



JDMT-5099101024-1670



Claim No: CFI 044/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

BEFORE CHIEF JUSTICE WAYNE MARTIN

BETWEEN

MR SHIRAZ MAHMOOD

Claimant

and

STANDARD CHARTERED BANK DIFC

Defendant

Trial: 19 February 2024 – 1 March 2024

Closing Submissions: 1 May 2024

Counsel: James Bickford Smith instructed by Charles Russell Speechlys LLP for the Claimant

Mohinderpal Sethi KC instructed by Clyde and Co for the Defendant

Judgment: 1 October 2024

JUDGMENT OF CHIEF JUSTICE WAYNE MARTIN

UPON hearing Counsel for the Claimant and Counsel for the Respondent at the trial held from 19 February 2024 to 1 March 2024, and the hearing of the oral closing submissions held on 1 May 2024

AND UPON reading the submissions and evidence filed and recorded on the court file

IT IS HEREBY ORDERED THAT:

1. The claim is dismissed.
2. Within 21 days of this Order the Defendant shall file and serve any application with respect to the costs of the proceedings, together with submissions in support of that application limited to:
 - (a) the terms of the order sought, and
 - (b) whether the Court should make an immediate assessment of the costs or order detailed assessment pursuant to RDC Part 40,the submissions should not deal with the quantum of the costs claimed.
3. If an application is made pursuant to the preceding order, within twenty-one (21) days thereafter the Claimant shall file and serve any submissions in response to the application.
4. Within fourteen (14) days after service of any submissions pursuant to the preceding order, the Defendant shall file and serve any submissions in reply.
5. The Court will thereafter make orders with respect to costs on the papers. If those orders include immediate assessment by the court, directions will be made in relation to the procedure to be followed.



Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 1 October 2024
Time: 12pm

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SCHEDULE OF REASONS

Summary

1. The Claimant, Mr Shiraz Mahmood (“Mr Mahmood”) was employed by the Defendant, Standard Chartered Bank DIFC (the “Bank”) between 3 August 2016 and 8 January 2021 when the Bank terminated his employment on notice by reason of redundancy. From 20 June 2017 until the termination of his employment Mr Mahmood served in the role of Global Head of Compliance for Global Islamic Banking. Mr Mahmood claims that during the time he served in that role:
 - (a) he was subjected to less favourable treatment and detriment (including dismissal) on the grounds of his race and/or nationality, contrary to Article 59 of the DIFC Employment Law 2019¹ (the “Employment Law”) or, prior to 28 August 2019² contrary to Article 58 of the DIFC Employment Law (2005), as amended by the DIFC Employment Law Amendment Law (2012)³ (the “previous Employment Law”);
 - (b) he was victimised, caused to suffer detriment and eventually dismissed from his employment as a result of making disclosures and allegations which were “protected acts” within the meaning of the Employment Law, contrary to Article 60 of that Law; and
 - (c) that the Bank had failed to provide and maintain a workplace free of harassment, discrimination and victimisation and without risk to an employee’s health and safety, in contravention of Article 40 of the previous Employment Law and Article 43 of the Employment Law.
2. Mr Mahmood seeks declaratory relief in respect of the Bank’s breaches, together with compensation in respect of the discrimination and victimisation which he alleges he suffered, and the imposition of a fine for breach of the duty to provide a safe place of work.
3. For the reasons which follow, after giving careful and detailed consideration to the extensive evidence adduced at trial, I have concluded that Mr Mahmood has failed to establish the allegations he has made, and that his claim must be dismissed. Essentially that is because

¹ DIFC Law no. 2 of 2019.

² The Employment Law came into operation on 28 August 2019.

³ DIFC Law no. 3 of 2012.

the evidence fails to establish that any detriment or disadvantage suffered by Mr Mahmood during the course of his employment with the Bank was occasioned on the ground of his race or nationality or because he undertook a protected act or acts.

The pleadings

The Amended Points of Claim

4. The Amended Points of Claim (“APoC”) is written in the style of a chronological narrative followed by a series of conclusions cast in somewhat general terms which are said to follow from the facts narrated. As the Bank pointed out, this style tends to obscure the ready identification of precisely which facts and matters are said to constitute discrimination on the ground of a protected characteristic (ie. race or nationality) or victimisation because of a protected act.
5. The Bank did not seek particulars of the assertions which it contended were cast in overly general terms. Instead, the Bank devoted much of its written and oral opening and closing submissions to various assertions that many and various aspects of Mr Mahmood’s case had not been fully or properly pleaded and should be rejected on that ground. Those submissions were often supported by a technical and somewhat pedantic approach to the pleading process.
6. The primary purpose of pleadings is, of course, to ensure that the Court and other parties know the case which is to be advanced and which has to be met. The adequacy of any particular pleading must be assessed in the case management context in which the pleading is served. In a court such as this, which has embraced contemporary principles of case management, the pleadings are not the only source of information with respect to the case which is to be advanced and which has to be met. To the contrary, directions will invariably be made providing for the service and exchange of witness statements and expert reports, together with the documentary evidence relied upon in the statements and reports well prior to trial. Closer to trial directions will invariably be made for the preparation of a hearing bundle comprising all the documentary evidence which any party proposes to tender and for the service and exchange of skeleton arguments. Technical rules of pleading which evolved in previous centuries during which such directions were not made are of limited relevance to contemporary practice.

7. Put another way, in the context of contemporary case management, when an issue arises with respect to the adequacy of a pleading, the question is not whether the pleading alone has provided adequate notice of the case which has to be advanced and which has to be met, but rather, whether the pleading read in conjunction with all the other materials which have been served and exchanged prior to trial, has provided adequate notice of the case which is to be advanced at trial.
8. In this case the Bank did not submit that any of the issues to which it objected took the Bank by surprise or that it had not prepared to meet the issue in the evidence which it had served. Any such submission would have faced the insuperable hurdle that many of the issues to which the Bank objected were included in a List of Issues to which the Bank agreed long before the trial and long before the Bank took any pleading points. It was clear from the evidence which had been served that the Bank had squarely joined issue on all the matters raised in the skeleton served on behalf of Mr Mahmood.
9. The pleading points were first raised by the Bank on the eve of trial, and in a context in which the Bank had agreed to a List of Issues which included many of the issues said not to have been pleaded, would have occasioned significant prejudice to Mr Mahmood if entertained. Arid technical pleading points which have no bearing on the fairness or efficacy of the trial process should not be raised in this way. Further, any pleading points should be taken well before trial – otherwise there is a risk of ambush or disruption to the trial process.
10. Given the length and complexity of the Bank's submissions with respect to the ambit of Mr Mahmood's pleaded case, it is impractical and inefficient to deal fully with those submissions against the contingency that I might find a case to which the Bank objects. The more efficient course is to defer any such consideration unless and until I find facts which would establish a cause of action or claim, and consider the Bank's objections in that context.
11. As the bulk of these reasons will be concerned with a detailed analysis of the evidence adduced at trial, it is unnecessary to undertake a detailed analysis of the facts alleged in the pleadings, as of course those allegations have been overtaken by the evidence. For present purposes it is sufficient to sketch the outline of the case pleaded by each party, leaving the details for consideration in the analysis of the evidence and the parties' submissions.
12. The APoC provides information with respect to Mr Mahmood's employment, including the material terms of his employment agreement and his duties. Reference is also made to the

Bank's policies, including the Speaking Up Policy, the Victimisation Prevention Framework and associated Practice Note and the Group Disciplinary Policy. The bulk of the APoC is concerned with a narration of the issues which arose in the course of Mr Mahmood's involvement with the Group Islamic Banking ("GIB") section of the Bank with which he worked as Head of Compliance for Islamic Banking. In the APoC it is asserted that in the course of working through those issues Mr Mahmood was treated detrimentally because of his race/nationality – often expressed as disadvantageous treatment because of his "status as a British Asian of partly Pakistani origin who spoke with a British accent [which] was taken to associate him with British colonial rule and/or to suggest that he had repudiated a Pakistani identity"⁴ in a context where almost all those working in GIB were of Pakistani origin.

13. The chronological narrative contained within the APoC commences with reference to an issue which arose as between Mr Mahmood and those within GIB which is described as the "Shariah Conflict" issue, which concerned the question of whether the existing arrangement whereby the Head of Shariah reported to the CEO of GIB created a conflict of interest. The APoC asserts that members of GIB unlawfully discriminated against Mr Mahmood in dealing with that issue and in relation to a number of other issues which arose in relation to the conduct of the Islamic Banking Unit within the Bank.
14. The APoC also makes various assertions with respect to Mr Mahmood's regular performance reviews, complaints that were made against him, various investigations into complaints by and against him, the disciplinary proceedings that were instituted against him and the decision to subject him to a Performance Improvement Plan ("PIP") and the events which led the termination of his employment, including the request that he enter into a Mutual Separation Agreement ("MSA"), the restructure of his position, his unsuccessful application for the restructured position and his subsequent redundancy and termination.
15. The APoC then refers to the various provisions of the Employment Law which are said to have been contravened by reason of the facts narrated. In the context of the assertion of breach of Article 59 of the Employment Law by reason of discrimination on the grounds of race or nationality it is asserted that if a comparator is to be used for the purpose of assessing discrimination the appropriate comparator in relation to the treatment Mr Mahmood received from members of GIB would be someone who is not a British Asian but

⁴ APoC [62.2].

a Pakistani national of Asian race, and in the case of the treatment Mr Mahmood received from management within the Bank's compliance function, the appropriate comparator would be a Caucasian person with white skin.⁵ It is to be noted that skin colour is not itself a protected characteristic under Article 59 of the Employment Law, although skin colour can of course be associated with race.

16. The APoC concludes by claiming that Mr Mahmood is entitled to:
- (a) a declaration that the Bank is liable for the detriment he has suffered by reason of his victimisation by the Bank;
 - (b) a declaration that the Bank is liable for the loss and damage he has suffered by reason of the Bank's discriminatory conduct on the grounds of his nationality and/or race;
 - (c) compensation in accordance with Article 61 of the Employment Law in an amount equal to one year of his salary – namely AED 779,992.08;
 - (d) damages in an amount three times the amount of compensatory damages pursuant to the DIFC Law of Damages and Remedies on the basis of the Bank's egregious and/or offensive conduct;
 - (e) an order and/or declaration from the Court that the Bank is fined the sum of USD 2,000⁶ by reason of its breach of Article 43 of the Employment Law, together with costs and interest.

The Amended Defence

17. The Amended Defence ("AD") responds specifically to the various facts asserted in the APoC by either admitting or denying those facts and, in other cases, making assertions relevant to the allegations made in the APoC. In very general terms it is asserted that the issues which arose in the course of Mr Mahmood's employment were the consequence of his confrontational style and manner of communication and were entirely unrelated to his race or nationality. It is further asserted that Mr Mahmood's redundancy arose from a general restructure within the Bank following the financial impact of the pandemic and that he was not appointed to the reclassified position because a better candidate was selected for

⁵ APoC [152].

⁶ Being the maximum available under Schedule 2 of the Employment Law.

appointment in the course of a process which was not affected by considerations of race or nationality. It is asserted that the termination of Mr Mahmood's employment was entirely unrelated to any acts of discrimination or victimisation.

18. In response to Mr Mahmood's proposed comparators, the Bank asserts that a relevant comparator would be an employee with an "aggressive and confrontational tone and approach both verbally and in email correspondence".⁷
19. The Bank denies any contraventions of the Employment Law or the previous Employment Law.

The Amended Reply

20. In the Amended Reply ("AR") Mr Mahmood responds to the specific assertions of fact made in the AD.

The Agreed List of Issues

21. The parties agreed upon a list of 37 issues that required determination. Many of the numbered issues contain multiple sub-issues.
22. An agreed List of Issues can be a very helpful forensic aid. However, the List of Issues in this case was not helpful, for a number of reasons.
23. The List of Issues was said to be "without prejudice to the parties' pleaded cases", connoting that the pleadings would define the issues for determination rather than the agreed list. As already noted, having agreed to the List of Issues, the Bank then advanced extensive submissions to the effect that a number of the issues were not pleaded and could not provide any basis for the relief sought by Mr Mahmood. Such an approach deprives the List of Issues of much of its forensic utility.
24. Some of the agreed issues do not need to be determined. For example, agreed issue 4 is:

"4. Was it a conflict of interest for the Head of Shariah to report to the CEO of Islamic Banking."
25. As I reminded the parties on a number of occasions, this case is a claim for discrimination

⁷ AD [118(c)].

on prohibited grounds and victimisation in the course of employment. It is not a committee of inquiry into the conduct of banking operations by the Bank. The question of whether it was a conflict of interest for the Head of Shariah to report to the CEO Islamic Banking gave rise to differences of opinion between Mr Mahmood and the members of GIB. It is entirely unnecessary for the Court to determine which opinion was correct in order to assess whether, in the context of the discussion of that issue, Mr Mahmood was subjected to discrimination on the grounds of his race or nationality.

26. Other issues are expressed in terms which avoid the real issue. For example, issues 8 and 19 invite determinations of whether Mr Mahmood told Mr Long and Ms Tabarra respectively that members of GIB mocked his British accent and habitually referred to his British nationality but nowhere in the List of Issues is it suggested that the Court should determine whether in fact members of GIB mocked Mr Mahmood's British accent and habitually referred to his British nationality.
27. When these problems with the List of Issues were raised with the parties in the course of closing submissions both agreed that the List of Issues would not form a desirable template for this decision.

The legal framework

28. It is desirable to set out the legal framework in which the issues must be determined. However, because of the conclusions of fact which I have drawn from the evidence, this is not a case in which detailed consideration of the many nuances involved in the application of discrimination law need to be considered in detail. Rather, it is sufficient for me to record the general principles which I have applied in undertaking my assessment of the facts, and the inferences to be drawn from those facts.

The previous Employment Law

29. Articles 40 and 58 of the previous Employment Law relevantly provide:

“40. General duties of employers to their employees

- (1) Every employer has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all its employees.
- (2) An employer shall provide and maintain a workplace that is free of harassment, safe and without risks to an employee's health.

58. Discrimination

- (1) An employer must not discriminate against an employee regarding employment or any term or condition of employment on the grounds of the employee's:
 - (a) sex;
 - (b) marital status;
 - (c) race
 - (d) nationality;
 - (f) mental or physical disability.
- (2) Discrimination for the purposes of Article 58(1) means where:
 - (a) an employee is treated less favourably than others would be treated in the same circumstances or on one of the prohibited grounds in Article 58 (1);
 - (b) in respect of the application of the same provision, criteria, or practice an employee is put at a disadvantage not faced by others who are not of that sex, marital status, race, nationality or religion, or suffering from a mental or physical disability as applicable; or
 - (c) on grounds of one of the prohibited grounds in Article 58(1), an employee is subjected to unwanted treatment or conduct which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace.
- (3) For the purposes of Article 58(2)(b), a provision, criteria or practice is discriminatory in relation to any of the grounds specified in Article 58(1) as relevant, if:
 - (a) an employer applies, or would apply it, to persons who do not share the characteristics of such employee;
 - (b) it puts, or would put, persons with whom the employee shares the characteristic at a particular disadvantage when compared with persons with whom the employee does not share it;
 - (c) it puts, or would put, the employee at that disadvantage; and
 - (d) the employer cannot show it to be a proportionate means of achieving a legitimate aim."

The Employment Law

30. Articles 43, 54, 59, 60 and 61 and Schedule 2 of the Employment Law relevantly provide:

"43. General duties of Employers

- (1) An Employer has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all its Employees.
- (2) An Employer shall provide and maintain a workplace that is free of discrimination and victimisation and without risks to an Employee's health and safety.
- (3) Subject to Article 43(4), an Employer who contravenes Articles 43(1) or (2) is liable to a fine as set out in Schedule 2.

Schedule 2

Schedule 2 provides that the maximum penalty for a breach of Article 43 is USD 2000.

54. Liability of Employers for an Employee's conduct

- (1) Subject to Article 54(2), an Employer is liable for any act, attempted act, or omission of an Employee done in the course of their employment with the Employer.
- (2) An Employer will only be liable pursuant to the provisions of Article 54(1):
 - (a) in the case of a claim for loss, damages or compensation, if the act, attempted act, or omission to which such claim relates is sufficiently connected with the Employee's employment that it would be fair and just to hold the Employer vicariously liable; and
 - (b) in the case of discrimination or victimisation, if the Employer is unable to show it took such steps as were reasonably practicable to prevent the Employee from:
 - (i) carrying out that act, attempted act or omission; or
 - (ii) doing anything of that description

59. Discrimination

- (1) An Employer must not discriminate against an Employee regarding employment or any term or condition of employment on the grounds of the Employee's:
 - (a) sex;
 - (b) marital status;
 - (c) race;
 - (d) nationality;
 - (e) age;
 - (f) pregnancy and maternity;
 - (g) religion; or
 - (h) mental or physical disability.
- (2) Discrimination for the purposes of Article 59(1) means where:
 - (a) an Employee is treated less favourably than another is or would be treated in the same circumstances, or put at a disadvantage not faced by others, because of a prohibited ground in Article 59(1);
 - (b) a provision, criterion or practice is applied to an Employee which is discriminatory in relation to one (1) of the grounds in Article 59(1);
 - (c) an Employer engages in unwanted treatment or conduct related to one (1) of the prohibited grounds which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace for an Employee or violates an Employee's dignity; or
 - (d) Article 59(8)(b) or (d) applies.
- (3) An Employer's actions in dismissing an Employee or subjecting them to a detriment are discriminatory under Article 59(1) if they contravene Article 59(2).

- (4) For the purposes of Article 59(2), a provision, criterion or practice is discriminatory in relation to any of the prohibited grounds specified in Article 59(1) if:
- (a) an Employer applies it, or would apply it, to persons who do not share the characteristics of such Employee;
 - (b) it puts, or would put, persons with whom the Employee shares the characteristic at a particular disadvantage when compared with persons with whom the Employee does not share it;
 - (c) it puts, or would put, the Employee at that disadvantage; and
 - (d) the Employer cannot show that it is a proportionate means of achieving a legitimate aim
-
- (6) In deciding whether conduct has the effect referred to in Article 59(2)(c), each of the following must be taken into account:
- (a) the perception of the Employee;
 - (b) the other circumstances of the case; and
 - (c) whether it is reasonable for the conduct to have that effect.

60. Victimisation

- (1) An Employer must not victimise an Employee.
- (2) For the purposes of this Part 9, an Employer victimises an Employee if it subjects the Employee to a detriment or dismisses him because the Employee does a protected act, or the Employer believes that the Employee has done, or may do, a protected act. Each of the following is a protected act:
- (a) bringing proceedings under this Part 9;
 - (b) giving evidence or information in connection with proceedings under this Part 9;
 - (c) doing any other thing for the purposes of or in connection with this Part 9; and
 - (d) making an allegation (whether or not express) that the Employer or another person has contravened this Part 9.

61. Proceedings under Part 9

- (1) In any proceedings before the Court under this Part 9:
- (a) the burden of proof shall be on the complainant; and
 - (b) the respondent shall be treated as a party and is accordingly entitled to appear and be heard.
- (2) A Court shall not consider a claim under this Part 9 unless it is brought to the Court before the end of:
- (a) the period of six (6) months beginning with the later of the date on which this Law comes into force and the date of the act, or failure to do something, to which the complaint relates; or
 - (b) where a complainant satisfies the Court that there are circumstances which justify dis-applying Article 61(2)(a), such other period as the Court considers reasonable.

- (3) For the purposes of Article 61(2)(a):
 - (a) conduct extending over a period is to be treated as done at the end of the period; and
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, for the purposes of Article 61(3)(b), a person is to be taken to decide on failure to do something when that person:
 - (a) does an act inconsistent with doing it; or
 - (b) does no inconsistent act, on the expiry of the period.
- (5) If the Court finds that there has been a contravention of a provision referred to in this Part 9 it may:
 - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - (b) subject to Article 61(7), order the respondent to pay compensation to the complainant which the Court considers reasonable in the circumstances which may include compensation for injured feelings whether or not it includes compensation on any other basis;
 - (c) make an appropriate recommendation; or
 - (d) do any combination of the above.
- (6) An appropriate recommendation for the purposes of Article 61(5)(c) is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.
- (7) The amount of compensation that may be awarded by the Court under Article 61(5)(b) shall not exceed an amount equivalent to the Employee's Annual Wage, calculated on the basis of the last Wage paid to an Employee prior to such compensation order."

31. Some of the conduct of which Mr Mahmood complains occurred prior to 28 August 2019 while the previous Employment Law was in operation, and some of it occurred after that date. However:

- (a) Mr Mahmood asserts that there was a continuing course of conduct within the operation of the Employment Law; and
- (b) the parties have addressed their submissions to the Employment Law, rather than the previous Employment Law.

32. There are significant differences between the provisions of the two laws, including the omission of any provision relating to victimisation in the previous Employment Law. It is fair to say that the provisions of the Employment Law are generally more favourable to employees than the provisions of the previous Employment Law. Accordingly, if Mr

Mahmood is unable to establish an entitlement to a remedy under the provisions of the Employment Law it is unnecessary to give detailed consideration to the question of whether any provisions of the previous Employment Law might entitle him to relief which he is unable to achieve under the Employment Law.

33. For these various reasons, like the parties, these reasons will focus upon the provisions of the Employment Law, rather than the previous Employment Law.
34. The parties have been unable to identify any decisions of this Court relating to the Employment Law, and only very limited authority dealing with the previous Employment Law which, in any event, as already noted, is cast in rather different terms. In these circumstances it is appropriate to seek guidance from decisions in other jurisdictions with comparable legislation, after taking into account any material differences between the legislation in such jurisdictions and the terms of the Employment Law. Perhaps unsurprisingly, given their identities, counsel for both parties have referred me to United Kingdom authority, although each have expressed caution in relation to the application of such authorities given the differences between the laws now in force in the United Kingdom and the terms of the Employment Law.

Discrimination

35. Article 59 prohibits an employer from discriminating against an employee regarding employment “on the grounds of” any one or more of eight characteristics possessed by the employee. These characteristics are often described as the “protected characteristics”. Relevantly to this case they include race and nationality. As noted, skin colour is not a protected characteristic *per se*, but skin colour is, of course, usually (but not always) an aspect of racial identity.
36. The characteristics which Mr Mahmood asserts resulted in discriminatory treatment by the Bank have been set out above. As noted, Mr Mahmood asserts that his characteristics of race and nationality resulted in discrimination by different people within the Bank for different reasons. He asserts that he was discriminated against by officers within GIB because although he was of Pakistani origin, he has British nationality and has, in effect, eschewed his Pakistani origins. He asserts that he was discriminated against by senior managers within the Compliance Section of the Bank because although he is British, he is not Caucasian in origin or appearance. The Bank does not dispute that these are protected

characteristics falling within the ambit of Article 59.

37. Article 59 only applies if the discrimination occurs “on the grounds of” one or more of the protected characteristics. In other words, discriminatory treatment will only contravene Article 59 if there is a causal connection between that treatment and one or more of the protected characteristics. The nature of the causal connection which must be established will be considered in more detail below.
38. Paragraphs (2)-(4) of Article 59 define discrimination for the purposes of the Article. Paragraph (2) stipulates four circumstances in which discrimination will have occurred.⁸ Paragraph (3) specifies that an employer’s actions in dismissing an employee or subjecting them to a detriment are discriminatory under paragraph (1) if they contravene paragraph (2). It follows that conduct falling within paragraph (2) will only contravene paragraph (1) if it involves either dismissal or the imposition of a “detriment”.
39. Many of the UK cases dealing with discrimination focus upon the causal connection between acts or omissions of an employer on the grounds of an employee’s protected characteristic and the identification of a detriment to which the employee was subjected by reason of those acts or omissions. The same causal connection is required by Article 59.
40. Paragraph (2) provides that one of the circumstances in which discrimination will occur for the purposes of paragraph (1) is where:

“An employee is treated less favourably than another is or would be treated in the same circumstances, or put at a disadvantage not faced by others, because of a prohibited ground [in paragraph (1)].”
41. This provision requires a Court assessing whether discrimination has been established to assess whether the complainant has been treated less favourably than another in the same circumstances, or put at a disadvantage not faced by others, which in turn requires the Court to compare the employer’s treatment of the complainant with the employer’s treatment of others who do not share the protected characteristic which is said to have caused the detrimental treatment
42. The comparative approach is reinforced by paragraph (4) of Article 59, which is set out above. Comparable provisions in the UK have resulted in the adoption of the practice of

⁸ Only three of which are relevant to this case.

identifying the characteristics of an employee with whom the relevant comparison can be undertaken. As noted, each party has adopted that practice in this case although, predictably, they attribute different characteristics to such a comparator.

43. The words “would be treated” in paragraph (2)(a) of Article 59 indicate that unless an actual comparator or comparators exist, the Court should undertake the exercise on a hypothetical basis – that is, by assessing the treatment which a hypothetical employee, lacking the protected characteristic which is said to have been the cause of the discriminatory treatment, would have received.⁹ In order to undertake a comparative assessment, the Court may need to consider evidence of the ways in which employees in circumstances materially different to those of the complainant were treated, the significance of which will depend upon the degree of similarity between the complainant’s circumstances and those of the evidential comparators.¹⁰

Causation

44. By requiring that the detrimental treatment of the employee must be “because of a prohibited ground”, paragraph (2)(a) of Article 59 reinforces the causative element imposed by paragraph (1) through the words “on the grounds of”.
45. The causative connection required by the provisions of Article 59 means that contravention of the Article is not established by merely showing that an employee has suffered a detriment in the course of his or her employment – rather, what must be established is that the employee suffered a greater detriment than that which would have been suffered by a comparator who did not possess the protected characteristic, “because of” or “on the grounds of” the protected characteristic¹¹. So, reprehensible treatment of an employee does not contravene the Article unless it is established that the treatment was meted out “because of” the protected characteristic.¹²
46. Unfair or detrimental treatment, even if extreme, is not *per se* discriminatory merely because

⁹ *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 (HL).

¹⁰ *Ahsan v Watt* [2008] IRLR 243, [36]-p37].

¹¹ *Bahl v Law Society* [2004] IRLR 799.

¹² *Koweleska v Lancashire Teaching Hospitals Foundation NHS Trust* UKEAT/0269/15.

the victim of the treatment has a particular racial origin or belongs to an ethnic minority.¹³

47. If the employer can establish that the detrimental treatment of the employee was the consequence of the employee's behaviour rather than the protected characteristic of the employee, the provision is not contravened provided that the employee's conduct is "properly and genuinely separable" from the protected characteristic.¹⁴ A finding that the complainant has been less favourably treated than an actual or hypothetical comparator does not mean that an inference must necessarily be drawn to the effect that the detrimental treatment was suffered because of a protected characteristic – the question will be whether such an inference should be drawn having regard to all the circumstances of the case.¹⁵ So, even if employees of a particular race or nationality are over represented amongst those who receive detrimental or preferential treatment, discrimination will not be established if that treatment is the consequence of some extrinsic non-discriminatory factor. In *Barclays Bank Plc v Kapur (No. 2)*¹⁶ an employer's refusal to allow employees to count previous service in Kenya due to the fact that they received a compensation package when they left Kenya was not held to be discriminatory. In *Wakeman v Quick Corp*¹⁷ the fact that higher wages were paid to Japanese employees who had been seconded from Japan was held to be non-discriminatory because it was due to the fact that they had been seconded from Japan, not because Japanese employees were being given preference over British employees.
48. Useful guidance on these issues is to be found in the judgment of Lord Nicholls in *Nagarajan v London Regional Transport*:¹⁸

"To be within section ... the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances I turn to the

¹³ *Zafar v Glasgow City Council* [1998] IRLR 36 (HL); *Qureshi v London Borough of Newham* [1991] IRLR 264 (CA).

¹⁴ *Martin v Devonshires Solicitors* [2011] ICR 352 [EAT].

¹⁵ *Madden v Preferred Technical Group GHA Ltd* [2005] IRLR 46 (CA).

¹⁶ [1995] IRLR 87.

¹⁷ [1999] IRLR 424 (CA).

¹⁸ [2001] AC 501, 511B.

question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must make findings of primary fact from which the inference may properly be drawn. ... A high rate of failure to achieve promotion of members of a particular racial group may indicate that "the real reason for refusal is a conscious or unconscious racial attitude which involves stereotyped assumptions" about members of the group."¹⁹

49. Lord Nicholls also considered the extent to which the protected characteristic must have contributed to the detrimental treatment in the following passage:

"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."²⁰

50. "Significant influence" has been described as "an influence which is more than trivial".²¹

51. At the risk of introducing yet another term paraphrasing the test, in the course of closing argument I put to counsel for the Bank if discrimination on the ground of a protected characteristic made a material contribution to the imposition of the detriment upon the employee, the causal connection would be made out.²² Counsel accepted that proposition.²³

52. Difficult issues can arise when a decision is made by one employee on the basis of an earlier decision made by another, or where there is a joint decision, or perhaps a sequence of events to which decisions made by a number of employees each contribute. In such circumstances, the question of whether causation has been established will turn critically

¹⁹ At [512].

²⁰ At [513].

²¹ *Igen Ltd v Wong (CA)* [2005] ICR 931; EWCA CIV 142.

²² "Material contribution" is an expression well known to Australian lawyers.

²³ TS 1 May 2024 at 124.

upon the facts found, and the inferences to be drawn from those facts. However, generally speaking, if a decision is taken jointly a discriminatory motivation on the part of one of the joint decision-makers satisfies the requirement that the discriminatory motive have a “significant influence” on the detrimental treatment.²⁴

Unwanted treatment

53. Paragraph 2(c) of Article 59 provides that discrimination shall include a circumstance in which:

“An employer engages in unwanted treatment or conduct related to one (1) of the prohibited grounds which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive work place for an employee or violates an employee’s dignity.”

54. Paragraph 6 of Article 59 provides that in assessing whether the conduct has the effect referred to in the paragraph quoted above, the court must take account of:

- “(a) The perception of the employee;
- (b) The other circumstances of the case; and
- (c) Whether it is reasonable for the conduct to have that effect.”

55. A number of observations may be made with respect to these provisions.

56. First, the connection between the prohibited ground and the unwanted treatment or conduct is expressed as “related to” which connotes a wider and more liberal degree of connection than that connoted by the expressions “because of” or “on the grounds of”.²⁵ Because of the wider nature of the nexus, a finding with respect to the motivation of the individual concerned is not the necessary or only possible reason to reach a conclusion that the conduct was “related to” the protected characteristic – that determination will be a matter of fact, including inferences properly drawn from facts found. However, the facts found must be capable of sustaining an inference of the requisite relationship between the protected characteristic and the unwanted treatment or conduct.²⁶

57. Second, the statutory requirements are satisfied if the relevant conduct has the “purpose or effect” of creating an adverse working environment or violating the employee’s dignity. The provision clearly and expressly creates alternative paths to the unwanted consequence, so

²⁴ *CLFIS (UK) Ltd v Reynolds* [2015] IRLR 562; EWCA CIV 439.

²⁵ *Tees Esk & Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495.

²⁶ *Tees Esk* (supra).

that even if the employer does not have the purpose of creating an adverse working environment or violating an employee's dignity, the statute will be infringed if the employer's conduct has that effect.²⁷

58. Third, the requirement to take into account whether it is reasonable for the conduct to have had the unwanted effect means that the statute will not be infringed merely because an employee is hypersensitive to offence. In *Dhaliwal*²⁸ Underhill P observed:

“We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct ... it is also important not to encourage a culture of hypersensitivity with the imposition of legal liability in respect of every unfortunate phrase.²⁹ See also *Nazar v Asim* [2010] ICR 1225 (EAT), *Heafield v Times Newspapers Ltd* UK EAT/1305/12; [2012] All ER(D) 265 and *Quality Solicitors CMHT v Tunstall* [2014] Eq LR 679 (EAT).”

59. Fourth, because the unwanted characteristic (offence, humiliation etc) must be “related to” the protected characteristic, the mere mention of a protected characteristic may not satisfy the requisite causal connection. So, in *Warbey v Wunda Group Plc*³⁰ an allegation by a manager that the complainant was lying in relation to her maternity was held not to infringe the provision because the harassment or offence was caused by the allegation of lying and maternity was mere background or context.
60. Fifth, because the perception of the employee is only one of the matters which must be taken into account in assessing whether the conduct has the relevant effect, the subjective view of the complainant on the question of whether the employer's conduct “related to” a protected characteristic will be relevant but not determinative.³¹

Victimisation

61. Article 60 of the Employment Law prohibits an employer from victimising an employee, which will occur if the employee is subjected to a detriment or dismissed because the employee does a protected act, or the employer believes that the employee has done or may do a

²⁷ *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 (EAT).

²⁸ (Supra).

²⁹ At [22].

³⁰ [2012] Eq LR 536.

³¹ *Tees Esq* (supra).

protected act. The provision defines a protected act to include the commencement of proceedings for discrimination or making an allegation (whether or not express) that the employer or another person has committed discrimination.

62. The UK cases hold that a “detriment” exists if a reasonable worker would or might take the view that the treatment which he or she received was, in all the circumstances, to his or her detriment. If the opinion formed by the employee in that respect is a reasonable one the requirement will be satisfied.³²
63. The causal connection between the imposition of the detriment or dismissal and the protected act is expressed in terms of “because”, with the consequence that similar principles of causation embedded within Article 59 are also embedded within Article 60.
64. The Article also expressly provides that victimisation can occur even if the employee has not done a protected act, if the relevant detriment or dismissal is incurred because the employer believed that the employee had done or might do a protected act.
65. The provision also expressly provides that an allegation to the effect that the employer or another person has contravened Part 9 of the Act may be express or implied so that if the allegation contains factual assertions capable of amounting in law to an act of discrimination, an allegation of contravention may be implied.³³

Vicarious liability

66. Articles 59 and 60 prohibit conduct on the part of an employer. However, Article 54 provides that an employer is liable for any act, attempted act or omission of an employee done in the course of their employment, provided that the act, attempted act or omission is sufficiently connected with the employee’s employment that it would be fair and just to hold the employer vicariously liable and the employer is unable to show it took such steps as were reasonably practicable to prevent the employee from carrying out the act, attempted act or omission.
67. In this case the Bank has made no attempt to lead evidence in relation to the steps which it took (if any) to prevent any of its employees whose conduct has been impugned in these proceedings from undertaking that conduct. Further, as will be seen in the analysis of the

³² *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 [105].

³³ *Waters v Commissioner of Police of the Metropolis* [1997] ICR 1073 (CA).

evidence in due course, the acts and omissions alleged by Mr Mahmood are all, if established, sufficiently connected with the relevant officer's employment with the Bank that it would be fair and just to hold the Bank vicariously liable for those acts and omissions. The Bank did not advance any significant submission to the contrary.

68. Accordingly, in this case Article 54 has the consequence that the Bank is vicariously liable for the acts and omissions of its employees, to the extent that they are established by the evidence.

Burden of proof

69. Article 61(1) provides that in any proceedings under Part 9 of the Law the complainant carries the burden of proof. In this regard the position under DIFC law is to be distinguished from the position which now applies in the UK.

70. In assessing whether any complainant, such as Mr Mahmood, has discharged the burden of proof the observations already made with respect to the unlikelihood of finding direct evidence of racial discrimination and the need to draw inferences from findings of primary fact are of particular significance.

71. Although the Court should bear in mind the evidentiary difficulties which face a person who complains of unlawful discrimination, Article 61 expressly provides that such a person must discharge the burden of proving discrimination on the ground of a protected characteristic or victimisation because of a protected act. The fact that an employer's conduct is unreasonable generally does not sustain an inference sufficient to satisfy the causal nexus if the evidence establishes that the employer acts unreasonably in relation to all or many employees.

72. In some circumstances, where the primary facts suggest a real prospect of discrimination, the failure of the employer to provide an explanation may support the drawing of the inference.³⁴

Limitation

73. Article 61 provides that a court shall not consider a claim under Part 9 unless it is brought to

³⁴ *King v Great Britain China Centre* [1991] IRLR 513; *Zafar v Glasgow City Council* [1998] IRLR 36 (HL).

the court before the end of six months from the date of the act or failure to do something to which the complaint relates or if the complainant satisfies the court that there are circumstances which justify disapplying that requirement, such other period as the court considers reasonable.

74. The Article also provides that conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided not to do the relevant thing.
75. The claim form was issued on 7 April 2021. Accordingly, detriments suffered by Mr Mahmood before 7 October 2020 cannot be the subject of a claim in these proceedings unless:
- (a) the detriments were suffered as part of “conduct extending over a period” which ended after 7 October 2020; or
 - (b) Mr Mahmood satisfies the Court that there are circumstances which would justify extending the time within which proceedings must be brought from the date upon which the relevant detriment was suffered until at least 7 April 2021.
76. It follows that if and to the extent that Mr Mahmood succeeds in establishing any or all of his claims, it will be necessary to assess, in respect of each claim whether it arose prior to 7 October 2020, and if it did, whether it is part of conduct extending over a period which ended after 7 October 2020 and if not, whether the Claimant has established grounds for extending time to enable the claim to be brought.
77. In the UK cases dealing with similar provisions have established that the claimant carries the burden of showing, either by direct evidence or by inference from the primary facts that numerous alleged incidents of discrimination are linked to one another and are evidence of a continuing discriminatory state of affairs falling within the concept of “conduct extending over a period”.³⁵ A one off decision with continuing consequences and a continuing state of affairs will not satisfy that requirement.³⁶ In assessing whether separate incidents form part of “conduct extending over a period” a relevant but not conclusive factor is whether the same

³⁵ *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530.

³⁶ *Barclays Bank Plc v Kapur* [2001] 2 AC 355, 367-9.

individuals or different individuals were involved in the various incidents.³⁷

78. It is further established, consistently with the text of Article 61, that there must be a finding of unlawful discrimination within the period of six months prior to the commencement of proceedings which can constitute the end point of the “conduct extending over a period” so as to bring all of the conduct within time.³⁸

Remedies

79. Article 61 also provides that if the court finds there has been a contravention of Part 9 it may make declarations with respect to the rights of the complainant and award compensation which the court considers reasonable in the circumstances which may include compensation for injured feelings. However, the amount of compensation is capped by an amount equal to the employee’s annual wage.³⁹
80. Mr Mahmood also invokes Article 40(2) of the Law of Damages and Remedies⁴⁰ which provides:

“The court may in its discretion on application of a claimant, and where warranted in the circumstances, award damages to an aggrieved party in an amount no greater than three (3) times the actual damages where it appears to the court that the defendant’s conduct producing actual damages was deliberate and particularly egregious or offensive.”

Obviously, there is a question as to whether this provision overrides the specific terms of Article 61 imposing a cap on the amount of damages that may be awarded. It is unnecessary to resolve that issue in this case.

The rule in *Browne v Dunn*⁴¹

81. In 1893 the decision in *Browne v Dunn* established the general rule in civil cases that a party was required to challenge by cross-examination the evidence of any witness of the opposing party on a material point if he or she wished to submit to the court that the evidence should not be accepted. The rule applied to both witnesses of fact and expert witnesses and the purpose and rationale of the rule was to ensure that the trial was fair, which included fairness

³⁷ *Aziz v FDA* [2010] EWCA CIV 304 [33].

³⁸ *South Western Ambulance NHS Foundation Trust v King* [2020] IRLR 168.

³⁹ Article 61(7).

⁴⁰ Law No. 7 of 2005.

⁴¹ (1893) 6 R 67 (HL).

to the party who had adduced the evidence of the impugned witness, fairness to the witness whose evidence was being impugned, and which would enable the court to make a proper assessment of the evidence.⁴²

82. As a significant portion of the Bank's written and oral closing submissions were directed to the proposition that there had been a breach of this rule in the conduct of the Claimant's case, it is necessary to analyse the contemporary scope of the rule, as applied in common law courts utilising modern processes of case management.
83. In *Browne v Dunn* the rule was imposed in somewhat extreme circumstances. Six witnesses had given evidence that they had signed a retainer of the defendant and that the retainer was genuine. It was not suggested to any of those witnesses that the retainer was not genuine. However, in closing submissions the plaintiff submitted to the jury that the retainer was not genuine and asked the jury to disbelieve the evidence of the witnesses. Of course, in 1893 there would have been no directions for the service of written witness statements of evidence in chief, or for the provision of written opening submissions. In those circumstances, the purpose and benefit of the rule imposed, in terms of procedural fairness and the efficacy of the trial process is obvious.
84. More recently, in the current edition of Phipson on Evidence, after referring to the ambit and function of the rule, it is stated:

“However, the rule is not an inflexible one. For example, if there is a time limit imposed by the Judge on cross-examination it may not be practicable to cross-examine on every minor point, particularly where a lengthy witness statement has been served and treated as evidence in chief. Thus, in practice, there is bound to be at least some relaxation of the rule.”⁴³

85. Contemporary case management practices in this Court, and many other common law civil courts are quite different to those which prevailed in 1893 when *Browne v Dunn* was decided. Even then, there was no obligation to put a matter to a witness in cross-examination where it was:

“Perfectly clear that (the witness) has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.”⁴⁴

86. Accordingly, in *Seven Individuals* Nujee J described the rule as preventing “a witness's

⁴² *Griffiths v TUI (UK) Ltd* [2023] UKSC 48.

⁴³ Phipson on Evidence [12-12].

⁴⁴ *Seven Individuals v Revenue & Customs Commissioners* [2017] WL 01162360 (2017), 61.

evidence being impugned if there has been no suggestion, either before the evidence starts or during the cross-examination, that the Tribunal of fact will be asked to reject it”.⁴⁵

87. He went on to observe:

“But the rule should not be applied in an over technical way. So long as it is clear from the thrust of the cross-examination (or from notice given beforehand) that a witness’s evidence will be challenged, I do not see that it is necessary to continue exploring a point in detail when the witness has already had an opportunity to state his case.”

88. In *Commissioner of the Police of the Metropolis v Denby*⁴⁶ Kerr J, after referring to the rule in *Browne v Dunn* observed that:

“In modern litigation the parties have far more advanced written material than Victorian times. The springing of an unfair surprise at trial is much reduced by the expansion of pleadings, written witness statements and list of issues.”

89. After referring to *Chen v Ng (British Virgin Islands)*⁴⁷ Kerr J observed that the issue was:

“Whether the outcome of the trial was fair in the light of the parties pleaded cases, the written evidence, the list of issues (as agreed and then amended) and the conduct and course of the trial including the questioning of witnesses and the matters set out in ... *Chen*.”

90. The matters set out in *Chen* included “whether the ground had been raised or touched on in speeches to the court, witness statements or other relevant places and, in some cases, the plausibility of the notion that the witness might have satisfactorily answered the ground”.

91. The rule was considered in the particular context of discrimination in employment in *Dunn v Secretary of Justice*.⁴⁸ In that case it was observed that in cases in which direct discrimination is alleged a critical part of the issues to be resolved include the mental processes of the putative discriminator, and it was therefore important for those matters to be explored in cross-examination of the alleged discriminator. In that case assertions that decisions of a manager had been influenced because of his antipathy to depression and disability were not put to the manager in cross-examination. In the Court of Appeal it was observed that the claim was bound to fail because of that failure.

92. However, the outcome of the case did not turn upon the rule in *Browne v Dunn*, and it is not

⁴⁵ Supra at [62].

⁴⁶ UK EAT 031416 [2017].

⁴⁷ [2017] UK PC 27.

⁴⁸ [2019] IRLR 298 (CA).

at all clear from the report to what extent the employer had been put on notice of the allegations that were made against the manager prior to the initial hearing before the Employment Tribunal. Nevertheless, in a case such as this, where there are critical issues with respect to the motives of various employees of the Bank, there can be no doubt that basic principles of fairness require that the Bank's witnesses be given a full opportunity to explain the motives for their actions.

93. However, this is a case in which the pleadings were extensive, witness statements were served well in advance of the hearing, skeleton arguments were served somewhat closer to the hearing, and oral opening submissions were presented to the court. In these circumstances I respectfully agree with the observation of Justice Kerr to the effect that the question is whether, in all the circumstances of the case, there was a departure from basic principles of fairness.
94. That is a nuanced question which cannot be resolved in the somewhat mechanical manner proposed by the Bank in closing submissions where it was, in effect, contended that unless the transcript revealed a direct question in cross-examination to the effect that the witness had discriminated against Mr Mahmood on the ground of a protected characteristic, the submission could not be put. For the reasons given above, the question is much more complex, and involves an assessment of the extent to which the witness was on notice of the allegation that they had discriminated against Mr Mahmood on the ground of a protected characteristic or victimised him because of a protected act, and whether they had fully explained and justified their conduct in their evidence in chief in such a way as to effectively deny the assertion of discrimination. In such a circumstance, requiring the cross-examiner to put a proposition of discrimination which would certainly be denied would be a futile waste of time.
95. For these reasons I will approach the Bank's submissions on this topic on the basis that before making any adverse finding against any of the Bank's witnesses I will assess whether the process, including all its components, has been sufficiently fair to enable such a finding to be made. Unless and until an adverse finding is in contemplation, it is unnecessary to consider the application of the rule in *Browne v Dunn*.

The evidence

96. The only witness called in support of the claim was Mr Mahmood. The Bank called various

officers to give evidence in defence of the claim. No expert evidence was adduced. Cross-examination of the witnesses occupied approximately 10 days of hearing.

97. The testimonial evidence was augmented by a very large number of documents which were tendered by consent as part of the hearing bundle. That bundle comprised just under 9,000 pages of which the documentary evidence formed the major part.
98. Obviously, it is impracticable to refer to the entirety of the testimonial and documentary evidence in these reasons. The most practical course is to analyse the testimonial evidence in the order in which it was presented, referring to the documents which were the subject of that evidence. Any material documents which were not the subject of testimonial evidence will be addressed when I come to consider the specific complaints upon which Mr Mahmood relies in order to sustain his claims.

Mr Mahmood

Written evidence

99. Mr Mahmood's evidence took the form of two witness statements, the second of which responded to witness statements served by the Bank.
100. In his first statement Mr Mahmood outlined his experience, which included service as a compliance officer in various investment banks, as a senior policy adviser at the Financial Services Authority in the UK and a number of roles in another international bank, HSBC, two of which were concerned with Islamic banking and one of which involved serving as regional head of operations, strategy and risk for consumer banking in Africa and Middle East ("AME"). At the time of his first statement, he had spent 15 years living in Dubai.
101. Mr Mahmood commenced employment with the Bank on 17 August 2016 as a Senior Compliance Officer in Financial Markets for AME on a six month contract. He received a positive performance assessment in 2016 and was appointed on a permanent basis on 16 January 2017 as a Director, Compliance Financial Markets for AME. He received positive assessments of his performance in that role.
102. On 17 June 2017 Mr Mahmood commenced a new role as Global Head, Compliance, Islamic Banking. Mr Mahmood entered into an employment contract with the Bank dated 20 June 2017 (the "Contract") which describes his position, his reporting line and specifies that the

position is within Band 4 within the bands of employment used within the Bank.⁴⁹ The Contract provides that it is terminable on three months' notice by either party. The Contract also specifies Mr Mahmood's general duties, and his remuneration, which included eligibility for discretionary incentive awards.⁵⁰ The Contract also provides that Mr Mahmood is entitled to receive an end of service gratuity in accordance with the provisions of the DIFC Employment Law.⁵¹

103. In his first statement Mr Mahmood describes Islamic banking and the uncertainty within this sector of finance because of the lack of a universal Shariah approach to ensuring the authenticity of products and services. He asserts that his role gave him compliance responsibility for the Bank's Islamic banking operations in Asia, AME, Europe and North America in six different areas of the Bank's operations.⁵²
104. Mr Mahmood is of British nationality and Asian race. He has a UK passport and nationality, and speaks English with a British/English accent. His appearance is Asian and he has a name commonly found in the Asian subcontinent.⁵³ He and Mr Vaselli, the Head of Legal of GIB, were the only two people of European nationality within GIB.⁵⁴
105. Mr Mahmood asserts that from a few months after he joined Islamic Banking, his nationality, accent and vocabulary were the subject of regular negative comment in particular from Mr Shaikh, Mr Akbar, Mr Allawala and Mr Pasha.⁵⁵
106. Mr Mahmood asserts that he was aware of the Bank's desire to improve culture and conduct in the wake of the imposition of a number of sanctions by regulatory authorities.⁵⁶
107. Mr Mahmood observes that any new banking product must undergo rigorous review to ensure that they do not breach any regulatory requirements, and Islamic banking products must be reviewed to ensure that they are compliant with Shariah Law. Mr Mahmood asserts that a robust, independent and credible internal Shariah function working with an independent Shariah Board is critical in ensuring that the products and services offered are

⁴⁹ Band 1 is the highest level.

⁵⁰ Contract clause 9.

⁵¹ Clause 11.1.

⁵² WS 1 [8]

⁵³ WS 1 [10].

⁵⁴ WS 1 [10].

⁵⁵ WS 1 [10].

⁵⁶ WS 1 [13]-[15].

Shariah compliant.⁵⁷ In that context the Head of Shariah operates as a control function to ensure that any new product is Shariah compliant.

108. During the first quarter of 2017 before taking up his role in GIB, he was asked to review a governance paper for Islamic banking by his manager, Mr Adam Long. When Mr Mahmood reviewed the governance paper he observed that Mr Mubeen, the Head of Shariah, reported to Mr Shaikh, who was the CEO of Islamic Banking. He formed the view that this created a clear conflict of interest as the Shariah function existed so as to provide a check on the Islamic banking business more broadly and to object to proposals that would infringe upon Shariah Law.⁵⁸ Following his review of the paper, Mr Mahmood advised that he considered this structure to create a conflict of interest. This view was supported by complaints made to him by Mr Mubeen in relation to being pressured by colleagues within GIB to provide favourable Shariah directions and that the performance objectives set for him by Mr Shaikh included financial performance targets.⁵⁹ Mr Mahmood regarded the resolution of his perceived conflict of interest as a matter of considerable importance.⁶⁰
109. Following his appointment to his role in connection with Islamic Banking, Mr Mahmood created a Compliance Framework relating to GIB. The framework highlighted the conflict of interest seen by Mr Mahmood. The first draft of the Framework was agreed between Mr Mahmood and Mr Long during October and November 2017 and it was circulated to various senior compliance managers, including Mr Fanucci and Mr Gilbert on 6 December 2017. The draft Framework was presented to the GIB management team for their comments and input on 7 December 2017. That team included Mr Shaikh, Mr Akbar, Mr Mubeen, Mr Vaselli and others.⁶¹
110. Mr Mahmood asserts that when the GIB management team discovered that he had circulated the document within Compliance management before exposing it to them for comment, “they were extremely hostile and aggressive”.⁶² He asserts that Mr Shaikh called him to his office and reprimanded him. He also asserts that Mr Long had agreed that the document should be circulated within Compliance before exposing it to GIB personnel for

⁵⁷ WS 1 [17].

⁵⁸ WS 1 [22].

⁵⁹ WS 1 [24].

⁶⁰ WS 1 [27].

⁶¹ WS 1 [30].

⁶² WS 1 [31].

comment.⁶³

111. On 24 December 2017 Mr Akbar sent an email to Mr Mahmood thanking him for the draft Framework and advising that comments would be provided shortly. Mr Akbar also observed:

“I feel that this document should have been agreed with all the stakeholders (even draft) prior to the distribution to the wider audience (Nic Fanucci and Nick Gilbert). There are factual inaccuracies (as per Bank’s policies) that need to be addressed/agreed/corrected with the GIB team prior to the circulation. ... We can discuss this upon your return.”⁶⁴

112. Mr Mahmood replied to Mr Akbar, copied to Mr Shaikh and Mr Long advising that the draft Framework had been provided to GIB within hours of it being provided to Mr Fanucci and Mr Gilbert. He stated:

“From the standpoint of being an independent control function, I am comfortable that the process which has been followed is correct. I welcome any comments on the draft document ... I would be grateful if you could document the “factual inaccuracies, (as per Bank’s policies)”, that you believe exist within the document.”⁶⁵

113. Mr Mahmood asserts that “in addition to the hostility and aggression I faced for disseminating the Framework within Compliance,” the GIB management team did not respond positively to the substantive content of the Framework with particularly strong reactions to the conflict of interest and the Operational Risk Framework (“ORF”). He asserts that he was required to attend over seven hours of meetings and to review extensive and condescending feedback on the document from November 2017 until the first quarter of 2018.⁶⁶

114. Mr Mahmood asserts that Mr Akbar was actively hostile to the Framework’s recommendations and sought to minimise the issues that it had raised. He also asserts that during the seven hours of meetings he was shouted at by numerous members of the GIB team, including Mr Akbar, Mr Ali, Mr Halal and Mr Allawala. He further asserts that Mr Shaikh was present at each meeting and did nothing to stop his subordinates from shouting at Mr Mahmood “with such vitriol”.⁶⁷

115. Mr Mahmood also asserts that he was repeatedly pressured to remove reference to the conflict of interest from the Framework and in that context was told that there was no conflict

⁶³ WS 1 [31].

⁶⁴ Tribunal Bundle 1131.

⁶⁵ TB 1131.

⁶⁶ WS 1 [34].

⁶⁷ WS 1 [35.1].

of interest, he did not know what he was talking about and that his position on the subject was wrong.⁶⁸

116. Mr Mahmood states that in addition to attempting to remove the reference to conflict of interest, Mr Akbar rewrote the entire section covering the ORF and asked him to insert his text into the document in place of that which Mr Mahmood had written. Mr Mahmood asserts that:

“Mr Akbar’s amended ORF section was intended to paint himself in a positive light, as this was an area that he was responsible for. This was consistent with the Islamic Banking management team’s *modus operandi*, denying any responsibility while claiming to be compliant.”⁶⁹

117. On 28 January 2018, Mr Mahmood replied to a request from Mr Akbar for a meeting to discuss issues relating to the draft Framework in these terms:

“With regard to the draft response you have provided, I am not comfortable with it [sic] contents, nor am I comfortable, from a Governance perspective, in being requested, once again, to include it in the document from a stakeholder who has a vested interest in ORF.

...

Having spent six hours of briefing the business and responded in writing to 60 separate comments on the document, I am comfortable with the ORF section of the document as it stands. If you believe that there is anything that is factually inaccurate in the ORF section or which impinges upon the business aspects of the Islamic Banking, please let me know.”⁷⁰

118. On 1 February 2018 Mr Mahmood wrote to Mr Shaikh and Mr Akbar, copied to Mr Long, advising that he considered that the draft Framework document required no further amendment and would be sent to Group Compliance in Singapore that day. He requested any reservations concerning the document to be provided in writing so that they could be provided to Singapore.
119. Mr Shaikh replied by email on the same day, asking that the document be run through him, along with Mr Akbar’s reservations, before circulating the document to Singapore, and requested that a meeting time be arranged. It seems that such a meeting was held, after which Mr Mahmood emailed Mr Shaikh on 5 February 2018 proposing changes to the draft Framework following their meeting including inserting text to the effect that the conflict of

⁶⁸ WS 1 [35].

⁶⁹ WS 1 [37]

⁷⁰ TB 1674.

interest may be perceived or actual.⁷¹

120. On the same day Mr Mahmood sent the revised Framework to Mr Fanucci and Mr Gilbert in Singapore, advising that the draft had “sparked over seven hours of meetings with the business ... along with extensive written feedback”. He further advised that Mr Akbar had approved the document with reservations and attached Mr Akbar’s draft of the text for the ORF section of the document, advising that he was not prepared to accept it.⁷²
121. In his statement Mr Mahmood asserts that the delay in formally signing off the draft Framework indicated to him that the Bank was treating him with a lack of professional respect.⁷³
122. Mr Mahmood also draws attention to the fact that he reported to Mr Long, a regional manager, whereas Mr Mahmood’s role was global and he should have been given a global reporting line, in common with all other Global Heads of Compliance.⁷⁴ He asserts that this deprecated his professional credibility. He also asserts that there was a discrepancy between his classification and the classification of other global heads of business compliance functions, who were all either Band 2 or Band 3. He asserts that Mr De Groote acknowledged that his role was clearly a Band 2 or Band 3 role.⁷⁵ However, he was told upon taking his role that he could not use the title of Global Head and was made to change his email signature to reflect that direction. He also asserts that he was excluded from Group compliance correspondence and mailing lists designed to update Global Heads of Compliance on important issues, which was a source of embarrassment and distress, both professionally and personally. He raised the issue with Mr Long, but it was never rectified, with the result that Mr Long was receiving the Group notifications rather than Mr Mahmood and Mr Long was able to determine what information Mr Mahmood should receive. Mr Mahmood contends that this undermined his role.⁷⁶
123. Mr Mahmood asserts that written feedback which he received from GIB, which was often condescending and rude, has not been disclosed by the Bank in the course of these

⁷¹ TB 1137.

⁷² TB 4849.

⁷³ WS 1 [41].

⁷⁴ WS 1 [43].

⁷⁵ WS 1 [45].

⁷⁶ WS 1 [46].

proceedings.⁷⁷

124. Mr Mahmood asserts that during his weekly one to one meetings with Mr Long he advised him of his concerns with the GIB team, being that they were out of step with the culture and conduct behaviours that were expected and applied in the rest of the Bank. He asserts that Mr Long agreed with those views. He further asserts that during these meetings he told Mr Long that there was a problem arising from the lack of diversity within the GIB team and the fact that it was largely made up of people of Pakistani race and nationality, with the result that he and Mr Vaselli were bullied by other members of the GIB team. He asserts that over the course of multiple meetings he told Mr Long that there was a negative focus upon him being British and not considering himself Pakistani and of the behaviours that manifested as a result of that focus, which ranged from bullying, being shouted at, increased focus upon his accent, references to Britain's colonial rule over India *et al* and derogatory references to the United Kingdom. He asserts that he also updated Mr Long on the bullying that Mr Vaselli was subjected to. He asserts that he briefed Mr Long on these matters between 2017 and 2020.⁷⁸
125. Mr Mahmood further asserts that during his meetings with Mr Long he told him that the members of the GIB team would frequently mock his accent and make references to his nationality. He asserts that comments were regularly made highlighting how he pronounced certain words and that he was asked to repeat himself as he could not be understood. There were also occasional references to Britain's colonial rule over India and he was referred to as "you Britishers" or "you Brits". He asserts that this revealed that the members of the GIB team had an issue with him being British Pakistani, because this level of overt micro-aggression was not meted out to anyone else within the GIB team. He asserts that while he did not report every instance to Mr Long, he told him on more than one occasion that he was being subjected to poor treatment. He asserts that Mr Long listened to his concerns but did not do anything about them.⁷⁹ Mr Mahmood believes that his status as a British Asian who spoke with a British accent suggested to those within the GIB team that he had repudiated a Pakistani identity that they had ascribed to him. He believed that this caused members of the GIB team to think that he considered himself to be superior to them and had repudiated

⁷⁷ WS 1 [49]-[50].

⁷⁸ WS 1 [52.1].

⁷⁹ WS 1 [52.2].

his Pakistani identity.⁸⁰

126. Mr Mahmood also believed that the view taken by members of the GIB team was “rooted in the negative perception of Britain following its colonial occupation of India which was and remains a common prejudice from Indian and Pakistani nationals towards British, Indian and Pakistani Asians in the Middle East”.⁸¹ He supports this belief with references to “regular, negative comments about my accent, the way in which I pronounced words, and my use of vocabulary” whereas Mr Vaselli’s Italian accent was never once subjected to the scrutiny and comment that he received. However, both he and Mr Vaselli were treated with hostility, according to Mr Mahmood, which he considers to have been plainly related to them not being Pakistani.⁸²
127. In early 2018 Mr Mahmood was asked to assist the Islamic Banking business with the development of a corporate loan product in Hong Kong. Compliance in Hong Kong had placed a financial cap upon the amount of Islamic banking corporate loans which could be booked in Hong Kong, which was said to limit the viability of Islamic banking loan products within Hong Kong.
128. On 30 January 2018 Mr Mahmood sent an email to Mr Haris Law, Head of Compliance for Islamic Banking in Hong Kong, in which he proposed that the cap be removed.⁸³
129. However, Mr Mahmood’s proposal was rejected by the business centre in Hong Kong. In the course of setting out his position, Mr Law advised Mr Mahmood that he did not “fully understand the proposal” and that “things don’t really add up”.⁸⁴ Mr Mahmood asserts that he considered Mr Law was questioning his professional integrity.⁸⁵
130. On 13 February 2018 Mr Mahmood sent an email to Mr Joel Cook, a senior compliance manager, copied to Mr Chris O’Donnell, another senior compliance manager to whom Mr Long reported.⁸⁶ In the email Mr Mahmood stated that he was extremely uncomfortable with the way that the issue with Islamic banking in Hong Kong had been handled “both from the perspective of the Bank and personally from a Conduct perspective”. Mr Mahmood asserted

⁸⁰ WS 1 [54].

⁸¹ WS 1 [55].

⁸² WS 1 [55].

⁸³ WS 1 [58].

⁸⁴ TB 1257.

⁸⁵ WS 1 [59].

⁸⁶ TB 970.

that when he presented a standard policy he was told that what he was proposing does not “really add up”, creating an inference that he was trying to do something untoward. He stated “I take great exception to these suggestions which demonstrate a lack of respect for compliance colleagues that have a different view I’d like [sic] arrange a call to try to resolve this rather than raise a Speak Up at this stage ...”.

131. The Speak Up process is a procedure available within the Bank whereby employees can anonymously report conduct which falls short of the Bank’s behavioural standards and ethics.
132. On 14 February 2018 Mr Cook wrote to Mr Phebey, another senior compliance manager, requesting his view on how to proceed. In the course of the email he observed that the threat of a Speak Up was too strong and not helpful.⁸⁷
133. On 19 February 2018 Mr Phebey replied to Mr Cook. He stated:

“Shiraz needs to amend his engagement. Whatever his excuse is, his style has now annoyed both you and I, who are fairly relaxed and well travelled (and lets not be shy, senior) Compliance Officers and if he can annoy us, many more people will not like his disposition either. He has annoyed my team, and I also hear noise when I speak to that region too. We need to get this feedback to Adam [Mr Long] as his manager. His Speaking Up comment is totally out of line and needs to be discussed with him. ... He should not use it as a threat, and as a senior Compliance colleague I would be expecting him to collaborate by bringing in management to resolve rather than using that channel – he is clearly not trying to hide the provenance of the complaint (himself) so why would he invoke the formality and process involved in a SU rather than just address the issue at the right level?

Islamic are a tough crowd, which I know from experience ... There is nuance to every situation and Shiraz must be careful not to get a reputation for blind advocacy ...”⁸⁸

134. When Mr Mahmood did not receive any response from Mr Cook, he followed up by telephoning him. Mr Mahmood asserts that Mr Cook was “extremely hostile, which I think was brought about by my reference to the Speak Up regime”. According to Mr Mahmood, Mr Cook stated “the last thing I need on my plate is someone threatening a Speak Up against my staff”.⁸⁹
135. On 14 March 2018 Mr Phebey visited Dubai and arranged meetings with each of Mr Long’s direct reports, including Mr Mahmood. Mr Mahmood asserts that during the meeting he was

⁸⁷ TB 970.

⁸⁸ TB 970.

⁸⁹ WS 1 [62].

reprimanded for raising the issues which he raised with Mr Cook. He also asserts that Mr Phebey was a close friend of Mr Cook and worked within the same team.⁹⁰

136. Mr Mahmood asserts that during his meeting with Mr Phebey, Mr Phebey expressed definite and unfavourable views on how Mr Mahmood had handled the matter, without discussing the underlying issues which caused them. Mr Mahmood formed the view that the underlying opinion in the compliance function was that Speak Ups should not be raised, which he considered to be at odds with the messaging that he had received from Mr De Groote “who had made a point of frequently mentioning that he raised two Speak Ups which had resulted in dismissals from the Defendant’s business”.⁹¹ I digress to observe that this observation is consistent with Speak Ups being raised in relation to conduct which justifies dismissal.
137. Mr Mahmood asserts that he received complaints from Shariah staff in Dubai, Malaysia and Pakistan about being pressured by the GIB team and Islamic Banking staff in Malaysia and Pakistan to provide decisions which benefitted the business.⁹² He asserts that he raised these issues with Mr Long and Mr De Groote, and there is an email in evidence from Mr Mahmood to Mr Long raising this issue in relation to Malaysia.⁹³ Mr Mahmood asserts that following these exchanges, Mr Shaikh continually referred to a “culture of fear” which he attributed to the compliance function. He asserts that this was said frequently during GIB management team meetings.⁹⁴ Mr Mahmood also asserts that he formally raised his concerns about the bullying and treatment of control functions in the GIB team meeting of 23 April 2013, in which he highlighted the manner in which meetings were held – for example interrupting and shouting at each other. The minutes of that meeting record that Mr Mahmood “highlighted the importance of conduct and culture in the team”.⁹⁵
138. Mr Mahmood asserts that he reiterated his concerns in subsequent management meetings in July and September 2018, and the minutes of those meetings make general references to discussions with respect to conduct.⁹⁶
139. Mr Mahmood asserts that Mr Akbar, in his capacity as Chief Operating Officer (“COO”) was

⁹⁰ WS 1 [63].

⁹¹ WS 1 [64].

⁹² WS 1 [69].

⁹³ TB 2157.

⁹⁴ WS 1 [70.3].

⁹⁵ TB 1422.

⁹⁶ TB 1500; TB 1721.

meant to act as a bridge between the business and Control functions (including compliance). He asserts that Mr Akbar failed to act as required and undermined his function. He discussed his concerns about Mr Akbar with Mr Long, and discovered that Mr Long shared those concerns and held a broader range of concerns himself.⁹⁷

140. On 31 March 2018 Mr Mahmood wrote to Mr Shaikh, copied to Mr Long. In the email he complained that he was not being kept abreast of compliance related matters that business colleagues were involved in. He related a recent incident which had made him “extremely upset”.⁹⁸ He also asserted that he had “historically asked” Mr Akbar in management meetings and in writing to introduce written procedures to improve the governance culture within GIB. He asserted that no action had been taken by Mr Akbar to address his concerns as a result of which he would be “issuing some Compliance procedures”. He requested Mr Shaikh’s support in implementing these measures.
141. Mr Mahmood asserts that he received no response to his email, after which Mr Long suggested that he should check with Mr Gilbert and Mr Phebey on the best approach to raising his concerns about Mr Akbar.⁹⁹ Mr Mahmood asserts that he met Mr Phebey during a visit to Singapore and raised his concerns about Mr Akbar and sought his advice. Mr Phebey suggested that he use the 365 feedback tool. He met Mr Gilbert the same day, who confirmed Mr Phebey’s advice.¹⁰⁰
142. Mr Mahmood asserts that although he was concerned about using the 365 feedback process, he was assured by Mr Long and Mr De Groote that if Mr Phebey and Mr Gilbert supported him using that process it would be fine to do so, provided that he advised Mr Shaikh.¹⁰¹ Mr Mahmood asserts that he acted on this advice and told Mr Shaikh that he would be sending feedback on Mr Akbar using the 365 feedback system. He does not appear to have told Mr Shaikh what the nature of the feedback would be. He asserts that Mr Shaikh told him that this was what the 365 feedback system was for, and that the feedback would help Mr Akbar improve.¹⁰²
143. Mr Mahmood asked Mr Long to review various drafts of the feedback to be provided. On 5

⁹⁷ WS 1 [74]-[76].

⁹⁸ TB 1394.

⁹⁹ WS 1 [79].

¹⁰⁰ WS 1 [80].

¹⁰¹ WS 1 [82].

¹⁰² WS 1 [83].

August 2018 Mr Long replied to the latest version of the draft and stated that it “looks comprehensive and reasoned/supported by examples”.¹⁰³

144. On 19 September 2018 Mr Mahmood submitted the 365 feedback, with two emails of accompanying evidence.¹⁰⁴
145. The feedback provided by Mr Mahmood was extremely critical of Mr Akbar. The feedback form creates a specific opportunity to provide positive feedback, under a heading using those words. Mr Mahmood provided observations disparaging of Mr Akbar under that heading. For example, in that section of the form he asserted that Mr Akbar “does not have a sound grasp on the governance risks associated with his function”.
146. Mr Mahmood asserts that after he submitted the feedback he was told Mr Shaikh did not appreciate how the feedback had been given, and that the 365 process was not the correct forum for such criticisms. Mr Mahmood asserts that rather than addressing Mr Akbar’s shortcomings, the GIB team’s treatment of him worsened and they sought to retaliate against him, although no specific examples are provided in his witness statement to support that general assertion.
147. Mr Mahmood asserts that he was stunned to read in his 2018 performance review that he “would also need to sharpen his people management skills to strike a balance in being assertive while avoiding confrontations”, given that he had been congratulated by Mr Long for his willingness “to be brave and challenge”.¹⁰⁵
148. Mr Mahmood asserts that he was told by Mr Long and Mr De Groote that Mr Shaikh had objected very strongly to the feedback and Mr Mahmood believes that Mr Shaikh used his standing in the Bank to attribute this as a shortcoming of Mr Mahmood’s. he also asserts that Mr De Groote told him that he should have asked Mr Long to review the feedback and that when Mr Mahmood told Mr De Groote that Mr Long had reviewed the feedback, he was surprised.¹⁰⁶
149. Mr Mahmood asserts that despite his submission of the 365 feedback, so far as he was

¹⁰³ TB 1514.

¹⁰⁴ TB 1580; TB 4948.

¹⁰⁵ WS 1 [87].

¹⁰⁶ WS 1 [88]-[89].

aware nothing was done to curb Mr Akbar's conduct.

150. Following the commencement of these proceedings Mr Mahmood became aware of a series of complaints that had been made against him following the submission of the 365 feedback. There were four such complaints. Mr Mahmood states that he was entirely unaware of the complaints at the time, or that they had been investigated by Aziza Dada, in the course of which members of the GIB team were interviewed. Mr Mahmood notes that all allegations against him were rejected in their entirety, including an allegation that he created a "culture of fear". So far as he is aware, the Bank took no action against those responsible for raising allegations against him.
151. As Mr Mahmood was unaware of the complaints, their investigation or his exoneration until after his employment was terminated, it is extremely difficult to see how these events could constitute any form of detriment or relevant disadvantage so as to constitute discrimination or victimisation contrary to the Employment Law. Nevertheless, as great emphasis has been placed upon these matters in support of Mr Mahmood's claim, it is appropriate to refer to the complaints in some detail. The legal and evidentiary significance of the complaints will be considered in due course.
152. The first complaint was an anonymous Speak Up raised under the pseudonym Jack James on 28 January 2019. The complaint alleges that Mr Mahmood had engaged in bullying and harassment, including personal humiliation. Specific criticisms were made to the effect that he had been found peeping into people's screens without their knowledge by standing behind their desks, playing games on his mobile phone and dozing off during meetings.
153. The complainant also asserted:
- "He also thinks he is an English Scholar and takes a dig on all documents/email (that are not even relevant to him) stating that they are not well written without focusing on the content and or subject."
154. The complaint ends by suggesting that 13 members of the GIB team should be spoken to in order to verify the allegations made.¹⁰⁷
155. The second complaint was another anonymous Speak Up lodged on 30 January 2019. The author opened the complaint by stating:

¹⁰⁷ TB 1900.

“It takes courage to write about a person who is heading Compliance and considers himself a cop of the colonial era who is above the law.”

The complaint alleged that Mr Mahmood treated employees/colleagues unfairly and created a culture of harassment/victimisation which created mistrust and fear.

156. Similar specific complaints are made as were made in the first anonymous Speak Up relating to Mr Mahmood playing games on his mobile phone, prying into the laptop screens of others and napping in meetings.¹⁰⁸
157. The third complaint was made by Ms Geetha Nilakantan, an officer of GIB. She met with Ms Diana Tabbara, a senior officer in the Personnel Department of the Bank on Sunday 3 February 2019. Following that meeting Ms Nilakantan sent an email to Ms Tabbara setting out her complaints. She alleged that Mr Mahmood was untruthful, unethical and unprofessional, and had targeted her and created a culture of fear. Unlike the two anonymous complaints, there is no reference to race or nationality in this complaint.¹⁰⁹
158. The fourth complaint was made by Ms Fatimah Yousef, another officer of GIB. The complaint is detailed in an email to Ms Tabbara of 4 February 2019. Similar specific allegations are made as with the three previous complaints, including peeping into people’s screens without their knowledge by standing behind their desks, making condescending statements, playing games on his mobile phone, dishonesty, bullying and harassment. No reference to race or nationality is made in the complaint.¹¹⁰
159. The similarities between the subject matter of the four complaints all lodged around the same time raises an obvious question as to whether the complaints were coordinated by somebody. It was put to Mr Akbar in cross-examination that he was the person who had coordinated the complaints – an allegation which he denied. This issue will be considered further below.
160. In February 2019 Mr Mahmood contacted the Business Model Analysis (“BMA”) unit of the Bank in Singapore. He asked them to assist with the resolution of the Shariah conflict of interest and asserts that he also raised concerns about the culture within the GIB team and the bullying of European nationals. Mr Crispian Cuss of the BMA told Mr Mahmood that he

¹⁰⁸ TB 1904.

¹⁰⁹ TB 1925.

¹¹⁰ TB 1920.

would investigate.

161. On 29 July 2019 Mr Cuss called Mr Mahmood and advised that he had been told that the reason for the lack of diversity within the GIB team was that the “talent pool for Islamic banking expertise is largely confined to Pakistan”. Mr Mahmood denied that proposition and gave Mr Cuss examples from his previous employment¹¹¹.
162. In his witness statement Mr Mahmood states that on a number of occasions he and Mr Vaselli were bullied, ridiculed and humiliated, without giving any specific examples of these allegations¹¹².
163. While an email from Mr Mahmood to Mr Vaselli of 6 March 2019 refers to Mr Vaselli complaining of bullying behaviour, no specific examples of that behaviour are given in that email or elsewhere.
164. Discussions between Mr Mahmood and Mr Shaikh, Mr Akbar and Mr Mubeen in relation to the Shariah Conflict issue continued during March 2019.¹¹³ On 9 April 2019 Mr Mahmood sent an email to Mr Akbar requesting him to “provide a written rationale for why this potential conflict is not, in reality, a conflict of interest”. Mr Akbar replied on 11 April 2019, in which he asserted that the reporting line to the CEO was administrative only, and that from a Shariah governance perspective, the head of Shariah took guidance from the independent Shariah Supervisory Committee.¹¹⁴ Mr Mahmood referred that email to Mr Shaikh for his comment. Mr Shaikh reiterated Mr Akbar’s views. Mr Mahmood then referred the email chain to Mr Long, asserting that he was not satisfied with the responses which had been received. Mr Long agreed to meet Mr Mahmood to discuss that and other matters. Mr Mahmood asserts that Mr Long agreed with his position.¹¹⁵
165. Mr Mahmood asserts that at this time he considered that he had been treated poorly and as a second class citizen by the Compliance infrastructure. He believed that this differential treatment was due to his race, although no basis for that belief is identified in his first witness statement. He asserts that he had been inappropriately reprimanded in respect of the issue in Hong Kong and for raising 365 feedback against Mr Akbar and that Compliance

¹¹¹ WS 1 [100.2].

¹¹² WS 1 [100.3].

¹¹³ TB 2073; TB 2227; TB 2076.

¹¹⁴ TB 2227.

¹¹⁵ WS 1 [101.4].

management had failed to take any action in response to his complaints about the treatment he had received from the GIB team. He asserts his belief that if he had been a white British national his concerns regarding the discrimination he had experienced would have been addressed. No basis for that belief is provided in Mr Mahmood's witness statement.¹¹⁶

166. On 1 April 2019 Mr Mahmood wrote to the Group Chief Executive, Mr Winters, and the Group Head of Corporate Affairs, Ms McDermott, to raise two discrete Speak Ups, with the first Speak Up comprising two issues.
167. The first issue concerned Mr Mahmood's assertion of inequality in respect of his treatment within the Group Compliance infrastructure, and the second related to his assertion that he had been subjected to detrimental and adverse consequences for following the agenda set by the Group CEO, which requires leaders to challenge and help transform the organisation.¹¹⁷
168. On the first topic, Mr Mahmood asserted that his reporting line should be into Group Compliance, rather than to Mr Long, a Regional Head.
169. On a related topic he asserted that he had not been included in the activities and communications within Group Compliance. He also asserted that he had not been given the human resources he requested, that his remuneration was out of line with comparable roles, and that his position should be classified within Bands 2 or 3.
170. In relation to the second topic, Mr Mahmood recounted his view of the interactions in relation to the cap upon the Islamic banking business out of Hong Kong and his assertion that he had been admonished for challenging the position adopted by the officers in Hong Kong. He also raised his concerns in relation to the governance and control culture within GIB, and the reaction to his utilisation of the 365 feedback mechanism as a means of elevating those concerns. He asserted that none of his concerns had been addressed, and that he had heard that Mr Shaikh had taken offence at the process he had followed.
171. Mr Mahmood also asserted that his performance assessments had been negatively affected by the positions he had adopted.

¹¹⁶ WS 1 [106].

¹¹⁷ TB 2085.

172. The second Speak Up was sent only to Ms McDermott.¹¹⁸ It was concerned with culture and conduct within GIB. In this complaint Mr Mahmood raised allegations with respect to the bullying of the Head of Legal. He did not assert, as he now does, that he was himself bullied. He asserted that his introduction of the draft Framework resulted in seven hours of meetings which involved him sitting in a room being shouted at by business stakeholders, excluding Mr Shaikh. He also asserted that during 2018 he raised the behavior of shouting and interrupting during management meetings and that whilst there were “spikes of improved behaviour, the conduct continues to lapse into one that is confrontational and antagonistic, particularly towards Control function”. In this context he asserted that:

“Whilst I have been able to respond in kind when being shouted at or interrupted, my colleagues in Shariah and Legal are more sensitive and often overwhelmed. Despite my not caving into the aggression from business colleagues, the confrontational environment does take its toll ...”

173. In the second Speak Up Mr Mahmood also recounted his version of the Shariah conflict of interest issue. He also raised his concern that none of the senior members of GIB, including himself, had been included in the Islamic Banking Group Governance Forum. He also complained that Mr Shaikh continued to refer to him as a married man even though he was divorced, which he found humiliating. He also asserted that Mr Vaselli and Mr Mubeen had each told him that they were so unhappy with their working environment that they were thinking of leaving the Bank. Mr Mahmood did not make any allegation of discrimination on the ground of race or nationality or assert that he had been subjected to bullying, intimidation or harassment in either of the complaints he submitted to senior management. Although Mr Mahmood referred to the bullying of Mr Vaselli, he did not assert that he had been bullied himself. Further, although he complained about references to his marriage as being humiliating, he made no reference to any mocking of his British accent or disparagement of his nationality. While he did refer to inappropriate behaviour by members of the GIB team during meetings including laughter, shouting and interrupting, confrontation and antagonism, he expressly asserted that he was able to “respond in kind”.

174. In his witness statement Mr Mahmood asserts that he was prevented from raising concerns about bullying behaviour as a discussion point on the relevant Group Islamic Banking Produce Risk Forum and at the Islamic Banking Governance and Control Forum by Mr Shaikh. He asserts that Mr Shaikh insisted that bullying concerns could be discussed at

¹¹⁸ TB 2135.

team meetings, but they never were. He further asserts that he was “not given bandwidth to speak freely at meetings and was prevented from freely pursuing the Compliance agenda”, although no specific instances are given in support of these general propositions. He asserts that he was “continually treated with disdain ... and that the Islamic Banking team did not want to implement changes suggested by a British national”. However, this evidence is expressed in terms of general conclusions, unsupported by any evidence of a specific instance which would sustain the asserted connection with his British nationality, other than a reference, with hindsight, to the anonymous complaints of which he had no knowledge until after these proceedings were commenced.

175. Mr Mahmood further asserts that his relationship with Mr Shaikh was unhealthy because of his British nationality.¹¹⁹ But again, no substantive evidence is offered in support of that proposition.
176. Mr Mahmood explains his failure to refer to racial discrimination in his Speak Ups because he thought to do so would have ended any reasonable prospect of being redeployed within the Compliance function. He asserts that during an interview with the i3 investigation team which investigated his complaints, he told them of the poor treatment that he and Mr Vaselli were subjected to on the basis of nationality, but on the basis that the meeting not be recorded in case the assertions were used against him.
177. Mr Mahmood asserts that his complaints fell within the scope of the Bank’s Speak Up policies and should have been investigated by the Shared Investigations Services team, but instead they were investigated by the Group Financial Crime Compliance Integrated Intelligence Investigations team (“i3”) which operates within the Compliance function. Mr Mahmood asserts that the appointment of i3 to investigate his complaints created a conflict of interest because his complaints related to the shortcomings of senior Compliance staff, although he did not raise this at the time.
178. The i3 team named the investigation “Project Barossa”. Mr Mahmood asserts that the Barossa Valley is a region in Australia well known for the production of shiraz wine, which created an obvious link between him and the disclosures, which were meant to be anonymous.¹²⁰ Mr Mahmood asserts that each of Mr Long and Mr Sabir Ahmed asked him

¹¹⁹ WS 1 [108.6].

¹²⁰ WS 1 [116].

if he had raised the Barossa Speak Up, because they thought there was a connection between the Barossa Valley and Shiraz wine.¹²¹

179. Mr Mahmood also asserts that about two weeks after raising the Speak Ups, Mr Shaikh started making overt references to people raising Speak Ups against him. He became concerned that his identity had been leaked and he advised Shared Investigative Services that he suspected that Mr Shaikh had been informed a Speak Up had been raised against him.
180. Mr Mahmood further asserts that as he was the only person working within Compliance with the GIB team, it would be easy to identify him as the source of any complaint relating to that function, and that a victimisation risk assessment should have been undertaken.
181. For these various reasons Mr Mahmood came to the conclusion that the i3 investigation was flawed substantively and he raised his concerns in that regard on a formal basis.
182. Mr Mahmood asserts that shortly after lodging the Speak Ups, Mr Shaikh stopped communicating with him on a one to one basis, socially and professionally and frequently adopted a loud, aggressive and unfriendly tone in his communications with Mr Mahmood in the presence of others. He asserts that Mr Shaikh shouted at him during a meeting on 14 April 2019. However, a file note which Mr Mahmood made of the meeting on the day it occurred makes no reference to shouting, although it does describe Mr Shaikh as upset and agitated. The file note records that Mr Shaikh expressed his concern that matters that had been discussed at a conduct meeting were not relevant and were a waste of time as he had to meet business targets and such meetings were a distraction. The note records Mr Shaikh asserting that it was for him to decide if and when to engage Legal and Compliance, and that it was his view that Legal and Compliance were following an agenda which was introducing a bad atmosphere within the GIB team.
183. Mr Mahmood asserts that Mr Shaikh frequently referred to a “culture of fear” that he had created and dismissed his concerns. He asserts that at one team meeting recent protests in Karachi were discussed and when Mr Mahmood enquired why people were protesting, Mr Shaikh replied that “compliance was too harsh”, generating laughter amongst other members of the team.¹²² He further asserts that he was excluded from strategy meetings

¹²¹ WS 1 [118.2]./

¹²² WS 1 [121.5].

and not consulted on Compliance issues as he should have been.

184. On 9 July 2019 Mr Mahmood sent an email to Mr Long asserting that he had been advised by members of the Shariah Group that Mr Shaikh had instructed them not to send any more emails in relation to a chain of correspondence relating to recording Shariah rulings and that they should not copy emails to Compliance. He also asserted that two men had told him that Mr Shaikh had instructed them to limit their meeting time with Compliance and not to spend too much time with Mr Mahmood.¹²³ Mr Mahmood also notified the i3 team.
185. Mr Mahmood also asserts that on three occasions at a GIB team meeting on 16 April 2019 Mr Shaikh stated that if anyone wanted to raise a whistleblowing disclosure against him, they were free to do so, and that he was “skilled at handling senior management” and that “if a whistleblowing disclosure was raised against him, he would at most be reprimanded”.¹²⁴ Mr Mahmood asserts that he interpreted this as a ‘thinly veiled threat’. Mr Mahmood made a file note of these assertions on the same day.¹²⁵
186. Mr Mahmood asserts that on 7 May 2019 he was called into Mr Shaikh’s office where Mr Shaikh shouted and screamed at him in an aggressive manner in front of Mr Akbar, as a result of an email Mr Mahmood had sent raising various Compliance issues. Mr Mahmood notified Mr Long orally on 7 May 2019, and by email in writing on 8 May 2019.¹²⁶
187. Mr Mahmood asserts that on 7 May 2019 Mr Shaikh called Mr Long and asked that Mr Mahmood be removed from his position. Mr Mahmood notified the i3 team of this assertion on 14 May 2019.¹²⁷
188. Mr Mahmood asserts that on 30 June 2019 he spoke with Mr De Groote about his concerns in relation to GIB’s engagement with the Shariah function. He further asserts that Mr De Groote was aware of the culture and agreed with the concerns that he had raised but felt that raising those concerns was causing “too much noise”.¹²⁸ Mr Mahmood asserts that during the meeting Mr De Groote alluded to him losing his job. This prompted Mr Mahmood to raise concerns of adverse consequences for him with Mr William Amos, the London based

¹²³ TB 2460.

¹²⁴ WS 1 [121.10].

¹²⁵ TB 2225.

¹²⁶ TB 2304.

¹²⁷ TB 2300.

¹²⁸ WS 1 [122].

Global Head of Strategy, Governance and Core Compliance.¹²⁹

189. Mr Mahmood asserts that Mr Shaikh and Mr Akbar were treating him adversely because the GIB team “did not like the fact that I was British and did not consider myself to be Pakistani”. This conclusory statement is said to be based upon frequent comments about his British pronunciation and accent and frequent derogatory and mocking comments towards the United Kingdom. He asserts that at virtually every GIB team meeting there were references to his British nationality, whereas neither Mr Vaselli nor Mr Ali were subjected to comments about their nationalities or accents (Italian and Indian respectively). He also believes that the adverse treatment he received from Mr Shaikh and Mr Akbar was due to his submission of the 365 feedback against Mr Akbar and the fact that they had learnt about the two Speak Ups.
190. On 29 July 2019 Mr Mahmood was invited to attend a meeting with the BMA¹³⁰ team. Mr Shaikh and Mr Akbar also attended. During the meeting Mr Cuss of BMA said that he had been told that the reason for the lack of diversity in GIB was that the “talent pool for Islamic banking expertise is largely confined to Pakistan”. According to Mr Mahmood, he also informed those at the meeting that BMA had found the Shariah conflict of interest was indeed a conflict of interest which needed to be resolved. Mr Mahmood asserts that on 8 November 2019 Mr Cuss told him that the BMA report required the conflict of issue to be resolved by the end of that year, but the Bank failed to take any action to resolve the issue for over 18 months.¹³¹
191. Mr Mahmood was invited to another meeting to discuss the BMA report. The meeting was held on 5 August 2019 and Mr Mahmood attended by telephone. He asserts that during the meeting Mr Shaikh and Mr Akbar pressured him to support them in allowing the Shariah reporting line to remain with Mr Shaikh and asserted (incorrectly according to Mr Mahmood) that they did not know the difference between Shariah compliance and Shariah advisory.
192. Mr Mahmood asserts that on the following day, Mr Vaselli told him that he had been approached by Mr Akbar after the meeting on 5 August 2019 and that Mr Akbar told Mr Vaselli to tell Mr Mahmood that he was behaving inappropriately and that “he knew how to

¹²⁹ TB 5363.

¹³⁰ Business Model Risk Analysis.

¹³¹ WS 1 [127].

deal with British people even if they had been masters".¹³² Mr Mahmood reported what Mr Vaselli had told him to Mr Ayrton and Mr Buckett of i3 by email on 6 August 2019.¹³³

193. Mr Mahmood asserts that the i3 team decided that it was outside the scope of the Speak Up investigation and therefore referred it to Employee Relations in Dubai for further investigation.
194. Mr Mahmood asserts that the Head of the Employee Relations team in Dubai reports to Ms Al Najjar, who has a close relationship with Mr Shaikh. He asserts that Ms Najjar had failed to take any action in response to Mr Vaselli's complaints of bullying. He also asserts that Mr Shaikh and Mr Akbar were close friends and socialised together.
195. On 5 September 2019 after his return from an extended holiday, Mr Mahmood was interviewed by Ms Tabbara as part of the investigation into the meetings on 5 August 2019. At the conclusion of the meeting Ms Tabbara advised Mr Mahmood that he should relocate from his seat in the GIB office in the interests of his wellbeing and welfare. Mr Mahmood advised that he did not feel a move was necessary. However, on 8 September 2019 he was invited to a meeting with Ms Tabbara and Mr Long, in which he was told unequivocally that he had to relocate to another floor in the building. Mr Mahmood asserts that he protested against the move, but it took place anyway. Mr Mahmood asserts that the relocation ostracized him from the team for which he was responsible and created the sense that he was being punished and frozen out because he had dared to complain. He also asserts that being relocated was a source of professional embarrassment.
196. On 18 September 2019 Mr Mahmood relayed his concerns with respect to the lack of impartiality of the HR team in Dubai with the i3 investigation team in London. He was told that he could only rely upon Employee Relations in Dubai to look into the complaint which had been raised.
197. On 29 October 2019 Mr Mahmood was told that disciplinary proceedings were being brought against him. It was alleged that during the meeting on 5 August 2019 he had made disrespectful comments relating to senior employees in the Bank and had used inappropriate tone and unprofessional language in addressing the attendees at the

¹³² WS 1 [130].

¹³³ TB 2977.

meeting.¹³⁴

198. Mr Mahmood asserts that he was shocked and appalled to be subject to such proceedings and felt even more marginalised and victimised.¹³⁵
199. On 11 November 2019 Mr Mahmood advised the disciplinary panel that he wished to be accompanied at the disciplinary meeting by Mr Vaselli. However, the disciplinary panel advised Mr Mahmood that it would not be possible for Mr Vaselli to accompany him to the hearing. Mr Mahmood asserts that at the hearing he was prevented from calling witnesses or being accompanied by a support person. Prior to the hearing he had provided packs of evidence upon which he relied. Mr Mahmood further asserts that Mr Sharr, who comprised the disciplinary tribunal, showed no interest in a statement provided by Mr Vaselli in relation to the events which took place at the meeting on 5 August 2019.
200. In the latter part of 2019 Mr Mahmood was advised by Mr Long that his performance had been “sub-par” and that he would be subject to a Performance Improvement Plan. He was also advised that he would receive no Total Variable Compensation Payment (i.e bonus) for the year. He was rated 4D in 2019 by Mr Long, by contrast to his ratings of 2C and 3B for the previous two years respectively. He was told that his adverse rating was due to the confrontational nature of the relationship with GIB. Mr Mahmood asserts that these views were tainted by discrimination.¹³⁶
201. Mr Mahmood contrasts his adverse performance review while working with GIB to the positive performance review he received while working in his previous role at the Bank.¹³⁷ He asserts that “the feedback from the Islamic Banking team was tainted by discrimination and my performance reviews became equally skewed”. In support of that assertion he cites Mr Phebey’s observation in February 2019 that “Shiraz needs to grow up if he thinks he is 1A”. 1A is the highest performance rating available, and Mr Mahmood had asserted that he was worthy of that rating.
202. On 18 December 2019 Mr Mahmood met with Mr Amos and Mr Buckett from the i3 team and was told that there had been no findings of any wrongdoing in respect of the two Speak

¹³⁴ WS 1 [139].

¹³⁵ WS 1 [144].

¹³⁶ WS 1 [161]-[162].

¹³⁷ WS 1 [165].

Ups he had lodged. During the meeting Mr Amos advised Mr Mahmood that the victimisation concerns which had previously been raised by him should be dealt with by way of the grievance process.

203. Following further complaints of victimisation by Mr Mahmood, in January 2020 Mr Amos replied to those complaints by suggesting that a grievance should be addressed to Ms Emma Crooks.
204. On 28 January 2020 Mr Mahmood was advised by email from Mr Yeo Su Yn that his most recent complaints relating to victimisation were outside the scope of the Speak Up program and that someone else would contact him in relation to his concerns. The following day Mr Su Yn advised that Employee Relations would review those concerns and that Mr Mahbub had been appointed to investigate Mr Mahmood's complaints.¹³⁸
205. On 2 February 2020 Mr Mahmood was advised that the Disciplinary Hearing had concluded that he had failed to treat colleagues fairly and with respect, and he was given a first written warning for misconduct.¹³⁹
206. After being provided with a recording of the Disciplinary Hearing Mr Mahmood lodged an appeal from its conclusion on 16 February 2020, supported by three packs of evidence. The appeal hearing took place on 31 May 2020. The panel comprised Mr Zulu, the Managing Director of Retail Banking, and Ms Bagwa, the Head of Human Resources UAE.
207. Mr Mahmood asserts that it was obvious during the appeal hearing that the Panel had not considered the evidentiary materials provided by him in support of his appeal and had not listened to the recording of the Disciplinary Hearing.
208. On 7 July 2020 Mr Mahmood was advised that his appeal had not been upheld. He asserts that the advice he received did not address all of his grounds of appeal.¹⁴⁰
209. On 6 February 2020 Mr Mahmood met Mr Mahbub. Following the meeting, Mr Mahbub provided Mr Mahmood with minutes of the meeting.¹⁴¹ Mr Mahmood sent Mr Mahbub his own file note of their conversation.¹⁴² Mr Mahmood also sent Mr Mahbub an edited version

¹³⁸ WS 1 [179].

¹³⁹ WS 1 [180].

¹⁴⁰ WS 1 [190].

¹⁴¹ TB 4045.

¹⁴² TB 4039.

of Mr Mahbub's notes.

210. None of the various versions of notes of the meeting between Mr Mahmood and Mr Mahbub record any complaint by Mr Mahmood to the effect that he was the subject of discrimination or victimisation by reason of his race and/or nationality. Although there is a reference in Mr Mahmood's notes to the lack of cultural diversity within the GIB team, there is no record of any complaint by Mr Mahmood to the effect that he was discriminated against or victimised on racial grounds. Rather, the thrust of his complaints to Mr Mahbub were to the effect that he had been victimised because he had utilised the procedures made available by the Bank to enable employees to raise issues of concern relating to the conduct of their fellow employees, including the Speak Up process.
211. Following the exchange of notes relating to their meeting, Mr Mahbub sent Mr Mahmood an email in which he set out the scope of his review, which was to ascertain whether six specific activities were undertaken in order to victimise Mr Mahmood as a result of him raising Speak Ups. In his witness statement Mr Mahmood asserts that this ignored a number of the victimisation concerns that he had expressed to Mr Mahbub, although his witness statement does not specify which matters are said to have been omitted. In an email of 2 March 2020 which Mr Mahmood sent to Mr Mahbub, he cited an example of omission in relation to Mr Shaikh's alleged instruction to members of GIB to reduce interaction with Mr Mahmood. In that email, Mr Mahmood asserted that there were other critical matters which had been omitted from Mr Mahbub's definition of the scope of his review, but the email does not specify what those matters were.¹⁴³ In the email Mr Mahmood expressed the view that Mr Mahbub's approach was not impartial and suggested that he "hold off" from undertaking his review.
212. On 25 March 2020 Ms Craik sent an email to Mr Mahmood advising that after considering Mr Mahmood's assertion that Mr Mahbub should hold off his review, the Bank had decided to direct him to resume his investigations.¹⁴⁴
213. On 7 April 2020 Mr Mahbub advised Mr Mahmood that he would be willing to review Mr Mahmood's concerns in relation to his 2019 performance rating and the decision to place him on a PIP.
214. On 21 June 2020 Mr Mahmood was invited to a meeting with Mr Long and Mr Abdulla Al

¹⁴³ T 4117.

¹⁴⁴ TB 4172.

Rashdan, HR Business Partner. Mr Mahmood was advised that the Bank wanted him to leave the organisation and proposed that he enter into a Mutual Separation Agreement (“MSA”).

215. On 24 June 2020 Mr Mahmood was advised that Mr Mahbub’s review had concluded that none of his concerns had been established.¹⁴⁵
216. On 7 July 2020 Mr Mahmood was advised by Mr Zulu, Chair of the Disciplinary Appeal Panel, that his appeal had been dismissed.¹⁴⁶ Mr Zulu stated that the Panel had found that Mr Mahmood was not prevented from calling a witness or taking a companion to the hearing, but the companion he had proposed (Mr Vaselli) was not appropriate for reasons which the Panel considered to be valid. The Panel found that Mr Mahmood had been given the option of taking an alternative companion. Mr Zulu further advised that the Panel had established that there was no conflict of interest in relation to the original Panel, and that the process was run in a fair manner according to the policies and procedures of the Bank.
217. On 15 July 2020 the Bank advised Mr Mahmood that the offer to enter into an MSA was withdrawn.¹⁴⁷
218. On 8 September 2020 Mr Mahmood was advised that as part of an ongoing review and restructuring of GSF Conduct, Financial Crime and Compliance, the Bank considered that the stand alone role occupied by Mr Mahmood was no longer required, with the result that his position was at risk of redundancy. The review was part of an overall review of the Bank’s structures with a view to reducing costs known as Project ICEE.¹⁴⁸
219. On 7 October 2020 Mr Mahmood was advised that his role would be made redundant and replaced with a new role of “Head of Conduct, Financial Crime and Compliance Advisory, Financial Markets AME and Group Islamic Banking”. Mr Mahmood was advised of the terms upon which his employment would be terminated, and was given three months’ notice of termination.¹⁴⁹
220. The Bank’s policy is to declare a position vacant and readvertise that position if the role

¹⁴⁵ TB 4433.

¹⁴⁶ TB 4499.

¹⁴⁷ TB 4484.

¹⁴⁸ TB 4579.

¹⁴⁹ TB 4606.

changes by more than 30%. Mr Mahmood asserts that he believed at the time that the assessment that the new role involved a change of more than 30% to the role was manufactured (impliedly in order to remove him from the Bank) and in his witness statement relies upon an email which referred to an exchange in November 2019 recording an urgent reassessment of the impact of the restructured role upon Mr Mahmood's position.¹⁵⁰ The email exchange referred to the likely timing of providing Mr Mahmood with an "at risk letter".

221. Mr Mahmood applied for the new role and on 8 December 2020 was advised that his application had been unsuccessful. Mr Mahmood asserts that he was the only person sufficiently qualified to undertake the new role.¹⁵¹ He asserts that the successful applicant, Mr Patel, had no detailed knowledge of Islamic banking, whereas he had knowledge of both Islamic banking and financial markets.

222. Mr Mahmood's employment terminated on 8 January 2021. He asserts that he was subjected to detrimental treatment by the Bank even after termination of his employment in that:

- (a) Following the expiration of his employment visa he was required to depart the UAE, and when he requested an "end of service letter" he was advised that he could collect the letter from the Bank after his last working day; and
- (b) He was not given clarity with respect to the payments made to him and in particular, no breakdown of the amount which he was paid, despite repeated requests.

223. Mr Mahmood was unable to gain other employment until 16 October 2023. He asserts that it took him a long time to secure another role because prospective employers became aware of the proceedings which he had brought against the Bank.¹⁵² Mr Mahmood asserts that when taking up his new employment, there were still difficulties obtaining his end of service letter from the Bank.

224. Mr Mahmood's first witness statement ends with a series of general assertions relating to the motivation of the GIB team, including the assertion that they did not like the fact that he considered himself to be British and not Pakistani. He further asserts that when he raised

¹⁵⁰ TB 3684.

¹⁵¹ WS 1 [216].

¹⁵² WS 1 [222].

the Speak Ups, he was treated appallingly and believes that his nationality and race were factors in his treatment, as he was not seen as “one of their own” by either GIB or Compliance.

225. Mr Mahmood’s second witness statement is purely responsive to the witness statements served by the Bank (appropriately). Portions of the statement are concerned with matters of detail relating to banking operations which do not bear directly upon the material issues in this case, and it is unnecessary to refer to them in these reasons.
226. In relation to the draft Framework which Mr Mahmood prepared, Mr Mahmood reiterates that Mr Long advised him to send the draft Framework to Mr Fanucci and Mr Gilbert.¹⁵³ In response to Mr Long’s assertion that other attendees at the meetings relating to the Framework had told him that Mr Mahmood also shouted, he denied that assertion. In response to Mr Long’s assertion that he did not recall anyone mocking Mr Mahmood or referring to his British accent or Mr Mahmood telling him about those things, Mr Mahmood asserts that he did tell Mr Long about the behaviour, although as the conduct was so frequent he would not mention it to Mr Long on each and every occasion it occurred.¹⁵⁴
227. Mr Mahmood denies Mr Long’s assertion that Mr Mahmood would be one of the main beneficiaries of a change to the Shariah reporting line, and that his calls for change may have been driven by an ulterior motive.¹⁵⁵ He denies suggesting that if there was a change in the reporting line, it should be to him.
228. In his second statement Mr Mahmood reiterates his assertion that Mr Long reviewed and approved him sending the 365 feedback in relation to Mr Akbar.
229. Mr Mahmood confirms that he gave himself a “1A” rating in each of his year end reviews for 2017 and 2018.¹⁵⁶
230. Mr Mahmood contests Mr Long’s assertion that he first became aware of the complaints made against Mr Mahmood in January 2019 on 16 June 2019, relying upon a document provided in disclosure to support his assertion.¹⁵⁷ He also disputes Mr Long’s assertion that

¹⁵³ WS 2 [6.11.1].

¹⁵⁴ WS 2 [6.14].

¹⁵⁵ WS 2 [6.16].

¹⁵⁶ WS 2 [6.21].

¹⁵⁷ WS 2 [6.24].

he used a desk on the Compliance floor from time to time, asserting that he only ever sat in GIB until relocated against his will.¹⁵⁸ Mr Mahmood responds to evidence given by Mr Buckett, relating to a question which was asked of Mr Mahmood in the course of the investigation in the following terms:

“Is there anything that’s indicated that this is personal or do you think ... [that] anyone trying to do your job would have found themselves in the same situation?”

Mr Mahmood refers to the transcript of the interview for context. As there is no reference to discrimination on the ground of race or nationality in the transcript of the interview, Mr Mahmood stated in his witness statement that:

“The issue of race and discrimination is a deeply personal and complex area for me and this was not something I was comfortable raising on an introductory call with two individuals that I had never met in person. I was also conscious of the implications for my role of raising an allegation of discriminatory conduct with the i3 Investigation Team. ... I was very conscious that any such allegation would significantly damage any chance of maintaining a relationship with the Islamic Banking Management Team and would have a significant likelihood of affecting my employment ...”

231. Mr Mahmood asserts that in late June 2019 in the course of a meeting with Mr Buckett and Mr Ayrton he stated that the animosity towards him from members of GIB was related to him being a British Asian and provided them with details of the types of discriminatory behaviour he had experienced, including “a steady and continuous stream of comments about my accent and pronunciation, frequent references to him being British and negative comments more generally about the United Kingdom which sometimes strayed into references about Britain’s colonial rule over India”.¹⁵⁹ Mr Mahmood asserts that one or other of Mr Buckett or Mr Ayrton expressed sorrow at his experience and assured him that the matter would be looked into. Mr Mahmood notes that while the meeting was not recorded, notes were taken, but no documentation or record of this meeting has been disclosed.
232. In response to Mr Buckett’s evidence to the effect that on 15 July 2019 Mr Mahmood confirmed that he did not believe that he had been subject to any victimisation, Mr Mahmood states that he does not recall making such a comment and queries why, if he did make such a comment, Mr Ayrton sent an email relating to his victimisation concerns shortly after the meeting.¹⁶⁰

¹⁵⁸ WS 2 [6.26].

¹⁵⁹ WS 2 [7.9].

¹⁶⁰ WS 2 [7.10].

233. In relation to Mr Buckett's assertion that Mr Mahmood had admitted that he had also lost his temper which had led to him shouting and interrupting and speaking over others, Mr Mahmood asserts that he told Mr Buckett that this had occurred on one specific occasion – not generally.¹⁶¹
234. Mr Mahmood denies Mr Shaikh's assertion that he had expressly asked Mr Mahmood not to circulate a draft of the Framework to Mr Fanucci and Mr Gilbert on 27 November 2018.¹⁶²
235. Mr Mahmood denies Mr Shaikh's description of his comments to the meeting on 5 August 2019 as an "outburst" and points out that he joined the call while in the waiting room for a dental appointment and asserts that he spoke in a normal conversational tone.¹⁶³
236. Mr Mahmood denies Mr Phebey's assertion that he had used a Speak Up as a threat in his dealings with the Hong Kong office of the Bank. He asserts that the prospect of raising a Speak Up was warranted in light of the problematic behaviour he was experiencing. He also denies any implication from Mr Phebey's assertions to the effect that the timing of his 365 feedback was related to the decision to be made by Mr Shaikh with respect to Mr Akbar's bonus.¹⁶⁴
237. In response to Mr De Groote's statement, Mr Mahmood asserts that in a meeting in Mr De Groote's office on 30 June 2019 he was told that his position was going to be advertised.¹⁶⁵ Mr Mahmood asserts that on 14 July 2019 he emailed Mr Amos setting out the conversation that had taken place between himself and Mr De Groote, although that email makes no reference to any statement by Mr De Groote to the effect that Mr Mahmood's position would be advertised. Mr Mahmood simply told Mr Amos that during his conversation with Mr De Groote he "became concerned about adverse consequences following the Speak Up I have raised".¹⁶⁶
238. In response to the statement submitted by Ms Al Najjar, Mr Mahmood accepts that he did not show Mr Shaikh a copy of the 365 feedback before it was sent, but asserts that he was not told to do so, and that no-one told him that he should make Mr Shaikh aware of the

¹⁶¹ WS 2 [7.12].

¹⁶² WS 2 [8.5].

¹⁶³ WS 2 [8.10].

¹⁶⁴ WS 2 [10.2].

¹⁶⁵ WS 2 [11.3.3].

¹⁶⁶ TB 5363.

contents of the feedback before sending it.¹⁶⁷

Oral evidence

239. Mr Mahmood gave evidence over the course of three days.¹⁶⁸ I formed an unfavourable view of Mr Mahmood's evidence at the time it was given. Subsequent detailed analysis of his testimony, viewed in the context of contemporaneous documents and the evidence of others, has caused me to conclude that his evidence was most unsatisfactory in many respects. The reasons for that conclusion follow, in the form of an analysis of his oral testimony in the order in which it was given.
240. Mr Mahmood confirmed that Mr Zunaid Patel was his line manager during the time he worked in financial markets with the Bank before moving to GIB¹⁶⁹. The significance of this evidence is that Mr Patel and Mr Mahmood were the two candidates interviewed for the position created following the restructure of Mr Mahmood's position. Mr Patel was the successful applicant.
241. Mr Mahmood accepted that the GIB business unit operated a "leverage model" which meant that most compliance risks were managed by business and compliance teams in the country in which the business was being written with support and assistance provided by GIB compliance where necessary.¹⁷⁰
242. Mr Mahmood confirmed that his position in GIB was classified as Band 4 and did not place him within the Group Compliance management team. He reported to Mr Long, who was a Band 3.¹⁷¹ Mr Mahmood confirmed that when he was appointed to a permanent position in Financial Markets his role was Band 5, and he reported to Mr Patel who was a Band 4.¹⁷²
243. Mr Mahmood stated that he was not content that his role was classified as a Band 4 when other global heads of compliance were classified as Band 3. He expressed his discontent to Mr Long.¹⁷³

¹⁶⁷ WS 2 [14.1.3].

¹⁶⁸ His testimony occupied a total of a little under 3 full hearing days.

¹⁶⁹ Day 1 TS 80.

¹⁷⁰ Day 1 TS 83.

¹⁷¹ Day 1 TS 83.

¹⁷² Day 1 TS 84-5.

¹⁷³ Day 1 TS 87.

244. Mr Mahmood was taken to the job description which he and Mr Long signed in December 2017 when he took up his role in GIB. Mr Mahmood stated that he was “made to sign” the document. When asked whether he signed the document under duress, Mr Mahmood stated that he expressed discontent to Mr Long in relation to the classification of the position as a Band 4 and was told that he needed to sign the job description, which he did.¹⁷⁴

245. It is inherently implausible that Mr Mahmood would have complained about the classification of the role for which he had applied and to which he was promoted from his position as a Band 5 at the time he took up the role. His initial assertion that he was forced to sign the job description was an early example of his enthusiasm for attributing poor conduct and improper motives to many of the officers at the Bank with whom he dealt and which was a dominant characteristic of his testimony.

246. Page 1 of the job description specifies that the occupant of the role was to:

“Maintain constructive and effective relationships with business heads, business chief operating officers and be the interface between compliance heads and the Islamic Banking CEO and Islamic Banking Management Committee.”

When asked whether Mr Mahmood saw that as a primary duty or responsibility he replied that he saw it was “one of all the responsibilities”.

247. The second page of the job description required the occupant of the position to:

“Build and maintain an effective and constructive relationship with all key business and functional stakeholders that is based on trust, capability and integrity, providing timely, responsive and quality regulatory compliance advice and guidance to enable the business and functions to meet/achieve their strategic tactical objectives.”

When asked whether that was a “fundamental part” of the job description, Mr Mahmood observed that it was not more fundamental than any of the other responsibilities specified in the job description.

248. By these answers Mr Mahmood was clearly endeavouring to downplay the significance of the express requirement to maintain effective and constructive relationships with business heads in a context in which he was well aware that the Bank asserted that he had failed to fulfil these obligations. However, he ultimately accepted that these requirements were “key

¹⁷⁴ Day 1 TS 87.

elements of the job”.¹⁷⁵

249. Mr Mahmood confirmed that the Shariah Department headed by Mr Mubeen did not have the power to give approval for Shariah services, product or transactions – that had to be given by the Shariah Supervisory Committee (“SSC”) which consisted of Shariah scholars who were not employees of the Bank, although some limited delegated powers had been given to the Shariah Department.¹⁷⁶
250. Mr Mahmood asserted that having Mr Mubeen, as Head of Shariah, reporting to Mr Shaikh as head of GIB, was a breach of an applicable law or regulation in the DIFC.¹⁷⁷ However, he accepted that the organisational structure which was approved by the Dubai Financial Services Authority (“DFSA”) in 2010 when a license to offer Shariah products was obtained clearly showed the Head of Shariah reporting to the Head of Islamic Banking. This is another example of Mr Mahmood unjustifiably disparaging the Bank. In this context, Mr Mahmood refused to accept that the SSC was an independent and rigorous approval body, and that it would be difficult for the Head of Shariah and the Head of GIB to market a service or product which did not comply with Shariah principles.¹⁷⁸
251. Mr Mahmood was questioned about the draft Compliance Framework which he prepared and provided initially to Mr Fanucci and Mr Gilbert before sending it to GIB. In that context he was asked whether the section on operational risk which he had prepared was very critical of GIB’s historic approach to compliance. He replied:

“Yes, the draft may have been critical. I am not in a position to say.”

Mr Mahmood then accepted that the portion of the draft in which it was stated that the implementation of the Operational Risk Framework in GIB had been “piecemeal and sporadic” as compared to other business segments within the Bank were words he had written. However, when asked if those words were critical of GIB, he replied:

“No, I think it was a very fair and accurate description of what happened.”

He again refused to agree that his words were critical of GIB’s approach to compliance,

¹⁷⁵ Day 1 TS 90.

¹⁷⁶ Day 1 TS 98.

¹⁷⁷ Day 1 TS 106.

¹⁷⁸ Day 1 TS 107

when plainly they were.¹⁷⁹

252. I then asked Mr Mahmood why he disagreed with the proposition that his words were critical of GIB. He answered by observing that he was relatively new to his role, which was unresponsive to the question asked. I then put to Mr Mahmood that something could be critical as well as being fair and accurate, to which he agreed. I then asked him whether he accepted or rejected the proposition that his language was critical of GIB and he replied “the language used could have been seen to be critical” – a somewhat equivocal response to a straight forward question.¹⁸⁰

253. It is reasonable to infer, and I do infer, that Mr Mahmood was aware when giving this evidence that the questions were intended to set the foundation for a more general proposition that he was responsible for the conflict which emerged between him and members of GIB. His refusal to accept a simple and obvious proposition in this context reflects poorly on his credibility.

254. When it was put to Mr Mahmood that it came as no surprise to him that members of the GIB Management Team would be upset by him sending the draft Framework to Mr Fanucci and Mr Gilbert before sending it to them, he replied:

“I think it's fair to say I thought their reaction would not be positive, yes.”¹⁸¹

255. However, Mr Mahmood later accepted that GIB would be upset about his comments with respect to the Shariah conflict of interest, and “extremely upset that a document like this had left GIB without them having reviewed it, commented on it and changed it”.¹⁸² When asked whether he accepted that GIB would be very upset by the fact that the document had been sent to Mr Fanucci and Mr Gilbert without them being aware of it, he rejected the proposition that they would be “very upset”, having just stated that they would be “extremely upset”. Mr Mahmood then denied that he sent the draft to Mr Fanucci and Mr Gilbert before sending it to GIB knowing what upset it would cause. He then said that he knew there would be upset, but that did not factor into his decision to send the draft to Mr Fanucci and Mr Gilbert.¹⁸³

256. The initial equivocation and subsequent inconsistencies in Mr Mahmood’s evidence on this

¹⁷⁹ Day 1 TS 117-8.

¹⁸⁰ Day 1 TS 118.

¹⁸¹ Day 1 TS 119.

¹⁸² Day 1 TS 120-1.

¹⁸³ Day 1 TS 121-2.

topic reflect poorly on his credibility generally.

257. In this context when asked again about the express requirement of his job description to build strong and constructive relationships with GIB, Mr Mahmood volunteered the observation that this obligation was “amongst other things” – a clear attempt to diminish the significance of that express obligation.¹⁸⁴ However, Mr Mahmood accepted that the success of his role depended entirely on him building a strong and constructive relationship with GIB.¹⁸⁵ When, in that context, Mr Mahmood was asked whether he agreed that it was unwise to send a Framework outside GIB before asking GIB for feedback, he replied:

“It’s an interesting question.”

He then elaborated on that answer by emphasising that Mr Long had approved sending it to Mr Gilbert and Mr Fanucci before it went to GIB, and further observed “it would have been a quieter life for me, but it wouldn’t have been the right thing to do”.¹⁸⁶

258. It is evident from this and other evidence that Mr Mahmood took the view that he should rigorously perform his Compliance function irrespective of the impact which that had upon his relationship with GIB.

259. Mr Mahmood asserted that in the meetings at which the draft Framework was discussed there were strongly held opinions on both sides but “there was a level of vitriol in what was directed towards me that was over and above professionalism” and while strong views were expressed “one side, i.e mine, expressed them professionally - one side expressed them with extreme hostility and vitriol”.¹⁸⁷

260. When asked, Mr Mahmood asserted that there was frequent mocking of his British accent. When it was put to him that he never complained to anybody about his British accent being mocked he asserted that he mentioned it to Mr Long on multiple occasions.¹⁸⁸

261. Mr Mahmood asserted that after discussing Mr Akbar’s draft revision of the Operational Risk Framework with Mr Long, they agreed that it was inappropriate for a stakeholder with a

¹⁸⁴ Day 1 TS 123.

¹⁸⁵ Day 1 TS 124.

¹⁸⁶ Day 1 TS 125.

¹⁸⁷ Day 1 TS 129.

¹⁸⁸ Day 1 TS 130. Mr Long denied this, and there is no documentary record of any complaint by Mr Mahmood to this effect.

vested interest to rewrite the whole section relating to Operational Risk, so it was rejected. When asked whether he explained that to Mr Akbar, Mr Mahmood replied “I am sure I would have tried to mollify him because he was very upset”.¹⁸⁹

262. Mr Mahmood was taken to an email to his superiors in Compliance in which he circulated a revised draft of the Framework observing that there had been “extensive and robust discussions around two sections of the paper”. When it was put to Mr Mahmood that he did not mention anything in the email about references to his race or nationality being a factor in the discussions he replied “why would I?”.¹⁹⁰
263. When asked about the introduction of an assertion to the effect that the Shariah conflict of interest “may be a perceived conflict or an actual conflict”¹⁹¹ in a later version of the draft Framework, Mr Mahmood asserted that he was subjected to significant pressure to insert those words.¹⁹²
264. Mr Mahmood was taken to an email in which he emphasised the importance of the maintenance of the anonymity of the Speak Up process.¹⁹³ It was put to Mr Mahmood that this position is entirely inconsistent with his complaint that the Bank’s failure to investigate and ascertain the identity of those who lodged anonymous Speak Ups against him and discipline those persons was unlawful race discrimination. Mr Mahmood maintained his assertion that the failure to investigate the Speak Ups was an act of discrimination against him, but was unable to reconcile that position with the assertions made in his earlier email with respect to the guaranteed anonymity of the Speak Up process.¹⁹⁴
265. Mr Mahmood was taken to an email from Mr O’Donnell to him in which Mr O’Donnell commented on the revised draft Framework.¹⁹⁵ In the email Mr O’Donnell observed, twice, that the document should be forward looking rather than a retrospective discussion on gaps or past failings. In cross-examination Mr Mahmood denied that Mr O’Donnell was suggesting that the draft should not be critical of past conduct but constructive and forward looking. That denial is implausible, given the obvious inferences properly drawn from the observations

¹⁸⁹ Day 1 TS 133.

¹⁹⁰ Day 1 TS 137.

¹⁹¹ TB 1220.

¹⁹² Day 1 TS 138.

¹⁹³ TB 2157; Day 1 TS 142-3.

¹⁹⁴ Day 1 TS 144.

¹⁹⁵ TB 1423.

made by Mr O'Donnell.¹⁹⁶

266. Mr Mahmood was asked whether Mr Long had repeatedly made the point that the Shariah reporting line to the Head of GIB had been approved by the DFSA at the time the Bank's licence was granted. Mr Mahmood replied:

"I believe it is impossible for him to have made that point to me repeatedly."

He was then asked whether Mr Long had made the point to him once. He answered:

"When he saw the very first draft, which did not talk about perceived conflict of interest but talked about conflict of interest, if this proposal had been approved by DFSA ... he should have told me "Shiraz remove it"."¹⁹⁷

267. This is an example of Mr Mahmood's tendency to advance argument rather than respond directly to simple questions. There are many other examples – one being shortly after the passage set out above, when Mr Mahmood was repeatedly asked whether Mr Long told him that he did not consider the Shariah Conflict to be an actual conflict but a potential conflict. Mr Mahmood did not answer the question directly, when it was put to him a number of times and responded with argumentative assertions, such as the unsubstantiated assertion that the reporting line breached local law.¹⁹⁸

268. I directed Mr Mahmood to listen carefully to the questions that were put and answer the question asked, without proffering argument in support of that answer. Mr Mahmood accepted that direction for a short while, and denied that Mr Long had told him that he did not think the Shariah reporting line was a significant issue. However, very shortly thereafter, Mr Mahmood relapsed into argumentation, asserting that Mr Long cannot have said that he did not believe that the reporting line was in breach of any local law or regulation because in fact it was. It was clear that despite my direction Mr Mahmood was incapable of distinguishing between the question of what was said by Mr Long to him, and the question of whether what was said was correct. His propensity for argumentative answers characterised his testimony.¹⁹⁹

269. Mr Mahmood was then asked which law the reporting line breached and he answered that it did not breach any law of which he was aware. However, he did not agree with the

¹⁹⁶ Day 1 TS 148-9.

¹⁹⁷ Day 1 TS 154.

¹⁹⁸ Day 1 TS 157.

¹⁹⁹ Day 1 TS 158.

proposition that it did not breach any regulation but when asked which regulation he thought it breached and whether he explained this to anybody at the time, he answered:

“I explained at the very start when the Framework document was created.”

However, it was not put in writing.²⁰⁰ Given the controversy which engulfed the issue of the Shariah reporting line, it is inconceivable that Mr Mahmood would not have written somewhere that the reporting line constituted a breach of regulation, identifying the regulation, if that is in fact the case.

270. Mr Mahmood’s evidence that the reporting line breached a regulation which he is unable to identify but which he explained orally at the time the Framework document was created but failed to record anywhere in writing is utterly implausible in the context of the heated disagreements which followed in relation to the Shariah Conflict issue. I do not accept the evidence. I conclude that when Mr Mahmood gave that evidence, he was searching for any argument he could think of to sustain his position. It is another example of testimony which reflects poorly on his credibility.
271. Another example is provided by his response when I enquired how he was able to reconcile his assertion that the reporting line was a breach of DFSA regulation with the fact that DFSA approved the reporting line. He asserted that this was because of a lack of understanding of Islamic banking, inferentially on the part of the DFSA. In other words, Mr Mahmood was asserting that the DFSA do not understand Islamic banking well enough to understand that the reporting line was a breach of its own regulations. However, as Mr Mahmood had no involvement with the application for the licence in 2010, it is clear that this was sheer speculation on his part, advanced argumentatively in order to sustain his untenable position.²⁰¹
272. Mr Mahmood emphatically denied that he had proposed that the Head of Shariah should report to him or that his approach to the Shariah conflict of interest was motivated by a desire to improve his Banding status. However, he accepted that if the reporting line was changed to report to him, it would have helped his argument that his position should be re-rated as a Band 3 instead of a Band 4.²⁰² He also accepted that he raised his discontent with his

²⁰⁰ Day 1 TS 159.

²⁰¹ Day 1 TS 160-1.

²⁰² Day 1 TS 165.

position being classified as a Band 4 with Mr Long on a number of occasions.²⁰³

273. Mr Mahmood was questioned about his disagreement with Mr Haris Law of the Hong Kong branch of the Bank in relation to the financial cap imposed on Islamic Banking in that branch. Mr Cook was Head of Regional Compliance for the Far East. In that context, Mr Mahmood had sent an email to Mr Cook in Hong Kong, copied to Mr O'Donnell in which he suggested a call to try and resolve the issue between himself and Mr Law "rather than raise a Speak Up at this stage".²⁰⁴ When it was put to Mr Mahmood that Speak Ups were for serious grievances, he responded that they had been explained to him as "a mechanism to raise a challenge where you didn't want repercussions".²⁰⁵ Mr Mahmood denied that threatening a Speak Up in the context of a disagreement like this was unreasonable, but clearly Mr Cook had a different view when he forwarded the email to Mr O'Donnell "mainly because of the seriousness of the tone and implications of Shiraz's email".²⁰⁶

274. It is clear that Mr Phebey took a similar view. After Mr Cook forwarded Mr Mahmood's email to him, Mr Phebey observed in his reply to Mr Cook:

"Shiraz needs to amend his engagement. Whatever his excuse is, his style has now annoyed both you and I, who are fairly relaxed and well travelled (and let's not be shy, senior) Compliance Officers, and if he can annoy us, many more people will not like his disposition either. He has annoyed my team, and I also hear noise when I speak to that region too. We need to get this feedback to Adam [Long] as his manager. His Speaking Up comment is totally out of line and needs to be discussed with him. ... He should not use it as a threat, and as a senior Compliance colleague I would be expecting him to collaborate by bringing in management to resolve rather than using that channel. He is clearly not trying to hide the provenance of the complaint (himself) so why would he invoke the formality and process involved in a SU rather than just address the issue at the right level?"²⁰⁷

275. It was put to Mr Mahmood that this controversy had nothing to do with the GIB team in Dubai and caused a number of senior managers to express concerns with respect to his communication style. Mr Mahmood replied:

"I understand that there are select individuals that have written contemporaneous concerns, but I wouldn't say there was a large number."²⁰⁸

²⁰³ Day 1 TS 166-7.

²⁰⁴ TB 973.

²⁰⁵ Day 1 TS 172.

²⁰⁶ TB 971.

²⁰⁷ TB 970.

²⁰⁸ Day 1 TS 176.

Mr Mahmood asserted that:

“I do think there is something not right with very senior individuals who seem to have created a collective view. I don’t accept that was done independently, so yes. Contemporaneously very few. Subsequent now there seems to be a vocal jungle of comment.”²⁰⁹

276. The email exchange to which I have referred reveals a sequence of email communications between senior Compliance Officers in distant geographical locations. None of the emails suggest any discussion took place between those officers before their emails were sent. Mr Mahmood’s unjustified assertion of collusion is an argumentative and speculative response to contemporaneous evidence which places him in a bad light.

277. In this context I asked Mr Mahmood whether Mr Cook was a member of the group which had created a collective view. He replied:

“In relation to this particular issue I do think Mr Cook was wrong in his assertions, sir.”²¹⁰

When I pointed out that this response was not an answer to my question, Mr Mahmood stated:

“I believe possibly yes.”

When I asked Mr Mahmood what the basis for that belief was, he replied:

“He was very good friends with Mr Phebey. They were very good friends that went back a long way.”

278. When I pointed out that Mr Cook’s email to Mr O’Donnell preceded his email to Mr Phebey, he replied “I don’t know the timeframe”.²¹¹

279. Mr Mahmood’s implausible and unjustifiable assertions of collusion amongst senior managers of the Bank reflect poorly on his credibility.

280. I then asked Mr Mahmood why he copied Mr O’Donnell into his email to Mr Cook. He replied that he thought Mr O’Donnell was Mr Cook’s Manager. When I asked why he thought it appropriate to bring Mr Cook’s Manager into the issue, he replied “frustration I believe”. When I asked whether he was frustrated with Mr Cook or whether his email to Mr Cook was

²⁰⁹ Day 1 TS 177.

²¹⁰ Day 1 TS 178.

²¹¹ Day 1 TS 178-9.

his first line of communication to him, he replied:

“It wasn’t personal to Mr Cook sir.”

When I pointed out to him that this was not an answer to my question, he confirmed that he did not believe he had previously corresponded with Mr Cook in relation to this issue, and that he was going above Mr Law’s head to Mr Cook. I then suggested to Mr Mahmood that copying in Mr Cook’s Manager to the email was a form of intimidation. He replied:

“It could be seen as such sir.”

When I asked Mr Mahmood whether he did it for that purpose, he replied:

No, I did it to try to get a result.²¹²

281. I then asked Mr Mahmood whether he thought Speak Up was an appropriate mechanism where there was a professional disagreement between two officers in relation to a business course that should be followed. He replied:

“My concern at that point was that the comments that were made to me by Mr Law were just inappropriate really and I didn’t think there was a rationale for him to prevent me from launching the product – prevent Islamic Banking from launching the product.”

Because of the unresponsive nature of that answer, I put to Mr Mahmood that he and Mr Law did not agree on whether there should be a financial limit in the credit approval document and he, in effect, agreed to that proposition.

282. Mr Mahmood also agreed with the proposition I put to him to the effect that Speak Up was a mechanism which was appropriately used in relation to some form of misconduct or inappropriate behaviour. I then asked Mr Mahmood why he had referred to that mechanism in the context of the professional disagreement with Mr Law. He replied:

“Mr Winters, the Group CEO, had on or around that time issued a number of communications about wanting to change the culture of the Bank, improving efficiencies, challenge issues like this where there is prevention of business, and there was a lot going on in the organisation at the time around Speak Ups. Just kind of that is the mechanism you should use.”²¹³

283. That answer provides no justification for Mr Mahmood’s threat to use a form of grievance mechanism that was appropriate to misconduct or inappropriate behaviour in the context of

²¹² Day 1 TS 179-180.

²¹³ Day 1 TS 181-2.

a professional disagreement with a colleague.

284. The observations made by Mr Phebey in relation to Mr Mahmood's "engagement" were put to him and he was asked whether they were a valid critique. He replied "it could be seen as such, yes". When asked why he could not simply accept that Mr Phebey's view was valid, he replied:

"Because this does not reflect the conversation I had with my Manager about this. It's basically Mr Law talking to his Manager, Mr Cook talking to his friend, Mr Phebey. There is no reference in the documents to me talking to my Manager in subsequent correspondence regarding it."²¹⁴

285. That answer is difficult to reconcile with Mr Mahmood's acceptance that Mr Long told him that he should not have raised a Speak Up.²¹⁵

286. When Mr Long's evidence to the effect that he spoke regularly with Mr Mahmood about his confrontational style of communication was put to him, he rejected that "wholeheartedly and totally".²¹⁶

287. Mr Mahmood asserted that when Mr Phebey visited Dubai on 14 March 2018 he reprimanded him in relation to the way he had handled the issue in Hong Kong.²¹⁷

288. Mr Mahmood accepted that in an email which he sent to Mr Long on 21 November 2018 referring to the need to raise the financial cap on Shariah Banking out of Hong Kong, he was suggesting that he had been right all along in relation to this issue.²¹⁸

289. When it was put to Mr Mahmood that senior management in Compliance were genuinely and reasonably concerned, on legitimate grounds, about the manner in which he raised challenges with his colleagues, Mr Mahmood denied the proposition.²¹⁹ He later qualified that answer by saying:

"They can have a concern but I don't believe it was a legitimate concern in the wider context of my work."²²⁰

²¹⁴ Day 1 TS 187.

²¹⁵ Day 1 TS 188.

²¹⁶ Day 1 TS 189.

²¹⁷ Day 1 TS 190-1. Mr Phebey denies this.

²¹⁸ TB 2113; Day 1 TS 192.

²¹⁹ Day 1 TS 193.

²²⁰ Day 1 TS 192-3.

290. I draw the following conclusions from Mr Mahmood's evidence on this topic:

- (a) The issues which arose were entirely unconnected with GIB, and therefore cannot have been connected with any discrimination or harassment on the ground of race or nationality emanating from GIB;
- (b) Mr Mahmood escalated a professional disagreement with a colleague to that colleague's Line Manager, (Mr Cook) and Mr Cook's Line Manger (Mr O'Donnell) in an email which contained a threat to utilise a grievance mechanism to raise anonymous complaints with respect to misconduct;
- (c) Mr Mahmood sought to explain the consistent adverse reaction which his superiors had to this conduct with an unjustified assertion of collusion which is contrary to the evidence in the form of the emails; and
- (d) Mr Mahmood has no insight into the impact which his aggressive and intimidatory response to professional disagreements with colleagues had upon his working environment or his capacity to discharge his responsibilities.

291. In further cross-examination on this subject Mr Mahmood stated that he did not know Mr Law and had very little dealings with him, but he considered his written comments to be unreasonable. The lack of any explanation or apparent justification for that view suggests that Mr Mahmood is quick to find fault with those who disagree with his views.²²¹

292. Mr Mahmood reiterated that he complained to Mr Long that he was being bullied or discriminated against by GIB team members because of his race and/or nationality.²²² When it was again put to Mr Mahmood that Mr Long raised Mr Mahmood's approach to communication with his colleagues on a number of occasions during their weekly meetings Mr Mahmood replied:

"I told you yesterday he did it once in my appraisal."

In his next answer he qualified that position by saying that over the three year period of his meetings with Mr Long, the issue was raised "not in a problematic sense that you are portraying".²²³ In his next answer, he conceded that the topic of his communications with

²²¹ Day 2 TS 2

²²² Day 2 TS 12. Mr Long denies this.

²²³ Day 2 TS 13.

his colleagues was discussed over that three year period. Shortly thereafter he asserted that the issue of his communication with his colleagues never came up as a developmental issue in his weekly one to one meetings and only came up once in his 2018 appraisal.²²⁴ The inconsistencies in these answers is obvious and detracts significantly from the weight of his evidence.

293. Mr Mahmood stated that when he submitted the 365 feedback on Mr Akbar he was not certain that negative feedback would have an impact upon Mr Akbar's annual performance appraisal and did not give the matter much thought.²²⁵ Mr Mahmood asserts that he was told by Mr Phebey and Mr Gilbert that the 365 feedback was the most appropriate mechanism through which to tackle the issues involving Mr Akbar. He also states that when he told Mr Long what he was proposing to do, Mr Long told him to let Mr Shaikh know that the 365 feedback was being submitted. Mr Mahmood accepted the proposition that providing feedback about a senior member of the management team in the business unit that he was meant to be supporting had to be done sensitively.²²⁶ Mr Mahmood confirmed that Mr Akbar had no warning that the 365 feedback was coming before it was lodged and copied to Mr Shaikh. Mr Mahmood denies that Mr Long told him to clear the feedback with Mr Shaikh before it was presented.²²⁷ Mr Mahmood stated that he could not recall whether he told Mr Shaikh about the nature of the feedback that he was proposing to provide.²²⁸

294. Mr Mahmood would not accept that his feedback was extremely critical or very critical – he asserted that the feedback was “fair but critical”.²²⁹ However, after rereading the feedback, he accepted that it was “very critical”.²³⁰ Mr Mahmood did not accept that the feedback was written in a harsh tone, but he did accept that it would have been difficult for Mr Akbar to read it.²³¹ He accepted that there was nothing positive contained within the feedback, and no suggestion of any developmental step which might be taken.²³²

295. Mr Mahmood accepted that his submission of the 365 feedback created an extremely

²²⁴ Day 2 TS 15.

²²⁵ Day 2 TS 21.

²²⁶ Day 2 TS 23.

²²⁷ Day 2 TS 25.

²²⁸ Day 2 TS 26.

²²⁹ Day 2 TS 26.

²³⁰ Day 2 TS 27.

²³¹ Day 2 TS 27-8.

²³² Day 2 TS 28.

sensitive situation.²³³ He asserts that his purpose in providing the feedback was to improve the governance culture within Islamic banking.²³⁴ He also claims that he relied upon Mr Long's review of his draft feedback. Mr Mahmood accepted that the feedback was direct and was not tactful at all.²³⁵

296. Mr Mahmood denied that when Mr Long told him to tell Mr Shaikh that the 365 feedback was going to be submitted he understood that he needed to give Mr Shaikh advance notice that negative feedback was about to land on his desk.²³⁶ I do not accept this evidence. Mr Long and Mr Mahmood were both aware that the draft feedback was "very critical" of Mr Akbar. In this context, a direction to inform Mr Shaikh that the feedback was coming clearly and obviously implied that Mr Shaikh was to be informed of the tenor of the feedback – otherwise the advance notice served no purpose.

297. Mr Mahmood asserts that Mr Long's contemporaneous assertion in an email to Mr O'Donnell and Mr Phebey that he had instructed Mr Mahmood to ensure that before releasing it he was to "run this through" Mr Shaikh to ensure that he was not surprised or ambushed was not true. However, he refused to characterise the statement as a lie.²³⁷ Mr Long's contemporaneous assertion is inherently more plausible than Mr Mahmood's testimony.

298. Mr Mahmood denied that following the submission of the feedback Mr Long had a discussion with him in which he explained that his success in his role at GIB Compliance depended upon him developing a constructive working relationship with GIB Management.²³⁸ Mr Mahmood asserts that he was informally reprimanded by Mr De Groote over the terms of the 365 feedback.²³⁹ Mr Mahmood accepts that Mr De Groote spoke to him shortly after the 365 feedback. He does not recall Mr De Groote explaining to him that his success in his role depended upon him developing constructive working relationships with the GIB Management team – all that he can remember of the conversation is that he was reprimanded.²⁴⁰

299. Mr Mahmood accepts that in the process of self-assessment that formed part of his

²³³ Day 2 TS 39.

²³⁴ Day 2 TS 40.

²³⁵ Day 2 TS 41.

²³⁶ Day 2 TS 43.

²³⁷ Day 2 TS 45-7.

²³⁸ Day 2 TS 51-2.

²³⁹ Day 2 TS 54.

²⁴⁰ Day 2 TS 56-7.

performance appraisal in 2017 he gave himself a 1A rating, which is the highest rating available to any employee in the Bank.²⁴¹ The category 1 denotes exceptional performance, and category A means that the employee is a role model.²⁴² However, Mr Long assessed his performance as 3B.²⁴³

300. Mr Mahmood again rated himself as 1A in November 2018, which he described in evidence as “not unsurprising”.²⁴⁴ Mr Long rated his performance as 2C. Mr Mahmood does not accept that Mr Long’s rating was fair and reasonable, even though it was a strong and very positive rating within the scoring framework.

301. Mr Mahmood’s continuing assessment of himself as being in the best possible category of employee within the Bank despite the issues which had emerged in relation to his style of communicating with his colleagues and the tensions which that had caused reinforces my conclusion that he lacked and continues to lack insight into the effect which his methods and style had upon those with whom he worked.

302. Mr Mahmood was taken to Mr Long’s appraisal of his performance in November 2018.²⁴⁵ In particular portions of that appraisal relating to the need to modify his style of communication were put to Mr Mahmood, who did not accept Mr Long’s observations.²⁴⁶ Further, Mr Mahmood questioned Mr Long’s motivation for writing the observations contained within the appraisal and asserted that he did not accept that Mr Long genuinely believed the matters at the time he wrote them. He reiterated that Mr Long did not believe what he was writing at the time he wrote it, and when asked whether Mr Long was lying he replied “your words”.²⁴⁷

303. The evidence provides ample justification for Mr Long’s observations. Mr Mahmood’s baseless assertion that Mr Long was, in effect, lying in the performance appraisal reinforces my conclusions that:

- (a) Mr Mahmood has no insight into the effect which his manner and style had upon others;
- and

²⁴¹ Day 2 TS 61.

²⁴² Day 2 TS 62.

²⁴³ Day 2 TS 64.

²⁴⁴ Day 2 TS 65.

²⁴⁵ TB 4759.

²⁴⁶ Day 2 TS 72.

²⁴⁷ Day 2 TS 74.

(b) Mr Mahmood is quick to attribute base and improper motives to others without any factual foundation whatever.

304. Mr Mahmood was reminded of his claims that his 2018 performance rating by Mr Long involved discrimination on the grounds of race or nationality. When asked to explain that claim he stated that the stakeholder feedback received by Mr Long was tainted by race or nationality, not by Mr Long himself. He asserted that the feedback that Mr Long received from senior management within Compliance was tainted by discrimination because they were European and he is of Asian origin. In the case of feedback from GIB it was because he was British.²⁴⁸ Significantly missing from Mr Mahmood's evidence is any basis for his belief that his 2018 appraisal was tainted by discrimination on the ground of race or nationality despite being asked several times by counsel for the Bank to identify any such evidence.²⁴⁹ Mr Mahmood did assert that the disclosure from the Bank had been inadequate and that stakeholder feedback from GIB and from Mr Phebey and Mr De Groote had been negative. However, clearly that is not evidence of discrimination on the ground of race or nationality.²⁵⁰ Mr Mahmood was unable to identify any other basis for his assertions of discrimination in relation to the 2018 appraisal.²⁵¹

305. Mr Mahmood denied that the manner in which he communicated with colleagues had been a persistent theme of discussions with his Manager and he was surprised when it came up in his 2018 performance review.²⁵² This evidence is implausible given the reaction to Mr Mahmood's communications in connection with his dealings with Mr Law and the consequences of his 365 feedback relating to Mr Akbar, all of which was known to Mr Mahmood.

306. Mr Mahmood accepted that he challenged Mr Long's rating of 2C and asserted that he should have been given a rating of 1A. When Mr Phebey's observation that "Shiraz needs to grow up if he thinks he is a 1A" was put to Mr Mahmood, he asserted that Mr Phebey "did have some sort of bias in relation to his perception of me".²⁵³ He also asserted that Mr De Groote was racist towards him when he reprimanded him. He also contended that Mr O'Donnell was motivated by racist considerations, even though he did not know him well.

²⁴⁸ Day 2 TS 76.

²⁴⁹ Day 2 TS 76-9.

²⁵⁰ Day 2 TS 80.

²⁵¹ Day 2 TS 81.

²⁵² Day 2 TS 84-5.

²⁵³ Day 2 TS 91-2.

Mr Mahmood asserted that Mr Long was also motivated by racism, along with Mr Shaikh, Mr Akbar and three others within GIB. In all, Mr Mahmood identified four managers in the Compliance division of the Bank, and five officers within GIB who he asserts were motivated against him on the ground of race or nationality. However, he did not enunciate the specific basis for his belief in relation to any of these nine individuals.²⁵⁴

307. Mr Mahmood accepted that he requested the review undertaken by the BMA team.²⁵⁵

308. Mr Crispian Cuss led the BMA investigation of GIB. An email from Mr Cuss to another officer of the Bank dated 17 July 2019 was put to Mr Mahmood in cross-examination. In that email Mr Cuss observed, *inter alia*:

“His [Mr Mahmood’s] relationship with the COO and wider business has deteriorated significantly over the last couple of years to the point where it has actually become slightly ridiculous, eg he submitted seven pages of fairly blunt criticism as part of the COO’s end of year 360 appraisal. A couple of fairly trite Speak Ups have been raised against him in return.

...

Shiraz is technically competent, and his observations are mostly valid. He should have been an asset to the business, particularly when it is facing a deluge of regulatory change. However, he has been unable (to) behave in a way that would allow him to carry the business and effect change. Rather than working with them, he has only served to antagonise them, alienate himself and undermine his position. His relationship with his wider stakeholders is no better.

IB do need Compliance, particularly because the COO is quite weak, however Shiraz’s inability to foster anything approaching a normal working relationship probably means they are better off without him.”²⁵⁶

309. In his evidence, Mr Mahmood refused to accept that these observations were consistent with the pattern of views that had been expressed about his interaction and communication style with his colleagues. Rather, Mr Mahmood asserted that the observations were consistent with the view that Mr Cuss got from various stakeholders he interviewed.²⁵⁷

310. In cross-examination Mr Mahmood accepted that he received an oral complaint from Mr Vaselli relating to bullying by Mr Parvaiz, a member of the GIB team. He reduced the complaint to writing and sent it to HR, although he accepted that it was not part of his

²⁵⁴ Day 2 TS 90-5.

²⁵⁵ Day 2 TS 96.

²⁵⁶ TB 2912.

²⁵⁷ Day 2 TS 111.

responsibilities to investigate grievances.²⁵⁸ Mr Mahmood suggested to Mr Vaselli that he might raise a Speak Up, but Mr Vaselli declined.²⁵⁹ Mr Mahmood denied the proposition that it was not part of his role or responsibility to pursue grievances on behalf of others.²⁶⁰

311. On 7 May 2019 Mr Mahmood sent an email to various members of the GIB team, copied to Mr Long attaching a revised GIB Conduct Plan, drawing attention to a highlighted section which provided that any failure to adhere to the Plan would be treated as a Conduct Breach.²⁶¹ Mr Shaikh contacted Mr Long by telephone and email the same day. In the email he asserted:

“It is unacceptable for Shiraz to make unilateral amendments in the Conduct Plan, without any prior consultation with myself or the larger management team and then state that non-compliance will be treated as a Conduct Breach ...”²⁶²

312. When it was put to Mr Mahmood that the terms of his email could be seen as a threat, he replied:

“In isolation, yes. In context, no.”²⁶³

Mr Mahmood did not develop or explain this somewhat cryptic answer. Whatever he meant by the answer he gave, it provides another example of his failure to appreciate the effect which the terms of his communications might have upon others. The same conclusion can be drawn from his response to the proposition that his unilateral amendment of the Conduct Plan accompanied by a threat was not conducive to building positive constructive relationships, to which he replied:

“I was responding to the conduct issues within the unit.”²⁶⁴

313. Mr Mahmood also denied that his statement that non-compliance would be treated as a Conduct Breach was a deliberate and inflammatory step.²⁶⁵ When it was put to Mr Mahmood that Mr Long sympathised with Mr Shaikh’s point of view and that he had no reason to doubt the genuineness of Mr Long’s position, Mr Mahmood replied “I can’t

²⁵⁸ Day 2 TS 113-7.

²⁵⁹ TB 2041.

²⁶⁰ Day 2 TS 120.

²⁶¹ TB 2281-2.

²⁶² T 2281.

²⁶³ Day 2 TS 130.

²⁶⁴ Day 2 TS 133.

²⁶⁵ Day 2 TS 135.

remember whether his belief was genuine or not”.²⁶⁶

314. Mr Long’s position at the time is evident from his email to Mr Shaikh of 8 May 2019 in which he observed that the email from Mr Mahmood was not the right way to further the discussion of a Conduct Plan. The email stated that Mr Long had discussed the matter with Mr Mahmood, emphasising that there should be no need for such emails.²⁶⁷ Mr Mahmood’s refusal to accept that Mr Long’s contemporaneously recorded views were genuinely held, with no apparent justification for that position, reinforces the views I have already expressed in relation to the general tenor of his evidence.

315. A meeting was convened to discuss the Conduct Plan. Mr Mahmood is adamant that Mr Shaikh was screaming at him during the meeting. When he was asked whether Mr Shaikh was screaming at him because he was a British Asian of Pakistani heritage Mr Mahmood replied:

“In relation to this particular instance he was upset ... about this Conduct Plan issue.”²⁶⁸

Mr Mahmood went on to observe “there was a running theme where instructions from someone like me was not – or someone that was not Pakistani was not appreciated in the office”.²⁶⁹

316. It is of some significance that Mr Mahmood first observed that Mr Shaikh was upset because of the Conduct Plan issue, and then added a generalised assertion based on nationality which was unsubstantiated by any specific statements or actions at the meeting or connected in any way with the meeting. That assertion was an after thought intended to bolster his case when he realised that his initial answer that it was the Conduct Plan which was upsetting Mr Shaikh would not advance his cause.

317. Mr Mahmood accepted that at some point in 2019 Mr Long told him that if he could not work with the GIB team it was difficult to see how he could perform his role effectively.²⁷⁰

318. In cross-examination Mr Mahmood observed that the relationship between him and Mr

²⁶⁶ Day 2 TS 135.

²⁶⁷ TB 2307.

²⁶⁸ Day 2 TS 141.

²⁶⁹ Day 2 TS 141.

²⁷⁰ Day 2 TS 144.

Shaikh and his team was toxic before he lodged his Speak Ups.²⁷¹

319. It was put to Mr Mahmood that Mr Long would give evidence to the effect that it was incumbent upon Mr Mahmood to develop a relationship which gave Mr Shaikh and the GIB team trust and confidence in him and he never did. Mr Mahmood was asked whether he had any reason to dispute that was the genuinely held belief of Mr Long and Mr Mahmood asserted that he did have reason to dispute the genuineness of Mr Long's belief. The reason or reasons were not enunciated in his evidence.²⁷²

320. Mr Mahmood accepted that Mr Long became more involved in the Compliance function with respect to GIB, but disputed the proposition that this was because GIB had found it increasingly difficult to work with Mr Mahmood.²⁷³ Mr Mahmood maintained that denial in the face of all the evidence to which he had been taken relating to the tenor of his communications with the GIB team. Mr Mahmood's evidence on this subject is inconsistent with the contemporaneous evidence and must be rejected. Mr Mahmood's evidence to the effect that the reason Mr Long commenced attending all GIB meetings from August 2019 was not because of the break down in relations between Mr Mahmood and the GIB team must be rejected for the same reason.²⁷⁴

321. When it was put to Mr Mahmood that his case was to the effect that the deterioration of the relationship between him and the GIB team had nothing to do with the tenor of his communications with his colleagues but came about because he was a British Asian who appeared to have relinquished his Pakistani heritage, he adhered to that proposition. When it was put to Mr Mahmood that his proposition was utterly unrealistic, he replied:

"I would say a more complete reading of the documents would show that that is not an utterly unrealistic view on my part."²⁷⁵

I then asked Mr Mahmood whether there were any particular documents that he had in mind when giving that answer. He responded by referring to a file note where Mr Vaselli recorded that the conduct within a meeting was so poor that he had to get up and walk out. He asserted that "there's numerous documents like that which show the other side of the

²⁷¹ Day 2 TS 150.

²⁷² Day 2 TS 152.

²⁷³ Day 2 TS 153.

²⁷⁴ Day 2 TS 155.

²⁷⁵ Day 2 TS 156.

coin”.²⁷⁶ The specific documents were not identified by Mr Mahmood.

322. It is significant that even if there was a file note of the character described by Mr Mahmood, it would go no further than to establish that there was disagreement between Mr Vaselli and the GIB team. It would not, of itself, establish that the disagreement was motivated by considerations of race or nationality, in the same way that the extensive disagreements between Mr Mahmood and the GIB team do not, in themselves, establish that they came about because of Mr Mahmood’s characteristics of race or nationality. Counsel for the Bank made a similar observation in the course of his next question and again asked Mr Mahmood to identify the documentary evidence of discrimination against Mr Mahmood because he was a British Pakistani Asian who had renounced his Pakistani heritage. Mr Mahmood’s response was to ask for the page of the Conduct Plan in the trial bundle, which was clearly not responsive to the question asked. He went on to observe that he was giving an example of a poor relationship between GIB and someone other than himself. When counsel for the Bank observed that the question related to his claim of direct race discrimination Mr Mahmood replied “I will let my counsel touch upon that”.²⁷⁷
323. The evidence to which I have referred establishes that when Mr Mahmood was asked to justify his assertion that the deterioration in his relationship with the GIB team was due to his characteristics of race or nationality he resorted to a general reference to all of the documents in the trial bundle. When pressed to identify any specific document which justified his assertion, he was unable to do more than point to documents evidencing disagreements between GIB and Mr Vaselli. He was quite unable to identify any document which sustained his assertion that the hostility was occasioned by characteristics of race or nationality.
324. In June 2019 a disagreement emerged between Mr Mahmood and Mr Khurram Hilal who worked in the Wealth Management team in Indonesia. Mr Mahmood asserted that it was necessary for the Shariah Department to engage Legal and Compliance when it became aware of a business request for approval which did not have previous approval. Mr Hilal’s position was that, consistently with the Leverage Model, decision-making rested with the business unit in individual countries, and it was up to them to determine when they needed to consult with Legal and Compliance.

²⁷⁶ Day 2 TS 157.

²⁷⁷ Day 2 TS 157-8.

325. Mr Mahmood sent the email chain revealing this disagreement to Mr De Groote on the basis that Mr Long “is not around”. In the email to Mr De Groote Mr Mahmood asserted that Mr Hilal’s emails contained factually inaccurate statements. Mr Mahmood thought it likely that if he raised this issue with Mr Hilal’s line manager, Mr Shaikh, then Mr Shaikh “may push back or create noise”.²⁷⁸
326. Mr De Groote replied to Mr Mahmood informing him that after reading the full story he could not see any conduct issue arising from the interchange and that the Business team made some good points.²⁷⁹ Specifically Mr De Groote did not agree with Mr Mahmood’s proposal to require the Shariah Department to engage Legal and Compliance when it becomes aware of a business request for approval because, under the Code of Conduct every officer of the Bank has that responsibility, and there was no need to single out the Shariah Department.²⁸⁰
327. Mr Long sent an email to Mr Mahmood in which he generally agreed with Mr De Groote. His email concluded “I think the email chain should stop and the next step should be to sit down and meet with the GIB Business people face to face next week ...”.²⁸¹
328. In cross-examination Mr Mahmood accepted that Mr Long was unhappy with how he had handled the situation. It was then put to Mr Mahmood that he had once again fallen out with members of the business unit that he was responsible for supporting and overseeing. He responded:
- “I had undertaken my responsibility. There was a conduct issue there which neither of these gentlemen addressed in their correspondence to me. So no, I hadn’t fallen out in the way you are requesting.”²⁸²
329. The “gentlemen” to whom Mr Mahmood was referring were Mr De Groote and Mr Long. Each specifically referred to the fact that the email chain did not give rise to any conduct issues.
330. Mr Mahmood was asked why he did not copy Mr Long to his email to Mr De Groote, given that he was going above Mr Long’s head. Apart from asserting that Mr Long was away, Mr Mahmood was unable to provide any satisfactory answer to that question.

²⁷⁸ TB 2513.

²⁷⁹ TB 2538.

²⁸⁰ TB 2538.

²⁸¹ TB 2538.

²⁸² Day 2 TS 169.

331. The significance of this evidence is that, like the evidence relating to the issue which arose in Hong Kong, Mr Mahmood found himself in disagreement with an officer of the Bank who was not a member of the GIB team and in respect of whom there is no suggestion of motivation on the grounds of race or nationality. Rather than attempt to resolve the disagreement by discussion, Mr Mahmood escalated the issue to Mr De Groote, who was not Mr Mahmood's line manager, or even Mr Long's line manager,²⁸³ on the basis that there was a conduct issue arising from the behaviour of the person with whom he disagreed. Mr Mahmood's actions are consistent with a pattern of behaviour established by the evidence to which I have already referred.
332. On 26 June 2019 Mr Mahmood sent an email to Mr Farhan Kazi, a Compliance Officer in Pakistan, recording a telephone conversation which had taken place earlier between the two men, in which Mr Kazi advised that he had been told that he was not to meet with the Audit Department without the knowledge or business of the Business Section. Mr Mahmood advised Mr Kazi that as a Control function he did not require permission from the Business Section to meet with other parts of the Bank and that if Mr Kazi "ever felt pressured or uncomfortable with the Business' approach to you, you should escalate it immediately".²⁸⁴ Mr Mahmood's enthusiasm for immediate escalation of disagreements is apparent in the evidence to which I have referred.
333. After Mr Mahmood escalated the disagreement he was having with the officer in Indonesia to Mr De Groote, Mr De Groote exchanged emails with Mr Long. On 30 June 2019 Mr De Groote wrote to Mr Long in the following terms:

"... we need to make a change. In fact he cannot do this job anymore since can't neither support nor control a business he has not been able to build a relationship with. Rehan [Mr Shaikh] has too much of it and I must say that we are spending really too much time on trying for ages now to get Shiraz to do a better job but he is not getting it and I strongly believe he will never get it. I also discussed with Crispian [Mr Cuss] and feedback re Shiraz was not good at all."²⁸⁵

334. Mr Long replied:

"I agree with all of that. I have tried my best to support and develop Shiraz but I have done as much as I can and there has been [no] material change in the way he works. ..."

²⁸³ Mr O'Donnell is Mr Long's line manager.

²⁸⁴ TB 549-50.

²⁸⁵ TB 2552.

Mr De Groot replied:

“... I know you have done the extra mile. Sometimes it does not work and this is clearly not your fault.”²⁸⁶

335. When these communications were put to Mr Mahmood in cross-examination, he agreed that it revealed frustration by members of senior management as a result of his actions and the way in which he communicated with others.²⁸⁷ He was then asked whether he maintains that Mr De Groot and Mr Long were motivated by race, to which he replied:

“I do believe, given the behaviour I experienced from those gentlemen, including this particular issue, which we have not really delved into fully ...”²⁸⁸

No basis for that belief was enunciated by Mr Mahmood in evidence.

336. Mr Mahmood denied that Mr Long was spending a lot of time dealing with the fallout from the way in which he interacted with his colleagues and in particular the GIB team.²⁸⁹ He asserted that Mr Long was required to spend extra time dealing with GIB because of Mr Shaikh’s reaction to his Speak Ups.²⁹⁰ This assertion is contrary to the contemporaneous documentary evidence which shows that Mr Long agreed to attend GIB management team meetings because of the continuing tension between Mr Mahmood and GIB team.

337. On 9 July 2019 Mr Mahmood sent an email to Mr Long, copied to Mr De Groot, complaining that Mr Shaikh had instructed two members of the GIB team to limit communications with Mr Mahmood. Mr Mahmood asserted that this behaviour breached the Code of Conduct and requested advice as to how the matter should be handled. When it was put to Mr Mahmood that Mr Long was entitled to take the view that the contents of the email reflected the poor relationship between Mr Mahmood and GIB Mr Mahmood implausibly replied “not at all”.²⁹¹ Mr Mahmood then reiterated the assertion that Mr Shaikh was in breach of the Code of Conduct.

338. When it was put to Mr Mahmood that he could hardly be surprised by Mr Shaikh’s reaction given all that had occurred, Mr Mahmood replied:

²⁸⁶ TB 2552.

²⁸⁷ Day 2 TS 176.

²⁸⁸ Day 2 TS 177.

²⁸⁹ Day 2 TS 177.

²⁹⁰ Day 2 TS 177.

²⁹¹ Day 2 TS 180.

“No. Given his reaction towards me as a British Asian and his reaction post the Speak Ups, I am not surprised.”²⁹²

339. The assertion that Mr Shaikh’s reaction towards Mr Mahmood was based upon his race/nationality is not substantiated by any evidence other than Mr Mahmood’s bare assertion.

340. At the meeting of the GIB management team on 5 August 2019 the issue relating to the Shariah reporting line was discussed. At 8.33am the following morning Mr Mahmood sent an email to Mr Long (who had not been at the meeting) reporting on the matters discussed at the meeting. In the email Mr Mahmood stated:

“I queried how, after approximately two years of discussions Rehan [Shaikh’s] and Sohail [Akbar] could not be familiar with the concerns around the reporting line into Shariah. I also pointed out the fact that Sheikh Muhbeen had been within Saadiq for approximately 12 years; as his reporting line was into the business, I queried how, after such a period of time, the CEO and COO, could not know how his activities were Compliance related.”²⁹³

341. Assuming this report is accurate, it is reasonable to infer, and I do infer, that rhetorical questions posed in the manner described by Mr Mahmood would likely have been offensive to both Mr Shaikh and Mr Akbar, who were implicitly accused of lacking understanding.

342. On 6 August 2019 at 14.08pm Mr Mahmood sent an email to Mr Ayrton and Mr Buckett in which he advised that following the meeting which had taken place the previous day, Mr Akbar went to Mr Vaselli and told him to tell his “friend” (referring to Mr Mahmood), that he was behaving inappropriately. In the email Mr Mahmood asserted that Mr Akbar told Mr Vaselli to tell Mr Mahmood that “he knew how to deal with British people even if they had been masters” which Mr Mahmood thought was a reference to British colonial rule over India. Mr Mahmood raised this for consideration because he asserted that it sounded like an implied threat, and a person’s race, nationality or gender have no bearing upon their work.

343. Mr Mahmood concluded the email in these terms:

“I have tried to reproduce the wording conveyed to me by Allesandro [Vaselli] as closely as possible. Should you require more detail of what was discussed

²⁹² Day 2 TS 181.

²⁹³ TB 2978.

between Sohail [Akbar] and Allesandro, then Allesandro is better placed than I to provide you with that information.”²⁹⁴

344. On 15 August 2019 Mr Shaikh sent an email to Mr Long in which he stated:

“I would like to reiterate that it is becoming increasingly difficult for me to conduct regular business with the attitude that Shiraz continues to adopt. His approach is becoming disruptive by the day and I am really struggling to run a productive unit under these ongoing distractions.

...

Given the background as well as the most recent incident of which I had advised you – and where his unwarranted comments continued to prevail, my fear is that this may unfortunately lead to an extremely unpleasant incident. May I therefore request your presence in Saadiq top team key meetings to ensure that there is a balanced Compliance view of the business conducted and we are able to avoid any potential disruption to the business.”²⁹⁵

Mr Long agreed to attend all senior meetings after his return from leave. He also advised Mr Shaikh that “as discussed previously we will be reshaping the role as part of our regional level ICEE exercise in September”. It is clear from other evidence that this is a reference to the role occupied by Mr Mahmood.²⁹⁶

345. Mr Mahmood worked from a workstation located on the floor occupied by GIB. On 5 September 2019, Ms Tabbara, the Head of ER for the Bank in the UAE, sent an email to Mr Long suggesting that Mr Mahmood work temporarily on the Compliance floor “considering the stressful environment on the Islamic Banking floor. I am concerned about his wellbeing, as well as to reduce unnecessary noise”.²⁹⁷ Mr Long replied advising that if Mr Mahmood had asked him to work on the Compliance floor he would have immediately approved it. Mr Tabbara responded advising Mr Long that Mr Mahmood had not asked to work on a different floor – rather, it was her suggestion as she was “concerned about his wellbeing as well as to avoid unnecessary noise or disruptive/stressful environment”.²⁹⁸

346. On 8 September 2019 Mr Mahmood met with Mr Long and Ms Tabbara dialled in by telephone.²⁹⁹ Ms Tabbara explained that Mr Mahmood would use a desk on the Compliance floor instead of with the GIB team. Mr Mahmood advised that he thought the move was

²⁹⁴ TB 2977-8.

²⁹⁵ TB 3131.

²⁹⁶ TB 3131.

²⁹⁷ TB 3247.

²⁹⁸ TB 3246.

²⁹⁹ Day 3 TS 48.

unnecessary but Ms Tabbara insisted that he should sit with the Compliance team full-time.³⁰⁰ When it was put to Mr Mahmood that Mr Long was genuinely concerned for his wellbeing he replied:

“No, because after the call we had a conversation and he knew there was no issue around my wellbeing.”

347. On 8 September 2019 Mr Long sent an email to Mr Shaikh, copied to Ms Tabbara, advising that Mr Mahmood would be working from the Compliance floor as from the following day.³⁰¹ Mr Mahmood was shown the email and asked if he accepted that the decision was taken by Mr Long. Mr Mahmood rejected that proposition and asserted that the decision was made by Ms Tabbara.³⁰² Mr Mahmood also rejected the proposition that it was common for Compliance colleagues to sit on the Compliance floor away from their business units.³⁰³

348. On 10 October 2019 Ms Tabbara sent an email to Mr Shaikh, Mr Long and others attaching a draft report following upon her investigation into two complaints to the effect that:

- (a) On 5 August 2019 Mr Akbar made a discriminatory and threatening comment in reference to Mr Mahmood; and
- (b) On 5 August 2019 Mr Mahmood made a disrespectful comment in respect of Mr Shaikh and Mr Akbar.

349. Ms Tabbara advised in the email that her investigation had resulted in her upholding both complaints. She recommended management reviews for each of Mr Akbar and Mr Mahmood and:

“... decide on ways of working to address the long-standing conflict and to create synergies between business and support functions.

Determine whether there is a requirement to consider changes in the scope of the role or candidate, taking into account (1) the history of the unresolved dispute between Shiraz and the business, (2) the main reasons of the conflict, and (3) the impact on the continuity and productivity of both.”³⁰⁴

350. In the draft report which had accompanied the email, Ms Tabbara referred to two interviews

³⁰⁰ Day 3 TS 49.

³⁰¹ TB 3256.

³⁰² Day 3 TS 50.

³⁰³ Day 3 TS 51.

³⁰⁴ TB 3372-3.

with a staff member described only as “B” in which the staff member stated:

- (i) “Mr Sohail had asked a colleague to pass on a message to Mr Shiraz in the context of “tell your friend that he (Mr Shiraz) was behaving inappropriately;
- (ii) Mr Sohail said that he (Mr Shiraz) should have better manners next time he is dealing with him.

During a second interview with staff “B” on September 23rd, staff “B” stated, inter alia, that their recollection of the comment which was said by Mr Sohail “I know how to put British people in their place” in the sense that Mr Shiraz should have better manners next time he is dealing with Mr Sohail.”³⁰⁵

It is clear from other evidence and the fact that only Mr Vaselli and Mr Akbar were party to the relevant conversation that “B” was Mr Vaselli.

351. The draft report also indicated that Mr Akbar had been interviewed and asserted that he did not make any comment to the meeting that could be perceived as inappropriate, disrespectful or discriminatory.

352. The draft report also contained references to interviews with anonymous staff members in relation to the discussions which took place during the meeting, to the effect that the meeting was not cordial or pleasant, consistently with previous meetings in which there had been friction between business support functions. Mr Mahmood is said to have questioned:

“That senior colleagues are still not able to understand the concept around the conflict of interest affecting the reporting line of the Head of Shariah Department.”

Mr Mahmood is also said to have stated:

“You guys have been running this business for past 15 years, you are all senior officers, and I feel disappointed that I have to explain to you the difference between Shariah Compliance and Shariah Advisory.”

These reports are of course consistent with the terms of Mr Mahmood’s email to Mr Long the morning after the meeting.

353. Those interviewed also reported that Mr Mahmood’s tone was aggressive and unprofessional.

354. In addition to the recommendations made in the covering email, in the body of the draft report disciplinary management of Mr Mahmood was recommended. Other evidence shows

³⁰⁵ TB 3375-6.

that the draft report was amended following intervention by Ms Al Najjar, and the adverse finding against Mr Akbar was removed.

355. This and other documents relating to the disciplinary process were put to Mr Mahmood in cross-examination and he was asked if he was aware of anything which would suggest that the communications were not accurate, and he replied in the negative.³⁰⁶ No basis for that assertion was provided.

356. Mr Mahmood was taken to his performance appraisal for 2018 in which Mr Long observed that:

“Moving forward into next year ...

Consideration of blind spots and self-reflection of different approaches based on stakeholder feedback. Better consideration of unintended consequences to challenge and adapt approach where needed to ensure the actual message/substance becomes the discussion and not the approach surrounding it.”³⁰⁷

357. It was put to Mr Mahmood that these matters were part of his objectives for 2019. He denied that proposition stating:

“No, sir, that’s part of the manager’s assessment of my performance, that’s not an objective.”

However, Mr Mahmood agreed that Mr Long included these as areas in which he needed to improve.³⁰⁸ Mr Mahmood reiterated his previous assertions that Mr Long did not repeatedly discuss the adoption of a less confrontational approach with him.

358. Mr Mahmood was then taken to his performance appraisal for 2019, in which he was rated 4D. In that appraisal Mr Long observed that there were areas of good performance which were:

“Outweighed by the areas where (i) objectives were not completed such as ... and (ii) support and engagement were impaired due to the confrontational nature of the relationship between Shiraz and Islamic Banking Business ...

Throughout 2018 and into 2019, Shiraz and I have had many discussions (not limited to P3 discussions) about a less confrontational approach that will engender a better relationship with the business – and that creating a stronger relationship is imperative to being able to demonstrate strong value added support to the

³⁰⁶ Day 3 TS 62.

³⁰⁷ TB 4760.

³⁰⁸ Day 3 TS 63-4.

business and perform against objectives. I have tried hard to support Shiraz in building a stronger relationship with the business. We have had detailed discussions about certain emails and verbal engagements and how a different approach could be taken to make the relevant point and move forward on the relevant point issues without minimising any risk or control aspects – and that calls by senior management for challenge to the status quo can be pursued in ways that limit confrontation. At times there has been progress in the ways of working and strengthening the partnership component of the CFCC/business relationship but there always seems to be step backwards where an approach taken on a risk and control aspect of the CFCC is taken by the recipient as aggressive and confrontational.

... There has been some positive stakeholder feedback from certain members of the Islamic Banking business but the goal needs to improve engagement across all relevant stakeholders.”³⁰⁹

359. These passages were put to Mr Mahmood who denied Mr Long’s report of the “many discussions” they had had over 2018 and 2019. However, he confirmed that the performance appraisal report was sent to him in accordance with usual practice.
360. Given that Mr Long would obviously have been aware that the report he produced would be sent to Mr Mahmood, it is inherently unlikely that he would have recounted conversations with Mr Mahmood which had not taken place. For that reason I reject Mr Mahmood’s evidence on this subject, and consider that Mr Long’s contemporaneous statements provide reliable evidence of what took place.
361. Mr Mahmood also asserted that when Mr Long told him that he was to be placed on a PIP he stated that it was “because of the feedback from Islamic Banking, the negative feedback that had been persistent”.³¹⁰ Given the terms of the report which I have set out above, that proposition is inherently improbable and I reject it.
362. Mr Mahmood agreed that no PIP was ever implemented.³¹¹
363. Mr Mahmood was taken to an email from Mr Long to Mr Mahbub in which Mr Long advised Mr Mahbub that the reason he did not want to commence a PIP was because the ICEE restructure for Compliance roles was taking place.³¹² Mr Mahmood asserted that the statements made by Mr Long in this regard were “not valid”. When he was asked whether he was stating that Mr Long was lying in the email to Mr Mahbub he replied:

³⁰⁹ TB 4771.

³¹⁰ Day 3 TS 72.

³¹¹ Day 3 TS 75.

³¹² TB 4125.

“That’s for him to testify.”³¹³

Mr Mahmood was then asked whether he had any basis other than speculation for his assertions, to which he replied:

“My case will be put forward in due course.”³¹⁴

364. Following further interchange, I asked Mr Mahmood whether he accepted that he had no evidentiary basis for his assertion to which he replied “yes, it was my belief”. This is another example of Mr Mahmood’s tendency to make assertions in the course of his evidence for which he had no basis other than “belief” as he would put it, or supposition, as I would put it. Obviously this characteristic reflects adversely on his credibility.
365. Mr Mahmood agreed that he was given a MSA to consider on 24 June 2020 and asked to respond by 5 July 2020, although he was aware that Mr Long was happy to give him as much time as he needed to complete a review of the document.³¹⁵ Mr Mahmood was taken to emails which established that the deadline for his response was extended to 15 July 2020, but he still did not respond.³¹⁶
366. Mr Mahmood asserted that ICEE was a genuine process, but in relation to him it was used as a lever to separate him from the organisation.³¹⁷
367. Mr Mahmood was taken to an email which he sent to Mr Long on 1 September 2020.³¹⁸ In that email he reported that during a management team meeting Mr Shaikh mentioned that there had been protests in Karachi and when Mr Mahmood asked why people were protesting, Mr Shaikh responded by saying they were protesting because “Compliance was too harsh”. Mr Mahmood reported that all the other members of the management team laughed. Mr Mahmood went on to assert that since being advised that the Bank would like him to enter into a MSA, this was not the first occasion that Mr Shaikh had made inappropriate comments regarding Compliance or implied references to him being asked to leave the Bank.
368. The email chain reveals that after receiving Mr Mahmood’s email, Mr Long sought advice

³¹³ Day 3 TS 81.

³¹⁴ Day 3 TS 82.

³¹⁵ Day 3 TS 85-6.

³¹⁶ TB 4451.

³¹⁷ Day 3 TS 91-2.

³¹⁸ TB 4576.

from Ms Tabbara as to whether he should raise the issue directly with Mr Shaikh or whether HR should be involved in the discussion. Ms Tabbara advised Mr Long that she considered Mr Mahmood's complaint to be serious and suggested that he request Mr Mahmood to provide details of all the incidents he was referring to and assure him that the discussion around the MSA was private and confidential. She also suggested that he discuss the issue with Mr Shaikh. The email chain also records Mr Long advising Ms Tabbara that he had spoken with Mr Mahmood and told him that he would speak to Mr Shaikh and would inform HR of the issue as it was serious. He also advised Ms Tabbara that he would go back to Mr Mahmood and ask for more details of all the incidents he is referring to. Mr Long also requested that someone from HR join him in the discussion with Mr Shaikh. Mr Long's evidence is to the effect that the proposal to meet with Mr Shaikh was overtaken by events relating to ICEE, and Mr Mahmood stated in evidence that he had no reason to dispute that.³¹⁹

369. No evidence has been adduced in relation to any of the other incidents to which Mr Mahmood was referring in his email to Mr Long. The incident which he related to Mr Long does not, in itself, suggest that Mr Shaikh's comment was motivated by Mr Mahmood's characteristics of race or nationality but, if those words were said, they appear to be a reflection of the disharmony between the GIB team and Mr Mahmood because of the way he performed his Compliance function. There is nothing in the words attributed to Mr Shaikh which would suggest that he was aware that Mr Mahmood had been invited to sign a MSA.
370. Mr Mahmood confirmed that he applied for the restructured position which was classified as Band 3, and which entailed responsibility for financial markets and for GIB.³²⁰ Mr Mahmood also confirmed that he was given three rounds of interview – in round 1 he was interviewed by Mr Shaikh, Mr Long and Mr Paul McCarthy, in round 2 he was interviewed by Mr Rajid Kumar and Mr Gary Mander, and in round 3 he was interviewed by Ms Emma Crookes and Ms Tracey McDermott.³²¹ Mr Mahmood was asked which of the seven people who interviewed him were motivated by some unlawful protected characteristic in their decision. He asserted that Mr Shaikh and Mr Long were influenced by such motivations – Mr Shaikh because he was a British Asian that had relinquished his Pakistani heritage, and Mr Long

³¹⁹ Day 3 TS 98.

³²⁰ Day 3 TS 99.

³²¹ TB 4616; Day 3 TS 101.

because he was not Caucasian with white skin.³²²

371. Mr Mahmood was taken to documents recording the views of those who had interviewed him in the course of his application for the restructured role.³²³ He was taken through Mr Long's overall assessment and asked to identify the propositions with which he agreed and those which he did not think were fair. The conclusions reached by Mr Long which Mr Mahmood did not think were fair, reasonable or accurate included:

- "He falls far below the requisite level of technical knowledge and experience needed to execute the risk management responsibilities in this role as part of the Group FM Advisory team.
- During the interview Shiraz stated several times that he has strong experience in FM but he was not able to provide any specific examples of direct FM Compliance experience beyond his 1.5 years in a mid level FM advisory role at SCB.
- Effective leadership, collaboration and people management are all critical components to being successful in this "double hatted" role and he requires too much development in these areas to be successful in a reasonable time frame.
- His approach to challenge, as he articulated in the interview, is reasonable and balanced. However, over the past several years he has not demonstrated this. In practice his challenge on issues has often been neither balanced nor productive.
- His inability to find a way to be a better partner to GIB and to collaborate more effectively has limited the impact of his current role. He has not been able to achieve the right balance of support and control.
- His familiarity with regulators across the AME is limited.
- He has had difficulty in reflecting on things he could have done better on particular matters. He has not demonstrated a Band 4 level of ability to proactively set out a work plan or identify areas for development."³²⁴

372. Mr Mahmood agreed that Mr Patel and he were both given notices of redundancy, and in that respect were treated identically.³²⁵

373. Portions of Mr Long's witness statement in which he expressed his views with respect to Mr Patel's application for the restructured role were put to Mr Mahmood. Mr Mahmood stated that he had no reason to dispute any of the many positive conclusions which Mr Long

³²² Day 3 TS 103-4.

³²³ TB 4614.

³²⁴ TB 4614.

³²⁵ Day 3 TS 116.

expressed in relation to Mr Patel's experience and capabilities, although he disagreed with Mr Long's description of Mr Patel's knowledge of Islamic Banking.³²⁶

374. Mr Mahmood accepted that he had no reason to dispute the decision of all seven interviewers that Mr Patel was the stronger candidate.³²⁷

375. Mr Mahmood was re-examined at some length, which is not surprising given the length of his cross-examination. In the course of re-examination Mr Mahmood provided more detail in relation to evidence he had already given. It is unnecessary to descend to that level of detail in these reasons. However, in re-examination Mr Mahmood had a marked tendency to provide very long answers to relatively straightforward questions (one answer occupied almost three pages of transcript and others exceeded a page) in which he appeared to be arguing his case. That characteristic did not enhance his credibility.

Mr Mahmood's evidence - summary

376. The many respects in which the evidence of Mr Mahmood was unsatisfactory are set out above. In summary:

- (a) His answers were frequently non-responsive and argumentative;
- (b) On many occasions it was clear that he was endeavouring to argue a case rather than present factual testimony;
- (c) He used re-examination as an opportunity to further argue his case;
- (d) He repeatedly made assertions of impropriety on the part of others without any apparent factual foundation whatever; and
- (e) Portions of his evidence were implausible and cannot be accepted.

377. For these reasons I do not consider Mr Mahmood to be a credible witness. His evidence was so distorted by his evident desire to argue his case that it is unreliable. I do not accept his testimony unless it is corroborated by a contemporaneous document or the evidence of other witnesses. The evidence which I have set out above sustains the following conclusions:

³²⁶ Day 3 TS 117-121.

³²⁷ Day 3 TS 121.

- (a) Mr Mahmood is willing to assert impropriety and misconduct on the part of others without any foundation for such assertions;
- (b) Mr Mahmood had frequent disagreements with those with whom he worked within the Bank (not limited to those within GIB) to which he responded with confrontation and which he escalated based on allegations of misconduct;
- (c) His communication style was confrontational and intimidating;
- (d) Mr Mahmood was incapable of changing his style of communication with others despite counselling and despite his awareness of the consequences of that style of communication; and
- (e) Mr Mahmood lacked and continues to lack insight into the effect which his communication style had upon other officers of the Bank, who he considers to be responsible for the conflict and tension which he had caused.

378. It is also significant to note that the direct evidence given by Mr Mahmood which bears upon his assertion that he was the subject of discrimination on the grounds of race and/or nationality is limited to:

- (a) The undocumented assertion that his British accent was frequently mocked and his British nationality were the subject of frequent reference within the GIB team;
- (b) Two anonymous Speak Ups which made reference to race; and
- (c) His assertion that Mr Akbar made a racist comment to Mr Vaselli following the meeting on 5 August 2019.

379. As noted earlier, the authorities establish that discrimination on the grounds of race or nationality can be established without direct evidence and by inference from the manner in which the complainant is treated, by comparison to others in a like position. Accordingly, that fact that Mr Mahmood has only been able to adduce very limited direct evidence of express references to his race or nationality it is not necessarily fatal to his case.

380. However, for the reasons I have given there can be no doubt that tensions arising from the manner in which Mr Mahmood communicated with his colleagues contributed very substantially to the manner in which those colleagues and the Bank dealt with Mr Mahmood.

In the particular circumstances of this case, the question is not whether Mr Mahmood was treated differently to the manner in which a relevant comparator would have been treated because of his race and/or nationality but rather whether Mr Mahmood's characteristics of race or nationality or his commission of any protected acts had any material bearing upon the manner in which his colleagues and the Bank dealt with him.

381. Because of:

- (a) the findings I have made with respect to Mr Mahmood's credibility; and
- (b) the limited nature of the question which is presented for determination in the particular circumstances of this case,

it is possible to deal with the evidence given by the Bank's witnesses more briefly than that given by Mr Mahmood. Further, much of the evidence and cross-examination of the Bank's witnesses was concerned with the correctness or otherwise of different propositions relating to the operations of the Bank which is, at best, contextual only and for that reason need not be considered in detail.

Mr De Groot

Written evidence

382. Mr De Groot provided one witness statement, in which he related his professional history. In relation to the Shariah reporting line, Mr De Groot states that he considered that there was the potential for a conflict of interest but neither he nor Mr Long were overly concerned about that potential.³²⁸ He understood that the Shariah reporting line had been approved by the DFSA at the time the Islamic Banking licence was granted and all Shariah services had to be approved by the Bank's independent Shariah Supervisory Committee.³²⁹ Accordingly the Shariah reporting line was not a priority matter for him or Mr Long and in Mr De Groot's view did not merit the amount of time and noise attributed to it by Mr Mahmood.

383. Mr De Groot does not recall specifically speaking to Mr Mahmood about his feedback relating to Mr Akbar but he always encourages colleagues to give feedback about others

³²⁸ WS [19]-[20].

³²⁹ WS [20].

and is an enthusiastic advocate of the 365 feedback tool.³³⁰ However, he was extremely surprised by the nature and tone of the feedback provided by Mr Mahmood. In particular, the section of the form headed “positive feedback” and “development feedback” were intended to ensure that the feedback was balanced and contained positive and constructive elements, but Mr Mahmood had filled both of those sections with further criticisms of Mr Akbar and had not provided any positive or developmental feedback at all.³³¹

384. Mr De Groote had received feedback from colleagues that Mr Mahmood was very difficult to work with. In Mr De Groote’s long experience at the Bank, it was unprecedented for such strong and critical feedback to be given about a member of senior management.³³² Mr De Groote took the view that Mr Mahmood’s personal attack on Mr Akbar would inevitably undermine his ability to develop a positive working relationship with GIB, which was crucial to his role.³³³ Mr De Groote asserts that he explained this to Mr Mahmood during a meeting with him.³³⁴ He denies that he reprimanded Mr Mahmood.

385. Mr De Groote asserts that he has no reason to believe that the performance appraisal which Mr Mahmood received had anything to do with his race or nationality or because he had raised any issues or complaints of discrimination.³³⁵

386. Mr De Groote asserts that on 12 May 2019 he attended a meeting with Mr Mahmood and Mr Long. During the meeting Mr Long questioned Mr Mahmood’s ability to undertake his role given his difficulties with the GIB management team. Mr De Groote and Mr Long both made the point to Mr Mahmood that if he wanted to succeed in his role as GIB Compliance he had to develop a constructive working relationship with the senior members of GIB. Mr De Groote stated that he told Mr Mahmood that if he could not work with the GIB team he did not see how he could properly perform his role. Mr De Groote denies making any comment during the meeting to the effect that Mr Mahmood’s role would be readvertised.³³⁶

387. Mr De Groote received an email from Mr Mahmood³³⁷ suggesting that his disagreement with Mr Hilal should be raised with Mr Shaikh as a conduct concern. Mr De Groote reviewed

³³⁰ WS [25].

³³¹ WS [27].

³³² WS [30].

³³³ WS [31].

³³⁴ WS [36].

³³⁵ WS [41].

³³⁶ WS [51].

³³⁷ TB 2513.

the correspondence and did not agree that there was any conduct issue. He felt that the whole exchange was another example of an unsuccessful and damaging challenge to a Business unit by Mr Mahmood who had not adapted his approach to challenge to account for the stakeholders and the personalities he was dealing with.³³⁸

388. By 30 June 2019 Mr De Groote had formed the view that the relationship between GIB and Mr Mahmood was simply not working, and if Mr Mahmood was unable to develop a relationship with GIB, the Bank would need to find somebody who could.³³⁹

389. In June 2020 when Mr De Groote was advised that other officers of the Bank had agreed to propose a MSA to Mr Mahmood, he supported that view because he did not consider there was a realistic prospect of Mr Mahmood developing a constructive working relationship with GIB.³⁴⁰

390. According to Mr De Groote one of the changes that was proposed in the course of Project ICEE was to reduce senior head count by downgrading a number of senior Compliance roles.³⁴¹ Project ICEE started in the latter part of 2019, but was suspended until mid 2020 because of the Pandemic. When the Project resumed, as a part of the Project it was “proposed to combine the role occupied by Mr Patel in relation to financial markets with Mr Mahmood’s role in relation to Islamic Banking to create a Band 3 role called Head, FM and Islamic Banking ...”.³⁴² This change had the dual purpose of reducing senior head count and creating a new senior role into which the Shariah Department could report. Although the role would be supported by two more junior roles, the overall cost of one Band 3 role with two junior roles in support was significantly less than two Band 4 roles.³⁴³

391. On 8 September 2020 all personnel affected by the ICEE reorganisation, including Mr Patel and Mr Mahmood were advised that they were at risk of redundancy.³⁴⁴ Later Mr De Groote was advised that Mr Patel had been successful in his application for the restructured role. According to Mr De Groote:

³³⁸ WS [67].

³³⁹ WS [78].

³⁴⁰ WS [91].

³⁴¹ WS [98].

³⁴² WS [99].

³⁴³ WS [99].

³⁴⁴ WS [101].

“Mr Patel had long been earmarked by the Global Team as a very talented individual capable of filling a more senior role. He had extensive FM (financial markets) experience and a track record of developing strong working relationships with the Business. Mr Patel was, and is, very highly regarded by all key stakeholders ...”³⁴⁵

392. According to Mr De Groot, Mr Mahmood was one of approximately 270 Compliance employees who lost their jobs as a result of Project ICEE.

Oral evidence

393. In the course of cross-examination Mr De Groot confirmed that while he agreed it was better to have the Shariah Department reporting to the Compliance function, Mr Mahmood had exaggerated this issue and was making too much noise in relation to something that was a potential conflict not an actual conflict.³⁴⁶

394. Mr De Groot confirmed that in his view Mr Mahmood had engaged in “a very serious misuse of the 365 feedback”, as it was intended for constructive and positive feedback with suggested improvements. In his view there was no way Mr Mahmood could build a relationship with the business that he was supporting if he was using a tool that was meant to help people to improve, to attack them.³⁴⁷ Mr De Groot would have given Mr Mahmood a lower performance rating than Mr Long, but in the end it was Mr Long’s decision.

395. In cross-examination Mr De Groot reiterated his denial that he had told Mr Mahmood that his job was going to be re-advertised during a meeting on 30 June 2019.³⁴⁸ He also reiterated his assertion that in an earlier meeting he had discussed the importance of building a relationship with the business unit because without such a relationship it would be very difficult for Mr Mahmood to continue supporting the business.³⁴⁹ Mr De Groot also confirmed that by the middle of 2019 he had formed the view that Mr Mahmood should be moved out of the role in which he was because of his apparent inability to build a relationship with the Islamic Banking business.³⁵⁰ He approved a MSA being offered to Mr Mahmood.

396. Mr De Groot denied that the restructure of Mr Mahmood’s role was undertaken in order to get him out of the Bank. However, he accepted that he wanted Mr Mahmood out of the role

³⁴⁵ WS [102].

³⁴⁶ Day 4 TS 42.

³⁴⁷ Day 4 TS 58-9.

³⁴⁸ Day 4 TS 107.

³⁴⁹ Day 4 TS 107.

³⁵⁰ Day 4 TS 109-110.

he was in because he was not performing satisfactorily.³⁵¹

397. In cross-examination Mr De Groot accepted that Mr Mahmood was not the only confrontational officer of the Bank and that when relationships break down there are usually two sides to the story.³⁵² He rejected the proposition that Mr Long's decision to place Mr Mahmood on a PIP was simply another means of exiting him from the Bank. PIPs are intended to support people and to help them improve.³⁵³

398. It was put to Mr De Groot that whether consciously or subconsciously, the fact that all the senior managers of Compliance were Caucasian made it "very much a white boys club". Mr De Groot replied:

"The fact that we are Caucasian and Mr Mahmood is not Caucasian doesn't make any sense to me. The person he competed with, who is now and since then in charge of the Islamic Banking, was the most senior person in this region in the Compliance Department after me, Mr Zunaid Patel is British, by the way, with a British accent and from Indian origin."³⁵⁴

In this context, Mr De Groot observed that if Mr Long had written the 365 feedback Mr De Groot would have reacted in exactly the same way.³⁵⁵

399. Mr De Groot rejected the proposition that a decision was made "to select Mr Mahmood for dismissal" because of Mr Shaikh's view that he had to be removed from the unit. Mr De Groot asserted that it was a commonly held view, including by Mr Shaikh, Mr Long and him, that Mr Mahmood's relationship with GIB did not enable an efficient Compliance function to support the business.³⁵⁶ When it was put to Mr De Groot that Mr Mahmood had been exited because GIB wanted him out, Mr De Groot asserted that Mr Mahmood had been exited because he was not able to build a good relationship and in consequence not able to support the business unit and because he competed for a position against another colleague who was a stronger candidate.³⁵⁷

400. Mr De Groot denied the proposition that the restructure of Mr Mahmood's role was an elaborate sham in order to remove him from the Bank. Mr De Groot pointed out that the

³⁵¹ Day 4 TS 122-3.

³⁵² Day 4 TS 127.

³⁵³ Day 4 TS 129.

³⁵⁴ Day 4 TS 138.

³⁵⁵ Day 4 TS 139.

³⁵⁶ Day 4 TS 140.

³⁵⁷ Day 4 TS 142.

restructured role is still in place, years later, and is working well. If it had been a sham, the restructured role would have been changed when Mr Mahmood left the Bank. Mr De Groot rejected the idea that there was any conspiracy because Mr Mahmood was not Caucasian and found the proposition insulting and an attack upon his integrity.³⁵⁸

401. It was then put to Mr De Groot that it was fundamentally lacking integrity to chase out of the Bank a senior Compliance officer who had raised legitimate concerns about the conduct and capability of Mr Akbar, through belated procedures to achieve an outcome that had been agreed as early as the middle of 2019. Mr De Groot rejected that proposition and reiterated that many attempts to ensure that Mr Mahmood was able to build a relationship with the business unit had failed completely and when a process for the reduction of costs was implemented another candidate for the restructured role was chosen unanimously by a panel which included very senior people. According to Mr De Groot, cost cutting projects are undertaken regularly every 4-5 years or so, and Mr Mahmood was required to leave the Bank as a result of that process, like hundreds of others.³⁵⁹

Mr De Groot's evidence - summary

402. Mr De Groot answered the questions that were asked of him directly and without prevarication or evasion. The answers which he gave were inherently plausible and consistent with the contemporaneous documents. I have no reason to doubt his evidence, and I accept it without reservation, including his explicit and plausible denial of any racial motivation in respect of Mr Mahmood's treatment. His assertion that he, Mr Long and Mr Shaikh formed the view that Mr Mahmood was not suitable for the role he was performing because of his inability to build a constructive relationship with the business unit he was supporting is consistent with the evidence to which I have referred above, and with the contemporaneous documents. The same observation applies to his evidence with respect to the restructure of Mr Mahmood's role and the decision to appoint Mr Patel on the basis that he was a better candidate for the restructured position than Mr Mahmood, a proposition which, in the end, Mr Mahmood did not seriously dispute.

³⁵⁸ Day 4 TS 145.

³⁵⁹ Day 4 TS 146-7.

Mr Long

Written evidence

403. Mr Long provided two witness statements. In his first statement he outlined his qualifications and professional experience.
404. Mr Long was involved in the appointment of Mr Mahmood as a Compliance officer for Financial Markets in the AME region. The feedback he received from Mr Patel, to whom Mr Mahmood was reporting, was that Mr Mahmood had performed reasonably well but Mr Long does not agree that he had senior or broad experience of financial markets compliance either when he joined that unit in September 2016 or when he moved to Islamic Banking in July 2017. Mr Long interviewed Mr Mahmood for that role, and recommended him for appointment.³⁶⁰
405. Mr Long rejects the proposition that Mr Mahmood's role carried sole responsibility for Compliance with respect to GIB. Rather, that responsibility was shared by Mr Mahmood, Mr Long, Mr O'Donnell and Mr De Groot. Consequently, Mr Mahmood's role was not equivalent to a Band 3 position.³⁶¹
406. Mr Long asserts that he recognised that having the Head of Shariah reporting to the Head of GIB was a potential conflict of interest, but he did not consider it to be an actual conflict that could not be managed.³⁶²
407. According to Mr Long, the ORF section of the draft Framework prepared by Mr Mahmood was very critical of GIB's historic approach to Compliance. In his view, the success of Mr Mahmood's role depended entirely upon him building a strong constructive relationship with GIB and so he should have recognised that it was sensible to address and resolve any issues the GIB management team had with the Framework before he requested approval of the Framework from the most senior members of Compliance.³⁶³
408. Mr Long did not attend the series of meetings held in early 2018 to discuss the draft Framework. However, he participated in discussions with those who did attend, all of whom

³⁶⁰ WS 1 [22].

³⁶¹ WS 1 [25].

³⁶² WS 1 [48].

³⁶³ WS 1 [55].

referred to very robust discussions taking place. Mr Mahmood told him that he had been shouted at during the meetings, and other attendees told him that Mr Mahmood had shouted at others during the meetings. Mr Long has never witnessed anybody shouting at Mr Mahmood.³⁶⁴

409. Mr Long stated he had never witnessed anybody mocking Mr Mahmood's British accent or referring to his British nationality, nor does he recall Mr Mahmood ever complaining to him that these things had happened. He does not recall Mr Mahmood raising any issues relating to nationality or race during his regular one to one meetings with him. In particular, Mr Mahmood did not say anything about race or nationality in connection with the robust discussions that took place in relation to the Framework.³⁶⁵
410. Mr Long asserts that while he agreed with Mr Mahmood that the Shariah reporting line should be addressed, he did not consider it was a significant issue nor did it pose a serious risk to the Bank having regard to the other controls which were in place and the fact that it had been recorded in the Bank's conflict of interest register and had been approved by the DFSA. However, according to Mr Long, Mr Mahmood appeared fixed on it and was unable to distinguish between a potential conflict of interest which could be managed to avoid risk and an actual conflict which needed to be remedied.³⁶⁶
411. Mr Long was also concerned that Mr Mahmood would be one of the main beneficiaries of the change in the Shariah reporting line, because if it reported to him, it would significantly widen the scope of his role and lend support to his argument that his role should be a Band 3 instead of a Band 4 role.³⁶⁷
412. Mr Long agreed with Mr Phebey's view that the threat of raising a Speak Up in his communication with Mr Cook in Hong Kong was completely inappropriate. Thereafter Mr Long asserts that he spoke to Mr Mahmood about his communication with his colleagues on multiple occasions during their weekly one to one meetings. He suggested to Mr Mahmood that he should ensure that the substance of his challenge did not become diluted by the manner in which he approached the challenge. Mr Long also asked Mr Phebey to

³⁶⁴ WS 1 [57].

³⁶⁵ WS 1 [62].

³⁶⁶ WS 1 [72].

³⁶⁷ WS 1 [73].

have a discussion with Mr Mahmood to try and strengthen the message.³⁶⁸ Mr Mahmood never complained that Mr Phebey had reprimanded him for his communication with Mr Cook.

413. Mr Long recalls Mr Mahmood telling him that GIB was not particularly diverse as the majority of its personnel were males from Pakistan. Mr Long did not consider that fact to be controversial, given that Pakistan is one of the largest pools for Islamic Banking talent and is geographically close to the UAE. He was however mindful of the lack of diversity in GIB, and was aware that HR were attempting to recruit more diverse personnel for GIB.³⁶⁹ Mr Long does not recall Mr Mahmood ever complaining to him that he was bullied or discriminated against by members of GIB because of race and/or nationality.
414. Mr Long asserts that he raised Mr Mahmood's approach to communication with his colleagues regularly, and that it felt like he had to deal with an aspect of his communication issues at almost every weekly meeting. He asserts that his message to Mr Mahmood was consistent – namely, a confrontational and aggressive approach would make it very difficult for him to build strong relationships with the Business and key stakeholders which was absolutely critical if he was to operate as an effective Compliance function.³⁷⁰
415. According to Mr Long, Mr Mahmood's propensity to escalate matters when he did not agree with a colleague's point of view resulted in colleagues being in fear of dealing with him. He heard the phrase "culture of fear" in connection with Mr Mahmood. He does not consider that the phrase had anything to do with Mr Mahmood's race and/or nationality.
416. Mr Long agrees that he reviewed the draft 365 feedback which Mr Mahmood prepared for Mr Akbar and advised Mr Mahmood that it looked comprehensive and reasoned. With hindsight he believes he should have recognised that the feedback was far too critical and that the harsh tone in which the feedback was expressed was going to be very difficult for Mr Akbar to digest. There was also an absence of constructive feedback to balance the negative aspects.³⁷¹
417. After the feedback was lodged he had various discussions with Mr Shaikh, Mr De Groote and HR about how best to proceed. He had a rather different view to that of Mr De Groote

³⁶⁸ WS 1 [81].

³⁶⁹ WS 1 [87].

³⁷⁰ WS 1 [88].

³⁷¹ WS 1 [95].

and Mr Shaikh who were very unhappy with Mr Mahmood because of the way he had provided such negative and critical feedback. However, Mr Long was more focussed on the concerns which Mr Mahmood had raised about Mr Akbar's performance, some of which he agreed with and which needed to be addressed.³⁷²

418. Mr Long's present view, with hindsight, is that it was not right for Mr Mahmood to have provided the feedback in such a one sided, direct and negative way, and he should have provided more balanced feedback by including constructive observations as well.³⁷³ Mr Long was also unhappy that Mr Mahmood had not disclosed the content of the feedback to Mr Shaikh in advance, which he had expected him to do when he asked him to warn Mr Shaikh.³⁷⁴
419. In his first statement Mr Long provides detailed evidence in relation to his appraisals of Mr Mahmood's performance. In the context of that evidence he asserts that reducing an employee's variable compensation award to reflect their final rating was standard practice which he had done a number of times and the reduction in Mr Mahmood's variable compensation had absolutely nothing to do with his race and/or nationality.³⁷⁵
420. Mr Long notes that Mr Mahmood challenged his rating of 2C and asserted that he was entitled to be rated 1A. In Mr Long's view, Mr Mahmood was not even close to meeting the level of performance required for a 1A rating.
421. Mr Long also considered the manner in which Mr Mahmood had dealt with the revised Conduct Plan was at best clumsy and at worst confrontational and provocative. In his view it was clearly not appropriate for a Compliance officer to unilaterally amend a governance plan and state to very senior members of management that any non-compliance with the amended plan would be treated as a conduct breach. Mr Long formed the view that Mr Mahmood still seemed to fail to appreciate that his role, and the success of his role depended on him developing a constructive working relationship with the GIB Management Team.³⁷⁶
422. On 8 May 2019 Mr Long received an email from Mr Mahmood saying that he had been

³⁷² WS 1 [97].

³⁷³ WS 1 [101].

³⁷⁴ WS 1 [102].

³⁷⁵ WS 1 [117]-[119].

³⁷⁶ WS 1 [141].

called into Mr Shaikh's office and shouted at by Mr Shaikh.³⁷⁷ On 12 May 2019 Mr Long met with Mr Mahmood and Mr De Groot. During the meeting Mr Long told Mr Mahmood that his success in his role depended on him building a constructive working relationship with the GIB Management Team, and that if he could not work with the team it was difficult to see how he could perform his role effectively. Mr Long asserts that Mr De Groot did not make any comment about Mr Mahmood's position being re-advertised.³⁷⁸

423. According to Mr Long, GIB's reluctance to involve Mr Mahmood significantly predated Mr Mahmood's Speak Ups. In his view it was incumbent upon Mr Mahmood to develop a relationship which gave the GIB team the trust and confidence to involve him in their activities. However, he was never able to do that.³⁷⁹

424. According to Mr Long, as the relationship between Mr Mahmood and the GIB Management Team deteriorated he became more involved in dealing with GIB Compliance issues because the GIB personnel found it increasingly difficult to work with Mr Mahmood.³⁸⁰ Mr Long was asked to attend all GIB Management meetings in August 2019. He asserts that this was because of the breakdown in relations between Mr Mahmood and GIB, and had nothing to do with Mr Mahmood's Speak Ups or his race and/or nationality.³⁸¹ Mr Long was unhappy with the manner in which Mr Mahmood had handled the situation with Mr Hilal. He had once again fallen out with members of the business unit he was responsible for overseeing and failed to copy in Mr Long when he escalated the matter to Mr De Groot.³⁸²

425. In mid-2019 Mr Long agreed with Mr De Groot's view that Mr Mahmood needed to be moved on from his role. Mr Long found he was spending a significant amount of his time dealing with the fallout from the way in which Mr Mahmood interacted with his colleagues and in particular the GIB Management Team. His attempts to help and coach Mr Mahmood had failed because he had simply not changed his approach to the way he dealt with the GIB Business.³⁸³

426. When Mr Long received Mr Mahmood's complaint that Mr Shaikh had instructed two

³⁷⁷ TB 2304.

³⁷⁸ WS 1 [145].

³⁷⁹ WS 1 [157].

³⁸⁰ WS 1 [159].

³⁸¹ WS 1 [160].

³⁸² WS 1 [174].

³⁸³ WS 1 [180].

members of GIB to limit their communications with him, he saw it as another reflection of the poor relationship between Mr Mahmood and GIB. It was his view that Mr Shaikh was responsible for running the Business, and if he felt that Mr Mahmood was obstructing the Business, which he did, it would not be surprising for him to try to limit his team's interactions with Mr Mahmood.³⁸⁴

427. In early July 2019 Mr Long met with Mr Shaikh and Ms Tabbara and Ms Al Najjar from HR and sought guidance on how to proceed with Mr Mahmood. The HR representatives suggested that Mr Mahmood could be placed on a PIP or there could be a restructuring of his role. Mr Long did not consider a PIP to be appropriate, given that the complaints against Mr Mahmood had been dismissed, but he gave some thought to the manner in which Mr Mahmood's role would be affected if there was a change in the Shariah reporting line.³⁸⁵
428. On 29 July 2019 Mr Long attended a meeting with Mr Cuss, Head of BMA along with Mr Mahmood, Mr Shaikh, Mr Akbar and other members of GIB. During the meeting the diversity of the GIB team was discussed, although Mr Long cannot recall the specific details. He does not recall Mr Mahmood making any allegation of discrimination or making any suggestion that there had been any discriminatory conduct in the recruitment practices of the GIB Business.³⁸⁶
429. In August 2019 Mr Long confirmed to Mr Shaikh that he was happy to attend all senior GIB meetings. He agreed to Mr Shaikh's request because of his desire to help Mr Mahmood find a way of working with the GIB Business to create a solid partnership that would enable Mr Mahmood to effectively support the Business. His decision to attend the meetings had nothing to do with Mr Mahmood's race and/or nationality or because of the complaints that had been made against Mr Mahmood or because he had raised the issue of the diversity of the Islamic Banking Team.³⁸⁷
430. Mr Long agreed with Ms Tabbara's suggestion that Mr Mahmood should shift from the GIB floor to the Compliance floor and attended a meeting at which this was explained to Mr Mahmood. Mr Mahmood advised that he did not think a move was necessary, and then suggested splitting his time between the GIB floor and the Compliance floor, although Ms

³⁸⁴ WS 1 [184].

³⁸⁵ WS 1 [198].

³⁸⁶ WS 1 [203].

³⁸⁷ WS 1 [213].

Tabbara insisted that he should sit with the Compliance team full-time. Mr Long supported Ms Tabbara's position, because of her concerns about Mr Mahmood's wellbeing.³⁸⁸ Although Ms Tabbara had initiated the suggestion, the decision to move Mr Mahmood was Mr Long's. He thought it would benefit Mr Mahmood and GIB for there to be a little distance between them.³⁸⁹ He was not concerned that it would negatively impact upon Mr Mahmood's ability to operate effectively because it was common for Compliance colleagues to sit on the Compliance floor away from their business unit.³⁹⁰ For the same reason he did not have any concern that the move would in any way impact Mr Mahmood's reputation or professional standing internally. Mr Long asserts that his decision to advise Mr Mahmood to use a desk on the Compliance floor had absolutely nothing to do with his race and/or nationality, or because of the complaints against him, or because he had raised the issue of the diversity of the GIB team.

431. In September 2019 Mr Long suggested changing the Shariah reporting line so that the Shariah Department reported to GIB Compliance as part of Project ICEE. He considered that this would constitute a sufficient change in the role to require the position to be declared vacant and re-advertised.³⁹¹ Ms Bajwa undertook an assessment of the significance of the change in November 2019 and concluded that the change in the role was greater than 30%, which was the threshold for vacating the position and re-advertising it.³⁹²
432. In his first statement Mr Long relates the reasons for his performance appraisal of Mr Mahmood in 2019 and his decision to implement a PIP. He explicitly asserts that it had nothing to do with Mr Mahmood's race and/or nationality nor was it because of the complaints against him, or because he had raised the issue of diversity in the Islamic Banking Team. According to Mr Long his decisions were driven solely by his desire to help Mr Mahmood find a way of working with the GIB Business to create a solid partnership that would enable Mr Mahmood to effectively support the Business.³⁹³
433. In the result, Mr Long decided not to implement the PIP because he expected the ICEE re-organisation to start in January/February 2020. However, as a result of the Pandemic, the

³⁸⁸ WS 1 [222].

³⁸⁹ WS 1 [224].

³⁹⁰ WS 1 [225].

³⁹¹ WS 1 [232].

³⁹² WS 1 [235].

³⁹³ WS 1 [268].

implementation of Project ICEE was pushed back.

434. In February 2020 Mr Long initiated internal discussions with respect to the possibility of offering a MSA to Mr Mahmood. Mr Long asserts that this had nothing to do with Mr Mahmood's race and/or nationality, or the complaints against Mr Mahmood, or because he had raised the issue of diversity of the Islamic Banking Team. Rather, Mr Long did not consider there was a realistic prospect of Mr Mahmood finding a way of working with the GIB Business to create a solid partnership that would enable Mr Mahmood to effectively support the business. Despite expending a significant amount of time and energy trying to manage Mr Mahmood and his relationship with the Business there had been very little progress.³⁹⁴
435. Mr Long confirms that on 24 June 2020 the proposed MSA was provided to Mr Mahmood, who requested more time to consider the proposal. Time was extended to 15 July 2020, but Mr Mahmood did not respond within that time.³⁹⁵
436. In his first witness statement Mr Long explains at some length why he did not consider Mr Mahmood had the requisite experience or knowledge to be successful in his application for the new combined role.³⁹⁶
437. According to Mr Long, when Mr Mahmood was issued with a notice of termination of his employment by reason of redundancy he was offered an enhanced redundancy package which he did not accept.
438. In his first statement Mr Long also explains at some length the reasons why he considered Mr Patel was significantly more suited to the new role than Mr Mahmood.³⁹⁷
439. Mr Long's second statement responds to Mr Mahmood's first statement. In that statement he denies that he agreed to Mr Mahmood sending the draft Framework to senior Compliance colleagues before discussing it with the GIB Management Team.³⁹⁸ Mr Long also reiterates many of the observations made in his first statement, in the context of responding to Mr Mahmood's first statement. Mr Long reiterated his assertion that he had not treated Mr

³⁹⁴ WS 1 [282].

³⁹⁵ WS 1 [298].

³⁹⁶ WS 1 [314].

³⁹⁷ WS 1 [320].

³⁹⁸ WS 2 [6].

Mahmood adversely due to his race or nationality, nor as far as he was aware, did anyone else. He also reiterated that Mr Mahmood never raised any allegation of race or nationality discrimination with him.³⁹⁹

440. Mr Long does not recall discussing with Mr Mahmood whether Project Barossa was connected to him because Barossa was a wine region.⁴⁰⁰

441. Mr Long reiterated the observations made in his first statement in relation to the multiple discussions he had with Mr Mahmood concerning him adopting a less confrontational approach that would help in establishing a better relationship with GIB.⁴⁰¹ According to Mr Long it was impossible for him to see how Mr Mahmood could continue in his role unless he made some fundamental changes to the way in which operated and the way in which he approached challenge, and it was for that reason that he decided to implement a PIP.⁴⁰²

442. Mr Long states that the assessment of the new role was not manufactured and was undertaken as part of ICEE and rejects Mr Mahmood's assertion to the contrary.⁴⁰³

443. Mr Long asserts that Mr Mahmood was not considered confrontational because he raised concerns about the actions of GIB – rather, he was considered confrontational because he was unable to adopt his approach to challenge to account for the stakeholders and personalities he was dealing with. He observes that those failings did not only arise when Mr Mahmood was dealing with members of GIB, but also when dealing with other stakeholders within the Group.⁴⁰⁴ He asserts that his assessment of Mr Mahmood's failings had nothing to do with race or nationalities within the Compliance team or Mr Mahmood's race or nationality. The evidence of Mr Mahmood's inability to forge a working relationship with the Business Unit and the fundamental problems that caused were evident for all to see.⁴⁰⁵

Oral evidence

444. In cross-examination Mr Long agreed that he encouraged Mr Mahmood to challenge the

³⁹⁹ WS 2 [31].

⁴⁰⁰ WS 2 [34].

⁴⁰¹ WS 2 [47].

⁴⁰² WS 2 [51].

⁴⁰³ WS 2 [56].

⁴⁰⁴ WS 2 [62].

⁴⁰⁵ WS 2 [63].

business unit to ensure the Compliance function was effectively performed but “in a way that was productive and didn’t create unintended consequences”.⁴⁰⁶

445. Mr Long accepted that Mr Mahmood started his role with GIB with hard work and determination.⁴⁰⁷ He also accepted that Mr Mahmood relied upon him for guidance in relation to Mr Mahmood’s preparation of the Compliance Framework document. When that document was completed he discussed its circulation with Mr Mahmood and they agreed that it should go to the business unit and to others within Compliance. Mr Long accepts that he did not tell Mr Mahmood not to send the document to Mr Gilbert and Mr Fanucci, but Mr Long was under the impression that GIB had “already had some sight of it”.⁴⁰⁸ When it was put to Mr Long that he told Mr Mahmood that it would be helpful for the document to be reviewed within Compliance before it went to GIB Mr Long stated that he did not recall that being his view.⁴⁰⁹
446. Mr Long agreed that in his experience of working with Mr Akbar “there was a fair amount of challenge” although not too different from the challenge provided by other businesses.⁴¹⁰
447. Mr Long thought there would be challenge from the business unit in relation to the draft operational Framework, which is why it would have been preferable to share it with them before sending it to Mr Gilbert and Mr Fanucci. He did not accept the proposition that the degree of challenge which came from GIB was extraordinary.⁴¹¹
448. Mr Long rejected the proposition that at the end of December 2017 or January 2018, Mr Mahmood was particularly upset by what had happened in relation to the Shariah Conflict of Interest issue and had a discussion with him about the difficulties faced by British Asians in the UAE.⁴¹² Nor did Mr Long agree that Mr Mahmood shared with him some of the experiences he had earlier in life of racism outside the UAE, or the experience that British Asians in the UAE can face from Indian and Pakistani nationals who have also moved to the UAE.⁴¹³ Mr Long did recall discussing the lack of diversity within GIB with Mr Mahmood, and in particular the members of the team being predominantly Pakistani. Mr Long rejected

⁴⁰⁶ Day 4 TS 173.

⁴⁰⁷ Day 5 TS 9.

⁴⁰⁸ Day 5 TS 12.

⁴⁰⁹ Day 5 TS 12.

⁴¹⁰ Day 5 TS 13.

⁴¹¹ Day 5 TS 22.

⁴¹² Day 5 TS 28.

⁴¹³ Day 5 TS 29.

the proposition that both Mr Mahmood and Mr Vaselli had been bullied by members of the GIB team, although he accepted that there was an email in which Mr Mahmood had asserted that Mr Vaselli had been bullied, although Mr Vaselli did not use the word “bullying” and didn’t want the matter to go to HR. Mr Long cannot recall ever having had any discussion with Mr Mahmood about bullying, although there were lots of discussions about aggressive challenge and disagreement and argument, but not about bullying over race or nationality.⁴¹⁴

449. In cross-examination Mr Long twice denied the proposition that Mr Mahmood had told him that his British accent was being mocked by members of the GIB team, and also stated that he never witnessed that occurring.⁴¹⁵ Mr Long has never seen Mr Vaselli shouted at in a meeting, although he was aware that there was an email in which that assertion was made.⁴¹⁶

450. Mr Long rejected the proposition that there were clear parallels between the way GIB treated Mr Vaselli and the way they treated Mr Mahmood, although he agreed that there was a lot of friction in terms of Legal and Compliance agreeing things with the Business, although not beyond friction that he sees in other Business areas.⁴¹⁷ Mr Long also rejected the proposition that he knew that there were cultural or racial tensions between Mr Vaselli and GIB with Mr Vaselli feeling culturally excluded, and again reiterated that he was not aware that Mr Mahmood was being subject to mockery of his British accent.⁴¹⁸

451. In cross-examination Mr Long was taken to his performance appraisal of Mr Mahmood in 2018. It was put to Mr Long that the views he expressed in that appraisal are completely at odds with the views expressed in his witness statement. Mr Long responded by drawing attention to portions of his appraisal in which he referred to the need for Mr Mahmood to “make reasonable efforts to develop a more effective and sustainable engagement with the Islamic Banking COO team and to “be aware of different options and approaches that will most effectively deliver the desired results and at the same time minimise ancillary negative outcomes”.⁴¹⁹ In his testimony Mr Long stated that the statements made in his performance appraisal are consistent with the statements in his witness statement to the effect that Mr Mahmood needed to have a more constructive approach to the challenges he was receiving

⁴¹⁴ Day 5 TS 28-9.

⁴¹⁵ Day 5 TS 30.

⁴¹⁶ Day 5 TS 36.

⁴¹⁷ Day 5 TS 38-9.

⁴¹⁸ Day 5 TS 43.

⁴¹⁹ Day TS 47-51.

from GIB.⁴²⁰

452. It was put to Mr Long that if the Shariah reporting line was changed, it could not be predicted that the Head of Shariah would report to Mr Mahmood's role. Mr Long disagreed and gave evidence of discussions around that time to the effect that if the reporting line was changed, it would likely report into Mr Mahmood's position. If that occurred, it would increase the size of Mr Mahmood's team and strengthen his case for an increase in his Banding.⁴²¹
453. Mr Long made clear that he was not contending that Mr Mahmood was motivated by personal benefit in his pursuit of the Shariah Conflict Issue – all he was pointing out was that there would in fact be some potential benefit if the Shariah Department reported to him.⁴²²
454. In cross-examination Mr Long agreed with Mr Phebey's observation that GIB were "a tough crowd" although he would not necessarily rank them as the toughest he has dealt with.⁴²³
455. When cross-examined about the issue which arose in relation to Hong Kong, Mr Long observed that he had never seen an email from an officer of the Bank to a senior colleague saying if you cannot help me sort out this issue with your subordinate, I will raise a Speak Up, either before or since Mr Mahmood sent his email in those terms.⁴²⁴
456. It was put to Mr Long that focussing on flash points in the evidence created a false impression of Mr Mahmood's performance because a lot of his engagement with colleagues across the Bank were positive. Mr Long replied by observing that throughout the time he was having continuous discussions with colleagues about the good work that Mr Mahmood had done, but also some of the problems and challenges that they were having with engagement.⁴²⁵
457. Mr Long agreed that Mr Mahmood had raised issues with him relating to Mr Akbar's performance. Mr Mahmood's views tallied with his own personal experience of Mr Akbar.⁴²⁶ Mr Long agreed with using the 365 tool, although with hindsight he accepts that it was not the best way to do it. He also accepts that he reviewed the draft Feedback and "was okay

⁴²⁰ Day 5 TS 53.

⁴²¹ Day 5 TS 63-4.

⁴²² Day 5 TS 68.

⁴²³ Day 5 TS 80.

⁴²⁴ Day 5 TS 81-2.

⁴²⁵ Day 5 TS 84.

⁴²⁶ Day 5 TS 85-6.

with it". However, he required that it be cleared through Mr Shaikh so that Mr Shaikh was not surprised by it. He did not disagree with the feedback, but in hindsight it should have been more balanced.⁴²⁷ Mr Long was adamant that he intended Mr Mahmood to "run the feedback by Mr Shaikh" so that he was not surprised by it. Mr Long was adamant that he "definitely asked for this feedback to be cleared through Rehan before it went off".⁴²⁸ Mr Long accepted that he and Mr De Groot had different views in relation to the validity of the feedback which Mr Mahmood had provided.⁴²⁹

458. Mr Long emphatically rejected the suggestion that his performance appraisal of Mr Mahmood did not reflect his own assessment of Mr Mahmood's performance but reflected an agreed outcome between Mr De Groot, Mr Shaikh and him.⁴³⁰ Mr Long was emphatic that in the meetings with Mr De Groot and Mr Shaikh in which they discussed the 365 feedback provided by Mr Mahmood, there was no discussion about his performance appraisal or compensation.⁴³¹ Mr Long also rejected the proposition that he had agreed with Mr De Groot and Mr Shaikh that there should be an informal disciplinary process sanctioning Mr Mahmood for what he had done by reducing his bonus.⁴³²
459. Mr Long stated that after he received an email from Mr Mahmood complaining that Mr Shaikh had shouted at him in the presence of Mr Akbar,⁴³³ he spoke with Mr Mahmood and with Mr Shaikh and got both sides of the story. He did not escalate the matter as an issue to HR.⁴³⁴
460. Mr Long was taken to an email which he sent in early January 2019, after which he accepted that he was probably told by Mr Shaikh that there would be a grievance against Mr Mahmood, although he cannot recall that discussion and did not draw any connection to it when he became aware of the grievance about six months later.
461. Mr Long agreed that in mid-2019 he, Mr De Groot and Mr Shaikh were of the view that there needed to be a change in relation to Mr Mahmood's role. At that time they were discussing the ICEE project and possible restructuring of the role, which could result in

⁴²⁷ Day 5 TS 86-7.

⁴²⁸ Day 5 TS 95.

⁴²⁹ Day 5 TS 100.

⁴³⁰ Day 5 TS 101.

⁴³¹ Day 5 TS 107.

⁴³² Day 5 TS 110.

⁴³³ TB 2304.

⁴³⁴ Day 5 TS 119.

redundancy.⁴³⁵ He agreed with the proposition that by this time “the writing was on the wall” for Mr Mahmood in his role at GIB although not necessarily within the Bank.⁴³⁶ He rejected the idea that his primary concern was to avoid being blamed personally for the problems that Mr Mahmood had caused – he felt like he had tried to help Mr Mahmood build a better relationship with the business unit and that had not worked.⁴³⁷ He recalled some discussions about a MSA during 2019, and then again in January/February 2020.⁴³⁸

462. It was put to Mr Long that Mr Mahmood was directed to move his workstation from the GIB floor to the Compliance floor because he had complained of a racially tinged threat from Mr Akbar following the meeting on 5 August 2019 and this was a “straightforward case of victimisation”. Mr Long denied that proposition and stated that he was unaware of a racially motivated complaint by Mr Mahmood.⁴³⁹ That denial is consistent with his initial assumption that Mr Mahmood had requested to move desks, evident in his email to Ms Tabbara.⁴⁴⁰ Mr Long asserted that the move was recommended by HR because of concern for Mr Mahmood’s wellbeing, and he supported the proposal.⁴⁴¹

463. Mr Long denied that he sought dispensation from making a change in the Islamic Banking Compliance space until ICEE was rolled out because he wanted to exit Mr Mahmood from the Bank. He asserted that the reason for the delay was that they were trying to create a new model for Compliance within GIB, which if it was assessed as having more than 30% change would put the role at risk.⁴⁴² He also denied that his own assessment of the change being in the range of 40-50% was undertaken in order to achieve the objective of removing Mr Mahmood. He asserted that the objective was to change the reporting line for the Shariah Department in order to resolve an issue which had been under discussion for a number of years.⁴⁴³ When it was again put to Mr Long that the entire process was undertaken for the purpose of implementing the decision to exit Mr Mahmood from the Bank, he denied that there was any decision to remove Mr Mahmood from the Bank – the issue related to his role

⁴³⁵ Day 5 TS 127.

⁴³⁶ Day 5 TS 128.

⁴³⁷ Day 5 TS 129.

⁴³⁸ Day 5 TS 130.

⁴³⁹ Day 5 TS 143.

⁴⁴⁰ TB 3246-7.

⁴⁴¹ Day 5 TS 143.

⁴⁴² Day 5 TS 144.

⁴⁴³ Day 5 TS 145.

at GIB.⁴⁴⁴

464. Mr Long also denied that his decision to place Mr Mahmood on a PIP following his performance appraisal was a first step to exiting him from the Bank on the grounds of performance. Mr Long stated that PIPs were intended to define what needs to be improved and work towards achieving that improvement. His experience was that some PIPs were successful and some were not.⁴⁴⁵
465. Mr Long also denied that the 4D performance appraisal which he gave to Mr Mahmood in 2019 was not a genuine assessment of his performance.⁴⁴⁶ He asserted that he took account of the positive feedback which had been received in relation to Mr Mahmood in his overall assessment of his capabilities.⁴⁴⁷ In the context of Mr Vaselli's reference to Mr Mahmood being seen as a "cop" Mr Long asserted that he had been referred to as a policeman or a cop and that it was not an uncommon reference to the Compliance function within business sections.⁴⁴⁸ He denied that the performance appraisal was a charade and referred to the negative feedback in relation to Mr Mahmood which had been received from many officers within the GIB team.⁴⁴⁹
466. Mr Long denied the proposition that he did not undertake a written mid-year review of Mr Mahmood because it had been decided that he would leave the Bank. He asserted that there was no HR requirement for written mid-year reviews and he did not undertake written mid-year reviews for any of his direct reports.⁴⁵⁰
467. Mr Long denied the proposition that a material factor in his performance appraisal of Mr Mahmood in 2019 was that he had made complaints to Mr Long about racial abuse he had received in the unit. He also denied that there was any complaint with respect to mockery of Mr Mahmood's accent or hostility towards him because of his status as a British Asian.⁴⁵¹
468. Mr Long also denied the proposition that a MSA was offered to Mr Mahmood because it was a faster way of getting him out of the Bank than a restructure of his role. He asserted that a

⁴⁴⁴ Day 5 TS 148.

⁴⁴⁵ Day 5 TS 149.

⁴⁴⁶ Day 5 TS 150.

⁴⁴⁷ Day 5 TS 150.

⁴⁴⁸ Day 5 TS 152.

⁴⁴⁹ Day 5 TS 153.

⁴⁵⁰ Day 5 TS 159.

⁴⁵¹ Day 5 TS 161.

MSA would provide a “fair outcome” in a circumstance in which Mr Mahmood and GIB could not work together. He asserted that the MSA was not offered because of any reasons of race, nationality or Speak Ups or anything to do with that.⁴⁵²

469. Mr Long reiterated his denial that a material factor in GIB’s refusal to accept Mr Mahmood in their unit was his status as a British Asian and denied that Mr Mahmood had made any complaint to him on that subject.⁴⁵³ He also denied that any decision had been made to make Mr Mahmood redundant – a decision had been made to change the role and if the role was assessed as significantly changed, then Mr Mahmood’s position would be at risk.⁴⁵⁴

470. Mr Long accepted that Mr Mahmood’s ability to send external emails and documents was removed when he was offered a MSA, but Mr Long was not aware of that at the time, nor was he aware that this was standard HR procedure.⁴⁵⁵ He now understands this to be a standard HR procedure.⁴⁵⁶

471. Mr Long asserted that the restructure of Mr Mahmood’s role would have taken place irrespective of the issues that had arisen between Mr Mahmood and GIB because it resolved the issue of the Shariah reporting line and combined two Band 4 roles into one Band 3 role with two junior supporting officers at levels 6 and 5, thereby reducing cost.⁴⁵⁷

472. Mr Long again denied the proposition that he was aware that the fact that Mr Mahmood was unwelcome in the GIB unit was materially related to his status as a British Asian, and added that the person who ultimately was appointed to the restructured role, Mr Patel, is a British Asian.⁴⁵⁸

473. Mr Long would not accept that Mr De Groote wanted to remove Mr Mahmood from the Bank, although he did accept that Mr De Groote wanted to remove Mr Mahmood from his role in GIB.⁴⁵⁹ He accepted that he had the same view from around mid-2019.⁴⁶⁰

474. During cross-examination on the interview report prepared following the interview of

⁴⁵² Day 5 TS 161-2.

⁴⁵³ Day 5 TS 162.

⁴⁵⁴ Day 5 TS 163.

⁴⁵⁵ Day 5 TS 164.

⁴⁵⁶ Day 5 TS 168.

⁴⁵⁷ Day 5 TS 172.

⁴⁵⁸ Day 5 TS 172.

⁴⁵⁹ Day 5 TS 174.

⁴⁶⁰ Day 5 TS 176.

candidates for the restructured role, Mr Long confirmed his view that:

“My experience with Shiraz is that he sometimes works collaboratively very well with others and other times does not. He is very inconsistent depending on the matter and the people involved. At times his resistance to compromise or to understand the other person’s perspective has created a lack of trust and credibility with GIB and some colleagues in CFCC.”⁴⁶¹

When it was put to Mr Long that Mr Mahmood was being blamed for an inability to create a relationship of trust and credibility with GIB, Mr Long denied that he was being blamed, but expressed the view that he was not able to produce the relationship which he expected of all the people in his team.⁴⁶² In this context Mr Long reiterated that he had many discussions – perhaps every month or so with Mr Mahmood about his confrontational style of communication.⁴⁶³ On one occasion Mr Long recalls going through an email with Mr Mahmood word by word and discussing how it could have been handled a different way.⁴⁶⁴

475. When it was put to Mr Long that rather than discussing Mr Mahmood’s style of communication there were regular discussions about Mr Mahmood’s difficulties in a hostile environment, Mr Long accepted that Mr Mahmood raised issues of being challenged, which related to arguments and heated discussion. Mr Long did not feel that that was any different to challenges that he had seen himself in other businesses within the Bank. He denied that there was any discussion about racial discrimination or racial motivation.⁴⁶⁵ When that assertion was challenged in cross-examination, Mr Long adhered to it, while repeating his testimony to the effect that he discussed the lack of diversity within the GIB team with Mr Mahmood and with HR.⁴⁶⁶

476. Mr Long confirmed that he believed that Mr Mahmood had demonstrated courage over the years “but at the same time had difficulties in making it constructive or effective”.⁴⁶⁷

477. Mr Long accepted that Mr Mahmood demonstrated considerable personal commitment to the vision he had of an Islamic Banking unit that properly followed Compliance procedures

⁴⁶¹ TB 4624; Day 5 TS 186.

⁴⁶² Day 5 TS 186-7.

⁴⁶³ Day 5 TS 187.

⁴⁶⁴ Day 5 TS 187.

⁴⁶⁵ Day 5 TS 188.

⁴⁶⁶ Day 5 TS 189.

⁴⁶⁷ Day 5 TS 192-3.

and had a strategic mindset for regulatory development.⁴⁶⁸

478. Mr Long accepted that the description of Mr Mahmood’s experience in financial markets as “very limited” in the interview report was harsh, although he would describe his experience as “limited”.⁴⁶⁹
479. It was put to Mr Long that he, Mr O’Donnell, Mr Phebey and Mr De Groote constituted a like-minded group of Caucasian males and Mr Mahmood was never fully welcomed by that group collectively. Mr Long agreed that the persons mentioned were all Caucasian males but disagreed that Mr Mahmood was never fully welcomed by that group and reiterated that the person who was appointed to the restructured role was a British Asian.⁴⁷⁰ Mr Long stated that the process which was undertaken with Mr Mahmood – the MSA, the redundancy etc, would all have happened if Mr Mahmood had been Caucasian.⁴⁷¹
480. Mr Long rejected the proposition that the sequence of events since September 2019 was “a grotesque process which has seen a series of Bank procedures manipulated in order to exit [Mr Mahmood] from the Bank”.⁴⁷² Mr Long also rejected the proposition that he was saying one thing to Mr Mahmood and another thing to his superiors about Mr Mahmood’s performance.⁴⁷³ He also rejected the proposition that Mr Mahmood’s eventual dismissal from the Bank was a foregone conclusion.
481. In re-examination Mr Long was taken to the transcript of his interview by Mr Buckett and Mr Ayrton as part of the i3 investigation⁴⁷⁴ in which Mr Long referred to his discussions with Mr Mahmood in which he had “often” discussed the manner in which Mr Mahmood communicated the message, providing the example of the threatened Speak Up in his communications with the Hong Kong branch of the Bank.⁴⁷⁵ During the i3 interview Mr Long referred to having discussed the issue extensively with Mr De Groote and with Mr Phebey, seeking their advice as to how to guide Mr Mahmood to a place where his communication

⁴⁶⁸ Day 5 TS 193-6.

⁴⁶⁹ Day 5 TS 197.

⁴⁷⁰ Day 5 TS 203.

⁴⁷¹ Day 5 TS 203-3.

⁴⁷² Day 5 TS 204.

⁴⁷³ Day 5 TS 205.

⁴⁷⁴ TB 2440.

⁴⁷⁵ Day 5 TS 208-9.

and way of working were better.⁴⁷⁶

Mr Long's evidence - summary

482. Mr Long's written and oral testimony is consistent with the contemporaneous documents and inherently plausible. I formed a favourable impression of his oral testimony. He answered questions directly and without evasion or prevarication. He made concessions where appropriate, some of which are illustrated in the synopsis above.⁴⁷⁷
483. It is clear that Mr Long must bear some of the responsibility for actions taken by Mr Mahmood which created or increased tension between Mr Mahmood and GIB. For example, Mr Long agreed with Mr Mahmood sending the draft Compliance Framework to Mr Gilbert and Mr Fanucci, assuming but without confirming that Mr Mahmood had first raised the draft with GIB. Further, Mr Long accepts that he approved the terms of the 365 feedback prepared by Mr Mahmood in relation to Mr Akbar, which became a source of conflict and tension.
484. However, the material issue in this case is not whether responsibility for Mr Mahmood's actions should be apportioned between Mr Mahmood and Mr Long. The issues which must be determined are whether Mr Mahmood's characteristics of race and/or nationality had a significant influence upon the treatment which he received from employees of the Bank, or whether he was victimised because he complained of racial discrimination. In the particular circumstances of this case that question comes down to the question of whether the treatment which Mr Mahmood received was occasioned by the tensions which had arisen between him and GIB in relation to operational matters or whether Mr Mahmood's race and/or nationality and/or his commission of a protected act or acts had a significant influence on the treatment he received. When it comes to assessing those questions, the evidence leaves no doubt that significant tensions arose between Mr Mahmood and GIB because he sent the draft Compliance Framework to Mr Gilbert and Mr Fanucci before sending it to GIB, and because of the terms of the 365 feedback he provided in respect of Mr Akbar. The question of whether Mr Long should bear some of the responsibility for the creation of those tensions is irrelevant to the question of whether race or nationality played a part in the manner in which Mr Mahmood was treated.

⁴⁷⁶ Day 5 TS 210.

⁴⁷⁷ For example, his role in the 365 feedback, the description of Mr Mahmood's experience in financial markets being harsh etc.

485. A similar observation may be made with respect to the cross-examination of Mr Long in relation to the decision to offer Mr Mahmood a MSA, and when he declined to accept it, to restructure his role putting him at risk of redundancy. Mr Long denied that the restructure of Mr Mahmood's role was a sham or pretext in order to remove him from that role and perhaps the Bank. However, the critical question is whether the decision to restructure Mr Mahmood's role was significantly influenced by Mr Mahmood's race and/or nationality, and/or because of his commission of a protected act or acts, and for the purposes of these proceedings, unless that question is answered in the affirmative, it does not matter what other motivations might have been at work, and in particular it does not matter that one of those motivations may have been to remove him from his role supporting GIB because of the tensions which had emerged.
486. Of course I accept that Mr Mahmood could succeed in his claim if he establishes that complaints about his conduct which were motivated by considerations of race or nationality had a significant influence on the decisions which were made in relation to the restructure of his role, but on that line of argument the critical issues are whether the complaints were significantly influenced by race or nationality, and whether the complaints significantly influenced the decision to restructure the role, rather than whether the decision to restructure the role was taken partly in order to remove Mr Mahmood from the Bank
487. I see no reason to doubt any of the testimony given by Mr Long. I accept his evidence that Mr Mahmood never told him that his accent was mocked or that frequent references were made to his British nationality by members of GIB. I also accept his evidence that Mr Mahmood never told him that he was subjected to bullying by members of GIB. That evidence is consistent with the lack of any documentary record of any allegations to that effect in the extensive documentary record presented to the Court. That evidence establishes that Mr Mahmood was very quick to complain in writing about any treatment which he received which he considered to be adverse to his interests. However, there is only one document in evidence before the Court in which Mr Mahmood complained of conduct related to his race and/or nationality, and that is the email in which he referred an assertion which he attributes to Mr Vaselli to the effect that Mr Akbar requested Mr Vaselli to tell Mr Mahmood that he knew how to deal with British people even if they had been masters. If, as Mr Mahmood now asserts, his accent had been the frequent subject of mockery, and his British nationality had been the frequent subject of reference, and if he had been bullied by GIB, it is highly improbable that he would not have complained in writing

of those matters.

488. I also accept Mr Long's evidence to the effect that he was not motivated by any considerations of race or nationality in his dealings with Mr Mahmood, not only because the evidence was plausibly given and is consistent with the contemporaneous documents, but also because there is no evidence to the contrary (other than Mr Mahmood's bare assertions), nor does the evidence establish any facts from which any inference adverse to Mr Long can be drawn on this issue.

Mr Shaikh

Written evidence

489. Mr Shaikh provided one witness statement in which he outlined his education and professional experience. He held the position of CEO of GIB from November 2015 to July 2020, after which he started in his current role as CEO of the Bank in Pakistan.

490. Mr Shaikh states that after Mr Mahmood started his role with GIB he made a concerted effort to get up to speed with how Islamic Banking operated and the products and services which it offered.⁴⁷⁸

491. In his statement Mr Shaikh asserts that on 7 December 2018 Mr Mahmood sent an email to him and others attaching a draft of the Compliance Framework document.⁴⁷⁹ The date is clearly erroneous, as the relevant email was sent a year earlier, on 7 December 2017. I will return to this error in the context of Mr Shaikh's cross-examination.

492. In his statement Mr Shaikh sets out his position in relation to:

- (a) The Draft Compliance Framework being sent to Mr Gilbert and Mr Fanucci before it had been considered by GIB;
- (b) The Shariah Conflict of Interest Issue;
- (c) The 365 feedback about Mr Akbar; and

⁴⁷⁸ WS [29].

⁴⁷⁹ TB 1132.

(d) His disagreement with Mr Mahmood in relation to the Conduct Plan.

493. Mr Shaikh denies that he told Mr Long in May 2019 that he wanted Mr Mahmood to be replaced, although he accepts that he may have queried how Mr Mahmood could properly undertake his role if he was unable to develop a constructive working relationship with GIB.⁴⁸⁰

494. In May 2019 Mr Shaikh invited the GIB Management Team to provide feedback on how the culture within the GIB Business could be improved. On 14 May 2019 Mr Mahmood provided Mr Shaikh with his feedback, in which he referred to the desirability of more occasional social interaction with junior staff.⁴⁸¹

495. Mr Mahmood did not make any reference to discrimination or harassment or his accent being mocked.⁴⁸²

496. Mr Shaikh refers to the review of GIB undertaken by BMA and its conclusions in relation to the Shariah reporting line. After the BMA team had reported, a meeting was held on 5 August 2019 to discuss the team's findings. Mr Mahmood dialled in remotely. Mr Long was invited to the meeting but was unable to attend. According to Mr Shaikh, Mr Mahmood expressed the view that the BMA team's findings had vindicated his position all along. On the other hand, Mr Shaikh and Mr Akbar reported their view that they still did not think the Shariah reporting line needed to be changed. In the context of this discussion, according to Mr Shaikh, Mr Mahmood said:

“You guys have been running this business for the past 15 years, you are all senior officers, and I am disappointed that I have to explain the difference between Shariah Compliance and Shariah Advisory to you.”⁴⁸³

Mr Shaikh asserts that he was shocked at Mr Mahmood's outburst, which he considered to be very disrespectful. Mr Shaikh asserts that he believes he had reached a stage in his career where he was due a certain level of respect from his colleagues, particularly in the presence of other employees. In his view Mr Mahmood's conduct during the meeting was unprofessional, inappropriate and inconsistent with the Bank's values.⁴⁸⁴ Mr Shaikh did not

⁴⁸⁰ WS [78].

⁴⁸¹ TB 2334.

⁴⁸² WS [85].

⁴⁸³ WS [102].

⁴⁸⁴ WS [103]-[104].

hear any discussion between Mr Akbar and Mr Vaselli outside the meeting room.

497. Mr Shaikh decided to “sleep on” Mr Mahmood’s behaviour. The following day he called Mr Long and told him that Mr Mahmood’s conduct during the meeting was unacceptable and disrespectful. Mr Long acknowledged that Mr Mahmood’s style was an issue. They agreed that Mr Shaikh would not submit a Speak Up in relation to the matter.⁴⁸⁵

498. On 15 August 2019 Mr Shaikh sent an email to Mr Long in which he asserted that:

“It is becoming increasingly difficult for me to conduct regular business with the attitude that Shiraz continues to adopt. His approach is becoming disruptive by the day and I am really struggling to run a productive unit under these ongoing distractions.”⁴⁸⁶

Mr Shaikh requested Mr Long’s presence in GIB top team key meetings so as to avoid “an extremely unpleasant incident”.⁴⁸⁷

499. Mr Shaikh asserts that he did not instruct Mr Long, or anyone else, to arrange for Mr Mahmood to use a desk on the Compliance floor, although he supported Mr Long’s decision to relocate Mr Mahmood “given the deteriorating relationship between [Mr Mahmood] ... and the GIB management team”.⁴⁸⁸

500. Mr Shaikh asserts that he did not tell or instruct Ms Tabbara to take any action against Mr Mahmood following the meeting on 5 August 2019. In due course he received an email from Ms Tabbara attaching the draft report of an investigation which she had conducted into the events on 5 August 2019.⁴⁸⁹ In the draft report Ms Tabbara had upheld the complaints against both Mr Mahmood and Mr Akbar. Mr Shaikh was surprised that the complaint against Mr Akbar had been upheld because Mr Vaselli was the only witness to what Mr Akbar was alleged to have said, and Mr Akbar denied saying it. Mr Shaikh asked to discuss the report with Ms Al Najjar but that discussion never took place, and he never instructed either Ms Al Najjar or Ms Tabbara to change the report.⁴⁹⁰ However, on 10 October 2019 Mr Shaikh received another email from Ms Tabbara saying that she had amended her report in light of additional witness evidence and had concluded that the complaint against Mr Akbar would

⁴⁸⁵ WS [109]

⁴⁸⁶ TB 3131; WS [110].

⁴⁸⁷ WS [110].

⁴⁸⁸ WS [117].

⁴⁸⁹ TB 3322; WS [124].

⁴⁹⁰ WS [127]-[128].

not be upheld because there was a conflict in the evidence given by Mr Vaselli and Mr Akbar and there were inconsistencies in the statements provided by Mr Vaselli during the first and second interviews with the investigator. She had therefore concluded that her investigation into the complaint against Mr Akbar was inconclusive.⁴⁹¹

501. It seems from the text of Ms Tabbara's report that the inconsistency to which she was referring is the assertion that Mr Vaselli initially stated that Mr Akbar said to him "tell your friend that he [Mr Shiraz] was behaving inappropriately and should have better manners next time he is dealing with him" whereas during a second interview with Mr Vaselli he stated that his recollection was that Mr Akbar had said "I know how to put British people in their place" in the sense that Mr Mahmood should have better manners next time he is dealing with Mr Akbar.⁴⁹²

502. Mr Shaikh asserts that he was never told that Project Barossa related to disclosures made by Mr Mahmood until after Mr Mahmood had left the Bank. He asserts that he could therefore not have changed his behaviour towards Mr Mahmood as a result of him making disclosures.⁴⁹³

503. Mr Shaikh asserts that as the relationship between Mr Mahmood and GIB deteriorated he felt that Mr Mahmood started to minute every conversation and discussion by email and misrepresented what had been discussed. He therefore decided to meet with Mr Mahmood in the presence of other colleagues and eventually requested Mr Long to attend GIB team meetings.⁴⁹⁴

504. Mr Shaikh asserts that he never adopted a loud, aggressive or unfriendly tone towards Mr Mahmood.⁴⁹⁵ Mr Mahmood denies that he treated Mr Mahmood any differently in relation to responding to his emails. He asserts that he responded to those which required a response, unless responding would inflame the situation, and did not respond to those which did not require a response.⁴⁹⁶

505. Mr Shaikh states that he cannot recall the comment attributed to him by Mr Mahmood in

⁴⁹¹ WS [131].

⁴⁹² TB 3375-6.

⁴⁹³ WS [137].

⁴⁹⁴ WS [139].

⁴⁹⁵ WS [141].

⁴⁹⁶ WS [142].

relation to the protests in Karachi and further asserts that at the time he was not aware of any discussions that Mr Mahmood was having about a MSA. He further asserts that Mr Mahmood had sought to frame every action or comment as part of a coordinated campaign against him which simply did not exist.⁴⁹⁷

506. Mr Shaikh asserts that as a result of the deteriorating relationship between GIB and Mr Mahmood, GIB came to view Mr Mahmood's involvement in matters as detrimental to business processes. He asserts that Mr Mahmood's obstructive approach and the regular disagreements between him and the team were a distraction from generating and conducting business for GIB which was his priority. In order to reduce the obstructions, disagreements and distractions he moved away from involving Mr Mahmood and started to engage more with Mr Long on Compliance issues.⁴⁹⁸

507. Mr Shaikh does not recall specifically instructing other members of the GIB team not to copy Mr Mahmood into emails or to limit the time they spent with Mr Mahmood. However, according to Mr Shaikh, Mr Mahmood's obstructive approach and the number of disagreements involving him was becoming detrimental to the conduct of GIB business and the obvious way of reducing the number of obstructions, disagreements and distractions was to limit Mr Mahmood's involvement. Mr Shaikh asserts that this had nothing to do with the Project Barossa investigation or Mr Mahmood's race or nationality.⁴⁹⁹

508. Mr Shaikh asserts that he does not recall saying that if anybody wanted to raise a whistleblowing disclosure against him they were free to do so and that he was "skilled at handling senior management" or that if a whistleblowing disclosure was raised against he would, at most, be reprimanded.⁵⁰⁰

509. Mr Shaikh reiterated in his statement that in his discussion with Mr Long on 7 May 2019 he did not say that he wanted Mr Mahmood to be replaced, although he may have questioned how Mr Mahmood could properly undertake his role if he was unable to develop a constructive or working relationship with GIB.⁵⁰¹

510. Mr Shaikh asserts that he never heard Mr Mahmood's British accent being mocked or his

⁴⁹⁷ WS [145]-[147].

⁴⁹⁸ WS [150].

⁴⁹⁹ WS [151].

⁵⁰⁰ WS [151]-[152].

⁵⁰¹ WS [153]

British nationality referred to.⁵⁰² Mr Shaikh does recall making references to avoiding creating a “culture of fear”. He was very keen to ensure that GIB did not develop an environment in which people were too scared to make a decision and fearful of the consequences of discussing things with each other.⁵⁰³

511. In relation to Mr Shaikh’s participation in the interviews for the restructured role, Mr Shaikh asserted that Mr Mahmood’s failure to forge a constructive working relationship with GIB inevitably played into the assessment of the merits of his application. However, putting that matter to one side, Mr Shaikh asserts that his overall professional opinion was that Mr Patel was by far the stronger candidate for the new role given his significant financial markets experience, which was the greater part of the new role, and his track record of developing strong relationships with the business. Mr Shaikh asserts that his assessment of Mr Mahmood’s and Mr Patel’s candidacy for the new role had nothing to do with Mr Mahmood’s race or nationality or with any complaint of discrimination made by Mr Mahmood.

Oral evidence

512. In cross-examination Mr Shaikh asserted that he was not upset or angry as a result of Mr Mahmood’s 365 feedback relating to Mr Akbar – he was frustrated because Mr Mahmood had created a difficult situation.⁵⁰⁴ Mr Shaikh does not recall suggesting to Mr De Groot that Mr Mahmood’s performance rating should be reduced because of the 365 feedback he had provided. However, Mr Shaikh accepted that he advised HR that he thought the feedback had been provided in bad faith.⁵⁰⁵ Mr Shaikh reiterated that he did not recall any specific conversation in which he suggested a reduced performance rating for Mr Mahmood, but as a stakeholder he provided his feedback to Mr Long as Mr Mahmood’s line manager. The feedback would not have been limited to one incident such as the 365 feedback but would have addressed the nature of the working relationship between Compliance and GIB.⁵⁰⁶

513. Mr Shaikh was cross-examined about the dates of the emails relating to the Shariah reporting line in his witness statement. As already noted, it is clear that there is an error in

⁵⁰² WS [154].

⁵⁰³ WS [154].

⁵⁰⁴ Day 6 TS 3-6.

⁵⁰⁵ Day 6 TS 10.

⁵⁰⁶ Day 6 TS 16.

the statement in relation to one of those dates, which should have been 7 December 2017 rather than 7 December 2018. Mr Shaikh was cross-examined at some length about the inconsistencies which this error caused in relation to other dates in his statement. Mr Shaikh went to some lengths to try and reconcile the dates which are irreconcilable, because of the error. I took Mr Shaikh to the email in question and suggested to him that there was an error in his statement in relation to the date of the email. For some time he refused to accept that proposition until he ultimately accepted the error. However, shortly after he maintained the correctness of assertions in his witness statement that could not be reconciled with the error. When it was put to Mr Shaikh in cross-examination that there had been a clear error in his statement and that he had done everything he could to avoid making concessions in evidence, he rejected that proposition.⁵⁰⁷ Although there is an error with respect to the date of the email and the inconsistencies, the error produced is not material to the issues in the case. However, Mr Shaikh's evidence on this topic does not reflect well on his general credibility.

514. Mr Shaikh denied the proposition that Mr Akbar had shouted at Mr Mahmood in the course of meetings relating to the Shariah Conflict Issue, although he accepted that voices may have been raised.⁵⁰⁸ He also rejected an assertion that GIB was “ganging up” on Mr Vaselli in meetings.⁵⁰⁹ He accepted that at times there were heated arguments but did not accept that there was any intimidation.⁵¹⁰ Mr Shaikh asserted that Mr Mahmood had his own views and was not ready to listen to other views and was adamant in communicating what he felt was the right thing to do.⁵¹¹
515. Mr Shaikh denied that he knew in late January 2019 that complaints were going to be made against Mr Mahmood and further denied any involvement in them. He asserted that he came to know about the complaints only when he became aware that there was an investigation going on in relation to them.⁵¹² He asserted that the first he knew of the investigation was on 16 June 2019.⁵¹³ When it was put to him that he knew grievances were going to be lodged against Mr Mahmood on 27 January 2019, he stated that he was aware that there was an unhappy business environment but he was not aware that a Speak Up was going to

⁵⁰⁷ Day 6 TS 58-71.

⁵⁰⁸ Day 6 TS 74-75.

⁵⁰⁹ Day 6 TS 76-77.

⁵¹⁰ Day 6 TS 80.

⁵¹¹ Day 6 TS 83.

⁵¹² Day 6 TS 84-85.

⁵¹³ Day 6 TS 86.

be lodged against Mr Mahmood.⁵¹⁴

516. Mr Shaikh was then taken to an email exchange between himself and Mr Long on 29 January 2019. In that exchange Mr Long stated to Mr Shaikh:

“Considering what you mentioned on Sunday, do we go ahead with this meeting? We would not be able to discuss the grievance as HR treat such cases as confidential while they are following up.”

Mr Shaikh replied:

“Shiraz had asked for this meeting earlier. Grievance issue came in later. ...”⁵¹⁵

517. Notwithstanding this contemporaneous evidence, Mr Shaikh denied that he was aware that grievances were going to be lodged against Mr Mahmood in late January 2019.⁵¹⁶ In the course of his denial he asserted that “Mr Long may have mentioned about a grievance. But I was neither aware nor do I recollect any conversation about the grievance.”⁵¹⁷ That assertion is inconsistent with the email, in which Mr Long attributes the information relating to a grievance against Mr Mahmood to Mr Shaikh. When that proposition was put to Mr Shaikh he said “I don’t know what I mentioned”. Further, when he was taken to his email to Mr Long when he referred to the grievance issue coming in after Mr Mahmood had called for a meeting, he stated that he could not recall the sequence of events.⁵¹⁸

518. I then referred Mr Shaikh to his email of 29 January 2019 and asked if he accepted that he was then aware that there was a grievance issue relating to Mr Mahmood. In his answer he asserted that there were multiple grievances, including grievances from before and other issues going on and he could not recollect which grievance was being talked about.⁵¹⁹

519. There was no evidence that there were any grievances pending against Mr Mahmood in January 2019. However, there is evidence that two anonymous grievances were lodged against Mr Mahmood in late January 2019 and Ms Nilakantan and Ms Yousef lodged complaints against Mr Mahmood around this time. It is inherently probable that these are the grievances to which Mr Shaikh referred in his meeting with Mr Long, and in their subsequent email exchange. I do not accept Mr Shaikh’s evidence that he was not aware of

⁵¹⁴ Day 6 TS 86-87.

⁵¹⁵ TB 1898.

⁵¹⁶ Day 6 TS 91.

⁵¹⁷ Day 6 TS 92.

⁵¹⁸ Day 6 TS 93-95.

⁵¹⁹ Day 6 TS 95.

those complaints until June 2019. His implausible attempt to deny the obvious conclusion to be drawn from his email exchange with Mr Long reflects poorly on his general credibility. Further, his awareness that grievances were to be lodged before they were in fact lodged suggests that there was discussion within GIB as to the lodgement of complaints against Mr Mahmood.

520. Mr Shaikh denied that Mr Mahmood's accent was regularly being mocked in meetings or that he was asked to repeat himself on the apparent basis that he could not be understood. Mr Shaikh stated that he could not recall if Mr Mahmood was asked to repeat things because the person to whom he was speaking did not understand what he said, but denied that there was any mocking of his accent or rude behaviour – although there were differences of opinion from time to time when voices may have been raised.⁵²⁰

521. It was put to Mr Shaikh that the hostility towards Mr Mahmood was caused in part because he was a person who had been born in Pakistan but who identified as British. Mr Shaikh replied by asserting that he never experienced any kind of hostility towards Mr Mahmood and that he never had any sense that Mr Mahmood's nationality or his origins had anything to do with any conversations relating to GIB.⁵²¹ Mr Shaikh did not accept that he was not surprised when he saw Mr Mahmood being described as a "copper for colonial era" and asserted that he heard that expression for the first time when the email was brought to his attention and he does not know who wrote the email.⁵²²

522. In cross-examination Mr Shaikh reiterated his denial that he stated that he was aware people were lodging Speak Ups against him and he would be able to deal with them effectively.⁵²³ He also denied that he was aware that Mr Mahmood had lodged Speak Ups with Mr Winters and Ms McDermott. He also denied ceasing communications with Mr Mahmood on a one-to-one basis and asserted that he generally communicated with Mr Mahmood in the course of meetings with others as part of normal practice.⁵²⁴ He also denied that there was any change in practice in this regard after Mr Mahmood lodged his Speak Ups.⁵²⁵

⁵²⁰ Day 6 TS 99-100.

⁵²¹ Day 6 TS 101.

⁵²² Day 6 TS 101.

⁵²³ Day 6 TS 109.

⁵²⁴ Day 6 TS 110-111.

⁵²⁵ Day 6 TS 111.

523. Mr Shaikh denied ever speaking to Mr Mahmood loudly or in a disrespectful manner.⁵²⁶ He further denied that there was any change in his approach to responding to Mr Mahmood's emails.
524. Mr Shaikh reiterated that there was no mockery of Mr Mahmood's accent or shouting at him during meetings.⁵²⁷
525. Mr Shaikh denied that his escalation of Mr Mahmood's Conduct Risk Paper to Mr Long was a pretext to get Mr Mahmood out of GIB. He asserted that he worked closely with Mr Mahmood from the beginning and they had worked well together and he wanted to ensure co-operative collaboration within the unit.⁵²⁸ Mr Shaikh denied that during a conversation with Mr Long on 7 May 2019 he had made it clear that he wanted Mr Mahmood out of GIB. He asserted that in the phone call he had sought Mr Long's assistance in trying to resolve the frictions that were holding the unit back.⁵²⁹ He also denied that he was aggressive towards Mr Mahmood in a meeting on that day.
526. Mr Shaikh denied that he had anything other than a normal professional relationship with Ms Al Najjar.⁵³⁰ He also denied the proposition that he had made clear to Mr De Groote that he wanted Mr Mahmood out of GIB. He raised issues for the consideration of his managers, and it was their responsibility to resolve them.⁵³¹ He also denied ever being involved in a conversation relating to Mr Mahmood being offered a MSA.⁵³² He was however aware of a plan to restructure Mr Mahmood's role, but he did not know what the new structure would be like or who the candidates for any new position would be.⁵³³
527. In cross-examination Mr Shaikh reiterated his evidence to the effect that Mr Mahmood's statements to the meeting on 5 August 2019 were 'very disrespectful'.⁵³⁴ He confirmed that he was not a party to any conversation between Mr Akbar and Mr Vaselli after the meeting.⁵³⁵
528. Mr Shaikh denied the proposition that it was only after he became aware that Mr Mahmood

⁵²⁶ Day 6 TS 111.

⁵²⁷ Day 6 TS 113.

⁵²⁸ Day 5 TS 118.

⁵²⁹ Day 6 TS 120.

⁵³⁰ Day 6 TS 126.

⁵³¹ Day 6 TS 127-128.

⁵³² Day 6 TS 128.

⁵³³ Day 6 TS 129-130.

⁵³⁴ Day 6 TS 134.

⁵³⁵ Day 6 TS 137.

had made a complaint of race discrimination that he requested ER/HR to take action in relation to what Mr Mahmood said on 5 August 2019.⁵³⁶ He also denied that the direction that Mr Mahmood move his workstation from the GIB floor to the Compliance floor was in retaliation for his complaint. He asserted that it was entirely normal for Compliance officers to work from the Compliance floor, and he was now aware that Ms Tabbara had suggested that he move in the interests of his well-being. However, at the time, it was a decision made by Mr Long with which he had no involvement.⁵³⁷ Mr Shaikh also denied “categorically” that he reached any agreement with Ms Al Najjar that Mr Mahmood would be put through disciplinary management.⁵³⁸ He also emphatically denied any involvement in the amendment of Ms Tabbara’s draft report to arrive at an inconclusive finding in relation to the complaint against Mr Akbar.⁵³⁹

529. Mr Shaikh denied that the restructure of Mr Mahmood’s role was undertaken because he wanted him out of the Bank. He asserted that the restructure was occurring independently, but Mr Mahmood had failed to work collaboratively with GIB so if there was a restructure it might help resolve that issue.⁵⁴⁰

530. Mr Shaikh accepted that he would have given feedback to Mr Long at the time of Mr Long’s performance appraisal of Mr Mahmood in 2019.⁵⁴¹ However, he denied that he ever had any conversation with Mr Long in which he stated that he wanted Mr Mahmood out – although he accepted that he advised Mr Long that things were not working, and it was the responsibility of his manager to make changes to ensure that GIB functioned well.⁵⁴²

531. When it was put to Mr Shaikh that Mr Mahmood’s eventual dismissal was a foregone conclusion and not a genuine redundancy he replied that he could not comment because he was not involved in the process, apart from his involvement in the interview panel.⁵⁴³

532. It was put to Mr Shaikh that Mr Mahmood did not create a “culture of fear” within GIB. Mr Shaikh replied that “it was not easy for people in GIB to work with Mr Mahmood and whether you call it fear or whether you call it people minding their own business because they don’t

⁵³⁶ Day 6 TS 142.

⁵³⁷ Day 6 TS 142-143.

⁵³⁸ Day 6 TS 145.

⁵³⁹ Day 6 TS 145-147.

⁵⁴⁰ Day 6 TS 148-149.

⁵⁴¹ Day 6 TS 151.

⁵⁴² Day 6 TS 154.

⁵⁴³ Day 6 TS 155-156.

want to get into friction it had the same result".⁵⁴⁴

533. Mr Shaikh denied the proposition that the interview panel process was a surreal exercise because the outcome had already been determined. He asserted that very senior members of the Bank were involved in the process and different people from different levels of seniority were involved.⁵⁴⁵ He asserted that Mr Patel came out as a much better candidate in terms of his knowledge and his people skills and collaboration.⁵⁴⁶ He rejected the proposition that he and Mr Long were critical in the decision of the panel and asserted that it was for each individual member of the panel to assess the applicants for the position and he and Mr Long had no greater vote than any other member of the panel.⁵⁴⁷

534. Mr Shaikh emphatically denied that Mr Mahmood's complaints of mistreatment and discrimination during his interactions with GIB had any affect upon his approach to the interview and candidate selection process and further denied that there was any mistreatment of or discrimination against Mr Mahmood.⁵⁴⁸

535. Mr Shaikh firmly denied that the reasons why people within the Bank reacted so strongly and so negatively to Mr Mahmood included the fact that he was a British Asian. He asserted that dealings with Mr Mahmood had nothing to do with his background or his nationality or him being British Asian and so far as he was concerned, that issue never came up. The issue that had to be addressed was his lack of collaboration.⁵⁴⁹

536. Mr Shaikh also rejected the proposition that Mr Vaselli had been treated differently to Mr Mahmood, in that no complaints had been raised against Mr Vaselli, because of Mr Mahmood's racial status.

Mr Shaikh's evidence - summary

537. I have identified two portions of Mr Shaikh's evidence which I have rejected and which give rise to doubts with respect to his general credibility. However, I accept Mr Shaikh's evidence to the effect that he did not observe any mockery of Mr Mahmood's accent or reference to his nationality essentially for the reasons I have given in relation to the same evidence given

⁵⁴⁴ Day 6 TS 159.

⁵⁴⁵ Day 6 TS 161.

⁵⁴⁶ Day 6 TS 162.

⁵⁴⁷ Day 6 TS 162-163.

⁵⁴⁸ Day 6 TS 163.

⁵⁴⁹ Day 6 TS 164.

by Mr Long – namely, lack of any record of Mr Mahmood complaining in writing of such matters in circumstances in which such records would have been expected.

538. I also accept Mr Shaikh’s evidence to the effect that he was not motivated in any way by considerations relating to Mr Mahmood’s race and/or nationality. There is no evidence to the contrary, nor any facts established by evidence from which an inference to that effect could be drawn. Mr Shaikh’s evidence confirms, consistently with the evidence of other witnesses and contemporaneous documents that there were significant tensions between Mr Mahmood and GIB, including himself, and those tensions readily explain the manner with which Mr Shaikh dealt with Mr Mahmood. I will deal in due course with the racial references made in the two anonymous Speak Ups raised against Mr Mahmood, and the statement attributed to Mr Akbar in his conversation with Mr Vaselli but for present purposes it is sufficient to observe that neither of those matters are capable of sustaining any inference that Mr Shaikh’s actions were motivated by considerations of race and/or nationality, or were influenced by the commission of any protected act or acts by Mr Mahmood.

Mr Akbar

Written evidence

539. Mr Akbar is a Canadian national of Pakistani origin. He has provided one witness statement, in which he sets out his professional background. In that statement he observes that he has not lived in Pakistan since his wife and he relocated to Canada in 1987. He has two children with Canadian nationality and his eldest child lives in Australia. He splits his time between Canada, UAE and Australia.

540. In his statement Mr Akbar sets out the reasons why he disagreed with Mr Mahmood’s views in relation to the Shariah Conflict Issue.⁵⁵⁰ During meetings on the subject Mr Mahmood was asked to amend the reference in the draft to reflect the fact that whether or not a conflict existed was something to be reviewed.⁵⁵¹ According to Mr Akbar, the exchanges on the issue were robust professional disagreements. There were raised voices, but the exchanges were not personal and according to Mr Akbar “had nothing to do with the claimant’s race or nationality”.⁵⁵² Mr Akbar asserted that it was often Mr Mahmood who was raising his voice

⁵⁵⁰ WS [39].

⁵⁵¹ WS [42].

⁵⁵² WS [42].

the most. He does not recall Mr Mahmood being “shouted at by numerous members of GIB”.⁵⁵³ Mr Akbar assumed that Mr Mahmood intended for the Head of Shariah to report into him, which would have justified his promotion to a more senior role which Mr Akbar did not consider he merited.⁵⁵⁴ Mr Akbar does not recall anyone telling Mr Mahmood that he did not know what he was talking about during discussions with respect to the Shariah reporting line nor did anyone mock Mr Mahmood’s accent. In this context Mr Akbar reiterated that the interchanges had nothing to do with race or nationality.⁵⁵⁵

541. Mr Akbar reviewed the 365 feedback which Mr Mahmood had provided after Mr Akbar had returned from leave. The feedback was completely negative, even in sections headed “positive feedback” and “development feedback”. Mr Akbar regarded it as a very personal attack presented in a way which meant that a number of his superiors and colleagues would see it. He was humiliated, although he tried not to become emotional about it. He was keen to correct some of the factual inaccuracies.⁵⁵⁶ He never discussed Mr Mahmood’s feedback with him. Mr Akbar does not recall that his working relationship with Mr Mahmood changed significantly after the feedback, although the relationship was already quite tense.⁵⁵⁷

542. On 24 January 2019 Mr Akbar sent an email to Mr Mahmood suggesting a discussion of their differences with a view to reaching agreement about how they could move forward together. Mr Mahmood replied declining the invitation to meet and advising that he would prefer to have a structured meeting with Mr Long and Mr Shaikh present. Mr Akbar considered that Mr Mahmood’s response demonstrated that he had no real interest in developing a constructive working relationship with him.⁵⁵⁸

543. Mr Akbar asserted that he did not see the anonymous complaint about Mr Mahmood dated 30 January 2019 until he began preparing his written statement. He asserted that he did not send it and he does not know who did.⁵⁵⁹

544. In his statement Mr Akbar asserted that Mr Mahmood’s approach towards GIB contributed negatively to the culture in GIB and made people fearful.⁵⁶⁰ In his statement he provided

⁵⁵³ WS [42].

⁵⁵⁴ WS [44].

⁵⁵⁵ WS [53].

⁵⁵⁶ WS [57].

⁵⁵⁷ WS [59].

⁵⁵⁸ WS [60]-[62].

⁵⁵⁹ WS [63]-[64].

⁵⁶⁰ WS [68].

examples of Mr Mahmood's conduct which he asserts made staff in GIB "uncomfortable".⁵⁶¹

545. Mr Akbar asserts that Mr Shaikh did not scream or shout at Mr Mahmood during their meeting on 8 May 2019.⁵⁶² Mr Akbar confirmed Mr Shaikh's evidence as to the statement made by Mr Mahmood at the meeting on 5 August 2019 and asserts that he was taken aback by the statement by Mr Mahmood as he had never heard anyone speak to Mr Shaikh in the manner or tone adopted by Mr Mahmood during that meeting. He considered Mr Mahmood's conduct to be totally disrespectful, inappropriate and unprofessional.⁵⁶³
546. Mr Akbar confirms that while leaving the meeting he spoke with Mr Vaselli. The two of them were alone. He asked Mr Vaselli why Mr Mahmood was being so difficult and said to Mr Vaselli that he should tell Mr Mahmood to be more respectful in the future. He denies making any reference to Mr Mahmood's race or nationality or any reference to British people being "masters" or any other reference to colonial rule. He asserts that because his family is a mix of Pakistani, Indian (his wife) and Canadian nationals who live in Pakistan, Canada and Australia, issues of race or nationality do not come into his mind.⁵⁶⁴
547. Mr Akbar asserted that he did not have any involvement in the disciplinary process brought against Mr Mahmood and did not ask Ms Tabbara or anyone else to discipline him.⁵⁶⁵

Oral evidence

548. In cross-examination Mr Akbar agreed that Mr Mahmood started well in his role at GIB.⁵⁶⁶
549. Mr Akbar denied that he was angry with Mr Mahmood because he had been denied the opportunity to provide input into the draft Compliance Framework before it had been sent to senior managers in Compliance.⁵⁶⁷ Mr Akbar accepted that there was a strong disagreement between Mr Mahmood and GIB in relation to the Shariah conflict of interest and that the reporting line for Mr Mubeen ultimately changed. However, Mr Akbar did not accept that he took the issue very personally from the start.⁵⁶⁸ I digress to observe that this

⁵⁶¹ WS [68].

⁵⁶² WS [82].

⁵⁶³ WS [91].

⁵⁶⁴ WS [94].

⁵⁶⁵ WS [98].

⁵⁶⁶ Day 7 TS 9.

⁵⁶⁷ Day 7 TS 11.

⁵⁶⁸ Day 7 TS 11-12.

answer is difficult to reconcile with the portion of Mr Akbar's witness statement in which he asserted:

"To me, by claiming that the Shariah reporting line was a conflict of interest the claimant was suggesting that Mr Shaikh (or another member of the GIB management team) may be inclined to force Mr Mubeen to breach Shariah principles. I felt that the claimant was calling into question our Islamic faith and I found it offensive."⁵⁶⁹

When that portion of his statement was put to Mr Akbar, he did not agree that his was a strong reaction.⁵⁷⁰

550. Mr Akbar denied that he or any other members of GIB shouted at Mr Mahmood during the meetings which were held to discuss the Shariah Conflict Issue.⁵⁷¹ He accepted that people had strong views, but he denied that there was any shouting.⁵⁷² He also denied that Mr Mahmood was being "ganged up on" in these meetings. He asserted that Mr Mahmood had strong opinions and could be aggressive at times. He also rejected the proposition that GIB had ganged up on Mr Vaselli in the past.⁵⁷³

551. Mr Akbar denied that he had made a serious allegation against Mr Mahmood to the effect that he had raised the conflict-of-interest issue out of a desire for personal career advancement. He asserted that he had not made that allegation to anyone – it was a personal feeling which he had not communicated to anybody.⁵⁷⁴ However, the assertion was of course made in Mr Akbar's witness statement.

552. Mr Akbar was cross-examined on an email which he sent to Mr Pieterse following Mr Mahmood's 365 feedback.⁵⁷⁵ In the email Mr Akbar raised a number of issues with respect to Mr Mahmood including:

- (a) Playing games on his mobile phone in the office;
- (b) Peeking into other staffs' systems by standing behind them without their knowledge;
- (c) Dozing off in meetings; and

⁵⁶⁹ WS [39].

⁵⁷⁰ Day 7 TS 12.

⁵⁷¹ Day 7 TS 17.

⁵⁷² Day 7 TS 18-19.

⁵⁷³ Day 7 TS 20.

⁵⁷⁴ Day 7 TS 27-28.

⁵⁷⁵ TB 1743; Day 7 TS 35.

- (d) During a visit to the UK for staff training he took days off, contrary to the Regional CEO's directives (Mr Akbar was not sure if Mr Mahmood had the right approvals in place).

553. In cross-examination Mr Akbar confirmed his assertion that he had not seen any of the complaints made against Mr Mahmood before preparing his witness statement.⁵⁷⁶ Mr Akbar was then taken to the anonymous complaint against Mr Mahmood dated 30 January 2019.⁵⁷⁷ His attention was drawn to the fact that the author of the anonymous complaint asserted that Mr Mahmood:

- (a) Visited the UK on Bank business and took personal leave contrary to directives issued by the Regional CEO ("not sure if he had the right approvals in place");
- (b) Is often found playing games on his mobile phone during office hours;
- (c) Has been often found prying into the laptop screens of others without their knowledge; and
- (d) Is sometimes found napping in meetings.

554. Given the close correlation between the points made in this complaint, and the points made in Mr Akbar's email to Mr Pieterse, it was put to Mr Akbar that there was a group who had decided to make complaints against Mr Mahmood and that he was a member of that group. Mr Akbar denied that proposition and also denied that he either wrote or contributed to the anonymous email of 30 January 2019.⁵⁷⁸

555. Mr Akbar was then taken to the complaint lodged under the pseudonym Jack James dated 28 January 2019 and the similarities between that complaint and the anonymous complaint of 30 January 2019 were pointed out to Mr Akbar, including the complaint that Mr Mahmood has been found peeping into peoples' screens without their knowledge by standing behind their desks.⁵⁷⁹ Mr Akbar sought to explain the similarities by asserting that Mr Mahmood had certain behavioural characteristics which were very common and known to everyone,

⁵⁷⁶ Day 7 TS 39-40.

⁵⁷⁷ TB 1909.

⁵⁷⁸ Day 7 TS 45-46.

⁵⁷⁹ TB 1900.

and so others may have drawn attention to those characteristics.⁵⁸⁰

556. Mr Akbar was then taken to an email which he sent to Ms Nilakantan and Ms Yousef two days after he sent his email to Mr Pieterse attaching an email from Mr Mahmood to Mr Akbar in which he had stated he was uncomfortable with Mr Akbar's draft ORF.⁵⁸¹ Mr Akbar was then taken to Ms Nilakantan's email of complaint of 7 February 2019 in which she referred to Mr Mahmood raising concerns in relation to ORF implementation by stating that Mr Mahmood was "uncomfortable". Mr Akbar was then taken to an email from him to Ms Yousef on 10 February 2019 in which he forwarded his historic rewrite of the ORF section, and on the same day Ms Yousef sent an email to Ms Tabbara outlining her complaints against Mr Mahmood.

557. Mr Akbar sought to explain these events in a rambling answer in which he essentially asserted that both women worked for him and were responsible for taking minutes of the meetings and complained to him many times about the difficulty they were having with Mr Mahmood in relation to the minutes. I then asked Mr Akbar directly whether he was providing assistance to the two ladies in relation to their grievance against Mr Mahmood and he accepted that he was. He asserted that they were already aware of the emails from being part of his team and asked for them. Mr Akbar accepted that he had said nothing about providing assistance to these ladies in his witness statement.⁵⁸²

558. The similarities between the terminology of Ms Yousef's complaint and the anonymous complaint were also put to Mr Akbar in cross-examination, and in particular the identical passage "a new kid on the block should not tell me what needs to be done" in both complaints. Mr Akbar denied any involvement in the anonymous complaints and asserted that the things that were going on were quite well known on the floor implying that this would explain the similarities between the complaints.⁵⁸³ Mr Akbar took the same approach when other similarities between the complaints were pointed out to him. Further, he maintained his denial that he assisted Ms Nilakantan and Ms Yousef to bring their complaints.⁵⁸⁴

559. I do not accept Mr Akbar's evidence on this topic as it is inherently implausible. The obvious

⁵⁸⁰ Day 7 TS 50.

⁵⁸¹ TB 1674; Day 7 TS 52.

⁵⁸² Day 7 TS 58.

⁵⁸³ Day 7 TS 60-61.

⁵⁸⁴ Day 7 TS 63.

similarities between the terms of the various complaints sustain the conclusion that they had a common source. Further, those similarities extend to Mr Akbar's email to Mr Pieterse, from which I infer that the authors of the complaints likely had access to either that email or information derived from it. The emails from Mr Akbar to Ms Yousef and Ms Nilakantan establish that Mr Akbar was providing information to them for the purposes of their complaints. The evidence as a whole establishes that there was a concerted effort within at least some members of GIB to ensure that complaints were lodged against Mr Mahmood, and that Mr Akbar was aware of the objective and assisted in its achievement. Further, the fact that Mr Akbar denied these obvious propositions when they were put to him counts significantly against his general credibility.

560. I will deal later with the significance of these conclusions. For present purposes it is sufficient to note the following limitations upon their significance:

- (a) The similarities which suggest concerted action do not extend to the comments relating to race in the two anonymous complaints;
- (b) It does not appear that the Bank had any way of identifying the authors of the anonymous complaints;
- (c) The references to race formed a small part of much more extensive complaints;
- (d) There are two possible explanations for the reference to race in the anonymous complaints – the first is that Mr Mahmood's race was a motivating factor for the complaint, the second is that the complainants had a very strong dislike of Mr Mahmood and took every opportunity to disparage him including by reference to his demeanour and accent;
- (e) In the absence of evidence from or about the authors of the anonymous complaints the choice between these two alternatives is sheer speculation;
- (f) Mr Mahmood accepts that he was not aware of any of these complaints until after his employment had been terminated and he had commenced these proceedings; and
- (g) After the complaints were investigated Mr Mahmood was entirely exonerated.

561. As already noted, it is difficult to see how matters not known to Mr Mahmood and which had

no consequences for him can be said to be either the imposition of a detriment on the grounds of discrimination or victimisation because of a protected act. It therefore seems that the highest this evidence can be put is to establish that there are two people, probably within GIB, who were prepared to disparage Mr Mahmood on the basis of behavioural characteristics associated with his British nationality. Although it can be concluded that Mr Akbar was assisting at least some of the complainants, the evidence falls short of establishing that he had any input into the comments in the anonymous complaints relating to British nationality.

562. Mr Akbar emphatically denied that what he felt about Mr Mahmood was bound up with hostility on the grounds of his nationality and asserted that his dealings with Mr Mahmood had nothing to do with anybody's nationality. He referred to his family's multiculturalism and multi-nationalities and asserted that he had no problem with any nationality he worked with. He also observed that Ms Nilakantan is not a Muslim working within GIB and he has never had any issue with any nationality, religion, caste or creed. He denied that he had a problem with Mr Mahmood because he was born in Pakistan but identifies himself as British and speaks with a British accent and that he felt that he had repudiated his Pakistani nationality and identity. He also asserted that he had no experience of tension within the UAE between people who come to the UAE from India and Pakistan and people of Indian and Pakistani heritage who come to the UAE from the UK.⁵⁸⁵

563. This evidence was plausibly given and despite my general reservations about Mr Akbar's credibility I accept it. In this context it is significant that the similarities which sustain the conclusion of collusion relating to the complaints do not include any similarities between any document with which Mr Akbar has had any association and the different racial remarks contained in the two anonymous complaints.

564. In cross-examination Mr Akbar denied that he said to Mr Vaselli that he should tell Mr Mahmood that he knew how to deal with British people even if they had been masters.⁵⁸⁶ He asserted that he has never said anything discriminatory about anybody, including Mr Mahmood.⁵⁸⁷

565. In this context it was again put to Mr Akbar that his hostility to Mr Mahmood shaded into a

⁵⁸⁵ Day 7 TS 64-65.

⁵⁸⁶ Day 7 TS 66.

⁵⁸⁷ Day 7 TS 68.

point about his British nationality, which Mr Akbar emphatically denied. Mr Akbar again denied that he and other members of GIB would make frequent references to Mr Mahmood's British accent although he accepted that there may have been occasions upon which Mr Mahmood was asked to repeat himself because he had not been understood. He further denied that Mr Mahmood was referred to as a colonial cop by him and other members of GIB.⁵⁸⁸

566. When it was put to Mr Akbar that his hostility towards Mr Vaselli never reached the level of his hostility towards Mr Mahmood he denied ever having had hostility towards either man. He also denied the proposition that the issues relating to the ORF section of the Framework, for example, "become bound up in a toxic manner with arguments about British/Pakistan identity/history".⁵⁸⁹

567. Mr Akbar asserted that during the meeting on 5 August 2019 Mr Mahmood was quite aggressive and was "borderline shouting".⁵⁹⁰

568. Mr Akbar concluded his evidence by again denying Counsel's proposition that the key obstacle Mr Mahmood faced in succeeding in his role in GIB was Mr Akbar's hostility towards him on the grounds of his British nationality.⁵⁹¹

Mr Akbar - summary

569. For the reasons given I do not accept Mr Akbar's evidence to the effect that he had no role in encouraging others to complain about Mr Mahmood in early 2019. The rejection of that evidence raises a significant question as to Mr Akbar's credibility generally. However, notwithstanding that general question, Mr Akbar's denials of hostility towards Mr Mahmood because of his British nationality were plausibly and consistently given. I do not consider that the evidence implicates Mr Akbar in the racially tinged comments made in the anonymous complaints against Mr Mahmood. The question of whether Mr Akbar's denials of motivation on the ground of nationality should be accepted is linked to the issue of whether he made the statement to Mr Vaselli which Mr Mahmood attributes to him following the meeting on 5 August 2019. Mr Akbar's oral testimony on that subject was limited to a denial

⁵⁸⁸ Day 7 TS 68-70.

⁵⁸⁹ Day 7 TS 70.

⁵⁹⁰ Day 7 TS 88.

⁵⁹¹ Day 7 TS 95.

that he used the words attributed to him in the only question put to him on that subject. The oral testimony therefore sheds little light on that question – a question to which I will return later in these reasons.

Mr Buckett

Written evidence

570. Mr Buckett has provided one witness statement in which he outlines his professional experience in investigative roles in the financial services sector in London. He also describes the role of the i3 team, of which he was a member.

571. In his witness statement Mr Buckett stated that the task of investigating Mr Mahmood's Speak Ups was given the name Project Baross by Hanizah Abdulla who was the Head of the Bank's Speak Up team based in Singapore. He never gave a second thought to the name given to the case.⁵⁹²

572. Mr Buckett and his associate Mr Ayrton had their first meeting with Mr Mahmood on 20 May 2019. The transcript of that meeting records that after Mr Mahmood made a lengthy complaint about GIB, Mr Ayrton asked him:

"Is there anything that's indicated that this is personal or do you think this is anyone trying to do your job would have found themselves in the same situation?"

Mr Mahmood replied:

"Yeah that's a really good question. No certainly not personal because as I say these guys are not used to having a Compliance function tell them what to do."⁵⁹³

573. I digress to observe that the answer given by Mr Mahmood to Mr Ayrton's question directly contradicts his claim and the evidence which he gave to the Court.

574. Mr Buckett stated that after receiving a complaint from Mr Mahmood about Mr Shaikh's awareness of the investigation, he reviewed all of Mr Shaikh's emails and after reviewing that data found no evidence that Mr Shaikh was aware of Mr Mahmood's Speak Ups or that Mr Shaikh was seeking to remove Mr Mahmood from his role.⁵⁹⁴

⁵⁹² WS [16].

⁵⁹³ TB 2368: WS [33]-[34].

⁵⁹⁴ WS [55].

575. On 26 June 2019 Mr Buckett and Mr Ayrton met with Mr Mahmood who told them that he may be required to make disclosures to the Bank's regulator if he was not satisfied with the outcome of their investigation. He did not give any details of what those disclosures might be. This is further evidence of Mr Mahmood's tendency to threaten officers of the Bank with whom he dealt if they did not provide what he wanted.⁵⁹⁵
576. During the course of the investigation Mr Buckett became concerned that Mr Mahmood was raising new matters on a regular basis, most of which seemed to be business as usual issues he had with colleagues.⁵⁹⁶
577. In his statement Mr Buckett sets out the findings which were made following his investigation. As those findings are based on evidence which probably differs from the evidence before the Court, those findings are of little evidential value unless they constitute further acts of discrimination or victimisation, which I do not understand is alleged. Accordingly, it is unnecessary to refer to those findings in detail in these reasons.
578. However, Mr Buckett's assertion in his statement to the effect that over the course of approximately nine hours of interviews with Mr Mahmood he did not once allege that he had been subjected to discrimination or harassment because of his race or nationality, or victimised because he had raised a complaint of discrimination or harassment is significant. Mr Mahmood did not once allege that anyone had mocked his accent in the course of those interviews.⁵⁹⁷
579. Mr Buckett also observed that his team did not uncover any evidence of discrimination or harassment because of Mr Mahmood's race or nationality or any act of victimisation because Mr Mahmood had made a complaint of discrimination, although that is hardly surprising if Mr Mahmood made no complaint to that effect.⁵⁹⁸

Oral evidence

580. In cross-examination Mr Buckett was taken to the log of his investigation in which he recorded a meeting with Mr Mahmood on 16 June 2019 in which Mr Mahmood stated:

⁵⁹⁵ WS [66].

⁵⁹⁶ WS [72].

⁵⁹⁷ WS [88].

⁵⁹⁸ WS [88].

“He may take matters to a regulator if he does not see a correct outcome.”⁵⁹⁹

581. Mr Buckett reiterated his denial that Mr Mahmood ever told him that his accent was being mocked within GIB.⁶⁰⁰ He also denied that the challenges between Mr Mahmood and the management team had strayed into negative comments about the UK.⁶⁰¹

582. In cross-examination Mr Buckett confirmed his statement to the effect that in the course of approximately nine hours of interviews with Mr Mahmood he did not once allege that he had been subject to discrimination or harassment.⁶⁰² However, he conceded that Mr Mahmood had complained about the conversation which allegedly took place between Mr Vaselli and Mr Akbar, although that matter was referred for investigation by ER, rather than i3.⁶⁰³

Mr Buckett - summary

583. Mr Buckett’s evidence is entirely consistent with the contemporaneous documents. No attack was made upon Mr Buckett’s credibility in cross-examination or in submissions and there is no reason to not accept his evidence.

584. It is of considerable significance that over the course of very extensive dealings between Mr Mahmood, Mr Buckett and Mr Ayrton, in a context in which Mr Mahmood had no reason to doubt that Mr Buckett and Mr Ayrton were independent investigators based in London, Mr Mahmood made no mention whatever of the matters of which he now complains, including the mockery of his accent, frequent references to his nationality and bullying. The only complaint made by Mr Mahmood during his lengthy dealings with the i3 team was the complaint relating to the statement attributed to Mr Akbar in the course of his conversation with Mr Vaselli, to which I will return in due course.

Ms Al Najjar

Written evidence

585. Ms Al Najjar is the Head of Employee Relations for AME. She has provided one witness statement in which she describes her professional experience and the respective roles of

⁵⁹⁹ TB 2325; Day 7 TS 123.

⁶⁰⁰ Day 7 TS 124.

⁶⁰¹ Day 7 TS 125.

⁶⁰² Day 7 WS 142.

⁶⁰³ Day 7 TS 142-143.

Employee Relations (ER) and Human Resource (HR) within the Bank. In order to expand her experience in HR, Ms Al Najjar requested assignment to the HR role within GIB, which she performed simultaneously with her ER responsibilities over the course of about 12 months.⁶⁰⁴

586. Ms Al Najjar stated that she met with Ms Yousef and Ms Nilakantan within a week or so of them lodging complaints about Mr Mahmood in February 2019. According to Ms Al Najjar, both were extremely emotional and one woman told her that she was receiving mental health support because she was so upset by the way the Mr Mahmood had treated her. Ms Al Najjar referred the matters to Ms Tabbara.⁶⁰⁵
587. The anonymous Speak Up complaints were referred to Ms Al Najjar. She did not take any action against the authors of those complaints because she did not know who they were. Further, disciplinary action would not be taken against an employee who submits a grievance or Speak Up unless it is shown that they had done so maliciously or in bad faith.⁶⁰⁶ Those complaints were also referred to Ms Tabbara for review. Ms Tabbara ultimately dismissed all complaints.
588. Ms Al Najjar received an email chain from Mr Mahmood which included emails passing between Mr Mahmood and Mr Vaselli. In the chain Mr Mahmood referred to a complaint from Mr Vaselli about bullying behaviour within GIB. However, Ms Al Najjar noted that in Mr Vaselli's response he did not refer to bullying and enquired of Ms Dada, who had spoken to Mr Vaselli as part of her investigation into various complaints against Mr Mahmood whether Mr Vaselli had mentioned any bullying. According to Ms Al Najjar, Ms Dada stated that Mr Vaselli had told her that he had not been subject to any bullying, which Mr Vaselli confirmed in an email to Ms Dada on 26 February 2019. On this basis Ms Al Najjar concluded that Mr Mahmood may have been seeking to use Mr Vaselli to advance his own agenda against GIB.⁶⁰⁷
589. According to Ms Al Najjar, she never received nor heard of any complaint or allegation from Mr Mahmood or any other employee about Mr Mahmood's accent being mocked or about

⁶⁰⁴ WS [13].

⁶⁰⁵ WS [27]-[28].

⁶⁰⁶ WS [36].

⁶⁰⁷ WS [45].

any unwanted references being made to the nationality or race of Mr Mahmood.⁶⁰⁸ Ms Al Najjar refers in her statement to Mr Mahmood's complaint in relation to the statement attributed to Mr Akbar following the meeting on 5 August 2019. She became aware of the issue through Mr Buckett, to whom Mr Mahmood had complained. She discussed the matter with Mr Buckett and they agreed Ms Tabbara would review the allegation.⁶⁰⁹

590. Ms Al Najjar spoke to Mr Shaikh about the meeting on 5 August 2019. She stated that Mr Shaikh did not instruct her to investigate Mr Mahmood nor to take any action against Mr Mahmood – he simply flagged his views about Mr Mahmood's conduct at the meeting on 5 August 2019.⁶¹⁰ Ms Al Najjar referred the matter to Ms Tabbara for investigation.

591. According to Ms Al Najjar, in early September 2019 Ms Tabbara told her that she was concerned about Mr Mahmood's welfare because he appeared to be very stressed and very hostile towards the GIB team. Ms Tabbara advised Ms Al Najjar that she thought it would be in the best interests of Mr Mahmood if he used a desk on the Compliance floor instead of the GIB floor. Ms Al Najjar supported Mr Tabbara's suggestion "in light of the obvious break down in the relationship between [Mr Mahmood] and the GIB management team".⁶¹¹

592. According to Ms Al Najjar, she discussed the investigation with Ms Tabbara, and they agreed that if it was concluded that Mr Mahmood had interrupted Mr Shaikh and questioned his competence in front of other team members disciplinary management would be appropriate. Accordingly, Ms Al Najjar was surprised to receive Ms Tabbara's draft report in which she upheld the complaint against Mr Mahmood but did not recommend disciplinary management. Ms Al Najjar queried that aspect of the draft with Ms Tabbara and also queried her conclusion that the complaint against Mr Akbar be upheld, given that it appeared to be one person's word against another.⁶¹²

593. After reflecting further on the matter Ms Al Najjar sent an email to Ms Tabbara expressing her opinion that in relation to the complaint against Mr Akbar, that it was a case of "he said she said and 1:1" with the result that in her view the complaint could not be sustained.⁶¹³

⁶⁰⁸ WS [48].

⁶⁰⁹ WS [94]-[99].

⁶¹⁰ WS [105].

⁶¹¹ WS 108.

⁶¹² WS [116]-120].

⁶¹³ TB 3366; WS [126].

594. Ms Al Najjar asserts that she did not discuss Ms Tabbara's report with Mr Shaikh.⁶¹⁴
595. In her statement Ms Al Najjar describes the disciplinary process that was implemented against Mr Mahmood after Ms Tabbara's final report. She asserts that Mr Shaar was appointed to chair the disciplinary process and she was confident that he was qualified for that role as a very senior leader within the Bank who was part of the UAE country management team.⁶¹⁵
596. Mr Mahmood had asked to be accompanied to the disciplinary hearing by Mr Vaselli, although Ms Al Najjar did not think that appropriate because Mr Vaselli was closely involved in the events in question.⁶¹⁶ According to Ms Al Najjar, while an employee had the right to be accompanied to a disciplinary hearing by a colleague, the role of that person was to provide support, not act as a witness or answer questions on his behalf.⁶¹⁷
597. In her statement Ms Al Najjar describes her communications with Mr Long in relation to Mr Mahmood's performance appraisal in late 2019.⁶¹⁸
598. Ms Al Najjar also describes the management of Mr Mahmood's appeal from the disciplinary finding in her statement.⁶¹⁹ She also describes her involvement in the proposal to offer Mr Mahmood a MSA.⁶²⁰

Oral evidence

599. In cross-examination Ms Al Najjar confirmed that the 365 feedback process was intended for constructive feedback rather than as a channel for raising a grievance.⁶²¹
600. In relation to the complaints from Ms Yousef and Ms Nilakantan, Ms Al Najjar stated that in her capacity as HR for GIB she came to know that those colleagues were going through a lot of anxiety and stress and were not feeling comfortable dealing with Mr Mahmood. She asked Mr Shaikh to guide them to speak to her.⁶²² One of them told her that she felt

⁶¹⁴ WS [128].

⁶¹⁵ WS [140].

⁶¹⁶ WS [142].

⁶¹⁷ WS [142].

⁶¹⁸ WS [146]-[157].

⁶¹⁹ WS [169]-[179].

⁶²⁰ WS [180]-[189].

⁶²¹ Day 8 TS 23.

⁶²² Day 8 TS 24.

terrorised by Mr Mahmood's behaviour because she would be working on her computer and she would be surprised and shocked to see that Mr Mahmood was standing right at her shoulder without letting her know and looking at what she was doing on her screen. Another said that Mr Mahmood spoke to her in a humiliating manner and undermined her in relation to the performance of her role of taking minutes of meetings. Both ladies cried during their respective meetings she had with them.⁶²³

601. In cross-examination Ms Al Najjar asserted that Mr Vaselli had been given every opportunity to complain about bullying if he wished, but he had chosen not to.⁶²⁴

602. In cross-examination Ms Al Najjar stated that as a business head, Mr Shaikh had the right to say that he did not want to continue working with Mr Mahmood. However, Mr Shaikh did not express that view until after the meeting on 5 August 2019.⁶²⁵

603. In the context of answering questions with respect to the lack of cultural diversity in GIB, Ms Al Najjar stated that Mr Mahmood was never part of any discussion on diversity and she never knew what nationality he was, nor did she know that Mr Mahmood had any allegations relating to nationality. Nor was she aware whether the team members in GIB were Pakistani nationals or had other nationalities.⁶²⁶

604. Ms Al Najjar stated that it was her decision to investigate Mr Mahmood's conduct at the meeting on 5 August 2019. She denied that the decision was influenced by her awareness that Mr Mahmood had made a complaint against Mr Akbar.⁶²⁷

605. According to Ms Al Najjar Mr Vaselli changed his statement in relation to the words used by Mr Akbar after the meeting on 5 August 2019. However, even if Mr Vaselli had confirmed exactly what Mr Mahmood alleged, the complaint would still have been dismissed because Mr Akbar denied using those words. It would have been a case of one person's word against another without any independent evidence or corroboration, and it is her practice to dismiss complaints in those circumstances.⁶²⁸ By contrast, there were a number of witnesses who corroborated the allegations with respect to Mr Mahmood's behaviour during the meeting on

⁶²³ Day 8 TS 25-26.

⁶²⁴ Day 8 TS 41-42.

⁶²⁵ Day 8 TS 73-74.

⁶²⁶ Day 8 TS 91-93.

⁶²⁷ Day 8 TS 101.

⁶²⁸ Day 8 TS 109-110.

5 August 2019, which sustained the complaint against him.⁶²⁹ Given that Mr Vaselli had made different statements at different times in relation to the events at the meeting, Ms Al Najjar did not give his statement as much weight as the statements from a number of other witnesses in relation to Mr Mahmood's conduct.⁶³⁰ Ms Al Najjar denied that she had already decided to put Mr Mahmood through a disciplinary process before Ms Tabbara had completed her investigation.⁶³¹

606. Ms Al Najjar asserted that after Mr Mahmood had been told that Mr Vaselli could not accompany him to the disciplinary hearing, he presented a written statement from Mr Vaselli which was taken into account by Mr Shaar.⁶³² Ms Al Najjar asserted that this was standard procedure.

607. Ms Al Najjar was cross-examined on her conversation with Mr Mahbub at the start of his investigation in February 2020. She accepted that her remarks were accurately recorded by Mr Mahbub in his email to her.⁶³³

608. She asserted that the views were those she held at the time. It was put to Ms Al Najjar that before Mr Mahbub had even got started she had flooded him with highly negative prejudicial material about Mr Mahmood. Ms Al Najjar denied that assertion and asserted that she was just stating what had happened and her experience based on the facts.⁶³⁴ When account is taken of the content and tenor of the email recording Ms Al Najjar's statements to Mr Mahbub, that proposition is difficult to accept, as her comments were strongly negative and highly prejudicial. However, there is nothing in her comments to suggest any motivation on the grounds of race and/or nationality.

609. In the course of cross-examination in relation to Mr Mahmood's appeal from the outcome of the disciplinary process, Ms Al Najjar again denied that Mr Mahmood's complaint about Mr Akbar formed any part of the decision to commence a disciplinary process against him.⁶³⁵

610. In the course of cross-examination Ms Al Najjar stated that another reason why the anonymous Speak Ups were not investigated was because they were cast in general terms

⁶²⁹ Day 8 TS 111.

⁶³⁰ Day 8 TS 117.

⁶³¹ Day 8 TS 116.

⁶³² Day 8 TS 126-127.

⁶³³ TB 4055; Day 8 TS 136.

⁶³⁴ Day 8 TS 141.

⁶³⁵ Day 8 TS 152.

and did not identify any specific incidents about which people could be questioned.⁶³⁶ Ms Al Najjar rejected the proposition that the references in the anonymous complaints to a “colonial cop” and to Mr Mahmood’s English nationality were red flags which would have justified investigation. The Bank’s policy was not to take investigative action against people who used the Speak Up channel for the purpose of making complaints.⁶³⁷

611. Ms Al Najjar reiterated her denial that Mr Mahmood’s complaint about discriminatory conduct was held against him by her.⁶³⁸ She asserted that disciplinary action would have been taken against any other employee who had spoken in a disrespectful or derogatory manner to another member of the Bank.⁶³⁹

612. Ms Al Najjar denied the proposition that her role was to try and get Mr Mahmood out of the Bank using her knowledge of the Bank’s processes.⁶⁴⁰ Ms Al Najjar asserted that she never had any intention of getting Mr Mahmood out of the Bank – but if a redundancy situation arose she would follow the process.

613. In re-examination, Ms Al Najjar was taken to various versions of statements made by Mr Vaselli at different times, in the course of which she reiterated her assertion that Mr Vaselli had changed his statement. Mr Vaselli’s various statements relating to the events on 5 August 2019 will be considered in more detail below, in the context of my analysis of the question of whether Mr Akbar said to Mr Vaselli the words attributed to him by Mr Mahmood.

Evidence of Ms Al Najjar - summary

614. Ms Al Najjar had a distinct tendency to give very long answers to questions that could and should have been answered briefly. Many of her lengthy answers were given in terms which suggested that she was endeavouring to argue the Bank’s case rather than provide evidence of facts. Obviously, these characteristics detracted from her general credibility. I have also expressed scepticism in relation to the evidence she gave in relation to her communication with Mr Mahbub.

615. However, as previously noted, the question which must be determined is not whether Mr

⁶³⁶ Day 8 TS 157-158.

⁶³⁷ Day 8 TS 160.

⁶³⁸ Day 8 TS 161.

⁶³⁹ Day 8 TS 162.

⁶⁴⁰ Day 8 TS 164.

Mahmood was treated with scrupulous fairness at all times but whether he was subjected to discrimination on the grounds of race and/or nationality, or victimisation because of a protected act. Ms Al Najjar's repeated rejection of the propositions put to her on those topics were given plausibly and did not suffer the shortcomings of loquacity and argumentation to which I have referred. There is no evidence which would suggest that Ms Al Najjar was motivated to take any of the steps which she took by considerations of race and/or nationality, or because of a protected act, nor have any facts been established by the evidence from which such inferences could be drawn.

616. For these reasons, despite my general reservations about Ms Al Najjar's evidence, I accept the evidence which she gave on the issues which are central to the case, and in particular, accept that she was not motivated by considerations of race and/or nationality or because of a protected act.

Ms Bajwa

Written evidence

617. Ms Bajwa serves as Head of HR for the Bank in the UAE. She has provided two witness statements, in which she describes her professional experience.

618. In late October 2019 Ms Bajwa was requested to undertake a comparative assessment of Mr Mahmood's responsibilities in his current role, and the responsibilities attached to the restructured role proposed. Ms Bajwa notes in her statement that when she undertook the analysis she concluded that:

- (a) The proposed new role would have accountability and oversight of the Shariah function;
- (b) Unlike Mr Mahmood's current role, the proposed new role would be a people leadership role with 2 and possibly 4 people reporting into that role; and
- (c) The proposed new role came with additional responsibilities in relation to financial crime and compliance advisory.

Ms Bajwa therefore concluded that there would be a significant change in the role – that is, a change of more than 30%. She notified Mr Long of her assessment in an email on 7

November 2019.⁶⁴¹

619. Ms Bajwa also described her role in the management of Mr Mahmood's appeal from the outcome of the disciplinary proceedings against him in her statement.
620. Ms Bajwa's statement and her cross-examination traversed topics which had already been canvassed in detail by other witnesses more principally involved in the events. Her evidence on those topics was not inconsistent with the other evidence given and it is unnecessary to consider it in any detail in these reasons.
621. However, Ms Bajwa was the person principally involved in the analysis of the impact of the restructured new role on Mr Mahmood's position and her evidence on that topic merits attention.
622. Ms Bajwa's second witness statement is concerned only with the difficulties Mr Mahmood experienced obtaining documentation relating to his end of service and need not be considered in any detail.

Oral evidence

623. In cross-examination Ms Bajwa accepted that before she undertook her analysis she had been told by Mr Long that he considered that there was a greater than 30% change in the role. Ms Bajwa was cross-examined about the matters she took into account when assessing the degree of difference in the two roles, but it was not put to her that her assessment was flawed or that she should have assessed the change as less than 30%. Ms Bajwa was questioned about an email in which she expressed surprise that she had been asked to assess the new role quickly in October given that the re-organisation still seemed some way off. She explained that she understood the time requirement to be based on the timing of the ICEE Project, which required all preparatory work to be completed by the end of 2019.⁶⁴² Ms Bajwa rejected the proposition that she was aware that the reason for the urgency was to put Mr Mahmood at risk as soon as possible, and reiterated that she believed the reason for the urgency was the requirement to complete the process towards the end of the year.⁶⁴³ Ms Bajwa also rejected the proposition that it must have been obvious

⁶⁴¹ TB 3455; WS [27]-[30].

⁶⁴² Day 9 TS 22-23.

⁶⁴³ Day 9 TS 24-25.

to her that the reason she was being asked to undertake the assessment was so Mr Mahmood could be put at risk, given the adverse investigatory reports relating to his conduct. She asserted that the ICEE process was quite independent of the disciplinary process.⁶⁴⁴

624. In the course of cross-examination in relation to her functions with respect to Mr Mahmood's appeal from the adverse disciplinary finding, Ms Bajwa stated that her role was limited to assessing the procedures that were followed in the course of the disciplinary proceedings, and she was not involved in the assessment of their merits.⁶⁴⁵

625. It is clear from the evidence that Ms Bajwa's role in relation to the disciplinary process was essentially administrative. Any significant decisions made in the course of that process were not made by her, but by others. It follows that the answers which she gave to the various questions which she was asked in relation to the procedures which were followed and the underlying merits of the issues in the appeal (some of which were procedural issues) is of little assistance to the Court, given that it is not suggested that anything done by Ms Bajwa was motivated by considerations of race and/or nationality or because Mr Mahmood had undertaken a protected act. The only questions asked of Ms Bajwa relating to victimisation related to her checking to ensure that Mr Mahmood's allegations of victimisation were being investigated by Mr Mahbub and therefore did not need to be considered in the course of the disciplinary process.⁶⁴⁶

626. Ms Bajwa emphatically denied the proposition that her main concern was that if Mr Mahmood's appeal was upheld it would cut across and clearly affect the outcome of Mr Mahbub's investigations.⁶⁴⁷ Ms Bajwa asserted that the disciplinary process was entirely independent of Mr Mahbub's investigations. All she was concerned with was to ensure that Mr Mahmood's allegations were investigated appropriately.⁶⁴⁸

627. Ms Bajwa "totally" disagreed with the proposition that by this stage people in HR/ER were liaising closely with each other in order to work towards removing Mr Mahmood from the Bank.⁶⁴⁹ Ms Bajwa was adamant that she did not discuss Mr Mahmood's allegations of

⁶⁴⁴ Day 9 TS 25.

⁶⁴⁵ Day 9 TS 30.

⁶⁴⁶ Day 9 TS 48-49.

⁶⁴⁷ Day 9 TS 52.

⁶⁴⁸ Day 9 TS 52-53.

⁶⁴⁹ Day 9 TS 53.

victimisation with Mr Zulu who determined Mr Mahmood's appeal.⁶⁵⁰

628. Ms Bajwa also emphatically rejected the proposition that Ms Al Najjar had given her "an unequivocal steer and that steer had been followed in the appeal outcome ...".⁶⁵¹

629. Ms Bajwa was also cross-examined about an issue raised by Mr Mahmood in relation to the difficulties he had obtaining his end of service letter. The thrust of her evidence was that the Bank followed normal procedure in relation to that issue. In this context it was not put to Ms Bajwa that Mr Mahmood was singled out for detrimental treatment. Nor was it put to Ms Bajwa that the difficulties Mr Mahmood experienced in obtaining the letter had anything to do with his race and/or nationality. It is therefore unnecessary to consider these matters any further.

Evidence of Ms Bajwa - summary

630. As already noted, the evidence given by Ms Bajwa was somewhat removed from the central issues in the case. It was not suggested to her that anything she did, or anything she saw others do was motivated by considerations of race and/or nationality or because Mr Mahmood had undertaken a protected act. In these circumstances, as already noted, her evidence with respect to the procedures followed in the course of the disciplinary process and the appeal therefrom is of little assistance to the Court.

631. Ms Bajwa's evidence with respect to her analysis of the degree of change between the role occupied by Mr Mahmood and the restructured role was plausible and not directly challenged. I accept that evidence and see no reason to doubt that her analysis was genuinely undertaken. Indeed, I have no reason to doubt any of the evidence given by Ms Bajwa.

Mr Mahbub

632. Mr Mahbub is a Bangladeshi national who held the office of Head of ER for Hong Kong, Greater China and North Asia for the Bank between 2018 and January 2022, when he also became the Global Head of Industrial Relations. He was promoted to his role as Head of ER for Asia in February 2023. He has never worked for the Bank in the UAE. Mr Mahbub has

⁶⁵⁰ Day 9 TS 55-56.

⁶⁵¹ Day 9 TS 56-57.

provided one witness statement relating to his review of Mr Mahmood's complaints of victimisation. In the course of his closing address Counsel for Mr Mahmood expressly stated that no allegation of discrimination or victimisation was made against Mr Mahbub. It follows that it is only necessary to assess Mr Mahbub's evidence to the extent that it might bear upon the actions of others. As Mr Mahbub's statement is primarily concerned with his dealings with Mr Mahmood and the conduct of his investigation, it is unnecessary to analyse its terms in these reasons.

633. After conducting his investigations Mr Mahbub concluded that there was no evidence that Mr Mahmood had been victimised because he raised a Speak Up.⁶⁵²
634. In the light of the position now adopted by Counsel for Mr Mahmood, it is equally unnecessary to analyse Mr Mahbub's cross-examination in any detail. It is sufficient to observe that I formed a favourable impression of Mr Mahbub whose evidence was given carefully and without prevarication or argumentation. His evidence was also entirely consistent with the contemporaneous documents. In particular I accept his assertion that neither his investigations nor his conclusions were influenced by the commentary he received from Ms Al Najjar.⁶⁵³ Mr Mahbub also asserted that the investigation report did not have any bearing on his findings.⁶⁵⁴ Later in the course of cross-examination Mr Mahbub stated that he deliberately decided to reach his conclusions only on objective facts and where the evidence of those facts was corroborated. He was at pains to ensure that he did a transparent review of the complex issues without being influenced by anyone else.⁶⁵⁵
635. Mr Mahbub was questioned about his observation to Ms Al Najjar after he had completed his investigation in which he wished her luck. It was put to him that effectively what he was saying was that she was taking on someone who was very difficult, which Mr Mahbub paraphrased as "taking on something which is going to be very complex". He elaborated on his position by observing that in his entire investigative career he had not ever encountered anyone who had submitted 200 pages of complaint at the very first meeting and then kept adding things as the investigation proceeded. He asserted that that was why he wished Ms

⁶⁵² WS [89].

⁶⁵³ Day 9 TS 79.

⁶⁵⁴ Day 9 TS 89.

⁶⁵⁵ Day 90 TS 115.

Al Najjar luck “in a lighthearted manner”.⁶⁵⁶

Mr Phebey

Written evidence

636. Mr Phebey has provided one witness statement in which he outlines his professional experience. In that statement he referred to his role in relation to the disagreement which arose between Mr Mahmood and Mr Law. Mr Phebey was “extremely frustrated by the back and forth ... which was essentially bickering”.⁶⁵⁷ Mr Phebey expressed the view that Mr Mahmood needed to amend his style of engagement with colleagues in an email to Mr Cook.⁶⁵⁸

637. Shortly after this episode Mr Phebey visited Dubai for other reasons. He intended to speak to all UAE/DIFC based Compliance advisors including Mr Mahmood. Mr Phebey met with Mr Mahmood on 14 March 2018 and although he does not recall specifically what was discussed during the meeting, he does recall:

“Having a coaching orientated conversation about working with, rather than against, the Bank’s network, and not sailing too close to the point of no return in his communications.”⁶⁵⁹

Mr Phebey asserts that he “certainly did not reprimand” Mr Mahmood in relation to the Hong Kong matter. He asserts that his sole intention was to help Mr Mahmood improve his engagement with others. He asserts that there was absolutely no unpleasantness during his conversation with Mr Mahmood.⁶⁶⁰

638. Mr Phebey was alerted to the 365 feedback Mr Mahmood had provided in respect of Mr Akbar by Mr Long. In his statement he asserts that while he was supportive of the feedback given by Mr Mahmood if it reflected bona fide concerns with Mr Akbar’s performance, the way in which Mr Mahmood had approached the matter highlighted maturity gaps and the need for further coaching. He also considered that it was very important that feedback on colleagues is delivered in a way which does not come as a surprise to the individual’s

⁶⁵⁶ Day 9 TS 116-117.

⁶⁵⁷ WS [22].

⁶⁵⁸ TB 970.

⁶⁵⁹ WS [36].

⁶⁶⁰ WS [36].

manager.⁶⁶¹

639. Mr Phebey asserts that he was incredulous at Mr Mahmood's assessment of himself as 1A for the purposes of his performance appraisal. He formed the view that Mr Mahmood was completely lacking in self-awareness because a number of senior leaders within the business, including him, Mr Long, Mr Cook and Mr De Groote had spent a considerable amount of time dealing with Mr Mahmood's errors of judgment.⁶⁶²

640. Mr Phebey stated that his assessment of Mr Mahmood's performance and his rating had absolutely nothing to do with his race or nationality.⁶⁶³

Oral evidence

641. In cross-examination Mr Phebey was taken through the matters addressed in his statement. In the course of cross-examination Mr Phebey expressed the view that it was totally inappropriate for Mr Mahmood to invoke the prospect of a "Speak Up" in relation to the Hong Kong issue, which involved a professional disagreement.⁶⁶⁴

642. Mr Phebey denied that the views he expressed in his statement in relation to Mr Mahmood's 365 feedback with respect to Mr Akbar were not views he held at the time but are views that he formed for the purposes of the Court case.⁶⁶⁵ Mr Phebey accepted that when Mr Mahmood sought his advice in Singapore he suggested he use the 365 process, but his problem is with how the feedback was delivered with respect to Mr Akbar's supervisors.⁶⁶⁶

643. Mr Phebey denied that the purpose of restructuring Mr Mahmood's role was to remove him from the Bank. He observed that there were hundreds of roles displaced across the Compliance Department by Project ICEE.⁶⁶⁷ He further observed that a general design principle for the restructure emerged to the effect that anybody in Band 4 who was a Managing Director had to wear two hats, which resulted in the merger of the roles occupied by Mr Patel and Mr Mahmood.⁶⁶⁸

⁶⁶¹ WS [40].

⁶⁶² WS [42-[43].

⁶⁶³ WS [45].

⁶⁶⁴ TS 10 TS 24.

⁶⁶⁵ Day 10 TS 33-34.

⁶⁶⁶ Day 10 TS 38-40.

⁶⁶⁷ Day 10 TS 59.

⁶⁶⁸ Day 10 TS 60.

644. It was put to Mr Phebey that he, Mr De Groote, Mr O'Donnell and Mr Long were all Caucasians and that either consciously or subconsciously Mr Phebey's reaction to Mr Mahmood and his criticisms of him were motivated by the fact that Mr Mahmood is not Caucasian. Mr Phebey replied "I would completely disagree with that".⁶⁶⁹

Mr Phebey's evidence - summary

645. Mr Phebey's written and oral evidence is consistent with the contemporaneous documents and plausible. His oral testimony was given directly and without evasion, argumentation or prevarication. I have no reason to doubt the veracity of his testimony. In particular, I accept that in his dealings with Mr Mahmood he was not motivated in any way by any considerations of race or nationality, not least because there is no evidence whatever to sustain that proposition.

Witness credibility – Mr Mahmood's submissions

646. Mr Mahmood has presented lengthy written submissions on the subject of the credibility of the witnesses as an appendix to his written closing submissions. As might be expected, in those submissions it is contended that Mr Mahmood gave credible and accurate evidence, that Mr Akbar was dishonest, and that the Court should not accept the evidence of Mr Shaikh, Mr Long or Ms Al Najjar unless it accords with the inherent probabilities or was corroborated by a contemporaneous document or a witness whose evidence the Court accepts.

647. Of course, I gave detailed consideration to those submissions before forming and expressing the views with respect to the credibility of witnesses which I have set out above. In summary, in relation to the witnesses whose evidence has been impugned by Mr Mahmood in his written submissions:

- (a) I do not accept the evidence given by Mr Mahmood unless it is corroborated by other evidence which I do accept;
- (b) I see no reason to doubt the evidence of Mr Long;
- (c) I have expressed reservations with respect to aspects of the evidence of each of Mr Shaikh and Mr Akbar – however, I see no reason to doubt the evidence which Mr

⁶⁶⁹ Day 10 TS 66.

Shaikh gave with respect to the motivations for his conduct and in particular his denial that he was motivated in any way by Mr Mahmood's characteristics of race and/or nationality; as already noted, the credibility of Mr Akbar's denials on that topic is tied up with the findings I make in relation to the conversation between Mr Akbar and Mr Vaselli on 5 August 2019, which will be addressed below;

- (d) While Ms Al Najjar's tendency to provide lengthy answers which bordered on the argumentative was somewhat disconcerting, and her evidence with respect to her communications with Mr Mahbub was less than frank, her evidence is generally consistent with the contemporaneous documents and I see no reason to reject its general tenor, including her denial of awareness of any actions by her or others being motivated by considerations of race and/or nationality and/or because Mr Mahmood had undertaken a protected act or acts.

648. I have set out the reasons for those conclusions at considerable length in my analysis of the evidence given by each person the subject of Mr Mahmood's submissions. Obviously, those reasons differ markedly from Mr Mahmood's written submissions in support of fundamentally different findings with respect to credibility. It is unnecessary to lengthen an already lengthy judgment by responding to each of the many submissions made on the subject of credibility on behalf of Mr Mahmood and with which I fundamentally disagree, for the reasons I have given.

Mr Mahmood's case – analysis and findings conclusion

649. It is common ground that Mr Mahmood carries the burden of proving his case. I have expressed reservations about the manner in which that case is enunciated in the pleadings, and it is clear from the written and oral closing submissions that some aspects of the claims, particularly those relating to the conduct of certain individuals, are no longer pursued.

650. In these circumstances the most reliable definitive statement of the case presented by Mr Mahmood to the Court is to be found in the written submissions presented by Mr Mahmood to the Court following the hearing, augmented by the oral submissions provided in support of the written submissions. Understandably the oral submissions were focussed upon more general issues of legal principle, the credibility of witnesses and the general nature of Mr Mahmood's case. Appropriately, the detailed factual components of Mr Mahmood's case are set out in the written submissions, which I will treat as a definitive statement of the

findings which Mr Mahmood asks the Court to make.

651. As I have observed more than once already, in the circumstances of this case the critical issues are not whether Mr Mahmood experienced detrimental treatment at the hands of the Bank and officers of the Bank for whom the Bank is liable, but whether the treatment which Mr Mahmood received was significantly influenced by his race and/or nationality, or constituted victimisation because of a protected act.
652. In the end, as I understand Mr Mahmood's closing submissions, he did not press the contention that this is a case in which an inference of discrimination on the ground of race and/or nationality can be drawn from comparison, either hypothetical or actual, with the treatment received by a person who did not have the characteristics of race and/or nationality which are said to have given rise to the alleged discriminatory treatment. However, out of an abundance of caution I will consider the conclusions which could be drawn from the application of the comparative technique in this case.
653. The evidence established three potential comparators who were serving in roles not dissimilar to Mr Mahmood – namely Mr Vaselli, Mr Patel and Mr Mubeen.
654. Comparison with Mr Patel provides no support for Mr Mahmood's case, as he has the same characteristics of race and/or nationality as Mr Mahmood. To the contrary, the fact that someone with those characteristics did not apparently receive adverse treatment of the kind asserted by Mr Mahmood and was appointed and remains in the restructured position for which Mr Mahmood applied unsuccessfully tells strongly against the proposition that Mr Mahmood's treatment was significantly influenced by considerations of race and/or nationality.
655. Nor does comparison with Mr Vaselli provide any support for Mr Mahmood's case. Mr Vaselli is Caucasian, but there is no evidence to the effect that he was treated any differently to Mr Mahmood by the Caucasian senior managers in Compliance⁶⁷⁰ because of that characteristic. Further, although Mr Vaselli is not a British citizen of Pakistani origin who could be said to have rejected that origin, there is evidence of significant tensions between Mr Vaselli and members of GIB, similar perhaps to those experienced by Mr Mahmood. The characteristic which Mr Vaselli and Mr Mahmood had in common was that both were

⁶⁷⁰ Mr Long, Mr De Groote, Mr Phebey, Mr O'Donnell.

engaged in the performance of control functions – Mr Vaselli in Legal and Mr Mahmood in Compliance. The fact that both experienced conflict with members of GIB suggests that the conflict arose from the nature of the functions they were performing and was unrelated to race and/or nationality. Accordingly, comparison with Mr Vaselli tends against Mr Mahmood’s case. At all events, there is no apparent basis upon which comparison with Mr Vaselli can support Mr Mahmood’s claim.

656. As I have noted, Mr Mahmood complained of the manner in which Mr Mubeen was treated by GIB, in terms which suggest that Mr Mubeen was subjected to disparagement and bullying. As Mr Mubeen has none of the characteristics of race or nationality which Mr Mahmood asserts were the cause of his detrimental treatment, but, like Mr Vaselli, was involved in a control related function, his adverse treatment by GIB tells against Mr Mahmood’s case for the same reasons as comparison with Mr Vaselli, and certainly provides no support for that case.

657. As the evidence establishes sources of conflict and tension other than race and/or nationality, any hypothetical comparison would have to assume a person without Mr Mahmood’s characteristics of race and/or nationality who was in the same position of conflict as Mr Mahmood. The evidence does not sustain any inference to the effect that such a person would have been treated any differently to Mr Mahmood.

658. As Mr Mahmood’s claim cannot be made out by a process of actual or hypothetical comparison, it is necessary to focus upon the evidence available to sustain an inference to the effect that the actions taken by officers of the Bank which Mr Mahmood asserts caused him detriment were significantly influenced by his characteristics of race and/or nationality, or because he undertook a protected act. As I have already observed, that evidence is extremely limited. That evidence is considered in the following categories.

The lack of cultural diversity within GIB

659. It is common ground that the officers of the Bank within GIB were predominantly Pakistani in origin, although of differing nationalities.⁶⁷¹

660. The lack of cultural diversity within GIB had been the subject of notice and discussion within the Bank. That cultural characteristic is incapable of supporting an inference of

⁶⁷¹ For example, Mr Akbar has Canadian nationality.

discrimination or victimisation in itself, unless augmented by some other evidence. That evidence might potentially take a variety of forms including words or actions which are capable of supporting an inference that detrimental treatment was motivated by considerations of race and/or nationality, or by evidence of the lack of any other plausible explanation for the detrimental treatment received by Mr Mahmood. However, in the absence of at least some other evidence, the mere existence of conflict or tension between employees who have a similar cultural characteristic and an employee who does not have that same characteristic will not ordinarily sustain an inference that the conflict was motivated by considerations of race and/or nationality.

661. The evidence in this case is strongly against the proposition that the dominant Pakistani cultural characteristic within GIB was, in itself, the cause of discriminatory actions by those within GIB. As already noted, there is evidence of tension between GIB and Mr Vaselli, a Caucasian, but no evidence of tension between GIB and Mr Long, who is also Caucasian. Further, there is evidence of tension between GIB and Mr Vaselli, a Caucasian and between members of GIB and Mr Mahmood, who is Pakistani and therefore not Caucasian. There is also evidence of tension between Mr Mubeen and GIB, and Mr Mubeen has none of the characteristics of race and/or nationality which Mr Mahmood asserts were a significant influence upon his detrimental treatment.

662. The proposition that considerations of race and/or nationality were not a significant influence upon the tensions which arose between Mr Mahmood and GIB is also supported by the evidence of similar tensions arising between Mr Mahmood and business units other than GIB and persons who are not Pakistani, such as Mr Law in Hong Kong, and Mr Hilal in Indonesia.

663. For these reasons I conclude that the dominant Pakistani cultural characteristic within GIB is not sufficient, of itself, to establish that any of the conduct of which Mr Mahmood complains was motivated or significantly influenced by considerations of race and/or nationality.

Mr Mahmood's assertion that his British accent was mocked, and his nationality disparaged by members of GIB

664. There is no evidence that Mr Mahmood's British accent was mocked or that his British nationality was disparaged by members of GIB other than general assertions to that effect by Mr Mahmood. I have already given my reasons for rejecting that evidence. To recap, for

the lengthy reasons I have given, I do not accept Mr Mahmood's evidence unless it is corroborated by other testimony and his evidence on this topic is not corroborated in any respect. Mr Mahmood's evidence that he complained of such matters regularly to Mr Long is denied by Mr Long, whose evidence I accept. Further, the evidence establishes Mr Mahmood's propensity to complain in writing of anything which he considers detrimental to his interests. However, the only document recording any complaint by Mr Mahmood with a component of race and/or nationality is the email which he sent immediately he became aware of the discussion between Mr Akbar and Mr Vaselli following the meeting on 5 August 2019. Despite having every opportunity to complain of such matters to Mr Buckett and Mr Ayrton, no complaint of this kind was made to them either orally or in writing. Given Mr Mahmood's established propensity to escalate complaints of perceived misconduct or mistreatment, it is implausible that he would have failed to record any complaint that his accent was being mocked or his nationality disparaged if in fact those matters had occurred.

665. For these reasons Mr Mahmood's assertions, which I do not accept, provide no support for his claims. All the evidence which I do accept on this issue is against any such mockery or disparagement on the grounds of race and/or nationality having occurred.

The complaints against Mr Mahmood in January and February 2019

666. As already noted, there were four complaints made against Mr Mahmood in January-February 2019. Two of those complaints were anonymous (one using the pseudonym Jack James), one was a complaint from Ms Yousef and the other was a complaint from Ms Nilakantan. Both anonymous complaints contained references to nationality.

667. The complaint lodged in the name Jack James contains the following assertion:

"He also thinks he is an English Scholar and takes a dig on all documents/email (that are not even relevant to him) stating that they are not well written without focussing on the content or subject."⁶⁷²

668. The other anonymous complaint contains the following statement:

"It takes courage to write about a person who is heading Compliance and considers himself a cop of the Colonial era who is above the law."⁶⁷³

Mr Mahmood submits, and I accept, that the reference to "a cop of the Colonial era" would

⁶⁷² TB 1900.

⁶⁷³ TB 1909.

be understood as a reference to British police during Britain's Colonial rule of India.

669. The complaints from Mr Yousef and Ms Nilakantan make no reference to characteristics of race and/or nationality.
670. I have given my reasons for rejecting Mr Shaikhs evidence to the effect that he was not aware of these complaints in late January 2019. Similarly, I have given my reasons for rejecting Mr Akbar's evidence that he was not aware of and had nothing to do with these complaints. Mr Mahmood submits that I should go further and find that Mr Akbar was the author of the anonymous complaints and colluded with Ms Yousef and Ms Nilakantan in the preparation of their complaints.
671. That submission is supported by the striking similarities between the topics raised in the four complaints both amongst themselves and with the topics raised by Mr Akbar in the draft response to Mr Mahmood's 365 feedback which Mr Akbar sent to Mr Pieterse.⁶⁷⁴
672. There are of course a number of possible explanations for the similarity in the subject matter of the complaints, including that Mr Mahmood's conduct was well known within the GIB and had been observed by many, with the result that it is not surprising that there was a degree of similarity in the complaints. However, that possibility cannot be reconciled with the fact that the complaints were all dismissed after investigation which presumably included interviewing members of GIB. Further, that possibility does not explain the similarity in the words used in the various documents in relation to the subjects addressed. Those similarities, and the evidence of emails passing between Mr Akbar and Ms Yousef and Ms Nilakantan lead to the conclusion that it is more likely than not that at least Ms Yousef and Ms Nilakantan had access to materials provided to them by Mr Akbar for the purposes of formulating their complaints. However, the evidence does not go so far as to sustain the conclusion that Mr Akbar was involved in writing those complaints – rather, it goes only so far as to suggest that he was likely involved in providing the complainants with materials for their use.
673. As this case involves claims for discrimination and victimisation, it is significant that there are no similarities in the portions of the anonymous complaints which refer to race and/or nationality either as between themselves, or with the complaints from Ms Yousef or Mr

⁶⁷⁴ TB 1740.

Nilakantan, or with the email sent by Mr Akbar to Mr Pieterse. Accordingly, to the extent that there was collusion in relation to the preparation of the complaints, it cannot be inferred that the collusion extended to comments referring to nationality. Rather, the clear inference is that the references to Mr Mahmood as an “English Scholar” and a “cop of the Colonial era” are idiosyncratic to the authors of the anonymous complaints.

674. It is reasonable to infer, and I do infer, that the authors of the anonymous complaints were members of the GIB team. However, the two references to nationality in these complaints fall well short of sustaining Mr Mahmood’s assertion that there was a culture of discrimination against him on the grounds of nationality and/or race over the years with which he worked with GIB, and which he never reduced to writing.
675. It is clear from the terms of the anonymous complaints that the authors were very irritated by Mr Mahmood. In the expression of their irritation they disparaged Mr Mahmood by referring to a characteristic associated with English nationality (scholar and colonial cop). In these circumstances it can be inferred that the references to nationality are a reflection of the authors’ antipathy towards Mr Mahmood, rather than a cause of that antipathy.
676. Nevertheless, if these statements had been made known to Mr Mahmood or had resulted in any consequences for Mr Mahmood there would have been a reasonable case for discrimination on the ground of nationality. However, as noted above in the section dealing with the relevant provisions of the Employment Law those provisions only apply if an employee has suffered some detriment by reason of the impugned conduct. Obviously an employee can suffer detriment by reason of hurt feelings or distress if subjected to adverse commentary because of a protected characteristic such as race or nationality. However, in order to suffer detriment in that form, the employee must be aware of the relevant commentary, and in this case Mr Mahmood was not aware of the comments made in the anonymous complaints until his employment had terminated and he had commenced these proceedings. In these circumstances the references to nationality in the anonymous complaints can have had no impact upon his feelings or emotions while an employee of the Bank.
677. Detriment could also be established if the references to Mr Mahmood’s nationality in the anonymous complaints had resulted in some adverse consequences for Mr Mahmood. However, all four complaints against Mr Mahmood were dismissed, and there is no evidence that the references to nationality in the anonymous complaints had any adverse impact upon

Mr Mahmood in his dealings with the Bank.

678. For these reasons, in the particular circumstances of this case, the references to Mr Mahmood's nationality in the anonymous complaints do not constitute unlawful discrimination.

679. In the course of cross-examination it was put to the Bank's witnesses that there should have been an investigation into the identity of the anonymous complainants so that they could be disciplined for their discriminatory comments. That proposition assumes there would be some means by which the identities of the authors of the anonymous complaints made by email could be established – a proposition that is not at all self-evident. It was not put to any officer of the Bank that there was a means by which the identity of the anonymous complainants could be established and which the Bank failed to pursue. But in any case the proposition is irrelevant, because a failure to investigate and discipline officers in respect of conduct of which Mr Mahmood had no knowledge whatever during his employment could not constitute unlawful discrimination within the terms of the Employment Law.

680. For these reasons the disparagement of Mr Mahmood by reference to characteristics of nationality in the two anonymous complaints of which he was unaware do not sustain a claim of unlawful discrimination contrary to the provisions of the Employment Law. For the reasons I have already given, nor do I accept that the racially tinged remarks sustain a broader conclusion of adverse treatment on the grounds of race and/or nationality.

The conversation between Mr Vaselli and Mr Akbar following the meeting of 5 August 2019

681. As already noted, Mr Mahmood asserts that on 6 August 2019 Mr Vaselli told him that after the meeting on 5 August 2019 Mr Akbar had told Mr Vaselli to tell Mr Mahmood that he was behaving inappropriately and that "he knew how to deal with British people even if they had been masters". Mr Mahmood reported his conversation with Mr Vaselli to Mr Ayrton and Mr Buckett by email.⁶⁷⁵ In that email, after setting out the words above, Mr Mahmood stated:

"I have tried to reproduce the wording conveyed to me by Allesandro [Vaselli] as closely as possible. Should you require more detail of what was discussed between Suhail [Akbar] and Allesandro, then Allesandro is better placed than I to provide you with that information."⁶⁷⁶

⁶⁷⁵ TB 2977.

⁶⁷⁶ TB 2977.

These observations reflect the principles which underpin the evidentiary rule against hearsay, arising from the potential unreliability of second hand evidence of things that were done or said.

682. Neither party sought to address the hearsay character of Mr Mahmood's evidence by adducing evidence from Mr Vaselli as to his conversation with Mr Akbar. Nor did any party provide any information to the Court with respect to the present whereabouts of Mr Vaselli or his willingness to provide evidence.

683. As already noted, there is other hearsay evidence of statements made by Mr Vaselli in relation to his conversation with Mr Akbar. In the report of her investigations Ms Tabbara referred to two interviews with a staff member who although anonymised in her report, must have been Mr Vaselli as there is no evidence that anybody other than Mr Vaselli and Mr Akbar were present during their conversation. According to Ms Tabbara's report the first time Mr Vaselli was interviewed about his conversation with Mr Akbar he stated that he (Mr Vaselli) should tell Mr Mahmood that he was behaving inappropriately and should have better manners next time he deals with Mr Akbar, making no reference to race or nationality.⁶⁷⁷

684. However, during a second interview with Mr Vaselli on 23 September 2019, approximately six weeks after the incident, Mr Vaselli stated that his recollection of the comment was "I know how to put British people in their place" in the sense that Mr Mahmood should have better manners next time he is dealing with Mr Akbar.

685. The only direct evidence of the conversation comes from Mr Akbar, who denies making any reference to Mr Mahmood's nationality. The question presented for determination is whether that evidence should be rejected because of the hearsay evidence to which I have referred. When assessing that question it is to be noted that Mr Mahmood acknowledged uncertainty in relation to the language used by Mr Akbar in his email to Mr Ayrton and Mr Buckett and Ms Tabbara has reported that Mr Vaselli provided two quite different versions of the conversation in successive interviews.

686. On behalf of Mr Mahmood it is contended that the Bank should have adduced direct evidence from Mr Vaselli, and an inference can be drawn from the Bank's failure to do so. I

⁶⁷⁷ TB 3375.

do not accept that submission. Mr Mahmood carries the burden of proving his case and has neither adduced evidence from Mr Vaselli nor provided any explanation for his failure to do so – for example, by reference to Mr Vaselli’s unavailability or unwillingness to testify. No evidence has been adduced to establish that Mr Vaselli remains in the employment of the Bank, and even if he were, I would not infer from that fact alone that Mr Vaselli, who is a lawyer, would not provide truthful testimony.

687. I reiterate that the only direct evidence in relation to this conversation comes from Mr Akbar. Taking into account the uncertainty and inconsistency of the hearsay evidence, and the unexplained failure to adduce evidence from Mr Vaselli, I am not satisfied on the balance of probabilities that a conversation between Mr Akbar and Mr Vaselli took place in the terms alleged by Mr Mahmood. It follows that Mr Mahmood’s claims receive no support from his assertions in this regard.

688. As noted earlier, I consider the assessment of Mr Akbar’s denials of any motivation against Mr Mahmood based on grounds of race and/or nationality is tied up with the finding made in relation to his conversation with Mr Vaselli. As I have not found that Mr Akbar made a racially related remark in his conversation with Mr Vaselli, it provides no reason to doubt Mr Akbar’s denials of motivation on the grounds of race and/or nationality, which I accept.

Summary – discrimination on the grounds of race and/or nationality

689. For the reasons above there is no direct evidence that Mr Mahmood was subjected to discrimination on the grounds of race and/or nationality. Of course it does not follow that Mr Mahmood’s claims of victimisation because he undertook or was thought to have undertaken a protected act must also fail. Nor does the absence of direct evidence exclude the possibility that an inference of unlawful discrimination might be drawn from the facts established by the evidence, although as I have already observed, the prospect of such an inference being available is reduced by the absence of any actual or hypothetical comparator and the extensive evidence of conflict between Mr Mahmood and his colleagues at the Bank arising from his style of communication and manner of working.

690. The matters identified in Mr Mahmood’s written closing submissions in support of his case will now be addressed, in the order in which they are presented in those submissions, in order to assess whether they sustain inferences of unlawful discrimination or victimisation. In this process it is unnecessary to refer to contentions based upon facts which I have found

not to be established by the evidence, such as the allegation of regular negative commentary based on Mr Mahmood's nationality and accent and the comment alleged to have been made by Mr Akbar to Mr Vaselli about "British masters".

Mr Mahmood's recruitment and promotion

691. The evidence establishes that Mr Mahmood created a favourable impression when he was recruited into the Bank, and at the commencement of his role in GIB. However, that evidence is not inconsistent with the evidence of the subsequent events which gave rise to significant conflict and tension between Mr Mahmood and his colleagues at the Bank.

The Compliance Framework

692. The evidence establishes that Mr Long approved the draft Compliance Framework prepared by Mr Mahmood and agreed with his suggestion that the draft be sent to Mr Fanucci and Mr Gilbert, albeit on the erroneous assumption that the draft had already received input from GIB. As I have already noted, it follows that Mr Long must share some of the responsibility for the friction which emerged when the draft was presented to GIB. However, as I have also already observed, the question of allocation of responsibility for the tension which arose has no material bearing on these proceedings as it sheds no light on the question of whether Mr Mahmood was treated detrimentally on grounds of race and/or nationality.

693. Similarly, the question of who was right and who was wrong in relation to the Shariah conflict issue is irrelevant to the complaints of discrimination and harassment unless the position adopted within GIB was so patently and obviously wrong that it could support an inference that the opposition to change was significantly influenced by considerations arising from the race and/or nationality of Mr Mahmood. However, the evidence establishes differences of professional opinions reasonably held, albeit that in the end, a change was made. It is the fact that this difference of opinion was a source of significant tension, unrelated to considerations of race and/or nationality, which is relevant.

The reaction of GIB to the draft Framework

694. The evidence establishes that the draft Framework resulted in tension between Mr Mahmood and GIB which resulted in robust discussions. Mr Mahmood asserts that he was bullied and shouted at in the course of meetings which followed publication of the draft Framework. However, Mr Mahmood made no complaint of bullying at the time, and when

referring to Mr Vaselli being bullied, asserted that he (Mr Mahmood) was able to give back as good as he got. The evidence does not establish that one or other of Mr Mahmood or the members of GIB were more aggressive or hostile than the other.

695. Mr Mahmood submits that it should be concluded that the hostility towards Mr Mahmood following the publication of the draft Framework was significantly influenced by his race or nationality because of the mockery of his accent and frequent references to his nationality. However, I have rejected Mr Mahmood's evidence on those topics. Mr Mahmood also relies upon the references to nationality in the anonymous complaints and the alleged conversation between Mr Akbar and Mr Vaselli in support of the assertion that the hostility towards Mr Mahmood can be attributed, at least in part, to his race and/or nationality. However, I have not found that the conversation between Mr Vaselli and Mr Akbar took place as asserted by Mr Mahmood, and have given reasons for my conclusion that the references to race in the two anonymous complaints do not support Mr Mahmood's claims.

Mr Long's role

696. Mr Mahmood submits that he regularly complained to Mr Long about the discriminatory behaviour he was subjected to. However, I have rejected Mr Mahmood's evidence on that topic and accepted Mr Long's evidence that Mr Mahmood made no complaints of that kind to him.

365 feedback about Mr Akbar

697. As I have already noted, and as with the draft Compliance Framework, Mr Long must share some of the responsibility for the terms in which Mr Mahmood provided feedback on Mr Akbar. However, as already noted, allocation of responsibility for the tensions which emerged between Mr Mahmood and GIB is not to the point of these proceedings. The significant point is that the terms in which the feedback was lodged provide an explanation for the conflict and tension between Mr Mahmood and his colleagues which diminishes the prospect of an inference that the tension arose on grounds of race and/or nationality.

Mr Mahmood's 2018 performance rating

698. Mr Mahmood submits that the performance rating given to him by Mr Long in 2018 with a reduction in his variable compensation was the result of an agreement between Mr Long, Mr De Groote and Mr Shaikh. I do not accept that assertion, which finds no support in the

evidence. I accept Mr Long's evidence that the rating he gave Mr Mahmood was his assessment after taking into account input from relevant stakeholders, including Mr Shaikh. I also accept Mr Long's evidence that he took into account the issues which had arisen in relation to Mr Mahmood's engagement with GIB. No inference of unlawful discrimination or victimisation can be drawn from the 2018 performance assessment.

The complaints against Mr Mahmood in early 2019

699. I have dealt with the issues arising from the four complaints lodged against Mr Mahmood in early 2019 above. For the reasons given, I reject Mr Shaikh's evidence that he was not aware of the complaints at the time they were lodged and Mr Akbar's evidence to the same effect and his assertion that he had no dealings with the person who made the complaints. I do not accept that Mr Akbar was the author of the complaints or that the racial references in the anonymous complaints provide any support for Mr Mahmood's claims, given that he was not aware of them until after his employment had terminated and these proceedings had been commenced and all complaints were dismissed with no consequences for Mr Mahmood. No inference of unlawful discrimination can be drawn from these complaints, for the reasons given earlier.

The investigation into the complaints

700. I have also dealt with the contention that the Bank's investigation of the complaints was deficient earlier in these reasons. For those reasons, even if there was a means of identifying the anonymous complainants which the Bank failed to pursue, it would provide no support for Mr Mahmood's claims.

701. Mr Mahmood also submits that there were deficiencies in the way in which the Bank dealt with Ms Dada's report of the investigation into the complaints against Mr Mahmood. It is unnecessary to consider the weight of that submission because, even if it were to be accepted, it would shed no light on the question of whether Mr Mahmood has been the subject of unlawful discrimination. The fact is that all complaints were dismissed and there is no evidence that the references to race in the anonymous complaints had any impact at all upon the way in which Mr Mahmood was dealt with by the Bank. The evidence is entirely to the contrary and establishes that the Bank's concerns in relation to Mr Mahmood's conduct during 2019 were driven by his poor relationship with the business unit he was supporting rather than by considerations of race and/or nationality.

The BMA review

702. Mr Mahmood submits, in reliance upon his evidence, that when he sought the assistance of the BMA team in the resolution of the Shariah Conflict of Interest issue, he expressed concerns with respect to the lack of diversity in GIB, and that both he and Mr Vaselli were being bullied. Mr Mahmood's evidence on this point is not corroborated by any other testimony, and I do not accept it.

Mr Mahmood's Speak Ups

703. As already noted, Mr Mahmood lodged two Speak Ups on 30 March and 1 April 2019 respectively. In the first he asserted that he felt like a "second class citizen within Group Compliance" as a result of his regional reporting line, lack of inclusion within Group Compliance, lack of additional human resources, inadequate remuneration and lower Band level. Although the assertion of being a "second class citizen" is cited in Mr Mahmood's closing submissions, when viewed in context it is clear that the assertion has nothing to do with race and/or nationality.

704. In the second Speak Up which was entirely concerned with the culture and conduct within GIB, Mr Mahmood raised the bullying experienced by Mr Vaselli. In four pages of complaint concerned entirely with culture and conduct, it is significant that Mr Mahmood made no reference to:

- (a) any adverse treatment he had received on the grounds of race and/or nationality; or
- (b) him being bullied by GIB.

He did assert that he had been shouted at during meetings following his introduction of the draft Framework, a matter which is considered above. In the context of his references to shouting and interrupting others during meetings, he asserted that while he had "been able to respond in kind" when being shouted at or interrupted, Mr Vaselli and Mr Mubeen were "more sensitive and are often overwhelmed".

705. I do not accept Mr Mahmood's assertion that he failed to make any reference to adverse treatment on the grounds of race and/or nationality for fear of repercussions because:

- (a) The Speak Up process is designed to conceal the identity of the "whistleblower";

- (b) The Speak Ups were scathingly critical of colleagues within Group Compliance and GIB on many and varied grounds and there is no reason to suppose that reference to discrimination would expose him to any greater repercussions from those colleagues; and
- (c) On the only occasion upon which Mr Mahmood became aware of an assertion which had overtones of discrimination, (the alleged conversation between Mr Vaselli and Mr Akbar) he complained promptly and in writing.

706. The fact that the only contemporaneous record of any complaint of adverse treatment on the grounds of race and/or nationality is the occasion upon which Mr Mahmood referred to the alleged conversation between Mr Vaselli and Mr Akbar tells strongly and significantly against the assertions Mr Mahmood makes in these proceedings, given the litany of complaints which he made during his employment by the Bank in relation to his conceived adverse treatment.

Mr Shaikh's demands for the removal of Mr Mahmood

707. Mr Mahmood submits that he was subjected to adverse treatment by Mr Shaikh following the lodgement of his Speak Ups. It is contended that Mr Shaikh was aware of the lodgement of the Speak Ups because of his reference to his capacity to deal with whistleblowing disclosures. The adverse treatment is said to have been his reduced communication with Mr Mahmood, failure to respond to Mr Mahmood's emails, his instruction to others to reduce their communications with Mr Mahmood, and the allegation that Mr Shaikh made comments that were humiliating of Mr Mahmood in meetings. This is said to have culminated in Mr Shaikh's request to Mr Long to remove Mr Mahmood from his position.

708. It will be apparent from my analysis of the evidence that I do not accept that all the matters relied upon in support of this submission in fact occurred. However, it is unnecessary to catalogue the facts which I find and the facts which I reject because even if all facts were found as alleged in the submission, they do not advance Mr Mahmood's claim. That is because I have not found any facts which would enable an inference to be drawn to the effect that Mr Shaikh's conduct towards Mr Mahmood was motivated by considerations of race and/or nationality. To the contrary, the facts which I have found compel the conclusion that Mr Shaikh's attitude to Mr Mahmood was occasioned by the manner in which Mr Mahmood performed his duties.

709. Further, even if it is assumed that Mr Shaikh was aware of the Speak Ups lodged by Mr Mahmood and if it is further assumed, contrary to my findings, that his awareness of those complaints influenced his attitude towards Mr Mahmood, this would not constitute victimisation contrary to the provisions of the Employment Law because the lodgement of the Speak Ups were not protected acts. They are not protected acts because there was no reference within them to unlawful discrimination on the grounds of race and/or nationality.

710. In summary, even if the facts relied upon in support of this contention are assumed, they provide no support for Mr Mahmood's claims.

The BMA review

711. Although reference is made to the BMA review in Mr Mahmood's closing submissions, it is not contended that the events relating to the review are anything other than contextual.

The meeting on 5 August 2019

712. Those who were involved in the meeting of 5 August 2019 gave differing evidence as to what occurred at that meeting. It is unnecessary to resolve those differences because no version of the meeting suggests that anything was said by reason of considerations of race and/or nationality. To the contrary, the evidence compels the conclusion that the differences of opinion that were expressed related to a professional disagreement in relation to the Shariah reporting line. Mr Mahmood's email to Mr Long reporting on the meeting is consistent with the evidence from others to the effect that he made comments disparaging of the professionalism and competence of Mr Shaikh and Mr Akbar during the course of the meeting as a result of which disciplinary proceedings were instituted against him.

713. I have dealt with the alleged conversation between Mr Vaselli and Mr Akbar above and explained my reasons for concluding that Mr Mahmood has failed to establish that the conversation occurred in the terms which he has asserted.

Mr Mahmood's complaint to Mr Ayrton and Mr Buckett

714. Mr Mahmood submits that Mr Mahmood's complaint to Mr Ayrton and Mr Buckett in relation to the alleged conversation between Mr Vaselli and Mr Akbar was a protected act. I accept that submission, as the complaint included reference to an alleged statement disparaging Mr Mahmood's British nationality.

715. However, in order to sustain a finding of victimisation, there must be some evidence to the effect that Mr Mahmood suffered a detriment or adverse consequence by reason of making the complaint to Mr Ayrton and Mr Buckett.

The investigation of the events of 5 August 2019

716. Mr Mahmood submits that he suffered detriment by reason of a protected act in the form of his complaint about Mr Akbar's statement to Mr Vaselli in that he was subjected to a disciplinary process whereas the complaint against Mr Akbar was dismissed. I do not accept that submission for the following reasons.

717. As already noted, a number of those involved in the meeting of 5 August 2019 stated to the investigator that Mr Mahmood made statements which were disparaging of the professionalism and competence of senior colleagues. Mr Mahmood's email to Mr Long reporting on the meeting is consistent with those assertions. There was therefore a sound evidentiary basis for the commencement of disciplinary proceedings against Mr Mahmood.

718. By contrast, Mr Vaselli and Mr Akbar were the only persons able to relate what occurred during their conversation following the meeting. In Mr Vaselli's first interview he made no reference to any statement by Mr Akbar relating to nationality. In his second interview, some time after the events, he did make reference to a statement by Mr Akbar referring to nationality, but in different terms to those asserted by Mr Mahmood. Mr Akbar denied making any reference to nationality in his conversation with Mr Vaselli.

719. The evidence establishes that it is the standard practice and policy of the Bank not to institute disciplinary proceedings in circumstances where it is one person's word against another, without any independent or corroborating testimony. Accordingly, in the circumstances, the decision not to institute disciplinary proceedings against Mr Akbar is entirely consistent with that practice and policy.

720. There is no evidence, nor any facts from which an inference can be drawn to the effect that the outcome of the investigation into the events of 5 August 2019 involved the imposition of an adverse consequence or detriment upon Mr Mahmood by reason of his complaint to Mr Ayrton and Mr Buckett. Accordingly, his claim of victimisation in respect of the disciplinary proceedings brought against him fails.

Mr Mahmood's statement to Ms Tabbara

721. During the course of Ms Tabbara's investigation into the events of 5 August 2019 she interviewed Mr Mahmood on 5 September 2019. In the course of that interview Mr Mahmood told Ms Tabbara that Mr Vaselli had told him that Mr Akbar had asked Mr Vaselli to tell Mr Mahmood that "he knew how to deal with British people even if they had been masters".⁶⁷⁸

722. Mr Mahmood told Ms Tabbara that he was "very upset, as my nationality is irrelevant to my work and it is upsetting that a senior member of staff judges me based upon my nationality rather than my work".⁶⁷⁹

723. Mr Mahmood submits, and I accept, that this was a protected act.

724. Mr Mahmood submits that he suffered a detriment by reason of this protected act in that he was directed to relocate his work station from the GIB floor to the Compliance floor. Mr Mahmood relies upon:

- (a) The temporal connection between the protected act and Ms Tabbara's suggestion to Mr Long that Mr Mahmood be relocated which occurred later in the day of her interview with Mr Mahmood; and
- (b) Discrepancies in the evidence relating to the reasons for Mr Mahmood's relocation in that:
 - (i) when Ms Al Najjar described the circumstances of the move of Mr Mahbub on 14 February 2020 she did not refer to any concern for his wellbeing but described the move as being in order to "avoid further escalation of issues created by his own behaviour";⁶⁸⁰ and
 - (ii) Ms Tabbara's suggestion that the move was temporary proved to be incorrect because Mr Mahmood was not permitted to return to his work station on the GIB floor at any time thereafter.

725. I do not accept this submission for the following reasons. Dealing firstly with the temporal connection, it is clear from the record of Ms Tabbara's interview with Mr Mahmood that he

⁶⁷⁸ TB 2952.

⁶⁷⁹ TB 2952.

⁶⁸⁰ TB 4056

reported to her that he was distressed by the ongoing conflict with senior members of GIB. In the course of the interview he raised many other issues and instances of conflict other than the alleged statement by Mr Akbar to Mr Vaselli. Ms Tabbara asserted to Mr Long, who made the decision to relocate Mr Mahmood, that her recommendation was based on concern for his welfare. The evidence establishes ample justification for that concern and there is no reason to doubt that it was genuine. At all events the decision to implement the relocation was made by Mr Long, who also had ample reason to conclude that the tensions between Mr Mahmood and GIB might be mitigated if Mr Mahmood was relocated to a work station on another floor. There can be no suggestion that Mr Long's decision was influenced in any way by the statement made to Ms Tabbara by Mr Mahmood relating to the conversation between Mr Akbar and Mr Vaselli.

726. Ms Al Najjar's email describing the reasons for Mr Mahmood's relocation is not inconsistent with Mr Long's evidence of the reasons for his decision, which included an attempt to reduce the evident tension between Mr Mahmood and GIB. Further, the fact that Ms Tabbara's suggestion that the move might be temporary did not come to pass is easily explained by the fact that the tensions between Mr Mahmood and GIB did not diminish.

727. For these reasons Mr Mahmood's claim of victimisation arising from his statement to Ms Tabbara fails.

The attempt to restructure Mr Mahmood's role in September 2019

728. Mr Mahmood submits that Mr Long's attempt to restructure the position held by Mr Mahmood in September 2019 was driven by pressure from the GIB team and undertaken for the purpose of declaring the position vacant and Mr Mahmood potentially redundant. Mr Mahmood relies upon Ms Bajwa's observation that she was pressured to assess the extent of the change in the position quickly in support of this submission.

729. The documents recording the communications on the subject of the restructure nominate two reasons for the proposed restructure – reduction of cost as part of Project ICEE and resolution of the Shariah reporting line issue. I accept that both were genuine reasons for moving forward with the restructure of Mr Mahmood's position. Project ICEE had been announced and was underway and provided a framework within which the restructure could take place. The BMA review had recommended that the issue relating to the Shariah reporting line be resolved. However, the communications between Mr Shaikh, Mr Long and

Mr De Groote sustain the conclusion that by September 2019 all had arrived at the conclusion that the conflicts between Mr Mahmood and GIB rendered his continued occupancy of his position untenable. I therefore accept the submission that part of the motivation for the restructure of Mr Mahmood's position was to provide an opportunity for someone else to take over the Compliance role in relation to GIB. I do not accept that Mr Long and others were motivated by a desire to remove Mr Mahmood from the Bank entirely at this time, although that was certainly a possible and perhaps likely consequence of the restructure of his position.

730. However, my conclusion that officers of the Bank were motivated in part by a desire to remove Mr Mahmood from his position is only relevant to these proceedings if Mr Mahmood establishes that his characteristics of race and/or nationality were a significant influence on the decision to restructure his position. There is no direct evidence which would sustain that conclusion and, for the reasons I have given, the evidence does not establish facts from which an inference to that effect could be drawn.

The outcome of Ms Tabbara's investigation into the meeting o 5 August 2019

731. In his written submissions Mr Mahmood challenges Ms Al Najjar's evidence in relation to her communication with Ms Tabbara which resulted in Mr Mahmood's complaint against Mr Akbar being dismissed. In particular, Ms Al Najjar's account of a meeting with Ms Tabbara on 16 September 2019 is challenged.

732. However, nothing turns upon the accuracy of Ms Al Najjar's recollection of that meeting, as it is clear that Ms Al Najjar, in effect, directed Ms Tabbara to apply the Bank's practice of dismissing complaints when the only evidence on an issue was one officer's word against another.

733. Mr Mahmood also submits that the decision to commence disciplinary proceedings against Mr Mahmood failed to take adequate account of the statements made to Ms Tabbara by Mr Vaselli and Mr Mahmood. However, the evidence establishes that statements were made to Ms Tabbara by others present at the meeting and, as already noted, Mr Mahmood's contemporaneous email to Mr Long is consistent with his disparagement of senior officers in the course of the meeting on 5 August 2019.

734. Accordingly, as I have already noted, the outcome of the investigation into the events of 5

August 2019 was consistent with the evidence presented to the investigator and the application of the Bank's practices and policy. I would also observe that even if I had reached a different conclusion, it would be of no significance to these proceedings unless there was evidence, or facts from which an inference could be drawn, to the effect that the outcome of the investigation was significantly influenced by Mr Mahmood's characteristics of race and/or nationality. There is no evidence to that effect, nor does the evidence establish any facts from which such an inference could be drawn.

The disciplinary proceedings against Mr Mahmood

735. Mr Mahmood submits that Mr Shaar who heard the disciplinary proceedings against Mr Mahmood at first instance was not impartial. It is submitted that Mr Shaar reported to Mr Shaikh and that Ms Al Tamimi⁶⁸¹ [sic Ms Al Najjar] had no credible answer to that proposition during her testimony. I do not accept that submission. Ms Al Najjar's evidence, which I generally accept, was to the effect that Mr Shaar had no reporting line into Mr Shaikh and therefore there was no conflict.
736. Mr Mahmood further submits that the disciplinary proceedings were "geared towards a finding of guilt"⁶⁸² because Mr Mahmood's request that Mr Vaselli accompany him was refused, and a statement from Mr Vaselli produced by Mr Mahmood was discounted by Mr Shaar during the hearing.
737. Mr Vaselli was present at the meeting on 5 August 2019 and was a witness to the events the subject of the disciplinary proceedings – indeed Mr Mahmood tendered a statement from him in support of his defence. The refusal of permission for Mr Vaselli to attend the hearing was consistent with the Bank's policy of not receiving oral evidence from witnesses at disciplinary hearings. Further, although Mr Vaselli's statement supported Mr Mahmood's defence, as Mr Shaar noted in his report on the proceedings, evidence from others at the meeting was consistent and to contrary effect. While Mr Mahmood was no doubt aggrieved by the outcome of the proceedings, there was evidence upon which an adverse finding against him could be made.
738. I would also observe that even if there were shortcomings in the procedure adopted in relation to the disciplinary proceedings against Mr Mahmood, they would not support his

⁶⁸¹ Claimant's written submissions [148].

⁶⁸² CWS [151].

claim in these proceedings unless there was direct evidence that any procedural shortcomings were significantly influenced by Mr Mahmood's characteristics of race and/or nationality, or the evidence established facts from which an inference to that effect could be drawn. For the reasons I have already given, there is no direct evidence to that effect, nor does the evidence establish any facts from which an inference to that effect can be drawn.

Mr Mahmood's performance rating in 2019

739. Mr Mahmood submits that Mr Long's assessment of his performance as 4D in 2019 was not a genuine assessment but another step taken to drive Mr Mahmood out of the Bank. As a consequence of that assessment, Mr Mahmood was not awarded any variable compensation for 2019 and he was advised that he would be placed on a PIP in 2020, although in the event that did not occur.
740. In support of this submission Mr Mahmood asserts that the only written feedback about him was positive and that Mr Long's assertion to Ms Al Najjar that he had not completed all objectives was a smokescreen, as the performance rating was driven by adverse verbal feedback from key business stakeholders, who it is submitted were aligned with Mr Shaikh, Mr Akbar and others within GIB. Mr Mahmood submits that the hostility of GIB towards him was tainted by nationality discrimination and Mr Long's decision to acquiesce to the views of GIB was materially influenced by his complaints about the racial abuse he had received in the unit.
741. For the reasons I have given I do not accept that the tensions and hostility between Mr Mahmood and GIB were affected in any way by considerations of race and/or nationality. Nor do I accept that Mr Mahmood complained to Mr Long about racial abuse he had received from GIB. Further, I refer to the cross-examination of Mr Long in relation to his assessment of Mr Mahmood in 2019 and I accept the evidence which he gave in that regard as it is plausible and consistent with other evidence which I accept to the effect of the irreconcilable differences which had arisen between Mr Mahmood and the business unit he was supposed to be supporting.
742. It follows that I accept Mr Long's assessment of Mr Mahmood's performance in 2019 was genuine and uninfluenced in any way by considerations of race and/or nationality, or by any complaints made by Mr Mahmood in relation to discrimination on those grounds.

Mr Mahmood's appeal against the disciplinary outcome

743. Mr Mahmood submits that Ms Al Najjar improperly interfered with the independence of the appeal process by advising Mr Zulu, who was conducting the appeal, that the dismissal of his complaint against Mr Akbar was irrelevant to the complaint against Mr Mahmood in relation to the statements he made during the course of the meeting on 5 August 2019. In support of that submission Mr Mahmood contends that Ms Al Najjar's reference to Mr Shaikh's complaint against him arising in the course of interviewing witnesses in respect of his complaint was not correct.
744. I accept that Ms Al Najjar's description of the circumstances in which evidence of Mr Mahmood's conduct arose in her email to Mr Zulu was not correct. However, I do not think that anything turns upon that error, as it is clear that Mr Shaikh's complaint against Mr Mahmood, which was made to Mr Long the morning after the meeting, was not influenced in any way by Mr Mahmood's complaint to Mr Ayrton and Mr Buckett about the statement attributed to Mr Akbar following the meeting. Accordingly, on the evidence, Ms Al Najjar was correct to counsel Mr Zulu to the effect that Mr Mahmood's unsuccessful complaint against Mr Akbar was irrelevant to the appeal which Mr Zulu was required to determine.
745. Mr Mahmood further contends that Ms Al Najjar improperly intervened in the appeal when, in her email to Mr Zulu, she asserted that Mr Vaselli had changed his statement and had given two different and opposing statements. During cross-examination Ms Al Najjar sought to defend that assertion by reference to the minutes of various statements Mr Vaselli had made to Ms Tabbara.
746. As already noted, Mr Vaselli provided a number of versions his statement to Ms Tabbara.⁶⁸³ Reasonable persons could form differing views as to the extent of the inconsistencies and contradictions between those versions of the statements. As already noted, in the course of the differing versions of the statements, Mr Vaselli first referred to the conversation between him and Mr Akbar in terms which made no reference to considerations of nationality, but later amended his statement to assert that Mr Akbar made a reference to "British people".⁶⁸⁴ There are also variations in the terms in which he described the level of confrontation during the meeting on 5 August 2019.

⁶⁸³ TB 3203; TB 3208; TB 3213; TB 3219; TB 3226.

⁶⁸⁴ TB 3226.

747. It is unnecessary to form and express a final view on the question of whether Ms Al Najjar rather overstated the extent of the inconsistencies in Mr Vaselli's statement in her email to Mr Zulu as nothing turns upon it for the purposes of these proceedings. The issue would only be relevant to these proceedings if there were some evidence that Ms Al Najjar was motivated to interfere with the appellate proceedings by considerations relating to Mr Mahmood's race and/or nationality or facts from which such an inference could be drawn had been established by the evidence. There is no evidence to that effect, nor does the evidence establish any facts from which such an inference could be drawn. Nor is there any evidence to the effect that Ms Al Najjar was motivated to intervene in the appeal because of Mr Mahmood's complaint against Mr Akbar, nor does the evidence establish any facts from which an inference to that effect could be drawn.

748. Mr Mahmood also contends that Ms Al Najjar inappropriately intervened in the appellate process at the request of Mr Shaikh who wanted to ensure that Mr Mahmood was removed from the Bank. I do not accept that submission, which is unsupported by any evidence, nor have any facts been established from which an inference to that effect could be drawn. While I accept that by this time Mr Shaikh had arrived at the point at which he wished Mr Mahmood to be replaced, the dismissal of Mr Mahmood's appeal against his written warning would not achieve that outcome directly, and there were other steps in process relating to the restructure of Mr Mahmood's position would be much more effective in resolving the difficulties which Mr Shaikh had experienced with Mr Mahmood. The contention that Mr Shaikh would have taken it upon himself to intervene in the appeal process is not only unsupported by any evidence but is inherently improbable.

The MSA

749. Mr Mahmood submits that Mr Long's suggestion to offer Mr Mahmood a MSA was motivated by the fact that "the key stakeholders in the business are not going to accept any outcome other than a change in staffing".⁶⁸⁵ I accept that submission, which is supported by contemporaneous documentary evidence.

750. The evidence also establishes that as a consequence of the decision to offer a MSA to Mr Mahmood, he was flagged as a "leaver" on the Bank's internal HR system, as a result of which his ability to print documents, access external emails and use USB devices was

⁶⁸⁵ Email from Mr Long to Mr De Groote and Mr O'Donnell of 18 February 2020 TB 4101.

revoked. The evidence also establishes that those permissions were never restored. The evidence also establishes that there was no conscious decision by anybody within Compliance or GIB to revoke Mr Mahmood's capacities in this respect – rather, it was the application of standard Bank procedures to the decision to offer Mr Mahmood a MSA.

751. Mr Mahmood also submits that when he failed to accept the MSA within the extended time allowed by the Bank, the Bank immediately proceeded to add his name to the list of those likely to be made redundant through Project ICEE. I also accept that contention, which is consistent with the contemporaneous documentary evidence.

752. However, none of these contentions, which I generally accept, support Mr Mahmood's claim in these proceedings unless there is evidence that the decision to offer Mr Mahmood a MSA or restructure his position in the event that he declined were significantly influenced by considerations of race and/or nationality. For the reasons I have given, there is no evidence to that effect, nor does the evidence establish any facts from which such an inference could be drawn.

The restructure of Mr Mahmood's position in 2020

753. Mr Mahmood submits that the restructure of his position by combining his role with that of the role then occupied by Mr Patel in Financial Markets was a sham intended to secure his exit from the Bank. In support of that contention it is asserted that the proposal did not lead to a reduced head count because it involved the replacement of two Band 4 roles with a new Band 3 role as well as two Band 5 roles. That proposition is correct, in terms of head count, but the evidence, which I accept, is to the effect that one Band 3 role supported by two Band 5 roles is significantly cheaper than two Band 4 roles.

754. Mr Mahmood further asserts that the decision to link Islamic Banking with Financial Markets was "extraordinary". There is no evidence to sustain that proposition. The evidence is to the contrary, as the combined role was still in place at the time of the hearing, more than three years after the restructure.

755. Mr Mahmood further submits that the restructure was driven by a desire to ensure that the preferred person would be appointed to the new role in place of Mr Mahmood. I do not accept that submission. There is no doubt that Mr Patel was seen as a potential candidate for the new role, given that his position, like Mr Mahmood's, was to be, in effect, abolished.

However, it does not follow from that fact that the selection process was a sham.

756. Extensive documentary evidence was provided covering the process relating to the interview of prospective candidates for the restructured position, and the selection of Mr Patel as the preferred candidate. That evidence compels the conclusion that the process was genuine and uninfluenced by any considerations of race and/or nationality. There is reference within the written materials to the tensions which had arisen between Mr Mahmood and GIB, but this was only to be expected, given the significance and extent of those tensions.
757. Mr Mahmood submits that it is apparent that he was being held responsible for the tensions between himself and the business unit when, at least, both sides were partly to blame. I do not accept that submission because of my conclusion that Mr Mahmood's style of engagement was predominantly responsible for the tensions which arose. But in any case, the fact that the tensions existed was relevant to the selection process relating to the restructured position, irrespective of who was to blame.
758. I would also observe, perhaps tritely, that as I have found that the tensions between Mr Mahmood and GIB were not occasioned by any considerations relating to Mr Mahmood's race and/or nationality, even if GIB were entirely responsible for the tensions which arose it would provide no support for Mr Mahmood's claim in these proceedings.

Alleged discrimination by Compliance management

759. Mr Mahmood submits that Mr Long, Mr De Groote, Mr Phebey and Mr O'Donnell were a group of like-minded Caucasian males who never fully welcomed Mr Mahmood.⁶⁸⁶ Mr Mahmood further submits that this was due to discrimination and supports that submission with the contention that a hypothetical Caucasian employee in materially the same circumstances as Mr Mahmood would have received different treatment and would have been protected from the hostility of GIB.
760. I do not accept that submission as there is no evidence to support it. Rather, as I have noted, the evidence compels the conclusion that neither the tensions which arose between Mr Mahmood and GIB, or the decisions that were made by the managers in Compliance were influenced or affected in any way by considerations of race and/or nationality.

⁶⁸⁶ CWS [188].

761. Mr Mahmood further supports this submission by referring to Mr De Groote's condemnation of Mr Mahmood because of the 365 feedback provided in relation to Mr Akbar, without taking a similar approach towards Mr Long, who had approved the terms of the feedback before it was lodged.⁶⁸⁷ Mr Mahmood does not contend that Mr De Groote was motivated by discriminatory prejudice but rather, whether consciously or unconsciously, his race had a material influence on Mr De Groote's differing reactions. I do not accept that submission. Mr Mahmood was the author of the 365 feedback, not Mr Long, and secondly, and perhaps more significantly, Mr De Groote's testimony in cross-examination was that he did not know, even at the time he was being cross-examined, whether or not Mr Long had reviewed the 365 feedback before it was lodged.⁶⁸⁸ There is no evidence to the contrary and I accept that evidence. If Mr De Groote was not aware that Mr Long had reviewed the 365 feedback before it was lodged, his differential treatment of Mr Mahmood and Mr Long is unsurprising.
762. Mr Mahmood also submits that he was the subject of belligerent criticism from Mr Phebey on a number of occasions. However, the evidence establishes that Mr Phebey's criticisms of Mr Mahmood were contained in emails to other senior managers within Compliance and were not presented directly to Mr Mahmood. As noted above, I do not accept Mr Mahmood's assertion that Mr Phebey reprimanded him during a meeting in Dubai.
763. Mr Mahmood's further contention that Mr Phebey's reactions were consciously or unconsciously influenced by his race are unsupported by any evidence. The evidence is all to the contrary. Mr Phebey's criticisms of Mr Mahmood in the emails contained within the evidence were all triggered by actions taken by Mr Mahmood which provided ample justification for the views expressed by Mr Phebey. In those circumstances there is no room for an inference to the effect that Mr Phebey's reactions were motivated by unconscious considerations of race.
764. The preceding analysis has addressed all of the specific matters identified in Mr Mahmood's written closing submissions as providing the basis for his claims.

The pleading issues revisited

765. As I have not found that any of the causes of action asserted by Mr Mahmood have been established, it is unnecessary to consider the Bank's objections to the manner in which the

⁶⁸⁷ CSW [190].

⁶⁸⁸ Day 4 TS 137.

causes of action were ultimately formulated, having regard to the pleadings.

The rule in Browne v Dunn revisited

766. I have made adverse findings against Mr Mahmood, and to a more limited extent, Mr Shaikh and Mr Akbar. Those findings arise entirely from matters that were put to the respective witnesses in the course of their cross-examination. It follows that there are no issues arising from the rule in *Browne v Dunn* which require determination.

Conclusion on Mr Mahmood's claims

767. For the reasons given, Mr Mahmood's claims of discrimination, victimisation and contravention of Article 43 of the Employment Law have not been established and must be dismissed.

Limitation and damages

768. In light of my conclusion that Mr Mahmood's claims must be dismissed, the issues with respect to limitation and damages that were presented to the Court do not require determination. However, even in cases in which a Court of first instance has found that liability has not been established, it is good practice for that Court to make as many findings as possible on the hypothesis that liability had been established, in case the Court's decision with respect to liability is overturned on appeal. I will now address the question of whether it is possible to follow that practice in relation to the issues pertaining to limitation and damages in the circumstances of this case.

769. Dealing firstly with limitation, it is clear that there was only one detriment suffered by Mr Mahmood which occurred within the six month limitation period prescribed by the Employment Law, being his termination on the ground of redundancy. Obviously no question of limitation arises in relation to that aspect of Mr Mahmood's claim.

770. Had that aspect of Mr Mahmood's claim been made out, and some of the other claims made by Mr Mahmood had also been made out, it would have been necessary to determine whether the other established claims were part of a continuing act culminating in the termination of Mr Mahmood's employment. Obviously that assessment would depend upon a consideration of the facts established as giving rise to the relevant contraventions. In the circumstances of this case, there is a large range of potential factual hypotheses which, if

found, could have resulted in a range of possible contraventions of the Employment Law. In these circumstances it is impractical to attempt to undertake a hypothetical assessment of the question of whether other contraventions might have been regarded as part of a continuing act culminating in the termination of Mr Mahmood's employment.

771. Another question which would have arisen if contraventions other than termination of Mr Mahmood's employment had been made out was whether the Court should exercise its discretion to enable those claims to be brought notwithstanding that the claims were commenced outside the limitation period prescribed by the Employment Law. As no such claims have been made out, and the exercise of the discretion would necessarily depend in part upon an assessment of the facts established as giving rise to the contraventions made out, a hypothetical assessment of that question is equally impractical.

772. Similar considerations apply to the assessment of damages. There are some cases in which damages can be assessed independently of the particular facts giving rise to a finding of liability – claims for personal injury providing an obvious example. However, in the circumstances of this case, any assessment of damages would depend critically upon the facts established as giving rise to liability. As no such facts have been found, for the reasons already given, hypothetical assessment of Mr Mahmood's damages in the event that liability had been established is impractical.

Costs

773. The parties have not yet exchanged submissions on the subject of the costs of the proceedings, on the basis that such submissions must be informed by this judgment. My orders therefore include orders for the exchange of submissions on the subject of costs, limited to the issues of liability for those costs and whether the costs should be the subject of immediate assessment by me, or detailed assessment by the Registrar in accordance with Part 40. Until the question of procedure has been resolved, the submissions are not to include submissions in relation to the quantum of costs claimed.