Case No: 3200579/2016

EMPLOYMENT TRIBUNALS

Claimant: Miss J Dove

Respondent: HSBC Bank Plc

Heard at: **Sheffield** **On:** **22, 23, 24, 27, 28, 29 and 30 March 2017**
15 May 2017
17 May 2017 (in chambers)

Before: **Employment Judge Brain**
Members: **Mrs K Grace**
Mr K Smith

Representation
Claimant: Mr S Mallett of Counsel
Respondent: Ms C Richmond of Counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. The Claimant was unfairly dismissed by the Respondent.
2. The Claimant's complaint that she was subjected to a detriment for having made a public interest disclosure was brought in time. The Tribunal accordingly has jurisdiction to entertain her complaint.
3. The Claimant's complaint that the principal reason for the dismissal of her was that she had made a protected disclosure fails and stands dismissed.
4. The Claimant's complaint that she was subjected to a detriment for having made a protected disclosure fails and stands dismissed.
5. There was no conduct on the part of the Claimant that contributed to her dismissal. Accordingly, there shall be no reduction to any award made to the Claimant pursuant to sections 118 to 126 of the Employment Rights Act 1996 by reason of the Claimant's conduct.

REASONS

1. After hearing the evidence in this case and after the Tribunal had received helpful submissions from Counsel our judgment was reserved. We now set out reasons for our judgment.
2. By a claim form presented on 20 June 2016 the Claimant brings three complaints. These are:-
   2.1. That she was unfairly dismissed by the Respondent (commonly referred to 'ordinary unfair dismissal').
   2.2. That the reason, or the principal reason, for the Claimant's dismissal was that she made a protected disclosure.
   2.3. That during employment she was subjected to detriment upon the grounds that she had made a protected disclosure.
3. The matter benefited from a Preliminary Hearing that came before the Employment Judge on 6 October 2016. At that Preliminary Hearing, the issues in the case were identified and case management directions were given. We shall consider the issues in detail in due course.
4. The Tribunal heard evidence from the Claimant. She called evidence from Martin Osborne. Mr Osborne has long experience working in financial services and has held senior management positions with several financial institutions including the Respondent. There was no challenge to Mr Osborne's evidence.
5. The Tribunal heard evidence from the following witnesses on behalf of the Respondent:-
   5.1. Richard Barker. He has worked for the Respondent since 2000. At the relevant time he held the position of area premier relationship manager.
   5.2. Tesni Williams. Mrs Williams is currently employed by the Respondent as head of the north region. She chaired the employment review meeting held on13 October 2015 at which was taken the decision to terminate the Claimant's employment with notice.
   5.3. Amanda Scott. Mrs Scott is employed by the Respondent and currently holds the position of head of wealth and premier for the north region.
   5.4. Greg Carnaffan. He is employed by the Respondent as head of transformation, M&S bank. Mr Carnaffan chaired the hearing of the Claimant's appeal against Mrs Williams' decision to dismiss her.
   5.5. Ken Yau. He is an employee of the Respondent who holds the position of senior employee relations manager for HSBC retail bank and wealth management.
   5.6. Paul Vine. Mr Vine is an employee of the Respondent who currently holds the position of area premier relationship manager.

6. This being a document heavy case (the Tribunal having been presented with a bundle consisting of six lever arch files of in excess of 2,500 pages) the first day of the hearing was set aside as a reading day. The Tribunal was presented with a seventh bundle upon the morning of the second day of the hearing. Additional documents were introduced into the bundle as the hearing progressed. The first lever arch file was arranged in two parts. The first of these consists of the pleadings and orders in the case. The second part contained copies of the Respondent's policies and procedures. Some of these are of significance and we shall make reference to them in our findings of fact.

7. In these reasons, we shall firstly set out our factual findings. We shall then set out the relevant law before going on to our conclusions (in conjunction with the list of issues).

8. On 11 May 2011 the Respondent made an offer to the Claimant of employment as regional resources manager. The Claimant accepted the offer on 23 May 2011 and upon that day her employment commenced. The offer of employment and the Claimant's acceptance are to be found in the bundle at pages 441 to 447.

9. Her CV is at page 411 and 412. She had in fact previously worked for the Respondent between 1 February 1996 and 9 May 2005 as area financial services manager in the North Midlands. She then left the Respondent's employment and went to work for Norwich and Peterborough Building Society as head of sales, financial advice between May 2005 and February 2009. She then worked for the Citizens' Advice Bureau in Newark as financial capability coordinator. As she says at paragraphs 17 to 21 of her witness statement, her work with the Citizens' Advice Bureau was upon a voluntary basis coinciding with a career break which she took from the end of November 2008 in order to attend to difficult family circumstances. Although her contract with Norwich and Peterborough Building Society terminated in February 2009 she was in fact allowed to go on special leave to attend to her caring responsibilities in November 2008.

10. Her unchallenged evidence (at paragraph 22 of her witness statement) was that she was approached in 2011 by Mark Bulmer, a senior manager of the Respondent, who discussed with her the prospect of her returning to work with the Respondent.

11. According to her CV at page 411, she held the position of regional resource manager (upon commencement of her second period of employment with the Respondent) until June 2012. At paragraphs 23 to 25 of her witness statement, she describes several restructures. It was as a consequence of these that she moved to the position of area premier manager first in Stoke and then in Sheffield. She held the position of area premier manager until August 2013. She then moved to her final role which was that of premier relationship manager. The premier relationship manager role is a regulated role.

12. It is convenient at this stage to set out passages from Mr Barker's witness statement. These give essential background information and context. As we have said, Mr Barker at the relevant time held the position of area premier relationship manager ('APRM'). He initially held that role in Hull before being asked to move to cover Sheffield. According to the very helpful chronology of events presented to us by Ms Richmond, Mr Barker took up the position of APRM for Sheffield and in that role started to line-

manage the Claimant with effect from 1 November 2014. An email confirming that Andrew Barnsley (the then APRM in Sheffield and thus the Claimant's former line manager) would go to Hull simultaneously with Mr Barker's move to Sheffield is at page 725. Mr Barker says:-

(3) *"As APRM for Sheffield I managed seven PRMs [premier relationship managers] including Judith and three premier relationship officers (PROs). PROs support the PRMs. The PRO is not a regulated role but the PRM and APRM roles are, with a PRM requiring the holding of competent advisor status (CAS) and APRM requiring competent supervisor status (CSS).*

The standard accreditation process for a PRM

(4) *The role of a PRM in essence is, through a portfolio of clients, to make contacts with HSBCs premier clients, complete financial reviews, identify potential needs and recommend solutions. The principal duties are advising customers on and recommending regulated products such as pensions, investments and protection (for example, life insurance and considering inheritance tax liability).*

(5) *As stated above, a PRM is a regulated role and an individual needs to achieve competent advisor status (CAS) to operate within it. At the end of 2012, across the banking sector, the retail distribution review took place. This changed the position in that in order to hold CAS, the PRM had to be "CII diploma in regulated financial advice" qualified (or equivalent such as IFS diploma). In order to achieve the diploma it is necessary to pass a minimum of 6 exams in different subject areas, with these generally recognised as tests RO1 to RO6. In addition to achieving the diploma, it is also then a requirement to complete a foundation course, a range of mandatory e-learning modules with related online assessments before passing a final role play accreditation. This is then followed by a period of training and supervision on the job where a PRM has a period of up to 12 months to attain certain standards before they are signed off as achieving CAS.*

(6) *Once the diploma is achieved, an individual would commence their development through the PSS scheme, which includes progression through key stages – namely "initial", "growth – direct supervision" (GDS), "growth – attaining competence" (GAC) before entering "expert" stage (also known as "competent advisor status"). Significant investment and training is invested in PRMs before they commence in role in field ie before dealing directly with customers in the geographical area to which they had been assigned. This is referred to the "initial" stage. The accreditation process starts with the foundation course, run as classroom training based out of our various training suites around the country. PRMs will undertake a number of courses, some running for weeks at a time, encompassing the various elements of the role. So for example, they will undertake a course of fact finding and the important information to draw from a customer in order to*

provide them with tailored advice – known as a discovery or discover meeting. They will have training on the various IT systems HSBC uses and how to write the financial planning report (FPRs) which the PRM presents to the customer. They will have courses to build their knowledge in the main areas of compliance, offshore, premier, pensions, investments, inheritance tax/estates planning and protection/trusts and will then take an invigilated class based test across each subject during the training. A pass mark of 80% is required in each area.

(7) Between classroom based training, they will spend time in the branch network in the geographical locations they are assigned to, building relationships with the employees in branch and practicing their skill by working on theoretical cases drafting dummy reports.

(8) This initial phase of the training culminates in a final accreditation day where the individuals are filmed and assessed conducting a first and second meeting with a customer, played by an actor and preparing all the documentation required for such a meeting. This assessment is marked centrally and individuals are told whether they have passed or failed. If an individual fails they are given two further attempts. If they pass, they start work in the field, operating out of the branch and supervised by the relevant APRM in the GDS stage. In my experience about 80% of candidates pass this assessment first time. It is unusual for individuals to need all three attempts.

(9) Once in the field, the individual commences work as a PRM and they are closely supervised by an APRM. They have to demonstrate certain abilities and competences before they can be signed off as having achieved CAS. Under HSBC's professional standards scheme ("PSS") from entering the field full time in GDS, a PRM has 12 months to achieve CAS status. The requirements to achieve CAS are set out below, but in my experience CAS can be achieved in as little as 4 months but most achieve it in around 6 to 9 months. In all honesty, whilst it does take some people 10, 11 or 12 months to achieve CAS, if a PRM has not made significant progress against the required CAS milestones after 9 months, the most likely explanation is that they are not suited to the role.

(10) At first, the PRM is in GDS and can have no customer contact without it being observed by an APRM. Once the PRM has demonstrated competence in at least one telephone approach, one discovery (also known as a "first") meeting and one "presenting solutions" (also known as a "second" or "recommendation" meeting) they are authorised to make customer contact unaccompanied. During this time they have frequent observations (at least one telephone approach, one first meeting and one second meeting each month) but can undertake some customer meetings independently.

(11) Once they have shown they can successfully achieve at least 4 or 5 complete customer journeys (which means taking a customer through initial contact, discovery, producing a satisfactory sales file/financial planning report and presenting solutions meetings at which the PRM presents the findings to the customer, followed by putting in place the products the PRM has recommended which the customer wants to take forward), in addition to achieving a sound activity operating rhythm commensurate with peers, they may be signed off as having achieved CAS.

(12) Whilst 4 or 5 customer journeys is the minimum, a PRM as a general rule achieves around 10 before they are signed off (and often more). In addition, they have to demonstrate advising across the full range of areas (protection, investment, retirement and a state planning) – for example, it would not be sufficient to achieve CAS having completed 5 customer journeys but all of them are around recommending products in respect of retirement only.

(13) We refer to the above as the EDRAS journey which is an acronym setting out the five steps for needs based selling – engaged/discover/recommend/act/service. Once a PRM is showing confidence and competency taking customers through that EDRAS journey, and assuming they have completed all the GDS milestones, they move to the GAC stage. This is a shorter phase and genuinely results in them being supervised taking one more customer through the customer journey, and provided all remains satisfactory the APRM would seek central approval to sign them off as having achieved CAS. Once that standard is achieved, they are known as 'expert'".

13. Within the policies and procedures section of bundle 1 we find the documents commencing at pages 177 and 256. These are respectively entitled 'Attaining and Maintaining your Professional Standards, Premier Relationship Manager (PRM)' and 'Professional Standards Scheme- Your Professional Development'. These documents describes in more detail the process described by Mr Barker in the passages that we have just cited. Of note in this document are the anticipated timescales. These are:-

13.1.1. For the 'initial stage', a period of up to eight weeks in role.

13.1.2. For the 'growth – direct supervision' stage, a period between the commencement of the ninth week in role and the 6 months.

13.1.3. For the 'growth – attaining competence' stage, a period of up to 12 months.

13.1.4. For the 'expert stage', from the twelfth month onwards.

13.1.5. At page 183 of the former document provision is made for an extension of time for compliance with the growth stage of up to three months 'in exceptional circumstances.'

14. It is also necessary to cite from Mr Barker's witness statement the passages in which he describes the standard supervision of PRMs and the up skilling of PRMs. This is done in a number of ways. Again, quoting from his witness statement:-

(18.1) Quarterly testing (informally referred to as "MOT") – PRMs need to be tested on their knowledge on a rolling 12 month basis and this is done through quarterly mandatory testing in the various areas – offshore/trusts/premier/pensions/investments/estates planning and inheritance tax (IHT)/compliance and protection. These tests are done by the individuals at their desks but need to be observed and signed off by an invigilator (who must be an MOT accredited, non-regulated colleague – usually a PRO) to confirm the test as being done under exam conditions. If at first the individual does not pass the exam they can have two further attempts and there are deadlines for when these need to be done. Test failures and non completion are flagged to the APRM in the monthly risk dashboard;

(18.2) Checking advice given by PRMs through a HFC. This means that prior to and post presenting advice to a customer, the APRM carries out a HFC to check the technical advice given. As well as carrying out pre and post sale HFCs for all FPRs for those still to achieve CAS, the APRM will carry out regular post sale HFCs of CAS qualified PRMs particularly where the advice is particularly complex; it is dealing with multiple needs and/or dealing with a vulnerable customer. *[We interpose here that "HFC" stands for holistic file check];*

(18.3) APRMs observe live interviews the PRM undertakes with customers – known as "telephone approach", "discovery meetings", where the PRM carries out a fact finding interview to gather together the relevant information, and "presenting solutions meetings" where the PRM takes the customer through their recommendations and if appropriate the product documentation;

(18.4) APRMs complete checks on the annual reviews (also known as CRFs which stands for "customer review forms") completed by the PRMs of their clients PIMS (Premier Investment Management Service) product. An annual review of this product is a regulatory requirement;

(18.5) Reviewing the monthly risk review. The APRMs are provided with a monthly risk dashboard which is produced centrally and flags risk indicators. For example, it would flag if a PRM had not advised on a certain area, such as a IHT, for 6 months therefore potentially highlighting a knowledge gap or if an individual had failed to undertake one of the regular quarterly "MOT" tests referred to above;

(18.6) As well as the APRs reviewing reports, there is review and checking carried out by the central sales quality team who award a scaled mark. In descending order the relevant scores are: "clean pass"; "pass with comments" (where the advice is robust but there may be certain areas to consider/advice for future work); "process fail" (where the advice is sound but there

has been some process/administrative error – for example a form not being completed correctly) or "wrong customer outcome" (this is the most serious where the advice to the customer is incorrect or could cause detriment for example, it is not the most tax efficient).

15. The letter confirming the Claimant's appointment as PRM in Sheffield is at page 456. This letter is dated 2 January 2014 but confirms that her effective start date in the role was 1 September 2013. The job grade for the role is 'CGB5'. As is explained in the Respondent's employee handbook (in the bundle commencing at page 130) positions within the Respondent are allocated a 'GCB' which stands for 'global career band'. We refer to page 139.

16. The Claimant was notified on 24 July 2014 that she had passed the accreditation stage described in paragraphs 6 to 8 of Mr Barker's witness statement (cited at paragraph 12 above). Before that stage the Claimant had undertaken the foundation course (to which Mr Barker refers in paragraph 6 of his witness statement) in October 2013. The Claimant achieved the necessary accreditation in July 2014 at the third attempt. She was issued with a 'Statement of Professional Standing' from 1 August 2014 to 31 July 2015 (page 470).

17. The Claimant therefore moved from the "initial" stage to the "growth – direct supervision" stage. As Mr Barker said in paragraph 9 of his witness statement, the Claimant therefore had 12 months to achieve CAS status. She had 12 months from 4 August 2014 to achieve this (confirmed in the email at page 495). The Claimant's line manager as at 4 August 2014 was Andy Barnsley.

18. It was fairly accepted by the Claimant in cross-examination that the FPR (financial planning report) is a fundamental and integral part of the process. In general terms, there is no dispute that the Claimant found the writing of FPRs very difficult and challenging. Ms Richmond took the Claimant to the MOT undertaken by Mr Barnsley on 12 September 2014 (pages 2076 to 2078). While the Claimant accepted that she had not completed a FPR at this point she rejected Ms Richmond's suggestion that this was evidence that she was struggling to write reports at this stage. The Claimant's account is that difficulties were only to be expected at this early stage. The record at page 2078 refers to the Claimant having started to write her first FPR in hand and to Mr Barnsley encouraging her to put it into proper form. Her diary was closed to enable her to do this and avoid her getting behind with her work. She was also noted to be spending time with Peter Lawless (a PRM) who was helping her to "work through browser main menu." That said, she fairly accepted that by 25 September 2014 she had still not completed a FPR. We also refer to the professional standards scheme adviser one-to-one form at pages 2082 to 2083. From this documentation it can be seen that the Claimant was someway off the preparation of an FPR for the clients with whom she was dealing at the time (who are named Ryan). The Respondent's expectation (recorded at page 2082) was for there to be a minimum of four customer meetings each week.

19. On 23 September 2014 the Claimant was notified that she had not been successful in an application for a different role within the Respondent. The role for which she had applied was another at GCB 5 and was that of

manager compliance monitoring-wealth distribution. An email from the relevant compliance manager informing the Claimant that her application had been unsuccessful is at page 676. It was suggested to the Claimant by Ms Richmond that she had made this application because she was aware even at this early stage that the PRM role was one to which she was not suited. This the Claimant denied. She said that she looked at other roles because "there was a lot of talk about the future viability of wealth and I wanted to explore other options".

20. Following Mr Barker having taken over as APRM for Sheffield with effect from 1 November 2014, he and the Claimant did not meet the first time until 17 November 2014. In evidence before us, Mrs Scott said that she thought that Mr Barker had in fact taken over the Claimant's line management with effect from 1 October 2014. The Tribunal rejects this evidence. Firstly, it is contrary to the date given in the Respondent's own chronology of events handed to us by Ms Richmond. Secondly, it is contrary to Mrs Scott's email at page 725 to which we have already referred at paragraph 12. Thirdly, it is contrary to Mr Barker's own account in paragraph 20 of his witness statement. Fourthly, (although we do not need to descend in to the detail of this material) we can see from the bundle index reference to a number of documents relating to the Claimant's employment between August 2014 and the end of October 2014 that show that Mr Barnsley remained involved in the Claimant's management. Fifthly, Mr Barnsley did a one-to-one with the Claimant on 29 October 2014. It was there recorded that the Claimant was experiencing some challenges now that the report stage had been reached upon the Ryans' customer journey (page 2091).

21. That said, it is the case that Mr Barker sent emails in October to the Claimant and others announcing his takeover of the team with effect from 1 November 2014. We refer to paragraph 24 of his witness statement.

22. The Claimant went on a two week holiday commencing on 30 October 2014. Just prior to her holiday she had a one-to-one with Kerrie Helmsley who is a wealth coach (page 2086 and 2087). It was recorded that the Claimant had four clients "progressing to advice" and that she would be seeking help from two of "her colleagues around her." She was reminded to continue to book appointments via the ABS *[appointments booking system]* and *[to]* update activity results." She had in fact already been told of this requirement at a one-to-one with Ms Helmsley on 25 September 2015. Upon her return from holiday, she met Mr Barker for the first time on 17 November 2014. At paragraph 40 of her witness statement the Claimant says that Mr Barker entered the office in the Sheffield commercial centre and greeted her "with the opening line of *"what are you up to Mrs'"*". The Claimant said that she realised, as the conversation progressed, that Mr Barker had mistaken her for someone else. The Claimant's account is that Mr Barker mistook her for Sally Kilner, the branch manager at Meadowhall. The Claimant says that, on realising his error, "Richard's comment was 'you women of a certain age all look the same'".

23. On 18 November 2014 The Claimant sent an email to Helen Cartenian (who is a member of the Respondent's employee resource legal team). The email is at page 783. The email from the Claimant to Ms Cartenian forwarded another email entitled 'All About Age: Recruitment – judge the skills, not the birthday.' The Claimant observed in her email that it was

"ironic that this arrived today, have thought about sharing but remembered the tactful approach I was learning".

24. The Claimant's account was that she was made more uncomfortable by Mr Barker when the Claimant was asked by him at the end of their meeting on 17 November 2014 to "give me five". The Claimant said that she did not find this comfortable and offered instead a "professional handshake". She says, "Richard commented that we could reserve high fives for when sales were made and appeared very dismissive of my desire to be professional. I was very disconcerted by his unprofessional attitude/comments and raised this generically".

25. Mr Barker's account of the events of 17 November 2014 is at paragraph 25 of his witness statement. Having never met the Claimant before he did not know what she looked like. He says, "When I walked in I saw a woman in the office with her back to me and said "hi Sally how are you?" thinking it was a local branch manager I had met for the first time a few days earlier. *[We interpose here to say that presumably this is a reference to Sally Kilner].* Actually I was mistaken and Judith came over to shake my hand and told me her name. I said that I was very sorry I was mistaken. Judith did not seem offended at the time, nor was there any reason to be. I deny that I made any reference to 'women of a certain age looking the same'".

26. Mr Mallett suggested to Mr Barker that it was no coincidence that the Claimant sent the email at page 783 the day after the meeting and that she had been prompted so to do by Mr Barker's age-related comments. Mr Barker said that the Claimant had "mistakenly interpreted what I said". Mr Barker fairly accepted inviting the Claimant to "give him five".

27. Upon this issue, we prefer the evidence of the Claimant. The credibility of her account is corroborated by her decision to send an email to Helen Cartenian which plainly expresses some misgivings about what had happened the previous day (albeit in somewhat oblique terms) accompanied by an email dealing with perception issues around age. We agree with Mr Mallett that it is not credible that this is simply a coincidence of time. We find that the Claimant was motivated to send the email of 18 November 2014 by the events of the previous day. The credibility of her account is reinforced by Mr Barker's concession around the 'high five' invitation which is corroborative of the Claimant's account.

28. Mr Barker accepted that Mr Barnsley had not done the observations upon the Claimant that he should have undertaken during September and October 2014. Documentary evidence that these mandatory telephone observations had not been carried out in those months is at page 784A. Mr Barker fairly accepted this to be an unsatisfactory situation as far as the Claimant was concerned.

29. It was suggested to Mr Barker that the Claimant was an individual of some ability. Mr Barker fairly acknowledged the good appraisals of the Claimant undertaken by Mr Barnsley for the year ended 2013 and for the year ended 2014 (pages 697 and 905): (in relation to the latter, Mr Barnsley was largely but not wholly responsible for completion of the appraisal). While Mr Barker was prepared to acknowledge the Claimant as an individual of some ability (as evidenced (amongst other things) by the reference from her previous employer, the Norwich and Peterborough

Building Society, at page 449) he plainly felt that her talents were best suited to a non-customer facing role.

30. At a one-to-one held on 21 November 2014 it was identified that the mandatory observations for that September and October had not been carried out by Mr Barnsley (this is at pages 784a and b which document is headed 'Breach Event- Previous APRM Error.'). The Claimant was required to undertake the actions set out at page 785 (that being a record of the one-to-one held that day). One of these actions was to finalise the FPR for the Ryans for review no later than 24 November 2014. The Claimant's account was that Mr Barker acknowledged that the Claimant had not had mandatory support and observations until November 2014. She said in evidence that she was told on 21 November 2014 that the intervention of Mr Barker would be "like starting from scratch" and that the failure was not the Claimant's responsibility. We accept the Claimant's evidence as it accords with the record at page 784a and b. That said, we can see from page 785 that Mr Barker had in mind the possibility of a personal development plan at this stage in light of the Claimant's performance in role.

31. The Claimant was taken to the one-to-one forms completed towards the end of October 2014 (at pages 2086 to 2093) which evidence that the Claimant acknowledged that she had what Ms Richmond described as *"a block"* about the preparation of the FPR for the client. The FPR for the Ryans had not been done by 21 November 2014 hence the imposition of the 24 November 2014 deadline.

32. In a similar vein, on 30 October 2014 the Claimant informed Mr Barker by email (copied into her then line manager Mr Barnsley) that "the biggest hurdle is report writing which is not unusual for people at my stage as I believe". She said that her aim was to be writing at the rate of one case per week by mid February 2015. She informed Mr Barker in the email that she was on holiday for the first two weeks of November 2014 "but will ensure I am able to have a telephone observation and initial discovery meeting on the date of 20 November". 'Key deliverable targets' identified on 30 October 2014 was for her to attain CAS and complete four FPRs between 14 November and 10 December 2015 (pages 768 and 769).

33. The Claimant did not achieve the target of completing the Ryans' FPR by 24 November 2014. The intention had been that this would be checked by John Barber, an experienced PRM. The Claimant emailed Mr Barber on 24 November to 2014 to say that the report was not ready (page 789). In that email she said, "I only wish that there was more training/support at this time on this rather than the wealth coach help with contacting etc which is simple by comparison." She observed that she had heard anecdotally that the preparation of a FPR may take 70 to 100 hours "in the early stage."

34. At the next one-to-one held on 28 November 2014 this matter was discussed. The FPR had now been completed albeit two days late. We refer to page 793. It was recorded that the FPR was now with Mr Barber. The Claimant and Mr Barker then went through her work that week and set deadlines and expectations. Three tasks were recorded (set out at page 793).

35. The Claimant accepted that the third task (the preparation of a one-to-one form for the following week) was not in fact completed. She attributed this

to difficulties with operating the Respondent's computer system which is known as 'Tracsmart'. This is a programme which, as described by Mr Barker in paragraph 29 of his witness statement, "keeps an up to date record of training and competences achieved and it records all development activities including observations and 1:1s". Mr Barker goes on to say that, "Judith did seem to struggle to get to grips with the technology and familiarise herself with the system. She also appeared to have lots of systems issues". Mr Barker was prepared to give credit for the fact that "Tracsmart isn't the easiest or intuitive system to work with". However, he contended that the Claimant seemed to have "by far more difficulties than others" with its operation.

36. The Claimant, for her part, said she endeavoured to get to grips with Tracsmart. She acknowledged to finding the operation of it something of a challenge (as is recorded at page 794). She said that she would continually receive icons denying her access and would receive a link warning her that operation of the system by her was deemed "unsafe". She acknowledged that she was informed that she could disregard the "unsafe" message and that there had been some improvement but it could on occasions take her "thirty attempts" to get into the Tracsmart system.

37. In cross-examination, Mr Barker confirmed that the Claimant was informed that she could ignore the unsafe system warning. A "work around" was devised should there be issues around access.

38. Mr Barker fairly acknowledged there to be a problem with another of the Respondent's computer systems known as 'Insight'. These problems arose because a 'termination marker' had been placed upon the Claimant's access to the system. This was not resolved until February 2015. Problems had been encountered with this from August 2014. The problem appears to have originated at the time of the Claimant passing the accreditation stage and there being a system fault wrongly indicating that she had left the Respondent's employment. Mr Barker acknowledged that this would be detrimental for the Claimant and may affect her performance.

39. Although Mr Barker acknowledged there to have been some IT issues that affected the Claimant his view was that she did not help herself. He said that she appeared reluctant to obtain help from the Respondent's IT specialists and that she preferred to rely upon Mr Barker to find solutions for her.

40. We now turn to the events of 27 and 28 November 2014. The Claimant says that on 27 November 2014 she "had a further conversation with Richard and one that turned out to be highly significant to the rest of my career with HSBC".

41. The Claimant's account at paragraph 42 of her witness statement is that in this conversation "…….Richard asked that I falsify records by recording individual review meetings with customers of the bank, which had never actually taken place. The reason given was that this would take the heat off him in board meeting when activity figures were reviewed. I explicitly remember this conversation, as I was so shocked by what Richard was asking me to do". She goes on to say in paragraph 43 that, "I refused to do as Richard requested as it was my understanding and belief that to deliberately falsify customer records was a major disciplinary matter, in addition to breaking external rules regarding collating accurate data, which

is what I told Richard at the time. To do what was requested of me by Richard would also have been fundamentally against the corporate standards of the bank. The conversation which followed became quite heated and I was very distressed and appalled by his attitude. Richard made it very clear to me that he did not want his authority as a manager challenged. At one point he told me that 'when a manager tells you to jump your only question should be how high?' I found this way of approaching the management of an individual to be quite disturbing and I found his style very threatening." In evidence during cross examination the Claimant said that her concern about what she had been told was that, "if you record as meetings things that are not meetings, your conversion ratio would be worse than it is. It'd be incorrect data for people to assess and analyse. It is falsification of records, a breach of regulation and their *[customers']* trust in the bank's integrity." She maintained this to be a matter of public interest because of "inaccuracy of client records."

42. Mr Barker's account is at paragraphs 32 to 35 of his witness statement. He puts the Claimant's account down to a misunderstanding of what Mr Barker had told her to do. His account is as follows:

    (32) "By this time, Judith had been working for me for a couple of weeks and she was regularly failing to record customer contact she had completed into the Browser Main Menu which is the Client Relationship Management System we use which holds all the information regarding our customers. It is important as it records the contact each PRM has made and is an important record when it comes to evidence in work that has been done and ultimately feeds into the areas key performance indicators and a PRMs end of year review. When reviewing this information, it became apparent Judith barely recorded anything in there. This meant that either (a) she was not doing any meaningful work or (b) she was, but was not recording it. I know from conversations with Judith that she was having some valuable, in depth conversations with customers at the time and therefore knew it was not a case of her doing nothing. I categorically was not telling Judith to record contact that had not taken place.

    (33) The purpose of requesting her to record contact was not to make me look good or that I looked bad as a result of her not doing this, it was for her own benefit to demonstrate and get the credit for the work that she was doing. Each week a report is run measuring individuals and teams against key performance indicators. By not recording this, as I said, it looked like Judith was not doing anything".

43. Mr Barker says that he tried to explain his position to the Claimant both on 27 November 2014 and at the one-to-one which we have already referred at paragraph 33 held on 28 November 2014. The salient entry is at page 795. We refer to paragraph 63 below for the full citation. We also note that the Individual Review procedure at page 175 requires an individual review appointment to be booked in the dairy and upon the ABS.

44. The Claimant's evidence is that during the conversation on 28 November 2014 Mr Barker said to her that if she did not do what she was being asked to do then she would end up being performance managed.

According to paragraph 44 of her witness statement, the Claimant says that on 28 November 2014 Mr Barker suggested to her "that a quick telephone call could be documented as an individual review". She was concerned as she knew this to be against the rules. That understanding was correct as we can see from page 645. Here, in an email of 10 September 2014, Mr Barnsley had advised that "engage appointments should not be input in ABS as this records as an IC *['individual consultation', the previous name for 'individual review'].*" Mr Barker's position was that he was simply telling her to record any contact of substance (whether by telephone or in person) as an IR but to also record elsewhere all activity of a routine nature. The Claimant understood him to be telling her to record everything as an IR.

45. The Claimant was sufficiently concerned about this issue that she spoke to Helen Cartenian. That she discussed her concerns with Helen Cartenian is corroborated by the email of 2 December 2014 addressed to Ms Cartenian at page 800. In this email she says that she had reflected upon matters and the next steps. She said that she was minded to refer the matter to the Respondent's compliance team. In the 'key points of concern' document to which we shall come (at paragraph 85 below) the Claimant said that Ms Cartenian told her of "her options and the processes available" (page 896).

46. The Claimant's case is that she reflected over the weekend. She appears to have been influenced to some degree by having read an article published in The Times on 26 November 2014. The headline for this was *'The Yes Men at HSBC Mislay their Moral Compass'*. The Claimant appears to have been encouraged by what she read in the press article about the Respondent's wish to usher in a culture change. We have a copy of the article in the bundle at page 791.

47. On 1 December 2014 at 13.12 the Claimant replied to an email from Ivan Willerton. This was copied in to Mr Barker (page 799). The Claimant's evidence is that Mr Barker had also sent the Claimant an email which required dealing with and that Mr Barker had taken umbrage at the Claimant dealing with Mr Willerton's email before that sent by Mr Barker. Mr Barker, on the Claimant's account, told the Claimant that she was "sticking two fingers up at him". (The Claimant's evidence is that it was this incident coupled with the conversations of 27 and 28 November 2014 that prompted her to speak to Helen Cartenian and to the subsequent email to her). (The Claimant had in fact spent the morning of 1 December 2014 (between 10.45 and 13.00) at the city branch working with John Barber on the Ryan report: see the Claimant's account at page 888 which is part of the note to which we refer at paragraph 95. We thus accept that Mr Barker did not (as the Claimant contends) interrupt the Claimant's meeting with Mr Barber as she did not deal with the Willerton email until after she had finished her meeting with Mr Barber).

48. Mr Barker's evidence upon this is at paragraphs 36 to 37 of his witness statement. He denied having said to the Claimant, on 27 November 2014, that "when a manager tells you to jump your only question should be how high?" However, he accepted making reference "to feeling that her actions were like sticking two fingers up at me" but said that the Claimant's evidence was portraying that remark out of context. Mr Barker said that he had been disappointed that she had actioned Mr Willerton's email before his and "felt like she was sticking two fingers up at me by doing so".

Mr Barker said, "I wanted her reassurance this was not the case which she did give".

49. In cross-examination, when asked about this, Mr Barker said that the Claimant had prioritised someone else at HSBC over him as her line manager and that it felt like "an extra thing". He denied any connection between that and the conversations of 27 and 28 November 2014 or being worried about the subject of those discussions. He pointed out that Mr Willerton is in fact of the same grade as Mr Barker and not of a lower grade as portrayed by the Claimant.

50. Mr Barker then goes on to say at paragraph 37 of his witness statement that he was open with the Claimant and told her that he would be seeking HR advice upon her actions. A record of Mr Barker's discussion with the Respondent's human resources team (which is known as 'employee relations' or 'ER') is at page 2014. Mr Barker complained that the Claimant had deliberately ignored requests from him to complete the FPR on behalf of the Ryans for John Barber by 24 November 2014 and to prepare the one-to-one form for the following week. Mr Barker took the view that the Claimant was deliberately refusing to complete tasks set for her by him.

51. It was suggested to Mr Barker during cross-examination that it was premature to seek ER advice so early in his relationship with the Claimant. Mr Barker maintained that it was appropriate for him to take this step and that it was what "any diligent manager would do in a challenging situation". When it was put to him that he was anxious to get something upon the record about the Claimant Mr Barker responded that he would have preferred her to simply have done the tasks set in the first place.

52. Mr Barker did not deny, when asked, that he had threatened performance management of the Claimant on 28 November 2014. He justified this upon the basis that the Claimant's performance was potentially the worst in the country of those holding her position. It was suggested that it was inappropriate to couch his complaint to ER in these terms in circumstances where the Claimant had in fact completed the FPR just two days late. Mr Barker said that the Claimant herself had acknowledged that her performance had been "horrific".

53. It was suggested that Mr Barker's actions were inappropriate in circumstances where the Claimant had explained on 28 November 2014 the reasons for the late preparation of the FPR. These reasons are set out at page 793 (being the one-to-one of 28 November 2014). These concerned IT issues and the fact that this was her first FPR. Mr Barker said that these comments and explanations were in fact added by the Claimant "much later than 28 November 2014". It was suggested to Mr Barker that this was not a credible explanation as (even if the comments were added to the form later) the subject of the late completion of the Ryan report (albeit by only two days) would inevitably have been the focus of the discussion on 28 November 2014.

54. It was suggested by Ms Richmond to the Claimant that Mr Barker did not threaten to performance manage her during the discussion of 28 November 2014. We find as a fact that Mr Barker did so. Firstly, he did not deny having said this when it was put to him in cross-examination. In fact, to the contrary, he sought to justify what he had said by reference to the Claimant's poor performance levels. Secondly, a performance

management threat is consistent with the tenor of the discussion around the Ivan Willett email on 1 December 2014 and Mr Barker's assertion that he felt that the Claimant was "sticking two fingers up" at him.

55. In relation to the annotation of the one-to-one of 28 November 2014 (at page 793) and the Claimant's explanation for not having prepared the one-to-one form (being difficulties with remote connectivity and other issues), the Claimant accepted that she had been the author of those remarks. We find Mr Barker's account that the Claimant inserted this explanation after 28 November 2014 to be credible. We say this because there is a note from the Claimant on the final page of the report at page 795 (being part of the relevant form pertaining to the one-to-one of 28 November 2014) which contains a record of a continuation of the discussions of 27 and 28 November 2014 and which took place on 2 December 2014. Plainly therefore it was possible for notes to be inserted after 28 November 2014 and this was indeed done by the Claimant making reference to a conversation some four days later: (this entry is the citation at paragraph 63).

56. We do not find it credible that there would have been no discussion between Mr Barker and the Claimant on 28 November 2014 about the reason why she had not completed the tasks set for her at the one-to-one of 21 November 2014 (page 785). Whatever views the Claimant may hold about Mr Barker's management style, it is an inescapable fact that he is a diligent manager. We do not find it credible that at a one-to-one held seven days after 21 November 2014 he would not have returned to the tasks set for the Claimant that were set out in the record of the one-to-one of that date (at bottom of page 785). We therefore accept the Claimant's account that the issue of the preparation of the one-to-one form was discussed again on 28 November 2014 (whether or not the written record of that conversation was in fact added into the record at page 785 several days later).

57. On the morning of 2 December 2014 (being the same day upon which Mr Barker contacted ER to request guidance upon managing the Claimant), the Claimant called the Respondent's compliance team. She spoke to Sheldon Rowles, who is the head of the compliance investigation team. At paragraph 58 of her witness statement she says that she explained what had happened and informed Mr Rowles of Mr Barker's request for her to falsify customer records. She says that in addition to the falsification of customer records she raised the matter of alleged ongoing cheating in examinations. This was a matter which had become a concern to the Claimant when she was on her training course for her PRM role in October 2013. She says, in paragraph 27 of her witness statement that a number of people were assisting a PRM who was taking an internal test in the classroom in which all were working. The Claimant's account is that she challenged the individuals concerned in 2013. Those challenged included an APRM. She says that she raised the matter with the course trainer. She was not advised of the outcome of her concerns.

58. The Claimant's evidence is that Mr Rowles suggested that she put her concerns into written form. It appears that no record was kept by Mr Rowles of the conversation that he had had with the Claimant on 2 December 2014.

59. It was suggested by Ms Richmond that the Claimant decided to report concerns to the Respondent's compliance unit only after she had been informed by Mr Barker of his intention to seek ER advice about his management of her. It was suggested therefore that she did this in order to "hit back" (as it was put) at him with a view for making it harder for the Respondent to manage her performance. This the Claimant denies. She pointed to her email to Helen Cartenian of 2 December 2014 (timed at 06.25 and thus before Mr Barker involved ER) as evidence of her resolve to take steps about the matters that were of concern to her arising from the conversations with Mr Barker of the previous week. She also pointed out that she had raised concerns about the exam issue the previous October (2013).

60. We accept the Claimant's account that she was seriously contemplating reporting her concerns to the compliance unit before she found out on 1 December 2014 of Mr Barker's intention to involve ER in the issue. The email of 2 December 2014 at page 800 demonstrates that the Claimant was sufficiently concerned to discuss matters with Helen Cartenian prior to 2 December 2014, she had reflected upon matters and had resolved to take the issue further. We also find the Claimant was unafraid to confront matters of concern to her as evidenced by her conduct at the course in October 2013.

61. The next one-to-one between Mr Barker and the Claimant took place on 3 December 2014 (pages 806 to 807, 2045AN and 2118). The FPR for the Ryans had still not been completed at this stage. The note at page 2045AN refers to abandoning the extant iteration of the FPR and starting again. In re-examination, the Claimant was asked as to how she was coping personally around this time. She said that she was finding matters to be stressful. She said that she was not sleeping well and had been physically sick. She says in her witness statement at paragraph 60 that on 3 December 2014 she consulted with her General Practitioner who prescribed sleeping tablets. He diagnosed her blood pressure to be higher than it ought to have been.

62. On the same day (3 December), the Claimant emailed Helen Cartenian (pages 804 and 805). She made reference to a discussion with Mr Barker previous day. She described that conversation as being "much less emotive on both sides". The Claimant copied Helen Cartenian into an email addressed to Mr Barker (also at pages 804 and 805). In this email she mentioned a lack of trust in him prior to his arrival in the area. As Mr Barker says at paragraph 22 of his witness statement, it appears that the Claimant had misgivings about him. She had emailed Annie Dost, another PRM in the team, on 4 October 2014. Ms Dost had asked the Claimant for her views about Mr Barker when his appointment was announced. The Claimant said, "I have an opinion but I will let you decide – his father also worked for the bank a long time ago in a similar role". We refer to page 722. Mr Barker had not in fact seen this email prior to him preparing his witness statement. The Claimant did not elaborate upon her email of 4 October 2014 when giving evidence before us. On any view however it is plain that she had misgivings about Mr Barker from the outset despite never having met him prior to 17 November 2014.

63. As we have said, the conversation of 2 December 2014 between the Claimant and Mr Barker featured in the annotation to the one-to-one record at pages 793 to 795 (in particular, towards the end of page 795).

The Claimant recorded that, "our discussions on this matter commenced on Thursday *[27 November]* and continued Friday *[28 November]* and today Tuesday 2/12 re the expectation of the appointments – the clarity I now have is that a quality telephone call with added value or an over the telephone IR should be documented in the ABS diary to reflect the work being undertaken. This will be input as either a banking or IR appointment depending on action taken". The entry also makes reference to a 90 minute conversation with the Ryans which had not been recorded anywhere. The Claimant said that she had in fact fully documented it and considered it not to be part of the discovery process described by Mr Barker at paragraph 11 of his witness statement (cited above). As she acknowledged in evidence before us it should in fact have been so considered and recorded accordingly.

64. On 9 December 2014 Mr Barker and the Claimant had a growth one-to-one and a coaching one-to-one (pages 811 to 812 and 815A to 815C respectively).

65. Towards the end of page 815A is an entry made by the Claimant. She referred to the conversation held on Thursday 27 November 2014 as having left her feeling very unsettled. She then commented that the matter had been resolved. When this was put to her in cross-examination, the Claimant said that by this she had meant that she had raised the matter with Sheldon Rowles of the compliance unit. She took the view therefore that as between her and Mr Barker this meant the issue was "resolved". It was suggested to her by Ms Richmond that this was not the case and that in reality she now understood the need to properly input and record all conversations so that she was being recognised for the work being done.

66. To reinforce this she was taken to page 1038A which is a record of a one-to-one held on 12 February 2015 where a similar point was made. The Claimant said that the recording referred to at page 1038A was upon the Respondent's browser system. What Mr Barker had asked her to do at the end of November 2014, in contrast, was (on her account) to record all contact with customers as individual review meetings.

67. It is worth reminding ourselves at this juncture that the Respondent has an individual review procedure which is in the bundle commencing at page 175. This was said to be effective from 17 November 2014 (coincidentally the day of the first meeting between Mr Barker and the Claimant). It says that the individual review meeting is a 'non-advised meeting'. (By this, staff was therefore required to ensure an understanding on the part of the customer that the Respondent was not able to give advice on HSBC banking products or services). As Mr Vine said in his second witness statement, the browser main menu and ABS were accessed by all staff and not just by the PRMs regulated by the FCA.

68. A further one-to-one took place on 29 December 2014 (pages 819 to 820). Page 819 lists a number of issues of concern around the Claimant's performance and her dealings with customers. A new deadline of 31 December 2014 was imposed for completion of the Ryans' FPR. In cross-examination Ms Richmond linked that list of concerns at page 819 with the email page 740. This is an email dated 16 October 2014 addressed to Mr Barnsley from Matthew Wilson, premier team manager in Edinburgh with complaints from a customer about the Claimant. The Claimant sought to

excuse the problems that had beset the customer and the Claimant's dealings with him that were the subject of that email upon the basis that she could not see him alone (under the procedure described by Mr Barker at paragraphs 4 to 17 of his witness statement) and Mr Barnsley had, as we had seen, failed to undertake any observations of her after July 2014.

69. On 30 December 2014 the Claimant emailed Helen Cartenian (page 821). The Claimant confirmed in evidence that the context of this email was her finalising her report to the Respondent's compliance unit. It is apparent from that email that the Claimant gave precedence to that task over progression with the FPR. The Claimant confessed in her email to an inability to function "at even some basic tasks" and that report writing has not progressed. She was unable to move forward with the Ryan FPR and was unable to meet the new deadline imposed upon her by Mr Barker for its completion. The Claimant appears to have been shaken by events as she relayed in the email an inability to send a text message because "my fingers were shaking so much I could not even manage it".

70. The next one-to-one was held on 2 January 2015 (pages 830 to 832). Here a wealth coach (Vicky Nika) recorded that "Judith finds seeing customers fine, observed appointments good." The observation then goes on to say that she "cannot get head around report writing side of the job, panicking things are going wrong, awake at night". She observed that a year had now gone by since "on boarding" had taken place (presumably a reference to the course that she had undergone in October 2013). She said that a lot of the knowledge that she had gained she had now forgotten. She expressed a wish to have further training about report writing. She said that she "would like to take a section of the course again and/or sitting with someone who is great at showing how to write reports would be great". Her comments to this effect were recorded on Tracsmart (page 2045AO).

71. There was also a suggestion that the role was not ideal for her and that she had only taken the APRM role because it was what had been offered to her (presumably in the context of redundancy exercises to which she refers in paragraph 24 of her witness statement). It is recorded that she was looking to another role "with head held high". The Claimant denied that she was at this stage thinking about taking another role. She said that she was determined to get CAS. The Tribunal does not accept the Claimant's account. It is plain from what we have seen so far (at paragraph 19) and an email sent in January 2015 (at page 976) that the Claimant was contemplating that a longer term solution may be to look at opportunities within compliance or elsewhere within the organisation in future. The Tribunal accepts that the Claimant's professional pride resulted in her wishing to achieve CAS. However, that does not of course exclude the possibility of her looking at opportunities elsewhere and we find that that is what she was doing at the time.

72. It was suggested to the Claimant by Ms Richmond that she had no need for refresher training in report writing. This was upon the basis that she had had six weeks of training during her course. This the Claimant denied. She maintained that her training had been for only two weeks and that the length of time devoted to training to enable PRMs to write FPRs was later extended to six weeks in view of difficulties that individuals were having. That was the reason why she sought refresher training.

73. There is merit in the Claimant's evidence upon this issue. Mr Vine told us that training in the preparation of FPRs had been reformed during the Claimant's period of employment and after October 2013. The FPR report forms themselves had been simplified from May 2015. The simplification was the avoidance of the need to justify why recommendations were not being made with the focus shifting to the justification of those being made. Mr Vine fairly and candidly accepted that in May 2015 further training would have helped the Claimant.

74. Following the one-to-one of 2 January 2015 Mr Barker sent an email to the Claimant on 5 January 2015 (page 834). He was concerned that she had not completed simple administrative tasks which he had asked her to complete around commenting on one-to-ones on the Tracsmart system.

75. Mr Barber also copied Mr Barker into feedback he gave to the Claimant regarding the Ryan FPR. This is at pages 867 to 869. Although this showed an improvement on the previous iteration of the Ryan FPR a number of points arose from the fact find completed by the Claimant. Further, as Mr Barker says, the report "could not even be checked by John *[Barber]* because of the format Judith had submitted it in making it too difficult to read and review properly". Mr Barker was prepared to allow the Claimant to work at the city branch in order to help her. On 6 January 2015 Vicky Nika encouraged her to seek more help with report writing (page 2146).

76. On 7 January 2015 the Claimant informed a colleague that she was continuing to work upon the Ryan report (page 843). It was upon this day that it was confirmed that the Claimant's profile had a termination marker which had now been removed (page 843). This was the issue that was causing problems with her access to the Respondent's Insight computer system (as we observed earlier). In her email at page 843 the Claimant refers to "linking up with a colleague for some face to face help". This colleague was Ms Dost. The Claimant also said that it was her view that "it is support and training that will provide the solution."

77. Mr Barker records performance concerns in paragraphs 43 to 47 of his witness statement particularly around report writing and customer care. The email of 5 January 2015 at page 834 to which we have just referred is mentioned at paragraph 46 of his witness statement. Furthermore, as she accepted in evidence, the Claimant did not telephone Mr Barker at 10.30 that morning as requested in the email.

78. Mr Barker goes on to say that, "up until this point many of the one-to-one meetings I had held with Judith had been by telephone. Judith contacted me on 6 January asking if she could have a face-to-face meeting and I therefore set this up on 12 January 2015. Judith produced some notes following this meeting and whilst I do not necessarily agree with the entire content, a copy of them are at pages 870 to 873".

79. A number of issues were discussed in the meeting of 12 January 2015. The Claimant recorded in her note at pages 870 to 873 Mr Barker advising that spending some time on the training course (by way of refresher) would not be suitable as the course had changed. The Claimant recorded him telling her that historically report writing covered two days and indicated that there had been a change of structure. This corroborates the Claimant's account that not only had the format of the FPR been simplified from May 2015 but additional training for more than two days was being

afforded by the Respondent to employees undertaking the process before then. She said that she had mentioned her concerns to Annie Dost who had sympathised with her concerns about report writing (page 872).

80. Mr Barker recommended (at the meeting of 12 January 2015) that the Claimant seek advice from Lyn Walton (who on the same day emailed the Claimant to offer help: page 871). Lyn Walton is a PRM. Mention was also made of John Barber's willingness to continue to help her. The Claimant expressed concerns that Mr Barber was very busy and had lots of reports to do. She was concerned about being a burden upon him and others.

81. It was suggested to Mr Barker in cross-examination that the Claimant's reference in her note of 12 January 2015 (in the fourth substantive paragraph on page 870) that the conversation of 2 December 2014 had taken the heat out of the Claimant's concerns arising from the discussions of 27 and 28 November 2014 was in fact a deliberate downplaying by her of the situation. As far as the Claimant was concerned, matters had not in fact been resolved as demonstrated by the fact that she had at this stage in fact presented her written report to the compliance team. She was compelled to downplay matters (or at least felt that she was compelled so to do) by the fact that she was discussing matters alone with him as her line manager.

82. Mr Barker was questioned about the reference in the Claimant's note (at the bottom of page 870) to "the guy in Hull" who it was recorded had "looked haunted". Mr Barker said that this was a reference to an individual employed by the Respondent who worked in Hull who was struggling to meet the required standard. He had decided to retire. When asked why it was felt appropriate to mention this to the Claimant Mr Barker said that the Claimant had admitted that she was struggling in the PRM role and he wanted to make a reference to another individual who had not enjoyed working in that position. Mr Barker accepted that this had not been a helpful reference but denied this to be a threat.

83. Mr Barker accepted that he had informed the Claimant (recorded in the fourth paragraph at page 871) that he had had a difficult time in his career because of a grievance issue. He was asked in cross examination to confirm that at the meeting he had told the Claimant that a grievance had adversely affected his career. Mr Barker said that "I did reference that". He denied this to be a warning. He said that he was simply encouraging the Claimant to seek ER advice at all times.

84. The transparency of Mr Barker's dealings with the Claimant around this time was questioned by Mr Mallett. He put to Mr Barker that unbeknown to the Claimant he was expressing serious reservations about her to ER. By way of example, Mr Barker was taken to the note of conversation he had with ER on 20 January 2015. This is at page 2029. Mr Barker there expressed concerns that the Claimant was seeking to prepare a case against him and the Respondent and that her version of events "would misrepresent/misconstrue the set of events to reflect adversely against HSBC". For her part, the Claimant denied (when taken to the document at page 2029) that she was seeking to build a case against the Respondent and Mr Barker. She said that she had no intention of so doing and wanted to work with HSBC for the rest of her career.

85. The Claimant's written report to the compliance team is at pages 895 to 900. This is headed 'key points of concern'. Somewhat surprisingly, the Respondent appears to have no definitive record as to when this was received from the Claimant. Ms Richmond's chronology has the date of its submission as 7 January 2015. At paragraph 64 of her witness statement the Claimant says that this was submitted at the end of December 2014 following a return from her holiday abroad between 10 December and 24 December of that year.

86. The report raised concerns about the Claimant's interpretation of what she was told by Mr Barker on 27 November 2014. She said, "the conversation I had with my line manager as part of a 121 included the fact that he wanted me to record IRs (individual reviews) with customers if I spoke with them as this "would take the heat off at board meetings re activity." She said that "any conversation I had of substance was recorded as an IR and that I needed a specific number each week." She went on, "I clarified that he wanted me to record something I had not done." She also raised, as an additional issue, the question around the probity of examinations and tests.

87. We have already made reference to the Claimant's notes (page 870 to 873) of the face-to-face meeting between the Claimant and Mr Barker that took place on 12 January 2015. The Respondent's notes of the meeting commence at page 874. The background to the meeting was set out in particular by reference to an agenda forwarded to Mr Barker by the Claimant on 11 January 2015. The agenda included issues regarding report writing and what the Claimant described as "soul destroying" problems arising from IT issues and the termination marker.

88. The notes at page 875 record Mr Barker as enquiring about the Claimant's health. The Claimant told him that she was "not good". The Claimant is recorded as agreeing with Mr Barker's suggestion that there should be a referral to the Respondent's occupational health providers.

89. This version of the notes shows that the discussion then turned to the Claimant's agenda items. Mr Barker acknowledged the report writing issues for the Claimant and made arrangements for her to be supported by Mrs Walton. There was discussion about the Claimant moving to an alternative role. Mr Barker said there was no need for her so to do. The notes record the Claimant as not ruling that out as an option while acknowledging her commitment to being a success in her current role. This accords with our earlier findings at paragraph 71 above. Mr Barker agreed that the weekly one-to-one due that week would not take place in the light of concerns around the Claimant's health. The Claimant was agreeable to this suggestion.

90. Although the Claimant's note and Mr Barker's note of the meeting are by no means identical, a theme that does emerge from both is the supportive tone of the meeting. The Claimant acknowledges in her note Mr Barker's wish to be supportive of her (page 872). It is also of note that Mr Barker had decided to defer the introduction of a personal development plan when he reviewed matters at the one-to-one on 2 January 2015.

91. The next one-to-one took place on 15 January 2015. The notes are at pages 883A to 883C. The Claimant said that she was looking to finalise the Ryan FPR "by the end of this week". It was agreed that she would complete the report by 12 noon on 21 January 2015. She had also

contacted Lyn Walton. They had made arrangements to meet on 29 January 2015 to complete Solutions training. In advance Ms Walton had sent the Claimant a Word template (page 2163). Unfortunately, this meeting was not possible due to bad weather.

92. On 16 January 2015 the Claimant obtained a statement of fitness for work from her General Practitioner. This is at page 884. This records an assessment that took place that day and a diagnosis of work related stress. The GP said that the Claimant may be fit for work subject to an adjustment that she only works for 50% of her full-time hours. The Claimant told us that this was the first occasion upon which she has ever been issued with a fit note with a diagnosis of work related stress.

93. As had been agreed at the one-to-one the previous day, an occupational health referral was made on 16 January 2015. This is at pages 885 to 886. In the box towards the top of page 886 there was reference to the Claimant having been absent from work due to severe headaches and vomiting on 9 January 2015. There was reference to the face-to-face meeting of 12 January 2015 when the Claimant said that she was suffering from "panic", "anxiety" and "stress". Mention was made of the GP's recommendation that she reduce her working hours by one half. It was said that the Claimant did not wish to be absent as she felt that this would make returning to work more challenging. She was determined to progress with her role. It was recorded that Mr Barker had agreed to the altered hours recommended by her GP and that this was to be discussed further at a face-to-face one-to-one to be held on 19 January 2015.

94. The Claimant confirmed in evidence before us that she did not wish to be "fully absent" from work. The provenance of the information in the box towards the top of page 886 was not clear. Mr Barker said during evidence that he thought the Claimant may have completed this information. Although his name appears on the first page of the referral form at page 885 no name appears at the bottom of the last page of the form. At all events, it cannot be other than the case that the occupational health referral in these terms was sent to the Respondent's occupational health providers in these terms and thus was despatched with the imprimatur of approval from the Respondent.

95. What transpired to be a fact find meeting then took place on 19 January 2015. The notes are at pages 887 to 893. Mr Barker did not dispute that the Claimant had turned up for the meeting assuming it to be a second one-to-one meeting with Mr Barker conducted face-to-face (as had been the case on 12 January and as was contemplated in the occupational health referral). Mr Barker accepted in cross-examination that he had not told the Claimant of this change. He said that he had already agreed to the reduction in the Claimant's hours and there was no need to tell her or give her advance notice that the meeting had been converted to a fact find meeting. Mr Barker was advised to proceed in this way by ER (page 2013). He made the request for their advice as he remained concerned that the Claimant was not following his "instructions to complete straightforward tasks on Tracsmart and missing deadlines".

96. The notes record (at page 887) Mr Barker having spoken to Kelly Giles of occupational health on 14 January 2015 to clarify that "it would be appropriate to complete a fact find with [the Claimant] in view of impending referral to occupational health after she confirmed that it was appropriate".

We see from the note that the Claimant expressed surprise as she had been expecting a one-to-one and discussion around the reduction in her working hours.

97. Mr Barker then went through the history of matters over the previous six weeks between 28 November 2014 and 16 January 2015. There was also reference to what was described as the "heated conversation" on 27 November 2014 and the conversation the following day.

98. The Claimant said (at the top of page 889) that she was struggling with report writing. This was not for the lack of trying. She said that she could not cope "with report writing systems issues" and referred again to problems with Tracsmart. She said that the training in October 2013 had not equipped her to do the report writing but she had been told that it was "not feasible" for her to attend a training update. In cross-examination, Ms Richmond suggested to the Claimant that at the fact find she had told Mr Barker that she was unable to complete the Ryan FPR because of stress issues. The Claimant sought to attribute blame more to systems errors than her own health. She said that she continually logged on and was able to provide a number of examples of "screen print errors". She did however acknowledge that report writing was proving difficult and she had never before had to re-write a piece of work so many times. She acknowledged that the FPR for Ryan had still not been done at this stage, the process having started back in September 2014. The Claimant attributed part of the problem to the customers not having "got the information together until late November" following the 90 minute face-to-face conversation that we referred to above. It was suggested by Ms Richmond that the FPR was taking an embarrassingly long time to complete and that the Claimant could take little comfort in the fact that the customers had not complained because, as employees of the bank themselves, they may have been reluctant so to do. The Claimant did not accept this. She said that the Ryans were happy to wait for the completion of the FPR. Nonetheless, the Claimant said that things had gone from bad to worse and had offered the Ryans the chance to change advisor.

99. We can see from page 892 that Mr Barker raised a concern that the Claimant had added some commentary upon the record of the one-to-one held on 29 December 2014 (page 819) to which we refer at paragraph 68. He then said that the Claimant had deleted some of Mr Barker's words. The Claimant denied having done so or, at any rate, having intentionally done so. She said that "there was no way on God's earth would I do that". She asked Mr Barker what it was that she had deleted.

100. When asked about this in cross-examination Mr Barker accepted that the Respondent's IT department could not establish that deletion of his words had in fact taken place. Although Mr Barker "couldn't guarantee" that she had done so he nonetheless confronted her with this accusation by asking her if that is what she had done. He accepted that he was unable to identify the comments or words which the Claimant had supposedly deleted. He said he asked her about this "to establish the facts". He said that it was "his feeling" at the time that the Claimant had deleted some comments. No action was taken about this after the fact finding meeting.

101. The Claimant was due to attend an all day training course in Manchester on 21 January 2015. An adverse weather warning was issued the day

before the course. Her evidence (at paragraph 97 of her witness statement) is that she contacted the administrators in Leeds asking if she could transfer to a course in York the following week. She says, "I contacted the Leeds administration team as I was nervous about asking Richard who I felt would not be helpful". She goes on to say (in paragraph 98) that, "Richard then contacted me and reprimanded me for not asking him, asking why I thought I should change the course". She says that Mr Barker was unconcerned and said that she must attend the course. The Claimant contrasted Mr Barker's attitude towards her with concerns expressed to other members of staff who were encouraged to leave work early by Mr Barker on 29 January 2015 (page 1008) because of the weather forecast.

102. The Claimant attended the course on 21 January 2015 as scheduled. Her evidence is that she went to the lengths of parking her vehicle on a main road approximately one mile from her home the night before and then walking across fields of snow the following morning to get back to her car. She had to abandon her car in Buxton and get a train to Manchester.

103. Mr Barker says that he said to the Claimant and a colleague of hers (who was also due to attend the course) that it was up to them as to whether make the journey or not. He says that he told them that if it was unsafe then they should not travel. He denies putting pressure on the Claimant to attend and was not aware that she had gone to the length of walking across snow covered fields in order to get there.

104. When asked in cross-examination why he had simply not instructed the Claimant not to go and to re-arrange the course, Mr Barker said, "my feeling was that it was important for her to go". He said that he asked her to "be pragmatic". He said he would be horrified if he thought the Claimant had put herself at risk simply to avoid upsetting him.

105. We do not find as a fact that Mr Barker insisted that the Claimant attend the course. That said, his concession in cross-examination that he felt it was important to attend and that she should "be pragmatic" is, in our judgment, significant. At this time, the Claimant had been diagnosed by her GP as suffering from work related stress. She was acutely aware that her performance was being monitored and she cannot but have known that Mr Barker was not impressed with her performance and wanted to see an improvement. Mr Barker did not positively tell the Claimant that she should not go because of the severe adverse weather warning. In the circumstances, the Claimant's apprehension of the situation that Mr Barker was expecting her to go to Manchester is reasonable and understandable.

106. On 22 January 2015 the Claimant was interviewed by Alison Clarke of the Respondent's compliance team regarding her written report to compliance. This was a telephone interview. The notes are at pages 910 to 923. Towards the end of the note we can see that the Claimant was reticent about others knowing of the fact that she had raised the complaints.

107. Alison Clarke asked the Claimant to explain what she meant by reference in the letter at pages 895 to 900 of concerns that Mr Barker wanted her to record IRs with customers if she spoke with them in order to take the heat off him. The Claimant said, "He asked me to record IRs with customers even if I had not done an IR". The Claimant said that she was being encouraged to record the IR on the ABS ('appointment booking system') and it would then show in the lotus notes diary.

108. At paragraph 106 of her witness statement the Claimant states, "Within my whistle blowing report I made reference to an exam which I needed to pass as part of my ongoing progress towards competent advice status. Due to the pressures of what was happening with exams and my whistle-blowing I did not take it at the appropriate time and this became an issue. After discussions/email exchanges with Alison Clarke in the compliance investigation team in January 2015 I was advised to raise the fact that I had not taken the exam which I did directly with Richard on 23 January 2015. This was documented as a compliance breach".

109. The exam in question was the quarterly knowledge "MOT" test described by Mr Barker in paragraph 18.1 of his witness statement (cited above). Mr Barker's account is that the Claimant did inform him that she had missed the deadlines for the first and second attempts for this exam. She offered the explanation that she had forgotten.

110. After a discussion with Mrs Scott, the Claimant was emailed by Mr Barker on 23 January 2015 (page 953). She was given a new deadline of 29 January 2015. This was to be deemed the third and final attempt as she had missed the first and second attempts for the MOT test in question (which was in relation to protection and trusts). Mr Barker's email to the Claimant confirming this is also at page 953. He also said that after consultation with ER he intended to introduce a personal improvement plan.

111. Mr Barker was advised that forgetting to take the tests constituted a "serious fail". He therefore took the Claimant "off the road". This meant that she could have no contact with customers until she passed the exam. The Claimant was notified of this on 23 January 2015 (pages 956 to 958). This resulted in Mr Barker's decision to remove the Ryan case from her. A further deadline for completion of the FPR of 21 January 2015 had been missed (page 959A).

112. The Claimant's evidence is that the real reason for the removal of the Ryan case from her was "to cause me detriment and hinder my progress". We refer to paragraph 109 of her witness statement. The case was passed to Steve Sorenson, a PRM based in Sheffield city branch.

113. The Claimant passed the examination. Mr Barker emailed her to congratulate her (page 1009). Her evidence is that she asked that the Ryan case be returned to her but Mr Barker refused to do so. She says that the removal of the case "caused me substantial detriment and loss of confidence in addition to delaying my progress towards competent advisor status". She goes on, "the only possible and logical reason to explain the actions taken is that Richard wanted to cause distress and detriment because of me standing up to him regarding the falsification of records". We refer to paragraph 110 of her witness statement.

114. In cross-examination, the Claimant was challenged about her evidence that she had simply forgotten to take the MOT test. It was suggested that there may be another reason for her not taking it as suggested at page 898 (being part of the written report to compliance received by the Respondent on 7 January 2015). There, she suggested that she had been offered but declined help to pass the relevant exam. This was because of concerns that she had about the probity of the Respondent's examination system as referred to in her report to the compliance team. On 28 January 2015, in an email to Alison Clarke at page 1003 she

referred having had the intention to take the exam prior to her holiday in December 2014. The suggestion in that email is that the discussions of 27 and 28 November 2014 were pivotal in her decision not to take the exam at that time. In cross-examination she said, "Events impacted upon the matter. I told compliance. I was waiting to see what happened next".

115. On any view, it is clear from the contemporaneous documentation that the Claimant had not simply forgotten to take the exam. While this is what she told Mr Barker, we find this not to be the case. It is clear particularly from page 1003 that she was well aware of the need to take the exam but had simply decided not to do so because she had raised an issue about examination probity with the Respondent's compliance unit.

116. In cross-examination, Mr Barker accepted that he is now aware that there was far more to the Claimant's failure to take the exam than merely her forgetting so to do. At the time, he had put her forgetfulness down to the stress and ill health issues. He subsequently became aware that the Claimant's failure was down to her raising a compliance issue although he did not know that at the time. He accepted that to be a legitimate reason for her missing the exam. That having been said, he stood by his decision to remove the Ryan case from her.

117. On 26 January 2015 the Claimant emailed Yvonne Schofield who is employed by the Respondent in ER as employee relations manager. There, she suggested the possibility of changing managers and moving back to work under the line management of Mr Barnsley. She expressed concerns that this situation was impacting upon her health and well being. The email addressed to Yvonne Schofield is at page 982. She said that she was contemplating resigning from her position.

118. The Claimant had expressed similar sentiments to Alison Clarke on 23 January 2015 (page 948). In that email, she had made the comment that Mr Barker's suggestion on 27 November 2014 (and which led to her reporting matters to the compliance unit) was one that he made with "good intention". When asked about this in cross-examination, the Claimant said that Mr Barker's intentions were directed at improving team performance. That was the motivation behind the suggestion that he made on 27 November 2014 albeit that the Claimant considered this to be wrong. The email to Alison Clarke is corroborative contemporaneous evidence that the Claimant's explanation of simply forgetting to take the exam was a pretext and an explanation proffered to Mr Barker at the time to avoid him becoming suspicious that she had made the report about his conduct to the compliance team.

119. Yvonne Schofield emailed Mr Yau on 23 January 2015 (page 945). Reference was made in this email to the Claimant's wish to temporarily move managers and that this was something she (the Claimant) could raise with Mrs Scott in her capacity as Mr Barker's manager. The suggestion was made that the Claimant should speak to Mrs Scott about her situation. The Claimant never took this issue up with Mrs Scott.

120. On 28 January 2015 Kelly Giles prepared the occupational health report that we see at pages 1005 and 1006. She referred to the Claimant having undergone an assessment from an NHS counsellor and her GP and the Claimant's diagnosis of moderate anxiety, depression and symptoms of stress. She said that all of these diagnoses the Claimant attributed to the work place. Kelly Giles reported that, "during the assessment conducted

today, Judith told me that her work related issues and her symptoms of stress have become a vicious circle; reportedly she is unable to sleep at night due to excessive worrying about work and when in work, the sleep deprivation affects her concentration and short-term memory, which affects her ability to perform and deliver as required by the bank." She said that the Claimant was "of the opinion that with ongoing additional training with report writing and the opportunity to speak openly with management regarding her perceived issues, she will get back on track and competently work in line with her peers within a meaningful time frame". The Claimant was keen to remain in work "and maintain a level of normality".

121. Kelly Giles recommended that management should continue to support her within the work place. Signing her off as unfit to work would only prove a hindrance and delay her recovery. She recommended continuation of the reduced hours of 50% up to 13 February 2015 and thereafter an increase in her hours to 75% for a further two weeks. Kelly Giles recommended that the Respondent continue to provide the Claimant with additional training on report writing and that there be a temporary 20% reduction of workload in comparison to her peers. She anticipated that by week commencing 2 March the Claimant should be in a position to return to her full-time hours, workload and duties.

122. Mr Barker's evidence was that upon receipt of the occupational health report, "for the first time I understood that the Claimant was poorly. I immediately agreed to a reduction of her hours and I understood why she was not doing some of her actions. It was a relief to be able to understand". This notwithstanding, Mr Barker refused to accept under cross examination there to have been a reasonable explanation or excuse for poor performance between the end of November 2014 and the end of January 2015. He maintained the Claimant was not "doing the actions that she had been set".

123. On 29 January 2015 there was a further one-to-one between the Claimant and Mr Barker (page 1043). The Claimant said that she was feeling a little better. Agreement was reached as to her working hours taking account of the adjustment to one half of her working time. Mr Barker praised the Claimant for having passed the MOT at the third attempt (having missed the previous two attempts as have seen). There was also discussion about the possibility of the Claimant moving to an alternative role. In an email of the same date (page 1007) the Claimant alluded to communication difficulties with Mr Barker, that matters between them had improved and of her intention to rid herself of her "kindergarten mentality."

124. Mr Barker's note of this discussion was under the heading 'without prejudice'. It was suggested by Mr Mallett in cross-examination that Mr Barker was using this expression as he was anticipating a legal case. Mr Barker said that he understood this phrase "to mean 'don't take it as read, you decide'". He had also used the expression 'without prejudice' in an email addressed to the Claimant of 23 January 2015 about a working timetable (page 959). Mr Barker was requested by Mrs Scott to desist from using this term. He complied with that request. It was suggested to him by Mr Mallett that the use of this expression gave the impression of a fundamental breakdown between him and the Claimant. In reply, Mr Barker said, "there was not a complete breakdown. We got off to a sticky start I agree but the relationship grew".

125. On 3 February 2015 the Claimant emailed Alison Clarke. She referred to having had "a very pleasant meeting with my line manager today". She expressed positive sentiments in the email. Mr Barker had informed her that day that there would be no further action taken following the fact find held on 19 January 2015.

126. On 12 February 2015 the Claimant submitted a further GP's report requesting continuation of the adjustment to work 50% of her hours until 1 March 2015. We refer to page 1027. That day she had a one-to-one with a wealth coach (pages 1038 A and B). This records recognition by the Claimant that she had not been "inputting correctly and *[she]* needs to record all conversations properly so that she is recognised for the work she is doing and conversations she is having with her clients."

127. On 13 February 2015 Mr Barker received a second occupational health report (pages 1028 to 1029). Kelly Giles said that she had spoken to the Claimant on 13 February 2015. She said that she was feeling much better. However, there were ongoing difficulties with her sleeping pattern and she became tearful during the discussion. Kelly Giles made reference to the Claimant informing her that she was looking for alternative internal roles.

128. Occupational health recommended continuation of the reduced hours to 1 March 2015. She then expected the Claimant to be able to return to full time capacity during week commencing 2 March. No further occupational health input was anticipated.

129. Mr Barker received a copy of the second occupational health report. The Claimant fairly acknowledged that Mr Barker did enquire as to her health around this time.

130. Mr Barker returned from a week's leave on 16 February 2015. He was called into a meeting that day with Mrs Scott. She told him "that someone had contacted the compliance team and as a result they had carried out an investigation". He goes on to say (in paragraph 73 of his witness statement) that, "this related to allegations around incorrect completion of customer records, team compliance with the MOT exam procedure plus a couple of other areas. Compliance had produced a draft report some of the contents of which they had shared with Amanda. I was able to provide some evidence to Amanda in respect of the MOT procedures being followed but I was not formally interviewed as part of the compliance investigation".

131. Mr Barker then goes on to say this in his witness statement:-

> "(74) *A couple of weeks later I was informed that the investigation had finished and the report had been completed. Amanda said there was one area where the conclusion was I had not followed the structured coaching observation procedure and I was placed on to a personal development plan (PDP) in this regard which I duly completed. This was held to be low risk, not leading to significant compliance issues or the need to take further action. In terms of recording customer information I was not found to be at fault in any way.*
>
> *(75) I was not informed of how this compliance investigation had come about. It would be disingenuous however of me to say that I did not suspect it may have been Judith because of the*

subject matter and our previous discussion back in November where she had misinterpreted my direction to record customer contact. Judith had also on occasions raised with me the fact that she did not believe internal exams were being undertaken in accordance with guidelines. However in my experience such exams were undertaken properly and I had no evidence to suggest otherwise, which is what I told Judith at the time.

(76) Whilst I thought it may have been Judith, from the information Amanda gave me, the investigation appeared wider than just the points Judith had raised with me so I did not know for sure, nor did I need to know. In any event I did not discuss this with the team, other than mentioning it to Amanda. That said a couple of weeks later one of the PRMs in the team did tell me that Judith had told her that she had called the compliance line but I did not engage in a discussion about it given the confidential nature of such matters"

132. Mrs Scott refers, at paragraph 33 of her witness statement, to the "relevant summary findings of the report". An extract of the report is at pages 1071 to 1075 and the passage referred to by Mrs Scott is at page 1074. The Tribunal was not told why only part of the report was produced. Mrs Scott says, "As you can see, in terms of the allegation that Richard instructed the individual to falsify records of customer contact, this was not found to be the case and the conclusion was that the individual may therefore have misinterpreted what she was being asked to do". She then refers to the conclusions leading to the action taken against Mr Barker. Mrs Scott makes reference to the allegation about internal exam cheating also not being upheld.

133. In cross-examination, Mrs Scott said that she had told Mr Barker, at the meeting of 16 February 2015, that it was the Claimant who had reported concerns to the compliance team. Mrs Scott said that the Claimant had waived confidentiality around her identity by discussing the matter with Annie Dost and telling Annie Dost what she had done. She said that Mr Barker was disappointed and upset at the Claimant's actions.

134. Mrs Scott said that although she had the power so to do whatever the views of the parties, she had not considered a change of line management for the Claimant. She justified her position upon the basis that no issues had been raised prior to the Claimant's report to the compliance unit and that neither Mr Barker nor the Claimant had requested a change. She took the view that Mr Barker's decision to seek advice from ER was a facet of performance management.

135. In cross-examination Mr Barker acknowledged there to have been rumours within the team about the Claimant's actions. He was asked whether Annie Dost had told Mr Barker that the Claimant had reported concerns to the compliance unit. Mr Barker said in answer that, "there were rumours". He denied that he knew that it was the Claimant who had reported matters to the compliance unit.

136. Mr Barker's evidence of course is contradictory to that of Mrs Scott who says that she told him that it was the Claimant who had taken this step at the meeting of 16 February 2015. Upon the basis of Mrs Scott's evidence the Tribunal finds that Mr Barker did know that it was the Claimant who had reported matters and that the date of that knowledge was 16 February

2015 at the very latest. Even if Amanda Scott was wrong in her account and that she did not in fact tell Mr Barker that it was the Claimant, we find that Mr Barker knew anyway. No credible alternative candidates (or indeed any alternative candidates at all) were suggested by him who may have filed a compliance report. Mr Barker was well aware that the matters discussed at the end of November 2014 had been of great concern to the Claimant. As we have seen, the issue of how she had understood his instruction had been discussed several times. He also acknowledged the Claimant to be concerned about the probity of the exams. In these circumstances, it cannot realistically be suggested that Mr Barker could reasonably have entertained suspicions that it was anyone but the Claimant who had reported concerns to the compliance unit.

137. On 19 February 2015 Mr Barker emailed the Claimant. This was in connection with an application that the Claimant had made for an alternative position as business review consultant. Mr Barker said that he had drawn this to her attention upon a 'without prejudice' basis. However, he wanted to reassure her that she remained part of his team. He said that he had no wish to see her move to another position. When taken to this issue in cross-examination, the Claimant said that Mr Barker had been very helpful as she had had difficulties obtaining the job description for this role from the Respondent's IT system. She felt that Mr Barker was encouraging her to apply for a different role and that there was a desire on his part for her to go elsewhere.

138. The next one-to-one was held on 18 February 2015 (page 1038A). The next FPR for the Claimant to undertake was for a customer named Nowlin. A report for this customer was to be done by the end of February 2015. The Claimant said that she felt like there was "light at the end of the tunnel in terms of templates, reports etc."

139. On 26 February 2015 the Claimant met with Mr Vine (page 2435). The record describes the Claimant finding this to be "incredibly useful" and that she had "learnt more in that 10 minutes than she has since starting in the role". The Claimant confirmed in evidence before us how useful she had found Mr Vine's intervention. The previous day she had a one-to-one at which was discussed the Nowlin case and how the Claimant was feeling more confident (pages 1044A and 2045AP).

140. On 27 February 2015 Alison Clarke emailed Sheldon Rowles. She said that the Claimant would not be raising a personal grievance against Mr Barker. Alison Clarke said that she had spoken to Yvonne Schofield who had relayed a comment made to her (Yvonne Schofield) from the Claimant that the Claimant had been "a bit rash" in making her complaint. We refer to page 1046. This was said by the Claimant in answer to an email from Yvonne Schofield to the Claimant (page 1045) also dated 27 February 2015. Yvonne Schofield asked the Claimant whether she was happy for her now to close the case. The Claimant said in evidence that she did not raise a grievance having been encouraged not to do so by Yvonne Schofield pending the outcome of the compliance investigation.

141. A further issue between the Claimant and Mr Barker occurred on 4 March 2015. This arose from an expenses claim made by the Claimant. This was rejected by Mr Barker upon the basis that pursuant to a new policy each individual journey needed to be itemised on the expenses claim. The Claimant had not done this and had made a composite claim. We refer to

page 1048. The Claimant goes into some detail about this at paragraphs 116 to 119 of her witness statement. In essence, she had been provided with a hire car in January 2015. This followed her being involved in a car accident. She says that Mr Barker telephoned her to inform her that he was rejecting the claim and said that "even basic things were difficult for me to get right". At a one-to-one the following day the Claimant said that her "reactions to these things were not as they would have been previously so I am aware I am still a little anxious about matters" (pages 1060A and B).

142. The Claimant then carried out some further investigations. She consulted with a member of the administration team who confirmed that she had in fact completed the expenses form correctly. She says, "I cautiously, with some trepidation, re-submitted my expenses to Richard – his tone when we spoke suggested that he was not happy that I had challenged his authority once again. I rarely claimed mileage expenses after this incident wanting to avoid further issues and conflict. The detriment caused was both financially and emotionally damaging".

143. In cross-examination Mr Barker emphatically denied having told the Claimant that she could not even get the basics right. He said that he had rejected the expenses claim because he himself had had a rejection as he had failed to itemise the individual components of the claim. He said that he did this in order to protect the Claimant.

144. Mr Barker accepted in cross-examination that he had been wrong to have rejected the Claimant's claim. He acknowledged that the car hire policy was such that there was no need to individually itemise the claims. Mr Barker maintained that he had told the Claimant he was seeking to protect her by rejecting the claim in the course of a telephone call. When it was pointed out to him that this did not feature in his witness statement he said, "it's common sense". He then went on to say that he had not used the word "protect" when he discussed the matter with her but that had been his intention. He denied that this was anything other than a genuine mistake and that he had rejected the Claimant's claim in order to victimise her following his discovery of the compliance unit's investigation.

145. Also on 4 March 2015, Mr Barker sent an email to all members of his team. This email complimented Emma Senior and Rebecca Pearce by highlighting their team work in persuading a customer to take out a credit card with the Respondent. The Claimant expressed concerns about Mr Barker's endorsement of their actions in an email that she sent to Yvonne Schofield (page 1076). She described this as having been "a very similar situation re inputting inaccurate information to the one I had last year". The Claimant's concern essentially was that Emma Senior (who may have gained financially from the transaction) had inaccurately recorded that she had persuaded the customer to take the credit card out where it was in fact Rebecca Pearce (who did not have anything to gain financially) who had done so. A clarification email that employees should only input matters upon which they have actually worked was circulated (page 1076).

146. Mr Barker's explanation for this is that he had read the email at page 1050 on his Blackberry but did not scroll down. The matter was discussed by Mr Barker with members of his team in one-to-ones on 12 March 2015 (pages 2501 to 2508). Mr Barker fairly acknowledged to have wrongly

endorsed the actions of Rebecca Pearce and Emma Senior. He denied that this was part of a pattern of encouraging members of his team to input incorrect and misleading information. Emma Senior was in fact later dismissed for falsification of records.

147. Mr Barker was concerned that the Claimant was still not making sufficient progress through February and March 2015. His evidence, at paragraph 79 of his witness statement, is that, "by 12 March 2015 Judith had now been in the PRM role for seven months and she was therefore more than halfway through the 12 month allotted period in which to achieve CAS and had still not completed a single customer journey. I therefore felt that it was necessary to formally document what she needed to do to achieve CAS by way of a performance development plan (which I entitled PDP1). We had previously discussed this right back in 2014 and therefore this came as no surprise to Judith. HR suggested that I could consider going straight to a performance improvement plan (PIP) rather than PDP and I discussed the best option openly with Judith. Judith implored me to put in place a PDP instead of a PIP and with a view to strengthening the relationship between us, and build her confidence, I agreed to a PDP". He goes on to refer to the PDP of 12 March 2015 which is at page 1063.

148. As alluded to by Mr Barker, he had sought ER advice prior to 12 March 2015. We refer to page 2028. This in fact refers to Mr Barker having prepared a PIP and having attached it to an email to employee relations. Concerns were expressed by ER about the lack of clarity around the areas in which the Claimant was under performing. Clarification was sought by ER about the CAS deadline. The possibility of an extension was raised. In reply, Mr Barker confirmed the CAS deadline to be August 2015 with "no extension requests yet". When asked about this in cross-examination Mr Barker said that he considered an extension of the CAS deadline to be premature given that there was still five or six months left to go. It was suggested that Mr Barker was set against an extension of the deadline notwithstanding the management issues (with reference to Mr Barnsley not completing mandatory observations), the IT issues and the health issues that had beset the Claimant from September 2014. Mr Barker said that he had no wish to "get rid" of the Claimant. Had that been his intention, he said, he would not have agreed to her request to proceed in mid-March 2015 by way of a PDP as opposed to a Performance Improvement Plan.

149. When asked about developments around this time during her cross-examination, the Claimant fairly accepted that she was far off the standard required to attain CAS. She said that she had requested that Mr Barker proceed by way of PDP rather than PIP. She said that she felt this to be "a more natural route" in view of the fact that she had been on adjusted duties upon the recommendation of her GP and occupational health.

150. The PDP is at pages 1063 to 1065. The expected date of completion of it was given as 1 May 2015. The target set was for the Claimant to have undertaken two "recommended meetings" by 1 May 2015. We assume this to be a reference to the "presenting solutions meeting" referred to in paragraph 11 of Mr Barker's witness statement cited above. The Claimant accepted that, given that the usual expectation was for there to be three such meetings per month, this was not an onerous task. The Claimant agreed with this "in principle but I had asked for further training".

151. At the one-to-one held on 12 March 2015 the Claimant is recorded as having agreed that the Respondent's stance was "absolutely fine". We refer to page 1061. The Claimant there reported her sleep to be "out of kilter."

152. On 18 March 2015 Mr Barker spoke to Vivienne Bee, regional resource manager. He then emailed her the same day (pages 1068 and 1069). Mr Barker says that this came about because Mrs Scott had said that Vivienne Bee had been contacted by ER and had been asked to make them aware of any individuals in the region in respect of whom ER support may be required. Evidence of this as at paragraph 84 of Mr Barker's witness statement. Mrs Scott therefore asked Mr Barker to summarise from his perspective concerns he had around the Claimant.

153. Mrs Scott gives similar evidence at paragraph 38 of her witness statement as to how the email at pages 1068 and 1069 came about. Mr Yau also makes reference to this at paragraph 13 of his witness statement. He acknowledges the possibility of Vivienne Bee having told Mr Barker that her request of him originated from Mr Yau. This was, according to Mr Yau, "because of the work we were doing at the time. Around this time, I was doing road shows and working with regional resource teams (and Vivienne was part of the regional resource team) to make them aware of the purpose and scope of employee relations and the support we were there to provide. I was asking the regional teams to make us aware of any matters on which ER support might be required so ER could provide assistance".

154. Mr Barker made reference (in his email at page 1068 and 1069) to under - performance issues. He then expressed caution (telling Vivienne Bee that he was being "extremely careful" with his words) before going on to tell her that the Claimant had told colleagues that she had telephoned the compliance disclosure helpline about other colleagues and that he harboured concerns that the Claimant could escalate sensitive HSBC information externally. He complained that she had breached core standards of behaviour by openly questioning him personally and his managerial approach. He told Mrs Bee that he had expressed concerns to ER about the Claimant preparing a potential grievance against him.

155. Mr Barker then said, "Jane Phillips, area director, had suggested that she be moved to an alternative team/patch". He expressed the view that "time spent with Judith is increasingly difficult in view of all of the above". He concluded, "In summary I feel that this leaves us in an untenable situation within Sheffield premier and fear the following possible repercussions of taking no action". Those repercussions were then listed towards the end of the email at page 1069. These included a drop in performance and potential future resignations from members of the team. Mr Barker told Vivienne Bee that he was concerned that the Claimant was seeking a "two year pay out" from the Respondent.

156. Mr Barker was questioned about this email. He was challenged as to why there was no reference in it to the ill health issues, the recommendation to reduce the Claimant's hours and the affect upon performance of her ill health. Mr Barker said, "I wouldn't detail everything. It's a general statement". He was asked why he had not requested a change of management for the Claimant given his views that the relationship had become untenable. Mr Barker said, "The one-to-ones don't reflect that".

157. Mr Barker was asked about to the involvement of Jane Phillips. He accepted having discussed the matter with her. This was at a performance weekly training meeting. Mr Barker denied ignoring Jane Phillips' advice and wishing to retain line management of the Claimant in order to manage her out.

158. Amanda Scott's evidence is that "on the back of these feelings from both sides" and to avoid further escalation of what was clearly a strained relationship Mr Yau suggested sending in a member of his team, Lucy Phillips, to carry out an informal investigation. Mrs Scott supported this course of action. She appeared to take some comfort from the Claimant having not raised a grievance against Mr Barker.

159. It was suggested to Mrs Scott in cross-examination that Mr Barker's email at pages 1068 and 1069 could not have been more critical of the Claimant. Mr Barker was essentially saying that the Claimant was impossible to manage and the relationship had become untenable. Mrs Scott was unable to shed any light as to who it was who had discussed matters with Jane Phillips. She herself had not done so. The Respondent's account was that Jane Phillips' connection with the Claimant's place of work was geographical as opposed to business related. Jane Phillips had no line management responsibilities for Amanda Scott.

160. It was a curious feature of this case that no one from the Respondent was able to shed any light as to the basis upon which Jane Phillips had become involved in the matter. We accept that she did become involved. Mr Barker said so in evidence before us and he would hardly have made mention of an area director in connection with this matter (contemporaneously or in evidence before the Tribunal) had she had no involvement as it is something that could very easily have been checked with her. It being so easily verifiable Mr Barker would have been left vulnerable had she been improperly mentioned. Mr Yau was unable to shed any light upon the matter. He simply referred, somewhat vaguely, to "there being a bit of a matrix" without explaining what he meant by that expression.

161. At the one-to-one of 19 March 2015 the Claimant acknowledged the buddy support available to her (page 1084A). She had had some continuing support from Lyn Walton as shown by the email of 24 March 2015 at page 1089. There was a discussion at the one-to-one about a back office procedure breach detailed at page 2045AQ. At a one-to-one held on 26 March 2015 (pages 1091A to C) the Claimant is recorded as confirming that she thought she was now "on track". Mr Barker took a contrary view. He continued to monitor her progress against the PDP at the one-to-ones held on 1 April 2015 (page 1098) and 8 April 2015 (page 1106). At the latter the Claimant said that she still required help with report writing (page 2045Q). Mr Barker had offered comment upon the draft Nowlin report on 2 April 2015 (page 1095). He had concerns about aspects of it.

162. On 3 April 2015 the Claimant emailed Lucy Phillips with some background information to assist with the investigation that she (Lucy Phillips) had been commissioned to undertake by Mr Yau. This is at pages 1103 to 1104.

163. The Claimant was then interviewed by Lucy Phillips on 8 April 2015 (page 1109). (There is in fact a dating error upon this document. The reference on the face of the document to 8 February should in fact be a reference to

8 April 2015). There was a reference to a conversation said to have taken place on 7 November 2014 about "recording figures". The Claimant told Lucy Phillips that this made her uncomfortable. (We think this must be a further dating error and should in fact be a reference to 27 November). The Claimant made reference to the fraught relationship between her and Mr Barker. She told Lucy Phillips about her conversation with Sheldon Rowles, the problems she was having with Tracsmart and her health issues. She told Lucy Phillips about what she perceived to be Mr Barker's encouragement that she should apply for an alternative role. She also made reference to her experience of seeking alternative roles when faced with a redundancy situation (which according to the note at page 1109 had occurred upon four separate occasions). In cross examination, she said that she had a perception that Mr Barker was encouraging her to go elsewhere given that he was helpful to her in procuring a copy of the job description, resolving IT issues and advising her how to apply.

164. Mr Barker was interviewed on 8 April 2015 (pages 1110 to 1111). He said that he immediately felt that the Claimant was deliberately not doing things that he asked her to do. He complained of her constantly testing him and of undermining him at every opportunity. He said that he had predicted to Amanda Scott before he went on his holidays that the Claimant was going to "do something during my holiday. Her body language/comments etc was suggestive that something was going to happen – she raised the CDL issue while I was away". He said that he thought the Claimant had "an agenda". He said that he had no confidence would achieve CAS by 10 August 2015 (we think this may be a mistaken reference to 4 August 2015).

165. When taken to pages 1110 and 1111 in cross examination, Mr Barker appeared to distance himself from Lucy Phillips' notes. He said he did not agree with her record of what he had told her. This was a somewhat curious position for him to have adopted. It is simply not credible that Lucy Phillips could have recorded these sentiments without input from Mr Barker. She had no reason (or at any rate we were not told of any) to invent or embellish what she as told by Mr Barker. Lucy Phillips' records are documents emanating from the Respondent and, in our judgment, the Respondent is accordingly bound by them. The sentiments expressed and recorded by her are consistent with those emanating from Mr Barker himself in the email on 18 March 2015 to Vivienne Bee at pages 1068 and 1069 which corroborates our judgment as to the accuracy of Lucy Phillips' note.

166. Mr Barker said that at around this time while on the one hand he was trying to strike a positive note with the Claimant in the one-to-ones on the other hand he was making negative comments about the Claimant to more senior management. Mr Barker said, "It's giving feedback to management. It made no difference to day-to-day support. She just couldn't meet the standards." Mr Barker denied that he was "being two faced". He said that he had provided the Claimant with "genuine support" which he described as "unprecedented".

167. Mr Barker expressed the view (at page 1110) that it was inappropriate for the Claimant to have gone to the compliance unit. He said that she had done this in order to "cause problems within the team". It was suggested to Mr Barker that this was at odds with the Respondent's obligation to protect those who make public interest disclosures.

168. On 9 April 2015, Lucy Phillips interviewed four others. We refer to pages 1112 to 1116 inclusive. Amongst those interviewed was Annie Dost (page 1116). She confirmed that she had been informed by the Claimant that she had made a complaint to the compliance unit. She was supportive of Mr Barker's management. Ian Richardson said the Claimant was embittered about prior treatment of her by the Respondent and came across as pedantic and "over the top" in her behaviour. He recognised there to be a clash between the Claimant and Mr Barker and had suggested to the Claimant that she raise a grievance "if she feels so strongly about it."

169. Lyn Walton (page 1114) said that "Richard *[Barker]* was one of the best line managers I've ever had". She also intimated that the Claimant had got herself "into a bit of a state" with the Respondent's IT systems. She also said that the Claimant wanted "a package."

170. On 14 April 2015 Lucy Phillips provided the conclusions of her informal investigation to Amanda Scott. The relevant email is at pages 1117 to 1118. The areas of concern investigated by Lucy Phillips were:-

(1) Without prejudice emails and encouraging the Claimant to apply for an alternative job.

(2) The Claimant "bad mouthing" Mr Barker.

(3) The allegation that the Claimant was wanting "a pay out".

(4) The Claimant's concerns about Mr Barker's style of management and her request for support to enable her to move roles to a different manager if possible.

(5) Concerns about the Claimant's behaviour.

171. Miss Phillips concluded by saying, "I've not found any strong evidence to suggest this needs to be taken down a formal disciplinary route with either party. I would recommend that both Richard and Judith should be issued with an FOW – Judith for openly discussing the CDL issue and her general behaviour in bringing others into the issues with her. Richard for using the "legally privileged" wording without seeking advice and creating potential risk. I believe the relationship would benefit from intervention from yourself to provide guidance on how they can effectively work together, otherwise I feel the issues will continue and escalate". 'FOW' stands for 'first oral warning'. Lucy Phillips also formed the view that the Claimant had sought legal advice.

172. Mr Yau said that, after reviewing Lucy Phillips' recommendation, he took the view that "this was a case where we were content to leave it to the discretion of the business and I understand that Amanda [Scott] decided not to issue a first oral warning to either Richard or Judith and just have a conversation with each of them instead. I understand that Amanda explains her reasons for this in her witness statement".

173. For her part, Mrs Scott says that she discussed the matter with Mr Barker on 15 April 2015 (pages 1120 and 1121). It was at this meeting that Mrs Scott emphasised that Mr Barker should desist from the use of the 'without prejudice' wording. She suggested that she attend and observe a one-to-one between the Claimant and Mr Barker to see for herself the nature of the relationship between the two. She emailed the Claimant to inform her that she would be present at the one-to-one to be held on 28 April 2015.

174. It was suggested to Mrs Scott in cross-examination that the circumstances showed there to be a very serious relationship issue between the Claimant and Mr Barker. Mrs Scott sought to downplay this issue. She said that the circumstances "raised questions". This was somewhat surprising evidence. It leads the Tribunal to speculate as to the sort of relationship difficulties that would have to be present in order for Mrs Scott to consider matters to be serious.

175. Lucy Phillips was not present before the Tribunal. Accordingly, Mr Mallett asked Amanda Scott for her views about Lucy Phillips' recommendation that the Claimant be issued with a final oral warning for having "openly discussed" the compliance issue. It was suggested to Mrs Scott that confidentiality is for the protection of the individual making the protected disclosure and if that individual elects to tell another it is a matter for them and not a disciplinary issue. Mrs Scott accepted that there was nothing within the Respondent's 'UK Whistleblowing policy' (at pages 168A to 168C) preventing the 'whistleblower' from disclosing the issue to anybody else, much less any warning within the policy that disciplinary action could follow if they did so.

176. Mr Yau said that by so doing there was a risk of what he described as "tipping off". We understood this to mean that there was a risk of the fact of the disclosure getting back to those being investigated which may taint the investigation in some way. Mr Yau commented that the Respondent's policy as confirmed in an email dated 16 October 2015 (at page 1467) is that generally the 'whistle blower' is not given feedback at the conclusion of the investigation. This therefore appears to limit the scope for any breach of confidentiality in relation to information provided to the 'whistle blower' by the Respondent (as opposed to the 'whistle blower' choosing to waive confidence about what he or she has said to the employer).

177. As we say, the one-to-one between Mr Barker and Amanda Scott of 15 April 2015 appears in the bundle at pages 1120 and 1121. There it is recorded at paragraph 6 that Amanda Scott was considering Lucy Phillips' recommendation about disciplinary action. It was put to Mr Yau that there was no suggestion that consideration was being given to action against Mr Barker about dim view that he too (as expressed in his email of 18 March 2015 to Vivienne Bee) of the Claimant having contacted the compliance unit.

178. On 16 April 2015 the Claimant asked Mr Vine for assistance with her work (page 1125). Mr Vine said that he had a heavy workload and was unable to help until mid-May. It was suggested to the Claimant in cross-examination that this was a late request given the deadline of 1 May 2015 set in the PDP at pages 1063 to 1065. The Claimant sought to explain away the delay by the fact that the client for whom the FPR was being prepared had been away for three weeks.

179. It was also suggested to the Claimant that there was other help available to her. The Claimant acknowledged the assistance of several 'buddies'. However, she commented that the assistance that they could afford to give her was subject to the vagaries of their own workload. In essence, the Claimant's evidence was that assistance given to her by others was somewhat hit and miss. We accept that the Respondent made available several buddies to help her (in particular by reference to the record of the one-to-one held on 16 April 2015 at page 1124A). The PDP was extended

by one week to take account of IT issues that had beset the Claimant in preparing the Nowlin report (page 1124A). The Claimant was required to continue working upon the Nowlin report and a report for clients named Bramhall.

180. Notes of the one-to-one of 28 April 2015 (at which Mrs Scott was present) are at pages 1144 to 1146. It was recorded there that, "both parties confirmed they were happy with their working relationship over the last four weeks and when questioned felt it was productive, professional and functional". Mrs Scott recorded that both declined the opportunity to explore further the findings arising from Lucy Phillips' investigation. She records that each expressed themselves happy to continue with their working relationship.

181. The Claimant accepted that she had not pursued her request for a change of line manager. She said that the relationship was much improved by around April 2015. She also said that she felt the Respondent had no appetite to support such a change anyway.

182. It was put to Mrs Scott that she had not informed the Claimant in advance that at the one-to-one on 28 April 2015 there would be a discussion about her relationship with Mr Barker and that this would take place in his presence. While it was the case that the Claimant knew that Mrs Scott was going to be present, she was under the impression that it was simply to observe a routine one-to-one and not for any other purpose.

183. Mrs Scott was unable to adduce any email or other evidence to demonstrate that the Claimant knew anything other than she was simply going to observe the one-to-one. It was suggested by Mr Mallett that it was inappropriate to discuss with the Claimant how she felt about her line manager when the line manager himself was present. Mrs Scott said she had done this upon the recommendation of ER. She said that she had afforded to both parties the opportunity to discuss the matter with her individually at the meeting.

184. It was suggested to Mrs Scott by Mr Mallett that this was a "terrible procedure" for her to have adopted. We agree. Should the Claimant have wished to raise concerns with Amanda Scott about Richard Barker then the procedure adopted by Amanda Scott placed the Claimant in the invidious position of having to ask Mr Barker to vacate the room. This would signal to Mr Barker, of course, that the Claimant had concerns that she wished to discuss in confidence with Amanda Scott. Mrs Scott said that she was supportive of the Claimant as she had not adopted Lucy Phillips' recommendation that disciplinary action be taken against her. While that is the case there is no escaping the fact that her approach to the meeting of 28 April 2015 was badly flawed and unfair to the Claimant.

185. At the one-to-one of 28 April 2015, it was agreed that the Claimant had not successfully completed the PDP of 12 March 2015. A new PDP was therefore agreed to run between 1 May and 20 June 2015 with a requirement for the Claimant to complete three customer journeys. The second PDP is at pages 1150 to 1152. It was described as a "route to competency". We can see from page 1149A that the Nowlin case was still ongoing. The Claimant was also expected to maintain progress upon the Bramhall case and was encouraged to do more than one case at a time. In fact, the Nowlin case remained outstanding as at 10 July 2015 (page 1184A). The Claimant said that the recommendation had been done upon

this case but then there were some unforeseen and unexpected technicalities. She said that Phil Barry, an experienced PRM, had never come across the technical issue in question. There is evidence that this case gave rise to acute and difficult technical issues at pages 2369 to 2377. That said, Richard Kirk had picked up many "fail points" when he reviewed a draft of the FPR on 8 May 2015 (pages 1163 and 1164)

186. At the one-to-one held on 19 May 2015 the Claimant expressed optimism and said that she felt more confident in the role than she had ever done before. She had been on the report writing course held in May 2015. She plainly thought that this had been a benefit to her. She said in evidence that this was the "type of training I really wanted and also a fresh start with a new manager": page 1168A. The Respondent also introduced a FPR report completion guide in May 2015 (commencing at page 254A: we were also provided with a further iteration of this document commencing at page 201).

187. At a one-to-one held on 20 May 2015 a "CAS weekly progress" timetable was set out at paragraph 5 (on pages 1170A and B and 1170). Mr Barker confirmed, when asked by the Tribunal, that this was a realistic timescale. It was anticipated that she would move to "expert" status on or around 3 August 2015.

188. By reference to the record of progress with the Claimant's three cases (at page 2487) it was suggested to Mr Barker that by the end of May 2015 the Claimant was moving in the right direction. Mr Barker accepted this but commented that there were still a number of outstanding issues. These are documented at page 2488. We need not set them out here.

189. An issue then arose in June 2015. The Claimant contends that she had been given incorrect information by Mr Barker about changes to an examination deadline. The Claimant was due to take the examination the day after her scheduled return from a holiday in Cuba. Unfortunately however technical issues arose with the plane and the Claimant's return was delayed.

190. The Claimant's evidence is that Mr Barker expressed concerns about her ability to pass the exam given the difficult journey that she had just endured. His concerns were magnified by the fact that the exam was difficult. He knew this from personal experience as he had failed it twice. He told her that there had been an extension to the time available to take it. The Claimant therefore took steps to re-arrange the examination date. However, very shortly afterwards Mr Barker contacted the Claimant to tell her there was in fact no extension. Arrangements were nonetheless made for her to take the exam at a later date.

191. Mr Barker's evidence upon this issue is at paragraphs 127 and 128 of his witness statement. He acknowledges having been concerned about the Claimant taking a difficult exam given the testing journey that she had just endured and also the fact that she had flown from west to east and therefore may suffer from jet lag. Mr Barker acknowledges that he was mistaken as to the deadline for the first attempt to take the exam. The deadline, he thought, was a Monday whereas in fact it had expired the previous Friday. He took steps to rectify his error and therefore the exam that she took on the Monday was counted as a first attempt. Mr Barker denied having misinformed the Claimant about the exam deadline.

192. The Claimant in fact successfully completed the exam (which she had been due to be taken on 19 June 2015). She passed it on 25 June 2015 (page 2339). In cross-examination, she said that she found it difficult to accept that Mr Barker had simply made a mistake. She said that he should have checked his facts. His conduct left the Claimant "feeling shaken". She did acknowledge however that Mr Barker's actions were not malicious and that he had apologised to her.

193. Mr Barker then sought further advice from ER about the Claimant's progress. He continued to be concerned about the Claimant's performance. By the end of June 2015 the Claimant had still not completed a single case.

194. Mr Barker says that on 23 June 2015, given that the Claimant had not met the required standards of the PDP of 29 April, he put in place a more formal performance improvement plan. This is at pages 1171 to 1178. The target date for completion was 4 August 2015. A record of the one-to-one and the email to the Claimant attaching this PIP is at page 1179.

195. Mr Barker sought advice from employee relations in order to obtain approval of the PIP issued to the Claimant on 23 June. Employee relations proceeded with their advice upon the assumption that Mr Barker had obtained an extension with regards to the Claimant's CAS status. We refer to page 2024. Mr Barker said in evidence that it was still too soon to contemplate asking for a CAS extension. This was curious evidence given that there was, at this stage, only around five or six weeks left before the expiry of the 12 month period. Mr Barker said that for others he had sought extensions very late in the day, often within a week or so of the expiry of the deadline. When it was suggested to him that there was no need for him to wait he replied that the Claimant was anyway "significantly outside the required activity".

196. The expected date of completion of the PIP was 4 August 2015 (page 1177). She was required to progress five clients through the full EDRAS journey in addition to the other tasks set out in the 'priorities' box at page 1177. When asked about this by Mr Mallett, Mr Barker denied that the targets at page 1177 were unachievable. He described them as "challenging". He said that they had been mutually agreed. It was suggested to him that to complete five complete journeys in six weeks was wholly unachievable. Mr Barker said that he expected the Claimant to achieve the target.

197. The Claimant says that at some point in July 2015, as she was on her way to an appointment in Sheffield, she spoke to Mr Barker who told her that she had not passed the exam taken at the end of June 2015. She had in fact passed it and the Claimant considered that Mr Barker was questioning her integrity. She considered it inappropriate for Mr Barker to have raised the matter with her as she was under a great deal of strain at the time. Mr Barker's explanation is at paragraph 129 of his witness statement. He says that he had been informed by a member of his team that there was no record of the Claimant and three or four others having taken this test. He therefore simply asked her about it in a non-accusatory way. In cross-examination, the Claimant appeared to accept Mr Barker's position but maintain that it was inappropriate for him to have asked her about it as she had notified him that she had passed the test. Mr Barker denied this to be a subtle attempt to undermine the Claimant. She did not raise any

allegation of undermining at the one-to-one held on 27 July 2015 (page 1188A) or on 3 August 2015 (pages 1225 to 1236). By reference to the documents referred to in paragraph 16(f) of Ms Richmond' submissions errors of this type were certainly not uncommon.

198. On 24 July 2015 Mr Barker emailed the Claimant to ask her for a copy of her contract of employment (pages 1188 and 1244). Mr Barker said that he was being asked for it by ER and was simply asking the Claimant if she could assist him by providing a copy for them. Again, Mr Barker denied placing any unwarranted pressure upon the Claimant. He said that he had been unable to locate it on the staff file.

199. Mr Barker continued to monitor the Claimant's progress during July 2015. He said that the Claimant made limited progress during July as evidenced in the one-to-ones of 10 July (page 1183 and 1184A and B) and 15 July (1185). The former identified action required to finalise the Nowlin FPR by 17 July 2015 and further action on several other cases including that of Bramhall. The latter demonstrated a number of outstanding issues with only two weeks remaining. While, as was acknowledged on 23 June 2015, one full customer journey had been completed "the PDP2 had not been achieved which required one presenting solutions meeting per 11 working days, plus four engaged and three discover meetings".

200. Mr Barker contacted ER on 21 July 2015. It is recorded that Mr Barker advised that "the business has no appetite" to request a CAS extension for the Claimant due to her capability. Mr Barker then set out his rationale in some detail. It was Mr Barker's view, when we were taken to the ER records at pages 2042 to 2045, that at this stage the Claimant would require around another 18 months to achieve CAS status.

201. That evidence does not sit easily with his assertion that the PIP of 23 June 2015 was realistic and achievable. It was suggested by Mr Mallett that it was a ridiculous assertion upon the part of Mr Barker that the Claimant would need another 18 months. She had successfully passed exams. She had undergone further training by this stage. Mr Barker shifted his evidence at this point to say that the Claimant would need around another 12 months to achieve CAS status and then would need another six months to achieve an "operating rhythm". He denied that it was the seldom seen technical issues in Nowlin that led to the failure of that case to be classed as having been "discovered". While Mr Barker did credit the fact that there was a technical issue which had seldom been seen before he attributed the problem to execution errors upon the part of the Claimant which had resulted in a sales quality fail.

202. It was suggested to Mr Barker that he had given an unbalanced account to ER in his emails at pages 2042 to 2045. In particular there was no reference to the Claimant's periods of illness. Mr Barker said that he simply told ER "where she was at the time". Also omitted was Mr Barnsley's failure during the first three months that the Claimant was on the "CAS journey". Mr Barker denied presenting an unbalanced account to ER.

203. It was also suggested on behalf of the Claimant that there was a failure on the part of Mr Barker to factor in the stress attributable to the Claimant's disclosure to the compliance unit. When this was put to him Mr Barker asked, "Why should I?" He denied there having been a total

breakdown in his relationship with her and that the failure to change line management had had an impact upon the Claimant's performance.

204. Upon the question of extending time to achieve CAS status, Mr Barker's attention was drawn to page 1511. This is an email from Yvonne Schofield to Mrs Williams of 20 October 2015. This refers to advice from the Respondent's professional standards department about extensions of time to achieve CAS. Mrs Williams was advised:-

> "If the business does not wish to extend the time period for CAS then it should be clearly documented in one to one events that this requirement is needed in the lead up to the 12 month deadline. Evidence should include any concerns that may be affecting the individual's ability to obtain the CAS status and clear action plans to address. Other factors that should be considered include change of manager(s) and any mitigating circumstances affecting the individual".

The advice goes on to say that it is for the Respondent to set its own timescales to achieve CAS. Mrs Williams was advised, "although you should 'never say never', there would need to be a clear demonstration by the individual that they were now in a position where they could demonstrate competence if undertaking the role again. In most, if not all cases, individuals who don't meet these standards are not normally in the right role and recommendation is made that an alternative role is found in the bank".

205. This email was of course furnished after Mr Barker had taken the decision in August 2015 to remove the Claimant from the PRM role. He was unaware of any management guidelines around extensions of time within the Respondent's organisation (there in fact were none or at any rate we were not informed that there was one).

206. In the light of the guidance from Yvonne Schofield of 20 October 2015 it was suggested to Mr Barker that had that been sought at the end of July 2015 the Claimant may have been afforded further time. Mr Barker said that "3 months wouldn't have been enough. 6 or 12 wouldn't. It would have taken 18 months".

207. ER was involved again on 30 July 2015. They were informed (presumably by Mr Barker) that the Claimant would be having an end of PIP review. By this stage she had completed two cases (those of Nowlin and Ellison: see the one-to-one of 27 July 2015 at pages 188A and B). Mr Barker informed ER that the Claimant had described her own performance as "horrific". We refer to page 2038. When the Claimant was taken to this passage in cross-examination she accepted this to be a fair description but attributed her performance to problems that occurred after she "did the whistle blowing". Mr Barker emailed ER the same day to say that the Claimant told him that she had consulted a barrister (page 1243).

208. A telephone conversation took place between the Claimant and Mr Barker on 31 July 2015. Mr Barker accepts that in this call he said words to the effect that if more time had been available "we could have cracked it". In his witness statement he says that there were no exceptional circumstances to support a business case for an extension and exceptional circumstances are generally required. In any event, that was not a decision for Mr Barker to make as he explains at paragraph 111.

209. Mr Barker's evidence that exceptionality is required is at odds with the evidence of Mr Carnaffan. He says, in paragraph 31 of his witness statement, that during 2005 the Respondent received 130 requests for CAS extensions. Only five of those were declined.

210. A PIP review was carried out on 3 August 2015 (pages 1193 to 1196 and 1225 to 1236). The Claimant was told that the PIP had been marked as unsuccessful on 3 August 2015. She was informed that she would no longer be able to contact clients after 5 August 2015. The Claimant was rated as "off track". Only one customer journey had been completed and therefore even had the Ryan case not been removed from her earlier in the year she would not have achieved the target of five customer journeys. (There appears to be a lack of clarity as to whether one or two cases had been completed: *cf* paragraphs 207 and 210).

211. A meeting was arranged for 6 August 2015. Mr Barker attended accompanied by a note taker. The Claimant was unaccompanied. The notes are at pages 1218 to 1219. Mr Barker asked her to pass all ongoing cases to Annie Dost and Phil Barry. She was informed that she needed to look for an alternative role within the Respondent over the next 6 weeks. The Claimant was concerned as she thought that she would be given 12 weeks to find an alternative role. She had in fact already applied for a role in the compliance team by this stage (page 1306). Mr Barker said that the Claimant should be aware that if she had not found an alternative role by 17 September 2015 a further meeting may be necessary and the Claimant should be aware that her contract may be terminated. The Claimant was handed the letter at page 1220 confirming the substance of the meeting. ER's view was that "after 30 years' service it feels right to give her some time to find an alternative role." *[We interpose here to say that ER was mistaken: the Claimant did not have 30 years' service. We refer to paragraphs 8 to 10].*

212. It was suggested to Mr Yau that it was inappropriate to summon the Claimant to the meeting of 6 August 2015 with less than 24 hours' notice. It appears from the email at page 1201 that the Claimant was asked to attend the meeting with Mr Barker by email timed at 17.18 on 5 August 2015. Mr Barker and Mr Yau both sought to explain that the Claimant was often working after 5 o'clock in the afternoon and they thought (or hoped) that she might see it. However, even if that were to be the case, the fact remains that she had very short notice of the meeting of 6 August 2015. ER advised on 6 August 2015 that before any employment review meeting where a contract may be terminated a warning to that effect ought to be given (page 2043). No notice was given to the Claimant in the email of 5 August as to the likely or possible outcomes at the following day's meeting. Plainly, the Claimant was concerned enough to call for an adjournment of the meeting on the morning of 6 August (page 1207). She said that she wanted to be accompanied at the meeting and asked about the possibility of re-arranging it. This notwithstanding that she did go ahead with the meeting.

213. Following the meeting of 6 August 2015, and her removal from the PRM role, the Claimant was assigned no work. This was in order that she could dedicate all of her time to a search for alternative employment. ER advised Yvonne Schofield that the Claimant was not fit for her regulated role (top box of page 2043). She was given a mid-year appraisal rating of

'4-needs improvement.' The Claimant acknowledged this on 16 September 2015 (page 2498).

214. On 21 September 2015 Amanda Scott asked Tesni Williams to chair an employment review meeting. The relevant email exchanges are at pages 1312 to 1314.

215. Mrs Williams says, in paragraph 4 of her witness statement, that "following this email Amanda [Scott] phoned me and provided me with a higher level background of the situation". She goes on to say, in paragraph 5, that, "Amanda informed me that Judith was employed as a premier relationship manager (PRM). As part of this role she was required to obtain CAS. Judith had been allocated 12 months from August 2014 to achieve this, but had not been able to do so. This meant that Judith had been unable to carry out her contracted role from August 2015 onwards. As a result, Judith had been informed that she would be given a period of six weeks in which to obtain alternative employment at which point her ongoing employment would need to be reviewed. Judith had not been able to find alternative employment at the time the employment review meeting took place, despite more than six weeks elapsing since the expiry of her CAS deadline".

216. Prior to the meeting, Yvonne Schofield emailed Mrs Williams with some information. This was what was described by Mrs Williams as "a brief factual background of the situation". She also sent to her a copy of the file note of the meeting of 6 August 2015 with Mr Barker (pages 1319 to 1324). Yvonne Schofield sent to Mrs Williams what was described as a "structure for employment review meetings". This is at pages 1392 to 1393. The first two sections of this appear to be a script to be read out by the individual conducting the employment review meeting followed by a series of prompts of matters to be discussed.

217. Yvonne Schofield emailed the Claimant on 1 October 2015 to inform her that the employment review meeting would take place on 13 October 2015. The purpose of the meeting was "to discuss how you are no longer able to continue in the premier relationship role, as you have not met the regulatory requirements of achieving competent advisor status (CAS)". The Claimant was told that "if all other options are exhausted, this meeting could result in the termination of your employment from the company". The Claimant was informed of her right to be accompanied at the meeting by an employee of the bank or by a trade union official of her choice. The email is at pages 1331 and 1332.

218. The notes of the employment review meeting are at 1394 to 1418. Although the heading to the notes refers to the meeting being conducted by way of dial in, Mrs Williams clarified that she and Yvonne Schofield were present at the meeting with the Claimant. Those dialling in were the minute takers whose names are noted in the heading. The Claimant chose to be unaccompanied.

219. The notes of the meeting are very lengthy. We shall endeavour to summarise the salient parts:-

    219.1. The Claimant understood that she had not achieved CAS but maintained that there were mitigating circumstances. She had asked for additional training.

219.2. The Claimant said that the Respondent had been at liberty to extend time for her to achieve CAS. She acknowledged it to be a contractual requirement to achieve CAS within the year.

219.3. The Claimant said that she had worked in a regulatory environment before and had held CAS "and personal liability". She therefore believed that she had the ability to achieve CAS this time.

219.4. The Claimant understood that achievement of CAS was a contractual requirement that she had failed to achieve.

219.5. She mentioned that "things had happened" which "made her feel unsettled with the culture at the bank". She said that she had concerns about the integrity of the examination procedure and relayed what she had observed herself which gave rise to those concerns.

219.6. She recited the history of matters following Mr Barker's appointment as her line manager. She told Mrs Williams of the unhappy circumstances of the first meeting when he had confused her with another and Mr Barker's alleged age related comment. She said how Mr Barker asking her to "give him five" had made her feel uncomfortable.

219.7. She told Mrs Williams about the events of 27 November 2014 when "RB had observed her over the phone, as she made a call. RB had said it was a good call, which JD noted would be on her Tracsmart. They had then talked about figures and the recording of diary appointments and RB had asked her to record the extra meetings even if she just spoke to someone on the phone *ad hoc.* She related RB had said this would take the heat off him in board meetings". She expressed concern that Mr Barker was asking her to falsify records to make it look like more meetings were taking place than was the case Mrs Williams asked if this had been "the main issue" to which the Claimant said that "it had been one of them". She said that she "noted her relationship with RB had deteriorated quickly after this which was December 2014, January 2015 time".

219.8. She told Mrs Williams of other incidents of concern. She mentioned the Ivan Willerton incident of 1 December 2014 and Mr Barker's view that by prioritising an email from him over one from Mr Barker the Claimant had "been sticking two fingers" up at her line manager. She said that Mr Barker had "told her that when a manager told her to jump, she should ask how high".

219.9. She told Mrs Williams of IT issues that she had had.

219.10. She said that she had reflected upon matters and then had made the disclosure to the compliance team.

219.11. She accepted that she had struggled with report writing and had requested a face-to-face one-to-one meeting with Mr Barker rather than continuing to deal with matters electronically.

219.12. She told Mrs Williams about her health issues and accepted that she had not been functioning adequately.

219.13. She informed Mrs Williams of continued problems with Mr Barker. She had withheld raising a grievance about him upon the advice of ER and that Mr Barker had told her "a few times that he had raised a grievance once, in Omarn, and it had negatively impacted his career". She relayed the incident where she had gone to the course notwithstanding inclement weather and the incident around the missing of the first and second attempts for the quarter four protection exam at the end of January 2015.

219.14. The Claimant fairly acknowledged report writing to be the principal barrier to her achieving CAS. She said that she had asked for extra training and to re-attend that part of the course dealing with report writing. She said that felt she had not had adequate training in this aspect of the role. She fairly acknowledged that Mr Barker had arranged for her to be "buddied" with experienced PRMs.

219.15. The Claimant said that by April 2015 she felt as if she was making progress. She went on to say that "she honestly believed she would be better now if she could start again and have a "new run" at the situation, now that RB had left". *[We interpose here to say that Mr Barker moved to Hong Kong in October 2015].*

219.16. The Claimant told Mrs Williams that "there had been an opportunity to give people more time to complete CAS in exceptional circumstances; this had not been given in her case". Yvonne Schofield confirmed that extenuating circumstance leading to an extension of time could include ill health absence. (It was Yvonne Schofield's understanding that extensions may be given "in extreme cases, eg maternity leave or long term absence" (page 1354)).

219.17. Mrs Williams asked Mrs Schofield "what the bank's procedure was. YS replied that their criteria were maternity leave and long term absence and that before an extension could be agreed certain things regarding progress had to have been met already. YS explained a strong business case needed to be put forward by the business to extend, to a department that considered cases and cases were not guaranteed to be extended even with a business case". The Claimant commented that "on the bank's intranet, it simply said 'extenuating circumstances'. The Claimant was unable to enlighten Mrs Williams as to why an extension of time had not been granted in her case although she did acknowledge that Mr Barker had told her that "there was no evidence from her performance to date that she could improve enough to meet CAS with an extension".

219.18. The Claimant had been expecting to be allowed 12 weeks to find an alternative position and pointed out the difficulties of seeking a role during August.

219.19. She told Mrs Williams of the efforts she had made to find an alternative position. She had, at her own expense, gained her 'ANL certificate'. The Claimant said that, "although she

understood why RB had not thought she could progress, she disagreed, she stated that she believed she had a lot to offer, as she had in the past. JD detailed that she was recovering, and was in a better place now. She stated that she was throwing herself into training and looking for other jobs. JD noted that RB had not seemed to think she needed to work, judging by the comment he had made about the size of her house". The Claimant "commented that RB had not seen her mortgage".

219.20. The conversation then turned to the issue of the PIPs. The Claimant confirmed that PDPs had been put in place before Mr Barker took the decision to move matters on to a PIP. Mrs Williams appeared not to have a copy of the PIP. Mrs Williams acknowledged that the Claimant had "shown dramatic improvement" towards the end of the process (that is to say, from May 2015).

219.21. There was mention of the meeting of 28 April 2015 at which the Claimant had confirmed that her relationship with Mr Barker had improved. Mrs Williams noted that Mrs Scott had given the Claimant the opportunity to speak to her alone, an opportunity that the Claimant had not taken.

219.22. The Claimant acknowledged that she had done only "a couple" of FPRs. Mrs Williams took the view that this was an insufficient number "given the average number of completed cases of the colleagues in the same situation had submitted." (We refer to paragraph 21 of Mrs Williams' witness statement).

220. Mrs Williams, in her witness statement, said that she did not consider that the issues that the Claimant had with Mr Barker were sufficient to justify an extension of time for her to achieve CAS. She said that the Claimant had applied for "roughly 14 roles from 6 August 2015" and was looking for a role in "customer experience".

221. Mrs Williams decided to adjourn in order to deliberate. A telephone meeting was arranged for 19 October 2015 at which Mrs Williams would advise the Claimant of her decision if possible (page 1418).

222. Mrs Williams' evidence is that on 20 October 2015 Mrs Schofield sent her the draft minutes of the employment review meeting. These are at pages 1511 and 1512. We have in fact referred to this document already in connection with the issue of the criteria for the granting of extensions of time to meet the CAS deadline.

223. The minutes were sent to the Claimant on 22 October 2015 (page 1525). The Claimant made some amendments and provided comments on 29 October 2015 (pages 1526 to 1553). The Claimant's comments are in bold type. During the course of the hearing, the Tribunal was not taken to the minutes incorporating the Claimant's amendments and comments. We have considered them when preparing our summary at paragraph 219.

224. To aid her deliberations, Mrs Schofield sent to Mrs Williams the email at pages 1455 and 1456. This sets out a "time line".

225. The employment review meeting reconvened on 19 October 2015 (page 1471). The Claimant said that she had some additional information that she wanted to provide. This she did on 21 October 2015 (pages 1513 to

1520). Again, the Tribunal was not taken to this document during the course of the hearing and we note the Claimant makes no reference to it in her witness statement. Having considered it, no new information appears to have been provided within this document. The Claimant lays emphasis upon the benefit that she may have obtained had there been a change of line manager.

226. On 15 October 2015 Amanda Scott emailed Yvonne Schofield. This was copied in to Tesni Williams. It concerned the Claimant's ill health. It made reference to her having only one sick day (that being on 9 January 2015). It made reference to there being no sick notes on the file. This email was provided at the request of Mrs Schofield in order to assist Mrs Williams with her decision regarding the Claimant. The email exchanges are at pages 1861 and 1862. Mrs Scott made no reference to the doctor's note of 16 January 2015 page 884. Mrs Williams said that a copy of that note was "not on the system". There was also no reference in the email at page 1861 to the occupational health referral and the two occupational health reports that followed. Mrs Scott said that Mrs Schofield was aware of those and that she (Mrs Williams) "had not asked for the full picture". When asked why she made no reference in her email to the Claimant's ill health issues between November 2014 and March 2015 Mrs Scott said that Mrs Schofield already knew of those matters. While that may be the case Mrs Williams did not know the full story and thus may have formed an incorrect and incomplete impression from Mrs Scott's email.

227. On 22 October 2015 Yvonne Schofield emailed Mrs Williams (page 1522). She said that she had spoken to Paul Barker, a professional services manager, who had advised "that it is normal to leave direct supervision after four or six months and that if she [the Claimant] was in direct supervision after 12 months she was taking twice as long as normal, at least, to meet the requirements. He said that it would be possible to give an extension at this late stage, that he felt that if she was so far away from passing it may not be the best thing for her". Mrs Schofield went on to say that "people in her position often move from PRM to MPM roles at a GCB6 level and when this happens they can start from scratch to get CAS – I wonder if this is something we could look at for her?" 'MPM' stands for 'mortgage and protection manager'. The GCB6 level is a lower grade in the Respondent's global career band structure than the PRM post.

228. When taken to this email in cross-examination Mrs Williams said that she "would have" considered the option of the MPM role presented to her by Mrs Schofield. When asked why it was not pursued she said that she "did not give it specific consideration". In re-examination, Mrs Williams said that the Claimant could have been moved to an MPM role if such a role was available and if no role was available then "we could look into whether we could have accommodated that". In closing submissions upon this issue we were referred to the email at page 1557. This was dated 2 November and was address to Mrs Williams by Yvonne Schofield. It was said that she (Miss Schofield) had asked the Claimant whether or not she had "contacted the areas re a MPM role." She said that the Claimant had not responded "which is very unusual." The issue of the MPM role generally was not put to the Claimant in cross examination.

229. The reconvened employment review meeting took place on 13 November 2015. The Claimant was notified of the decision to terminate her employment and was given one month's notice of termination subject to

obtaining alternative employment in the interim period. Mrs Williams' letter confirming her decision is at pages 1569 to 1575. The reasons for Mrs Williams' decision are set out at paragraph 38 of her witness statement. These may be summarised as follows:-

229.1. That the Claimant had failed to obtain CAS within 12 months of August 2014 and was therefore not capable of carrying out her substantive role.

229.2. Mrs Williams recognised that Mr Barker and the Claimant "did not always see eye to eye". That said, the Claimant had not raised a grievance against Mr Barker. Mrs Williams set some store by Amanda Scott's observations at the meeting of 28 April 2015. She said, "Richard Baker had provided Judith with regular support on her CAS journey. I would question why Richard would have taken such steps if his aim was remove Judith".

229.3. That the Claimant had done all that she needed to do in order to raise her "whistle blowing allegation". Mrs Williams said, "at this point [when she contacted the compliance unit] Judith had done all that she needed to do and it is in the bank's policy that outcomes to whistle blowing investigations are not shared with those who raise them". She did not believe that the Claimant raising such allegations in January 2015 had "a material impact on Judith's ability to obtain CAS". She said that the Claimant acknowledged the relationship with Mr Barker was "back on track by April 2015".

229.4. She said that the Respondent can only extend time to reach CAS "in exceptional circumstances". She said that such circumstances "typically include when an employee has been on maternity leave or on prolonged sick leave". Further, the Claimant was someway off obtaining CAS. Also, the Claimant herself had made no such application.

229.5. The Claimant had had ample time to find an alternative role. She had initially been given six weeks to find an alternative position with the Respondent but by the time of the meeting of 13 October 2015 the Claimant had actually had 10 weeks. This had become 13 weeks by 13 November 2015 which in Mrs Williams view was ample time for the Claimant to obtain a new role.

230. The following emerged from the cross-examination of Mrs Williams:-

230.1. That the "high level background" information provided to her by Mrs Scott referred to in paragraph 4 (of Mrs Williams' witness statement) was very brief and was a conversation undertaken with Mrs Williams when she was driving her car.

230.2. While Mrs Williams accepted that during the course of the Tribunal hearing matters had been considered in greater depth than was the case when she dealt with the matter. However, she considered that the review meeting of 13 October 2015 had aired all of the issues about which the Tribunal had heard. She therefore stood by her decision.

230.3. Mrs Williams gave confused evidence as to whether or not the Claimant had, during the employment review meeting, raised the issue of an extension of time to achieve CAS. Mrs Williams accepted that it was in her gift to provide her with an extension.

230.4. Mrs Williams again gave confused evidence as to the issue of whether or not the public interest disclosure about Mr Barker's line management was or was not a relevant factor. Under cross-examination she said that it was not but then under questioning from the Employment Tribunal changed her mind and said that it was a relevant factor that ought to have been considered.

230.5. Mrs Williams accepted that the Claimant had pointed out the difficulty that she had had with her line manager, her illness, the difficulties arising from the disclosure that she made and that she was seeking a 'new run' at achieving CAS. Mrs Williams said that the Claimant had accepted it not to be realistic that she could achieve CAS. In fact, the note at page 1417 has the Claimant acknowledging that it would be a challenge. We cannot see where in the notes it is recorded that the Claimant considers achieving CAS to be unrealistic.

230.6. Mrs Williams accepted that the Claimant had been reluctant to spend a lot of time in the city branch availing herself of the buddy help arranged for her by Mr Barker. The Claimant acknowledged that this "sounded wimpy but it was true". We refer to page 1406. Mrs Williams acknowledged the obligation upon the Respondent to ensure that those who do make a protected disclosure are protected and not disadvantaged. She acknowledged that there should be no repercussions to the Claimant by the fact that she made the disclosure and also because she had chosen to inform Annie Dost as to what she had done.

230.7. Mrs Williams acknowledged the Claimant to have had technical problems with the Respondent's IT systems. She dismissed these as significant mitigation describing them as "sporadic".

230.8. She recognised that Mr Barker knew during the course of the hearing before us that the Claimant's performance between November 2014 and March 2015 had been affected by her health. She said that the Claimant had "never relayed that to me" at the time but maintained that she had considered the health issues and the restrictions upon the Claimant's performance as a consequence of medical advice. She informed the Tribunal that she did have the occupational health reports before her at the time that she made her decision. Nonetheless, she did concede that she could have looked at the Claimant's health and the impact upon her performance of her health condition in more detail.

230.9. She said that she did acknowledge that the "CAS journey" got off to a poor start with a lack of supervision when she was under Andrew Barnsley's line management.

230.10. Mrs Williams acknowledged that the Claimant had asked for further training with report writing. She took the view that the "good buddy system" was in effect adequate training and that the Claimant had had sufficient time to put together enough FPRs to attain CAS.

230.11. She was cross-examined as to the weight she gave to the absence of a grievance raised by the Claimant against Mr Barker. She said that the Respondent's human resources department had not positively advised her not to raise a grievance pending the outcome of the compliance investigation but, rather, had suggested that she may want to await the outcome of it.

230.12. She maintained that the Claimant had not applied for an extension of time to achieve CAS in April 2015 and had not sought an extension. She also maintained that Mr Barker should not have applied for it in March 2015. She thought that he was correct not to have done so at that stage. This was because the Claimant had time to turn things around. She fairly acknowledged that the Claimant applying for and being granted an extension of time in April 2015 may have made a difference to the outcome.

230.13. She was asked why, if Mr Barker considered the targets in the PIP of 23 June 2015 to be attainable by 4 August 2015, she did not consider granting a three month extension of time. She said that she did not believe that a further three months would make any difference.

230.14. She did not accept that a change of line manager may have assisted the Claimant. She maintained that Mr Barker was trying to help the Claimant. In the absence of a grievance, and with the Claimant being performance managed, Mrs Williams did not think a change of line manager to be appropriate. She felt that the relationship between them was "equally challenging" from both sides and that Lucy Phillips' investigations carried out in April 2015 simply corroborated the view that she took that this was a difficult relationship. Mr Barker's highly critical views of the Claimant expressed in the interview (at pages 1110 to 1111) and in the email of 18 March 2015 at page 1068 did not cause Mrs Williams to alter her view that she (Mrs Williams) had confidence in the line management structure. That said, she does not appear to have been made privy to those documents as she said that she made the decision based upon the information with which she was furnished (which did not include those documents). She also set store by the fact that neither Mr Barker nor the Claimant requested a change of line manager and that Amanda Scott had satisfied herself that the relationship was tenable on 28 April 2015. Mrs Williams acknowledged that sight of the material of 18 March 2015 and 8 April 2015 may "put a different slant on things" particularly given that an area director was suggesting a move. Mrs Williams acknowledged that this material would have caused her to look into the relationship between the Claimant and Mr Barker in more detail.

231. On 2 December 2015 the Claimant appealed against the decision to terminate her employment. The appeal letter is at page 1591 to 1616. She referred (at page 1609) to having asked for an extension of time to achieve CAS at the meeting of 28 April 2015 and to her expressing concerns about having to take a two week holiday around that time "which they thought would be helpful."

232. Towards the end of her appeal letter, the Claimant complained that she had been incorrectly advised by Yvonne Schofield that she could not apply for fixed term roles during her notice period. Mr Yau spoke to Yvonne Schofield following his receipt of the Claimant's letter of appeal. He says at paragraph 32 that Mrs Schofield confirmed to him that she had advised the Claimant that any alternative employment had to be a permanent position. Mr Yau said that this was erroneous advice and that whilst the Claimant "needed a firm and unconditional offer prior to her employment terminating in order for her notice to be retracted, this could and should include an offer of a fixed term role". Mr Yau goes on to say at paragraph 33 that, "for the avoidance of doubt, this misunderstanding only applied during Judith's one month notice period – it did not apply during the 3 and a half month period between being removed from the PRM role at the beginning of August and Tesni's decision on 13 November. During this time Judith had considered (and I understand applied for) fixed term roles". He then goes on to give a number of examples.

233. He says at paragraph 34 that, "upon realising this misunderstanding, I determined that the fairest approach was to extend Judith's employment by a further month, to give her another period to seek alternative roles. I spoke to Amanda Scott about this and she was immediately supportive of this proposal". There was a complication with this proposal in that the Claimant was about to go on holiday immediately after the date of termination of employment. She was due to go on holiday between 14 December and 10 January 2016. It was therefore agreed that she would be on exceptional unpaid leave for the time that she was out of the country during this period and then upon her return would have a further months' paid notice from 11 January to 10 February 2016.

234. It was suggested to Mr Yau that the Claimant had problems accessing her account between 13 December 2015 and 11 January 2016. Access to the account was necessary to enable her to search for alternative jobs. Mr Yau said that he was informed by the Respondent's IT department that this was not the case and that she "got back on in a few days". The Claimant's evidence about her being effectively barred out from the system between 13 December 2015 and 10 January 2016 is at paragraph 215 of her witness statement. Here, the Claimant says that she was originally going to be on two holidays between 14 December and 10 January 2016 and therefore had cancelled the second one to enable her to spend time seeking an alternative position. Her position was set out in the emails at page 1702 and 1711. She was also concerned that she was disadvantaged with effect from the end of her first holiday because applications would have to be based upon the mid-year performance rating of '4' (whereas before that time she had been able to use her end of year rating for 2014 of '3').

235. We prefer the evidence of the Respondent upon this issue. The email at page 1704 corroborates the Respondent's account that the Claimant's access was restored prior to 10 January 2016. This was not put to the

Claimant in cross examination but nonetheless we accept it as good evidence supportive of the Respondent's account. The email cites an account number for the IT issue that beset the Claimant at this stage.

236. On 11 January 2016 the Claimant was informed that her appeal hearing was to take place on 21 January 2016. It was to be heard by Gareth Griffiths. The letter of invite is at page 1688. The Claimant objected to Mr Griffiths' appointment upon the basis that she believed that he had had what Mr Carnaffan described as "a relationship of sorts" with Mr Barker. Mr Carnaffan was thus asked to chair the appeal hearing.

237. On 8 February 2016 the Claimant emailed Amy Seymour who is the employee relations lead for global functions at the Respondent. She asked for an extension of time to the effective date of termination of her contract of employment from 10 February to 22 February 2016 in order that pending applications for alternative positions could be progressed.

238. Mr Carnaffan was asked about this. It was put to him that the Claimant had a pending interview in Birmingham scheduled for 17 February 2016. This was for a job that the Claimant had been "courting" as it was put by Mr Mallett. She had in fact applied for nine jobs in Birmingham (by reference to the list at page 1818). It was suggested to Mr Carnaffan that in the circumstances (where she had been given wrong advice upon the fixed term contract issue and there had been problems accessing her account after 13 December 2015) an extension of time was appropriate. Mr Carnaffan disagreed. He said, "There has to be a line. She had already had six months". The Claimant applied for the roles at pages 2001 and 2002. Although there were PRM roles available (as acknowledged by the Claimant in her appeal letter at page 1615) she did not apply for any of them. Mr Barker had left to work in Hong Kong from 1 October 2015 and thus should she have secured a PRM role she would have been working under a new APRM.

239. Mr Yau emailed the Claimant on 11 February 2016 to inform her that there would be no extension to her contract of employment. We refer to page 1708.

240. On 19 February 2016 Mr Carnaffan heard the Claimant's appeal against dismissal. The notes of the appeal hearing are at pages 1863 to 1876. In summary:-

    240.1. The Claimant referred to the difficulties that beset her relationship with Mr Barker in particular after 27 November 2014.

    240.2. She had achieved a "strong" rating in 2014 but believed that her rating was going to be a "4" for 2015. This was a lower rating upon the Respondent's rating system.

    240.3. The Claimant had not been properly prepared for the meeting of 28 April 2015. While she acknowledged there to have been some improvement by the time the meeting took place, she had not felt comfortable with discussing the matter with Mrs Scott in the presence of Mr Barker. We refer to the bottom of page 1865.

    240.4. The Claimant had obtained help from Richard Kirk, Lyn Walton and Paul Vine but had had no "genuine help" from Mr Barker.

240.5. She said that the difficulties with Mr Barker's management style had contributed to her "acknowledged" slow progress and difficulty with report writing. She said it was unfair that the assessment of her performance had not taken into account the time when her working hours had been reduced by 50%. She said that "anyone who had managed this situation with the slightest element of emotional intelligence would have seen that something had not stacked up, as she had shown willingness and had a long term track record of success only to be told she could not function." She acknowledged that she had been registered as sick for a long time as this was not what she had wanted. She wanted to show she could do it, but whenever she had been close getting over a hurdle it had been reinstated.

240.6. She then made reference to her search for alternative jobs, difficulties with access to the system and incorrect advice furnished to her about fixed term contracts.

240.7. She said she had a concern "that people had tried to separate the whistle blowing and her dismissal but she believed the two were connected because the whistle blowing had impacted how RB had treated her, which had then impacted her performance". The note at the bottom of page 1875 then goes on to say that the Claimant "explained that she was not saying she had been sacked for whistle blowing, but it was integral to what had happened". This in fact chimes with part of the Claimant's appeal letter (at page 1613) where she said, *"For absolute clarification I agree that the bank has not dismissed me simply for raising whistle blowing allegations. I do firmly believe that the whistleblowing and the direct challenge to a manager who asked me to falsify figures has impacted on the relationship with my line manager and colleagues and being detrimental to my ability to achieve CAS".*

240.8. The Claimant also mentioned that Yvonne Schofield had told her to "think about whether she wanted to go to Tribunal because it could be very costly for her".

241. Mr Carnaffan decided not to uphold the Claimant's appeal. The outcome was relayed to the Claimant in a meeting held on 14 April 2016 (the minutes are at pages 1986 to 1990).

242. Mr Carnaffan sets out in his witness statement the reasons why he rejected the Claimant's appeal. At the outset, he says that the appeal was not to be a re-hearing but rather "a chance to explain why the decision to dismiss her had been unfair or procedurally flawed, or that evidence had not been taken into account by the first hearing manager, Tesni Williams". In summary Mr Carnaffan's reasoning was as follows:-

242.1. He did not accept that the Claimant was unprepared for the meeting that took place on 28 April 2015. He says that the Claimant had not raised a grievance against Mr Barker which he would have expected her to do if she had been experiencing serious management issues. Furthermore Amanda Scott had asked the Claimant if she wanted to speak to her on a one to one basis but the Claimant said this was not necessary.

242.2. The Claimant had raised the issue of an extension of time to achieve CAS. Mr Carnaffan thought this was inappropriate as the issue that arose was her lack of ability particularly in report writing. He considered that Mr Barker had provided significant support to her including the holding of regular one-to-one meetings and putting her in touch with others such as Richard Kirk, Lyn Walton and Paul Vine.

242.3. Mr Carnaffan took the view that Mr Barker's decision taken as part of the process that the Claimant should only work upon one report at a time was good management. Mr Carnaffan considered that to be a "mechanism to help Judith submit and complete a successful report, without errors and encountering difficulties in using the system. I did not believe this would have impacted on her ability to demonstrate competence but allow her to build competence in getting something right before increasing volume or managing more than one report at a time, especially given that she had described them as challenging her".

242.4. The Claimant had had between 15 August 2015 and 10 February 2016 to find alternative employment. He considered that she had had enough support and that there are a number of self-help applications and interview guides available upon the Respondent's intranet.

242.5. There was no evidence that the Claimant had been treated any differently because of her contact with the compliance unit in relation to the alleged actions of Richard Barker.

242.6. There was nothing to suggest that being compelled to take her core leave in April 2015 had had any impact upon the Claimant's progress. Mr Carnaffan took the view that the requirement for her to take this two week period of core leave was with a view to assisting her so that she could come back from holiday afresh to face the challenges ahead.

242.7. The Claimant complained that Mr Barker had not observed the entirety of a customer appointment held on 23 July 2015. This was because he had wanted to support somebody else with a career development meeting. Mr Carnaffan agreed that Mr Barker could have acted more appropriately and sensibly but did not consider that this isolated incident was sufficient to change the decision given that the Claimant's failure to obtain CAS took place over the course of a year as opposed to being based upon this single observation.

243. Before announcing his decision, Mr Barker had spoken to Amanda Scott. She said that the Claimant had not been close to obtaining CAS and did not believe that a CAS extension was appropriate. Mrs Scott told Mr Carnaffan that the relationship with Mr Barker had improved when this had been discussed in April 2015.

244. Mr Carnaffan also wished to investigate the Claimant's assertions about Yvonne Schofield's input and involvement with the case. He therefore arranged for Amy Seymour to speak to her. The notes of that discussion can be found at pages 1927 to 1929.

245. Mrs Schofield's account is that she did discuss the issue of the costs of taking the matter to an Employment Tribunal in the light of the Claimant's comment that she would take matters all the way and sell her house in order to do so. Mrs Schofield said, "Sometimes the bank will ask an individual to pay the costs if a Tribunal is lost, not always but sometimes". She denied making the comment in a threatening way and said it was a response to the Claimant having brought the subject up. She accepted that she would not normally mention costs. She considered that the Claimant was "being the more frightening – unless we gave her a pay out she would go to a Tribunal".

246. Mr Carnaffan sent a letter to the Claimant confirming the outcome of the appeal. This is at pages 1991 to 1997 and is dated 15 April 2016. He set out in the letter his views about the impact of the whistle blowing claim upon the Claimant's performance, her relationship generally with Mr Barker, the issue of the annual leave in 2015 and Mr Barker's handling of the observation on 23 January 2015. These are, we think, accurately summarised in Mr Carnaffan's witness statement and in paragraph 242 above where we analysed his evidence.

247. The following points emerged from Mr Carnaffan's cross-examination:-

247.1. He did have the power to extend time for the Claimant to complete CAS if he felt that Tesni Williams' decision was incorrect.

247.2. He did not think that anything had emerged during the course of the hearing before the Tribunal which would have caused him to come to a different view had he known it at the time. Mr Carnaffan maintained this view notwithstanding Mrs Williams' evidence around Lucy Phillips' investigation and Vivienne Bee's email.

247.3. Mr Carnaffan maintained his view about the granting of an extension of time notwithstanding that only five out of 130 applications for an extension of the time to achieve CAS had been refused and Mr Barker's view when putting in place the PIP on 23 June 2015 that she could achieve CAS by 4 August 2015.

247.4. It was suggested to Mr Carnaffan that his consideration of the impact of the 'whistle blowing' upon the case had not been properly considered by him. It was suggested by Mr Mallett that it was not a question of whether Mr Barker had treated her differently because of what she had done but, rather, the impact of it upon her performance. Mr Carnaffan said that the Claimant had not raised this aspect of the matter with him. That is a somewhat surprising conclusion for him to have reached given the contents of the penultimate paragraph at page 1864 in which the Claimant says that after she had challenged Mr Barker about falsifying records "from that point on the style of management he had used was one she had never experienced in her 41 year career". She then goes on at page 1865 to say how that had impacted upon her relationship with Mr Barker.

247.5. Mr Carnaffan acknowledged that the Claimant had discussed ill health issues with him during the course of the appeal hearing,

that she had reduced her hours of work by 50% for a six week period and that she had not wanted to go off on sick leave. Mr Carnaffan did not have the occupational health reports before him. He appeared to take comfort from the fact that the Claimant was still at work. He acknowledged that Mr Barker had said in evidence before us that the ill health issue had impacted upon the Claimant's performance. Mr Carnaffan conceded that had he had the full picture about the Claimant's health that may have been material to his appeal.

247.6. Mr Carnaffan did not have before him the ER notes which record discussion that had taken place about the possibility of extending time for the CAS or Mr Barker's observation in his email to Vivienne Bee about an area manager having suggested a change of line manager.

247.7. When asked why Mr Carnaffan could not simply have extended time for her to be considered for the post in Birmingham he said, "I cannot recall why I didn't".

248. At paragraph 8 of his witness statement Paul Vine said that between May 2015 and September 2016 he directly supervised and assessed eight individuals in their efforts to obtain CAS status. Of those, only five achieved CAS. Mr Vine said that in one of the three cases of failure to achieve CAS consideration was given to an extension of time in one case. Mr Vine said, "I did not feel that extending the CAS period would have achieved anything, or resulted in the employee successfully achieving CAS. He had only completed three cases so in my view was not close to achieving CAS, and he had been given ample support. There were no exceptional circumstances referred to which supported a business case for an extension".

249. Yvonne Schofield said on 24 February 2016 that she had been involved with four "CAS fail cases". None of those four got extensions. We refer to pages 1927 and 1928.

250. The Respondent did not enlighten the Tribunal as to whether the cases referred to by Yvonne Schofield and Paul Vine were amongst those five cases where an extension had not been granted referred to by Mr Carnaffan in paragraph 31 of his witness statement. Included in the bundle is what was described as 'example letters to employees dismissed for failing to obtain CAS'. It seems from these letters (in particular that at page 2045B) that there is a requirement for exceptional circumstances to be demonstrated to achieve an extension of time.

251. On a different issue, Mr Yau said that there was no obligation upon the part of the Respondent to treat an employee who has made a protected disclosure (or claims that he or she has done so) more favourably than anybody else. Mr Yau accepted in contrast that were an employee to face redundancy then help is afforded to affected employees. He says in paragraph 51 of his witness statement that "a specific manager is often appointed who will meet with individuals [affected] and assist in carrying out a proactive search on the part of those at risk". He went on to say, "such a system is not however in place in Judith's situation, or anyone else who is searching re-deployment in the same or similar circumstances as her where they have been removed from role for capability reasons regarding performance".

252. Mr Yau confirmed in cross-examination that his understanding was that the same principle extended to employees who had made a protected disclosure: that is to say, the Respondent was under no obligation to treat such an individual more favourably than others who may have failed to meet the contractual requirements for their substantive role. That said, Mr Yau maintained that the Claimant had been given significant support in her search for alternative employment. She had a period of in excess of six months to seek an alternative position. During that time she was not given any duties to attend to and therefore could devote her whole time and attention to making job applications. Mr Yau pointed out that Yvonne Schofield had offered to assist the Claimant to secure an interview for any role that she wished to be considered for. The relevant references are in paragraph 54 of Mr Yau's witness statement.

253. We have already referred to Mr Osborne's unchallenged evidence. He said the Claimant operates with "utmost honesty and integrity". He also said that he had "never known an employee to be dismissed for not being able to write suitability reports as given the correct support and guidance this is very achievable". We refer to the second page of his witness statement. Although Mr Osborne was not challenged, Mr Barker took issue with Mr Osborne's evidence. He said that regulatory requirements have changed since Mr Osborne had worked in financial services.

254. Mr Osborne says that he witnessed the telephone conversation referred to at paragraph 208. He corroborates the Claimant's account that Mr Barker had said that with "a little more time" the Claimant could have achieved CAS. Mr Osborne says that he listened to this telephone conversation after the Claimant switched the telephone to loudspeaker mode.

255. We have made reference several times to the Respondent's UK whistle blowing policy (introduced into the bundle at pages 168A to 168C). Mr Mallett made several criticisms of the policy in his submissions. He described it as inadequate. He also said that there was no mention in the staff handbook about the Respondent's policy of affording protection to whistle blowers. He took us to page 158 of the bundle (that being part of the employee handbook commencing at page 130). Ms Richmond took issue with these submissions. She said that it is plain from page 158 that it is the Respondent's intention to protect whistle blowers. There is some force in Mr Mallett's submissions as there is no explicit statement of an intention to protect those undertaking protected disclosures. However, on a fair reading of page 158, the Tribunal determines that the clear intent of the Respondent is to provide protection for whistle blowers by providing the facility to report matters of concern to a designated department and developing the UK whistle blowing policy. This recognises a legal obligation to protect employees from victimisation should they report a genuine concern about malpractice.

256. We now turn to a consideration of the relevant law. All of the Claimant's complaints are brought under the Employment Rights Act 1996. She brings two complaints of unfair dismissal. The first complaint is of what is commonly referred to as 'ordinary unfair dismissal'. The second is a complaint under section 103A of the 1996 Act upon the basis that the reason or the principal reason for the dismissal is that the Claimant made a protected disclosure. The third complaint is brought under section 47B of the 1996 Act: that the Claimant was subjected to a detriment upon the grounds that she made a protected disclosure.

257. The right not to be unfairly dismissed is a statutory right to be found in Part X of the Employment Rights Act 1996. Section 98 of the 1998 Act provides that in determining whether the dismissal of an employee is fair or unfair it is for the employer to show one of the statutory permitted reasons. The relevant reason in this case relates to the Claimant's capability or qualifications of performing work of the kind which she was employed by the Respondent to do.

258. The Tribunal therefore has to determine whether the Respondent entertained a genuine belief that the Claimant was so incapable. The onus is upon the Respondent to show genuineness of that belief. Should the Respondent satisfy the Tribunal upon this issue then we must determine whether the Respondent entertained a reasonable belief that the Claimant was incapable of performing work of the kind that she was employed to do and that such belief was formed after having carried out as much investigation into the matter as was reasonable in the circumstances of the case. The burden upon the issues of reasonableness is neutral. The Tribunal must then go on to consider whether the Respondent acted fairly and reasonably in treating that as a sufficient reason to dismiss the Claimant in all the circumstances of the case in accordance with the provisions of section 98(4). That is to say, the determination of the question whether the dismissal is fair or unfair having regard to the reasons shown by the employer depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. That issue shall be determined in accordance with equity and the substantial merits of the case.

259. The Tribunal must therefore consider whether the decision to dismiss fell within the band of reasonable responses. The Tribunal must consider the reasonableness of the employer's conduct and not simply whether they themselves consider the dismissal to be fair. The Tribunal must not substitute its decision as to what was the right course for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the range of reasonable responses. If the dismissal falls within the band the dismissal is fair. If the dismissal falls outside the band it is unfair. The objective standards of the reasonable employer must be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed.

260. Upon a consideration of capability dismissals, the correct test of fairness is whether the employer honestly and reasonably held the belief that the employee was not competent and whether there was a reasonable ground for that belief. In a case of incapacity an employer will normally not act reasonably unless fair warning is given to the employee with an opportunity to mend his or her ways and show that he or she can do the job.

261. Whether, before dismissing on grounds of incapacity, an employer should offer the employee alternative work depends upon the circumstances of the case. There is no rule of law that an employer is obliged to create a special job for such an employee. What is reasonable is a question of fact and degree for the Tribunal.

262. As we have said, potentially fair reasons (including incapability) are provided for by section 98(1) and (2) of the 1996 Act. If the employer establishes one of these reasons the Tribunal must then go on to consider whether it acted reasonably in dismissing for that reason. There are however certain reasons for dismissal which can be described as automatically unfair in the sense that if one or more of these reasons is established the Tribunal must find the dismissal to be unfair and the question of reasonableness does not arise. Consideration of the reasonableness of the decision to dismiss is entirely irrelevant when it comes to claims based upon any of the statutory provisions that render a dismissal automatically unfair. One of those is to be found in section 103A of the 1996 Act: dismissal for making a protected disclosure.

263. Where an employee brings a complaint of automatically unfair dismissal it remains for the employer to prove a fair reason for dismissal. There is no burden on the employee either to disprove the reason put forward by the employer or to positively prove a different reason, even where the employee is asserting that the dismissal was for an inadmissible reason. However, the employee who positively asserts that there was a different and inadmissible reason for dismissal, such as making protected disclosures (as in this case), must produce some evidence supporting the case that there was an inadmissible reason and challenging the evidence produced by the employer. The employer can defeat a claim of dismissal for an inadmissible reason either by proving a different reason or by successfully contesting the reason put forward by the employee. If the Tribunal is not satisfied that the reason for dismissal is the reason asserted by the employer, it is open to it to find that it is the reason asserted by the employee, but it does not have to so find.

264. In determining a complaint of automatically unfair dismissal for having made a protected disclosure, the first issue to be decided is whether the disclosure in question is a 'qualifying disclosure'. The relevant statutory provisions are to be found at Part IVA of the 1996 Act. A qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the relevant failures listed in section 43B(1) of the 1996 Act.

265. It must then be determined whether the disclosure is protected under the 1996 Act in that it was made in accordance with one of the specified methods set out in section 43C to 43H: that is to say, the disclosure is made to the employer or others there specified and in the manner so prescribed. Once it has been established that the disclosure is made in the public interest, that the information being disclosed relates to one or more of the relevant failures listed in section 43B(1) and that the disclosure has been made in accordance with one or more of the specified methods then the question arises as to whether the reason or if more than one the principal reason for dismissal was by reason of the protected disclosure. As the Claimant in this case also brings a complaint of detriment in employment pursuant to section 47B, the question arises as to whether she suffered the detriment by reason of having made a protected disclosure.

266. In relation to a whistleblowing detriment, the question for the Tribunal is whether the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the person

making the disclosure. It is for the Claimant to show that there was a protected disclosure, there was a detriment and the Respondent subjected the Claimant to that detriment. If that is done then the burden will shift to the Respondent to prove that the Claimant was not subject to the detriment on the ground of making the protected disclosure. The detriments to which the Claimant claims to have been subjected are those at paragraph 2 (a) to (l) at pages 78 to 81.

267. The term 'detriment' is not defined in the 1996 Act. It is broadly understood to mean that the employee has been put under a disadvantage to the employee's detriment. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is whether the complainant is shown to have suffered a disadvantage of some kind.

268. Not all disclosures are protected by the 1996 Act. The following propositions are, we believe, an accurate summary of the legal position:-

268.1. Disclosure of information requires the person making the disclosure to convey facts. The making an allegation is not a disclosure of information although information and allegation might be intertwined.

268.2. A disclosure of information made for the purposes of seeking advice will not be protected if not made to the recipient in the recipient's capacity of employer.

268.3. The information must in the reasonable belief of the worker be made in the public interest and tend to show one or more of the six relevant failures. The question for the Tribunal is whether the worker reasonably believes that the information disclosed shows that there has been a relevant failure and not whether the worker reasonably believes there to have been a relevant failure.

268.4. The question of the Claimant's belief is subjective. There must be a reasonable belief on the part of the worker making the disclosure. However, the question of the reasonableness of the Claimant's belief is objective. The question is what a person in the position of the worker making the disclosure reasonably believes to be wrong doing. Truth and accuracy are therefore relevant to the worker's reasonable belief.

268.5. A worker may make a qualifying disclosure even if he or she was mistaken as to the existence of any criminal or legal obligation. However, there must be more than simply a belief that certain actions are wrong if the relevant failure is one of a breach of a legal obligation. The Tribunal must consider what legal obligation the Claimant believed to have been breached.

268.6. The worker's belief that the disclosure was made in the public interest must be objectively reasonable.

269. Where a Tribunal finds that a complaint of unfair dismissal (ordinary or automatic) is well founded it must decide the appropriate remedy. The relevant statutory provisions are at sections 112 to 126 of the 1996 Act.

270. At the private Preliminary Hearing held on 6 October 2016 the Employment Judge directed that this hearing should consider the remedy

issues referred to in paragraphs 2.1.4 and 2.1.5 of the list of issues at page 73A. That is to say:

270.1 Whether any compensation awarded should be reduced by application of the principles in **Polkey v A E Deighton Services Limited** [1987] ICR 142 and, if so, what reduction is appropriate; and

270.2 Whether compensation awarded should be reduced upon the grounds that the Claimant's actions caused or contributed to her dismissal and if so what reduction is appropriate?

271. The relevant statutory provisions pertaining to monetary awards are to be found at section 118 to 126 of the 1996 Act. The basic award is calculated by reference to a statutory formula. The basic award may be reduced in circumstances where the Tribunal considers that any conduct of the Claimant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, than the Tribunal shall reduce that amount accordingly.

272. The compensatory award is in such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. The Tribunal must determine that there was conduct on the part of the employee which was culpable or blameworthy in the sense that it was foolish or perverse or unreasonable in the circumstances. The conduct must have contributed to the dismissal. The Tribunal must also consider it to be just and equitable to reduce the assessment of the employee's loss.

273. Accordingly, when considering contributory conduct, the focus shifts from an analysis of the employer's conduct to the employee's conduct. There is therefore a clear distinction between considerations relevant to a consideration of the fairness of dismissal on the one hand and those relevant to a consideration of contributory fault on the other. The latter requires findings of fact as to what (if any) blameworthy conduct on the employee's part the employer knew about at the time of dismissal. The question of fairness on the other hand entails the Tribunal considering whether in all the circumstances the employer's decision to dismiss fell within the band of reasonable responses.

274. A complaint that a worker has been subjected to a detriment for making a protected disclosure must be presented to an Employment Tribunal before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where the act or failure to act is part of a series of similar acts, the last such acts or failure to act. The Tribunal has the power to extend the time limit for a reasonable period if it is satisfied that it was not reasonably practicable for the complaint to have been presented in time.

275. Where an act extends over a period of time, the date on which it will be deemed to have been done for the purposes of calculating when the time limit begins to run in a detriment complaint is the last day of that period. It is necessary to concentrate on identifying the act or deliberate failure to act that caused the detriment and not look at whether the Claimant

continues to suffer the detriment. A continuing detriment is not to be confused with a continuing cause. Absent a connecting rule, practice, scheme or policy what must be shown by the Claimant is that there is some relevant connection between the acts within the limitation period and those outside of it which make it just and equitable for them to be treated in time. The necessary connection must be that they were part of a series and that they were similar. All the circumstances must be considered including the connection between the alleged perpetrators, whether their actions were organised or concerted in some way and their reason for doing what was alleged.

276. We shall start with the protected disclosure complaints. These were identified at the private Preliminary Hearing as those at paragraph 1 of pages 44 and 45 of the bundle. That document is the Claimant's further and better particulars of her claim. At paragraph 3 of the case management summary (at page 71) the Employment Judge recorded that the two disclosures were, in summary: that the Claimant was asked by Mr Barker to falsify customer and diary records; and a failure upon the part of the Respondent to follow proper examination procedure.

277. The Claimant says (at page 44) that she made protected disclosures:-

277.1. Verbally to Helen Cartenian on 28 November 2014.

277.2. Verbally to Sheldon Rowles on 2 December 2014.

277.3. In writing to the Respondent's compliance investigation team at the end of December 2014.

277.4. During a formal telephone interview with Alison Clarke held in January 2015.

278. It is the Claimant's case that she disclosed information which she reasonably believed tended to show that there had been, was being or was likely to be a failure to comply with a legal obligation. Thus, the Claimant says that the relevant failure is that in section 43B(1)(b) of the 1996 Act.

279. It was rightly conceded by Mr Barker and Mr Yau that a disclosure of information about falsifying records would fall within the list of protected disclosures set out at page 158 (being part of the Respondent's employee handbook). We agree with Mr Mallett that a failure upon the part of the Respondent to keep accurate customer records and to falsify those records would be a breach of a legal obligation. In his submissions (at paragraph 20) he said that "this information constituted a breach of an employee's contract of employment, plus a breach of the obligations imposed by the FCA and breach of the Data Protection Act." This submission was not challenged by Ms Richmond. It is difficult to see how it could have been. We add to this that falsification of records may also be in breach of the criminal law. We need not descend into the detail of the particular legal provisions in question nor were we addressed upon this aspect of matters.

280. We also accept that a disclosure of such activities upon the part of a bank is in the public interest. It must be in the public interest that banks and similar organisations keep accurate records of customer activity. A failure so to do would be of the upmost concern to the customers themselves involved in the transactions and the public at large.

281. From this promising beginning (from the Claimant's perspective) we now turn to the individual disclosures for which she contended (those being listed at page 44 of the bundle). We start with that at paragraph 277.1. In our judgment, the disclosure by the Claimant to Helen Cartenian of concerns she had around her understanding of what Mr Barker was asking her to do was made confidentiality for the purposes of advice. We refer in particular to paragraphs 45 and 60 above. It is clear from the email at page 800 that the Claimant had confided in Helen Cartenian who had advised her of her options. We also refer to paragraph 51 of the Claimant's witness statement. The disclosure of information to Helen Cartenian was not made in the latter's capacity of employer (or the embodiment of the employer). It is plain from the tenor of the email at page 800 that the Claimant was not expecting Helen Cartenian to take any action on her behalf. She says as much at paragraph 51 of her witness statement. The Claimant resolved to pursue the matter herself. The disclosure of information to Helen Cartenian was thus not made in accordance with any of the provisions of section 43C to H of the 1996 Act.

282. We now turn to the verbal communication of 2 December 2014 (at paragraph 277.2). We refer to our findings of fact at paragraph 57. We accept the Claimant's account that she conveyed information to Mr Rowles as to what she had understood Mr Barker to be asking her to do. The Claimant's account was straightforward: she says that she informed Mr Rowles of Mr Barker's request for her to falsify customer records and that she raised the matter of alleged ongoing cheating in examinations. The Tribunal did not have the benefit of evidence from Mr Rowles. There was no written record from him or from the Respondent about this telephone call. The Claimant's account is credible for the reasons that we give in paragraphs 57 to 60.

283. In our judgment, that disclosure was made to Mr Rowles as a personification of the employer in accordance with the employee handbook at page 158. The Claimant contacted Mr Rowles who works in the Respondent's compliance team. Would-be whistle blowers were encouraged to contact the compliance team with their concerns and that is what the Claimant did. We therefore hold this to be a disclosure of information pursuant to section 43C of the 1996 Act.

284. We also hold that the Claimant had a reasonable belief that the disclosure was made in the public interest and tended to show the relevant failure. In our judgment, she reasonably believed at this stage that Mr Barker was, essentially, encouraging her to dress up routine contact with clients as individual reviews. We hold that the Claimant reasonably believed that that was what she was being told to do by Mr Barker and that she reasonably believed this to be an improper course of conduct and in breach of her own, Mr Barker's and the Respondent's legal obligations to maintain accurate customer records.

285. It is not necessary for the Claimant to identify precisely the source of the legal obligation she believed was being breached or was likely to be breached. In our judgment, the Claimant can reasonably have apprehended a breach of legal obligation by virtue of list of protected disclosures at page 158. Those include fraud or deliberate error in preparing, evaluating, reviewing or auditing any false statement, fraud or deliberate error in recording and maintaining financial records of any group company and deficiencies in or non-compliance with any group company's

internal accounting controls. Such wide definitions are sufficient in our view to catch both the Claimant's concerns regarding the examination irregularities as well as her concerns about what the Claimant understood her instructions to be from Mr Barker. In any event, the Claimant could, in our judgment, reasonably understand the alleged examination irregularities to be a breach of FCA requirements. On any view, that would be a reasonable view to hold.

286. We now turn to the third protected disclosure (at paragraph 277.3) which is the written complaint to the compliance team. This is referred to in paragraphs 85 and 86 of our reasons.

287. In our judgment the Claimant provided information to the compliance team both about Mr Barker's instructions and the examination issue. The provision of the information at pages 895 to 900 was made by the Claimant to the Respondent's compliance team as the personification of the Respondent in its capacity as the Claimant's employer. The disclosure therefore was made in accordance with section 43C of the 1996 Act.

288. It is conceded by the Respondent that the Claimant made protected disclosures in relation to the examination issue in the letter at pages 895 to 900. Absent that concession, we would in any event have made a finding to that effect for the same reasons as at paragraphs 282 to 285. We have determined that the Claimant had a reasonable belief about the examination irregularities that she had herself witnessed. It is not necessary, of course, for the Claimant to be correct that there were examination irregularities. It is sufficient that she had a reasonable belief that such irregularities were ongoing. The Claimant gave a detailed account of her concerns (in particular at pages 897 and 898). There was nothing emanating from the Respondent to persuade us that the Claimant's belief was simply unfounded and without any basis.

289. We find that the written disclosure to the Respondent's compliance team about Mr Barker's activities was one that was not held upon reasonable grounds. Matters had moved on after the verbal disclosure to Sheldon Rowles. Of great significance, in our judgment, is the Claimant's annotation following the discussion with Mr Barker of 2 December 2014 and to which we refer at paragraph 63. To reiterate, the Claimant says here that she now had clarity in that what she describes as a "quality telephone call with added value" should be recorded as an IR to reflect the work being undertaken. That contemporaneous note accords with the account that Mr Barker gave to us as to what he was telling the Claimant to do. We refer to paragraph 42 above.

290. One of the difficulties the Claimant had in her PRM role was in understanding what should be recorded and where. Mr Barnsley, very early on in her time in her substantive role, had sought to clarify matters for her (paragraph 44).

291. The Tribunal does have some sympathy with the Claimant. The Tribunal searched in vain amongst the voluminous papers and witness statements for a clear and concise explanation from the Respondent about their systems and what needed to be recorded where. That said Mr Barker appeared to have provided clarity to the Claimant on 2 December 2014. The Claimant recorded her understanding that meetings (whether over the telephone or face to face) which added value and which were of substance should be recorded as individual reviews. It was plain,

therefore, in our judgment that Mr Barker had disabused the Claimant of the understanding that she had reasonably formed on 27 November 2014 that everything (whether routine or not) should be recorded as an IR. In our judgment, therefore, from 2 December 2014 onwards, the Claimant cannot have had a reasonable belief that Mr Barker was encouraging her to record client activity inaccurately. Reasonableness of belief is to be assessed at the time of the alleged disclosure and therefore, in our judgment, while the Claimant reasonably had that belief on the morning of 2 December 2014 that ceased to be the case following the one-to-one later the same day. Therefore, we hold that the Claimant did not entertain a reasonable belief that the information that she supplied to the compliance team about falsification of records tended to show a failure or a likely failure on the part of the Respondent to comply with its legal obligations.

292. For the same reasons, we determine that the fourth alleged disclosure (at paragraph 277.4, being the information supplied to Alison Clarke on 22 January 2015 about the same matter) also fails. The relevant findings of fact about that disclosure are at paragraphs 106 to 108. Discussion with Alison Clarke around the exam issues was recorded at pages 915 to 923. For the same reasons as given in paragraph 288, we hold that the Claimant's disclosure of information around examination irregularities to be a protected disclosure.

293. In summary, therefore, our judgment is that:-

293.1. There was no protected disclosure prior to 2 December 2014.

293.2. The Claimant did make a protected disclosure about both the individual review issue and the examination issue to Sheldon Rowles on 2 December 2014.

293.3. The Claimant made protected disclosures about the examination issues in her written complaint to the compliance team and her interview with Alison Clarke.

293.4. The Claimant did not make protected disclosures about the incident review falsification issue in her written report to the compliance team or her interview with Alison Clarke.

294. There was no suggestion made by or on behalf of the Claimant that Mr Barker subjected her to a detriment because of the protected disclosure she made about the examination irregularities. This was unsurprising as there was no suggestion that the administration of examinations or anything to do with them fell within Mr Barker's remit. All of the alleged detrimental treatment of the Claimant by Mr Barker centred upon the Claimant's complaint about how he wished her to deal with individual reviews. Given the principles set out at paragraph 266, it is necessary to make findings upon each matter listed at paragraph 2 (a) to (l) of pages 78 to 81 in order to determine whether each was a detriment and whether the Respondent subjected her to that detriment and whether (the burden being upon the Respondent) the Claimant was subjected to detriment by reason of having made the protected disclosure. It is convenient, we think, to consider each alleged detriment in turn and do so in paragraphs 332 to 334 at the end of these reasons. In sum we find that where the Respondent subjected the Claimant to detriment it was not by reason of

the fact that the Claimant made the protected disclosures at paragraphs 293.2 and 293.3 around the examination issues.

295. We adopt a similar approach upon the question of the causal effect (if any) of the disclosure (summarised at paragraph 293.2) made by the Claimant to Sheldon Rowles about Mr Barker and his wish for the Claimant to record the individual reviews as she understood it matters on the morning of 2 December 2014. In essence, there was no evidence that Mr Rowles informed Mr Barker of the Claimant's discussion with him that day. Mr Rowles did nothing with the information provided to him by the Claimant. In reality, the verbal complaints went nowhere. Mr Barker did not know for certain that the Claimant had raised a compliance issue about him until 16 February 2015 (paragraphs 131 to 136). It is our judgment that Mr Barker in fact had a reasonably held belief that it was the Claimant who had referred matters to the compliance unit before Mrs Scott told him on 16 February 2015. This is because Annie Dost had told Mr Barker that she had been told by the Claimant of the Claimant's report to the compliance team. We refer to paragraph 135. In this conversation the Claimant was referring to the written report that she had submitted and not the verbal report to Sheldon Rowles on 2 December 2014. There was, in summary, simply no evidence that the verbal report to Sheldon Rowles which had status of a qualifying disclosure was causative of the Claimant's dismissal or any detriment of her.

296. There was no suggestion upon the part of the Claimant that the disclosures that she had made about examination irregularities or the disclosures to Sheldon Rowles on 2 December 2014 in any way influenced the Respondent's decision to dismiss her. It is worth repeating that there was no evidence that Mr Rowles informed Mr Barker of the Claimant's discussion with him that day. Mr Rowles did nothing with the information provided to him by the Claimant. In reality, the verbal complaints went nowhere. The suggestion that that these disclosures had influenced Mrs Williams and Mr Carnaffan was not put by Mr Mallett. Thus, the Claimant has not shown there to be an issue warranting investigation by application of the principles outlined at paragraph 263. .

297. We hold that the Tribunal does have jurisdiction to consider the Claimant's complaints of detriment for having made a protected disclosure. It is plain from the chronology that the Respondent's acts both before and after 16 January 2016 were around issues concerning the Claimant's performance. (The significance of 16 January 2016 is that the Claimant notified ACAS of the matter as required by section 18A of the Employment Tribunals Act 1996 on 15 April 2016). The Respondent is correct that Mr Barker left to go to Hong Kong on 1 October 2015. That said, there were common actors within the drama both before and after 16 January 2016. Mr Yau, Mrs Scott and Mrs Schofield were both heavily involved both before and after that date. In the final analysis, in all the circumstances, the Tribunal's judgment is that the Respondent's actions when considered in the round were concerned with issues around the Claimant's performance and the management of it. They were not specific and isolated acts. The Respondent's actions were organised and concerted in that they were all around concerns with the Claimant's performance and her relationship with Mr Barker. It is artificial to separate out acts both before and after 16 January 2016 when the story is one of continued management of the Claimant.

298. Although now otiose in the light of our findings, we ought to consider a remedy issue specific to the public interest disclosure complaints. That is the question as to whether or not the Claimant's disclosures were made in good faith. Compensation for unlawful detriment and automatically unfair dismissal suffered because of the protected disclosure may be reduced by up to 25% in the event that disclosure was not made in good faith. 'Good faith' must have a core meaning of honesty. Even if a worker has a belief in the truth of a statement, it does not mean that the statement is made either reasonably or in good faith, and good faith adds something to that of reasonable belief in the truth. Requirements such as reasonable belief and good faith may overlap. A disclosure is not made in good faith where the dominant or pre-dominant purpose was for some ulterior motive such as a personal gain or antagonism towards another rather than remedying the wrong which is occurring or has occurred.

299. The Claimant did have misgivings about Mr Barker even prior to him taking over as the Claimant's line manager (see paragraph 62). What lay behind those reservations was never explored in evidence and the Claimant was not asked to elaborate. The Tribunal does not find that the Claimant made the disclosures in bad faith with a dominant or pre-dominant purpose of personal gain or antagonism to Mr Barker. In our judgment, the Claimant continued to believe that he had directed her to record all customer contact as an individual review. As we say, that was not a reasonably held belief after 2 December 2014. Nonetheless, the Tribunal accepts that the Claimant believed that that was what she had been told to do and it was that that prompted her concerns and her report to the Respondent's compliance unit. It is our judgment that the Claimant was motivated by concerns that she had about what she had been told to do and that she suffered from a lack of clarity about her role which in turn fuelled those concerns. There was no suggestion that the Claimant had anything to gain personally by making the disclosures and, as we say, there was simply insufficient evidence upon which basis to form the view that she made the disclosures because of some personal grudge against Mr Barker. Therefore, had the Claimant succeeded with her protected disclosure claims we would have not reduced her compensation to reflect any lack of good faith.

300. This now leaves us with the ordinary unfair dismissal complaint. There is ample evidence within the bundle of the Claimant not performing well in her role and experiencing difficulties with it. In reality, there are numerous instances in our factual findings of poor performance. We did not understand it to be contended on behalf of the Claimant that the Respondent could not have entertained a belief based upon reasonable grounds when deciding to dismiss her that the Claimant was incapable of performing the job that she was employed to do by the Respondent. By the time that the decision was taken by the Respondent to remove her from her role she had failed to achieve CAS. She therefore did not possess the ability, the requisite authority or qualification to continue in the regulated role. On 6 August 2015 the Respondent genuinely believed that the Claimant was incapable (by reason both of ability and lack of qualification) to continue in the PRM role after 6 August 2015. In our judgment, that was a genuine belief and one formed upon reasonable grounds.

301. The Claimant failed to meet the requisite standards outlined at paragraph 12 of these reasons. Difficulties in role were identified from an early stage and continued throughout. A non-exhaustive list of the factual findings upon which basis we have determined the Respondent to have had a reasonable belief of incapability is paragraphs: 18, 20, 30 to 34, 61, 68, 69, 70, 74, 75, 77, 87, 98, 111, 147 to 151, 185 to 188, 194 to 196, 200, 201, 207, 210 and 230 to 235.

302. That being the case, therefore, the real issue is one of mitigation. Did the Respondent give the Claimant adequate opportunity to improve and achieve CAS? Did the Respondent act reasonably in considering alternative employment for the Claimant? Was dismissal within the range of reasonable responses?

303. In our judgment, there was significant mitigation in this case. This must be set in the context of the Respondent fairly recognising the Claimant as someone of ability. We refer for example to paragraphs 8 to 10, 29, 73 and 240.2. It is worth reminding ourselves that the Claimant had worked for the Respondent for many years. After a break in continuity, she was then approached by the Respondent. We refer to paragraph 10. The Respondent would hardly have done this had the Claimant not been of proven ability in her previous roles.

304. There were several impediments to the Claimant's performance in role and achievement of CAS within the requisite timescale. We shall consider each of these in turn.

305. The first of these was the poor management of the Claimant by Mr Barnsley. We refer to paragraphs 28, 30 and 68. These failures certainly got the Claimant off to a bad start. As we have said in paragraph 30, we accept the Claimant's account that she was told on 21 November 2014 that the intervention of Mr Barker would be "like starting from scratch". Effectively, therefore, the Claimant lost the best part of the first three months of the 12 month period that she was given to achieve CAS status.

306. The second mitigation advanced by the Claimant was her IT difficulties. We refer to paragraphs 35 to 39, 55, 76, 87, 98, 169 and 179. The Tribunal accepts this to be a source of frustration for the Claimant. They would certainly not have assisted the Claimant in her role.

307. The third issue was that of lack of adequate training. The Claimant requested refresher training on many occasions. We refer to paragraphs 33, 70 to 76, 79 and 186. Further, the Claimant benefited from the refresher training that was undertaken in May 2015 and from the simplification introduced by the Respondent for completion of the FPR. This training enabled the Claimant to show an improvement such that by the end of July 2015 she had completed two cases.

308. It is the case that the Respondent provided considerable buddy help. Mr Barker described this as "unprecedented". The Tribunal has no way of judging whether or not that is a true and accurate description of help afforded to the Claimant. Nonetheless, the Tribunal does accept that a great deal of help from buddies was provided. We refer to paragraphs 75, 80, 89, 91, 98, 161, 178 and 179. The difficulty for the Claimant however was that buddy help was provided very much on an *ad hoc* basis. It depended upon the vagaries of the availability of the buddies. That the

Claimant benefited from structured and formalised training was demonstrated by her performance after May 2015. Mr Barker recognised this as he maintained that the PDP of 1 May 2015 and the PIP of 23 June 2015 were challenging but realistic. We accept Mr Barker's case that he was not setting up the Claimant to fail. That being our finding it must be the case that Mr Barker recognised something in the Claimant and that it was realistic for her to attain the targets that he set for her. He also acknowledged in the conversation of 31 July 2015 that with more time the parties "could have cracked it".

309. All of these difficulties are to be set in the context of the principal impediment which was the Claimant's relationship with Mr Barker. A facet of these difficulties was the disclosure that she made about him (in particular that to the compliance unit on or around 7 January 2015).

310. The Claimant's perception of what she had been asked to do by Mr Barker regarding the individual reviews and her rumination over that instruction caused the Claimant to suffer ill health issues. These had a significant impact upon the Claimant. We refer to paragraphs 61, 69, 88, 92, 121 and 123. The ill health issues impacted upon her generally and in particular by resulting in her reducing her hours. We refer to paragraphs 92, 121, 123 and 126 and the occupational health reports at paragraphs 93, 94, 120, 121 and 126 to 129. The situation, accordingly, was that from shortly after the time that the Claimant was told that she would be starting from scratch (on 21 November 2014) following the false start with Mr Barnsley, the Claimant found herself having to deal with matters about which she was concerned to the extent to it affecting her health. Not only, therefore, had she lost the first three months of the 12 month period to achieve CAS but the next four months were blighted by reason of ill health issues, the impact of the pressure upon her of having made what she considered to be a public interest disclosure resulted in reduced hours and thus reduced efficiency. This situation pertained for around the four months between the end of November 2014 and March 2015.

311. Strain in her relationship with Mr Barker extended beyond the disclosure issue around the IRs. The Claimant encountered difficulties in her relationship with Mr Barker from the very first day. There was the difficult first meeting (paragraphs 22 to 27). There was the unsympathetic reaction from Mr Barker to the Claimant when the Claimant expressed reservations about what Mr Barker was asking her to do (or what she perceived him to be asking to do) around the individual review issue. We refer to paragraphs 41 to 44. There was then the issue around Mr Barker's reaction to the Ivan Willerton email (paragraphs 47 to 49).

312. This being said, it is not the case that Mr Barker was unremittingly hostile to the Claimant. The Claimant herself recognised an easing of the relationship around 2 and 3 December 2014 (paragraphs 63 to 65). This finding reinforces our judgment that after the Claimant obtained clarity (as recorded at paragraph 63) she could no longer hold a reasonable belief that Mr Barker was asking her to falsely record information about customers. She acknowledged the supportive nature of the one-to-one meeting held on 12 January 2015 (paragraph 90). Mr Barker also went easier on the Claimant than he needed to in terms of performance management. He acceded to her request to proceed by way of a PDP rather than the more serious PIP (paragraph 149). He also extended the PDP then in place (paragraph 179). The Claimant fairly acknowledged Mr

Barker to be concerned about her health and to have agreed to a reduction in her hours in accordance with occupational health advice. Mr Barker also congratulated her on passing examinations.

313. However, benign management was, from the Claimant's point of view, interspersed with difficult management. In addition to the issues that we have already referred to above, there were several incidents of great concern to the Claimant. There was the accusation that she had deleted Mr Barker's comments from the 29 December 2014 one-to-one (paragraphs 99 and 100). There was the failure to inform the Claimant that what she thought was a one-to-one scheduled for 19 January 2015 was in fact to be a fact find meeting (paragraphs 95 to 99).

314. The Claimant was became so concerned about his demeanour towards her that she was reticent to approach Mr Barker and ask to be excused from attendance at the course to be held in Manchester when very bad weather was forecast. We refer to paragraphs 101 to 105.

315. We observed at paragraph 166 Mr Barker's acceptance that on the one hand he was trying to strike a positive note with the Claimant and yet on the other hand was making negative comments about her to more senior management. There are plenty of examples of this. Mr Barker, very early on in the relationship, perceived that he needed to seek ER advice about how to manage the Claimant (paragraphs 50 to 55 and 84). In particular, there was the excoriating criticism of the Claimant by him in the Vivienne Bee email (paragraphs 152 and 157 to 159) and in the Lucy Phillips investigation (paragraphs 162 to 169).

316. The Claimant's perception of Mr Barker's management of her was not assisted by his decision to remove the Ryan case from her. We refer to paragraphs 111 to 113. In the Tribunal's judgment, Mr Barker's decision so to do was reasonable given the difficulties which the Claimant was having preparing the FPR for the Ryans.

317. In summary, therefore, it is plain that there were difficulties with the relationship between Mr Barker and the Claimant on both sides. The Respondent was faced with the situation where a poorly performing employee had reported her direct line management to the compliance unit. The Claimant perceived that she had made a protected disclosure. (The Tribunal has found that as a matter of law, the written disclosure to the compliance team received by the Respondent on 7 January 2015 was only, in law, a qualifying disclosure in relation to the examination issue. Nonetheless, the fact remains that the Claimant perceived herself to be a whistle blower about both the exam and the IR issues). The impact of this upon the Claimant's health and consequently of her performance in role was something which, in the Tribunal's judgment, the Respondent ought reasonably to have considered. This was recognised by Mrs Williams (as we say at paragraph 230.4). The Respondent's failure to recognise the impact of the disclosure issue upon the Claimant was something which, in our judgment, fell outside the range of reasonable responses.

318. The Respondent took comfort in the fact that the Claimant had not raised a grievance against Mr Barker. The Respondent sought to use this as justification for its failure to move the Claimant away from Mr Barker's line management. We have found as a fact that the Claimant was encouraged by Yvonne Schofield not to raise a grievance pending the outcome of the investigation by the compliance team. That said, whatever

Yvonne Schofield advised the Claimant is incidental to what, in our judgment, was the Respondent's poor management of the line management issue. We agree with Mr Mallett that Amanda Scott adopted a "terrible procedure" when determining how to proceed towards the end of April 2015. To leave the Claimant under the line management of Mr Barker in the circumstances was a decision that, in our judgment, plainly fell outside the band of reasonableness. We refer to paragraphs 134, 140, 156 to 158, 174, 180 to 184, 229.2, 230.11 and 230.14. If there was ever a case to warrant the removal of a poorly performing employee from the management of someone about whom she had blown the whistle (or at any rate regarded herself as having done so) and was experiencing significant difficulties (compounded by ill health as a result of that disclosure) then this case is it. The need to move the Claimant was recognised by Jane Phillips but those dealing with the matter failed to act.

319. In summary, therefore:-

319.1. Through poor management on the part of Andrew Barnsley, the Claimant had not received effective management prior to 1 November 2014. Her 'CAS journey' got off to a bad start.

319.2. The Claimant was informed that Mr Barker's intervention would be "like starting from scratch". She was told this on 21 November 2014.

319.3. Unfortunately, within a matter of days, the Claimant became very concerned about what Mr Barker was instructing her to do concerning individual reviews.

319.4. This caused the Claimant great anxiety which impacted upon her health. That her health was affected was corroborated by occupational health and her own General Practitioner's reports. This resulted in reduced hours and impaired effectiveness for a further period of four months.

319.5. The Claimant's complaints about inadequate training were not heeded until May 2015. Once she had undergone training she showed a marked improvement. This was demonstrated by the fact that she completed two cases by the end of July 2015. More pertinently, perhaps, Mr Barker recognised the improvement by setting her challenging but realistic targets to achieve CAS within the timescale set for her the previous August. We do not find that Mr Barker acted so as to set the Claimant up to fail.

319.6. Notwithstanding the reservations of an area director, the Respondent kept the Claimant under the line management of Mr Barker despite the significant difficulties that existed between them. The Respondent took misplaced comfort in the Claimant's failure to take out a grievance. This wrongly was to place the onus upon the Claimant when in reality it was upon the Respondent to properly manage the situation. The safeguard offered to the Claimant by Amanda Scott on 28 April 2015 was woefully inadequate for the reasons that we have given (in particular at paragraph 184) and which placed the Claimant in an invidious position.

320. In addition to these features, the Tribunal considers that the Claimant has made a valid point about the Respondent's approach to the whistle blowing issue. We refer to paragraphs 167 and 177. This corroborates the Claimant's case that the Respondent did not have in its mind at any stage the impact upon her of having taken the profound step of contacting the compliance team. A failure to remark upon Mr Barker's position that the Claimant should not have gone to the compliance team in the first place enables us to draw on inference that the Respondent did not have it at the forefront of their minds that the fact of having made the disclosure may reasonably be considered to have impacted upon the Claimant's performance. This was recognised by Mrs Williams before the Tribunal but not, it seems, at the time that she took the decision to dismiss the Claimant.

321. Further, the Respondent's position upon the question of an extension of time to achieve CAS was confused. Mr Carnaffan's evidence was that very few requests for extension of time were refused. This contrasted with the evidence of Mr Vine and the opinions expressed in the papers of Yvonne Schofield. The Tribunal accepts the Respondent's case that the written procedure requires exceptional circumstances to be shown to warrant an extension of time. This is the case as we can see from page 183. We know nothing of the circumstances of the other cases to which Mr Carnaffan refers. On any view, however, it is our judgment that ill health impacting upon a whistle blower and impacting upon that whistle blower's performance must fall within the category of exceptional circumstance contemplated by the policy document. This finding is underscored by the clear expectation and assumption upon the part of ER that Mr Barker had requested an extension of time given that the Claimant was struggling in her role. That expectation coupled with Mr Carnaffan's evidence about only five requests having been refused out of 135 leaves the Tribunal to believe that there was an expectation that extensions of time to complete CAS were frequently requested and granted. We refer upon the issue of extensions of time to paragraphs 148, 195, 200 to 209, 219.16 to 219.17, 227 and 229.4.

322. Given all of the circumstances, it is our judgment that the decision taken by the Respondent to bring the Claimant's contract of employment to an end and not uphold her appeal fell outside the band of reasonable responses of the reasonable employer. This judgment is reached taking into account the size and administrative resources of the Respondent's undertaking. The granting of further time for the Claimant to prove her worth and achieve CAS would have been of little detriment to the Respondent given its resources. On the other hand, the impact to the Claimant of not giving her further time was significant in that it led to the loss of her regulated role and ultimately her employment. In our assessment of the equity of the situation we have taken into account the factors referred to at paragraphs 302 to 321 above.

323. In the circumstances, it our judgment that the decision of Mrs Williams on 13 November 2015 to terminate the Claimant's contract of employment fell outside the range of reasonable responses of the reasonable employer. Mrs Williams, in our judgment, failed to consider all of the factors. Had she done so, then, in our judgment, no employer acting reasonably would have taken the decision that she did. Mr Carnaffan, similarly, did not

properly consider all of the issues to which this case gives rise and by rejecting the appeal acted outside the band of reasonableness.

324. Of particular significance upon a consideration of Mrs Williams' decision was the concession that she made about the impact of the disclosure upon the Claimant's relationship with Mr Barker and the impact upon the Claimant's health of it. Of particular significance upon our consideration of Mr Carnaffan's decision was the concession given in his evidence that had he had before him the full picture around the Claimant's health that may have been material to the decision he made on appeal.

325. There was also no consideration by either the dismissing or appeals officers that the Claimant had had no input into the decision to remove her from her regulated role on 6 August 2015. It appears that the Claimant was told she was to be removed from her role on 31 July 2015 (paragraph 208). She was not warned of the possibility of removal from her role when she was summoned at short notice to the meeting of 6 August 2015 (paragraphs 210 to 212). The Claimant was unaccompanied at the meeting of 6 August 2015. The Claimant was simply presented with a *fait accompli* on 6 August 2015. There was no evidence that Mr Barker or anyone else within the Respondent had at that time considered all of the features with which we have been concerned and reached a reasoned decision upon the issue of whether or not an extension of time should be granted to the Claimant to achieve CAS. Contrary to ER expectations Mr Barker never in fact made that request on the Claimant's behalf.

326. Mrs Williams was not fully cognisant (or made fully cognisant by Mrs Scott) of the health issues that had beset the Claimant. We refer to paragraph 226. There was no evidence that Mrs Williams or Mr Carnaffan were privy to the Vivienne Bee emails (and in particular the question of the area director's suggestion that a change of line manager was appropriate).

327. Our finding that the Respondent acted outside the range of reasonable responses in dismissing the Claimant from her substantive role and refusing CAS extensions (which both Mrs Williams and Mr Carnaffan accepted they had authority to grant) renders the dismissal unfair. This was compounded by the Respondent's failure to re-deploy the Claimant to the MPM role (paragraph 227). Mrs Williams' evidence was clear. It was within the gift of the Respondent to assign the Claimant to the MPM role. We refer to paragraphs 227 and 228. We make this finding notwithstanding the contents of the email at page 1557. The issue of the email to the Claimant about the MPM role was not raised with her in cross-examination. We therefore find as a fact that the Respondent could have found an alternative role for the Claimant and did not do so. As we have said, what is reasonable upon the issue of alternative work is very much a question of fact and degree for the Tribunal. In these circumstances, it plainly fell outside the range of reasonable responses for the Respondent to fail to have taken effective steps to re-assign the Claimant to the MPM role. This brought with it the prospect of starting again in order to achieve CAS. There is no basis for us to find anything other than that this would have been an attractive proposition for the Claimant. The Claimant was willing to look at and consider alternative roles as we have seen (at paragraphs 19, 71, 89, 127, 137 and 211).

328. Our findings upon the issues concerning the Claimant's substantive role and the MPM role render otiose further considerations around the

Respondent's efforts to find alternative employment for the Claimant. We agree with Ms Richmond that ample opportunity was given to the Claimant after 6 August 2015 to find an alternative role. We find compelling her submissions that the assistance given the Claimant by the Respondent was reasonable. It cannot be said to fall outside the band of reasonableness for the Respondent to have failed to render any further assistance. That said, the Respondent's defence upon the issue of alternative work founders upon the rock of the MPM role referred to in paragraphs 227 and 228 and the failure to give any proper consideration to an extension of time to enable the Claimant to achieve CAS in her substantive role in any event.

329. We agree with Mr Mallett that there is no scope to make any reduction from any basic or compensatory awards made in favour of the Claimant on account of contributory conduct. We do not understand the Respondent to be making any submissions that there should be. The issue was not addressed in Ms Richmond's written submissions. On any view, the Claimant did not act in a foolish, unreasonable or bloody minded fashion such as to warrant on just and equitable grounds a reduction on account of contributory conduct. The Tribunal is satisfied that at all times the Claimant did try her best to achieve the requisite standards. She fell short. She did not achieve the standard because of innate difficulties that she found with the role and the several significant mitigating factors with which we have been concerned.

330. The Tribunal does not consider that it is in a position to assess, at this stage, what would have happened had the Respondent adopted a fair procedure and not dismissed the Claimant for incapacity. Upon the question of an extension of time to achieve CAS, several difficult issues arise. How long would the extension of time have been granted for? What were the prospects of the Claimant achieving CAS? What would have happened had the Claimant failed to achieve CAS status following the granting of an extension of time? Would the Claimant have taken the MPM role and if so how long would she have lasted in that role? These **Polkey** issues are matters best left to the remedy hearing which had been provisionally listed for 6 July 2017.

331. As the Claimant has succeeded in part, the remedy hearing shall now proceed. Should the parties consider that the matter may benefit from a further private Preliminary Hearing in front of the Employment Judge then they may apply accordingly.

332. We now set out, for the sake of completeness, our findings upon the issue of each of the whistle blowing detriments set out in the Claimant's further and better particulars. We adopt for convenience Ms Richmond's headings in her submissions for each of these:

    (a) *28 November 2014: RB telling C that she would "end up being performance managed".* The relevant findings of fact are at paragraphs 30 to 33, 44 and 52 to 54. We do not find performance management to be a detriment. On the contrary, whilst such may be unwelcome as far as a poorly performing employee is concerned, it is in fact to that employee's benefit with a view to enabling the employee to perform and remain in his or her role. In any event, on any view, Mr Barker informing the Claimant that she would "end up being performance

managed" pre-dated the disclosures summarised at paragraph 277 in any event. The Respondent therefore did not inform the Claimant of this by reason of her having made the disclosures but, rather, because of her poor performance.

(b) *23 January 2015: RB removing an ongoing case from C (customer Ryan).*

The relevant findings of fact are at paragraphs 111 to 116. We can accept this to be a detriment as on any view the removal of a case from the Claimant would be to her disadvantage in seeking to achieve CAS status. We are satisfied that the Respondent has demonstrated that the reason for the removal of the Ryan case from the Claimant was because of Mr Barker's concerns about the Claimant's poor handling of it and not because she had made any of the disclosures at paragraph 277.

(c) *19 January 2015: RB arranging a fact find meeting with C.*

Relevant findings of fact are at paragraph 95. Again, we can accept that subjecting the Claimant to the rigours of a fact finding meeting is a detriment as it puts her at a disadvantage. We find that this was done by the Respondent because of Mr Barker's concerns about the Claimant's poor performance and not because of the disclosures. The reason for the fact finding meeting was that the Claimant had continued to fail to undertake the tasks requested (page 887). As a result Mr Barker was advised by ER to proceed to a fact find meeting with the Claimant (page 2013).

(d) *4 March 2015: RB rejected C's expenses claim for a hire care, claiming it was not completed correctly and that basic tasks were challenging for C.*

The relevant findings of fact at paragraphs 141 to 144. Again, we can go some way with the Claimant and agree with her that Mr Barker rejecting the expenses claim was a disadvantage. He was wrong to do so. We agree with the Respondent that the reason why he did so was because of a misunderstanding upon his part. He made a genuine mistake. When it was pointed out he approved the Claimant's expenses claim. He did not wrongly reject her claim because of the disclosures.

(e) *19 June 2015: RB told C that the time for taking the CAS exam had been extended.*

The relevant findings of fact are at pages 189 to 192. We find that the Claimant was not disadvantaged by Mr Barker's conduct upon this issue. Again, we accept the Respondent's case that he made the genuine mistake. This was not motivated in order to victimise the Claimant because of the disclosures. Mr Barker took steps to ensure that the Claimant was not disadvantaged in any way and no detriment occurred to her. The Claimant accepted that Mr Barker's incorrect and mistaken belief did not impact upon her (page 2045AS).

(f) 23 July 2015: Just before C met a customer that would go towards C achieving CAS, RB told C she had failed an exam, when she had actually passed.

The relevant findings of fact are at paragraphs 194 and 197. We accept this to be a detriment to the Claimant as it may be considered to disadvantage her. On any view, being told that she had not passed an exam when she had done so is unfavourable treatment. We accept the Respondent's case that it was not uncommon for incorrect records to be maintained by the Respondent. Mr Barker's conduct was not therefore materially influenced by the disclosures but rather because he had been informed that regional support had no record of her and several others taking the test.

(g) July 2015: RB regularly asked C what her contractual notice period was.

The relevant findings of fact are page 198. It is difficult to see how this can be said to be a detriment. The Claimant's contract of employment says what it says. The employer asking the Claimant to confirm the length of her notice period cannot therefore be said to disadvantage her. In any event, Mr Barker was motivated to act as he did at the request of ER. The circumstances were that there was no readily accessible information about the Claimant's notice period in the Respondent's possession. Surprising as this may be, that is the fact of the matter. Again, Mr Barker was not motivated to victimise the Claimant by reason of the disclosures.

(h) June and July 2015: RB insisted that one CAS case be dealt with at a time, and reviewed at a time.

There is confusing evidence advanced by the Respondent upon this issue. On the one hand, we have found that Mr Barker encouraged the Claimant to work on more than one case at a time. We refer to paragraph 185. In contrast, Mr Carnaffan found that the Claimant was in fact instructed only to work upon one case at a time (paragraph 242.3). We find Mr Barker's evidence that the Claimant was encouraged to work on more than one case at a time to be the more persuasive version of events. This was recorded in the contemporaneous records (for example at page 1124A, 1149A and 1168B). While the Respondent's evidence upon this issue is somewhat unsatisfactory it is possible that Mr Carnaffan has simply misunderstood the position. Mr Barker was line managing the Claimant and is thus more likely to be aware of his instruction in this aspect of the matter. Therefore, we find that the Claimant was not requested to only work upon one case at a time and this allegation therefore fails on the facts.

(i) March and July 2015: R did not allow C an extension of time to achieve CAS.

The relevant findings of fact are at paragraphs 148, 195, 200 and 202 to 208. Plainly, the refusal to allow an extension of

time was to disadvantage the Claimant. The refusal put her in the position that she lost her regulated role and ultimately her employment. We are satisfied however upon the Respondent's evidence that the Respondent's refusal not to allow her an extension of time was because of the belief held by the Respondent that the Claimant was someway off achieving CAS and had not brought her case within any of the exceptional circumstances such as to justify an extension. We have determined, of course, that the decision to dismiss her and to refuse an extension of time fell outside the range of reasonable responses. However, the fact remains that that decision was not taken by the Respondent because of the disclosures. It is significant, upon this issue, that the disclosures did not directly (or even indirectly) implicate Mrs Williams and Mr Carnaffan. Who were the decision makers and who had it in their gift to reprieve the Claimant and grant her an extension of time. We find that they were motivated not to do so by reason of their belief in the Claimant's poor performance and not by reason of any of the disclosures.

(j) 6 August 2015: R removed C from her role as PRM, caused by RB's deliberate attempts to prevent C achieving CAS.

The relevant findings of fact are at paragraphs 210, 211 and 212. Again, the removal of the Claimant from her regulated role was plainly a detriment. We have determined however that the reason for removal was the Claimant's failure to meet the competency requirements of CAS. The decision to remove her was taken by Mr Barker. We are satisfied however that Mr Barker took this decision because of concerns about the Claimant's performance. He did not do so by reason of the disclosures.

(k) 13 November 2015 and 10 February 2016: C given notice on 13 November 2015 and dismissed on 10 February 2016.

The relevant findings of fact are at page 229. Again, being given notice is plainly a detriment. Notice was given to the Claimant because she had not achieved the requisite CAS status and the dismissal became effective because she had not found an alternative position.

(l) RB gave C a performance rating of 4 (improvement required) at mid year and end of year 2015.

The relevant findings of fact are at pages 213 and 234. A poor performance rating is plainly a detriment to the employee. However, that was upon the basis of the Claimant's poor performance and not because of the disclosures.

333. It will be appreciated that these findings are in any event academic given that we have determined that the public interests disclosures made by the Claimant were around the examination irregularities and the information given to Sheldon Rowles on 2 December 2014. We have determined that none of those disclosures were causative of any detriments to the Claimant or her dismissal for the reasons already given. It was the Claimant's case that all of the detriments at paragraph 323 were

attributable to her report to the Respondent's compliance team. We determined that is not to be a protected disclosure. Our findings upon the detriment issues are therefore given for the sake of completeness.

334. We then refer to the further detriments listed by the Claimant in her further particulars. Again, for the same reasons, these findings are made for the sake of completeness:-

(a) *Decision not to support C with training (C paid for AM certificate in money laundering).*

The relevant findings of fact are at paragraph 219.9 regarding the certificate. We find reasonable the Respondent's position that it would not fund the money laundering training where there was no guarantee that the Claimant would be suitable for a role at the end of it. It is difficult to see why this decision is impugned as unreasonable where no benefit may have flowed from it for the Respondent. She was not doing any work other than applying for jobs once she had been removed from her substantive position. The Tribunal can understand how subjectively the Respondent's refusal to pay for the training would be perceived as detrimental to the Claimant. However, this was entirely voluntary upon her part and there was no obligation upon the Respondent to pay for it. It is difficult therefore to see how that may be said in law to be a detriment. In any event, it was not motivated in our judgment by any of the disclosures but, rather, by the Respondent's reasonable perception of the prospects of the Claimant achieving a role in the Respondent's organisation and the lack of benefit they may gain from funding the course. .

(b) *Vacancies in Birmingham that with minimal or no re-training the Claimant would have been able to undertake.*

The Claimant was free to apply for whatever job she wanted and indeed had applied for roles in Birmingham. We refer to paragraph 238. Other than Sheldon Rowles, none of the managers who rejected the Clamant when she applied for these positions knew of the disclosures. The reason why the Claimant was subjected to the detriment of not having her applications taken further was therefore because of her unsuitability for the roles and not because of the disclosures. For the reasons already given Sheldon Rowles took the information furnished to him on 2 December 2014 no further.

(c) *Support not as good as on previous occasions when C was supported to move to a different sector and lack of influence to secure CA position.*

The Respondent's position is set out in the evidence of Mr Yau summarised at paragraphs 251 and 252. There is no obligation in law to provide a whistle blower with more favourable treatment than others who have failed to meet the contractual requirements of their role. Again, we can accept that the Claimant was subjected to a detriment in that she did not get the same level of support as she had on previous occasions. The reason why that support was not provided

was because she was not in a redundancy situation. It was not by reason of being a whistle blower. The Respondent would have treated any employee found to be incapable in the role for any reason the same as they did the Claimant.

(d) *Withdrawal of support to give to gain interviews where reason given was factually untrue eg Ken Yau saying C had raised a grievance against member of HR team.* The relevant findings are at paragraphs 232 and 233. This complaint centered upon the Claimant's complaint about Yvonne Schofield's erroneous advice that a fixed term contract would not be sufficient for the Respondent to retract the Claimant's notice. This was nothing to do with the disclosure issue and it was not put to Mr Yau that he did withdraw the support from Yvonne Schofield because of the Claimant's disclosures. The reason why she was withdrawn as support was plainly the Claimant's complaint about Yvonne Schofield.

(e) Disabling of the Claimant's system for one month (claimed by R to be 3 days) preventing C from seeking alternative roles.

This fails on the facts for the reasons given at paragraphs 234 and 235.

(f) Changes in dismissal date disrupted C's job search and the time allocated was insufficient to complete the average recruitment process within R and *refusal to extend leave to allow C to attend an interview a few days after the dismissal date.*

It is convenient to take these together. The relevant findings are at paragraphs 237 to 239. There was no detriment in the change of the dismissal date. In fact this was to the Claimant's advantage as it gave her longer to search for roles.

The reason why Mr Yau did not extend the notice period to allow the Claimant to attend an interview was to avoid giving the Claimant preferential treatment over other colleagues who fail exams and qualifications (page 1704). While we can accept this to be a disadvantage to the Claimant the reason why was nothing to do with the disclosures but rather Mr Yau's perception of fairness amongst those finding themselves in this position.

Employment Judge **Brain**

Date: 5 July 2017