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EMPLOYMENT TRIBUNALS

Claimant: **Mr D Simpson**

Respondent: **Cantor Fitzgerald Europe**

Heard at: **East London Hearing Centre** **On: 4-7 April, 10-12 April & (in chambers) 19-20 April 2017**

Before: **Employment Judge Prichard**

Members: **Ms L Conwell-Tillotson**
Mrs B K Saund

Representation

Claimant: Mr D Reade QC (Counsel, instructed by Ms L Bunni, solicitor, Clintons, London WC2)

Respondent: Ms A Mayhew (Counsel, instructed by Ms C Crockett, Cantor Fitzgerald Europe London E14)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1 The claimant's public interest disclosure claims under sections 47B and 103A of the Employment Rights Act 1996 fail and are all dismissed.
2 The claimant's claims of unlawful deductions from pay fail and are all dismissed.
3 The claimant's claims for breach of contract fail and are all dismissed.

REASONS

1 The claimant, Mr Dray Simpson, worked for the respondent from 23 February 2015 to 31 December 2015 when his notice expired. He had not been at work from 16 November when he was suspended. He received a dismissal letter dated 1 December 2015 confirming that his notice would expire at the end of the calendar year. He was not required to work that month; it was garden leave.

2 The reasons given for his dismissal were:

> "…irreconcilable differences with you and your team as a result of your lack of collegiality with your colleagues. This created an untenable situation with your colleagues and made the firm lose trust and confidence in you."

It continued:

> "This decision has nothing to do with any of the accusations you have made. Your complaints have been looked into carefully and we have not found anything of concern."

That was a reference to the whistle-blowing allegations the claimant made then, and now brings before this tribunal.

3 The claimant's job title with the respondent was Managing Director on Emerging Markets Desk. The two main types of individual on such a desk are salesmen and traders. The claimant was hired as a salesman. This was a specialist desk trading bonds principally from the CIS countries (Commonwealth of Independent States). The desk sat within the Debt Capital Markets (DCM) department of the respondent Cantor Fitzgerald Europe.

4 That company is a UK based company in London Docklands. It has an American affiliate which is Cantor Fitzgerald & Co. This was not merely a brokerage. Cantor Fitzgerald Europe is itself an investment bank. They trade in the "over the counter" (OTC) market sector.

5 The omission of the word Limited from the respondent's title is not an accident. This is one of very few UK private unlimited companies.

6 By the time of starting employment with the respondent the claimant was between jobs, (although that gap seems to have disappeared on reading his current CV). Prior to joining the respondent the claimant had worked for about 6 months at Deutsche Bank in London specialising, as he does, in emerging markets.

7 He is currently 42 years of age. He worked and lived in Ukraine for 2½ years, 2009 to 2011, and he has a Ukrainian wife. He earlier established a retail bank in Ukraine between 2006 and 2007. He was then working in ING bank in financial markets between 2007 and 2009 when the global financial crisis broke. He had his 2½ year spell in the Ukraine after that.

8 He is of Canadian origin, and has an Economics Degree from University of

Vancouver. He subsequently acquired an MBA in finance from the London Business School in 2001/2003.

9 Since leaving the respondent the claimant has found work at Stiffel Nicolaus based in Cheapside City of London. He appears to have started that job sometime in March 2016.

10 The respondent, Cantor Fitzgerald, is a well known merchant bank/trader founded in the USA. We have heard a good deal about the USA affiliate Cantor Fitzgerald & Co based in New York. Indeed the claimant's manager was Mr Charles Cortellesi who is Co-Head of the Emerging Markets business. Mr Cortellesi has a sales background.

11 The tribunal heard witness evidence from Mr Cortellesi and the other Co-Head Erich Bauer-Rowe both by video link from a suite in Cantor Fitzgerald's New York offices.

12 At the time he was taken on, the respondent was just establishing a London-based Emerging Markets desk. It is clear from his previous experience that the claimant was a suitable choice for this specialist role.

13 There were 20 people in Cantor Fitzgerald Emerging Markets consisting of 14 sales and 5 traders. The majority were based in New York. We have come across one in Miami and there were 4 in London.

14 The respondent has also stated several times both at this tribunal and in the workplace that it was hard to recruit to this desk. They were trying to build it up. As the narrative will make plain, despite the difficulties experienced between the claimant and his London team colleagues, the respondent was reluctant to let the claimant go until relationships within his team had become intolerable.

15 At the time he started the claimant was working a 6-month probationary period. The salary structure was that he was paid £160,000 per annum for the first 6 months. This was known as a "fixed draw", a form of guaranteed commission for new starters.

16 In a helpful chronology compiled by the respondent, 35 separate alleged public interest disclosures were made between 27 April 2015 (just 2 months into the claimant's employment) until 25 November 2015 after the claimant had been suspended from work. That is why this case has taken so long to hear. The list of disclosures has been developed by the legal teams from an original request for information from the respondent. The final iteration of the list of issues is dated 20 February 2017.

17 The claimant struck the tribunal as someone with strong opinions particularly over regulatory matters although, as the narrative will describe, he often failed to get the facts right.

18 Locally in London the claimant reported to Thomas Blondin, a trader. He was a Belgian national.

19 The tribunal heard a considerable amount about a practice known as "front running'". Explained simply, a client places an order for $20m of a certain bond and the trader holds back that order and buys $2m of the same bond then puts the client's order through. The price will go up because that is what a large order of a certain instrument will do to the price of a bond. The trader has bought a smaller amount in the bank's own right. The private knowledge that a larger amount is soon to be acquired makes this analogous to insider dealing. The illustration just given is the simplest paradigm case. There are more subtle variants. The practice is illegal both in the US and the UK, under the respective Securities and Exchange Commission (SEC), and Financial Conduct Authority (FCA) regulatory codes.

20 In Cantor Fitzgerald's market conduct policy the practice of front running comes under the rubric heading of "Insider dealing" phrased:

> "The front running of orders i.e. where a broker executes orders for one customer with the benefit of advanced knowledge based on pending orders from other clients or proprietary trading within advanced knowledge of client orders thereby benefit from the impact of those other orders."

21 Other provisions we were referred to which arise during the narrative of this case were as follows:

> "Incorrectly advertised volumes could create false or misleading impressions as to the supply/demand of stock traded by a firm. Such false or misleading impressions could in turn encourage market participants to trade the stock through the firm. For example where a market participant sees that a firm has traded a large volume in a given stock which results in a significant market share they may infer that the firm is the most competitive entity for them to route future trades in that stock."

The concept of misleading behaviour or distortion is explained (at length) as follows:

> "This is behaviour which gives or is likely to give a regular market user a false or misleading impression in relation to the supply of, demand for, or price, or value of an investment, or would or would be likely to be regarded by a regular user of the market to mislead or distort the market in any way and is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard or behaviour reasonably be expected of a person in his position in relation to the market."

22 Another important and relevant aspect is the suspicion provisions as follows:

> "Upon suspicion that any party has committed or attempted to commit this offence the employee must follow the suspicious activities and incidents procedures which can be found on the intranet. Reports of suspicious activities and incidents including manipulating transactions are highly confidential. Employees must not make any unauthorised disclosures of such reports. Doing so may tip off a suspect and compromise an official investigation which is a potential criminal offence."

23 Money laundering too is an issue in this narrative. Each financial institution has an officially designated MLRO / Money Laundering Reporting Officer. In CFE's case it was Ms Annie Mills, the Head of Compliance. Those familiar with money laundering will know the importance of identifying the client you are dealing with and attempting some verification of the source of their funding. The relevant passage is in the Financial Crime policy for Cantor Fitzgerald as follows:

> "Due Dilligence – Client Verification and Know Your Client (KYC)
>
> The Money Laundering Regulations 2007 and the systems and controls requirement set out in the FCA handbook supported by the JMLSG guidelines require regulated firms and their employees to adhere to certain principles designed to combat money laundering. One of those key principles is the need to 'know your clients' often referred to as KYC and 'know your client's businesses often referred to as KYB. The KYC KYB obligation is not limited to obtaining documents. The FCA expect firms to think intelligently as to what information it needs to really understand its clients including knowing about its clients business and source of funds. The firm is required to establish and maintain robust account opening procedures and undertake appropriate risk-based due diligence when onboarding new clients to ensure that sufficient evidence of identity is obtained taking into account the different categories of clients and the size and nature of the client documents evidencing these checks must be kept up to date and retain."

24 There have been prosecutions and large fines have been paid by retail banks who fail in this regard. (For instance, one large investment bank recently faced fines in the US rising from funds which were the proceeds of Mexican drug cartels). In Cantor Fitzgerald Europe terminology it is: "Client due diligence or CDD".

25 Another general feature of this case is that every aspect of every trade is recorded. All telephone calls on the UK Cantor Fitzgerald landlines are recorded and the recordings are kept for a certain period of time. Not only are the telephone lines recorded but the so-called "squawk box" is also recorded. This is a trader's open line to inter-dealer brokers such as Tullett Prebon, ICAP Traditions or Cantor Fitzgerald's own BGC brokerage. CFE was far more than an inter-dealer brokerage. CFE traded in its own right as a fund-holding bank.

26 The desk handled two types of trade - business at risk or riskless. Riskless trade is more akin to the work of an inter-dealer broker where both sides of the trade one client wanting to buy another client wanting to sell. On the other hand a trade at risk is when CFE itself buys bonds with CFE's own capital with the risk that the bond may reduce in value rather than go up. The risks can be greater in emerging markets which are more volatile. CFE is not a long-term investor or what has colloquially been called "real money", like pension funds, or hedge funds.

27 On the buy side CFE often do what is colloquially known as "trading with the street". That means using the services of inter-dealer brokers such as the 4 mentioned above.

28 When any trader or salesman joins a regulated body such as Cantor Fitzgerald as a new starter they have to receive FCA approval even though they have recently had FCA approval with another financial sector employer. There were no issues with the claimant and he quickly obtained his FCA approval on 5 March 2015, after 10 days. Some approvals take longer than others. The FCA needs to take up references from previous employers going back several years. The more recent previous employers, the longer the process will take.

29 Mr Russell Scott's approval took almost 2 months. Another example someone who took longer was Mr Steve Gooden. That was apparently because there were issues which needed to be investigated in his case. He joined 20 April 2015 as a trader, but did not receive his FCA registration until 24 August, 4 months later.

30 FCA approval comes at various different levels. The claimant's original approval

was for CF30 (Control Function 30). To illustrate the scale, the Co-Chief Executive of CFE, Mr Gordon Neilly, was cleared for CF3. His opposite number in the US was Mr Angelo Sofocleous.

31 A theme which has emerged from the narrative was the claimant's tendency to raise the spectre of large scale fraud investigations/criminal trials, and to send links by email to his colleagues Thomas Blondin and Steve Gooden. Early examples were 13 May 2015 a Bloomberg article about the Jesse Litvak fraud trial headed "White lies and guilty pleas".

32 Another email on 12 June the subject heading: "Wow criminal trial this year or next I think". This attached the judgment of Eder J in the UK Commercial Court on a $175m fraud where the lead claimant was Otkritie International Investment Management Ltd against many Russian defendants. His Lordship stated:

> "Anyone sitting in court listening to the evidence and the parties' respective submissions might have been forgiven for supposing that they were in the Old Bailey rather than in the Commercial Court in the Rolls Building."

33 Much of the claimant's oral evidence strayed to wider corruption in the financial sector including mention of the LIBOR affair (in which, as a matter of fact, Cantor Fitzgerald was never involved in any way).

34 At one point, in his defence, the claimant mentioned that Annie Mills had sent a cautionary email with a wide circulation within the Cantor Fitzgerald organisation with the subject heading as follows: "Standard Bank fined over USD 36m for failing to prevent bribery in primary DCM transaction". She had compiled a summary herself. The subheading was: "Could CFE find itself in a similar position?" However, unlike the claimant's emails which merely attached links to news articles this email has some obvious purpose and was addressed to all within the Cantor Fitzgerald organisation. She concluded:

> "Please exercise extreme caution, even scepticism, when considering whether it is necessary to make a payment to a third party in relation to any transaction. Third parties may include introducing brokers, commission sharing counterparties, joint venture partners, consultants and advisers."

(Ironically Standard Bank was Annie Mills' previous employer). Ms Mills was a highly qualified witness at this tribunal. She has written a specialist best selling book on compliance.

35 While new employees are awaiting FCA approval (4 months in Mr Gooden's case), they are forbidden from carrying out trades or transactions or having direct contact with buying or selling clients. We accept the evidence that there is truly very little they can usefully do. One of the strands of the claimant's case, developed below, is that Steve Godden appeared to be dealing with clients in his own right prematurely, rather than assisting Thomas Blondin who had the FCA approval.

Protected Disclosures

36 Helpfully the respondent's counsel separated out 37 alleged protected disclosures which seemed to be made by the claimant.

37 Disclosure number 1 was 27 April 2015. This was a composite string of disclosures starting on that date where the claimant alleges that he said there were improper practices with both the traders on the Emerging Market's desk. (How he could have included Steve Gooden at that stage, when he was still 4 months away from FCA approval is not clear).

38 What he alleges in his witness evidence to the tribunal is severe. He accuses Thomas Blondin of arranging trades in a way that disadvantaged the claimant's clients and advantaged his own to the prejudice of the claimant's own commission payments.

39 A salesman is dependent upon the trader to accurately report what the other side of a trade is, i.e. where it goes once it is traded order to properly account for the commission due to the salesperson, i.e. the claimant. Apparently it is endemic that there is tension between traders and sales. Latterly this "tension" appeared bad to the point of toxic. However Mr Neilly, the Co-Chief Executive Officer, stated it was not the worst he had ever seen.

40 The point is well made by the respondent that if the claimant genuinely and conscientiously believed that there had been regulatory breaches it was his duty as an FCA approved professional to report this to Compliance. That was never done. It was over this time that the claimant was sending the emails we have referred to referring to other cases of fraud and people being tried for financial crimes. One of the articles was, according to Annie Mills, just a gossip article. You could tell from the tone of it. The heading was "If you ain't cheating you ain't trying" and there were other statements from "The traders who just cost Wall Street 5.8 billion". The focus of it was the Libor affair.

41 These mails were not put forward to the tribunal as protected disclosures in themselves, but the claimant now somehow seeks to say that this was his subtle and oblique way of conveying to Thomas Blondin and Steve Gooden that their practices were breaches of regulation and corrupt. If that was the claimant's intended message, Mr Blondin and Mr Gooden could be forgiven for not picking it up. It was cryptic in the extreme and could more easily have been taken as gossip, as a typical example of a professional deriving *schadenfreude* from the misdeeds of fellow professionals.

42 Mr Blondin in his witness evidence to the tribunal stated that the claimant had never told him that he had any regulatory concerns at all and the claimant for his part in oral evidence seemed to resile from the more extreme version of these disclosures which he had made in the original ET1 claim form.

43 The claimant's witness statement is vague and over-general and conveys impressionistically that there were many such conversations. If it was half as serious as he originally suggested we would have expected much more detail and we would have expected concerns to have been raised to Compliance at CFE. All of that leads the tribunal to conclude that the respondent is correct that the claimant did not raise such concerns with Mr Blondin nor with Steve Gooden, (as yet still awaiting FCA approval).

44 Disclosure number 2 is dated 20 May. The claimant identifies this as an email sent to Thomas Blondin and also an oral disclosure. He states neither at the time nor

subsequently did he provide any details of a trade which might have been the subject of such an allegation of regulatory breach. (The claimant retained access to his work computer account and emails until December 2015, so had plenty of opportunity to obtain details).

45 In oral testimony the claimant stated to the tribunal that he had made notes about deals with names, companies, names of the bonds Venezuelan, Kazak, Ukrainian, Argentinean, (the desk did trade in Latin American bonds if they were traded in Euros). These notes of the claimant were not in the bundle and the claimant accused the respondent of impropriety in the discovery and disclosure process in the tribunal proceedings. He complained this lack of disclosure disabled him from properly running these tribunal proceedings.

46 However, during the hearing, Ms Crockett went to investigate the system once again, now that the claimant had described better what the notes were and where they might be on the system. Over several hours in work on the Sunday, she found them and provided them to the claimant over the weekend. Copies were made for the tribunal on the Monday morning. The document is 71 pages, approximately one third of the notes are A3 sheets. When the claimant received these he made almost no use of them at this hearing, suggesting that it was tactically more useful to his tribunal case to be able to accuse the respondent of disclosure irregularities than to in fact have the disclosure and make use of it.

47 It was evident that the claimant found the cross-examination process here bruising and emotionally upsetting. That was going to be inevitable given the nature of his case against the respondent, and the lack of detail.

48 The claimant's colleagues later complained that the claimant made notes when talking to them or doing business on the desk. They treated that as suspicious, as he appeared to be building a case against them. There was no other apparent need for him to take such notes in order to carry out his role.

49 Disclosure number 3 was a Bloomberg exchange on 26 May 2015 between the claimant and Charles Cortellesi. They were the only two parties to the chat; it was on 26 May he was asking to have a call from Mr Cortellesi, this was 12.30pm i.e. 7.30am in New York. He mentioned a colleague - Mikaela Shaposhnikova (who was the sales person based in Miami). He talked of: "working together on what feedback we can pass to traders". In a cautionary Bloomberg response Mr Cortellesi said: "accentuate the positive ….. if you want to deliver negative feedback to the traders run it by me first….. It may be best if I deliver negative feedback to traders". Then, as so often, timidity got the better of the claimant, and he replied: "nothing negative, overall things look good, just a few minor tweaks, had positive chat with Erich [Bauer-Rowe] I think, at least hope, he did". There was this tendency to raise matters of concern or criticism with Mr Cortellesi and as soon as the latter expressed disagreement or indifference to what the claimant was saying, he would tone down the criticism until it became almost nothing.

50 Mr Cortellesi far prefers communication by telephone than by Bloomberg chat or email. Another curious difference as we discovered was that while the phone lines are recorded in the London office they are not recorded in New York. In spontaneous evidence to the tribunal Mr Cortellesi said: "Gee … if I had known the call was being recorded I

wouldn't have sworn so much!"

51 The claimant and he had telephone contact at sometime after 2.40pm that day. We have read this transcript. The call was only 2 minutes long. In tone the phone call is chatty and friendly. The tribunal cannot see any suggestion there of a legal duty for the purpose of section 43B(1)(b) of the Employment Rights Act 1996. Further, we cannot find on this evidence that there was "information" for the purpose of *Cavendish Munro PRM Ltd –v- Geduld* [2010] IRLR, 38, EAT, a case and a legal proposition we return to several times in our discussion of the claimant's alleged protected disclosures. This cannot qualify as a protected disclosure.

52 Disclosure number 4 allegedly took place on 11 June. It is another Bloomberg chat between the claimant and Charles Cortellesi in New York. This was 11.25am UK time. (We heard that everyone starts work early). He was talking about developing a relationship with Mehak Bhatia, a female trader who previously worked with UBS who was apparently going to Brevan Howard. In this business relationships were vital for sales and traders alike.

53 The worst the claimant said was: "… not sure Thomas wants a sales person on the account but call me old fashioned I think, in our model, you need a sales …..". In evidence to the tribunal he commented it was about the structure of the desk. Logically, if this mention of the need for sales was going anywhere it was going to the claimant's long running grievance about the level of his commissions. This was therefore not in any way in the public interest and cannot be a protected disclosure. Nor is it information.

54 Disclosure number 5 by Bloomberg chat on 17 June seems to suggest nothing general or particular about any regulatory breach or impropriety. In fact in this chat the claimant confirms that he had sent Charles Cortellesi the CV of an acquaintance of his (Cedric Barbier) who used to work with him. Mikaela had recommended him. It seems odd, months since he had allegedly been complaining about the corrupt practices on the trading desk, that he would be positively recommending CFE as an employer for anyone he apparently considered a "good guy".

55 At this point Mr Cortellesi planned to come to London for a week. The claimant suggested meeting him for a beer. There is nothing remotely improper here, and nothing which could conceivably amount to public interest disclosure. It is not even information. It is in none of the categories in 43B(1) of the Employment Rights Act 1996.

56 Disclosure number 6, was a Bloomberg chat on 18 June at 2.30pm UK time. The claimant was upbeat saying he had done another decent trade yesterday and had made $70,000 this week so far, and said it felt good when it started to click. Cortellesi: "I have noticed great job and … gaining traction" (a metaphor much used in this business).

57 The claimant relies on the following passage: "Also not sure the way we are doing things is most efficient but that's a conversation in person". It is stretching the tribunal's credibility beyond breaking point to suggest that the claimant could have been alluding to a regulatory breach by the word "efficient". He then goes on to say: "Just get a bit frustrated with our traders here". In fact there was only one and it was Thomas Blondin because Steve Gooden had not yet got approval. Then he goes on to say: "but hey

nothing is 100% perfect. We're moving in the right direction so the future is bright, bring some shades".

58 The claimant seeks to portray to the tribunal that everything is calm on the surface but beneath it there is this strong undertow of corruption in a way that is non-specific and, to the tribunal, non-credible.

59 It was around this time on 25 June that new salesman came on board - Russell Scott. We have seen a copy of his CV sent to Steve Gooden. Mr Scott was a witness at this tribunal hearing. He joined fully shortly on 1 September 2015. At that stage he gave a list of clients with whom he had relationships, some of which, as was bound to happen, overlapped with the claimant's contacts.

60 Disclosure, number 7, is said to be on 19 June and said to be an undocumented disclosure to Thomas Blondin in person. If this disclosure really was about underpaid commission, it could hardly be a qualifying disclosure. It was not in the public interest, but was made for self-interest. The claimant himself appears to have lost interest in this listed "disclosure" as it was not mentioned in his witness statement.

61 Disclosure number 8 was on 24 June to Charles Cortellesi in person. There was a team dinner. It was at the Hawksmoor Restaurant in Covent Garden. Russell Scott could not attend the dinner although he sent his email afterwards. He already had a date that evening. Again the claimant seemed to resile from saying that there was any disclosure made at this dinner. So the alleged disclosure failed, even before it was challenged.

62 Disclosure number 9 was made in a Bloomberg chat and subsequent phone call to Charles Cortellesi 30 June when Mr Cortellesi was back in America. The chat was initiated by Mr Cortellesi (unusually). The claimant was a little critical of Thomas Blondin over information flow and transparency. He said:

> "Tell Thomas we need to post more in the chat room when trades are going down so everyone feels more involved… they agree so we will work more to keep everyone feeling the love".

63 Subsequently there was a telephone call at 3pm UK time. Mr Cortellesi is a witty, and sweary person. He addressed the claimant as "Dr Dray" - a reference to an American rap artist. Mr Cortellesi was also impatient. He said:

> "Just make sure you post like Alex and Max and you make sure people are aware of what you are doing, yeah?" [trading Ukrainian bonds].

The claimant was indecisive:

> "Exactly we should have a chat about that because we need to figure out the best way to get down to it".

Mr Cortellesi:

> "The best way to do it is to get on the fucking phone and call Alex right now and explain to him the trade you did and say do you have anyone else involved in this yeah?"

Later:

> "… do me a favour I'm gonna hang up the phone when you're done call me back. Call Alex it's important you guys need to start communicating its what this fucking business is about. I'm gonna hand up the phone…. call me back when you're done talking to Alex."

64 These exchanges could not conceivably raise any regulatory breaches. The claimant seems to be raising an issue about communication but it would appear from that latter exchange that it was the claimant himself who had a problem with communication otherwise Mr Cortellesi would not have addressed him like this.

65 Disclosure number 10 was a Bloomberg chat to Charles Cortellesi on 6 July. There were two Bloomberg chats that day, one from 1.18pm between Charles Cortellesi and the claimant and another at 2.02 to 3.53pm between Steve Gooden and the claimant.

66 In the first of these chats between the claimant and Charles Cortellesi, the claimant was critical of Thomas Blondin, not however for any regulatory breach. He stated:

> Today our model shows some of its cracks. Thomas gets lifted in Ukraine 20s so lifts the 17 n on screen (which is the one my client is trying to buy) and he spent half his day working an order for a client in the Middle East on VENZ [Venezuelan bonds] 18s which I thought Michael Barfoot trades so clearly some incentives misaligned here…."

Michael Barfoot was one of the New York traders. There is nothing here suggesting any regulatory breach and in any event Mr Cortellesi was aware of the situation with Thomas Blondin.

67 Contrary to what the claimant claimed, there is nothing in either Bloomberg chat about Steve Gooden trading without approval, and there was no breach of any actual duty alleged. The allegation reflects, (as many did), the claimant's readiness to interest himself in a trade which had nothing to do with him rather than getting on with his own work.

68 Disclosure number 11. On the same day the claimant allegedly made a complaint that Mr Gooden appeared to be trading in his own right in advance of receiving regulatory approval from the FCA. An untutored reading of it might suggest that the claimant was correct. There was an exchange between them. (Whenever you use swear words on Bloomberg, you have to misspell them in some way otherwise they get trapped in the filter). Steve Gooden: "Ask the question on this bl00dy order is 80 bucks". Claimant: "Why is Thomas trading Vennie? Steve Gooden: "He's not" Steve Gooden: "I got an order for 80 million". Steve Gooden: "So he's speaking to the trader?" Steve Gooden: "I'm trying to help you". Steve Gooden: "I'm happy not to". In fact it is a one-way conversation. The only contribution the claimant made was to ask why Thomas was trading VENZ. The trade had nothing to do with the claimant. He had no interest in it, direct or contingent.

69 If anything it is evidence of the claimant's officiousness and his readiness to involve himself with other people's business rather than spending time on generating sales. The point the claimant makes is Steve Gooden's use of the first person singular "I got an order for 80 million". In fact on the same day Steve Gooden had stated to a trader Julian Sanchez-Agus: "Hi mate … I'm still not live to trade … once I'm up and running we will trade".

"Agreed thanks mate" and "please give the details to Thomas he will look at it". "OK". Then Thomas Blondin came in.

70 So this alleged protected disclosure seems to be contradicted by the claimant's own evidence. More importantly there is no evidence that he made a protected disclosure of the fact that Steve Gooden appeared to be trading when he was still not FCA approved, or, as Steve Godden put it "live to trade". Nor does the earlier Bloomberg chat suggest, as was put in evidence, that Thomas Blondin was front running the Ukrainian trade. It was a speculative accusation because the claimant could not see all the information around Thomas Blondin's trade. It would not have been visible to him. He was just making constructs from overheard one-sided telephone conversations.

71 The claimant stating evidence that he had reported it to Charles Cortellesi. It is not a protected disclosure if it is information. He is reporting FCA non-compliance by Steve Gooden to the tribunal rather than reporting it at work.

72 The claimant relied upon correspondence dated 29 April between Christopher Moore, the compliance officer sitting on the same floor by the team, and Thomas Blondin. Mr Blondin had asked Mr Moore for guidance as to what Steve Gooden could and could not do pending FCA approval. It is evidence that Thomas Blondin wanted to do the right thing. He did not want to find himself the wrong side of the regulatory line. In our view it is compelling evidence in the respondent's favour. The claimant would not have been aware of this correspondence before these tribunal proceedings.

> Question: "he will not be speaking to any clients about markets or providing any prices for trading".
> Answer: "Agreed"
>
> Question: "Is he allowed to speak to clients for the purpose of conducting KYCs and getting clients onboarded?"
>
> Answer: "Yes solely for this purpose no business discussions, comments, tips etc".
>
> Question: "Is he allowed to have access to … screens to watch bond prices in the market in a view only capacity?"
>
> Answer: "Yes view only".
>
> Question: "Is he allowed to send out market runs and internal market commentary on a strictly internal only basis?"
>
> Answer: "No. Too much risk may be passed on to clients".
>
> Question: "Is he allowed to participate in interviews for potential candidates?"
>
> Answer: "Yes provided only candidates for positions at CFE".

73 That was clear and detailed enough. The most that the claimant can point out is

Steve Gooden's use of the first person singular. It is a pretty weak case. We say again, the important thing was that this was never the subject of a disclosure within the workplace. Therefore it cannot conceivably be relied upon as a protected disclosure in these tribunal proceedings.

74 Later on 18 August, years before his FCA approval came, Mr Gooden stated in a Bloomberg chat: "Oh my God … I cannot wait for FCA … I'm so bored its untrue … if we can think of any admin cr@p [sic] we need to do, lets fire it over". Thomas Blondin: "Sure". And Thomas Blondin: "I think bottom line is the most value add is to be on look out for sales people … get any account open that you can think of for Russia, Kazaks Ukraine". This also reinforces the respondent's contention that they were keen to recruit salesmen and found it hard to do so, hence extreme reluctance to let the claimant go despite the constant strain between him and the team.

75 Disclosure number 12 is a Bloomberg chat to Charles Cortellesi on 21 July and yet, as a protected disclosure, it does not seem to stand up in itself. In the chat the claimant pasted an excerpt from another Bloomberg chat between himself and Thomas Blondin. It mentioned an "axe" meaning some sort of run, to interest a client in purchasing or even selling a particular kind of bond. Having quoted this excerpt from Thomas Blondin he says: "No complaint here just flagging the inherent risks" and then he adds "BTW I'm not trying to be a pain just keeping the trials and tribulations of a London sales person in front of you so when you are doing your fine tuning you keep these things in mind on balance sending out regular runs a definite positive".

76 Mr Cortellesi then changed the subject. There was then a short call that day about an hour later it was only about 20 seconds and it was about a particular trade. What seems to have happened here is that the claimant was speculating and making adverse assumptions of market abuse or front running, based on that Bloomberg chat. It was not clear and was based on a lack of information because the claimant did not know exactly what Thomas Blondin was trading. It was not visible to him and he did not know the details. This cannot possibly have been a protected disclosure.

77 Disclosure number 13 is an alleged protected disclosure made to Erich Bauer-Rowe in person in New York on 28 July. The way this was presented to the tribunal was a long way short of the way it was described in the claimant's ET1. The claimant states he unequivocally told Erich Bauer-Rowe about traders on the desk front running and misleading clients and that Mr Bauer-Rowe seem to be in agreement with him and said he would have a chat with them next time he was in London but he was not due to be in London for over a month. If there really had been regulatory breaches or if the claimant had really given Mr Bauer-Rowe cause to believe that there were such breaches, it is inconceivable that Mr Bauer-Rowe would not have notified Compliance immediately to look into the deals. Again the problem was that the claimant's criticisms were over-general, lacking specific details of dates, times, traders, and clients.

78 In giving evidence to the tribunal Mr Bauer-Rowe could not remember any regulatory issues being mentioned or anything memorable about meeting with the claimant in New York. That would be extraordinary if the claimant really had raised regulatory breaches. The meeting was unmemorable to him because he would routinely meet any sales person from elsewhere who visited New York. The tribunal accepts that he is experienced enough in the business (with a trading background) that

this would have stuck out if it had in fact happened. All Mr Bauer-Rowe does remember, (as so many others), was the claimant complaining about his commissions. That would not be a protected disclosure. There was no public interest. The tribunal finds as a fact that the claimant did not further mention Steve Gooden trading without FCA approval at all. That too would have made the meeting memorable to Mr Bauer-Rowe. The respondent argues that it is a figment of the claimant's imagination. The tribunal agrees. Under examination the claimant rather lost his grip on this particular alleged disclosure.

79 Disclosure number 14. The claimant states he also raised matters with Mr Buer Rowe, the next day (Wednesday 29 July 2015). This alleged disclosure appears to be the same referring to alleged market abuse.

80 In his oral evidence the claimant told the tribunal that his spreadsheet would back him up. This was the spreadsheet referred to which Ms Crockett found on Sunday 9 April 2017. When it was provided it did not help him with the detail of what he was trying to disclose to Mr Bauer-Rowe on this day or the day before. The evidence is shadowy, vague, and utterly unconvincing. The tribunal could not possibly find that there were any protected disclosures made to Mr Bauer-Rowe on 28 or 29 July.

81 Disclosure number 15 was on 7 August to Mr Cortellesi by email. The tribunal has noted that the claimant in his oral evidence to the tribunal withdrew the contention that this was a qualifying disclosure. Reading the email we can understand why. It is all about Mehak Bhatia starting at Brevan Howard and other pieces of news about clients. It is astonishing the claimant or his legal advisors could ever have thought there could have been a protected disclosure here.

82 Disclosure number 16 was on 10 August apparently by email to Charles Cortellesi. The email starts: "Morning. Had a good chat with Erich when I was in NY. Have a few issues but am a big boy so can deal with them." It states:

> "We are sending out lots of runs these days. This is good. We get big axes which is good but quite often the axes aren't the best prices (Thomas's view is a client needs to engage to get the best price). What I find is he shares better pricing with certain clients".

Perhaps there is an insinuation there.

83 Later, as the judge remarked during the evidence, the claimant seemed to be saying that this was bad business rather than a regulatory breach. For instance, surrounding account number 23 specialist high yield emerging markets fund. It says:

> "What client would ever give us an order on something like that? … and if we are using balance sheet in trying to build a business why can't we just bid 97.375 or something or did we get our market wrong? Why are we sending out runs if we can't get people done?"

Again he copied an excerpt from a Bloomberg chat. Later:

> "… we don't seem to have a strategy other than to throw prices out there and try and squeeze orders out of people. Of course I'm trying my best to generate axes which bring more."

84 The whole concept of an axe is related to a run. It is the interest that a fund or a trader shows in buying or selling an instrument. It may be related to the phrase "axe to grind". During his examination the claimant accepted that this fell short of raising regulatory issues, again, because of lack of information. Therefore this alleged protected disclosure appears to be another one based upon assumptions and speculation rather than genuine belief, and it cannot qualify for protection.

85 Disclosure number 17 is said to have happened on 11 August 2015 mainly in a phone call to Charles Cortellesi. The preceding Bloomberg chat was very short just to Charles Cortellesi asking to speak. There is no record of the telephone call between Mr Cortellesi and the claimant. There was a lot of recorded conversation between Thomas Blondin, Charles Cortellesi and Erich Bauer-Rowe. This was a day when Mr Blondin was concerned that the claimant had told him that a trade was "done" when in fact it was not done so the claimant had misinformed him leaving CFE with a risk position of which Mr Blondin was unaware until he later found out.

86 On this day Mr Cortellesi was holidaying in France. That may somehow account for the lack of telephone records for his call with the claimant. The claimant evidently appreciated that he had made a bad mistake. Subsequently he apologised to Christopher Moore in Compliance stating:

> "As per our earlier conversation I want to confirm this is a one off issue with a client who unfortunately had not completed our set up process. I am very clear that we are not to attempt to transact with any client who has not been approved by Compliance. Apologies for putting the firm in such a situation."

87 This was the day of what the tribunal has been referred to as the account 29 trade. (All clients' names were kept anonymised in this tribunal hearing. There was a key with numbers and letters).

88 The incident was classified as a "near miss". It was later noted by Mr Moore in a note to the head of compliance Annie Paresh Dholakia, noting that it was a near miss and that Dray Simpson apologised. Apparently the claimant offered to resign because of the mistake in speaking to Thomas Blondin. At 1.40pm Thomas Blondin phoned Erich Bauer-Rowe to tell him about the incident where the claimant had said a deal was done when it was not done, describing it:

> "Dray confirmed to me that the trade was done and then they said that we had to do a put through because we are not open with the account who sold us the bonds [i.e. CDD / KYC had not been done] and then he had to leave the office and we didn't manage to find the counter party for the put through that night."

89 Mr Bauer-Rowe was clear. He said "Okay first of all you pay zero, right …..you're not going to pay any sales credits on the transactions?" he asked. Later he says: "Just pay zero I'm telling you" and then Mr Blondin says: "No, no but I think it is more important than this right" and goes on …

> "Do we want to keep a guy on board that's not been truthful to the desk? That's the real problem". "Yeah" agrees Mr Bauer-Rowe…. "It's a very dangerous situation. I mean these are distressed bonds you know like the economic hit could have been substantial had the bonds rallied 10 points today. But the biggest thing is the trust right. We're operating in an environment where we have to have trust. If trust isn't there it is very very dangerous in my

eyes".

90 Subsequently Mr Blondin suggested to Mr Bauer-Rowe that he gave the claimant a warning, a suggestion with which Mr Bauer-Rowe was agreeable. Subsequently he telephoned Mr Cortellesi in France. There is a record of this telephone call. Charles Cortellesi asked why they were not "open" with CFE. At this stage Mr Blondin had sorted out the situation satisfactorily but it remained an alarming near miss with a distressed bond. (Distress implies a high probability of default on a bond). Again Mr Blondin described the lack of trust in a detailed and well observed way:

> "If Dray is not forthright and telling the truth to the desk there is a problem. Like I ask him point blank I said Dray did you do the trade yesterday or not and it took him two minutes to start you know talking some long complicated answer. It's like yes or no like you have either done the trade or you have not done the trade it's very very clear so that's why I spoke to Erich. I said look this is my big big concern now it's like it's either and what we said is I'm gonna give him a warning."

91 Mr Cortellesi clearly got the message. He stated: "There is no grey. You are either done or you are not done and if that's not clear Dray you are not working with us."

92 The tribunal observes that the claimant's tendency not to give a yes or no answer was abundantly evident during the claimant's oral testimony to the tribunal.

93 Charles Cortellesi nonetheless was trying to dissuade Thomas Blondin from tackling this directly. He said: "I'll have a conversation with him" and later Mr Blondin says: "He's on the desk I'm gonna call him into a room now". Mr Cortellesi: "No, no don't call him I'll deal with it. I'll deal with Dray", and then: "you should not get into a massive fight with Dray. You let me get into … what I want to get across to you is let me get into the fight with Dray. You get what I'm saying" and then "… if you and Dray have a problem with each other it hurts the desk … you know the conversation that I'm gonna have with Dray … what the fuck are you doing? You're not gonna be working on our desk if you operate this way let me have that conversation okay".

94 At this stage the claimant was talking to Compliance. The claimant's contention is he was talking to Compliance to report a risk, trying to be proactive. However, to the extent that it was reported at all, the report came back on him because of his own failure to do CDD/KYC. Perhaps the claimant was just trying to get his defence in before an attack.

95 In summary, the tribunal cannot accept that the claimant made anything resembling a protected disclosure in the unrecorded telephone call with Mr Cortellesi. The tone of his contemporaneous unreserved apology to Chris Moore suggests that he never asserted, as he now suggests that other traders had dealt with counterparties CFE was not "open" with.

96 Disclosure number 18 was on 13 August to Charles Cortellesi, Gordon Neilly, Thomas Blondin and Steve Gooden by email and in person. However no email was sent on this day. At this stage the claimant was taking notes. He does mention having a word with Gordon Neilly. He states in his note:

> They ask me if it was in the system as it's caused a big problem etc But at the same time they are dealing and trading with clients who are not set up so how is my situation different? I've got

> to show risk that I'm trying to fix the problem etc But they're continuing to do the exact same thing? Isn't this an even bigger violation? So why was my situation sent to compliance? Also you can hear in the recording that Thomas makes a big deal about it that compliance has it etc…. Same thing again today he says he's helping me to fix the problem but it's serious. Gordon came around yesterday and I had a quick two words with him and he had no issues whatsoever. How does this really impact our business? Why are we dwelling on this and making it a big deal if it isn't. And if it really is then how can we be doing the same things still?"

97 This is a telling quote from the claimant's perspective. He thinks the other traders were doing business with clients who were not set up. This is totally denied on behalf of the traders by Thomas Blondin, Charles Cortellesi, and Erich Bauer-Rowe, in their evidence to the tribunal. Indeed the judge intervened at one stage in the examination to express open surprise the claimant's statement that Charles Cortellesi told him he would be "sacked" if he mentioned that others were guilty of the same thing. It was wholly denied. The claimant has made a big argument around this. He says that he was penalised by losing all his sales commission on the client 29 trade whereas they lost no commission all the times that they did business with clients who were not set up.

98 The claimant goes on to describe this in his note to himself:

> "He's paying me nothing for the trade. First is it his decision to make? Secondly why? What really went wrong here? Ignoring the fact that we're not set up with the client as he is clearly doing the same today. If someone screwed him on a cross he'd be in the same situation. The fault here was with the client. He didn't stand up to his word after he messed up. He later realised he was wrong and did but market practice supported my view. The legal or compliance view Thomas took is clearly confused (given he ignores it the next day) … Yes I take responsibility and it is not a good situation but given some of our business practices here, was my behaviour or activity really that offensive or destructive?"

99 The claimant seemed to think that the respondent was seizing upon this as a welcome pretext to bring about his demise. That is stretching credibility too far. The claimant could far more easily have been dismissed anyway for his lack of productivity and his constant complaining. He did not even have 1 year's service. The alleged protected disclosure number 18 may not have even happened at all. There is not a hint about Thomas Blondin "positioning his book". It cannot be accepted as a protected disclosure.

100 <u>Disclosure number 19</u> is said to have occurred on Monday 17 August, to Thomas Blondin orally in person, concerning client information and front running. However, this allegation wilted and fell under cross examination. The claimant's counsel agreed and the allegation was withdrawn.

101 <u>Disclosure number 20</u> allegedly happened on the same day in a Bloomberg chat between the claimant and Charles Cortellesi who seems to have been back from France. The claimant stated: "not happy with how I was treated last week but no rush we can chat later in the week. I'm still trucking away". Mr Cortellesi said: "Lets talk later today or anytime tomorrow. Very important that you and TB move forward. We need you working as a team".

102 The claimant then goes on to describe a trade and his puzzlement over the sales commission and states: "Just frustrating that I can't see what trades actually get done". He was again repeatedly stressing his lack of trust in Thomas Blondin and the lack of

transparency over his sales commissions. He was mistrustful. Again this is based on pure speculation. There could have been a legitimate reason for Thomas Blondin's conduct of that sale. As the claimant himself said, he could have been covering a short. He was pressed for the detail of this apparently detailed trade with an unidentified client. He failed to come up with any explanation to the tribunal. Even after he received his Excel notes here in the tribunal hearing, he could still not come up with any explanation. It is too vague to qualify as a protected disclosure. Once again, too, it primarily involves the claimant's own commissions which are never going to pass the "public interest" test.

103 In a telling piece of evidence on 18 August, the claimant had sent to himself, at his personal hotmail address, a letter that he was contemplating sending to Mr Cortellesi. It says:

> "Charlie
>
> I'm not happy about what happened last week I had an issue with a trade with a client [this is the account 29 trade] (I have written a lengthier account of what happened if you really want the details). Instead of just dealing with it Thomas made a big deal about it. He made me bring the issue up with Compliance, since then has reinforced me how he's fixing my problem how big a deal it is and gave me "an official warning" about the matter. Yet the next day he's trying to do a cross with a client he's not set up with and I know he's not the only one.
>
> He also told me I'd get paid nothing for the trade even though it was a profitable trade (he seems to think sales payments are at his discretion rather than fixed. He paid me 10 cents for a trade that he was happy to print 50 cents higher on with no explanation as to why."

104 That afternoon following the telephone conversation with Charles Cortellesi the claimant sent home to his g-mail account various excerpts that he intended to form into the email to send Charles Cortellesi. One of those was the email quoted above of 18 August ("Charlie I'm not happy about what happened last week") so by the time it was sent to Charles Cortellesi it was not "last week" because the account 29 trade had happened between 10 and 11 August 2015, about a month before. He sent the email to Mr Cortellesi on 16 September at just after midday UK time. It still started "this is what we discussed today" which of course was yesterday by then. He seems to make an allegation about a Kazaks trade which had occurred on 14 August and yet the paragraph starts:

"Earlier this week we were working an order for a client to sell Kazak bonds. Thomas goes and hits a screen and bids my client lower which of course he hits. There's a name for that practice."

105 It is an odd email. In one sense he was now saying Thomas is doing exactly what he did wrong on the account 29 trade and doing a cross with a client he is not set up with, but the main thrust of this is a complaint is about the claimant not getting paid for the trade. That was a decision which we now know was taken by Erich Bauer-Rowe. The end of the email states:

> "I know you like to just let things run but when the guy who's suppose to be running your business here in Europe does not do it in a proper way then I've got issues and I've been doing this too long to be afraid of speaking up."

<u>Probationary Period</u>

106 On 17 August Ksenia Vertyachikh in HR notified Thomas Blondin that the claimant's probation period was due to end on 21 August. 6 months was up. She asked him if he was happy to pass the claimant and she sent Mr Blondin details of the remuneration package he would get on confirmation of his probation because his fixed drawer of £11,666 per month would end and he would be living on commission then, as well as a basic salary of £20,000 per annum.

107 The claimant predictably places a lot of reliance on the fact that his employment was confirmed and that his probation came to an end at this stage and after the account 29 incident.

108 The tribunal pressed Mr Blondin on this because after the account 29 incident it was evident that Mr Blondin was very actively thinking of dismissing the claimant if it had been in his power.

109 The claimant was not going to be dismissed. Charles Cortellesi had made that clear. Given that the claimant was not going to be dismissed, Mr Blondin in his own right, as well as Mr Cortellesi, considered that extending the probation period sent out too negative a message. The hope was that the claimant would actually do more work now rather than complaining about Mr Blondin and his sales commissions.

110 By email of 20 August, at the last minute, Mr Blondin stated to Ksenia Vertyachikh and Gordon Neilly: "Let's go ahead and give him a pass for the probation period so no extension. I will meet with Dray and discuss working harder/better and set goals."

111 On balance the tribunal do not consider that this was as positive a sign as the claimant contends it to be. It was a difficult role to fill. The claimant had good career experience and should have been the right person for the role despite Mr Blondin's severe misgivings with which Mr Cortellesi agreed. The desk had to come first.

112 Disclosure number 21 was nearly a month on from the last, on 15 September 2015, Tuesday. It is said to have taken place on a Bloomberg chat and by email. There was a Bloomberg chat between Charles Cortellesi and the claimant at which the claimant returns to an old theme: "going to send you an email with a couple of issues to discuss …. some are already addressed others not … Tough being here where the traders control everything and no oversight". Mr Cortellesi: "Call me" and there was a call then. It seems to have been a 30 minute call. First the claimant was complaining without directly alleging front running that the markets are being impacted by the traders trading.

113 He was also complaining about the modest size of CFE's balance sheet and stated: "Here a lot of the time it's like, woo, you know you guys operate like you're Citigroup and that's a problem for some of my clients right. The problem is you know my clients have had markets impacted by their trading here right". You know it is hard to see what the claimant is saying any more than a statement of the obvious is that any trade affects the market in over the counter bonds like this.

114 Later the claimant developed an allegation that strongly resembles front-running which therefore needs to be quoted:

> "It's about the behaviour I hear. So how does that impact me? How it impacts me is I have stuff like someone comes in a buyer of Ukrainian bond which is super liquid then we're bidding on a

> screen or to some off screen bookie and its moved against my client, and what happens is…." Cortellesi: "What you're saying is that they are taking the information that you gave them then they're moving their screen against your client". Claimant: "Yeah. So what happens is Steve makes a ton of money in Ukraine …. oh yeah he's God now and I am like well fuck man, I fed you guys information I had some orders so it doesn't show up in my numbers because my guys didn't get executed because they are showing preference to other clients so whether they get paid for it or not ….they wanna look like the big guy."

115 The tribunal accepted that the claimant did not retract that statement. The transcript is quite ambiguous. In closing submissions we listened to a voice recording of the Bloomberg chat. But Charles Cortellesi disagrees with his entire assumption here stating: "Okay if they're trying to push the market up then why don't you find buyers and help them push the market up?" Mr Cortellesi had previously said in response: "to think about it because you know this is the model I have been operating under for 10 years". So in other words Mr Cortellesi did not consider that the claimant, with this hypothetical illustration, was actually describing front-running. It did not necessarily involve a regulatory breach and unlawful use of insider knowledge of an impending large purchase of Ukrainian bonds. We stress again it was hypothetical. The claimant was not identifying any particular trade here.

116 Again the claimant, as he did in evidence to the tribunal, strayed completely off point and he described one of Mr Blondin's trades where he lost 2 points on Tullow Oil. He seemed to retract his regulatory breach allegation when he said:

> "No, no exactly Charlie this is my point right. It's just to help you understand to nudge it's not conspiracy it's a trading style to the issue is right he's thinking 80¼ is a good level and its fucking not. 80¼ and then you trade at 75½ clearly your market was wrong. That's my point alright?"

It is likely that Mr Blondin did a bad trade on that occasion, but not a regulatory breach.

117 The claimant was a constant frustration to Mr Cortellesi. Rather than doing his own job he was concentrating on other peoples' work. Mr Cortellesi tried to bring the claimant round. He was fed up with all the carping. But Mr Cortellesi was also highly diplomatic and motivational. In one of his chats with Thomas Blondin he intimated he was intending to get rid of the claimant, but he told the tribunal: "that's what I'm telling them [i.e Mr Blondin and Mr Gooden]". It was not what he intended to do. He needed to placate the traders as they were running out of patience with the claimant.

118 The claimant knew where Mr Cortellesi was coming from:

> "I don't mind you coming to me and giving me your grievances. I don't have a problem with it at all and I appreciate it because it shows you care about the fucking business but the flip side is…."

…the claimant actually anticipates his next line and says it himself:

> "…you get up and get some shit done because if you're not making a million dollars dude you're not helping me and I need to get your fucking arse in this seat and I need you to make a million dollars for yourself right because you're sitting on some of these accounts."

Despite understanding Mr Cortellesi's message, it did not stop the claimant

complaining.

119 Later that day, (the timing is of interest), the claimant sent a confidential email to Mr Moore of Compliance who, as we mentioned, sits on the same floor as the emerging markets desk:

> "Chris. .. would like to discuss a few topics where I would like clarity on what the appropriate actions are. I'd like to do this in confidence as the traders here are sensitive to anyone questioning how we operate so please do not let Thomas or Steve know I've asked any questions. Perhaps we could arrange a time to speak later this week off the desk."

Subsequently the claimant sent a string of his notes and copies and pastes of emails to himself at his personal g-mail account. That was to collate his evidence for a reference to Compliance.

120 The respondent called Mr Philip Wale who is now the Head of Debt Capital Markets DCM in London effectively a replacement for Gordon Neilly who left to work for someone else. It is extraordinary that the claimant would keep quiet about this allegedly blatant example of front running for a whole month without telling compliance, without raising it to Charles Cortellesi with sufficient detail. Mr Wale is quite certain, judging from the trade tickets for that day, there was no front running. The Kazak bonds were bought from account 20 for 0.97 US dollars 5.5m once they were sold 5½ hours later for 0.970625 dollars. (profit of $3,437.50)

121 Counsel for the respondent rightly argues that, as this trade had literally just happened the day before the claimant asked to meet with Chris Moore. It was quite extraordinary he did not raise it then. This is strongly suggestive of the allegation not being one in which the claimant reasonably believed (or believed at all), and the allegation being untrue.

122 The tribunal accepts that contention. If there was a serious belief that this was blatant front running it would have been a prime example to put before Mr Moore with more urgency. He ultimately did raise concerns with Mr Moore as his email to Mr Moore of 15 August was only a general enquiry. It was not stated to be an urgent enquiry.

123 Disclosure number 22 was on 16 September 2015 Mr Bauer-Rowe was in London. From that day we have a Bloomberg chat between Thomas Blondin and Steve Gooden. By this time Steve Gooden had FCA approval and was trading. Russell Scott who had joined on 1 September had not yet started acting in sales, pending FCA registration. (That, as, we remarked, took longer than average. The FCA needed to obtain more employer references).

124 It is evident from that exchange Steve Gooden in particular was very fed up. There is reference here giving the claimant the 2 accounts he was insisting that he be given, namely account G and account B, even though Russell Scott might well do a better job on them. Steve Gooden stated:

> "I'm done with it. There is no point fighting it. There is just too much noise … I never hear anything positive from anyone here. It has to stop … I'm not prepared to work with politics like this it's a joke so lets give him what he wants and be positive". Thomas Blondin: "Agreed it's

> as simple as that okay". Steve Gooden: "He will fail but I don't really care". Steve Gooden: "Erich depressed me today, really depressed me but onward and upwards." Gooden: "I cannot be doing with the fighting it's all a joke … so please lets just tell Charlie that he can have them and he can then fail as I kid you not he will not print [business]. This will nip it in the bud". "Okay fine to stop the noise". Steve Gooden: "Let's give it till Christmas. No down side … if he hasn't printed we'll take it back". Thomas Blondin: "cool".

125 Disclosure number 22 centres round conversation between the claimant and Mr Bauer-Rowe. They were at a dinner on 16 September. This "disclosure" concerned account coverage and allocation within the team, as far as we can see. It is impossible to see how that could conceivably have been a disclosure in the public interest or a breach of any duty whatsoever. The claimant contends that he told Mr Bauer-Rowe about regulatory breaches. Mr Bauer-Rowe, whose evidence we accept, , clearly states again that the conversation he had was all about account allocation within the team and how he had to try to encourage the claimant to work together with the whole desk.

126 The claimant seemed to have a fixed idea, as the tribunal put it to him, that somehow commissions was a "zero-sum game", i.e. the more one team member was given, the less the others would receive. That was totally opposite to the model urged by Mr Cortellesi and Mr Bauer-Rowe. Under their model everybody could get richer. There was not a finite amount of commission money. The team could be getting richer at the expense of their competitors not at the expense of each other. Mr Bauer-Rowe is quite clear he would have remembered any allegation of regulatory breach and would have swiftly raised it with Compliance if such an allegation had been made. The tribunal finds on balance that no such allegation was made at all, and even if it had been it was not in the public interest. There was no protected disclosure here.

127 Mr Bauer-Rowe had given the claimant the impression, when they had previously met in New York, that he would be chatting to the desk when he came to London the following month. This lack of urgency itself was inconsistent with the claimant raising regulatory breaches when he was in New York. At this stage, a month on, Mr Bauer-Rowe remarked that Mr Scott was significantly more productive than the claimant who suffered by comparison. He considered that, too, contributed to the steady deterioration of relationships on the desk.

128 The claimant should have been well established for his future on that desk. Despite the complaints of his team colleagues, Mr Cortellesi and Mr Bauer-Rowe had seen to it that nothing should stand in the claimant's way. All he had to do was to work hard at his job, stop wasting time taking notes of what colleagues were doing, stop complaining about, or just querying, his sales commissions, and stop complaining about account allocation.

129 Disclosure number 23 was on 25 September allegedly in an email to Charles Cortellesi. The claimant was getting no easier to deal with because this email was 25 pages long when printed. Most of it consists of a paste of a long Bloomberg chat between the claimant and Mr Dang Bui who was a trader in New York office. The claimant seemed to be complaining about his sales commissions again.

130 The tribunal did not permit the claimant to enlarge his case from both his

witness statement and his ET1, to suggest now that Dang Bui was also front running. Even the claimant appreciated he could not do that at this late stage. The claimant's case is quite wide-ranging enough already. The tribunal accepts the contention that the whole drift of this long email was about commission. Perhaps surprisingly, in the course of it the claimant stated:

> "I'm very happy Russell is here as he sits beside me and has reinforced to me that I'm correct in finding issue with some things. I come to you as not to be disruptive as I've said you can look at the situation and see how to improve things in a gradual way".

131 There is speculation in the detail about Dang Bui as follows:

> "Dang has a risk free order from me for 15 minutes then decides to fill me for his own book and then takes 5 minutes to fill the final 3 which indicates (doesn't prove but doesn't take a large stretch to imagine) that the market was clearly going better".

This was an oblique insinuation of front-running but without the necessary details to substantiate it.

That was sent at 7.05am London time. One hour later at 8.03 on the same day the claimant was sending another email. A lot of the information was pasted from elsewhere. In a typically ambivalent passage the claimant said:

> "What I don't like is all these games and all the BS. I'm telling you this not because you need to do anything but understand where I am coming from to be supportive of my efforts here and help balance things between sales and trading as we regularly say we're moving in the right direction and I am not asking for anything radical just fairness …
>
> I apologise I'm writing you these lengthy emails but I need to know you're seeing the whole picture and understand. I really like everyone here and Russell is a fantastic addition. When Russell is up and running it will help a lot. He is not shy to state his view and so far him and I are pretty much in line on most things."

He adds a PS at the end:

> "I see stuff I feel is wrong but then I'm afraid to speak up least I upset the traders (who even when they're wrong don't necessarily admit it or see your point) so unfortunately for you that's why you are the one to get these mails. As I said I am looking for some help some guidance. Me putting my head down and cracking my accounts is way more important than all this "noise". But at the same time if people are doing things improperly it's good to look at ways of fixing it."

132 As far as those emails are concerned the tribunal cannot find that there were any protected disclosures relating to Steve Gooden, Thomas Blondin or Dang Bui. There is no hard "information". The claimant again appeared to be merely grumbling.

133 The claimant had got Mr Cortellesi's message about "accentuating the positive" because the subject headings of those two emails were: "Moving forward, last words on this topic from me, on to making money on new trades" and "Guidance and back to cracking accounts". There was then telephone call between them at 16:50 Friday 25 September. Charles Cortellesi came straight out and said it:

> "Dray you're complaining too much. I like people who want to move the business forward. You know we have 12 sales people here [in New York] no one else is complaining to me okay. I am not saying that I am someone who doesn't listen to complaints I do but you got to understand

> you got to be able to move the business forward and what scares me most is that you're breaking down your relationship with the most important people for you in this firm which will be the traders. I mean you can't do it dude."

The call ended in a very up-beat way. At no point in this phone call is there anything which comes near to raising a breach of any legal obligation or anything that could conceivably be a protected disclosure. It was not even covered in the claimant's witness statement either.

134 Disclosure number 25 occurred allegedly on 28 September 2015. This was said to be in a Bloomberg chat to Charles Cortellesi, and to Steve Gooden in person. However, it does not appear that Bloomberg chat with Mr Cortellesi exists. As far as disclosure to Steve Gooden is concerned on this day that allegation seems not to be pursued. It is there in the list of issues but is simply not pursued through to hearing so there is nothing in either of these alleged protected disclosures.

135 The tribunal is clear that the respondent has been thorough in its duty of disclosure. If they cannot find a Bloomberg chat the tribunal considers it is a safe indication that no Bloomberg chat exists.

136 Disclosure number 26 allegedly occurred on Thursday 1 October to Thomas Blondin and Steve Gooden in person. This concerned what has become known as the "Russian trade" which occurred over days from 28 September onwards. Steve Gooden and the claimant had an argument. On the following day, Friday, 2 October, the claimant did not attend work. The Russian trade had nothing at all to do with the claimant. It was a trade that took place in the US therefore under different US CDD regulation. The sales person was Mikaela Shaposhnika in Miami who had apparently complained to the claimant about her own commission on the trade. The claimant only glimpsed certain details of the trade and, as has been shown to be his tendency, speculated and made adverse assumptions about what he did not know.

137 It cannot be said that this disclosure is made out of self interest as the trade had nothing to do with the claimant. However, the tribunal cannot accept that it raised a protected disclosure as it was based, and known to be based, on adverse assumptions about the traders. The claimant was later to claim that he did not dare to make negative comments about his commissions as he would otherwise be banged into a corner and made to regret it. The claimant's take on the Russian trade is so speculative that it is hard to say if he believed it, let alone reasonably. Evidence before us from Mr Blondin, and also Annie Mills who analysed the trade, was that there were no regulatory breaches of CDD. The tribunal find this cannot be a protected disclosure.

138 Disclosure 27 was eventually made on 5 October 2015, Monday, to Chris Moore in person. It is clear from Mr Moore's notes of that meeting that the claimant gave no specifics at all of his allegations. Mr Moore asked the claimant to provide the specifics. Apparently the claimant had asked for a meeting orally on Thursday 1 October. He was then not in work on Friday 2 October. That is why the meeting took place on the morning of Monday the 5 October.

139 As Mr Moore had waited some time for the claimant to provide him with detail, and he still had not done so, Mr Moore felt duty bound to raise it with his manager,

Annie Mills. His report to her, which we take to be an accurate, contemporaneous, and faithful account of this meeting states:

> "DS stated he found it difficult to discuss issues with the DCM traders on the desk. DS had mentioned various matters to Charlie Cortellesi in the US but no action had been taken. He has asked Chris Moore for an explanation of conflicts of interest surrounding the desk particularly dealing ahead with client orders. CM provided an explanation. DS was concerned the conflicts of interest might not be managed properly on the desk and that information on clients' interest, in particular securities might be being misused to the advantage of the trading book. DS was asked to provide details of specific transactions so that Compliance could check them but did not do so."
>
> "CM asked DS to notify Compliance of any transactions executed by the desk that he had concerns about. DS agreed. CM said the matter would be referred to the head of Compliance who would decide what further action to take if any."

Ms Mills subsequently asked promptly why did he not do so; did he refuse to do so or was he unable to think of any specific examples. It continues:

140 Ms Mills told the tribunal that she felt she should notify Gordon Neilly as the CF3 of the respondent's office in London and Co-Chief Executive and she did so that afternoon. We considered that Mr Neilly would understand absolutely that this was to be kept in confidence. She told the tribunal she might not have sent it to Mr Neilly at all at that stage, but that this was an extraordinary situation where someone was making generalised hypothetical allegations with no specifics even though he had been given time to provide details of date, times, names of clients. He then had access to his own spreadsheet which he seemed to think would give him all the identifying information he needed to refer it to Compliance.

141 The claimant somehow seemed to imagine that Compliance would have an all out enquiry into the desk, but it does not work like that. One has to provide leads. This was an investigation and not an enquiry. This was the second time that the claimant had been to see Chris Moore. The first was in September and still there were no specific factual examples, just hypotheses. His was a circular argument. Everybody knows front running is wrong. The claimant hardly needed to ask what the position was on front running, he knew it, Chris Moore knew it, and everybody knew it. The real point was to demonstrate that front running had occurred, by reference to factual details which the claimant never provided. The claimant had told Mr Moore that he would come back with details but he never did, and had no explanation why not.

142 There was only so long Mr Moore could sit on this, waiting for detail. The claimant should have had plenty of detail. He had sent notes to himself previously on 13 August - 8 pages of his own writing and another 17 pages of pasted Bloomberg chat that concerned the claimant's commissions. There was also a Bloomberg chat with Mr Luke Mercadante (who is in the middle office). Only the middle office had the ability to change commissions after the day of a trade. The trader could no longer do it. Presumably a senior manager like Mr Cortellesi could have done I, if minded to. Compliance was at a loss. This could not conceivably have been a protected disclosure of information. What the claimant gave Compliance was the anthesis of "information".

143 Disclosure number 28, allegedly made on 5 October 2015 to Thomas Blondin,

was a non disclosure and the claimant now accepts that nothing happened that day.

144 Disclosure number 29 was allegedly made on 9 October to Charles Cortellesi on email and in person. At this stage we note that the claimant had first involved the solicitor who now acts for him, Layla Bunni from Clintons. He was talking about the allocation of client D to Russell Scott. At this point the claimant was obviously preparing a case.

145 Before sending the email to Charles Cortellesi the claimant had sent himself the same email, and Ms Bunni for her to check and approve. He said to Charles Cortellesi:

> "I understand you warn me about my relationship with the traders and I've kept quiet and see things slowly improving as I keep my head down but I did hear some discussions yesterday and worry you've moved the account because they didn't want me to cover it. (I asked Thomas why it had moved to me and he said he had nothing to do with it, it was you). Speak when you're in."

This was at 11.25 so Charles Cortellesi would soon be in New York.

146 There was a telephone call between them for less than a minute at 13:40 UK time but in a later call shortly afterwards which lasted for seven minutes he developed his complaint. Account D was no longer going to be covered by Marc Goldwyn. It had to be reallocated and Mr Cortellesi had to make a decision whether to give it to the claimant or Russell Scott. Mr Cortellesi said:

> "And you spend a tremendous amount of time focusing on client D rather than focusing on the accounts that you cover that we are not doing business with and I don't understand it…. I don't get it dude."

The claimant said:

> "Yeah no I understand but Charlie listen from my perspective they were my two biggest accounts. I mean that so that shouldn't surprise you if they were big account for me then that's I mean I understand what you are saying but listen account 3 is a tough one ….but you know …"

Cortellesi:

> "….but whatever dude it's not account 3 it is the 35 other accounts."

And there was a discussion between them about the relative coverage between New York and London and yet again Mr Cortellesi said:

> "I mean my point is rather than wasting your time coming at me all the time about the accounts that you don't cover you need to go focus on the accounts that you do cover … I can't sit here and argue with you over the 15 accounts you don't cover. It's just its a constant you know and it is creating hostility … You work on a desk where there are 14 fucking sales people there are always going to be a lot of accounts you don't have … Rather than spending the time writing a fucking email spend the time coming up with strategy … like you've got to get it into your head that this is a team sport and everybody needs to work together. You can't constantly be focusing on what the other guy has got.. You've got to focus on creating what you have …. accentuate the positive, get in early leave late."

The claimant says: "… okay Charlie okay. Yeah okay thanks goodbye"

147 We quote these at some length to show the tone of mounting irritation. Mr Cortellesi had to repeat himself a lot. He was running out of patience.

148 This is not put by the claimant as a separate protected disclosure, but as a detriment suffered on the ground that he had made protected disclosures, a s 47B ERA complaint. In any event it could never have been a protected disclosure because the public interest will never be involved in allocation of accounts, and there is no possible breach of a legal obligation under s 43B.

149 Subsequently there was a phone call between Mr Cortellesi, Mr Bauer-Rowe, Mr Blondin, and Mr Gooden without the claimant. Steve Gooden was the most outspoken and the most fed up. He came straight to the point:

> "The situation with Dray cannot continue and it's untenable. In my 14 years of working life have never once not wanted to get up and come to work and people in the office are at the stage right now where there is too much disruption, not enough focus and the atmosphere is the worst environment I have ever worked in and you know it and you know I think it, Thomas thinks it Russell has been made to feel unwelcome in the team since he joined with the whole handover of accounts and I am not prepared to put up with it anymore."

Charles Cortellesi: "So what do you think we should do, get rid of him?"

Steve Gooden: "Unfortunately we need a bum in that seat but the atmosphere is so bad that I don't see a way forward. I don't know what you wanna say Thomas."

Thomas Blondin: "It's really getting to the point right now where keeping him might make it that you just end up with him there and no one else."

Charles Cortellesi says: "Right"

Blondin: "So either his attitude changes overnight which we all know that we've tried hard."

Cortellesi: "I've had a lot of conversation with the guy and you know something I don't think his attitude is going to change is the answer because I've read him the riot act multiple times and he just doesn't seem to get it."

Blondin: "The harsh reality in my view is that he is not made for that seat and for that job. That is the harsh reality."

Cortellesi: "Okay why don't we do this?….call the woman in personnel and we'll speak with her about what our options are."

150 Mr Gooden also dealt with timekeeping which had become a running sore:

> "This is a very new business here in London … we get to the office at half six seven o'clock in the morning and we sit here till 6 or 7 o'clock. Thomas is here till 8 9 o'clock some nights. Dray swans in whenever he likes, he leaves whenever he likes and is barely on the desk in the day and making a massive massive effort. Unfortunately his work ethic just isn't there. I said to myself "is this a Steve issue maybe I'm doing something wrong but it is so consistent what everyone thinks that it just cannot go on."

Mr Bauer-Rowe too seemed to get that point. Later, as we will mention, the claimant's

swiping in and out card records were produced. When Gordon Neilly looked into them, he was horrified. Mr Cortellesi seemed to be on the same page as the traders but even so he said:

> "I know but I am very reluctant because the flip side is guys we need another arse in that seat."

But then: "I will deal with this woman"

Thomas Blondin identified someone they might be able to get into the seat. Mr Cortellesi explained his position further:

> "You know you've been telling me that you can't take this guy any longer and I've been pushing back and pushing back because I know how difficult it is to bring someone into that seat and you know the thing about sales people is difficult personalities. It's kind of weird, a lot of sales people are but this goes out of fucking control dude. I mean I'm feeling it here. I can't imagine what you guys are feeling there. I just can't imagine I couldn't believe, on coming in today, he took the time to write a 5 paragraph email to me on account E. It's like as you pointed out why wouldn't you take that time and call two of the biggest fucking funds in Emerging Markets [accounts 3 and 11]."

Then Mr Cortellesi said that he would call HR but even then it was sometime before he took the plunge.

151 We were urged to read this transcript in some detail by the respondent's counsel. It conveys a reliable authentic view of the intensity of, and the focus of, the team's unhappiness with the claimant, as at 9 October at a time before decisive steps were made. Even then Mr Cortellesi was, as he put it, "pushing back".

152 Disclosure number 30 was made to Gordon Neilly when he asked to see the claimant after Annie Mills' notification of the claimant's earlier disclosure. Mr Neilly attempted to obtain the details which Compliance had failed to obtain. He had no more luck than them. The claimant responded, instead, that he would be providing them to Compliance. That was evasive. He would not have been talking to Mr Neilly at all had he given the necessary details to Compliance in the first place. For the same reason – no "information" given – this could not conceivably have been a protected disclosure.

153 Disclosure number 31 is said to have been on 14 October 2015 to Annie Mills and Martin Appiah at a meeting between the 3 of them. Again there was no information. Even the claimant describes these scenarios as hypothetical and " ... we have not crossed the line yet" which means he was saying there was no regulatory breach. The claimant did not even mention the recent Russian trade, despite his stated concerns which betrayed a lack of faith in his own stated beliefs.. Again it is a hopeless allegation of a protected disclosure. For a third time he was being specifically asked to disclose some information and for whatever reason he did not. The claimant did not then, and does not now, give any plausible explanation for why not. It was clear he had every opportunity to provide information if he could have. Any information was all available to him. The respondent is probably correct in its contention that the claimant was merely trying to pass his commission concerns off as protected disclosures in order to leverage his personal position.

154 Disclosure number 32 is said to be the claimant's email of 21 October to Annie

Mills. However, it is stated to be an enquiry as opposed to a disclosure of information: "Could you let me know if the following information raises any issues?" The scenario described seems to be the account A trade in which the claimant was not involved (it was Steve Gooden and Russell Scott). There is again a huge amount of speculation and supposition involved on the claimant's part. He has constructed a scenario based on overheard conversation, and one-sided telephone calls. That could not support a "reasonable belief" that there was a breach of FCA regulation here.

155 Further, it is indicative that, once again, he provided the specifics of the trade very slowly and piecemeal with Ms Mills having to drag the information out of him 8 days later on 29 October. The account A trade is in fact the only trade whose details he did eventually disclose – date, bond, trader, sales, and the reference numbers. In sum, however, this cannot count as a disclosure. It fails to satisfy s 43B in 2 ways – information (not just a query), and reasonable belief.

156 Disclosure number 33 is said to have been on 4 November, in person, to Martin Appiah of Compliance, further to the account A trade subject of the last disclosure above. Even according to the claimant's evidence, he was not disclosing anything, but was simply trying to get Mr Appiah to "understand" the trade and how it worked. He said he would later be disclosing "many other examples", but we know that never happened. Insofar as it as the self same speculative enquiry as above, it cannot be a protected disclosure.

157 Disclosure number 34 was allegedly made in person to Gordon Neilly on 5 November, but even on the claimant's own evidence to the tribunal, the tribunal cannot see there was anything like a protected disclosure at that meeting. The claimant had ostensibly gone there, he thought, to discuss his commissions but nothing like that was discussed. What was discussed was the claimant's conduct in going directly to Compliance and dangling the carrot of "other examples" without providing any details. That was not proper. The claimant put himself in breach of FCA regulation by not disclosing such details if, indeed, he genuinely believed there were breaches. Mr Neilly was angry with the claimant and asked to come out with all the details of these "examples" at once. Instead the claimant said he would be disclosing details to Martin Appiah, as in the paragraph above, but he never did. That was the best he was going to give Mr Neilly. So it is hard to see how the claimant can put this forward as a protected "disclosure" when on his own evidence, he procrastinated and disclosed nothing even though he was ordered to disclose it at once.

158 Mr Neilly had a problem on the desk in London. It was clear relations were very strained. So he spoke to the claimant on 6 November and asked him if he was prepared to meet and speak with the team and try to mediate. The claimant said he would, so a meeting was convened for Monday 9 November. At that time Mr Neilly also said to the claimant he had now looked at the account A trade himself and found nothing wrong with it. (Hence he was anxious to try to see how such a serious allegation should have arisen within the team).

159 On 9 November, the claimant was put on the spot and proved to be thoroughly evasive about whether he doubted the integrity of his colleagues. Originally he said not "at present" and then was further questioned as to whether he had in the past, and almost grudgingly said he had not. It was a long meeting, and it was recorded by the

respondent. Despite the claimant's hesitation and equivocation, Mr Neilly considered that there was a lack of trust on the part of the claimant. The tribunal have to say, the sort of equivocation recorded in that transcript was very typical of some of the equivocation we saw in the claimant's answers in examination during this tribunal hearing.

160 Disclosure number 35 is said to have been in person on 12 November in a meeting with Mr Neilly, just the two of them. Mr Neilly talked to the claimant seriously and critically about his relations with the team. He mentioned 3 points in descending order of importance – confrontational attitude, time keeping and attendance, and the taking of notes. The last was most important because that specifically undermined trust. He said he would have to address the other team members to see if trust could be rebuilt or not. He was having doubts. The claimant did not hand over the notes he had been making, although they were later given to the respondent. There were more than 30 pages, closely typed, reporting on specific trades and general trends. The tribunal cannot see anything said on that day which could possibly have been a protected disclosure. There is no evidence of it. The tribunal accept Mr Neilly's evidence that he never looked at the claimant's notes at any stage before he decided to dismiss the claimant on 1 December. (The claimant was asked to stay home from 16 November until that point).

161 Disclosure number 36 is said to have taken place the same day 12 November, in person, to Annie Mills. Looking at her notes of the encounter and the claimant's own description in evidence, it seems clear that nothing resembling a protected disclosure took place. The claimant eventually accepted he said nothing new to her on that day. It was at that encounter that she showed the claimant the details of the account A trade, and the claimant had to accept there was no breach revealed in it. He had never seen this detail before, as all he had were overheard telephone conversations and conversation, when he was himself working with other clients.

162 Disclosure number 37 on 25 November 2015 was an email to Mr Neilly. There were without prejudice negotiations and the purpose of the claimant's email was to decline the respondent's offer. It does not appear to raise any information such as could amount to a protected disclosure, but alleges that he has suffered whistle-blowing detriments, and now termination. An allegation is not disclosure of information. (*Cavendish Munro PRM Ltd –v- Geduld* [2010] IRLR, 38, EAT). It would also seem circular. An allegation which is prefaced "I cannot help but feel that had I not raised my concerns….", will never be a "disclosure of information".

Public Interest Disclosures

163 The tribunal has no hesitation in finding that none of the above alleged protected disclosures are in fact protected disclosures under s 43B of the Employment Rights Act 1996, for the reasons given above. In summary: the claimant's tendency to insinuate and to challenge others, and his hesitation and equivocation when challenged himself, militate against him ever making a disclosure of information (as opposed to allegations or just queries). The tribunal also consider that the origin of the claimant's distrust was a money concern over commission payments. That meant that many of these alleged disclosures could never be in the public interest. Further having heard him giving evidence over a long period at the tribunal, the equivocation suggests that the claimant

cannot have held a reasonable belief in what he was alleging. The vestigial evidence the claimant overheard on the account A trade, in which he was not involved, and the lack of a single other trade being disclosed to the respondent would suggest a lack of reasonable belief and the claimant bluffing about "other examples".

Conclusions

164 That could be the tribunal's conclusion on the whole public interest disclosure claim, but we need to comment on the main detriment and dismissal complaints and the money claims. Regarding the claimant's dismissal, in the course of the above narrative, woven through the 37 alleged disclosures, it was clear to the tribunal that it had become utterly impossible for the team to work with the claimant. Thomas Blondin said (and it did not seem an empty threat), that if Mr Cortellesi insisted on keeping the claimant, he might be the only one left on the team. The team was exasperated with the claimant and, despite being told repeatedly, the claimant showed no sign of mending his ways. It would be utterly fanciful to state that the "principal reason" for his dismissal (s 103A Employment Rights Act 1996) was that the claimant had made protected disclosures. The team's dissatisfaction was abundantly well investigated by the respondent and is well documented over a long period, a period which was as long as it was only because Mr Cortellesi kept "pushing back" until it was clear that was no longer an option. The claimant's poor attendance was bad in its own right. Mr Neilly was appalled when he saw the records. But he ultimately found it just one aspect of the claimant being a poor team player. It was the lack of trust which proved most corrosive and was ultimately insuperable.

165 So far as account allocation is concerned, work had to be found for Russell Scott when he joined. After a long analysis, the tribunal could find nothing in the respondent's allocation of accounts which could be criticised at all, let alone interpreted as a reprisal for the claimant making protected disclosures. At one stage (see above) Steve Gooden and Thomas Blondin agreed to give in to the claimant's demands for certain accounts, against their better judgment, just to shut him up (the "noise"). The claimant was spending more time complaining about what he did not have than working with the (substantial) accounts he did have. Account allocation as a whistle-blowing detriment is a far-fetched claim.

166 The claimant claims that his rightful commissions were underpaid from as early as April 2015. It is a contractual claim, and a claim for unlawful deductions from pay as well as a claim for whistle-blowing detriments. Detailed accounts were produced by the claimant and the respondent to show the amounts due when he was at work. There was in fact little variance. Many variations were due to the US Dollar / GBP exchange rate, deductions of fixed percentage overheads from profits, and calculation dates (the trade datd or the date paid). The claimant, as stated throughout the above narrative, was never slow in complaining if he was underpaid to any extent. His main complaint was that he was forced to trust Thomas Blondin to accurately report the trades which determined the amount of sales commissions, as these were not fully visible to the claimant on the system. The respondent would always listen to any query on commissions.

167 Now the claimant's commission claims as put in these tribunal proceedings amount to a total of £4.6m underpayment based on the claimant's suspicions about

trades being systematically under-reported by the traders since April 2015. That was clearly an unwarranted claim. The fact it was so large undermined its own credibility as a claim.

168 In witness evidence the claimant raised 9 trades on which he stated he "knew" he had been underpaid although he did not quantify the amounts. There was enough detail there for the respondent to respond, as they did in a witness statement from Phillip Wale. He is the new London Head of DCM (Debt Capital Markets). He produced the Bloomberg trade tickets for all the named trades and explained to the tribunal how to read them. It was an exhaustive painstaking exposition to which no effective challenge was made by or on behalf of the claimant. On more than one of these trades, for instance, he stated it was arguable that the claimant had been overpaid. On one (17/06/2015), the tribunal saw a later commission adjustment had been made in the claimant's favour.

169 The claimant, who has the burden of proof, here has come nowhere near to proving a single underpayment of commission, either contractually or as a whistle-blowing detriment. The origin of the claim in these tribunal proceedings is fundamentally derived from the claimant's distrust of the traders. Ironically, that is what the claimant was ultimately dismissed for too.

170 So the tribunal rejects all the claimant's claims and his claim is dismissed

Employment Judge Prichard

17 July 2017