EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
	v
Matthew Colliander-Smith	Veritas Asset Management LLP

Heard at: London Central Employment Tribunal

On: 22 April – 1 May 2025
(9 and 10 June) In Chambers)

Before: EJ Webster
Mr Benson
Ms Olulode

Appearances
For the Claimant: Ms D'Souza (Counsel)

For the Respondent: Mr Laddie KC

JUDGMENT

1. The Claimant's claims for discrimination arising out of disability pursuant to s15 Equality Act 2010 are not upheld.

2. The Claimant's claims for failure to make reasonable adjustments pursuant to s20 and s21 Equality Act 2010 are not upheld.

3. The Claimant's claims for victimisation pursuant to s27 Equality Act 2010 are not upheld.

RESERVED REASONS

The hearing

1. The hearing was held over 8 days in person. The hearing was adjourned for the afternoon of the second day (23 April 2025) due to the Claimant's ill health and for the whole day (bar 20 minutes at the beginning) on 29 April 2025 due to a panel member's ill health. The Tribunal thanks both parties and their representatives for their flexibility which ensured that the Tribunal was able to hear all the evidence and submissions in the remaining time. Written submissions were agreed and given on 13 May 2025. The Tribunal reconvened in Chambers on 9 and 10 June to deliberate.

2. An application for late submissions regarding time was made by Claimant's counsel on 19 June 2025. These were sent to EJ Webster on 20 June. The Tribunal had already reached a conclusion having considered the substance of the allegations in any event, without relying on any time points to determine the claims. Nevertheless, as the written reasons had not been finalised, EJ Webster reviewed the Claimant's additional submissions and considered the Tribunal's decision in light of those submissions. She did not consider that it was proportionate to reconvene the Tribunal panel in full as she did not consider that the submissions altered the Tribunal's conclusions. In addition, given that timing is a jurisdictional matter, the Tribunal had already considered the point and whilst no disrespect is intended to Ms D'Souza's submissions which were clear and helpful, the matters she raises had already been considered by the Tribunal panel in reaching its initial conclusion. For clarity, after the Tribunal had reached its conclusions, EJ Webster considered the Claimant's submissions on time to ensure that the Tribunal had turned its attention to all the matters raised therein. She was satisfied from her notes that they had and therefore did not re-refer the decision to the whole panel.

3. After the Claimant became unwell on 23 April and remained unwell on 24 April, he obtained medical evidence from his GP and his therapist indicating that he was well enough to continue the hearing. It was suggested in those documents that adjustments be made but those adjustments were not specified. The below adjustments were made in conjunction with the Claimant and his representative. No others were requested or identified.

    (i) The Tribunal took breaks every hour.
    (ii) For the majority of the second day on which the Claimant gave evidence the fluorescent lights were turned off – though this changed in the afternoon as the parties could not properly see the documents. This change was done by agreement.

4. We were provided with a bundle numbering 2512 pages. On 29 April we were provided with additional pages of disclosure from the Respondent numbering 21 pages which were added to the bundle with the Claimant's agreement.

5. We were provided with witness statements as follows:

   (i) Matthew Colliander-Smith (Claimant)
   (ii) Graeme McLaren (Claimant's friend)
   (iii) Ruth Liptrot (Claimant's friend)
   (iv) Thomas Berry (Claimant's friend)
   (v) Antony Burgess (Managing partner for the Respondent and Claimant's line manager)
   (vi) Owen Thomas (Employee for the Respondent)
   (vii) Nicola Smith (Managing partner for the Respondent)
   (viii) Sandra Phelan (HR manager for the Respondent)

6. We were told on the first day that the Respondent did not wish to cross examine Mr McClaren or Ms Liptrot and the Claimant has therefore asked us to accept their evidence without challenge. Mr Berry attended to give evidence but was not in fact called as Mr Laddie confirmed he did not wish to cross examine him either. All the Respondent's witnesses gave evidence and were cross examined.

7. The evidence of Mr Burgess and Mr Thomas had to be interposed on Thursday 24 April due to the ill health of the Claimant.

8. The Issues were agreed prior to the hearing and were discussed with the parties at the outset. No changes were requested save that the Respondent had conceded disability prior to the hearing and we have therefore not considered this matter. The Issues are appended to this Judgment. At the conclusion of the hearing the Claimant withdrew any claim in relation to Detriment 13.

Relevant Law

9. Both parties submitted extensive, helpful, written submissions accompanied by case law bundles. We do not set out the case law in full in this section but it has been considered in full. Where relevant it is discussed in the conclusions section. The only significant point of difference regarding the law concerns the interpretation of the case of Archibald v Fife Council [2004] ICR 95. We address that below in our conclusions regarding reasonable adjustments.

Discrimination arising out of disability (s15 Equality Act 2010)

10. Section 15 EQA 2010 provides as follows:

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

11. We have had particular regard to the guidance given in *Pnaiser v NHS England* [2016] IRLR 170 which is summarised by the EAT as follows:

(a) 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.
(b) 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.
(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her skeleton).
(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.
(e) For example, in Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb) a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.
(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in s.15(2) so that there must be, as she put it, "discriminatory motivation" and the alleged discriminator must know that the "something" that causes the treatment arises in consequence of disability. She relied on paragraphs 26–34 of Weerasinghe as supporting this

approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages – the "because of" stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

12. We have reminded ourselves that motive is irrelevant (as per Pnaiser above) and carefully considered, that there can be more than one factor that causes the less favourable treatment and that our assessment of what was in the minds of the Respondents at the time is key but consideration of their motive is irrelevant.

Victimisation: Equality Act 2010 s27

13. S27 (1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

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

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

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

S 20 Equality Act - Duty to make adjustments

14. S20 (1) 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.

    (2) The duty comprises the following three requirements.

    (3) 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.

    (4) 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.

    (5) 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.

    (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

    (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

<u>S 21 Equality Act - Failure to comply with duty to make reasonable adjustments</u>

15. s21 (1) 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.

    (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

16. Schedule 8, Equality Act 2010 states that the duty to make reasonable adjustments arises unless the employer can show that it did not know or “could not reasonably be expected to know" that the employee is disabled or that there was a substantial disadvantage.

17. Case law and the EHRC Code suggest that knowledge will sometimes be imputed to the employer. The EHRC Code advises that employers must "do all they can reasonably be expected to do" to find out this information.

18. An employer is not under a duty to make reasonable adjustments unless it knows or ought to know the employee has a disability and is likely to be placed at the substantial disadvantage in question (per paragraph 20(1) Schedule 8, EA 2010)

19. Guidance for a tribunal's approach to reasonable adjustments was given in *Environment Agency v Rowan* [2008] ICR 218:

- The PCP must be identified;
- The identity of the non-disabled comparators must be identified (where appropriate);
- The nature and extent of the substantial disadvantage suffered by C must be identified;
- The reasonableness of the adjustment claimed must be analysed.

20. In *Tarbuck v Sainsbury's Supermarkets* [2006] IRLR 664**,** the EAT held that the only question is whether the employer has *substantively* complied with its obligations or not.

21. It is for the tribunal to assess for itself the reasonableness of adjustments. The Equality and Human Rights Commission Code of Practice gives useful guidance at paragraphs 6.28 and 6.29 upon potentially relevant factors.

S136 Equality Act 2010 - The Burden of Proof

22. S.136(2) Equality Act 2010 (EqA) provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred; and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision.

23. The EHRC Employment Code states that 'a claimant alleging that they have experienced an unlawful act must prove facts from which an employment tribunal could decide or draw an inference that such an act has occurred'. If such facts are proved, 'to successfully defend a claim, the respondent will have to prove, on the balance of probabilities, that they did not act unlawfully'.

24. The leading case on this point remains Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931. This was further explored in *Madarassy v Nomura International plc 2007 ICR 867, CA*; and confirmed in *Hewage v Grampian Health Board 2012 ICR 1054, SC*.

25. In the case of Igen, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place (on the balance of probabilities). If so proven, the second stage is engaged, whereby the burden then 'shifts' to the respondent

to prove on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground.

26. The Court of Appeal in *Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205, EAT*, gave a clear set of guidelines which we have had due regard to.

Time limits - S123 Equality Act 2019

27. S123 (1)Subject to s140B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

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

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

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

(3)For the purposes of this section—

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

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

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

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

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

Facts

28. We have made findings solely in relation to the matters which have informed our conclusions. Where we do not reference evidence that was put before us that does not mean that we have not considered it, simply that it was not relevant to our conclusions.

29. All our findings are reached on the balance of probabilities.

Background

30. The Respondent is a limited liability partnership operating a global asset management business. There are four managing partners including Mr Burgess and Ms Smith. Mr Burgess is Head of Clients and Investment Specialists and Ms Smith is the Chief Operating Officer and Chief Financial Officer. Together they share responsibility for the day to day management of the partnership. Ms Smith was originally the business manager but was appointed to the role of CFO in 2020 and COO in November 2021.

31. Decisions regarding bonus allocations were made by the Remuneration Committee which consisted of the managing partners. That committee met three times a year in November and December.

32. AMG (Affiliated Managers Group Inc) is a silent partner in the Respondent owning approximately 65% of the partnership through a UK holding company. It is not involved in the day to day running of the partnership but has significant powers as the majority shareholder.

33. The Claimant was employed by the LLP from 11 January 2011 to 1 January 2015. He then became an operating partner on 1 January 2015. It was common ground between the parties that the Claimant was not an employee. His role at the time that he became unwell was Head of Performance and Risk.

The Claimant's health

34. In October 2021 the Claimant contracted Covid-19 and thereafter experienced symptoms which have come to be called ' Long Covid' or Post Coronavirus Syndrome. The Claimant also has the condition of Anxiety. It was accepted by the Respondent that the Claimant was disabled for the purposes of the Equality Act 2010 at the relevant time in relation to both of these conditions. Part of the Respondent's case challenges whether they had knowledge of the substantial disadvantage relied upon by the Claimant in relation to some of the reasonable adjustment claims. That is dealt with in the relevant paragraphs below.

35. It was not in dispute between the parties that the Claimant was severely unwell with a variety of symptoms for a considerable period of time. The Claimant says that his symptoms were at their most severe and debilitating from 2021 until early 2023. He states that from early 2023 his physical symptoms were beginning to show signs of improving. He states however that he was left with mental and physical fatigue and that his stamina reduced. The Claimant had two significant relapses of his condition; 1 February 2022 and 2 August 2022. As a result of the second relapse the Claimant had is referred to as a mental breakdown and was prescribed antidepressants and anti-anxiety medication.

The Claimant's role

36. Before becoming unwell, the Claimant was working as the Head of Performance and Risk. This role was multifaceted and included (amongst many others)

responsibilities such as leading a project for a full rebrand of the firm, developing new client reporting and leading the firm to GIPS compliance. The Claimant himself identified that risk was a relatively small part of his responsibilities. His evidence to us in respect of the importance of the risk role varied, however throughout his time working for the Respondent and during the discussions about the deletion of his role and taking on the new risk role, we find that he believed that risk formed approximately 5% of his role.

37. The Claimant says that the reason the proportion of time spent on risk was only 5% was because he did not have sufficient time to dedicate more to it due to his performance responsibilities. We were taken to various documents during the Claimant's cross examination which demonstrated that it had been a topic of conversation during the Claimant's performance reviews for a number of years. There was a continued demand for more from the risk role even on the Claimant's case, but the Claimant states that he was hampered by lack of time and resource. The idea behind Holly Naughton's recruitment was to free up the Claimant in order that he might be able to do more on the risk reporting requirement for the Respondent.

38. Part of the evidence we heard pertained to the possible introduction of a new risk analysis system. The Respondent used a system called Excerpt. The Claimant considered that this was a fairly basic system which did not provide the level of support required. The Respondent stated that on being reviewed by subsequent risk professionals, Excerpt was in fact a system that could deliver what they needed and the Claimant appeared not to understand its full potential. In or around summer 2021 the Claimant had begun working on the risk program with a project called project Tahoe. The Claimant states that project Tahoe identified that a new risk system would have been preferential. The Respondent's case is that, following analysis by contractors, this was not in fact necessary and would have been very costly. We address the significance of this difference of opinion below when discussing the consideration of the Claimant for the "risk role".

39. One of Ms Smith's first initiatives on becoming COO was to assess the Respondent's existing processes, the sources of data they had access to, data mapping and overall operating model. She states (paragraph 66) "my goal was to identify key risks and pressure points along the value chain and leveraged external insights to pinpoint areas process improvement and developing a target operating model. This became known as the process excellent project." Ms Smith invited the PEN partnership to undertake the review which they started in May2022. The Claimant fed into their review in that despite having long Covid and PEN put together a report called the PEX report in late July 2022 which identified the following:

    (a) A recommendation to appoint an outsourced trade execution function
    (b) that performance reporting was notably manual and time consuming
    (c) that we had key person dependencies particularly within performance reporting

(d) that there were issues with risk reporting into client services

40. Ms Smith's evidence was that of the six key findings made by PEN, five related in whole or in large part to the Claimant's role's function – the Respondent's performance reporting and investment risk functions.

41. The PEX report made various recommendations all of which Ms Smith submitted to the board who then approved those recommendations for the following year as part of the business plan.

42. Ms Smith says that it was as a result of the PEX report she made the decision to eliminate the Claimant's Head of Performance and Risk Role. We accept that this was the main driver for her decision though we deal with other factors below. There was no written evidence to substantiate when she made that decision. The Claimant's case is that she made the decision to eliminate his role after he had sent his email on 10 January 2023 which he relies upon as being a protected disclosure though the actual decision to delete the role does not form part of the Claimant's claims for discrimination or victimisation. Nevertheless the way that it was managed and what happens next do form part of his claim and so the timing of the decision is important.

43. Ms Smith says that the decision to reorganise the team and the work when she did was made in January 2023 (as opposed to continuing to wait until the Claimant was well enough to return to work) because of the need to support Holly better. That need was prompted by Holly's email dated 3 January 2023 in which she raised concerns about the long-term plan for the performance analytics and reporting role because she felt she had been performing solo for 15 months. Holly's request for more clarity about the long term situation was in turn prompted by the Claimant's message to Ms Naughton and Ms Watson saying that he would be unable to respond to any work queries after 3 January 2023.

44. We accept that Ms Naughton's 3 January email was the catalyst for Ms Smith to consider whether to restructure the team whilst waiting for the Claimant to return or not. The decision to eliminate the role was, we find, made at around the same time as the decision to move Holly, or perhaps slightly earlier, as it was all part of the reorganisation from her point of view. There was evidence of changes regarding Holly and Suzanne's reporting lines being discussed in mid-January 2023 (page 1187). We therefore consider that the decision was made at some point between 3 January and the various emails in mid January informing Holly that she was moving. There was an email dated 12 January from Ms Phelan which talks about embedding the new proposed team structure and working with the Claimant on a potential role involving investment risk and enterprise risk (p1166) suggesting that the new team structure was imminent.

45. It was accepted by Ms Smith that at no point did she consult with the Claimant regarding these structural changes and the elimination of his role. Ms Smith states

that she did this because he was not an employee and therefore had no right to be consulted, because the Claimant had indicated that he was significantly unwell and did not want to respond to work-related matters by email, and because she was always going to be enacting the PEX report recommendations at some point in any event. We accept those as genuine reasons.

46. We had no evidence that the Claimant's role within the restructured team was announced to anyone in the business before he left. We do not accept that others were told about Matt's role beyond reassurances being given that he would be returning to work when he was ready and that they would support him to do that.

The Claimant's bonus and fixed profit allocation

47. Running alongside this situation was an issue concerning the Claimant's bonus. The Claimant's remuneration package consisted of the following types of payments:
    (i) an annual fixed profit allocation paid by way of a fixed monthly payment (in effect a salary payment)
    (ii) an additional 10% fixed profit allocation (meant in lieu of pension contributions)
    (iii) to be considered for an annual discretionary bonus profit share (hereafter referred to as a bonus)

    The Claimant was also entitled to various share allocations which we deal with below.

48. The Claimant continued to receive his fixed profit allocation until the end of September 2022. The staff handbook suggests that any pay during sickness absence is discretionary but it appeared to be conceded by the Respondent during these proceedings that there was a reasonable expectation that full pay would be received for up to 26 weeks (p130). The Claimant also received a full bonus in respect of calendar year 2021 despite having been absent for two months. His bonus share was an increase on the year before. The Claimant did not dispute that any entitlement to a bonus was discretionary under the contract. Subsequently, for the calendar year 2022 the Respondent decided to award the Claimant a bonus of £10,000.

49. The Claimant was notified of this in December 2022. The way in which it was done was upsetting for the Claimant. He found out via text message from Mr Burgess. The system appeared to record that he was going to be awarded the same bonus as the previous year. Mr Burgess corrected that misconception in an offhand message (31 December 2022, p 1084). Given the vast difference between the bonus received 2021 to 2022, we understand why the Claimant may have been taken aback by the difference. We also consider that although Mr Burgess and the Claimant had a good working relationship and these messages were being sent on a Saturday, it was thoughtless of Mr Burgess to inform the Claimant in this way.

50. The Respondent said that the decision to award him a comparatively low bonus arose out of the fact that he had not performed any significant work during the calendar year of 2022. We were presented with a breakdown by the Claimant of the days and hours he had worked during 2022 which, he said, amounted to roughly 8% of the working days. His evidence to us was that he had done this of his own accord because he wanted to demonstrate commitment and care to the Respondent. The Claimant's case that he was entitled to a greater bonus was based on the premise that the 8% of days that he had performed work on took such considerable effort by him that it represented far more effort than he had ever put in before and therefore his bonus ought to recognise that as opposed to output.

51. As a result of the Claimant's disappointment with the bonus, he postponed lunch with Mr Burgess and submitted the letter (p1150**)** dated 10 January 2023. That letter, in summary, sets out the Claimant's significant health challenges and the efforts he has made in order to get better. It then goes on to provide a breakdown of the work that the Claimant says he did during this period and provided the breakdown and analysis of work described above. He also says that he performed work tasks on a total of 246 days in 2022 thus suggesting that he was doing little and often. He provides a breakdown of the number of work-related emails he sent during 2022 and he provides a bullet point list of the work tasks that he considers he performed. Facts which he said demonstrated total commitment throughout the year of 2022. He then goes on to state as follows:

> *"Given these unprecedent circumstances the decision to reduce my fixed profit allocation by -94% year-on-year has left me shocked and disappointed. I would appreciate if you could provide details of how the fixed profit allocation figure for me was determined. This has had a significant and detrimental impact on our family's finances and at a time where I was at the early stages of regaining my life I am now obligated to deal with the additional stress and complications that this decision has lead to.*
> *Although I recognise that my absence has also had an impact on Veritas, and many of my colleagues, this has not been through any fault of my own and I have, and continue to be, committed to recovering as soon as possible so I can return to work.*
> *For these reasons and taking into account my years of commitment to the company, I would respectfully request that you re-visit your decision making so that we could reach a more mutually agreeable solution." (*p1152)

52. It is clear from this email that the Claimant roots his concerns regarding the reduction in his fixed profit allocation in his sickness absence. Nevertheless at no point does he allege or suggest that the Respondent has made the decision in a way which contravenes the Equality Act or is in some way discriminatory. We note that at this point in time the Claimant had not accessed legal advice as far as we can tell.

53. There was not a huge amount of correspondence between the Claimant and the Respondent between 31 December and 10 January. However what there was reflected a change in tone by the Claimant. We consider the correspondence regarding contact in some detail below. However it is important to note that the Claimant, from this point on, appeared to be, at best, curt in his emails. His approach and attitude towards the Respondent changes significantly.

54. On 12 January 2023 there is correspondence between Ms Phelan, Mr Burgess and Ms Smith indicating that they are seeking legal advice and wanting to avoid any potential discrimination claim. The Claimant relies upon this as being evidence that they understood the 10 January email to be a protected disclosure. We analyse its significance in our conclusions below. However we accept that they sought advice in light of the Claimant's 10 January letter, but also in respect of his position generally. The wording of the email suggests that, at least in part, the legal advice and the issues being discussed also concern the Claimant's continuing position within the Respondent as opposed to being just about the bonus payment which was the focus of the 10 January letter. In that respect Ms Phelan's email is clearly focussed on wanting to ensure that the firm were acting correctly by focussing on how to support the Claimant whilst he was off sick and how to move the firm forward with the reorganisation and the Claimant's subsequent role within that reorganisation.

55. The Respondent replied on 12 January 2023 setting out in some detail the financial and practical support that they had offered the Claimant to date and explaining the financial support going forward. That response was approved by Mr Burgess and Ms Smith. The email addresses the Claimant's concerns regarding the bonus and reminds him that any bonus is discretionary. They also address the issues that the Claimant raises in respect of the reduction to his 'salary' by 50% during the period from October 2022 to December 2022.

56. They explain the reduction in salary being due to the use of the Aviva Income protection insurance scheme. They explain that in order to qualify for the protection of the scheme, the fixed profit allocation had to be reduced in order to ensure that the Claimant was suffering a loss and therefore that the insurance product need to cover. However, they accepted that this was not communicated to the Claimant until he queried it. The Claimant had not queried it until January 2023 because he had not noticed that his income had reduced in the previous three months.

57. On 19 January, Ms Smith appears to have written to the Remuneration Committee (Remco) setting out proposed next steps. She indicates that they will not be increasing his bonus and explaining what team changes will be made. The email focusses on line management arrangements for the Claimant's direct reports, Suzanne and Holly. It does not say that the Claimant's role is being deleted but it makes reference to working with the Claimant to reassure him that a role will be found when he returns. It is clear from this proposed email (although it is not clear that this was sent) that the intention was for Mr Burgess to tell the Claimant about

all the changes, including the deletion of his role during the call the following day. (p1179)

58. Subsequently, the Claimant had an online call on 20 January 2023 with Mr Burgess. Mr Burgess's witness evidence to the tribunal and the contemporary evidence of his emails and messages demonstrate that he was shocked and upset by the appearance of the Claimant during this call. He told colleagues that he was worried for the Claimant's ongoing health and his evidence before us appeared to suggest that he felt some sort of personal responsibility to the Claimant to ensure that he did not suffer the negative repercussions which the Claimant was alleging would occur as a result of the reduction in income. During the call the Claimant indicated that he thought he would have to sell his family house as a result of the fall in income.

59. As a result an additional RemCo meeting was called on 26 January 2023. Mr Burgess asked the management committee to reconsider its decision in respect of the value of the bonus awarded to the Claimant. Mr Burgess's evidence to us was that he went in with a higher figure in order to negotiate a middle ground. Mr Burgess's evidence was not that he thought the Claimant ought to receive a bonus of £97,000 but that as a starting point it was a sensible place. He said that Remco meetings were often tough and he needed to have a starting point. His evidence, which we accept, was that there was significant resistance to awarding the Claimant anything above £10,000. He said that other members said that they had team members who had also been off for a year who got no bonus and that it would be unfair to them to increase the award to the Claimant. Subsequently the committee did not agree to any increased share of the pot but two individuals including Mr Burgess contributed money from their own bonuses to increase the figure and in the end the Claimant was awarded £40,000.

60. The tribunal finds, on balance of probabilities, that although the Claimant strenuously opposed Mr Burgess's evidence that he placed the value of the bonuses being £97,000 in order to obtain a negotiating position, this was in fact what he intended to do. Mr Burgess's approach to the Claimant has, throughout, been both sympathetic and empathetic. His attempts to maintain the Claimant within the business and to remunerate him in a way that did not impact the Claimant's financial obligations, were, in our view, extraordinary in all the circumstances. It was clear to us that Mr Burgess's intent towards the Claimant were at all times benign and his actions were done in an effort to help him. He rated the Claimant highly in terms of his performance prior to this stage and we presume, after 11 years of working with him, they had a genuine friendship. It was on this basis that Mr Burgess 'went into bat' for the Claimant at the remuneration committee meeting. It was also on this basis that he gave some of his own money in order to ensure that the Claimant's pot was increased. The others within Remco were making decisions based on normal bonus basis not because of the Claimant's ill health.

61. We find that the decision not to pay the Claimant's normal bonus was because he had not done his job in any meaningful way for an entire year due to his absence. We accept the Claimant's evidence that he had attempted to work in a meaningful way. However, we consider that this is what Mr Burgess was rewarding when he awarded any bonus at all and then agreed to increase the Claimant's bonus. It is clear that despite all the charts and the analysis, the Claimant was not working in a way that generated significant benefit to the Respondent at this time because he was too unwell to do so. It was his lack of economic contribution or output that the Claimant was not awarded a greater bonus by Remco.

62. At the time that he was notified that his bonus was increased to £40,000 the Claimant appeared very grateful to Mr Burgess. This is what he expresses in his emails on the subject. He does not object to this award until he submits a freedom of information application and discovers that Mr Burgess asked for £97,000 on his behalf. He has since argued that his work output fits into this analysis better and that this ought to have been his entitlement. He argues that the Respondent's failure to agree with Mr Burgess was discriminatory – we address this in our conclusions below. However, we accept the Respondent's submissions that at the time that he received £40,000 he was satisfied that this was a fair bonus. His response expressed gratitude and we consider that the emotions expressed were genuine.

63. It was also agreed that the Claimant should be paid in full for the last three months because he had not been notified of the changes to his pay. This was done without him requesting it. Having considered the evidence from Ms Phelan and Ms Smith, on balance, we accept that they had not properly understood the mechanism of the insurance product. This resulted in the Claimant receiving incorrect information from Ms Phelan. Ms Phelan had genuinely believed that the insurance payment would form 50% of the Claimant's pay and the company would pay the balance. He had not appreciated (nor had Ms Smith) that in fact the Claimant had to be receiving less than 50% of his overall remuneration package in order to qualify for the insurance scheme. We reach this conclusion because of the correspondence from the insurance scheme on this matter. Ms McFadyen sets this out to Ms Phelan in an email dated 5 January 2023. She initially quotes from Aviva.

> *"Under the policy terms, Matthew is entitled to receive a maximum of 50% of his pre-absence earnings from all sources. Therefore any continued income may impact the level of benefit we can pay. Based on the 3 years of average earnings prior to Matthew's absence, his pre-absence earnings were £330,837.00. The maximum he's able to receive from all sources is £165,418.50. (p1114).*
>
> She then goes on to explain:
>
> *"The key figure a Group Income Protection policy works back to is the overall maximum remuneration a Claimant should receive during their absence which*

in Matt's case is the figure of £165,418.50. Aviva insure the fixed profit share only which would be annual benefit of £50,833.33, so the questions they have asked are to ensure that Matt is currently receiving no more than another £114,585.17 from a combination of member discretionary profit share, bonus and pension cash allowance. If for example the other elements amount to £120,585, Aviva would reduce Matt's benefit to £44,833 (i.e. reducing by the amount his total income has exceeded £165,418.5 by).

Once agreed the benefit calculation would not be revisited other than an annual check on the discretionary income received from member profit allocation and bonus as once the benefit is in payment Veritas would no longer be paying Matt a fixed profit share (the Aviva benefit must replace this when in payment) and the pension cash allowance would remain the fixed amount agreed, so all Aviva do is check on the variable and discretionary elements of possible ongoing income during Matt's absence."

64. We accept that in order for the Respondent and therefore the Claimant to benefit from the Aviva package, his overall income had to reduce by half and this was what prompted the decision to reduce his fixed profit allocation. The failure to communicate it to him was caused by Ms Phelan's misunderstanding of the mechanics of the product as demonstrated by Ms McFadyen's email dated 5 January.

65. The Claimant was not told of the reduction until 3 months after it had occurred. The Respondent acknowledged that this ought not to have occurred and Ms Phelan accepts that this occurred because she made a mistake and had misunderstood the policy. On realising the mistake, the Respondent paid the Claimant his back pay to October 2022 (3 months) because it recognised it had given the Claimant the wrong information.

66. Overall, the communication to the Claimant regarding his initial £10,000 bonus and the halving of his profit allocation was poor and inconsiderate to the Claimant. His shock at the significant reductions was understandable. We do not accept the Respondent's submissions that any such shock should have been offset by the knowledge that it was going to happen at some point. We accept that the Claimant had been paid far more than his contractual entitlement until then, nevertheless, as someone who was absent from the work force, two such negative realisations at the same time would have been shocking without any warning.

67. The Claimant was paid in full (despite only being entitled to 6 months full pay), for a period of 15 months in total. In addition, he received a full bonus for the year 2021 and a £40,000 bonus for the year of 2022.

Reorganisation of the Claimant's team – January 2023

68. The Claimant had two individuals reporting to him; Holly Naughton and Suzanne Watson. In the Claimant's absence, Holly had stepped up and taken on the majority

of the Claimant's performance-related responsibilities. She had been emailing the Claimant for guidance and he had continued to support her when he could. She had also received line management support from others within the team. Suzanne was moved to Nurul's team.

69. The Respondent did not tell the Claimant about the reorganisation of the performance and risk team at the time that those changes were made. We accept that the decision to reorganise the team was made at some point in early January. There is email evidence that this was discussed with Holly and Suzanne before an email was sent to Remco on 19 January. We accepted that Mr Burgess's intention had been to communicate to the Claimant on 20 January 2023 that his role had been deleted and the Department re-organised. However, on seeing the appearance of the Claimant he decided not to share the news as he believed that it would have been very upsetting for the Claimant and he did not want to exacerbate the Claimant's ill-health.

70. On 30 January 2023 there was email correspondence between Mr Burgess and Ms Phelan setting out that they would not communicate with the Claimant until he was ready to come back. She outlines that they will not share any team communication with him at this stage and that they will talk to the Claimant when he is ready to come back to work. She sets out that she does not consider that there is any requirement to keep his role open but that they should help him identify a role he could perform at the same salary when he is ready to come back. (p1207)

71. Although parts of the email are redacted, we consider that at this stage, there was a genuine intention to bring the Claimant back into the business as and when he was ready to and this email reflects that genuine intention. The intention to bring the Claimant back was reflected in all emails to the wider business about the changes to reporting lines (e.g. email to Remco p 1179).

72. The rest of the business was told about the changes at the end of January or the very beginning of February 2023. The people whose roles were actually moving were, we find, told in mid-January 2023 as there was significant email correspondence on this point. Given that Ms Smith was unable in evidence to ascertain exactly when she took the decision, the Tribunal cannot say for certain that Ms Smith's decision to eliminate the Claimant's role predated the 10 January email from the Claimant**.**

73. Nevertheless, we do accept that Ms Smith's decision making in respect of the performance and risk team was prompted by the PEX report which clearly identified that they needed to increase and change their Risk reporting. The timing of her decision was prompted by the email of 3 January from Holly Naughton. Although the circumstances and timing of the 10 January email could have coincided with Ms Smith's decision making process, we do not consider that this was either in part or in full, a prompt for Miss Smith's decision.

74. Ms Phelan's evidence was that the 10 January letter marked a shift in the relationship between the Respondent and the Claimant. Ms Smith gave evidence that Remco and AMG took a dim view of people challenging their bonus allocation and it was unusual for anyone to do so. However we accept, on balance, that the content of the 10 January email was not such that it would cause Ms Smith or the Respondent as a whole to make decisions regarding the way its staff were organised, the delivery of its Risk function and ultimately the Claimant's role. There is nothing significant in the Claimant's email beyond an assertion that he ought to receive more financial recognition for his efforts. To suggest that it prompts such a widescale set of actions is implausible, particularly when there is clear evidence that:

    (i) The Respondent had been considering the delivery of its risk function in detail since the PEX report September 2022
    (ii) The Respondent had been told by 2 separate contractors(Chris Gould and Ian Nisbet) that their current risk functionality was not sufficient and that the systems they had could be better used suggesting that the Claimant was not the right person for the job
    (iii) Holly Naughton and Suzanne Watson had sent emails requesting help

75. It is more plausible to suggest that the 10 January letter caused them not to tell the Claimant about the reorganisation for fear of angering or upsetting him further. However we find, that at this stage, Mr Burgess was so worried about the Claimant's presentation on the zoom call on 20 January that he wanted to protect the Claimant whilst he could. He took steps to increase his bonus as far as possible, and he took steps to shield him from the news about the reorganisation because he did not want his health to be worsened and he was worried about his response from a health point of view.

76. We address our analysis of whether this is a protected disclosure below, but we do not think that any line, straight or dotted, can be drawn between this email and the decision-making process regarding the reorganisation of the team. The only evidence of a link between those things is the timing. We accept that timing and coincidence can be meaningful in some circumstances, nevertheless in these particular circumstances we do not accept that that is the case.

Contact arrangements

77. The Respondent says that they did not tell the Claimant because he had specifically requested that he was not to be contacted regarding work matters. The first email is at page 1126. It is dated 3 January 2023 and says as follows:

    "Sandra

    Please send me all the documentation and contact details for the Aviva income support claim. I was not aware that my salary had been reduced by 50% and I don't know where I stand with Aviva.

Please contact me on this email address. I am no longer able to monitor any work emails or teams messages."

Regards
Matt" (p1126)

78. Ms Smith and Ms Phelan rely on the second sentence of this email as supporting their assertion that the Claimant was asking not to be contacted. The Claimant says that it was not intended to do any such thing and it does not read that way. In fact it was a request for them to use his personal email address not his work email address as he did not want to monitor any work-related emails. It was not a request to not be contacted at all.

79. On 3 January Ms Phelan responded and said that she would like to talk to the Claimant and suggested they speak the following day. On the following day the Claimant responded asking her to email in everything in respect of Aviva and also saying as follows:

"My health has deteriorated in the last few days and I'm not well enough for a phone call at this stage. Many thanks" (p1126)

80. It is clear to us that the Claimant was not indicating that he did not want to be contacted at all and Ms Phelan did not interpret it as such as she continued to contact him. He asks for emails to be sent to his personal email address and he indicates that he is not very well. He does not however say that he does not want to correspond with them at all.

81. Perhaps an important distinction is that his original email says he does not want to monitor work emails or teams messages suggesting that he does not want to do anything work-related meaning, we conclude, anything that would require him to do any actual work or think about actual work. He clearly does want interaction about his Aviva claim given that he asks for it. As Ms Phelan instantly responds to the Claimant's email on 3 January and suggests a conversation, she is clearly not believing that he has asked not to be contacted whatsoever as she emails him and suggests a phone call. Subsequently there are various emails regarding the bonus situation and the Aviva claim. There is also the zoom call on 20 January with Mr Burgess and it is obvious that communication continues with the Claimant certainly about all things financially related to him.

82. The Respondent also relies upon a message that the Claimant sends to 2 of his colleagues on 3 January 2023 as evidence that he did not want to be contacted. He sends a message to Holly and Suzanne, (p 1088):

"I need to let you know that from today I'll be unable to respond to any work queries and I won't be monitoring any work emails/teams. If you can pass any

queries onto Anthony/Nicola. I hope this doesn't cause you any extra work. Maybe we can catch up for lunch in the coming weeks."

83. We find that although this suggests that the Claimant will not respond to any work queries and again will not be monitoring any work emails, it does not suggest that he ought not to be contacted for other reasons. For example he suggests a catch up for lunch in the coming weeks. In a message shortly thereafter, it also confirms that his health is improving and says that he is well enough to catch up.

84. Overall in respect of this matter, we conclude that the Claimant clearly did not ask not to be contacted at all by the Respondent. However, the picture he provided at the time was confusing. He did indicate to Ms Phelan that he was too unwell for a phone call or any correspondence with them in relation to work matters other than those relating to his Aviva claim and his bonus payments. He then indicates to colleagues Holly and Suzanne in contrast that although he will not be answering work messages, he is getting better and that he would like to catch up with them. His messaging to colleagues is very mixed. He then attends a zoom meeting on 20 January with Mr Burgess in which he presents as very unwell.

85. What we consider to be demonstrated by all of the correspondence we were taken to during this period, is that the Claimant was angry and upset in relation to his remuneration. His way of dealing with that was to refuse to engage with the Respondent about any matter except that. We consider that on balance, he formed the view that if he was not getting paid what he had expected, he would not make the additional effort he had previously been making. His suggestions of ill health to Ms Smith and Ms Phelan as being the reason for him not being in contact seem to be somewhat disingenuous, when contrasted with his correspondence with Holly and Suzanne.

86. Overall, we conclude that both Ms Smith and Ms Phelan formed the view that they should not contact the Claimant to discuss any work-related matters unless it related to his remuneration as he was telling them that he was too unwell to do so and his presentation to Mr Burgess on 20 January appeared to confirm that. We believe their belief that communicating 'bad news' to him regarding the reorganisation and the deletion of his role would be detrimental is plausible. He had sent clear correspondence indicating that he would not check his work emails, refused to have a call with Ms Phelan and had had an apparent downturn in health as communicated to Mr Burgess on 20th of January. It is indisputable, that the deletion of the Claimant's role would have been, and indeed was, interpreted by the Claimant as "bad news". We therefore consider that the Respondent's benign attempt not to further anger and more make the Claimant unwell, resulted in them deciding not to tell the Claimant about the reorganisation of the performance and risk departments and the deletion of his role.

87. On 7 February 2023, the Claimant was sent a letter which confirmed that he would receive a bonus of £40,000. It also outlined the other remuneration which he would receive which totalled £268,699.

88. The Claimant's response to that was overwhelmingly positive. He was very grateful to Mr Burgess and at this point in time he raised no issues or concerns regarding this decision.

IT Access

89. On 21 February 2023, a decision was made to remove the Claimant's IT access. At this time the Claimant was signed off sick until 23rd March. The email from Ms Phelan said "keep our communication to you to a strict minimum to avoid any work-related distractions" and explained that the access would be paused until the Claimant was fit enough to return to work and that the purpose was to focus on the Claimant getting better. It was clear from the emails between Mr Smith and the IT engineers that the disablement of the access was meant to be temporary and all communications by the Respondent with IT suggested he would return to work. (p 1226).

90. At no point did the Claimant complain about the fact that his access to emails had been disabled. The Claimant emailed them on 6 April saying that he was locked out of the system and cannot find access the job description for the new risk role. This is then sent to him. There is no discussion regarding reinstating access. His email does not trigger either Ms Phelan or Ms Smith to ask for his access to be reinstated. (p 1349)

91. In notes or questions that the Claimant prepared before his meeting with Ms Phelan and Ms Smith on 12 April 2023, the Claimant writes a question regarding IT access "Why have I been locked out of all the systems just when I communicated that I was well enough to start a phased return?" The notes of the meeting do not record that any such question was asked. However they are brief notes. The Claimant's witness statement does not suggest that this comment was made. In evidence to us he says he could not remember whether he asked the question but believes that if it was in his preparation notes he would have asked it. The Claimant's witness statement says that he did talk about being locked out of the system which made demonstrating some of the problems with the APX accounting system to Ms Smith difficult in that meeting.

92. On balance we do not consider that the direct question from the Claimant's notes was asked. We accept that the Claimant will have raised something regarding being locked out of the system but not that he placed it in the context of there being a targeted decision to remove it because he was returning to work. Instead we accept that, as per his witness statement, he raised it in the context of his concerns regarding the business sense of deleting his role and the problems it would cause. We consider, on balance, that the Respondent was trying to accommodate the Claimant's requests for information and his requests for support overall at this point

in time as they wanted him to return to work and so had he asked for his access to be restored or suggested that it had negative connotations, they would have restored it.

93. We accept that the decision to remove the Claimant's systems access was made at a strange time. If we are to easily believe the Respondent's assertion that the reason access was removed was because the Claimant asked not to be contacted or around 3 January 2023 then it is not clear why the decision took so long. Alternatively, if the reason was to facilitate the Aviva insurance claim, it ought to have occurred in October 2023 when his pay was first reduced or in January when everyone realised that this had happened. Ms Smith says that the reason access was not removed until 21 February was because she had simply forgotten before that.

94. On balance, despite the timing issues outlined above, we accept that no thought was given to the possibility of removing his access until the February meeting because nobody had given it any thought. There has been no explanation of why it occurred to Ms Smith at this meeting other than that they were reviewing the Claimant's absence, in light of the sick note he sent in on that date. Ms Phelan's evidence was that Ms Smith was concerned about the possibility that his access may jeopardise the Aviva insurance because he might have been working.

95. We accept that the Respondent made the decision to remove the Claimant's access because they, rightly or wrongly, thought that it might jeapordise his health insurance and that as he was not using it (at his request), there was no need for it to remain on.

96. Although there was a time lag, we accept the Respondent's evidence that the time lag occurred because they did not turn their minds to the issue until then. They did not make the decision to remove his IT access because of his continuing absence and/or the management view that the Claimant should not be contacted because of the risk of aggravating his anxiety levels. They took the decision because he had asked not to use his work emails and they were concerned about the Aviva insurance scheme.

The Claimant's 'return' to work

97. On receiving his sick certificate on 21 February, Ms Phelan responded on 21 February informing the claimant that his IT access had been paused (see above) and acknowledging his sick certificate and indicating that Aviva will be in touch in June regarding his income protection should he remain unwell at that point. The Claimant's response on 23 February 2023 was, to indicate that he had made good progress with his therapist and his health over the last two months and therefore should be ready for a phased return to work in the following two weeks. He suggested a catch up phone call. Ms Phelan's response to that was very positive

that they would work with the Claimant occupational health and the therapist to ensure a gradual return which would enable the Claimant's "success back at work".

98. The Claimant was not able to explain to the Tribunal what had changed between him submitting a sick certificate on 21 February signing him off until 23 March and his sudden recovery such that he was indicating that he was able to return 2 days later. His inability to explain this complete about turn has damaged the credibility of his evidence to us regarding what happened next. We believe, on balance, that the Claimant decided that he needed to return to work due to financial pressures now that he fully appreciated its impact on his pay and bonus whilst he remained off sick. Alternatively, it was suggested during cross examination, that he knew that changes had been made to his team due to information from colleagues, he knew that Mr Paxton had been or was being exited, and he realised he might also be exited and was considering positioning himself so as to negotiate an enhanced leaving package. Either way, we consider that much of the Claimant's actions hereafter were not necessarily motivated by the reasons he has set out in his witness evidence to us. We consider that hereafter a lot of what the Claimant did was intended to increase his negotiating position and that he had little or no intention of returning to work for the Respondent if they were not willing to let him return to his old role. His focus throughout many of his meetings with Ms Phelan and Ms Smith was that the decision to delete his role was misconceived and would not work. He did not accept that the decision was genuine and considered that the new risk role they created was essentially just his old role with a new title or, alternatively, was a role that he could easily do and that he ought to be offered outright as the equivalent of 'suitable alternative employment' (our phrase not his) in a redundancy exercise. This has remained his focus during these proceedings.

99. As a result of the Claimant's email, Ms Phelan emailed Mr Burgess and Ms Smith indicating that the Claimant was feeling much better and that he would like to discuss a gradual return to work. Ms Phelan recommended that the Claimant was referred to occupational health (OH) to get third party medical opinion to ensure that they could support him back to work. She indicates that they would need to discuss what type of roles might be the most appropriate to alleviate stress. Mr Burgess's response to that was to say that it was great that he was feeling better.

100. On 9 March the Claimant attended a telephone call with Ms Phelan during which she explained to the Claimant that she felt that the Claimant ought to be referred to occupational health so that they could be fully appraised of what adjustments needed making to his return to work. He was told that his direct reports had been moved into different departments. He was not told at this meeting that his role had been deleted.

101. The Claimant attended an OH meeting and the report was produced on 16 March 2023. That report recommended a gentle return to work working three hours on two non-consecutive days per week gradually increasing to 3 non-consecutive three hour days then for three hour days the day off midweek before increasing to

53 hour days. The occupational health report confirmed that the Claimant was not experiencing any significant side-effects from medication and that he continued to experience post coronavirus syndrome symptoms and anxiety/mood-related symptoms however they were decreasing with appropriate treatment and support. It stated that his memory and cognitive functions were improving and he was able to focus for 60-90 minutes at a time and his overall emotional state was less labile. It was also recommended that when the Claimant first return to work he should undertake discrete pieces of work which were not time bound and avoided the need for any significant client interaction. It was also recommended that he work five days per week from home if possible and to remove stressful elements of his role as much as possible. The report also confirmed that in the doctor's opinion he was likely to satisfy the definition of disability for the purposes of the Equality Act.

102. On receipt of the report Ms Phelan had another meeting with the Claimant on 21 March 2023. At this point Ms Phelan confirmed that the Claimant's role had been eliminated and that the Claimant could therefore no longer return to the role of head of performance and risk. The Claimant says that he was shocked and surprised as he had had no indication previously that this was the case. We find on balance, that the Claimant knew that his department had been re-organised and he knew that others had exited the firm as a result of the PEX report. Nevertheless we accept that this point in time, the Claimant did not know for sure that the role of Head of Risk and Reporting had been deleted as opposed to simply re-organised or reduced or re-titled. At this meeting, the Claimant told Ms Phelan that he believed he was protected under the Equality Act and that he had taken legal advice. The Claimant indicated that he had sought legal advice because this was a redundancy situation whilst he was unwell and he was covered by the Equality Discrimination Act**.** He also indicated that he was aware that this was happening to other operating partners and that the Respondent was trying to reduce cost in a challenging business environment. He indicated that he believed his treatment over the past 14 months had been very poor and he said that prior to this long episode of being unwell with long Covid he had been signed off work with stress for one month.

103. In evidence to the tribunal, although it was not necessarily that clear, the Claimant appeared to indicate that at this stage and during his recuperation and efforts to get better whilst having long covid, the Claimant had made great efforts to try to find out what caused long covid. He told us that one of the prevailing thoughts amongst the long covid community was that being exposed to significant levels of stress, whether at work or elsewhere, led to long Covid. We were not asked to consider this point and these answers came out as a result of cross-examination. Nevertheless, we think it is clear that at this stage the Claimant was making statements that appeared to suggest that he thought that making him redundant whilst he was unwell was unlawful in some way and discriminatory under the Equality Act. Even though he does not mention disability it is clear that he was alluding to this given that his allegations were made in the context of him being off on long term sick leave. He also seems to be lining up the possibility for a personal

injury claim if at this stage he believed that having been previously signed off work with stress might have contributed to his long covid he was seeking to ensure that the Respondent understood this if they were trying to dismiss him.

104. We also consider that what he said during this meeting indicates that he had taken legal advice regarding his position and also knew that Mr Paxton, another partner, had been exited. This confirms that the situation was not a complete surprise to him otherwise we do not consider that he would have taken pre-emptive legal advice. It also suggests that he knew that he was not the only person affected by the changes given that Mr Paxton, who had not been unwell or absent, had also been exited from the business. He puts the exits (his and Mr Paxton's) in the context that the Respondent was making decisions to exit Operating Partners and trying to reduce cost in a challenging business environment. We believe that this is what he actually considered was happening at the time and reflects his true understanding. He did not consider that he was being deliberately targeted but he felt that he was being poorly treated.

105. Ms Phelan stated that she tried to explain to the Claimant that they did want him back to work subject to his rehab/OH plan and that there was an investment risk role that had been created that he could consider. The Claimant's response to that was that he thought the role would not be sufficient. Ms Phelan explained that the way the role was constructed indicated that there would be an element of investment risk, an element of project management of a data warehousing project. The Claimant indicated that he was worried that he was coming back to a dead-end situation and that if he was in fact being exited in six months' time he wanted to know now because he had considerations at stake domestically. He then said that he needed to work and he needed to do any job that would be at the same level that he was. The discussion then moved on.

106. On 22 March Ms Phelan called their insurer, Aviva, and asked for advice as to how much of an exit package Aviva would pay out should the Claimant be exited. Aviva responded on 30 March stating that they would fund the Claimant's notice pay (3 months). This information was not in either Ms Phelan or Ms Smith's witness statement. Ms Phelan indicated that she had forgotten about the approach because they did not do anything with the information or circulate it to any one as a realistic prospect. She said that she was scenario planning because the conversation on 21 March had been so difficult. We accept this call was scenario planning as opposed to indicating that the Respondent had made a decision to dismiss the Claimant at this point. They were responding to the Claimant's legal allegations in his meeting with Ms Phelan as opposed to making active decisions about the Claimant's future employment. We reach that conclusion because had they been interested in exiting the Claimant at this point, they would have taken steps to do so as opposed to waiting several months. At this stage the Claimant's role had already been deleted, the Respondent could have dismissed the Claimant for that reason but chose not to. We find that this was not because they were ticking

boxes to avoid a claim by considering him for the Risk role or other work, but because they wanted to see if the Claimant could be kept in some capacity.

107. On 23 March 2023 there was another meeting between the Claimant Ms Phelan and Ms Smith about the return to work and the new role. The Claimant's account of the meeting is such that he says Ms Smith spent meeting explaining the reasons for the change to the team and the elimination of role and that Ms Smith heavily referenced the PEX review as justification. The Claimant was disappointed that this was the basis for their decision making processes as he felt that the PEX report was flawed. He believed that the elimination of the Claimant's role was unnecessary and he felt that the decision to put Holly Naughton in a different team was nonsensical. The majority of his points focussed on the fact that it was a mistake to eliminate his role at all. He did not, and still does not, believe that the Respondent's risk functionality needed to be increased to such an extent that it required a whole job. The Respondent disagreed at the time and disagrees now. This was, by all accounts, a difficult meeting.

108. On 25th of March 2023, Ms Phelan emailed the Claimant to confirm the conversation they had had on 23 March. In that email, Ms Phelan confirmed that the new role was one which he could consider applying for. All the Claimant says in his witness statement was that he felt that the Respondent's responses to his queries regarding why he was being asked to apply for the role and why he was not being offered it automatically were inadequate.

109. On 29 March 2023 the Claimant sent an email,

"I would like to apply for the newly created role but I would also ask you to respond to the following questions: given the elimination of my Head of Risk and Performance role why have I not been automatically offered the newly created risk role? Why was I not informed of the termination of my role and the creation of the new role until several weeks after the new risk role was published publically [sic]?"

110. The Claimant relies upon this as his third protected act. It is not suggested that it explicitly refers to the Equality Act or discrimination but the Claimant says that it should be taken in conjunction with what he said at the 21 March meeting with Ms Phelan.

111. The Claimant says that the Respondent's responses and reasons were wholly inadequate and indicated a change in their approach to him. He relied on the fact that only a few weeks earlier the Respondent had said that they would work with him the occupational health and his therapist to ensure that a gradual return to work would enable his success and that Ms Phelan had always said that the Claimant was outstanding and his contribution was critical to the business. We do not accept that there was a direct contrast or conflict between what the Claimant had been told previously and what the Claimant was now being told in respect of his role. We address the requirements of the new role below, however it is entirely

possible and common for individuals who have contributed huge amounts to organisations and been incredibly good at their jobs, to be made redundant in circumstances where the organisation takes a different approach and direction to how they run their business. Further, we accept the various Respondent witnesses' evidence which outlines that they had every intention of the Claimant returning to the business in some capacity, at the same level, if at all possible.

112. They (in particular Mr Burgess) wanted to find work for him and were going to work with him to do that. We accept as true, the evidence of all the Respondent witnesses who said that they valued the Claimant, they valued his contribution, and that that would have been happy if they could keep him on in some capacity. They made efforts to do that which the Claimant rejected on every occasion.

113. The Claimant was not an employee and so did not have the right to be made redundant and/or consulted in respect of any redundancy situation. However the approach that the Respondent took was that they wanted to ensure that he was not disadvantaged by the circumstances that had arisen. This is in direct contrast to Mr Paxton who was also a partner who had also been exited as a result of the PEX report. He was not consulted and he was exited from the business very quickly.

The new Risk Role

114. Turning to the requirements of the new risk role and the Claimant's suitability for it. The Claimant states that he was well able to carry out the Risk role. He asserts that he ought to have been offered it without the need for any assessment process. He had spent many years as Head of Reporting and Risk and the reasons he had not focussed more on risk were that he was not given the time, support, systems and manpower to create the changes that the Respondent now wanted. He also stated that his line managers had been happy with his approach and at no point had it been raised as a significant performance concern.

115. The Respondent disagreed that the Claimant had the necessary skills or experience to be just slotted into the new role.

116. Both the Claimant and the Respondent gave significant amounts of evidence focussed on this point. We the Tribunal are not in a position to determine whether the Claimant did or did not have the necessary skills and experience to perform the new role. Nevertheless we have to assess whether the methodology and the decision to subject him to a process were discriminatory or acts of victimisation. We have therefore considered the process both practically and substantively.

Decision to assess the Claimant

117. It was Ms Smith's decision to assess the Claimant's ability to carry out the head of risk role. We find that the majority of Ms Smith's decision was based on her perceptions of the Claimant's performance of the risk element of his role. She set out in some detail at paragraph 83 of her witness statement all the concerns she

had regarding the Claimant's risk knowledge. She accepted that none of these concerns were put to the Claimant before or during the assessment process that then followed.

118. Her concerns can be summarised as:
    (i) He did not appreciate the importance of risk and if he did he did not prioritise it
    (ii) He did not understand the systems they already had and had not used them to best advantage instead advocating investment in new systems
    (iii) Despite several steers in performance reviews and opportunities to do more on risk the Claimant had not done so
    (iv) Contractors who had been hired to support the function in the Claimant's absence had pointed out significant, easy improvements that could be made in risk reporting and functionality
    (v) The Claimant did not want to do more of a risk role
    (vi) The PEX report indicated that their risk function was weak.

119. The Claimant in his evidence before us disagreed with her analysis. He indicated as follows:
    (i) He had been Head of Risk and Reporting and had managed their risk function without any problems or any concerns being raised for many years
    (ii) Project Tahoe had identified concerns with the Excerpt system that were wholly valid despite what the contractors said.
    (iii) He had not had the manpower or support to increase his work in risk – hence the recruitment of Holly a year before he went off sick. His intention had always been to do more risk work once Holly was trained
    (iv) All his actions and work had been approved by previous managers

120. We heard a lot of evidence about the performance concerns and how unjustified they were. The Claimant considers that this evidence from Ms Smith ought not to be considered because it was only introduced as her reasoning in her witness statement and we should place very little if any weight on it as there was no documentary evidence of her thought processes at the time.

121. However, having considered those concerns, we nevertheless accept that the Respondent has provided us with sufficient evidence to show that Ms Smith's concerns regarding the Claimant's previous performance in the risk element of his role were genuinely held. Even if all of the Claimant's points are correct (for the avoidance of doubt we are not making that finding), that does not mean that Ms Smith's concerns were not genuinely held and that she has not evidenced that they were reasonable concerns. Examples (not an exhaustive list) of that evidence were:
    (i) The Claimant's performance review documents at which risk was discussed with him,
    (iii) The PEX report recommendations,

(iv) Ms Smith's evidence regarding the information provided to her by the two contractors about the functionality of Excerpt.

122. We do not accept that Ms Smith's concerns have been manufactured since the Claimant's letter of 10 January or for any reasons relating to the Claimant's sickness absence or as a manufactured reason to justify dismissing him. It is clear that, from Ms Smith's point of view, the weaknesses of the risk function were revealed to an extent by the Claimant's absence. However they were not manufactured or sought out because of the Claimant's health or absence or because of any of the concerns he raised prior to Ms Smith's decision to delete the Head of Risk and Performance role and assess the Claimant for the new Risk role.

123. The Claimant says that the decision to assess him was contrary to normal practice within the Respondent. He gave examples of other individuals within the organisation who had been transferred into new roles and supported with training and mentors and says that the same approach should have been afforded to him. He highlighted three individuals in particular; Rob Paxton, Dean Tomlinson and Paul Garner. He said that they were transferred without a competitive process into jobs they did not have the necessary skills for. He says that the refusal to take that step with him means that the Tribunal should infer that that the Respondent had ulterior motives in deciding to assess him as opposed to simply appointing him.

124. It was not disputed that the other individuals were transferred within the business, but the Respondent distinguished their treatment and said that they were different decisions about different roles and different people. We have noted however that transitions within the business were possible, that individuals were supported to learn new skills and that significant previous experience was not always a prerequisite when appointing internally within the Respondent.

125. We also accept the fact that the Claimant gave the Respondent the very clear impression and understanding that he did not think that there should be a stand-alone risk role. He considered that it was not of sufficient importance and in this regard he fundamentally disagreed with the PEX report recommendations. He stated that repeatedly in his meetings with Ms Smith and Ms Phelan and he restates it in his witness statement and evidence to the Tribunal.

126. We find that the Respondent has established, on balance, that this was a highly specialised role with a large amount of expertise required given the level of funds and responsibilities associated with the risk role and the FCA requirements associated with that. It is not in dispute that the Respondent was an FCA regulated body and therefore it had to manage its risk in accordance with the FCA rules.

127. Given Ms Smith's genuinely held concerns regarding the Claimant's ability to deliver a pure and specialised Risk role, she decided to assess him. Communications regarding the need for and how that assessment would be undertaken were poor and unclear.

128. The Claimant did indicate that he was interested in the role. He was told that he would have to go through a selection exercise for the role. He was very angry about that indication. Ms Phelan's evidence was that thereafter they did not use the word interview so as to avoid an argument with the Claimant. We consider that this approach was wholly unhelpful. They ought to have called the interviews with Mr Thomas and Ms Smith 'interviews' so as to avoid confusion.

129. The Claimant asserts that he performed badly at both his interviews because he did not know that they were job interviews as he had not been informed of that beforehand. He says that his lack of ability to prepare for those interviews significantly disadvantaged him. The Respondent accepts that none of their written communications regarding these interviews called them interviews.

130. The Respondent's case was that, in context, the Claimant clearly understood and knew that the 'meetings' were part of the selection process for the new role. They had had three meetings previously in which the situation and the process was discussed. They offered him the opportunity to meet Mr Thomas and said that the Claimant volunteered to do that and knew that he was being assessed. We consider that the written communications regarding this matter were misleading. They reference enabling the Claimant to obtain as much information and understanding about the role for himself as opposed to being some form of interview process in which the Claimant had to prove himself.

131. However, the circumstantial evidence that surrounds this issue is more nuanced. The Claimant's objections to the situation were that he considered (and still considers) that he ought to have been slotted into the new role as it was either a slight amendment to his old role or a role that was well within his existing capabilities and the Respondent ought to have known that. However, once he was told that he was not going to be slotted in, he knew he would have to go through a selection process and we accept that he understood he would be assessed as part of that.

132. We accept he may not have properly prepared for his meeting with Mr Thomas. He says that he was surprised by Mr Thomas asking him questions. However he did not object to them or raise any concerns with Ms Phelan or Ms Thomas indicating that he was not prepared for an interview. We believe that had he really been concerned by the way the meeting or interview was conducted he would have raised it in the following meeting with Ms Smith. It was clear from the beginning that Mr Thomas thought this was an interview and yet the Claimant did not comment on this at all at the time. Further, the Claimant did not have any questions for Mr Thomas. We consider that if he had truly understood this to just be an information gathering exercise aimed at the Claimant understanding the role, he would have come prepared with his own questions about the role. He did not do that. This suggests one of two things to us; either the Claimant was not surprised by the fact that he was being formally questioned or that the Claimant did not care that he was being formally questioned as he had no intention of taking the new

role. We do not accept that the Claimant, who had been vocally raising concerns and questions in all his meetings with Ms Smith and Ms Phelan, would not speak up if he was surprised by Mr Thomas questioning him either during the interview or in his subsequent interview with Ms Smith.

133. The Respondent also relies on the fact that when the Claimant was told that he was not being offered the head of risk role, he did not express surprise because he had not yet been formally interviewed. He did not, for example, say, 'Well when how have you made this assessment when I have not even attended an interview?' Nor did he ask when any assessment took place. On 10 July he emails Mr Burgess asking him for an update on the risk role. He characterises it as a decision about whether he is being allowed to return to work. He knew that Ms Smith was going to be making a decision following the meetings he had with them and therefore he must have understood that there was an assessment of some sort taking place and that these meetings were part of that. We accept that he did not know that he was being measured against others given that Ms Smith maintained before us that this was not the exercise she performed. At the time, the Claimant did not question the process at all other than to question the decision to remove his original role and the fact that he was not just offered the new role.

134. The only evidence we have to support the fact that he was not expecting interviews on those days was Mr Berry's witness evidence. Mr Laddie did not challenge Mr Berry's evidence at all. Mr Berry's evidence stated that the Claimant had told him that he had been ambushed with an interview during a conversation shortly afterwards. Although this evidence is accepted, we do not necessarily consider that this conversation outweighs all the other evidence regarding how the Claimant behaved and did not challenge the process throughout. So although the Claimant communicated this to Mr Berry, on balance, we find that it was not a fair reflection of his understanding of what had happened.

135. We conclude that he understood, on having it confirmed that he was not going to be placed into new role, that he would have to undergo some form of assessment process. We accept that there was little clarity around what the meetings with Mr Thomas and Ms Smith actually entailed. Nevertheless, we believe that the Claimant knew that he was being assessed and that these meetings were part of that process.

136. The Claimant also considers that he was disadvantaged because of the way the interviews were carried out and the fact that he was competitively assessed against other candidates. The Respondent states that this was not a competitive process. They say they were assessing the Claimant but not comparing him to others. Ms Smith's evidence was that had he demonstrated sufficient knowledge and understanding of the risk role it would have been offered to him over the other candidates even if they performed better than him. We do not accept that position.

137. Mr Thomas interviewed the Claimant in the same way that he interviewed everybody else. He did not give him any more time or information in respect of the way the interview was conducted. The Claimant was not sent the questions in advance. Mr Thomas gave evidence that he knew that the Claimant had been unwell and off sick for a considerable period of time. We conclude that Mr Thomas knew that the Claimant had been off sick but had not been told to make any adjustments at all. The Claimant was asked the same questions and given the same time (45 minutes) as the other candidates. Mr Thomas told the Tribunal that he believed he was scoring the Claimant competitively. The Claimant was scored in the same way as everyone else and given that his scores were placed in a table alongside the other candidates, Mr Thomas viewed his interview as part of a competitive process and said as much in his evidence to us. He said that he was more lenient in his scoring because the Claimant had told him he had been off sick. There was no evidence to support that and his witness statement had not touched on this. On balance we do not accept that Mr Thomas scored the Claimant more leniently. Overall the Claimant came fourth out of five candidates interviewed by Mr Thomas.

138. We accept Mr Thomas' witness evidence that he had no knowledge of the Claimant's issues regarding his bonus nor his complaints on 21 March 2023 and 29 March 2023. Whilst he did have a briefing before meeting the Claimant we consider that given his position, it was highly unlikely that he would be informed that the Claimant had raised concerns relating to the Equality Act. On balance we therefore accept his evidence as correct.

139. Ms Smith's interview followed 15 minutes later. It was also 45 minutes long. She scored him very badly, far worse than Mr Thomas had scored him. She says that these scores took into account her previous considerations of his performance which we outline above. The Claimant highlighted that had he understood that these were competitive interviews (or interviews at all on his case) he would have been better able to demonstrate his past experience and that he would have known to highlight his previous experience such as that in Warehousing prior to his employment by the Respondent. He would also have been able to address Ms Smith's performance concerns properly if they had been raised with him, but they were not. There was significant discussion before the Tribunal around the fact that nobody had asked to see the Claimant's CV thus meaning that he could not rely on past experience as well as his work for the Respondent and therefore compared to the others in the recruitment process he was at a disadvantage. Given that the Claimant had been employed by the Respondent for 11 years, his recent experience was already known to them. Whilst the Claimant's CV may have provided a starting point for Ms Smith's conversation with the Claimant during this interview, which may have led to a conversation about warehousing, we consider, on balance, that the Claimant had worked for the Respondent for 11 years and so it was reasonable for them to rely on their knowledge of that and the Claimant telling them what other relevant experience he might have during the interview process. If anything, that would appear to be an advantage when the working

relationship is so long and provides a detailed understanding of a candidate's strengths and weaknesses.

140. On balance we consider that all the evidence points to the fact that the Claimant was competitively interviewed for the role. We do not consider that Ms Smith would have placed his results in a table against the other individuals had she not been comparing him to them. Perhaps she would not have required him to be the top performer to offer him the role, but we do not accept that there was no comparison. Mr Thomas clearly believed that the Claimant was being competitively interviewed and we consider this reflects the reality of the process. We do not accept Ms Smith's evidence that the Claimant just had to show some capability to do the role. However we find that Ms Smith had to a large extent made up her mind at the point that she created the new Risk role, that the Claimant was not capable of performing it. The Claimant would have to have shown that he was better than other candidates to be considered at all. That is not to say that the system was deliberately rigged against the Claimant. However, we consider that Ms Smith's views of his ability to do the role were already such that the interview process was only a relatively small part of Ms Smith's decision making process.

141. It was put to Ms Smith and Mr Thomas that they ought to have known that the Claimant was struggling in these interviews because his answers were not very good and he missed opportunities to provide basic information such as his previous experience in warehousing.

142. The Claimant's evidence to us was that he had thought the interviews went well and had been very proud of himself for making it into the office and attending the meetings at all; he says both were significant feats for him given his ill health. The Claimant has provided no evidence to us that he was confused or tired or lacked focus during either of these interviews other than that he gave poor answers. The symptoms of long Covid that he had were not in dispute (e.g. fatigue, lack of concentration) but there was no evidence that during these interviews he demonstrated signs of those. Ms Smith knew that these were issues he faced and made no adjustments to the interviews when compared to other candidates. Mr Thomas was not told to make any adjustments to his interview other than to be aware that the Claimant had been off for 18 months.

143. The Respondent's case is that the interviews complied with the adjustments that the OH had recommended such as only lasting 45 minutes each and cumulatively adding up to 90 minutes which was the period of time OH said he could concentrate for. In her evidence Ms Phelan said that they asked the Claimant whether he wanted to attend the meeting in person or online and he indicated he would prefer to come in. She accepted in cross examination that they did not consider any other adjustments for the meeting as they considered that the Claimant did not display any other problems with engaging with them in any of their other meetings. They maintain that they had no obligation to make further

adjustments as nothing about the Claimant's presentation or performance suggested he needed any other adjustments.

144. The Claimant accepts that he did not ask for any adjustments during the interviews or suggest that he needed anything at the time. He now says that he ought to have been given more time to answer questions or be given the questions in advance because his cognitive processing was reduced. We reach our conclusions on whether there was a failure to make reasonable adjustments during these interviews below.

145. An overarching finding regarding this process though is that we find that the Claimant did not want the new risk role in any event. He made it clear throughout these proceedings and at the time, that he considered that the role was superfluous and that the Respondent ought not to have deleted his original role. At every opportunity he disputed the business sense behind the decision to remove his original role. He questioned the validity of the new role throughout. Our finding is not just based on the 5% figure that he says is being used against him by the Respondent but on all of the evidence we saw regarding his behaviour and approach towards the Respondent once he understood that his old role had been deleted. This animosity to the situation was clear throughout and affected his desire to work for the Respondent at all. He said in answer to cross examination that he desperately wanted to return to work and that he needed to return financially. He says that in correspondence with the Respondent too. However that desire was not made clear in any of his actions once he was told that his old role had been deleted. Almost all of his behaviour thereafter was hostile to the Respondent and obstructive to any suggestion they made regarding a way forward that would result in him returning to work. We accept that he expressed an interest in the new role but he did not actually want it. He wanted to leave with what he considered to be an appropriate exit package.

146. On 20th of July 2023, Ms Phelan informed the Claimant that he was not successful in applying for the new role. The email outlined that the new risk role was not suitable for the Claimant as they did not consider that he had the relevant skills to up skill the investment risk capability to respond to increasing regulatory requirements. However, at the end of that email must Phelan says as follows:

> *"However, I want to reassure you that we are committed to supporting you through the current group income benefit reassessment with Aviva before we take any decisions in relation to the impact of this decision on your membership of Veritas. As previously discussed, we are committed to support a phased return supporting discrete projects to enable you to return to the workplace." (p1530)*

147. Ms Phelan and Ms Smith accepted that they did not consider a trial period for the Claimant in the new role. Ms Smith's opinion remained that he did not have the necessary skills, knowledge or experience. They considered that the role was very

different and the Claimant was not the right fit for the role. They did not think beyond a binary assessment of whether he was capable of doing it or not.

148. We consider that it is very clear from the 20th July email that the Respondent, despite having deleted the Claimant's original role, and despite considering that the new risk role was not suitable for the Claimant, wanted to return him to the business and were willing to work with him to do that. We do not believe that this was a mere platitude and we accept that everybody including Mr Burgess and Ms Smith were committed to enabling the Claimant to return to work in some capacity.

149. They had no reason to make this offer unless it was genuine. The Claimant was not an employee so he had no right to be offered suitable alternative employment such as in a redundancy situation. They could have just dismissed him at any stage. He knew that Mr Paxton had been dismissed in similar circumstances. Instead the Respondent offered me alternative work because they valued his contribution and expertise.

Other possible work

150. The Claimant's case is that he could only return to work if there was a plan that led to a permanent position. He refused to consider any piecemeal or project based work if he did not have a permanent role to work towards. He wanted the Respondent to confirm that he had a secure permanent role. The Respondent would not do that as there was no such commensurate role available.

151. It is not clear why this was such a barrier to the Claimant's return at this point in time if what he has said is true and he wanted to return to work to any role. He has accepted that the OH advice in relation to his return to work was for a very gradual return in a less stressful role performing work that was not time pressured. The Respondent was offering to do that but they could not confirm was that it would be to a permanent role at this point in time.

152. Given the extraordinary levels which Mr Burgess had already gone to on behalf of the Claimant in respect of his bonus, it is not clear why the Claimant had so little trust in everyone at the Respondent at this point in time. In essence he seems to have determined that he had no trust and confidence in the Respondent for two reasons:

(i) They had not maintained him on full pay and bonus beyond 14 months
(ii) They had deleted his role as head of Risk and Performance

153. We consider that the loss of trust by the Claimant began around the time of the bonus issue and was then compounded by the communications in March regarding his role. However, a large contributor to the Claimant's motivation to not return to work for the Respondent began when he established that he was not being paid in full. At that point he appears to have lost trust in the Respondent and from then on viewed their actions with suspicion. We do not underestimate the impact of the

deletion of his role, but we consider that his dedication to and trust in the Respondent began to wane from the point that he was not paid his full bonus.

154. On 8 June, at a meeting, it was suggested to the Claimant that he could return to work gradually by covering some aspects of Holly's upcoming maternity leave and assisting with training her consultant replacement.

155. The Claimant says that he found this offensive as he considered that he was being asked to do the work of the role that he had been told had been deleted. He also emphasised that all of this was being offered without a long term plan.

156. It was accepted by the Respondent that there was no long term plan and no other substantive role at this point in time but their intention was to try and find something useful for the Claimant to do pending other decisions regarding other possible roles and work whilst also complying with the parameters set out in the OH report. The OH report specifically stated that the Claimant should not undertake time bound or pressured work and it significantly limited the hours that he would be working. They accepted that the piecemeal work and the work covering Holly's maternity leave or supporting the contractor was work that the Claimant had done previously but was now 'rearranged' and they considered that this would be helpful as it would not be too pressurised or stressful for the Claimant. Mr Burgess' evidence was that he wished the Claimant had trusted them because it would have led to a return to work.

157. It is not clear how the Claimant's stance that he really wanted to return to work for the Respondent in any capacity, that he desperately needed to earn money and that he was willing to do anything, can be squared with this approach to his return to work. He indicates that he believes he had been repeatedly lied to but it is not clear what lies he is referring to. He was unable to explain why the lack of a long term plan mattered in circumstances where he either returned to work for a short period of time to see if it worked long term, or he did not return at all. Given his apparent financial concerns, it is not clear why he identified the first option as the worse option.

158. It is clear that pay was not discussed at the 8 June meeting or in any of the discussions. We are not clear whether the work offered was going to be on the same pay but it appears that the Claimant was working under the assumption that it would be as he did not query it.

159. Subsequently, the Claimant told the Respondent that he was away with his family for two weeks. He did not seek permission to take leave and just told them that he was unavailable. Given that he was no longer signed off sick, his actions and the manner in which he did this were questionable. Nevertheless this was not questioned by the Respondent.

160. The situation was therefore at a stalemate; the Respondent had no permanent role for him and the Claimant refused to consider anything less than a permanent role. This ultimately led to the Claimant rejecting any possible return to work for the Respondent at that point in time. As a result, and with there being no vacant role to which the Claimant could be permanently appointed, a decision was reached by Ms Smith to terminate his membership of the LLP. This was communicated to the Claimant on 4 September 2023.

161. In accordance with section 3.5(b)(ii) of the LLP Deed, the Claimant's status as an Active Individual Equity holder could be terminated for any reason other than for cause by the managing partner board and with the prior consent of AMG.

Termination of membership and Share sales

162. Upon joining the LLP in 2015, the Claimant was allocated 2,000 shares (C-points). The C points were initially C2 points. After 5 years, up to 10% of the shares (200 in the Claimant's case) could vest annually and become C1 points. The C1 points could be sold or 'put'. This could be done up to a maximum of 50% (1,000 points). The remaining 50% would only vest after 15 years as a member or on retirement of the shareholder. On a quarterly basis, income from the points was distributed to the holders of the C points The 'Annual Put Option' would normally be signed in August and the value would be paid the following November.

163. In December 2021, the Claimant was also awarded 750 E-points. We accept that these points would only have had any value if the Claimant remained a partner for at least 7 years after they were awarded.

164. The way in which all of the shares or points could be sold was governed by the LLP Deed.

165. On 1 August 2023 the Claimant submitted a put notice to the AM to sell 20% of his C1 points (400 points). Presumably this was done with the expectation that he would be paid for these shares in November. This notice was acknowledged on 4 August 2023 and referred to in Ms Phelan's letter dated 4 September 2023. A purchase notice was sent to the Claimant on 3 October 2023 after his LLP membership had been terminated. The Claimant considered that the Respondent ought to have purchased his shares at their full value. However, as the Claimant's membership of the partnership had been terminated in September, in order to do that the Respondent and its managing agency company, AMG, required the Claimant to sign a legal waiver confirming that he did not have any claims against the Respondent.

166. In the circumstances, the Claimant refused to sign the waiver and despite leaving the offer open for a year, the Claimant continued to refuse that offer and as a result his shares were bought back at nil value. It has not been put to the Respondent that this was a breach of contract and, indeed, it is clear from the

contractual documents we were provided with that the Respondent and AMG whether separately or together were contractually entitled to reach that conclusion and to buy back the shares at nil value. This is clearly set out in the LLP deed. The Claimant's complaint is that they ought to have exercised their discretion and bought them back at full value.

167. The Respondent did offer to do that. They had no contractual obligation to do so once the Claimant's membership was terminated even though the Claimant had 'put' his shares prior to the termination of his membership. However they offered to buy back the full 400 shares at full value provided he sign the waiver. We were provided with evidence that demonstrated that other leavers were also required to sign a legal waiver if their shares were bought after termination of membership and/or employment. We accept that the Claimant was not treated differently from other leavers in that regard. The only difference between the Claimant and other leavers was that the offer was left on the table for a year.

168. We accept, that the Respondent treated the Claimant more favourably than it treated other leavers by leaving the offer on the table for a year. They had no contractual obligation to do so nor did AMG. We find, on balance, that it is likely that this was left open so that the parties could continue to negotiate possible settlement to the claim that was before us. Regardless of the motive, it is clear to us that offer remained open and the Claimant refused it.

Conclusions

169. We address the victimisation and s15 'arising from' claims together by reference to each detriment relied upon. We deal with the reasonable adjustments claim separately.

Victimisation

The Claimant relies upon 3 separate Protected Acts. To qualify as a Protected Act, the Claimant must establish that he made an allegation (whether or not express) that another person has contravened the Equality Act or that he did any other thing for the purposes of or in connection with the Equality Act. An allegation does not need to be express, however it must be an assertion of facts which are capable of amounting to an allegation of discrimination. The Claimant's submissions did not address any other type of protected act i.e. that he did 'any other thing' for the purposes of or in connection with the Equality Act but we have considered that possibility in our analysis as the list of issues does not limit the consideration to an allegation.

170. The first protected act relied upon is the email dated 10 January 2023. The Claimant's submissions state that this email did the following:

"a) spelled out symptoms he had experienced and therapies undergone by him in the previous 15 months;
b) identified impact on his day-to-day activities;
c) spelled out the level of work that he had done for R in that time;
d) spelled out that he felt he had been treated unfavourably because of his illness and absence (in other words, he laid the groundwork for a s.15 claim)."

171. We accept the submissions a-c above are correct but do not accept that this email spells out that he had been treated unfavourably because of his illness and absence. Laying the groundwork for something is not the same as alleging something. The text of the email does not spell out that he felt he had been treated unfavourably because of his illness and absence in such a way as to make an allegation (expressly or otherwise). We have not been taken to a specific sentence that is relied upon to do that. The email, in short, states that he does not consider that his efforts have been fairly rewarded against a backdrop of being a long serving employee who has been off sick. He states that the effort he has put in deserves greater recognition. However at no point does he suggest that the Respondent's treatment is somehow, expressly or otherwise, discriminatory or in contravention of the Equality Act. In his evidence to us he accepted that he did not believe, at the time that he sent this letter, that he was alleging discrimination. In the absence of a clear explanation as to how this email is alleging a breach of the Equality Act or how it represents the Claimant doing any other thing in relation to the Equality Act, we conclude that it does not do that even if taking a broad, holistic approach to the evidence.

172. Ms D'Souza suggests in her submissions that the Respondent understood it as an allegation of discrimination because, two days later, Ms Phelan sought advice as to whether they were at risk of a discrimination claim. We consider that the phrase in the email relied upon is taken out of context. The email dated 12 January 2023 was sent in the context of talking to the Claimant about the fact that his role had been deleted. We accept that sorting out the Claimant's situation generally was almost certainly the focus of advice and receiving his letter dated 10 January probably prompted them to seek advice as to how to properly manage his absence and pay and possible return to work. By this time they had decided to delete the Claimant's role and restructure the team so they knew that they were going to be making several changes to the Claimant's position. We do not accept however that the reference to a possible discrimination claim meant that they felt that this was what he was alleging in his email to them. The Respondent is not seeking advice as to how protect the firm from a potential discrimination claim that they fear is round the corner or being alleged; their intent, according to our interpretation of the email, is not to fall foul of the Equality Act n as the situation proceeds. We consider that the awareness of a possible discrimination claim arose from the very fact that the Claimant's role was being deleted whilst he was off sick. There is therefore no evidence to suggest that the Respondent understood the Claimant's email dated 10 January 2023 as an allegation of discrimination. Given that this was not the Claimant's intention in any event that is perhaps no surprise.

173. We do not accept that this amounts to a Protected Act for the purposes of s27 Equality Act 2010. The Claimant has not established that anything he says in this letter, albeit in the context of him having been off sick, relates even tangentially to the Equality Act 2010. He is complaining about the level of his bonus and asking for it to be reconsidered; nothing more.

174. The second Protected Act relied upon is the Claimant's comment in the meeting of 21 March 2023 which was *""he referred to this as a redundancy whilst he was unwell and covered by the Equality Discrimination Act" [1326] and that "he has a solid case on personal injury claim and on Equality Act as well" [1327]."* The Respondent concedes that this was a protected act.

175. The Third Protected Act was the Claimant's email dated 29 March 2023 which stated as follows:

"I would like to apply for the newly created role but I would also ask you to respond to the following questions: given the elimination of my Head of Risk and Performance role why have I not been automatically offered the newly created risk role? Why was I not informed of the termination of my role and the creation of the new role until several weeks after the new risk role was published publically [sic]?"

176. In submissions, Ms D'Souza accepts that the email makes no direct reference to discrimination or the Equality Act but suggests that the allegation is implied. She asks that the Tribunal examine the context of the email against the following background:

(a) "On 16 March 2023, SP had received the OH report which had indicated that C was likely to be disabled;
(b) On 21 March, in a meeting with SP to discuss the OH report and a return to work, C had made an express allegation of breach of the Equality Act to SP (the admitted protected act – PA 1A);
(c) The 29 March email was sent to SP directly following the next meeting with SP and NS taking place on 23 March 2023."

177. She also argues that this email ought to be aggregated with the 21 March meeting. We accept that the Respondent knew that the Claimant was alleging that the deletion of his role and his proposed redundancy was discriminatory from the 21 March meeting and that they knew he was disabled at this time due to the OH report.

178. We accept that this email was a follow up to the meeting on 23 March. However we note that the Claimant made no reference to the Equality Act during his meeting on 23 March. The notes of the meeting do not suggest that he raised any issues regarding discrimination in this meeting. It is not clear to us that this is also a follow on from the 21 March meeting.

179. Even if we were to aggregate the email with the comments made on 21 March and place it in that context, we do not consider that the Claimant has established that these specific questions are part of any allegation of discrimination. To reach that conclusion requires a much greater leap than that required to link the message to the 21 March meeting. The questions asked could just as easily point to the sort of questions people often ask in redundancy situations when considering whether there is suitable alternative employment and whether consultation has been properly carried out. Whilst we accept that the Claimant did not have employee status and therefore could not pursue such a claim, that does not mean that his questions must therefore have been suggesting that the failures he is asking about were discriminatory

failures. Even if we read this email in the context of the Respondent believing that the Claimant was alleging that the reorganisation was discriminatory, these questions in this email make no such allegation. Ms D'Souza is correct in saying that, "put simply, asking why something had not happened" could amount to an allegation that it had not been done. However, there is not sufficient context here to also infer that this means he is alleging discrimination. He is alleging that something has not been done. Given that he was receiving legal advice by this point and had already turned his mind to the possibility that the Equality Act was being contravened, he could have referenced it here and chose not to. We do not consider that he intended to allege that these 'failures' were discriminatory – had he intended to do so he would have made that clear as he did in the 21 March meeting.

180. We have considered the case of Waters v Commissioner of Police of the Metropolis [1997] ICR 1073. The claimant there contended that a protected act would be constituted by an any allegations "which, objectively considered, are aimed at claiming…protection under the equality legislation" Nevertheless, there must be something approaching an allegation that can, in context can be understood as an allegation of discrimination. We do not consider that, even in context, this email amounts to anything more than a question regarding why the Claimant was not being given a different role automatically.

181. Our primary conclusion therefore is that only the disclosure on 21 March 2023 amounts to a protected disclosure. Therefore the Claimant's claims for victimisation can only succeed if the Claimant can show that the disclosure of 21 March caused the subsequent detriments.

182. We have nevertheless analysed whether any of the three disclosures relied upon caused any of the detriments.

S15 Equality Act 2010 – discrimination arising from disability

183. The Claimant relies upon several 'Arising froms' depending on the detriment. We address them under each detriment.

184. We have approached our analysis of the s15 claim in accordance with the guidance outlined above from *Pnaiser v NHS England* [2016] IRLR 170. We note the Claimant's submissions regarding the relatively low bar required for unfavourable treatment and note the EHRC code of practice at paragraph 5.7 that clearly sets out that motive is irrelevant.

Detriments

1.In or around mid-December 2022, awarding C a Discretionary Profit Share Allocation (DPS) of £10,000.

s15 Claim

185. This is pleaded solely as a s15 Equality Act 2010 claim. It was not in dispute that this occurred. The level of the bonus was determined by the fact that the Claimant had been off sick and therefore had not been able to work and deliver 'output' or value to the Respondent.

186. The 'something arising' relied upon by the Claimant in respect of this 'detriment' is the Claimant's absence levels.

187. The relevant treatment was awarding the Claimant a bonus of £10,000. The reason for that award was that the Claimant had done very little work during the previous year. He had been almost entirely absent from work. Even on his own analysis he had worked 18 days of the year which amounts to roughly 7.5% of the working days in a year (240). In the previous year the Claimant had been awarded £185,000. 8% of that amounts to £14,800. Yet, as we see from the claim regarding the subsequent £40,000 the Claimant asserts that he ought to have received a bonus of approximately £97,000 in respect of the year.

188. The question we have to consider is whether that was unfavourable? It is not necessarily a high bar but it must be capable of being seen as a disadvantage. The level of the bonus could be seen as unfavourable or disadvantageous if compared to the previous year or when compared to colleagues' bonuses and slightly more remotely, on a strict analysis of the number of days' work he says he put in. We appreciate that no comparison arises but working out if the level of a bonus is unfavourable treatment does require some analysis of the context and that includes what was happening to colleagues and why. The Claimant had not worked for 14 months when the Respondent awarded him £10,000. He had no contractual entitlement to any bonus even if he had worked and he has not established that any of the work he did do was productive as opposed to simply sending emails that did not add value for the Respondent.

189. We do not accept that the Claimant has established that the decision to award him £10,000 is any less favourable than his previous years' bonus even if it ought to be measured by reference to the number of days' work he has put in. The Claimant's evidence seemed to rest on the idea that he should be rewarded for the increased effort it took him to do those 18 days' of work. Given that the award of any bonus is discretionary, it is not clear on what basis he considers that the effort ought to be recognised in this way.

190. We accept that this case can be distinguished from Trustees of Swansea University Pension and Assurance Scheme and anor v Williams [2019] ICR 230, SCT on the basis that the Claimant would have been considered for a bonus had he not been off sick as well as if he had been. This was not a benefit that was only payable if the person was disabled. However, it seems to us that it is difficult to argue that the award of any amount in circumstances where the bonus is wholly discretionary, which the Claimant knew he was not entitled to (whether at work or not), for a year where he had hardly worked at all, was actually unfavourable. There is nothing intrinsically unfavourable in the award of a bonus at this level in these circumstances. We consider that

where this case is analogous to Williams is that what the Claimant is complaining about was that his bonus which was advantageous, was not more advantageous.

191. Our primary conclusion therefore is that the paying of a bonus in these circumstances at this level is not unfavourable treatment when taking into account all the circumstances of the case.

192. The decision not to pay him a higher bonus did arise out of the Claimant's absence which was something arising in consequence of the Claimant's disability. We have therefore gone on to consider the second limb of s15(1)(b) Equailty Act 2010.

193. We accept that the decision not to pay a higher bonus was a proportionate means of achieving a legitimate aim. The Respondent had a finite (if large) bonus pot that they used to incentivise staff. They rewarded various aspects of performance, but it is clear from the evidence that the main factor rewarded was output, not simply effort. Even if effort played a part, despite the Claimant's evidence that his effort was equivalent to previous years because he found it particularly difficult to make that effort, is not persuasive. The Respondent's reasons are clear and cogent and it was proportionate for them to reward the staff who had been at work that year as opposed to those who had not. The Claimant was rewarded with a bonus, just not the bonus he expected.

194. Finally, given that the Respondent listened to the Claimant's concerns and awarded him a higher bonus (see Detriment 3) we do not accept that the Claimant suffered any loss as a result and any upset caused by the original decision was short lived as the bonus was increased on 26 January (about 4 weeks later).

195. We do not uphold the Claimant's claims based on this detriment.

2. In or around January 2023, reducing C's Fixed Profit Allocation (FPA) by 50% without warning C in advance –

s15 Claim

196. The Claimant relies upon the 'something arising' of his absence levels from work. The decision to reduce the Claimant's pay arises out of his absence levels. Had he been at work no such decision would have been taken. However the claim is pleaded such that the decision not to tell him about it also arose because of his absence.

197. We accept that both parts of this allegation are capable of amounting to detriments. We accept that the decision to reduce his pay arose out of his absence and therefore his disability.

198. With regard to the failure to inform him of the pay cut, it is less clear cut. The Respondent's case is that he knew it was coming. We accept that the Claimant knew that he was not contractually entitled to his FPA indefinitely. The fact that the Respondent had paid him in full previously does not mean that the Claimant had not been told or was not aware that at some point it would be reduced. Nevertheless Ms Phelan had suggested in correspondence that the instigation of the Aviva income insurance scheme would mean that he would not suffer any loss of income because Aviva would pay half and the Respondent would pay half. He had therefore expressly been told that he was not about to suffer a drop in income. We therefore consider that the Claimant did not know that his pay was going to be halved when it was and suggest that this is a difficult argument to make when the Respondent witnesses also did not appear to understand that this would happen when it did.

199. We conclude that the failure to tell the Claimant about the reduction arose out of Ms Phelan's misunderstanding of the policy. She had not realised that this would be the impact of claiming under the policy and wrongly believed that the Claimant would continue receiving his full pay with 50% paid by the Respondent and 50% paid by Aviva. The incorrect information being given to the Claimant was human error. Therefore we do not consider that the reason the Claimant was not told arose out of his absence levels and therefore his disability.

200. In recognition of the fact that this mistake was made, the Claimant was paid for the three months he had not received full pay for. He has therefore not suffered any financial loss as a result of the mistake.

201. If we are wrong and the fact that it was a policy triggered by sickness absence means that any errors in relation to it technically 'arose out of' the Claimant's disability, we nevertheless consider that the decision to reduce the Claimant's pay after more than a year's absence was a proportionate means of achieving a legitimate aim. The legitimate aim was to facilitate the use of the insurance scheme. Had the payment not been reduced then the Claimant's income would probably have been reduced to nil pay given that he had no contractual entitlement to pay at this point. It could be argued that the Respondent ought to have considered continuing to pay the Claimant full pay at this time – but that is not the argument being made and we consider it quite likely that the Respondent would be able to demonstrate such a reduction was a proportionate means of achieving a legitimate aim.

202. In summary, we conclude that the Respondent failed to communicate the terms of the scheme properly to the Claimant and we accept that this was unfavourable treatment, but it did not occur because of the Claimant's absence levels or the fact that he was off sick. It occurred through Ms Phelan's lack of knowledge and understanding of the insurance policy. It was an error that was subsequently rectified with back pay.

203. We therefore do not consider that Detriment 2 was a unfavourable treatment that arose out of the Claimant's absence levels.

204. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

3.Following a meeting on 26 January 2023, (and after a written complaint by C on 10 January 2023), upwardly revising C's DPS to only £40,000.

s15 claim

205. This should be read in conjunction with our conclusions regarding the award of the bonus of £10,000. We do not consider that the decision to revise the bonus upwards could amount to unfavourable treatment. The matter that the Claimant is complaining about is that he was not paid as much as Mr Burgess submitted to Remco as his starting point. That is a complaint that the advantage he is being given is not as advantageous as he would like.

206. Further, even if it is unfavourable treatment because it is less than he would have been paid had he been at work for that year we consider that the Respondent's decision making process was a proportionate means of achieving a legitimate aim in the same was as we concluded for Detriment 1.

Victimisation claim

207. In respect of the Victimisation Claim. We have concluded that the 10 January letter was not a protected act.

208. However, if we are wrong in that conclusion we conclude that the effect of the 10 January email was to increase the Claimant's bonus. They treated him better than they had before, not worse. Even if their motivation was to offset a possible discrimination claim, we do not accept that increasing the bonus as a result of the letter could be considered detrimental.

209. Again, the Claimant's argument is that he should have been awarded more and he would have been had his 10 January letter not alleged a breach of the Equality Act. Putting aside our conclusions regarding the content of the letter, it is difficult to see how the Claimant argues that the decision to award him a significantly increased bonus amounts to a detriment even if it was because of the complaint. They listen to his concerns and increase his bonus. The fact that the bonus was not as big as Mr Burgess' initial opening gambit to Remco about the level of bonus, does not mean that they would have awarded more had he not said what he said in the letter. Had he said nothing at all he would have received no increase.

210. The Claimant has not established that had he made no reference to his health or absence or any of the parts that he relies upon as amounting to a protected act, that on receipt of an appeal letter the Respondent would have increased his bonus to the level Mr Burgess requested. This was a discretionary bonus. Remco had no obligation to pay the Claimant anything yet they did and then they increased it when he asked them to.

211. The Respondent has demonstrated that the Claimant was in fact treated more favourably than his colleagues who had also been off sick for a year. Firstly in getting a bonus at all and secondly by getting it increased. This demonstrates that the letter of 10 January had a positive impact on the treatment of the Claimant not a negative one.

212. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

4.Failing to consult with C about proposed changes to his role before announcing them.

S15

213. The Claimant relies the 'something arising' of 'The Claimant's continuing absence and/or the management view that the Claimant should not be contacted because of the risk of aggravating his anxiety levels.'

214. We accept that the Claimant was not consulted before the role was changed. We accept that not consulting someone could amount to unfavourable treatment. We also accept that announcing changes to the Claimant's role before telling him about them would amount to unfavourable treatment.

215. Our first observation is that there is a flaw in the way that this part of the claim is pleaded. As a question of fact, the decision to delete or change the Claimant's role was not communicated to staff until after he left. The decision to change the reporting line of Suzanne and Holly was communicated but it did not make any reference to the Claimant or his role. It did not suggest a change at all to the Claimant's role. The Claimant was only referred to in a positive way in this communication and people were told that they would work with him to ensure that he returned to work when ready. Therefore the claim as pleaded fails.

216. We find that the decision by Ms Smith in relation to the risk role was taken without consultation with the Claimant but would have been taken in this way regardless of whether he was off sick or not. She reached that decision based on the PEX report and the fact that he was not an employee thus had no legal obligation to consult the Claimant. We accept that she treated Mr Paxton in exactly the same way. Therefore the decision not to consult the Claimant did not occur for a reason arising out of his absence.

217. Our primary conclusion therefore is that this claim also fails.

218. We also address the not quite pleaded but perhaps intended claim, that the Claimant was not informed about the deletion of his role until several weeks after the decision had been made. It is not in dispute that this decision

was made. The timing is somewhat in question. We conclude that the decision was made by 19 January 2023 at the latest as Mr Burgess originally intended to tell the Claimant about it in his meeting on 20 January but changed his mind when the Claimant appeared very distressed in the 20 January meeting. We also had reference to it in Ms Phelan's email of 12 January to embedding the new proposed team structure which suggests the decision may have already been made.

219. The Respondent relies upon the fact that the Claimant had asked not to be contacted on his work emails as being the primary justification for their decision not to tell the Claimant about the deletion of his role until later. The Claimant did not ask not to be contacted at all. He had said he would not be looking at his work emails. He also asked not to be contacted about work related matters by his direct reports. Ms Phelan and Ms Smith were aware of that request too.

220. The Respondent continued corresponding with the Claimant about financial matters even if not work itself. We consider however that the Respondent did not tell the Claimant about the deletion of his role because of his presentation on 20 January in the call with Mr Burgess and Mr Burgess' concerns that if he told him then, it would have been too much for the Claimant to cope with. There were emails demonstrating that Mr Burgess intended to discuss the matter with the Claimant then. Therefore the Claimant's request regarding correspondence cannot have been the main reason behind their decision not to tell him. We the Tribunal accept however that the aim of their decision not to tell him was to enable his recovery. They were concerned that he would suffer another relapse and his communications and presentation on 20 January suggested that this was a possibility.

221. We consider however that just as we are interpreting the Claimant's pleaded claim more widely than that set out in the List of Issues, we can interpret the Respondent's legitimate aim broadly. Their pleaded legitimate aim is that they were respecting the Claimant's request not to be contacted. The grounds of resistance at paragraph 40 say that they did not contact him "*because the Claimant had made clear in early January 2023 that he did not wish to be contacted by the LLP (directly telling Ms Phelan on 3 January 2023 that he did not wish to be contacted) and the LLP was mindful not to aggravate his health until he was better."* They also say at paragraph 67*, 'These decisions were taken to protect the Claimant's health, to enable him to focus on his recovering in circumstances where the Claimant had explicitly asked not to be contacted."* Finally, in the table attached to the Grounds of Resistance (pg 65) they state that the legitimate aims were,

- *"Enabling a staff member's recovery in circumstances where they had asked not to be contacted by the company whilst on sick leave.*
- *Respecting a staff member's wishes in circumstances where they had asked not to be contacted by the company whilst on sick leave."*

222. We consider that the Respondent did interpret his communications to colleagues on 3 January that they should not contact him about substantive

work-related matters though Mr Burgess had intended to break this during the meeting of 20 January but decided against it. We accept that the Respondent did have the legitimate aim of enabling his recovery by not distressing him with what was objectively bad news regarding his role. We consider that this was a proportionate means of achieving a legitimate aim in circumstances where:

i. Communication with the Claimant was not going to change the decision. Ms Smith had made up her mind and had no obligation to consult with the Claimant. Speaking to him would have made no difference to the decision. This was not a redundancy consultation
ii. The Claimant had indicated that he did not want to be contacted on his work email and had asked colleagues not to ask him work questions. Although he does not ask them not to contact him at all, it was clear that he did not want to engage with the Respondent about substantive work matters.
iii. The Respondent was not announcing the change to colleagues but taking steps to reorganise line management of staff who were seeking help. They did not tell anyone about the deletion of the Claimant's role until after he had left. Their communications with the team about the Claimant were supportive and focussed on his return to work.

223. The Respondent therefore made a decision not to consult or inform the Claimant about the deletion of his role. They did this because they were concerned about exacerbating his health condition and because he had communicated that he did not want to be contacted about substantive work issues. Overall, in these circumstances, we consider that this was a legitimate aim and it was proportionate.

224. We are cognisant that much of our analysis of this part of the claim is, by and large, dealing with a claim that has not been put in these terms. We do not consider, with two well represented parties throughout that this is the claim that we were asked to determine and that the difference between 'failing to consult' and 'failing to inform' is substantial in these circumstances. We have addressed it because it appeared to be the claim the Claimant's witness statement and case generally addressed. In those circumstances, the Respondent has not been given an opportunity to properly defend itself against that case or tailor its legitimate aim accordingly. We have therefore addressed it using a broad brush approach in an effort to communicate to the parties our consideration of the facts as they have been presented to us.

225. Our primary conclusion is that the claim as actually set out in the List of Issues does not succeed because the Claimant has not established that there was a failure to consult <u>before</u> announcing the changes publicly. Secondly the Claimant has not established that a failure to consult arose out of the Claimant's absence or the management view that the Claimant should not be contacted because of the risk of aggravating his anxiety levels. The failure to consult occurred as we have set out above.

226. In conclusion, however worded, this 'detriment' is not upheld as a section 15 claim.

Victimisation

227. With regard to the victimisation aspect of this the Claimant relies on 10 January letter. We repeat that we do not accept that this was a protected act. Further, we do not accept that Ms Smith's decision to change the Claimant's role and/or how to communicate it occurred because of the Claimant's 10 January email. There is simply no link whatsoever between the two. The timing is the only thing that links the two matters.

228. It is clear that Ms Smith had been considering the reorganisation since the commissioning of the PEN review and the receipt of the PEX report both of which predate 10 January. The decision regarding the reorganisation took place shortly after 3 January when Holly Naughton asked for help. The decision regarding the Claimant's role was taken at some point between then and 19 January. Ms Smith's decision not to consult the Claimant occurred because she had no obligation to consult the Claimant and would not have done so even if he had been at work.

229. The original intention was to tell the Claimant about the reorganisation and his role on 20 January when his line manager, Mr Burgess had a meeting with him. That was changed because of the Claimant's presentation at that meeting. It had nothing to do with the letter of 10 January.

230. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

5. On 21 February 2023, removing C's systems access.

S15 Claim

231. We accept the premise that removing someone's access to the IT systems could amount to unfavourable treatment.

232. However, in this context, we do not consider that the Claimant has established that lack of access negatively affected him and was therefore unfavourable treatment. He specifically asked not to be contacted on his work emails and so was not. He therefore did not need access to his work email. If he did, he has not explained that need to us. He cites one example where he did not get sent some documents by the insurer but when that was realised, the documents were sent and there was no negative impact on the Claimant.

233. In respect of other elements of the IT system, he has not suggested that he tried to access certain information but could not. He does send an email in which he says that he was locked out of the system so could not ascertain the value of his shares. He does not at this point ask for access to be reinstated. He is told that he does not need the information and only needs to put the percentages in which he does. He could have asked for access to be reinstated but instead he asks for help. (p1551)

234. There was a note that the Claimant says indicates that he raised it at his meeting on 23 March 2023 suggesting that it had happened at the same time as he was ready to come back to work. We have not accepted that it was raised at the meeting despite this note. In addition, it is clear that this decision was made on 21 February before the Claimant indicated that he was well enough to return to work on 23 February. There is therefore no link between them in any event.

235. He does not at any point ask for his access to be reinstated suggesting that he made no attempt to access other information and did not need to do so. He did not tell the Respondent at any point between February and the termination of his partnership, that he needed to access any aspect of the IT system. His witness statement said that his access was never reinstated despite communicating that he was ready to start returning to work. However it is also clear that he did not ask for that to happen. Further it is clear that his claim is in respect of the decision to remove access as opposed to being a claim about it not being reinstated at a later date.

236. We therefore consider that given that the Claimant specifically stated that he did not want to be contacted on work email and has not been able to demonstrate that it caused him any issues at the time we do not find that the decision on 21 February to remove his access to systems was unfavourable treatment in all the circumstances.

237. If we are wrong and this does amount to unfavourable treatment, we have gone on to consider whether the decision was made for a reason arising out of the Claimant's disability namely C's continuing absence and/or the management view that the Claimant should not be contacted because of the risk of aggravating his anxiety levels.

238. The Respondent accepts that it was. We must therefore consider whether it was a proportionate means of achieving a legitimate aim.

239. As outlined in the facts section above, we have found that the reason the Respondent suspended the Claimant's IT access was the combination of his request not to be contacted via work email and their concern that it might jeopardise his insurance claim. Given their lack of understanding of how the insurance plan worked this seems plausible. We find that both those reasons are legitimate aims. When considering whether it was proportionate, we must consider the switching off of access as opposed to the failure to reinstate it later as this was the claim brought. On that basis, we find that the original decision was proportionate as it was the best way of ensuring that they had a record of the Claimant not working at all thereby being entitled to his insurance.

Victimisation Claim

240. As to whether this is a victimisation claim. We restate that the letter of 10 January is not a protected disclosure. In any event, we find no evidence

of any causative link between the concerns that the Claimant raised about his bonus and the decision to remove his IT access. Had there been a perception that the Claimant was making trouble or about to make trouble and that as a result his access needed to be denied, it is more likely that IT access would have been considered sooner and removed sooner.

241. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

6. On 21 March 2023, Sandra Phelan informing C that he would need to apply for the new Head of Investment Risk and Data Analytics role ("the New Role");

Victimisation claim

242. This is primarily a failure to make reasonable adjustments claim which we decide below. It is also pleaded as a victimisation claim. The protected acts relied upon must be the 10 January letter and the comments he makes in this meeting itself.

243. The Claimant has established no evidential link between his 10 January letter about bonus and this meeting. After his 10 January letter the Respondent considered his comments, increased his bonus, and moved on to consider the Claimant's return to work from February 23 onwards. Nothing they do in the intervening period suggests any continuing connection to the bonus 'issue' or that they were motivated by the bonus complaint.

244. Secondly, we do not accept that Ms Phelan would have reacted to the Claimant's comments regarding the Equality Act by suggesting, in the very same meeting, that he needed to apply for the role. We do not accept that she would have, because of his comments about the Equality Act, created a previously undecided hurdle to his future with the Respondent, that had not been sanctioned by Ms Smith (who was not at the meeting and therefore could not have been aware of these particular comments). It is entirely implausible that because he made those allegations in this meeting she told him that he would have to apply for the role.

245. Both counsel's submissions suggest that the information about applying for the role may not have been given until the 23 March meeting with Ms Phelan and Ms Smith.

246. The Respondent asserts that Ms Smith did not know about the comments regarding a discrimination claim in the 21 March 2023 meeting with Ms Phelan. We think that is implausible. They prepared thoroughly for the meeting precisely because the Claimant had reacted badly in the 21 March 2023 meeting and therefore we think it is more likely than not that Ms Smith was told what he had said.

247. Nevertheless, given our factual conclusions that Ms Smith had essentially made up her mind that the Claimant was unlikely to have the

necessary skills and experience to carry out the new Risk role, we do not consider that she made the decision to interview the Claimant for the role because of his comments on 21 March 2023. We consider that she had always intended to assess the Claimant if he wanted to apply for the risk role because she did not consider he was likely to be able to do the job. She therefore told the Claimant at this meeting so that he could consider whether he wanted to apply for the role or not. There was no causative link between the comments on 21 March and the decision to ask the Claimant to apply for the role or the decision to tell him about this requirement at this meeting.

248. The Claimant relies upon other individuals within the organisation being able to transition into other roles without application as being evidence that he was treated differently thus establishing a negative motive on the part of the Respondent. We do not accept that this establishes a link between the Protected Acts relied upon and the decision to require him to apply for the role.

249. We do not uphold the Claimant's claims based on this detriment.

7.On 8 June 2023, in a meeting with Antony Burgess and Nicola Smith, being informed that on his return a role could be that of providing support to a team member and then contractor who would be covering that team member's maternity leave.

S15 Claim

250. The Claimant says that the something arising that he relies upon for this claim is "*A management perception with the Respondent that the Claimant was not immediately fit to resume carrying out any aspect of his previous role."*

251. It is possible that asking someone to cover a junior colleague's work or train someone to cover for them could, in certain circumstances amount to unfavourable treatment particularly when it was not a permanent role. We recognise that this could amount to a demotion and therefore be unfavourable. The Claimant found this request offensive because he had been told that his role doing this work had been deleted and he was now being asked to do it again. We accept that as a premise, this could be unfavourable treatment.

252. However, in these circumstances we do not consider that the Claimant has made out that it was unfavourable to him. This work was work that complied with the OH report recommendations. Further it was work that existed and could be undertaken by the Claimant whilst he built his health recovery and whilst alternative projects could be found and a role within the firm could be found. The alternative was the termination of his partnership. The Claimant knew that. It is time limited but this was because there was no permanent role available save for that which the Claimant had been assessed and found not to be suitable for.

253. It is also not clear what the Claimant is alleging in relation to this 'Something Arising'. The Something Arising was that management did not believe he was fit enough to do his old role – yet he was being expressly asked to carry out aspects of his previous role. Supporting Holly Naughton and her work was clearly part of his old role. Therefore this shows that the Something Arising had not in fact arisen. There was no perception amongst management that he was unable to resume any aspect of his previous role; that is exactly what he was being asked to do.

254. We therefore do not consider that the suggestion for the Claimant to do this work occurred because they had no trust in him being fit enough to do parts of his old role. On the contrary, they believed he could and wanted him to return to work that he could do without significant levels of stress, that were not timebound and which were possible in the hours that the phased return to work allowed.

255. Finally, the decision to offer the Claimant this work, even if it was unfavourable treatment based on the Respondent's perception of the Claimant's health, it was a proportionate means of achieving a legitimate aim. The offer complied with the OH report which gave clear parameters to the work that the Claimant ought to be doing during his phased return to work. This work fitted within those parameters. Their suggestion was therefore a proportionate means of achieving the legitimate aim that they rely upon namely, "Enabling a staff member to return to work in circumstances where their previous role was no longer required by the company.

256. We therefore consider that this part of the s15 claim must fail.

<u>Victimisation claim</u>

257. Neither party's submissions deal with this as a victimisation claim though the List of Issues (5.3) includes it as a detriment under the victimisation claim.

258. The Claimant also alleges that this is an act of victimisation following his disclosures. We have considered whether any of the three acts relied upon caused this to occur. We do not consider that any link has been shown between any of the acts relied upon and this offer.

259. This decision concerned his return to work and confirmed that despite the Claimant's complaints, they still wanted to support his return in whatever way was possible. There is no link between the protected acts and the respondent's decision. This claim is not upheld.

260. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

8. Ms Phelan failing to inform the Claimant in her email of 19 June 2023 or at any other time that the meeting she was arranging for C with Owen Thomas (which took place

on 26 June 2023) in relation to the New Role was intended to constitute an interview for the New Role.

261. The reason arising out of his disability that the Claimant relies upon is "A loss of confidence by the Respondent in the Claimant's ability to carry out new duties which were within his grasp, such loss of confidence being caused by the Claimant's disability."

262. We accept that the failure to inform the Claimant that the meeting on 26 June was an interview could amount to unfavourable treatment. We have made findings however that the Claimant did understand that he was undergoing an assessment and that his meeting with Mr Thomas was part of that assessment. Nevertheless the written communications regarding this meeting were clearly misleading and at best, only told the Claimant part of what was intended by these meetings. We are not satisfied that the Respondent's explanation that the Claimant had not liked them using the word 'interview' is sufficient to reduce this lack of clarity to something not capable of being unfavourable treatment.

263. However that unfavourable treatment did not occur because of a loss of confidence by the Respondent in his ability to carry out new duties which were within his grasp. That treatment occurred because the Respondent was clearly worried by the Claimant's response during meetings to the idea that he was going to be formally interviewed. They were at pains to work with the Claimant to see if he wanted to apply for the Risk role and wanted to assess him accordingly. Some three months lapsed between informing him about the new role and these interviews. We accept that during that time they spoke to the Claimant on numerous occasions about the role, the process and the situation he found himself in. We accept that he continued to focus on his view that the decision to delete his original role was flawed. The Respondent wanted him to attend the interviews to ensure that the process was properly followed. Even if they had lost confidence and thought it highly unlikely that he was going to get the role, sabotaging his chances of performing well at the interview would not serve their purpose. A tick box, 'fair on paper' exercise would have been far better from their point of view. That does not mean that they had absolute confidence in him to do it, but they did want to understand whether he wanted to be considered for it and then, whether he was capable of doing it. Deliberately misleading him in order to sabotage his chances of performing well at the meetings would have been perverse in these circumstances.

264. Alternatively even if they had decided to mask their true intentions regarding the purpose of the 26 June meetings/interviews, we have found that any loss of confidence by Ms Smith or the Respondent at large, arose from pre-existing, genuine and evidenced concerns regarding the Claimant's ability to perform the senior head of risk role given his performance in the risk aspect of his role prior to going off sick. Ms Smith's decision making was almost entirely based on the findings of the PEX report, feedback from consultants, her consideration of the Claimant's pre ill health performance

reviews, the Claimant's own assessment of how much Risk experience he had over the previous 11 years, and his own enthusiasm about carrying out a purely Risk based role. They were not influenced by his disabilities or his absence levels. The interviews on 26 June confirmed Ms Smith's concerns rather than challenged them. The Claimant may argue as to how far that loss of confidence was justified but we have found that these were the genuine reasons that Ms Smith did not believe the Claimant could do the role.

265. We do not accept that the arising out of as pleaded has been made out in any event. The new duties of the risk role were not within his grasp. He has not demonstrated that to the Tribunal.

Victimisation claim

266. We do not accept that there was any link between the way that the meetings on 26 June were convened and any of the acts relied upon as Protected Acts. As previously stated, the Respondent's view of the Claimant's concerns regarding his bonus did not impact their decisions regarding his return to work and his suitability for other work.

267. With regard to the Acts 2 and 3, we do not accept that the fact that he had alleged discrimination in one meeting on 21 March or possibly alluded to it on 29 March motivated their subsequent actions. The perversity of attempting to sabotage his chances in the interview are as already outlined above. By this stage, there was no plausible reason for them to want to mislead the Claimant regarding the situation.

268. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

9. Ms Phelan and/or Mr. Thomas intending in the meeting on 26 June 2023 to undermine C's candidacy for the New Role.

269. Our primary conclusion regarding this part of the claim is that neither Mr Thomas nor Ms Phelan or Ms Smith intended to undermine the Claimant's candidacy. Therefore the factual basis of the claim is not made out and the claim fails.

270. The basis for this claim appears to have been an email which the Claimant now accepts was about a different 'Matt'. In the absence of that email, we have not found any facts that support the conclusion that they were intending to undermine his candidacy for the new role. We accept that Ms Smith had significant misgivings regarding his capabilities but she did not wish to undermine his candidacy through the meetings on 26 June. Mr Thomas had no background knowledge about the Claimant and had not been briefed by anyone to treat him differently from any of the other candidates. Ms Phelan had no vested interest in undermining the Claimant.

271. Our conclusions regarding this claim, which relies on the same 'Arising out of' echo those regarding Detriment 8 above.

272. We accept that Mr Thomas did not know about the protected acts relied upon for the Claimant's victimisation claim and we repeat our conclusions regarding the Detriment 8 victimisation claim with regard to Ms Phelan's motives.

273. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

10. In the meeting on 26 June 2023, Mr Thomas asking C detailed and searching questions about the role without:- (a) having informed C that the meeting was in fact an interview for the New Role, (b) taking account of C's deskilling as a result of his disability-related absence, and (c) making any accommodation for disability-related disadvantage experienced by C, such as providing the questions in advance of the meeting, or allowing C a short time to think about his answers.

S 15 Claim

274. The Claimant relies on the 'Something Arising' of his absence levels from work.

275. Mr Thomas asked the Claimant exactly the same questions as everyone else and conducted his interview with the Claimant in the same way as he did everyone else. We accept that he did not do any of the a) to c) listed above. Whether that was a failure to make reasonable adjustments we examine below. The way that this has been pleaded is clearly more of a reasonable adjustments claim than a s15 claim. If Mr Thomas behaved in the way described then this could amount to unfavourable treatment.

276. However, Mr Thomas's decision to treat the Claimant as he did, did not arise out the Claimant's absence levels as he treated everyone in the same way during the interview. Mr Thomas did know that the Claimant had been absent but his treatment of him was as a person applying for the role.

277. We accept Mr Thomas' evidence that beyond knowing that the Claimant had had a significant time off sick, he did not know anything else about the Claimant's situation and had simply been asked to interview him and assess his risk knowledge. Mr Thomas said in evidence to us that he scored the Claimant more favourably because of his absence levels and that he felt sorry for him. We have not accepted that as correct. If there were any adjustments they were marginal at best. We consider that he scored him according to the same criteria and standards as he scored everyone else.

Victimisation Claim

278. With regard to the victimisation claim, we have found that Mr Thomas did not know about the acts relied upon as protected acts. He therefore cannot have had this in mind when he carried out the interview.

279. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

11. On 20 July 2023, rejecting C for the New Role.

280. There is some confusion as to whether this claim is pleaded as a s15 claim or not. It is not identified at 3.1 of the List of Issues and there is no 'something arising' identified in the List of Issues either.

281. Ms D'Souza's submissions state that it was pleaded as such in the Particulars of Claim at paragraph 55d. That is not quite correct. Paragraph 55d identifies a 'Something Arising' as the cause of this detriment. However, paragraph 54 of the Particulars of Claim says as follows:

"The Respondent treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability by the acts described at Detriments 1-5, 7-10, and 13-16, contrary to section 15 EqA 2010 and s.45(2) 2010 EqA."

282. It expressly excludes claims 6, 11 and 12 and that is what was replicated in the List of Issues. This was not raised either at the outset of proceedings when the List of Issues was discussed with the parties, nor in oral submissions. The first time it has been raised has been in the written submissions. Ms D'Souza does not appear to suggest that we should consider it saying instead that she wishes to avoid any pleading arguments and that the factual matrix regarding this claim will be covered in the claim regarding termination of the Claimant's membership. We will therefore discuss that below. We do not consider that this has been effectively pleaded as a s15 claim.

<u>Victimisation Claim</u>

283. It has been pleaded as a s27 victimisation claim. As per all our findings on this matter, we are not persuaded that any decisions about the Claimant's selection for this role or his ongoing working relationship with the Respondent were negatively influenced from the Respondent's point of view, by the discussion regarding the bonus. They considered the matter concluded having raised his bonus. Thereafter, the change in tone and relationship was due to the Claimant's behaviour, not theirs. The bonus issue affected his trust in the Respondent not the other way round.

284. We do not accept that the comments in the meeting of the 21 March or the email on 29 March influenced the Respondent's treatment of the Claimant in respect of his rejection for the new risk role.

285. For the avoidance of doubt we restate that, on balance, we accept that the reason Ms Smith did not offer the Claimant the risk role was because she did not think he was capable of performing this role at this level due to his previous experience, his previous performance and approach to the risk part of his 'old' role and his overall attitude to this new role. We consider that the Respondent has evidenced Ms Smith's decision and accept that the Claimant's acts or complaints did not affect this decision.

286. We do not uphold the Claimant's claims based on this detriment.

12. *After 1 August 2023, R failing to respond to the 'Put Notice' submitted by C on 1 August 2023.*

14. On a date unknown prior to 4 September 2023, R exercising its discretion to not to pay C the full value of his equity holding in the event of termination of his membership of the LLP.

16. On or after 4 September 2023, R failing to act in accordance with the offer expressed by it in the letter of 4 September 2023 in which it agreed to purchase 10% of C's vested equity.

S15 Claim

287. We deal with all of the share-related matters together as our reasoning and conclusions are the same. The Something Arising relied upon for 14, and 16 is the Claimant's absence levels from work. Detriment 16 also relies on loss of confidence by the Respondent in the Claimant's ability to carry out new duties which were within his grasp, such loss of confidence being caused by the Claimant's disability.

288. Detriment 12 does not appear to have been pleaded as a s15 claim so we will not deal with it as such. It is not in paragraph 3.1 of the List of Issues and there is no something arising assigned to it.

289. In any event, there was clear evidence that the Respondent did respond to the Put Notice submitted by the Claimant on 1 August 2023. Therefore this claim is not made out as pleaded. These responses were summarised in the Respondent's submissions as follows:

"(i) acknowledging it on 4 August 2023 [1585];
(ii) referring to it in SP's letter to C on 4 September 2023 [1618];
(iii)negotiating with AMG, effectively on C's behalf, to preserve the effectiveness of C's put notice so as to permit him the opportunity to sign the purchase agreement and to receive full value for the 400 points that were the subject of the put notice."(para 188 a R's Closing Submissions)

290. We are not clear that (iii) above is technically a 'response' but it is clear that there was a response. If what the Claimant is complaining about is the failure of the Respondents to buy them. That is a different matter and has not been pleaded.

291. We also conclude that detriment 14 did not occur as described. The Respondent did exercise its discretion to buy back the 200 C1 shares that he had 'put' on 1 August 2023 and they asked their majority shareholder to approve buying back the 200 shares that would have vested shortly after his partnership was terminated. The fact that they were not in the end purchased at full value by the Respondent was because of three matters:

a) They had no contractual obligation to do so;
b) They left the offer to buy them open for a year
c) They, as standard, required individuals to sign legal waivers before purchasing shares at full value post the termination of their employment or partnership. The Claimant refused to sign that waiver.

292. In submissions the Claimant avers that the fact that others also had to sign a waiver does not mean that the Respondent's failure to exercise its discretion in respect of purchasing his shares was not unfavourable treatment arising out of his disability. We accept that premise as it does not have to be a comparative exercise. However, the fact that the others had to sign waivers demonstrates to us that the Respondent did not treat the Claimant unfavourably because of his absence from work or their loss of confidence in him. They did exercise their discretion but insisted on the security of a waiver in those circumstances. The Claimant refused to agree to that and so the Respondent withdrew its discretion.

293. The same reasoning applies to Detriment 16. The letter dated 4 September does offer to purchase 10% of the Claimant's vested equity but it is offered on the grounds that the Claimant signs the purchase agreement which included the legal waiver. He refused to do so and therefore they did not buy the shares as offered.

294. Neither Detriment 14 or 16 occurred because of the Claimant's absence levels or the Respondent's loss of confidence in the Claimant.

295. The Respondent's main argument is that they did not make these decisions in any event. They state that AMG did and therefore the Respondent cannot be held accountable.

296. Ms D'Souza submits that "*AMG is a corporate partner of Veritas ([2028] – definition of 'Member']. As a 'Member', AMG acts as the LLP's agent under the LLPA 2000 [2366]. Accordingly, R is vicariously liable for any discriminatory act by AMG taken in relation to a member under the EqA's agency provisions (s.109(2) EqA 2010).*" (para 178 C's submissions).

297. We do not consider that we need to determine this point – though we note that Mr Laddie disagrees with the accuracy of this premise in his submissions. The reason we do not need to consider this point is that, even taking the Claimant's case at its highest and assigning vicarious liability to the Respondent, we do not consider that either AMG or the Respondent made any decisions about the purchase of the Claimant's shares because he had been absent or because of any loss of confidence in him. They offered to buy 400 shares at their full value subject to a commercial contract which included a legal waiver. When the Claimant refused to sign that they exercised their contractual rights (after a year) to buy them back at nil value. The inclusion of the legal waiver was not there because of the Claimant's absence levels or any loss of confidence. It was there because it makes commercial sense that if they exercise their discretion in someone's favour, they get something

in return – namely certainty regarding legal culpability. It was demonstrated to be in other leavers' purchase agreements too. This may be a harshly commercial decision but it was not because of either of the 'Somethings arising' that the Claimant relies upon.

Victimisation Claim

298. We also consider that the Claimant has not established any link between this decision and the acts relied upon for victimisation. Had they intended to treat him badly because of the issues he raised regarding the bonus or his allegations of discrimination, it is implausible that they would wait so long to do so and, before buying the shares back at nil, offer to buy them back at full value. They had a contractual right to buy them back at nil value from the moment his partnership agreement was terminated. They did not. The fact that they offered to buy them at full value demonstrates that the acts were not the motivating force behind the decision.

15. On 4 September 2023, R terminating C's membership of the LLP with immediate effect.

S15 Claim

299. The 'Somethings Arising' relied upon for this claim are the Claimant's absence levels and a loss of confidence by the Respondent in the Claimant's ability to carry out new duties which were within his grasp, such loss of confidence being caused by the Claimant's disability.

300. Whilst there is inevitably an indirectly causal link between the Claimant not being appointed to the new risk role and the termination of his membership, we as a Tribunal find that the Respondent genuinely intended and subsequently attempted to try to keep the Claimant as a member despite not appointing him to the new risk role.

301. We found Mr Burgess' evidence on this point particularly compelling. He had fought hard for the Claimant. He had maintained him on full pay, he had ensured a full bonus for his first year and he personally contributed to the bonus in the second year. He told us that he would still employ the Claimant today were he not working at the Respondent. We accept that evidence. Mr Burgess wanted the Claimant to remain within the partnership. He told the Claimant this directly but the Claimant did not believe him or Ms Smith.

302. Therefore the attempts to get the Claimant back to work between his rejection for the risk role and the termination of his membership on 4 September break the causative link between any decisions regarding the risk role and the ultimate termination of his membership.

303. In any event, we have not found that the decisions regarding the rejection for the risk role arise out of the Somethings relied upon.

304. The reason the Claimant's membership was terminated was not because of the Somethings Arising. The decision was made by Ms Smith because he refused to consider any of the possible return to work plans that

they suggested. He stopped engaging constructively with them. He abruptly told them that he was going away with his family – though he was not technically taking annual leave. He had effectively given them an ultimatum which was that if they did not have a permanent role to offer him he would not return to work. As they had no permanent role available (and it has not been suggested by the Claimant that there was any such role beyond the risk role), the Respondent could not find any work for the Claimant to return to. In addition, the Claimant's income protection insurance payments were due to come to an end because the Claimant was well enough to return to work. On that basis Ms Smith terminated the Claimant's membership. They were contractually entitled to do so without notice provided they paid him in lieu of the three months notice period (para 18 LLP membership side letter, p108). Given that he was not at work, there was no reason for him to have to work his notice period.

Victimisation Claim

305. The reason for the termination is as outlined in the paragraph above. It was not motivated by the Claimant's complaints on 10 January, 21 March or 29 March 2023. The Claimant has not established any causative link between the acts and the decision to terminate his contract. Had the Respondent been intent on treating the Claimant badly for any of those acts, we consider that they would have done so earlier and treated him very differently in the interim.

306. We do not uphold the Claimant's claims based on this detriment/unfavourable treatment.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

307. The Claimant's claims regarding reasonable adjustments rely upon three provisions criterions or practices ('PCP'). The reasonable adjustments suggested by the Claimant (which PCP ought to be adjusted by which adjustments was not specified) were:

"4.5.1 assigning C to the New Role;
4.5.2 informing C in advance of the meeting that his aptitude and suitability were going to be formally and definitively assessed at this meeting;
4.5.3 providing C with the topics for discussion and assessment in advance of the meeting;
4.5.4 allowing C time during the meeting, or by taking a short break, to consider his answers to the questions posed;
4.5.5 providing C with relevant training to fill in any gaps in his knowledge base;
4.5.6 providing C with coaching or mentoring by Mr Thomas or other suitable Risk expert to fill in any gaps in C's skills base;
4.5.7 allowing the Claimant a trial period to perform the role."

Were the PCPS in place?

4.2.1 In order to be selected for the role of Head of Investment and Data Analytics ("the New Role"), C had to demonstrate his suitability in a competitive selection exercise [R accepts applying a PCP that C had to demonstrate suitability, but not that there was a competitive selection exercise (§58A(1) GoR)];

308. This practice was applied. We have concluded that the Claimant's recruitment was part of a competitive selection process. Both Mr Thomas and Ms Smith clearly scored the Claimant in the same way that they scored the other candidates and then they put his results in a table with the other candidates. Had he been a 'stand alone' candidate in the way Ms Smith suggests, then we do not consider he would have been compared in this way to those individuals. That said we also accept that even if no other candidates had been considered, the Claimant would still have had to perform to a certain level in order for Ms Smith to consider appointing him. Nevertheless a competitive element was definitely present in this exercise.

4.2.2 That C's aptitude for the New Role would be assessed and determined by R at the meeting on [20 July 26] June 2023 with Sandra Phelan and Owen Thomas (Detriment 10) [R accepts applying a PCP that C's suitability for the New Role was determined after meetings between C, Owen Thomas and Nicola Smith on 26 June 2023 (in addition to Ms Smith's previous interactions with C and her knowledge of his skills and experience) (§58A(2) GoR)];

309. The Respondent accepts that this PCP was in place in that they accept that the Claimant's aptitude was, in part, assessed at the meetings. We agree but we also agree that it was only part of the assessment process applied to the Claimant as he was also assessed according to his previous performance.

4.2.3 that C needed to demonstrate his suitability for the New Role in order to avoid termination of his LLP membership (R accepts applying a PCP that C needed to demonstrate suitability for the New Role (§58A(2) GoR).

310. We do not accept that this was the PCP was in place. Yes the Claimant had to demonstrate his suitability for the risk role but he did not have to do that to avoid the termination of his LLP membership. His LLP membership, as already discussed above, was terminated because after failing to demonstrate his suitability for the risk role, the Claimant then refused to accept the available work that was being offered to him. To avoid termination of his LLP membership the Claimant either had to demonstrate his suitability for the New Role or, failing that, he had to engage with the offer of other work. Therefore this PCP was not applied to the Claimant.

311. However, if we are wrong and the fact that demonstrating his suitability contributed to a step along the way to the termination of his membership, we address below whether it placed him at a substantial disadvantage.

<u>Did the PCPs place the Claimant at a disadvantage?</u>

312. The disadvantages that the Claimant states he was at when compared to the others interviewed were as follows:

(PCP1) Non-disabled candidates would not have been absent from the workplace for the length of time that the Claimant was and/or would not have suffered with the symptoms described above [impaired concentration, memory loss, brain fog, fatigue, poor sleep, headaches and anxiety plus actual or perceived deskilling by him and impaired recall of details] *occasioned by the Claimant's disability or disabilities, as a result of which they would have performed better than the Claimant in demonstrating their suitability for the New Role.*

(PCP2) Non-disabled candidates would not have been absent from the workplace for the length of time that the Claimant was and/or would not have suffered with the symptoms described above occasioned by the Claimant's disability or disabilities, as a result of which they would have performed better than the Claimant in demonstrating their suitability for the New Role in an unexpected interview setting.

(PCP 3) The Claimant was substantially disadvantaged by PCP 3 in comparison to non-disabled candidates who applied or would have applied for the New Role. Non-disabled candidates would not have been absent from the workplace for the length of time that the Claimant was and/or would not have suffered with the symptoms described above occasioned by the Claimant's disability or disabilities, as a result of which they would have performed better than the Claimant in demonstrating their suitability for the New Role. Further, non-disabled candidates who applied or would have applied for the New Role would not have faced termination of LLP membership as a result of not demonstrating suitability for the New Role.

313. The Respondent asserts that the adjustment claim in relation to the recruitment process as a whole is misconceived in respect of the suggestion that the Claimant ought to have been offered the role without assessment as an adjustment. Mr Laddie relied upon the case of Archibald v Fife Council [2004] ICR 954. He argued that this case establishes that it is only if the disadvantage arises from the relevant disability that an employer is under a duty to consider an adjustment. Therefore, unless the Claimant's original role was deleted because of the Claimant's disability, this situation or disadvantage did not arise out of the Claimant's disability and there was no duty to consider adjusting the process of appointment to a new role.

314. We accept that the relevant disadvantage must arise out of the Claimant's disability to require adjustment. However we do not accept that the relevant disadvantage in this case is the deletion of the Claimant's old role. We agree that this was not caused by the Claimant's disability. However the relevant disadvantage here is the fact that in order to get the new risk role, the Claimant had to go through a competitive process. That is the PCP pleaded. As Mr Laddie says at para 106 of his submissions:

If, in a competitive selection exercise, C's disability placed him at a substantial disadvantage versus other candidates, R would concede that the duty to

make reasonable adjustments would arise. To be clear, that is a duty to make adjustments that would remove the disadvantage. What that would require is the application of steps that level the playing field between C on one hand and non-disabled candidates on the other. What it would not require is for R simply to remove all non-disabled candidates from the process. That would not be levelling the playing field – it would be clearing it. Such an approach would be wrong in law.

315. Given that we have found that there was a competitive selection exercise, the scenario outlined by Mr Laddie above must be the assessment we undertake. Did the Claimant's disability place him at a substantial disadvantage versus other candidates. We agree that this would require the application of steps that level the playing field between the Claimant on the one hand and non-disabled candidates on the other. What those reasonable adjustments might be depends on the circumstances of the case.

316. We accept that it is possible that people with long Covid could be disadvantaged by having to go through a competitive interview process. However as already discussed above, the symptoms of long Covid vary hugely. Nevertheless we accept the basic premise that having this diagnosis could disadvantage someone's ability to go through a competitive interview process.

317. The Claimant needs to establish that he was at that disadvantage. This is particularly important when dealing with a condition as wide ranging as long Covid. On balance, we do not accept that the Claimant has shown that he was at the disadvantages relied upon when compared to the other candidates during this selection process.

318. The disadvantages outlined above are all based on the same premise that the competitive interview process caused the disadvantage but they are slightly different:

(i) as a result of which they would have performed better than the Claimant in demonstrating their suitability for the New Role.

(ii) they would have performed better than the Claimant in demonstrating their suitability for the New Role in an unexpected interview setting.

(iii) Further, non-disabled candidates who applied or would have applied for the New Role would not have faced termination of LLP membership as a result of not demonstrating suitability for the New Role.

319. The medical evidence provided shows that the Claimant had had significant issues with fatigue, cognition, memory loss, brain fog, poor sleep and concentration all of which we accept could affect performance in an interview. However the OH report had signed him as fit to return to work. It recommended adjustments but nothing suggested the Claimant was not capable of an interview. The OH report says that he would be able to concentrate for 60-90 minutes at a time.

Mr Smith is not experiencing any significant side-effects from medication. He continues to experience post coronavirus syndrome symptoms and anxiety/mood related symptoms, however, these are decreasing with appropriate treatment and support. Specifically his memory and cognitive functions are improving. He is able to focus for 60 to 90 minutes at a time and his overall emotional state is less labile.

Mr Smith continues to have symptoms of post viral fatigue/post coronavirus syndrome, although this is improving along with his anxiety and mood symptoms. I think he is fit to return to work, although some adjustments would be needed to support this.

320. The adjustments suggested are a slow return to work starting with 3 hours on two non-consecutive days per week and then a gradual increase building to 5 days in a row of 3 hours per day. The report also suggests that the work he returns to is discrete pieces of work, which are not time bound and avoid the need for significant client interaction.

321. These interviews were 45 minutes long each. The Claimant asked to come into the office – he was told that he could do the meetings from home to reduce any possible fatigue but chose not to. Throughout both interviews the Claimant was cogent, clear and answered all the questions. He did not ask for a break. He did not express fatigue or confusion or suggest that he could not remember something. He did not, after reflecting on his performance later in the day, contact the Respondent and raise any concerns about the situation or how he had performed. His evidence to the Tribunal was that he thought the interviews had gone well. Although Ms D'Souza took Mr Thomas and Ms Smith to various parts of the interviews or scores which suggested that the Claimant did not fully respond to questions or give as much detail as they might have expected, we consider that he has not shown that there was anything within in his performance that meant that the Claimant was at the disadvantage he now suggests or that the Respondent ought reasonably to have been aware of the disadvantages he now relies upon.

322. Ms Smith did say that if the Claimant had spoken about Warehousing it would have been useful, but she did not say that it would have boosted his scores such that he would have outperformed the others or that she would have been persuaded that he could do the job. The Claimant has not provided us with evidence that his experience of warehousing was so significant that it would have satisfied the requirements of the role. We accept that this role was not solely a risk role as it was described as it included other elements. However we still consider that the Claimant has not established that he was unable or less able due to his disabilities to provide information regarding his warehousing experience during his interview with Ms Smith.

323. More importantly, it was not this process alone that meant that the Claimant was not given the role. Ms Smith's assessment of the Claimant was also based on his Risk performance before he became ill and how risk had

been delivered by him when he had been working. Therefore, the Claimant's performance at these interviews was only part of the reason that the Claimant was not offered the role. Ms D'Souza's submissions appear to suggest that this was a disadvantage. It seems a difficult argument to us to suggest that a long term employee having his previous experience considered should amount to a disadvantage. However if it is we note that it hasn't been pleaded as such. In addition, we note that any such disadvantage did not arise out of his disabilities but out of the fact that he was an existing employee. The decision to consider his previous experience and performance cannot be said in any way to arise out of his disability.

324. Overall, the Claimant has not established that others performed better than he did because they did not have long Covid and therefore that he was at the first disadvantage relied upon.

325. The second and third disadvantages have not been established The Claimant was aware that he was being assessed during these meetings. He was not in an unexpected interview setting. The Claimant did not face termination as a result of not being able to secure the role. The Claimant faced the possibility of alternative work which we have found was genuinely offered but ultimately refused by the Claimant. That possible disadvantage was not caused by the requirement to go through a competitive interview process.

326. We also consider that the Respondent could not reasonably have known that the Claimant was at the disadvantages he relies upon because they had an OH report that said that the Claimant was well enough to work, and that he was well enough to concentrate for 90 minutes at a time. The Claimant volunteered to travel into the meeting, he did not at any point in the interview process or the build up to it suggest that he could not answer any questions or that he needed more time, say that he was tired or needed a break or indicate that he was struggling. He knew he was going to be assessed during the meetings regardless of it being called an 'interview' or not. Had he truly been blindsided by the fact that it was an interview with Mr Thomas he would have spoken up and he would certainly have raised it afterwards in his interview with Ms Smith. He did not do those things and he considered that he had put in a good performance. We therefore consider that the Respondent, although they knew that the Claimant had been very unwell and was still recovering, reasonably relied upon the OH report and the Claimant's own presentation during the meetings that he was well enough to do them and did not know that the Claimant was at a disadvantage during the selection interviews.

327. Finally, if we are wrong, we have considered whether the adjustments suggested were reasonable.

328. We address whether each of the adjustments suggested was reasonable. We note that it is not for the Claimant to prove or suggest what adjustments might have been reasonable but it is helpful to understand what

it is that the Claimant says ought to have happened to avoid the disadvantages he relies upon.

329. The two key adjustments the Claimant appears to suggest are that he ought not to have been required to go through a selection process at all and simply given the job or given a trial period in the job.

330. In these circumstances we consider that neither of these would have been reasonable taking into account the size and resources of the employer and the role in question. Although the Claimant had 11 years' employment with the firm and was well regarded as being diligent, hardworking and very good at his previous role, he was not a Risk expert even on his own analysis. He considers that the Respondent ought to have taken into account that he was quick learner and had carried out diverse projects and work for the Respondent and in previous jobs elsewhere. Nevertheless, the level of responsibility in this role was very high. As per Baroness Hale in Archibald, *at para.70:*

"We are not talking here of high grade positions where it is not only possible but important to make fine judgments about who will be best for the job. We are talking of positions which a great many people could fill and for which no one candidate may be obviously the "best"."

331. That is simply not applicable to the new risk role in this case. This was a role that we accept was *"a specialist position requiring a high degree of skill and experience; it is a critical standalone position in a small asset management business with c.£25bn assets under management at the relevant time." (Respondent's submissions para 110).*

332. The Claimant had never performed such a risk-centred role at the relevant level. He had been 'Head Of' risk previously but by his own admission it was only as a relatively small part of his job and he had not been required to operate at the level and to the same extent that was now required by the new job. His understanding and assessments of the risk systems within the Respondent whilst he was well had been highlighted to not be good enough or mistaken by external contractors and his appraisals had consistently highlighted that he needed to spend more time on risk. At the time that he was discussing the new role and its remit with the Respondent, he refused to accept any responsibility or interest in the weaknesses in the risk function when it had been his responsibility. Instead he expressed significant doubts about the new role and consistently argued that it was unnecessary and not sufficient for him. Simply placing him in to the new role at this level when his view of it and his previous experience suggested that he was either not sufficiently capable or not sufficiently interested, was not a reasonable adjustment to the PCP. We consider that this would be the case for a trial period too. It was not reasonable for a role at this level within this organisation with the FCA reporting requirements.

333. Taking a step back and looking at the situation we note the following:

i. The Claimant had been extremely unwell but he and his doctors considered him well enough to return to work for up to 3 hours per day.

ii. The Claimant knew that these meetings or interviews were part of an assessment process even if they were not called interviews. He chose to travel into the office to attend the meetings and by his own assessment he performed well, and answered almost all the questions.

iii. The Claimant presented well, did not ask for a break, did not misunderstand any questions or give any indication that he was struggling at the time. Beyond one question about warehousing he has not suggested that he would have said anything differently in his answers to the questions asked.

iv. This was a very high level role in a regulated organisation which required a significant level of risk-related knowledge and experience that the Claimant did not have and had never demonstrated during his 11 years at the Respondent. His previous role had only been 5% risk. Whether that amount of time was due to the Claimant's own reluctance to perform this part of the role or due to time constraints caused by other demands from the Respondent, the amount of time he had dedicated to risk during the previous 11 years was minimal and not above roughly 5% of this time. His experience was therefore relatively limited.

v. The Claimant provided evidence of 3 people whom he says were transferred to entirely different roles within the Respondent without the relevant experience. He says that this supports the suggestion that the transfer of him to the new role without the relevant experience would have been a reasonable adjustment particularly on a trial period. The Respondent did not dispute the personnel moves that he relied upon but asserted that all of them were in different circumstances and therefore different considerations applied. They also stated that this had not been part of his pleaded case. We agree with the Respondent in this regard. Whilst we understand the Claimant's concerns regarding disclosure on this point, we nevertheless do not consider that the fact that others had previously been transferred, and that the Respondent did not even consider this option for him, does not necessarily mean that on this occasion, the failure to consider it for him was unreasonable. The Respondent was clearly considering transferring him to a different role, just not the risk role which they, reasonably, assessed as being too important, too regulated and too far outside the Claimant's skillset and interest to be valid to transfer him to. We consider that this was reasonable in all the circumstances particularly in circumstances where they were willing to transfer the Claimant elsewhere within the business.

vi. The interview process was not the only part of the Claimant's selection process. His previous performance was taken into account so that these interviews were not the sole basis for the assessment. This was, in effect, an adjustment to the process for the Claimant – the other candidates did not have this part of the process. Whilst the Claimant now says that using his past performance was a disadvantage and we should have caution

about how much weight we place on Ms Smith's performance concerns because she has only raised them in her witness statement for the first time, we have found that Ms Smith genuinely held these performance concerns and did so as a result of the PEX report and external consultants' assessment of the internal risk systems as well as the annual performance reviews and the Claimant's own description of his risk work whilst at the Respondent. Had the Respondent not considered his past performance and experience, this would no doubt have been significantly challenged by the Claimant, as, at the very least, unfair. Further as detailed above, the decision to rely upon his past performance as well, does not arise out of the claimant's disability.

vii. The fact that the Claimant's previous performance in the Performance element of his role had been so good was the reason they wanted him to return to the business. The fact is that this assessment process for the Risk role was not what led to the Claimant's termination. They assessed that he was not a good fit for this role but not that they therefore wanted him to leave the organisation. They wanted him to stay but doing something else.

"4.5.1 assigning C to the New Role;

334. We have already dealt with this matter above. We do not consider that this was a reasonable adjustment in the circumstances.

4.5.2 informing C in advance of the meeting that his aptitude and suitability were going to be formally and definitively assessed at this meeting;

335. The Claimant knew that these interviews were part of the assessment process. Further they were not the sole and definitive assessment of the Claimant's suitability for the role

4.5.3 providing C with the topics for discussion and assessment in advance of the meeting;

336. There was no indication that the Claimant was at a disadvantage because of his disability in not knowing the topics in advance. The Claimant had worked in the business for a long time, knew the systems in place and was asked generic risk related questions which he knew were going to be the basis for the role. He knew that he was going to have discuss risk. Nothing within the OH report suggested that this would be a reasonable adjustment for the claimant. It was not reasonable, based on the disadvantages the Claimant has established, to adjust it with this step in these circumstances.

4.5.4 allowing C time during the meeting, or by taking a short break, to consider his answers to the questions posed;

337. There were no facts presented to us that suggested that the Claimant needed time or a break and that he was at this disadvantage. We have found that had either been asked for Mr Thomas and Ms Smith would have provided such breaks. They had no reason to know or understand that, in a short interview, the Claimant needed any such time.

4.5.5 providing C with relevant training to fill in any gaps in his knowledge base

338. The Claimant's case in this regard is somewhat confusing. He firstly asserts that he had sufficient risk knowledge and alternative experience to do the job but also appears to recognise that he would need training.

339. We can see that training could, in some circumstances, be a reasonable adjustment. However, in these circumstances, for this level of role we do not. We come back to the fact that this was a 'Head of' role, in an area of work that the Claimant had some, but not much experience (by his own admission) that was FCA regulated and which required extensive experience not just knowledge. It is not clear to us exactly what gaps in the Claimant's knowledge would need filling, nor how long any such training would take or how much support the Claimant would have needed. The Claimant's submissions point to the fact that there was a ready-made mentor in Owen Thomas and a sufficient support network to ease him into the role. However, we do not consider that this was reasonable taking into account all of the circumstances. The Claimant suggests that Dean Tomlinson had a skills and competencies assessment conducted to stablish what skills and gaps training was needed to facilitate his transition into his new role. He considers that the same situation ought to have been offered to him.

340. However we believe that this was the purpose of the assessment exercise. Through that process Ms Smith had ascertained that the gaps were too significant to be filled with training. She was entitled to assess the Claimant's skills for the job as we have already outlined. She could have lowered the criteria required for the Claimant to obtain such a role and offered training to fill in those deficits if the Claimant only fell slightly short of the requirements. However we consider that the Respondent has properly evidenced that this was not the case.

341. In addition, we accept the Respondent's submissions that any gaps in the Claimant's knowledge or skill did not arise out of the Claimant's disabilities. In essence the Claimant is seeking an adjustment such that the Respondent should adjust their assessment process of the Claimant to make up for any skill or knowledge shortcomings even though that disadvantage did not arise out of the Claimant's disabilities. Any disadvantage concerning skills was not caused by the Claimant's long Covid. For a role that was so significant we do not think it is reasonable to require the Respondent to recruit someone without the necessary skills and experience even when they were a highly trusted member of staff with some of the necessary skills. The fact that others had been offered such opportunities in the past whilst making it something that could be reasonable, does not mean that it is something that was reasonable in these circumstances.

4.5.6 providing C with coaching or mentoring by Mr Thomas or other suitable Risk expert to fill in any gaps in C's skills base;

272. Our conclusions in relation to this adjustment are the same as the one above.

4.5.7 allowing the Claimant a trial period to perform the role."

342. For the same reasons as the two above, we do not consider that this is a reasonable adjustment. We accept that the role had been vacant for some time and that there was not necessarily any rush to fill it. However, that does not mean that it was reasonable to allow the Claimant to try it out.

General observation of reasonable adjustment claim

343. We also consider that the Claimant's case with regard to reasonable adjustments has been put as if the failure to make these adjustments resulted in him losing his job. In his view, the reasonableness of the adjustments he is seeking, should be viewed against the risk of him losing his role altogether and him being dismissed as a result. That is not the situation that the Claimant was facing. The Claimant's role, for reasons entirely unrelated to his disability, had been deleted. In those circumstances, it was entirely open to the Respondent to just terminate the Claimant's membership.

344. The Respondent chose not to. The Respondent was trying to find a way to get him back to work. One possible option was the new risk role – but it was one option not the only option. We also reiterate our findings that the Claimant was not interested in this role in any event. He has said to us that he was desperate to return to work in any role but we have found that to be incorrect. We consider that from the point the Claimant found out that his role had been deleted, he was trying to negotiate a way to leave the Respondent. He did not consider that the risk role was a good enough role for him and he did not want it and behaved accordingly. He could not outright reject the option because he knew it would affect his ability to negotiate his exit so he expressed an interest in the role. When that did not work because the Respondent did not consider him suitably skilled for the role, other options were offered to the Claimant. He refused them. Had he really been desperate to return to work he would have accepted those alternative roles even when they were not permanent.

345. In conclusion, we do not uphold the Claimant's claims that the Respondent failed to make reasonable adjustments.

Time

346. The Tribunal has decided all of the Claimant's claims on the basis of their substantive merit. However, for completeness we address the issue regarding whether all or part of the claims are in time. As set out in the List of Issues, any incident that occurred before 6th August 2023 is potentially out of time.

347. We accept that all of the claims relating to the deletion of the Claimant's role and the subsequent recruitment process and subsequent search for alternative work amount to a continuing act, culminating in the Claimant's dismissal and are therefore in time. They are sufficiently linked by the fact that

they all relate to the same issue of the Claimant's ongoing position within the Respondent and we are satisfied that there is enough of a connecting factor to establish that ongoing act.

348. If we are wrong in that assessment we consider that the Claimant has brought his claim in relation to those matters within such period of time as we consider just and equitable given that the Claimant's case is that he was attempting to remain in work with the Respondent and all matters relating to that were not crystallised until his contract was terminated. Although he had legal advice from March 2023 onwards, and although we have found that there was a clear separation between the Claimant's failure to be appointed to the risk role and his subsequent termination, that does not detract from our decision to exercise discretion and that it is just and equitable to consider these claims as if brought in time given the significance of the decision to terminate the contract on the Claimant and the importance of the events leading up to that decision. We have also taken into account the Claimant's ill health in reaching that decision.

349. We do not accept that any of the matters concerning the Claimant's bonus or the decision to reduce his pay are in time. The decision to pay the Claimant £10,000 and subsequently increase it to £40,000 are two discrete incidents that occurred in December 2022 and January 2023. The decision to reduce his pay occurred in October 2022 though was not realised until January 2023. None of these incidents related to the Claimant's continued employment. We do not accept that there was a thread linking them to his subsequent dismissal. As set out above we consider that the issue surrounding the Claimant's pay and bonus had no impact whatsoever on the Claimant's ongoing employment other than in respect of his reduction in trust in the Respondent.

350. We must therefore consider whether the claim was submitted within such period of time as was just and equitable. We have considered the Claimant's health and life circumstances and the impact that this may have had on his ability to submit a claim. However we note that he had legal advice from around March 2023 onwards and therefore could have submitted a claim then or understood the deadlines by then. There was therefore a long period of time before a claim was submitted. We have concluded that we shall not exercise our discretion as we do not consider that these claims were brought within such time period as was just and equitable in all the circumstances. These were isolated incidents concerning pay. The Claimant was not initially troubled by the decision to reduce his pay given that the reduction in pay without notice was rectified swiftly thereafter. Further the Claimant was pleased by the decision to pay him £40,000 in bonus and had himself considered the matter closed at that point in time. It is clear to us and we consider that it was clear to the Claimant at the time and now, that these payment issues were entirely separate to the decisions regarding his ongoing employment, he had access to legal advice and so would have been aware of any deadlines, his health at this time was getting better, at least from March 2023 onwards, and we therefore do not consider that they have been brought within such period of time as is just and equitable in all the circumstances.

Employment Judge Webster

Date: 18 July 2025

JUDGMENT and SUMMARY SENT to the PARTIES ON

22 July 2025

.....

.....

FOR THE TRIBUNAL OFFICE

Appendix 1 – List of Issues

Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 6th August 2023 or 4th September 2023 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability – This was conceded by R

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about (December 2022 to 4th September 2023)? The Tribunal will decide:

2.1.1 Did he have a physical or mental impairment:

2.1.1.1 Post Coronavirus Syndrome; and/or

2.1.1.2 Anxiety?

2.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

2.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.1.5.2 if not, were they likely to recur?

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably in respect of the acts and/or omissions as described in detriments 1-5, 7-10, and 13-16 of the attached schedule?

3.2 Did the following things arise in consequence of the Claimant's disability:

3.2.1 The Claimant's absence levels at work (detriments 1, 2, 3, 10, 14, 15, and 16);

3.2.2 The Claimant's continuing absence and/or the management view that the Claimant should not be contacted because of the risk of aggravating his anxiety levels (detriments 4 and 5);

3.2.3 A management perception with the Respondent that the Claimant was not immediately fit to resume carrying out any aspect of his previous role (detriment 7);

3.2.4 A loss of confidence by the Respondent in the Claimant's ability to carry out new duties which were within his grasp, such loss of confidence being caused by the Claimant's disability (detriments 8, 9, 15, and 16);

3.2.5 The Respondent's failure to submit the correct forms and/or mismanagement of health related forms relating to/explain the Claimant's absence (detriment 13).

3.3 Was the unfavourable treatment because of any of those things?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent will provide a list of its specific aims within 28 days.

3.5 The Tribunal will decide in particular:

3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the Claimant and the Respondent be balanced?

3.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

4.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1 in order to be selected for the role of Head of Investment and Data Analytics ("the New Role"), C had to demonstrate his suitability in a competitive selection exercise [R accepts applying a PCP that C had to demonstrate suitability, but not that there was a competitive selection exercise (§58A(1) GoR)];

4.2.2 That C's aptitude for the New Role would be assessed and determined by R at the meeting on 20 July 26 June 2023 with Sandra Phelan and Owen Thomas (Detriment 10) [R accepts applying a PCP that C's suitability for the New Role was

determined after meetings between C, Owen Thomas and Nicola Smith on 26 June 2023 (in addition to Ms Smith's previous interactions with C and her knowledge of his skills and experience) (§58A(2) GoR)];

4.2.3 that C needed to demonstrate his suitability for the New Role in order to avoid termination of his LLP membership (R accepts applying a PCP that C needed to demonstrate suitability for the New Role (§58A(2) GoR).

4.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability? The Respondent will provide a list of the ways in which it says the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability within 21 days.

4.4 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

4.5 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1 assigning C to the New Role;

4.5.2 informing C in advance of the meeting that his aptitude and suitability were going to be formally and definitively assessed at this meeting;

4.5.3 providing C with the topics for discussion and assessment in advance of the meeting;

4.5.4 allowing C time during the meeting, or by taking a short break, to consider his answers to the questions posed;

4.5.5 providing C with relevant training to fill in any gaps in his knowledge base;

4.5.6 providing C with coaching or mentoring by Mr Thomas or other suitable Risk expert to fill in any gaps in C's skills base;

4.5.7 allowing the Claimant a trial period to perform the role.

4.6 Was it reasonable for the Respondent to have to take those steps and when?

4.7 Did the Respondent fail to take those steps?

<u>5. Victimisation (Equality Act 2010 section 27)</u>

5.1 It is accepted that the Claimant:

5.1.1 Sent the letter dated 12 10 January 2023 to the Respondent;

5.1.2 attended a meeting on 21 March 2023 with Sandra Phelan in which they discussed his role; and

5.1.2 Sent the email dated 29th March 2023 to Sandra Phelan.

5.2 Did any of these acts constitute a protected act for the purposes of s.27 of the Equality Act? [The Respondent accepts that 5.1.2 was a protected act].

5.3 Did the Respondent behave in the way set out in detriments 3 to 16 of the attached schedule?

5.4 By doing so, did it subject the Claimant to detriment?

5.5 If so, was it because the Claimant did a protected act?

6. Remedy for discrimination and/or victimisation

6.1 What financial losses has the discrimination caused the Claimant?

6.2 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

6.3 If not, for what period of loss should the Claimant be compensated?

6.4 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

6.5 Is there a chance that the Claimant's LLP membership would have been terminated in any event? Should their compensation be reduced as a result?

6.6 Should there be any deduction to compensation on account of any contributory conduct by the Claimant?

6.7 Should interest be awarded? How much?

SCHEDULE OF ACTS OF DISCRIMINATION/DETRIMENTS

C advances the following as acts of discrimination occasioning detriment:-

1. In or around mid-December 2022, awarding C a Discretionary Profit Share Allocation (DPS) of £10,000.

2. In or around January 2023, reducing C's Fixed Profit Allocation (FPA) by 50% without warning C in advance.

3. Following a meeting on 26 January 2023, (and after a written complaint by C on 10 January 2023), upwardly revising C's DPS to only £40,000.

4. Failing to consult with C about proposed changes to his role before announcing them.

5. On 21 February 2023, removing C's systems access.

6. On 21 March 2023, Sandra Phelan informing C that he would need to apply for the new Head of Investment Risk and Data Analytics role ("the New Role");

7. On 8 June 2023, in a meeting with Antony Burgess and Nicola Smith, being informed that on his return a role could be that of providing support to a team member and then contractor who would be covering that team member's maternity leave.

8. Ms Phelan failing to inform the Claimant in her email of 19 June 2023 or at any other time that the meeting she was arranging for C with Owen Thomas (which took place

on 26 June 2023) in relation to the New Role was intended to constitute an interview for the New Role.

9. Ms Phelan and/or Mr. Thomas intending in the meeting on 26 June 2023 to undermine C's candidacy for the New Role.

10. In the meeting on 26 June 2023, Mr Thomas asking C detailed and searching questions about the role without:- (a) having informed C that the meeting was in fact an interview for the New Role, (b) taking account of C's deskilling as a result of his disability-related absence, and (c) making any accommodation for disability-related disadvantage experienced by C, such as providing the questions in advance of the meeting, or allowing C a short time to think about his answers.

11. On 20 July 2023, rejecting C for the New Role.

12. After 1 August 2023, R failing to respond to the 'Put Notice' submitted by C on 1 August 2023.

~~13. On a date unknown prior to 31 August 2023, R submitting the wrong documentation to R's Group Income Protection ("GIP") provider, Aviva, causing or contributing to the cessation of GIP payments by Aviva to C.~~

14. On a date unknown prior to 4 September 2023, R exercising its discretion to not to pay C the full value of his equity holding in the event of termination of his membership of the LLP.

15. On 4 September 2023, R terminating C's membership of the LLP with immediate effect.

16. On or after 4 September 2023, R failing to act in accordance with the offer expressed by it in the letter of 4 September 2023 in which it agreed to purchase 10% of C's vested equity.