IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 261

Suit No 171 of 2021

Between

Kallivalap Praveen Nair

… Plaintiff

And

Glaxosmithkline Consumer Healthcare Pte Ltd

… Defendant

JUDGMENT

[Employment Law — Employers' duty — Implied term of mutual trust and confidence]

TABLE OF CONTENTS

Kallivalap Praveen Nair
v
Glaxosmithkline Consumer Healthcare Pte Ltd

[2022] SGHC 261

General Division of the High Court — Suit No 171 of 2021
Kwek Mean Luck J
27–29 July 2022, 3–4 August 2022, 26 September 2022

18 October 2022 Judgment reserved

Kwek Mean Luck J:

Introduction

1 The plaintiff, Mr Kallivalap Praveen Nair ("Praveen"), brings this action against his former employer, Glaxosmithkline Consumer Healthcare Pte Ltd ("GSK"), for breach of his employment agreement, on the grounds that GSK discriminated against him and caused him to lose the opportunity to secure roles in GSK and another company, Unilever.

Factual background

2 Praveen was previously employed by GSK Consumer Healthcare Limited ("GSK India") as its Head of Expert Sales and Marketing for the Indian

subcontinent.[1] In 2018, Praveen joined GSK as an employee. GSK is a company incorporated in Singapore. It serves as the regional headquarters for consumer healthcare operations of the group ("GlaxoSmithKline").[2]

3 On or around 16 May 2018, Praveen signed a Letter of Appointment ("LOA") with GSK, taking on the role of Global Expert Director for Nutrition and Digestive Health business ("NDH"). In June 2018, Praveen relocated to Singapore with his family.[3]

4 In or around November or December 2018, GlaxoSmithKline announced the sale of its Nutrition business to Unilever ("Unilever Deal"). The Unilever Deal was completed around April 2020. In or around December 2018, GlaxoSmithKline announced its acquisition of Pfizer's consumer business ("Pfizer Deal"). The Pfizer Deal was completed around August 2019.[4]

5 Sometime in late May to June 2019, Praveen interacted with Unilever personnel to discuss opportunities at Unilever. He was ultimately not selected for any of the roles with Unilever.[5]

6 On 11 June 2019, GSK announced through an email sent on behalf of Ms Tamara Rogers ("Tamara"), who was GlaxoSmithKline's designate Chief Marketing Officer at the material time, that a new Global Head of Expert Marketing role had been created and that Ms Tess Player ("Tess") had been

---

1 Kallivalap Praveen Nair's Affidavit of Evidence in Chief ("Praveen's AEIC") at [7].

2 Praveen's AEIC at [6].

3 Praveen's AEIC at [8] and [10].

4 Praveen's AEIC at [46]-[49].

5 Praveen's AEIC at [78].

appointed to that role. This was regarded as a "LT-1" role, *ie*, "Leadership Team minus one", which meant it was one level below Leadership Team roles. Praveen was not invited to apply for that role.[6]

7 From around June 2019 to September 2019, Praveen took part in GSK's assessment and selection ("A&S") process for new Global Expert Category "LT-2" roles (*ie*, Leadership Team minus two, which meant one level below LT-1 roles) that were created following GlaxoSmithKline's restructuring. Between August and November 2019, GSK announced the appointments for the LT-2 roles that Praveen applied for. He was not selected for these roles.[7]

8 On or around 2 December 2019, Mr Rick Sheppard ("Rick"), who was Praveen's line manager, informed him that there were no roles available for him and that he would be made redundant.[8] A notice of redundancy was issued to Praveen in January 2020 which stated that his last day of employment would be 14 April 2020.[9] Praveen sought to extend his last day of employment to 30 September 2020. GSK subsequently extended Praveen's last day of employment to 30 June 2020.[10]

9 In this suit, Praveen claims against GSK for damages in the amount of $1,239,158.91 for breaches of his employment agreement with GSK ("EA"), which he claims resulted in the loss of his opportunity to land a role with Unilever, a new LT-1 role in GSK and LT-2 roles in GSK. Praveen also claims

---

6 Praveen's AEIC at [91].

7 Praveen's AEIC at [112]-[120].

8 Praveen's AEIC at [136].

9 Praveen's AEIC at [138]-[139].

10 Praveen's AEIC at [143].

that GSK is liable to him for the shortfall in his severance payment of $148,809.83, and for the sum of $49,503.21 which he claimed was wrongfully withheld by GSK from his salary.

10 GSK counterclaims for the sum of $95,211.87, which it says was paid to Praveen by mistake.

Whether the Employment Agreement expressly imposes an obligation on GSK to comply with the Policies

11 Praveen claims that GSK breached its policies ("the Policies"), which are defined at cl 5.2 of the LOA. These include the following:[11]

(a) Code of Conduct;

(b) Policy on Equal and Inclusive Treatment of Employees (the "Equality Policy");

(c) Policy on Non-retaliation and Safeguarding Individuals who report Significant Misconduct (the "Non-Retaliation Policy");

(d) Redundancy policies;

(e) General Bonus Plan Rules;

(f) Global Long-Term Incentive Delivery documents, including:

(i) the Long-Term Incentive Guide Incentive Guide on Share Value Plan entitlements for Grades 4 – 6;

(ii) the Information on the Change in timing of the SVP awards 2012 – 2019; and

[11] Plaintiff's Closing Submission ("PCS") at [9].

(iii) the Share Value Plan Leaver Rules;

(g) GSK Singapore Health & Wellbeing Handbook; and

(h) GSK's Employee Handbook.

12 The first issue which the plaintiff has to address, is whether the EA expressly imposes an obligation on GSK to comply with the Policies.

13 The plaintiff submits that cll 5.3 and 11.1 of the LOA expressly impose such an obligation on GSK.[12] The relevant clauses are cll 5.2, 5.3 and 11.1 of the LOA. They state:

> Clause 5.2 – **You shall comply with all existing policies of the Company**, its parent, subsidiary and associated companies ("GSK Group of Companies") **which are applicable to you** in the course of your employment which may be varied, amended, introduced, modified or revoked from time to time ("**Policies**"). **It is your responsibility to keep yourself updated** with the latest version of such Policies as may [sic] made available on the Company's intranet. Any such variation, amendment, introduction, modification or revocation is effective on the date stated on the Company's intranet."
>
> Clause 5.3 – In addition, if any of the terms set out in this Letter of Appointment conflicts with or is inconsistent with any Laws and Regulations and/or Policies prevailing from time to time, the latter shall prevail and the conflicting or inconsistent terms of this Letter of Appointment shall be deemed amended to be in line with the provisions of the then prevailing Laws and Regulations and/or Policies.
>
> Clause 11.1 – This Letter of Appointment and the documents expressly referenced herein contain the entire agreement between the parties with respect to the subject matter hereof … In the event of any inconsistency between this Letter of Appointment and any of the documents expressed referenced therein, the provisions shall prevail in the following order: (a) any Laws and Regulations and/or Policies of the GSK Group of

[12] PCS at [8].

> Companies, as varied, amended, introduced, modified or revoked from time to time; (b) the Letter of Appointment …
>
> [emphasis added in bold]

14 On a plain reading, cl 5.2 only obliges Praveen, the employee, to comply with the Polices. It does not oblige GSK, the employer, to comply with the Policies. In other words, under cl 5.2, the Policies are incorporated only to the extent that they impose obligations on Praveen as the employee.

15 Clause 5.3 is clearly intended to be read together with cl 5.2, as it begins with the phrase "In addition" and it refers to "Policies", which was defined in cl 5.2. The phrase "Policies prevailing from time to time" that is mentioned in cl 5.3 must hence be in reference to "Policies" as mentioned in cl 5.2. Consequently, under cl 5.3, the Policies that prevail over conflicting or inconsistent LOA terms must refer to Policies that impose obligations on Praveen as the employee, and not Policies that impose obligations on GSK as the employer.

16 In a similar vein, the opening line of cl 11.1 refers to the LOA and the documents "expressly referenced herein". The Policies are expressly referenced in cl 5.2, which as stated above, plainly oblige only the employee, Praveen, to comply with the Policies, and not the employer, GSK. Consequently, under cl 11.1, the Policies that prevail over conflicting or inconsistent LOA terms must refer to Policies that impose obligations on Praveen as the employee, and not Policies that impose obligations on GSK as the employer.

17 I hence find that the EA does not expressly impose an obligation on GSK to comply with the Policies.

Whether there is an implied term of mutual trust and confidence

18 The plaintiff alternatively submits that the EA contains an implied term of mutual trust and confidence ("ITMTC"), the content of which includes compliance by Praveen and GSK with *all* the Policies, known or unknown[13]. The plaintiff submits that the ITMTC is implied in law or on the facts.[14]

Implied on the facts

19 I will first examine whether there is a basis for an ITMTC, as pleaded, to be implied on the facts here.

20 The test for implying a term in fact was set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp*") and consists of three steps:

(a) First, the court will ascertain how the gap in the contract arose. The implied term will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

(b) Second, the court will determine whether it is necessary in the business or commercial sense to imply a term in order to give efficacy to the contract.

(c) Third, the court will consider whether the specific term to be implied was one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had it been put to them

---

13 26 September 2022 Transcript at p 7, lines 3 to 8.

14 PCS at [22] and [23].

at time of the contract. If it is not possible to find such a clear response, then, the gap persists, and the consequence of that gap ensues.

21 The plaintiff submits that the ITMTC as pleaded is necessary to give efficacy to the EA because GSK's employees must be able to expect GSK's compliance with its own policies, which addresses key aspects of the employment relationship. Praveen cites as an example of this, GSK's policies providing for key components of employees' remuneration.[15] However, employment contracts generally contain specific provisions that deal with the remuneration of employees. This is also the case for Praveen. Clauses 2.1, 2.2 and 2.3 of the LOA explicitly set out his remuneration and other entitlements. It could not be said that the ITMTC as pleaded is necessary to ensure proper remuneration. More generally, even if GSK employees expect GSK to comply with its own policies, that does not make it a business or commercial necessity such that it should be contractually part of the EA. Therefore, I do not find the second step of the *Sembcorp* test, *ie*, business or commercial necessity, to be made out.

22 Neither is the third step of the *Sembcorp* test met. As applied to this case, this requires that the ITMTC as pleaded is one to which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had it been put to them at time of the contract.

23 Having expressly limited the obligation of complying with Policies to be on the employee and not the entity, it is not apparent that GSK as an entity

---

15 PCS at [28].

would have said of "Oh, of course!" if it was put to it that the ITMTC as pleaded was part of the contract.

24 The plaintiff submits that this test is satisfied as every witness confirmed that GSK's employees had the right to expect GSK to comply with its policies.[16] However, Tamara, Tess and Mr Jayant Kumar Singh (who was one of Praveen's line managers) ("Jayant") all testified, when asked, that they did not know what an ITMTC was. In addition, they, along with Rick Sheppard ("Rick") (Praveen's line manager after Jayant), did not testify that they saw GSK's compliance with the Policies as part of GSK's contractual obligations to its employees. Their evidence is summarised as follows:

(a) Rick saw a nuanced distinction between trust in a company and a legal obligation. He believed that the company's legal obligations are set out in the employment contract, but that the company will also follow its values and expectations to look at the employment contract in the right light.[17] The plaintiff submits that Rick testified that if GSK did not comply with its policies, the aggrieved employee would have a right to bring his claim to court.[18] However, this is a misinterpretation of Rick's testimony. The relevant portion of the transcript that the Plaintiff relies on is set out below:[19]

> Q: Assuming that an employee operates in a country where there is no right to equal treatment and no right to be free from discrimination, the laws of the

---

16 Plaintiff's Skeletal Submissions dated 22 September" 2022 ("PSS") at [20].

17 29 July 2022 Transcript at p 105 line 20 to p 106 line 3.

18 PCS at [13].

19 29 July 2022 Transcript at p 117 line 24 to p 118 line 17.

> country do not provide for that, but those are in your policies …
>
> A: One more time?
>
> Q: No right to equal treatment, no positive right to equal treatment and no right to be free from discrimination, right, the employment contract doesn't provide for that, the laws of the country doesn't provide for that, but your code of conduct does; correct?
>
> A: Yes.
>
> Q: Do you agree that that employee should have a right to redress and compensation, whether from the courts or employment tribunals, if he suffered from unequal treatment or discrimination?
>
> A: In those particular circumstances? I think so, honestly.

As evident from the above, all that Rick testified to was that in the particular circumstances described by the plaintiff, he thought that an employee should have a right of redress. Rick was not asked the more specific and relevant question – did Rick consider GSK to be contractually bound to follow its Policies? There is hence no evidence from Rick to that.

(b) Tamara said that GSK employees had to follow the Code of Conduct, but the rules in the Code of Conduct were not law. The Code of Conduct applied to everyone in GSK and if an employee failed to comply, there may be disciplinary action. She considered an employee contractually bound by the Policies. She did not know if GSK as an entity would be contractually bound to its employees to follow the Policies.[20]

---

[20] 4 August 2022 Transcript at p 24 lines 1 to 5.

(c) Jayant said he did not have a clear view on whether his employment agreement contractually bound GSK to follow the Policies.[21]

(d) The plaintiff submitted that Tess testified that she would expect GSK to be contractually bound by the Policies.[22] Again, this is not supported by the transcript. What Tess said was that she did not know if the Policies were legally binding on GSK.[23]

25 While these employees were senior employees within GSK, their seniority alone does not mean that they represent the will of the company. Their understanding of the terms of the Employment Contract is not necessarily representative of GSK's understanding. Furthermore, even taking Praveen's case at its highest, these witnesses did not know in the first place what an ITMTC was, and they also did not clearly consider GSK to be contractually bound by its Policies. Therefore, I find it difficult to conclude that they would have said "Oh of course!" if it was suggested to them that GSK was contractually bound by the ITMTC as pleaded. Neither is there any evidence before the court to conclude that GSK as an entity would have also said "Oh of course" to this suggestion. That GSK expressly limited the obligation of compliance with the Policies to employees in cl 5.2 of the EA, suggests the contrary.

---

21 4 August 2022 Transcript at p 91 lines 8 to 15.

22 PCS at [32(d)].

23 4 August 2022 Transcript at p 163 lines 17 to 23.

26 I hence find that neither step 2 nor step 3 of the *Sembcorp* test is satisfied on the evidence, and that the plaintiff has not proven that the ITMTC is implied in fact.

Implied in law

27 I will next examine if an ITMTC as pleaded should be implied in law. GSK makes a preliminary argument that the ITMTC cannot be part of the EA because it contradicts the express terms of the EA.[24] However, while cl 5.2 of the LOA places an obligation on the employee to comply with the Policies, and there is no term placing an obligation on the employer GSK to comply with the Policies, there is no express term in the LOA precluding the inclusion of the ITMTC as pleaded.

28 The plaintiff relies on decisions such as *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock*") to support its position. There, the High Court held that unless there are express terms to the contrary or the context implied otherwise, an implied term of mutual trust and confidence and fidelity, is implied by law into a contract of employment under Singapore law: at [59]. Subsequent High Court decisions have also recognized the existence of the ITMTC in Singapore law.

29 GSK relies on the observations of the Appellate Division of the High Court in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 ("*Dong Wei*") to submit that the issue of whether ITMTC is part of Singapore law is still an open question. In *Dong Wei*, the Appellate Division noted at [73] that the Court of Appeal in *Wee Kim San Lawrence Bernard v*

---

[24] Defendant's Closing Submissions ("DCS") at [19].

Robinson & Co (Singapore) Pte Ltd [2014] 4 SLR 357 ("*Wee Kim San*") did not formally endorse the existence of the ITMTC, unlike certain High Court decisions. The Court of Appeal in *Wee Kim San* was cognisant that *Commonwealth Bank of Australia v Barker* (2013) 214 FCR 450 ("*Barker (FC)*") – then in the Federal Court of Australia ("FCA") – was on appeal to the High Court of Australia ("HCA"): at [30]. In a subsequent Court of Appeal decision in *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 ("*One Suites*"), the Court of Appeal expressly noted that *Wee Kim San* left open the position in Singapore on the existence of the implied term of mutual trust and confidence: at [44]. The court in *Dong Wei* thus observed at [82]:

> … the status of the implied term of mutual trust and confidence has not been clearly settled in Singapore. It remains an open question for the Court of Appeal to resolve in a more appropriate case, ideally with facts capable of bearing out a claim based directly on the existence of the implied term.

30 GSK also refers to the decision of the HCA in *Commonwealth Bank of Australia v Barker* (2014) 312 ALR 356 ("*Barker (HC)*") to support its position that the ITMTC should not be recognized under Singapore law. The issue of whether the ITMTC should be implied by law in Australia, was considered extensively by the HCA in *Barker (HC)*. The factual matrix in *Barker (HC)* is similar to the present case in three aspects: (a) Praveen similarly argues that GSK must be bound by its own Policies; (b) Praveen's pleaded case is that his claim is not based on the act of dismissal but on the ground that he has been unfairly treated in the selection process for Unilever, LT-1 and LT-2 roles; and (c) Praveen is also claiming damages for the loss of chance of obtaining those roles.

31 I begin my analysis of the parties' submissions on whether the ITMTC as pleaded should be implied in law, by observing that the content of the ITMTC that the plaintiff seeks to ascribe to the ITMTC, namely that GSK as the employer is contractually bound to comply with the Policies, is not something that has been held to be part of the ITMTC. When asked, counsel for the plaintiff confirmed to the court that he has not found any precedent anywhere, where an ITMTC of the pleaded content, that a company has to comply with its policies, has been accepted.[25]

32 The court in *Cheah Peng Hock* at [56] set out examples of the application of an ITMTC. These include:

(a) a duty not to act in a corrupt manner which would clearly undermine the employee's future job prospects (*Malik v BCCI* [1998] AC 20) ("*Malik*");

(b) a duty not to unilaterally and unreasonably vary terms (*Woods v W M Car Services (Peterborough) Ltd* [1982] ICR 693);

(c) a duty to redress complaints of discrimination or provide a grievance procedure (*W A Goold (Pearmak) Ltd v McConnell* [1995] IRLR 516);

(d) a duty not to suspend an employee for disciplinary purposes without proper and reasonable cause (*Gogay v Hertfordshire CC* [2000] IRLR 703);

(e) a duty to enquire into complaints of sexual harassment (*Bracebridge Engineering Ltd v Darby* [1990] IRLR 3);

---

[25] 26 September 2022 Transcript at p 5, lines 14 to 22.

(f) a duty to behave with civility and respect (*Isle of Wight Tourist Board v Coombes* [1976] IRLR 413);

(g) a duty not to reprimand without merit in a humiliating circumstance (*Hilton International Hotels (UK) v Protopapa* [1990] IRLR 316); and

(h) a duty not to behave in an intolerable or wholly unacceptable way (*British Aircraft Corporation Ltd v Austin* [1978] IRLR 332).

33 It was argued before the HCA in *Barker (HC)* that the range of duties imposed by the ITMTC introduces inherent uncertainties. The HCA in *Barker (HC)* affirmed Jessup J's dissent in *Barker (FC)* that the ITMTC will have "the potential to act as a Trojan horse in the sense of revealing only after the event the specific prohibitions which it imports into the contract": at [117]. I note that the court in *Cheah Peng Hock* was also cognizant of the wide range of duties imposed under the ITMTC at [56], but nevertheless found that the ITMTC exists under Singapore law.

34 However, in my view, the tension between *Barker (HC)*'s concerns as to the uncertainties associated with the ITMTC as a doctrine and *Cheah Peng Hock*'s recognition of the ITMC, is not the nub of the issue in this case.

35 This is because the issue before this court is not whether the ITMTC, in the form that has been applied in previous cases, is part of Singapore law, in the light of the analysis in *Barker (HC)*. The ITMTC as pleaded is very different from the formulation of the ITMTC in *Malik* that "[p]arties shall not engage in conduct likely to undermine the trust and confidence required if the employment

relationship is to continue in the manner the employment contract implicitly envisages". Rather, the issue is this: even assuming that the ITMTC is part of Singapore law, should the content of the ITMTC include a contractual duty on the part of the employer to comply with its internal policies? Counsel for the plaintiff accepts that this would indeed be the inquiry before this court, and that even if this court accepts that ITMTC is part of Singapore law, the court will have to find that an ITMTC of the pleaded content is part of Singapore law.[26]

36 To sharpen the inquiry before this court, the substance of what the plaintiff is contending is no different in terms of the outcome, if his submission was that there should be "an implied term in the EA that GSK should comply with its policies", rather than "an implied term of *mutual trust and confidence* in the EA that GSK should comply with its policies".

37 Even assuming, without making a judgment on it, that the ITMTC is part of Singapore law, the plaintiff's submission here on the pleaded ITMTC introduces a different order of uncertainty. It is trite law that the certainty of contractual terms is an important tenet of contract law. In *T2 Networks Pte Ltd v Nasioncom Sdn Bhd* [2008] 2 SLR(R) 1 at [44], Judith Prakash J, as she then was, cited *G Scammell and Nephew, Limited v H C and J G Ouston* [1941] AC 251 (at 268-269) for the proposition:

> It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite, or capable of being made definite without further agreement of the parties,

[26] 26 September 2022 Transcript at p 6, lines 3 to 17.

> that the promises and performances to be rendered by each party are reasonably certain.

38 The doctrine of implication of terms in law inevitably raises some degree of uncertainty given the broadness of the criteria utilized to imply such terms: *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 4 SLR(R) 769 at [90]. Therefore, courts must be cautious in determining whether to imply certain terms in law and carefully consider the degree of uncertainty that such terms may introduce. Further caution should be exercised when the content of the implied term involves a concept which is itself controversial: *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 at [46].

39 The uncertainty here takes place at two levels, first in respect of GSK, and second, in respect of other companies.

40 First, in respect of GSK, not all the content or clauses in GSK's company policies were traversed in the course of the trial. Only the Policies and particular clauses of the Policies that were relied on for the plaintiff's action were mentioned. There remains a large body of GSK's documents that are neither identified nor discussed ('the unknown GSK documents"), the legal status of which remains unclear by the end of the trial.

41 Hence, it could not be said with certainty which of the unknown GSK documents should rightly be regarded as part of GSK's policies or contractual obligations. This is particularly since, even for purposes of this suit, there are documents which are titled as "Guidance" or "Best Practices", but which the plaintiff submits are nevertheless contractually binding policies, despite their wording on the face of the documents.

42 The plaintiff submits that GSK should still be bound by the unknown GSK documents since it knows what these other documents are. The plaintiff argues that since it has been pleaded that under cl 5.2 of the LOA, all GSK policies are part of the EA, then the onus is on GSK to identify which of the remaining unknown policies are not to be regarded as contractual obligations.[27]

43 With respect, I have several difficulties with this submission for the following reasons:

(a) First, as set out above, cl 5.2 only binds the employee and not GSK. There is no express clause that incorporates a contractual obligation on GSK to follow all its policies. Indeed, it is because there is no express contractual obligation, that there is a need to consider whether there is an ITMTC. There is hence no place to rely on cl 5.2 of the LOA, in relation to this issue of uncertainty in the pleaded ITMTC. The uncertainty over the universe of unknown policies that should be subject to the pleaded ITMTC remains to be addressed.

(b) Second, while the plaintiff submits that there is no uncertainty because GSK would know which policies are binding, the position taken by GSK in this case is that it disputes that there are any policy documents that are contractually binding on it in the first place. Therefore, it is no answer for the plaintiff to say that GSK would be able to identify these unknown GSK documents. Most certainly, an employee would also not know what is the realm of unknown GSK documents that are regarded as contractually binding.

---

[27] 26 September 2022 Transcript at p 11, lines 2 to 6; p 12, lines 3 to 18.

(c) Third, there could be many other unknown GSK documents for which it is uncertain if such documents are policy documents and if they bind GSK. This is especially when the plaintiff's position during the trial was that townhall communications can also be classified as policies. It would be overly onerous to expect GSK to identify all such potential documents in the course of this suit and clarify which of such documents are policies, and which of these policies are regarded as binding. This is especially when many of these documents may not be or are unlikely to be related to this suit, since they were not relied on by the plaintiff.

44 Therefore, the first order of uncertainty for GSK, if the pleaded ITMTC is upheld, is the uncertainty over which of the unknown GSK documents are to be regarded as policies.

45 There is a second order of uncertainty with the pleaded ITMTC in relation to GSK. Even if it can be ascertained which of the unknown GSK documents are to be regarded as policies, it is uncertain which part of such policies should be regarded as contractually binding under the pleaded ITMTC. Many of the statements in the Policies, such as in the Code of Conduct, are clearly phrased as aspirational statements. They do not appear to give employees a contractual right to sue. The defendant referred to "principles of equality, transparency and integrity" as an example. Another example is the company's value of "Respect" stated in the Code of Conduct, which is described as "supporting colleagues and communities around us, and embracing diversity and individuality, so that we can all achieve great things". It is not apparent that this was intended to give employees the contractual right to sue GSK for any lack of diversity or impose legal standards that GSK is contractually obliged to meet. A similar point was made in *Tan Swee Wan and another v Johnny Lian*

Tian Yong [2018] SGHC 169. There, it was alleged at [50(c)] that a term stating that "the ultimate objective … was to list [a company] on NASDAQ, a stock exchange in the United States of America" was a contractually binding term. The court rejected this, holding at [240] that the term was merely "an aspiration", as it was "hard to see how the defendant could agree to be subject to such a term … [the success of the NASDAQ] listing would depend on numerous variables and circumstances, some or many of which the parties will have little control over".

46 The plaintiff acknowledges that there are aspirational statements in the Policies and submits that aspirational statements should be treated as obligations for GSK to use reasonable endeavours to achieve those standards. Where, however, there are statements in the Policies that are phrased in mandatory language, those should be treated as binding even though there is an aspirational quality.[28] The plaintiff cites as an example, a line from the Equality Policy[29] which states that "managers and anyone with managerial responsibilities must … [d]emonstrate equal and inclusive treatment of employees" and submits that since the phrase "must" was used, it should be regarded as a contractual obligation.[30] However, the very same page of that document also states that managers must "[c]reate an environment where employees are engaged in challenging work that matches their talents and increases their skills". Whether there is such an environment would be highly subjective. What constitutes a breach would be highly uncertain. It is not likely that GSK would regard such a phrase as contractually binding, even though the word "must" was used. Words

---

28 26 September 2022 Transcript at p 15 line 12 to p 16 line 10.

29 Praveen's AEIC at p 189.

30 26 September 2022 Transcript at p 17, lines 1 to 13.

such as "must" or 'should" can also be used as exhortations, particularly in aspirational documents, and need not necessarily indicate an intention to impose a contractual obligation.

47 There is a separate level of uncertainty with the pleaded ITMTC, and that is in relation to other companies or entities, whether in the private sector, public sector or charity sector. There is no evidence before the court of the content that other companies put into their internal policies, and whether it would be appropriate for such policies to be treated as part of those companies' contractual obligations with their employees, which is the inevitable outcome if the plaintiff is correct in submitting that the ITMTC as pleaded is implied by law.

48 The plaintiff seeks to go around this difficulty by submitting that the ITMTC as pleaded need not go that far as to affect other companies. This is because it was held in *Cheah Peng Hock* at [60] that the content of ITMTC can vary greatly depending on the facts of each case. The plaintiff hence submits that a finding that the pleaded ITMTC is implied by law need not affect other companies.[31]

49 However, the plaintiff also accepts that *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR(R) 927 ("*Forefront*") was correct in holding at [42] that "once a term has been implied [in law], such a term will be implied in all future contracts of *that particular type* … [T]he central idea is clear: it is that the term implied is implied in a *general* way for all specific contracts that come within the purview of a broader umbrella category of

[31] 26 September 2022 Transcript at p 20 line 5 to p 21 line 16.

contracts" [emphasis in original].[32] The EA does not appear to be particularly unique. Following the principle set out in *Forefront*, at the least, a company that imposes a contractual obligation on its employees to comply with company policies, would similarly face an implied term that the company too would be contractually bound by such policies. Moreover, counsel for the plaintiff also accepts that if the pleaded ITMTC is upheld on the basis of it being implied by law, then such a decision would have precedential value, and other companies would have to be more precise if they do not want to be bound by their internal policies in future. In other words, there would be impact on other companies.[33]

50 This raises the question of whether it is appropriate, by way of implying in law the pleaded ITMTC, to lay down a contractual obligation for other companies to comply with their policies. Many companies include in their internal documents, aspirational statements, as GSK did in this case. It is commendable that companies put in aspirational statements in their policies, as it provides high standards to strive towards. Oftentimes, companies do so knowing that they may not be at that standard yet, but the aspirational statements are nevertheless useful in providing the right directions to strive toward. It is unlikely that they conceived of such aspirational statements as being contractual obligations when they were crafted. It is also unclear whether organisations would be discouraged from having such aspirational statements and goals included in their policies if they were regarded as contractual obligations. The plaintiff acknowledges that aspirational statements could be caught by the umbrella of "all policies" and submits that the distinction should be based on whether the aspirational statements were phrased in mandatory terms. However,

---

[32] 26 September 2022 Transcript at p 21, line 17 to p 22, line 2.

[33] 26 September 2022 Transcript at p 25, lines 9 to 25.

the plaintiff also accepts that it is not known if aspirational statements elsewhere have been written in mandatory terms or not.[34] Consequently, there is uncertainty over whether the aspirational statements in internal policies for other companies should be held to be contractually binding, simply because of the presence of some mandatory language, particularly when these could be set out in aspirational documents such as documents on the values of a company. All of these introduce uncertainty of an order which was not placed before the court in *Cheah Peng Hock*.

51 This brings me to another issue, which is whether a court hearing involving a private dispute between a company and its employee, is the best modality to decide if the internal policies of other companies, should be part of their contractual obligations with their employees. In *Barker (HC)*, the HCA observed that the ITMTC would "intrude a common law policy choice of broad and uncertain scope into an area of frequent, detailed and often contentious legislative activity": at [118]. Our courts have also expressed similar concerns about such intrusion and have held that it "is impermissible for the courts to arrogate to themselves legislative powers" or become "mini-legislatures": *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 ("*Lim Meng Suang*") at [77]. This is because the courts have no mandate to create or amend laws in a manner which permits recourse to extra-legal policy factors as well as considerations. The jurisdiction as well as the power to do so lie exclusively within the sphere of the legislature: *Lim Meng Suang* at [77]. At the same time, our courts have been able to make advancements in areas of common law, which affect a polarity of parties, for

[34] 26 September 2022 Transcript at p 27, line 23 to p 28, line 21.

example with respect to the test on medical negligence in *Hii Chii Kok v Ooi Peng Jin London Lucien and another* [2017] 2 SLR 492.

52 In my view, the issue here is not about the respective capabilities or the proper reach of the different institutions. Rather, it is a question of whether the wider impact on other companies that flows from the plaintiff's submission on the pleaded ITMTC, is one that is best arrived at through the process of a private employment dispute between two parties, *ie*, the plaintiff and GSK.

53 The plaintiff's submission is a very broad and far reaching one.

54 If accepted, his submission will lead to implications for other companies in the private sector, public sector and charity sector, and not just GSK. There will be a precedent for companies to be *contractually bound* by their own policies pursuant to an ITMTC. Yet, there is nothing before the court as to what constitutes policies for these companies or what part of their policies should be binding. For example, the plaintiff submits that GSK's townhall communications of 29 May 2019 and June 2019 constitute policies. However, townhalls are generally used for internal communications and discussions between an organisation and its staff. There would be a wide range of communications in a townhall. It is not clear that all such communications would or should be regarded as policies. Neither is there evidence on whether other companies have drafted their policies with the intent that the clauses of such documents could form a potential ground for a contractual claim against the company. A ruling that such policies have contractual force could have widespread implications on the employer-employee dynamic in Singapore, raising many unanswered questions and uncertainties. For example, what are the implications if companies subsequently re-frame their policies in order to

limit such unintended legal exposure? What are the legal effects of internal policies that are not published to employees? Whose breach would suffice to constitute a breach on the part of the company in relation to this broad range of policies? Will another employee's breach of the company's policies be attributed to the company? These are highly pertinent questions that affect the landscape of employment relationship in Singapore.

55 For the above reasons, I find that even on the assumption that the ITMTC exists in Singapore, the ITMTC as pleaded by the plaintiff, *ie*, that a company is contractually bound to comply with all its policies, is not part of Singapore law.

56 In summary, I observe that while the plaintiff frames his case as being based on the ITMTC, there is no precedent for an ITMTC of the content that he seeks to ascribe. While positioning the claim as one of an ITMTC may allow the plaintiff to tap into the jurisprudence accepting ITMTC, one should not lose sight that the fundamental question that the plaintiff's submission raises is not whether an ITMTC exists in Singapore law, but whether it should be implied in law (through an ITMTC) that companies are contractually bound to comply with all their policies. For the reasons above, I find that such a term would be too uncertain. I also do not regard an employment dispute between two private parties as being the appropriate forum for determining that companies elsewhere are similarly contractually bound to comply with all their policies.

57 As this is a threshold question for the plaintiff, my finding that there is no ITMTC as pleaded that is implied in law, means that the plaintiff's case would be dismissed on this basis alone.

58 For completeness, I nevertheless proceed to consider if there are breaches of the EA, assuming that an ITMTC as pleaded, is implied by law in Singapore. As set out in my assessment below, I find that the facts do not bear out a claim based directly on the ITMTC as pleaded, even if it existed.

Praveen's omission from the May 2019 GSK list of personnel eligible for assessment for Unilever roles

Parties' position

59 The plaintiff submits that GSK's omission of his name from the May 2019 GSK list of personnel ("the List") that was provided to Unilever, is a breach of the EA, particularly the principles of equality in the Code of Conduct and the Equality Policy.

60 GSK personnel who were included in the List underwent formal assessment by Unilever including evaluation and screening of their curriculum vitae, psychometric assessment profiling as well as formal interviews with Unilever business leaders and human resources ("HR"). As Praveen was left out from the List, he did not undergo any of these assessments. Praveen argues that he would have been selected by Unilever if he were on the List.

61 GSK submits that the Code of Conduct and Equality Policy do not impose any obligation on GSK to include Praveen in the List. Praveen was not automatically eligible for a transfer to Unilever because only employees who were solely supporting the Nutrition business and based in India were automatically eligible. Praveen did not solely support the Nutrition business.[35]

---

[35] Rick Sheppard's Affidavit of Evidence in Chief ("Rick's AEIC") at [48]-[49].

62 Despite the fact that Praveen was not automatically eligible for a transfer from GSK to Unilever, attempts were made to put him up for consideration for a transfer to Unilever. He was also invited to several interviews with Unilever. However, the final decision as to who Unilever wish to employ lay with Unilever.[36]

My decision

63 The plaintiff submits that GSK's explanation for how the List was constucted (*ie*, that the List only included employees solely supporting the Nutrition business) is false, as there were GSK personnel who handled leadership responsibilities for both the Nutrition and Digestive Health businesses in the List. GSK was not able to respond directly to this. GSK explained that the persons responsible for the Unilever roles, namely Karen Stahl ("Karen"), GSK's Global Categories Human Resource Lead, and Nikhila Krishnan, had left the company and attempts to receive the documents from various sources were not fruitful. This is not a wholly satisfactory explanation.

64 It does not however, shift the balance of probabilities in Praveen's favor on this issue, when the totality of the evidence is taken into consideration.

65 The correspondence shows that even though Praveen was excluded from the List, GSK nevertheless put him in touch with Unilever for consideration for a role there:

(a) On 17 April 2019, Praveen sent an email to Karen stating, "Really appreciate your having taken the time today to walk me through

---

[36] Rick's AEIC at [50].

your perspective on the Unilever opportunity. As discussed, please find attached my resume for further action. Like mentioned, this is still exploratory and my decision will depend as much on the responses I get for the following queries, as also on the priorities of the family". Praveen then listed four questions to clarify with Unilever.[37]

(b) On the same day, Karen forwarded Praveen's CV to Rahul Kapoor ("Rahul"), Arun Sehgal and Jayant. She stated, "Both Jayant and I have had discussions with Praveen about exploring opportunities with [Unilever]. He is open to explore opportunities with [Unilever] with some questions outlined below".[38]

(c) Rahul replied stating that, "As we had shared with you, [w]e have already sent info required to [Unilever] last week. I was in their office yesterday & we did not discuss [Praveen] since we were not sure what our position is. Let me see if anything can be done now. Will let you know. As already discussed, [Praveen] is out of scope of this deal".[39]

(d) Karen replied, "I was very aware of your timelines but was waiting for [the plaintiff] and it was important we had the right discussions with him. We are fully aware that [Praveen] is out of scope as is he".[40]

---

37 Agreed Bundle of Documents Vol 1 ("1ABOD") at pp 316 and 317.

38 1ABOD at p 316.

39 1ABOD at p 316.

40 1ABOD at p 316.

(e) Rahul then asked Karen what the plaintiff's current grade is, to which Karen replied that she can confirm he is a "Grade 4".[41]

(f) On 22 April 2019, Rahul messaged Karen stating that, "[Unilever] is happy to have a conversation with [Praveen], Krishnan ([Unilever] Integration lead) can have this call/Skype on Wednesday (9-945 India time). The questions from [Praveen] had been shared with [Unilever]. Can you please confirm so that we can go back to them".[42]

(g) On 26 April 2019, Praveen messaged Karen stating that he finished his interaction with Krishnan and that Krishnan requested him to meet with Umesh Shah, the Executive Vice President for Unilever Global based in Singapore.[43]

(h) On 30 April 2019, Praveen messaged Karen stating that his situation seemed positive and that he had received the answers to some of his earlier questions. He also said, "As discussed, I am approaching this with an open mind and shall decide in consultation with Jayant."[44]

(i) On 20 May 2019, Praveen sent a WhatsApp ("WA") message to Jayant stating that he had a good call with the Unilever folks and that "they sound eager about Expert and are ambitious with the portfolio… They may not have a set Expert role, but are in the process of designing

---

41 1ABOD at pp 320-321.

42 1ABOD at p 320.

43 1ABOD at p 324.

44 1ABOD at p 323.

the role itself."[45] He also stated, "like you mentioned, it is nice to be a beacon so long as you know who is going to hold it next."

(j) On 27 May 2019, Rahul messaged Karen stating, "On [Praveen], we have got confirmation that HUL/Unilever currently doesn't have a role which matches his experience and skill profile. So it can be shared with [Praveen]."

66 The above correspondence shows three things. First, as of 17 April 2019, Praveen was not completely decided on whether to be considered for a role in Unilever. Second, even though Praveen was not on the List, GSK put him in touch with Unilever for their consideration of him and Praveen did meet with Unilever personnel. Third, it was not GSK that declined to offer Praveen a role in Unilever. It was Unilever that subsequently decided not to offer Praveen a job. Praveen himself acknowledged to Jayant in their correspondence that Unilever did not have a set Expert role, which was his area of expertise: see above at [65(i)].

67 The plaintiff initially argued that Praveen's exclusion from the List prejudiced him, as all those that were on the List were offered roles. I note that this position was adjusted subsequently, when the plaintiff submitted instead that it is the undisputed evidence of both Praveen and Prateek Jain ("Prateek") that "*almost all* the people on the list obtained roles in Unilever" [emphasis added].[46] Prateek is a former GSK employee who held a leadership role, who was transferred to Unilever. He appeared as a witness for Praveen. On the plaintiff's evidence then, being on the List did not automatically result in a role

45 1ABOD at p 329.

46 PSS at [79].

with Unilever. That being the case, it is difficult for the plaintiff to submit that the mere exclusion of Praveen from the List resulted in him being unable to secure a role with Unilever. More fundamentally, there is no evidence that Unilever, as the party taking over the business, was unable to exercise its discretion on what roles it needed and who to offer them to, and instead had to offer roles to anyone who was on the List put up by GSK.

68 Praveen also acknowledged that when he does recruitment, he would take the best person for the job, regardless of whether that person was on some initial list. Prateek testified that Unilever would have to make its own assessment as to who it wishes to employ for its senior roles.[47]

69 Praveen initially explained that he was not offered a role by Unilever because his area of strength was Expert Marketing, in particular marketing to pharmaceutical professionals (compared with consumer marketing) and Unilever did not have roles for Expert Marketing.[48] If that was so, then GSK cannot be faulted for Unilever's decision not to create roles for Expert Marketing.

70 Praveen subsequently explained that Unilever did have roles for Expert Marketing but did not offer him a role because he was not on the List.[49] Leaving aside that this explanation contradicted what he had earlier said on the stand, this does not explain why the exclusion of Praveen from the List would have been determinative for Unilever.

---

47 28 July 2022 Transcript p 156, lines 19-22.

48 27 July 2022 Transcript p 47, lines 11-22.

49 27 July 2022 Transcript p 68, lines 7-10.

71 As Praveen had acknowledged, a recruiter would choose the best person for the job, regardless of whether that person was on an initial list.[50] If Unilever did need people for Expert Marketing roles, there is no logical reason, and certainly no reason that has been placed before the court, as to why Unilever would choose not to take Praveen if he was suitable for a role Unilever required, even if he was not on the List. This is particularly so when Unilever's interest in the Unilever deal was not just the purchase of the Nutrition business but also the people and their expertise. Prateek testified to that effect: "[a]s part of the Unilever Deal, GSK started to look into which personnel would be transferred to Unilever as the latter would not simply be purchasing the Nutrition business, which was around 45% of the NDH business, but more importantly, the people and their expertise."[51]

72 Examining the evidence in totality, I find that GSK did not breach the EA, even if it contained a contractual obligation on the part of GSK to abide by the Code of Conduct and Equality Policy, by excluding Praveen from the List for consideration by Unilever.

GSK's failure to disclose the creation of the new LT-1 role to Praveen and the appointment of Tess without giving Praveen opportunity to apply

Parties' position

73 The plaintiff submits that GSK's failure to disclose the creation of the LT-1 role to Praveen and the appointment of Tess to the LT-1 role without giving Praveen an opportunity to apply for the role is a breach of the EA, particularly: (a) GSK's "LT-1 & 2 A&S principles, process and proposed

---

50 28 July 2022 Transcript at p 124, lines 1-7.

51 Prateek Jain's Affidavit of Evidence in Chief ("Prateek's AEIC") at [12].

timelines";[52] (b) GSK's communications to the attendees of the 29 May 2019 and June 2019 town hall; (c) the June 2019 Leadership Communication Pack ("LCP"); (d) the Code of Conduct; and (e) the Equality Policy.

74 The plaintiff submits that Tamara breached GSK's policies by failing to adhere to the LT-1 A&S policies. The plaintiff challenges GSK's explanation that there was no A&S process for the LT-1 role because Tess was appointed as a "Talent Appointment", on the following grounds:

(a) First, there is no evidence that the talent appointment process was permitted within GSK.

(b) Second, there is no evidence that the talent appointment process was used in respect of the LT-1 role. GSK relies on a policy titled "Best practice for global job posting" ("Posting Policy").[53] The plaintiff submits that the Posting Policy applies only where the role becomes an open one in the course of the A&S process. In the document titled "A&S Principles and Process – HR Guidance" ("A&S HR Guidance"),[54] the only reference to the talent appointment process states that "A talent appointment will not normally have a 'home' role as it will have been backfilled i.e. usually is a permanent move". It also states that as part of the A&S process, the talent appointment ought to be considered with similar employees in the same pool. Thus, the plaintiff submits that even if Tess was considered a "talent", the A&S process suggests she should have been put in a pool with similar candidates (in this case, other LT-2

---

52 Agreed Bundle of Documents, Vol 3 at p 1564-1574.

53 Agreed Bundle of Documents, Vol 4 ("4ABOD") at p 2414-2416.

54 4ABOD at p 2427.

Global Experts) in order to decide who ought to get the LT-1 Global Expert role.

(c) Third, the plaintiff submits that the absence of related documents from GSK shows that: (i) there was no guidance from HR or the senior leadership team to Tamara on this, contrary to what she alleged; (ii) there were other considerations relating to the LT-1 role that if revealed, will show that Praveen is not less qualified than Tess; and/or (iii) there were other candidates (including Praveen) besides Tess put forth for the LT-1 role but Tamara did not consider them. Alternatively, the lack of documentary records shows that Tess's appointment to the LT-1 role was done without regard to GSK policies. The Posting Policy contains the requirement for the manager to document the justification for not conducting an open application, which was not done.

(d) Fourth, Praveen contends that if there was an open process, he would have been selected over Tess, as he was told by Karen and Jayant that he was the strongest contender in the Expert roles that may open up following GSK's restructuring.

75 GSK submits that there is no breach of the EA. The Code of Conduct, the Equality Policy, GSK's alleged representations in the May and June 2019 townhalls and the June LCP do not impose any obligation on GSK to disclose the creation of the new LT-1 role to Praveen or give him an opportunity to apply.

76 GSK submits that Tess was appointed via a talent appointment process. The Posting Policy specifically contemplates that GSK may choose not to post a job when, among other things, "[t]he job is being filled by a particular employee in order to meet a critical business need, and/or where both the best

interests of the individual and the company are served".[55] It also allows for it where "[q]ualified candidates have been identified through the Leadership Planning/Succession Planning/ Differentiated Development process internally."

77 Since March 2019, the LT-1 role selection process was not envisaged to be an "open" process for general application. The selection of LT-1 personnel was a targeted exercise, with the relevant members of the designate Leadership Team ("LT") being given a significant amount of autonomy to assemble their LT-1 team based on recommendations from senior LT staff within GSK and Pfizer. Such targeted manner of appointment is not unusual within GSK.[56]

78 Against that backdrop, Tamara created the LT-1 role of Global Head of Expert Marketing to address a gap in expert marketing. This LT-1 role required the potential appointee to have an excellent grasp of both expert marketing and consumer-facing marketing. Tamara's assessment, even if she had been aware of Praveen, is that she would have found Tess to be the only suitable candidate.[57]

My decision

79 It was accepted by the plaintiff after the evidence was taken at trial, that the question is not whether there is a system for Talent Appointments in GSK. Rather, the nub of the issue here is whether GSK could directly deploy Tess for the LT-1 role ("direct deployment process) without opening the LT-1 role for applications from other candidates ("open posting process").[58]

---

55 Tamara Rogers' Affidavit of Evidence in Chief ("Tamara's AEIC") at p 9.

56 Tamara's AEIC at [20]-[22].

57 Tamara's AEIC at [23]-[24] and [34]-[35].

58 26 September 2022 Transcript at p 37, lines 13 to 21.

80 I will deal first with the evidence relating to the direct deployment process, followed by whether there was any breach of the direct deployment process, before addressing Praveen's contention that he would have been selected if there was an open posting process.

Whether there is a direct deployment process in GSK

81 Tamara's evidence is that there is generally an open posting process, but direct deployments can be made as an exception. She adduced the Posting Policy that sets out the conditions under which direct deployments could be made.[59] The Posting Policy states that the company "may choose not to post a job when the following apply". This includes where "Qualified candidates have been identified through the Leadership Planning/Succession Planning/ Differentiated Development process internally". The Posting Policy also includes other situations which does not involve personnel considered by GSK as a Talent Appointment, for example, where the "job is part of a developmental or rotational programme".

82 Tamara's evidence on direct deployment is supported by the Posting Policy as well as contemporaneous correspondence. GSK's internal investigator Chris Dilworth ("Chris"), in his email to Praveen on 29 June 2020 ("Chris' email") informing him of the state of his investigations, stated that Tess's appointment was a "Talent Appointment". He refers to a "UK Postings" policy and indicates that he understands that the sentiments within it apply globally. What he cites is exactly the same as the first bullet point in the Posting Policy, namely that there could be direct deployment for qualified candidates identified

[59] Tamara's AEIC at pp 41-43.

through "Leadership Planning/Succession Planning/Differentiated Development process internally".

83 The plaintiff submits that Chris' email supports his case. He refers to a part of Chris' email, where he said that there appeared to have been no reference to the use of such appointments in the distributed literature and it might have been prudent to explicitly state that the company reserved the right to make Talent Appointments in advance.[60] However, when that email is read in full, it is clear that Chris was not saying that a direct deployment process for a Talent Appointment did not exist or that it was wrong to use it, but that the lack of reference to this in published materials offered opportunity for confusion.[61] Chris was making a critique of GSK's communications, but he did not question the existence of a direct deployment process for a Talent Appointment or its use.

84 The plaintiff also referred to the A&S HR Guidance to support his case. Tamara's evidence was that this document sets out the process in relation to open postings and does not preclude direct deployments for Talent Appointments. Tamara testified that a Talent Appointment could be part of an open posting, and when part of an opening posting, could be subject to the principles of this document. I accept that this is the proper reading of this document.

85 I make the following observations on the A&S HR Guidance that Praveen relies. First, it is unclear on the face of the document whether it is

---

60 Praveen's AEIC at p 67.

61 Praveen's AEIC at p 744.

binding. The header of the document reads "Guidance" and the last sentence in the document reads, "In all cases the business should consider what is fair and reasonable".[62] These suggest that the document is meant to provide guidelines and not binding instructions that GSK must comply with under all circumstances. The plaintiff accepts that this document is framed as "Guidance" but submits that as part of the document states that the "process will adhere to GSK Values, treat people fairly, respectfully and take place in a timely manner",[63] it should hence be done in accordance with GSK values and commitment.[64] I do not find that this sentence alone changes the entire nature of the document, such that it takes the document beyond what it is clearly titled as, namely "Guidance", rather than a binding set of HR instructions. Given that it is only "Guidance", it would be a stretch to say that a breach of its contents amounts to a breach of GSK's contractual obligations to its employees, whether read on its own or together with the GSK values and commitment.

86 Second, in any event, even if it is a binding set of HR instructions, I am of the view that the A&S HR Guidance does not preclude direct deployment of a Talent Appointment under the Posting Policy. Praveen relies on a line in that document that states: "If an open role/ new role has been created as part of the restructure, which you think you would be suitable for / which you would like apply for, you would be supported to apply via the usual GSK Vacancy/GSK Job Posting process."[65] However, this line is set out in a table that describes four most likely outcomes in the event of an organisational change, one of which is

---

62 4ABOD at p 2450.

63 4ABOD at p 2431.

64 26 September 2022 Transcript at p 33, line 7 to p 34, line 15.

65 4ABOD at p 2436.

that there is an "Open Role". The line that Praveen relies on is the description for such an outcome. Notably, the slide as a whole does not set out to define the posting processes, but merely highlights likely outcomes. Neither does it specify whether the "open role / new role" that is mentioned, applies to LT-1 or LT-2 roles or both. Nor does it state that there will be only open postings and that direct deployments are precluded.

87 I note also that there is a question in the FAQ to this document, asking "How do you treat employees who are Talent Appointments?" The answer given is "The TA would be considered with the aligned pool of employee".[66] The reference to "TA" in the FAQ suggests that Talent Appointments are recognised within GSK generally. The plaintiff accepted that on the basis of this document, there may have been a "TA" process but submits that "TA" postings would still have to be subject to the processes set out in A&S HR Guidance.[67] However, I find that this is not borne out by the document. It does not state definitively that Talent Appointments can only be posted as per the processes set out therein. It only mentions Talent Appointments as a part of the FAQ and using the phrase that a Talent Appointment "will not normally" have a home role.

88 Similarly, GSK's communications in the "A&S Approach LT-1 & 2", GSK's townhall meetings of May and June 2019 and the June LCP, do not exclude the possibility of a direct deployment process for a Talent Appointment.

---

66 4ABOD at p 2450.

67 26 September 2022 Transcript at p 35, line 23 to p 37 line 12.

89 Tamara's evidence of a direct deployment process is also supported by Rick. He testified that "this [direct deployment] is consistent with how we operated for years".[68] I found him to be a credible and reasonable witness, who provided candid responses that did not always follow GSK's case. His evidence adds further weight to what Tamara testified, as well as what the documents and correspondence show.

90 Moreover, LT-1 roles are very senior positions in GSK. They are one level down from the top leadership roles, which contains C-Suite appointments. It is not unbelievable that GSK would retain discretion to make direct appointments of such senior positions for talent management purposes.

91 As the primary materials that Praveen relies on do not support his case that GSK could not have carried out a direct deployment of a Talent Appointment, it is not necessary to go into how the absence of documentary records could show that there were other candidates including Praveen or show that Praveen was not less qualified than Tess.

Whether there was a breach of the direct deployment process

92 Praveen also objects to the direct deployment of Tess as a Talent Appointment, assuming that her deployment was valid, on the ground that Tamara, as the manager, failed to record her justification for not conducting an open application, as required by the Posting Policy.

93 I note that it is unclear on the wording of the Posting Policy, if it was intended to be a binding set of HR instructions. It is titled "Best practices for

---

[68] 29 July 2022 Transcript at p 25, lines 21-22.

global job posting". It also starts by saying "This document provides global guidance". Taken together, these lines suggest that the document sets out recommended practices which are not necessarily binding. The plaintiff accepts that this document is just for guidance.[69] However, if this document is only for guidance, then Tess's failure to keep documentation could not be regarded as being in breach of a binding HR policy. The plaintiff submits that there could still be a breach of GSK policy, in so far as it breaches the requirement in the Equality Policy[70] that managers "must" demonstrate "equal and inclusive treatment of employees".[71] As set out above, the use of the term "must" in the Equality Policy does not mean that this line should be regarded to be a binding obligation. Moreover, if the Posting Policy is only a best practice or guidance, as accepted by the plaintiff, that would also mean that there is no binding HR instruction that required Tess to keep documentation. It would only be a breach of a recommended practice or guidance. That would present a far weaker case for a breach of "equal and inclusive treatment", than a breach of binding HR instructions.

94 In any event, even if the Posting Policy was binding, under the Posting Policy, the "keeping" of such documentation is not couched as a condition that managers must fulfill before the Talent Appointment process can be used. The Posting Policy states that the "company may choose not to post a job when the following apply" and lists six situations in which the company may choose not to post a job. This is followed by the line "Managers who decide not to post a role based *on reasons listed above* should, following agreement with Human

---

69 26 September 2022 Transcript at p 38, lines 10-22.

70 Praveen's AEIC at p 189.

71 26 September 2022 at p 38, line 23 to p 39, line 23.

Resources, document their decision and record the justification for future reference" [emphasis added].[72] The documentation of such decision is phrased as a recommendation, and not a pre-condition to the use of the direct deployment. Therefore, under the Posting Policy, the lack of proper documentation does not negate GSK's decision to appoint specific candidates *via* direct deployment, under one of the listed situations.

Whether Praveen would have been selected under an open posting process

95 I will deal next with Praveen's contention that he would have been selected for the LT-1 role if there had been an open posting process.

96 Tamara's evidence is that GSK identified Tess as the person suitable for the role, considering her successes in GSK Consumer Healthcare's largest division and her wide experiences with global markets. Tamara testified that she would have found Tess more suitable even if she had the opportunity to consider Praveen. She explained that Tess joined GSK in 1995 and had significant experience in GSK Consumer Healthcare's largest and most successful division, Therapeutic Oral Health, which has footprints in more than 100 global markets. Tess had already started working on the Expert capabilities for other categories even before she was appointed as Global Head of Expert Marketing.[73] In contrast, Praveen joined GSK in 2014 and his experience relates to GSK's Digestive Health category, which is a small category of lesser strategic importance, and has a smaller global footprint. Praveen's experience was limited to India initially and Singapore thereafter. His experiences may not be

---

72 Tamara's AEIC at pp 41-42.

73 Tamara's AEIC, at pp 13-14.

sufficient for the role of the Global Head of Expert Marketing, which requires an understanding of the global markets.[74]

97 Praveen disputes Tamara's assessment that he did not have sufficient global experience. However, in his correspondence with GSK staff, Praveen acknowledges that such assessments of him were fair. For example, he told Rick that feedback he received from Tess that "[his] exposure outside India and Asia is minimal given nature of NDH business" is fair.[75]

98 Rick was also asked on his views of Tess. He said:

> I have thought about this, candidly, over the last couple of years this has gone on. To me, it was not a surprise that Tess Player was announced as the LT-1 leader in expert. Right? Once again, as I think about work that she's done -- like, we had a major focus on how do we measure and prove the ROI of an expert investment, which is significant. We're talking 2 millions of pounds here. She was leading a very broad, 3 multi-functional team for about 12 months, in addition to her other work, to go do that because we were trying to ensure that that investment was working. It was highly visible. She was involved with also the integration planning when we went from GSK to Novartis, so she was seen as a real thought leader in the company. So it did not surprise me that she was selected. So think about it from a business perspective. She had the largest category, seen as the most developed expert strategist. So all those arguments to me says that was a clear and -- I hate to say this -- obvious choice to me from where I sat. But, you know, I didn't know Praveen before that LT-1 selection, so I got to be fair about that as well.

99 The plaintiff submits that the justifications for Tess's appointment were developed after the event, and that he was discriminated as he had been told that he was the strongest contender for the Expert role. He also refers to strong

---

74 Tamara's AEIC at [40]-[42].

75 1ABOD at pp 515-516.

assessments and commendations about him, for example, winning the President & CEO award in 2017,[76] him being indicated as having a "research driven, best-in class profile" by Korn Ferry,[77] and Jayant stating in a feedback form that "Praveen's organization has consistently had the highest engagement scores across GSKCH. His teams love him."[78]

100 GSK does not dispute that Praveen was a good performer and that he received these assessments or awards. What GSK disputes is their officers telling Praveen that he was the strongest contender, or that he was such a strong contender that he would have been given the LT-1 role if he was included in the process, or given the LT-2 roles if not for the alleged discrimination.

101 Jayant, who was previously Praveen's line manager, testified that he did not recall telling Praveen that he was the strongest contender.[79] There was also no mention of Praveen being the strongest contender in the communications between GSK staff when Praveen was being put up for consideration by Unilever. During cross-examination, Praveen accepted that it was never said that he was the strongest candidate for Unilever. Jayant's testimony is consistent with the feedback form that he filled in for Praveen as part of the A&S process for LT-1 and LT-2 roles. He did not state there that Praveen was the strongest contender for expert roles.[80]

---

76 1ABOD at p 466.

77 1ABOD at p 491.

78 1ABOD at p 498.

79 Jayant Kumar Singh's Affidavit of Evidence in Chief at [32]-[33].

80 1ABOD at p 498.

102 The performance ratings given to Praveen also do not suggest that he would be regarded as the strongest contender for Expert roles. Praveen was given a "3 – Strong Performance" rating in his Year End Performance Review by a Prashant Pandey in 2014 and 2015. The assessment is done on a scale of "1" to "5", with "1" being the highest. A "3" would be in the middle.[81] Praveen received a "2" rating from Prashant Pandey for his performance in 2016[82] and a "3" rating for his performance in 2017 by Manor Kumar[83]. Tamara testified that the majority of GSK staff would get a "3" rating.[84]

103 In addition, Praveen testified that any assurance he received about being a strong contender was not in relation to any role but based on his CV. Rick explained that the staff assessment does not contain any comparative assessment. He also explained that GSK does not engage in cross-ranking of GSK officers. Praveen himself acknowledged that it would be difficult for a supervisor to assess the strength of his staff relative to other officers whose work they did not know.

104 In applying for roles, there would invariably be competition with others in the organisation who had not worked for Praveen's line manager. I find it unlikely that Jayant or Karen (who was in HR but not Praveen's supervisor) would have told Praveen that he was the strongest contender without knowing what role he was specifically applying for or who he was contending with for

---

81 Praveen's AEIC at pp 122-124.

82 Praveen's AEIC at p 125.

83 Praveen's AEIC at p 126

84 3 August 2022 Transcript at p 223, line 18 to p 224, line 3.

such a role. I accept Jayant's evidence that he did not make such assurances to Praveen.

105 In summary, on the evidence before the court, I do not find that GSK has breached the EA in selecting Tess over Praveen for the LT-1 role.

Whether there is a breach of the Employment Agreement from Praveen being passed over for the LT-2 roles

Parties' position

106 The plaintiff submits that GSK's failure to fairly consider Praveen for the LT-2 roles is a breach of the EA, particularly: (a) GSK's "A&S Approach LT-1 &2"; (b) GSK's communications to the attendees of the 29 May 2019 and June 2019 town hall; (c) the June LCP; (d) the Code of Conduct; (e) the Equality Policy; and (f) the Non-Retaliation Policy.

107 The plaintiff submits that through Tess and Rick, GSK failed to fairly consider Praveen for the LT-2 roles, passing him over in favour of appointees who were less qualified and were associated with Tess, as retaliation for probing into Tess's appointment to the LT-1 role. GSK's claim that because of the "geographic pooling principle", Praveen was eligible for only a single LT-2 role based in the USA, for which he was unsuitable, is unsupported by evidence.

108 GSK submits that there is no breach of the EA. Praveen was not selected for the LT-2 roles as he was unsuitable for them. At the outset, before the formation of the new Consumer Healthcare Joint Venture, the LT-2 marketing teams were based in different locations, including Weybridge (UK), Nyon (Switzerland), Singapore and Warren (USA). In forming the new Consumer Healthcare Joint Venture ("Consumer Healthcare JV") between GSK and

Pfizer, what was deemed to be fair and equitable was that individuals would only be allowed to apply for or be considered for roles in one geographic location (the "geographic pooling principle"). At the material time, Praveen was supporting both the Pain Relief Category and the NDH Category. In this regard, following the formation of the Consumer Healthcare JV, it was intended that the NDH category would no longer exist, and a new Wellness category would be based in Warren (USA). On the "geographic pooling principle", Praveen could only be considered for Wellness roles based in the USA. He was included in the pool of eligible candidates there for the LT-2 role of Expert Lead on Wellness, as he was then the Expert Lead for NDH.

109 Rick and Tess interviewed Praveen for the position of the LT-2 role of Expert Lead on Wellness. Following the interview, they concluded that Praveen was not suitable for two reasons.[85] First, the role was a Grade 5 role and Praveen was previously in a Grade 4 role. GSK would have exceeded costs for that role by placing an employee who was in a more senior Grade. Second, the LT-2 Expert Lead on Wellness role required less traditional healthcare professional marketing (which Praveen was more experienced in) but more health influencer digital work, as well as prior experiences in USA or China.[86] The interview feedbacks were relayed to Praveen, which he acknowledged were "pragmatic and based on fair and transparent evaluation".[87]

110 GSK denies Praveen's allegation that he had not been fairly considered by Tess for the LT-2 roles because of her prejudice against him stemming from

---

85 Tracey's Margaret Hort Player's Affidavit of Evidence in Chief ("Tess's AEIC") at [25], [31], [34] and [37]; Rick's AEIC at [36].

86 Tess's AEIC at [39].

87 Praveen's AEIC at p 584.

his probe into her LT-1 appointment. Tess was not aware at the material times that Praveen had probed into the propriety of her appointment to the new LT-1 role.[88]

111 GSK denies Praveen's allegation that he was passed over for the LT-2 roles in favour of nine appointees associated with Tess despite them being less qualified and having less market exposure than him. The evidence does not bear out Praveen's claim that the nine were mostly of British nationality or from Tess's team. Among the nine appointees identified by Praveen:

(a) Ms Nadeen Jibry and Ms Jo Franklin were not part of the LT-2 A&S process. They were part of the LT-3 process and were assessed for roles based in Weybridge, which Praveen was not eligible to be considered for under the geographic pooling principle. They were appointed to LT-3 roles, which Praveen was not keen on.[89]

(b) Ms Janan Ranjan was not selected in the A&S process for a LT-2 role and was eventually made redundant. There is no basis for Praveen to draw any comparison with Ms. Ranjan.[90]

(c) Ms Sandhya Sud applied for the role of Global Marketing Director for Expert when it became an open role and was appointed to the role. Praveen did not apply for this role when it became an open role. This was a LT-3 role, which Praveen was not keen on.[91]

---

88 Tess's AEIC at [44] and [45].

89 Tess's AEIC at [47] to [50], [51] to [54].

90 Tess's AEIC at [55] to [56].

91 Tess's AEIC at [57] to [61].

(d) The remaining five appointees (Ms Kavita Sud, Ms Sabrina Sharpe, Mr Stephen Glynn, Ms Jessica Bobet and Ms Heather Pelier) were appointed to LT-2 roles which Praveen was not eligible for under the geographic pooling principle, as they were either based in Weybridge (UK) or Nyon (Switzerland). GSK also submits that it is not fair to say that the appointees to the various LT-2 roles were less qualified or had less market exposure than Praveen.[92]

My decision

112 In the plaintiff's Closing Submissions, his submissions on GSK's breaches regarding the LT-2 roles substantially diverged from his pleaded case. In his Statement of Claim at paragraphs 50 to 54, he pleaded that GSK's breaches were that: (a) Praveen was passed over for the LT-2 roles in favor of appointees associated with Tess or their British nationality despite them being less qualified and having less market exposure than him; (b) Praveen was not fairly considered by Tess for LT-2 roles because of Tess's prejudice against him stemming from his probing into the propriety of her appointment to the new LT-1 role; and (c) there was systemic discrimination against personnel of Asian nationalities or minority descent.[93]

113 In the plaintiff's Closing Submissions, Praveen did not submit on the above pleaded claims. Instead, his submissions focused on the following: (a) GSK did not comply with "A&S Approach LT-1 & 2", which the plaintiff submits sets out the policy for the LT-2 application process; (b) there was no basis for GSK to rely on the "geographic pooling principle"; (c) GSK's claims

92 Tess's AEIC at [62] to [82].

93 Statement of Claim at [51]-[54].

that the unfilled roles became open roles should not be believed; and (d) Praveen was more qualified than the other LT-2 candidates that were selected.

114 I will first examine Praveen's case on the basis of what he had pleaded, before examining his case as based on his Closing Submissions, which differed from his pleadings.

Praveen's pleaded case

115 Unlike the LT-1 Role, Praveen was invited to participate in the A&S process for the LT-2 role. He completed his online psychometric test and attended interviews with Tess and Rick. After the interview, Praveen received feedback that he might not be considered for the LT-2 role because there were specific skillsets that he did not have, that he was overqualified and underqualified in some respects for the roles; that his exposure to markets outside of India and Asia is limited; and that his networking and business development efforts required improvement.[94]

116 Contrary to Praveen's allegations, the email correspondence does not suggest that Tess had any ill-intentions toward Praveen or that she was trying to "get back" at him for probing about the inappropriateness of her appointment. Tess stated that she did not even know that Praveen had probed into the propriety of her appointment to the new LT-1 role and that she was only made aware in the course of these proceedings.[95] The plaintiff submits that the email correspondence in February 2020 where Tess was copied on an update about his complaint, shows that Tess was lying about when she learnt about his

94 Praveen's AEIC at pp 51-52.

95 Tess's AEIC at [45].

complaint. The plaintiff highlights that the email also stated that the "outcome was subsequently in conversations with Rick and Tess as well" and submits that it cannot be true that Tess was only aware of Praveen's complaints in the course of these proceedings. Tess's evidence was that she did not recall this email and that Ruth had not spoken to her about this.

117 I do not find this to be a material inconsistency, such that Tess's evidence that she did not know of the allegations at the time of the LT-2 appointments should be doubted. Even on the email correspondence, the earliest that Tess could have known of Praveen's complaints was in February 2020, about five to six months after the LT-2 roles were decided on.[96]

118 Praveen further submits that GSK HR had not shown the ability to keep his identity confidential and it is therefore likely that Tess was informed around June 2019. However, this is purely speculation. The email exchanges indicate that Tess recognized Praveen's contributions in driving the "step-change in their expert programme" and sought direct feedback from his manager, Jayant, for his views on Praveen. The email exchange between Rick and Tess dated 26 July 2019 shows that she wanted to put Praveen up for consideration for the Expert Lead on Wellness role, which was based in the USA, despite Rick's reservations. Jayant was also copied in this email. The material aspects of the exchange are set out below:[97]

> Rick: I see you have included Praveen Nair in the talent pool for Expert Lead on Wellness. I don't know Praveen, but I would like to understand why you think he should be included? I believe this role needs to be located in the USA … if so, I am not sure we would consider an

[96] Ruth's AEIC at p 161.

[97] Tess's AEIC at pp 112-113.

> international transfer to fill the role? Seems like a very expensive proposition.
>
> Tess: I included Praveen as he is currently the Expert lead for NDH, reporting to Jayant. He is based in Singapore on a localized package… For background, he was the Expert lead (all categories I think) in ISC driving the step-change in their expert programme, the benefits of which are now being reaped.
>
> …
>
> Jayant - it would be great to get your perspective on him, did you do his line manager report?

119 The evidence does not show that Tess and Rick were simply going through the motion with no intention to fairly consider him for the role when they interviewed him. The "Hiring Manager Report" dated 24 June 2019, which was produced for Praveen's interview, analyzed in detail his behavioral competencies, traits, and drivers.[98] Feedback from Praveen's former manager, Jayant, was also considered.[99] There is evidence that Tess and Rick discussed after the interview and reached a consensus that Praveen was not suitable.[100] The evidence indicates that Tess and Rick had properly considered Praveen's application but came to a business decision that he was not suitable.

120 In relation to the other GSK officers who were appointed to the LT-2 roles ahead of Praveen, the plaintiff objected on the ground that there is no policy for auto-elevation of LT-3 personnel to LT-2 simply because their supervisor has been "promoted".[101] However, there is no evidence that the LT-3 personnel were promoted to LT-2 roles simply because their supervisor, Tess,

---

98 Tess's AEIC at pp 97 to 105.

99 Tess's AEIC at p 107.

100 Tess's AEIC at p 117.

101 PCS at [104].

had been promoted. Neither has the plaintiff pointed to any policy that prevents LT-3 personnel from taking on LT-2 roles.

121 The other dimension of the plaintiff's objection is that the personnel appointed to LT-2 roles were appointed because of their close association with Tess or their British nationalities.[102] However, the evidence does not bear this out. Tess testified that four of the nine appointees were not in her former team and did not report directly or indirectly to her.[103] Furthermore, out of the nine appointees, while four are of British nationality, the rest came from diverse backgrounds, including Kuwait, Germany, Singapore, Canada and Switzerland. For instance, Ms Sandhya Sud, one of the appointees, is a Singapore national who was not in Tess's former team and did not report directly or indirectly to Tess.[104] Tess also testified that in Weybridge itself, there were people of other nationalities and ethnicities.[105] For completeness, while the plaintiff pleaded that there was systemic discrimination against persons of Asian nationalities, including himself, the plaintiff did not substantiate this pleading and abandoned this point in his Closing Submissions.

Praveen's unpleaded case

122 I will next examine the plaintiff's submissions, based on his unpleaded case in the Closing Submissions.

---

102 Statement of Claim at [50].

103 Tess's AEIC at pp 24 to 36.

104 Tess's AEIC at [57].

105 4 August 2022 Transcript at p 160 line 3 to p 161 line 6.

123 The plaintiff relies on a document "A&S Approach LT-1 & 2".[106] The defendant objects to this as the breach of this document was never pleaded. Paragraph 13 of the Statement of Claim ("SOC") sets out the Policies that the plaintiff relied on. The document "A&S Approach LT-1 & 2" is not one of such documents. Furthermore, paragraph 16 of the SOC only refers to the defendant being bound by the ITMTC to abide by GSK "*Policies*" [emphasis in original]. This phrase "*Policies*" is defined at paragraph 13 of the SOC, which does not include the "A&S Approach LT-1 & 2" document. It is trite law that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue: *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 142 ("*V Nithia*") at [38]. *In Poh Lian Construction (Pte) Ltd (in liquidation) v Lauw Wisanggeni and others (Chia Quee Hock and others, third parties)* [2019] SGHC 114 ("*Poh Lian*") it was held at [75] that it is only in very rare circumstances where "no prejudice is caused to the other party" or where "it would be clearly unjust for the court not to do so" that a court should decide on the basis of unpleaded issues or claims, and that this is a high bar to meet.

124 The plaintiff responds that *V Nithia* only applies where a party is advancing an entirely new case at trial. In *V Nithia*, it was found that the pleaded claim did not support a claim based on proprietary estoppel but one based on resulting trust. The claims involved significantly different factual underpinnings and involved more than pure issues of law. The plaintiff submitted that his pleading in relation to GSK policies is a general one, as he pleaded that GSK policies under cl 5.2 of the LOA "include all existing policies of GSK".

---

106 3ABOD 1556-1574.

125 I note that the decision in *V Nithia* precludes matters "that the parties themselves have decided not to put into issue". The plaintiff has set out the GSK policies relied on at paragraph 13 of the SOC. His case on the breach of GSK policies in relation to the ITMTC, is stated at paragraph 16 of the SOC, which references paragraph 13 of the SOC. The "A&S Approach LT-1 & 2" is not mentioned in paragraph 13 of the SOC. In my view, given the breadth of GSK policies, it cannot be said that all the GSK policies were put into issue with respect to all aspects of the plaintiff's claim, simply because he pleaded that GSK policies under cl 5.2 of the LOA included all of GSK's policies. That was in relation to the coverage of cl 5.2, and not his claim for breaches in relation to LT-2 roles. The plaintiff would have to specify which policy was breached by GSK for the LT-2 roles, in order for the defendant to know the case that it had to meet. That there was a breach of the processes set out in "A&S Approach LT-1 & 2" in relation to LT-2 roles is effectively a new case, which was not made in the pleadings. The claim that GSK had breached the "A&S Approach LT-1 & 2" was not even mentioned in Praveen's affidavit of evidence in chief ("AEIC"). I hence agree with GSK that the unpleaded breach of "A&S Approach LT-1 & 2" in relation to LT-2 roles should not be taken into account.

126 In any event, I have also assessed the alleged breach of the "A&S Approach LT-1 & 2", assuming that this claim was allowed, and find that it does not advance the plaintiff's case. The document was enclosed as an attachment to an email in March 2019 from Paul Creedon to a small group of recipients within GSK.[107] The email said that it enclosed "some pre-reads to help guide our team session next Tuesday regarding the JV". The document itself started with

[107] Praveen's AEIC at p 447.

a disclaimer, that the "following pages contain data and analysis to be shared for planning purposes only, and which should not be shared further".[108]

127 The document ends with a caveat that "This document is exchanged in view of ongoing work and discussions on options for the future JV... Its contents are confidential and should not be disclosed to any unauthorised persons and will be used only for the purpose of integration planning". Thus, on the plain face of the document, it was only for planning and discussion purposes.

128 Tamara also explained that the contents of the document were intended to apply to roles that had not been filled pre-closing.[109] Tess testified that she did not rely on this document,[110] and was not even aware of it at the time that she was doing the LT-2 A&S process.[111]

129 I find that the document "A&S Approach LT-1 & 2" was not circulated generally nor was it intended to be applied as binding instructions to the LT-2 roles that Praveen sought.

130 The second plank of the plaintiff's argument (based on his unpleaded case), is in relation to the "geographic pooling principle". The plaintiff makes a preliminary objection that this was not pleaded by GSK despite it being a material fact, and the defendant should not be allowed to rely on this principle or it should be given little weight.

---

108 Praveen's AEIC at p 450.

109 3 August 2022 Transcript at p 119, line 2 to line 4.

110 4 August 2022 Transcript at p 138, lines 17 to 22, p 144 line 25 to p 145 line 1.

111 4 August 2022 Transcript at p 140, lines 7 to 11.

131 The defendant submits that it is disingenuous for the plaintiff to depart from its pleaded case and argue that the "geographic pooling principle" was not made known earlier. The plaintiff had requested in HC/SUM 3641/2021 for the specific discovery of documents relating to "the requirements of the LT-2 roles and the dissemination of these requirements to all potential LT-2 candidates ahead of their scheduled interviews". This was denied by the court on the basis that it is not the plaintiff's pleaded case that the plaintiff was unfairly treated because the defendant had not disclosed the requirements of the LT-2 roles to him.

132 While the plaintiff submits that the "geographic pooling principle" was in response to the SOC at paragraph 51, he accepted that even on this basis, it would only be indirectly related.[112] I note that the plaintiff's pleaded case on LT-2 roles revolves around Tess's alleged prejudice because of Praveen's probe into her appointment, the other candidates being associated with Tess and of British nationality and systemic racial discrimination. The "geographic pooling principle" was not a material fact that directly responded to these claims. I accept the defendant's submission that it supports the defendant's further averment that the plaintiff is not suitable for the LT-2 roles, but it was not made in direct response to the plaintiff's pleaded claims. Hence, the defendant should not be faulted for not pleading the "geographic pooling principle".

133 In any event, the plaintiff's case is not advanced, even if the defendant is not allowed to rely on the "geographic pooling principle". The plaintiff's unpleaded case, is that there is a breach of the processes set out in "A&S Approach LT-1 & 2". As I have found above, the "A&S Approach LT-1 & 2"

---

[112] 26 September 2022 Transcript at p 42, line 22 to p 46, line 6.

was only a planning document with limited circulation and not intended to apply as binding instructions for the LT-2 roles. Thus, GSK could not be said to be in breach of it. Given that the processes set out in "A&S Approach LT-1 & 2" are not a source of breach, whether there is a "geographic pooling principle" or not, becomes immaterial.

134 The plaintiff further submits that if Tess's evidence on the "geographic pooling principle" is accepted, that principle discriminated against Praveen. However, the evidence is that the "geographic pooling principle" did not result in the loss of roles that Praveen could apply for in Weybridge. Tess testified that the "geographic pooling principle" was a principle that GSK HR guided them on.[113] However, only a few roles in Weybridge were filled through the A&S process. The other available roles then became open roles.

135 Praveen claims that the open roles were never published or advertised.[114] Tess testified that all open roles, and not just the ones for Expert, were in fact posted on the intranet.[115] As an example, her AEIC contains an Excel spreadsheet which shows the number of candidates that applied for the open roles.[116] The plaintiff submits that Tess's evidence that all open roles were posted on the GSK Intranet should be disbelieved because it was not pleaded. The defendant's response to this is similar to that made in relation to the plaintiff's submission that the "geographic poling principle" was not pleaded.

---

113 4 August 2022 Transcript at p 153, lines 9 to 19.

114 27 July 2022 Transcript at p 168, lines 1 to 15; 4 August 2022 at p 155 lines 15 to 17.

115 4 August Transcript 2022 at p 155 lines 18 to 20, p 161 lines 7 to 19.

116 Tess's AEIC at p 171.

136 As set out earlier, Tess's evidence on the "geographic pooling principle" is not a material fact in response to the plaintiff's pleaded case. Neither is Tess's evidence on the posting of open roles on the intranet. It arose from her response to the plaintiff veering into a new alleged breach for LT-2 roles, namely discrimination in the application of the "geographic pooling principle". Hence, I find that it is not a matter that had to be pleaded by the defendant.

137 In any event, Tess did provide documentary support in her AEIC, in an email from a Mr Glynn to Tess dated 28 October 2019, which refers to "Job Requisition ID 229224", by which Mr Glynn submitted his application, "using the documents attached on Workday".[117] Mr Glynn's cover letter which similarly contains a reference "Ref: 229224 Global Expert Lead - Channel Planning and Conversion", in which Mr Glynn was "writing to apply to the role referenced above".[118] This supports Tess's evidence that there were open roles and Praveen did not apply for them.

138 In summary, I do not find that GSK breached the EA when Praveen was passed over for the LT-2 roles.

Plaintiff's unpleaded claim that GSK breached its Non-Retaliation Policy and internal investigation policy

139 In the plaintiff's Closing Submissions, the plaintiff submits that GSK breached its Non-Retaliation Policy and internal investigation policy. However, while the events relating to the "Speak-Up" inquiry were pleaded at paragraphs

---

117 Praveen testified that the reporting hierarchy of employees could be seen from Workday and that he had taken screenshots from Workday; 27 July Transcript 2022 at p 154 lines 20-21, p 155 lines 1-2, p 174 lines 6-9; 28 July Transcript 2022 at p 105 lines 8-18.

118 Tess's AEIC at p 149 and 152.

64 to 70 of the SOC, the plaintiff did not advance any claim in relation to this. This is clear from his claims as set out in the SOC at paragraphs 81 to 85, which do not reference paragraphs 64 to 70 of the SOC when advancing his claims.

140 GSK submits that if the plaintiff had properly pleaded his claim regarding the "Speak-Up" inquiry, they may have called Chris, the internal investigator to give evidence. It would hence be prejudicial to GSK for this unpleaded claim to proceed. I agree with GSK. The plaintiff subsequently clarified during oral submissions that the "Speak-Up" Inquiry did not constitute a separate head of claim, and that it was raised only in support of the alleged breaches in relation to LT-2 roles.[119]

Whether there is a breach of the Employment Agreement from Praveen's shorter notice period

Parties' position

141 The plaintiff submits that GSK's accordance of an effectively shorter notice period to him compared to other retrenched GSK staff, in the absence of any justifiable basis for the difference, is a breach of the EA, particularly the Code of Conduct, the Equality Policy and the Non-Retaliation Policy.

142 The plaintiff notes that in Ms Pakhi Rusia's case, GSK admitted that she was effectively given a longer notice period than Praveen. While GSK alleges that some employees such as Mr Saurabh Nandi were given longer notice periods because of business needs, GSK has not adduced any supporting evidence.

---

[119] 26 September 2022 Transcript at p 45, lines 6 to 13.

143 GSK submits that there is no breach of the EA. Praveen was given the notice period as contractually provided for in the EA. He was not unjustifiably treated as compared to other employees. In any event, the EA does not impose any obligation on GSK to accord the same notice periods to Praveen and other individuals. The notices of redundancy were issued to employees affected by the restructuring on different dates. The notice period would begin from the date of the issuance of the relevant notice of redundancy. The different dates on which the notices of redundancy were issued arose because GSK eliminated the roles in a gradual manner, rather than in one instance.[120] To the extent that the last day of employment of other individuals (for example, Mr. Saurabh Nandi) were extended, there were certain business needs, *ie*, special circumstances which required the extension of the notice period which distinguished their case from Praveen's case.[121] Further, the notice periods of individuals who were employed by GlaxoSmithKline's subsidiary in India (in the case of Mr Arindam Som and Mr Vijay Sharma) are not relevant as they were not employed by GSK.[122]

My decision

144 Clause 10 of Praveen's EA clearly provides that his employment may be terminated by either party by giving three months in writing, without a need to provide the reason for doing so.[123] Despite being contractually required to

---

120 Rick's AEIC at [81]; Ruth Tan Woon Huay's Affidavit of Evidence in Chief ("Ruth's AEIC") at [35].

121 Rick's AEIC at [69] and [83].

122 Rick's AEIC at [84].

123 Praveen's AEIC at p 103.

only give three months' notice for termination without notice, GSK gave him an extension, providing him six months' notice.

145 I find that Praveen's allegation that he was discriminated as other retrenched GSK Personnel had longer notice periods, is unfounded. The Redundancy Notice issued to Ms Pakhi Rusia was dated 4 May 2020, which meant that she had around three months of notice before her last day on 10 August 2020.[124] While there is little information on the date of the Notices of Redundancy for Mr Arindam Som and Mr Vijay Sharma, the date of the letter to Mr Arindam Som suggests that he was informed of his redundancy on 13 March 2020, which meant that he too, only had three months' notice before his last day on 30 June 2020.[125] This meant that Praveen was actually given a *longer* notice period than Ms Pakhi Rusia and Mr Arindam Som. For Mr Saurab Nandi, his Notice of Redundancy was dated 7 January 2020, which meant that he was given 8 months before his last day of employment on 30 June 2020. However, Rick explained that GSK had certain business needs which required the extension of his notice period.[126]

146 Praveen accepted during cross-examination that the contractual notice period did not differ significantly for the GSK staff he highlighted. He then contended differently, that his complaint is that some were allowed to stay on longer for personal rather than operational reasons. However, Praveen himself was given an extension, from 14 April 2020 to 30 June 2020. GSK's staff, Jeen Sim, explained to him in her email that GSK gave him an extension to 30 June

---

124 Rick's AEIC at [82]; pp 437-438.

125 Praveen's AEIC at p 660.

126 Rick's AEIC at [83].

2020 even if there was no business requirement, because of the Covid-19 situation. Beyond that, there would have to be business needs.

147 Ultimately, Praveen did receive an extension to 30 June 2020, despite there being no contractual obligation or business need on the part of GSK to do so. Nor is there evidence that GSK treated Praveen unfairly in relation to his notice period, as retaliation for probing into GSK's alleged improprieties regarding the LT-1 and LT-2 roles appointments. In the circumstances, I find that the length of Praveen's notice period cannot be said to be in breach of the EA.

Whether there is a breach of the Employment Agreement in GSK's computation of Praveen's severance payment

Parties' position

148 The plaintiff submits that the way GSK computed his severance payment results in a shortfall of $148,809.83. This is in breach of the EA, particularly the Code of Conduct and GSK's HR practices on severance payments, which Ms Ruth Tan ("Ruth"), the former Regional Human Resources Manager of GSK, communicated to Praveen.

149 The plaintiff claims that GSK, through Ruth, confirmed that it would pay Praveen severance payment of one month's salary per year of service according to the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment ("Retrenchment Advisory"). MOM confirmed that "salary" under the Retrenchment Advisory is defined under s 2 of the Employment Act, which includes various other components of Praveen's remuneration (including allowances) over and above the basic pay. GSK's

computation of the severance payment due to Praveen, which is based only on the Praveen's base salary, is therefore a breach of the EA.

150 GSK submits that there is no breach of the EA. In the first place, Praveen is not contractually entitled to any severance or redundancy payments. The EA does not contain any provisions which require GSK to make any severance payments to Praveen.[127]

151 The computation of Praveen's severance payments was based on Praveen's basic monthly salary (which was GSK's practice in Singapore), subject to conditions to be fulfilled. In this regard, the February Redundancy Notice issued to Praveen set out the severance package which he would receive as part of the redundancy process.[128] It was provided that upon Praveen's signing and return of a "No Claims Acknowledgement and Undertaking" form which was enclosed with the February Redundancy Notice and Praveen's compliance with the terms in the February Redundancy Notice (read together with the January Redundancy Notice), he would be entitled to: (a) a severance payment of $144,716; and (b) pro-rated performance bonus of $35,781.70. The computation of the severance payment of $144,716 set out in the February Redundancy Notice was based on GSK's HR internal guidelines for Singapore, in particular, GSK's redundancy policy for Singapore. This provided that severance payments to employees shall be based on the employee's monthly basic salary (in particular, one month's basic salary for each completed year of service). The formula would have been the product of the tenure of the employee's employment at GSK in years, and the monthly basic salary of the

127 Rick's AEIC at [96] to [97].

128 Ruth's AEIC at [39] to [40].

relevant employee. In Praveen's case, the severance payment of $144,716 was derived based on the number of years from 13 June 2014 to 30 June 2020 (6.05 years), multiplied by Praveen's monthly salary of $23,920, which amounts to $144,716.40.

152 GSK submits that Praveen's claim that he was entitled to a larger sum of severance payment based on Retrenchment Advisory is without merit.

153 First, there is no basis for Praveen to rely on Ruth's WA message for his allegation that GSK "abides" by the Retrenchment Advisory. Ruth's message does not create a contractual agreement or entitlement.

154 Second, the Retrenchment Advisory does not impose statutory obligations on employers in any manner. It expressly states that it is only meant to "assist and guide" employers: "The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment aims to assist and guide employers in managing their excess manpower, preserving jobs and conducting retrenchment exercises responsibly". In *Han Hui Hui and others v Attorney-General* [2022] SGHC 141, the court held that an advisory issued by the Tripartite Alliance regarding COVID-19 vaccination at workplaces did not (a) have the force of law; (b) amount to a policy directive; or (c) carry any legal effect: [56]–[60]. In a similar vein, the Retrenchment Advisory does not amount to a policy directive or have legal effect. At its highest, the Retrenchment Advisory only provides guidance to employers regarding how they may (if they wished to) pay retrenchment benefits to their employees. Nothing in it directs or compels employers to pay retrenchment benefits to employees.

155 Third, and in any event, GSK's computation of severance payment is aligned with the Retrenchment Advisory's benchmark for "2 weeks to one month salary per year of service, depending on the financial position of the company and taking into consideration the industry norm." As explained in Ruth's WA message to Praveen dated 7 December 2019, GSK provides for the "top end" of the guidelines set out in the Retrenchment Advisory.[129] Given that, GSK computes severance payment on the basis of one month's base salary per year of service.

My decision

156 I find that there are no merits to this claim. First, the Code of Conduct states that GSK will "work to comply with the strictest requirements". This is not phrased in mandatory terms. It only states that GSK will try to meet the highest standards but makes no promises that GSK is obliged to meet the highest standards prescribed by legal regulations.

157 Second, the Retrenchment Advisory does not provide mandatory guidelines. It merely provides that if there is no provision as to the retrenchment benefit, the quantum is to be *negotiated* between the employees and the employer. The "2 weeks to one month salary per year of service" is merely the *prevailing norm* for retrenchment benefits and is in no way binding on GSK.

158 Third, I accept Ruth's evidence that Praveen misunderstood her WA message, as that message only sets out that GSK considers the government guidelines (including the Retrenchment Advisory) as a benchmark in respect of the multiplier used (*ie*, two to four weeks per year of service as indicated in the

---

129 Ruth's AEIC at [41].

Retrenchment Advisory). Ruth did not commit in any way to computing Praveen's severance in a particular way, or commit to what comprised the base compensation to be applied to the multiplier.[130]

159 The plaintiff's main complaint is that the calculation only included his basic monthly salary, and not the other various components of his salary. However, there is no requirement for GSK to follow the Retrenchment Advisory or adopt the legal definition of "salary" under the Employment Act.

160 I therefore find that GSK's severance payment to Praveen is not in breach of his EA.

Whether GSK is liable to Praveen for $49,503.21

161 The plaintiff claims the sum of $49,503.21, which GSK withheld to satisfy any tax payable to IRAS on Praveen's behalf. Praveen's June 2020 pay slip shows that GSK withheld $180,497.70. It is undisputed that GSK paid Praveen's income taxes for YA2020 ($49,494.57) and YA2021 ($81,499) in the total sum of $130,993.57.

162 This leaves the sum of $49,503.21 that is still withheld by GSK. There is no evidence that there were further taxes that GSK paid on behalf of Praveen. However, GSK submits that Praveen is still not entitled to this sum, as he is not entitled to any severance payments in the first place. This is because Praveen did not sign the No Claims Form, when it is a specific requirement of the Redundancy Notices that the GSK severance payment would be paid out only

130 Ruth's AEIC at [42], [44].

on Praveen's signing of the No Claims Form.[131] The plaintiff did not respond to this in its opening statement or written submissions. As there is an explicit requirement in the Redundancy Notices that Praveen is entitled to payment of severance payment only if he signs the No Claims Form, and this has not been met, I find that the plaintiff is not entitled to the $49,503.21, which the defendant had withheld.

Whether Praveen is liable to GSK for GSK's counterclaim for $95,211.87

Parties' Position

163 The defendant counterclaims against the plaintiff for the sum of $95,211.87. GSK's case is that sums were credited to Praveen in excess of what he is legally entitled to. As Praveen did not sign the No Claims Form, he is not entitled to any severance payments. The severance sum reflected in Praveen's June 2020 pay-slip and the payment of $130,993.57 to the IRAS on Praveen's behalf was a result of a mistake.[132] Based on GSK's calculations, the sum of $95,211.87 had been overpaid to Praveen.[133]

164 Praveen submits that he is not liable to GSK for the counterclaim amount. Even if GSK was mistaken in crediting the severance payment to Praveen, he has since changed his position and would be prejudiced if GSK's claim for unjust enrichment is allowed. Alternatively, GSK is estopped from now contending that Praveen's signing of the No Claims Form was a prerequisite for the severance payment.

---

131 Agreed Bundle of Documents, Vol 2 at pp 639 and 728.

132 Rick's AEIC at [118].

133 DCC at [60]-[67].

My decision

165 GSK's basis for its counterclaim is that it was mistaken as to the fact that the plaintiff did not sign the No Claims Form. To succeed in this, GSK must show that (a) Praveen had been enriched; (b) the enrichment was at the expense of GSK; (c) the enrichment was unjust; and (d) there are no relevant defences to the claim: *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Singapore Swimming Club*") at [90].

166 GSK relies here on mistake of fact, which is a well-established unjust enrichment factor. In *Singapore Swimming Club*, the Court of Appeal set out at [94] the following principles:

> (a) First, the claimant must prove that it had made a mistake, in that it believed that it was more likely than not that the true facts were otherwise than they in fact were.
>
> (b) Second, the claimant must show that its belief caused it to confer the benefit (*ie*, the severance payment) to the defendant – there must be a causative mistake.
>
> (c) Third, a claimant may still be denied relief if it had responded unreasonably to its doubt or unreasonably ran the risk of error.
>
> (d) Fourth, a claimant who had doubts may be denied relief on the distinct grounds that he has compromised or settled with the defendant, or on the basis that he is estopped from pleading the mistake.

167 On the evidence, GSK was aware that Praveen had reservations about the No Claim Forms. Praveen informed Ruth about this.[134] Ruth testified that she does not know if Praveen ultimately signed the No Claim Form as she moved to a new role within GSK on 15 April 2020. The email exchange between Ruth and Praveen was copied to Ms Lim Ai Hwa on 2 April 2020.[135] She was Ruth's manager and remained in GSK until June 2020.

168 Despite having notice about Praveen's reservations about signing the No Claims Form, GSK proceeded to make two payments. First, the payment to IRAS for withholding tax in respect of Praveen's severance payment. Second, to credit part of the severance payment to Praveen. There is no evidence that GSK was mistaken that Praveen had signed the No Claim Forms when it made the severance payment. In the absence of such evidence, it could also have been that GSK chose then to make such payment, and only decided to dispute the severance payment when Praveen brought his suit against GSK. I find that GSK has not proven that on the balance of probabilities, it made the payment under a mistake.

169 Furthermore, even if GSK was mistaken that Praveen had signed the No Claim Forms, I am of the view that it unreasonably ran the risk of error by proceeding with payment of the severance sum without ascertaining if the No Claims Form had in fact been signed. I therefore dismiss GSK's counterclaim against Praveen.

---

134 Ruth's AEIC at [47].

135 Ruth's AEIC at p 122.

Conclusion

170 In conclusion, I dismiss the plaintiff's claims against the defendant for breach of the EA leading to Praveen not being able to secure roles in Unilever, or the LT-1 and LT-2 roles in GSK. I also dismiss the plaintiff's claim against the defendant for the sum of $49,503.21 withheld by the Defendant. I dismiss the defendant's counterclaim against the plaintiff for the sum $95,211.87.

171 I invite submissions on costs, including quantum, which are to be filed within 8 days from the date of this judgment.

Kwek Mean Luck
Judge of the High Court

Vikram Nair, Foo Xian Fong and Glenna Liew (Rajah & Tann Singapore LLP) for the plaintiff;
Ang Hsueh Ling Celeste, Kwong Kam Yin, Tan Yi Wei Nicholas and Lim Jia Ren (Wong & Leow LLC) for the defendant.