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THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M F Arthur	**v**	**Ghana International Bank PLC**

Heard at: London Central **On**: 9-13, 16 October 2017

Before: Employment Judge Glennie

Members: Ms K A Church
Mrs J Webber

Representation:

Claimant: Mr A Hogarth, QC
Respondent: Mr D Tatton-Brown, QC

JUDGMENT ON LIABILITY

The unanimous judgment of the Tribunal is as follows:

1. **The complaints of automatic unfair dismissal, unfair dismissal and wrongful dismissal (breach of contract) are dismissed.**

2. **The complaint of failure to pay holiday pay is dismissed on withdrawal.**

REASONS

1. By his claim to the Tribunal the Claimant, Mr Arthur, made complaints of automatic unfair dismissal related to a protected disclosure ("whistleblowing"); unfair dismissal; wrongful dismissal; and failure to pay holiday pay (which has been dealt with by agreement).

2. The Respondent, Ghana International Bank PLC, resists all of those complaints.

3. The Tribunal is unanimous in the reasons that follow.

4. It was agreed that this hearing would deal with the issues as to liability only. The parties had not produced an agreed list of issues, but the Tribunal identified the issues arising as follows.

5. In respect of automatic unfair dismissal:-

   5.1 Did the Claimant make a protected disclosure or disclosures.

   5.2 If so, was that the reason or principal reason for his admitted dismissal.

6. In respect of unfair dismissal under Section 98 of the Employment Rights Act 1996:-

   6.1 What was the reason or principal reason for dismissal, the burden being on the Respondent to prove this.

   6.2 Did the Respondent act reasonably or unreasonably in treating that as a sufficient reason for dismissing the Claimant.

   6.3 Issues as to the principle in **Polkey** and contributory conduct did not in the event arise for determination.

7. In respect of the complaint of wrongful dismissal, the issue was whether the Claimant had committed a breach of contract that entitled the Respondent to dismiss him summarily.

8. The Tribunal observes that there is at the centre of this case a transaction involving an account holder with the Respondent, namely the King of the Ashanti people, his Majesty Otumfuo Osei Tutu II, to whom we will refer as "the King". The King is not a party to this case and the Tribunal has not heard any evidence from him. The Tribunal has not been called upon to reach any judgment about the significance of any actions on the King's part and we have not done so.

9. We turn then to the evidence that was given in the course of the hearing. On behalf of the Respondent, the Tribunal heard evidence from the following witnesses.

   1. Miss Karen Bowden-Brown, HR Manager.

   2. Mr Raymond Sambou, Executive Director Finance and Operations.

   3. Mr Colin Millar, a Non-Executive Director and Chairman of the Furness Building Society.

10. The Tribunal also read a witness statement from Mr Peter Haines, formally a Non-Executive Director of the Respondent. Mr Haines was not called to give evidence: the Tribunal was told that he had left the Respondent's employment and was at the time of the hearing engaged in business in Dubai. The Tribunal read his statement, giving it less weight than it would have been given had he attended to give oral evidence.

11. The Claimant gave evidence on his own behalf.

12. There was an agreed bundle of documents and page numbers that follow in these reasons refer to that bundle.

13. The Claimant has dual Ghanaian and UK Citizenship and is a member of the Ashanti people of Ghana. He began work for the Respondent in 1989 as a trainee. He was promoted over the years and in 2015 became General Manager. In February 2016 the Claimant was appointed to the Board of Directors and his title became that of Executive Director. At the time of the events with which this hearing was concerned the Claimant was the second most senior officer in the Respondent's organisation in the UK. The most senior was the Chief Executive Officer, Mr Joseph Mensah.

14. Although there was some suggestion of a degree of difficulty in the working relationship between the Claimant and Mr Mensah, which the Claimant disputed, the Tribunal was satisfied that the Claimant had an unblemished disciplinary and performance record over the years.

15. A great deal has been said in the course of this hearing about the events of the 7th to 9th August 2016. The only oral evidence the Tribunal has heard about those matters has come from the Claimant, and the only evidence available to anyone enquiring into the interactions between the Claimant and the King has also been that of the Claimant. What follows is therefore essentially the Claimant's account of the events.

16. On the evening of 7 August 2016, the King's wife telephoned the Claimant and summoned him to the King's residence at Henley on Thames the following morning. She did not say why the Claimant was being asked to attend.

17. On the morning of 8 August 2016, the Claimant sent a message to Mr Mensah saying that he would be coming into work late, without giving any further explanation of this. He drove to Henley in his own car and was shown into the King's presence. The Claimant explained that the situation was unusual because the King was generally attended by a retinue, but on this occasion he was alone. Furthermore, it was customary for any conversation with the King to take place indirectly through a third party who the Claimant described as a linguist, but the Claimant and the King spoke face to face.

18. The King produced a holdall that contained bundles of banknotes. It transpired that there were in the holdall US $200,000 and £196,960 in cash. The King then stated the following three matters:-

    18.1 He wanted the cash to be deposited in his account with the Respondent.

    18.2 He was expecting a further transfer of funds from a named organisation.

18.3 Having enquired, and having been informed that the current balance in his US Dollars account was $199,864, he asked for $200,000 to be transferred from that account to his account with a bank in Jersey.

19. In paragraphs 40-49 of his witness statement the Claimant set out his evidence about his reaction to the situation and about what occurred next. The Claimant said that he was surprised by the King's request to deposit the cash but did not want to show this in front of him. He opened the bag and did a spot check. The Claimant explained in his oral evidence that he did not count the money, but he did count the bundles in order to see whether they corresponded to the sums that the King had stated were present in the bag. The Claimant told the King that he would not be able to verify the funds at his residence, but could do an immediate check once he returned to the Bank. He asked the King for permission to ask some questions about the money in order to verify its origin and the King gave that permission.

20. The Claimant continued that the King told him that the cash had come from the National Investment Bank (NIB) and the Societe Generale Bank (SG-SSB) in Ghana, both of which banks kept accounts with the Respondent. The Claimant told the King that he would need to speak with someone at both banks to verify this and the King said that he could not remember the name of the person at the NIB who dealt with the requests.

21. The Claimant stated that he told the King that withdrawing cash in this way was unnecessary and that the Respondent could assist him in transferring large amounts of money electronically and thus avoid the need for him to carry large amounts of cash. In his oral evidence the Claimant said that the King seemed to be unaware that electronic transfers could be made in these particular circumstances.

22. In paragraph 46 of his witness statement, the Claimant said this:-

"Without a policy to follow and without wishing to offend a Sovereign of my Country, I found myself in an extremely difficult situation and one I had never been in before. I could not carry out the necessary due diligence by talking to his Majesty, so decided it would be best to verify the deposits at the Bank and to speak directly to Mr Mensah rather than disrespect his Majesty in a face to face meeting."

23. The Claimant continued that he was aware that cash deposits had been taken in this way before, with an after the event explanation given in a note subsequently put on the file. He said that he was aware that it had been said that he should have called the Bank but stated in paragraph 48 of his witness statement:-

"… I found myself in an extremely unique and difficult circumstance; I was before his Majesty and did not want to insult him by asking to leave the room. I was aware of Royal protocol and it would not have been right to leave his Majesty waiting whilst making enquiries, this was an exceptional situation. I can say with certainty that if it was anyone other than his Majesty I would not

have behaved in this way, I would not have even attended their residency in the first place, I have never attended any customer in this way before."

24. Then in paragraph 49:-

"Having decided to deal with all due diligence back at the Bank, I drove home as there was nowhere to park near the Bank. From home I got an Uber taxi to work as I did not want to risk carrying that much cash on public transport."

25. When cross-examined, the Claimant agreed that he had left himself vulnerable in the circumstances as he had not given a receipt, but added "I was dealing with a King", a comment that he made on a number of other occasions. He said that he considered that he could not refuse to accept the cash and transport it to the Bank and (when it was suggested) that the thought did not occur to him that he could have said that he could not take responsibility for the money there and then, but could return the following day better prepared.

26. When asked about the journey, the Claimant said that he was alone in his car and that had he driven straight to the Bank in the City of London, he would have had to drive to a temporary parking place and then carried the cash to the Bank premises, which would have heightened the risk. He agreed that it was possible for a vehicle to draw up immediately outside the Bank and said that it did not cross his mind that he could phone ahead to the Bank to arrange someone to meet him. The Claimant further said that at the time of these events he did think about the insurance position and agreed that he knew that there was a £50,000 excess on the policy in the event of loss of cash. The insurance position was the subject of further discussion in the course of the hearing to which we will refer again in these reasons.

27. The Claimant's account continued with his description of events when he arrived at the Respondent's premises. He said that he immediately gave the cash to the cashiers to count and asked the Deputy Head of Retail to supervise this and to hold the cash until he gave further instructions.

28. In paragraph 55 of his witness statement, the Claimant said that he then went straight to Mr Mensah's office as he knew that the Money Laundering Reporting Officer was not available and he wished to have Mr Mensah's guidance before the transaction continued. He explained what had happened that morning and then continued in paragraph 56 of his statement as follows:-

"Mr Mensah did not express anything untoward, his body language was relaxed and he remained seated throughout the whole conversation. He told me to go ahead and process the cash deposits and the transfer. I cannot remember if he told me precisely to make a note for the file, but I took from our conversation that we were to carry out the transaction as requested by his Majesty and I would then carry out the necessary due diligence for the file; neither of us suspected there was anything untoward as the cash deposits and transfer were consistent with his Majesty's profile."

29. The Claimant continued that he then instructed the cashiers to process the deposits and the transfer.

30. As we have already stated, the above is the Claimant's account of events. At 15.28 on 8 August 2016, he sent an email to Mr Mensah at page 703, which read as follows:-

> "This is to inform you that at the request of his Majesty Otumfuo Osei Tutu II, I this morning collected from his UK residence £199,960 and $200,000 dollars cash to be credited to his accounts with us. I understand that the cash was withdrawn from National Investment Bank and SG-SSB. The bands on the cash received confirm this. His Majesty and I discussed how we can avoid such large cash deposits; he has agreed to arrange for a senior officer at both Banks to contact me to discuss wire transfers in the future. He has also requested that the $200,000 be transferred to his account at [the Jersey Bank], he has also informed me to expect [the payment from the third party]. I am orchestrating these requests."

31. The Claimant observed in his witness statement that, with hindsight, he should have phrased this email differently and included some reference to the earlier conversation with Mr Mensah.

32. Mr Mensah's account of what had occurred, which differed from that of the Claimant, was given later, when the matter was investigated. Remaining with the events of August 2016, on the morning of the 9th August, Mr Mensah sent two relevant emails. The first was at 08.49 to Cynthia Manful, the Respondent's Acting Head of Compliance and read as follows:-

> "This huge cash lodgement is not consistent with the operation of the account and is a clear breach of our laid down procedures, I suggest you file a suspicious transactions report accordingly. I will make it clear to Mark that such transactions should not be accepted going forward and that customers should be encouraged to use the banking system via electronic transfers where the source of funds could be easily traced."

33. Then at 08.53, Mr Mensah sent the following email to the Claimant (page 704):-

> "I have reviewed this transaction and my views are:-
>
> 1. We should not accept such huge amounts over the counter as it is a clear breach of our policy.
>
> 2. We should encourage his Majesty to use electronic transfers.
>
> 3. I suggest you contact NIB and SG for confirmation of the source of funds and make a note for the file before we effect the transfer to [Jersey]."

34. The Claimant replied at 09.08 noting Mr Mensah's comments and referring to the information he had given the previous day about the cash payments and the transfer. He went on to say that he did not have contacts at either of the Banks (i.e. NIB and SG-SSB) to make enquiries of straight away but that he was liaising with the King for the branch and contact details. In his oral evidence, the Claimant said that he in fact returned to the King's residence with a view to making enquiries but was not able to establish any further information at that stage.

35. Also on 9 August 2016, Mr Mensah filed with the SRA a suspicious activity report in respect of the transactions, as referred to in his email to Ms Manful. The Tribunal has not seen a copy of this report.

36. On 11 August 2016 Ms Manful sent an email to Ms Nana Mante of Retail Banking asking for a compliance report in relation to the cash deposits and the transfer to Jersey. She said that some of the issues to address would be documentation for the source of funds, how it was lodged, reasons given for this and documentation to support taking cash over the counter of more than £5,000, as per the manual.

37. On the same day, Mr Sambou sent an email to Ms Manful, copied to Ms Manteh and the Claimant asking:-

    "Why did we receive this in cash? This is huge for a cash transaction, I am keen to understand the reasons for this transaction and that we have done everything to protect the Bank."

38. On 15th August 2016, Ms Mante produced an account monitoring report at pages 706 to 707. This set out what the Claimant said regarding the cash received and the transfer to Jersey. In relation to other cash deposits, Ms Mante identified three payments of £15,000 each over a period of about 2 weeks in May 2013 and another payment two days later, again in cash, of £39,950. These were described as proceeds from investments. She also recorded a cash payment on 8th August 2014 of US $100,000 described as gifts received from a celebration in the UK. Ms Mante explained that Ashanti custom involved subjects giving the King substantial gifts, often in the form of cash, which would be paid into the account. The report also stated that there had been over the same period 3 payments from the US Dollars account to the King's account in Jersey. Ms Mante concluded as follows:-

    "Considering the fact that [the King] is classified in our books as a political exposed person (PEP) so the accounts are classed as high risk. We must take documentary evidence for all the cash deposits lodged unto his accounts."

39. Returning to the Claimant's account of events, in paragraphs 62 and 63 of his witness statement he described being called to speak to Mr Haines, Chairman of the Audit Risk and Compliance Committee, and having a detailed discussion which lasted for over an hour about the events of the 8th August. As to the content of these discussions, the Claimant said only that

he again explained what had happened and said that he had sought and received Mr Mensah's approval before the transactions were carried out and that this came as a surprise to Mr Haines. Mr Haines did not mention this conversation in his witness statement.

40. On the 10th October 2016, by a letter at page 1142, the Claimant was suspended pending investigation of the events of the 8th August. The letter, which was signed by Mr Haines, gave the following by way of explanation for the suspension.

"As some of the allegations involve irregularities and matters connected with our systems, we consider suspension is an appropriate step. If someone were guilty of such allegations, that person could use our systems to delete or alter documentation relating to the investigation. Equally, if someone were guilty, they could influence others if they were still at work with them."

The letter continued that the Claimant was required to attend an investigation meeting with Grant Thornton.

41. It is apparent from the report ultimately produced by Grant Thornton that it was Mr Haines who instructed them to carry out the investigation. Mr Haines did not expressly say this in his witness statement, although he stated that he did not seek to influence the contents of the report in any way, except to ensure that the facts were correct in terms of his own meetings with the Claimant.

42. On pages 610 to 611 Grant Thornton listed the interviews that had taken place with relevant employees. Ms Manful, Ms Olive Terrelonge, Mr Adam Mullins and Ms Ruth Amarh were all interviewed on the 6th October. Ms Mante was interviewed on the 7th October, the Claimant on the 18th October, Mr Mensah on the 20th October and the Claimant again on the 4th November.

43. The report and the appendices to it are lengthy and the Tribunal will give only a brief summary of the most important aspects. There were no statements as such from those interviewed, but rather Grant Thornton conveyed in the body of the report what each had said. There was a chronology of events set out at pages 615 to 616, including the Claimant's account of the events at the King's residence. It was recorded that Ms Terrelonge, the Deputy Head of Retail Banking, stated that when the Claimant arrived with the cash she asked him whether enhanced due diligence had been carried out and he said that it had. The Claimant said that he did not recall that conversation.

44. The report highlighted an inconsistency between the Claimant and Mr Mensah, the former saying that Mr Mensah had not raised any concerns about the transactions and did not suggest that they should not be processed; while the latter stated that the Claimant told him about the deposits after they had been processed into the King's accounts and that he was highly alarmed and raised a number of concerns, including the safety of transporting such a large sum in an unsecured manner, and the requirement to establish the source of funds for such a large cash deposit. The report

continued that Mr Mensah stated that following his conversation with the Claimant, he left the office to have a coffee with a friend before reading the email sent by the Claimant at about 15.28 when he returned to the office at about 5 o'clock that afternoon.

45. At page 617 under the heading "Reporting to MLRO" (Money Laundering Reporting Officer) it was stated that the Claimant said a number of times that he was not concerned about the transactions as they did not appear to be out of keeping with the customer's profile.

46. In relation to insurance, at page 618, Grant Thornton recorded that it seemed likely that custody of the cash was taken when it was received by the Claimant at the King's residence, that responsibility for any loss of the cash while being transferred from there to the Bank would have been with the Respondent, and that this was a breach of the insurance policy which only covered transportation of up to £250,000 by "Armoured Motor Vehicle".

47. At page 623, Grant Thornton recorded that there was a restriction on taking local or foreign currencies out of Ghana to the equivalent of US $10,000 and that the Claimant had said that he was not aware of those regulations. Although there was no record in the list of interviews of an interview with Mr Haines, the Grant Thornton report stated that Mr Haines said that when he spoke to the Claimant with regard to the transactions the latter told him that it was illegal to take more than, he thought, US $10,000 out of Ghana and that the Claimant did not recall having said that. Grant Thornton also recorded a requirement to make a cash declaration in order to bring a sum equivalent to €10,000 or more into the EU, and that although the Claimant was aware of this requirement he did not ask the King whether this had been complied with.

48. Then at page 624 the report recorded that Ms Manful had a conversation with Mr Mensah about the deposits and the transfer to Jersey, and that she said that she explained to him that this was not acceptable and that a suspicious activity report should be raised. It continued that Mr Mensah then emailed her at 8.49 formally instructing her to do so (an account which would seem to indicate that it was Ms Manful who initially triggered the raising of the SAR).

49. Under the heading "Source of Funds" at page 625, the report recorded that in his email of 8 August, the Claimant had said that the cash had been withdrawn from the NIB and the SG-SSB and that it had later transpired, according to the Claimant, that all the money was withdrawn from the NIB.

50. Finally, on page 628, the report commented that the King's file did not contain sufficient due diligence documentation or evidence with regard to source of funds, source of wealth or purpose of transactions, and that this comment included the US $100,000 deposited in July 2014.

51. On the 14th November 2016 Mr Haines sent a letter to the Claimant at pages 1165 to 1168 inviting him to a disciplinary hearing on 22 November to

consider an allegation of misconduct and/or negligence. It was said that this could amount to gross misconduct and/or gross negligence. The letter set out six allegations as follows:-

1. "On 8 August 2016, you attended a private residence of a high net worth individual and collected £199,960.00 and $200,000. That individual … was listed on the Bank's systems as a politically exposed person (PEP). A person who is a PEP must be subject to enhanced scrutiny as transactions in relation to that person are considered by the Bank and UK Law to be at a significant risk of money laundering. As such evidence of the source of funds should be obtained.

2. You transported this significant amount of currency from Henley-upon-Thames to the Bank in the City of London. The Bank's insurance policy is that any transportation of physical cash must not exceed £250,000 and must be by armoured car.

3. At the Bank you had the currency paid into the account of the PEP. You then had the Bank transfer $200,000 to a different Bank in Jersey.

4. You suggested that this was authorised by the Chief Executive by printing out an email sent to him and initialling it yourself.

5. Your actions were not only in breach of the Bank's policies but gave rise to the need for the Bank to make a suspicious activity report (SAR) and the need to notify the Bank's regulator, the Prudential Regulation Authority.

6. These actions also meant you have covered up breaches of currency movement regulations relating to currency leaving Ghana and currency entering the EU."

52. The letter continued that the Grant Thornton Report was enclosed, and drew attention to certain parts of that report. There was also sent with the letter a letter from the Respondent's solicitors setting out the legal position. Mr Haines concluded that he thought it likely that the Claimant would wish to bring his legal adviser, and that he was minded to permit such a request.

53. There followed email correspondence between the Claimant's solicitor and Mr Haines, which included an email of the 18th November 2016 at pages 1191 to 1192 from Mr Deans, the Claimant's solicitor. This made a number of points and threatened an application for an injunction (an application that was not made in the event) but in particular asserted that Mr Haines should not conduct the disciplinary hearing because he was not independent, given his prior involvement in the matter. The letter continued that there did not appear to be anyone in the London branch of the Respondent who was not aware of the matter, and therefore asked for an independent person, such as the Chairman of the Bank in Ghana, to conduct the Hearing. In reply on 19th November, Mr Haines said that if the Claimant wished to challenge the view that he was sufficiently independent, that could be added to the agenda for

the disciplinary hearing. He also referred to the other points that had been made.

54. On the 22nd November, the Claimant and Mr Deans attended the disciplinary meeting with Mr Haines. Ms Bowden-Brown was also present as HR Manager, as were lawyers engaged by the Respondent from both Mayer Brown and Shulmans. The meeting was recorded and notes of this were at pages 1196 to 1206.

55. Mr Deans made various procedural points, including asserting that the Claimant did not believe that he had had sufficient time to prepare for the meeting, and an issue as to which of two staff handbooks would be used in relation to procedure.

56. On page 1201 it was recorded that Mr Deans asked Mr Haines what his precise involvement in the matter had been up to that point. Mr Haines said that Mr Mensah had called him and briefly told him his version of the events in issue and that Mr Haines subsequently met the Claimant in August, when the Claimant gave him his account of events. He said that the meeting took about an hour. Mr Haines said that he had not been interviewed by Grant Thornton or Mayer Brown, and that he had some involvement in the agreement whereby Grant Thornton were instructed to investigate. Following this, Mr Deans repeated the assertion that Mr Haines was not independent, and he asked him to recuse himself from conducting the meeting.

57. Mr Haines declined to do this, and said that he intended to proceed with the meeting. Mr Deans said that in the circumstances the Claimant was not in a position to participate in the meeting and he and the Claimant then left. Immediately before they did so the following exchange took place:-

"Mr Haines: We did offer the opportunity to respond to any questions in writing by the end of the week so that now remains the course if you wish to use that.

"Mr Deans: Thank you very much and of course we would say to you that if you subsequently decide not to continue with this meeting, we would respect that and hopefully you will inform us if that is your decision."

58. The 22nd November 2016 was a Tuesday, and if Friday is taken as the end of the week, that would have been the 25th November. In the event on the 23rd November Mr Haines sent an outcome letter to the Claimant by email at pages 1215 to 1219. In the letter, Mr Haines dealt with the question of his previous involvement and said that he considered that he had sufficient independence of mind to reach his own conclusions. He said that the Claimant had left the meeting without giving any account in respect of the allegations against him. Mr Haines said that in the absence of any such explanation he had concluded that the Claimant was guilty of the six listed allegations and that he had concluded that he was guilty of gross misconduct and/or gross negligence.

59. Mr Haines continued that he found that summary dismissal was the appropriate sanction and set out his reasons for saying this. These included that there was no suggestion that the Claimant had not done the acts listed in the invitation letter; that the King was a PEP under the Money Laundering Regulations 2007 and that as such that there was an inherent higher risk that the source of the funds could be the proceeds of crime; the question of Ghanaian and EU currency controls; the failure to ascertain the source of the funds; the failure to give a receipt; and transporting the money in a private taxi.

60. Mr Haines also said that the Respondent could no longer have any trust in the Claimant as an employee and that he was alive to the fact that the Claimant's actions meant that the FCA would decide that he no longer passed the fit and proper person test suitable for being a senior manager. He concluded by referring to the right to appeal against the decision.

61. The Claimant sent an email to Mr Haines appealing against the decision on 30 November 2016. The Respondent decided to appoint Mr Millar to hear the appeal, sending him a letter on 15 December 2016 at pages 1253 to 1257. This contained a paragraph at pages 1254 to 1255 stating that Mr Millar would be acting with the delegated authority of the CEO, who was a director of the Respondent, and that he should have particular regard to the general duties of directors in Part 10 of the Companies Act 2006, including a duty to act in the way which we would be most likely to promote the success of the company for the benefit of its members as a whole. The letter then referred to certain specific matters, including the likely consequences of any decision in the long term; the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; and concluding with the need to act fairly as between members of the company.

62. When Mr Millar was asked about this paragraph in cross-examination he agreed that it was slightly surprising, but stated that he was acting in place of the Chief Executive in hearing the appeal. When Ms Bowden-Brown was asked about this part of the letter, it was put to her that this was effectively saying to Mr Millar that he should find a scapegoat for the situation, which she denied.

63. As will be explained later in these reasons, the Tribunal was satisfied that Mr Millar approached the appeal with an independent mind and was not influenced by any consideration of what outcome the Respondent might or might not have wanted. In those circumstances this paragraph was, as he put it, slightly surprising, but nothing more than that in the Tribunal's judgment.

64. In his oral evidence, Mr Millar also said that he was sent an extensive file of documents about the matter, including the Grant Thornton report, the advice letter from Mayer Brown, a transcript of the original disciplinary hearing, the suspension and dismissal letters, and the email trail between Mr Deans and Mr Haines about the procedural aspects. He confirmed that he did not have

any witness statements obtained by Grant Thornton, but said that this did not surprise him because he viewed the Grant Thornton report as a pre-disciplinary investigation undertaken in order to see whether there was a case to answer, and that he understood that the information from Grant Thornton was that transcripts of the interviews did not exist. He said that it was correct that he had asked whether they existed and said that he did so, not in order to examine the contents of the other witnesses statements, but rather to test the Claimant's assertion that the flow of conversation at his interview had been such that he did not have the opportunity to raise the particular point about the type of passport held by the King.

65. The appeal hearing took place on 14 February 2017, with a lawyer from Shulmans and Mr Deans again present. The meeting was recorded and the transcript of that recording was at pages 1280 to 1305. The Claimant gave a full account of events in effectively the same terms as previously. At the close of the meeting, Mr Millar said he would not be making a decision on the day and that he would read the transcript of the hearing before doing so. He also said that he would consider whether he needed to speak to anyone else in relation to points made by the Claimant.

66. Having read the transcript Mr Millar sought further information on particular points, sending an email to Ms Bowden-Brown on 23 February 2017 at pages 1306 to 1308. In paragraph 22 of his witness statement, Mr Millar set out in detail the points that were clarified by Ms Bowden-Brown. Some but not all of these were, in summary, the following:-

    66.1 The Respondent did not hold a copy of a diplomatic passport for the King that had not expired, and the current copy of the passport on file was an ordinary passport. (It was confirmed by the Respondent during the course of the present hearing that this information was incorrect and that the copy of the current passport on the King's file is in fact a diplomatic passport).

    66.2 It was impossible to say whether the movement of the cash from Ghana to the UK was lawful, in terms of Ghanaian currency export controls, or whether it might have been the case that the King had relied on his diplomatic status to import cash for personal use. If the latter, Ms Bowden-Brown stated that the Claimant should have considered this as an additional high risk factor in conducting due diligence on the source of funds.

    66.3 The insurance proposal form showed the maximum amount of cash in transit at any one time to Head Office as £250,000, by armoured motor vehicle.

    66.4 There was no evidence to suggest that the Claimant received any benefit out of the transaction. Ms Bowden-Brown said that the Respondent had so far lost £95,800 in costs relating to the investigation and legal costs and that there were potential reputational and other financial implications following a visit by the

FCA. She said that a voluntary business restriction had been imposed by the FCA on the Respondent until the FCA was satisfied that the control environment around the financial crime and sanctions processes had been sufficiently strengthened.

66.5 Ms Bowden-Brown said there had been no similar event involving a senior manager or such large amounts of physical cash to which this could be compared.

66.6 Ms Bowden-Brown said that if the dismissal were to be reversed and the Claimant to be reinstated then it would be necessary to apply for approval from the regulators and satisfy them that the Claimant was a fit and proper person, which would involve explaining how there had been a change of mind about the case.

67. The tribunal considered that the making of these enquiries, and in particular those at points 1, 2, 3 and 5 above, tended to show that Mr Millar was exercising his own independent judgment in the matter and was not influenced by any perception of what might have been the Respondent's preferred outcome: he was testing what he had been told, rather than just accepting it at face value.

68. Mr Millar also decided to speak directly to Mr Mensah, which he did on the 17th March 2017, a transcript of that meeting being at pages 1368 to 1383. Mr Millar set out in detail in paragraph 28 of his witness statement the contents of that meeting. Some, but not all, of the points raised were as follows:-

68.1 Mr Mensah said that although the King would be treated as a high net worth individual and would be shown respect, that did not mean that he was a special customer who was not subject to UK regulations.

68.2 Mr Mensah said that on the day in question, the Claimant should have telephoned him from the King's residence and told him what was happening, whereupon Mr Mensah would have told him to politely explain that this could not be done.

68.3 Mr Mensah gave his account of what occurred when the Claimant returned to the Bank, which mirrored that that he had given previously, including the differences from the account given by the Claimant.

68.4 Mr Mensah said that he could not see that it was possible for the Claimant to be reinstated or reengaged.

69. On 31 March 2017, Mr Millar sent by email to the Claimant a letter at pages 1397 to 1403 dismissing his appeal. Again, Mr Millar referred to the six specific allegations.

70. Mr Millar upheld the allegation of accepting the cash. He pointed out that the facts were not disputed, but said that at the appeal hearing the Claimant had asserted that his action was reasonable. Mr Millar said that the King was a PEP and that the Claimant knew or should have known that he had to complete enhanced due diligence before accepting the cash, which he did not do. He said that the Claimant should not have accepted the cash if he was not able to satisfactorily establish the source of funds and that he had not obtained a credible explanation for why the deposit was being processed in cash and not by bank transfer. Mr Millar said that the proposed deposit was not consistent with the King's normal use of his account and he referred to the four transactions adding up to nearly £100,000 and the single transaction for $100,000 referred to above. Mr Millar continued that after the event the Claimant failed to carry out adequate due diligence because he did not obtain independent confirmation from the National Investment Bank in Ghana of the source of the funds, but only sent an email in which he recorded a telephone conversation with an officer there.

71. Mr Millar upheld the second allegation in relation to transporting the cash from Henley on Thames to the Bank, saying that the Claimant knew or should have know that the cash was not covered by insurance in those circumstances, that he could have ordered an armoured motor vehicle, and that he had not adequately considered whether the cash was insured at the time that he transported it.

72. Mr Millar did not uphold allegation 3, which concerned crediting the cash deposits at the Bank and then making the transfer to the bank in Jersey. Recording the Claimant's explanation that he had informed Mr Mensah of the transactions and he had raised no objection, Mr Millar said that it was impossible to reconcile the two accounts. He therefore said that he gave the Claimant the benefit of the doubt and that it was reasonable for him to conclude that he had Mr Mensah's approval, explicit or implied, to process the transactions.

73. The position was similar in relation to allegation 4, which again Mr Millar did not uphold, and which related to making the transfer to Jersey with the implied authority of Mr Mensah.

74. Mr Millar upheld allegation 5, which was breach of the Bank's policies giving rise to the need to make a suspicious activity report. It seemed to the Tribunal that this in fact added little, if anything, to the earlier allegations.

75. Mr Millar also upheld allegation 6, which was that of breach of the currency movement regulations. He did so on a basis that there was no record that the King held a current diplomatic passport which, as has already been stated, was incorrect information that Mr Millar had been given by the Respondent. Mr Millar added that there was no evidence that the Claimant had established sufficient information to enable him to form a view on whether the movement of the cash from Ghana to the UK was lawful.

76. Mr Millar continued that although there was no evidence of deliberate intention to damage the Respondent, these actions would normally amount to gross misconduct. He said that there was no evidence of contrition or regret on the Claimant's part, and that if he were to resume a senior role in the Respondent it would be necessary for the Respondent to assure the regulator that it was satisfied that he was a fit and proper person to hold a senior management function. Taking everything into account, he did not consider that the Respondent could have trust and confidence in the Claimant as a senior employee. Mr Millar therefore concluded that his dismissal should stand but added that there should be recognition of his past service to the Bank over a long period, and that he therefore recommended that he should be given a payment in lieu of notice.

77. Mr Millar gave the following further evidence in cross-examination:-

    77.1 In relation to the other deposits into the King's account, Mr Millar said that he was aware of these, and that he understood that the $100,000 had been raised at a fundraising event and that therefore the source of those funds was probably established. When referred to the record at page 919 regarding this deposit, he said that this was not an adequate report at all and that it was surprising that Mr Sowah, who had made the record, had not given the explanation of the source of funds at the time. Mr Millar said, however, that he thought that this was a completely different scenario from that involving the Claimant, since if members of the Bank had been present at the fundraising event, they would have know the source of the funds. In relation to the sterling deposits amounting to nearly £100,000 over 5 weeks, Mr Millar said that these were surprising but that there was a world of difference between deposits of £15,000 at a time and being handed a mix of currencies amounting to around £350,000 in value.

    77.2 When it was put to Mr Millar that it was plain to him that Mr Mensah was not telling the whole truth when he was interviewed, Mr Millar replied that he gave the Claimant the benefit of the doubt as he thought that his account was more plausible (again illustrating, in the Tribunal's view, his independence of mind in the matter).

    77.3 With regard to the insurance issue, Mr Millar said that for the Claimant, as an experienced banker, it would have been second nature to think about the insurance position.

    77.4 Mr Millar expressed the view that "the damage was done when the Claimant took the holdall with the money without checking where it had come from, whether it was in the country legally, and then drove it to London uninsured." He agreed that the Claimant was faced with a very significant diplomatic challenge, but said that he should have ensured that UK law was enforced. He said that the control framework at the Bank was deficient, but that taking a holdall full of money was a different matter. He said that the Claimant would have

known the money laundering regulations and that if anyone had the standing to explain the position to the King, the Claimant did.

77.5 Elsewhere in his evidence, Mr Millar expressed the view that the Respondent had been "below the radar" for a long time in terms of the regulators and that had they been more experienced they would have contacted the regulator earlier. He said that in making his decision he was not influenced by the view of the lawyers, Mayer Brown, that the Claimant could not return to the Respondent's employment. He said that the Governor of the Bank of England had recently stated that regulators should not apply a "one strike and out" approach to infringements by senior employees with a good record (another point tending to suggest independence of mind).

77.6 Mr Millar stated that he did not consider that any of the information that he had not received from the Respondent would have made a difference to his decision in the circumstances.

The Applicable Law and Conclusions

78. The first complaint that the Tribunal considered was that of automatically unfair dismissal. Section 103A of the Employment Rights Act 1996 provides as follows:-

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

79. A protected disclosure is defined in the following terms in section 43A of the 1996 Act:-

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

80. Section 43B in part then provides as follows:-

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

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

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

81. The first question that arises is whether the Claimant made a protected disclosure. In this regard he relies on the solicitor's letter of 18 November

2016 at page 1191 and similar observations made at the meeting on 22 November.

82. As to whether or not what was written or said amounted to information, the Tribunal had in mind the observations of Langstaff J in **Kilrane v London Borough of Wandsworth [2016] IRLR 422** to the effect that very often allegations and information are intertwined. We found that this was the case here and that the Claimant at least disclosed information in terms that Mr Haines had previously been involved in the material events. It was common ground that the fact that Mr Haines already knew this did not prevent it amounting to information.

83. The second element of the definition of a qualifying disclosure is that in the reasonable belief of the maker, it is made in the public interest. In **Chesterton Global Limited v Nurmohamed [2017] EWCA Civ 314**, the Court of Appeal held that the Tribunal has to ask (a) whether the worker believed at the time he was making the disclosure that this was in the public interest and (b) whether, if so, that belief was reasonable.

84. In his submissions Mr Hogarth QC observed, correctly, that Mr Tatton-Brown QC had not cross-examined the Claimant to the effect that he did not hold the requisite belief at the relevant time. Mr Tatton-Brown agreed that he had not questioned the Claimant on this point and submitted that there was no call for him to do so, as the Claimant had not given any evidence asserting that he held the relevant belief. Mr Tatton-Brown contended that the absence of such evidence was fatal to the Claimant's case that he had made a qualifying disclosure.

85. The Tribunal found that Mr Tatton-Brown was correct in that submission. Nowhere in his evidence did the Claimant say that he believed that the disclosure was made in the public interest. It was not written or said at the material time that this was so, nor is it the case that the disclosure was so obviously in the public interest that the point would go without saying.

86. In fact, the Tribunal would go further and finds that a belief that this was a disclosure made in the public interest would not be a reasonable belief. The Tribunal accepts, as Mr Hogarth submitted, that there is a public interest in the proper regulation of banks and the provision of financial services. The disclosure was not, however, of information related to such regulation. The information related to Mr Haines' prior involvement in the events and to the contention that he should not therefore be conducting the disciplinary hearing. That was a matter of concern to the Claimant, but it could not be said that the public interest was engaged in the question of who was or was not an appropriate person to conduct that meeting.

87. The Tribunal therefore found that the Claimant had not shown that he believed that the disclosure was made in the public interest. Further, if he did hold such a belief, that belief was not a reasonable one.

88. These findings mean that the Claimant did not make a protected disclosure and that the complaint of automatically unfair dismissal therefore fails. For completeness, however, the Tribunal has dealt with the other elements of that complaint.

89. For a disclosure to amount to a qualifying disclosure there would also have to be a reasonable belief on the Claimant's part that the disclosure tended to show (in this case) that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject. Little was said about this in submissions. The claim was pleaded on the basis that the legal obligation in issue was the implied term of trust and confidence in the employment contract and/or that the situation was such that a miscarriage of justice was likely to occur.

90. In the absence of submissions directly on the point, the Tribunal would, if necessary, assume this issue in the Claimant's favour.

91. Doing so leaves the question of causation. It was common ground between the parties that the starting point for considering the Respondent's reason for the dismissal was not Mr Haines' decision, but Mr Millar's, as the latter conducted a re-hearing. Mr Hogarth accepted that Mr Millar had reached his decision in good faith. Mr Hogarth did not suggest that Mr Millar had in his mind as a reason for dismissing the Claimant the fact that he had made a disclosure to Mr Haines, but rather he argued that Mr Mensah and/or Mr Haines had manipulated Mr Millar's decision.

92. In this connection, Mr Hogarth relied on the decision of the Employment Appeal Tribunal in **Royal Mail Group Limited v Jhuti [2016] IRLR 854**. Mr Hogarth relied on the passage in paragraph 34 of the EAT's judgment given by Mitting J that read as follows:-

> "I am satisfied that as a matter of law, a decision of a person made in ignorance of the true facts whose decision is manipulated by someone in a managerial position responsible for an employee, who is in possession of the true facts, can be attributed to the employer of both of them."

93. The Tribunal considered how this approach might apply in the present case. Essentially, Mr Hogarth was submitting that although Mr Millar acted in good faith, he was manipulated by Mr Mensah and/or Mr Haines and that, if that was the case, their reason for seeking the Claimant's dismissal became the Respondent's reason.

94. So far as direct attempts at manipulating Mr Miller's decision are concerned, there was no evidence that either Mr Mensah or Mr Haines made any approach to Mr Millar. The situation was rather that Mr Millar sought information from each of them. In his email of 7 March 2017, at pages 1419 to 1420, Mr Millar asked Ms Bowden-Brown to make enquiries of Mr Haines about various matters, including his contact with the Claimant and the basis on which he came to a conclusion that the Claimant was guilty of gross misconduct and that summary dismissal was appropriate, rather than

something that took account of the Claimant's long service and previously clean disciplinary record. Mr Haines replied to Mr Millar's questions at pages 1423 to 1425. On the face of the matter, the answers that he gave were factual responses to the questions that Mr Millar had raised and did not suggest that he was trying to steer Mr Millar's decision in a particular direction for some reason other than his own conclusion as to the Claimant's conduct and the sanction that should be applied in respect of that. The Tribunal did not therefore consider that there was any merit in the contention that Mr Haines was seeking to manipulate Mr Millar's decision.

95. So far as Mr Mensah is concerned, the position is if anything even clearer. Mr Mensah gave Mr Millar an account of the events of 8 August that tended to show himself in a more favourable light than did the account given by the Claimant. If this was not an accurate account of events, there was no obvious reason for thinking that what lay behind it was anything more complicated than a wish on Mr Mensah's part to protect his own position. But in the final analysis, if this was an attempt to manipulate Mr Millar's decision, for whatever reason, it failed, because Mr Millar preferred the Claimant's account of events.

96. The other way in which Mr Hogarth suggested that there was manipulation of Mr Millar's decision, was in relation to evidence that was not provided to him, raising the following items:-

96.1 The absence of interview notes or transcripts taken by Grant Thornton. Although the Tribunal found the position in this regard to be somewhat curious, the evidence was that there were no transcripts of the interviews and that Grant Thornton declined to produce their notes when these were requested on behalf of Mr Millar. There did not appear to be any intervention or manipulation by Mr Mensah or Mr Haines.

96.2 Mr Millar was not told about the fact that two directors, including Mr Haines, had not been re-appointed, it being suggested that this was indicative of failings as to compliance within the organisation. This however seemed to be of little significance because Mr Millar agreed in cross-examination that the problems with compliance were more widespread than the single occurrence with which this case is concerned.

96.3 Mr Millar was given the wrong information about the King's passport in that he was told that this was an ordinary version when in fact it was a diplomatic passport. However, this again was of little significance on Mr Millar's evidence, because he said that even if the King did have a diplomatic passport and was using it when he brought the money into the country, the existence of that passport would not entitle him to bring money in for personal use.

96.4 The SAR was not produced to Mr Millar. When he was asked about this, Mr Millar said that he would not necessarily expect to see it and

would not regard it as being of great significance to what he had to decide.

96.5 The internal audit reports of 2014 and 2016 were not produced to Mr Millar, but as he said in his evidence, he was aware of their existence.

96.6 When Mr Millar enquired about the insurance policy Ms Bowden-Brown replied with information about the proposal form, rather than the policy itself. There was some debate in the hearing about the correct analysis of the insurance position, and whether the cash was insured, and if so to what extent, while it was being transported from Henley to London. This debate included propositions as to insurance law that were not agreed and on which the Tribunal did not feel qualified to reach a judgment. However, the Tribunal did not doubt that the insurance position was at least open to question in the circumstances, and noted that Mr Millar's specific finding was that the Claimant had not adequately considered this aspect at the time. In any event, it was common ground that there was a £50,000 excess in respect of cash under the policy, and to that extent at least the money was not insured while it was being transported to London.

97. The Tribunal concluded that the information that was not put before Mr Millar would not have made a difference to his decision. This was largely because at the heart of that decision was Mr Millar's view (quoted above) that the Claimant was in trouble as soon as he took the money from the King and secondly, that having got into trouble in that way, he was not prepared to accept that he was in the wrong. The Tribunal considered that this conclusion could not have been affected by any of the further information referred to above and that therefore, even if there was an attempt to influence Mr Miller's decision in any of the above respects by holding back evidence that might have gone before him, it was of no causative effect on his decision.

98. The complaint of automatically unfair dismissal was therefore unsuccessful.

99. The Tribunal then turned to the complaint of unfair dismissal arising under Section 98 of the Employment Rights Act 1996. That section provides in part as follows:-

(1) In determining … whether the dismissal of an employee is fair or unfair, it is for the employer to show:–

(a) The reason (or if more than one the principal reason) for the dismissal, and

(b) That it is either a reason falling within sub section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this sub section if it:-

(b) relates to the conduct of the employee.

(4) Where the employer has fulfilled the requirements of sub section 1, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer):-

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) Shall be determined in accordance with equity and the substantial merits of the case.

100. As stated above, it was common ground that it was Mr Millar's reason for dismissing the Claimant that was relevant. The Tribunal has found that Mr Millar's reason for upholding the Claimant's dismissal was the Claimant's actions on the 8th August 2016. The Tribunal was satisfied that this reason related to the conduct of the Claimant and was therefore a potentially fair reason within sub section (2) of Section 98.

101. The fairness of the decision therefore had to be considered in the light of the test in **British Home Stores v Burchell [1978] IRLR 379** which states that the Tribunal should consider whether the Respondent had a genuine belief based on reasonable grounds that the Claimant had committed the conduct concerned; whether the Respondent had carried out a reasonable investigation (within which there could be consideration of any procedural defects that are suggested); and whether dismissal was within the range of reasonable responses in the circumstances.

102. In **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23**, the Court of Appeal confirmed that the test of reasonableness applies to all stages of the **Burchell** analysis. The Tribunal must not attempt to substitute its own view of what would have been a preferable outcome or a preferable investigation for that of an employer who has acted reasonably.

103. Determining whether the employer acted reasonably or unreasonably in accordance with equity and the substantial merits of the case involves looking at the whole disciplinary process in the round.

104. We have already held that Mr Millar had a genuine belief that the Claimant had committed the conduct concerned. There were reasonable grounds for that belief. The essential facts about the receipt of the money etc were not disputed, indeed as we have observed the Claimant himself was the source of the information about what happened.

105. Mr Millar also made findings about the nature of the King's passport that have subsequently been shown to be incorrect. The Tribunal considered that

Mr Millar had reasonable grounds for reaching the conclusion that he did on this point given the information that was placed before him, although we will comment further on the investigation in relation to this aspect. As we have stated above, the position about the insurance policy is less certain, but if it is the case that Mr Millar's conclusions on this aspect were incorrect then the same observation would apply, namely that he had reasonable grounds for reaching them.

106. So far as the reasonableness of the investigation is concerned, the Tribunal has already commented above on a number of procedural points that were relied on by Mr Hogarth, including the points about the passport and the insurance position. We concluded that these did not render the investigation unreasonable. Ultimately, the main points in issue were the Claimant's accepting the cash, not checking the amount or ascertaining its origin, and then transporting it in an insecure manner to London. These central matters were the subject of a reasonable investigation, and were unaffected by any criticisms that could be made in relation to the insurance position and the passport.

107. The Tribunal also considered two further points that related to the procedure that was followed. The first of these was that, as the Claimant and his representative left the hearing with Mr Haines, the latter indicated or appeared to indicate that there would be an opportunity to put in written submissions by the end of that week. He did not in fact allow such an opportunity because he sent a letter dismissing the Claimant the next day. The Tribunal concluded that in the particular circumstances of the case, this did not render the decision to dismiss the Claimant unreasonable for the following reasons:-

    107.1 As the Claimant confirmed in his oral evidence, he did not have any intention of putting in written submissions to Mr Haines and indeed doing so would have been inconsistent with his stance that Mr Haines should not have been conducting the process at all.

    107.2 If this was, however, a procedural defect, it was cured by the appeal undertaken by Mr Miller which amounted to a rehearing at which the Claimant had the opportunity to put forward anything that he wished to raise.

108. The second matter is the delay of approximately two months from the events of 8 August before the investigation into them was started. The Tribunal considered that this was unfortunate in the sense that the Claimant might have thought that the whole incident had blown over and that he need not be concerned about it. (The Tribunal observes in passing that it may have been that the Respondent, and Mr Mensah in particular, had similar hopes).

109. In the event, the Tribunal did not consider that this delay gave rise to any unfairness. The Claimant was still able to give his explanation of what occurred and why he acted as he did. The fact that this took place two

months or more after the incident rather than immediately, did not detract from the fairness of the investigation.

110. Finally, the Tribunal considered whether dismissal was within the range of reasonable responses. The Tribunal could understand that the decision to dismiss the Claimant seemed harsh to him as he had effectively lost his career, whereas Mr Mensah had escaped without challenge over his part in the matter (in respect of which Mr Millar had preferred the Claimant's account). It is also the case that, as Mr Millar found, there was a more widespread problem with compliance in the Respondent's organisation and there had been earlier occasions when transactions had been undertaken for the King where the compliance aspect was unsatisfactory.

111. That said, however, the Tribunal concluded that whatever had gone before did not mean that the Claimant was justified in doing what he did or had any reason to believe that what he was doing was acceptable. For the reasons outlined above, this was a serious breach of several aspects of the due diligence that should be carried out in respect of transaction of this nature. We have already set out above the problems that there were in relation to the source of the funds, accepting such a large sum in cash, checking whether the relevant exchange controls had been complied with, and the security of the funds while they were being transferred to the Bank. The Claimant stated in his own evidence that he was placed in a dilemma. This arose because he knew that what the King was asking him to do was something that he should not do, but because of the King's status he felt unable to challenge him over it.

112. The Tribunal repeats that it is possible to have some sympathy with the Claimant's position, given the King's status. However, there is no escaping the point that the Claimant knew that he should not accept the money when he did. As Mr Millar explained, simply accepting the money in the holdall without counting it and then taking it to London by car and taxi was breaking the rules and put the Respondent's reputation and ability to conduct business at stake, as shown by the restriction on business that was applied.

113. In those circumstances, it was impossible to say that no reasonable employer could have dismissed the Claimant in the circumstances.

114. The complaint of unfair dismissal therefore fails.

115. There remained the complaint of wrongful dismissal. This had no impact in terms of compensation because, in accordance with Mr Millar's recommendation, the Claimant was in fact paid in lieu of his notice. It would nonetheless remain open to the Tribunal, if appropriate, to make a finding that the Claimant was wrongfully dismissed as payment in lieu of notice is not the same as the giving of notice.

116. However, for all the reasons given above in relation to the reasonableness of the decision to dismiss the Claimant, the Tribunal was satisfied that in doing what he did the Claimant had committed misconduct of sufficient seriousness

as to amount to a fundamental breach of the employment contract entitling the Respondent to terminate that contract without notice. In this connection, the Tribunal noted that Ms Manful and Mr Sambou had both expressed surprise at what the Claimant had done, the latter expressing this in his email of 11 August 2016, quoted above.

117. The complaint of wrongful dismissal therefore also failed.

118. The complaints in this matter are therefore all dismissed.

119. By way of a final footnote, after the Tribunal had completed its deliberations but before its judgment and reasons were promulgated, the judgment of the Employment Appeal Tribunal in **Jhuti** was reversed by the Court of Appeal. This does not, however, affect the outcome in the present case.

Employment Judge Glennie on 6 December 2017