



EMPLOYMENT TRIBUNALS

Claimant: Mr Arvinder Bhachoo

Respondent: UBS Business Solutions AG

Heard at: London Central (in person)
On: 2, 3, 4, 5, 10, 11, 12 December 2025
8, 9, 15, 16 December 2025 (in chambers)

Before: Employment Judge B Smith (sitting with members)
Mr R Baber
Mr D Kendall

Representation

Claimant: Ms A Fadipe (counsel)
Respondent: Mr J Crozier (counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of direct race discrimination is not well-founded and is dismissed.
2. The complaint of failure to make reasonable adjustments is not well-founded and is dismissed.
3. The complaint of victimisation is not well-founded and is dismissed.
4. The complaint of protected disclosure detriment is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant has been employed as a Senior Enterprise Architect at the respondent, a global financial services provider, since 22 December 2017. He remains employed. ACAS conciliation commenced on 10 January 2024 and concluded on 21 February 2024. The claim was presented on 21 March 2024.
2. The claimant brings claims of:
 - (i) Direct race discrimination;
 - (ii) Failure to make reasonable adjustments;
 - (iii) Victimisation; and
 - (iv) Protected disclosure detriment.
3. Disability was in issue.

Procedure, documents, and evidence heard

4. The parties were represented by both solicitors and counsel during the final hearing. Solicitors attended throughout for both parties.
5. No adjustments were required or asked for by any of the parties or witnesses. The Tribunal kept this under review and took regular breaks as necessary. No issues around adjustments arose during the hearing. Nonetheless, we understood and took into account the claimant's mental health in making our decisions throughout, in particular for his oral evidence.
6. Timetabling was discussed and agreed at the start and throughout the hearing. Towards the end of the claimant's evidence on day two, given that the claimant had been giving evidence for some time, he had asked if his

evidence could be completed that day, and his counsel sought to re-examine by reference to documents, the Tribunal proposed that if those documents spoke for themselves there may be no need to re-examine on them. The claimant's counsel preferred for the claimant's re-examination to complete the following morning and this was permitted by the Tribunal. The respondent's cross-examination of the claimant was nonetheless curtailed for it to be completed within a day and a half.

7. The Tribunal often sat later than intended in order to allow for more time. The time permitted for the claimant's representative to cross-examine the respondent's witnesses was also well in excess of that originally timetabled at the first case management hearing.
8. Although two days in the middle of the hearing were not for the parties to attend, the Tribunal sat in deliberation after the original estimate of 9 days so that no time overall was lost for the parties.
9. We were satisfied that the parties had a full and fair opportunity for all elements of the final hearing to be completed. Slightly longer breaks were on occasion allowed at the request of the claimant's counsel.
10. The Tribunal reminded the parties where necessary about timing of witness evidence to the extent that it was concerned that the evidence overall be completed within the timetable. The parties were, in any event, given a full opportunity to cross-examine proportionate to the issues. The Tribunal went no further than exercising its case management powers to ensure that the timetabling of the case was appropriately carried out.
11. The timetable for exchange of written submissions and oral submissions was agreed and kept under review. On the last day with the parties the claimant's counsel requested additional time to complete written submissions. This was granted. A later start time for oral submissions at the claimant's request was also granted. The claimant's additional request for a longer break between the parties' oral submissions was also granted. The

parties also had two full days in the middle of the hearing when they were not required to attend and this time was available to prepare draft written submissions if the representatives so wished.

12. The witnesses, including the claimant, all gave evidence under affirmation and were cross-examined.
13. The list of issues was set by order of EJ Nash dated 7 January 2025. By the time of the hearing, there was an updated agreed list of issues. This can be found at **Appendix A**.
14. The parties confirmed from the outset of the hearing that no applications to amend the claims were required or made.
15. The agreed documents were:
 - (v) Hearing bundle paginated to 2445;
 - (vi) Agreed list of issues;
 - (vii) Witness statements of the claimant, and for the respondent: Daniel Jäger, Neena Varsani, Emily Sulkowski, Sarah Hobson, Karen Gwynn, and Sarah Blay;
 - (viii) Respondent's chronology and cast list;
 - (ix) Claimant's neutral chronology and cast list; and
 - (x) By consent, additional documents as follows: DB Year End Performance Evaluation for 2021 and 2022.
16. We only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and both parties indicated specific pages for the Tribunal to read.

17. Both parties made oral submissions at the close of the evidence. Both parties made written submissions. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.

Relevant Law

18. We fully took into account the law as set out in the parties' written submissions even if not expressly referred to below.

DISABILITY

19. Disability is defined in section 6 EQA:

- (1) *A person (P) has a disability if -*
 - (a) *P has a physical or mental impairment, and*
 - (b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*
- (2) *A reference to a disabled person is a reference to a person who has a disability.*
- (3) *In relation to the protected characteristic of disability -*
 - (a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*
 - (b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability*

[...]

20. Substantial means more than minor or trivial: s.212(1) EQA.

21. Long term is defined in schedule 1 paragraph 2 EQA:

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

22. Paragraph 5(1) to schedule 1 EQA says:

An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –

- (a) *measures are being taken to treat or correct it, and*
- (b) *but for that, it would be likely to have that effect.*

23. In determining whether at the relevant time an impairment producing a substantial adverse effect was 'likely' to last for 12 months, we refer to SCA Packaging Ltd v Boyle [2009] IRLR 746. 'Likely' is to be given its ordinary meaning and does not mean 'probably'. The EHRC Guidance at C3 suggests that 'likely' should be interpreted as meaning that it could well happen.

FAILURE TO MAKE REASONABLE ADJUSTMENTS

24. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. Failure to comply with the duty is at s.21 EQA. The relevant questions are:

- (i) what is the provision, criterion or practice ('PCP') relied upon;

- (ii) how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;
 - (iii) can the respondents show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and
 - (iv) has the respondents failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
25. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.
26. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: Chief Constable of West Yorkshire Police v Homer [2012] ICR 704.
27. The Tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.
28. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the relevant duty has been breached: Project Management Institute v Latif [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent under s.136 EQA. In Rentokil Initial UK Ltd v Miller [2024] EAT 37 it was then held at [43] that *'What Latif means is that the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.'*
29. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach

and a Tribunal should widely construe the statutory definition: Ahmed v Department for Work and Pensions [2022] EAT 107 at [25].

30. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: Fareham College Corporation v Walters [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: Pipe v Coventry University Higher Education Corporation [2023] EAT 73.
31. The EHRC Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including whether taking any particular steps would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.
32. A knowledge defence applies (paragraph 20, Schedule 8 EQA):
 - (1) *A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—*
 - (a) *in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;*
 - (b) *in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.*

DIRECT DISCRIMINATION

33. Direct discrimination is prohibited conduct under s.13 EQA:

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

[...]

34. Section 39 EQA reads:

(1) An employer (A) must not discriminate against an employee of A's (B) –

(a) [...]

(b) in the way that A affords B access, or by not affording B Access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or services;

(c) [...]

(d) by subjecting B to any other detriment.

35. Detriment means a disadvantage. In Shamoon:

[34] ... the court or Tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.

[35] ... this is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to 'detriment': Barclays Bank plc v Kapur (no 2 IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on

which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence.

36. The comparator's circumstances must be the same as the claimant's, or at least not materially different. This is because s.23 EQA says:

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

[...]

37. The protected characteristic need not be the only reason for the less favourable treatment, or the main reason: London Borough of Islington v Ladele [2009] IRLR 154 (EAT). The decision must be more than trivially influenced by the protected characteristic.

38. The question of less favourable treatment can be intertwined with the reason for that treatment: the principal question is why was the claimant treated as he was? If there were discriminatory grounds for that treatment then there will *'usually be no difficulty in deciding whether the treatment ...was less favourable than was or would have been afforded to others.'* *There is a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others':* Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 HL.

39. Also, in Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated: *'I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment'.*

40. Where the question is addressed in this order the Tribunal need not necessarily identify the precise characteristics of the hypothetical comparator: Law Society and ors v Bahl 2003 IRLR 640 EAT.

VICTIMISATION

41. Victimisation is prohibited conduct under s.27 EQA:

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.*

42. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010 and bringing proceedings under the EQA. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons?

43. In Kokomane v Boots Management Services Ltd [2025] EAT 38 it was held that, when considering whether something amounted to a protected act, the Tribunal must consider the full context. The context includes the respondent's understanding of the act.

TIME LIMITS IN EQA CASES

44. Time limits for claims under the EQA are governed by s.123:

- (1) Subject to section 140B 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*

[...]

- (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 [...]*

45. We have a wide discretion to extend time on just and equitable grounds: Jones v Secretary of State for Health and Social Care [2024] EAT 2. Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.
46. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: Hendricks v Metropolitan Police Commissioner [2003] IRLR 96. The fact of common individuals to the allegations is relevant but not conclusive: Aziz v FDA [2010] EWCA Civ 304.

BURDEN OF PROOF – EQA CLAIMS

47. The burden of proof for the EQA claims is governed by s.136 EQA:
- (1) *This section applies to any proceedings relating to a contravention of this Act.*
 - (2) *If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

48. It was held in Field v Steve Pie [2022] EAT 68 at [37]:

'In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.' Further at [41] that *'if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment.'*

49. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.
50. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [2005] EWCA Civ 142.

PROTECTED DISCLOSURE DETRIMENT

51. Section 43A ERA says:

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

52. Section 43B ERA says:

(1) *In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the*

disclosure, is made in the public interest and tends to show one of more of the following: -

- (a) that a criminal offence has been committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

[...]

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

- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*

[...]

53. Section 43C ERA says:

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*

- (a) to his employer,*

[...]

54. Section 47B ERA says:

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

[...]

55. The burden is on the claimant to prove each of the necessary elements: Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13/LA at [44] (HHJ Eady QC):

The burden of proof in this regard is on the employee. As observed by HHJ McMullen QC in Boulding v Land Securities Trillium (Media Services) Ltd EAT/0023/06:

“24 . . . As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

- (a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.*
- (b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.*

25 'Likely' is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260:

'In this respect 'likely' requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.'

56. The claimant must establish a disclosure of information that they reasonably believed tended to show a breach or likely breach of a legal obligation. It is not sufficient for the claimant to make allegations without conveying facts:

Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 per Slade J at [24]. A mere expression of opinion does not amount to a disclosure of information: Goode v Marks & Spencer plc UKEAT/044/09 per Wilkie J at [38].

57. For the purposes of this part, notions of information and mere allegations are not mutually exclusive. Allegations can amount to disclosures of information depending on the content and the surrounding context: Kilraine v London Borough of Wandsworth [2018] ICR 1850. There is no rigid dichotomy between information and allegations (at Kilraine at [30]). The disclosure has to have '*sufficient factual content and specificity such as is capable of tending to show*' one of the five wrongdoings: per Sales LJ in Kilraine at [35] (also Simpson v Cantor Fitzgerald Europe [2020] ICR at [43]).
58. Whether communications should be read together is a question of fact for the Tribunal, and communications can be read with earlier communications: Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.
59. It is necessary for the discloser to have a genuine belief that the disclosure tends to show a relevant failure, and that belief must be a reasonable belief. Reasonableness involves the application of an objective standard to the personal circumstances of the discloser: Babula v Waltham Forest College [2007] ICR 1026 at [75]. It is relevant what the discloser believed at the time of making the disclosure and not what they may have come to believe later on: Dodd v UK Direct Solutions Limited [2022] EAT 44 at [55]. The objective test is what a person in their position would reasonably believe: Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at [62]. A belief may be a reasonable belief even if it is wrong: Babula.
60. The discloser must exercise their own judgment: Darnton v University of Surrey [2003] IRLR 133 at [31]: '*There must be more than unsubstantiated rumours in order for there to be a qualifying disclosure. The whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him.*'

61. In Darton at [30] it was held that '*...Parliament has not sought to import into section 43B a requirement that the worker must hold the belief that the information and allegation disclosed are substantially true.*' Equally. at [32]: '*...for there to be qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken.*'
62. For a potential breach of a legal obligation the discloser must have made a disclosure of information tending to show that a breach was likely to occur at some point in the future: Cantor Fitzgerald at [45].
63. In the context of the relevant failure, 'is likely to' means that the information disclosed should tend to show in the claimant's reasonable belief that the relevant failure was 'probable or more probable than not': Kraus v Penna [2004] IRLR 260 EAT.
64. For breach of a legal obligation as the relevant failure, this includes breach of an employment contract: Parkins v Sodexo [2002] IRLR 109.
65. The leading authority on whether the discloser has a reasonable belief that the disclosure is made in the public interest is Chesterton Global Limited v Nurmohamed [2018] ICR 731. The Tribunal must consider all the circumstances, including the numbers in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer. There may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker: Chesterton at [37].
66. The claimant must prove that they had an actual belief at the time of making the disclosure it was in the public interest and that belief must also have been reasonable: Chesterton at [27-28]. The Tribunal must not substitute its own view of whether the disclosure was in the public interest for that of

the worker: at [28]. This is a two-stage test and it should not be rolled into one: Ibrahim v HCA International Ltd [2020] IRLR.

67. Tribunals should be cautious about finding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the number of others who share the same interest: Chesterton at [36].
68. The fact that a private purpose exists does not mean that there cannot also be a public interest: Dobbie v Paula Felton/Felton Solicitors [2021] IRLR 679 (referring to paragraph [17] of Chesterton): *'Provided that the worker making the disclosure reasonably believes that it is made in the public interest it does not matter that he might be making the disclosure for some other purpose; the protection can apply even where the disclosure is made in bad faith'* [at 23]. In mixed interest cases it is for the Tribunal to make a finding as to whether there was sufficient public interest to qualify: Okwu v Rise Community Action Ltd [2019] UKEAT/0082/19 at [20].
69. Dobbie contains a helpful summary of the main principles to be allowed at [27] (HHJ Tayler):
- (1) *the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence*
 - (2) *while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker's motivation*
 - (3) *the exercise requires the Tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest*
 - (4) *a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith*

- (5) *there is not much value in trying to provide any general gloss on the phrase 'in the public interest'. Parliament has chosen not to define it, and the intention must have been to leave it to employment Tribunals to apply it as a matter of educated impression*
- (6) *the statutory criterion of what is 'in the public interest' does not lend itself to absolute rules*
- (7) *the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest*
- (8) *the broad statutory intention of introducing the public interest requirement was that 'workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers'*
- (9) *Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis:*
 - (i) *the numbers in the group whose interests the disclosure served*
 - (ii) *the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed*
 - (iii) *the nature of the wrongdoing disclosed*
 - (iv) *the identity of the alleged wrongdoer*
- (10) *where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 45B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest*

70. At [28] HHJ Tayler made further observations, summarised as follows: (1) that a matter that is of public interest is not necessarily the same as one that interests the public; (2) while the public will generally be interested in

disclosures that are made in the 'public interest', that does not necessarily follow; (3) a disclosure could be made in the public interest although the public will never know that the disclosure was made; (4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition; (5) the fact that it is a matter of educated impression does not mean that it is not to be determined by a principled analysis, and Mr Laddie's factors in Chesterton are of assistance, and failure to take into account relevant factors, or ignoring relevant factors, may be an error of law; (6) Parliament must have considered that disclosures about the types of wrongdoing in s43B ERA will often be about matters of public interest and the legislative history is important for understanding that the purpose was to *'exclude only those whose disclosures about 'wrong doing' in circumstances as where the making of the disclosure serves 'the private or personal interest of the worker making the disclosure' as opposed to those that 'serve a wider interest'; [...]* 8) while motivation is not the issue...the person making the disclosure must hold the reasonable belief that the disclosure is 'made' in the public interest.

71. The employer does not need to know that the disclosure qualifies as a protected disclosure in law: Croydon Health Services NHS Trust v Beatt [2017] ICR 1240 at [80].
72. Applying authorities decided in the context of the EQA, a detriment is treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 at [35] per Lord Hope. An unjustified sense of grievance does not amount to a detriment: Derbyshire v St Helen's MBC [2007] ICT 841.
73. The test is whether the worker was subjected to the detriment by the employer on the ground that they made a protected disclosure. The initial burden is on the worker to prove on the balance of probabilities that there was a protected disclosure, that there was a detriment, and that the employer subjected them to the detriment. If so, the burden shifts to the

employer to show the ground on which the detrimental act was done (section 48(2) ERA): Serco v Dahou [2017] IRLR 81 at [29-31] CA.

74. The Tribunal must consider what the reason was for the detriment. The employer must show that the protected disclosure played no part whatsoever in its acts of omissions: Fecitt v NHS Manchester [2012] ICT 372 CA. The Tribunal must focus on the mental processes of the individual decision maker. When determining whether a detriment was done on the ground of a protected disclosure under s.47B the causation test is whether the employer's conduct is materially influenced by a protected disclosure: Fecitt at [45].

Findings of fact

75. We make findings of fact on the balance of probabilities below. However, we applied the relevant burden of proof as necessary as set out in the legal section above. Page references are to the hearing bundle.
76. ACAS conciliation commenced on 10 January 2024 and concluded on 21 February 2024. The claim was presented on 21 March 2024.

(i) Overall narrative

77. The claimant has been employed as a Senior Enterprise Architect at the respondent, a global financial services provider, since his first working day on 5 February 2018. His contract of employment was signed on 22 December 2017. Mr Jäger, Head of Enterprise Architecture, was the claimant's line manager since 2021. The claimant initially led a team of 8 people. He remains employed by the respondent.
78. Broadly speaking, the facts relevant to the claims relate to the claimant's conduct at work, a complaint having been made about him (in particular how he interacted with others), the investigation into that complaint, and the subsequent written warning the claimant received as a result. We are

careful in these findings of fact to distinguish between what is reported by individuals and what actually took place, as a matter of fact. Elements of the claimant's performance and promotion prospects also form the background to the claims.

79. Mr Kraus-Navarro, Technical Lead and former contractor, was the complainant in the claimant's disciplinary investigation. He reported to the claimant. The allegations about the claimant's conduct were received by Employee Relations on 19 November 2022. Mrs Varsani, HR Employee Relations, was the investigator for the claimant's disciplinary investigation. The claimant was interviewed as part of that investigation on 21 February 2023 after other relevant people were interviewed before that date. The investigation report was dated 27 March 2023. There was later a disciplinary hearing chaired by Ms Sulkowski. The disciplinary hearing was on 5 April 2023. The written warning was imposed on 12 May 2023.

(ii) Relevant previous or intervening matters

80. At the end of 2021 the claimant's feedback evaluation recognised excellent contribution and exemplary behaviours (for employees) and under 'manager' he was rated excellent contribution for objectives and expected for behaviours. It describes him as having built a highly productive and motivated team. Equally (p306), overall the year 2021 is described by Mr Jäger, in written performance feedback as areas where the claimant could be more impactful, it was stated that there were some issues with individual colleagues which might have been caused by other factors. There was said to be a level of impatience on the part of the claimant. Mr Jäger recognised that, in the right dose, this was not a bad thing, and the situation was resolved (p326).
81. By email dated 7 September 2021, Mr Daryanani (a contractor) emailed his recruiting agency terminating the relevant contract (p788). In his reasons for leaving he says it was because of the unreasonable behaviour of the claimant who had subjected him to frequent verbal abuse over the last seven months, and gave an example of that morning of the claimant

shouting at the contractor whilst he was on holiday, the claimant saying he was paying him to do the work and it was the worst rubbish he'd seen in 20 years, and saying those outbursts were frequent. That was fed back to the Enterprise Architecture Team to Mr Dhillon. The claimant accepted being told about this in Autumn 2021. This email formed part of the later investigation into the claimant, it having been sent by Mr Jäger to Ms Vasani on 3 February 2023 to correct a date (p.594). The claimant accepted in cross-examination, if not all of that allegation, that he had said something that shouldn't have been said, and he accepted that it had been inappropriate enough that he had apologised to this contractor. This incident formed part of the later investigation by Mrs Varsani.

82. By email dated 19 May 2022 Mr Minford (Recruitment executive at Hays contractor service provider) stated by email that following a number of calls yesterday (18 May 2022) he had understood that the claimant was said to have been shouting down at contractors in his team on a team call and using belittling language, and it sounded like this had happened multiple times to several contractors. Nick Johnson is identified as a contractor who felt he could no longer put up with this from the claimant. This email was sent to Mrs Varsani as part of her investigation.
83. On 24 September 2022 Mr Jäger emailed the claimant stating that he wished to push for his promotion. The claimant agreed under cross-examination that as of September 2022 Mr Jäger was supportive of the claimant's promotion from director to senior director level and we find accordingly.
84. We accepted Mr Jäger's evidence under cross-examination (it being consistent with the documentary position and not otherwise being meaningfully undermined) that the claimant was put forward for promotion as soon as he had his first exemplary rating in anticipation of there being a second exemplary rating on a pre-emptive basis. This was because, if not as a matter of formal process, for there to be a realistic prospect of promotion being confirmed by the process (by those above Mr Jäger) there was a practice of this only being realistic once there were two exemplary

ratings (or, more accurately, there being one exemplary rating with a second exemplary rating having been pre-empted for the next appraisal round such that by the time the promotion was put into effect there would be two such ratings in place, given the difference the in promotion and appraisal calendars).

85. The claimant accepted under cross-examination that he raised matters about Mr Kraus-Navarro and Mr Suttle to Mr Jäger, and they raised matters about the claimant, around the end of 2022. The claimant partially accepted that Mr Jäger didn't raise those matters to HR and Mr Jäger's approach was to leave his line reports – including the claimant, Mr Kraus-Navarro and Mr Suttle – to sort things out or otherwise resolve between themselves. The claimant only partially accepted this because Mr Jäger was said to have interviewed the team about a complaint in around 2021 and concluded that there was nothing that required any further action. We accept that around that time that this was the case because this was demonstrably what happened. The matter was not escalated to HR by Mr Jäger around that time.
86. The claimant accepted under cross-examination that during a discussion with Mr Jäger about his promotion prospects on 29 November 2022 this contained both supportive comments (as reflected in Mr Jäger's diary notes) and also (from the claimant's evidence was) that a feature of the discussion, if he was to be promoted, was that he would have to think differently about how to manage the team in the future and his leadership style.
87. The claimant accepted in cross-examination having personal difficulties with Mr Kraus-Navarro and Ian Suttle in (at least) the latter part of 2022. We find accordingly.
88. On 11 and 12 October 2022 the claimant and Ian Suttle, the claimant's copilot/colleague, had an uncomfortable exchange on MS Teams, including Mr Suttle telling the claimant that he felt that the claimant was incapable of talking to two colleagues about an issue, and the claimant suggested that Mr Suttle was trying to shift responsibility. On 11 October 2022 the claimant

had raised concerns about the behaviour and conduct of Ian Suttle to Mr Jäger and had also raised concerns about Mr Kraus-Navarro before this point. On 13 October 2022, Mr Suttle emails Mr Jäger about this stating that the incident had built on weeks and previous weeks, which he had felt was bullying, and so he felt the need to make an official complaint. This was not reported to HR at the time by Mr Suttle or Mr Jäger (p593), although the claimant later raised it with HR in his grievance. The claimant sent screenshots of the Teams chat, above, to Mr Jäger on 2 November, following a conversation with Mr Jäger about it, which was accepted by the claimant in cross-examination (p588). The claimant accepted under cross-examination that, to his knowledge, Mr Jäger did not raise this with HR. We find accordingly.

89. In December 2022 the claimant line managed a specific programme called Big Bet 4, and in January 2023 the team continued to be managed by the claimant daily with line management responsibilities transferred to Ms Erica Jansson-Wood due to implementation of a matrix management structure.
90. On 19 March 2023 the respondent merged with Credit Suisse and this resulted in changes to the team structure and reporting lines.
91. Changes to Enterprise Architecture were announced on 1 July 2023 (p1175, 1856-7).

(iii) Mrs Varsani's investigation

92. Allegations about the claimant's conduct had been received by Employee Relations on 19 November 2022 (p344) from Mr Kraus-Navarro. The claimant accepted in cross-examination that this was the source of the later HR investigation into him. We find accordingly.
93. The allegations included the following. At the start of the project, more than two years before, Mr Kraus-Navarro was experiencing conflicts between the claimant and other managers because there was an unclear definition of

roles and programme scope, and a few weeks after joining in a meeting the claimant told Mr Kraus-Navarro and Mr Dhillon that 'any' of them there were his favourites because he had taken a risk. In the last two years 7 contractors had left the team after experiencing alleged abuse from the claimant. In a table about those people allegations were made of power, harassment, bullying, heated team meetings, and verbal abuse. It was also alleged that people were being punished for offering their opinions. It also raises the prospect of three developers having contacted Mr Kraus-Navarro who were thinking of resigning.

94. A formal investigation (carried out by Mrs Varsani) was started into the allegations against the claimant from 6 December 2022 to 21 February 2023. The claimant accepted under cross-examination that, if well-founded, the Kraus-Navarro allegations could breach the respondent's policies in this area and therefore could be potentially a serious matter. The policies included as part of the definition of bullying (or rather, examples of this) the making unfounded comments about job security.
95. We do not find that the 19 November 2022 complaint by Mr Kraus-Navarro implicated Mr Dhillon, as alleged by the claimant. Mr Dhillon is identified as a person involved but the substance of the complaint does not attribute the relevant conduct to the claimant. This is clear from the wording used.
96. In the claimant's disciplinary investigation (carried out by Mrs Varsani) the claimant asserted that a contractor (Mr Johnson, who reported to the claimant) was outwardly prejudiced and ignorant to race, and there were a number of run-ins with him, and so he had terminated his contract (p620). The claimant accepted in cross-examination that there were 'run ins' with Mr Johnson, although he stated that these were two-way.
97. The claimant acknowledged during his investigation that inappropriate words were used toward colleagues but he denied during that investigation that it was bullying (p616). He expressly accepted 'dressing down' colleagues during that investigation interview (as is clear from the transcript, p617). He denied shouting but accepted using a raised voice out of

frustration (p614). He similarly admitted this during the later disciplinary hearing (p882). In the claimant giving an example of him using a raised voice (p614) he says that the reasons for that were mostly down to explaining something three or four times in a number of different ways and [the team] still not delivering, him accepting that it was raised out of frustration. Although in other contexts the possibility of raising a voice due to technology issue (on remote calls) was given, that was not the explanation given here.

98. The claimant accepted in cross-examination that he did not make a complaint about alleged conduct by Mr Nick Johnson to HR, and therefore HR were given no opportunity to reprimand him. The claimant explained that he did not want to raise it as an issue because he felt that he had to put up with a degree of racial prejudice in order to progress with his career.
99. The claimant sent Mr Kraus-Navarro's appraisal by email on 30 September 2022 to Mr Jäger which included as development areas that he could improve his soft skills and communication, plan more effectively, and develop stronger partnerships. Mr Jäger approved the development areas. By the clear content of the email we find that the claimant was not stating to Mr Jäger in this email that there was a problem with Mr Kraus-Navarro that needed addressing formally by UBS, and he effectively accepted this in cross-examination.
100. It is right that the claimant raised concerns about colleagues' behaviour (namely Mr Suttle, Mr Kraus-Navarro) in October and November 2022: Mr Jäger accepted in cross-examination that the claimant had been flagging concerns about Mr Suttle from Oct 2022 and Mr Kraus-Navarro from earlier that year. However, we did not have clear and cogent evidence of people making complaints about others to HR in terms of raised voice used by others. It was also apparent that advice from Mr Jäger about how to deal with a previous incident with Mr Kraus-Navarro had demonstrably assisted the claimant in dealing with the issue as shown by email dated 2 November 2022 (p589). The claimant's email thanks Mr Jäger for the advice which had helped the conversation with Mr Kraus-Navarro as constructive. At that

point, we find that the claimant was not stating that he required an intervention from Mr Jäger or escalation to HR as is clear from the email. The claimant effectively accepted this in cross-examination.

101. The claimant relies on an email sent on 23 November 2022 to Mr Jäger, suggesting that this was him making a complaint about Mr Kraus-Navarro (the claimant's point for these proceedings being that, in effect, that it should have been dealt with similarly to how complaints about the claimant were handled by HR). However, the clear content of that email is factually different to Mr Kraus-Navarro's complaint. The email is simply the claimant explaining what had happened after an incident. The claimant ends '*I believe that he will behave differently, however it is clear he does not pay attention in areas he has no interest in, nor the impact he makes on others. Will think about how I can help him develop soft skills and self-awareness. Thanks.*' It is demonstrably not a complaint per se nor does the content demand support from Mr Jäger. This is clear from the words used.
102. On the factual differences between how issues were treated differently, accept Mr Jäger's clear evidence that the issues the claimant was raising (generally) were about someone he was managing, whereas Mr Kraus-Navarro was complaining about his manager. This was demonstrably the case given the difference in roles.
103. It is right to acknowledge (and find) that Mr Jäger felt that the incident in 2021 concerning Roshan was not something where the claimant had 'crossed the line', but it was something that needed to be corrected (p580). This was how he described that incident to Mrs Varsani.
104. The claimant accepted in cross-examination (by reference to p2442), as Mr Reekie's investigation meeting set out, that Mr Jäger had an expectation that those at director level would seek to resolve difficulties between themselves. We find accordingly.

105. In his investigation interview, Mr Reekie stated that things between the claimant and Mr Suttle quickly became emotional. This included, when asked about the relationship between Mr Suttle and the claimant, Mr Reekie describing the claimant as being harsh in certain situations.
106. The investigation report into the claimant was dated 27 March 2023 (p720). Eleven individuals and the claimant had been interviewed. These included seven contractors and Mr Minford who sat between the respondent and the recruiting agency for contractors. The claimant accepted in cross-examination that the focus of the investigation was on the vertical through hiring/reporting lines as opposed to the horizontal between directors.
107. The investigation report addressed the following allegations (in summary): (1) that individuals were experiencing conflicts between the claimant and other managers because there was an unclear definition of roles and programme scope; (2) in a meeting the claimant had told two individuals that none of them were his favourite candidates for the positions and them being hired was him taking a risk; (3) in the last two years 7 people had left the team after experiencing different types of abuse from the claimant; (4) the claimant behaved inappropriately and was abusive, so staff turnover was high; (5) the team had been exposed to bullying, heated team meetings, poor management, 'power harassment', shouting and verbal abuse from the claimant; (6) there was a lack of respect for the team, and for all the effort put in by the team the claimant was causing the team damage; (7) as a result of the above there was a tense and difficult work environment; (8) the environment was unhealthy for everyone, the team was tired, and one person was physically and emotionally exhausted; (9) the issue was raised to the claimant's line manager because three individuals had indicated that they were thinking of resigning, and although the claimant's line manager had acknowledged a problem of behaviours and had promised to make some changes, the focus was on reaching deadlines and objectives rather than the root of the problem.
108. We find as a matter of fact that Mrs Varsani used a range of questioning techniques in her investigation interviews. This is clear from the transcripts

used. For example, in the interview with Nitin Gupta, she started with open questions such as *'how would you describe the culture within your team? Is it collaborative? Is it open? Is it, you know, respectful? Talk me through all of that in terms of how you feel about the culture within the team.'* Mr Gupta soon raised the question of 'fear' without prompting from Mrs Varsani. She then asks for more specific examples and questions later (such as at p434).

109. The investigation interview with Mr Ransom, a contractor, included Mr Ransom reporting that inside the team there were serious problems and he hadn't experienced working with someone like the claimant before on the basis that the claimant was very aggressive and short tempered and quick to attack people, with there being a blame culture on the team. Mr Ransom gave very specific examples of various incidents to Mrs Varsani about the claimant's behaviour, her having asked for examples. These included allegations that the claimant had *'lost it'* in respect of a particular incident and of shouting at contractors. Also Mr Ransom alleged that the claimant at one point was saying *'Am I paying you or not? Am I paying you or not?'* to contractors. The information given by Mr Ransom clearly portrayed the claimant's behaviour as outside of Mr Ransom's experience as a software developer, and he alleged it to amount to an abuse of power. These are all clear in the evidence from Mr Ransom's account in his investigatory interview. The claimant effectively accepted under cross-examination, that in terms of Mr Ransom's account to Mrs Varsani, he identified the claimant as the primary source of tension in the team.
110. An investigatory interview was carried out with Mr Dhillon who was also the claimant's companion during the investigation. Mr Dhillon is Indian Sikh. During his interview Mr Dhillon spoke about friction in the team starting September/October 2022, a divide and clash of personalities. He said that there clearly something going on between the claimant and Mr Suttle and it wasn't helping Mr Dhillon's work in terms of recruitment. He described both the claimant and Mr Suttle as difficult personalities. His interview included him stating that he had a few instances where there was feedback from contractors on the claimant's style of communication, including that the claimant did tend to shout when things weren't done right. He also referred

to two contractors having left. Mr Dhillon included that he had fed back to the claimant words to the effect of the claimant being very passionate about and that sometimes the aggressive tone didn't always get the best out of people, and the claimant accepted in his oral evidence that Mr Dhillon had given that sort of feedback to him. Mr Dhillon also provided to Mrs Varsani screenshots of a conversation between Mr Dhillon and Erica Jansson-Wood about a call from Sam (another contractors) about the claimant, and Sam being about to '*throw in the towel*'.

111. When Mr Gupta, another contractor, was interviewed by Mrs Varsani, he described a fear culture (p432). This included an example of the claimant being alleged to have humiliated Nick Johnson (another contractor) during a call in front of the whole team, Mr Johnson resigning that day. Mr Gupta also communicated another example of alleged humiliation by the claimant of another. This interview included allegations of the claimant raising his voice to a level that people felt uncomfortable, although he disagreed with the suggestion that this was abusive. Mr Gupta also suggested that the claimant's behaviour was such that there might be other contractors thinking of leaving. Mr Gupta agreed in the interview that he would associate power harassment with the claimant and stated that people were afraid of the claimant. Equally (p439), when Mr Gupta was asked '*Have you seen or witnessed any bullying-type behaviour from anybody in the team?*' he replied '*No, no, no. I haven't seen it, no.*' Mr Gupta also described his relationship with the claimant as professional to a point. Notably, the fact that Mr Gupta had not heard abusive language from the claimant was carried through into the investigation summary (p730).
112. Mr Jäger's account to Mrs Varsani, as is clear from the transcript, included that in around October 2022 something had changed in respect of the claimant (the feedback about him) and he would need to review the feedback of the claimant in respect of a promotion. The claimant accepted in cross-examination that Mr Jäger did not in fact change his position (on promotion) and we find accordingly. The claimant accepted in cross-examination that he was perceived as being the common denominator in tensions in the team. We find accordingly. It was also plain that around that

time there were issues between the claimant and at least the following individuals: Mr Suttle, Mr Kraus-Navarro and Mr Johnson.

113. We find as a matter of fact that there was a body of evidence capable of supporting the conclusions that Mrs Varsani reached, as set out in the hearing bundle and in particular that outlined above. The evidence includes the transcripts of the investigatory interviews.
114. Mrs Varsani ultimately found '*partial merit*' in allegations 3-7, above. It therefore was the case, as a matter of fact, that Mrs Varsani had not accepted all of the allegations made by Mr Kraus-Navarro. The claimant accepted in cross-examination that there was no evidence that the length of the investigatory and disciplinary process was related to his race. The practical effect of Mrs Varsani's finding of '*partial merit*' was that those allegations would proceed to a disciplinary hearing.
115. As was clear from the documents, we find that Mrs Varsani used both open and leading questions when interviewing people. However, these did not always result in evidence wholly negative to the claimant (as an issue of fact). Examples of this include, in the interview of Mohan Lella, when asked '*Would you describe Arvinder as abusive, or anyone in the team as abusive?*' the reply was '*I don't know what I will say abusive – not with bad language. It's not abusive; it's only aggressive. And sometimes he loses his patience....*'. However, when then asked '*have you witnessed any bullying type behaviour from anyone in the team?*' the answer was '*No, I don't think.*' (p422-423). Equally, when Adam Macintosh was interviewed (p463-4) he stated that the claimant was respectful of Mr Macintosh's challenges to thoughts and ideas and that the claimant created a speak up-culture in terms.
116. The claimant accepted that, in terms of the length of the investigation, it was around 7 weeks and that a lot of people were interviewed as part of this.

(iv) The disciplinary hearing

117. The claimant's disciplinary hearing was on 5 April 2023 and it was chaired by Ms Sulkowski (p872). The invitation was on 30 March 2023 and the allegations were now more specifically: (1) that the claimant's conduct towards other UBS employees amounted to bullying; (2) the conduct towards direct reports was inappropriate and or unprofessional; (3) the conduct impacted team moral and motivation and or created a difficult work environment; and (4) the conduct resulted in contractors choosing to leave the team. This was said to breach a range of different policies and codes of the respondent.
118. During the hearing the claimant had a companion, Mr Dhillon, and there was a third-party note taker.
119. During the claimant's disciplinary hearing (p882) he accepted that he raised his voice and his frustrations with the team. The claimant appeared to accept in his disciplinary hearing in respect of allegations about Ajay (another contractor) stating '*You're not doing your job properly*' when he was emotional, following which he had apologised to Ajay (p894). The claimant accepted in cross-examination that he had spoken to him in the wrong manner, and he didn't like the way in which he had done that, so he apologised. The claimant accepted during his disciplinary hearing that (p.896) that in respect of Sam Ransom he had '*dressed him down*' in the front of two other colleagues and that on reflection he should have done it in a different way.
120. We find that during the disciplinary hearing, on the clear basis of the transcript, Mrs Sulkowski did engage in questions which defined 'dressing down', her having asked the claimant that very question (p896).
121. As part of the disciplinary investigation Ms Sulkowski interviewed Erica Jansson-Wood who was broadly positive about the claimant. The interview expressly included Ms Sulkowski asking whether any information was first

hand or not. Ms Jansson-Wood said that one or two times she had witnessed the claimant being a bit harsh on people, calling them out, but never abusive. For one example she did say that the claimant had been a bit straightforward with an external contractor and although there was nothing abusive, personal, or demeaning, she did take the claimant aside, and the claimant seemed receptive to feedback. Ms Jansson-Wood was interviewed following a request by the claimant's representative, Mr Dhillon as is clear from the transcripts (p906), albeit not as a direct eye witness to the specific allegations.

122. Ms Sulkowski's findings included that the claimant had stated words to the effect of '*I'm paying you.*' to contractors, although the claimant had denied stating this in his account. She made this finding on the basis of two sources of evidence. She found that this amounted to bullying within the policy definition because it was demeaning and was a threat about job security without foundation. This was in a context where, on the claimant's own evidence, contractors typically had four-week notice periods.
123. The claimant was on sickness absence between 11 April 2023 and 21 July 2023 by reason of '*stress*', according to the fit notes (p924 and p958). The first sign off was between 11 April 2023 and 8 May 2023, and the second sign off was between 9 May 2023 and 22 May 2023.
124. On 12 May 2023 the claimant received a written warning (sanction) because the four allegations above were upheld (p959). The outcome letter included that Ms Sulkowski had considered the claimant's representations during the hearing and she had also spoken to Erica Jansson-Wood, and reviewed the claimant's documents, and additional information had been obtained from Mr Minford. On allegations 1 and 2, Ms Sulkowski relied heavily on admissions said to have made by the claimant during the process, specifically that he had dressed down a colleague, shouting at an individual and the team four or five times over five months, raising his voice, jumping on people and berating team colleagues. Also, the claimant had acknowledged that the behaviour was unacceptable and not appropriate during the hearing. On a disputed issue, Ms Sulkowski preferred the

evidence of one interviewee to the claimant's evidence to the effect that he had told contractors *'I'm paying you.'* She also outlined the claimant's mitigation including his frustrations with the team, although she did not accept his mitigation during the hearing. In upholding allegation 3, she referred to various examples evidenced during the investigation of people stating that the claimant had grilled his members and had adopted an aggressive management style such that people felt fearful to raise things, and there was a lack of respect from the team. Six people had given similar evidence. Ms Sulkowski noted that the claimant had confirmed that proposed ways of working had not gone down well with the team and he had found it frustrating having to reiterate guidance around risks. On the basis of this, Ms Sulkowski found that the claimant's approach to team meetings was difficult and this impacted their motivation. In terms of those said to have left on account of the claimant's behaviour, Ms Sulkowski found that this was only the case for two of them. Evidence in support of this included their stated reasons for leaving as being the claimant's unreasonable behaviour and frequent verbal abuse. This was similarly the case for another individual on the basis of what they had told Mr Minford.

125. We find that there was a factual error in the disciplinary findings to the extent that, rather than the claimant having admitted shouting, in fact his express admissions were only to the extent of having used a raised voice. Also, we accept Ms Sulkowski's evidence that she had understood the claimant to have admitted berating the team, this arising from a slightly unclear passage of the transcript (p881-882). The claimant was asked about the allegation that he was quick to jump on people and berate them during calls. The claimant replied *'So, jumping on people and berating them. I will – I will accept that I do get frustrated....'* He then describes various things. Ms Sulkowski says *'And is that – is that what's leading you then into a situation where these examples are showing that you're shouting, raising your voice at the team?'* and the claimant states *'So, I will accept I raised my voice, for sure....'* Ms Sulkowski also gave this explanation – that she had understood this to be an admission – to Ms Hobson in the appeal process (p1247). It was that understanding that led to that part of her findings, on the evidence.

(v) The appeal of the disciplinary outcome

126. The appeal deadline was 10 working days. The claimant sought an extension on 17 May 2023 but this was refused a few hours later (p977). The claimant's oral evidence was that the state of his mental health was also a reason he was seeking an extension consistent with his email on p974. However, the claimant accepted in cross-examination that one of his reasons for wanting more time was that he was seeking information about the impact of the written warning on him. We find that this was consistent with the wording in his emailed reasons (p974) and we prefer the wording in his emailed reasons as to the predominant reason for seeking an appeal, taking
127. The claimant was seeking legal advice since at least 17 May 2023 (p976).
128. In any event, the claimant accepted in cross-examination that he could raise additional matters during the later appeal meeting with Ms Hobson, although he still felt that he was disadvantaged. We find, as a matter of fact, that Ms Hobson (p1146) at the beginning of the appeal hearing summarised the grounds of appeal, the claimant accepted that it was a fair summary, he was asked if he wanted to make an opening statement or similar, and he said no: he was happy to just go through his appeal. On that basis we find that as an issue of fact he had a full opportunity to make any additional points that he wanted to during the appeal hearing even if he had not had time to put them in his original written document.
129. The claimant appealed against the disciplinary outcome on 26 May 2023 (p991). His grounds of appeal were procedural failures (delay and evidence did not amount to bullying, applying the terms of reference); biased investigator (preferring other's evidence over the claimant's without explaining why); significant flaws in the investigation process; factual inaccuracies of attributing comments to the claimant that he did not say; failure to consider mitigation; and evidence of collusion between team members that was not investigated.

130. An occupational health report about the claimant was dated 12 June 2023 (p1006). This said that the claimant was unfit to return to work but was fit to engage with the disciplinary process, and the recommended adjustments were in respect of supporting the claimant at meetings. These were: to conduct meetings in a sensitive and supportive fashion; have a supporter; have the meeting in a mutually acceptable venue; and short breaks; allow additional time to review and absorb documents; be transparent as to agenda, purpose and outcome; timely feedback; and the claimant having an advance appointment with his GP or counsellor following the outcome. The report included that the claimant has a long-standing history of anxiety relating to personal stressors, and he had been engaging with a therapist for the last 18 months to help manage this, and eight sessions via the EAP. The source of this information was the claimant's reporting (only). The report stated that the claimant had stated that the grievance and disciplinary process had exacerbated his underlying mental health condition, and he had been experiencing low mood, high levels of anxiety, and sleep disruption. Currently, the claimant was reporting persistently high levels of anxiety and sleep disruption, and cognitive symptoms such as difficult focusing on cognitively demanding tasks and mild impairment in memory. The report was by a consultant occupational physician. It stated that it was difficult to be definitive regarding a return to work date as it was likely to be influenced by the timeframe and outcome of the disciplinary appeal process.

(vi) The claimant's first grievance

131. The claimant raised his first grievance alleging discrimination, unfair treatment and higher standards applying to him on 15 June 2023 (p1016). The allegations included that the claimant had received discriminatory treatment during the course of his employment; that Mr Suttle and Mr Reekie had spread untruths about him; the claimant had raised concerns to Mr Jäger and others as early as September/October 2022 which had been ignored; discriminatory treatment towards the claimant by Mr Jäger, who was alleged to have been more willing to accept the account of white colleagues over the claimant; and that the claimant's white colleagues with

fewer responsibilities had been promoted in February 2023 whilst the claimant had not.

132. The claimant was signed off work by reason of stress from 20 June 2023 to 17 July 2023.

(vii) The claimant's appeal hearing of the disciplinary decision

133. Ms Hobson, Director (HR), was the disciplinary appeal decision maker. The appeal hearing was on 26 June 2023 (p1143). The claimant had a companion, Mr Dhillon. The meeting was reconvened on 10 August 2023 and the original decision was upheld (p1350). The appeal involved consideration of hard copy documents provided to Ms Sulkowski, representations made during the appeal hearing, a follow up interview with Ms Sulkowski (and transcript of that interview), the claimant's representations '*on my meeting with [Ms Sulkowski]*', the transcript of a follow-up interview with Mrs Varsani, and an email chain between the claimant and Mrs Varsani dated 17 March 2023, and the claimant's representations on the email chain.
134. We find that Mr Jäger accepted holding the claimant to high standards in the first grievance interview with Mr Jäger. However, we find that this was because the claimant was senior and in line for promotion and had nothing to do with race. This is because we accept Mr Jäger's account, as given internally, that this was the reason for that treatment, there being no good reason to doubt that explanation, and it being credible.
135. The outcome letter included that the disciplinary process took around 5 weeks to complete but this was reasonable in the circumstances as a whole. The appeal outcome agreed with the initial determinations in terms of whether the actions the claimant was accused of amounted to bullying. In terms of alleged bias in the investigation, it referred to Mrs Varsani having heard common themes arising from fairly similar interview questions. It rejected the claimant's allegations of collusion as being unsupported by the

evidence. The appeal found that Mrs Varsani was not overly reliant on hearsay or third-hand opinions. The appeal found that rather than the claimant in fact admitting to shouting during the disciplinary hearing, the transcript in fact was references to the claimant admitting having raised his voice. To that extent, there was an error in the way Ms Sulkowski had recorded the claimant's admissions. However, this was not sufficient to undermine the original findings. It was satisfied that the claimant's mitigation was taken into account.

(viii) Subsequent and other matters

136. The claimant's first grievance hearing was on 16 August 2023 was chaired by Ms Gwynn, ER Specialist (p1362). Ms Blay, Executive Director, Employee Relations, co-chaired the hearing. Ms Gwynn, was the decision maker in the claimant's grievance process.
137. On 12 October 2023 the claimant was informed of a proposed change in line manager due to the above reorganisation. The claimant alleges that this amounted to demotion and exclusion from the management team. However, the claimant accepted in his oral evidence that at least two of those who were no longer reporting to Mr Jäger were at director rank, although he believed that they did not work to the same level as him. The claimant complained about this by email to Mr Ruff on 13 October 2023, on the basis he felt that reporting to someone under Mr Jäger amounted to a demotion (p1518). The claimant emailed Mr Jäger on 12 October 2023 stating, by reference to someone else being away for two weeks about a conversation with the claimant about his function and the future, the claimant stating to Mr Jäger that as a result of this person being away the claimant would be unable to have a conversation with him, and so he could not conclude if this was something he was going to accept about his role, and stating that this was causing a great deal of anxiety, but the claimant would keep Mr Jäger informed.
138. The claimant started further sickness absence on 20 October 2023 (p1524) until 2 November 2023 referencing 'stress at work'.

139. The claimant's first grievance was not upheld on 26 October 2023. A recommendation was made to discuss development for promotion and contact with the DEI lead (p1530). The claimant did not appeal that decision.
140. The claimant raised a second grievance on 11 December 2023 alleging demotion as retaliation for having raised a previous grievance (p1705). The grievance hearing was on 13 February 2024 (p1726) by Sonia Paston-Beddingfield (Managing Director) and Ms Blay. This reconvened on 9 May 2024 as a grievance investigation meeting (p1800). This was not upheld on 24 May 2024 (p1812).
141. The claimant asserted in evidence that inappropriate behaviour was the norm at UBS. However, we did not feel that this generalised allegation was in fact supported by the evidence as a whole. There was no good evidential basis for this allegation other than the claimant's perception.
142. The claimant accepted in evidence that the pause on promotion prospects was as a result of policies the respondent had in place at the time. He also accepted that the effective time limited block on promotion followed from the decision to make written warning and that this was a consequence of the respondent's policy.
143. It is right that the claimant, in his document as provided to Ms Sulkowski, made reference to Mr Kraus-Navarro, in terms of allegations. However, as set out in that document (p920), this simply alleges about him '*Sexist comments towards Eugenia and Lidia, and us having to have conversations to him about it*'. This is, as a matter of fact, different in substance to the conduct-specific allegations made by Mr Kraus-Navarro about the claimant.
144. It right that the claimant on 5 October 2023 in an email to Karen Gwynn stated '*I highlighted both Carlos and Ian for their behaviours in breech [sic] of the same conduct and behaviours as per the handbook and policies highlighted below, which I have been disciplined for, ...will the above two also be investigated for Breach, or not?*' to which Ms Gwynn replied on 9

October 2023 that she was looking into the concerns raised regarding Carlos and Ian as part of the grievance in that the examples the claimant had given had an impact on him or the team. However, this is factually different to what Mr Kraus-Navarro did in respect of the claimant: here the claimant is simply repeating previous concerns he'd raised in his process and does not provide details or specific-conduct in the same way as Mr Kraus-Navarro did, about the claimant.

145. A culture review was carried out given the issues raised about the claimant's general allegations of unfair treatment of ethnic minorities at UBS. This is evidenced by an email from Ms Blay of ER dated 18 July 2024 (p1831). This addressed concerns of employees other than the claimant.
146. A redacted email dated 6 September 2023 (p2260) made reference to the claimant's salary being '*at 26th percentile in the band (low)*'.

(ix) Specific additional findings in relation to disability

147. On 10 July 2023 an Occupational Health report (p1223) stated that the claimant was approaching readiness to return to work and was keen to return to work when his current sickness certification expires, and the report writer felt that the claimant was fit to return the following week, with consideration of adjustments. The report references reduced psychological well-being in relation to work related concerns. The claimant had reported improvement in psychological symptoms, but he continued to have reduced anxiety. He reported improvement in his sleep but some sleep disruption, and improvement in cognitive symptoms, and no current functional impairment. As adjustments, the report recommended a phased return work both in terms of hours and responsibilities/work allocation, and home working. It did not arrange a routine occupational health review.
148. An occupational health report dated 7 February 2024 included the claimant describing aspects of work which continued to contribute to stress and anxiety following his return to work in August/September 2023 as a phased

return. In October 2023 he experienced chest pain and breathing difficulties and attended A&E and he was advised that it was stress related.

149. An occupational health report dated 23 October 2024 (p1841) referred to the claimant describing having experiencing significant anxiety relating to his grievance outcome exacerbated by additional stress due to the insurance application process, and he described chronic insomnia, although the claimant's mood and concentration had improved.
150. The claimant was signed off sick with '*stress at work*' from 2 January 2024 to 26 January 2024, then again until 26 February 2024 for the same reason.
151. When the claimant made an application in respect of health insurance on 29 January 2024, the GP answered that the condition was psychological stress. The claimant was recorded to have first consulted a doctor on 6 April 2023 for this (p1738-9). His doctor described that it would not be beneficial to engage in fully supported return to work at that time, but once the HR/Legal process was completed a work related occupational health assessment should be carried out for a planned return to work. The report stated that the current absence was caused by work related stress and that the condition was static due to ongoing HR/legal process, but on completion recovery will be likely.
152. In an email from the claimant to Ms Sulkowski on 4 May 2023 the claimant said that his GP was concerned that the claimant's anxiety levels were increasing at the thought of the uncertainty still persisting and going back to work.
153. The claimant relies on a report from someone called Dav Panesar as medical evidence. The claimant refers to this individual as a psychologist in his impact statement (p139). However, the claimant also accepts that this person was in fact his Masters tutor for a master's degree in Psycho-spiritual Therapy. Dav Panesar's letter is dated 4 April 2023. Dav Panesar uses the postnominals MBA, MCIM, Msc and did not on the evidence available

appear to be a psychologist (certainly not registered) or hold a doctorate. The claimant accepted in evidence that this individual did not appear to be medically qualified. The letter states that he has been treating the claimant for stress, panic attacks, depression and anxiety since 2021 although it provides no timeline or basis for those diagnoses nor whether Mr Panesar has any medical or other suitable qualifications to make such diagnoses. Accordingly, we gave little to no weight to this evidence.

154. Although the claimant stated in his impact statement that he had anxiety back as far as 2021, he accepted that this was not supported by documentary or other medical evidence. He accepted that there was no documentary or other medical evidence for the periods February 2022 or October 2022.
155. The respondent did not dispute that from April 2023 the claimant was signed off from work and his condition was sufficiently severe to keep him off work until the period of June 2023, when the claimant was able to start going back to work, and he was then off work from June 2023.
156. We find as an issue of fact that the claimant did have the mental impairment of anxiety. This is because we accept that element of his impact statement, which references anxiety, and the fact of anxiety (generally) has a degree of support in the medical documents overall. There was no other good reason to doubt that clear evidence.
157. We accepted the claimant's evidence that he felt a degree of anxiety in 2021 and in February 2022 and October 2022. This is on the basis of his impact statement: there is no good reason not to accept it to that extent. We find, accepting the claimant's evidence of the same, that the felt anxiety again from January 2023 escalating to the period, on the claimant's own evidence, April 2023 to May 2024. On the basis of the claimant's own evidence his anxiety coincided with the disciplinary investigations and process.

158. We do not find as a matter of fact that the claimant's anxiety feelings in 2021 or 2022 were likely to recur. This is because there is no cogent evidential basis for such a finding, nor would it be an appropriate finding as a matter of common sense. Anxiety is by its nature often short lived and situational. When it is more than this, or likely to recur, this would need to be supported by clear and cogent evidence, and there was no such evidence for the periods 2021 to 2022 for the claimant. There were clear limitations to the 12 June 2023 occupational health report because the extent to which that report refers to the claimant's anxiety being long standing is based on self-reporting.
159. The respondent accepted that the claimant's condition had a substantial adverse effect on his ability to carry out normal day to day activities from April 2023: the claimant was signed off work for periods from at least then.
160. We do not find that the claimant's condition had a substantial effect on his day to day activities before April 2023, as a matter of fact. This is because of an absence of clear and cogent evidence that this was the case. April 2023 also coincides with the claimant self-certifying being off sick and this is supportive of our finding.
161. Before that period the claimant was not taking medication to relieve the effects of his condition. We reject the evidence of Mr Panesar as supportive of the claimant's condition having an impact but mitigated by treatment because Mr Panesar does not have medical qualifications or other qualifications, on the evidence, which suggest that he can give evidence that but for his treatment the claimant's impairment would have had an effect on his day-to-day activities. Also, at the height of Mr Panesar's evidence, he simply refers to the claimant making progress under his care. This is insufficient to show, as a matter of fact, that but for the treatment the condition would have had the required effect.
162. We find as a matter of fact that as of March 2024 it was likely that the effect of the claimant's impairment on his day-to-day activities was likely to last 12 months or more. This is because there is an absence of cogent evidence

that this was the case before that date. The clear indications from the medical evidence, particularly the occupational health advice, is that the claimant's anxiety was linked to stress from the disciplinary process. That process was not inherently long-term and there was every prospect that if the process had ended sooner then then claimant's anxiety would have ended sooner. However, once the claimant's impairment had been affecting him for 11 months in terms of evidenced effect on his day to day activities, we accept and find that it was likely to continue beyond that point: by this stage it had become more of a continuous state of affairs that was less situational in its nature, taking the evidence as a whole.

163. In terms of the respondent's knowledge about the claimant in May 2023, this was limited to him being off work with stress, and documents showed that they had some concerns about his mental health: on 11 April 2023 Ms Sulkowski confirmed by email that there was no open case (as a wellbeing contact) for the claimant. However, there was no cogent evidence to suggest that the respondent had knowledge of any prognosis of the claimant's condition as of April or May 2023 other than the extent of the sick notes.
164. The claimant mentioned in evidence that he had told Mr Jäger about the claimant having arthritis before then and that this was having an effect on his mental health. Mr Jager accepted that the claimant had mentioned his arthritis '*dragging him down*' before the period. However, this did not mean that, as a matter of fact, Mr Jager had any real knowledge of the prognosis of the claimant's anxiety (as distinct from feeling down about his arthritis) as of April or May 2023. Mr Jäger was concerned about the claimant's wellbeing by email dated 27 March 2023 (p716) but this falls short of evidence of knowledge of prognosis. Equally, the claimant stating by email dated 13 March 2023 (p976) that things were affecting his mental health to Mrs Varsani went no further than this.

(x) Specific additional findings in relation to race discrimination

165. The first alleged less favourable treatment was a 'flawed investigation process'. Factual findings here are made in the context of the additional findings above. Firstly, we reject the contention that, as a matter of fact, it was 'effectively a fishing expedition' which the claimant alleged. This is because on the evidence the investigation was nothing more than an ER-led investigation in response to a documented complaint. There is no cogent evidence that the respondent was actively seeking to find something against the claimant, rather the documented investigation process was simply looking into the issues that were raised by Mr Karus-Navarro. The claimant's contention is unsupported by the evidence as a whole.
166. The claimant alleges that the terms of reference were undefined. We reject this as a matter of fact. This was not, on the documentary evidence, an undefined investigation. The scope of the investigation was clear. Firstly it was those matters raised in the initial complaint. Secondly, an email dated 12 December 2022 set out in written terms (an investigation form) an investigation summary which included a summary of the allegations to be looked into, and there was an investigation plan and scope.
167. The claimant also alleges that there were allegations without any defined time period. We accept from the wording used that the allegations were not expressly time limited. However, by the time that the claimant was interviewed there was a degree of identification of time periods because he was asked about specific periods and by his response to the questions the claimant clearly understood the incidents being spoken about because he was able to reply to them. Therefore we find that although there was not an express written time period attached to each allegation, by the time that this went to a disciplinary hearing, the rough time period in question was well-established.
168. The claimant alleges that the investigator did not produce a balanced investigation report exploring exculpatory evidence. We reject this on the facts. This is clear from the wording of the investigatory report and

interviews in the documentary evidence. For example, the investigation clearly identified a number of people who stated that the claimant had not been, for example, abusive. It also found some of the allegations not met. Also, those allegations which were met – and thus proceeded to a disciplinary hearing – were expressly identified as only partially met. A clear example of this was the fact that even at the investigatory stage evidence was obtained suggesting that the claimant was not responsible for many of the contractors leaving (four out of six). This alleged treatment fails on the facts.

169. The claimant also alleges that there was a failure on the part of the investigator to explore significant concerns that the claimant had made pointing to collusion and ulterior motives of some contributors. We find that the claimant did not clearly raise the issue of collusion as an issue in the investigation stage. He did raise the fact of conflict between him and at least two others. However, this was covered by Mrs Varsani in her discussions with the claimant during his interview (specifically, Mr Suttle and Mr Kraus-Navarro, and Mr Roshan). However the 'run ins' between the claimant and others were exactly what formed part of the investigation. To avoid taking an overly legalistic approach to this allegation, we also considered whether the claimant raised the issue of collusion at his disciplinary hearing. We find that he did. However, we accept the evidence of Ms Sulkowski that she did investigate that element of the claimant's concerns. It is right to record and find that the amount of investigation into potential collusion was limited. However, it was explored specifically by Ms Sulkowski raising the issue in an undocumented meeting with Mrs Varsani, and Mrs Varsani was clearly of the view that she saw no evidence of collusion. Also, the detailed investigatory interviews were such that the decision makers were able to see if on the face of the interviews there was collusion. We also do not conclude that there is, on the evidence, anything which might have reasonably suggested that there was collusion. This is distinct from the likelihood that that disgruntled team members are likely to have spoken to each other about issues with the claimant as their line manager. We also accept the clear evidence from Mrs Sulkowski that she did consider the

issue of potential collusion and she did not find that it required any more investigation than had already been carried.

170. Importantly, the investigatory interviews (on the face of the transcripts) made it clear where people were reporting things that they had direct experience of and whether it was something that had been reported to them (as is established by the documents themselves). This was not, therefore, a case where, on the facts, the investigation and disciplinary process had failed to distinguish between direct and indirect evidence where collusion is more likely to have been a problem. Also, as a matter of fact the investigation and disciplinary process clearly did involve, on the documents, identification of the disagreements between the claimant and Mr Kraus-Navarro, and Mrs Varsani and Ms Sulkowski gave evidence that they took that into account. We accepted that evidence as credible and not meaningfully undermined by anything.
171. In any event, it is important to note that even if Mr Kraus-Navarro had an ulterior motive, we accept Ms Sulkovskis' clear oral evidence that his evidence in fact played a very limited role in the overall determinations. This is consistent with and supported by the wording used in her report. Specifically, the matters found proven were reliant on a mixture of evidence of the claimant's own admissions, and the evidence of others, and some documents. Mr Kraus-Navarro's evidence was only cited in support of one particular allegation and that allegation also was supported by many others' evidence. In the circumstances, any ulterior motive was therefore of very limited effect to the overall process (as an issue of fact).
172. We accept that the investigation did in part rely on some hearsay evidence. However, there is no cogent evidence to suggest that the investigation relied on assumptions or speculation. In fact, Mrs Varsani was very careful to identify where accounts were hearsay and not, and Mrs Sulkowski clearly (accepting her credible evidence of this) weight the fact of hearsay into the balance when making her decisions. Importantly, the overall conclusions made were largely based on either the claimant's own admissions, or accounts given by more than one person, and in places documentary

evidence (such as the reasons for contractors leaving). Equally importantly, the investigation did not just take Mr Kraus-Navarro's word for things. This is because, for example, there were many allegations found not proven despite him having made the allegation, particularly into the reasons why most of the contractors left.

173. The claimant alleges that crucial parts of the transcript were misstated. This is only proven to the extent that, as a matter of fact, where the claimant had admitted raising his voice this was transformed by Mrs Sulkowski into the claimant admitting shouting. We do consider that there is a meaningful difference between the two admissions (as a factual point). However, the allegation is not otherwise proven. The only other material issue was the suggestion that the claimant had admitted berating someone when this had not happened. The relevant facts are these. Mrs Sulkowski said '*there is a kind of – a couple of comments that are made through the investigation minutes around you kind of having a blame culture, I think that's the phrase that was used, and also kind of being quite quick to jump on people and berate them during calls. So just – just talk me through what your view is on those statements that have been made.*' The claimant replies '*So, jumping on people and berating them. I will – I will accept that I do get frustrated...*' This was taken by Mrs Sulkowski as an admission when the claimant's response was more nuanced than that. We also refer to our findings on this issue above.

174. Although the claimant relies on a point when he was asked for examples of when he had shouted or dressed people down (by Mrs Varsani) (p617), it is correct that Mrs Varsani states '*So you dressed him down as in got angry in front of other people?*' and the claimant replies '*When you say 'in front of other people, what do you mean?'*' and the conversation then was about behaviour in front of others. However, this did not transfer into any kind of inaccurate transcript or reporting of an admission. In fact, Mrs Varsani did not inaccurately summarise this (eg. at p740) in her investigation report. In any event, the full transcripts were available to Ms Sulkowski and there was no clearly inaccurate suggestion that the claimant had admitted being angry in the disciplinary hearing report.

175. We accept that there was an instance of Nitin Gupta's investigation interview which was slightly inaccurately recorded in Mrs Varsani's investigation report around whether he had witnessed bullying from anyone versus anyone other than the claimant. However, this was an isolated inaccuracy and the full transcript was available to Mrs Sulkowski for the disciplinary hearing itself and so was of limited effect, particularly as Mrs Varsani was only investigating if there was, in effect, a case to answer rather than establishing primary and detailed facts.
176. The claimant refers to a suggestion that there is a statement that was wholly unsupported by the evidence in Mrs Varsani's report, ie. that *'Eugenia Arias wanted to work form Mexico and wanted to move out there and AB didn't want to renew her contract anyway'* However, on the facts this was not a finding of fact and was just Mrs Varsani recording a summary of the claimant's interview. What the claimant said in interview was *'But she was moving to Mexico.....so we let her go at the end of the contract; we didn't renew it'*. In those circumstances this was not an inaccurate summary. In any event, the full transcript was available to the disciplinary hearing.
177. We reject, as a matter of fact, that the claimant has established in evidence that any of the above (or other matters) amounted to Mrs Varsani exhibiting confirmation bias. Specifically, Mrs Varsani elicits plenty of evidence where people are supportive of the claimant or expressly deny particular allegations of behaviour. We refer to our finding above where the exculpatory evidence equally made its way from the interview transcript to her summary of the interview (Mr Gupta).
178. We reject as a matter of fact the suggestion that the claimant was labelled as aggressive and that this fed into 'angry black stereotypes'. The claimant's counsel, for the first time in her oral submissions, clarified that this refers to *'politically black'*. In any event, there was no cogent evidence of stereotypes being used about the claimant. Although some of his behaviour was described by interviewees as aggressive, there is nothing to suggest that this was a stereotypical label relative to race or any other matter as opposed to a genuine reported experience of how he treated his direct reports,

particularly in circumstances where the claimant admitted raising his voice and dressing people down.

179. We reject as a matter of fact the suggestion that there was little to no distinction between first hand experiences, opinions, and hearsay because this was demonstrably not the case on the documentary evidence. Mrs Varsani and Ms Sulkowski clearly took those matters into account. Mrs Varsani often clarified with interviewees whether or not they were present at particular incidents or whether they were just reporting what was reported to them. This is clear from the documentary evidence.
180. We reject as a matter of fact that there was an unwillingness to believe the claimant or evidence supportive of his position. This was demonstrably not the case on the documents. The investigation and disciplinary found many matters not proven. The claimant's chief contention was about disagreements between him and Mr Kraus-Navarro (such as believing him and not the claimant). However Mr Kraus-Navarro's account played a minimal role in the overall determinations as set out above. Where the claimant's account was not preferred over others, specifically in relation to whether or not he had stated to contactors words to the effect of '*I pay you*' the overall findings were based on both accounts and an email account making such a suggestion. We find therefore that when the claimant's account was not preferred this was not, on the facts, based on any unwillingness to believe his account. Rather it was, on the evidence, simply the decision makers weighing everything in the balance. Importantly, the actual overall conclusions of both Mrs Varsani and Ms Sulkowski were largely based on either the claimant's own admissions or where multiple people were saying very similar things about the claimant's behaviour. They were not, on the evidence, demonstrated to have been influenced by an unwillingness to believe the claimant or evidence supportive of his position.
181. The claimant alleges that the investigation process was pre-determined. We reject this is a matter of fact. Many of the allegations did not proceed or were only partially upheld. This is indicative of a genuine process. The ultimate findings were based on the claimant's own admissions and other evidence

in support. This is not indicative of a pre-determined outcome. We find that although the allegations were reworded from the initial complaint, to the investigation, to the disciplinary hearing, this was not an attempt by the respondent to pre-determine the process. Rather, this simply reflected the allegations being clarified, and ensuring that (to a degree) the matters at the disciplinary hearing were not based on those which were unevidenced.

182. We do conclude (below) that two elements of the process that were unfair. Firstly, the fact that the initial investigation found only evidence that the claimant's behaviour was responsible for contractors leaving was only the case for 2 out of the original 7 identified by Mr Kraus-Navarro. However, six were covered at the disciplinary hearing. Ultimately, the claimant was not found responsible at disciplinary for those Mrs Varsani had already concluded he was not responsible for. However, as an issue of fact this left him open to the possibility of being disciplined for actions not supported by the initial investigation (on this limited issue).
183. Equally, in terms of the facts, there were two instances of behaviour between the claimant and contractors which formed part of the disciplinary process which had already been dealt with by Mr Jäger on an informal basis. We conclude (below) that raising those historic issues again in this manner was, to a degree, unfair on the claimant. However, even if those instances were removed from the allegations, there was still, on the facts, an abundance of evidence (not least the claimant's own admissions of using a raised voice) that could have been sufficient to justify the written warning in circumstances where he had raised his voice to his direct reports.
184. We accept that Mrs Sulkowski told the claimant early on that the likely sanction would not be dismissal. This is not in dispute. However we accept her clear and credible evidence that this was not because the outcome was pre-determined but to reassure him based on the seriousness of the allegations. There is no good reason to find otherwise.
185. We reject as a matter of fact the suggestion that the investigation and disciplinary involved upholding generic allegations without evidence. Firstly,

the allegations were not generic. Although the headline wording used in the disciplinary was not specific, it was clear to the claimant exactly what was being alleged when the disciplinary pack was considered as a whole: he knew what was raised in particular from Mrs Varsani's report. He had the full transcripts and was able to comment on particular instances as required. Secondly, on the documents there was clearly an abundance of evidence in support of the allegations which were upheld.

186. The length of the disciplinary process was as set out in the chronology above. The length of the process was caused mainly by the number of people interviewed. Overall, this was not, as a question of fact, a particularly lengthy disciplinary process in the experience of the Tribunal.
187. There is no evidence from which we could properly find, as a factual issue, that the above treatment was different to how the respondent would normally carry out ER-led investigations. In particular, there is no factual evidence from which we could find that any of the above treatment was (as an issue of fact) influenced by the claimant's race. The relevant people denied that this was the case and there was nothing presented to us that undermined that evidence.
188. The claimant alleged that the respondent had an expectation that the claimant must not make mistakes. This is not proven on the facts. This is because Mr Jäger was able to do deal with some matters informally, as was clearly the case as set out above. Also, the respondent's reaction (as an issue of fact), to where the claimant had admitted inappropriate behaviour, was not to dismiss him but rather to give him a written warning. This is not indicative of an employer that will tolerate no mistakes.
189. The claimant also alleged that he was held to a high standard of perfection. This is not proven on the facts. The evidence only suggested that the claimant was held to the policy standards referred to in the disciplinary outcome. There was no cogent evidence to clearly show that the claimant was held to different standards to anyone else for the same or sufficiently

similar conduct, other than Mr Jäger's expectations of managers as set out above.

190. More specifically, the claimant alleges that Nick Johnson was not reprimanded for similar conduct. However, this is not the case on the facts. The claimant has failed to produce clear and cogent evidence that Mr Johnson acted in the same or a similar way to the claimant and was treated differently. There was a lack of clear evidence about exactly how Mr Johnson left, such as whether it was by way of resignation on account of the claimant's conduct (that being what Mr Johnson told Gerard Minford about the reason for leaving as Mr Minford records by email on 19 May 2022, p534). Mr Jäger accepted in evidence that there had been an issue with Mr Johnson, and the email at p786 provided to Mrs Varsani was about him, but there was no clear evidence that the issues with Mr Johnson were the same sort of issues as with the claimant, ie. raising his voice and direct reports. Also, as a matter of fact, there was no complaint to ER about Mr Johnson. He either resigned or his contract was not renewed, on the evidence.
191. It is right that high standards were expected of the claimant, as a matter of fact. However there was no suggestion that higher standards were expected of the claimant than anyone else (save as above). The only evidence of differential standards was the fact that it was accepted that one of the reasons why a written warning was appropriate was because the claimant's behaviour had been to direct reports. However, there was nothing to suggest that holding managers to that standard was in any way related to race. Also, this finding is consistent as a matter of common sense as to would be expected of all employers, at least to the extent that those with management responsibility would be expected to hold high standards as role models.
192. We also find as a matter of fact that there was no evidence of any differential treatment when it came to promotions, ie. Mr Jäger stating that two consecutive exemplary ratings were required for the promotion to executive director level. There was no suggestion that this in fact applied differently to

the claimant compared to anyone else. It was clear from the oral evidence of Mr Jäger that this equally applied to Daryl Barnes on the chronology of him joining and when his ratings and expected ratings would be. In fact, both the claimant and Mr Barnes were due to be promoted at the same time on the same ratings and with the same rating expectations. The only reason in fact that the claimant was not promoted was the effect of his written warning. The evidence clearly showed that this was an automatic effect of the written warning on the evidence of Mr Jäger and the document HR guidance of the respondent (p229). There was nothing to suggest that this was a different practice with the claimant compared to anyone else.

193. We reject as an issue of fact the suggestion that the claimant was discouraged and or unsupported from raising concerns about Ian Suttle and Kraus-Navarro with ER. This was denied by Mr Jäger and we accept his credible evidence that rather than discouraging or not support raising concerns about others, Mr Jäger gave the claimant the same advice he gave everyone. This was to be cautious before escalating matters to HR and it was also Mr Jäger's demonstrable management style to leave those reporting to him to resolve matters between themselves if possible. We consider Mr Jäger to have given consistent and credible evidence on this, and this management approach was endorsed as reasonable by Ms Gwynn who also gave evidence that when she spoke to other directors about whether it was Mr Jäger's approach to leave those at director level to resolve between themselves, that sentiment was echoed by Ms Jansson-Wood and Mr Reekie. Also, there is no cogent evidence that this approach by Mr Jäger was different to anyone else.
194. The claimant suggests that the respondent did not address his concerns about Ian Suttle in October 2022. However, Mr Jäger gave clear evidence (which we accept) that when the claimant raised concerns with him about Mr Suttle, Mr Suttle had already raised concerns about the claimant with Mr Jäger, and Mr Jäger planned a trip to London to understand the issue. Mr Jäger also explained during the grievance investigatory interview that he did not believe that it was his role as Managing Director to find out who was wrong between the claimant and Mr Suttle. This is consistent with him

leaving matters to directors to sort issues between themselves and we find accordingly. Ultimately the issues with Mr Suttle were centred around an uncomfortable exchange of messages. Given that the claimant did not expressly report Mr Suttle to HR for an investigation this explains in full why the matter was dealt with by the respondent as it was, as an issue of fact. The fact that the claimant mentioned Mr Suttle in his various investigation meetings was not enough, on the facts, to trigger an ER-led investigation (as had happened to the claimant, from Mr Kraus-Navarro's complaint). However, we accepted in full the evidence from those who heard the claimant mentioning others behaviour in those interviews that there was nothing so clearly raised by the claimant about others that warranted an ER-led investigation. Given that the relative seriousness of the complaints was different between the claimant and Mr Suttle, and Mr Kraus-Navarro, this explains why the respondent reacted differently, as an issue of fact.

195. In particular, there is a clear factual difference between the claimant and Mr Kraus-Navarro. Firstly, Mr Kraus-Navarro raised a specific complaint to ER about conduct, triggering an ER-led investigation. By comparison, the claimant raised issues about Mr Kraus-Navarro not as a specific complaint about conduct, rather in passing suggesting that the claimant had been treated less favourably. In particular, the claimant's complaint about Mr Kraus-Navarro was made to Mr Jäger by email on 17 November 2022 (p590). However, this was a description of a difficult interaction with Mr Kraus-Navarro and suggestion that he had been negative and a single reference to raised voices (unspecific). The gist of the claimant's complaint was that Mr Kraus-Navarro was undermining him. However, when the claimant specifically raised this with Mr Jäger he stated *'At this stage I don't understand where this has come from and if I talk to him, may make things more difficult, however the works needs to be done'*. This was therefore expressly not a request for an investigation into conduct nor a real complaint, we find, given the words used. It was simply provided to Mr Jäger for information on the face of the words used. The fact that this email was part of the disciplinary evidence to Mrs Varsani is not enough to suggest that, in fact, the claimant was expressly reporting Mr Kraus-Navarro for conduct.

196. We find that those were clear factual differences between how concerns about other employees' conduct were raised in terms of Mr Suttle and Mr Kraus-Navarro, when compared to the complaint about the claimant. We find that the claimant's grievance, given the wording used, was not a conduct complaint about others, rather it was a complaint of unfair treatment as an ethnic minority.
197. The claimant alleged that he was passed up for promotion on successive occasions. This fails as an issue of fact. The claimant was, on all the evidence, put up for promotion as soon as Mr Jäger was in a position to do so and in the same overall circumstances as the alleged comparator Mr Barnes. Both were promoted when their ratings allowed on the basis of the normal practices of Mr Jäger. The only reason the claimant was not promoted was the written warning which was an automatic application of the respondent's practices as applied to everyone. We repeat our findings about promotions above.
198. The claimant did not pursue issue 2.2.8 ie. that the claimant's promotion was blocked prior to disciplinary sanctions being made.
199. We find as a matter of fact that there were differences between how the complaint about the claimant was handled, as an ER-led disciplinary investigation, as opposed to the claimant's grievance. However, most of those differences are outlined above, ie. the alleged conduct was different, and the claimant was subject to an ER-led investigation because Mr Kraus-Navarro had made a conduct-specific complaint to ER. On the other hand, the claimant had made passing references first to his line manager, which in respect of Mr Kraus-Navarro was not specifically seeking an ER-type outcome. Also, the thrust of the claimant's grievance was an allegation of unfair treatment of him as opposed to a conduct-type complaint about others. The respondent witnesses were clear in their evidence that if the claimant's matters had actually raised conduct-type concerns of sufficient seriousness about others then they could and would have started an ER-led process but there was no good reason to in the circumstances. We accept their evidence on this as credible particularly given the clear factual

differences between what was alleged about the claimant and what the claimant alleged about others.

200. We wholly reject, save as below, the claimant's assertion (as a factual issue) that the respondent did not address the main points in his grievance and ignored the claimant's wider systematic issues or that, on the facts, negative assumptions were made about the claimant. The respondent did not ignore the wider systematic issues because it commenced a culture review with those that the claimant named as also potentially being affected. The fact of the culture review was not in dispute.
201. However, the one criticism by the claimant of the respondent's approach to his grievance that we agree (as a fact) with is that it did not expressly address the race issue as regards the claimant. The claimant himself was not interviewed as part of the culture review. Ms Gwynn accepted in oral evidence that her outcome letter did not expressly address whether or not the claimant had been treated differently because of race. Rather, Ms Gwynn had looked into each of the allegations of treatment and explored why they happened without reaching a written conclusion on race. However, her evidence to us was that she did not find that race played any role. We reject the claimant's assertion that race was 'carved out' entirely, on the evidence: the documentary evidence clearly shows the only 'carved out' element was the wider concerns about those other than the claimant. This is consistent with emails between Ms Gwynn and her line manager about what the grievance would and would not cover.
202. However, we do not find that the fact that Ms Gwynn did not expressly write down a conclusion about race was anything to do with the claimant's race. There is no good reason to make such a finding. There is no suggestion that if she had been carrying out the same process for a person of a different race that she would have treated them any differently. Rather, we find on the facts that the reason why she did not expressly make reference to race was not because the respondent was seeking to hide from that issue, given that they did the wider culture view. The fact that Ms Gwynn felt it was enough to detail the treatment and reasons why they happened was, in our

judgment on the facts, a misapprehension on her part rather than being indicative of hiding from the issue or treating the claimant any differently to anyone else. From her perspective, once the alleged different treatment had been investigated and the reasons for the treatment found, there was no need to write a separate conclusion. However, she did expressly conclude, for example: that there had been no favouritism by Mr Jäger; she did not find proven an allegation that lies were being spread about the claimant; she did not find that Mr Jäger had blocked the claimant's concerns about Mr Kraus-Navarro being raised to ER; she concluded that Mr Jäger had fully supported the claimant, including proper consideration for promotion; the disciplinary issues were found to be outside of the grievance and her conclusion on whether the claimant had to work three times as hard compared to white colleagues was addressed under earlier conclusions. Also, the grievance was expressly not upheld. Accordingly, on a proper analysis from the wording used in the letter, consistent with Ms Gwynn's oral evidence, her having generally concluded that the claimant was not treated differently, or there was an obvious explanation for different treatment, or the alleged treatment did not happen, there was no need for her to expressly write a conclusion about race. Whilst we find that this is not good practice, there was nothing cogent to suggest that this was because of the claimant's race, as an issue of fact.

203. As a matter of generality, given our wider findings, we accept the evidence of the respondent's witness as to why things happened to the claimant as being consistent, credible, and supported by the documentary position, and those things that did happen flowed as a matter of common sense.
204. Overall, the claimant was put forward to be promoted as soon as possible; the claimant's promotion was only not put in place as a result of the written warning. That clearly happened for non-racial reasons and were automatic as a result of the respondent's policies. In terms of Mr Suttle and Mr Kraus-Navarro, they were subject to different processes and procedures to the claimant because the claimant was subjected to a conduct-specific complaint to ER. The same cannot be said of them, nor was the alleged

conduct the same. Any difference in treatment was because of those reasons and was nothing to do with race.

205. On the evidence, although Mr Kraus-Navarro's complaint was treated formally as a whistleblowing complaint, as opposed to the claimant's grievance, there appeared on the evidence to be no real practical consequence of this. Also, there was nothing to suggest that the classification of concerns as whistleblowing or not had anything to do with race.
206. It is also relevant that Mr Kraus-Navarro's initial complaint named Mr Dhillon. Mr Dhillon, who was also on the evidence an Indian Sikh, was not investigated or given any kind of sanction by the respondent.

(xi) Specific additional findings in relation to victimisation and protected disclosure detriment

207. The respondent accepted that the claimant's first grievance (facts set out above) was a protected act.
208. The content of the claimant's first grievance was as set out in the hearing bundle. This included an assertion that the claimant had been treated unfairly and that this was different compared to those who were not an ethnic minority, making specific references to specific incidents and named individuals, and asserting application of different standards by the respondent.
209. We do not find as a matter of fact that when making the grievance the claimant had a belief that his disclosure was in whole or in part in the public interest. This is because from the grievance document and the claimant's own evidence we find that he only had his own interests in mind and was not making this disclosure with any other purpose other than his own grievance about his own situation. The language and tone of the grievance does not suggest any element of public interest in mind: those concerned

were limited to the claimant. The claimant uses the first person, and in particular it was that he had to work three times harder than white colleagues, as opposed to, in the grievance itself, being about points with wider purpose. There was nothing about the identify of the respondent which took the claimant further on this issue. There was also insufficient other good reason or cogent evidence on which we could make a finding that he had the relevant belief. We equally did not consider that there was sufficient evidence to establish a mixed-private/public interest given the evidence as a whole, even taking into account the fuller context of the grievance and the nature of the alleged wrongdoing.

210. The claimant's case on the other (second) alleged protected act/protected disclosure, was put on the basis, as set out in his witness statement at paragraph [23], that that during March meeting he made a number of disclosures summarised in the meeting notes that he stated he *'feels under siege...being attacked...that as a minority...work in a state of hyper vigilance...asked for help from line managers...if anything has been done he did not feel supported...he does not feel safe...he gets to a point where promotions are in place and then he is sabotaged...happening at UBS...Culture...Unsafe.'* However, those sections are isolated quotes and the content needs to be read in the full context of the document. It is on the basis of the full content and context of the document that we have made our decisions and findings about this alleged disclosure.
211. Ultimately, the content of the disciplinary investigation and hearing is as set out in the documents. At its height, the claimant did assert during the disciplinary investigation meeting with Mrs Varsani *'I live in a company that is white majority and there are people around this company that abuse that white privilege. So what do you expect me to say to you?'* However he did not provide specific factual allegations where he asserted on an express or implied basis, people abusing white privilege, during the content of that investigation meeting.
212. We find, based on the content of the transcripts, as an issue of fact, there is no sufficiently clear express or implied allegation of a contravention of the

Equality Act 2010 in the disciplinary investigation or hearing. This is because of the content of what was said.

213. In any event, the only person said by the claimant, as a matter of fact, to have carried out the victimisation/protected disclosure detriments was Mr Jäger. Mr Jäger stated in evidence that he did not know about the content of the claimant's disclosures during his investigation and disciplinary interviews. We accept that evidence as credible and not otherwise undermined. There is no other good reason, in terms of the evidence, to find that (as a matter of fact) he had that knowledge. At best, it was put to him in cross-examination that someone from HR had told him, but Mr Jäger denied that this was the case and there was no other clear evidence of someone from HR telling Mr Jäger about any specific content of those meetings where it could be taken that the claimant was making a complaint, express or otherwise, about a contravention of the Equality Act 2010. In all the circumstances, we are satisfied as a matter of fact that Mr Jäger did not know about the matters said to be the investigation/disciplinary-based protected disclosure/act.
214. It follows from the above that we find as a matter of fact that the alleged detriments said to be because of the investigation/disciplinary-based protected disclosure/act were not in any way influenced by the claimant's disclosures during those meetings.
215. In terms of alleged detriments:
- a. We find that on or around 12 October 2023, the claimant was no longer under Mr Jäger's direct line of reporting. This was accepted by the respondent.
 - b. We do not find that the claimant had colleagues that he had previously line managed placed in more senior positions than him, as alleged. This is because in fact Mr Suttle, Ms Jansson-Wood and Mr Bobrik were accepted by the claimant in cross-examination, and

on the documents to all being Senior Enterprise Architects reporting to Mr Jäger (p1714). This detriment fails as a matter of fact. To the extent that these people did report to Jäger, that is inherent in the first alleged detriment.

- c. We do not find as a matter of fact that the claimant was ignored when he asked for the rationale around the reporting lines on 12 October 2023. We prefer the clear and cogent evidence of Mr Jäger that in fact the claimant terminated the call. We prefer the evidence of Mr Jäger about this meeting, including that it was on MS Teams rather than in person, because his oral evidence about this was clearer than the claimant's which lacked detail. The claimant expressly accepted being a bit confused on this allegation in cross-examination. There was a lack of clear evidence about any email on 19 October 2023 being ignored and this was not clearly identified to the Tribunal in submissions by the claimant.

216. As a matter of fact, we also accept Mr Jäger's explanation as to the team changes and reporting lines around that time. We accept because it was Mr Jäger's evidence and consistent with the documented position at the time, that line reporting changes and team changes were necessary because (a) there had been a merger and significant reorganisation including integration of the Credit Swiss teams given business needs; and (b) the claimant was returning from a period of long-term sickness. There was no good evidential reason to doubt Mr Jäger's explanation.

217. We find as a matter of fact that Mr Jäger only knew about the claimant's protected act – ie. grievance – and inferred enough about the content of the grievance – when Mr Jäger was interviewed about that grievance. This is because we accept his evidence of this evidence and there is no good reason or evidence to suggest that this is wrong. There is nothing to suggest that he was aware of the content of the grievance before that point, such as in the grievance meeting interview to Mr Jäger.

218. The fact that afterwards when the claimant made a second grievance Mr Jäger asked by email on 4 April 2024 (p1783) for clarification about the grounds of the second grievance ie. whether it was against him like the first, or he was less or not involved, is not enough to suggest that he knew about the content of the original grievance before or provided any kind of motive for him to treat the claimant badly. This is pure speculation on the part of the claimant and it is not a safe inference to draw from that single email. We reject that contention made by the claimant.
219. Although the documentary evidence did not clearly establish that the decision to make the team changes was made before Mr Jäger knew about the claimant's protected act, there was an email dated 2 October 2023 – before Mr Jäger knew - consistent with reorganisational changes having been communicated to the claimant on or before that time: *'Dani did briefly discuss a role in one of the inherited areas which I did not agree was an appropriate level. Taking into consideration I was operating at an Executive Director level (the reason for been put forward for promotion) I have an expectation that a workplan will eventually provide a role to that level of responsibility. I do not feel I have any choice but to wait until the new organisation has been confirmed.'* This strongly suggests that the decisions about reporting lines were made before Mr Jäger is aware of the protected act and the claimant being unhappy about the proposed changes. Whilst not determinative, this supported the evidence that the treatment that did happen, as a matter of fact, was not because of the claimant's protected act.

Conclusions

220. We express our conclusions only insofar as is necessary given our findings of fact above and conclusions below.

Direct race discrimination

221. We apply the law on the burden of proof as set out above.

222. Whether relied on as named or hypothetical or evidential comparators, we find that the claimant has failed to establish facts about those comparators (such as Mr Barnes and Mr Suttle or anyone else) such that we can properly draw an inference about the treatment of the claimant. They were, on the facts, in variously different circumstances to the claimant, as set out in our findings above. In those circumstances, there was no proper inference that could be drawn about the treatment by the respondent. Even as evidential comparators the evidence is insufficient to properly demonstrate this in support of the claimant.
223. The fact that a redacted, unclear email makes reference to the claimant's salary as set out above (as relied on by the claimant) did not help us in our determinations. There was not an express complaint about pay in these claims, nor do we know why his salary is described as low, nor was there anything to suggest that it was low because of race or by comparison to the claimant's peers. We also did not consider that this called out for an explanation such that an adverse inference could be drawn about it.
224. Overall, we did not conclude that the claimant had established facts from which we could infer that the claimant's treatment was in any way to do with his race. In those circumstances, the burden of proof did not shift to the respondent.
225. Specifically, there were no facts established from which we could properly infer that the approaches of the respondent about the claimant's indirectly raised behavioural issues of others, as compared to the specific conduct complaint about the claimant, were anything to do with race. The matters raised on by the claimant with regards to other people and their conduct are explained in our findings of fact above as being sufficiently different in terms of conduct and the matter of the issue being raised as to support this conclusion.
226. As to what treatment occurred, in any event, we repeat our findings of fact above about the treatment of the claimant. The vast majority of the allegations have been unsuccessful on the facts.

227. Given the factual findings above, we conclude that the claimant's comparators are not in the same material circumstances as him. They are also unhelpful when viewed as evidential comparators given that the circumstances are sufficiently different as a matter of fact: it would not be a safe inference that differences in treatment were anything to do with race from the established facts as a whole.
228. In any event, we are entirely satisfied that the treatment proven was in no way whatsoever because of the claimant's race.
229. Firstly, there were no established facts from which we could properly make such an inference.
230. Secondly, even if there were, we accept that the respondent has explained the reason for the treatment as being non-discriminatory, as set out in our findings of fact above.
231. We did conclude that two elements of the process were unfair to the claimant. The first was that the initial investigation found evidence that the claimant's behaviour was responsible for contractors leaving, but this was only the case for 2 out of the original 7 identified by Mr Kraus-Navarro. However, six were covered at the disciplinary hearing. Ultimately, the claimant was not found responsible at disciplinary for those Mrs Varsani had already concluded he was not responsible for. However, this left him open to the possibility of being disciplined for actions not supported by the initial investigation (on this limited issue). Equally, this had nothing to do with the claimant's race, on the evidence. There is no good reason to make such a finding. Rather, we are satisfied that this was nothing more than an error on the part of the investigatory process. There is no good reason to suggest that this error had anything to do with the claimant's race.
232. Secondly, there were two instances of behaviour between the claimant and contractors which formed part of the disciplinary process which had already been dealt with by Mr Jäger on an informal basis. We conclude that raising

those historic issues again in this manner was, to a degree, unfair on the claimant. This is because he would have a legitimate expectation that they had been dealt with and that they did not warrant any further action. However, this had nothing to do with the claimant's race, on the evidence. There is no good reason to make such a finding. Rather, we are satisfied that this was nothing more than an error on the part of the investigatory process. There is no good reason to suggest that this error had anything to do with the claimant's race.

233. Equally, even if those instances were removed from the allegations, there was still, on the facts, an abundance of evidence (not least the claimant's own admissions of raising voices) that would have been sufficient to justify the written warning in circumstances where he had raised his voice to his direct reports, as set out above.
234. Finally, we are satisfied that that the fact that the claimant was held to a high standard of behaviour was only related to the fact that he was a manager, as set out in our findings above, and had nothing to do with his race. There is no good reason to find otherwise.
235. Equally, we are entirely satisfied for the reasons set out above that the factual differences between the Kraus-Navarro complaint to ER and the issues the claimant raised in various ways about others in his processes had nothing to do with race. There is no good reason for any such finding to be made. Different allegations were made via different processes.
236. For those reasons the claim of direct race discrimination is unsuccessful.

Victimisation

237. One alleged protected act was the claimant's first grievance. The respondent accepted that this was a protected act.

238. The other alleged protected act was the claimant's disclosures during his initial disciplinary investigation meeting and disciplinary meeting. However, we conclude that the vague matters mentioned by the claimant are insufficient to be allegation (express or implied) of things that would be a contravention of the Equality Act (applying Kokomane, above), even reading the documents together and as a whole. There is insufficient particularity to even amount to an implied assertion of the Equality Act 2010, in our judgment, and a couple of vague mentions of race were insufficient in the circumstances of this case and our findings of fact above.
239. We repeat our findings of fact about the alleged detriments, above.
240. In any event, if we are wrong about the above, we conclude that the alleged detriments were not in any way influenced by the investigation/disciplinary-based alleged protected disclosure/act. This is because of our finding of fact above that Mr Jäger did not know about those disclosures and there is no other reason to believe that he could have been influenced by them, directly or indirectly.
241. We found as a matter of fact that the claimant's line reporting did change, as set out above. We find that this did amount to a detriment because a reasonable employee might properly regard reporting to someone else as a disadvantage.
242. However, given the factual context above, we do not find that the claimant has established facts from which we could infer that this was because of the claimant's protected act, or disclosures more broadly. This is because there is an absence of reasoning why this might have been the case.
243. In any event, we are also entirely satisfied that the respondent has shown that this was for reasons wholly unrelated to the claimant's disclosures (whether protected or not). These are for the reasons outlined in our findings of fact above. The proven detriment had nothing to do with the claimant's grievance.

244. Given the date of the alleged detriments, it appeared that the victimisation complaint was in time.
245. For the above reasons, the complaint of victimisation is unsuccessful.

Protected disclosure detriment

246. We conclude that the content of the claimant's first grievance was sufficient to amount to information capable of showing a breach of the Equality Act 2010. This is because the claimant clearly asserts that he has been treated unfairly and that this was different compared to those who were not an ethnic minority. He makes specific references to specific incidents and named individuals, asserting application of different standards by the respondent, which were capable of amounting to breach of a legal obligation.
247. However, we also conclude that the content falls short of identifying information capable of showing a health and safety breach, on the face of the content of the document.
248. We also found that the claimant's grievance, for the reasons outlined above, was not made with a belief that the disclosures were in whole or in part made in the public interest. Accordingly, we conclude that the grievance was not a protected disclosure.
249. Equally, we conclude that the information included in the claimant's investigatory interview and disciplinary hearing falls far short of sufficient factual specificity that it amounted to information capable of showing a breach of a legal obligation. The references made by the claimant are too value and unspecific given the content of the words used. For that reason we conclude that this was not a protected disclosure.
250. In the alternative, we repeat our findings as for victimisation on the grounds for the treatment. Specifically, the detriments were proven but only to the

extent above. In any event, we were wholly satisfied that the things that did happen were in no way influenced by the claimant's disclosures. We accept Mr Jäger's explanation as to why those things happened. There is no good, cogent and evidenced reason to find otherwise.

- 251. Given the date of the alleged detriments, it appeared that the protected disclosure detriment complaint was in time.
- 252. For those reasons, the complaint of protected disclosure detriment is unsuccessful.

Disability

- 253. Given our findings of fact above, the claimant did have the mental impairment of anxiety.
- 254. On the basis of the respondent's concession, the claimant's impairment had a substantial adverse effect on his ability to carry out normal day-to-day activities from April 2023. We do not find that there was such an impact before then for the reasons set out in our findings of fact above.
- 255. We do not find that the claimant was receiving treatment before April 2023 which, absent that treatment, was such that his condition would have had a substantial effect on his day to day activities. This is because of an absence of cogent evidence that this was the case.
- 256. For the reasons outlined above in our findings of fact, the effect of the claimant's impairment was likely to last 12 months or more in March 2024. We do not find that it was likely to recur for the earlier periods because of an absence of evidence that this was the case.
- 257. For those reasons, we conclude that claimant was disabled by reason of anxiety from March 2024 onwards.

258. The content of the email evidence suggested that as a matter of fact the claimant was more concerned about the impact of the written warning on promotion and remuneration and that was why he wanted more time to appeal rather than him not being able to properly appeal due his condition, we also conclude, as set out above.

Failure to make reasonable adjustments

259. The time when the claimant says that reasonable adjustments ie. an extended appeal period, should have been in place was May 2023. The claimant was not disabled at that time. For that reason alone, the reasonable adjustments claim must fail.
260. In the alternative, we do not find, for the reasons outlined above, that the respondent knew at the relevant time that the claimant had a disability. This is because there was an absence of evidence to suggest that they knew that any effect of the claimant's anxiety was likely to be long term at that point. In particular, this was before any occupational health input, the content of the sick notes did not suggest that the respondent knew about any prognosis, and the cause as far as the respondent was aware was 'stress' as opposed 'anxiety'.
261. In the circumstances, there was also no reason why the respondent ought to have known more than it did. The claimant had been off sick for only a relatively short space of time and in terms of what the respondent's employees were being told, there was no reason to expect them to enquire earlier at that stage. Also, even if the respondent had made enquiries at the time of April May 2023, there is no clear evidence that they would have received information to suggest that the claimant's condition was likely to last 12 months or more. This is because when occupational health do get involved they do not make that suggestion. The 12 June occupational health report suggested in fact that the mental health condition was situational and conditional on the employment-processes.

262. The respondent accepted that it had a PCP of stipulating 10 working days to lodge a disciplinary appeal.
263. However, we do not find that this put the claimant at a disadvantage compared to those who were not disabled. This is because the claimant plainly was able to complete his grounds of appeal in time and he was also given an opportunity in the disciplinary appeal hearing to expand on his grounds. The contemporary email evidence also suggested that the claimant was in fact more concerned about the effect of the written warning on his promotion and remuneration than being unable to complete an appeal in time, or being less able to complete an appeal on time.
264. We also note that the reasonable adjustments suggested by occupational health – later on – do not suggest that the claimant needed more time to prepare appeal-type documents. The adjustments required were to support him in meetings.
265. Even if we are wrong about the above, the sought adjustment was not reasonable. The respondent was right to seek wherever possible to be consistent in the application of its appeal procedures, particularly in the absence of medical evidence that the claimant was unable or less able to produce an appeal document in time. In any event, to the extent that anyone was disadvantaged by the 10 day timeframe, the remedy for this was not to allow for longer time, but to allow for grounds to be included or expanded during the appeal hearing. This was exactly the opportunity that the claimant was given.
266. We conclude that the claimant's disability discrimination claim was almost completely without merit, it having failed in almost every stage of the legal test for that claim.
267. We also find that this claim is out of time: the alleged time of discrimination was May 2023 and the relevant limitation date was 10 October 2023. The claimant accepted having received legal advice since 17 May 2023. There

is no good reason why there was any delay in bringing the disability discrimination claim. Although the respondent has not been put to any real prejudice on the disability discrimination claim because of the delay, nonetheless there is no good reason why it would be just and equitable to extend time, particularly taking into account the merits. This was not a case where it was reasonable for any of the claimant's internal procedures to have been resolved first, in all the circumstances.

Approved by
Employment Judge B Smith
29 January 2026

SENT TO THE PARTIES ON

16 February 2026

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FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

1. DISCRIMINATION / VICTIMISATION – JURISDICTION

- 1.1 Did any of the acts relied on by C occur more than three months before the date on which C submitted his claim to the Employment Tribunal (extended, as necessary, by ACAS conciliation?)
- 1.2 If so, do any such acts form part of conduct extending over a period, and was the claim brought within three months of the end of that period (extended, as necessary), by ACAS conciliation); and
- 1.3 If not, should time be extended to such other period as the Employment Tribunal thinks just and equitable?

2. DIRECT RACE DISCRIMINATION

- 2.1 C is Sikh Indian.
- 2.2 C relies on the following alleged less favourable treatment:
 - 2.2.1 A flawed investigation process (§29(a) PoC);
 - 2.2.2 A predetermined disciplinary process (§30 PoC);
 - 2.2.3 Upholding generic allegations without evidence (§31 PoC). The allegations at paragraph 13 PoC sets out the upholding of the generic allegations:
 - That your conduct towards other UBS employees amounted to bullying; (“Allegation 1”)
 - That your conduct towards your direct reports was inappropriate and/or unprofessional; (“Allegation 2”)
 - That your conduct impacted team morale and motivation and/or created a difficult work environment; (“Allegation 3”)
 - That your conduct resulted in contractors choosing to leave the team. (“Allegation 4”)
 - 2.2.4 The length of the disciplinary process (§32 PoC);
 - 2.2.5 R’s expectation that C must not mistakes and holding C to a high standard of perfection (§33 PoC); For example, the failure to reprimand Nick Johnson for similar conduct that C was disciplined for, when the conduct of Nick Johnson was directed at C. The details of C’s concerns about Nick Johnson are contained in both grievance and disciplinary minutes. Further detail is contained within C’s grievance and disciplinary minutes.

C relies upon [p.131]:

 - High standards expected of C;
 - C’s conduct must be exemplary;
 - DJ stating C would not be promoted and stated an additional requirement for 2 yrs excellent rating in order to achieve promotion
 - 2.2.6 C being unsupported and discouraged from raising his concerns to HR in respect of the conduct Ian Suttle in October 2022 and Carlos Kauss Kraus-Navarro in

September 2022, and R not addressing those concerns (§34 PoC);

- 2.2.7 C being passed up for promotion (§37 PoC) on successive occasions, as set out in C's grievance dated 15 June 2023 and laterally in October 2023

C relies upon the following occasions on which he was passed over for promotion [p.131]

- February 2022 – C told he would not be promoted as required 2 yrs of excellent rating

- February 2023 – C informed his performance review would be put on hold pending disciplinary process

- Disciplinary Appeal Outcome (10.8.23) – confirmed C ineligible to be promoted to ED; and

- 2.2.8 C being blocked from a promotion prior to any formal disciplinary sanction being made against him (§36 PoC).

- 2.2.9 The way C's grievance in June 2023 was handled as compared to how concerns about him were handled from November 2022.

C relies upon the following differences in treatment:

- November 2022 – C was interviewed and disciplined;

- C's First Grievance (15.6.23) – R did not address main points; ignored C's concerns about wider systematic issues; C experienced negative assumptions.

- 2.3 Who is C's comparator (actual or hypothetical), whose circumstances must be materially the same as C's?

2.3.1 In respect of 2.2.7, C relies upon Daryl Barnes White British (§35 PoC); and

2.3.2 In respect of 2.2.1-2.2.6 and 2.2.8, C relies on a hypothetical comparator and Ian Suttle White British.

- 2.4 For the purposes of 2.2.1-2.2.6 and 2.2.8, what is the definition of the Claimant's hypothetical comparator, whose circumstances must be materially the same as the Claimant's?

- 2.5 Was C treated less favourably than the comparator was or would have been?

- 2.6 If so, was the reason for the treatment C's race?

3. DISABILITY DISCRIMINATION

- 3.1 Was C disabled?

3.1.1 Did C have a physical or mental impairment? C relies on the impairment of anxiety (§43 PoC).

3.1.2 Did that impairment have a substantial adverse effect on C's ability to carry out normal day-to-day activities?

3.1.3 Was that adverse effect long-term?

3.1.3 Was C disabled at all relevant times?

- 3.2 Reasonable adjustments

- 3.2.1 Did R know/could R reasonably have been expected to know that C had a disability?
- 3.2.2. Did R apply a provision, criterion or practice ('PCP')? C relies upon an alleged PCP of stipulating 10 working days to lodge a disciplinary appeal (§44 PoC)?
- 3.2.3 If so, did that PCP place C at a substantial disadvantage in comparison with employees who were not disabled? Whilst C was suffering with heightened anxiety, he was unable to put all of the points across that he wanted to in the given timeframe and he was unable to get sufficient support in that time.
- 3.2.4 In the circumstances, would it have been a reasonable adjustment for R to grant C's request for an extension of 4 days to submit his disciplinary appeal? (§45-46 PoC)

4. VICTIMISATION

- 4.1 Did C do, or were they suspected of having done or intend to do, a 'protected act' C relies upon the following as protected acts:
 - 4.1.1 Raising the first grievance (§38(a) PoC);
 - 4.1.2 Making disclosures in the initial disciplinary investigation meeting and in the disciplinary meeting (§38(b) PoC).
- 4.2 If so, were they subject to a detriment as a result? C relies upon the following alleged detriments:
 - 4.2.1 On around 12 October 2023, C being removed from Daniel Jäger's direct line of reporting (§39(a) PoC);
 - 4.2.2 C having colleagues that he previously line-managed placed in more senior positions than him (§39(b) PoC); colleagues Ian Suttle, Erica Jansson-wood, Ralph Bobrik.
 - 4.2.3 On 12 October 2023 C being ignored when he asked for the rationale around why he had been demoted (§39(c) PoC). By email Daniel Jäger's on 12 October and 19 October 2023.

5. WHISTLEBLOWING

- 5.1 Jurisdiction
 - 5.1.1 Was C's claim presented before the end of the period of three months (extended, as necessary, by ACAS conciliation) beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them?
 - 5.1.2 If not, was it reasonably practicable for the claim to be presented in time?
 - 5.1.3 If not, was the claim presented within such further period as the Tribunal considers reasonable?
- 5.2 Detriments
 - 5.2.1 Did C make a disclosure of information that they reasonably believed tended to show that:
 - (a) there had been or was likely to be a failure to comply with a legal obligation (s.43B(b) ERA 1996); or
 - (b) the health and safety of a person had been, was being or was likely to be

endangered (s.43B(d) ERA 1996).

C relies upon the following disclosures:

- (i) Raising the first grievance (§41(a) PoC); C relies on the whole grievance, see paragraphs 1, 1a, 1b, 1d, 1e, 2a, and 2c of grievance. C disclosed information about racial discrimination. The legal obligation was R's failure to comply with the Equality Act 2010.
- (ii) Making disclosures in the initial disciplinary investigation meeting and in the disciplinary meeting (§41(b) PoC). C relies on the investigation minutes of 27 March 2023 and the disciplinary transcript of 5 April 2023. C disclosed information about cultural ignorance and discrimination within the workplace. The legal obligation was R's failure to comply with the Equality Act 2010.

5.2.2 Did C reasonably believe that the disclosure was in the public interest?

5.2.3 Did C reasonably believe that the disclosure was true and did C make it for personal gain?

5.2.4 Was C subjected to any detriment by any act or deliberate failure to act by R on the grounds that they had made a protected disclosure? C relies upon the following alleged detriments:

- (a) On around 12 October 2023 and 19 October 2023, C being removed from Daniel Jäger's direct line of reporting (§42(a) PoC);
- (b) C having colleagues that he previously line-managed placed in more senior positions than him (§42(b) PoC); namely Ian Suttle, Eria Jansson-wood, Ralph Bobrik
- (c) On 12 October 2023 C being ignored when he asked for the rationale around why he had been demoted (§42(c) PoC). By email Daniel Jäger's on 12 October and 19 October 2023.

5.2.5 Was the disclosure made in good faith?

5.2.6 If the disclosure was not made in good faith, is it just and equitable in all the circumstances to reduce any award by up to 25%?