THE EMPLOYMENT TRIBUNALS

Claimant **Mr A Kuznetsov**

Respondent **Manulife Asset Management (Europe) Limited**

HELD AT: **London Central**

ON: **19 February – 2 March 2018**

Employment Judge: Mr J Tayler **Members: Mrs J Cameron**
Mrs S Plummer

Appearances

For Claimant: **Mrs S Chan, Counsel (until 27 February 2018)**
In Person (from 27 February 2018)

For Respondent: **Mr S Purnell, Counsel**

JUDGMENT[1]

The unanimous Judgment of the Tribunal is that the claims of automatic unfair dismissal for the reason, or principal reason, that the Claimant made protected disclosures, detriment done on the grounds of making protected disclosures and for holiday pay fail and are dismissed

[1] Corrected to remove typographical errors and the Claimant personal telephone number that he inserted into his email sign off.

REASONS

Introduction

1. By a Claim Form submitted to the Employment Tribunal on 3 March 2017[2] the Claimant brought complaints of automatic unfair dismissal for the reason, or principal reason, that the Claimant made protected disclosures, detriment done on the grounds of making protected disclosures and for holiday pay.

Issues

2. The issues for determination were agreed between the parties in the form of a finalised List of Issues at Annex A, save that the Respondent suggested that disclosure 6 should be split into two disclosures, being those made to and in respect of Camden Council (6a) and those to the Rolton Group (6b). We have accepted that suggestion as it makes the analysis more logical. We have decided those issues necessary to determine the claims.

Evidence

3. The Claimant gave evidence on his own behalf.

4. The Respondents called:

   4.1 Peter Sam Mennie, Chief Operating Officer

   4.2 Alexandra Louise Cornforth, Head of Compliance at the material times

   4.3 Christopher Paul Conkey, Chairman of the Respondent's board of directors

5. We were provided with an agreed bundle of documents. References to page numbers in this Judgment are to the page number in the agreed bundle of documents.

Procedural Matters

6. In the afternoon of the second day of the hearing, after we had concluded our reading, the Claimant applied to amend the claim to add a further protected disclosure in relation to the alleged meeting at the end of September 2016:

> "The Claimant told Mrs Cornforth that she needed to process his FCA application as soon as possible as the FCA required those giving investment advice to be registered and non-registration could get the Respondent into trouble. The information in the Claimant's reasonable belief tended to show a breach of a legal obligation to register him with FCA"

[2] With a finalised version sent on 12 April 2017.

7. In considering the application to amend we had regard to **Selkent Bus Co v Moore** [1996] ICR 836 at 843F. Mummery J, as he then was, held that whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Mummery J noted a number of relevant factors; including, the nature of the amendment and the applicability of any time limits and the timing and manner of the application. Those are examples of factors that should be taken into account. Essentially, the approach in **Selkent** is at one with the overriding objective: the focus is on the balance of hardship in allowing or refusing the amendment, which is a key component of dealing with cases fairly and justly. This is also the approach set out in the Presidential Guidance.

8. We consider that although the application was not to add a new type of claim, it was a new claim, in that a new protected disclosure was relied upon. We considered that application was made extremely late, being made at 1:55pm on the second day of the hearing, just before evidence was due to commence. The Claimant had had ample opportunities to raise the matter before; in the Claim Form, at either of the Preliminary Hearing or when he instructed Mrs Chan the end of January this year. Most significantly, we consider that the Respondent would suffer a significant prejudice were the application permitted as it would require investigation and possible provision of further documentation and witness evidence. We do not consider it would be fair to the Respondent have to seek to deal with this matter "on the hoof" without an adequate opportunity to properly consider it before evidence commences. A delay to the evidence would add yet further costs proceedings. The outweighed the prejudice to the Claimant of not being able to add yet another alleged disclosure. We refused the application.

9. The Claimant also pursued 3 applications for specific disclosure. To order disclosure we must be persuaded the documents sought are relevant and that searching for them, and disclosing them, is necessary for the fair disposal of the proceedings. The Claimant stated that he wished to be provided with a list of names, desks and telephone numbers or staff in London and Boston, USA. We refused this application as we considered that the information requested was irrelevant.

10. The Claimant sought all communications, including with staff in Boston, that related to his dismissal. The Claimant stated that he was seeking reassurance that proper disclosure had been given. The Respondent stated that all such documentation had been disclosed. The Claimant had no basis to contradict this assertion. The application was refused.

11. The Claimant sought the CCTV recording of a person who visited him at the Respondent's office. It was initially suggested that the person was unauthorised and had not signed in. The Respondent stated that CCTV recordings are overwritten periodically and that the relevant recording no longer exists. We accept that is the case and refused the application. Furthermore, even if the recording had been available, we do not consider that it would be relevant issues before the tribunal.

12. The Claimant produced two lever arch files of documents in addition to the 12 in the agreed bundle. The Respondent did not object to them being provided to us and accepted that the order of Employment Judge Lewzey had made provision for the Claimant to provide such additional documentation. Accordingly, we accepted the documents.

13. The Claimant sought to put before the tribunal extracts of regulatory materials. Initially, the documents were passed to the tribunal clerk without Mrs Chan's knowledge. Subsequently, on 27 February 2018, the Claimant made a written application for their introduction. The Respondent stated that they did not object to the documents being before us, although they did not accept that they were relevant. In the circumstances we agreed to accept the documents on the basis it would be for the Claimant to explain their relevance.

14. The parties attended on 28 February 2018, at which time we were due to receive their written submissions and any brief oral submissions. Mrs Chan informed us that Claimant wished to rely on his own submissions rather than hers and that circumstances had arisen in which she was withdrawing as the Claimant's representative, on his instructions. Accordingly, from then on the Claimant represented himself.

15. We completed reading the written submissions at 12pm at which stage we had proposed that we would hear any brief oral submissions. The Claimant asked for additional time. To give him the fullest opportunity to properly put forward his case we agreed with his application that he should make his oral submissions at 2pm but stated that we would expect them to be concluded within one hour, as opposed to the one and a half hours he requested, in the light of the fact that he had produced very lengthy written submissions. In fact we did permit the Claimant to complete his submission even though they took longer than one and a half hours.

16. During his submissions the Claimant produced a document with case summaries. The Respondent did not object to it being provided to us and we accepted it.

The Law

Qualifying disclosures

17. Qualifying disclosures are defined by section 43B Employment Rights Act 1996 ("ERA"), so far as is relevant:

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

18. There must be a disclosure of information. There can be a disclosure of information even if the information is already known to the recipient. A distinction is to be drawn between the mere making of an allegation such as "you are not complying with Health and Safety requirements" and a disclosure of information, such as "the wards of the Hospital have not been cleaned for two weeks", which gives rise to the allegation: **Cavendish Munro Professional Risk Management v Geduld** [2010] ICR 325. An allegation without information cannot be a protected disclosure. However, an allegation with supporting information can.

19. Other than in obvious cases, where a Claimant relies on having reasonably believed that a disclosure of information tended to show an actual or prospective breach of a legal obligation under section 43B(1)(b) ERA, he should identify the source of the legal obligation that he believed was being, or was likely to be, breached: **Blackbay Ventures Ltd t/a Chemistree v Gahir** [2014] ICR 747.

20. The employee must have a reasonable belief that the information tends to show the relevant breach of legal obligation. The belief need not be correct, but it must be reasonable for the employee to hold it: **Babula v Waltham Forrest College** [2007] IRLR 346.

21. The employee must also subjectively believe that the disclosure is in the public interest and that belief must be objectively reasonable: **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed** [2017] EWCA Civ 979.

Protected Disclosure

22. A qualifying disclosure is protected provided it comes within, so far as is relevant to this case, Section 43C or 43F ERA:

> 43C Disclosure to employer or other responsible person.
>
> (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure...—
>
> (a) to his employer, or
>
> (b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
>
> (i) the conduct of a person other than his employer, or
>
> (ii) any other matter for which a person other than his employer has legal responsibility,
>
> to that other person.
>
> 43F Disclosure to prescribed person.
>
> (1)A qualifying disclosure is made in accordance with this section if the worker—
>
> (a) makes the disclosure ... to a person prescribed by an order made by the Secretary of State for the purposes of this section, and
>
> (b) reasonably believes—
>
> (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
>
> (ii) that the information disclosed, and any allegation contained in it, are substantially true.

23. The provisions make it clear that there may be a protected disclosure that is not made to, or about, the employer. The issue is whether the protected disclosure is causative of the treatment. If the information is not about the employer this is most likely to be the case where the employer has some interest in the matter about which the disclosure is made: e.g. it may be "uncomfortably close to home": See **BP v Elstone and Petrotecnics Ltd.** [2008] IRLR 530.

Detriment

24. An employer has a right not to be subject to detriment done on the ground that the employee has made protected disclosures.

25. 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 have to work thereafter.

26. The Claimant must prove on the balance of probabilities that he made the protected disclosures and that there has been detrimental treatment. If he discharges that burden, the Respondent then has the burden of proving the reason for the treatment; section 48(2) ERA. If the Respondent does not prove the reason for the treatment, the Tribunal is entitled, but not obliged, to infer that the detriment was on the ground that the Claimant made the protected disclosures: **Ibekwe v Sussex Partnership NHS Foundation Trust**: UKEAT/0072/14.

27. A person who subjects a whistleblower to detriment must personally be motivated by the protected disclosure. Another person's knowledge and motivation cannot be imputed to an "innocent" decision maker who does not know about it: **Malik v Cenkos Securities**, UKEAT/0100/17, unreported, 17 January 2018, paras 86-93.

28. There must be a causative link between the protected disclosure and the reason for the treatment, in the sense that the disclosure materially influenced the employer's treatment of the whistleblower (NHS **Manchester v Fecitt & Ors** [2012] IRLR 64.

Dismissal

29. Pursuant to Section 94 of the Employment Rights Act 1996 ("ERA") an employee has the right not to be unfairly dismissed. Pursuant to Section 103A ERA a dismissal is automatically unfair if it is done for the reason or principal reason that the Claimant has made a protected disclosure.

30. The Claimant was not employed for two years and so does have qualifying service to claim "ordinary" unfair dismissal. He therefore bears the burden of proving on the balance of probabilities that he made the alleged protected disclosures and that was the reason, or principal reason, for his dismissal: **Ross v Eddie Stobart Ltd**, EAT, unreported, 08 August 2013, applying **Smith v Hayle Town Council** [1978] IRLR 413.

31. Determining the reason for dismissal requires an enquiry into what facts or beliefs caused the decision maker to dismiss: **Abernethy v Mott** [1974] ICR 323. The person taking the decision to dismiss must be aware of the protected disclosures **Royal Mail Ltd v Jhuti** [2017] EWCA Civ 1632.

32. To succeed in a claim under section 103A ERA the protected disclosure must be the reason, or principal reason, for the dismissal.

33. It is rare for there to be direct evidence that a dismissal was because of making protected disclosures so it will often be necessary for the Employment Tribunal to draw inferences from primary facts: **Kuzel v Roche Products Ltd** [2008] IRLR 530. However, there may be other circumstances in which the Employment Tribunal is fully persuaded by the evidence what the reason for the dismissal was, and that it was unrelated to the making of any disclosure.

Other reason for treatment

34. It is generally prudent for the Employment Tribunal to decide the reason for detrimental treatment or dismissal even if it decides that the making of protected disclosures was not the reason, and so, the determination is not strictly necessary to decide the claim: see **Malik** paras 79-80.

35. It is important to note that it is not possible to infer that the reason for treatment was the making a protected disclosure merely from the fact that an employer has acted unreasonably: see by analogy in the context of discrimination claims **Glasgow City Council v Zafar** [1998] ICR 120. However, unexplained unfair treatment might found the drawing of an inference.

Findings of fact

36. While it is generally appropriate to deal separately with findings of fact and the application of the law to those findings of fact, in this case dealing with the matter in that way would involve excessive repetition as it would be necessary to set out the facts in respect of each disclosure, then set them out again when analysing whether they amounted to protected disclosures. Accordingly, we considered the totality of the evidence and, having reached our findings of fact, we considered the disclosures and decided whether the statutory requirements were met so that they were protected disclosures. We have set out those determinations chronologically along with the findings of fact. We have also considered whether the alleged detriments occurred and the factual reason for those that did, and for the Claimant's dismissal, on analysis of the totality of the evidence.

37. The Respondent is a subsidiary of the Manufacturers Life Insurance Company ("Manulife") which has its headquarters in Canada. The Manulife group of companies provides insurance, life assurance and investment/pension plans. The Respondent is the European asset management arm of Manulife.

38. In 2015, a decision was taken to recruit two analysts to be based in London to cover emerging markets in Europe. Mr Mennie interviewed the Claimant on 24 June 2015 for one of the roles. He agreed to the Claimant's appointment. The role reported locally to Mr Mennie, in his capacity as the Respondent's Chief Operating Officer in London.

39. On 17 November 2015 the Claimant was sent the Employee Information Handbook [B1, 82].

40. On 27 November 2015, the Respondent sent the Claimant his employment contract by email [B1, 118-129].

41. On 30 November 2015, the Claimant commenced employment with the Respondent as Director, Senior Investment Analyst.

42. On 3 December 2015 the Claimant signed his employment contract [B1,127].

43. Clause 2.3 of the contract of employment included the following provisions:

> 2.3 You undertake with the Company and the Group Companies that you shall:
> (a) devote the whole of your working time, attention and abilities to the duties assigned to you;
> (b) faithfully and diligently exercise your powers and serve the Company and Group;
> (c) act solely in such a way as to promote and protect the interests and reputation of the Company and Group giving at all times the benefit of your knowledge, expertise and skill;
>
> (e) comply with all rules, policies and regulations issued by the Company or Group from time to time and all requirements, recommendations, rules and regulations (as amended from time to time) of the FCA (including but not limited to the requirement to hold any FCA approvals needed to carry out your duties) and all other regulatory authorities relevant to the Company and the Group; and
> (f) immediately report to the Company any information that comes into your possession which adversely affects or may adversely affect the Company or the Group including without limitation any wrongdoing (including acts of misconduct, dishonesty, breaches of contract, fiduciary duty, statutory duty, company rules or the rules of the relevant regulatory bodies) whether committed, contemplated or discussed by any director or member of staff of the Company or Group of which you are aware irrespective of whether this may involve some degree of self-incrimination.

44. Clause 14 of the contract of employment provided:

> 14 Outside Interests
> 14.1 You shall not during your employment with the Company directly or indirectly, paid or unpaid, be engaged or concerned in the conduct of, or become an employee, agent, partner, consultant or director of or assist or have any financial interest in any other actual or prospective business, occupation or profession whatsoever without the prior written consent of the Company.

45. Clause 17 included the following provision:

> 17 Company Standards and Policies
> 17.1 Employment with Manulife is always contingent upon continuing good performance in the job and conduct in accordance with Corporate and Divisional Standards, and all Company policies including the Code of Business Conduct and Ethics, the Manulife Reputation Risk Management Policy, Manulife Asset Management Code of Ethics and Business Conduct.

46. Clause 19 made the following provision as to termination of the contract by default:

> 19 Termination by Events of Default
> 19.1 The Company may terminate your employment with immediate effect and without notice or payment in lieu of notice or payment of any compensation or liquidated damages if you:
>
> (a) are guilty of gross misconduct or commit any serious or (after warning) repeated or continued material breach of your obligations or duties;
> (b) commit any breach of this agreement other than a breach which is capable of remedy and is remedied forthwith by you at the Company's request to the complete satisfaction of the Company;

47. On 21 December 2015 the Claimant underwent compliance induction training and signed a statement confirming receipt of the Manulife Asset Management (Europe) Limited Compliance Manual (including the Code of Business Conduct and Ethics) [B1, 148].

Compliance Induction Attendance List – 21.12.15

I/We acknowledge receipt of copies of the following:

- Manulife Asset Management (Europe) Limited Compliance Manual (inc. The Code of Business Conduct and Ethics).
- Statements of Principle for Approved Persons
- Code of Practice for Approved Persons (General)
- Code of Practice for Approved Persons (Specific)

48. The Claimant states that although he signed a receipt he was not provided with a copy of the Compliance Manual. We find, on balance of probabilities, that the Claimant was provided with a copy of the Compliance Manual. We find it implausible that he would have signed a receipt stating that he had received the Compliance Manual if he had not. Furthermore, if he had not received the Compliance Manual he would have asked for a copy as soon as he realised he did not have one.

49. A FCA application form for the Claimant was partially completed on 5 January 2015 [B2, 518-542]. We accept the Respondent's evidence that the Claimant asked to complete the form. We accept that the Respondent understood that there was no need for the Claimant to be registered with the FCA at the time as he was not providing advice direct to clients, although as the Respondent recruited local sales staff the chance of him being involved in direct client facing advice would increase which would mean that he would need to register at some stage in the future. The Claimant stated that there are missing sheets in which he declared his directorships of Athena Global Limited and Axel Brown Limited. We do not accept his evidence. Mrs Cornforth kept the form safely in her office and there is no reason for any sheets to have been lost.

50. On 11 January 2016, the Claimant signed a statement confirming that he received the Manulife Asset Management Code of Ethics and confirmed he had listed all reportable securities **[B1, 343]**.

Manulife Asset Management.

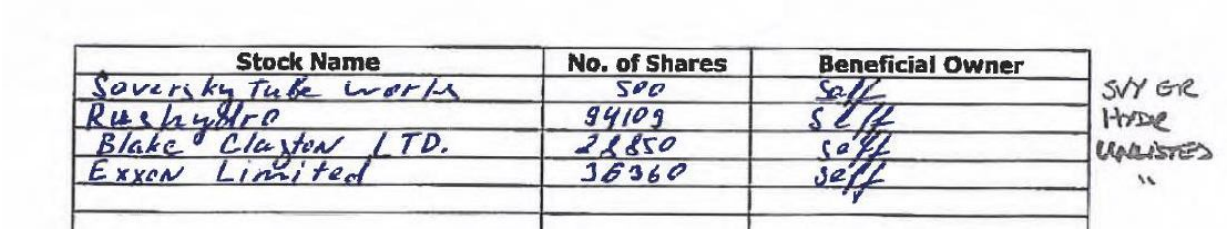
Code of Ethics – Initial Certification

Name: Alexander Kuznetsov

I acknowledge receipt of the The Manulife Asset Management Code of Ethics (The Code) as provided on 21st December 2015.

As required by Section 5.1 of the Code I have listed below **all** Reportable Securities (as defined by The Code) that represent my, and my Household Members' holdings (including MFC stock and options and GSOP holdings).

I hereby certify that I have read and understood The Code and will comply with its requirements at all times.



Stock Name	No. of Shares	Beneficial Owner
Severstky Tube Works	500	Self
Rushydro	94109	Self
Blake Clayton LTD.	22850	Self
Exxon Limited	36360	Self

SVY GR HYDR UNLISTED "

51. The Claimant did not declare his interest in Athena Global Limited. In his evidence he stated this was because he did not know how many shares he held. We do not accept that evidence. He could have declared that he held some shares and subsequently provide the number. There is no evidence to suggest that he ever sought to do this.

52. The Claimant accepted that, irrespective of the documentation he received, he knew that he should declare directorships and that he should not represent himself as acting for the Respondent if he was not so doing.

53. In the early part of 2016, Camden Council were seeking to compulsorily purchase the Claimant's house on the Bacton Estate as part of plans to demolish the buildings and redevelop the estate. The Claimant was extremely upset by this, particularly as he believed that Camden Council were trying to purchase his property at a substantial undervalue.

54. On 20 March 2016, the Claimant sent Camden Council an email about the possible purchase of the Bacton Estate **[B2, 569]**. He suggested that the purchase would be funded by a friend in the United States who could offer a 7% premium over Camden's valuation of the property. The evidence does not show whether the email was sent from the Claimant's personal or work email account.

55. On 26 May 2016, the Claimant sent emails from his work email account to Sir Keir Starmer MP and Greg Clarke MP to request meetings about "housing and regeneration policies". The signature block of the email gave the Claimant's role as a "Director" of the Respondent without reference to his division, Emerging Markets [B2, 445], [B2, 446] and [B2, 447]. This made it appear that the Claimant was a statutory director of the Respondent, rather than having the job title of director within one specific division.

56. On 15 June 2016, the Claimant sent an email to Mike Cook at Camden Council in the following terms [B2 453]:

From: Alex Z Kuznetsov
Sent: 15 June 2016 16:13
To: mike.cooke@camden.gov.uk
Subject: Re: Meeting to discuss asset disposal

Importance: High

Mike Cooke
Chief Executive Officer
Camden Borough Council

Re: Meeting to discuss asset disposal

Dear Excellency,

It came to our attention that having reviewed its property portfolio, Camden Council has identified several properties for disposal. Having discussed this with my former colleague who is currently managing a large Real Estate Investment Trust in the US, we decided to explore the opportunity of purchasing part of the Camden portfolio.

In fact, our company, Manulife Asset Management, has a substantial US$50bn portfolio committed to residential and commercial real estate as well. This accounts for almost 10% of our total investment portfolio. Although our current exposure to the UK real estate is limited at present, MFC's senior executives see significant opportunities in the European market and have set the European expansion as one of the key objectives this year. The strong commitment of Manulife to Europe has been emphasized at the board meeting yesterday and is reflected in several press-releases published this week.
http://www.manulife.com/public/news/detail/0,,lang=en&artId=148832&navId=630002,00.html

Thus, I would like to enquire if your busy schedule may allow arranging a meeting, I am happy to visit your office at your convenience or, if you prefer, we can meet in my office.
I am looking forward to the meeting.

Kind regards,

Alex Kuznetsov, CFA, FRM, CA
Director
Manulife Asset Management
18 St Swithin's Lane
London EC4N 8AD

57. We consider that this email is the most important document in this case and requires careful reading. It is important to note:

57.1 The email was sent from the Claimant's work email account

57.2 The signature block described the Claimant as a Director of Manulife Asset Management (not including the words "(Europe) Limited")

57.3 The Respondent and group companies knew nothing about and had no interest whatsoever in the Bacton estate.

57.4 The Claimant was not involved in property transactions in his work for the Respondent.

58. The email of 15 June 2016 was not discovered by the Respondent until 10 November 2016.

59. On 29 June 2016, the Claimant sent an email from his work email account to Sir Keir Starmer MP to ask for assistance regarding the compulsory purchase of his house. He used a personal signature [B2, 462-466]. This demonstrates that the Claimant could use a personal signature when sending from an email from his work account.

60. On 4 July 2016, Camden Council sent an email to the Claimant refusing to meet with him in terms that suggested that they understood he was suggesting a purchase of the Bacton Estate by a friend. The letter did not refer to the email of 15 June 2016 [B5, 1462].

61. On 9 August 2016, Mrs Cornforth sent an email to the Respondent's employees, including the Claimant, about the introduction of the Personal Trading Control Center (PTCC) to record personally owned securities and trading activity [B2, 543].

62. On 17 August 2016, The Claimant logged onto the PTCC and recorded that he had no outside business interests and that he had read and understood the Global Code of Ethics [B2, 544]. The PTCC form had a link to the Outside Business Activity Guidelines [B2, 545-552].

63. On 27 September 2016, Mrs Cornforth sent an email to the Claimant asking about his directorship of Blake Clayton Limited as it was referred to in the employment section of the FCA application form, but had not been disclosed as an outside business interest on PTCC [B2, 580].

64. On 28 September 2016, the UK Compliance team asked the Claimant to disclose any other directorships [B2, 583].

65. At the end of September 2016 the Claimant alleges that, after the Respondent had moved offices, he spoke Mrs Cornforth and stated that an employer's insurance certificate was not displayed in the office as is legally required and that there were very substantial fines for failing to do so (in the Claim Form he suggests that this was in early October 2016). This is alleged to be Protected Disclosure no 1. In his oral evidence the Claimant stated that there was a formal meeting in an office or meeting room, principally to discuss his FCA registration, possibly on 22 or 26 September 2016. The Claimant alleges that he stated to Mrs Cornforth that there was a fine of £2,500 per day for not having a certificate displayed. In her statement Mrs Cornforth stated that she could not recall a discussion about displaying the insurance certificate at the end of September 2016. However, having heard the Claimant's allegation in his oral evidence that there was a formal meeting, she was adamant that there was no such formal meeting. We accept her evidence. We do not accept that disclosure 1 was made. Further, we accept Mr Mennie's evidence that he knew nothing about any issue about the display of an insurance certificate.

66. On 17 October 2016, the Claimant sent an email from his work account to the Rolton Group [B3, 1035-1036]:

Dear Sirs,

I have read your report BASEMENT IMPACT ASSESSMENT PREPARED FOR E C HARRIS LLP AT BACTON LOW RISE REDEVELOPMENT GOSPEL OAK, LONDON (Doc Ref 12-0083 XRP007) wiith great interest. Having read the report, I found that a substantial amount of the information presented in the report is incorrect and misstated. The information presented in the report is contradicted by several credible sources in my posession.

Thus, I suggest two options.

Option 1: You admit the material misstatements and distortions in both inpput data and conclusions and retract the report within 3 days from the date of this letter. I AGREE NOT TO SEEK DAMAGES IN THIS CASE.

Option 2: I will seek a legal remedy by launching a legal action on the grounds of negligence and misfeasance. In the second instance, could you please provide details of your third party liability insurance as well as professional negligence insurance?

The choice is yours.

Alex Kuznetsov, CFA, FRM, CPA

Director

Manulife Asset Management (Europe) Limited
1 London Wall

London EC2Y 5EA

67. On 18 October 2016, the Claimant sent emails from his work email account to Fergus Freeney, Mike Cooke, Ed Watson and the Planning Department at Camden Council objecting to the planning application for the Becton Estate [B3, 849-891], [B3, 892-938], [B3, 939-984] and [B3, 985-1030]. The Claimant used a personal signature. These form part of a series of complaints about the way in which Camden Council were dealing with the potential compulsory purchase of the Claimant's property.

68. On 19 October 2016, Mrs Cornforth received a complaint from Allan Rose of Rolton Group Ltd regarding the email sent by the Claimant [B3, 1035]:

> Dear Ms Cornforth
>
> I apologise in advance if this email to you is incorrect and should be directed elsewhere but I have acquire your details from Companies House.
>
> I am in receipt of the email below from Mr Alex Kuznetsov, totally out of the blue, which is surprising in both its content and tone and making demands and threats of action which are on the one hand unrealistic and on the other hand significantly unsubstantiated. I am also surprised that such an email ·ould be forthcoming from Manulife which is why I seek to establish its authenticity. I would be grateful i· ·u can confirm if Mr Alex Kuznetsov is a representative and Director of Manulife Asset Management (Europe) Ltd or not? He does not appear to be registered as a Director at Companies House.
>
> I would be grateful if you can advise on the above and if not, to whom this email should be directed within your organisation
>
> I thank you in anticipation of your advice on this matter.
>
> Kind regards
>
> Allan Rose
>
> Allan Rose | Managing Director
> C.Eng, MIStructE, BEng (Hons)
>
> ·lton Group Ltd

69. On 19 October 2016, Mrs Cornforth forwarded the email she had received from Rolton Group to Alan Seghezzi, who instructed the Respondent's Investigative Services department to investigate [B4, 1103a-1103ee].

70. On 20 October 2016, Mr Rose sent Mrs Cornforth further emails Rolton Group Ltd had received from Claimant with a signature block in which he was referred to as a Director of the Respondent [B4, 1049-1065]. The emails that Mr Rose sent Mrs Cornforth, including the email of 17 October 2016 in which the Claimant alleged that there were incorrect and misstated information and that there were misstatements and distortions in both input data and conclusions in a Basement Impact Assessment produced by the Rolton Group, This is alleged to be disclosure number 6b (1058-1062). The Claimant did not specify the alleged misstatements etc despite being asked to. In the circumstances we do not consider that he can have had a reasonable belief that there was a breach of a legal obligation. The Claimant sent the emails as part of his dispute in relation to the Bacton Estate. It was sent purely to further his own interest and we do not consider that he had a reasonable belief that he was acting in the public interest. Disclosure 6a is not made out.

71. On 21 October 2016, An anonymous report was submitted on the Respondent's system, EthicsPoint, alleging that an unidentified individual was conducting personal business in the Respondent's office during working hours, was making extensive use of the Respondent's resources for his personal interests and had received a non-business related guest [B4, 1104-1105]. A review of CCTV images suggested that the individual was the Claimant.

72. On 21 October 2016, Mr Mennie sent an email to the Claimant and requested that he stop using work email for personal activities [B4, 1107].

> Alex,
>
> It has come to my attention that you appear to be using company email for personal purposes, and a complaint has been received regarding those emails.
>
> Please immediately stop using your company email for any personal activities.
>
> Peter

73. On 31 October 2016, Mrs Cornforth asked the Respondent's Investigative Services department to perform a review of the Claimant's email account from 20 October 2016 onwards to check that he had complied with Mr Mennie's request [B4, 1327-1328].

74. On 31 October 2016 a meeting was held between the Claimant, Mr Mennie, Mrs Cornforth and Mr Spavin. The Claimant was asked about his outside business interests, his visitor and the emails to the Rolton Group [B4, 1108-1110]. After the meeting, the Claimant sent Mr Mennie an email with some details of his outside business interests [B4, 1111].

75. The Claimant alleges as detriment 19 that Mrs Cornforth was abusive and aggressive towards him in this meeting (although the Claimant gave the date as 30 October 2016 in his list of detriments). This allegation was not put to Mrs Cornforth. We do not accept that she was abusive or aggressive. We do not accept the detriment 19 is made out.

76. On 2 November 2016, Mr Spavin sent an email in which he asked the Claimant about his outside business interests. The Claimant responded but Mr Spavin replied that he needed more detail. He attached a copy of the Compliance Manual [B4, 1117].

77. On 3 November 2016, The Claimant sent further information concerning his outside business interests. He stated that he did not need to disclose anything about Tomsk Energy, a company shares in which were owned by two companies that he held shares in, and was sole director of. The Claimant alleged that he had not received the Compliance Manual when he joined the Respondent and was not aware of PTCC until September 2016 [B4, 1222-1223]. Mrs Cornforth replied stating that disclosure about Tomsk Energy was required. Mrs Cornforth contended that the Claimant had received the Compliance Manual and was sent an email about the change to PTCC in August 2016 and had logged on to the system on 17 August 2016 [B4, 1266-1267].

78. The Claimant's emails are contended to contain protected disclosure number 2, alleging a failure by the Respondent to have in place a Compliance Manual and to provide him with a copy of the Compliance Manual when he joined the Respondent, or thereafter. The Claimant relies on these specific extracts from emails:

> 5. Thank you very much for sending me the Manulife Asset Management (Europe) Compliance Manual – June 2016. Although the document appears to confirm my understanding in respect of the Tomsk Energy shares, I do not believe I received the document at the time I joined Manulife. This may be due to the fact that my corporate email has not been set up for a few weeks after I joined the company. Furthermore, I have not been added to some important distribution lists up until March 2016 which, for example, resulted in an important email concerning the pension contributions sent in March 2016 has not been received.
>
> For the avoidance of doubt, may I ask the compliance team to send me the compliance manual and other documents which should have been provided at the time I joined the firm. Could you also provide me with the manual for PTCC system, please?

79. We do not accept that there was any allegation that the Respondent did not have a compliance manual in place when the Claimant joined the Respondent. The Claimant could not have had a reasonable belief that there was no compliance manual, or that one was not provided to him, as he was provided with it early in his employment. The Claimant could not have reasonably believed there was a breach of any legal obligation. We do not accept that disclosure 2 is made out.

80. The emails are also alleged to contain protected disclosure number 3 alleging that the Respondent's EU Compliance Team was either unfamiliar with, or not able to interpret the Respondent's Compliance Manual, and therefore lacked professional competence in breach of FCA obligations. The Claimant relies on these specific extracts:

> I admit that I am not legally trained. However, my understanding of the contemporary regulations suggests that an individual who has a minority interest in company A which owns shares in company B is not the owner of shares in company B. If this understanding is not correct, shareholders of Manulife and/or investors into the specific funds owned by Manulife would be deemed to be shareholders of all companies Manulife invested into.
>
> As I understand, the definition of the Beneficial Interest based on the applicable Securities regulations is given in Appendix A of the Manulife Asset Management (Europe) Compliance Manual –June 2016 (page 44) and is defined as
>
> *"An Access Person is deemed to have a Beneficial Interest in any transaction in which the Access Person controls or has the opportunity to directly or indirectly profit or share in the profit derived from the Securities transacted. An Access Person is presumed to have a Beneficial Interest in the following Securities and related transaction activities: (1) Securities owned by an Access Person in his or her name; (ii) Securities (and Securities accounts) owned by Household Family Members; (iii) Securities owned by an Access*

Person indirectly through an account or investment vehicle for his or her benefit, such as an IRA/RRSP/RESP/ISA/SIPP, family trust or family partnership; (iv) Securities owned in which the Access Person has a joint ownership interest, such as Securities owned in a joint brokerage account; and (v) Securities over which the Access Person has discretion or gives advice (other than MAM Client accounts) and includes Securities owned by trusts, private foundations or other charitable accounts for which the Access Person has investment discretion. Beneficial Interest is interpreted in the same manner under the Code as it would be under Rule 16a-1(a)(2) under the U.S. Securities.Exchange Act of 1934.

"

Respectively, the definition confirms my understanding that an individual with a minority interest in entity A which owns shares in Company B is not the owner/shareholder of Company B.

It may also be important to stress that

1. The entities in which I invested had shares in Tomsk Energy at the time of my investment. Respectively, I could not possibly direct to make such investments.
2. Based on the information in Bloomberg, it does not even appear that the shares of Tomsk energy are trading on the market. In any case, the company does not have and has never had any bonds.

Respectively, the Manual confirms that the minority stakes in Tomsk Energy owned by an entity in which I had a minority stake had to be disclosed.
However, I am more than happy to provide any information which can be of any assistance. Could you please provide me with the relevant form and, if possible, a sample or a manual on the correct way to fill the form, please?

From: Alex Kuznetsov
Sent: 03 November 2016 17:33
To: Alexandra Cornforth
Cc: Peter Mennie; William E Corson; Carl J Spavin
Subject: RE: Personal Investing

Dear Alexandra,

I do not know what made the impression that I am entering into any "debate". As stated in my earlier email, I do not mind providing any necessary disclosure. In fact, this information is also shown in the Companies House. However, I need to understand (1) how this should be done and (2) What number of shares shall be shown. Specifically, should I put the entire number of shares owned by the entity in which I have a minority interest or shouold this number be multiplied/adjusted by the percentage of ownership. Please advise.

Although I do not mind entering the information nor "debate it", the definition of the Beneficial Interest given in Manulife Asset Management (Europe) Compliance Manual –June 2016 (page 44) confirms that the ownership of a minority stake in an entity which owns a minority stake in Tomsk Energy does not make a Manulife employee an owner of a stake in Tomsk Energy.

For the avoidance of doubt, may I ask the compliance team to send me the compliance manual and other documents which should have been provided at the time I joined the firm. Could you also provide me with the manual for PTCC system, please?
Addressing the question of PTCC, I would like to add that, I had not even known about the existence of the PTCC prior to August. I believe I have not used it until September but it is possible that it was a couple of weeks earlier. In any case, the existing ownership had been declared on paper forms in December 15 or January 16 and, as confirmed in the Carl's message sent yesterday, the compliance team has this information.

Kind regards,
Alex Kuznetsov

81. While we accept that the Claimant was putting forward an alternative analysis of whether a beneficial interest existed and should be disclosed, we do not consider that he was making a disclosure suggesting that the Respondent's EU Compliance Team was either unfamiliar with, or not able to interpret, the Respondent's Compliance Manual, and therefore lacked professional competence in breach of FCA obligations. Furthermore, we do not consider the Claimant had a reasonable belief that the compliance team lacked professional competence and were breaching FCA regulations. In writing the email the Claimant was trying to justify his own position and had no reasonable belief

that he was acting in the public interest. We do not accept that disclosure 3 is made out.

82. On 4 November 2016, Mrs Cornforth informed the Claimant that he needed to disclose information about Tomsk Energy [B4, 1277-1278]. The Claimant's replies are contended to include protected disclosure number 4, alleging that the PTCC system was inadequate. The Claimant relies on these specific extracts:

> I do not know what made the impression that I am entering into any "debate". As stated in my earlier email, I do not mind providing any necessary disclosure. In fact, this information is also shown in the Companies House. However, I need to understand (1) how this should be done and (2) What number of shares shall be shown. Specifically, should I put the entire number of shares owned by the entity in which I have a minority interest or shouold this number be multiplied/adjusted by the percentage of ownership. Please advise.
>
> For the avoidance of doubt, may I ask the compliance team to send me the compliance manual and other documents which should have been provided at the time I joined the firm. Could you also provide me with the manual for PTCC system, please?
>
> **From:** Alex Kuznetsov
> **Sent:** 04 November 2016 11:32
> **To:** Alexandra Cornforth <Alexandra_Cornforth@manulifeam.com>
> **Cc:** Peter Mennie <peter_mennie@manulifeam.com>; William E Corson <wcorson@manulifeam.com>; Carl J Spavin <Carl_Spavin@manulife.com>
> **Subject:** RE: Personal Investing
>
> ar Alexandra and Carl,
>
> Could youy please advise on the correct way of reporting the shares owned by a legal entity in which I have a minority interst, please?
> Specifically, if I have an interest of 25.9048161869478% in a legal entity and the legal entity owns 120,000 shares, should I state that I own 120,000 or 31,085.78 shares? If it is the latter case, could you please advise how to report fractional shares, please?
> Many thanks in advance for your assistance!

83. While the Claimant argued that it was difficult to disclose his interest in Tomsk Energy in the PTCC system, it did prove possible to do so with assistance. We do not consider that the Claimant had a reasonable belief that there was any breach of a legal obligation in respect of the operation of PTCC. What is more, in arguing that it was difficult to disclose his interest in Tomsk Energy the Claimant was seeking only to justify the fact that he had not declared his interest previously, and did not have a reasonable belief that he was acting in the public interest. We consider that protected disclosure number 4 is not made out.

84. The emails are also alleged to contain protected disclosure number 5 alleging that the Claimant had not been informed of the PTCC system upon joining the Respondent or at any other point until September 2016, which is allegedly in breach of FCA rules. The Claimant relies on these specific extracts:

> Addressing the question of PTCC, I would like to add that, I had not even known about the existence of the PTCC prior to August. I believe I have not used it until September but it is possible that it was a couple of weeks earlier. In any case, the existing ownership had been declared on paper forms in December 15 or January 16 and, as confirmed in the Carl's message sent yesterday, the compliance team has this information.

85. We consider this allegation is not made out factually. The PTCC system was brought into use in the London office in August 2016. The Claimant was informed about the introduction by email at the same time as other employees. The Claimant had no reasonable belief that there was a breach of any legal obligation in relation to being provided with information about the PTCC or its operation that could result in a failure to comply with FCA rules. What is more in raising issues about the PTCC system the Claimant was trying to justify why he had not disclosed his interest in Tomsk Energy, and had no reasonable belief that he was acting in the public interest.

86. On 4 November 2016, the Claimant entered further information into PTCC [B4, 1285-1287].

87. On 10 November 2016, Joseph Jay Wayshak sent an email to the Claimant attaching formal letter of reprimand for breach of the Global Code of Ethics [B4, 1356-1357]:

> Under the Manulife Asset Management Global Code of Ethics, as an access person you are required to disclose all reportable accounts and securities in which you have a beneficial interest; this includes your personal accounts, those of a spouse, "significant other," minor children or family members sharing your household, as well as all accounts over which you have discretion or give advice or information.
>
> Compliance has been made aware that you have not disclosed your Tomsk energy shares, being held through minority shareholdings in two private companies, in the Personal Trading Control Center (PTCC) system.
>
> In accordance with the Schedule of Fines and Sanctions, you are being issued this Letter of Reprimand for your repeated failure to complete your reporting requirements. Please take all necessary steps to ensure that your future personal dealings are conducted in full compliance with the provisions of the Manulife Asset Management Global Code of Ethics.
>
> Please be advised that should any subsequent violation occur in the near future, it may result in an additional sanction, such as a monetary fine and/or a restriction on trading and additional measures.

88. The Claimant did not appeal the decision.

89. The Claimant alleges as detriment 1 that he was unable to buy certain shares at a price he had been considering because of the length of time the compliance team took to approve the share purchases while the investigation into his share ownership and directorships was ongoing. While there may have been some delay in dealing with the Claimant's request to purchase shares because his shareholdings and business interests were being investigated, this had nothing to do with any of the disclosures that the Claimant had made.

90. On 10 November 2016, the Respondent's Investigative Services department replied to Mrs Cornforth's request for an analysis of the Claimant's work email address with copies of a number emails, including email chains involving email in which the Claimant raised issues about his dispute with Camden Council [B4, 1325-1347]. This was when the email of 15 June 2016 came to the Respondent's attention because it was included within a chain that fell within the search date parameters.

91. The email attached a series of emails in which the Claimant alleged that Camden had acted improperly in respect of the proposed compulsory purchase. The email correspondence with Camden from the Claimant was in furtherance of his personal dispute with them in respect of the compulsory

purchase of his property. We do not consider that he had a reasonable belief that he was acting in the public interest. None of the detail of the email correspondence was put to the Respondent's witnesses. It was simply put that they thought that the Claimant was a troublemaker as a result of seeing his disputatious correspondence with Camden. We accept that their focus was almost entirely on the email of 15 June 2016 and that insofar as they were aware of the Claimant's dispute about the potential compulsory purchase of his property, they were sympathetic to him, and did not hold it against him. We do not consider that the allegations that the Claimant made in respect of Camden led to any of the alleged detriments or to his dismissal.

92. On 15 November 2016 the Claimant was called to a meeting [B4/1367]:

> Dear Alex,
>
> I would like you to come to a meeting in the Wado Conference Room at 2pm this afternoon to discuss some very serious concerns that have been raised as part of the Company's investigation into various compliance breaches.
>
> Alexandra Cornforth (copied above) will join in her capacity as Head of Compliance and will take a note of the meeting.

93. The Claimant alleges as detriment 8 that he was unable to effectively prepare for the 15 November meeting. While we accept that the Claimant was not given advance notice of the purpose of the meeting and so did not have a full opportunity to prepare we do not consider that this was because of any of the disclosures he made.

94. On 15 November 2016 the meeting was held between Mr Mennie, the Claimant and Mrs Cornforth, as a note taker. At the meeting the Claimant was questioned about the 15 June 2016 email. The Claimant was suspended during the meeting [B5, 1368-1374]. The Claimant did not allege that he was suspended because he had made any protected disclosures. The Claimant alleges as detriment 2 that he did not know the grounds of his suspension or subsequent dismissal. We do not accept that this is factually accurate. It was made clear in the meeting that the main concern was the email of 15 June 2016. Furthermore, we do not consider that the Claimant's treatment had anything to do with the disclosures that he had made.

95. The Claimant alleges that he was not informed that he had a right to be accompanied the meeting. While this is correct, it had nothing to do with the disclosures he had made.

96. The Claimant alleges as detriment 3 that the decision to suspend him was made before the 15 November meeting. We do not accept that the decision to suspend the Claimant had been taken prior to the meeting, although it was likely that he would be suspended. If the Claimant had admitted that he had made a serious error in sending the email of 15 June 2016 the position might have been different. Furthermore, we do not consider that the decision to suspend the Claimant had anything to do with the disclosures he had made.

97. During the meeting the Claimant stated that he did not have his work telephone with him. After the meeting the Claimant was escorted to his desk. Mrs Cornforth noticed there was a phone on the desk and said words to the effect "I thought your work phone was at home". The phone on the desk was the

Claimant's personal phone. The Claimant alleges as detriment 4 that Respondent drew unwarranted attention to the Claimant's suspension and created the impression that he intended to steal the Respondent's property. He alleges that this caused reputational and stigma damage. The Claimant alleges as detriment 9 that Mrs Cornforth gave the Claimant's colleagues the impression he had stolen the Respondent's property. We do not consider that this had anything to do with the disclosures the Claimant had made. Mrs Cornforth genuinely thought that the telephone on the Claimant's desk was his work telephone which is why she asked him about it.

98. Mrs Cornforth asked the Claimant to return his notebook. The Claimant alleges as detriment 12 that as a result he was unable to rely on his notes of the 15 November meeting. The Claimant was asked to return his notebook as it was company property and thought likely to include company information. This had nothing to do with the disclosures made by the Claimant.

99. On 16 November 2016, Mr Mennie dismissed the Claimant by letter attached to an email [B5, 1414-1416].

Dear Alex

Confirmation of summary dismissal

I am writing to confirm that further to our disciplinary meeting yesterday and in view of the seriousness of this matter, it has been decided that your employment with Manulife Asset Management (Europe) Limited (the **"Company"**) should be terminated for gross misconduct without notice.

I set out the reasons for my decision below.

Use of company name

We discussed, and you were shown, an email from 15 June 2016 to Camden Council and we have previously discussed your e-mails of October 2016 to Rolton Group Ltd. We asked you:

a) why you sent the emails in question;

b) whether you intended to mislead the recipients of the emails so that they had the impression you were acting in the course of the Company's business, when in fact you were acting on your own account;

c) whether you thought that this behaviour was appropriate and in line with the expected level of conduct at the Company; and

d) whether you had sent any other emails or other communications where you had implied or misrepresented that you were acting on behalf of the Company when in fact you were furthering your own interests.

Having considered all of the evidence and what you had to say, it is my decision that you have, on more than one occasion, intentionally used the Company's name to further your own personal interests in breach of your implied duties to the Company. Whilst your actions have not caused the Company to suffer any direct financial loss, your repeated actions highlight the potential damage that may have been caused.

Failure to disclose outside interests and shareholdings

Concerns regarding your failure to disclose outside interests and shareholdings have been raised with you on numerous occasions over the past few weeks. We discussed these concerns again yesterday and you were unable to provide any form of satisfactory explanation.

It is an express term of your contract of employment (clause 14) that you shall not "directly or indirectly, paid or unpaid, be engaged or concerned in the conduct of, or become an employee, agent, partner, consultant or director or assist or have any financial interest in any other actual or prospective business, occupation or profession whatsoever without the prior written consent of the Company." Your failure to disclose your outside interests is therefore a direct breach of the terms of your employment and poses a significant risk to the integrity of the Company.

Having considered all of the evidence and what you had to say, I have decided to uphold the allegation that you deliberately failed to disclose outside interests and shareholdings.

Outcome

Before reaching a final decision as to the outcome of the disciplinary meeting I considered the full range of possible disciplinary sanctions that may be imposed. Manulife operates in a highly regulated environment and employees are expected to uphold the highest standards of propriety, honesty and integrity. As you have been unable to provide any reasonable or cogent explanation for your actions, my decision is that you be dismissed with effect from the date of this letter for gross misconduct.

100. The key issue in this claim is the reason for the Claimant's dismissal. We consider that the principal reason for the Claimant's dismissal was the fact that he had sent the email of 15 June 2016. The dismissal letter also referred to the email to the Rolton Group and the Claimant's failure to fully disclose outside business interests and shareholdings. However, when the Respondent first knew about those issues they decided to warn the Claimant rather than dismiss him. This underlines the fact that the principal reason for the dismissal was the sending of the email of 15 June 2016.

101. We accept that the Respondent genuinely believed that in sending the email of 15 June 2016 the Claimant deliberately made it look as if he was acting on behalf of Manulife. We accept that that was the genuine belief formed by Mr Mennie. While Camden may not have been taken in, that did not prevent Mr Mennie genuinely concluding it was the Claimant's intention. He had good grounds for forming that belief. The Claimant had doctored his signature block by removing the words "(Europe) Limited" which made it appear that he was acting for a US entity, the property portfolio of which he described in detail in the email. Although in the first paragraph the Claimant referred to his friend potentially being interested in purchasing the property Mr Mennie reasonably concluded that the email was deliberately ambiguous and suggested that the Claimant was acting on behalf of Manulife and that it might be interested in purchasing the Bacton estate. Mr Mennie genuinely and understandably considered that the reference to "our company" was deliberately misleading. Mr Mennie concluded that the Claimant was seeking to portray himself as acting on behalf of Manulife when he was not. This was contrary to the Respondent's policies and was, as the Claimant conceded in his evidence, improper. It was the principal reason for the Claimant's dismissal and it had nothing whatsoever to do with any of the disclosures. Furthermore, to the extent that the Rolton Group email and the Claimant's failure to fully disclose outside business interests and shareholdings were taken into account, that had nothing to do with the disclosures.

102. Mr Mennie genuinely and rationally rejected the Claimant's argument that he merely wished to flag a possible opportunity to the Manulife property team in case Camden wished to sell, but his friend was not interested in pursuing the opportunity. If that were the case the Claimant would have contacted the Manulife property team before sending the email to Camden. In any event, it is close to farcical for the Claimant to suggest that there was any likelihood of Manulife wishing to purchase a Camden council estate where he happened to

own a property. It is implausible that the Claimant expected the estate to be sold. It is much more likely that he wished to have documentation that suggested that Camden had refused to consider offers to purchase the estate for use in his dispute about the compulsory purchase of his property.

103. While not informing the Claimant of the purpose of the meeting of 15 November 2016, not giving him advance notice of the charges against him and failing to separate out the investigation from a disciplinary hearing did not accord with the Respondent's policies and the ACAS code, and would have been likely to result in a finding of procedural unfairness had the Claimant had qualifying service to claim "ordinary" unfair dismissal, we accept that Mr Mennie took and acted on HR and other advice in determining the format of the meeting. We do not consider that the procedure adopted gives us any reason to infer that the reason for the Claimant's treatment was the making of the disclosures. We are entirely satisfied that the principal reason for the Claimant's dismissal was his sending the email of 15 June 2016.

104. On 16 November 2016, the Claimant sent Paolo Valle and William Corson emails setting out his grievance about the suspension [B5, 1396, 1405-1412b]. The emails are said to contain protected disclosure number 7, alleging unfair treatment and prejudice to employees by the Respondent's management team in London. As Mr Mennie was not aware of the emails prior to the decision to dismiss they cannot have been taken into account. Furthermore, in the emails Claimant contends that he had done nothing wrong in sending the email of 15 June 2016 to Camden and therefore it was inappropriate for the Respondent to suspend him. We consider that the Claimant must have been well aware that the email was deliberately designed to make it appear that he was acting on behalf of Manulife and he cannot have had a reasonable belief that there was any breach of a legal obligation on the part of the Respondent in suspending him for that misconduct. In challenging his suspension the Claimant was purely trying to protect his own position and cannot have had a reasonable belief that he was acting in the public interest. We do not accept that disclosure 7 is made out.

105. The Claimant alleges as detriment 6 that he was unable to pick up his personal belongings from the Respondent's offices. It is correct that the Claimant was escorted from the Respondent's office without being able to collect all his belongings. This had nothing to do with any disclosures he had made.

106. The Claimant alleges as detriment 7 Respondent undertook an unlawful search of his personal belongings and his personal email in breach of his right to privacy under the Human Rights Act 1998. While the Claimant's personal belongings were collected together by the Respondent we do not accept that they were searched. The Respondent was entitled to investigate what emails had been sent from the Claimant's work email account. In any event, none of the treatment in this regard resulted from the disclosures made by the Claimant.

107. The Claimant alleges a series of detriments that relate to, or result from, his dismissal. The Claimant alleges as detriment 10 damage to his professional reputation as a result of his dismissal. The Claimant alleges as detriment 11

that he did not receive notice pay or bonus. The Claimant alleges as detriment 13 that he has suffered loss of ability to: serve as a director, provide regulated services, be registered with the FCA and obtain alternative professional employment and that this has led to loss of his professional career. The Claimant alleges as detriment 14 loss of past and future earnings for malicious and negligent detriment. The Claimant alleges as detriment 15 ongoing headaches, anxiety and distress. The Claimant alleges as detriment 16 hair discolouration (turning grey). The Claimant alleges as detriment 17 loss of consciousness on two occasions. The Claimant alleges as detriment 18 speech problems and possible stroke. The Claimant's dismissal did not result from the disclosures he made and so the consequences of dismissal also are unrelated to any disclosure he made.

108. The Claimant alleges as detriment 5 a general detriment of belittlement, harassment, bullying and intimidation by the Respondent and injury to his feelings. We do not accept that there was any general belittlement harassment bullying or intimidation of the Claimant or that the Claimant's treatment had anything to do with the disclosures he made.

109. On 18 November 2016, Mr Mennie sent the Claimant a copy of the notes taken at the 15 November meeting [B5, 1537-1544]. On 21 November 2016, the Claimant provided his comments on the 15 November meeting note [B5, 1545-1561]. He did not allege that he had been dismissed for making protected disclosures.

110. On 28 November 2016, the Claimant appealed his dismissal [B5, 1595-1683]. The Claimant did not allege that he had been dismissed for making protected disclosures.

111. On 7 December 2016, the Appeal Hearing took place before Christopher Conkey. The Claimant did not allege at the appeal hearing that he had been dismissed for making protected disclosures.

112. On 20 December 2016, Sarah Bintinger sent the Claimant by email a copy of the appeal hearing notes [B7, 2135-2142]. On 4 January 2017, the Claimant provided his comments on the appeal hearing notes [B7, 2144-2152]. The Claimant did not suggest that he had been dismissed for making protected disclosures.

113. On 4 January 2017, Christopher Conkey sent the Claimant his appeal decision, confirming Peter Mennie's decision to dismiss [B7, 2153-2156]. Mr Conkey considered that the sending of the email of 15 June 2016 was sufficient to justify the dismissal and did not think it was necessary to consider the other allegations in detail.

Conclusion

114. Despite the enormous quantity of witness and documentary evidence the key issue in this case was very simple; why was the Claimant dismissed? We consider it is absolutely clear that the principal reason for the Claimant's dismissal was the sending of the email of 15 June 2016. The Respondent genuinely and reasonably believed that the Claimant was seeking to portray himself as acting on behalf of Manulife and deliberately sought to create the impression that Manulife might be interested in purchasing the Bacton estate. He doctored his email signature block to make it look as though he was acting for the US entity and that he was a statutory director. His misconduct fully justified the decision to dismiss him. The dismissal and alleged detriments had nothing whatsoever to do with the disclosures he made.

115. Furthermore, we have concluded that disclosure 1 did not occur and that disclosures to 2 to 7 were not protected. That is also fatal to the Claimant's claims.

116. Nothing was put to any of the Respondent's witnesses in respect of the holiday pay claim. We do not accept the suggestion in the Claimant's closing submission that he had a right for paid holiday to attend the public enquiry into compulsory purchase of the Bacton Estate. In his closing submissions, the Claimant suggested that when he no longer needed certain days of holiday to attend the public enquiry the Respondent failed to give him back the days that he had booked although he worked on them. The documentary evidence shows clearly that the days holiday were given back. This was put to the Claimant in cross-examination and he accepted that it appeared to be the case. The claim for holiday pay fails.

_____

Employment Judge Tayler
2 March 2018

Annex 1

The Claimant brings the following claims against the Respondent:

1. Automatic Unfair Dismissal for making a protected disclosure (s.103A Employment Rights Act 1996 (**"ERA"**));
2. Detriment for making a protected disclosure (s.47B ERA 1996); and
3. Claim in relation to holiday pay [*Claimant has not set out appropriate statutory basis for this claim*].

1. <u>Automatic Unfair Dismissal for making a protected disclosure (s.103A ERA)</u>

Issues

(a) Did the Claimant disclose "information" within the meaning of s.43B(1) ERA? In this respect, the Claimant relies upon:

i. **Alleged Disclosure 1:** Did the Claimant make a disclosure of information regarding an alleged failure by the Respondent to display its employer's liability insurance certificate (AGoC, para 7)? If so, when, how and to whom?

ii. **Alleged Disclosure 2:** Did the Claimant make a disclosure of information regarding an alleged failure by the Respondent to have in place a Compliance Manual and to provide him with a copy of the Compliance Manual when he joined the Respondent or thereafter (AGoC, para 18)? If so, when, how and to whom?

iii. **Alleged Disclosure 3:** Did the Claimant make a disclosure of information alleging that the Respondent's EU Compliance Team was either unfamiliar with, or was not able to interpret the Respondent's Compliance Manual, and therefore lacked professional competence in breach of FCA obligations (AGoC, para 22)? If so, when, how and to whom?

iv. **Alleged Disclosure 4:** Did the Claimant make a disclosure of information alleging that the Respondent's Personal Interest Reporting System (i.e. the Personal Trading Control Center ("PTCC") system) was inadequate (AGoC, para 26)? If so, when, how and to whom?

v. **Alleged Disclosure 5:** Did the Claimant make a disclosure of information alleging that he had not been informed of the PTCC system (which the Claimant incorrectly

refers to in his particulars of claim as the "PTT" system) system upon joining the Respondent or at any other point until September 2016, which is allegedly in breach of FCA rules (AGoC, para 31)? If so, when, how and to whom?

vi. **Alleged Disclosure 6:** Did the Claimant make a disclosure of information to Camden Council (AGoC, para 33), the Planning Inspectorate (AGoC, para 33), the Secretary of State for Communities and Local Government (AGoC, para 33), the Rolton Group (AGoC, para 41), the Respondent (AGoC, para 73-75) and/or other third parties regarding alleged malpractice, wrongdoing and failure to comply with legal obligations relating to the proposed redevelopment of the Bacton Estate? If so, when, how and to whom?

vii. **Alleged Disclosure 7:** Did the Claimant make a disclosure of information alleging unfair treatment and prejudice to employees by the Respondent's management team in London (AGoC, para 73, 76)? If so, when, how and to whom?

(b) If so, did any of the alleged disclosures above amount to a "qualifying disclosure" within the meaning of s.43B(1) ERA, namely did the Claimant reasonably believe that the information disclosed tended to show one of the statutory categories of "failure" and that the disclosure was made in the public interest?

i. Did the Claimant believe the information to relate:
    1. in relation to Alleged Disclosure 1, to one (or more) of the categories of failure in s.43B(1)(a), (b) or (c) ERA; and/or
    2. in relation to Alleged Disclosure 6, to one (or more) of the categories of failure in s.43B(1)(a), (b) or (c) ERA; and/or
    3. in relation to Alleged Disclosures 2, 3, 4, 5 and 7, to the category of failure set out in s.43B(1)(b) ERA?

ii. Was the Claimant's belief in that respect reasonably held?

iii. Did the Claimant believe the disclosure to be in the public interest?

iv. Was the Claimant's belief in that respect reasonably held?

(c) If so, did any of the alleged disclosures above amount to a "protected disclosure" within the meaning of s.43A ERA, namely were any of the alleged disclosures made in accordance with any of sections 43C and 43F ERA?

i. In respect of Alleged Disclosures 1, 2, 3, 4, 5, 6 (to the extent that the Claimant alleges that this Alleged Disclosure was made to his employer) and 7, did the Claimant make the alleged disclosure to his employer in accordance with s.43C(1)(a) ERA?

ii. In respect of Alleged Disclosure 6, did the Claimant make the alleged disclosures in accordance with s.43C(1)(b) ERA, namely did he make the alleged disclosures to Camden Council, the Planning Inspectorate, the Secretary of State for Communities and Local Government, the Rolton Group and/or any person other than his employer (each, for these purposes, an "**Other Person**") where he believed the relevant failure related solely or mainly to:

1. the conduct of that Other Person (s.43C(1)(b)(i) ERA), or
2. any other matter for which that Other Person has legal responsibility (s.43C(1)(b)(ii) ERA), and
3. was the Claimant's belief in that respect reasonably held?

iii. In respect of Alleged Disclosure 6, did the Claimant make the alleged disclosures in accordance with s.43F ERA?

1. Are Camden Council, the Planning Inspectorate, the Secretary of State for Communities and Local Government and/or any person other than his employer to which the Claimant made the alleged disclosures a person prescribed by the Public Interest Disclosure (Prescribed Persons) Order 2014, SI 2014/2418 (as amended)?
2. If so, which description of matters in respect of which that person is so prescribed did the Claimant believe the relevant failure fell within?
3. Was the Claimant's belief in that respect reasonably held?
4. Did the Claimant believe the alleged disclosure, and any allegation contained in it, were substantially true?
5. Was the Claimant's belief in that respect reasonably held?

(d) Was the reason, or principal reason, for the Claimant's dismissal the alleged protected disclosure/s he made (s.103A ERA)?

2. <u>Detriment for making a protected disclosure (s.47B ERA)</u>

Jurisdiction

To the extent that the Claimant seeks to rely on any alleged act giving rise to a detriment where the act pre-dated **4 October 2016**[3]:

(a) Did the alleged act form part of a series of similar acts and if so, did the last of them occur on or after 4 October 2016 (s.48(3)(a) ERA); and/or

(b) For those acts which allegedly occurred prior to 4 October and which did not form part of a series of similar acts, was it reasonably practicable for the complaint to have been presented within three months of the alleged act having occurred (s.48(3)(b) ERA)?

(c) If not, was the complaint presented within such further period as the Tribunal considers reasonable (s.48(3)(b) ERA)?

Issues – For those alleged acts upon which the Tribunal has jurisdiction to rule

(d) Did any of the Claimant's alleged disclosures set out above amount to a protected disclosure (see above);

(e) If so, was the Claimant subjected to any of the alleged detriments set out in Appendix 1 on the ground that he made the protected disclosure (in the sense that the protected disclosure materially influenced the detrimental treatment)?

3. <u>Holiday pay claim</u>

Jurisdiction

The Claimant has not identified the appropriate statutory basis under which he brings this claim. However, pursuant to paragraph 4 of the Order of EJ Lewzey, dated 22/06/17:

Issues – for those matters upon which the Tribunal has jurisdiction to rule

[3] Calculated based on the early conciliation regime under s.207B(4) ERA: Day A was 3 January 2017; therefore the earliest date within three months of Day A was 4 October 2016.

(a) Does the Claimant have any entitlement to holiday pay?

(b) If so, in what amount?

List of Alleged Detriments

Number	Paragraph reference in AGoC	Alleged detriment	Alleged act giving rise to detriment	Alleged date of act giving rise to detriment
1	Para 12, para 67, para 84	Claimant alleges he was unable to buy the shares at the price he had been considering. If he had been able to, he would have doubled his investment.	Length of time compliance team took to approve the share purchases.	
2	Para 61, para 77, para 102, para 180	Claimant alleges he does not know the grounds of his suspension or subsequent dismissal.	Claimant alleges Peter Mennie refused to give reasons at the meeting or in response to subsequent requests from the Claimant.	15 November 2016 (and subsequent dates).
3	Para 63	Decision to suspend Claimant was made before the 15 November meeting.		
4	Para 64, para 65, para 80, para 96	Respondent drew unwarranted attention to the Claimant's suspension and created the impression that he intended to steal the Respondent's property. This caused reputational and stigma damage.	In front of Claimant's colleagues, Alexandra Cornforth demanded return of the Claimant's notebook and said "Here is the phone, you told us you don't have the corporate phone with you." Management accompanied Claimant as he exited the Respondent's offices.	15 November 2016.
5	Para 66, para 198	Belittlement, harassment, bullying and intimidation by the Respondent and injuries to the Claimant's feelings.		
6	Para 79, para 100	Claimant was unable to pick up his personal belongings from the Respondent's offices.	Respondent was refused access to the Respondent's offices.	

7	Para 80, para 98	Breach of right to privacy under Human Rights Act 1998	Claimant alleges Respondent undertook an unlawful search of his personal belongings and his personal email.	
8	Para 89	Claimant was unable to effectively prepare for the 15 November meeting.	Respondent failed to advise the Claimant of the reason for the meeting in advance, despite the Claimant's request. Respondent failed to advise the Claimant that he could be accompanied to the meeting. The Respondent failed to give the Claimant notice of the meeting in advance.	15 November 2016.
9	Para 89	Humiliation by the Respondent.	Alexandra Cornforth gave the Claimant's colleagues the impression he had stolen the Respondent's property.	15 November 2016.
10	Para 90	Damage to professional reputation after 16 November 2016.	Dismissal.	16 November 2016.
11	Para 92	Claimant did not receive notice pay or bonus.	Dismissal.	16 November 2016.
12	Para 95	Claimant is unable to rely on his notes of the 15 November meeting.	Alexandra Cornforth requested the Claimant return his notebook.	15 November 2016.
13	Para 171	Loss of ability to: serve as a director, provide regulated services, be registered with the FCA and obtain alternative professional employment. Loss of professional career.	Alleging gross misconduct.	16 November 2016.
14	para 194	Loss of past and future earnings for malicious		

		and negligent detriment.		
15	Para 198	Ongoing headaches, anxiety and distress.		
16	Para 198	Hair discolouration (turning grey).		
17	Para 198	Loss of consciousness on two occasions.		
18	Para 198	Speech problems and possible stroke.		
19	Para 17, para 77	Abusive and aggressive behaviour towards the Claimant.	Conduct of Alexandra Cornforth at the 30 October meeting.	30 October 2016.