EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr A Borisov **v** **Zurich UK General Services Limited**

Heard at: London Central (by video)

On: 2 (Employment Judge E Burns sitting alone), 3, 4, 5, 8, 9 and (in chambers) 10 November 2021

Before: Employment Judge E Burns
Ms H Craik
Ms E Flanagan

Representation

For the Claimant: In person
For the Respondent: Catherine Casserly, Counsel

RESERVED JUDGMENT

(1) The unanimous judgment of the Employment Tribunal is that the Claimant's claims fail and are dismissed in full.

(2) In addition, the Employment Tribunal Awards the Respondent £371 plus VAT in costs (i.e. £445.20 in total) which should be paid within 14 days of the date this judgment is sent to the parties.

REASONS

THE ISSUES

1. This is a claim arising from the Claimant's summary dismissal by the Respondent on 25 April 2019.

2. A list of issues had not been prepared before the start of the hearing. The tribunal therefore prepared a list of issues which was discussed and agreed with the parties and updated following an amendment application.

3. The issues to be determined were therefore as follows:

Protected Disclosures

4. Did the Claimant make the following disclosures of information:

4.1 the contents of an email exchange with Tony Warner head of IPZ IT in which he reports UWR360 IT project to be fraud and waste of funds – the first email is dated 1 December 2018

4.2 a telephone conversation on 21 December 2018 with Angela Presland and Graham Mann of the Zurich Investigation Team (Ethics line) where he explained in detail that UWR360 project is a fraud because every statement in the presentation is an intentional lie, the project adds zero value to the company and is technically undeliverable

4.3 an email to James Shea, CEO Commercial Insurance dated 1 February 2019, in which he explains that UWR360 is a fraud and accuses property Management of a cover-up

4.4 an email to the internal investigation team (Graham Mann) dated 27 February 2019 in which he requests the reopening of an investigation accusing 5 people of fraud, falsification of evidence a, intimidate and cover up

4.5 an email dated 17 March 2019 to the FCA and FINMA reporting a major breach of regulations to the Swiss and UK financial regulators

The Respondent disputes that the above constituted disclosures of information rather than the making of allegations.

5. If so, is the disclosure of information one in which in the Claimant's reasonable belief tends to show that a criminal offence has been committed, is being committed or is likely to be committed? (section 43(B)(1)(a) ERA 1996)

The Claimant says he reasonably believed that his disclosures revealed an intentional waste of shareholders' funds and therefore a potential criminal offence. In addition, he reasonably believed the funds could be being misappropriated by those involved in the project.

The Respondent disputes the Claimant held this belief and/or that it was a reasonable belief for him to hold.

6. If so, was it a disclosure of information which in the Claimant's reasonable belief tended to show that the Respondent had failed to comply with a legal obligation to which the Respondent is subject? (section 43(B)(1)(b) ERA 1996)

The Claimant says that he reasonably believed the deliberate waste of shareholder's funds was a breach of a legal obligation to protect shareholders interests.

The Respondent disputes that the Claimant held this belief and/or that it was a reasonable belief for him to hold.

7. If so, was it a disclosure of information which in the Claimant's reasonable belief tended to show that that any matters falling within sections 43B(1)(a) or 43B(1)(b) had been or were likely to be deliberately concealed? (section 43(B)(1)(f) ERA 1996)

The Claimant says he reasonably believed there was a major corporate cover-up campaign intended to conceal wrongdoing.

The Respondent disputes that the Claimant held this belief and/or that it was a reasonable belief for him to hold.

8. Did the Claimant reasonably believe that any disclosure was made in the public interest?

The Claimant says the disclosures were made in the interests of 120,000 shareholders, whose funds were being intentionally wasted.

9. It is accepted that the Claimant made any disclosures in accordance with sections 43C (1.1 to 1.4) and section 43F (1.5).

Detriments – section 47B Employment Rights Act 1996

10. Did the Respondent subject the Claimant to the following detriments:

11.1 intimidating him through what was said in the final paragraph of Graham Mann's email to the Claimant dated 31 January 2019;

11.2 suspending him on 5 March 2019;

11.3 intimidating him through what was said in the final paragraph of the letter dated 5 March 2019;

11.4 initiating a disciplinary investigation on 5 March 2019.

If so, was this done on the ground that he made one or more protected disclosures?

Automatic Unfair Dismissal (section 103A Employment Rights Act 1996) / Ordinary Unfair Dismissal (section 98 Employment Rights Act 1996)

11. What was the principal reason the Claimant was dismissed? Was it because he had made one or more protected disclosures or was it, as asserted by the Respondent, a reason relating to the Claimant's conduct?

12. If the Claimant was dismissed for a reason relating to his conduct, then in all the circumstances, including the size and administrative resources of the Respondent, and in accordance with equity and the substantial merits of the case, did the respondent act reasonably or unreasonably in treating it as a sufficient reason for dismissing the Claimant?

Breach of Contract

13. It is not in dispute that the Claimant's contractual entitlement was to 3 months' notice. Did the Claimant fundamentally breach the contract of employment by an act of gross misconduct entitling the Respondent to terminate his employment without notice or payment in lieu of notice?

This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the gross misconduct.

Remedy

14. If the Claimant was unfairly dismissed and the remedy is compensation:

15.1 How much is his basic award?

15.2 Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

15.3 How much should he be awarded by way of compensatory award? The Claimant's claim is for 81 days' pay.

15.4 If the dismissal is unfair, what adjustment should any adjustment be made to the compensatory award to reflect the possibility that the Claimant would still have been dismissed? (*Polkey v AE Dayton Services Ltd* [1987] UKHL 8)

15.5 Did the Claimant, by blameworthy or culpable actions, cause or contribute to the dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

15.6 Should any other award be made?

15.7 Did either party unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase or reduce any award and by how much (up to a maximum of 25%)?

15. If the Claimant was wrongfully dismissed, what additional damages should he receive, if any?

THE HEARING

16. The hearing was a remote hearing. From a technical perspective, there were a few minor connection difficulties from time to time. We monitored these carefully and paused the proceedings when required. The participants were told that it was an offence to record the proceedings.

17. The panel explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because he was a litigant in person. We regularly explained the process, visited the issues and explained the law when discussing the relevance of the evidence.

Claimant's Applications

18. At the start of the hearing, the claim was solely for automatic unfair dismissal pursuant to section 103A of the Employment Rights Act 1996, ordinary unfair dismissal pursuant to section 98 of the Employment Rights Act 1996 and wrongful dismissal. The Claimant questioned why there was not a full tribunal panel hearing his case. Employment Judge E Burns explained that the claims could be heard by a judge sitting alone.

19. The Claimant applied for his claims to be heard by a full panel. Although the claims could be heard by a judge sitting alone (by virtue of section 4(3) of the Employment Rights Act 1996, the Respondent did not object to a full tribunal panel and one was arranged by consent for the start of the following day.

20. The Claimant made an application that the Respondent be prevented from adducing any witness evidence or the documents contained in the bundle it had prepared. Employment Judge E Burns (sitting alone on the first day) did not grant the application and gave oral reasons for her decision. The Claimant later asked her to reconsider this decision and/or for the decision to be made by the full panel. Employment Judge E Burns did not agree to this. The Claimant had prepared his own bundle. The Tribunal made sure it referred to both bundles.

21. On the second day of the hearing, the Claimant applied to amend his claim to add seven claims that he had been subjected to detriments under section 47C of the Employment Rights Act 1996 because he had made protected disclosures. The Respondent objected. The application was considered by the Tribunal siting as a full panel, who allowed the Claimant to add four of the claims. The Tribunal gave oral reasons for their decision. We gave the Respondent leave to call additional evidence to defend the new claims, which it did in the form of an additional witness statement from Ms Coombes.

22. On the third day of the hearing, the Claimant made an application for 30 witness orders. The Claimant had not approached any of the individuals on the list to ask them if they would give evidence voluntarily. The Tribunal (sitting as a full panel) refused the application and gave oral reasons for the decision.

23. Later, on the same day, the Claimant reduced the number of witness orders he was seeking to five. The Tribunal did not grant the application relying on its earlier reasoning. It was made clear to the Claimant that he needed to contact the individuals and ask them if they would be willing to give evidence voluntarily before we would give further consideration to any fresh application. No further applications were made.

24. The Tribunal received applications from journalists present at the hearing for copies of the witness statements and bundles. The Respondent agreed to send these by email to the interested parties.

25. The Respondent made an application to adduce late evidence consisting of an internal video. The Claimant did not object to the video being admitted as evidence and it was. He asked if he could send it to journalists. The Respondent asked for time to consider the request, which the Tribunal granted. The Claimant was told, very clearly, twice, that he must not send the video to any journalists until the Tribunal decided that he could. The Claimant, however, ignored this instruction and sent the video to a journalist before the Tribunal had decided whether it should be made publicly available.

26. The Respondent invited the Tribunal to declare the Claimant's conduct to be in contempt of court, but sought no other sanction. Having considered the matter, and satisfied ourselves that we have the power to do so, the Tribunal does declare that the Claimant's conduct amounted to a contempt of court.

27. In addition, we have awarded the Respondent costs in the amount of £371 plus VAT, which are the additional costs that the Respondent occurred dealing with the matter. We are satisfied that the threshold under Rule 76(1)(b) for a costs award is met (the Claimant's conduct was unreasonable) and that to award costs in the circumstances is in the interests of justice. The amount sought is modest and we believe it to be well within the Claimant's means. However, we would have exercised our power to award these costs against the Claimant in any event, noting that Rule 84 does not oblige us to take the Claimant's means into account.

28. With regard to the video, the Respondent objected to the video being made publicly available for data protection reasons. The Tribunal disagreed and determined that the video should be available to any members of the public who wish to view it. We ordered the Respondent to send it to anyone who makes a request via their solicitors.

29. Before the close of the hearing, we asked the parties to make submissions on remedy as well as liability. The Claimant found a job 89 days after his dismissal and therefore his losses, if he succeeded, were fixed. The Tribunal considered we could, if we found in his favour, consider remedy without having to hear any further evidence. The parties agreed, but as can be seen, our decision on liability has meant that it has not been necessary to consider any remedy issues.

The Evidence

30. The Claimant gave evidence. His witness statement exhibited documents running to 313 pages. We admitted into evidence two versions of the Claimant's witness statement: one which referred to the page numbers of his exhibits and the other which referred to page numbers of the hearing bundle.

31. For the Respondent we heard evidence from:

- Graham Mann, Investigation Manager in the Respondent's Fraud Prevention and Investigations Unit
- Cindy Warden, Head of Corporate Risk, UK Life Business
- Steve Rickards, UK Tax Director
- Shaun Hicks, UK Chief Risk Officer
- Carmen Coombs, People Experience Manager for the Respondent

32. The tribunal ensured that each of the witnesses had access to the relevant written materials which were unmarked. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

33. The hearing bundle prepared by the Respondent was 901 pages which included some additional documents which were admitted into evidence during the course of the hearing with the agreement of the parties. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below. We also referred to the exhibits to the Claimant's witness statements as a 'second' bundle

34. The Claimant had annotated a large number of the documents. Although some of the annotations were contemporaneous to the events we had to consider, this was not true in the majority of cases. The Tribunal was mindful of this when considering the documents.

FINDINGS OF FACT

35. Having considered all the evidence, we find the following facts on a balance of probabilities.

36. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

Background

37. The Respondent is part of the Zurich Insurance Group (the Group) of companies. The Group, which is headquartered in Zurich, Switzerland employs over 54,000 people globally.

38. The Group has a large HR function, an in-house legal department and its own Fraud Unit.

39. The Group operates an "Ethics Line". This is an internal reporting route for staff concerned about fraud. The line is advertised to employees through training and on the internet.

40. The Claimant commenced employment with the Respondent on 7 October 2013 as a Business Analyst / Developer. Prior to commencing this role, he had around 10 years' experience in IT.

Contract and Policies

41. The Claimant's contract of employment entitles him to three months' notice of termination from his employer, save in cases of gross misconduct when he can be dismissed without notice or pay in lieu of notice (49)

42. The Respondent had the following policies which applied to the Claimant:

- Code of Conduct – called Zurich Basics (52 – 58)
- Disciplinary Procedure (67 – 75)
- UK's Reporting Concerns Policy (474 – 478)
- Group Policy - Reporting of Improper Conduct and Concerns (59-66)

The Claimant's Role

43. The Claimant's role sat within the Group IT and Operations Team. This team included people employed by a variety of different corporate subsidies within the Group and who were based in a variety of different locations. It was a Group role rather than a Zurich UK role.

44. The Claimant was based in London. The events we were concerned with occurred between October 2018 and May 2019. During this period, the Claimant reported to Claude Haueter, Projects Director for International Programs IT, who was based in Switzerland. Mr Haueter reported to Tony Wainner, Head of IT for Commercial Insurance and IP who was based in London. Mr Wainner reported to Helene Westerlind, Head of International Programmes. She reported to James Shea, CEO of Global Commercial Insurance.

45. The Claimant's role required him to spend the vast majority of his time working on an IT system called PlumZ. The acronym stands for Property Location Utility Macros Zurich. The system was a tool used by underwriters working for the Group globally in connection with the underwriting of commercial property insurance. It was programmed in Microsoft Excel.

46. PlumZ was a tool used within the Group's Commercial Insurance division. This division had its own CEO, James Shea who reported to Mario Greco, Group CEO. Rob Kuchinski, Global Head of Property and Energy, Commercial Insurance reported to Mr Shea. Susan Fallon, Global Head of

Property, Commercial Insurance reported to Mr Kuchinski. This was an entirely separate reporting line to the UK subsidiary, i.e. the Respondent.

47. At the time the Claimant joined the Respondent, PlumZ was already in existence. The Respondent was operating another system called PlumS at the time. Within about six months of his arrival, PlumS was decommissioned and PlumZ took over.

48. The Claimant made a number of significant enhancements to Plum Z. Although he did a small amount of other work, his primary responsibility was supporting and developing Plum Z. He was the only person working on Plum Z. No-one else understood the programme as well as he did.

Project Underwriting 360

49. Members of senior management within the Group's Commercial Insurance division were of the view that the property insurance underwriter experience the Group was offering was poor and that there was a need to improve the IT tools available to underwriter community. In 2018, a project group was set up to develop new IT systems for the use of its underwriter community. IT was called Underwriting 360 or UW360 / UWR360 for short.

50. The project was sponsored by Ms Fallon, Global Head of Property, Commercial Insurance. The Project Managers for the project were the Claimant's line manager, Mr Haueter and another IT developer, Niamh Meade. The Claimant was not involved.

51. A project plan was developed that envisaged offering a single tool, called UW360, that would provide underwriters with an underwriting 'workbench' and pricing tool that would be web-based (and available via a single interface. It was planned that the new tool would build on an existing web based application in development called Neo. The proposals envisaged PlumZ and another IT programme (Compaz) being decommissioned.

52. The Zurich Group has an internal process for approving project spend such as that envisaged by UW 360. A PowerPoint presentation, known as a Zpad, was prepared for this purpose. The document was published on a shared drive to which the Claimant had access. Approval for UW360 was required from Jim Shea, CEO for Global Commercial Insurance. This approval was given on 4 December 2018 (100).

The Claimant's Knowledge of Project UW360

53. As noted above, the Claimant was not part of the UW360 Project Team and was not consulted about it.

54. In around September 2018, the Claimant undertook a business trip to Zurich during which his colleagues shared with him that there was a plan for him to move into a more of a Business Analyst role rather than development. At the same time, the possibility of decommissioning PlumZ was mentioned. The Claimant told the tribunal he did not initially take the proposals to

decommission PlumZ seriously, as he thought this was to be in the distant future.

55. The Claimant learned in November 2018, however, that, the proposals were not in the distant future, but part of Project UW360 and were in the process of being approved. This led him to reading the Zpad proposal. When he did this, he saw that it included a proposal to decommission PlumZ in the near future.

56. The Claimant told the Tribunal that he did not understand the logic of the proposal to decommission PlumZ and therefore he approached his manager to ask him about it. He was told that UW360 was the future and that although PlumZ would be decommissioned in 2019 his manager was keen for him to get on board with the new project and envisaged a future role for him.

57. The Claimant says he was "*deeply shocked*" and couldn't understand why all the effort he had put into developing PlumZ in the previous five years would go to waste. In an effort to save PlumZ, he emailed his manager on 15 November 2018 with an idea to enhance PlumZ and offer some of the functionality envisaged in UW360 for auto-scrubbing. It appeared to the Claimant that the only thing that UW360 included that was not offered by PlumZ was a mechanism whereby data entries would be deleted so that underwriters would not need to do this manually.

58. The Claimant's manager responded to the Claimant's email saying that he was, "*to be honest, … a bit surprised by this…*" This was because the Claimant was aware that auto-scrubbing was being worked on as part of UW360. To encourage him, however, Mr Heuter invited the Claimant to join the auto-scrubbing sub-working group. His reply email says:

"*I would ask you to refrain from advancing PlumZ functionality in these areas and, in case of queries confer with either [a colleague] or myself before implementation work is done. As per previous discussions, I see you as an expert in this subject and [would] like to encourage you to join the …team and help us shape the target solution." (96)*

59. The Claimant told the tribunal that this response led him to lose trust in his manager. He could not understand why his manager would not want him to work on improving the functionality in PlumZ when he was offering a "*free, fast and possibly much better solution* [than UW360] *considering that UWR360 plan was to spend millions and wait for > 1 year.*"

60. The Claimant began to think that his manager was involved in something underhand. He went back to the Zpad and read it thoroughly. He formed the view, as he put it in his witness statement, that "*the whole UWR360 project was an intentional lie*."

61. In his own words:

"One day I took UWR360 presentation and decided to look into it more thoroughly. After proper in-depth reading I suddenly realised unthinkable

– the whole UWR360 project was an intentional lie. Every single statement in it was either non-sense or false, something that is not immediately clear for non-specialists. …. Except for 'auto-scrubbing' (LBOT) the project would have added 0 value to the Company and was in fact technically undeliverable. After 5 years in Zurich, which I considered as a 'model' company it was very difficult to believe into, also because project listed a lot of senior people involved many of whom I knew well and trusted. Claude [Haueter] was listed as UWR360 Project Director and Dirk [Auchter] was UWR360 lead business analyst. Not only they knew very well that from both business and technical perspective the project was non-sense, but I suspect that they actively participated in preparing UWR360 presentation. This is because presentation contained a lot of technical information, which very few people in Zurich had good knowledge in."

62. The Claimant's thoughts on the Zpad can be understood from the marked up version of it that he created and that was contained in the bundle at pages 151 – 186.

First Purported Disclosure

63. On 1 December 2018, the Claimant sent an email to Tony Wainner, Head of IT for Commercial Insurance & IP and the Claimant's line manager's manager. The email said the following:

"Dear Tony

For the past 5 years I never approached you directly, this time it's important.

Following Zurich basics I would like to report that UWR360 project is a fraud organised by Susan Fallon. Susan agreed with key people such as Claude, Dirk and probably Bart to implement a project which is highly detrimental to Zurich.

I was supposed to travel to Zurich on Wednesday this week, which I am cancelling now. If you are in London please let me know when we can meet to discuss the matter." (98)

64. Mr Wainner replied asking the Claimant for more details. In response, the Claimant sent an email dated 3 December 2018 setting out his concerns. His email began:

"*As you know, Property UWR is one of the most complex areas and to prove that UWR360 project is a fraud we unfortunately need to dive into the details. I will try to be as short as I can."*

65. The Claimant then sent an email back with two points of detail, one relating to the auto-scrubbing functionality for PlumZ he had proposed he develop in his email of 15 November 2018 sent to Mr Hauter and the second saying

"UWR-360 plans to decommission PlumZ as one of its top priorities. I understand that PlumZ is probably kept low profile in top management

discussions, but in fact its business-critical application, which is bigger than CompaZ and Neo in terms of features, functionalities and complexity. There is not a single reason to decommission Plum Z and 100 reasons why it shouldn't be done. In fact, there are many reasons why its impossible to decommission PlumZ without sacrifice of business-critical functionalities. Claude stated that PlumZ needs to be decommissioned by end of 2019, but in reality, it will take 10 years to do if we consider past experience into account. Attached in another email to Claude, explaining in detail why PlumZ shouldn't/cannot be decommissioned"

66. The Claimant attached a document (similar to the one at page 852 of the bundle) providing information about the functionality in PlumZ and the difficulties of decommissioning it (852).

He concluded the email saying:

"*Just as with two points above, I can talk for a long time explaining and proving that almost every single word in UWR-360 presentation is false. Let me know if that's what you want. (98 – 99)*

67. Mr Wainner's response, sent the same day (99) said:

"Tom, thanks for the detail. I won't confess to understand all of it, but it's clear there are a lot of points to consider here. Clearly PlumZ has many strengths but at the same time, I do understand the Property teams wish to have a fully integrated user experience in the future."

Mr Wainner suggested that the best course of action would be for the Claimant to spend time with members of the NEO team going into the detail of his points, so the Respondent could fully understand all of the issues and implications. He concluded his email saying, "*I think it's important to do this and then we can decide on next steps together*." (99)

68. The Claimant travelled to Switzerland shortly after this email exchange and met with his line manager and some other members of the IT team. There are no notes of the meetings or discussions. He did not, however, find them supportive of his concerns about UW- 360 project.

69. On 6 December 2018, the Claimant sent the following email to his colleagues:

"*Guys*

Was wandering if you have any suggestions why I shouldn't do something like below:

I go and speak to every UWR many of whom I know personally, show them Auto-scrubbing solution (which I am not allowed to show), ask them if they like PlumZ and would like to see it decommissioned. Show them UWR-360 presentation and explain them how Susan cares for them. Collect all the replies in one document (with the most polite ones on the top) (maybe few

hundred if I can) and send it to James Shea. Then whoever comes and talks to me. I explain what really is. Any reason why I shouldn't do it? Maybe there is something I have to lose all be afraid of? Do you think I do not realise what will happen after that?

Listen, I don't wish any harm to anyone, definitely not such a present for XMAS. So here is what I am gonna do. I will reserve the top option. The most extreme scenario, which I hope will never happen. I will report to Tony that we agreed to continue a constructive discussion. I will also tell him that you are really good people with good knowledge and experience and I would love to continue working together, but this project needs to go back to design stage. (105)

70. On his return to the UK, on 11 December 2018, the Claimant sent an email to Mr Wainner (107) describing UW360 as "*one of those unfortunate mistakes we all make, which in this case is actually 'enforced' from the top*." His email included the following paragraph:

"With regards to the next steps, there is certainly an extreme way to instantly halt the project: a single email to UWR community explaining new auto–scrubbing solution, pointless decommissioning plans and UWR-360 presentation with my comments. I am sure such scenario can be avoided and the project can be peacefully shut down without much noise." (107)

71. The Claimant sent a follow up email to Mr Wainner two days later on 13 December 2018. In this email he said:

"Hope you had a chance to look at the below [referring to his email of 11 December 2018] and were probably thinking about next steps. Please allow me to add some comments, which should hopefully help. I do understand the full gravity of current situation. Even Rob Kuchinsky offered 'full support' for the project, which means that he is either part of the scheme or doesn't understand what is going on.…

A single email to James Shea (who approved the project) is enough to throw everything into chaos. It may be difficult for him to believe, but I can easily get strong support from say 100 UWRs, who would instantly see what's going on and be willing to express their opinion.

The fact that so many people were involved in such nonsense activity for so long (and plan to continue) not only means a waste of resources. It also means that real issues and problems, which business needs to be solved are not addressed (and there are so many of them in Property).

I do also understand that I am the only one who stands to gain from current situation. Many others are facing negative and highly negative consequences. That's not the outcome. I wish to see, and definitely not during XMAS period. I do believe in peaceful resolution and "happy ending". I am prepared to offer any support if needed."

72. Mr Wainner was very concerned about the contents of the Claimant's emails which he perceived to be threatening. He forwarded the emails to Swiss HR and asked for advice saying he was concerned that the Claimant "*could do something unpredictable sooner rather than later*" (109). A member of the Swiss HR Team forwarded to the UK HR saying: "*We see major issues to let him work on productive systems as well as with his colleagues. Appreciate your guidance and support with this case."* (114)

73. The UK HR department took the view that the Claimant's allegations of fraud should be referred to the UK Fraud department. In the email making the referral, the HR Employee Relations Consultant says: "*The tone of the [Claimant's] emails …is quite threatening" and expresses concern that the matter could escalate potentially externally quite quickly*." (122)

74. The referral led to Graham Mann, from the UK's Fraud Unit being appointed to conduct an investigation into the Claimant's allegations. Mr Mann had around thirty years of experience of conducting investigations into fraud at the time of his investigation. Although the Fraud Unit is an internal investigation unit, the reporting lines are structured to give it as high a degree of independence as possible.

Second Purported Disclosure

75. The Claimant sent Mr Mann a background note by email on 20 December 2018 ahead of the meeting which was due to take place by telephone the following day. In the note he says: "*To prove that UWR-360 project is fraud it would be useful to separate the topic into 3 areas*" (126) He then identified three points:

- That in his view, there was not a single logical reason to decommission PlumZ
- The auto-scrubbing solution proposed in UW360 was not needed. The justification that was given for them, namely image recognition, was not required in practice
- Almost every single word in the UWR-360 presentation was either a nonsense or false.

76. The telephone meeting took place the following day, 21 December 2018. Present were the Claimant, Mr Mann, Angela Presland, HR Consultant and another investigator. A note was taken of the call on which the Claimant later had the chance to comment. The Claimant's marked up version of the notes, which was sent to the Respondent on 4 January 2019, was contained in the bundle at pages 144 – 150. The Claimant relies on what he said during this telephone conversation as a protected disclosure.

77. Mr Mann informed the Claimant that the focus of the investigation would be the allegations of fraudulent behaviour by those involved with the project. He explained that he would not be conducting a technical review of Project UW360, assessing the project business case generally or assessing the

respective merits of Plum Z and UW 360, but would focus on the allegations that the Claimant had made of fraudulent behaviour by those involved with the Project.

78. The Claimant told Mr Mann that almost every statement in UWR360 presentation was false or nonsense, but asked him to investigate the three most obvious concerns, which he believed would reveal the Project to be a fraud. These were:

- the claims made that UW360 would result in £1m savings
- the fact that PlumZ has auto-scrubbing functionality built into it, and so it was not necessary to implement the auto-scrubbing proposals in UW360
- There were three graphs and acronyms included in the Z-pad were impossible to understand and demonstrated the document was fraudulent.

Fraud Investigation

79. Following the meeting, Mr Mann decided to investigate the Claimant's concerns by approaching Robert Kuchinski, Susan Fallon's line manager. This was because the Claimant had said at the meeting that he thought Ms Fallon was the architect of the fraud.

80. Mr Mann therefore sent Mr Kuchinski an email on 7 January 2019 asking him to address a number of questions. Mr Kuchinski replied and provided some evidence to support his responses. He also confirmed that he had checked some of the details before responding, as while he was responsible for the division that will be doing a lot of work on the UW360 project he was not involved on a day to day basis.

81. Mr Kuchinski confirmed, by way of background, that since joining the Zurich Group in February 2017, he had spent time directly meeting with hundreds of Zürich Underwriters and that his personal experience was that the number one criticism the underwriters had of their jobs was the underwriting systems and associated processes. He explained that underwriters who had recently transferred into Zürich from competitors were shocked at how archaic the group systems and processes were. In his view Project UW360 was imperative.

82. With regard to the three points:

- He rejected the Claimant's allegations that the cost savings were unfounded. Mr Kuchinski acknowledged that PlumZ was a relatively cheap application and that little by way of financial savings would be achieved from its decommissioning. However, when the cost of replacing CompaZ was taken into account, he was satisfied, based on his own high-level knowledge and having checked with a colleague (not Susan Fallon) that the savings figure was realistic.

- Mr Kuchinski confirmed that contrary to the Claimant's view, image recognition was an issue that needed to be addressed when developing Auto-Scrubbing. He explained why and provided some evidence of this.

- Mr Kuchinski was unable to provide any helpful information about the graphs, but sent a sheet that he thought might explain some of the acronyms and make them easier to understand.

83. Based on the replies from Mr Kuchinski, Mr Mann prepared an outcome report in which he stated, "*having reviewed all the information provided to us, by you and others, we have not found any evidence that corroborates your allegation of fraudulent behaviour, and specifically by Susan Fallon*." (204 – 207)

84. In addition to providing the Claimant with a written report, Mr Mann met with the Claimant by telephone on 31 January 2019 to explain his findings to him. HR was also present. A note of the meeting was taken (216 – 219). When the Claimant learned that Mr Kuchinski was satisfied with the forecasted potential savings, he questioned whether Mr Kuchinski was telling the truth and suggested he must also be supporting the fraud. The Claimant said he believed the savings should have been established by external specialists.

85. At the meeting, the Claimant was informed that if he wished to continue discussions about the merits of the project, or his continued role on it, he would need to have these discussions with his management. The Claimant replied saying that he needed to consider his next actions which could be contacting James Shea and some underwriters. The Claimant asked if he could speak to the underwriters to show them the Zpad PowerPoint and ask 100 underwriters if they supported his proposal and agreed that UW 360 was 'nonsense and a lie'

86. The Claimant was cautioned against this and told that he should speak to his line manager in the first instance before taking any such actions, and that a lot of underwriters had already been consulted about the project.

87. Following the meeting the Claimant sent two emails to Mr Mann asking if he could contact 100 underwriters to ask for their views on UW360 and Plumz. He was told in writing that he must not do this (212, 215) Mr Haueter also sent the Claimant an email on 31 January 2021 telling him not to contact the underwriters (224).

Third Purported Disclosure

88. On 1 February 2019, the Claimant emailed James Shea, asserting that UW360 project was a fraud organised by the Property Team. He asserted the fraud was being covered up by very senior managers. The Claimant sought Mr Shea's approval to obtain 100 signatures from property UWRs supporting his point of view (225 – 227).

89. Mr Shea sent a holding reply to the Claimant's email 4 Feb 2019 which was followed by a substantive reply on 14 February 2019 (226 – 227) In that

reply, Mr Shea thanked the Claimant for bringing the issue to his attention. He said he was pleased that the Claimant was following the guidance in Zurich Basics and had raised his concerns. He went on to say, however, that having looked into the matter, he was satisfied that the Claimant's concerns had been properly addressed and taken seriously with the conclusion of the review being that no evidence of fraud was found to corroborate the Claimant's allegations.

90. Mr Shea then acknowledged that the Claimant had a different view on the merits of the strategy and UW360 project. He said that he supported and encouraged that all employees should feel empowered to challenge strategy, but added that as the management team overseeing the project had reached the conclusion to proceed with UW360, Zurich needed to move forward as a team and execute the decision. So far as the Claimant was concerned, this meant he expected his continued and positive support and contribution to the initiative saying it was not productive to continue to challenge nor solicit support for an alternative strategy.

91. Mr Shea concluded his email saying that he had asked the Claimant's line manager to meet with him to explore the Claimant's views around his future contribution to working on or assisting the Project and to consider alternative options if the Claimant remained embedded in his current view.

92. Following receipt of the email, the Claimant spoke with Mr Haueter and told him that his personal opinion of the project remained the same, and that he could not support it with his 'heart and soul' but that he would provide assistance with helping to decommission PlumZ.

Redundancy

93. Shortly after that telephone conversation, Mr Haueter conducted a further telephone meeting with the Claimant to tell him that he was being placed at risk of redundancy. The conversation took place on 21 Feb 2019. Mr Haueter explained to the Claimant that the redundancy situation was being brought about as a result of the decision to decommission PlumZ in April.

94. The conversation was followed up with a letter dated 26 February 2019. The letter informed the Claimant that there would be a consultation process with at least three consultation meetings, the first one being 7 March 2019, followed by an outcome meeting sometime around the end of April 2019 (232). Angela Presland, HR forwarded information to the Claimant from the redeployment team providing details of vacancies and explaining that he would be given preference over other candidates who are not at risk (233)

95. Mr Haueter later provided a copy of the script he used for the telephone conversation in an email to Mr Hicks (who dealt with the Claimant's appeal against his dismissal) (764- 767). It is evidence form the script that that Mr Haueter invited the Claimant to have a protected conversation, but when the Claimant declined to agree, Mr Haueter took this no further (764-767).

Claimant Contacts the Underwriters

96. On 26 February 2019, the Claimant sent emails to the 150 most frequent users of Plum-Z. The email included links to two videos introducing new functionalities and asked the recipients to reply saying:

- would they find the features useful?
- would they save them time?
- would they like them to be released?

The initial emails made no mention of UW360. (293)

97. A number of positive responses were received supporting the proposed new functionality (293 – 306) (C's exhibits 121 – 149).

98. When the Claimant received a reply from an underwriter Jafar Mukri (242) he sent him a subsequent email saying:

"Can I kindly ask you for a favour?
Can you please review [attached] presentation of UWR360 project (with my comments) and let me know what you think of it?

Do you agree with my opinion that the project is nonsense and fraud?
I am sorry to be asking such questions, but there are no more options left.

I am not allowed to release (and even show) any new PlumZ functionalities as it contradicts UWR360 project.

Without your support I will not be able to release above 2 functionalities and PlumZ will be shut down in 2019. Most PlumZ functionalities will be lost without asking users opinion. Sounds unthinkable? Well, have a look at the link above. The project is confirmed, fully funded, goes ahead and I have already exhausted all possible options to stop it." (242)

99. Mr Mukri replied saying;

"*I have quickly reviewed the presentation and below are my thoughts.*

A bit unclear exactly what UWR360 entails and how it can support underwriting. To decommission PlumZ is a shame. PlumZ is constantly being developed allowing us to be more and more efficient. It has gone from (almost) merely being a tool where location information + insured values are stored from underwriting tool linked to guidelines where we can analyse exposure and see what limits we are allowed to put out iro NatCat. Furthermore, it helps us with achieving density, update ZAX, etc

If UWR360 provides a better solution for underwriting, then I fully support. Presentation doesn't unfortunately explain how it will do so. Would be good to release a test version so underwriters can make a judgement on its pros/cons? That would be a sensible first step and see if users deem it to be better than PlumZ"

100. He sent a similar email to another underwriter Ruth Verschuere (433). The Claimant also had a Skype conversation with Mr Mukri asking him for his assistance in proving UWR360 was a fraud (253 - 254)

101. The Claimant also sent emails to underwriters identified as part of the consultation group for Project UW360 to ask them if had been involved. Two of them, Ankeet Patel, whom the Claimant emailed on 28 February 2019 (255) and Daniel Jim Bayard, whom the Claimant emailed on 4 March 2019 (256) replied to say they did not know a lot about the project.

Fourth Purported Disclosure

102. On 27 Feb 2019, the Claimant sent emails to Helene Westerlind (Head of IPZ) (236), Graham Mann (237 – 238) and Steve Collinson (Head of UK HR) (239).

103. In his email to Ms Westerlind, the Claimant described himself as "*the witness of [a] major fraud / cover-up scheme which involved James Shea, Rob Kuchinsky, Susan Fallom. Tony Wainer, Claude Haueter etc and asked for her help to uncover it*." He said that as he was the only witness opposing the fraud, Claude had decided to made him redundant.

104. In his email to Graham Mann, the Claimant requested that the fraud investigation be re-opened. He asserted that James Shea and Rob Kuchinski were implicated as well as Susan Fallon, Tony Wainner and Claude Haueter. Within the body of his email, he says:

"*Despite the fact that I was not allowed to release/show functionality to users, I have contacted a number of UWRsto show them videos of new functionality and attached are some of the comments I received*."

105. He sent a follow-up email to Mr Mann the next day saying he was now asking underwriters from the UW360 consultation underwriters group if they had even heard about the project (257). He later sent the responses received from Ankeet Patel and Daniel Jim Bayard to Mr Mann.

106. In his email of 27 February 2019 to Mr Collinson, the Claimant said that he was "*unfairly being made redundant as a witness of major fraud/cover-up scheme."* The email listed the people he felt were involved and said:

"All of the people listed above rejected IT solution, which I developed which saves Zurich millions in every year. I was not allowed to release and even to show it to users. Nevertheless, I did show solution to some underwriters yesterday and attached are the responses I received.

After discussion with James [Shea], my line manager, Claude stated that I am being made redundant because IT system I support is being decommissioned, which is nonsense. I am the only person who developed and supports business-critical application serving 1000 property underwriters in 30 countries.

Are you able to help?"

Suspension and Decision to Commence Disciplinary Process

107. In light of the Claimant's conduct, the Respondent set up a working group to consider what, if any, action should be taken. It considered it necessary to establish a working group for several reasons. These were:

- there appeared to be a potential disciplinary case against the Claimant for not following management instructions in circumstances when he had previously raised concerns that were treated as an Ethics L complaint. The Respondent was mindful of its policy protecting employees against retaliation in such circumstances;

- the Claimant's case crossed different employment jurisdictions so needed input from group HR in Switzerland as well as the UK HR team;

- The Claimant was sending out correspondence to different people, so the respondent wanted to ensure coordination in its response.

108. The working group had input from the following:

- Carmen Coombes, then UK Senior HR Manager – Employee Relations and Advisory Services and Steve Collinson, UK Head of HR from UK HR
- Kathrin Szelloe, Global HR Business Partner, Commercial Insurance and Michelle Auer, Human Resources Business Partner APAC, from Swiss HR
- Graham Mann
- UK Legal

109. The working group collectively decided to proceed with a disciplinary investigation against the Claimant. The working group, with particular input from UK HR, also decided that the Claimant should be suspended.

110. According to the evidence of Ms Coombs, the decision to suspend the Claimant was taken because the Respondent "*had no confidence that he would not take steps to interfere with the investigation and/or to seek to disrupt it if he had the opportunity to do so*." This included, temporarily suspending his access to the Respondent's systems.

111. The Claimant was suspended on 5 March 2019. Ms Coombs and Ms Szelloe of Swiss HR invited him to participate in a telephone call to inform him of this. A note of the discussion was made (285 - 287). The suspension was also confirmed in a letter dated 5 March 2019 (271-273).

112. The notes of the discussion confirm the following:

- the Claimant was being suspended from work pending a disciplinary investigation into an allegation that he failed to comply with a reasonable management instruction not to communicate with underwriters about the UW 360 project;

- the Claimant would continue to receive his normal salary and benefits during the suspension;

- the Claimant was not required to carry out his duties and should not visit the Respondent's offices or contact any customers or colleagues, unless authorised by a named contact (to be provided) of the Respondent;

- the Claimant would not have access to the businesses data or IT systems. During his suspension. If there was any specific information. the Claimant felt was relevant to the investigation he could raise this with the investigator once appointed;

- the suspension was not a disciplinary action and did not imply that the Claimant was guilty of the alleged misconduct. The Respondent's aim would be to keep the period of suspension as short as possible;

- the redundancy consultation process would be put on hold and the redundancy consultation meeting which had been due to take place on Thursday, 7 March 2019 would not now take place and

- the suspension did not relate to the internal complaint he had made or the fact that he disagreed with management on the way forward.

113. The letter explained that in addition to the alleged misconduct, two additional concerns would be investigated. These were: (1) that on 25 February 2019, he requested access from a colleague to a European system which he would have no obvious need to access as part of his role; and (2) on or around 1 March 2019 he implemented and rolled out an upgrade to PlumZ without going through any of the normal governance requirements or seeking approval for the same.

114. The letter also specifically instructed the Claimant not to seek to contact the underwriters whom he had previously been instructed not to contact or any other Zurich colleagues.

115. The letter also explained the following:

"I understand that you recently raised a complaint regarding the [UW 360] project (which was investigated and has now concluded), but that the focus of your complaint was on behaviours, not on the business' reasons why the UW 360 Project was considered desirable and preferable to the current PlumZ system. As it appears that you remain of the view that PlumZ (with some changes) is more favourable, a senior manager will be in contact to let you know in more detail the business' views on the merits of those proposals. If there are any questions about them, they will let you know. That process does not form part of your suspension or the disciplinary investigation, but will proceed simultaneously with it."

116. It took around 20 minutes for the Respondent to suspend the Claimant's access to the Respondent's IT system after the telephone call. During this period, the Claimant did two things:

(1) he sent an email to various senior executives of the Zurich Group including the Global CEO (Mario Greco) and the UK CEO (Tulsi Naidu), copying in Ms Coombs, saying:

"Please help!"

I have reported major corporate fraud and nobody is doing anything about it. Instead, I have just received a call from HR stating that am being suspended and shut off all Zurich It systems." (279)

and

(2) he downloaded the Respondent's Outlook database of contacts. This contained the email addresses of 200,000 people and 25,000 mobile numbers.

117. Later that same day, the Claimant sent further emails from his personal email address to Mr Greco (281-282), Michel Lies, Chairman of the Zurich Group Board (283 – 284), Mr Collinson and Mr Mann (291) asking for his suspension to be lifted.

118. On 6 March 2021, Ms Coombs emailed the Claimant in reply to two emails sent by him to her following the suspension by telephone. In her response she reiterated that the decision to suspend the Claimant was not because he had raised a concern regarding the validity of the UW 360 project and was instead because he appeared to have failed to follow a reasonable management instruction which potentially constituted misconduct. Her email also reiterated that suspension was not a disciplinary sanction and it did not mean that the respondent had formed an opinion on the Claimant's case.

119. Ms Coombs also clarified the Respondent's instructions to the Claimant with regard to contacting Zurich colleagues. The email said, "*when we refer to [*you not contacting] *'other Zurich colleagues', that is not intended to prevent you from seeking to contact senior management within Zurich about your situation, but rather colleagues you work with all who may use the UW 360 Project or PlumZ…..To confirm, you are not barred from sending communications to senior managers requesting oversight of the process, but you remain barred against sending communications to the underwriters or other users of PlumZ/UW 360 about the systems." (312)*

120. Mr Collinson also replied to the Claimant to say that it would not be right for him to lift the suspension. He sought to reassure the Claimant that the investigation would be carried out as quickly as possible so that the period of suspension and the impact on the Claimant could be kept to a minimum. He explained that requests not to contact colleagues were fairly standard during periods of suspension and reiterated that this did not prevent the Claimant passing new information not previously submitted to Graham Mann raising concerns through the proper channels to senior managers, such as himself (318).

121. On 7 March 2019, the Claimant emailed Mr Collinson and Ms Coombs to request that his manager, Mr Heuter be suspended immediately (328). This was because, according to the Claimant, Mr Heuter was not acting in the interests of Zurich and could not be trusted. Instead, the Claimant said Mr Heuter was acting in his personal interest and causing major harm to underwriters and Zurich shareholders. He also expressed the view that Mr Heuter had the ability to impede further investigation, which had to be stopped. (328)

Disciplinary Investigation

122. Ms Coombs prepared outline Terms of Reference (315 – 316) for the investigation and provided these to Cindy Warden, Head of Zurich Corporate Risk who was appointed as the investigator. Ms Warden was a senior manager who had not had any involvement with the Claimant.

123. In the Terms of Reference, the Respondent identified two rather than one disciplinary allegations.

These were "*whether [the Claimant]:*

- *failed to follow reasonable management instructions; and/or*
- *took steps to actively undermine or damage the UW 360 project beyond reporting his concerns about it to management.*

The management instructions in question are his line manager's request by email on 31 January 2019 that he not contact the underwriters about the UW360 project or seek to undermine the project, supported by other instructions from management and/or HR at around this time." (316)

124. The Claimant was invited to attend an investigation meeting with Ms Warden on 8 March 2019. The Claimant prepared a written response to the allegation of misconduct and the additional concerns (319 – 321) which he provided to Ms Warden prior to their meeting.

125. Ms Warden was accompanied at the meeting by Lesley Denham (HR, Employee Relations) and a notetaker was present. The notes were included in the bundle (356 - 358). The Claimant told the tribunal that the notes were "reasonably accurate."

126. The Claimant did not dispute that he had sent the emails to the underwriters in breach of the instruction telling him not to do so. His defence was that the instruction was not a reasonable one in the circumstances.

127. Ms Warden also met and interviewed the following as part of her investigation:

- Claude Heuter (370 – 372)
- Omar Khan (367)

15 March 2019 Letter

128. On 15 March 2019, Mr Collinson sent the Claimant a letter which was intended to provide a response to the points and questions raised by the Claimant in his various communications sent to various individuals (374 – 377). This was the letter that had been referred to in the suspension letter from a senior manager.

129. The letter explained the background to the UW360 project and why the decision had been taken to decommission Plum Z in a significant amount of detail, including highlighting the Respondent's view of the limits of Plum Z's functionalities and why other options were preferred. The letter asked the Claimant to accept that although he may be disappointed with the internal decision to proceed with UW360 and may or may not agree with it, to accept that there were wider business objectives that needed to be taken into consideration when deciding on the correct approach which improving PlumZ would not achieve.

130. The letter explained that the Respondent had reviewed the emails from underwriters which the Claimant had provided and had concluded they did not constitute evidence of fraud. It said:

"From the company investigation we have seen that the company view has been established after proper internal governance has taken place, and after taking a wide range of business needs into account. On systems of this size, it may well be that there are areas where existing systems are not replicated exactly or initially improved, but this is commonplace for such a wide scale IT project. We do not agree decisions carried out in this way have amounted in any way to fraudulent behaviour."

131. Notwithstanding this, the letter said that if the Claimant had any new evidence that he had not previously shared that suggested fraud by anyone involved with UW360 project, he could send this to Mr Mann.

132. The Claimant did not accept the contents of the letter and considered the letter simply to be a further part of the cover-up.

Fifth Purported Disclosure

133. On 17 March 2019, the Claimant emailed the UK Financial Conduct Authority (FCA) and the Swiss equivalent, FINMA. In his email to the FCA he said: "*With this email. I would like to report a major breach of regulations by Zurich insurance. I am the witness of fraud/cover-ups scheme, which involves over 20 people, including CEO and Chairman of the Board*." He then set out a case summary which included the following points (888)

- *"Over the past five years on my own I delivered better software then 2 IT projects with $30 m budget. Zurich management in pursuit of self-interest did not recognise it in any way and covered it up*

- *Several people in Zurich started an IT project, which has no added value and with fraudulent intentions*

- *I developed an alternative functionality, which saves Zurich $1-3m/year, but it was rejected without a valid reason, because it exposes the fall of the project. I was not allowed to show new functionality/contact anyone about it*

- *I reported fraud, but Compliance department reached conclusion that no fraud was found without proper investigation. I was threatened not to contact anyone.*

- *My line manager constantly intimidated me and informed me of risk of redundancy with an intention to get rid of me as the only witness opposing fraud. HR helped him.*

- *HR suspended me and cut me off all IT systems for non-sense reasons in an attempt to stop me collecting… evidence of fraud*"

134. Mr Mann told the Tribunal that he understood that the FCA had asked Zurich about the allegations, but had taken no action.

19 March 2019

135. On 19 March 2019, the Claimant sent two emails to Mr Collinson to say that he no longer considered the UW360 project to be fraudulent. He said that as a non-native English speaker, he now realised that his use of the word fraud was non apposite and acknowledged that although it appeared to him the UW360 project was not justified from a costs point of view, he had come to the realisation that this was ultimately a matter for management. (387)

136. The Claimant also said that he would not try to undermine the UW360 project or accuse anyone of fraud. He asked that he be allowed to return to work and release the new functionalities he had developed in PlumZ, which he predicted would save Zurich $1-3 m per year and many hours of manual work, while the UW360 project was underway saying, "if/when UW360 delivers something better it can simply be replaced." (389).

137. The Claimant later recoiled from the contents of these emails. He told the tribunal that he had been encouraged to write it by a QC friend of his who was providing him with some free legal advice and support. The Claimant said he now believed that the friend had been asked by Zurich to provide him with inaccurate legal advice to ensure that the Claimant destroyed the evidence he had of the fraud, for which the friend received a "good payment". The reason he reached this conclusion was because his friend had been skiing in Switzerland. The Claimant suspected that the friend had struck a deal with Zurich during this trip. Copies of the email correspondence between the Claimant and the QC friend were included in the bundle.

Conclusion of Disciplinary Investigation

138. The Claimant attended a further disciplinary investigation meeting with Cindy Warden on 20 March 2019. Notes of this meeting were contained in the bundle with the Claimant's comments at pages 397 – 400. The Claimant told the tribunal that the notes in their entirety are incorrect and we should

not rely on them. We note that he made very few amendments /comments on them however, and consider that they are an accurate reflection of the discussions at the meeting, albeit not a verbatim record.

139. On 28 March 2019, Ms Warden was sent further emails between the Claimant and underwriters which had been obtained by the respondent from his Zurich Outlook account. An internal request for access to the Claimant's Zurich Outlook had been made at the start of the investigation by Ms Coombs. The Claimant's account was accessed by Zurich's UK Data Protection Officer for the limited purposes of finding out what communications had been sent by the Claimant to underwriters and what responses had been received. The additional information included a transcript of a skype conversation between the Claimant and an underwriter.

140. Ms Warden sent the documents to the Claimant on 29 March 2019 for his comments asking him how they impacted on the allegation that he was seeking to undermine the UW360 project. He replied to say:

141. "Yes, i do acknowledge that these are my conversations. That is correct, i did try to get support from two underwriters in an attempt to 'undermine' the project with additional evidence. We can have a telephone conversation. If you wish, or if you have more questions, but at this point i do not have much else to say." (438)

142. The Claimant told the tribunal that he deliberately put the word undermining in single quote marks in this email because he did not accept the allegation as put. In his view, he was trying to collect evidence to support his allegation of fraud rather than undermine the UW360 Project.

143. Ms Warden completed her investigation report on 2 April 2019. She concluded that there was a disciplinary case to answer in relation to the two disciplinary allegations and one of the additional areas of concern.

144. With regard to the other additional area of concern, Ms Warden found that the Claimant had not rolled out new functionality in the live version of PlumZ without his manager's knowledge. The new functionality had been developed only in the test version of PlumZ. Ms Warden considered this should not be pursued as a separate allegation. She expressed the view, however, that she considered the reason the Claimant done this was as part of his wider efforts to undermine UW360 and therefore it was relevant to the other allegations.

145. Ms Warden also highlighted some mitigating and aggravating factors that she considered were relevant.

146. These included by way of mitigation:

- being satisfied that the Claimant genuinely and passionately felt that the UW360 project was not the right option for Zurich and that PlumZ was a preferable action. She did not find this justified him ignoring the reasonable management instructions or seeking to undermine the UW

360 Project, but thought it should be taken into account as a mitigating factor;

- the fact that the Claimant clarified that fraud had been the wrong word to use and that he was not asserting wrongdoing, but rather that the UW360 Project was a poor use of money and PlumZ would be better; and

- the fact that the emails to underwriters had been sent shortly after the Claimant had been put at risk of redundancy. Ms Warden acknowledged that any redundancy process has the potential to be stressful the individual involved and may affect their judgement.

147. Ms Warden identified the following aggravating factors:

- She considered the Claimant not being entirely honest and transparent with her. This was because he had initially told her he had had contact with only four underwriters, whereas it transpired that had been communications with 150 of them.

- She also considered that the Claimant's actions were premeditated. In her view, the evidence from his emails to Mr Wainner in December 2018, strongly suggested that he had been considering taking the steps he ultimately took for some time.

148. Ms Warden's overall recommendation was that the case should progress to be a disciplinary hearing and be treated as potentially one of gross misconduct.

149. The Claimant was informed of this in a letter dated 4 April 2019 (450 - 451) and provided with a copy of the full investigation report (444 – 449) on 8 April 2019.

Disciplinary Hearing

150. The Respondent initially appointed Shaun Hicks, Chief Risk Officer, as the Disciplinary Officer. He was supported by Alison Charnock from HR.

151. Mr Hicks had had no prior involvement in the matter. He had no connection with the Global Commercial Insurance Property Group and did not know the Claimant or any of the other people involved.

152. The Claimant was invited, by a letter dated 8 April 2019, to attend a disciplinary hearing on 11 April 2019 (462-463). The letter informed the Claimant that the purpose of the meeting was to consider the following allegations of potential gross misconduct, namely:

- failing to follow reasonable management instructions not to contact the underwriters about the UW 360 project and/or to seek to undermine that project;

- taking active steps to undermine or damage the UW 360 project, beyond reporting concerns to management; and

- requesting access to a system with customer data that was not needed for his duties for the purpose of undermining the UW 360 project.

153. The letter, which was sent by Mr Hicks, attached a copy of the investigation report and the pack of documents collated by the investigation. The letter told the Claimant that the allegations, if proven, potentially constituted gross misconduct and that a possible outcome of the hearing would be the termination of his employment. The Claimant was advised that he could be accompanied by a work colleague or trade union official at the disciplinary hearing; could provide any evidence or information that he believed would be helpful or that supports did his case and could, if he wished, call relevant internal witnesses to the meeting.

154. The Claimant emailed Mr Hicks and Ms Charnock to say that he would like to ask 13 property underwriters if they were available to attend to be witnesses at the disciplinary hearing. He clarified that he would like to ask all 13 if they were available in the hope that several would agree to attend.

155. Ms Charnock responded by asking the Claimant to clarify the evidence, the identified individuals would be giving and how it was relevant to the Claimant's disciplinary case. In order to allow time for this to be fully considered ahead of the disciplinary hearing, and the fact that the hearing slot could not accommodate 13 witnesses, she suggested postponing the hearing.

156. Following further correspondence, the hearing was rearranged for 18 April 2019. As Mr Hicks was due to be on annual leave on 18 April 2019, Steve Rickards, Head of UKGI tax, was instead appointed to conduct the disciplinary hearing. Mr Rickards had had no prior involvement in the matter. He had no connection with the Global Commercial Insurance Property Group and did not know the Claimant or any of the other people involved.

157. Ultimately, the Respondent did not accept that the identified individuals would give relevant evidence and therefore did not permit the Claimant to contact them (502). It did not close off the possibility of the Claimant calling one or two witnesses with relevant evidence, however, and gave him specific permission to contact a colleague for the purposes of accompanying him disciplinary hearing (532)

158. The Respondent explained at some length why it considered the requested witnesses did not appear relevant. This was because the Claimant wanted to rely on their evidence to prove that UW360 was a 'nonsense' and PlumZ was better. The Respondent's view was that the disciplinary hearing was not a reinvestigation of the Claimant's allegations of fraud and would not be considering which of UW360 or PlumZ was better. Instead, it would be examining whether the Claimant had acted as alleged (502). The Respondent's view was that nothing the Claimant had said suggested that

the witnesses he wanted to call would give any evidence relevant to this question (502)

159. During this period, the Claimant spoke to a lawyer and learned that legislative provisions were in force that protect employees who make protected disclosures. He wrote to the Respondent to assert that "*As a whistle-blower reporting major multi-million dollar corporate fraud [he had] immunity by law ('Public Interest Disclosure Act 1998') as well as Zurich internal whistle-blower protection rules*." (497). He commenced the Acas early conciliation process on 10 April 2019 (13) and sent emails to members of the Global Executive Committee (504) and the CEOs of Zurich EMEA and Zurich UK (506) asking for his suspension to be lifted and the disciplinary hearing to be cancelled.

160. At 22:39 on 17 April 2019, the Claimant emailed Mr Rickard and Mr Collinson to request that the hearing be rescheduled due to unspecified personal/family circumstances. When the Respondent refused the postponement and indicated that if he did not attend, the hearing would proceed in the Claimant's absence, the Claimant asked to join by telephone. This was agreed and the disciplinary hearing proceeded on 18 April 2021.

161. The Claimant attended the hearing alone. He confirmed that he was aware that he had a right to be accompanied but had chosen to attend alone. The hearing was conducted by Mr Rickards. He was accompanied by Ms Charnock and a note taker took notes (558 – 564).

162. The Claimant told the tribunal that the notes do not reflect what was said at the hearing and has accused the Respondent of adducing falsified evidence. He was unhappy that the notes "*portrayed [him] as a person with mental problems who could not express himself properly*" because they did not include everything he said by way of explanation.

163. We are satisfied that the notes are reliable and not a falsification of evidence. The Claimant did not complain about the notes of the disciplinary hearing at the appeal stage. In addition, Mr Rickards, whose evidence we accepted, told us that he checked the notes shortly after the disciplinary hearing and was happy to approve them as accurate as they reflected his handwritten notes and recollection of what was discussed. They were never intended to be a verbatim note.

164. In addition, we have taken into account our own experience of the Claimant's communication style in the tribunal hearing. We observed him giving lengthy answers and asking very lengthy questions that at times were difficult to follow. This made taking our own notes of what he was saying quite difficult, but did not prevent us from understanding the points he wished to make.

165. When cross examined, the Claimant accepted that he had a full opportunity to state his case at the disciplinary hearing. He said it was mainly him talking with some questions from Mr Rickards and Ms Charnock. The hearing lasted around two hours.

166. Mr Rickards did not consider that he needed to undertake any further investigations following the disciplinary hearing. He concluded that the first two allegations, namely the failure to follow a reasonable management instruction not to contact the underwriters and the allegation that the Claimant had taken steps to undermine the UW360 project were proven. He did not uphold the third allegation.

167. Mr Rickards told us that the two allegations were both closely connected. In his mind, each one of them constituted gross misconduct justifying summary dismissal. He took into account the mitigating and aggravating factors identified by Ms Warden in her investigation report. His decision was that the Claimant should be summarily dismissed without notice or payment in lieu of notice.

168. The decision was communicated to the Claimant in a lengthy letter dated 25 April 2019 (609 – 616). The letter explained Mr Rickard's reasoning in a good deal of detail. The letter confirmed that the Claimant had the right to appeal against any aspect of his decision with which the Claimant was unhappy.

169. On 26 April 2019, the Claimant sent emails to more than a thousand Zurich employees and other contacts using the contact information he had downloaded from the Respondent's IT system. He also refused to return the company equipment and property that he had in in his possession. The Respondent successfully pursued High Court litigation in connection with this.

Appeal

170. The Claimant appealed against his dismissal on 7 May 2019. His appeal was in the form of text messages sent to Ms Charnock and Mr Collinson. This was followed up in a short letter dated 8 May 2019. In his letter the Claimant said:

"I would like to appeal my disciplinary hearing decision. I received on 25 April 2019, from Steve Rickards. Such decision is illegal, because it breaches 'Public Interest Disclosure Act 1998'. I also believe that Steve Rickards was influenced/forced break the law, taking such decision." (645)

171. The Claimant was sent a letter dated 10 May 2019 inviting him to attend an Appeal Hearing on 17 May 2019. The letter informed him that Mr Hicks would be hearing his appeal. We note that Mr Hicks had had some prior involvement in the case because he had been due to conduct the Disciplinary Hearing. He had read the investigation report prepared by Ms Warden and had some preliminary discussions with HR about how to approach the disciplinary hearing.

172. The invite letter explained that Mr Hicks would be accompanied by Niki Siddons form Employee Relations. The letter advised the Claimant that he could be accompanied by a colleague or trade union official and could call relevant witnesses. The letter requested the Claimant provide details

regarding the grounds of his appeal along with any supporting evidence by email directly to Mr Hicks or Ms Siddons (646).

173. The Claimant responded to the request for grounds of appeal in an email dated 10 May 2019 saying, "*The reason is simple: Employment Tribunal and FCA may ask why i didn't appeal disciplinary decision if I believe that dismissal was unfair. So you can consider this appeal to be just a formality*." (649) He sent a further email on 13 May 2021 saying, *"I would like to clarify my reasons for appeal. The decision to dismiss me was illegal as it violates "Public Interest Disclosure Act 1998" and I believe that Steve Rickards was influenced to take it." (660)*

174. The appeal hearing took place in person on 17 May 2019. The Claimant attended alone. He confirmed that he was aware that he had a right to be accompanied but had chosen to attend alone. A note was taken of the discussions at the appeal hearing (714 – 726)

175. The Claimant told the tribunal that the notes do not reflect what was said at the hearing and has accused the Respondent of adducing falsified evidence. The Claimant did not complain about the notes of the disciplinary hearing at the appeal stage. Mr Hicks told us that he checked the notes shortly after the appeal hearing and was happy to approve them as accurate as they reflected his handwritten notes and recollection of what was discussed. We consider the notes to be reliable for the same reasons as set out above in relation to the disciplinary hearing notes.

176. When cross examined, the Claimant accepted that he had a full opportunity to state his case at the appeal hearing. He said it was similar to the disciplinary hearing with mainly him talking with some questions from Mr Hicks. The hearing lasted around two hours.

177. Although the Claimant had limited his appeal to two grounds, Mr Hicks treated him as having three grounds of appeal. This was because the Claimant's main focus during the meeting was that the management instruction he had received from Mr Haueter, and which he accepted he did not follow, was not a reasonable one and therefore it was not misconduct for him not to have followed it.

178. Following the Appeal Hearing, Mr Hicks interviewed Ms Warden (742 – 744), Mr Mann (745 – 748), Mr Rickards (749 – 751) and Mr Haueter by way of follow up investigations. Mr Mann provided Mr Hicks with documents from the fraud investigation. Mr Haueter provided Mr Hicks with the documents created at the time of the redundancy consultation.

179. Mr Hicks sent the Claimant an outcome letter and the notes from the appeal hearing on 19 June 2019. The letter confirmed that Mr Hicks had decided not to uphold the Claimant's appeal. (776 – 781)

180. In the letter Mr Hicks explained that he had approached the Claimant's appeal, objectively and that there had been no internal instructions or directions to him to make any particular finding. He said the view he had

come to was based on the evidence, what the Claimant had said at the appeal hearing and his subsequent investigations.

181. Mr Hicks then dealt with each of the three grounds of appeal in turn.

182. Mr Hicks rejected the argument that the dismissal was illegal and in breach of whistleblowing legislation, saying that he was satisfied that the dismissal was not an act of retaliation for the Claimant having raised his complaints internally, but was instead a reaction to the Claimant's subsequent conduct.

183. In reaching this conclusion, Mr Hicks had also considered whether the decision to put the Claimant at risk of redundancy was a reaction to his complaints. Having spoken with Mr Haueter to understand the basis for the redundancy process, Mr Hicks concluded that once the decision had been taken to decommission the PlumZ system the Claimant's potential redundancy flowed naturally. He was satisfied, however, that termination of the Claimant's employment was not an inevitable outcome of the redundancy process as redeployment would have been considered. We note that Mr Rickards told the tribunal that often when employees are put at risk at the Respondent, it can be a fairly long period before they leave the business.

184. Mr Hicks also rejected the argument that Mr Rickards had been forced to take a particular decision to dismiss him. When questioned about this by Mr Hicks, Mr Rickard told him that he had no proper knowledge of the Claimant or the project and had no personal interest or involvement in it. Mr Hicks indicated that he had seen no evidence to suggest that there was any improper influence on Mr Rickards.

185. Finally, Mr Hicks rejected the argument that the management instruction was not reasonable. In reaching his conclusion on this point, Mr Hicks considered whether the fraud investigation report was deficient as alleged by the Claimant. He rejected this assertion having spoken to Mr Mann and read the letter dated 15 March 2019 from Mr Collinson to the Claimant. Mr Hicks took the view that the management instructions from Mr Haueter had to be understood in the context of the emails the Claimant had sent him previously, threatening to stop the project or to throw everything into chaos. When that was done, he considered the instructions to be entirely reasonable in the circumstances and that it was not acceptable for the Claimant to ignore them.

186. Mr Hicks concluded by saying that he also considered whether summary dismissal was the appropriate sanction in the circumstances and was satisfied that it was. He said that he agreed with Mr Rickards that the Claimant's behaviour "*fundamentally breached your employment relationship and that dismissal was the correct outcome*."

THE LAW

Protected Disclosures

187. Section 47B(1) of the Employment Rights Act 1996 says:

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

188. According to section 43A "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

189. Section 43B(1) says "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Disclosure of Information

190. There must be a disclosure of information. In *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38, the EAT held that to be protected a disclosure must involve information, and not simply voice a concern or raise an allegation.

191. The court of appeal has subsequently cautioned tribunals against treating the categories of "information" and "allegation" as mutually exclusive in the case of *Kilraine v London Borough of Wandsw*orth [2018] EWCA Civ 1436. At paragraphs 30 -31, Sales LJ says:

"*I agree with the fundamental point …….. that the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. …….Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. ……*

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision."

192. He goes on to say at paragraph 35:

> "*In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection [43B](1).*"

Reasonable Belief

193. It is irrelevant whether or not it is true that a relevant failure has occurred, is occurring or is likely to occur (*Darnton v University of Surrey* 2003 [ICR] 615, EAT; *Babula v Waltham Forest College* [2007] ICR 1026, CA).

194. The test is whether the Claimant reasonably believes the information shows this. The requirement for reasonable belief requires the tribunal to identify what the Claimant believed and to consider whether it was objectively reasonable for the Claimant to hold that belief, in light of the particular circumstances including the Claimant's level of knowledge. (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT).

Public Interest Test

195. The leading case dealing with when the public interest test is met is *Chesterton Chesterton Global Ltd & Anor v Nurmohamed & Anor* [2017] EWCA Civ 979. The Court of Appeal confirmed that where a disclosure relates to a breach of the worker's own contract of employment, or some other matter under section 43B(1) where the interest in question is personal in character, there may be features of the case that make it reasonable to regard the disclosure as being in the public interest as well as in the personal interest of the worker.

Detriments and Automatic Unfair Dismissal

196. Section 47B ERA 1996 gives an employee the right not to be subjected to a detriment on the ground that he has made a protected disclosure.

197. The term "detriment" is not defined in ERA 1996 and tribunals have therefore looked to the meaning of detriment established by discrimination case law. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 it was held that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work.

198. Section 103A ERA provides that **"**An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".

199. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment

of a whistleblower (*NHS Manchester v Fecitt and others* [2012] IRLR 64, CA). Section 103A requires the protected disclosure to be "the principal reason" for the dismissal. In both cases, an enquiry into what facts or beliefs caused the decision-maker to act is necessary.

200. If the employer fails to show an innocent reason for its treatment of a whistleblower, the tribunal may draw adverse inferences, but is not legally bound to do so.

201. In the case of *Bolton School v Evans* [2006] EWCA Civ 710, CA, the Court of Appeal distinguished between a disclosure of information and an act by an employee designed to produce evidence to support his belief in the information disclosed. It was acceptable for an employer to take disciplinary action for the employer for the latter.

Ordinary Unfair Dismissal

202. The test for ordinary unfair dismissal is set out in section 98 of the Employment Rights Act 1996. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is a reason falling within subsection (2).

203. Under section 98(4) '… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.'

204. Tribunals must consider the reasonableness of the dismissal in accordance with section 98(4). However, tribunals have been given guidance by the EAT that applies to misconduct cases in the case of *British Home Stores v Burchell* [1978] IRLR 379; [1980] ICR 303, EAT. There are three stages:

    (a) did the Respondent genuinely believe the Claimant was guilty of the alleged misconduct?

    (b) did it hold that belief on reasonable grounds?

    (c) did it carry out a proper and adequate investigation?

205. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the Respondent, the second and third stages of *Burchell* are neutral as to burden of proof and the onus is not on the respondent (*Boys and Girls Welfare Society v McDonald* [1996] IRLR 129, [1997] ICR 693).

206. Finally, Tribunals must decide whether it was reasonable for the Respondent to dismiss the Claimant for that reason in all the circumstances of the case.

207. We have reminded ourselves that the question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for us to substitute our own decision.

208. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23, CA)

209. When considering the question of the employer's reasonableness, we must take into account the disciplinary process as a whole, including the appeal stage. (*Taylor v OCS Group Limited* [2006] EWCA Civ 702)

210. In reaching our decision, we must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

Wrongful Dismissal

211. When considering a claim for wrongful dismissal, the tribunal is required to ask itself was the Claimant guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the respondent to summarily terminate contract of employment.

212. We must be satisfied, on the balance of probabilities, that there was an actual repudiatory breach by the Claimant. It is not enough for the Respondent to prove that it had a reasonable belief that the Claimant was guilty of such serious misconduct.

ANALYSIS AND CONCLUSIONS

Did the Claimant make protected disclosures?

213. We consider the Claimant made disclosures of information that had sufficient factual content and specificity so as to meet the sufficiency of information test. The Respondent understood the Claimant was saying a legal obligation was being breached and/or a criminal offence was being committed and later that whichever one it was was being deliberately concealed.

214. However, in the judgment of the Tribunal, none of the disclosures constituted protected disclosures, as defined in section 43B(1). This is

because it was not reasonable for the Claimant to believe what he told the Respondent on each occasion. In addition, although the Claimant appears to have convinced himself he made the disclosures in the public interest, it was not reasonable for him to believe this, as he was acting only in his own self-interest.

What was the information disclosed?

215. The Claimant relies on five purported protected disclosures. What he actually said on each occasion evolved with time, but all of the disclosures were concerned with the same subject matter, namely the validity of the UW360 Project. The Claimant asserted throughout that the Project was a 'fraud' and that senior people at Zurich were covering up that fraud.

216. The Claimant used the word 'fraud' to denote his view that those involved in establishing the Project were acting in a corrupt manner and deliberately wasting shareholder's funds. We consider that the use of the word 'fraud' was sufficient to convey that he considered a legal obligation was being breached and/or a criminal offence was being committed.

217. The basis for the Claimant's negative view of the UW360 Project was because it involved decommissioning PlumZ and replacing it with new software that had not yet been developed. By way of an explanation for his assertion that the UW360 was a 'fraud', he communicated the following information, that had genuine and, in our judgment, sufficient factual content, to the Respondent:

- PlumZ offered very good value for money
- PlumZ offered a high level of functionality which could be easily developed further
- He had identified improvements that could be rolled out for minimal cost
- Plum Z was well liked by the underwriters with whom he had regular contact
- Decommissioning Plum Z would not be straightforward for a number of reasons which he outlined in some detail

218. The Claimant also identified that the savings of £1 million envisaged in the Zpad were exaggerated. This was because he could not work out where they came from as his understanding was that the only savings would be a few people's salaries. This was also a communication of information. We note that the Respondent sought to clarify this for him, but he maintained this was the case even after the Respondent explained in more detail how the savings would be achieved.

219. There were two things the Claimant said which we considered were simply allegations or expressions of opinion. The Claimant told the Respondent that he considered that the Project was not deliverable based on his expertise as an IT professional working in the area. This was expressed as a matter of opinion, however, and was not supported with information that contained factual content.

220. Finally, the Claimant suggested to the Respondent that those involved in the Project may have offshore bank accounts. He was not able to produce to the Respondent or to the Tribunal any evidence of actual criminal behaviour by any of them and so did not provide information about this. Instead, he merely made unsubstantiated allegation about this.

Reasonable Belief

221. The Claimant jumped to the conclusion that Project UW360 was corrupt and a deliberate waste of shareholder funds at an early stage of learning about it. This was not a reasonable belief for him to hold at any time. This applies to our assessment of his reasonable beliefs in relation to all of the disclosures he made.

222. The Claimant made the first disclosure based on his reading of the Z-pad and because his line manager had asked him not to develop any new functionality in PlumZ in response to the proposal he sent him by email on 15 November 2018. In the Claimant's view, what was said about the Project in the Z-Pad was so blatantly false that he decided those involved in promoting and protecting the Project must be acting solely in their own self-interests. At best, he believed the Project was a job creation exercise securing their future livelihoods; at worst, those involved were using the Project as a vehicle to steal money from Zurich.

223. The Z-pad does not, in our judgment, contain blatantly false information. The Claimant was unable to articulate what the false information was for the benefit of the Tribunal, other than to suggest we would not be able to understand it because we lacked his expertise. We have reached our view on this having read the comments the Claimant added to the original Zpad document carefully.

224. We add that we consider that the Claimant's line manager's behaviour with regard to his proposal to develop new functionality in PlumZ was entirely understandable in the circumstances where it was to be decommissioned. We find nothing suspicious about it at all.

225. The Respondent did not reject the Claimant's concerns outright, but treated them seriously. As the Respondent provided more information about the rationale for Project 360 to the Claimant, his continuing unchanged beliefs became even more unreasonable. It appears that, once the Claimant had formed his adverse view of the Project, it was impossible to dissuade him from it.

226. The Respondent accepted many of the points that the Claimant made about PlumZ. It nevertheless explained that for commercial reasons it had decided to proceed with a different solution and decommission PlumZ. The Claimant simply refused to accept this. The small number of emails of support he received from the underwriters for PlumZ and the proposed new functionality he was proposing do not support his position that UW360 was a fraud.

227. It was wholly unreasonable for the Claimant to form the view that everyone who expressed a view contrary to his must be involved in a cover-up. This

is particularly true of his belief that his QC friend was actually acting for Zurich and deliberately deceiving him.

Public Interest

228. The Claimant's reason for not wanting to see PlumZ decommissioned was because it adversely impacted on his own position. He denied this was why he raised his concerns and said that he was acting in the wider interests of Zurich's shareholders. In our judgment, he may have convinced himself that this was the case, but this was not a reasonable view for him to hold.

229. The Claimant was the only person working on PlumZ. He had effectively created a perfect role for himself. He had a lot of freedom with little oversight from his line manager including working from home. He was very proud of the way he had developed PlumZ. When PlumZ was to be decommissioned, the Claimant's reaction was driven by the fact that his hard work during the previous 5 years would go to waste and his job would change.

230. Although the Respondent sought to explain the commercial benefits of UW360 to the Claimant and why it was in the interests of underwriters and shareholders, he rejected these explanations outright. By continuing on the path that he followed, he failed to consider the positions of underwriters or shareholders and focussed solely on proving that he was right.

Detriments and Automatic Unfair Dismissal

231. As we have found that the Claimant did not make any protected disclosures, it follows that his claims that he was subjected to detriments on the ground of having made protected disclosures and that he was dismissed for this must fail. For the sake of completeness, however, we state that even if we had reached a different conclusion on the protected disclosures, we would not have upheld his claims.

232. The four purported detriments were as follows:

- intimidating him through what was said in the final paragraph of Graham Mann's email to the Claimant dated 31 January 2019;
- suspending him on 5 March 2019;
- intimidating him through what was said in the final paragraph of the letter dated 5 March 2019;
- initiating a disciplinary investigation on 5 March 2019

233. We have first considered whether occurred and if so, if they amounted to detriments.

First and Third Detriments

234. The Respondent does not dispute that the Claimant was told by Mr Mann in the email of 31 January 2019 that he should not contact underwriters and discuss his views about Project UW360 with them, nor that this was reiterated in the suspension letter.

235. In both cases, there was no intention to intimidate the Claimant, but to reiterate the instruction that he had already been given on several occasions, that he should not share his proposal for new functionality for PlumZ with the underwriters or discuss Project UW360 with them.

236. We consider that it was entirely reasonable for the Respondent to instruct the Claimant not to contact the underwriters about the new functionality he had developed in PlumZ or the Project. The reason the Claimant was given this instruction was to ensure that the underwriters were not given confusing messages about PlumZ or the Project. The views of underwriters were being sought as part of Project UW360 and it was not appropriate for the Claimant to undertake a separate exercise.

237. The aim of the instruction was not to prevent the Claimant from obtaining evidence to support his allegation of fraud. He was told repeatedly that he could present any genuine evidence of fraud he had. The views of the underwriters as to the respective merits of UW360 and PlumZ were irrelevant to the fraud question.

238. Initially, Mr Heuter's instructions to the Claimant were expressed in a very friendly tone language. That tone changed slightly and became firmer when the Claimant sent threatening emails to his colleagues on 6 December 2018 and to Mr Wainner on 11 and 13 December 2018. After the Claimant told Mr Mann what he was thinking of doing, it was appropriate for Mr Mann to reiterate the Respondent's instruction and for this to be expressly referenced in the suspension letter.

239. The language and tone used in the relevant correspondence were not intimidating. We note that the Claimant did not behave as if he found the instruction from Mr Mann intimidating because he ignored it.

240. The instruction had no detrimental impact on the Claimant. It did not prevent him from contacting the underwriters in the course of his normal duties and work. He was also not subjected to the detriment of being prohibited from raising concerns about the Project as he was told that he could still do this.

241. Our conclusion is that the actions of the Respondent did not result in the Claimant being subjected to a detriment.

Second and Fourth Detriment and Dismissal

242. It was to the Claimant's detriment that he was suspended and a disciplinary investigation was instigated. Even though suspension is said to be a neutral act, it inevitably results in a detriment to the employee involved. The same is true of a disciplinary investigation even though it may not lead to any disciplinary action being taken.

243. We are satisfied that the reason the Respondent suspended the Claimant, initiated the disciplinary investigation and dismissed him was because the Claimant had ignored the reasonable instruction that he was given not to contact the underwriters.

244. We note that prior to commencing the disciplinary process the Respondent had put the Claimant at risk of redundancy. We have considered whether we should infer from this that the Respondent was trying to remove the Claimant from Zurich because he had raised concerns about the UW360 Project. Such an inference is not substantiated by the available evidence. The Claimant's role would have disappeared once PlumZ had been decommissioned. The Respondent had other roles to offer him, however, and it was by no means inevitable that he would end up being redundant.

245. None of the actions taken by the Respondent were taken because the Claimant had alleged the Project was fraudulent and that his colleagues and senior managers were trying to cover this up. The Respondent's conduct was not an attempt to silence or punish him because he had raised concerns. We consider that Zurich behaved exceptionally well toward the Claimant and deserves recognition for the effort it made, at every senior levels, to understand his concerns and seek to address them until he put them in the position where they had to take action against him.

Ordinary Unfair Dismissal

Reason for Dismissal

246. We are satisfied that the Claimant's dismissal was for a fair reason, namely misconduct consisting of his failure to follow a reasonable management instruction. Misconduct is a fair reason for dismissal.

247. It was not because the Claimant had raised concerns about the Project or because he had accused his colleagues and senior managers of fraud.

Was the Claimant's Dismissal Fair?

248. The Claimant accepts that he was aware of the instruction he was given not to contact the underwriters and that he deliberately disobeyed it. He accepts that he contacted 150 underwriters in breach of the instruction to show them the new functionality he had developed. He also contacted two underwriters to ask them to support his position that Project UW360 was a fraud.

249. The Claimant's reason for doing this was because he did not consider the instruction was reasonable in the circumstances. He argued at the time and before that he should have been allowed to contract the underwriters to obtain evidence to support his allegations that UW360 was a fraud and to obtain support for the retention of PlumZ.

250. We do not agree. In our judgment, as explained above, the instruction was a reasonable one for the Respondent to have given the Claimant.

251. The Respondent treated the Claimant's conduct as amounting to gross misconduct. We are satisfied that this was within the range of responses of a reasonable employer in the circumstances. The Respondent took into account the mitigating circumstances that applied before reaching its decision. This included the fact that the Claimant's views were strongly held and his attitude to Project UW360 was potentially influenced by the impact

on his job. The Respondent's decision that these mitigating factors were outweighed by the aggravating factors that applied (particularly his lack of remorse and insistence that he would do the same again) was a fair and reasonable one.

252. The Claimant pointed out that his actions did not cause actual harm to the UW360 project or create confusion in the underwriter community and argued that treating his behaviour as constituting gross misconduct unfair for that reason. The Tribunal considers that the Respondent was nevertheless entitled to treat the conduct as gross misconduct because there was such a flagrant and deliberate breach of an instruction that the Claimant had been given several times.

253. Finally, we are satisfied that the Respondent followed an exceptionally fair disciplinary process which complied with the Acas Code of practice.

254. Suspension of the Claimant was justified because there was a need to prevent the Claimant from contacting others during the disciplinary investigation.

255. The Claimant was informed throughout that the Respondent was treating the matter as a serious and of his right to be accompanied to the various meetings at each stage. He was informed of the allegations against him and provided with copies of the evidence obtained during the investigation. He was given sufficient notice of meetings so that he was able to prepare.

256. The Claimant's own evidence was that he considered the investigation conducted by Ms Warden was thorough and fair and she gave him every opportunity to tell his version of events.

257. He was given the same opportunity at the disciplinary hearing (albeit by telephone and not face to face) and appeal hearing.

258. The Claimant says he should have been allowed to present witness evidence from some of the underwriters he contacted. We consider that the Respondent's decision not to permit him to do this was reasonable because the evidence of the underwriters was not relevant to the disciplinary allegations.

259. It is notable that the Respondent did not uphold some of the initial allegations against the Claimant, demonstrating that it took account of his defence where he had one.

260. Taking all of the above into account, we find that the Claimant's dismissal was fair.

Wrongful Dismissal Claim

261. In addition to being satisfied that the Respondent acted reasonably in treating the Claimant's conduct as gross misconduct, we find that his behaviour did indeed constitute gross misconduct.

262. The Claimant's managers did not try and prevent the Claimant from raising concerns about Project UW360 or subject him to retribution for doing so. They took the concerns he raised seriously and sought to engage with him. Against that context, the Claimant's actions were deliberate and planned and constituted a fundamental breach of contract.

263. His claim for notice therefore fails as we determine that the Respondent was entitled to summarily dismiss him without notice or a payment in lieu of notice.

_____

Employment Judge E Burns
1 February 2022

Sent to the parties on:

01/02/2022.....

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For the Tribunals Office