EMPLOYMENT TRIBUNAL

Claimant: **Guillermo Vigil**

Respondent: **Tata Consultancy Services Limited**

Heard at **LONDON SOUTH**
By CVP

On: **19-21 January 2026**

Before
EMPLOYMENT JUDGE N COX

Appearances:

For the Claimant: **Mr Downey (Counsel Direct Access)**
For the Respondent: **Mr Porter (Counsel)**

RESERVED JUDGMENT

The judgment of the tribunal is :-

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

2. There is no order for reinstatement or reengagement of the claimant.

3. The respondent shall pay the claimant a basic award of £1800.40.

4. It is just and equitable to reduce the basic award payable to the claimant by 30% because of the claimant's conduct before the dismissal. The stated award is the amount payable after adjustment.

5. The respondent shall pay the claimant a compensatory award.

6. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 30 %.

7. The amount of the compensatory award to be paid by the respondent is to be determined at a further hearing unless agreed between the parties.

8. The complaint in respect of holiday pay is well-founded. The respondent failed to pay the claimant in lieu in accordance with regulation 14(2) and/or 16(1) of the Working Time Regulations 1998 the sum of £4894.62 being:

    a) £3654.22 net due in respect of 14.73 days of accrued but untaken holiday.

    b) £1240.40 net in respect of 5 days carried over leave

9. The amounts in fact paid by the respondent in respect of the accrued but untaken holiday set out above are to be set-off against that sum. The parties are to endeavour to agree the precise net sum to be paid to the claimant in light of this judgment. That sum is to be included in an order to be made at the further hearing to be convened to determine the compensatory award.

10. The complaint of breach of contract is well-founded. The respondent failed to pay the claimant in lieu of notice one month's salary and entitlements including a sum representing one month's accrued but untaken holiday pay based on his 28-day statutory entitlement, a total of £6468.05. The respondent is liable to pay to the claimant that sum by way of damages together with interest. The respondent's payment to the claimant of £5033.29 on 26 April 2024 is to be set off against the claimant's claims. The parties are to endeavour to agree the precise net sum and interest to be paid to the claimant to be included in an order to be made at the further hearing to be convened to determine the compensatory award.

Approved by Employment Judge N Cox

Date: 5 June 2026

Judgment sent to the parties and entered in the Register on: 11 June 2026

For the Tribunal Office

P Wing

Note
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

RESERVED REASONS

Claims and Issues

3. The claimant brings the following complaints:

3.1. Unfair dismissal (ERA s 94/98).

3.2. Breach of Regulations 13 and 13A of Working Time Regulations 1998 in respect of 'carried forward' holiday pay; and

3.3. Breach of Contract by failing to give notice or make payment in lieu.

4. The respondent defends the claims.

5. The issues were not previously settled but at the start of the hearing counsel agreed that the issues were as follows:

List of Issues

1. Unfair Dismissal s.98 Employment Rights Act 1996 (ERA 1996)

Dismissal is admitted by the Respondent. The effective date of termination was 9 October 2023.

1.1. Can the Respondent show the reason for the dismissal?

1.2. If so, was that reason a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held (ERA s98(1)(b))?

1.3. If so was the dismissal fair or unfair, having regard to the following:

a. in all the circumstances (including the size and administrative resources of the Respondent's undertaking) did the Respondent act reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the Claimant; and

b. equity and the substantial merits of the case?

1.4. If the Tribunal finds the dismissal unfair:

1.4.1. Should the tribunal make an order for reinstatement under ERA s114 taking into account:

1.4.1.1. (1) The fact that the Claimant wants to be reinstated and

1.4.1.2. (2) whether it is practicable for the Respondent to comply with an order for reinstatement;

1.4.1.3. (3) whether the Claimant caused or contributed to some extent to the dismissal and if so, whether it would be just to order his reinstatement?

1.4.2. If the Tribunal decides not to make an order for reinstatement should it make an order for re-engagement under ERA s115 and if so on what terms taking into account:

1.4.2.1. Any wish expressed by the Claimant as to the nature of the order to be made;

1.4.2.2. whether it is practicable for the Respondent to comply with an order for re-engagement;

1.4.2.3. whether the Claimant caused or contributed to some extent to the dismissal and if so, whether it would be just to order his re-engagement and (if so) on what terms?

1.4.3. If the Tribunal decides to make an order for re-engagement should the order be made on terms that are, so far as reasonably practicable, as favourable as an order for reinstatement?

1.4.4. If the Tribunal makes no order for re-instatement or re-engagement:

1.4.4.1. What basic award is payable to the Claimant, if any? It is common ground between the parties that in light of the date of the Claimant's dismissal, the maximum basic award would be £2,572 (subject to any deductions on a just and equitable basis pursuant to ERA s122(2));

1.4.4.2. Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

1.4.5. Should the tribunal make a compensatory award to the Claimant and if so, how much should it be? The Tribunal will decide:

1.4.5.1. What financial losses has the dismissal caused the Claimant?

1.4.5.2. Has the Respondent shown that the Claimant has failed to take reasonable steps in mitigation of loss to replace lost earnings?

1.4.5.3. For what period of loss should the Claimant be

compensated?

1.4.5.4. Is there any chance that the Claimant would have been fairly dismissed in any event if a fair procedure had been followed, or for some other reason? (Polkey):

1.4.5.5. If so, should the Claimant's compensation be reduced?

1.4.6. If the Claimant was unfairly dismissed, did he cause or contribute to his dismissal by blameworthy conduct? If so, would it be just and equitable to reduce any compensatory award?

2. Breach of the WTR

2.1. What, if any, was the Claimant's accrued and untaken holiday entitlement at 9 October 2023?

2.2. In calculating that entitlement is the Claimant entitled to carry forward untaken holiday from previous years:

2.2.1. As additional leave under Regulation 13A;

2.2.2. Under Regulation 13(14) to (17); or

2.2.3. In accordance with the Respondent's custom and practice in previous years?

2.3. What amount was the Claimant entitled to be paid, and what amount was paid to the Claimant in respect of holiday pay on termination of his employment?

3. Breach of Contract in respect of Notice Pay

3.1. Was the Respondent in breach of contract in terminating the Claimant's contract of employment because:

3.1.1. They failed to give notice of such termination to the Claimant; or

3.1.2. They failed to make payment in lieu of notice under clause 16.1 of his contract of employment?

3.2. If so, what amount of damages should be paid to the Claimant? Should the Respondent have to pay any more than the sum of £5,033.29 (net after tax) paid to the Claimant on 26 April 2024? The Claimant alleges he should be compensated by:

3.2.1. A month's net pay in the sum of £5,145.32

3.2.2. Employer's monthly pension contribution £471.11

3.2.3. Employer's monthly health contribution £51.42

3.2.4. The value of one-month additional holiday entitlement

The Hearing

4. At the start of the hearing I declared that in my professional capacity as a barrister I had some years previously acted on behalf of the Government as junior counsel in a case brought against Tata Consulting Ltd relating to a computer system it had provided to a government department. I provided details of the litigation and of my historic involvement in it which ended in May 2021. I indicated that having regard to the test for recusal on the grounds of apparent bias set out in Porter v Magil [2002] AC 357 that my provisional view was that a fair minded and informed observer, having considered the facts, would not conclude that there was a real possibility of bias, but I gave the parties an opportunity to consider and to make submissions. In the event neither party suggested that I should not hear the case. I was satisfied that there was no apparent bias.

5. It was agreed in the course of the hearing that it was unlikely that the time allocated would be sufficient for all of the evidence on the issues above to be heard and determined, allowing time for deliberation and an oral judgment on liability and remedy. Accordingly, the tribunal indicated that the best use of tribunal resource would be to hear evidence on liability, Polkey issues and contribution and reinstatement/re-engagement and to deliver a reserved judgment on those issues. A further hearing to determine compensation for unfair dismissal would be listed if necessary.

6. I had before me a hearing bundle of 1379 pages. There was also a (non-agreed) remedies bundle.

7. The respondent provided a skeleton argument, chronology and a bundle of authorities. I had witness statements and heard oral evidence from:

7.1. The claimant on his own behalf;

7.2. For the respondent from:-

8. Ms Rasika Sangra: Ms Sangra was a consultant in the respondent's Employee Relations team. Her role was to advise Human Resources Business Partners (HRBPs) and managers on employment matters. She gave evidence about the circumstances surrounding the claimant's removal from the LBG account on 27 March 2023, and the subsequent processes of investigation of those circumstances, the disciplinary process and the consultation process preceded the claimant's dismissal;

9. Ms Anshoo Kapoor: Ms Kapoor was Head of Talent Engagement in UK

and Ireland within the respondent's Human Resources team. Ms Kapoor gave more detailed evidence about how the RMG redeployment process worked within the respondent, she addressed the claimant's detailed criticisms of the respondent's consultation process and provided evidence about the practicability of reinstatement or re-engagement. Ms Kapoor's evidence was submitted late. Mr Downey opposed it being admitted. I heard submissions from both parties and gave permission for Ms Kapoor's evidence to be admitted late for the reasons I gave orally at the time.

10. I had the benefit of written closing submissions from both counsel, which were supplemented by oral submissions. I have taken both parties' submissions fully into account in reaching my decision.

Findings of Fact

11. I make the following findings of fact on the balance of probabilities and in light of the totality of the witness evidence I have read and heard and the documents to which I was referred. I reference only those matters which I consider most important for my conclusions.

12. The Claimant was employed by the Respondent as a Node JS Tech Lead (Software Developer) from 4 March 2019 to 9 October 2023. The Claimant was employed under the terms of a Contract of Employment dated 19 February 2019 (the "Contract") [p 104-138]. The relevant parts of the Contractual Framework are set out in a separate section of this judgment.

13. The Respondent is large a multinational corporation incorporated in India. It provides IT solutions and consultancy services in the UK and inrternationally. It employs approximately 614,000 employees in 55 countries and has over 20,000 employees based in the UK and Ireland. Its headquarters are in Mumbai, India. Its UK operations are managed through a branch office in London, and smaller operational offices throughout the UK. The Respondent employs technical staff itself and then provides the services of those staff to its clients who are referred to as 'accounts'. It is common for the Respondent's employees to work for different clients during their employment. Employees' general day to day interactions are with the client's IT systems, and with the client's staff and as required with Respondent's managers engaged to oversee the work of that client account and/or project. The Respondent's managers were physically located outside of the UK, in India.

14. In December 2022 the Claimant was assigned to work for Lloyd's Banking Group ("LBG") on their transport account. The claimant worked remotely from his home at all times. He used a laptop issued by LBG for the purposes of his work. Mr Ajay Krishnan Singh (Mr Singh) was the claimant's direct TCS line manager on the Transport project. Mr Siva Bala

was TCS' Delivery Manager for the project. Mr Reynolds and Mr Murrough were LBG employees directly managing the LBG Transport project work for LBG.

15. Mr Suresh Shenoy and Mr Kumud Rana worked for the respondent's information security team. They participated in the respondent's own investigation into LBG's concern about a data breach by the claimant while on the LBG account.

16. Prior to his deployment to the LBG account there had been no issues with the claimant's competence or conduct as an employee of the respondent or with his previous deployments.

17. Ms Sangra explained – and I accept as being consistent with early email exchanges after the request by Mr Reynolds to remove the claimant – that the respondent operated as follows when a client asks for an employee to be removed which was a not uncommon event:

17.1. The client request would be made to the employee's TCS manager(s);

17.2. Where the client's removal request involved a potential HR issue (for example misconduct allegations or capability concerns) the respondent's managers are required to take advice on HR issues;

17.3. HR advice is provided by HR Business Partners ("HRBPs") who are consultants employed by the respondent. There are approximately 18-19 HRBPs.

18. One such HRBP was Talpita Chouhan. She was an India based HRBP on secondment to the UK and working from the Leamington Spa office;

19. Because HRBPs may not be familiar with local (in this case UK) employment law, and because such issues involve an element of wider management of employee /client relations HRBPs are required to report incidents to and take advice from the respondent's UK-based employee relations team. Ms Sangra was one of two employee relations staff and Ms Chouhan was allocated to her.

19.1. The Employee Relations team adviser would, as part of their task, review the client account contract to check that the client had a contractual right to request the removal of a deployed employee, and in appropriate cases challenge whether the client's request fell within the client's contractual rights. The Employee Relations Team Adviser (in this case Ms Sangra) provided general (but not specifically legal) advice to HRBPs (in this case to Talpita Chouhan) about how to handle employee side issues in such cases: for example on what procedures TCS applied to disciplinary matters, to ensure some consistency of

approach across TCS.

20. On 8 March 2023 the claimant, I find, downloaded VPN software onto the laptop he was using for his LBG work, and attempted to change certain proxy settings and then tried to contact a site that co-ordinates cloud services. In doing so he was attempting himself to solve a technical issue on his own initiative. He did not take advice or seek assistance or approval from LBG or TCS technical colleagues or managers before taking these steps. He understood that he should have taken advice or sought assistance from LBG or TCS technical colleagues before taking these steps and that such actions were contrary to LBG's security policies. His activities resulted in a security alert detected by LBG's cyber security team.

21. On 27 March 2023 in the morning LBG's cyber security team reported to Mr Reynolds – LBG's transport platform manager – concerns that the activity by the claimant on 8 March which the team had detected may have been an attempt to sidestep LBG security and send LBG data outside the network. The claimant's laptop was locked remotely. At 13.29 the claimant reported to Mr Kumud Rana [326] that he had been asked to do a Microsoft update but lacked internet access to enable that to be done.

22. Mr Reynolds spoke to the claimant by telephone to ask if the claimant had taken the steps identified by the cyber security team. The claimant admitted that he had taken these steps but said that the reason was that he didn't have the [software] tools necessary to do his job [263]. Mr Reynolds was concerned with that explanation and at 17:31 emailed Mr Singh asking that the claimant be removed from the account because although there did not seem to be malicious intent, he was concerned about the seriousness and potential risks of his actions.

23. A member of the TCS team – Somas Venhantham – contacted Talpita Chouhan on 28 March to advise her of the notification by LBG of a breach by the claimant and asked for advice on next steps. She responded that she would have to handle matter sensitively and asked if anyone had his contact number or a way to connect with the claimant for a formal meeting [294]. Somas Vedhantham provided a mobile number [293]. Ms Chouhan was unable to contact the claimant on that number. Mr Venhantham emailed Ms Chouhan on 29 March to report that he had discussed with the claimant that he needed to hand over his laptop [292]. On 31 March 2023 Mr Venhantham emailed Ms Chouhan to say that the claimant was: 'not cooperating to hand over the laptop and was not picking up my call'. He added "Yesterday we communicated to the associate through one of my team member – Vinoth [Kumar] cc'd. Associate is made aware about the end of his engagement with the LBG project and we conveyed that HR /RMG will contact him further".

24. I find that that the claimant had been told on 30 March that i) his engagement with LBG had ended and ii) he was required to hand over his laptop. But that information was not delivered through fellow team members and not via a formal channel or in writing.

25. Between 27 March and 13 April 2023 Talpita Chouhan made a number of attempts to contact the Claimant by messages sent to his phone number to discuss the cyber security breach and to make arrangements for the Claimant to return his LBG laptop so LBG could conduct a forensic examination, but the Claimant did not respond to any of these communications [337, 265, 286, 287, 301, 298]. Internal emails show Ms Chouhan asking for 'a contact number or a way for me to connect with him for a formal meeting' and being given the claimant's mobile number on 28 March 2023 [293-4]. On the same day [338] she told Mr Shenoy of the respondent's cyber security team not to send any emails to the claimant as she would handle the communications with him.

26. In early April Mr Venhantham passed on to Ms Chouhan that he was coming under grave pressure form LBG to recover the laptop [292] but couldn't contact the claimant. Ms Chouhan advised on 6 April that she could not establish contact with the claimant and the customer should be informed that she was starting the absconding process [291].

27. On 12 April Ms Chouhan emailed the claimant at his @TCS.com email address with an absconding letter (copy to his home address) [298-299]. The letter advised that he had failed to report his first day of absence and that his current absence was regarded as unauthorised and that unauthorised absence could amount to gross misconduct. She said she had been attempting to contact him on his telephone without success. There is no evidence that she sent an email to that email address or a letter to his home address on file before 12 April 2023.

28. The claimant responded on 13 April. He said "I'm not sure what absence you are referring to. My personal phone is unfortunately out of order, but I have been available every day since 30 March and this is the first email I get about it."

29. In the course of his oral evidence the claimant said that he assumed that he was still working for LBG because he had not been told otherwise and was simply not being given any work. As stated above I find that he had been informed informally on 30 March 2023 that he was no longer on the LBG account and that he needed to return his laptop. He took no proactive steps to contact anyone at TCS or LBG to clarify the position.

30. Ms Chouhan invited the claimant to attend a fact-finding meeting.

31. On 20 April 2023 the fact-finding meeting with the claimant was held over Microsoft Teams and was attended by Ms Kumudhavalli Rajavelu and Mr

Suresh Shenoy of the Respondent, in the presence of Talpita Chouhan [346]. All of these individuals were involved in aspects of the internal process of handling the client, the breach and the claimant. The claimant gave his explanation (he did not have the applications to do his job, he did a google search and may have accidentally downloaded a VPN).

32. On 21 April 2023 the claimant's LBG laptop was collected from him – he had declined to return it himself [703, 346]. Before handing the laptop back the laptop had been reset to factory settings. The claimant's position was that, whilst he did not dispute that the laptop had been reset, and that it might have happened as a result of him trying to access the laptop multiple times when i was functionally locked, he had not deliberately performed a reset.

33. On 3 May he was told that LBG were doing a forensic check on the laptop [421]. This took some time.

34. On 24 May 2023 a meeting took place with the claimant to discuss the security breach and his redeployment [421] [418]. This was conducted by Talpita Chouhan [425]. The points discussed in the meeting were confirmed to the Claimant by letter which was sent with an email on 24 May 2023 [423-424].

35. The letter stated that while the client was completing forensic tests on the laptop:"We believe it is best to parallely look for job role for you while the forensics investigation completes thus we have a need to consult with you. If however during the consultation meeting or after a successful redeployment there arises a need for us to invite you for a disciplinary meeting, you will be notified as per the TCS disciplinary policy. The process of looking for alternative deployments within TCS would be started and she explained that the consultation period would end on 23 June and that if no alternative employment could be found by that date, the claimant's employment would 'brought to an end'. She invited the claimant to share his updated CV with her to go to the Resource Management Group ("RMG") and he was directed to make use of the internal "Exciting Opportunities" site which she described as containing a 'live' view of current internal opportunities. He was encouraged to let her or RMG know if any opportunities appeared to him to suit his skills. She assured the claimant that "throughout this process we will keep in constant touch with you for update purposes", and "during the consultation period, TCS will continue to consult with you and will also make every effort to seek ways in which we can minimise the impact of this proposed change".

36. On 24 May 2023 the respondent commenced a consultation period to identify an alternative role for the Claimant. The consultation period was originally fixed for 30 days and was stated to expire on 23 June 2023.

37. On the same day Talpita advised RMG in an email that the claimant was in a consultation period because a redeployment had become necessary for 'SOSR' [427]. She also asked the claimant to share a copy of his CV with the RMG team [426] . Internal emails show that his details were entered and initial processes for finding redeployments began [430-432]. The claimant was contacted by RMG (Ajay Krishnan) and asked to contact them for a call and to share his CV. The claimant responded with his CV and he and RMG arranged to speak for a discussion on 25 May 2023 [434-5].

38. Ms Kapoor gave evidence, which I accept as broadly reliable, about how the RMG redeployment process was intended to work generally, and in particular in the case of an individual being removed from an account:

39. RMG serves a critical bridging function between the talent pool and fulfilment of client needs. Clients may choose TCS to fill a vacancy or a competitor. For that purpose, employee CVs are maintained on a central RMG database.

40. RMG maintains a database of vacancies. Vacancies are added when they arise: the situation was described as 'fast moving'. The vacancy list is refreshed quarterly and stale vacancies removed. When vacancies arise, generally, RMG for TCS would proactively submit CVs which they considered appropriate for the role.

41. The vacancy list includes external (client) opportunities as well as opportunities internal to TCS. It also includes international vacancies. I note that Ms Talpita's letter of 24 May 2023 states that the "Exciting Opportunities" site contains live listings of internal opportuniites;

42. In the particular case of an employee being requested to be removed, the employee would be warned about the need for redeployment when TCS receives notice that a client wanted to remove a worker;

43. The employee is provided with the vacancy spreadsheet which is searchable and can be filtered by the employee;

44. When the employee identifies opportunities in the database that they are interested in, RMG provides the employee with further details of the opportunity so that the employee can adjust their on-file CV to match the opportunity in case they have specific skills/experience or have upskilled;

45. In cases where there is a CV fit for the opportunity, RMG would provide the CV to the client hiring manager for filtering and consideration;

46. Hiring managers are given employee's CV's for consideration and can contact the employee themselves. Employees are not provided with hiring manager's details directly to avoid bias, networking , and

disadvantage to new employees etc and to ensure a transparent and meritocratic process;

47. The Hiring Manager decides which employees to contact and which to allocate the job to;

48. The RMG process is successful in achieving UK redeployments. Ms Kapoor stated it had over 95% success rate.

49. On 26 May 2023 RMG sent that week's vacancy report with the claimant by email with instructions on how to log in to the vacancy system which showed a full list of current and future vacancies. The claimant was asked to go through the list and identify any vacancies of interest. He did so and identified one vacancy on 31 May 2023 [488-9]. I infer that he had also identified another vacancy (the NBS project). Ajay Krishnan G replied on 2 June having followed up on the vacancies identified by the claimant and explained that one had been rejected and the other had been followed up. He encouraged the claimant himself to contact the relevant manager for this vacancy. Ajay Krishnan said he was also checking the TCS interactive unit for opportunities for the claimant.

50. On 31 May 2023 the claimant, somewhat confusingly, received an automatically generated email saying that his allocation to LBG ends on that day [507].

51. On 2 June 2023 Vinayak Pawar contacted the claimant by Teams messaging asking for details of who the claimant's manager was in TCS Interactive. The claimant responded that he had no manager. He complained: "Being at TCS over 4 years now, was part of a unit that was dissolved, then moved over to this unit without any choice or consultation. Nobody has ever introduced themselves as my manager, taken an interest in my career, progression or goals. TCS has proven to be by far the worst employer in my 15 plus year career". He expressed further dissatisfaction with TCS to Mr Parwar, but eventually gave details to Mr Parwar of his role at LBG and skills [511-2].

52. A first consultation meeting took place on 2 June 2023. The discussions were summarised in a letter from Ms Chouhan on 7 June [596].

53. On 6 June 2023 Grahame Reynolds of LBG's project management team informed Mr Shiv-Pratap Singh of the respondent that LBG's security team had been unable to find anything on the laptop or any evidence of wrong doing as the Claimant had performed a factory reset on the device before it was handed back [618-619].

54. On the same day the claimant received a vacancies list of UK based vacancies in the form of an Excel Sheet listing some 2000 vacancies [518]. The vacancies list showed the customer name, primary

compency/proficiency requirements, 'microskill' proficiency requirements, the role title, city location and years of experience required.

55. Also on 6 June the claimant was told, having chased the manager, that the UK Consulting Partner position he had been interested in had been filled and would be removed from Ultimatix. He was also proactively contacted by a Mr Saty Polvarapu on Teams messaging (who had been contacted by Ajay Krishnan G on behalf of the claimant) who said he was recruiting for a project management position.

56. On 7 June 2023 the claimant sent an email to Ajay Krishnan highlighting 4 vacancies from the vacancies database (Credit Suisse x2, HSBC and Deutsche Bank) apparently similar to his experience on LBG and asked Ajay Krishnan to apply for them on his behalf and put the claimant in touch with the recruiters.

57. A Consultation period letter was sent on 7 June summarising the discussion at the first consultation meeting on 2 June and updating the position. Ms Chouhan's letter [596/612] stated amongst other things:

58. That three vacancies had been proposed for the claimant on 25-31 May, and one had been unsuccessful. her update did not mention the HSBC vacancy the claimant had earlier that day identified to Ajay Krishnan as of interest to him.

58.1. The claimant had said that his consultation period should be extended for 3-4 months and he felt TCS might have a job in the coming months and could not terminate his employment until 6 months. The letter stated that TCS was making every effort to find him a role but if that did not succeed he would be dismissed for SOSR (some other substantial reason). "Since customer had requested to remove you from the account due to a potential security breach, this is *not a redundancy situation*, rather it is a customer request of removal of TCS personnel.

59. It stated further that "..regarding the security incident, we are still waiting for the customer to complete the forensics on the laptop. However we decided to parallely look for job role for you, while the forensics investigation is being done. If, however, during the consultation meeting or after a successful redeployment there arises a need for us to invite you for a disciplinary meeting, you will be notified as per the TCS disciplinary policy. You continue to remain under consultation during this time, however we will continue to engage with view and look for ways in which the consultation may be avoided." The claimant was again encouraged to look on the 'Exciting Opportunities' site on Ultimatix.

60. It is clear that the claimant had complained at the 2 June meeting that there was an ulterior motive to the consultation process. The letter responded to this. It said "I would like to clarify further two suggestions

made during the consultation meeting that there is an ulterior motive to the proposed consultation that the justification for the proposal is purely from a strategically business operational perspective and nothing more".

61. A second consultation meeting took place with Ms Chohan alone on 7 June 2023. The discussions at that meeting were also summarised in a letter dated 7 June 2023 sent to the claimant on 13 June [615]. In this letter Ms Chouhan confusingly stated that the claimant 'remain[ed] 'at risk' of a potential redundancy situation". The letter contains standard text which was similar to the body of the letter relating to the first consultation meeting assuring the claimant that the respondent would "continue to consult with the claimant and make every effort to seek ways in which we can minimise the impact of this proposed change".

62. On 8 June a Mr Lokesh Kumar Gupta a hiring manager contacted the claimant by Teams messaging to discuss his profile, which he had been sent by RMG. The claimant engaged actively with him.

63. On 12 June a Mr Paul Jeremi contacted the claimant about another opportunity after the claimant had been put forward by Aman. Again, the claimant engaged actively.

64. By 13 June Ajay Krishnan had put the claimant forward for 10 roles, all but one of which was pending an outcome [607].

65. On 16 June 2023 [618-9] RBG reported back to Suresh Shinoy of TCS, copying in a number of TCS colleagues including Talpita Chouhan, that the RBG security team were unable to find anything on the laptop or any evidence of wrong-doing because the claimant had apparently carried out a factory reset before the laptop was returned. She was later (19 June) asked to upload the statement he had made previously giving his explanation so that the investigation could be closed and the matter sent to HR for further action.

66. On 20 June the claimant emailed Talpita Chouhan. He stated that apart from the Lokesh/NatWest opportunity there had been 'radio silence' from TCS HR over the last two weeks. He complained that three of four opportunities that he had referred to Ajay Krishnan as of interest had not been applied for, and stated "It is becoming clear that TCS HR's strategy is no other than to run down the clock on your arbitrary one month deadline which I contested in our first contact."

67. I understand that Ms Chouhan was absent for about two weeks, either for holiday or medical reasons about this time.

68. Talpita Chouhan checked the RMG position with Ajay Krishnan and he made inquiries about the Lokesh/NatWest opportunity, which had been closed due to NWB management inaction [[701]. Ajay Krishnan shared

the new vacancy list with the claimant on 22 June and mid-morning on 23 June the claimant identified 17 opportunities, with two which he said he was particularly interested in.

69. On about Friday 23 June Ms Chouhan also contacted the claimant to arrange what she described as 'the last day of consultation' meeting [740]. The claimant did not immediately respond. He responded on 26 June explaining that he was dealing with a medical issue, which he evidenced. Further unsuccessful attempts were made to reschedule the consultation meeting for 26 June 2023 and 28 June 2023 [705, 706-707, 715-717, 726-727, 728, 738-739]. On 27 June Ms Chouhan consulted Ms Sangra on the form of an email advising the claimant of his 'final' consultation meeting. In the version which was eventually sent on 27 June 2023 [739] Ms Chouhan criticised the claimant for not communicating reasons for not attending rescheduled meetings, and, whilst acknowledging that he had shown interest in new positions, nothing had materialised and "we as an organisation would not be prepared to extend the consultation period for you as it has been a month that we have been consulting with you. If there is positive feedback for any of the roles you have already applied for we will consider the date of final consultation". She stated that if he did not attend that meeting she 'would have to make a decision in his absence'.

70. At this stage, Ms Sangra explained, she was aware that there had been no contact between Ms Chouhan and the claimant for two weeks, and had been consulted by Ms Chouhan. She gave evidence that she had advised that Ms Chouhan's consultation meetings should be 'put on hold' because of the need to conclude the disciplinary process through an independent manager. Following that advice Ms Chouhan did not undertake any consultation meetings or further activities herself until after the conclusion of the disciplinary process.

71. The claimant emailed Talpita Chouhan on 28 June in reply using, objectively, sarcastic language addressing these attempts to meet. He again complained that the one-month deadline was arbitrary and time should not have started because she had told him that TCS would wait until LBG's forensic team came to a conclusion before trying to find a new client. Ms Chouhan forwarded his email to Rasika Sangra.

72. On 29 June 2023 Talpita Chouhan emailed the claimant saying that she would address his points in his 'final consultation meeting which I am reconsidering following your recent email."[748]. Thereafter Ms Chouhan did not hold any further consultation meetings with the claimant until the 'final' meeting on 9 October 2023.

73. The respondent did not advise or inform the claimant what was happening with the consultation process: whether it was being placed in

suspension during the disciplinary process, whether it had formally ended or on what basis it would resume after any disciplinary process was completed.

74. In effect the disciplinary process now took over.

75. On 30 June 2023 Talpita Chouhan sent the Claimant an email inviting him to attend a disciplinary meeting on 4 July 2023 [775, 776-777]. She had informed Ms Sangra of the outcome of the LBG forensic test the previous day.

76. On 3 July 2023 the Claimant emailed Talpita Chouhan to inform her that he could not attend the disciplinary meeting as he had a doctor's appointment that day and requested that the meeting to take place in person [816] [871].

77. On 4 July the respondent informed the claimant that the disciplinary hearing would be re-scheduled to 10am on 6 July 2023. Avinash Lingam, an HRBP and the designated disciplinary officer explained to the Claimant in an email dated 5 July 2023 [814] that he could not attend the meeting in person in London as he was based in Edinburgh. The Claimant emailed to explain that he had a medical problem on 5 July and failed to attend the disciplinary meeting on 6 July 2023 [812-815]. Later on that day the claimant emailed again to express concern that the process had moved from a fact-finding meeting to a 'disciplinary hearing' [813].

78. On 7 July 2023 Avinash Lingam sent a letter by email to the Claimant inviting him to attend a re-scheduled disciplinary meeting on 11 July 2023 at 10am [812 and 818-819].

79. On 10 July 2023 the claimant informed Mr Lingam that he would not attend a disciplinary hearing that would be heard remotely and said that if the meeting were to occur, it would have to be in person [850]. Mr Lingam responded reminding the claimant him that he (Mr Lingam) lived in Edinburgh and would therefore not be able to attend a meeting in person [864]. The claimant responded insisting on an in-person meeting [864].

80. On the 14th of July 2023 the respondent agreed to an in-person meeting fixed for the 18th of July 2023 [874, 875-876]. Mr Lingam could not attend the in-person meeting and so the disciplinary process was conducted by Mr Gaurav Pradhan.

81. The disciplinary meeting took place in person at the respondent's office on the 18th of July 2023 attended by Gaurav Pradhan, HR Business Partner at the Respondent, and Jude Ashour (who attended as a note taker) and the Claimant. The disciplinary meeting notes are at [916-921].

Mr Pradhan asked the claimant questions about his actions: specifically that the claimant had downloaded a VPN, made unauthorised changes in the proxy system and accessed a website which gave rise to a risk that data could be shared to the cloud and that when the laptop was returned it had been factory reset. The claimant provided his explanations for these actions and complained that no one had spoken to him about them. He was particularly critical of Talpita Chouhan whom he accused of harassing him about the return of the laptop, that she had tried to dismiss him without following due process or evidence. He said Talpita had changed her tactics when he had explained to her that that being asked to leave by a client did not mean he lost his employment with TCS. He threatened to take the respondent to an employment tribunal or the High Court if they terminated his employment and described the respondent as the worst employer of his career. On 21 July 2023 the claimant reviewed the disciplinary meeting notes [1012] and his amendments were accepted.

82. A new vacancy list was circulated on 23 July 2023.

83. A Mr Vikas Jain contacted the claimant via Teams messaging on 26 July about an opportunity [1070] and the claimant engaged positively. In the end the position was confirmed as unsuitable because it was offshore.

84. On 31 July 2023 Mr Pradhan told the claimant that he wanted more time to investigate the disciplinary matter.

85. Another vacancy list was circulated on 3 August 2023 [1077/8] and the claimant told Ajay Krishnan of the 15 most relevant roles for him from that list. Ajay Krishnan acknowledged the list. The claimant was contacted via Teams messaging about another opportunity on 3 August 2023 [1128].

86. On 9 August 2023 Gaurav Pradhan sent a disciplinary outcome letter to the Claimant [1120]. He set out his findings and conclusions on 5 heads of misconduct. He stated that although the claimant's actions had not been established as being malicious, he was concerned that the claimant had not appreciated how his actions led to his removal request and how they affected the reputation of TCS. He found that the claimant had downloaded software and changed settings which the claimant knew was contrary to LBG security policies, and rejected the justification that that was necessary for the claimant's work. He accepted there was no evidence of data loss. He was concerned about the claimant's conduct in resetting the laptop, and sceptical of the claimant's assertion that this might have happened automatically, but found the allegation inconclusive. He concluded that the claimant's defiant response to the client's concerns about breaches brought TCS into disrepute and amounted to a breach of The Respondent's Code of Conduct. The Claimant was given a final written warning for his conduct and was

warned that if he repeated such misconduct, the Company would instigate further formal disciplinary proceedings that could lead to the termination of his employment.

87. On 15 August 2023 the Claimant sent an email to Sanchal Srivastava, Head of Talent Engagement at the Respondent, to appeal the disciplinary outcome [1112-1113]. Mr Mansoor was appointed as the appeal officer.

88. Mr Mansoor made internal inquiries for the purpose of his appeal function with Mr Shiv-Pratap Singh of TCS [1230-1226]. At one point in the correspondence (on 19 September 2023) Mr Mansoor wrote in connection with obtaining information from the RBG forensic investigation that "Unfortunately without these inputs our case is quite inconclusive and hence really seek your intervention in getting us these from the customer".

89. On 7 September 2023 [1175] Ajay Krishnan emailed the claimant to say that the accounts to whom RMG had provided the claimant's CV were "finding it difficult to reach out to you since you are not available on MS Teams and your CV does not have any contact number to reach out". He asked if he could share contact details. The claimant responded: "To be completely frank I do not get the feeling like RMG is putting any effort into connecting me with a suitable client. Regarding client outreach, I unfortunately do not have a corporate mobile phone and, as you could understand, have a strong preference towards written forms of communication. To that end I am available via e-mail and will continue to be reachable and engage with as I have with potential clients on MS Teams. I would like to remark that I am yet to receive the contact details for the hiring managers on any of the roles I've put forward." This exchange was forwarded to Ms Sangra by Ms Chouhan. Ajay Krishnan replied on 8 September [1178] with one direct contact and explaining that there were 3-4 accounts who had been trying to connect with the claimant. The claimant replied by describing the sorts of roles that would suit him.

90. The claimant was directly contacted about another role by an account holder on 15 September 2023 and engaged with that person [1220].

91. On 22 September 2023 the claimant again sent a list of positions of interest from a new vacancy list [1250] and asked for confirmation as to which jobs had been applied for and for direct contact details. Ajay did not provide these.

92. On 25 September 2023 Talipita Chouhan emailed the Claimant regarding a meeting to discuss "next steps in your redeployment'. This was the first communication from Ms Chouhan for about two months about the consultation process.

93. The claimant refused to meet remotely and asked for communications to be by email [1271].

94. An internal email of 26 September discloses that the RMG database showed the claimant as a Product Owner (which he was not) rather than as a Product Lead [1278-9]. He was alerted to the description of him as Product Owner in an email request on 29 September for his CV from a potential vacancy.

95. On 28 September 2023 Talpita Chouhan emailed the claimant stating; "Since [24th of May 2023] we have been trying to redeploy you to other open job roles in TCS UK. The consultation was for one month but due to certain series of events, we had reasonably extended it till date. We have reason to believe that we have extended all our support to help you find a job role. We will therefore extend the consultation to one more week to find a role for you. If you are unable to find a job role within this 1 week we will have no choice but to terminate your employment on grounds of SOSR. Thus last date of your consultation shall be 5 October 2023 [1299]."

96. On 2 October Ms Chouhan asked Ajay Krishnan to send her a summary of the roles the claimant had applied for [1302]. Ajay Krishnan's reply set out a spreadsheet showing all of the jobs for which the claimant had been proposed between 23 May and 11 September 2023. This showed that he had been proposed for a total of 44 vacancies and that all had the status shown as 'rejected'. Amongst these there were several entries for "All UK Accounts" - UK BRM Grp". I understand from Ms Kapoor that these would have been occasions when Mr Ajay Krishnan checked whether there had been any takers for the claimant's CV on file. This explains the comment "No takers till now" and "No takers for this CV". Some comments indicated that that answers or further responses were awaited.

97. On 3 October 2023 the claimant replied to Talpita Chohan [1298]. He raised various issues and concerns including numerous threats of termination, harassment and 2 months of silence from your side. He asserted that after he had pointed out the illegality of the proposed SOSR termination, there was a change of strategy to initiate a disciplinary investigation which he criticised. Sanchal Srivastava (Head of HR Talent Engagement) was copied in.

98. Given that the Claimant had raised various issues, Talpita Chouhan on the same day sought to set up a Teams meeting including the claimant and Mr Srivastava for 5 October 2023. The claimant, having instructed solicitors, refused to attend via Teams [1297-8]. Nevertheless Ms Chouhan sent an invitation for an MS Teams meeting for 6 October 2023 [1289] The Claimant continued to maintain his position on a face-to-face meeting declining a Teams meeting. A face-to-face meeting was

eventually fixed for 9 October 2023 [1295]

99. On 5 October 2023 Mr Mansoor sent his disciplinary Appeal Outcome letter to the claimant [1291]. The Appeal was rejected and the sanction of a Final Written warning was upheld.

100. On 9 October 2023 Ajay Krishnan emailed Ms Chouhan. He said that one of the problems with the claimant's redeployment was "unavailability from associate and response time on vacancy shortlist are late". He provided a spreadsheet showing that whilst the claimant had responded promptly to two vacancy reports in June, he had not responded to any reports in July or August (save for a response on 7 August to a vacancy communicated on 3 August). In September he responded on 22 to a vacancy communicated on 11, and failed to respond to another vacancy on 28 September. Ajay Krishnan said RMG was continuing to share the claimant's CV and profile.

101. An in-person meeting took place in London on 9 October attended by the claimant and Mr Srivastava, TCS' Head of Talent Engagement (UK ,Ireland). Ms Chouhan attended remotely. During the meeting the claimant was told that his termination was due to the respondent's inability to redeploy him.

102. The claimant was effectively dismissed on 9 October 2023 following the in-person meeting. He filed a Subject Access Request on the same day.

103. The termination letter was sent on 11 October 2023. The letter referred back to the 24 May consultation period letter and the indication given in that letter that if redeployment could not be achieved within a month the claimant would be dismissed for 'SOSR'. It stated that the consultation was thereafter 'reasonably extended' but that "no other suitable redeployment opportunities were identified' and so the claimant's employment was terminated with effect from 9 October. The letter advised the claimant of his right to appeal.

104. On 17 October the claimant appealed by an email of that date sent to Ms Sangra [1310]. He emphasised his role, and complained that he had routinely not been put in touch directly with the recruiting managers, that he had not been allocated an active line manager during the consultation period and that RMG had not been making genuine efforts to find either an internal or external client redeployment. In the event Ms Sangra's attentions were elsewhere and she overlooked the appeal and no appeal process was undertaken.

105. On 3 January 2023 the claimant contacted ACAS [16]. He issued his ET1 on 2 March 2024.

The Contractual Framework

106. The claimant was employed by TCS pursuant to contract of employment dated 3 March 2019.[104 and 108]

107. Clause 2.2 provided for the claimant's employment to continue until terminated by one month's prior written notice.

108. Clause 3.6 required the claimant to familiarise himself with client confidentiality and internet and security policies.

109. Clause 3.7 provided: "If there is a reduced need for employees to perform work of a particular kind on a temporary or permanent basis, or any other occurrence which affects normal working, the company shall be entitled to lay you off or impose short time working indefinitely or for such period as the company shall decide. Whilst you are laid off you shall not be required to work and shall have no right to remuneration apart from any statutory guarantee pay in accordance with legislation in force from time to time".

110. Clause 3.9 provided:" it is the company's policy that should your involvement with the project end, for whatever reasons, and you remain an unallocated resource you will be paid your salary in full for one month and shall remain on leave and not be required to perform duties during this. Thereafter the short term layoff rights will be implemented by the company".

111. Clause 9 provided:

> 9.1 You will be entitled to 22 days paid holiday in each holiday year (being the period from the 1st of April to the 31st of March), together with the usual bank and other public holidays. In the respective Holiday years in which the employment commences or terminates, your holiday entitlement will be calculated on a pro rata basis for each complete month of service during the relevant year.
>
> 9.2 Holiday can only be taken with the advance approval of your line manager. In exceptional circumstances and only with the prior written consent of your line manager and HR approvals having been gained, you may carry forward a maximum of five days holiday from 1 holiday year to the next. Any such holiday carried forward cannot be used during any notice. On termination of the employment. You are not entitled to receive any payment in lieu in respect of any unused entitlement of days carried forward.
>
> 9.3 On termination of the employment, the company may either require you to take any unused and accrued holiday entitlement during any notice. By giving you at least one days notice…. or make a payment in

lieu based on your entitlement under clause 9.1 for the holiday year in which your employment terminates…...

112. In relation to Termination :

Clause 16.1 provided"Notwithstanding clause 2.2 the company may in its sole and absolute discretion terminate the employment at any time and with immediate effect by making you a payment in lieu of notice equal to your salary only which you would have been entitled to receive during the notice period (or remainder of the notice period) referred to in clause 2.2….".

Clause 16.3 provided: You will have no right to receive a payment in lieu of notice unless the company has exercised its discretion in clause 16.1 above. Nothing in this clause 16 shall prevent the company from terminating the employment and electing not to make you any payment in lieu of notice." Clause 16.4 provided a right for the respondent to terminate employment with immediate effect and without payment in lieu of notice in cases of gross misconduct.

113. Clause 18 imposed certain obligations on employees after termination and during a period of Gardening Leave. Clause 19 provided for Gardening Leave. Clause 20 imposed various restrictive covenants for 3 months post termination.

114. Clause 21 applied the respondent's Disciplinary and Grievance Procedure in the staff handbook. Clause 21.2 provided "The Company may at any time suspend you in full pay for a period of up to 20 working days, or such longer period as shall be reasonably necessary, for the purposes of investigating any allegation of misconduct or neglect against you."

115. The Employee Handbook and Core Policies and Procedures document [145] provided (so far as I was referred to it by the parties) :-

116. In Clause 2 , a disciplinary procedure. The details of the procedure included in each case, the conduct of an investigation before any Disciplinary Procedure is initiated. The formal disciplinary hearing would be conducted by a different manager, employees would be given reasonable notice of the hearing and advised of the right to be accompanied. The employee will be informed within their disciplinary invite letter of the allegations against them , along with the supporting evidence available. It further provides that a detailed final written warning letter will be issued 'in the case of failure to comply with standards which do not amount to gross misconduct but warrant more than a first or second formal warning to be issued. [157].

116.1. Clause 6 is concerned with Managing Redundancy. Clause 6.3 defines redundancy as: "Potential redundancy situation arises in the

following circumstances:

1) Where TCS has closed/stopped or intends to close/stop:

the business*:where TCS has ceased or intends to cease to carry on the business for the purposes for which the employee was employed or* ***operating from the work location*** *where TCS has ceased or intends to cease to carry on the business in the place where the employee(s) was so employed to.*

2) Where TCS now needs or expects to need fewer employees:

to do a particular kind of work *(the fact that the requirements of that business for employees to carry out work for a particular kind have ceased or diminished or are expected to cease or diminish) or*

to do a particular kind of work at the work location *(the fact that the requirements of that business for the employees to carry out work of a particular kind in the place where the employee was employed by the employee have ceased or diminished or expected to cease or diminish)*

116.2. Clause 6.4 is entitled **Measures to avoid redundancy**. It provided: "TCS is committed to retaining its employees wherever possible and will always seek to minimise redundancies where it can. Measures that may avoid redundancy include

reassignment of roles within the account for instance roles that are presently being performed by expatriates

redeploying individuals to alternative posts outside of the account (see Redeployment Policy)

provision of reasonable training or retraining of individuals for alternative work

other potential options including sabbaticals etc…"

117. Clause 6.6 describes collective and individual consultation. I states that "Consultation with representatives will begin at least 30 days before the first dismissal". In individual cases it provides: "Individual consultation will also take place with each individual who is in a potential 'at risk' of redundancy situation, whatever the number of overall redundancies involved. At these individual consultation meetings, employees may be accompanied at any stage by either another TCS employee or by a suitably qualified trade union representative (if they are a member of a trade union) This will also cover ways of avoiding the redundancy situation and mitigating the effect of the redundancy with particular emphasis on how the redundancy impacts each individual employee".

118. Clause 6.8 - Redundancy Process: provides that "TCS will advise all individuals who are at potential risk of redundancy of the situation and proposals and give them the opportunity to provide comments and feedback. The individuals will also be invited to put forward suggestions to avoid or minimise the potential redundancy situation.

119. Clause 6.9 provides for redundancy payments matching the statutory obligations.

120. Clause 6.12 concerns redeployment. It provides that: "An individual selected for redundancy will continue to be considered for reassignment or redeployment until their dismissal takes effect."

121. Clause 18 deals with **Leaving TCS. I**t sets out a number of familiar and commonplace reasons why employment with TCS might end (resignation, dismissal, redundancy and retirement). The main intrroductory paragraph states, however: "The following sets out the usual reasons why employment with TCS might end. However there may be some circumstances which do not fit clearly into these categories. However, some of the principles outlined will equally apply. Clause 18 point 1.2 'Dismissal' states that the procedure applicable to the reason for dismissal will be followed and that TCS will tell the employee of the reason for dismissal.

122. Clause 18.2.3 'Holiday entitlement' provides "If your employment terminates partway through a leave year, your annual leave entitlement will be assessed on a pro rata basis. Deductions from final salary duty on termination of employment will be made in respect of any annual leave taken in excess of your accrued entitlement. Payment for annual leave entitlement accrued and not taken will be granted when leaving your employment and will be paid subject to the usual deductions for tax and National Insurance."

Payments made in relation to Termination

123. The Respondent paid the claimant £2152 on 27 October 2023 and £2292.88 on 28 November 2023.

124. On 26 April 2024 the respondent paid the claimant the sum of £5033.29. The Respondent says this was 1 month's notice pay under Clause 2.2 of his contract of employment (ie £7660.83 less tax).

Unfair Dismissal

<u>Applicable Law – Unfair Dismissal</u>

125. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996 ('ERA'). Under section 98(1), it is for the

employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

126. The reason for dismissal is 'a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee'. (Abernethy v Mott Hay and Anderson [1974] ICR 323, CA.)

127. Under s98(4) ERA, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

128. The burden lies on the employer to show what the reason or principal reason was, and that it was a potentially fair reason under section 98(2). If the employer fails to show what the reason for dismissal was under section 98, or the reason for dismissal is not a potentially fair reason, the dismissal is unfair.

129. But once the reason has been shown there is no obligation on either party to prove fairness/unfairness. The burden of proof of fairness is neutral.

130. The word "redundant" in section 98(2) is a term of art. Redundancy is defined in section 139 for the purposes of the whole of the Employment Rights Act 1996. The definition centres on an employer that ceases to carry on business altogether or in the place where the employee is employed to work, or where the requirements of the business for numbers of employees have or will cease or diminish. In situations which do not fall within the technical definition (e.g: because there are the same number of employees afterwards as before) employers not infrequently argue that the reason for dismissal is "some other substantial reason" ("SOSR").

131. SOSR is not in itself a reason for dismissal. It is simply a category of potentially fair reasons which do not fall within those specified in the Employment Rights Act.

132. In considering the question of fairness under s 98(4) the key question is whether the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee. This effectively imports a "band of reasonable responses" test. The question is whether the particular respondent acted in a reasonable way given the

reason for dismissal. Dismissal can be a reasonable step even if not dismissing the employee would also have been a reasonable step.

133. In addition I was referred to the following additional authorities by the Respondent.

134. Although this is not a case of dismissal at the behest of a third party, in such cases dismissal would fall with some other substantial reason and be potentially fair (subject to general considerations of fairness under ERA s 98(4)). Scott Packing and Warehousing Co Ltd v Paterson [1978] IRLR 166 EAT) and Grootcon (UK) Ltd v Keld [1984] IRLR 302 at paras 7 and 9 and Wadley v Eager Electrical Ltd [1986] IRLR 93, EAT.

135. In applicable cases tribunals are required to have regard to the contents of The ACAS Code of Practice on Disciplinary and Grievance Procedures (Code No 1) [The ACAS Code]. However, the ACAS Code applies in terms to disciplinary and grievance procedures. It does not apply to dismissals due to redundancy (paragraph 1).

136. The ACAS Code where it applies to disciplinary procedures requires, amongst other things that (i) If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing and this notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence [paragraph 9] and at any disciplinary meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered [paragraph 12]. Employers should provide employees with an opportunity to appeal [paragraphs 26-29].

Analysis and Conclusions – Unfair Dismissal

Issues:

1.2 Can the Respondent show the reason for the dismissal? If so, was that reason a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held (ERA s98(1)(b))?

1.3. If so was the dismissal fair or unfair, having regard to the following:

a. in all the circumstances (including the size and administrative resources of the Respondent's undertaking) did the Respondent act reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the Claimant; and

b. equity and the substantial merits of the case?

137. The parties' positions:

138. The claimant, through Mr Downey, invited me to conclude that the respondent had failed to show that the reason for the dismissal was Some other Substantial Reason.

139. Mr Downey submitted that the respondent's evidence was unsatisfactory. He argued that the respondent has failed to identify what the facts were that were active on Ms Chouhan's mind: a critical shortcoming because the respondent has the obligation of showing that the reason is of a kind that could potentially justify the dismissal. Ms Chouhan did not give oral evidence. I was told she had left but the respondent did not give a fuller explanation of why she had not produced any witness evidence. Ajay Krishnan from RMG also gave no witness evidence about exactly what he did to seek out deployments for the claimant, what the outcomes were, or to speak to the documents disclosed. The explanation that he had gone back to India and had left employment was also not satisfactory. Ms Sangra and Mr Kapoor simply speculated about what Ms Chouhan and Mr Krishnan's words and documents meant and gave evidence about how the system should work and not how it worked in this case. The tribunal was left to speculate about what was in the mind of Ms Chouhan and what Mr Krishnan did.

140. He also criticised Ms Sangra's evidence as unreliable evasive and inconsistent: instead of answering questions she gave an explanation of why something was done. He submitted that her answers about what happened during the consultation period were untrue. In her witness statement [para 16] she said that the consultation period was extended 'a number of times' and both she and Ms Chouhan considered this extension was reasonable. He submitted that there was no internal correspondence supporting the assertion that the consultation period was 'extended'. On the contrary the email actually sent to the claimant on 27 June 2023 [738-9] into which Ms Sangra had some input stated that the respondent was <u>not</u> prepared to extend the consultation period and there were numerous other references by Ms Chouhan that the period had ended. There was no communication to the claimant about any extension. The first reference to extension is on 28 September 2023, and the claimant immediately challenged at the time that there had been an extension. Mr Downey contended that the reason why she gave such evidence was that she did not want to admit that the consultation period in fact ended on 23 June 2023 and thereafter they stopped consulting with the claimant on behalf of the respondent while the claimant carried on liaising with RMG and receiving vacancy lists. What appears from the correspondence is an unknown unclear internal process occurring between RMG and hiring managers – the details of which were not disclosed in the evidence. There is no clarity about why the claimant's CV was rejected for many of the vacancies, there is no proof that Ajay

Krishnan was in fact putting forward applications (the claimant complained expressly about this on 20 June [700] and received a status report which, for example did not include the HSBC vacancy he had identified) but at the same time the claimant himself was being pushed proactively to seek advertised openings.

141. Mr Downey observed that SOSR (ERA s 98(1)(b)) cannot co-exist with any other potentially fair reasons listed under ERA s 98(2). Where, as here, the respondent is saying that the reason is that there was no work for the claimant to do, then the real reason is redundancy (ERA s 98(2)(c)), but the respondent has disavowed that as the reason.

142. Mr Downey referred to the contractual framework. The Employment Contract, he said, made clear that an employee was not assigned to a particular deployment or role, but could work wherever he was allocated. The Contract contained provisions which deal with the position when an employee's involvement in a project ends: paragraph 3.9. He suggested that Ms Sangra was wrong when she gave evidence that her view was the Clause 3.9 applied when a project came to an end. Clause 3.9 applied to the claimant's circumstances and was not in fact implemented by the respondent. The provisions of Clause 3.9 differ substantially from the procedure relied upon by the respondent in this case, which involved a consultation period of 30 days followed by termination if an employee remained unallocated on the grounds of Some Other Substantial Reason. That policy is nowhere set out, was not communicated to employees and was inconsistent with the written employment contract. He submitted therefore that the respondent has not shown that there was in fact a policy underpinning their conduct towards the claimant other than something the respondent implements when it wants to get rid of an employee without making a redundancy payment. The above matters are important considerations also in weighing the reasonableness of the dismissal.

143. He relied upon the nature of the claimant's employment. The overall picture which emerged was of the respondent retaining a pool of skilled technical industry workers whom they place with their customers for reward. The Contract imposes duties of exclusivity, loyalty to the respondent and restrictive covenants precluding employees leaving and setting up alone or working for a competitor. He asserted two consequences. First that the onus and risk of non-deployment is on the respondent, not the employee. If the respondent cannot place the employee it is for them to pay a salary until they do. Secondly, it is not correct to characterise the relationship as akin to a competitive labour market in which the employee has to find work. That is important when considering that employees are not given direct contacts or access to recruiting managers. They are dependent on the system for recruiting managers to contact them.

144. He argued that there was material from which I could conclude that the real reason was not a substantial one that could justify dismissal: i.e it was not that no suitable opportunity was found for the claimant, but rather that there was an arbitrary wish on the part of the respondent to get rid of the claimant by whatever means they could, a strategy which was implemented by Talpita Chouhan. He pointed to matters in support of that contention including in summary:

144.1. The sheer volume of vacancies which did not result in a finding of alternative deployment for the claimant;

144.2. Internal use of language: The internal reaction to the report by LBG of a potential breach by the claimant (which in the event was not found to be an actual breach and not thought to be malicious) referred to 'the unfortunate nature of the situation' and these were repeated expressions of concern and about keeping the client up dated on status. Contrary to Ms Sangra's explanation that this related to the laptop the reality was that concerned also the status of the associate (see email of 21 April 2023 [346] although this was not put to Ms Sangra in cross-examination). The appeal officer was searching for information from Lloyds to 'disprove' what was being said and to prove the claimant had initiated a factory reset of the machine (he referred to there being a 'quite inconclusive' case without that). The only possible reason for seeking an update on his status was that the disciplinary process was pre-determined against the claimant.

144.3. The allegation of absconding: Although not pursued, did not fall out of the frame of consideration and was still relied upon by Ms Chouhan.

144.4. The respondent's conduct and timing around the consultation period: In May 2023 the claimant was in limbo. No steps had been taken to find other work for him. The inference to be drawn is that the real reason is the common-sense reason that the respondent wanted to await the outcome of the disciplinary investigation, because there would be no point relocating the claimant with another client if he were subsequently to be found guilty of gross misconduct meriting dismissal. In most circumstances one would expect this situation to be dealt with by way of a formal suspension. Instead, Ms Chouhan starts a concurrent consultation period on 24 May [423] to which is attached a threat of termination if no alternative allocation is found. Mr Downey submitted that it was no mere coincidence that, after the LBG report was received on 16 June 2023, Ms Chouhan was told by the respondent's Mumbai head office to initiate the internal Disciplinary Process: Ms Chouhan was made principally responsible for managing both the consultation process and the disciplinary process – a clear conflict of interest from which a desire to dismiss the claimant is to be inferred.

145. When the RBG report disclosed no evidence of a cyber breach the claimant was not provided with evidence in the disciplinary process setting out the facts upon which the internal disciplinary sanction was being pursued. When the disciplinary process only resulted in a final written warning, Ms Chouhan switched back to the back-up strategy of removing the claimant by means of the consultation period. A reasonable expectation at that point would be that a one-month consultation period at minimum would begin. Instead, Ms Chouhan notified the claimant that the respondent had been extending the consultation period in the meantime and that now it would be extended only for one further week at the end of which the claimant's employment could be terminated for SOSR, no alternative allocation having been found for the claimant.

146. As regards the legally-separate question whether in all the circumstances the respondent acted reasonably in treating the reason given as a substantial reason justifying dismissal, Mr Downey submitted:

147. The whole process adopted was inherently unfair:

147.1.1. The process placed the onus for finding work on the claimant, rather than primarily on the respondent. At the same time it deprived the claimant of the opportunity to find out himself what roles were available and suitable. Distancing the candidate from the hiring manager and requiring everything to go through RMG creates unfairness because employees cannot control whether applications are made or whether the role is suitable for them. The concern about networking is not reasonable because recruiting managers would be expected to hire the best candidate.

148. The 30-day period adopted was arbitrary. There is no legitimate reason for saying the period has to be 30 days and that it is reasonable to dismiss at the end for SOSR.

149. The disciplinary process should have preceded the start of the consultation period.

150. The evidence of action by the respondent actively to obtain redeployment of the claimant was very thin indeed. There are few results which appear suitable. The claimant was put forward for roles he did not have skills for and not put forward for those he did.

151. The appeal was not actioned. Whilst this may have been oversight it all weighs against a finding of a reasonable decision based on a reasonable process within the range of reasonable responses.

152. For the respondent, Mr Porter submitted, in summa ry, as follows:

152.1. The respondent has demonstrated that the real reason for dismissal was a fair reason and, on the facts, a substantial reason: some other substantial reason within ERA section 98(1)(b).

153. The reason on the mind of Ms Chouhan and the respondent is to be found in the contemporaneous written statements that she made, as embodied in the consultation letter of 24 May 2023 [423] and repeated in the end of period/termination letter of 11 October 2023 [1304]. If no redeployment opportunity could be found for the claimant by the end of the consultation period after efforts to find alternative allocations his employment would be terminated. The claimant had been removed from his deployment at the lawful request of the client – there was no going back on that. That alone could (subject to a test of reasonableness have sufficed as substantial reason for dismissal). But further, no alternative deployment opportunity had been found by 9 October – during which period the claimant had been paid but had been economically inactive - and his employment was terminated for that reason. The reason for his dismissal was substantial and the proper label for such a dismissal is 'some other substantial reason'.

153.1. The claimant was responsible for putting himself in a position in which his LBG engagement was ended at the request of the client: Mr Porter relied on the fact that the claimant did not dispute, in his meeting with Mr Reynolds of LBG that he had downloaded VPN and other software tools, and accepted that was the case in the meeting with Suresh Sinoy on 20 April 2023 [346]. Although he argued this was justified for his work needs it was nevertheless a breach of LBG policies. There was also concern on the respondent's part about the claimant's action in resetting the laptop to factory settings.

154. As regards credibility and evidence, the respondent's witnesses accepted that they did not have first-hand knowledge of events but the best source of evidence of what was in Ms Chouhan's mind is to be found in the contemporaneous written evidence.

155. Mr Porter disputed the characterisation of the dismissal as redundancy. The circumstances did not fall within the definition of redundancy within ERA s 139. He argued that even if it was a redundancy situation, redundancy would be a potentially fair reason and thereafter – applying the neutral burden of proof - a redundancy situation would engage the same steps regarding the search for alternative roles as were in fact undertaken. The measures described to avoid redundancy are set out in paragraph 6.4 of the Contract and these were followed, so whatever label is used, the dismissal was fair.

155.1. In relation to Clause 3.9 and the process which the respondent adopted, he pointed out that the consequence of adopting the process

set out in clause 3.9 would mean that the claimant could have been laid off indefinitely without pay, and so the approach taken by the respondent was beneficial to the claimant: he was paid salary from 27 March 2023 to 9 October 2023.

155.2. The claimant's counter theory of a settled intention to dismiss is not credible, and the claimant was unable to identify in cross-examination why people within the respondent's organisation would all be acting in concert against him. The claimant accepted that he had had no previous dealings with Ms Chouhan, Mr Pradhan or Mr Mansoor. He described as an 'epic failure' a pre-determined scheme to dismiss the claimant which resulted in a disciplinary process that determined that non-dismissal (a Final Written Warning) was the appropriate sanction for the claimant's conduct and the fact that the claimant's refusal to attend remote disciplinary meetings resulted in a late stage change of disciplinary officer to Mr Pradhan – again militating against an inference of pre-determination. He submitted that the claimant's 'bizarre' non-contact during the respondent's attempts to contact the claimant through previously effective channels to recover the laptop amply justified Ms Chouhan's activation of the absconding procedure.

155.3. As regards the disciplinary appeal by Mr Mansoor, there was no suggestion that the original decision not to dismiss would be upgraded.

156. As regards the consultation process and the manner in which it was conducted, Mr Porter submitted as follows: it was clear there was no going back on LBG's decision to remove the claimant, so the focus of the consultation process was to be on exploring alternative roles to return the claimant to being an economically active employee. There was a specific department – the RMG – which was wholly dedicated to placing employees in new roles. It was reasonable for RMG to filter applicants' CVs before submitting them for roles for the reasons explained by Ms Kapoor (avoiding influence/networking and promoting transparency and a merits-based outcome). There was a mass of contemporaneous evidence to show that Ajay Krishnan had put forward the claimant's CV for roles, that the claimant had been contacted by a number of recruiting managers interested in hiring him, and that the claimant had put forward suggestions of his own that were progressed. By contrast there was evidence of a lack of responsiveness on the claimant's part and a 'bloody-minded' failure by him to facilitate prompt contacts and replies [1070] [1138] 1220] and his insistence on being contracted by email at a time when the claimant's only task was to be involved in the process. Ajay Krishnan commented on this internally on 9 October [1300]. The claimant's passivity echoed his failure to contact the respondent during 27 March to 13 April about the laptop.

156.1. Mr Porter accepted that the claimant's appeal against his

dismissal was not progressed but pointed out that Ms Kapoor's evidence was not challenged that this was a genuine oversight.

156.2. He submitted that this was not a conduct or capability dismissal, and so the ACAS guidelines have no application for the purposes of considering any uplift. The same is true even if the dismissal were a redundancy case in relation to the overlooked appeal.

157. In the event the claimant was afforded the generous benefit of 6 months of redeployment attempts (more than the 3-4 months he had initially argued on 7 June 2023 would be fair) and was put forward for consideration for 44 roles in that time. Extending the period in this way was conduct within the range of reasonable responses, and the decision to end that process, during which the claimant had been receiving full salary but was not economically active, also fell within the range of reasonable responses.

Analysis and Conclusions – Unfair dismissal

158. The burden of showing the real reason for dismissal and that that was a substantial reason is on the Respondent. The reason for dismissal is the set of facts known to the respondent at the time of the dismissal which caused it to dismiss the claimant, and the tribunal must endeavour to look into the mind of the decision maker to ascertain the reason.

159. The immediate decision maker in relation to the claimant's dismissal was Talpita Chouhan following discussion with Ms Sangra. The fact that Ms Chouhan did not give evidence is not fatal to the respondent's ability to prove the real reason for dismissal, although the lack of direct evidence requires me to look with particular care at the contemporaneous correspondence as the best evidence from which to infer the facts and causative considerations in her mind,, especially so in cases where some other substantial reason is relied upon as the reason for dismissal.

160. I find that on the balance of probabilities the respondent has discharged the burden of proving that the reason for the claimant's dismissal was for some other reason than redundancy or conduct. Ms Chouhan stated in her 24 May 2023 letter, and I infer from that that she considered that she was required to and had initiated, in parallel with an internal disciplinary process, an individual consultation process intended to last for 1 month to redeploy the claimant following RBG's conduct related request for the claimant to be removed from the account. By 9 October she believed that attempts on the part of RMG to find redeployment had not succeeded. Having warned the claimant on 24 May 2023 that his employment could be terminated for some other substantial reason if an alternative allocation could not be found through the consultation process, I find that she believed she was dismissing the claimant for that reason. This conclusion is consistent with the reasons

for dismissal stated in the initial consultation warning and consultation letters to the claimant and in the termination letter. It is consistent also with her internal record of the reason for referring the claimant to the RMG. Ms Sangra's evidence was also that she considered that the dismissal by Ms Chouhan was for some other substantial reason.

161. I find that she considered that that would be a dismissal for some other substantial reason, and not a redundancy dismissal. In her letter of 7 June 2023 following the second consultation meeting [596] she expressly distinguished the claimant's situation from a redundancy situation, as I infer she saw it, because "the customer had requested to remove you from the account due to a potential security breach). I note that in her 13 June summary letter to the claimant Ms Chouhan referred to a redundancy situation, directly contrary to her clearly asserted position in her previous letter. However, I take the view that this was a 'cut and paste' error because the 'consultation' process being followed in the claimant's case was, in practice, following similar steps to a true redundancy procedure as envisaged in the Employee Handbook and I infer Ms Chouhan was using and amending standard paragraph redundancy letters. Mr Downey in his cross-examination of Ms Sangra and also in submissions argued that this was in fact a redundancy dismissal. I find that on the evidence and my findings that was not in fact how Ms Sangra or Ms Chouhan understood the position. I am satisfied that their position was not so evidently wrong or contrary to the contractual landscape that the contrary conclusion advocated for by Mr Downey should outweigh the inferences I draw from the contemporaneous records and the evidence before me. In drawing this inference from Ms Chouhan's contemporaneous documented explanation it is in my judgment significant that i) the employee handbook recognises that there might be other reasons for termination of employment that do not fit into the listed categories, and that in those anomalous circumstances 'some of the principles equally apply' and ii) that Ms Sangra's oral evidence (from whom Ms Chouhan was required organisationally to take advice) was also that once it had been established that a client had lawfully requested the removal of an employee from their account under the terms of the client contract, the respondent undertook efforts to redeploy them and (only) if that exercise proved unsuccessful, would the employee be dismissed for Some Other Substantial Reason.

162. Ms Sangra and Ms Kapoor both explained that a procedure existed for finding redeployment opportunities in the circumstances in which the claimant found himself. I comment below in relation to the fairness of the process adopted in the claimant's particular case, but it seems to me, adopting a realistic and wholistic view of the evidence before me that in essence the respondent had a clear set of procedures set out in clause 6 of the Employee Handbook which it adopted in the

case of collective redundancy, including where a project comes to an end and employees are placed at risk because the respondent's need for their particular skills, or for those skills in a particular location diminish (it is easy to see why the end of a long-term major client project might have that consequence). The contractual definition broadly reflects the position under statute. The Employee Handbook then goes on to describe the notification, consultation and engagement process in some detail. I consider that the situation facing the claimant would not, or was reasonably not understood by Ms Chouhan to have fallen within that definition. The claimant had been removed at the account's request. There was no suggestion or evidence that his skills on that account were no longer required. It is also not, in my judgment, a legitimate inference to draw from the mere fact that the claimant was not in fact successfully redeployed that the need for his skills had diminished or disappeared. Other applicants might simply have been preferred. Ms Sangra gave evidence that the process in SOSR dismissals was in practice the same as for redundancy dismissals. The differences being that redundancy dismissals involve a right to redundancy payment whereas SOSR dismissals (where the client rather than the respondent removes the employee) entail no right to such a payment, and in SOSR cases HRBPs can do the meetings themselves, they do not require an announcement of changes and potential proposals and do not give a right to the employee to be accompanied. The specified minimum consultation period in small redundancy cases is expressed to be 30 days.

163. For the reasons identified by Mr Downey in his submissions set out above, I also found Ms Sangra's oral evidence somewhat unreliable on certain points – the example of the agreed extension of the consultation period being the clearest – and whilst she had some involvement with the process, she was less sure-footed when answering about what did happen rather than what would have happened. Nevertheless, I found her account of the process of distinguishing SOSR from redundancy and of the resulting procedure adopted persuasive.

164. I have also taken into account in reaching my conclusion on the reason for dismissal in the mind of Ms Chouhan (and which also fall into consideration when considering the fairness question below) that the contractual picture is, on the evidence, by no means clear:-

164.1. The claimant's employment contract provides (Clauses 3.7 and in particular Clause 3.9) on the face of it a specific policy for the claimant's circumstances: namely "should your involvement with a project end, for whatever reasons, and you remain an unallocated resource you will be paid your salary for one full month and shall remain on leave and not be required to perform duties during this period. Thereafter the short term lay-off rights will be implemented by the company". But neither Ms Chouhan nor Ms Sangra referred to, and I infer relied upon, this specific

procedure. Ms Sangra was unable to explain why these provisions were not put into effect. It is clear they were not and appear not to have been considered. Similarly, there seems to have been no consideration of whether to exercise the contractual right to suspend the claimant pending the outcome of a disciplinary investigation which, by the time the 24 May 2023 letter was sent, was at the very least in prospect.

164.2. Ms Sangra was unable to identify any contractual (or Employee Handbook) provision which sets out the procedure of a maximum 30-day consultation procedure when an employee is removed from an account at the request of the client. Her unconvincing answer in cross-examination was that HR decide if the case is a redundancy or SOSR case and 'we just follow ACAS'. Ms Kapoor gave a slightly different account. She said that the 30-day period and the process is laid out in an SOP [Standard Operating Procedure] where all HRBPs follow the process. There was no copy of the Standard Operating Procedure in evidence. Moreover, the Employee Handbook in Clause 6 makes reference to a Redeployment Policy. No such policy was in evidence. There was no evidence that any document was provided to the claimant to explain the process or the roles of RMG and himself in it, although the 24 May letter records that oral explanations were given by Ajay Krishnan.

165. Notwithstanding that these are powerful considerations, and they suggest a measure of poor understanding and/or internal co-ordination they do not displace, in my judgment, the correct inference that both Ms Sangra and Ms Chouhan believed that the claimant had been removed at client request and, after a 'redundancy-like' consultation period involving RMG in excess of 1 month, the claimant had not been re-deployed and thus they considered that the claimant was (fairly) dismissed for this 'other' substantial reason.

166. Furthermore, notwithstanding these contractual points and Mr Downey's other compelling submissions, I was not persuaded by his argument that the respondent had failed to discharge its initial burden of proof on the grounds that I should find that the proper or preferable conclusion on the evidence was that the procedure adopted was in effect a convenient fig-leaf to disguise a settled intention to dismiss an employee the respondent did not want to keep on. Under cross-examination the claimant's reason for his concluding that there was predetermination of his dismissal was that in the disciplinary procedure he was not given the evidence that he should have been. This was insufficient to support the inference he sought to invite me to draw. Further, there was a significant number of individuals in different departments and functions who each, in my judgment, were doing what they thought was required of them. The claimant could not explain why such a cohort, most of whom had had no prior knowledge of him and in

the case of the disciplinary officer was a last-minute replacement because the claimant insisted on an in-person meeting, would conspire together in that way.

167. Furthermore, and weighing against the conclusion of a settled intention to dismiss;

167.1. I have set out above Mr Downey's submissions in relation to the use of internal language. Without descending into excessive detail I considered that the language used did not support the inferences he sought to invite: Mr Mansoor's search for information to support a 'quite inconclusive' conclusion about the factory reset was evidence, in my judgment, of an independent appeal officer doing his job diligently.

167.2. The argument that Ms Chouhan was in charge of both disciplinary proceedings and the consultation process and therefore represented a conflict of interest is a bootstraps argument. Whilst I find that it is likely that Ms Chouhan found the claimant rude and challenging to deal with (the tone of his emails was at times sarcastic and critical) and it is also likely, in my judgment, that she thought it likely that the claimant might well be disciplined for his conduct in relation to the laptop and what she likely perceived as his unexplained failure to engage with her attempts to contact him. Nevertheless, the disciplinary decisions were taken by independent managers not by Ms Chouhan. I am not persuaded that the evidence invites a conclusion that she was acting in bad faith, or on the direction from Head Office to get rid of the claimant by one means or another. It was unclear how long the client would take to produce its report and by the time it had done so and the order from Mumbai to initiate internal disciplinary actions came though, Ms Chouhan had already initiated the 'consultation' process. Mr Downey's implications of a strategy to remove the claimant in those circumstances implies a degree of foresight which is not justified on the facts.

167.3. Certain submissions were more persuasive: for example the argument that there had been delay in starting to find work for the claimant before May 2023 for the common-sense reason that the respondent wanted to await the outcome of the disciplinary investigation first, because there would be no point relocating the claimant with another client if he were subsequently to be found guilty of gross misconduct meriting dismissal, and that this situation would normally be dealt with by way of a formal suspension. But overall, these were not sufficient to persuade me of the overall merits of the 'pre-determination' argument.

168. Finally, in relation to the separate question of whether the reason for dismissal was a substantial reason, I am satisfied that was. In short, the circumstances before Ms Chouhan were that unless an alternative

redeployment could be found for the claimant, the respondent would continue to bear the salary and other costs of employing an employee who, on this hypothesis, the respondent had been unable to allocate after a reasonable period of time and effort using the dedicated resource of RMG to do so.

169. Turning next to the overall reasonableness of the decision to treat the reason as a sufficient reason to dismiss the claimant, having regard to all the circumstances, including the size and resources of the respondent and to the substantial merits of the case.

170. Mr Porter' submitted that the decision to extend the consultation period and the consequence that the claimant was afforded a generous benefit of 6 months of redeployment attempts during which he was put forward for consideration for 44 roles demonstrated that the decision to dismiss at the end of that period fell within the range of reasonable responses. I accept that it is likely that that is how Ms Chouhan regarded the situation on 9 October.

171. However, in my judgment her decision to dismiss the claimant on 9 October 2023 was in all the circumstances not reasonable, that is to say that, in my judgment, it fell outside the range of reasonable responses of the respondent.

172. My reasons are as follows.

173. The respondent's evidence in the hearing was that the process adopted in this case was, save for the specific points mentioned above, the same procedure as would be adopted in a redundancy situation. However, the redundancy policy set out in the Employee Handbook identified various matters that may avoid redundancy including redeploying individuals to alternative posts (referencing a Redeployment Policy that wasnot in evidence), the provision of reasonable training or retraining, and other options such as sabbaticals. Ms Chohan's letter of 24 May 2023 referred the end of employment "subject to no other suitable alternative options being found to avoid the same". At the 1st consultation meeting on 2 June, as recorded in the letter of 7 June 2023 Ms Chohan again stated that 'we are making every attempt to make sure we do not reach that situation however b) if we are unable to find a role for you or you are unsuccessful with your job application, then we will have to terminate your employment..". Despite the indication in the redundancy procedure, and Ms Chouhan's assurances about every effort being made, there was no evidence that any alternatives other than redeployment through RMG were raised or discussed with the claimant or considered by Ms Chouhan or Ms Sangra at any time. Had they been it is possible that the claimant may have avoided dismissal on 9 October or at all. The claimant had identified in his witness statement the

possibility of his performing contractor roles.

174. Ms Sangra sought to persuade me that the consultation period initially imposed by Ms Chouhan of 30 days was in fact extended during the disciplinary procedure. Whilst it is the case that RMG and Ajay Krishnan continued to send vacancy lists to the claimant, and Ms Kapoor maintained that the period had been extended because the claimant was still on the list for redeployment and could have asked for vacancy lists to be sent to him, I do not accept that the formal consultation process was extended during the hiatus while the disciplinary process was proceeding to a conclusion, and I find that the claimant was never told that it was:

175. On 24 May 2023 in her first consultation letter Ms Chouhan described the consultation period as 'ending no later than on 23 June 2023".

176. At the 2 June/7 June 2023 first consultation meeting, Ms Chohan was present as well as Ajay Krishnan. In the 7 June letter Ms Chohan stated "we will keep in constant touch with you for update purposes…let me assure you that during the consultation period TCS will continue to consult with you and will also make every effort to seek ways in which we can minimise the impact of this proposed change."

177. At the seconf meeting only Ms Chouhan was present. The claimant had had to ask for Ms Chouhan's help because he had not heard the results of any job applications that had been pursued and Ms Chouhan provided that information and repeated the same language as in the letter relating to the first consultation meeting. In her follow up letter she provided updates after a conversation with Ajay Krishnan.

178. When 23 June 2023 arrived, Ms Chouhan reiterated that the consultation period had ended or would end as soon as the rescheduled final consultation meeting was concluded which she clearly indicated was imminent and decisions taken in the claimant's absence if he didn't attend.

179. The claimant then became engaged in communications with Ms Chouhan and then other managers about disciplinary matters.

180. No explanation was given to the claimant about the status of the consultation process or when and how, and on what basis it would resume. It was unclear to him, I find, what obligations or conduct was to be expected of him, and what support he should expect from the respondent's HR team after about the end of June. He was left in limbo.

181. I consider that having regard both to the language of the Handbook and Ms Chouhan's letters, and the fact that on at least one occasion the claimant had to seek Ms Chouhan's help with RMG that the

consultation process envisaged a degree of direct involvement and management of the process by HR. Merely continuing to have the claimant's name on the list of available employees and RMG passing on his name to suitable or identified opportunities was not in and of itself an extension of the consultation process. The redeployment possibilities were continuing to be explored, but the consultation process was not.

182. The redeployment process itself was not, at least not in the evidence before me, clearly explained. In particular, I was not shown, and there is no evidence that the claimant was shown, the Redeployment Policy document referred to in the Handbook in the specific context of the procedure which the respondent's witness said was being followed in the claimant's case.

183. I reject Mr Downey's submission that that the process was inherently unfair because the claimant himself was expected to at least to some extent participate actively and even proactively to obtain employment/redeployment. I reject also the related submission that the process was unfair because the redeployment process involved (as I find that it did) RMG effectively acting as a 'gatekeeper' between the claimant and hiring managers. I was satisfied that such a practice was not inherently unfair (either in principle or in the claimant's particular case): that the respondent demonstrated good objective reasons for that aspect of the redeployment process and there was no evidence that the process was applied any differently to the claimant than it would have been to any other employee in a similar situation. However, I do consider that to the extent that the claimant was expected to act proactively in support of the RMG process, the range of reasonable responses required that those expectations should first have been clearly explained to him. Although I find it likely that Ajay Krishnan would have explained the process in general terms at the first consultation meeting, there was no evidence that the information given to the claimant about it was sufficient, comprehensive or clear as regards the conduct and actions expected of him, or what steps he could expect the that respondent would undertake through RMG, for example periodic reporting on progress. The failure by Ms Chouhan/HR to explain the change to the consultation process and the lack of active engagement by HR between July and September 2023 exacerbated, in my judgment, the shortcomings in the information provided to the claimant.

184. A specific aspect of the inadequate provision of information about what was expected of the claimant in relation to the redeployment process is illustrated by the fact that Ajay Krishnan was critical of the claimant for not responding quickly enough to vacancies that were flagged for him. Mr Porter criticised the claimant's insistence on using MS Teams and email only, and there is force in that submission. However, Ms Kapoor described the vacancy landscape as a fast moving one. There

is no evidence that it was explained to the claimant that specific actions, ways of communicating or response times were expected by RMG or hiring managers at any time before 7 September when the claimant was first alerted to difficulties expressed by hiring managers in contacting the claimant by Ajay Krishnan. There was at least one potential hiring manager who observed that the claimant was not on Teams [1007/8]. Notwithstanding that fairness required the provision of information or direction to be given to the claimant, I nevertheless consider that he was manifesting at least in relation to some opportunities and contact attempts a lack of urgency and a degree of passivity (taking a week, or days to reply to a contacts on at least two occasions which he was unable to explain, and not providing a contact number for a hiring manager when that had been asked for on the basis that they could contact him in some other way). He also insisted on contact through MS Teams or email, but when challenged why he had not responded to an MS Teams contact from a hiring manager, he alluded to the fact that he could not readily access Teams because he had a Mac computer, and responded that they could contact him by email.

185. I reject Mr Downey's submission that I should infer that the redeployment process was unfair because given the claimant's skills and the sheer number of vacancies, it must be the case that the process was not undertaken fairly or in good faith. There may be any number of reasons why the claimant was unsuccessful: better or better specific qualifications from other applicants, the claimant's relatively slow response times etc. I am also unpersuaded by Mr Downey's submission that there was no evidence that RMG made efforts to redeploy the claimant. Although there was no direct evidence of internal emails and referrals, there was evidence of hiring managers on a number of occasions actively seeking to contact the claimant to discuss opportunities for redeployment within their teams. There were also contemporaneous emails from Ajay Krishnan to Ms Chouhan listing applications that had been made and outcomes. Again, the detail was thin but I am satisfied that the contemporaneous material demonstrates real and genuine efforts to redeploy the claimant. On the other hand the claimant made some telling criticisms of the evidence of efforts to place him. For example: there were a number of instances [see the claimant's witness statement at para 89] where the claimant had identified potential vacancies but was not provided with information about when they were applied for or what the result was (an example was the HSBC vacancy). Ms Kapoor speculated that that may have been because by the time he had expressed interest the vacancy had ceased to exist. But that was speculation and does not explain why that information was not given at the time. A number of the vacancies which appeared on the final schedule of jobs for which the claimant had been recorded as 'rejected' in fact indicated that some further response was awaited, rather than that the claimant had been rejected for the

opportunity. The reality may have been that he had been rejected, but that is not what appeared on the face of the documentation. This conduct is not consistent with the promise in Ms Chouhan's conusultation meeting letters to 'keep in constant touch' with the claimant 'for update purposes'. There is no evidence whether Ms Chouhan checked the position or sought clarification about the apparent inconsistent column entries. Further, there was evidence before me which suggests that the failure to place the claimant may have been a consequence of a data error in the claimant's RMG record. In particular, I find that the claimant's RMG record had referred to him as a product 'owner' rather than a product 'lead'. Although there was no expert advice about this, the claimant maintained, and I accept, that there was a difference between those roles. He was contacted for and rejected for two opportunities [1128;1178] for Product Owner.

186. The failure of the respondent to action the claimant's appeal is also a separate and cumulative aspect of procedural unfairness. In the claimant's appeal notice against his dismissal he had emphasised that he was a product lead (in bold). Had there been an effective appeal hearing it is possible that the recording of the claimant as a product owner might have been recognised and the decision to dismiss reviewed or delayed. Relying on the decision to dismiss without consideration of the matters raised by the claimant in his notice, including that the RMG had not made real efforts to find him redeployment also results, I find in this respect also the respondent has failed to satisfy me, applying the neutral burden of proof, that the redeployment process and the decision to dismiss for its failure was fair. I so find in all the circumstances notwithstanding that, as Mr Porter correctly submitted, the ACAS code of Conduct did not formally apply, especially given that Ms Sangra's evidence was that the process adopted by the respondent in this case involved 'following ACAS'.

187. Finally, the original decision by Ms Chouhan to conduct a consultation exercise in parallel with a disciplinary procedure was, in its implementation, unfair. It is not clear why suspension pending investigation, which was specifically provided for as a mechanism in the Employee Handbook and might typically be deployed by employers in such circumstances, was not considered, or if considered, not adopted. Even assuming in favour of the respondent that initiating a consultation period in the circumstances was both open to the respondent and a reasonable course of action, the procedural information about it given to the claimant was confusing and incomplete. He was not advised until the disciplinary procedure had been completed how the consultation process would be concluded. In the end he was allowed a further week. This appears to me to have been an arbitrary period decided upon by Ms Chouhan. There was no contractual or other basis for it shown to the claimant (or to me). It was not suggested that it was covered by a

standard operating procedure internally, indeed the wording of the 24 May letter ("we have decided…") somewhat suggests that the decision in the circumstances was a departure from any established practice. The inference I draw is that Ms Chouhan assumed that having already used up the 'month' consultation period which she regarded as the minimum requirement, any further period was simply a bonus for the claimant. But she never explained to the claimant that the consultation period was being extended between July and September, or for how long. And when it ended there is no evidence that she took into consideration whether the disciplinary process required a reconsideration or reset of the consultation period to ensure fairness to the claimant, given (i) Ms Kapoor's description of the landscape as being 'fast-moving', (ii) the (as it appears to me) unusual decision to consult alongside an anticipated disciplinary procedure and (iii) the lack of HR engagement in the process during July and September and the length of time taken to conclude. Given these apparently atypical or novel factors a reasonable employer would, in my judgment, have carried out such a review to determine what length a reasonable consultation period should be.

188. Accordingly, and for the reasons set out above I find that the claimant's claim that he was unfairly dismissed is well-founded.

Re-instatement/Re-engagement – Unfair dismissal

189. Issues:

1.4.1. Should the tribunal make an order for reinstatement under ERA s114 taking into account:
1.4.1.1. (1) The fact that the Claimant wants to be reinstated and
1.4.1.2. (2) whether it is practicable for the Respondent to comply with an order for reinstatement;
1.4.1.3. (3) whether the Claimant caused or contributed to some extent to the dismissal and if so, whether it would be just to order his reinstatement?
1.4.2. If the Tribunal decides not to make an order for reinstatement should it make an order for re-engagement under ERA s115 and if so on what terms taking into account:
1.4.2.1. Any wish expressed by the Claimant as to the nature of the order to be made;
1.4.2.2. whether it is practicable for the Respondent to comply with an order for re-engagement;
1.4.2.3. whether the Claimant caused or contributed to some extent to the dismissal and if so, whether it would be just to order his re-engagement and (if so) on what terms?
1.4.3. If the Tribunal decides to make an order for re-engagement should the order be made on terms that are, so far as reasonably practicable, as favourable as an order for reinstatement?

Applicable Law - Re-instatement/Re-engagement

190. Section 112 of the Employment Rights Act 1998 provides that where a complaint of unfair dismissal is well-founded, if the claimant has expressed a wish to be reinstated or reemployed the tribunal may make such an order under sections 113, 114 (reinstatement) or 115 (reengagement). If no such order is made the tribunal shall make an order for compensation under section 118 to 126.

191. Section 116 (choice of order and its terms) provides relevantly:

(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
(a) whether the complainant wishes to be reinstated,
(b) whether it is practicable for the employer to comply with an order for reinstatement, and
(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
(3) In so doing the tribunal shall take into account—
(a) any wish expressed by the complainant as to the nature of the order to be made,
(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—
(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he

wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

192. An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed: Section 114 (1) of the Employment Rights Act 1996. This involves re-employing the employee on the same terms of employment with no loss of pay, pension rights or continuity of employment, and with the benefit of any pay rises or other improvements that they would have enjoyed if they had not been dismissed (section 114(3), ERA 1996).

193. If the tribunal decides that it is not appropriate to order reinstatement, it must consider whether to make a re-engagement order and on what terms (section 116(2), ERA 1996). An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment: Section 115(1). Except in cases where there is contributory fault by the employee, the re-engagement order must be on terms which are, so far as reasonably practicable, as favourable as reinstatement (section 116(4)). On making a re-engagement order, the tribunal must specify the terms on which the re-engagement is to take place. If a tribunal decides reinstatement is not practicable, it can still order re-engagement: Hazel and another v The Manchester College [2014] EWCA Civ 72.

194. A tribunal is only required to take into account contributory fault when determining whether it is just to order re-engagement if, and only if, it has been established that the claimant caused or contributed to the dismissal (paragraph 52). Where no finding of contributory fault has been made at the liability stage, and it is not a point taken by either party, it is not for a tribunal to take on an inquisitorial role to determine whether there has been contributory conduct which it would be required to take into account in deciding whether to make a re-engagement order: British Council v Sellers [2025] EAT 1 (paragraph 53).

195. I was referred to the following further authorities and propositions or law and principle.

196. In connection with reinstatement:

197. The meaning of practicability: "The standard must not be set too high. The employer cannot be expected to explore every possible avenue which ingenuity might suggest. The employer does not have to show that

reinstatement or re-engagement was impossible. It is a matter of what is practicable in the circumstances of the employer's business at the relevant time'.' Port of London Authority v Payne [1994] IRLR 9. Practicable in this context means more than merely possible but "capable of being carried into effect with success": Coleman and Anor v Magnet Joinery Ltd [1975] ICR 46 at p 52.

198. The test for contributory fault under this subsection (which may act as a defence to an order for reinstatement or re-engagement) is the same as the test for contributory fault under s 123(6): Boots Co plc v Lees-Collier [1986] IRLR 485, [1986] ICR 728, EAT: cf Nelson v BBC (No 2) (CA) [1980] ICR 110, 121 F-G.

199. In connection with reengagement:

200. “Re-engagement is not to be used as a means of imposing a duty to search for and find a generally suitable place within the ranks for a dismissed employee irrespective of actual vacancies. An employer does not necessarily have a duty to create a space for a dismissed employee to be re-engaged. There is no statutory presumption that an employer is required to displace or bump an existing employee. Lincolnshire County Council v Lupton UKEAT/0328/15 (19 February 2016, unreported) (Simler P presiding).

201. In connection with either type of order, a relevant consideration is whether there has been an irretrievable breakdown in trust and confidence, and the effect of allegations made by the claimant in relation to senior employees at the respondent. Mr Porter for the respondent referred me to:

202. Wood Group Heavy Industrial Turbines Ltd v Crossan [1998] IRLR 680 (EAT) at paras 10-12 for the proposition that in cases where there is a finding that the employer genuinely believed in the substance of the allegations, the remedy of reengagement has very limited scope and will only be practical in the rarest cases where there is a breakdown in confidence as between the employer and the employee. Even if the way the matter is handled results in a finding of unfair dismissal, the remedy, in that context, invariably to our minds will be compensation. In that case the claimant had asserted that there had been a conspiracy and that a number of people had been ‘out to get him’.

203. PGA European Tour (appellant) v Kelly (respondent) [2020] IRLR 927 for the proposition that a genuine loss of trust and confidence may lead to the conclusion that re-employment would not be practicable. As regards the correct approach for the tribunal in such cases, it was said that “The issue of trust and confidence had to be tested as between the parties in order to determine, even on a provisional basis, whether an order for re-engagement was practicable, whether it was capable of being

carried into effect with success, whether it could work. The trust might have reached a conclusion as to the claimant's honesty by an impermissible route in its dismissal decision and might also have drawn the wrong inference at the rehearing, but the tribunal still needed to ask, as at the date it was considering whether to order re-engagement, whether it was practicable or just to order this employer to re-engage the claimant. It thus was the trust's view of trust and confidence – appropriately tested by the employment tribunal as to whether it was genuine and founded on a rational basis – that mattered, not the tribunal's. The tribunal was is entitled to scrutinise whether the trust's stated belief was genuinely and rationally held, tested against the other factors the tribunal considered relevant. It was, however, still a question to be tested from the perspective of the trust, not that of another employer, still less that of the tribunal. Accordingly, the Tribunal must consider whether the employer genuinely and rationally believes that trust and confidence has been broken, so that re-employment is not practicable: that is, not capable of being carried into effect with success. An employer cannot merely assert that this is the case in a self-serving way, in order to successfully resist the Order sought. The Tribunal should test and evaluate against the evidence before it, whether the employer's stated belief is both genuinely and rationally held. But it must keep in mind that the ultimate question is about whether it is practicable for this employer to re-employ this employee. The requirement for the asserted belief to be both genuinely held, and have a rational foundation, is not a reasonableness test, or to be equated with that which would be applied under s 98(4) of the 1996 Act. A belief may have a rational foundation in evidence or information known to the person who forms it, though it has not been reasonably reached. This explains why, as authorities such as Crossan show, it is possible for an employer to rely upon a genuine and rational belief in misconduct as having a bearing on practicability, even though the dismissal for that same conduct was unfair.

204. Nothman v London Borough of Barnet (No 2) [1980] IRLR 65 CA (para 4) the Court of Appeal held that the fact that the employee has shown that she distrusts or lacks confidence in her employer indicated that she would not be a satisfactory employee if reinstated and accordingly reinstatement was not reasonably practicable.

205. Rembiszewski v Atkins Ltd UKEAT/0402/11 (10 October 2012, unreported) (Slade J presiding) where it was held that the absence of confidence in a former employer is plainly capable of being a relevant factor in deciding whether re-engagement is practicable or whether discretion should be exercised to make an order (see paragraph 46). Further, that it would be appropriate for an ET also to consider the argument on absence of trust and confidence which was advanced by the Respondent following the Claimant's costs application in that case and expressions of lack of trust and confidence made at that stage, since

a remitted hearing to determine whether an order for re-employment should be made will depend on relevant factors at the time such order would take effect.

Analysis and Conclusions – Reinstatement/Reengagement

206. Mr Downey for the claimant identified, correctly in my judgment, the key questions as being (i) whether it is practicable for the respondent to comply with an order for reinstatement and ii) whether the claimant caused or contributed to some extent to his dismissal and , if so, whether it would be just to order his reinstatement. He argued that the respondent did not rely on a breakdown in trust and confidence as a reason for dismissal until after the reinstatement claim was advanced and it cannot rely on post-termination conduct by the claimant as there is no subsisting employment relationship to which a trust and confidence basis applies. He relies upon the lack of evidence that reinstatement is not possible, the large size of the respondent's organisation with attendant unlikelihood of encountering the individuals concerned with this dispute and the fact that the claimant did not contribute to his dismissal. Similar considerations apply to the question of reengagement.

207. Mr Porter argued that reinstatement or reengagement is not practicable. In particular the claimant has not been employed by the respondent for over two years. He also relied upon an order for reinstatement/reengagement being unjust in light of the claimant's conduct contributing to his dismissal. He also submitted that there was evidence of a loss of trust and confidence on the part of both the claimant in the respondent and the respondent in the claimant.

208. I have taken into account all of the circumstances and the evidence before me. I refer below to the factors which have been most significant in reaching my conclusion.

209. In favour of an order for reinstatement, alternatively for reengagement:

210. It is significant that the respondent is a very large organisation whose activities encompass a wide range of clients, projects and roles both in the UK and Ireland and internationally. Its management structures and operations appear to be diffuse and individuals appear to be internationally mobile. Much of the work done by technicians appears to be performed, or capable of being performed remotely. Although I note that the respondent is not under a duty to go out of its way to find a position for the claimant (Lincolnshire County Council v Lupton) it is a relevant consideration that it maintained a specialist department (RMG) to search out redeployment opportunities which enjoyed a 95% success rate.

211. Accordingly I do not accept Mr Porter's submission reinstatement is impracticable because the claimant had been absent for two years. That fact appears to me in any event to be irrelevant: see Section 116 (5).

212. The claimant is an experienced IT professional of 16 years experience, with over four years of previously unblemished employment with the respondent.

212.1. Having examined the claimant's conduct in relation to his work with LBG and the resetting and return of the laptop, the respondent determined that that conduct was not sufficiently serious that the claimant could not continue to be employed.

212.2. These factors suggest that in principle the claimant could practically have found and been employed in a role, with a client, and in a manner which would not require to him come into contact with those with whom he had previously interacted in the course of his employment.

213. However, as against these factors, there are significant factors pointing to other way:

214. The claimant clearly cannot be reinstated to his former position working for LBG. LBG had, and exercised, a contractual right to request his removal from the account. His argument must therefore be that he could and should be reinstated (or reengaged) in a similar role to his previous role of Node Tech Lead on another client account.

214.1. In the period preceding his dismissal there is documentary evidence which establishes that efforts were made on the part of RMG to place the claimant with other accounts which proved unsuccessful.

215. The position post-employment is less clear as regards whether it would be practicable to reinstate or reengage the claimant on the grounds that no vacancy could practicably be found for the claimant. Ms Kapoor gave oral evidence, which was tested in cross-examination, that she had monitored monthly vacancy lists to assess demand for roles demanding the skills which the claimant offered and that there was no demand, at least no additional demand beyond roles already filled by current employees, for the package of skills offered by the claimant as a tech lead. The demand was, she asserted, more towards the areas of AI, cloud and cyber security solutions. Whilst this position was asserted with conviction, there was reason to treat her evidence with reserve. First because in her witness statement [paragraph 68] she identified that in the marketplace "there are plenty of roles posted every week which would be suitable for the claimant to apply for", and whilst the respondent's current business may well have different and specific

requirements, some evidence would be needed for this position to be made out. Furthermore her evidence was not supported by copies of the respondent's vacancy reports and she did not address this point in terms in her original witness statement. Accordingly, whilst I accept her evidence was given honestly, I place only limited weight on her unsupported oral evidence that the respondent could not practically reinstate or reengage the claimant because no demand for his skill exited with the respondent.

216. The main point relied upon by the respondent, and addressed in detail by Ms Kapoor in her evidence, was the fact, or belief on the part of the respondent, that there existed an irrevocable breakdown in trust and confidence. Ms Kapoor stated that this was the respondent's view [61]. I accept that evidence: I note that she was not directly challenged on this in cross examination. I find that the respondent had and has a genuine belief that the relationship of trust and confidence was irrevocably lost and could not be restored and that that belief has a rational basis.

217. I am not persuaded by Mr Downey's argument that a lack of trust and confidence cannot be relied upon by the respondent because the claimant was not dismissed for that reason. The authorities referred to above are clear that the test for practicability has to be applied in light of the evidence and the circumstances at the time of the hearing to determine remedy. I consider Mr Downey's submission elides considerations relevant to sections 116 (1) c) with ss 1)b) (and in relation n to reengagement s 116 ss 3) c) with ss3)b)). Subsection c) in each case requires conduct relevant to the dismissal to be taken into account. Subsection b) in each case focusses on practicability. On the basis of the authorities above, I am satisfied that the fact that at the time discretion falls to be exercised there exists an absence of trust and confidence between the parties is a relevant consideration. I reject also the argument that conduct post-dating the employment relationship (including but not limited to the conduct of hostile litigation) cannot result in a failure of trust and confidence in a non-existent relationship. This submission is at odds with the decisions in Nothman v London Borough of Barnet (No 2) and Rembiszewski v Atkins Ltd.

217.1. Ms Kapoor and Mr Porter pointed to the following evidence in support of Ms Kapoor's stated belief in a breakdown of trust and confidence:

218. During the Claimant's employment in his email to the UK and Ireland head of HR on the 16th May 2023 [415-416] he stated:

> *"I do not know if this behaviour is in your HR training handbook or corporate culture but over the last four plus years I've been here TCS has proven again and again it does not care about me my*

well-being or my career. It is by far the worst employer in my 16 plus years of professional experience and I would not recommend this employer to anyone"

219. Similarly in his disciplinary hearing [920] the claimant stated:

"My experience with TCS in the 4.5 years I've been here so far is that it has been the worst employer of my career, treated me very badly.."

220. In addition I note that his correspondence with Ms Chouhan was expressed in challenging and critical language.

221. Statements made by the claimant in his witness statement which were expressed in trenchant terms critical of the procedure adopted by the respondent leading to his dismissal included statements that the process was 'pre-determined' and that individuals who were part of the claimant's HR/employee engagement teams were not impartial, were 'reckless' or biased and adopted questionable practices [paragraphs 46d),47,52;57;60;80;90].

222. The claimant made serious allegations against the respondent (which was legally represented) in the tribunal proceedings that the respondent 'tampered' with evidence. Those allegations were described by an employment judge during an earlier procedural hearing as 'spurious' and 'totally unfounded'. Ms Kapoor emphasised that serious and sustained allegations of malpractice and deliberate tampering with evidence went beyond the usual conduct of litigation.

223. My finding that the respondent believed on rational grounds that there had been a breakdown in trust and confidence does not of itself operate as a bar to reengagement. I have taken into account in particular the size of the respondent and whether reengagement might practicably be ordered on terms that might allow the claimant to work without contact with specific employees. However, I am satisfied that that notwithstanding the size of the organisation and the weight of factors pointing the other way, having regard to the nature and extent of the relationship breakdown it would not be practicable to reinstate or to reengage the claimant: neither could in my judgment be carried out with success. I consider that in any event, in light of the matters referred to above that it would not be just to exercise discretion in favour of making an order for reinstatement or for reengagement on any terms.

224. Mr Porter submitted that the matters he referred to as set out above also evidenced that the claimant himself had in fact no trust and confidence in the respondent. Although I am satisfied for the reasons I explain above that no reinstatement or rengagement order should be

made, I am also not persuaded that the claimant's request for reinstatement or reengagement is genuine:

225. This conclusion is consistent with the fact that the claimant did not initially seek this relief. He first sought reinstatement or reengagement on 29 September 2025, approximately 26 months after termination of his employment.

226. It is consistent also with the claimant's conduct towards the respondent after 31 March 2023. In particular I find that his conduct after having been (albeit informally) advised that he had been removed from the RBG account and had to return his laptop was markedly passive: he made no efforts at all to contact anyone to find out what the call was about and what he was expected to do – in particular at a time when his case before me was that his mobile phone was not functioning. His conduct during the period when he was being put forward for redeployment opportunities when he insisted that he be given hiring managers' names, refused to be contacted by mobile and insisted on email was also at the very least consistent with a hesitant attitude to continuing to work for the respondent.

227. It is consistent also with his highly critical descriptions of the respondent as the worst employer he has had.

228. As regards the alternative basis contended for by Mr Porter (that the claimant by his conduct caused or contributed to some extent to the dismissal that it would not be just to order his reinstatement/reengagement). Whilst I am of the view that the claimant did contribute to his dismissal by reason of his conduct in not following the cyber security policies of LBG of which I find he was aware when he was on their account (and without which he would not have been removed from the account and required to be redeployed), the respondent did not consider it appropriate to dismiss him for that conduct. The most significant conduct which the respondent identified thereafter as a bar to reinstatement/reengagement related to the serious allegations made against the respondent in the course of the tribunal proceedings. That conduct post-dated the dismissal and so could not be said to contribute it. Accordingly my conclusion is based on my findings and the exercise of my discretion as to the impracticability or reinstatement or reengagement.

Polkey and Contributory Conduct

Applicable Law:

Contributory Conduct

229. A tribunal may reduce the basic award if it finds that the

claimant's conduct before dismissal was such that it would be just and equitable to reduce it (section 122(2), ERA 1996). The tribunal has a wide discretion to reduce the basic award by anything from zero to 100%. The tribunal can reduce the basic award even if the claimant's conduct has not caused or contributed to the dismissal. It can also take into account conduct that is not discovered until after the dismissal.

230. Since the tests differ, the tribunal must consider potential reductions to the basic award and compensatory award separately.

231. Having addressed the basic award, the tribunal must go on to consider whether it is appropriate to make a compensatory award (section 118, ERA 1996). Section 123 of the ERA 1996 provides that the award shall be: "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

232. In Polkey v AE Dayton Services Ltd [1987] IRLR 503, the House of Lords held that the compensatory award may be reduced or limited to reflect the chance that the claimant would have been dismissed in any event and that the employer's procedural errors accordingly made no difference to the outcome. In assessing a Polkey deduction the tribunal must consider the "counterfactual" scenario of what would have happened if the employer had acted fairly. The question is what the actual employer would have done (Granchester Construction (Eastern) Ltd v Attrill [2013] UKEAT/0327/12). This requires consideration of the employer's likely thought processes and the evidence that would have been available to it. There must be some evidence to justify a Polkey deduction and the tribunal must have regard to all the evidence when making its assessment, including any evidence from the claimant. The EAT provided guidance in Software 2000 Ltd v Andrews and others UKEAT/0533/06: "The question is not whether the Tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice" (paragraph 53). Assessment will always involve a degree of speculation. A Polkey reduction may be expressed as any of the following: The tribunal may find that it is certain (a 100% chance) that the employee would have been dismissed by the end of a certain period (and therefore award compensation only up to that date). The tribunal may find that the employment relationship would have continued unaffected for a certain period, but thereafter there was a percentage chance that the employee would have ceased to be employed. The tribunal might not identify any set period of continued employment but instead might assess the percentage likelihood of the employment terminating: Zebrowski v Concentric Birmingham Ltd UKEAT/0245/16

233. A tribunal can make Polkey and contributory fault deductions in the same case, as they are intended to cover different things: Rao v Civil Aviation Authority [1994] IRLR 240 at paragraphs 8-11. A Polkey reduction is intended to assess the amount of loss attributable to the unfair dismissal, and should be considered first. Contributory fault is intended to reflect the amount by which the compensable loss should be reduced to take account of the employee's conduct. If both Polkey and contributory fault deductions are to be made, the tribunal must clearly explain why both are being made and the basis for each. It is also necessary to avoid any element of double-counting of the same factors in a way which is unfairly detrimental to the claimant.

234. Where the tribunal finds that the dismissal "was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding" (section 123(6), ERA 1996).

235. In Nelson v BBC (No.2) [1979] IRLR 346 (CA), the Court of Appeal set out three factors that must be present for the compensatory award to be reduced for contributory fault: The claimant's conduct must be culpable or blameworthy. It must have actually caused or contributed to the dismissal, and the reduction must be just and equitable. An employment tribunal must consider the following four questions: What was the conduct (on the part of the claimant) which was said to give rise to possible contributory fault? Was that conduct blameworthy, irrespective of the employer's view on the matter? For the purposes of section 123(6), did the blameworthy conduct cause or contribute to the dismissal? If so, to what extent should the award be reduced and to what extent would it be just and equitable to reduce it? : Steen v ASP Packaging Ltd UKEAT/23/13. Any conduct on the part of the claimant can be taken into account in determining the extent of contributory fault, providing it is blameworthy and contributed in some way to the dismissal. It follows that post dismissal conduct cannot be taken into account.

Analysis and conclusions: Polkey and contributory conduct

236. Mr Downey for the claimant submitted simply that because the respondent disavowed that conduct or capability played any part in the decision to dismiss, there is no proper basis for any Polkey deduction or any adjustment for contributory conduct.

237. Mr Porter argued if the claimant is found to have been unfairly dismissed, then:

237.1. there was a very high chance that he would have been dismissed in any event at or shortly after the date of the dismissal in all the circumstances (including if an appeal against dismissal had been held).

The reality was that after six months of the Claimant being without an active position to undertake there was no change in this position and his dismissal in such circumstances was wholly reasonable.

237.2. Further, on the facts there was clearly significant contribution engaged here (which should be applied sequentially with any Polkey reduction to any award) because:

237.2.1. a) the Claimant was removed from the LBG project as a result of his own conduct and LBG's decision that the Claimant was to be removed from their work (which was subsequently found to warrant a final written warning). As such it was his own actions which led to LBG deciding that he could not continue on their project with the result that from 27 March 2023 he no longer had a project to actively work on and which placed his future employment at risk if a suitable alternative could not be found. This in itself is significant contribution and

237.2.2. b) the Claimant's actions during the extended consultation process evidencing a lack of engagement and unreasonable positions such as refusal to meet by electronic means (Teams) or provide a phone contact number, conduct which can be characterised as foolish perverse or bloody minded in the sense explained in Nelson v BBC (No 2)

238. Considering first whether there should be any adjustment to the basic award for conduct, I find that the following aspects of the claimant's conduct before his dismissal fall to be taken into account:-

238.1. His conduct in connection with his work on the LBG account. I find on the balance of probabilities and on the basis of all the evidence that i) the claimant knew of LBG's policies and security practices ii) the claimant downloaded a VPN onto the laptop provided to him and attempted to adjust proxy settings which were activities that LBG regarded as contrary to those policies and which I find the claimant knew or ought to have known amounted to a breach of LBG working policies iii) he thereby caused and created the situation in which the respondent had to find alternative deployment for him. His conduct was at least reckless or careless.

238.2. In weighing the following further conduct in the balance I have taken into account the fact that there appears to me also to have been fault on behalf of the respondent to which some of the above conduct appears likely to have been a reaction, and which to some extent mitigates the view I take of the culpability of the claimant's conduct.

238.3. I find that he was made aware informally on 31 March 2023 by means of a phone call to his mobile number that he had been requested

to be removed from the LBG account and that he needed to return his laptop. Notwithstanding that he had used his mobile phone to keep in contact with co-workers on the LBG account, he did not respond to calls or messages from Ms Chouhan. On his own account of events, as to which I am sceptical in the absence of any documentary proof but do not feel able to make a finding against the claimant, he had no functioning mobile phone. Nevertheless, having been told by co-workers that his laptop was to be returned and he was off the account he made no attempts to contact the respondent or his managers to clarify the position. Whilst there was fault on Ms Chouhan's part in not attempting other means of contacting the claimant, I take the view that his conduct, or his omissions were aspects of an unco-operative disposition and studied passivity towards the respondent which can be characterised in my judgment as to some extent perverse and 'bloody-minded' (especially when viewed in light of the tone of some the claimant's communications at the time). They made the situation and the time taken to return the laptop worse.

238.4. I find on balance that the claimant did reset the laptop while it was in his possession. In his disciplinary investigation interview he accepted that he might have done so, perhaps by trying to log in resulting in an automatic factory reset as a security measure. I am unable, however, to conclude on the evidence as a whole that that step was taken deliberately by the claimant in an attempt to delete unhelpful records of his activities. I am, however, satisfied that his conduct in relation to the laptop whilst in his custody was reckless or careless.

238.5. I find that during the redeployment process, the claimant did impose unusual restrictions on the manner in which hiring managers were to contact him. He appears to have been reluctant to give his mobile number or to contact managers in that way. His explanation that he was always contactable through MS Teams was to some extent at odds with his evidence that he struggled to use that platform because he used a mac computer. Ajay Krishnan on two occasions identified both to the claimant and internally the claimant's inaccessibility and relatively slow responses as problematic for his redeployment. Although I have found the claimant was not given standards and expectations, I find that his conduct in this respect was unhelpful for his prospects of redeployment and perverse.

239. I find that the claimant's reckless or careless behaviour in connection with his LBG work in particular precipitated the process which led eventually to his dismissal (for some other substantial reason) merits an adjustment to the basic award. In all the circumstances I consider that it is just and equitable to reduce the basic award by 30%.

240. It is common ground between the parties that in light of the date

of the Claimant's dismissal, the maximum basic award would be £2,572. Accordingly the respondent must pay the claimant the sum of £1800.40 by way of basic award for unfair dismissal.

241. Turning next to whether any compensatory award should be made, and if so whether (before the amount is determined at a later date, there should be any deduction for Polkey or contributory conduct. .

242. I am satisfied that in light of the procedural shortcomings in the consultation process which I have identified above, that it is appropriate that a compensatory award be made in favour of the claimant.

243. I direct that there is to be a further hearing to determine the amount of any such award.

244. As regards whether any such compensatory award should be reduced or limited to reflect the chance that the claimant would have been dismissed in any event and that the employer's procedural errors accordingly made no difference to the outcome (Polkey adjustment) , I conclude that no such deduction should be made.

244.1. This is a somewhat different context from the usual conduct/capability dismissal context in which Polkey assessments are routinely made. Notwithstanding that the claimant pointed to shortcomings in the disciplinary process adopted by the respondent, this was ultimately not a disciplinary dismissal. Any conduct which the respondent found proven against the claimant was sanctioned by the lesser sanction of a final written warning only. The issue of whether a Polkey adjustment falls to be made is therefore concerned with whether the respondent has demonstrated (the burden being on the respondent) that there was a chance the claimant would have been dismissed in any event notwithstanding the procedural shortcomings which I have found to have occurred in the consultation process adopted by the respondent.

244.2. The respondent's position is that there is evidence that a 6-month job search had not turned up an appropriate or acceptable redeployment opportunity for the claimant so that is reasonable to conclude that the respondent would have dismissed the claimant anyway. My difficulty with that argument is that I found that the respondent did not conduct an effective consultation, even though there is evidence that the claimant was considered for several opportunities without success. My belief is that Ms Chouhan and Ms Sangra were trying (albeit unsuccessfully) to implement a fair consultation exercise to try to redeploy the claimant. The assessment I therefore have to make is whether the respondent has proved on the balance of probabilities that there was a chance that the claimant would have been dismissed if a fair consultation exercise had been carried into effect.

244.3. As to that the evidential position is mixed. On the one hand the respondent points to the 6 months of RMG activity which led to no allocation. Ms Kapoor gave oral evidence that vacancies for jobs such as those that the claimant was suited to continued to be absent from vacancy reports. On the other hand there is no evidence that alternatives such as re-training were considered or offered, there is some evidence that the claimant's details on the RMG database were inaccurate. Both of these matters might have made a difference to the ultimate outcome of the redeployment search. No appeal was conducted so the potential issues were not explored. Ms Kapoor's striking evidence was that the RMG redeployment process was 95% effective. She did not provide documentary support for her evidence that suitable vacancies were not appearing in the vacancy reports. On the contrary, the fact that some initial interest was shown in the claimant amongst hiring managers for other accounts suggests that some requirement for the sort of work that he was doing existed in 2023.

244.4. Looking at the evidence before me as a whole, the state of the evidence either way is also such that I do not consider I have sufficient confidence to make any assessment as to what an appropriate adjustment should be. In any event the respondent has not satisfied the burden of showing on the evidence that there was a chance the claimant would have been dismissed by reason of the respondent not being able to find alternative deployment opportunities if a fair process had been carried out. In any event.

245. I turn finally to the question of whether there should be a deduction from the compensatory award for contributory conduct on the part of the claimant.

246. I find that acts of the complainant contributed to his dismissal and that I should reduce the amount of the compensatory award by a proportion which I consider just and equitable having regard to the conduct I find occurred.

247. I have referred to the conduct which I have found occurred above in the context of the adjustment of the basic award: (i) the claimant's reckless or careless conduct in connection with his work on the LBG account which created the situation in which the respondent had to find alternative deployments for him; (ii) unforthcoming and somewhat 'bloody-minded' conduct towards Ms Chouhan and the careless resetting of the laptop which both contributed to some extent to delay in initiating the consultation process (which had it been initiated earlier might have led to a successful redeployment opportunity) (iii) the imposition of unjustified and unhelpful restrictions on, and his delay in responding to hiring manager communications.

248. I am satisfied that this conduct, particularly his reckless or careless conduct of his work at LBG, and to a lesser degree the further conduct (which I take into account in light of the mitigating factors of the respondent's own conduct) contributed significantly to his ultimate dismissal. I consider that a just and equitable reduction having regard to the conduct I have found is 30%.

ACAS Uplift

249. Although this head of claim was not pressed by Mr Downey, for the avoidance of doubt I consider that there is no basis for the application of an uplift to any compensatory award under the terms of s 207A of the Trades Union and Labour Relations Consolidation Act 1992.

250. The Claimant was not dismissed on grounds of conduct or capability and accordingly ACAS COP No 1 on Discipline and Grievance is not applicable.

Holiday Pay/ Breach of the Working Time Regulations 1998 (WTR)

Issues:

2.1 What, if any, was the Claimant's accrued and untaken holiday entitlement at 9 October 2023?
2.2 In calculating that entitlement is the Claimant entitled to carry forward untaken holiday from previous years:
2.2.1. As additional leave under Regulation 13A;
2.2.2.Under Regulation 13(14) to (17); or
2.2.3.In accordance with the Respondent's custom and practice in previous years?

2.3 What amount was the Claimant entitled to be paid, and what amount was paid to the Claimant in respect of holiday pay on termination of his employment?

Applicable Law : Holiday Pay

251. For the purposes of calculating holiday entitlement, the statutory 5.6 weeks entitlement is split into 4 weeks derived from EU law (which is set out in regulation 13 of the Working Time Regulations 1998 ("WTR"), and an additional 1.6 weeks derived from UK law (which is set out in regulation 13A of the WTR) up to a maximum of 28 days.

252. Regulation 13 WTR also relevantly provided :

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—
*(a) subject to the exceptions in paragraphs (14), (15) and (17)**]** it may only be taken in the leave year in respect of which it is due, and*

(b)it may not be replaced by a payment in lieu except where the worker's employment is terminated.
…
(14) Where, as a result of taking a period of statutory leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.

(15) Where, as a result of taking a period of sick leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year provided it is taken by the end of the period of 18 months from the end of the leave year in which the entitlement originally arose.

(16) Paragraph (17) applies where, in any leave year, an employer fails to—
(a)recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16;
(b)give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or
(c)inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

(17) Where this paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 16.

(18) Annual leave that has been carried forward pursuant to paragraph (17) cannot be carried forward beyond the end of the first full leave year in which paragraph (17) does not apply.

253. The effect of Regulation 13(9) a) is that annual leave may only be taken in the relevant holiday year. However, in relation to additional leave, Regulation 13A(7) permits (but does not require) a carry forward entitlement:

13A ..(6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where—
(a) the worker's employment is terminated; or
(b) the leave is an entitlement that arises under paragraph (2)(a), (b) or (c); or
(c) the leave is an entitlement to 0.8 weeks that arises under paragraph (2)(d) in respect of that part of the leave year which would have elapsed before 1st April 2009.
(7) A relevant agreement may provide for any leave to which a

worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

254. A 'relevant agreement' includes a contract of employment: WTR Regulation 2

255. The claimant's employment contract specifies the holiday year as 1 April to 31 March.

256. The claimant took no paid leave prior to the termination of his employment.

257. Following the termination of his employment Ms Chouhan for the respondent paid the claimant for unused annual leave of 11.51 days [1308/7] [22 days leave x 6m and 6 days -1 April to 9 October 2023]. The claimant responded that that period spans 192 rather than 191 days and that he was entitled to a full 5 days carried over leave from 2022/2023.

258. The respondent later accepted that on 1 March 2023 [243] the claimant had been permitted to carry forward 5 days annual leave into the 2023/24 holiday year. On the basis of no admission of liability, in November 2024 the respondent paid the claimant in respect of 5 days leave that the claimant was permitted to carry forward under the provisions of Clause 9.2 of his Employment Contract.

259. Mr Downey submitted that the claimant's holiday entitlement was made up of (i) 28 days annual and additional annual leave on the basis of regulations 13 and 13A of the WTR Regulations 1998. Pro-rated his entitlement for 2023/2024 was 192/365 x28 days = 14.73 days; (ii) an additional 5 days leave which were not taken in the preceding holiday year and which he was entitled to and did carry over under the terms of clause 9.2 of his contract of employment, and; (iii) a further 10 days on the basis that he had been permitted to carry over unused leave by his manager in the past, and in holiday year 2022/2023 the respondent had failed to notify him or encourage him to take these days of leave during the holiday year contrary to WTR Regulation 13(16) and (17). The claimant's net pay per day was £248.08 [£5375.14 x 12/260] accordingly he claims for £7375.42 in respect of holiday pay [£248.08 x 29.73] before deductions for sums paid by the respondent.

260. Mr Porter denied that the claimant was entitled to an additional 10 days holiday pay under the terms of WTR Regulations. Mr Porter pointed to email exchanges on 29-30 March 2023 [249-251].

261. On 29 March 2023 I find that the claimant emailed Mr Amjad Hameed explaining that he had postponed 5 days leave and still had 10 days leave that he wanted to take in May 2023, but that the booking

system would not allow him to book those dates as leave. Mr Hameed explained that only 5 days leave could be carried forward and the rest would lapse. The claimant asked for this issue to be escalated. Mr Hameed responded stating that the 5 days carry over policy is clearly set out in the documentation which associates are expected to follow. He added that periodic reminders are sent to TCS email IDs encouraging all to utilise annual leaves. The claimant responded that he had not been reminded by his manager and that he had not been able to take planned leaves because of starting a new job, moving house and being ill for some weeks at the start of 2023.

262. As regards the 5 days carried over, Mr Porter submitted that that sum has already been paid, but that in any event, the position under the regulations is that the respondent is permitted, but not obliged to provide for 5 days of carry over in a relevant agreement, but in this case clause 9.2 of the Employment contract expressly provided that carried forward leave will not be compensated for by a payment in lieu of notice on termination. The claimant therefore has no statutory or contractual right to payment in respect of the 5 days additional leave.

263. In relation to the Holiday Pay claim I conclude as follows:

263.1. The claimant was entitled to daily pay of £248.08 and 28 days paid holiday per holiday year;

263.2. He was entitled to a pro-rated payment in lieu of untaken holiday for the 2023/2024 holiday year of 14.73 days: £3654.22. In so far as the calculation by Ms Chouhan provided for payment of a lesser sum the claimant is entitled to the difference. The parties are to endeavour to agree the precise sum for inclusion in the order to be made at the further hearing to be convened to determine the compensatory award;

263.3. He was entitled to an additional 5 days leave payment under the provisions of WTR Regulation 13. He was entitled in principle carry over additional leave under the terms of Regulation 13A(6) but that entitlement is subject to the terms of the Employment Contract: see Regulation 13A(7). Clause 9.2 of the Employment Contract does not entitle the claimant to be paid carried over additional holiday pay as payment in lieu of notice. However, I do not consider that the respondent can rely on that restriction, having confirmed to the claimant on 1 March 2023 that he was entitled to 5 days carried over leave from 2022/23. Accordingly in the circumstances which have occurred (in which his employment was terminated and there was a payment in lieu) the claimant is entitled to the additional 5 days payment in lieu of carried over annual leave. A payment in respect of this head of claim has already been paid on a without prejudice basis which is to be set-off against and in discharge of this claim.

263.4. The claim for the additional 10 days carried over holiday pay is dismissed on the facts.

263.4.1. Mr Downey referred me specifically to Regulations 13(16) and (17). These provide broadly that an employee may carry over untaken holiday into the following holiday year if the employer fails give the worker a reasonable opportunity to take the leave to which the worker is entitled under the regulation or encourage them to do so; or fails to inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost. I conclude that the claim fails on the facts:

263.4.2. I proceed on the basis that it is for the respondent to show that it informed the claimant that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost and to encourage him to take his full entitlement.

263.4.3. The evidence that appears from the email exchange on 29 March 2023, which is the best contemporaneous evidence I have, is that the claimant asserted that nobody had warned him to use his 10 days of unused holiday by the year end. On the other hand Mr Hameed asserted that the requirement to take holiday leave within the holiday year, subject to a carry-over of a maximum of 5 days, is set out in policy documentation and that 'periodic reminders are sent to all tcs mail IDs' encouraging the utilisation of annual leaves. Clause 9.2 of the employment contract set out that a maximum of 5 days holiday could be carried over. Mr Hameed referenced periodic reminders sent to tcs email addresses. The claimant confirmed in his evidence that he had such an address. Although there was no copy of the reminders in the evidence, it seems to me likely on balance that the respondent would have such a practice in place in order to present at least the appearance of compliance with the law relating to holiday pay. I find therefore that the claimant was informed and encouraged to take leave.

263.4.4. The claimant additionally relied upon an exchange with his then manager dated 1 March 2021 [141] in which he suggested he wanted to take the whole of March off, his manager replied that 'Most of March' might be an issue and the claimant replied saying "even taking every Mon-Wed off in March I wouldn't manage to use the 20 days needed, so might have to roll quite a few days unofficially". Kartik replied "yes fine". The claimant relied on this as evidence of a practice of consenting to carrying over holiday in excess of 5 days. However, the exchange of 1 March 2023 does not in my judgment assist the claimant. First in referring to a further 20 days being 'needed' it seems to me that that demonstrates that the claimant was in fact aware of the need to take annual holiday

within the holiday year. Second, he refers to having to 'roll quite a few days unofficially' . This does not amount to an express or clear request to his manager to agree to more than the 5-day roll over permitted by his contract. But even if it did, I do not read Kartik's reply as consent to his doing so. In the context of the exchange as a whole, in which Kartik is concerned about the claimant taking the whole of March off, I read Kartik as agreeing to the claimant's suggestion to take 'today through Friday off'. I do not read his short reply as an agreement to some kind of unofficial arrangement. There was no evidence that any such unofficial arrangement was in fact put in place in 2022. The respondent has therefore established the policy and practice of allowing 5 days carry over and the claimant has not discharged the practical burden of showing that there was any informal or agreed variation to that policy.

Notice Pay/Breach of Contract

Issues:

3.1 Was the Respondent in breach of contract in terminating the Claimant's contract of employment because:

3.1.1 They failed to give notice of such termination to the Claimant; or

3.1.2 They failed to make payment in lieu of notice under clause 16.1 of his contract of employment?

3.1.3 If so, what amount of damages should be paid to the Claimant? Should the Respondent have to pay any more than the sum of £5,033.29 (net after tax) paid to the Claimant on 26 April 2024? The Claimant alleges he should be compensated by:

3.1.4 A month's net pay in the sum of £5,145.32

3.1.5 Employer's monthly pension contribution £471.11

3.1.6 Employer's monthly health contribution £51.42

3.1.7 The value of one-month additional holiday entitlement

264. It is common ground that the respondent failed to make a payment in lieu of notice on or about 9 October 2023 when the claimant's employment was terminated. The claimant did not remain employed or work thereafter. The respondent says this was an oversight. The respondent paid the claimant the net sum of £5033.29 on 26 April 2024 which it asserts represented the omitted payment in lieu of notice [1354].

265. Mr Downey submitted that the respondent acted in breach of contract in terminating the claimant's contract of employment because :

265.1. They failed to give notice of such termination to the claimant;

265.2. They failed to make payment in lieu of notice under clause 16.1 of his contract of employment. Clause 16.1 required the payment in lieu to be made as a condition in order to exercise the right under clause 16.1 to terminate with immediate effect, and no such payment was

made at the time;

265.3. The respondent is liable to pay the claimant damages for breach based on the loss of pay and benefits for the month. He calculated the claims as follows: i) Net salary £5375.14 ii) Monthly pension contribution £471.11 iii) monthly healthcare contribution £51.42 and one month's additional accrued holiday entitlement 2.3 days x £248 = £570.38.

266. Mr Porter for the respondent submitted:

266.1. In the termination letter it is made clear that the respondent is exercising its express contractual right to terminate the Claimant's employment without notice and to make a payment in lieu of notice (page 1305) In the light of the contractual provision permitting immediate termination of the employment, the contract of employment was terminated lawfully: Clause 16.1 [122].

266.2. The contract of employment does not require that in order to rely upon the payment in lieu of notice termination provision that the sums in issue must be paid immediately or contemporaneously with the notification of dismissal: such a contractual construction offends business common sense and it would not be necessary or obvious to seek to imply such an onerous term.

266.3. Pursuant to that clause the only entitlement to payment in lieu in such circumstances is to payment of salary only as is expressly stated in the clause. This is what the claimant received on 26 April 2024.

266.4. Delaney v. Staples (t/a De Montfort Recruitment) [1992] IRLR 191 (HL) is authority for the proposition that a 'payment in lieu of notice' is not a term of art. It is commonly used to describe many types of payment, the legal analysis of which differs. The principal categories are 1. An employer gives proper notice of termination to his employee, tells the employee that he need not work until the termination date and gives him the wages attributable to the notice period in a lump sum. In this case (commonly called 'garden leave') there is no breach of contract by the employer. The employment continues until the expiry of notice; the lump sum payment is simply advance payment of wages. 2. The contract of employment provides expressly that the employment may be terminated either by notice or, on payment of a sum in lieu of notice, summarily. In such a case if the employer summarily dismisses the employee he is not in breach of contract provided that he makes the payment in lieu. But the payment in lieu is not a payment of wages in the ordinary sense since it is not a payment for work to be done under the contract of employment. 3. At the end of the employment, the employer and the employee agree that the employment is to terminate forthwith on payment of a sum in lieu of notice. Again, the employer is not in breach of contract by dismissing summarily and the payment in

> lieu is not strictly wages since it is not remuneration for work done during the continuance of the employment. In the first three categories, the employee is entitled to the payment in lieu not as damages for breach of contract but under a contractual obligation on the employer to make the payment. 4. Without the agreement of the employee, the employer summarily dismisses the employee and tenders a payment in lieu of proper notice. This is by far the most common type of payment in lieu …The employer is in breach of contract by dismissing the employee without proper notice. However, the summary dismissal is effective to put an end to the employment relationship, whether or not it unilaterally discharges the contract of employment. Since the employment relationship has ended, no further services are to be rendered by the employee under the contract. It follows that the payment in lieu is not a payment of wages in the ordinary sense since it is not a payment for work done under the contract of employment. The nature of a payment in lieu falling within the fourth category has been analysed as a payment by the employer on account of the employee's claim for damages for breach of contract: Gothard v Mirror Group Newspapers Ltd [1988] IRLR 396, 14 per Lord Donaldson Lymington MR.

267. Accordingly, the respondent contends that even if (which is denied) the claimant was dismissed in breach of contract his entitlement to payment has been met by the payment in April 2024 which falls to be set off against (or will extinguish) a claim to damages for notice pay.

268. The termination letter [1304] referenced the outcome of the consultation period and stated: “in these circumstances, the company has no other choice but to confirm your termination with effect from 9 October 2023……As per your employment terms you are entitled to receive 1 month notice pay to terminate the employment relationship, payment for which can be made as payment in lieu (“PILON’) . This amount is subject to NI and tax deductions”

269. The termination letter is not happily or carefully worded. The reference to the claimant’s employment terms and to the claimant’s entitlement to receive 1 month’s notice <u>pay</u> [my emphasis] to terminate appears to be an erroneous reference to the claimant’s entitlement (under Clause 2.2) to receive 1 month’s notice) of termination. The letter does not reference Clause 16.1 expressly. However, the phrase ‘payment for which can be made as a payment in lieu’, together with the reference to the claimant’s terms of employment does, in my judgment, allude to the exercise of the unfettered discretion available to the respondent under Clause 16.1. That is because there is no other entitlement of the claimant to payment in lieu of notice provided for in the terms of employment. Clause 16.3 says so in terms.

270. The starting point therefore is that the respondent purported to

exercise a contractual discretionary right to terminate without notice with immediate effect. The contractual provision makes clear that the relevant amount of the payment is a 'payment ..equal to your salary only which you would have been entitled to receive during the notice period". This language in my judgment excludes non-salary items such as pension contribution, health contribution. In other words if the discretion was exercised to terminate in that basis the respondent would not need to pay more than the salary (without further emoluments). The position as regards holiday pay during this period is specifically provided for in clause 9.3. Clause 9.3 provides relevantly: "On termination of the employment, the company may either require you to take any unused and accrued holiday entitlement during any notice by giving you one day's notice or make a payment in lieu based on your entitlement under clause 9.1 for the holiday year in which your employment terminates. If the company terminates the employment for any of the reasons in clause 16 or if you resign in breach of clause 2.2 your entitlement to payment in lieu will be based on the minimum holiday entitlement under the Working Time Regulations 1998 only…. Any payment in lieu or deduction made shall be calculated on the basis that each day of paid holiday is equivalent to 1/260th of your annual base salary." On the face of it, assuming that the respondent effectively exercised its discretion under clause 16.1, the claimant would be entitled, in addition to the base salary payment, to one month's accrued but untaken holiday pay based on his 28-day statutory entitlement. Mr Downey calculated this as £570.38 [2.3 days x £248.08]

271. As regards the question of interpretation, I approach the question on the basis of the well—established principles of interpretation summarised in Investors Compensation Scheme v West Bromwich Building Society [1997];UKHL 28;Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38; Rainy Sky SA and Others v Kookmin Bank [2011] UKSC 50; Arnold v Britton [2015] UKSC 36 and Wood v Capita Insurance Services Limited [2017] UKSC 24.

272. Clause 16.1 states that the company may terminate the contract…with immediate effect by [my emphasis] making you a payment in lieu of notice". This has to be read together with Clause 16.2 which entitles the respondent to elect to pay the payment in lieu in equal monthly instalments during what would have been the notice period.

273. Having regard to the natural meaning of the words in the context of an employment contract, the effect of clause 16.1 in my judgment is that the respondent's right to terminate employment with immediate effect is effected by making the payment in lieu of notice. The provisions in clause 16.2 enable that payment to be spread out, but it can be read consistently with clause 16.1 by interpreting it so that termination takes effect when and does not take effect until the first equal instalment is paid.

274. In the event, the respondent did not make a payment in lieu of notice until after the expiry of the months' notice period to which the claimant was otherwise entitled under clause 2.2.

275. Accordingly, whilst it is common ground that the claimant's employment was effectively terminated on 9 October 2023 I find that the respondent did not terminate the claimant's employment with immediate effect pursuant to the exercise of its discretion under the terms of clause 16.1 of the Employment Contract.

276. It follows that the respondent breached the contract of employment in terminating the contract on 9 October 2023 without paying the claimant the salary and entitlements (pension contribution/healthcare etc) he would have received for the period 9 October to 9 November 2023. The entitlements include one month's accrued but untaken holiday pay based on his 28-day statutory entitlement.

277. The claimant is therefore entitled to recover those sums by way of damages together with interest. The payment of £5033.29 is to be set off against the claimant's claims from 26 April 2024.

278. I will direct the parties to endeavour to agree the principal sum and interest ahead of the remedies hearing to be fixed.

Approved by Employment Judge N Cox
Date: 5 June 2026

Judgment sent to the parties and entered in the Register on: 11 June 2026

For the Tribunal Office

P Wing

P Wing