

THE INDUSTRIAL TRIBUNALS

CASE REF: 2250/12
724/13

CLAIMANT: AB

RESPONDENT: Ulster Bank

DECISION

The decision of the tribunal is that the claimant was subjected to detriment on grounds of having made protected disclosures. The claimant is awarded total compensation in the sum of £28,792.82

Constitution of Tribunal:

Chairman: Mrs Ó Murray

Members: Mr J Devlin
Mr P McKenna

Appearances:

The claimant was represented by Mr N Philips, Barrister-at-Law, instructed by Worthingtons Solicitors.

The respondent was represented by Mr T Warnock, Barrister-at-Law, instructed by Elliott Duffy Garrett, Solicitors.

The claim

1. The claimant claimed that he was subjected to detriment on grounds of having made protected disclosures.
2. The respondent denied:
 - (1) that any disclosures amounted to protected disclosures in that the claimant failed to communicate information and lacked the requisite reasonable belief in the truth of any alleged disclosure;

- (2) that any detriment was suffered by the claimant; and
- (3) that any alleged detriment was suffered on grounds of having made any protected disclosure.

The issues

3. The respondent accepted that the claimant raised issues in good faith. Good faith therefore was not contested by the respondent in the course of the case.
4. The issues before the tribunal therefore were as follows:-
 - (1) Did the claimant make disclosures in the sense of conveying information?
 - (2) Did the alleged information tend to show a breach of one or more of the categories set out at Article 67B of the legislation? It was agreed that the two categories engaged were at Article 67B(1)(a) and (b) which relate to the commission of a criminal offence and failure to comply with a legal obligation, namely the contract of employment and the tort of conversion. The crime involved was theft.
 - (3) Did the claimant reasonably believe at the time of the alleged disclosures that the information tended to show the relevant failures?
 - (4) Did the claimant suffer one or more detriments?
 - (5) Were any alleged detriments on grounds of the fact of having made a protected disclosure?
 - (6) In relation to value, is the claimant entitled to: compensation for psychiatric injury; injury to feelings; loss of overtime; a statutory uplift to compensation?

Sources of Evidence

5. The tribunal had before it written statements and oral evidence from the following witnesses and had regard to the documentation to which it was referred.
6. The claimant gave evidence on his own behalf. A psychiatric report by Dr GL was tendered in evidence without the necessity of formal proof by agreement of the parties and we therefore accepted it in evidence in the absence of any rebuttal evidence. The tribunal was also referred to relevant extracts in the claimant's GP notes and records.
7. For the respondent the tribunal heard from the following witnesses:-
 1. Mr C, Specialist Investigator;
 2. Ms D, HR Case Consultant;
 3. Ms E, a colleague of the claimant;

4. Mr F, the claimant's line manager for the majority of the time relevant to these proceedings;
5. Mr G, the Business Manager who dealt with the second disciplinary process;
6. Ms H, the Manager who dealt with the first disciplinary process;
7. Mr J, the Head of Cash Operations and Logistics who was more senior to the claimant and his line manager;
8. Mr K, the Head of Banking Operations, who was on secondment from RBS, and was the most senior manager to give evidence to us.

Preliminary

8. At the outset of the hearing, due to security concerns relating to the personal safety of the witnesses and relating to the Bank's processes, the following Orders were granted:- a permanent Restricted Reporting Order, and an anonymity Order in relation to the claimant and the witnesses. A copy of the Order is attached to this decision.

The Law

9. Both counsel provided detailed written submissions which were shared in advance of the hearing and they also provided written submissions. The written submissions were supplemented with oral submissions at hearing.
10. The tribunal took account of all of the oral submissions and the authorities to which it was referred and considered in detail at the relevant parts of the text book authority namely **Whistleblowing Law and Practice** (second edition) by Bowers and others.
11. The Public Interest Disclosure (Northern Ireland) Order 1998 amended the Employment Rights (Northern Ireland) Order 1996 ("the ERO") and introduced provisions protecting workers from suffering detriment on grounds of having made protected disclosures.
12. Article 70B of the ERO provides:

"A worker has the right not to be subjected to any detriment by any act or deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure".
13. The ERO provisions engaged in this case are Articles 67B(1)(a) and (b) which state as follows:

"67B. (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, 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."*

14. The following cases were referred to in detail in submissions by both sides and were considered by the tribunal in reaching its conclusions.

- (1) **Easwaran v St George's University of London** [2010] UKEAT/0167/10.
- (2) **Cavendish Monroe Professional Risks Management Ltd v Geduld** [2009] UKEAT/0195/09.
- (3) **Maini v Dept for Work and Pensions** (ET, Case No. 2203978/01, 15 October 2002).
- (4) **Goode v Marks & Spencer PLC** [2010] UKEAT/0442/09.
- (5) **Smith v London Metropolitan University** [2011] IRLR 884.
- (6) **Everett Financial Management Ltd – v – Murrell** [UKEAT/552/02].
- (7) **The Learning Trust and Others v Marshall** [2012] UKEAT/0107/11.
- (8) **Korashi v Abertawe Bro Morgannwg University Local Area Health Board** (EAT/0424/09, 12/09/11).
- (9) **Babula v Waltham Forest College** [2007] EWCA Civ 174.
- (10) **Kraus v Penna plc** [2004] IRLR 260, EAT.
- (11) **Darnton v University of Surrey** [2003] ICR 615.
- (12) **Pinnington v Swansea City Council and another** [2005] EWCA Civ 1180.
- (13) **Shamoon v The Chief Constable of the RUC** [2003] UKHL11
- (14) **Khan v Chief Constable of West Yorkshire Police** [2001] UKHL48.
- (15) **MOD v Jeremiah** [1980] ICR 13 at 26.
- (16) **NHS Manchester v Fecitt and others** [2011] EWCA Civ 1190).
- (17) **Nagarajan v London Regional Transport** [1999] ICR 877 at 866.
- (18) **Rice v McEvoy** [2012] NIJB 80 – [2011] NICA 9.
- (19) **Kuzel v Roche Products Limited** [2008] EWCA Civ 380.
- (20) **Harrow v Knight** [2003] IRLR 140.
- (20) **Fincham v HM Prison Service** (EAT/0925/01 and EAT/0991/01, 19 December 2002).
- (21) **BP PLC v Elstone and Petrotechnics Ltd** 2010 EAT.

(22) **Boulding v Land Securities** 2006 EAT.

15. The meaning of “information” is encapsulated in the following dictum by Slade J in the **Geduld** case as follows:

“Further, the ordinary meaning of giving information is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating “information” would be “the wards have not been clean for the past two weeks. Yesterday sharps were left lying around”. Contrasted with that would be a statement that “you are not complying with health and safety requirements” in our view this would be an allegation not information”.

16. The principles involved in assessing the reasonable belief element are outlined at paragraph 3.25 of Bowers. We summarise the nine principles as follows:

- (1) The test involves both a subjective test of the worker’s belief and an objective assessment of whether the belief could reasonably have been held (**Babula**).
- (2) The worker can be wrong yet still hold a reasonable belief (**Darnton**).
- (3) The test of reasonable belief applies to all elements of the test of whether the information disclosed tends to show a relevant failure including whether the relevant criminal offence or legal obligation in fact exists (**Babula**).
- (4) Reasonableness of the belief is to be tested having regard not only to what was set out in the disclosure but also to the basis for that information and any allegation made (**Darnton** and **Babula**).
- (5) What is reasonable depends on all the circumstances assessed from the perspective of the worker at the time of making the disclosure and it is for the tribunal to assess this. This may include consideration of the circumstances in which the disclosure was made, to whom the disclosure was made, the context and extent to which the worker claims to have direct knowledge of the matters disclosed and a comparison with how the worker would be expected to have behaved if he genuinely and reasonably believed in the truth of the matter disclosed and that they tended to show a relevant failure (**Darnton** and **others**).
- (6) The truth or falsity of the information disclosed and whether or not the relevant failure in fact occurred may be relevant when assessing reasonable belief (**Darnton**).
- (7) The worker must exercise a judgement consistent with the evidence and resources available, including the expertise and seniority of the worker, their ability to investigate further, and whether it is appropriate in all the circumstances instead to refer the matter to someone else to investigate (**Darnton**).

- (8) The standard to be applied has to take into account that it is only necessary to have a reasonable belief that the information ‘tends to show’ the relevant failure, rather than that it positively establishes that failure (**Babula**).
- (9) The burden is on the worker making the disclosure to establish the requisite reasonable belief (**Babula**).
17. Detriment is determined using the **Shamoon** test which is whether a reasonable worker would or might take the view in all the circumstances that the treatment was to the claimant’s detriment in the sense of being disadvantaged.
18. The detriment suffered must be on the ground of having made a protected disclosure. In the **Nagarajan** case the House of Lords sets out the correct approach which requires the tribunal to consider the mental processes of the respondent and the reason why detrimental acts or omissions occurred. The tribunal must consider the motivations of the respondent, whether conscious or unconscious. The key question is whether the detrimental acts or omissions were materially influenced by the fact that the claimant made protected disclosures.
19. In the case of **Fecitt** (CA) it was found that, in detriment cases, the relevant provision is infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the employee.
20. The burden of proof in whistleblowing detriment cases operates in the same way as it operates in Trade Union detriment cases. This is in contrast to discrimination cases generally where the initial burden is on the claimant to prove facts from which the tribunal could conclude that an act of discrimination occurred.
21. This means that, in effect, there is a lower threshold for a claimant to surmount in order for the burden to shift to the respondent to provide an untainted explanation for any detrimental acts. Thus the initial burden is on the claimant to prove that he made protected disclosures and that he suffered detriment. If he proves those two elements the burden shifts to the employer to provide an explanation which is not tainted by the fact of the claimant having made protected disclosures.
22. In this case, on the facts found, we are satisfied that the detrimental acts occurred on grounds of the claimant having made protected disclosures. Even if we had not made positive findings that the claimant was being lined up to be a scapegoat, the operation of the burden of proof would have led to the claimant succeeding in his claim in any event. The reason for this is that the claimant proved to our satisfaction that he made protected disclosures and proved to our satisfaction that he suffered detriment. The burden would therefore then have shifted to the employer to provide an untainted explanation for the detrimental acts. As the explanation put forward by Mr K was rejected by us on the facts, the net effect was that there was no credible explanation put forward by the respondent for the detrimental acts. (see below).
23. In the **Vento** case the Court of Appeal gave guidance on the assessment of damages for injury to feelings. In the decision the Court of Appeal cited with approval the summary of the general principles on compensation for non pecuniary

loss which were outlined in the case of **Prison Service v Johnson** [1997] ICR 275 by the EAT.

24. The guidance by the Court of Appeal on valuation states as follows:

“Employment tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings as distinct from compensation for psychiatric or similar personal injury.

- (1) *The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race...Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*
- (2) *The middle band between £5,000 and £15,000 should be used for serious cases which do not merit an award in the highest band.*
- (3) *Awards of between £500 and £5,000 are appropriate for less serious cases such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether as the risk being regarded as so low as not to be a proper recognition of injury to feelings.*

There is of course within each band considerable flexibility allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. The decision whether or not to award aggravated damages and if so what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled.

Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for no pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each case.”

25. The **Vento** bands were reconsidered by the EAT in **Da’Bell v National Society for the Prevention of Cruelty to Children** EAT 0227/09. The current middle and upper bands are £6,000 to £18,000 and £18,000 to £30,000.

26. The Employment Act (Northern Ireland) 2011 amends the Industrial Relations (Northern Ireland) 1992 in relation to the adjustment of awards where there is a failure to follow the statutory grievance procedure. Article 90A(2) provides as follows:

“If in the case of proceedings to which this article applies, it appears to the tribunal that –

- (a) *The claim to which the proceedings relate concerns a matter –*
 - (i) *to which a relevant Code of Practice applies, and*
 - (ii) *to which statutory dispute resolution procedure does not apply.*

- (b) *The employer has failed to comply with that Code in relation to that matter, and*

- (c) *That failure was unreasonable*

The tribunal may if it considers it just and equitable in all the circumstances to do so increase any award it makes to the employee by no more than 50%.”

27. The explanatory notes states as follows:

“An award cannot be adjusted under inserted Article 90AA in respect of the new grievance arrangements if the statutory disciplinary and dismissal procedures apply. This precludes the possibility of separate adjustments being made under the now differing grievance and disciplinary/dismissal mechanisms.”

28. In this case as the claimant was in the midst of disciplinary proceedings the statutory dismissal procedures applied and the uplift for failure to follow the SGP does not therefore apply in this case.

Findings of Fact and Conclusions

- 29. Prior to the issue of this decision the parties were given the opportunity to make representations in relation to the exclusion of any detail which might tend to identify any witness or to reveal sensitive details of the respondent’s operations which might compromise its security.

- 30. The tribunal heard evidence and had detailed oral and documentary evidence before it in relation to procedures and policies in operation within the respondent’s Cash Centre. In this decision however, such procedures are only referred to in broad outline to the extent necessary to make clear the issues involved in this case.

- 31. It is important to note that we do not record below all the competing evidence as the following are our primary findings of fact drawn from all the evidence put before us.

Credibility

- 32. At the heart of this case lie issues of credibility which relate to two key matters in the case.

- 33. The first key credibility issue concerns the level of detail given by the claimant to his line manager, Mr F, in conversations on several key dates the first of which occurred before Mr F became the claimant’s line manager. The claimant says that he provided detail to Mr F which amounted to information tending to show the

relevant failures and therefore constituted protected disclosures. On Mr F's case the conversations amounted to little more than vague allegations in that, the claimant did not specifically say that he suspected Mr P of stealing; he could point to no evidence to show Mr P was stealing; he did not ask to be treated as a whistleblower; he did not mention the words "protected disclosure". On the respondent's case the claimant's failure to allude to these matters together with the lack of information communicated mean that they did not amount to protected disclosures.

34. In relation to the conflict between the claimant's evidence and Mr F's evidence, we prefer the evidence of the claimant for the following principal reasons:-

- (1) We do not accept Mr F's account of the first conversation in August 2011 as his subsequent behaviour is at odds with his account. Essentially his evidence to us was that the claimant made vague allegations about Mr P and Mr F understood this to be simple griping and jealousy about a colleague who had progressed quickly in his career. If that were correct, it did not make sense firstly, for Mr F to suggest in response that the claimant or he could take the matter up further with management if the claimant was not comfortable in doing so, and, secondly, for Mr F to follow this up with the claimant a week later by phone to ask if he wanted Mr F to take it further. We infer from this that Mr F knew that the matters raised were significant enough to be taken further but he wrongly believed that it was up to the claimant to drive that process by gathering evidence to back up his concerns.
- (2) There was uncontested evidence that the claimant had raised concerns about Mr P with a previous manager, Mr L, in 2009. We accept that the claimant also followed this up with an email expressing his concerns to Mr F his then line manager. The claimant had become suspicious of Mr P because of his extravagant gambling lifestyle and the control he exerted over others gaining access to the cash vault. At that time the claimant was senior to Mr P and was concerned at the level of control that such a junior employee had over vault access to the extent that he (Mr P) was able to refuse entry to senior members of staff. The claimant felt rebuffed by Mr L's response but took comfort from the fact that a senior manager Mr M became involved to speak to Mr P about his gambling. The concerns the claimant then raised with Mr F at the first note destruction in August 2011 were therefore in line with his previously expressed suspicions about Mr P.
- (3) The claimant's allegations were consistent (in their key elements) in all his contacts with Mr F. On Mr F's own account (in his written notes compiled in December 2012) he records details of his encounters with the claimant in 2011 and 2012 which accord in key respects with the claimant's more detailed account.
- (4) By the time the shortfall was discovered, Mr F had a clear motive to minimise the information that the claimant had previously communicated to him at different stages.

35. The second key credibility issue relates to the evidence given by Mr K who was the most senior manager to give evidence to us. His seniority was evident from the fact that he reported directly to the Chief Operating Officer of the Bank. This matter relates to the issue of the conscious or unconscious motivation of the respondent for treating the claimant as it did following the alleged protected disclosures. The evidence given by Mr K therefore relates to 'the reason why' the claimant was treated as he was.
36. We found Mr K to be a wholly unconvincing witness whose evidence was at times evasive and disingenuous. At times, he contradicted himself in his evidence and he also contradicted the evidence of several of the respondent's other witnesses in an apparent effort to distance himself, and other senior managers from key decisions. The inferences we draw from his unconvincing evidence are set out below.
37. A subsidiary credibility issue related to the evidence of Mr J. We found his evidence unreliable because it was at odds in key respects with the evidence of Mr F and Mr C. In particular Mr J recorded (and persisted in evidence to us) that the claimant knew that the voucher he was signing was at Mr P's behest and was completed in order to hide money. This evidence contradicted the evidence of Mr F and Mr C which was that the claimant had relayed to them that he had been told this by another member of staff and that he was told this only after the first shortfall of £7000 was detected in December 2011. Despite this, Mr J persisted with his account in the hearing before us effectively insinuating that the claimant was complicit in the cash shortfall.

Disclosures

38. The claimant began his employment with the respondent in 1987 and rose through the ranks until he attained the level of team leader. At the time relevant to these proceedings the claimant was a team leader in the Cash Centre. At first, the claimant was team leader of the Customer Service Team but in March 2011 he was moved to the post of team leader of the Administration Team. This post meant that the claimant was responsible for the cash vault. The cash vault housed large sums of cash including notes which had gone out of circulation and damaged notes. These latter two categories of cash were liable periodically to be destroyed.
39. In broad terms, cash was categorised in different ways and was also assigned to different accounts. The movement of cash between accounts was authorised by the signing of vouchers and one such voucher was in issue in this case. Junior staff would present large batches of vouchers for signature by staff, such as the claimant, and the correctness of the figures entered on vouchers could not always be checked by a physical count of cash, due to the volume of cash and volume of vouchers involved. Cash could also physically be moved from one part of the vault to another and this was important in this case where large sums of cash were found to be kept in plastic bins in such a way that they were not taken into account in the balancing of the cash vault following an audit in December 2012.
40. The claimant alleged that the contents of the following conversations with his managers on the following dates amounted to protected disclosures: at the first note destruction in August 2011; at the second note destruction on 1 December 2011; 13 December 2011, 14 December 2011 and 29 December 2011. It was the

claimant's case that protected disclosures were made in each of the conversations and also that all of the conversations taken together amounted to a protected disclosure.

41. The respondent accepted that it was the claimant's conversations with his managers on 13 and 14 December 2011 which led to a cash count which revealed a shortfall of approximately £7,000 in the cash vault. It was also accepted by the respondent that it was as a result of the claimant's further conversation with his managers on 29 December 2011 that it was discovered that cash (which was not counted in the audit) was stored in bins in another part of the vault. It was accepted by the respondent that this discovery precipitated a further cash count which led to the discovery of a cash shortfall of approximately £565,000.

Information

42. We have no hesitation in finding that the claimant conveyed information to Mr F and Mr J in the conversations on 13 December, 14 December and 29 December 2011 and that he had reasonable belief in the truth of that information and that it tended to show that Mr P (who controlled access to the vault) was stealing and/or was in breach of his contract in relation to removal of cash in breach of bank procedures.
43. The information communicated on 13 and 14 December 2011 was the following:-
- (1) that Mr P at a social event (shortly before the claimant's conversations) had handed out winnings to the gambling syndicate which he ran and that the members of that syndicate were employees in the Cash Centre;
 - (2) that he was sure that Mr P must be stealing from the Cash Centre as he had just received information from N (who worked in the vault) that Mr P regularly took out cash without filling out any documentation;
 - (3) he repeated what he had told Mr F previously about Mr P's gambling and his extravagant lifestyle (see below);
 - (4) that at the social event Mr P had a large amount of cash between £500 and £1,000 with him and the majority of the cash was in large denomination notes of £50;
 - (5) that the claimant was concerned about how the betting syndicate could pay out so much over such a long period when the members had only ever put in very small sums;
 - (6) that the claimant had suspicions of where Mr P was getting the cash from;
 - (7) that Mr P had some sort of hold or control over the vault and his team leaders; and
 - (8) that if the claimant had ever challenged Mr P for anything work-related he ended up having procedural failures raised against him by Mr P.

44. The further information disclosed on 29 December 2011 was that a large sum of cash was not included in documents relating to the cash balancing exercise conducted by the auditors; was kept in odd bins in another part of the vault; and that this move was managed by Mr P. That was clearly information which led to the odd bins being checked and this led to the discovery of the shortfall of £565,000.
45. The information provided on 13, 14 and 29 December 2011, repeated and built on information which had already been provided by the claimant to Mr F at the two note destructions in August 2011 and on 1 December 2011.
46. The specific information provided to Mr F (who then held the role of risk manager) at the first note destruction in August 2011 was:
 - (1) that Mr P was controlling the vault;
 - (2) that Mr P had ensured that the claimant was pushed into the note destruction role because that meant that he could not directly check the balancing of cash in the vault. This consequence was not apparent to the claimant until he took on that role as he was new to that division;
 - (3) that Mr P had a lavish lifestyle;
 - (4) that he was a gambler;
 - (5) that he had lavish trips twice a year to Las Vegas to gamble;
 - (6) that he had a drinking issue;
 - (7) that he was in charge of a betting syndicate in work; and
 - (8) that he always paid out winnings in £50 notes despite very little being contributed by syndicate members.
 - (9) We also accept that the claimant at that point said that he had suspicions that Mr P was stealing from the vault but that he had no proof and could not see how it was being done. Because of this lack of proof the claimant asked that Mr F not take it any further but that does not detract from the import of the information communicated by the claimant at that time which led him to say that he suspected that Mr P was stealing.
47. On the second note destruction on 1 December 2011 (by which time Mr F was again the claimant's line manager) the claimant said that he had not witnessed anything further but that he was still suspicious. Mr F had asked the claimant twice previously if he wanted to take the matter any further.
48. The level of detail provided in the disclosures must be assessed in the relevant context which, in this case, relates to the nature of the business in which the respondent and its employees were engaged. In a business such as this, where huge sums of cash are being handled by staff, the fact that a lavish gambling lifestyle is engaged in by the person with control of the cash vault must raise

suspicious that that individual might be engaged in something untoward in his work. This was the information which appears to have triggered the suspicions of the Bank's investigators about Mr P following the disclosures in December 2011 as is apparent from the investigation report into him (see below).

49. A thread running through the evidence of the respondent's witnesses in regard to the alleged disclosures revealed an apparent misunderstanding, on their part, of the level of information required to be disclosed (whether under their own policies or in law). It appeared to be the respondent's manager's view that, because the claimant did not designate himself a whistleblower, did not specify that he was making protected disclosures, and did not point to specific evidence of wrongdoing, that this meant he could not be regarded as a whistleblower.
50. The following extract from Bowers on Whistleblowing is directly applicable to this case:

"... The whistleblower may have a good hunch that something is wrong without having the means to prove it beyond doubt or even on the balance of probabilities. ... The notion behind the legislation is that the employee should be encouraged to make known to a suitable person the basis of that hunch so that those with the ability and resources to investigate it can do so."
(Page 399).
51. We find that this is indeed a case where the claimant was in a position to have a good hunch that something was wrong when he observed the lifestyle conducted by Mr P and the way the gambling syndicate ran. This information together with the fact that, firstly, Mr P controlled access to the cash vault and, secondly, had pushed the claimant to a note destruction role so that he was not allowed to have detailed oversight of the operations of the cash vault, meant that the claimant had information on which to base his suspicion that Mr P could be stealing from the vault.
52. As outlined above, we accept that the claimant told Mr F in August 2011 that he suspected that Mr P was stealing from the vault. What was missing for the claimant was sufficient knowledge of the procedures for him to work out how Mr P was doing it. The claimant had only recently been appointed to that position and had not received any training other than on-the-job training from Mr P. The claimant therefore communicated his suspicions and the basis for them to his managers and they then had the ability to investigate further by, for example, deciding to do a cash balance such as the one which ultimately revealed the shortfall.
53. In summary, we therefore find that the claimant communicated information to Mr F in August 2011 and on 1 December 2011 at the two note destructions, and to Mr F and Mr J on 13, 14 and 29 December 2012.

Reasonable Belief

54. The respondent contested the claimant's reasonable belief in the truth of any information disclosed and that he reasonably believed that the information tended to show one or more of the acts or failures listed at Article 67B of the Act. Reasonable belief must be assessed looking at the information available to the whistleblower at the time, but the subsequent truth, or otherwise, of the allegation can be used as a

tool to assess the reasonableness or otherwise of the whistleblower's belief in the truth of the information communicated by him.

55. We examine, firstly, the claimant's reasonable belief at the time of the note destructions, and, secondly, at the time of his disclosures on and after 13 December 2011.
56. Mr P was investigated and was ultimately charged by the Bank with unauthorised removal of cash from the vault in the Cash Centre thought to be in the region of approximately £500,000 and he was also charged with having stolen money from the vault. The underlying investigatory report makes clear that a significant point for the Bank's investigators was that significant amounts of cash were paid into Mr P's personal Ulster Bank accounts. This echoed the claimant's concern that Mr P often had large sums of cash about him. It was also significant to Mr F and Mr J, when the claimant first raised the gambling syndicate to them, that the fact that Mr P ran a gambling syndicate in work was significant in terms of raising their suspicions about his activities in the vault.
57. This is not a case where the claimant's suspicions turned out not to be true. On the contrary, they led to very serious disciplinary allegations being put by his employer in writing to Mr P. The investigation led to the clear suspicion that it was Mr P who had stolen "approximately £500,000" as he was actually charged with this by his employer. The claimant's suspicions that Mr P was stealing were therefore shared by his employer as part of their investigation. This emphasises to us the reasonableness of the claimant's suspicions from August 2011 onwards based on his observation of the large amounts of cash that Mr P flaunted and the operation of the gambling syndicate run by Mr P, together with the additional information the claimant had relating to Mr P's lavish lifestyle and his control of access to the vault.
58. The final piece of the jigsaw for the claimant in working out how money was taken by Mr P was the information he received from Mr N on the 12/13 December 2011 (on the Monday following the social event) when Mr N stated that Mr P would regularly take notes out of the cash vault without filling in the appropriate documentation. This information together with the lavish life style, the gambling syndicate which generated cash from an unknown source and the inordinate control exerted by Mr P over access to the vault meant that the claimant had reasonable belief in the truth of his assertion that he was now sure that Mr P was stealing.
59. On Mr F's account, the information disclosed by the claimant on 29 December 2011 was that there was additional cash of over one million pounds which had previously been part of the vault balance but which had been moved on paper out of the relevant vault account and physically moved to be stored in bins. The claimant also said on that date that he had just discovered that the move from one account to another had been done by Mr P and that Mr P had told other vault officials that they just had to remove the cash from their balance sheet. This information, in the context of the previous information and suspicions communicated by the claimant to Mr F, amounted to a protected disclosure because the claimant held the reasonable belief that it tended to show, firstly, at the very least, a breach of Bank procedure amounting to a breach of contract and secondly, it tended to show that Mr P was involved in theft.

60. Another thread running through the respondent's case was that the claimant had to present actual evidence of wrongdoing. This is not the legal test which is that the claimant must provide information that he reasonably believes merely tends to show an act or omission as set out in the legislation. In addition the respondent's own Internal Fraud and Theft, and Whistleblowing policies to which we were referred (albeit that they post-dated the period in issue in this case) do not require evidence to be produced before an employee is expected to raise issues: suspicion of fraudulent activity or of illegal or unethical behaviour is enough to put that obligation on an employee.
61. In summary therefore, the claimant made three disclosures on and after 13 December 2011 which individually and cumulatively amounted to protected disclosures. The disclosures in August 2011 and on 1 December 2011 at the note destructions also amounted to protected disclosures.

Detriment and causation

62. The authorities make it clear that it is important for the tribunal to distinguish between, on the one hand, detrimental acts which occur as a consequence of the disclosure, which do not result in liability, and, on the other hand, detrimental acts done on grounds of having made a disclosure.

First suspension

63. The suspension letter of 9 January 2012 referred to an investigation into the claimant for potential gross misconduct relating to "lack of due diligence checks" on the voucher for £1.3 million and for not raising with management concerns he had about a shortfall.
64. The four individuals who worked in the cash vault were suspended in December 2011 and January 2012 and this included the claimant. We regard it as reasonable of the respondent to have suspended the four individuals, pending investigation, given the large sum of cash which was found to have gone missing and, given the claimant's job and his supervisory capacity. The fact that it was the claimant's signature on a voucher which moved a large sum of cash from one account to another so that it did not appear visible on the vault balance meant that it was not unreasonable for the respondent to suspend the claimant with others whilst they investigated this.
65. Using the **Shamoon** test we find that a reasonable worker would regard the first suspension as being to the claimant's detriment but, applying the whistleblowing authorities we regard the first suspension as a consequence of the disclosure rather than being done on grounds of the disclosure. The claimant has therefore failed to establish liability for that detrimental act.

First disciplinary

66. During Mr C's first investigation the claimant agreed that old notes were taken from the vault, sold on his behalf to a dealer and that he had made a personal profit from it. We accept that the investigator recommended disciplinary action as he reasonably believed that this was contrary to procedure. It was during the disciplinary interviews that it became apparent that, in the claimant's previous

workplace, it had been accepted practice to exchange new notes for old and to sell them at a profit. Staff had never been notified that this practice was no longer acceptable. For this reason the claimant was found not guilty of that disciplinary charge.

67. Whilst the first disciplinary process was stressful for the claimant and amounted to a detriment we do not regard it as amounting to a detriment suffered on grounds of the protected disclosure. We accept that Mr C genuinely and reasonably believed that this was in breach of procedures as the claimant was involved in the removal of the notes without arranging for the replacement of notes to the same value at the time of removal. There were therefore grounds for the claimant to be the subject of disciplinary action. We do not find that this disciplinary action was taken on grounds of the fact that the claimant had made a protected disclosure. The claimant has therefore failed to establish liability for that detrimental act.
68. The Mr C investigation started on 3 January 2012. The claimant was suspended on 9 January 2012. In the intervening period Mr C did his investigation (having interviewed the claimant on 5 January 2011, 29 March and 4 April 2011) and produced a report of 26 April 2011. The claimant received a step 1 letter dated 25 May 2012, the disciplinary meeting was on 15 June 2012 and the outcome of the first disciplinary was communicated to him at a meeting on 20 July 2012. There was slippage in dates due to the unavailability of the claimant's TU rep and holiday arrangements. In the circumstances, we do not regard there to have been any undue delay in the first disciplinary procedure.

Second suspension and disciplinary process

69. The first suspension was lifted on 20 July 2012 and the claimant was told to liaise with Mr F about a return date. He phoned Mr F that day and they were to meet the following week to agree a return date as the claimant hoped to get permission to use some accrued holidays. This never came to pass as Mr F was instructed by senior managers shortly after the call not to contact the claimant again pending further instructions.
70. Unbeknown to the claimant, the respondent was adopting a "holding position" from 20 July 2012 ie, he was neither suspended nor was he allowed to return to work. A decision was being taken by senior managers on 30 July to re-suspend him and the suspension began on 6 September.
71. Mr G became involved as disciplining manager and he promptly sent the invitation letter on 27 November for a meeting on 6 December. He enclosed the redacted statements referred to in the Mr C report of 4 September. Mr G very quickly established that, whilst there was a procedure relating to voucher signing for one category of notes, there was no procedure in place relating to the checking and signing of vouchers for the category of notes involved in the charge against the claimant. This was the reason that charge was not upheld against him. The outcome hearing was on 28 January 2013 and the claimant returned to work on 19 February 2013 only to have to go off ill again on 1 March 2013.
72. We are satisfied that the claimant was subjected to a series of detriments following the lifting of the suspension on 20 July 2012 and that those detrimental acts were committed on grounds of his having made disclosures as the focus of senior

managers was to try to make him the scapegoat for the loss that had been discovered. The claimant was unreasonably and unjustifiably kept in limbo following 20 July 2012. He was unreasonably and unjustifiably suspended and disciplined a second time and there was a delay in the outcome. The fact that the disciplinary action was ultimately dismissed does not mean that a detriment did not occur. Our principal reasons for so finding are set out below.

- (1) The records and emails show Mr K's pervasive and directing influence after 20 July, presumably on behalf of more senior managers. It was clear to us that great pressure was being put on the more junior managers from the senior managers at Mr K's level and above, to produce a report to ensure that the claimant could be disciplined. Mr K sought to minimise his role and to put the responsibility on others for any decisions in this regard. Senior managers (of whom Mr K was one) were trying to push junior managers into pinning the blame on the claimant. Mr K repeatedly said in evidence that the claimant was disciplined because his name was on a docket that led to the shortfall. This was not correct as everyone else acknowledged that the shortfall must have reached back over many years and had just been discovered at the time of the voucher in issue in this case. It was clear that Mr K was not happy with the outcome whereby the claimant had been exonerated.
- (2) We do not accept Mr K's evidence that the reason for the further report was that Mr C and his boss had accepted that he had done an inadequate job first time round. We therefore find as a fact that this was not the true reason for Mr K's direction to Mr C as it was clear from the documents that Mr C had explained his sound and reasonable rationale for leaving out the voucher issue both to HR and to the senior managers. Nevertheless, he was directed to produce a further report with that specific recommendation despite Mr C having previously stated to HR that to pursue the claimant for this matter could amount to singling him out. Mr C was essentially directed on 30 July by Mr K to do his second report based on the information already gathered (ie without any further investigation) to include the voucher issue as a charge of gross misconduct despite Mr C's attempts to explain why he had consciously decided to discount this at the time of his first report.
- (3) Mr C's recommendation in the second report of 2 August 2012 was that a charge of gross misconduct be levelled against the claimant relating to the voucher issue despite previous advice from HR that, whilst it might have resulted in some disciplinary action, it was not a dismissible offence. We infer from this escalation from no action to potential gross misconduct that this emanated from Mr K given his directing influence.
- (4) The second disciplinary charges essentially related to the claimant having signed a voucher for £1.3 million which meant that a particular category of cash was moved from one account to another and this ultimately facilitated the storage of cash in odd bins so that the

auditors did not take account of them until they were pointed out by the claimant.

- (5) The decision was taken by senior managers on 30 July 2012 to re-suspend the claimant and Mr K was to identify someone to investigate and the disciplining authority. It is clear from the documents that this case was “visible “ at Exco level (meaning Chief Executive and Chief Operating Officer level) and that there were concerns about the Bank’s reputation given that this occurred in the middle of the widely-reported hiatus relating to the Bank’s computer systems.
- (6) Following the decision to pursue the second disciplinary, it was only following HR’s insistence that other members of staff were interviewed by Mr C about voucher-signing procedure and this resulted in the third report dated 4 September 2012.
- (7) It was only on HR’s insistence that the anonymised statements of those staff were provided to the claimant following his reasonable request so that he had them before the disciplinary hearing. It was unreasonable and to the claimant’s detriment that the redacted statements were not shared promptly as this led to further delay and consequent stress on the claimant.
- (8) Legitimate concerns raised by HR were dismissed by Mr K as the “personal view” of Ms D despite the fact that other HR professional were expressing concerns. HR had to push to ensure that procedures were complied with to the extent that Ms D took the serious step of sending a “red flag” email on 5 November 2012. This was raised in relation to the proposal being pushed through by Mr K that the witness statements relating to the voucher issue, should be withheld from the claimant and it outlined the serious risks in persisting with that. The red flag designated this a high risk case due to HR concerns about Mr K’s proposals.
- (9) Mr K affected not to know what such a red flag meant and this disingenuousness undermined his credibility for us as the red flag must have been a factor in his later change of approach.
- (10) Mr K also unreasonably sought in our hearing to lay the blame on HR (despite the import of the contemporaneous documents) for any impugned decisions which had actually been made by him with other senior managers. This undermined his credibility and was an aggravating factor for us in determining value.
- (11) In contrast with normal practice and procedure, the suspension was not reviewed at any point to ensure that it was not unnecessarily prolonged.
- (12) It was clear from the evidence before us that Mr K was made aware of the shortfall discovered in December 2011 and was kept aware of the steps taken after that. He was on a working party of senior managers which included those at Chief Executive level in the Bank. At a key

meeting on 30 July 2012 the decision was taken by senior managers to re-suspend the claimant. Despite this being a key issue in this case, no minutes were produced and the fact of the meeting and the discussions came out only in cross-examination during the unsatisfactory evidence of Mr K. We draw an adverse inference from the paucity of evidence in relation to the decision by the senior managers (of whom Mr K was the only one to give evidence to us) which led to the respondent focussing on disciplining the claimant in the face of considerable misgivings from its own HR managers.

73. The claimant was subjected to the following detriments:-

- (1) He was kept 'in limbo' between 20 July 2012 (when the first suspension was lifted) and the second suspension on 6 September 2012, that is, during that time he was not suspended but he was not let back to work. Essentially he expected to arrange his return date but was "strung along" by Mr F because Mr F had been told by senior managers that he should not contact the claimant. This put Mr F in an invidious position and increased the claimant's stress because Mr F was his point of contact about his return to work.
- (2) The claimant was suspended on 6 September unnecessarily. The stated grounds for suspension, namely that it was: "*a precautionary measure until such times as we carry out further investigations*" did not apply as by that stage the 9 other staff had been interviewed and the decision to prefer disciplinary charges had been taken at the end of July.
- (3) The notification of suspension was given 4 weeks after the decision had been taken thus lengthening the period the claimant was in limbo and the suspension was not kept under review as required by the respondent's procedures. The period of suspension was therefore unnecessarily protracted and increased the claimant's stress.
- (4) The claimant was unnecessarily and unreasonably subjected to a second disciplinary process and justifiably felt singled out after July 2013.
- (5) Delay during the disciplinary process was caused by the dispute between HR and Business side (ie Mr K and other senior managers) in relation to the need to interview other staff about voucher signing, about sharing those statements at all or in redacted form, and because of the red flag issue. This delay was unreasonable and to the claimant's detriment.
- (6) It took until 6 November 2012 for the charge letter to issue even though no further investigation was done by Mr C before he produced his second report on 2 August 2012 and even though he produced his third and final report on 4 September. This constituted an unreasonably lengthy period of time.

- (7) There was delay in the outcome as ultimately the claimant had an outcome hearing on 28 January 2013. We do not find any undue delay at all on the part of Mr G but there was delay in dealing with the second disciplinary process as a whole from the date the claimant expected to be back at work soon after 20 July 2012.
- (8) The investigation essentially completed in August 2012. The claimant could therefore have been given a favourable outcome much earlier. The lack of investigation after the second suspension was therefore to the claimant's detriment as it led to an unnecessary disciplinary process and unnecessary delay.

Explanation for detrimental acts

74. As our firm finding is that the actions of the respondent following 20 July 2012 were aimed at making the claimant a scapegoat, we find that detrimental acts occurred. The burden of proof therefore shifts to the respondent as its detrimental actions require an explanation. The only explanation put forward by Mr K was:

- (1) that the first disciplinary process did not deal with the voucher issue because it had been wrongly left out of the Mr C report following an inadequate investigation. This was not the case because Mr C considered the voucher issue and discounted it specifically as a disciplinary charge so that it never went forward to disciplinary action. He explained his cogent reasoning to Mr K to no avail and was directed to do another report with Mr K. We therefore reject that explanation.
- (2) Mr K repeatedly said in evidence that the claimant was disciplined because his name was on a docket that led to the shortfall. This was not correct as everyone else acknowledged that the shortfall must have reached back over many years and had just been discovered at the time of the voucher in issue in this case. We therefore reject that explanation as it is contrary to the evidence of the respondent's other witnesses and we find it to be factually inaccurate.

Summary

75. The onus is on the employer in the form of its managers to act on information provided by a whistleblower. It is not enough to leave it to the whistleblower to gather evidence on behalf of the employer once enough information has been communicated. In this case the claimant had given enough information to his managers for them to go and act upon it. It was then up to managers to be proactive. The point is to protect people and to make the culture such that people feel safe in revealing suspicions and the basis of their suspicions particularly when it means pointing the finger of suspicion at a close colleague. It is clearly in the public interest that an undertaking such as this (which is essentially publicly-owned as it is part of RBS) whose business is safeguarding customers' money, has a culture whereby people working with cash come forward if information like that in this case is disclosed.

76. The claimant was left to push his point despite being in the invidious position of having to accuse a colleague who was also a friend. It was up to senior managers to be proactive and to do what they could to investigate suspicions raised by someone who was in a position to suspect something was wrong. This protects the whistleblower and the organisation.
77. Our conclusion from the evidence of all the witnesses and from the documentation was that middle managers, namely Mr C and Ms D in particular, were trying to do their job fairly and independently but that senior managers were influencing and directing the course of events to ensure that the claimant was subjected to a disciplinary process for alleged gross misconduct with a view to making him the scapegoat for the large cash shortfall.
78. We accept that senior managers were doing this because his signature happened to be on a voucher which moved money from one account to another and it was this paper exercise which covered up the longstanding shortfall from the auditors.
79. The fundamental rationale of the legislation is that people should be encouraged to come forward with concerns about wrongdoing. Those who can raise suspicions of wrongdoing are normally people in a position to have relevant information and well-founded suspicions. Being in this position carries with it the danger that the individual raising the issues could be disciplined with a view to making him or her a scapegoat. Whilst being subjected to disciplinary action can be a consequence of making a disclosure, being made a scapegoat is more than a consequence, it amounts to a detriment on grounds of having made a disclosure.
80. We therefore find that the claimant was subjected to a series of detriments on grounds of having made protected disclosures. As a consequence he is entitled to compensation for injury to feelings, for resulting financial loss and for any psychiatric injury caused by those acts.

Compensation

Injury to feelings

81. We found the following principal factors relevant to our assessment of damages under this heading:
 - (1) The grievance contained in the solicitor's letter of 12 September 2012 was to have been dealt with as part of the second disciplinary process. The focus of it was firstly, the claimant's concern about the voucher issue being revived to ground disciplinary charges, and secondly, the continued suspension. The grievance was not dealt with at all in that it was never explained to the claimant why the voucher issue was revived. Whilst this cannot result in a statutory uplift (see below) it is an aggravating feature in this case and is reflected in the injury to feelings award.
 - (2) Throughout this case the respondent has accepted that the claimant acted in good faith. The height of the allegations against him was a lack of due diligence which HR had firmly viewed as less than gross misconduct. However, Mr J and Mr K persisted at tribunal hearing in

insinuating that the claimant was complicit in the loss of the £565,000. We find this to be an aggravating factor for compensation.

- (3) The investigation into Mr P's activities makes clear that the suspicion is that the money was removed between 2009 and 2011 and that any nefarious activities may have stretched back as far as 2006. This supports the claimant's allegation that the untoward activities had been going on for years undetected and long before the claimant was employed in the cash vault. Following the initial investigation it seems to have been accepted by the respondent's managers and investigators that the shortfall did not occur during the tenure of the claimant but that it stretched back over a much longer period. This made it all the more galling for the claimant when he realised that he was being lined up as a scapegoat for the shortfall especially when he had raised concerns about Mr P over the previous 3 years and he felt that they had been effectively ignored.
- (4) The claimant was told at the end of the first disciplinary process: *"You will be able to go back [to work] and hold your head held high knowing that no formal action has been taken against you"*. His hopes and confidence in the Bank were therefore dashed when he was suspended for the second time when he reasonably believed that he had been exonerated.
- (5) The claimant did not need to be suspended at all for the second disciplinary to progress.
- (6) The claimant was very stressed following his reasonable belief (once the shortfall was discovered) that he had not been listened to for 3 years and was also stressed due to his experience in the first disciplinary action. The respondent must take its victim as it finds him and, in this context, it meant that the effect of the second suspension and disciplinary hearing was all the harder on him as he was by then in a fragile mental state. The respondent in the form of HR and Mr K were well aware of his mental state.
- (7) The effect of the unwarranted second disciplinary process was that, instead of returning to work on 20 August 2012, the claimant returned to work in February 2013. The claimant was unnecessarily kept out of the workplace for six months with a cloud of suspicion hanging over him. The claimant made clear in his testimony his distress as he believed during that period that his colleagues would assume that his continued suspension meant that he was complicit in the cash shortfall. He stated that he was made to feel like a criminal.
- (8) The claimant had a previously unblemished record and had worked his way up to his supervisory roles over many years. He clearly felt great loyalty to the Bank and felt strongly about doing the right thing and it was this that motivated him to volunteer information to his employer.
- (9) During the suspensions, when considering how to proceed senior managers did not appear to acknowledge or take account in a positive

way of the fact that it was the claimant, by volunteering information, who precipitated the discovery of the missing cash.

- (10) It appeared to us that no credit was given to the claimant at any stage for raising the issues that led to the discovery of the shortfall. This remained the case during the tribunal process and at hearing.
- (11) The claimant was clearly very upset at his treatment and this was evident from his medical notes, the notes of meetings, and throughout the hearings before us.
- (12) By 22 October 2012 the claimant's mental state was so low that, he sent a text to Mr F about the effect the delay was having on his mental health. Mr F was so concerned about the claimant's safety that he immediately alerted HR and they in turn alerted the head of HR (a member of Exco, the senior management team) to see if the process could be expedited. This meant that the respondent was well aware of the claimant's deteriorating mental state and speed in the process was therefore of the essence.
- (13) Mr F persisted in denying the detail of the conversations that the claimant had had with him at the note destructions.
- (14) Mr C at first specifically ruled out pursuing the voucher issue because of the risk of singling out the claimant. Mr K, and also, presumably the working group of senior managers, were aware of this. Despite knowing this risk the respondent later singled out the claimant for disciplinary action on this precise issue. Very senior managers were pushing the process forward in the face of the considerable misgivings of their own HR professionals and in full knowledge of the risks pointed out to them. The detrimental acts were not therefore committed out of ignorance, carelessness or incompetence: this was a positive attempt to pursue the claimant unreasonably in full knowledge of his fragile mental state. This was a particularly aggravating feature for us.
- (15) The first disciplinary outcome was in the middle of serious adverse events regarding the respondent's computer system which occurred in June and July 2012. It was clear from the papers that one consideration for managers in that period was to have regard to possible adverse comment and publicity. The overarching concern of senior management in this period seemed to be in relation to the reputation of the Bank and their focus was to try to pin the blame on an individual because his signature appeared on a voucher. We regard this as an aggravating feature in this case.

82. Mitigating factors for compensation are: the attempts to make the claimant a scapegoat did not succeed because of the actions of the more junior HR and disciplining managers; the claimant did not lose his job; and the detrimental acts occurred over a relatively short period.

83. Taking account of the factors set out above we place this case within the middle band of **Vento**. We have decided that an award in the upper end of that band takes account of the aggravating features outlined above. We therefore award **£15,000** for injury to feelings.

Loss of Overtime

84. We are satisfied that the claimant lost overtime during his absence. The respondent's evidence in this regard was confused and contradictory. We therefore accept the claimant's calculation based on his previous 2 years' overtime earnings. The agreed figure for the average over that period was £313.83 net per month. As the first detriment found was the 20 July we award a pro rata sum from July 2012 to 20 October 2013: 15 months x £313.83 = **£4,707.45**

Psychiatric Injury

85. In assessing compensation under this head we have taken account of the parties' submissions in relation to the guidelines in the Green Book. We are also conscious of the overlap between injury to feelings and psychiatric injury.
86. The psychiatric report of 11 April 2013 diagnoses a moderate depressive episode with likely improvement by April 2014 in that, the claimant will likely be unable to work again in the Bank but should be fit for a comparable job by the end of that period. By the time of the report the claimant was no longer on anti-depressants. We note the psychiatrist's opinion that other family issues were not the cause of the illness and that the work matters were the primary cause.
87. Whilst the first disciplinary and suspension did not amount to detrimental acts they rendered the claimant in a more fragile state than otherwise and thus made the effect of the later detriments all the greater. The "thin skull rule" therefore applies in that the respondent must take its victim as it finds him at the time of the detrimental acts. It was in the period beginning with the second disciplinary suspension that the claimant's mental health deteriorated to the extent that there were concerns for his safety and he also had to undergo CBT.
88. Taking account of these factors we assess damages for personal injury at **£7,000** being a discounted figure from the £10,000+ band in the Green Book. This discount takes account of other pre-July 2012 work stressors, the minor exacerbation by family issues, and any overlap with injury to feelings.

Interest

89. Interest is awarded in the usual way on the injury to feeling award from the date of the act and on all other loss from the mid-point date at the rate of 8% per annum.

Statutory Uplift

90. As the SDP applied at the relevant time in this case, the legislation excludes the possibility of an uplift for failure to follow the statutory grievance procedure. There is therefore no uplift to compensation awarded.

Compensation calculation

Date of first detrimental act: 20 July 2012

Mid-point date: end February 2013

Date of calculation: 20 October 2013

Injury to Feelings: £15,000.00

Interest – 15 months @ 8% pa £ 1,500.00

Subtotal A: **£16,500.00**

Loss of overtime: £ 4,707.45

Psychiatric injury: £ 7,000.00

Total: £11,707.45

Interest 7½ months @ 8% pa: 585.37

Subtotal B: **£12,292.82**

Total Compensation (A+B): **£28,792.82**

91. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order 1990.

Chairman:

Date and place of hearing: 6 June, 29 July – 1 August and 21 August 2013 at Belfast

Date decision recorded in register and issued to parties:

Case Ref Nos: 2250/12
724/13

AB

V

ULSTER BANK LTD

**INDUSTRIAL TRIBUNALS (NI) Order 1996
RESTRICTED REPORTING ORDER**

**Industrial Tribunals (Constitution and Rules Procedure) Regulations
(Northern Ireland) 2005 – Rule 50, Rule 59, Rule 10.**

1. This Order prohibits the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland in relation to the persons specified in paragraph 2.
2.
 - (a) name of claimant
 - (b) name of any witness
 - (c) name of any individual referred to in the evidence
 - (d) name of any person likely to lead to identifying the individuals referred to above in this matter.
3. The words "identifying matter" and "written publication" have the meanings set out in Article 13(2) of the Industrial Tribunals (Northern Ireland) Order 1996.
4. The Order referred to at 1 and 2 above and 5 below shall remain in force indefinitely.
5. The extent to which the facts of this case can be reported is limited to the facts and matters contained in the decision of the tribunal to which this Order is appended. For the avoidance of doubt, the prohibition on publication outlined above applies indefinitely to the statements provided by witnesses during the hearings relating to this case.

JP

6. For the avoidance of doubt the Order does not prohibit the identification of the respondent in this matter.
7. If any identifying matter is published or included in a relevant programme in contravention of this restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale –
 - (a) In the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
 - (b) In a case of publication in any other form, the person publishing the matter; and
 - (c) In a case of matter included in a relevant programme –
 - (i) Any body corporate engaged in providing the service in which the programme is included and
 - (ii) Any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Chairman:



10

December 2013

JP

INDUSTRIAL TRIBUNALS


NOTICE OF RESTRICTED REPORTING ORDER

An industrial tribunal has issued a restricted reporting order on 10 December 2013 in relation to proceedings under reference no 2250/12 and 724/13 now being heard in Tribunal Room 9.

A restricted reporting order means an order prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland. Identifying matter in relation to a person means any matter likely to lead members of the public to identify him as a person affected by or as the person making the allegation.

If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following person shall be guilty of an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale –

- (a) In the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) In the case of publication in any other form, the person publishing the matter; and
- (c) In the case or matter included in a relevant programme -
 - (i) Any body corporate engaged in providing the service in which a programme is included; and
 - (ii) Any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Secretary: 

Date: 10 December 2013

JP

THE INDUSTRIAL TRIBUNALS

CASE REF: 2250/12
724/13

CLAIMANT: AB

RESPONDENT: Ulster Bank

DECISION FOLLOWING A PRIVATE HEARING

The respondent's application for further redaction and amendment of the draft decision in this case is refused. The decision will be dated and issued to the parties today but will not be published on the Register or the tribunal website until 18 December 2013.

Constitution of Tribunal:

Chairman: Mrs Ó Murray

Members: Mr J Devlin
Mr P McKenna

Appearances:

The claimant was represented by Mr N Philips, Barrister-at-Law, instructed by Worthingtons Solicitors.

The respondent was represented by Mr B Fee QC and Mr T Warnock, Barrister-at-Law, instructed by Elliott Duffy Garrett, Solicitors.

1. The purpose of the hearing was to hear and determine the respondent's application for further redaction and amendment to the tribunal's draft decision which was provided to the parties on 30 October 2013.

2. It was agreed by the parties, and we so ordered, that the hearing proceed in private under Rule 16(b) and (c), given the nature of the evidence to be given. It was further agreed and we so ordered that the identity of the witness be anonymised in this decision and that a permanent Restricted Reporting Order apply to her identity in the same way that a permanent Restricted Reporting Order applies to the identity of the claimant and all witnesses involved in the previous substantive hearing.
3. We have considered the evidence of Ms X who testified today together with the contents of the documents to which we were referred. We considered the written submissions provided by the parties in advance of the Hearing together with the oral submissions of Mr Fee and Mr Philips today.
4. We were referred to and considered the following authorities in detail:-
 - JIH –v- News Group Newspapers Ltd [2011] EWCA Civ 42 (Court of Appeal)**
 - B –v- United Kingdom and P –v- United Kingdom [2001] ECHR 298**
 - F –v- G [2011] EAT**
 - JR5 –v- Department of Agriculture and Rural Development [2007] NICA 19**
 - Re A Police Officer 2012 NIQB (McCloskey J)**
5. Both sides agreed that the situation in this case engages rights under the European Convention of Human Rights. It was agreed, and the authorities make clear, that the tribunal must conduct a balancing exercise between Article 2 and Article 8 rights on the one hand and Article 6 and Article 10 rights on the other. The authorities are also agreed that the balancing exercise is fact sensitive. We have already accepted that the relevant human rights are engaged given that we have granted an Anonymity Order and a Restricted Reporting Order in respect of the previous hearing.
6. Where competing human rights are engaged it is for the tribunal to conduct the balancing exercise in order to decide on an interference with one or more human rights, which is proportionate and is no more than is necessary to deal with any risk of infringement of a competing human right.

7. As is evident from our decision we anonymised all individuals named in the decision and we also referred in broad outline to procedures in the Bank without going into the level of detail which was presented in evidence to us at the substantive hearing. It is our decision that the anonymisation and the limit on information provided in the decision as already drafted is a proportionate means of dealing with any risk to Article 2 or Article 8 rights which are in existence in relation to individuals involved in this case.
8. The principles involved in a balance between Article 8 and Article 10 rights are helpfully set out at paragraph 21 of the JIH case. In the case of **Re A Police Officer McCloskey J** sets out the principles involved in a case engaging Article 2 rights. We accept Mr Fee's point that where Article 2 rights are engaged that they weigh heavily in the balance against full publication and open hearings. It is precisely because Article 2 rights are engaged that we have acceded to requests to anonymise, to provide a permanent Restricted Reporting Order and to minimise the information provided in the decision. We are not persuaded that further amendments would be proportionate.
9. It is important that our decision reflects in sufficient detail the factual basis for the inferences which we drew and that the decision records enough detail to support our conclusions.
10. We have carefully considered the suggested amendments set out in the letter from Elliott Duffy Garrett of 13 November 2013. Whilst the suggested amendments number over 50 changes to paragraphs throughout the decision, they relate principally to the following matters:-
 - (1) that any reference to very senior managers at Exco level and their job titles be removed in order to deal with an increased risk to their personal safety;
 - (2) that all references to the fact that the events took place in the Cash Centre be removed;
 - (3) that all references to the amount of missing cash be removed;
and
 - (4) that any reference to signing procedures in the Bank be removed.

The respondent's application was that the reasoning behind the application was that they are concerned for the personal safety of individuals in the Bank and particularly of senior managers whose identity is in the public domain.

11. The key point for us to determine is, whether any risk to individual's safety is increased by the publication of our decision in its current form. We have taken full account of the detailed evidence given by Ms X and for obvious reasons do not intend to rehearse the detail of that evidence in this decision. We are satisfied having taken account of her evidence in the light of the information contained in our decision that the risk to individuals' safety is not increased by the detail contained in our decision to the extent necessary to tip the balance in favour of further redaction or amendment.
12. In particular in relation to identifying very senior managers by job title and thus indirectly identifying them, we note that the references in our decision to the influence of those managers was in relation to the disciplinary process involving the claimant. We also note that Mr K who gave evidence to us and whom we identified as being the director of certain detrimental acts against the claimant, no longer works for the respondent company or any of its affiliates and he no longer resides in Northern Ireland or indeed Ireland. We do not accept that the detail in our decision increases any risk to Mr K's successor merely because of reference to his job title particularly in circumstances where procedures and policies have changed (see below).
13. We regard reference to the fact that this was a Cash Centre and to the sums of cash involved as fundamental to our decision as this formed part of the assessment of the reasonableness of the claimant's belief in the light of all the circumstances.
14. We were provided with clear evidence today from Ms X that the procedures and systems in place at the time relevant to our decision have been changed and that stricter management is now in place as a result of the deficiencies identified following the situation relevant to the claimant's case. Our decision therefore is dealing with historical systems and procedures and in those circumstances we do not find the limited description of those procedures to increase any risk to current employees sufficient to tip the balance further.
15. We are concerned that the cumulative effect of the proposed changes and indeed some of the particular changes (in relation to the signing of the voucher issue and in relation to the information about bins which was pointed out by the claimant as one of his disclosures in December 2012) change the meaning of our decision in key respects. The nature of this part of the business, the availability of large amounts of cash and the procedure in relation to vouchers are key elements of our decision and we find that the suggested amendments would change the import of those parts of our decision.

16. Mr Justice McCloskey refers to several important principles which are relevant to this case. In order to determine whether the rights under Article 2 are engaged the Court must be satisfied that the risk is real and immediate. In this case we have accepted, and all parties agree that, there is an ongoing real risk to the personal security of individuals working in this area of the Bank. It is for this reason that we have already granted the Orders which are already in existence. In doing so we have borne in mind the dictum of Mr Justice McCloskey at paragraph 13 of his decision where he states:-

“Where the convention right at stake is that protected by Article 2 or Article 3 and the Court is satisfied of a real and immediate risk to the litigant’s life or, as the case may be, the infliction of treatment proscribed by Article 3, it is difficult to envisage the balancing exercise having an outcome in which the principle of open justice prevails fully.”

17. In this case we have accepted that the principle of open justice should not prevail fully.
18. Mr Justice McCloskey further states at paragraph 10 when discussing the principles to be derived from the JIH case as follows:-

“The Court emphasised that the Judge must be satisfied that the facts and circumstances of the case are sufficiently strong to justify an encroachment on the principle of open justice: where thus satisfied any approved restrictions on publication must be formulated so as to minimise the extent of the encroachment.”

19. It is our decision that the decision as currently drafted encroaches on the principle of open justice to the minimum extent necessary to deal with any risk to the security of individuals.
20. The application is therefore refused.

Chairman:



Date and place of hearing: 10 December 2013, Belfast

Date decision recorded in register and issued to parties: 10 DEC 2013

Case Ref Nos: 2250/12
724/13

AB

V

ULSTER BANK LTD

**INDUSTRIAL TRIBUNALS (NI) Order 1996
RESTRICTED REPORTING ORDER**

**Industrial Tribunals (Constitution and Rules Procedure) Regulations
(Northern Ireland) 2005 – Rule 50, Rule 59, Rule 10.**

1. This Order prohibits the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland in relation to the persons specified in paragraph 2.
2.
 - (a) name of claimant
 - (b) name of any witness
 - (c) name of any individual referred to in the evidence
 - (d) name of any person likely to lead to identifying the individuals referred to above in this matter.
3. The words "identifying matter" and "written publication" have the meanings set out in Article 13(2) of the Industrial Tribunals (Northern Ireland) Order 1996.
4. The Order referred to at 1 and 2 above and 5 below shall remain in force indefinitely.
5. The extent to which the facts of this case can be reported is limited to the facts and matters contained in the decision of the tribunal to which this Order is appended. For the avoidance of doubt, the prohibition on publication outlined above applies indefinitely to the statements provided by witnesses during the hearings relating to this case.

JP

6. For the avoidance of doubt the Order does not prohibit the identification of the respondent in this matter.
7. If any identifying matter is published or included in a relevant programme in contravention of this restricted reporting order the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale –
 - (a) In the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
 - (b) In a case of publication in any other form, the person publishing the matter; and
 - (c) In a case of matter included in a relevant programme –
 - (i) Any body corporate engaged in providing the service in which the programme is included and
 - (ii) Any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Chairman:



10

December 2013

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INDUSTRIAL TRIBUNALS

NOTICE OF RESTRICTED REPORTING ORDER

An industrial tribunal has issued a restricted reporting order on 10 December 2013 in relation to proceedings under reference no 2250/12 and 724/13 now being heard in Tribunal Room 9.

A restricted reporting order means an order prohibiting the publication in Northern Ireland of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Northern Ireland. Identifying matter in relation to a person means any matter likely to lead members of the public to identify him as a person affected by or as the person making the allegation.

If any identifying matter is published or included in a relevant programme in contravention of a restricted reporting order the following person shall be guilty of an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale –

- (a) In the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) In the case of publication in any other form, the person publishing the matter; and
- (c) In the case or matter included in a relevant programme -
 - (i) Any body corporate engaged in providing the service in which a programme is included; and
 - (ii) Any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Secretary: 

Date: 10 December 2013

JP