



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr Saleem Patka

v

(1) British Broadcasting Corporation
(2) Ms Mary Hockaday
(3) Mr Tarik Kafala

Heard at: London Central

On: 3 – 13 July 2022 and 14, 15, 28 and 29 July in chambers

Before: EJ G Hodgson
Mr S Godecharle
Ms H Craik

Representation

For the Claimant: in person
For the Respondent: Mr Tom Brown, counsel

JUDGMENT

- 1. All claims of alleged detriment contrary to section 47B Employment Rights Act 1996 fail and are dismissed**
- 2. All claims of victimisation contrary to section 27 Equality Act 2010 fail and are dismissed.**

REASONS

Introduction

- 1.1** By a claim form presented on 20 September 2021., the claimant alleged he had suffered detriments because he had made protected disclosures and that he had been victimised for bringing a previous claim.

The Issues

- 2.1 This claim was issued on 20 September 2021. It has been subject to a number of amendments, and in particular the claimant has relied on further alleged protected disclosures.
- 2.2 The specific detriments relied on were not set out adequately in the claim form. We do not need to record the full history of the amendments allowed.
- 2.3 The parties presented to us an amended agreed list of issues, which identify a number of detriments, albeit some remain inadequately identified.
- 2.4 It is that agreed list of issues which has been used to identify the claims. It is attached as appendix 1.

Evidence

- 3.1 The claimant gave evidence.
- 3.2 For the respondents we heard from Mr Jamie Angus, Ms Pauline Conroy, Mr Tarik Kafala, Ms Hilary Bishop, Ms Mary Hockaday, Mr Alan Dickson, Ms Kirsty Lee, Mr Jonathan Munro, Ms Fran Unsworth, and Mr Simon Wilson.
- 3.3 We received a bundle of relevant documents and a chronology.
- 3.4 The parties provided written submissions.

Concessions/Applications

- 4.1 On day one we considered the issues. The parties had produced an "amended agreed list of issues." It was agreed that the issues could be simplified. The respondent was ordered to provide a simplified document, which identified the page number and any relevant document referred to. This was to be supplied by 15:00, 4 July 2022. The claimant was to provide any comments by 09:00, 5 July 2022.
- 4.2 The parties were asked to consider whether any claims of detriment which relied on the two protected disclosures allowed previously by way of amendment were out of time.
- 4.3 The claimant was ordered to state by 15:00, 4 July 2022, in relation to each protected disclosure relied on, what relevant failure, pursuant to section 43B Employment Rights Act 1996, was contemplated at the time the alleged disclosure was made.

- 4.4 We discussed the timetable, neither party applied at the outset of the hearing to adjourn. Both parties believed the matter had been limited to 8 days.
- 4.5 There was some dispute as to the timetable. When the hearing was limited to 8 days, it had been envisaged that the tribunal should have one day to decide the case, and that all evidence and submissions should be completed in seven days. The tribunal indicated that it would expect to sit for 10 days, but given the complexity of the claims, it would reserve the final three days for the decision. The parties were invited to agree a timetable to complete the evidence and submissions within seven days. The tribunal indicated that the time available for cross-examination would be broadly split between the parties to allow one third for cross-examination of the claimant and two thirds of the time for cross-examination of the respondent's witnesses.
- 4.6 The tribunal set aside the afternoon of day one and day two for reading. The hearing resumed at 10:00 on day three, 6 July 2022.
- 4.7 During the reading day on 5 July 2022, the parties filed what they had agreed as the final list of issues together with a proposed timetable.
- 4.8 Having considered the final list of issues, it became clear that further information was needed. It was unclear that the claimant had complied with the order to set out, in relation to each alleged protected disclosure, the full relevant failure (as defined by sec 43B Employment Rights Act 1996) relied on at the time of the disclosure. He was ordered to clarify. The claimant provided no further information. Instead, he stated, "I apologise if I did not properly follow your directions. I believed I had done so and I understand the lawyer for the respondents was under the same impression. I am not completely clear what is being asked of me, but I have completed the attached document which I hope provides the information you are requesting." It follows that any clarification of the alleged failures relied on was contained in the final amended issues, as agreed between the parties.
- 4.9 It was also apparent the claimant had not adequately identified the information said to constitute any protected disclosure. The following order was issued: "EJ Hodgson directs that the claimant must, for each email relied on as a protected disclosure, state what is the information which is said to be made in the public interest and which constituted the protected disclosure. That information should be provided to the respondent and the tribunal by 16:00, 5 July 2022."
- 4.10 In response to this order, the claimant filed a further document which appeared to contain extracts from the various emails he said contained protected disclosures.

- 4.11 Later in the afternoon of day two, the respondent filed an application to use a cipher to anonymize various individuals who were referred to, it being the respondent's basic position that the identity of those individuals was not relevant to the issues to be decided and it was appropriate that they should be anonymized.
- 4.12 The tribunal agreed that the identities of the individuals referred to were not relevant. The cipher was adopted.

The Facts

- 5.1 At all material times, the claimant, second respondent, and the third respondent were all senior leaders at the BBC. The claimant is employed as a head of journalism. He is accountable for five of the language services in the World Service (the Persian Service, the Afghanistan Service, the Uzbek Service, and the Kyrgyz Service, which are each headed up by a head of service. In addition to substantive role, the claimant headed up the Afghan service due to the absence of the head of that service.
- 5.2 The third respondent, Mr Kafala, was the claimant's line manager. He is employed as a news controller in which he heads up World Service languages.
- 5.3 The second respondent was the interim senior news controller, responsible for News International Services, for the period from March 2021 to mid-October 2021. The third respondent reported to the second respondent during that time.
- 5.4 On 2 January 2016, the claimant's brought employment tribunal proceedings alleging race discrimination. We understand that claim largely concerned pay. That claim was settled, we understand, without the admission of liability. It is accepted that bringing the 2016 claim is a protected act for the purpose of the victimisation claim now brought.
- 5.5 Around the beginning of 2021, it became clear that America proposed withdrawing troops from Afghanistan. The effect on the government of Afghanistan, the position was unclear.
- 5.6 The BBC maintained an office in Kabul. As part of the BBC's World Service, the BBC employed locals in Afghanistan, including journalists. The BBC recognised that it may not be possible to continue to maintain an office in Kabul, as it may become unsafe to operate. Discontinuance of operations was not a certainty, even if the country became controlled by the Taliban.
- 5.7 There had been in place a contingency plan which may be brought into operation should it become impossible to continue to work from within Afghanistan. That plan was reviewed and was, largely, rewritten by the claimant. On 29 March 2021, a news group approval meeting (NGAM),

approved a paper giving permission for Languages (along with International Ops, BBCM, NG and BD) to start a contingency plan that would be put into effect if - and only if - the security situation in Afghanistan becomes so dangerous that it was impossible to continue operating in the country. The aims of the plan were to ensure the safety of staff and to safeguard output.

- 5.8 The plan considered two broad areas. The first was how to provide continuity of service. The second concerned the treatment of staff. It was recognised that staff may become caught up in conflict or may be specifically targeted. The plan dealt with the response if it were no longer possible to proceed with the service in Afghanistan. There would be an initial period of paid absence and thereafter redundancy complying with local laws. The previous plan provided for two month's paid leave; the new plan provided for three month's paid leave. It was also proposed that twenty journalists may be relocated to India from where they would continue their work. It would be necessary to obtain visas.
- 5.9 The claimant included provision, within the plan, for the staff to be told immediately. It is unclear whether that provision was specifically debated at the NGAM. It became clear, very quickly, that the third respondent, and others, had reservations about disclosing the plan immediately, as they were concerned about the potential effect on staff in Afghanistan. It is apparent the claimant fervently disagreed. He went above his own line manager in an attempt to overturn his own line manager's decision.
- 5.10 The plan was eventually explained to staff on 5 July 2021. It was widely understood that this constituted the triggering of the plan on the assumption that the office in Kabul would close. Progress was made on the plan, but the subsequent events in Afghanistan led to the plan being, effectively, abandoned.
- 5.11 Around 6 August 2022, the Foreign Secretary, The Rt Hon Dominic Raab, announced a policy of asylum which would benefit BBC employees in Kabul. The details were not specified. The BBC then sought clarification and, ultimately, many employees and their families were evacuated from Kabul to other countries, including Britain; this largely superseded the original plan. In particular, the planned removal of journalists to India was not implemented.
- 5.12 During this period, the claimant was dissatisfied, in many ways, with the way BBC handled, and responded to, various matters.
- 5.13 The claimant raised numerous concerns and challenges at various levels of the organisation, including to Mr Tim Davie, the director-general, who heads the BBC. He also raised matters with Ms Fran Unsworth, who at the time was director of news and current affairs. The matters raised included various complaints, allegations, and assertions.
- 5.14 The claimant now relies on six matters as being protected disclosures.

- 5.15 Disclosure one was by email 1 April 2021 to Ms Sarah Ward Lilley, who was managing editor of news; she was senior to the claimant's own line manager, Mr Kafala, albeit she was not his direct line manager. Ms Ward Lilley was at the same level as Ms Mary Hockaday, who was Mr Kafala's direct line manager. This disclosure, it is alleged, concerned an alleged decision by R3 to postpone the implementation of the BBC's emergency plan for Afghanistan plan after 29 March 2021.
- 5.16 Disclosure two is an alleged disclosure to Ms Fran Unsworth on 2 May 2021 being an email which was again concerned with the alleged postponement of the implementation of the emergency plan.
- 5.17 Disclosure three was to Mr David Jordan who was the director of editorial policy and standards and reported directly to Mr Davie. This concerned alleged funding arrangements with the Foreign and Commonwealth and Development Office and alleged breach of editorial guidelines.
- 5.18 Disclosure four was to Mr Tim Davie on 6 July 2021. This was concerned with a £3 million alleged underspend of the BBC World Service budget.
- 5.19 Disclosure five was to Mr Balram Veliath on 22 August 2021 and concerned the claimant's removal as a grievance manager. He alleges this was an attempt by the second respondent and others to subvert the BBC's independent grievance process.
- 5.20 Disclosure six was to Ms Fran Unsworth and contained a number of criticisms of the BBC's role. It related to alleged serious mistakes made by senior members of BBC News (including respondents 2 and 3) in allegedly failing to properly support BBC staff in Afghanistan.
- 5.21 The claimant alleges that he suffered multiple detriments because of his protected disclosures. The nature of detriments is wide ranging and includes threats of disciplinary action, inappropriate grading (leading to a smaller pay rise than anticipated) and exclusion from significant aspects of his role.
- 5.22 The claimant remains employed in the same position and remains employed by the respondent. Since filing this claim, the claimant has filed a further eight claims, some of which rely on the same alleged protected disclosures. We have not considered the detail of those new claims.

The law

- 6.1 Under section 43A Employment Rights Act 1996, a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. Qualifying disclosures are identified in section 43B Employment Rights Act 1996.

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

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

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

...

(5) In this Part 'the relevant failure', in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

6.2 The following questions must be addressed: first, is there a disclosure of information; second, did the claimant believe the information tended to show one of the relevant failures identified in section 43B(1)(a)-(e); third, was the belief of the employer that the disclosure tended to show a relevant failure reasonably held; and fourth, was the belief that there was a public interest reasonably held. In deciding the latter point it is important to recognise that there are two key questions: first, whether the worker believed, at the time he made the disclosure it was in the public interest; and second whether that belief was reasonable. All of these elements must be satisfied if the claim is to succeed.

6.3 Disclosure of information should be given its ordinary meaning, which revolves around conveying facts. Mere allegations may not be a 'disclosure' for these purposes (see **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38. It should be recognised that the distinction between allegation and information may not be clear-cut. Any argument based on this alleged distinction should be viewed with caution. It is possible an allegation may contain information, whether expressly or impliedly (see **Kilraine v Wandsworth LBC** [2018] EWCA Civ1 1436). Each case will turn on its own facts. It will be necessary to consider the full context.

6.4 It may be possible to aggregate disclosures, but the scope is not unlimited, and it is a question of fact for the tribunal.

- 6.5 It may be necessary to indicate the legal obligation on which the claimant is relying, but there may be cases when the legal obligation is obvious to all and need not be spelled out (see **Bolton School v Evans** [2006] IRLR 500 EAT). However, where the breach is not obvious, the claimant may be called upon to identify the breach of obligation that was contemplated when the disclosure was made. It may be necessary to identify a legal obligation (even if mistaken), as opposed to a moral or lesser obligation (see **Eiger Securities LLP v Korshunova** [2017] IRLR 115, EAT.)
- 6.6 The reasonable belief of the worker must be considered. The test is whether the claimant reasonably believed that the information 'tended to show' that one of (a) to (f) existed (the relevant failure); the truth of disclosure may reflect on the reasonableness of the belief.
- 6.7 'Reasonable belief' is to be considered by reference to the personal circumstances of the individual. It may be that an individual with specialist or professional knowledge of the matters being disclosed may not have a reasonable belief whereas a less informed but mistaken individual might. Each case must be considered on its facts.
- 6.8 The public interest element was added in 2013 in order to reverse the decision in **Parkins v Sodexho Ltd** [2002] IRLR 109, EAT. This has been considered by the CA in **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ979.
- 6.9 Underhill LJ gave the lead judgment in the Court of Appeal and addressed whether a disclosure made in the private interest of the worker may also be in the public interest, because it serves the interests of other workers as well (see Underhill LJ, paragraph 32). Underhill LJ declined to interfere with the tribunal's decision and set out his reasons at paragraph 37.

.. the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker... The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case...

- 6.10 Whilst the basis of the decision revolves around a simple question that the tribunal must consider all the circumstances, Underhill LJ also gave some general guidance. Starting at paragraph 26, he dealt with some "preliminaries." He reiterated that the tribunal must first ask whether the worker believed, at the time he was making the disclosure that it was in the public interest and if so, whether that belief was reasonably held. At paragraph 27 he stated:

First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in *Babula* (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at

the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable

6.11 Underhill LJ says at paragraph 29

... if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all...

6.12 'Likely' requires more than a possibility or risk that an employer may fail to comply with a relevant legal obligation – see **Kraus v Penna plc**. 2004 IRLR 260.

6.13 It is not necessary for the information to be actually true (see **Darlington v University of Surrey 2003** IRLR133, EAT).

6.14 In **Ibrahim v HCA International** 2019 EWCA civ 207 the Court of Appeal suggested the mental element imposes a two-stage test: (i) did the claimant have a genuine belief at the time that the disclosure was in the public interest, then (ii) if so, did he or she have reasonable grounds for so believing. It is necessary to consider the individual circumstances of that individual, including any expertise or knowledge.

6.15 When considering the ground on which any act, or deliberate failure to act was done, it is necessary to consider the mental processes (conscious or unconscious) of the decision maker (see **Harrow London Borough v Knight** 2003 IRLR 140, EAT).

6.16 It is for the employer to show the ground on which any act or deliberate failure to act was done (section 48(2) Employment Rights Act 1996). The employer must prove, on the balance of probability, that it was not on the grounds of the protected act (or disclosure) meaning that the disclosure did not materially influence, in the sense of it being more than trivial, the employer's treatment of the whistleblower (see **Fecitt v NHS Manchester** 2011 EWCA civ 1190).

6.17 As regards the content of a disclosure, Sales LJ in **Kilraine v LB Wandsworth** [2018] EWCA Civ 1436 held that "Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other...." Further, he stated at para 35 -

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

36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case...

- 6.18 Sales LJ observed in **Kilraine** at paragraph 33 that statements which were “devoid of any or any sufficiently specific factual content” would not qualify for protection.
- 6.19 In **Simpson v Cantor Fitzgerald Europe** [2020] ICR 236 (EAT), Choudhury P considered whether a question can amount to the provision of information for the purpose of making a qualifying disclosure:

Whether or not something is merely a query, or amounts to the provision of information albeit framed as a query, is for the tribunal to determine. If an employee sets out sufficiently detailed information that, in the employee’s reasonable belief, tends to show that there has been a breach of a legal obligation, then the fact that such information is contained within a communication that can be described as a query will not prevent it from amounting to a qualifying disclosure.¹

- 6.20 In **Jesudason v Alder Hey Children’s NHS Foundation Trust** [2020] ICR 1226, the Court of Appeal provided guidance on the concept of a ‘detriment’ in whistleblowing cases. At paragraph, the Court stated, “There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment” and approved the statement that an “unjustified sense of grievance cannot amount to a ‘detriment.’”

- 6.21 Victimisation is defined in section 27 of the Equality Act 2010.

Section 27 - Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

¹ At para. 42.

6.22 When considering victimisation, it may be appropriate to consider the questions derived from Baroness Hale's analysis in **Derbyshire and Others v St Helens Metropolitan Borough Council and others 2007 ICR 841**. However, there is no requirement now to specifically consider the treatment of others.

“37. The first question concentrates upon the effect of what the employer has done upon the alleged victim. Is it a 'detriment' or, in the terms of the Directive, 'adverse treatment'? But this has to be treatment which a reasonable employee would or might consider detrimental... Lord Hope of Craighead, observed in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 at 292, paragraph 35, 'An unjustified sense of grievance cannot amount to "detriment"’.

40. The second question focuses upon how the employer treats other people...

41. The third question focuses upon the employers' reasons for their behaviour. Why did they do it? Was it, in the terms of the Directives, a 'reaction to' the women's claims? As Lord Nicholls of Birkenhead explained in *Khan's* case [2001] IRLR 830, 833, paragraph 29, this

'does not raise a question of causation as that expression is usually understood ... The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.’”

6.23 The need to show that any alleged detriment must be capable of being objectively regarded as such was emphasised in **St Helens Metropolitan Borough Council v Derbyshire 2007 IRLR 540**. **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 IRLR 285** was cited and it was confirmed an unjustified sense of grievance cannot amount to detriment. That in our view remains good law. In **Derbyshire**, Lord Neuberger confirmed the detriment should be viewed from the point of view of the alleged victim. Rather than considering the 'honest and reasonable test as suggested in *Khan*' the focus should be on what constitutes a detriment. It is arguable therefore that whether an action amounts to victimisation will depend at least partly on the perception of the employee provided that perception is reasonable. It is this reasonable perception that the employer must have regard to when taking action and when considering whether that action could be construed as victimisation. Detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment. The detriment cannot be made out simply by an individual exhibiting mental distress, it would also have to be objectively reasonable in all the circumstances. The stress and worry induced by the employer's honest and reasonable conduct in the course of his defence cannot, except in the most unusual circumstances, constitute a detriment. The focus should be on the question of detriment.

- 6.24 When the protected act and detriment have been established, the tribunal must still examine the reason for that treatment. Of course, the questions of reason and detriment are often linked. It must be shown that the unfavourable treatment of a person alleging victimisation was because of the protected act. A simple 'but for' test is not appropriate.
- 6.25 It is not necessary for a person claiming victimisation to show that unfavourable treatment was meted out solely by reason of his or her having done a protected act.
- 6.26 Lord Nicholls found in **Najarajan v London Regional Transport 1999 ICR 877**, HL, that if the protected act has a significant influence on the outcome of an employer's decision, discrimination will be made out. It was clarified by Lord Justice Gibson in Court of Appeal in **Igen and others v Wong and others 2005 ICR 931** that in order to be significant it does not have to be of great importance. A significant influence is an influence which is more than trivial.

Conclusions

- 7.1 We first consider whether any matter relied on constitutes a protected disclosure.
- 7.2 The alleged disclosures were not set out adequately in the claim form. The parties agreed a list of issues. The agreed issues identified six alleged disclosures and in respect of each what was said to be the relevant failure. The issues still failed to set out, adequately, or at all, what was said to be the information. The claimant was ordered to clarify the position he filed a further document.
- 7.3 Both parties, and the tribunal, have treated the final issues as being the definitive record of the pleading of the case. In considering each of the alleged disclosures, we will set out the content of the issues and the subsequent clarification said to identify the information. When considering whether the alleged disclosure is protected, we will set out the relevant facts.
- 7.4 The evidence filed in this case is extensive. There are approximately 270 pages of witness statements and a substantial bundle of documents which has over 2,000 pages. There is a lot of detail, much of which is irrelevant. We will set out those facts which are most relevant to the disclosures and the alleged detriments when we consider each. Although we have not set out all the facts that we have considered, the parties should note that we are not obliged to do so. We have considered all of the evidence and have taken the entirety of it into account. No party should assume that because a particular point of evidence or disputed fact is not specifically recorded that we have not considered it. We set out the most important elements of the evidence to the extent we believe it necessary for the parties to understand the reasons for our decision.

Disclosure one

7.5 The issues identify it in these terms –

To Sarah Ward-Lilley on 1 April 2021 by email, concerning an alleged decision by R3 to postpone the implementation of the BBC's emergency plan for Afghanistan?

The issues identify the relevant failure as this –

...the health or safety of BBC staff in Afghanistan was being, or was likely to be endangered by the failure to implement the BBC's emergency plan...

The claimant identified the information as this –

I have no option in this case as it involves the safety of our staff in Afghanistan, and protecting our output to a country of extreme need. I think our responsibility is to do what is best, rather than worrying about any short-term embarrassment. I believe the plan outlined in the paper approved by NGAM on Monday should be implemented immediately, otherwise there is a serious risk that we will be left unprepared if the situation in Afghanistan unravels quickly.

7.6 The BBC employed a significant number of local staff in Afghanistan in various positions. The claimant indicates there were approximately 100 staff, and he was directly responsible for approximately 60. As well as journalists, and those who contributed to gathering news, there were general support staff, including drivers and interpreters. At all material times, the region was in conflict. There was a military presence from United States and other countries. In early 2021, the Americans agreed to military withdrawal. At all material times, the residents in Afghanistan risked involvement in violence and conflict, either by being caught up in violence or being targeted by the Taliban or other groups. It was recognised that there may come a time when the BBC was unable to continue to operate from within Afghanistan, should the situation become too dangerous. A contingency plan had been in place for some time.

7.7 When it became clear that America was to withdraw, it was unclear how the situation would develop. It was widely assumed that the Afghan government would continue, but there may be conflict, particularly with the Taliban. However, it was not widely assumed that the Taliban would gain immediate control, albeit it was recognised that the Taliban's influence may increase. The BBC did not consider that the removal of American troops would necessarily lead to a situation where the BBC was no longer able to operate safely within Kabul. Even if the Taliban were in control, it did not necessarily follow that it would be hostile to the continuing presence of the BBC.

7.8 In August 2021, following the withdrawal of American troops, the Taliban rapidly gained control of the country. This had not been envisaged by the claimant or the BBC generally. Such a rapid change of power did not constitute an underlying assumption when the risk was assessed around March 2021.

7.9 The claimant updated, with the support of others, a contingency plan which was approved by the news group approval meeting (NGAM) on 29 March 2021. The claimant attended that meeting. The plan outlined the BBC's response should Afghanistan become ungovernable, and the BBC be unable to maintain a base within Kabul. The stated aim was to-

...ensure the safety of our staff and also to safeguard and sustain:

*** The content WS Languages provides to audiences (currently more than 50% of the Afghan population consume Languages content every week)**

*** The content which BBC Monitoring produces from the country for internal and external clients**

*** The partnership relationships in Afghanistan developed by Business Development**

*** Newsgathering and support for deployments from Newsgathering**

7.10 It specifically noted that the threat at that time was moderate but could escalate quickly and significantly. Relevant timings were considered as follows:

There is a certain level of urgency to this work as we need to identify which staff would potentially move to Delhi, and arrange visas by the start of May at the very latest, as well as making the other preparations necessary in Delhi. Although we hope that this plan is never required to be put into action, we need to be ready as the volatile situation in Afghanistan may change at any time.

If this paper is approved, we would immediately speak to all employees in Afghanistan outlining the plan and asking for volunteers from each area. If we get more volunteers than required, a simple selection process will be carried out to choose those best suited to the duties. If we get fewer volunteers than required, we will seek to put additional backup plans in place. But the situation will only become clear once we start the process of speaking to staff.

7.11 The claimant's paper recognised that communicating the plan may be sensitive and could cause negative reaction. It stated the following:

Some employees may feel that the assistance by the BBC may be limited and should involve the evacuation of employees and their families from Afghanistan. This will not be possible. By verbally briefing staff, the intention will be to manage the reaction, and explain that the employee (only) would travel to Delhi if their work could be carried out from there, and if he or she volunteered to do so. Those volunteers would need valid passports with at least one year of validity.

7.12 The plan set out principles to be followed if it was no longer possible to maintain an office in Kabul. The principles were as follows:

Where employees are able to perform their roles remotely, they would be expected to work from home, or from a temporary home, as long as it were safe for them to do so.

- If the BBC had to evacuate from Kabul, some editorial employees may be asked to relocate (voluntarily) out of the country to India [subject to

obtaining an appropriate work permit], to work there on a temporary basis, until the Kabul office could reopen.

- If individuals were not required to work outside of Afghanistan, do not volunteer or do not have roles which could be performed at home, or if it were unsafe for them to continue to work, the BBC would pay each staff member 3 months full pay in cash in advance, to enable them to support themselves and their families until the BBC offices in Kabul was able to reopen.

- It is currently expected that the banking system would not be functioning hence paying staff in cash in advance.

- Employees receiving a salary advance would need to sign an agreement confirming their understanding that they are expected to return to work as soon as the office re opened.

- The office would re-open upon it being deemed safe to do so; this could be at any time during the 3 month period so employees would be required to remain in contact.

- If employees chose not to return to work when the office re opened, they would be expected to repay the advance or have the money deducted from any other BBC gratuity [end of service benefit] due to them.

- During the office closure in Kabul, a check in system would be set up for all employees with calls made several times a week, to ensure everyone was safe and to keep everyone up to date with the plans for the office.

- If, after 3 months, Afghanistan was still not safe, the BBC would put arrangements in place to terminate contracts.

- Any termination of contracts would be carried out in full accordance with the Afghan Labour Law. Under Afghan contracts all employees are eligible to a month's notice, a gratuity of one month's salary per year of service in lieu of pension and in addition, under Afghan law, if made redundant, would be eligible to a job seekers' payment of up to six months' salary depending on length of service. The current total provision held by the BBC for the gratuity and job seekers' payments for all employees in Afghanistan is £

7.13 It follows that there was a range of responses. The report recognises that it is not possible to remove all risk of employees, or former employees of the BBC, being targeted directly, or being caught up in violence. It was specifically recognised the BBC could not offer any evacuation. The report was concerned partly with safety, and partly with continuity of the service. It was specifically recognised that those individuals who may volunteer to go to India would not do so on the basis that BBC have any involvement in moving their families.

7.14 It appears the report was adopted without any specific amendment or alteration. Within the report, as noted above, was an indication that the content would be communicated immediately to employees.

7.15 It is unclear how far that was specifically discussed or addressed at the NGAM on 29 March 2021. However, it very quickly became clear that there were reservations about communicating the content, given the

potential reaction of staff. Mr Kafala addresses the difficulty in his statement as follows:

46. However, my views on triggering and communicating the plan to staff were different to Saleem's. Although the contingency plan had been approved, I felt that the end of March / early April 2021 was too early to communicate the plan and I was concerned that once we did so, the Kabul bureau would effectively cease operations because the message was a very difficult one for staff. The first approved version of the emergency plan provided for 26 staff (20 of whom were Languages staff) to be relocated to India for a period of 12 months without any family members. The remaining staff (around 76 employees and 36 freelancers) would be placed on three months paid leave and then, if the situation had not improved, they would be made redundant and left to live under the Taliban.

47. My views were shared by Fran Unsworth, the then Director of BBC News, Lizz Loxam, Managing Editor, BBC Monitoring and Bruce Baron, Operations Director for International Bureaux. Lizz and Bruce also had staff in Kabul and therefore they also had a stake in that decision which I had no power to overrule because they did not report to me. I had spoken to Fran, Mary and the High Risk team twice about when we should communicate the emergency plan to staff, before and after the approval of the plan. We all agreed that it was premature to communicate the plan straight after it was approved at the end of March 2021. Saleem was of the view that we could communicate the plan with no repercussions in terms of a negative reaction from the staff whereas I considered that communicating the plan was effectively triggering it.

48. Whilst the emergency plan, if triggered, would have reduced any risk of harm to up to 26 of the Afghanistan based staff, it would not have decreased any risk of harm to the remainder who numbered 112 (including freelancers who were a key part of our operation. Nor, at this stage, was there any foreseeable and concrete risk of harm. Saleem knew that I didn't want to communicate the plan immediately on approval. The reason for seeking NGAM approval in March 2021 was to have the plan approved in good time if we got to the point that we needed to move staff, but that time had not come in March or April 2021. Nor was it NGAM's role to approve the timing of communication; that remained a decision for managers, and I had made my position (and that of others) clear to Saleem. To be clear, the decision on when to communicate the plan was not mine alone.

49. Saleem wanted to communicate to the staff in order to start applying for visas in India. India has a visa processing time of 'up to' three months but it could have been quicker and it is sometimes possible to obtain visas for India within three days. I knew that as the BBC, we could go quite high up in Indian government to process visas far more quickly than three months and so I did not think visa processing time was an imperative at that moment. Those staff who would relocate to India under the plan would do so without their families, who would be left with the Taliban gaining in power. The primary driver of that part of the plan was business continuity, aimed at safeguarding our editorial output rather than staff safety (which we proposed to address by placing the remaining staff on extended paid leave (to distance them from the BBC) and then making them redundant (to end their connection to the BBC which could be a risk factor)). When the plan was in fact communicated, the staff who were not in scope for relocation were asking about their situation, and those staff who were looking to relocate were primarily focussed on that, so it was immediately and seriously destabilising to the Afghan Service.

50. At that time, the advice from High Risk about how the Taliban might take over the country was that it would be gradual and that there may be a power sharing government, gradually taking over some ministries. The Taliban were saying that they didn't want to take the country over militarily as that would involve a huge death toll. However, in the end they did take it over in that way because the Afghan army vanished and the senior political figures left the country so the Taliban were able to just 'walk in'.

51. There had been questions from staff in Afghanistan for many months about how the BBC would respond to the withdrawal of US troops, and we and International Bureau (IB) had so far been pointing them to an existing (pre-March 2021) contingency plan under which there would be closure of the bureau, staying in touch, and the honouring of contractual and statutory commitments. The difference in the March 2021 contingency plan was that we would move some staff to India. So the March contingency plan built on the previous contingency plan, but there was never going to be a plan to move all staff, let alone all staff and their families. There was no comprehensive answer to those questions from staff in Afghanistan. The BBC did not have the ability or capacity to move significant numbers of people unless relocating staff to carry on serving audiences.

7.16 It follows that Mr Kafala, who was the claimant's direct manager, did not consider the NGAM had approved immediate disclosure, and considered the timing of any communication to be a matter for senior management. He had consulted with Ms Unsworth, who at the time was director of news and current affairs. It is clear he spoke to the claimant. The claimant did not agree to delaying the communication. The claimant would not accept Mr Kafala's managerial decision. This is what led directly to what the claimant now says was his first protected disclosure.

7.17 The claimant wrote to Ms Sarah Ward-Lilley who was managing editor of news. She was not part of his direct line management. She was senior to Mr Kafala. The relevant part of this email reads

Hi Sarah - I don't like going above Tarik's head as I know he's got a very difficult job, but I feel I have no option in this case as it involves the safety of our staff in Afghanistan, and protecting our output to a country of extreme need.

I understand that Tarik and others have started to worry about the reaction from staff in Afghanistan when we inform them that - in the worst case scenario - only about a quarter of them will be transferred to India and the others will be made redundant after being given three months paid leave. It's not a conversation I relish having with the staff.

I also know that there may possibly be a question about the support we are giving to staff in Afghanistan on today's Stay Connected call, and I can appreciate that there is a certain level of nervousness that Richard Sharp or Tim Davie may be put in a difficult spot.

But ultimately I think our responsibility is to do what is best, rather than worrying about any short-term embarrassment. I believe the plan outlined in the paper approved by NGAM on Monday should be implemented immediately, otherwise there is a serious risk that we will be left unprepared if the situation in Afghanistan unravels quickly.

Ta

- 7.18 Was there a disclosure of information? This email is a mixture of contention, opinion, and fact. It does contain some limited information. Mr Kafala and others were worried about the potential reaction of staff. It outlines the key elements of the plan. It is implicit, having regard to his assertion the plan should be communicated immediately, that the communication of it had been postponed.
- 7.19 In his pleaded case, the claimant states the health and safety of BBC staff in Afghanistan was being or is likely to be endangered by the failure to implement the BBC's emergency plan. Did the claimant believe the information intended to show the relevant failure? The claimant's evidence on this is unsatisfactory and unclear. He believed there was some form of duty to protect the health and safety of individuals. However, it is clear from the contingency plan itself that he recognised that there were limitations. The recognition of limitations may be in conflict with the email, which asserts the responsibility is to do "what is best." What is meant by that is unclear. As regards health and safety, we accept the claimant had in mind protection from being caught up in violence, and/or being specifically targeted. We are not satisfied, on the balance of possibility, that the claimant believed the BBC had an obligation, legally, to protect staff against those dangers in all circumstances.
- 7.20 Did the claimant reasonably believe that the information disclosed tended to show relevant failure? In considering this, we note that the claimant is a senior leader within the BBC and an experienced journalist. He had access to management and human resources support. He had an ability to research. As a senior manager with responsibility for a £20 million budget, and significant responsibility for staff, it would be reasonable to expect him to undertake basic research and to act in a way which demonstrated a recognition of actual responsibilities and the reality of the situation.
- 7.21 We have found that he did not have the requisite reasonable belief. It is not enough to say that there was a current or future threat to BBC staff. This claim revolves around an assertion that there was a failure to implement the BBC's emergency plan. That claim is without merit. The plan existed. It was a modification of the previous plan. It was contingency plan in the event that the Kabul office could no longer be maintained. There was no imminent possibility of the Kabul office closing and the threat at the time was moderate.
- 7.22 Before us the claimant has relied on the potential difficulty of obtaining visas. In essence he says that obtaining visas may take up to three months and it was therefore necessary to start the process immediately in order to secure those visas, so that part of the plan could be implemented.
- 7.23 The principal driver for moving staff to India was to maintain continuity if operations could no longer continue in Kabul. Whilst for those individuals there may have been a coincidental benefit by being removed from an

area of conflict, thus improving safety, that was not the driver; we find that the claimant fully understood that.

- 7.24 The delay in communication did not in itself constitute a failure to implement the plan, or a postponement. The plan was always current and active; ultimately, it was not implemented because it was taken over by events, particularly the mass evacuation to Britain and other countries. However, that was not envisaged at the time.
- 7.25 As for the staff that would remain in Afghanistan under the plan, the safety provision revolved around cessation of operations and ultimately redundancy. That part of the plan could be implemented at any time, and without prior communication. In no sense whatsoever was it undermined by failure to communicate it immediately.
- 7.26 Redundancy was the primary way of seeking to secure safety. In no sense whatsoever did the claimant believe at the time that there would be a failure to implement that plan. Further, even taking the claimant's case at its highest, a delay in communication would not necessarily have led to a situation where visas could not be obtained in time. There was no rational basis for assuming that the position would become untenable within three months of 29 March, when the plan was initially approved. The advice obtained indicated of a much longer period of transition. Therefore, the claimant had no basis for a reasonable belief that time was of the essence. It follows that there was no reasonable basis for believing that the plan would not be implemented. There was no reasonable basis for believing that the respondent was in breach of any health and safety duty.
- 7.27 Further the claimant failed to give any consideration to the scope of the BBC's obligation to ensure the safety of staff threat posed by conflict and regime change. He had the ability to research. He had the ability to enquire. Instead, he did nothing and, having regard to his evidence as a whole, he did not draw any distinction between a legal obligation and a moral responsibility. His approach undermines any claim that his belief was reasonably held.
- 7.28 The reality is that the claimant had his own agenda. He was unwilling to accept the decision of the own manager. He deliberately sought to overturn the decision of the senior managers by going to a higher level of management.
- 7.29 We have found that the claimant had lost respect for Mr Kafala and has become hostile to his management. His action in going above Mr Kafala's head is an illustrative example.
- 7.30 As we found the claimant did not have the requisite reasonable belief, is not necessary for us to consider the public interest element.

Disclosure two

7.31 The issues identify disclosure two in these terms –

To Fran Unsworth on 2 May 2021 by email, concerning an alleged decision by R3 to postpone the implementation of the BBC's emergency plan for Afghanistan.

7.32 The issues identify the relevant failure as this –

...the health or safety of BBC staff in Afghanistan was being, or was likely to be endangered by the failure to implement the BBC's emergency plan...

7.33 The claimant identified the information as this –

I need to raise a serious concern about how we are handling the situation in Afghanistan. I've tried to deal with this directly with Tarik and keep hitting a brick wall - he is now not even answering my emails - so given the responsibility I have as regional editor to ensure the safety and well-being of the 60 Languages staff in the country, I feel I have no option but to escalate the issue.

We currently have no actionable contingency plan if the security situation deteriorates and it becomes too dangerous for our journalists to continue working in Afghanistan. In order to put a proper plan in place we first need to speak to our staff about what that means for them, but Tarik is refusing to allow us to do that.

We would just be preparing for the worst and explaining to staff what that would mean for them, so they can make informed decisions about their futures.

I hope we never have to use the plan and our teams can carry on working from Afghanistan, even if the Taliban take over. But as no-one can confidently predict what will happen in the coming weeks, I believe it is negligent for us not to get ready.

The aim of the plan is to ensure the safety of our staff and to safeguard our output.

Of course some would be unhappy, especially those who express interest in leaving Afghanistan but are not selected. But they would know what to expect and could start making their own backup plans for themselves and their families. We would not be in a situation - as we are currently - where they could be told at the last minute that the BBC is pulling out, leaving them no time to prepare and potentially putting them in greater danger.

7.34 This alleged disclosure is a continuation of the claimant's concerns which underpinned the alleged disclosure one. In his evidence he describes continuing conversations with Mr Kafala. The claimant continued to advance the view that staff should be told immediately. Mr Kafala continued to have concerns.

7.35 The claimant decided to contact Ms Fran Unsworth who was director news and current affairs. She was one management step down from the director-general, Mr Tim Davie.

7.36 The claimant sent the following email:

Hi Fran - I need to raise a serious concern about how we are handling the situation in Afghanistan. I've tried to deal with this directly with Tarik and keep hitting a brick wall - he is now not even answering my emails - so given the responsibility I have as regional editor to ensure the safety and well-being of the 60 Languages staff in the country, I feel I have no option but to escalate the issue.

The detailed background is below,² but basically we currently have no actionable contingency plan if the security situation deteriorates and it becomes too dangerous for our journalists to continue working in Afghanistan. In order to put a proper plan in place we first need to speak to our staff about what that means for them, but Tarik is refusing to allow us to do that.

His reasoning, to the extent that he has provided any, is that if we tell staff we need a contingency plan they will panic and we will have to immediately pull out of Afghanistan. He is wrong. Our staff understand the situation and they have been asking for clarity from the BBC for weeks.

His other concern appears to be that some of the staff may not like the plan, and if we tell them about it they may complain to you or Tim Davie, potentially making us look bad. I think that is irrelevant.

Tarik told me he had spoken to you about the plan and you had expressed concern that we were proposing to pull out of Afghanistan before it was necessary. I don't know what you were told, but I want to make it clear that this is only a contingency plan and not an evacuation plan. We would not be moving a single person at this stage - or hopefully at any stage. We would just be preparing for the worst and explaining to staff what that would mean for them, so they can make informed decisions about their futures.

I hope we never have to use the plan and our teams can carry on working from Afghanistan, even if the Taliban take over. But as no-one can confidently predict what will happen in the coming weeks, I believe it is negligent for us not to get ready. It is unfair to our staff and it risks damaging our output. We have already wasted one month, and I would ask you to intervene immediately so we don't waste any more time.

**Ta
Saleem**

7.37 Was there disclosure of information? There can be no doubt there is information contained within the email. There is significant information contained in the background, which records the approval of the contingency plan and the claimant's subsequent rejection of Mr Kafala's view. The reference to there being no actionable contingency plan is less easy to categorise. As noted above, the contingency plan, as it affected staff remaining in Afghanistan, was actionable immediately. Read as a whole, the email expressed concern that the delay may prevent visas being obtained for a number of months, with a consequential slowing down of any resumption of provision of service from India. We observe it

² We have fully considered the background, but we do not need to set it out in the written reasons.

did not necessarily prevent staff from leaving the country; it appears the visas envisaged would have allowed work from India.

- 7.38 Did the claimant have the requisite reasonable belief that the information tended to show one of the relevant failures? The position had not materially changed since the first alleged disclosure. For the reasons we have already explored, to the extent the claimant believed that there was a potential failure, or had been a failure, that was not a reasonably held belief.
- 7.39 It follows we do not need to consider whether he believed there was a public interest.

Disclosure three

- 7.40 The issues identify it in these terms –

To David Jordan on 31 May 2021 by email relating to alleged funding arrangements made by the BBC with the Foreign Commonwealth and Development Office, which C claims he believed breached the BBC's editorial guidelines and might involve a deliberate attempt to deceive BBC audiences.

- 7.41 The issues identify the relevant failure as this –

a: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had failed to comply with its legal obligation to be editorially independent, or

b: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had deliberately concealed or were deliberately concealing information tending to show the breach of the legal obligation referred to in the previous paragraph;

- 7.42 The claimant identified the information as this –

I believe the arrangements may conceal an unpublished and/or unwritten agreement which commits BBC News to specifically carry out investigations related to China, Russia and India in return for direct funding, in a manner which breaches our stated editorial value of being "independent of outside interests and arrangements that could compromise our editorial integrity.

[I]t appears that the BBC has agreed with the FCDO to spend £3m of the new funding specifically on investigative journalism about China, Russia and India. But more than that, in order to retain the impression of editorial independence, it has decided to try to disguise that fact by not including it in the official agreement or any public announcement.

In my view the first part of that breaches our editorial guidelines, as well as the public promise made by Tim before the Public Accounts Committee. But the second part is even more concerning as it suggests a deliberate intention to deceive our audiences.

- 7.43 It is necessary to set out the background to funding provided to the BBC by the FCDO.
- 7.44 Until 1 April 2014, the World Service was funded entirely by a grant in aid from the then Foreign and Commonwealth Office (now the FCDO).
- 7.45 The BBC's charter assures editorial independence. The World Service has widespread international respect. Over time, the focus of funding has developed. Other European language services ended in March 2006 leading to increased funding for Arabic and Persian language services. It follows that the focus of the service has developed over time. This is reflected in decisions as to where to focus funding.
- 7.46 From April 2014, the World Service was funded from the licence fee. From 2016, the FCDO made grants in aid funding to the BBC for the World Service. This was 4 million in 2016/2017 and 86 million a year thereafter to April 2020 (known as world 2020). This resulted in overall investment of over 290 million between 2016 and 2020, enabling large expansion of the World Service with twelve new language services and a new or expanded international bureau.
- 7.47 The process of agreeing grant-in-aid funding involved agreeing with the FCDO where funding should be focused. The BBC pitched a proposal for funding to the FCDO. Parts were accepted and parts were not. The BBC recognised that funding may not be provided unless it generally furthered the FCDO's aims in providing value for money. The agreement reached may require funding to be used in particular ways. That requirement was the product of agreement. The agreement itself was a product of those areas for which the BBC had made proposals. In no sense whatsoever was the FCDO telling the BBC what it could or could not do.
- 7.48 We accept Mr Angus's evidence that the claimant had shown dissatisfaction with what he believed was a lack of funding for the Afghan service as part of the World 2020 settlement.
- 7.49 With the FCDO funding due to end, there was a period of rolling discussions with the FCDO with a view to extending funding. On 15 February 2021, Mr Angus and Mr Davie went to the FCDO to pitch for further funding. Part of that pitch was a proposal for a new "disinformation unit." This would focus on global disinformation. This would include China units and investigative journalism focusing on a number of regions including India, Russia, Latin America, and the Arab world. This bid reflected a belief that audiences would benefit from investigation into specific sources of disinformation, including those emanating from China, Russia, and India. Those proposals came from the BBC, not from the FCDO. Additional funding was announced on 1 May 2021.
- 7.50 Whilst the claimant relies on his email of 31 May 2021 as being a protected disclosure, it is clear that he expressed various concerns about funding, and the way in which its use could be perceived by the public.

On 6 March 2021, he emailed Mr Angus referring to leaks in the press concerning use of FCDO funds to investigate China. He appeared to be concerned that the BBC may face criticism.

- 7.51 Mr Angus sought to reassure the claimant and responded by email of 6 March 2021. That email acknowledged that there may be perception issues. However, it emphasised the reality of editorial independence, the fact that relevant stories concerning, for example, China would have been pursued in any event, and emphasised the clear editorial separation. It therefore confirmed the BBC's commitment to its editorial independence.
- 7.52 Mr Angus had no further involvement until after the claimant made the alleged disclosure. Mr David Jordan informed Mr Angus, on 16 August 2021, that the claimant had raised a complaint about the FCDO funding of 31 May 2021.
- 7.53 On 26 May 2021, the claimant attended a meeting. The claimant deals with it in his statement starting at paragraph 45.

45. On 26 May 2021 I took part in a meeting of the World 2020 Programme Board, which on a monthly basis brought together the editors responsible for the areas which were spending the £289 million that the World Service was receiving from the UK Government. The main topic on the agenda was the additional FCDO funding that had been announced on 1 May. I asked for more details and both Mr Kafala and Julia Glynn-Pickett, the Strategy Manager for World Service, said that the agreement with the FCDO required the new funding to be spent specifically on coverage of China, Russia and India. I was particularly concerned when Ms Glynn-Pickett indicated that requirement was an unwritten understanding between the BBC and the FCDO and had not been included in the wording of the agreement.

46. It was clear to me that was contrary to the assurances I had previously been given by Mr Angus and Mr Kafala that the FCDO funding agreement would not damage the BBC's editorial independence. Even worse it appeared that there was a deliberate intention to disguise the precise nature of the agreement and deceive our audiences. I felt very strongly that was unacceptable but was undecided about what to do. As I had already made a disclosure to Ms Unsworth earlier in the month, and the safety of the WSL journalists in Afghanistan was my main priority, I did not want to go back to her with a different matter. I remembered what Mr Sharp had said about the BBC Protected Disclosure Policy but had doubts about the efficacy of that given my previous experience. I also considered leaking the information to a newspaper journalist or to MPs on the House of Commons Culture and Media Committee or the Foreign Affairs Committee, but I knew that would be treated as a disciplinary offence. In the end I listened back three or four times to the section of Mr Sharp's interview where he encouraged staff members to raise their concerns under the BBC whistleblowing protocol and decided to take him at his word and give the internal BBC process another chance.

47. On 31 May 2021 I made a disclosure to David Jordan, the Director of BBC Editorial Policy and Standards, who was the

person designated under the BBC Protected Disclosure Policy to deal with such matters [relevant page of Policy at page 98]. I outlined in detail my concerns about the new FCDO funding and provided all the supporting evidence. I also highlighted my concern that the BBC appeared to be trying to disguise the nature of the agreement in order to retain the impression of editorial independence [disclosure email to Mr Jordan ...].

- 7.54 Was there a disclosure of information? It is unclear what is said to constitute the information. The claimant states the arrangements "may conceal an unpublished and/or unwritten agreement." Viewed one way that is speculation. However, the claimant's direct evidence to us was to the effect that he believed that there was unpublished or unwritten agreement. That oral evidence is at odds with the disclosure. Taking the disclosure as a whole, there is clearly an accusation that the BBC is covering up an agreement which, whether in writing or otherwise, existed. We doubt that their allegation is information. It may be possible to say that the assertion that the audiences may have concern could be information. However, that does not appear to be a matter relied on by the claimant. Moreover, the fact an audience may have concerns does not, in itself, indicate whether the concern is justified. Still less, does it provide any evidence for a belief that there had been or was being a breach of any obligation.
- 7.55 As for the relevant failure, the claimant relies expressly on an accusation that the director-general, Mr Tim Davie, the director of BBC News, Ms Fran Unsworth, and both the second and third respondents had failed in their legal obligation to be editorially independent.
- 7.56 It is accepted that editorial independence is an obligation. Further, there is an accusation of deliberate concealment. It would appear that the concealment relates to the alleged existence of an agreement, whether that agreement is in writing or otherwise.
- 7.57 We need to consider the reasonableness of the belief as to whether the disclosure of information tended to show a relevant failure. In considering the reasonableness of that belief, we have to take into account the claimant's seniority, and what he should reasonably have understood.
- 7.58 His evidence to the tribunal was that at no time did he believe any person within the BBC had, in fact, ever breached the obligation to observe editorial independence. It follows his own evidence contradicts his pleaded case.
- 7.59 We have set out in some detail the way in which funding the World Service has developed. The claimant was a senior manager. He may not have understood the full detail. However, we have no doubt that he had a sufficient understanding to appreciate the

context in which negotiations took place and to understand that those negotiations for funding proceeded on the basis of proposals put forward by the BBC. Before us he has sought to argue that the BBC appeared to be limited to reporting on disinformation from Russia, China, and India. Further, in some manner, he asserts that was evidence of a breach of legal obligation, the particular obligation being to remain editorially independent. We do not accept the claimant could reasonably have held that view at any time. Funding was necessary. That involved making proposals to the FCDO. The claimant had specifically enquired as to whether there was a compromise of editorial independence. He had received an assurance. However, he maintained some form of belief that there was some agreement which remained undisclosed. He had no appropriate basis for that belief and it was mere speculation on his part. To the extent he made enquiries, he had received appropriate assurances.

7.60 In any event, he had no belief was that editorial independence was compromised. He should have appreciated that the BBC had a legitimate interest in reporting on disinformation. In particular, disinformation which emanated from countries was of concern. Relevant countries included China, Russia, and India. Whilst there may be an expectation that funds would be used in relation to those countries there was no rational basis for believing that any journalist within the BBC would lose sight of the need for editorial independence, or that in some manner the investigation, and reporting, of disinformation would be arbitrarily limited to the three countries which were of particular interest. He had no reason to believe that, where it was appropriate, any investigation or reporting would not encompass other nations or organisations. In brief, the claimant had no grounds for assuming that there was an inappropriate agreement, or that the agreement was any form of contract, or that the agreement had been concealed. He had no grounds for believing that editorial independence was compromised. It follows that any alleged belief was not reasonable. This disclosure was not protected.

7.61 We do not have to consider public interest separately.

Disclosure four

7.62 The issues identify it in these terms –

To Tim Davie on 6 July 2021 by email relating to an alleged failure by the BBC to spend at least £254 million on the BBC World Service in the financial year 2020/21 allegedly in breach of one of the requirements flowing from the BBC Royal Charter.

7.63 The issues identify the relevant failure as this –

a: R1 and, in particular, the Director-General of the BBC, Tim Davie, had failed to comply with its legal obligation to spend at least £254 million on the BBC World Service in the financial year 2020/21 in breach of one of the requirements flowing from the BBC Royal Charter, or

b: R1 and, in particular, the Director-General of the BBC, Tim Davie, had deliberately concealed or was deliberately concealing information tending to show the breach of the legal obligation referred to in the previous paragraph;

7.64 The claimant identified the information as this –

According to the World Service Licence, the BBC has an obligation to spend at least £254m per year on the World Service for each of the financial years up to 2021/22. According to page 50 of the Annual Report, the BBC spent £251m last year. Am I misreading the report, or did the BBC break its legal commitment last year?

I should add that I also have doubts that the £261m spend figure that was included in the 2019/20 Annual Report was accurate. This year's figure supports that as I don't believe that - despite the Covid effect - there has been a drop of £10m in spend on the World Service over the course of a year.

7.65 It is common ground that for the year 2020/21 there was a budget of £254 million. The annual report from 2020/2021 recorded -

...the BBC committed to protect its annual spend the world service for a period of five years from 1 April 2017 to ensure it remains a valued public broadcaster for the future. Including content, distribution and general support costs, 251 million (2020:261 million) was spent on the BBC World Service operating licence."

7.66 On 6 July 2021, the claimant attended a Zoom meeting for team leaders to hear about the BBC's annual report and accounts (2020/21). The report was published that day. During the meeting, the claimant downloaded the report. He states, "I was greatly surprised when I came to the expenditure section to see the BBC had spent only £251 million of the licence fee on the World Service in 2020/21." He goes on to say "It was a well known fact among all the SL's in WSL that there was a legal obligation for the BBC to have a budget of at least £254 million for the World Service each year until 2021/22. He states that he immediately typed a question about what he had discovered, but that question was not addressed. The claimant made no further enquiries before sending his alleged protected disclosure to Mr Davie his evidence states –

I used the same question that I had typed into the Q&A box, asking whether the BBC had broken its legal commitment to spend at least £254m on the World Service in 2020/21. I also raised my concerns about the accuracy of the figure for World Service spend that the BBC had included in the 2019/20 annual report ...

7.67 The claimant's email read as follows:

Hi Tim - I put this question into the Q&A at the Team Leader Briefing but it didn't get asked, so I thought I would follow up with you directly.

According to the World Service Licence, the BBC has an obligation to spend at least £254m per year on the World Service for each of the financial years up to 2021/22.

According to page 50 of the Annual Report, the BBC spent £251m last year. Am I misreading the report, or did the BBC break its legal commitment last year?

I should add that I also have doubts that the £261m spend figure that was included in the 2019/20 Annual Report was accurate. This year's figure supports that as I don't believe that - despite the Covid effect - there has been a drop of £10m in spend on the World Service over the course of a year.

I'm obviously aware of the separate additional funding that the World Service has received directly from the government in recent years, but I don't believe that reduces the BBC's obligation to abide by its legal agreements.

Ta
Saleem

- 7.68 Was there a disclosure of information? It is unclear what is said to constitute the information. There is an assertion that the BBC has an obligation to spend at least £254 million per year. Read as a whole, there is an assertion that there is some form of legal commitment. As for the information, it appears the claimant is saying that there was a spend of £251 million as against an obligation to spend £254 million. The claimant expresses doubt that the £261 million figure for 2019/20 was accurate. However, that appears to be an opinion only, and possibly an unsupported allegation. It does not appear to be information. It follows there may be some information. However, how any information is said to tend to show one of the relevant failures is difficult to understand.
- 7.69 The pleaded case refers to spending £254 million in 2020/2021 as "breach of one of the requirements flowing from the BBC Royal Charter." The Royal Charter is not referred to in the alleged disclosure. The claimant gives no clarifying evidence in his statement. There is no direct reference to a Royal Charter in his statement. He refers to the BBC Charter in two places. The first at paragraph 38 makes reference to editorial independence. The second at paragraph 62 is in the context of the charter allegedly requiring a "transparent and accessible framework for complaints." The claimant gives no evidence as to what he believed was the requirement of the BBC Royal Charter, why he had it in the mind at the time, or in what manner it was breached. He has failed to prove that he had any belief at all that there was breach of any requirement of the BBC Royal Charter.

- 7.70 The claimant's statement at paragraph 53 refers to the obligation to have a legal budget. In various parts of his statement, he refers to an underspend, and it is implicit that he is suggesting that the concept of a budget equates to a legal obligation to spend the budget.
- 7.71 At paragraph 59 the claimant says the following:
- However the revelation that the BBC had failed to meet its legal obligation on World Service spending in 2020/21 now gave me the opportunity to try to get some of that £3 million underspend diverted to the WSL journalists in Afghanistan.**
- 7.72 His evidence was that his complaint about the alleged underspend, and its request for extra funding, were coincidental, and he simply saw an opportunity to make a request.
- 7.73 We are satisfied that some information was disclosed. The budget had been £254 million. The spend was £251 million.
- 7.74 We find that the claimant never believed that there was a legal obligation to spend at least £254 million. His evidence on this point was poor. He referred generally to managers using the terms 'budget' and 'spend' interchangeably. He has pointed to annual reports which also use the term 'spend,' albeit there is no evidence he relied on those annual reports at the time of the alleged disclosure. His evidence was that he simply made some form of assumption on the basis of use of the term 'spend' during managers' meetings.
- 7.75 The claimant controlled a budget of approximately £20 million. At no time was it communicated to him that he had an obligation to spend the entirety of that budget. We do not doubt that the terms budget and spend have been used, at times, interchangeably. In context, the term spend simply meant budget – the terms were used interchangeably. We heard from one witness, Mr Dixon who did, as part of his budget, have an obligation to spend at least a certain amount on some projects. That was unusual.
- 7.76 In general, the fact that money budgeted may be spent does not in itself indicate an obligation to spend it. We find the reality is the claimant always understood that a budget does not carry an obligation to spend. We do not accept his evidence that at any time he believed that when a budget of £254 million is set, there was a legal obligation to spend the full £254 million.
- 7.77 We have outlined the evidence the claimant gave. He failed to address, in any meaningful way, the basis on which he alleges he could have either formed or held that belief. Moreover, even if he had held that erroneous belief, it would not have been reasonable

to allege that there was a legal failure without taking any steps at all to confirm the truth of his belief. He failed to take any steps.

- 7.78 In his pleaded case, the claimant has referred to a requirement of the BBC Royal Charter. He has failed to set out the requirements relied on. He has failed to give any evidence in relation to it. In his pleaded case he states that the director-general of the BBC, Mr Tim Davie, deliberately concealed information tending to show a breach of the legal obligation. As to the claimant's reason for making that allegation, he gives no evidence at all. It is not addressed in his witness statement. As for the disclosure itself, it makes no attempt to set out the basis for why he believed there was an obligation to spend £254 million.
- 7.79 There is a possibility that the claimant made the allegation because he wished to gain support for his request for extra funding. However, we do not have to decide the point. The question for us is did he have a reasonable belief that the information tended to show a relevant failure, in this case a breach of legal obligation. We find he never believed there was an obligation to spend £254 million. He could not have a reasonable belief.
- 7.80 We do not have to consider separately whether it was made in the public interest.

Disclosure five

- 7.81 The issues identify it in these terms –

To Balram Veliath on 22 August 2021 by email relating to an alleged attempt by two senior members of BBC News (including R2) to subvert the BBC's independent grievance process.

- 7.82 The issues identify the relevant failure as this –

a: R1 and in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 was committing or was likely to commit a criminal offence, namely fraud, or

b: R1 and, in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 had failed or was failing to comply with its legal obligation to properly follow its contractual grievance processes and the ACAS code of practice on grievances, or

c: a miscarriage of justice in respect of the BBC grievance process had occurred or was occurring, or

d: R1 and, in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 had deliberately concealed, was deliberately concealing, or was likely to deliberately conceal information tending to show the matters referred to in any of the previous paragraphs D(a) to D(c);

7.83 The claimant identified the information as this –

I would like to raise a serious concern and ask you to investigate as I have clear evidence of the BBC Grievance Policy being - at best - disregarded by two members of News Board. At worst there has been a deliberate attempt to deny a BBC employee the right to a fair outcome to his grievance by subverting what is supposed to be an independent process. If the attempt succeeds it may have a negative financial impact on that employee, so it could be argued it is verging on a criminal offence.

- 7.84 Senior managers of the BBC may be required to decide grievances. The manager is selected and appointed by human resources. There is a contractual grievance procedure. Grievances should be heard at a level of management above the one at which the action complained of was taken. The decision to appoint is taken by "manager advice." There is in a process whereby the appointed manager investigates, undertakes interviews, and comes to a decision.
- 7.85 Around August 2021, employee X raised a grievance which concerned The BBC's Career Path Framework (CPF). This was the BBC's job and grading structure. The complaint was that employee X had been mapped to the role of assistant editor and should have been mapped to the more senior role of commissioning editor. The claimant was appointed (neither Ms Lee nor Ms Hockaday appointed him).
- 7.86 The underlying decision concerning the mapping of the role had been taken by mmh. She was significantly more senior than the claimant and it follows that his appointment was technically in breach of the grievance procedure.
- 7.87 On 4 August 2021, Ms Hockaday raised concerns about the claimant's appointment. Those concerns were not communicated to the claimant at the time, and he did not know about it at the point he made his alleged disclosure.
- 7.88 On 4 August 2021, Ms Hockaday stated in an email to Ms Lee:
- I have a CPF mapping grievance in my team. I've been told that Saleem Patka is to hear it. 2 points – is he sufficiently from another department, and secondly should News returning to an SL to hear a grievance who at the same time is making a complaint about corporate BBC handling of WS funding and is in other way is at odds with his management.**
- 7.89 That did email not lead to the claimant being removed from the grievance.
- 7.90 During early August, the situation in Afghanistan developed rapidly. American troops were withdrawn. The Afghan government

collapsed. The Taliban took control, with little resistance. For the BBC, there were two broad challenges. The first concerned safety of staff. The second concerned maintenance of accurate reporting. The response was time critical. It involved numerous staff. The demands placed on the claimant were enormous. On 13 August 2021, the claimant, by email, raised concerns about working 50 plus hours a week and having no weekend off for months. He indicated he was not getting the support he believed he required.

- 7.91 On 18 August 2021, Ms Hockaday decided to replace the claimant as the grievance manager. We accept that, technically, she did not have specific authority to do so, in the sense that the appointment was made by human resources. She therefore needed the agreement of Ms Lee. Ms Lee would not have independently removed the claimant. Ms Lee agreed the removal following a discussion with Ms Hockaday on 18 August 2021. However, the decision to remove the claimant was Ms Hockaday's. That decision was approved by Ms Lee, who relied on the judgement of Ms Hockaday.
- 7.92 Ms Hockaday sent an email to the claimant on 18 August 2021 which stated "I have asked HR to find someone else who can hear [Z's] grievance. This reflected the email Ms Hockaday had sent to the previous day which stated "Please can you find someone else to do this grievance and tell Saleem that he is not required..."
- 7.93 On 18 August 2021, there was also a WhatsApp exchange between Ms Lee and Ms Hockaday. Ms Hockaday expressed views about the claimant. She stated:

FYI Fran and I spoke this AM, her view (as mine) is that SP does not operate like an SL and once this Afghan crisis is calmer it needs addressing. He makes Tarik's life and ability to manage much harder, we need to back Tarik. Plus he is at odds with the organisation, does not communicate well, does not collaborate, lacks broad judgement and behaves in ways which upset colleagues. In that context it is not appropriate for him to do a grievance appeal if we don't trust his judgement as an SL. No reason Kate would have known any of this or needs to know all of it. Afghan situation is also a real and good reason, we need his time to be focused there (even if it is imperfect and not always helpful to Tarik)."

The claimant did not know of this exchange at the time.

- 7.94 The claimant's email of 22 August 2021 stated:

I would like to raise serious concerns and ask you to investigate as I have clear evidence of the BBC grievance policy being – at best – disregarded by two members of News Board. At worst there has been a deliberate attempt to deny BBC we right to a fair outcome to his grievance by subverting what is supposed to be an independent

process. If the attempt succeeds may have a negative financial, so it could be argued it is verging on a criminal offence...

- 7.95 It is necessary to ask whether there was a disclosure of information. As to what may be the information, it is appropriate to consider the alleged disclosure, as recorded in the issues. This involves "an alleged attempt by two senior members of BBC News... to subvert the BBC's independent grievance process." Having regard to our full understanding of this case, it is perhaps implicit that at the heart of this is the allegation he was removed from the grievance process. His removal is information, albeit the wording relied on may not be explicit.
- 7.96 The alleged disclosure did include a long history of the relevant events. The claimant says specifically "Mary got Kirsty Lee HR director of BBC News to replace me as hearing manager." That is clearly information. Whilst it is not set out specifically in the claimant's pleaded case, we have no doubt that the respondent understood that the heart of this alleged disclosure is the removal of the claimant as the grievance manager. That has been the basis upon which the respondents have presented the case and the cross examination has proceeded.
- 7.97 It follows that it is at least arguable, having regard to all the circumstances, that there was a disclosure of information. That information was that the claimant was removed as grievance manager by Ms Hockaday.
- 7.98 The relevant failures, as identified in the agreed issues are wide-ranging and extremely serious. Those said to be responsible include the HR director, Ms Rachel Currie, as well as Ms Kirsty Lee and Ms Hockaday. It is alleged there was a failure to comply with a legal obligation to properly follow a contractual grievance process and the ACAS code of practice. It is alleged there was a miscarriage of justice in respect of the BBC's grievance procedure. It is alleged there was deliberate concealment.
- 7.99 Most seriously, it is alleged that Ms Rachel Currie, Ms Kirsty Lee, and Ms Hockaday were committing or likely to commit a criminal offence, namely fraud
- 7.100 As to the allegation of fraud, this has been inadequately explained by the claimant.
- 7.101 The claimant says at paragraph 114

114. I had made my disclosure to Balram Veliath on 22 August 2022 because I believed the BBC, and in particular Ms Hockaday, Ms Lee and Ms Currie, was failing to comply with its legal obligation to properly follow its contractual grievance process, that by doing so

it could deny Employee Z a fair outcome, that the actions being taken could lead to Employee Z being defrauded in terms of his salary, and that an attempt was being made to conceal that information. As such I believe the disclosure met all the legal requirements to qualify as a protected disclosure.

- 7.102 The claimant does not explain what, if anything, he believed was the legal obligation. Taking account of all his evidence, it appears that his position can be rationalised as follows. The grievance procedure must be applied. It is necessary to appoint a grievance manager. He was appointed properly. His removal was in breach of the procedure. The removal was deliberate, as part of some form of plot to ensure that employee Z's grievance should fail, which would lead to his being denied any re-grading and consequential financial benefit. It is in that denial of the financial benefits that underpins the allegation of fraud. The logic of the claimant's position is that the reason for removing him was to replace him with someone who would not act professionally and independently.
- 7.103 The claimant's evidence to us was that he had no reason to believe, following his removal, that the person appointed would do anything other than act independently. He also alleged he had not reached a final decision, albeit he was leaning towards finding in favour of employee Z, he had not done so and maintained an open mind. It follows his evidence fell short of saying that Mr Z's grievance was well-founded and should have been upheld.
- 7.104 He makes reference to the ACAS procedure. He had not considered it. He identified no specific part of the procedure relied on. Instead, he asserted that there was an overriding context on which he relied. He had no reasonable grounds for believing there was a breach of the ACAS code.
- 7.105 The claimant failed to identify, at any stage, what was the alleged breach of the grievance procedure. There is nothing in the grievance procedure which prevents a manager being removed, or someone else being appointed.
- 7.106 However, even if that were forbidden by the grievance procedure, which it was not, and he had no grounds for believing there could be any fraud or concealment. He would have needed to believe that some form of puppet manager would be put in place who would agree to act unprofessionally and find against employee Z, regardless of the evidence. Not only did the claimant have no evidence for that, his own evidence make it clear he never believed it. He had no reasonable grounds for believing that there was a failure of legal obligation, or that that failure of legal obligation constituted a fraud on employee Z. He did not have a reasonable belief. It follows that this was not a protected disclosure.

- 7.107 We should note how the matter developed, because it is relevant to the victimisation claim.
- 7.108 Ms Currie became involved. When he escalated the matter to her. On 20 August 2021, Ms Currie wrote to the claimant she questioned whether his raising a formal complaint was appropriate and referred to his workload and the challenges faced by the team in Afghanistan.
- 7.109 Nevertheless, the claimant maintained that he wished to remain as the grievance manager and that he was making a formal complaint. The claimant proceeded with his grievance.
- 7.110 There was a meeting with the National Union of Journalists who agreed that it would be acceptable to delay employee Z's grievance. As a result, Ms Lee contacted the claimant and offered to reinstate him. She confirmed she could resume the grievance once the situation in Afghanistan had stabilised. She explained that the National Union of journalists was willing to wait for the claimant to hear the grievance. The claimant declined the offer to be reinstated.

Disclosure six

- 7.111 The issues identify it in these terms –

To Fran Unsworth on 25 August 2021 by email relating to alleged serious mistakes made by senior members of BBC News (including R2 and R3) in allegedly failing to properly support BBC staff in Afghanistan.

- 7.112 The issues identify the relevant failure as this –

a: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had committed a criminal offence, namely criminal negligence, or

b: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had failed to comply with its legal obligation to take reasonable measures to keep their employees safe from harm, or

c: that the health or safety of BBC staff in Afghanistan had been endangered by the failure to implement the BBC's agreed emergency plan, or

d: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 was deliberately concealing, or was likely to deliberately conceal information tending to show the matters referred to in any of the previous paragraphs E(a) to E(c).

- 7.113 The claimant identified the information as this –

I would strongly urge that we not repeat the mistakes of the past few months. I have listed the three most serious errors that were made:

- The three month delay that was imposed on me preparing for the Afghanistan emergency plan. It was approved by NGAM on 29 March, but I was prevented from speaking to staff about it until early July, despite my repeated requests and my escalating the issue to more senior levels.
- The inadequate and parsimonious response to my emails to Tim Davie on 28 July and 3 August asking for more resources to support our teams in Afghanistan.
- The absolute failure of the BBC to immediately take advantage of the announcement by the foreign secretary on 6 August of a possible route for Afghan journalists working for British media to relocate to the UK.

In each case the BBC dithered and delayed, showing a lack of judgement and vision. It was unacceptably poor leadership even at the time. Now with some of our colleagues still trapped in Kabul it looks like something close to criminal neglect.

I hope at some stage the Chairman and the other non-executive members of the BBC Board investigate these failures as there are lessons which need to be learned. And given the amount of additional money that is now being spent mitigating earlier failures, licence-fee payers would have genuine cause for complaint if they knew the detail.

- 7.114 During the hearing, the claimant stated that his disclosures revolved around three points which can be summarised as follows: an alleged three-month delay in preparing the Afghanistan emergency plan; an inadequate and parsimonious response to funding requests on 28 July 2021 and 3 August 2021; and the alleged absolute failure to immediately take advantage of the government's announcement on 6 August concerning relocation of journalists from Afghanistan to Britain.
- 7.115 On 28 July 2021 the claimant emailed Mr Davie. The email concerned what action could be taken in relation to 60 staff, for whom the claimant was responsible, in Afghanistan. It confirmed that the emergency plan was "a good step forward." But it acknowledged that left "the majority of our staff exposed to the fickleness and cruelty of the Taliban." It requested "financial support to Languages so we can put more comprehensive plans in place." It goes on to say that the emergency plan "is not good enough." It finishes by referring to the alleged £3 million underspend, and suggests that money could be used.
- 7.116 The claimant sent a further email on 3 August 2021 to Mr Davie. He states, "The issue is the different interpretations that we may have about what is appropriate, and the associated costs." He sets out his proposed actions. They included the following: all 60 language staff should have the opportunity to move to India; the India contract period would be for a minimum of three years; additional payment to make it easier for staff to take their families;

six month paid leave for staff who are not going to India; and to "consider what guarantees for support we can give to individuals."

- 7.117 It is the response to these two emails which he described later as parsimonious.
- 7.118 On 6 August 2021, the Foreign Secretary, Dominic Raab, made a commitment to offer asylum to certain individuals working in Afghanistan. The conditions were not specified. It was necessary for the government to give effect to the promise. That was not in the control of the BBC.
- 7.119 It is clear that the BBC took advantage of the government's commitment. There was a process of liaising and clarification between the BBC and the government which occurred at the highest levels. The claimant was not part of that process; there was no reason why he should be. As a result of that process, there was a mass evacuation of BBC staff from Afghanistan to Britain and other countries. This effectively replaced and superseded the original contingency plan. As events unfolded, it became clear that the Taliban would gain control of Afghanistan at a pace which had not been envisaged. The evacuation faced significant uncertainty and logistical difficulties. The success of the evacuation is a testament to the commitment of the BBC and to its organisational ability. By 23 August 2021, it appears one member of staff had been evacuated. However, by 25 August 2021, 251 people (65 staff and their families) were evacuated. The claimant knew this at the time he sent an email of 25 August 2021.
- 7.120 It is unclear what steps, if any, the claimant took to establish the BBC's response to the 6 August announcement. He does not deal with it in his witness statement.
- 7.121 Was there a disclosure of information? What is said to constitute the information is not clear. It may be arguable that there is information implied about the date when the original contingency plan was communicated. The suggestion that the response to his two emails was both inadequate and parsimonious, appears to be an allegation; it is difficult to see it as information. What is said to be the information underpinning the accusation of the failure to respond to the government's announcement 6 August 2021 is uncertain. This appears to be a bare allegation. We doubt that there was a disclosure of information.
- 7.122 It is unclear the claimant had any relevant failure in mind at the time he made the alleged disclosure. The language employed in the pleaded case is extreme. He accuses Mr Davie, Ms Unsworth, Mr Kafala, and Ms Hockaday, of "criminal negligence." He states there is a failure to comply with the legal obligation to take reasonable measures to keep employees safe. He states health

and safety of BBC staff had been endangered by failure to implement the emergency plan. He then goes on to accuse all four of deliberately concealing information relevant to the other failures.

- 7.123 The claimant's evidence is not supportive of the pleaded position. The alleged disclosure itself describes the obligation to staff in Afghanistan as a "moral obligation." It states that the BBC "delayed showing a lack of judgement and vision." He alleged poor leadership "looks like something close to criminal neglect." It does not appear to suggest there has been any concealment.
- 7.124 The claimant's evidence on these matters is unsatisfactory. As to criminality, he states the BBC may have been guilty of criminal negligence. There is no attempt to explain what he believed was meant by criminal negligence at the time he made alleged disclosure. The evidence is also equally unsatisfactory as to what he believed to be the relevant health and safety obligation. His own disclosure refers to a moral obligation and to the extent that he sought to clarify this in his oral evidence, the claimant talked generally about employers having rights and obligations. It is far from clear that the claimant had any belief, at all, that there was a legal obligation, as opposed to a moral obligation, whether that is couched in terms of criminal neglect, or health and safety.
- 7.125 If we take his case at its highest and assume, despite all the difficulties, that he did believe there was some form of legal obligation and that there had been some sort of failure, whether or not it amounted to criminal failure, we must decide whether his belief was reasonable. In doing so, we must have regard to all the circumstances. Those circumstances include the claimant's seniority, his ability to gain relevant information and ask relevant questions, and his ability to undertake research. The reality is the claimant did not ask relevant questions. He did not undertake any or any adequate research. Instead, he made allegations based, at best, on assumptions which he should have understood, even on a moment's reflection, may be inaccurate.
- 7.126 There was no ground for believing that the BBC had failed in any legal obligation. To the extent that it had any obligation at all, legally, to reduce the risk of employees being caught up in fighting or targeted by the Taliban, he had undertaken a risk assessment and the BBC had agreed to put members of staff on leave, should the operation become impossible. We do not accept that the primary reason for moving some staff to India was for the safety, it was for continuity; the claimant knew that at all times. Undoubtedly, there were coincidental benefits to those individuals who moved, but that did nothing to address the circumstances of those left behind.

- 7.127 By the time he made his disclosure, whatever his view on past failures, it was clear that the BBC had gone beyond anything which had previously been contemplated as practicable, appropriate, or possible. The success of that strategy should have been plain and obvious. Why in those circumstances, the claimant believed there was any possibility of concealment is unexplained.
- 7.128 In his submissions, the claimant indicated to us that having started to make disclosures, he is now more willing to enter into arguments with his management. We have no doubt that the claimant is sincere in his belief that the BBC has faults. However, we also have no doubt that he has now become hostile to senior managers, including Mr Kafala, which has now become hostility. That hostility is affecting his judgement and driving his approach.
- 7.129 The whistleblowing legislation is designed to protect individuals who make protected disclosures. The alleged making of a protected disclosures does not justify inappropriate action by an employee, or prevent appropriate managerial response. We have no doubt the claimant is committed to the World Service. He is committed to maintaining funding. He is committed to ensuring the highest quality output for those audiences the World Service serves. However, within the context of providing any service, there is likely to be dispute as to the best course of action in any given situation. Most organisations have a hierarchy. At some point in the hierarchy decisions are taken. Whilst managers may dispute and question decisions, equally, they have a responsibility to accept legitimate decisions, or risk conflict which undermines the delivery of the service.
- 7.130 For disclosure six, the claimant did not have the requisite reasonable belief. Instead, his action has the character of a personal campaign, based on a lack of acceptance of managerial decisions and more generally, hostility to management. That falls outside the protection of the legislation.
- 7.131 It follows that we have found that none of the alleged disclosures was a protected disclosure. It follows that all the alleged detriments must fail. However, lest we be wrong about whether any disclosure is protected, we should consider, briefly, each of the detriments. When we have done so, we will consider specifically the victimisation claim.

Detriment 3a -R3 on 12 August 2021 threatened C with disciplinary action by email

- 7.132 On 12 August 2021, Mr Kafala sent the claimant an email which contained an informal disciplinary warning. That was in line with the disciplinary policy. The background revolves around a complaint from employee X who was a human resources partner.

She had been upset during a Zoom call with the claimant. The claimant had apparently entered into a discussion with her and it culminated in an email from the claimant which was highly critical of employee X's conduct (350). The claimant's email contained a lengthy chronology concerning employee X's interaction with the claimant on a specific project. It refers to his having concerns about her ability. It was highly critical.

7.133 Mr Kafala was informed of the complaint and undertook sufficient investigation to understand employee X's concerns. Mr Kafala spoke with the claimant on 29 July 2021. This was a lengthy conversation. He followed it up with an email on 12 August 2021. That email stated, if there are any future incidents of this nature concerning your behaviour with colleagues I will consider them seriously and will likely result in disciplinary process." Such informal warnings are envisaged by the disciplinary process. We have considered all the relevant correspondence and explanations. We accept that Mr Kafala was concerned both by the claimant's interaction with employee X, and his criticism of her both verbally and in a lengthy email. He was also concerned that the claimant did not appear to recognise the inappropriateness of his own action.

7.134 The claimant has continued to maintain before us that his action was appropriate. Objectively, there is no justification for the claimant's approach to employee X. He allowed himself to get into a situation where he was extremely critical of a junior colleague and of her work. This had caused employee X considerable unhappiness and upset.

7.135 It may be that the claimant had grounds for being dissatisfied with the support he had received. However, he showed a significant lack of judgement in the way he approached the matter. If he had significant concerns, it would be appropriate to engage employee X's own management. Mr Kafala's actions were justified and appropriate. Had stronger disciplinary action being instigated, we have no doubt that would have been appropriate. Mr Kafala's response was at the lowest level that could reasonably be expected and was reasonable and proportionate.

7.136 No reasonable employee would have considered Mr Kafala's actions to be detrimental.

Detriment 3b - R2 and/or Kirsty Lee (HR Director for BBC News) on 18 August 2021 removed C from the role of hearing manager for a grievance raised by Employee Z.

7.137 We have considered the circumstances concerning the removal of the claimant as grievance manager for employee Z. Whilst we have noted Ms Hockaday's general concerns, the specific reason

for his removal was to allow him to fully undertake his duties at a critical time. No reasonable employee would consider this a detrimental act.

Detriment 3c - R2 on 2 September 2021 threatened C with disciplinary action on a telephone call

7.138 Employee V, who was a senior manager, was absent on long-term sickness. The claimant had managerial responsibility. Ms Hilary Bishop contacted employee V, when she was absent, to discuss a work matter. In doing so, we accept Ms Bishop considered whether there were any other options and had reached the conclusion that there weren't any. She proceeded with some caution and checked whether employee V was content for contact be made. We accept that making such contact is within the relevant policy when there is no practicable alternative.

7.139 The claimant considered Ms Bishop's action to be inappropriate. This led to him sending an email on 1 September 2021. In his email, the claimant said "I can't believe you called [employee V] about this. You know she is away on sick leave and has serious stress problems. What were you thinking? That is completely unacceptable." The email continues in similarly strong terms. It goes on to suggest that if employee V's condition is made worse he would bring a formal complaint. The tone goes beyond strong and is hectoring and unpleasant.

7.140 Ms Lee sent the claimant's email to Ms Hockaday. She believed the tone to be inappropriate and stated she was "taken aback." Mary Hockaday spoke to the claimant on 2 September 2022. She stated that his email was inappropriate and unprofessional and that she would reflect on the matter.

7.141 We find that this did not constitute a threat of disciplinary proceedings. To the extent it could be interpreted as indicating a possibility there may be disciplinary proceedings, it was an appropriate and proportionate response to an email which was self-evidently inappropriate. No reasonable employee would consider Mary Hockaday's R actions to be detrimental.

Detriment 3d - R2 on 15 September 2021 threatened C with disciplinary action on a telephone call, followed up by an email

7.142 Ms Hockaday became concerned around September 2021 when she learned the claimant had known that employee Y, a London based employee, had flown to Kabul without the claimant reporting the matter to high risk. In fact, the claimant knew the employee's intentions, and granted him special leave. He chose not to report the matter to high risk, which is a BBC department which provide specific advice. The claimant was aware that his granting leave

would allow the employee to travel in their own time. This caused concern.

7.143 Following internal discussion, Mary Hockaday decided to raise the concerns of the claimant and spoke to him on 15 September 2021. She indicated that his actions warranted an internal investigation. We accept that this may, ultimately, have led to disciplinary proceedings. However, there were genuine grounds for questioning the appropriateness of the claimant not disclosing employee Y's intention. It cannot be assumed that his actions were wrong, but we have no doubt that they were sufficiently questionable to justify an internal fact finding investigation. In no sense whatsoever was this detrimental treatment.

Detriment 3e - R3 on 15 September 2021 threatened C with disciplinary action by email

7.144 Following Mr Kafala's email of 12 August, the claimant responded on 13 August 2021. At this time, the situation in Afghanistan was developing rapidly. That email was critical of Mr Kafala, who sent a response on 15 September 2021. It reiterated Mr Kafala's concern about the claimant's interaction with employee X. He noted the claimant's further email to Ms Bishop, described above. He reiterated that it was reasonable for him to discuss potential disciplinary action when the claimant's behaviour was inappropriate. It reflected that there had been difficult periods during their working relationship. We do not read this as a threat of disciplinary action. It is an appropriate email. No reasonable employee would consider this to be to detriment.

Detriment's F, G, I, J, K - With regard to R1's response to the unfolding Afghanistan crisis, a group comprising at various times of one or more of TD, FU, JM, AD, KL, R2 and/or R3, excluded C both before 15 August 2021 and after 21 August 2021 but not in between those dates as follows:

- *3f: on or before 5-6 August 2021 by omission from emails and conversations in relation to the response to staff from Afghanistan asking for help from the BBC;*
- *3g: on or before 23 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how best to provide support to staff from Afghanistan being evacuated to the UK*
- *3i: on or before 25 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how many jobs would be offered to the staff from Afghanistan being evacuated to the UK;*
- *3j: on or before 7 September 2021 by omission from meetings / conversations / email exchanges where discussion were taking place about a support plan for the Afghan Service in London; and*
- *3k: on or before 15 September 2021 by omission from discussions taking place with the National Union of Journalists about support for staff evacuated from Afghanistan and the help that UK staff with families in Afghanistan want from the BBC.*

7.145 We will deal with these briefly. They revolve around an allegation that the claimant was excluded from relevant meetings, email trains, and otherwise marginalised as a manager, such that he was not permitted to undertake his legitimate duties.

7.146 When considering the issues, the claimant stated that he was not excluded during part of August. He did not explain his reasoning. In order to make good this allegation, it is necessary for claimant to set out in some detail the nature of his role, his expectation for inclusion, and details of the nature of the exclusion. His evidence fall short of establishing any of these points adequately or at all. We find there is no adequate evidence of any exclusion.

7.147 Undoubtedly the claimant wished to be included in numerous aspects of the developing situation. However, the response to the Afghan situation was not the exclusive province of one manager, nor could it be reasonably expected that it would not involve all levels of management and significance input from numerous members of staff. All this occurred against a background of extreme uncertainty and time critical action. The claimant was asked to perform tasks that he did not perform. Response teams were organised into higher mid and lower level which were termed gold, silver, and bronze. The claimant was part of the bronze level. Much of his complaint appears to be about involvement at a higher level. The reality is there is no evidence, in our view, the claimant was excluded in any way which could constitute any form of detriment. No reasonable employee would have expected the degree of involvement that claimant appears to envisage.

Detriment 3H - With regard to R1's response to the unfolding Afghanistan crisis, a group comprising at various times of one or more of TD, FU, JM, AD, KL, R2 and/or R3, excluded C both before 15 August 2021 and after 21 August 2021 but not in between those dates as follows:

- *3f: on or before 5-6 August 2021 by omission from emails and conversations in relation to the response to staff from Afghanistan asking for help from the BBC;*
- *3g: on or before 23 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how best to provide support to staff from Afghanistan being evacuated to the UK*
- *3i: on or before 25 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how many jobs would be offered to the staff from Afghanistan being evacuated to the UK;*
- *3j: on or before 7 September 2021 by omission from meetings / conversations / email exchanges where discussion were taking place about a support plan for the Afghan Service in London; and*
- *3k: on or before 15 September 2021 by omission from discussions taking place with the National Union of Journalists about support for staff evacuated from Afghanistan and the help that UK staff with families in Afghanistan want from the BBC.*

7.148 This concerns a specific email sent by Kirsty Lee on 24 August 2021. The claimant was not included. His line manager, Mr Kafala was included. At the time, it was expected there would be general dissemination of emails both up and down the chain. Ms Lee believed the claimant would be informed. He was informed. There was no reason for her to include the claimant in the specific email. The primary responsibility for forwarding it was with the claimant's manager. The claimant was sent it. No reasonable the employer would see this as detrimental treatment.

Detriment 3I - In or around July 2021, R3 did not have a meeting with C about the Senior Leader Index and on or before 5 December 2021, R3 did not have a meeting with C about his mid-term appraisal known as "myConversation"

7.149 It is accepted that there was no specific meeting with the third respondent. However, we do not accept that a reasonable employee would see this treatment as detrimental. We find that Mr Kafala was finding the working relationship increasingly difficult. We find the primary reason for this is the relationship was undermined by the claimant who had lost respect for Mr Kafala. This resulted in his treating Mr Kafala in an increasingly negative and hostile way. Mr Kafala did not meet with other managers. Mr Kafala was conscious that the meeting with the claimant would require him to discuss and set targets. At this time, the claimant had been highly critical of Mr Kafala's management in a public way. Mr Kafala was concerned about the practicalities of the meeting. He did not wish to be alone with the claimant. He did not know how to approach the conversation given the profound recent disagreements.

7.150 We find that Mr Kafala had recognised that the relationship had, in essence, become unworkable. He could not see any way in which the meeting could be approached appropriately or constructively. To the extent the claimant suggests that Mr Kafala's approach was unjustified, we consider his contention to be to be disingenuous. We find the claimant knew that such a meeting would lead to confrontation. He should have recognised that continuing would have been inappropriate. No reasonable the employee would have found failing to have that meeting detrimental treatment.

Detriment 3M - R3, on or before 14 September 2021, withheld an increase to C's salary greater than 0.7%

7.151 The claimant's pay rise was, in part, dependent on Mr Kafala's assessment of him. The claimant argues that he should have been graded as an exceptional employee. It is unclear why he says this; his evidence is not supportive. Mr Kafala, marked the claimant as satisfactory. Given the claimant's behaviour – which included

inappropriately escalating matters to senior managers, direct and public criticism of Mr Kafala, questionable decisions in relation to employee Y, and demonstrably inappropriate correspondence with, and criticisms of, colleagues – marking the claimant's performance as satisfactory was a demonstrably reasonable and balanced approach. Objectively, we can see no basis on which the claimant's performance could be described as exceptional. No reasonable employee would consider this to be a detriment

Detriment 3n - R3, on 2 December 2021, informed C that R3 was cancelling one-to-one meetings

7.152 This allegation is an extension of the allegation forming alleged detriment 3l. It fails for the same reasons. It was the claimant's behavior that made the working relationship untenable, and Mr Kafala recognized this.

Detriment 3o - R3 excluded C from a meeting on 6 December 2021 regarding impartiality in the BBC's news coverage of Afghanistan

7.153 This concerns an email sent by Mr Kafala's PA, Ms Pauline Conroy, on 6 December 2021 concerning an invitation to a meeting. The claimant was not included. The claimant has accepted Ms Conroy's evidence which was to the effect that she inadvertently missed putting the claimant, (and two others) from the attendee list. This is a complete answer to the claim.

7.154 During his evidence, the claimant chose not to withdraw this allegation, despite accepting Ms Conroy's evidence. He suggested that in some manner had his relationship with Mr Kafala been better he would have found out about the failure to invite him at an earlier stage. This is not the pleaded claim. This allegation fails.

Victimisation

7.155 The only allegation of victimisation is the removal of the claimant from being the hearing manager for a grievance. We have considered the detail of this above.

7.156 We find there is no fact which turns the burden. We do accept that there is evidence Ms Hockaday did not want the claimant to hear the grievance. For the reasons we set out above she was concerned about his judgement. However, there is no evidence in our view that her concern stemmed from the fact that he brought a claim previously. In any event, her concern about his judgement was not a material reason at the time he was removed. We accept the respondent has proven a reason which in no sense whatsoever was because of a protected act. He was removed because he was needed to perform his role at a time when he should reasonably be expected to focus entirely on his role. Later, the union agreed that

the grievance could be delayed. It was proposed he should be reinstated. Ms Hockaday did not object. We find on the balance of probabilities that this demonstrates the true reason revolved around the need for him to perform his duties at a time of extraordinary pressure and the wish to avoid delaying the grievance. In no sense whatsoever was it because of the protected act. We reject this allegation.

7.157 It follows that all the claims fail.

Employment Judge Hodgson

Dated: 1 September 2022

Sent to the parties on:

.01/09/2022

For the Tribunal Office

Appendix - Final amended agreed list of issues

Whistleblowing allegations

1. Did C disclose information as follows:
 - a. To Sarah Ward-Lilley on 1 April 2021 by email, concerning an alleged decision by R3 to postpone the implementation of the BBC's emergency plan for Afghanistan?
 - b. To Fran Unsworth on 2 May 2021 by email, concerning an alleged decision by R3 to postpone the implementation of the BBC's emergency plan for Afghanistan?
 - c. To David Jordan on 31 May 2021 by email relating to alleged funding arrangements made by the BBC with the Foreign Commonwealth and Development Office, which C claims he believed breached the BBC's editorial guidelines and might involve a deliberate attempt to deceive BBC audiences?

- d. To Tim Davie on 6 July 2021 by email relating to an alleged failure by the BBC to spend at least £254 million on the BBC World Service in the financial year 2020/21 allegedly in breach of one of the requirements flowing from the BBC Royal Charter?
- e. To Balram Veliath on 22 August 2021 by email relating to an alleged attempt by two senior members of BBC News (including R2) to subvert the BBC's independent grievance process?
- f. To Fran Unsworth on 25 August 2021 by email relating to alleged serious mistakes made by senior members of BBC News (including R2 and R3) in allegedly failing to properly support BBC staff in Afghanistan?

2. In respect of each of these disclosures, was it:

- a. a disclosure of information which
- b. in the reasonable belief of C:
 - i. was made in the public interest; and
 - ii. tended to show:

A: In respect of the 1 April 2021 and 2 May 2021 disclosures that:

the health or safety of BBC staff in Afghanistan was being, or was likely to be endangered by the failure to implement the BBC's emergency plan;

B: In respect of the 31 May 2021 disclosure that:

a: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had failed to comply with its legal obligation to be editorially independent, or

b: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had deliberately concealed or were deliberately concealing information tending to show the breach of the legal obligation referred to in the previous paragraph;

C: In respect of the 6 July 2021 disclosure that:

a: R1 and, in particular, the Director-General of the BBC, Tim Davie, had failed to comply with its legal obligation to spend at least £254 million on the BBC World Service in the financial year 2020/21 in breach of one of the requirements flowing from the BBC Royal Charter, or

b: R1 and, in particular, the Director-General of the BBC, Tim Davie, had deliberately concealed or was deliberately concealing information tending to show the breach of the legal obligation referred to in the previous paragraph;

D: In respect of the 22 August 2021 disclosure that:

a: R1 and in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 was committing or was likely to commit a criminal offence, namely fraud, or

b: R1 and, in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 had failed or was failing to comply with its legal obligation to properly follow its contractual grievance processes and the ACAS code of practice on grievances, or

c: a miscarriage of justice in respect of the BBC grievance process had occurred or was occurring, or

d: R1 and, in particular, either the BBC Group HR Director, Rachel Currie, and/or the HR Director for BBC News, Kirsty Lee, and/or R2 had deliberately concealed, was deliberately concealing, or was likely to deliberately conceal information tending to show the matters referred to in any of the previous paragraphs D(a) to D(c);

E: In respect of the 25 August 2021 disclosure that:

a: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had committed a criminal offence, namely criminal negligence, or

b: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 had failed to comply with its legal obligation to take reasonable measures to keep their employees safe from harm, or

c: that the health or safety of BBC staff in Afghanistan had been endangered by the failure to implement the BBC's agreed emergency plan, or

d: R1 and, in particular, either the Director-General of the BBC, Tim Davie, and/or the Director of BBC News, Fran Unsworth, and/or R2 and/or R3 was deliberately concealing, or was likely to deliberately conceal information tending to show the matters referred to in any of the previous paragraphs E(a) to E(c).

3. If C proves that he made any such protected disclosures, is it established on the balance of probabilities that:

No	Alleged detriment	Page ref	Rs' position
3a	R3 on 12 August 2021 threatened C with disciplinary action by email	506 at 508	The 12 August 2021 email included an informal disciplinary warning in line with the Disciplinary Policy in relation to C's conduct with Employee X.

3b	R2 and/or Kirsty Lee (HR Director for BBC News) on 18 August 2021 removed C from the role of hearing manager for a grievance raised by Employee Z	580	Rs accept C was removed from hearing Z's grievance.
3c	R2 on 2 September 2021 threatened C with disciplinary action on a telephone call	Notes by R2 at 1029-1030, by C at 1031, and from R3 to Kirsty Lee at 1032	R2 did not threaten C with disciplinary action; she said that she would reflect on the matter they had discussed (C's email to Hilary Bishop at 1000)
3d	R2 on 15 September 2021 threatened C with disciplinary action on a telephone call, followed up by an email	C's notes from call 1207, R2's notes at 1208 and 1199; follow up email 1215	R2 did not threaten C with disciplinary action; she informed C that she would ask for an investigation.
3e	R3 on 15 September 2021 threatened C with disciplinary action by email	1209-1210	R3 did not threaten C with disciplinary action but reiterated the 12 August 2021 informal warning
3f, g, i, j, k,	With regard to R1's response to the unfolding Afghanistan crisis, a group comprising at various times of one or more of TD, FU, JM, AD, KL, R2 and/or R3, excluded C both before 15 August 2021 and after 21 August 2021 but not in between those dates as follows: <ul style="list-style-type: none"> • 3f: on or before 5-6 August 2021 by omission from emails and conversations in relation to the response to staff from Afghanistan asking for help from the BBC; • 3g: on or before 23 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how best to provide support to 	3f: 1912-1916, 368, 374, 377-379, 380-382, 388-390, 393, 394-395 3g: 735, 1002-1003 2019	C was not included in all meetings, emails and calls, but Rs deny that C was <i>excluded</i> (i.e., that anyone decided that he should not be involved in matters in which he should have been involved). Several decisions were taken by more senior managers, including the Director-General and at News Board level.

	<p>staff from Afghanistan being evacuated to the UK</p> <ul style="list-style-type: none"> • 3i: on or before 25 August 2021 by omission from meetings / conversations / email exchanges where decisions were being made about how many jobs would be offered to the staff from Afghanistan being evacuated to the UK; • 3j: on or before 7 September 2021 by omission from meetings / conversations / email exchanges where discussion were taking place about a support plan for the Afghan Service in London; and • 3k: on or before 15 September 2021 by omission from discussions taking place with the National Union of Journalists about support for staff evacuated from Afghanistan and the help that UK staff with families in Afghanistan want from the BBC. 	<p>3i: 1001-1003</p> <p>3j: 912, 1099, 1101</p> <p>3k: 482-485 1257</p>	<p>3f: C contributed to revising the emergency plan at a meeting on 2 August 2021. No substantive response to staff asking for help was provide other than an acknowledgement by TD and, more broadly, there was a revision of the emergency plan.</p> <p>3g: C was not included in all meetings, emails and calls, but Rs deny that C was <i>excluded</i> (i.e., that anyone decided that he should not be involved in matters in which he should have been involved); C was asked to suggest someone to provide such support.</p> <p>3i: C was not excluded; C was asked to prepare a proposal for the number of jobs to be opened in the UK within budget [1003]; C agreed to do so but then prepared an out of budget proposal to offer jobs to all evacuees [1001-1002], and the matter was thereafter taken forward by HB.</p> <p>3j: After C did not prepare a proposal within budget, the work was developed by HB; C's input was requested on 31 August [1001] and, once a draft proposal was ready for discussion, C's input was taken from 8 September 2021 [1123-1125 and 1158-1161]</p>
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			3k: C was not included because discussions with the NUJ were taking place at the highest levels of the BBC in liaison with the General Secretary of the NUJ (Michelle Stanistreet).
3h	Kirsty Lee (HR Director, News) on 24 August 2021 excluded C from an email she sent entitled "Afghanistan staff arriving in the UK, Employment status"	775	C was not included in the email from KL, but was not excluded from it. KL instructed recipients to cascade to management teams as appropriate; as a result the email was cascaded to C on 26 Aug 2021 which C in turn cascaded to his management team [845]
3l	In or around July 2021, R3 did not have a meeting with C about the Senior Leader Index and on or before 5 December 2021, R3 did not have a meeting with C about his mid-term appraisal known as "myConversation"	n/a	R3 did not have a Senior Leader Index review meeting with any of his direct reports (including SW and HB); R3 did not hold a mid-term appraisal for reasons set out in R3's (Tarik Kafala's) witness statement at paras 174-178.
3m	R3, on or before 14 September 2021, withheld an increase to C's salary greater than 0.7%	1461	R3 limited C's pay rise to 0.7% for the reasons set out at paras 16-26 of R3's witness statement.
3n	R3, on 2 December 2021, informed C that R3 was cancelling one-to-one meetings	1433-1434, 1453	One or two one-to-one meetings were cancelled before they recommenced. The reasons for cancelling are set out at paras 168-173 of R3's witness statement.

30	R3 excluded C from a meeting on 6 December 2021 regarding impartiality in the BBC's news coverage of Afghanistan	1382-1386, 1410-1411, 1412	C was not included on the email invitation. R3 did not send the meeting invite, his PA (Pauline Conroy) did and inadvertently missed out C (and two others) from the attendees list.

4. If so, was the ground for C's treatment that he had made a protected disclosure?

5. If so, what remedy (if any) should C be awarded?

Victimisation under s27 Equality Act 2010

6. The Respondents accept that C did a protected act by bringing Employment Tribunal proceedings for race discrimination on 2 January 2016.

7. Did R1 and, in particular, either R2, and/or the HR Director for BBC News, Kirsty Lee, on 18 August 2021 remove C from the role of hearing manager for a grievance? [1321]

8. If so, was that a detriment?

9. If so, was C's removal in part or in whole because of that protected act?

10. If so, what remedy (if any) should C be awarded?