



Claim No: CFI-004-2017

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

**IN THE COURT OF FIRST INSTANCE
BEFORE THE DEPUTY CHIEF JUSTICE SIR DAVID STEEL**

BETWEEN

THE ESTATE OF CHRISTOS PAPADOPOULOS

Claimant

and

STANDARD CHARTERED BANK

Defendant

Hearing: **14 January 2018**
Counsel: Bushra Ahmed of KBH Kaanuun for the Claimant
Farhaz Khan instructed by Baker McKenzie Habib Al Mulla for the Defendant
Judgment: **27 February 2018**

JUDGMENT OF THE DEPUTY CHIEF JUSTICE SIR DAVID STEEL

Summary of Judgment

Deputy Chief Justice Sir David Steel (the DCJ) granted the Defendant's application for immediate judgment on the Claimant's claim and struck out the Defendant's counterclaim.

The Claimant sought damages from the Defendant bank ("SCB"), the former employer of Mr P. (now deceased) arising from a failure to pay him a discretionary bonus for 2015. The Claimant valued the bonus in the amount of USD \$1,067,000. Mr P. had been made redundant in December 2015 and his employment contract was governed by DIFC law.

Following notice of Mr P's potential redundancy, the parties had entered into negotiations and by a settlement agreement SCB had agreed to pay the sum of USD \$1, 514, 611 by way of compensation. The Claimant's position was that, pursuant to clause 13 of the Settlement Agreement, he was eligible to be considered for a bonus and SCB's decision not to award one was perverse, irrational and/or in bad faith and thus in breach of contract.

SCB's case was that it was entitled to immediate judgment in the claim and its counterclaim on the basis that the Claimant had no real prospect of succeeding on the claim and/or no real prospect of successfully defending its counterclaim that by virtue of Clause 17 of the Settlement Agreement (which provided that if Mr P instituted any proceedings against SCB in respect of matters covered by clause 14, he would be liable to repay to the Bank the compensation payment under the Settlement Agreement) it was entitled to recover the sums paid under the Settlement Agreement.

The DCJ adopted Justice Roger Giles' approach to an application for an immediate judgment as expounded in the case of *GFH Capital Limited v David Lawrence Haigh* [2014] DIFC CF1 020. The DCJ did not find the Claimant's claim for a bonus to be fanciful insofar as Clause 13 of the Settlement Agreement was concerned as it was arguable that Clause 13 provided a free-standing entitlement to be considered for a bonus outside the overall compensation settlement. The DCJ further rejected the Claimant's contention that the whole employment contract was superseded by the Settlement Agreement, and was unable to accept that the discretion under the employment contract regarding bonus entitlement was unfettered. At the very least it was clearly arguable that there was an implied term that any decision should be rational and accordingly not arbitrary, capricious or perverse.

The DCJ examined the grounds upon which the Claimant contended that the decision not to award a bonus was irrational, making reference to the decision of Mummery LJ in the case of *Keen v. Commerzbank* [2007] ICR 623 and emphasising that it was not the Court's place to step into the shoes of the decision maker and to determine whether the bonus decision was reasonable. No irrationality or perversity had been shown as regards SCB's decision not to award Mr P a bonus due to their evaluation of his conduct and management style. Therefore, the Claimant's argument that the issue of irrationality constituted a ground for asserting an arguable breach of contract was rejected and the Defendant was entitled to immediate judgment on the claim. There was no real prospect of the Claimant succeeding and it was not suggested that there was some other reason for a trial, let alone a compelling one.

Given the DCJ's conclusion on the scope of Clause 14 of the Settlement Agreement (namely that there was a free-standing entitlement to be considered for a bonus outside the overall

compensation settlement), the Defendant's counterclaim would have no prospect of success and should also be struck out.

ORDER

UPON reviewing the Defendant's Application No. CFI-004-2017/1 dated 30 March 2017 seeking to strike out the Particulars of Claim and for immediate judgment on the Claimant's Claim

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at a hearing on 14 January 2018

AND UPON reviewing all documents submitted in the court file

IT IS HEREBY ORDERED THAT:

1. The Defendant's Application is granted.
2. The Defendant is allowed immediate judgment on the Claim.
3. The Defendant's counterclaim be struck out.
4. Costs are reserved.

N Bakirci

Issued by:
Natasha Bakirci
Senior Assistant Registrar
Date of Issue: 27 February 2018
At: 10am



JUDGMENT

1. In these proceedings the Claimant seeks damages from the Defendant bank ("SCB") the former employer of Mr. Papadopoulos (now deceased) arising from a failure to pay him a discretionary bonus for 2015. The bonus is valued by the Claimant in the amount of USD \$1,067,000.
2. Mr. Papadopoulos was employed by SCB as a Regional Chief Executive Officer from 2006 to 31 December 2015 when he was made redundant. He was based in the DIFC and his contract of employment was governed by DIFC law.
3. The relevant terms of his contract were as follows:

"Discretionary variable compensation

- 6.8 You are eligible to participate in the Group's Discretionary Total Variable Compensation Plan ("the Plan"). Any awards paid under the Plan will depend on a number of factors including your own performance, the performance of your team, the business and the Group, and your adherence to the Bank's stated values and sound risk management principles. Any award will be subject to the Group's Claw-back Policy as amended from time to time.
- 6.9 Approved discretionary variable compensation awards are normally paid in March following the performance year to which they relate. The Bank retain absolute discretion as to the size of the award to be made under the Plan (if any). The Bank reserves the right to end or amend any aspect of the Plan at any time at its sole discretion without replacement or compensation.
- 6.10 Any award is also subject to: (i) your being in employment on the date that the award is made; and (ii) neither party having given notice to terminate your employment on the date that the award is made. For the avoidance of doubt, no payment or pro rata payment under a discretionary plan will be made to you if you are serving notice (whether actively or on garden leave) as at the relevant award date. Any deferred cash awards which have not vested by the Termination Date will be forfeited by you on the Termination Date except as set out in any relevant rules.
- 11.4 The Bank shall be entitled at its absolute discretion to terminate your Employment lawfully and with immediate effect (whether or not notice under clause 5 has already been given by either you or the Bank) by giving written notice of its intention to make a payment in lieu of notice to you and if it does so the Bank shall make a payment of money in lieu of notice equal to your base salary under clause 6.1 and the cash benefits allowance under clause 6.4 and, if applicable any mobility housing premium and/or mobility education premium that you would be entitled to receive during any unexpired part of the notice period to which you are entitled under clause 5 of this Agreement (the "PILON Payment") less any statutory or other required deductions. The Bank may in its absolute discretion elect to make the PILON Payment in equal monthly instalments in arrears. For the avoidance of doubt you shall not be entitled to any other benefits (including bonus) or any holiday pay which may otherwise have

accrued during what would have been your notice period. If the Bank terminates your Employment in accordance with this clause 11.4, all of your post termination obligations contained in this Agreement (for example the obligation at clause 11.6 and the restrictive covenants under clause 19) shall remain in force.

21 Grievance, Disciplinary and Performance Procedures Details of the Bank's non-contractual Grievance Procedure and non-contract Disciplinary and Performance Procedures are available on iConnect."

4. Following notice of his potential redundancy, the parties entered into negotiations and by a settlement agreement dated 20 August 2015 SCB agreed to pay the sum of USD \$ 1,514,611 by way of compensation. The terms of the agreement were reached following prolonged negotiations for which purpose SCB contributed to the legal fees incurred by Mr. Papadopoulos.
5. The terms of the agreement included the following provisions:

"13. You will remain eligible for consideration for a discretionary variable compensation award for the performance year 2015. Any awards paid under the Plan will depend on a number of factors including your own performance, the performance of your team, the business and Group, your adherence to the Bank's stated values and sound risk management principles, and your overall contribution in the performance year. There is no entitlement to or guarantee of an award and any award will be subject to the Group's Claw-back Policy and Group's Structure of Variable Compensation Policy as amended from time to time. Should any award be made, this will be payable on the Bank's normal payment date in or around March 2016. For the avoidance of doubt, any discretionary variable compensation that you may be awarded will be considered based on the full 2015 performance year to 31 December 2015.

Settlement of Claims

14. You hereby accept the terms of this Agreement in full and final settlement of all and any claims, costs, expenses or rights of action of any kind whether contractual, statutory or otherwise, whether or not they are or could be in the contemplation of the parties at the date of this Agreement and whether having already occurred or arising in the future in the DIFC, the UAE or in any other country in the world, which you have or may have against the Bank or any Associated Company or any Relevant Personnel from time to time, which arise out of or in connection with your employment by the Bank or any Associated Company or its termination.
15. You further agree and acknowledge that the salary and benefits under paragraph 3 plus the Compensation Payment constitutes the full and final amount which may be due to you from the Bank or any Associated Company in connection with and/or arising out of your employment by the Bank and/or its termination, up to and including the Termination Date. You further irrevocably agree and acknowledge that you are not entitled to any further amount (including but not limited to notice pay) whatsoever from the Bank or any Associated Company.
16. You hereby irrevocably waive any rights you may have in respect of any claims listed in paragraph 14 above and the Bank shall immediately deemed fully and irrevocably released in connection thereto.

17. You agree that, without prejudice to any other rights or remedies of the Bank or any Associated Company arising from such action, that if you institute or continue any proceedings against the Bank or any Associated Company of the kind set out in paragraph 14, you shall repay to the Bank immediately upon demand the lesser of:
- (a) The Compensation Payment (less deductions of tax as were made by the Bank at source); or
 - (b) Such amount of the Compensation Payment as is equivalent to the total amount of the compensation or damages (including interest) awarded to you as a result of such proceedings, together with the full amount of any legal fees incurred by the Company in defending such proceedings.
- The Employee agrees that such sum will be repayable as debt. Any part of the Compensation Payment which remains outstanding shall cease to be payable under this Agreement with effect from the date of commencement of such proceedings."
13. The Claimant's position is that, pursuant to clause 13 of the Settlement Agreement, he was eligible to be considered for a bonus and SCB's decision not to award one was perverse, irrational and/or in bad faith and thus in breach of contract.
14. SCB accepts that no bonus was paid but contends:
- (a) That, pursuant to clause 14 of the Settlement Agreement, any claim for a bonus was necessarily absorbed within the settlement figure.
 - (b) In any event, SCB had an absolute contractual right to determine whether or not to award a bonus and its decision not to do so was not subject to any fetters.
 - (c) In the alternative, the Claimant had no real prospect of showing that SCB had exercised its discretion perversely, irrationally or in bad faith.
 - (d) Further, by virtue of clause 17, SCB was entitled to recover by way of counter claim the sums paid under the Settlement Agreement.
15. In the result it was SCB's case that it was entitled to immediate judgment in the claim and the counterclaim on the basis that the Claimant had no real prospect of succeeding on the claim and/or no real prospect of successfully defending the counterclaim.
16. There was as might be expected no dispute on the correct approach to an application for immediate judgment. The issue was considered in a judgment of Justice Roger Giles dated 18 October 2016, *GFH Capital Limited v David Lawrence Haigh* [2014] DIFC CF1 020. In

summary, I adopt his approach that the elements to be taken into account in the DIFC are as follows:

- (a) An application for immediate judgment may be based on a point of law, the evidence which can reasonably be expected to be available at trial or the lack of it, or a combination of these, as provided by RDC 24.2;
- (b) The Court must consider whether the respondent to an application for immediate judgment has a "realistic" as opposed to "fanciful" prospect of success; where a fanciful claim is one that is entirely without substance;
- (c) A realistic prospect of success requires some degree of conviction and not one that is merely arguable;
- (d) The Court should avoid conducting a mini-trial without disclosure or oral evidence;
- (e) The Court is not required to take everything that a party says in its witness evidence at face value and without analysis. Factual assertions may have no real substance, particularly where they are contradicted by contemporaneous documents;
- (f) The Court should avoid being drawn into an attempt to resolve those conflicts of fact which are normally resolved by a trial process;
- (g) The Court must take account of evidence actually placed before it on the application for immediate judgment and the evidence reasonably expected to be available at trial;
- (h) Allegations of fraud may pose particular problems;
- (i) The overall burden of proof remains on the claimant to establish that there are no real prospects of success and no compelling reason for trial;
- (j) The Court should hesitate to make a final decision without a trial where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to the trial judge and so affect the outcome of the case;

- (k) There will be a compelling reason for trial where there are circumstances that ought to be investigated.

See also *Nest Investments Holding Lebanon et al v. Deloitte & Touche et al* Claim No: CFI-027-2016.

17. Did Mr. Papadopoulos settle any claim for a bonus under Clause 13? Although this was at the forefront of SCB's case I am unable to accept that the contrary view is in any sense fanciful. Indeed, whilst the scope of Clause 14 read in isolation is broad enough to constitute a settlement of any bonus claim, such a construction would render Clause 13 wholly redundant. On one view (and as presently advised the better view), Clause 13 overrides the impact of Clause 6.10 of the Employment Contract whereby an award of a bonus could not be made post termination. This is further confirmed by Clause 15, which provides that the settlement figure is in respect of monies due up to termination. It follows (and it is certainly arguable) that Clause 13 provides a free-standing entitlement to be considered for a bonus outside the overall compensation settlement.
18. The second contention advanced by SCB is that it had an absolute contractual right to determine whether or not to award a bonus under Clause 13 and thus the decision not to award a bonus is not open to challenge in any circumstances. In this regard I understood the Claimant to argue that on the assumption that the contractual discretion was unfettered as contended by SCB nonetheless the Clause 13 entitlement fell outside the former employment relationship in the sense that the contract of employment was wholly superseded particularly having regard to the "entire agreement" clause.
19. I do not regard this proposition as arguable. Any consideration of a bonus was not at large but under the "Plan" i.e. the Group's Discretionary Total Variable Compensation Plan. The factors against which the assessment was to be made were specified in Clause 13 in like terms to Clause 6.8 of the Employment Contract. Indeed as specified in Clause 13 Mr. Papadopoulos would "remain" eligible for an award for the year 2015 making it plain that the eligibility for the bonus was simply a continuation of the pre-existing eligibility carried through termination.
20. The broader proposition that the whole Employment Contract was superseded is equally hopeless. For example Clause 2, in dealing with garden leave, provides that Mr. Papadopoulos remained bound by the terms of the Employment Contract. Reliance on Clause 28 is misplaced. It merely confirms that the agreement constitutes the entirety of the

provisions relating to the settlement and precludes reliance on any collateral representation. It has no bearing on the scope of Clause 6.9 of the Employment Contract which affords SCB "an absolute discretion" as to the size of an award under the Plan "if any".

21. But I am unable to accept that the discretion under the employment contract was unfettered. At the very least it is clearly arguable that there is an implied term that any decision should be rational and accordingly not arbitrary, capricious or perverse: see *Keen v. Commerzbank* [2007] ICR 623, *Braganza v. BP Shipping Ltd* [2015] UKSC17. Ironically, it is in this connection that SCB seeks to contend that the Settlement Agreement is to be construed differently from the Employment Contract. SCB asserts that even if during the currency of the Employment Contract the right to consideration for a bonus was subject to a good faith duty, no such fetter applied to the right to be considered for a bonus under the Settlement Agreement. I have already made observations about the difficulty in concluding that the Settlement Agreement should be construed as regards consideration of a bonus in a different way from the Employment Contract. I am quite unable to accept this distinction.
22. Is there a realistic prospect of the Claimant establishing want of good faith? Before his death Mr. Papadopoulos gave an extensive witness statement which forms the basis of the pleaded case on the issue of irrationality. Bizarrely the issue is pleaded on the basis of breach of an express term of the agreement. Given that it is common ground that in accordance with Clause 13 consideration was duly given by SCB to the award of a discretionary bonus this is not easy to follow. But I will treat the allegations of breach as more properly directed to the implied term.
23. Mr. Papadopoulos' account was as follows. On 9 March 2016, he was informed by Mr. Medappa, Head of SCB Human Resources, that he had been awarded a "D" rating for the year 2015 and that consequently, based on a decision of the bank not to award any bonuses to senior executives with "D" values he would be awarded no bonus. A D rating is made when an employee "only sometimes lives the values and demonstrates expected behaviours of the Bank". The reason for the "D" rating was said to be:
 - (a) Various conduct issues in the UAE;
 - (b) His tough management style; and
 - (c) Involvement in transactions with another executive of the bank.

24. On 13 March 2016 Mr. Papadopoulos wrote to Mr. Bill Winters, Group Chief Executive Officer of SCB challenging the D rating. Mr. Winters replied on 17 March 2016. He comments on the bonus and D rating as follows:

"I'd like to respond to your email concerning your bonus and 3D rating. As you are aware, this rating is based on the extent to which an employee has delivered on their Values objectives. A "D" rating means that NOT SCANNED.....

From the information I have been provided to date, I am satisfied that a D rating fairly reflects your values during the 2015 performance year. The rating reflects and takes into consideration the feedback received regarding your overall conduct and behaviour and treatment of colleagues. The Bank is not disputing or challenging the performance achievements mentioned in your email, as these are reflected in your performance rating of a 3 which means you demonstrated good performance against stretching objectives.

The Values rating reflects your values and behaviour and the feedback received from a number of employees. I can confirm that multiple complaints were raised with regards to your management style which was described as intimidating, aggressive and bullying. Employees were intimidated by you to the point that some were afraid to raise a formal Speak Up for fear of reprisal. The complaints were mainly from employees more junior than you, from Band 3 and below, based in the UAE. These complaints were not raised by members of the investigations team. Had you remained with the Bank, the Bank would have in all likelihood dealt with this through formal procedures.

You mention the Bahrain issue and the allegations of the investigators being abusive. You escalated this issue to me at the time and reported the events as fact. Upon review, it would appear that you had not checked the veracity of the allegations, which subsequently were found to be untrue. This was most unhelpful.

I can confirm that the Bank has no clear evidence so far of any personal financial dealings with Afaq and this was not a consideration in the Values rating.

However, I am satisfied that there is enough evidence of your failures to treat colleagues fairly and with respect throughout the course of your dealings with them on day to day issues. As you are aware, this is a key requirement under the Group Code of Conduct and as a senior leader of the Bank, you were expected to lead by example and demonstrate a high standard of conduct and related behaviour in all aspects of your work, at all times. This was not always and consistently the case. It is clear that you did not always live the Bank's Values and this is reflected by the D rating."

25. Mr. Papadopoulos challenged these comments regarding his management style and invoked the Bank's Grievance Procedures pursuant to Clause 21 of the Employment Contract. In the meantime Mr. Papadopoulos held a telephone conversation with Mr. Winters on 31 March 2016. His note of the conversation read:

"BW said that the rating was based on a very thorough review by Tracy Clarke and PK Medappa and was supported by incidents/dates etc.

I questioned the veracity of the review and pointed out that PK had to reschedule my P3 discussion by 24 hrs in order to obtain supporting information/justification from Tracy Clarke knowing that I would be challenging the rating (this is what PK told me on a call when he explained why we had to reschedule).

Bill said that the 'D' rating was based on a pattern of behaviour and also on other issues such as instances of personal financial dealings by staff indicative of a culture issue in the UAE. He said that the D rating was a judgment call and suggested that I should not get worked up about it.

I replied that I found it offensive that after a long career my management style was described as abusive and my integrity was being questioned in as it regards the allegation of potential personal financial dealings with Afaq Khan."

26. As part of a grievance procedure SCB appointed Anna Marrs to conduct an independent review. The "D" rating was found to be a reasonable outcome. This followed interviews with various witnesses and consideration of various documents. In her letter dated 12 May 2016 reporting on the outcome of the review by Ms. Marrs, Pamela Walkden, Group Head of Human Resources at SCB said as follows:

"Findings

Overall your values were found to fall below expectations for the following reasons:

- (a) Feedback from Bill. You were awarded a "B" values rating for your 2015 interim performance review by Bill. However, the commentary clearly included feedback on your management style "I have advised Christos in the past that his potential runway in the organisation was limited in the opinion of then senior management (XMG). While technically competent, candid and experienced, he may have stylistic issues which have been the source of friction with London/Singapore based seniors"

Bill set out his rationale for awarding you a "D" Values rating for the 2015 performance year in his email to you dated March 17th 2016. This was expanded upon in his interview with Anna. Bill gave specific examples of his direct interaction with you that caused him to have concerns over your conduct, values and behaviour. Anna raised these issues with you on her call with you on 11th May. These included:

- (i) Bill's first meeting with you when you asked Bill which type of entertainment he would like (summarized as "smoking or girls") which Bill found to be deeply inappropriate and showed a gross lack of judgment. You did not deny having made this remark. This type of conduct does not in any way reflect the Bank's values and falls far short of the standards expected or tolerated by the Bank.
- (ii) The Bahrain issue where you escalated, as fact, some complaints made by a number of employees in Bahrain about their mistreatment by investigators during their interviews which were subsequently found to be untrue. In your call to Anna you disputed that all the allegations were unfounded. However, this was not the Bank's finding on its review of this issue. Your conduct in this matter was not constructive and undermined the investigation and the trust and teamwork between all those involved; and
- (iii) The evidence of poor culture in the Middle East, North Africa and Pakistan region over the past 12 months that does not reflect the culture and Values of the Bank. There have been a disproportionate amount of issues in this region, such as Projects Newport and Worksop, for which you overall supervisory responsibility as the Regional CEO.

- (iv) The quantum of your direct reports involved in on-going investigations. At least 2 of your former direct reports are currently in scope of on-going investigations in the Middle East. This level of issues suggests a lack of appropriate leadership and a concern regarding "the tone from the top".

These were all factors reasonably taken into consideration by Bill in his assessment of your values and D rating.

In your call with Anna, your response was largely based on the fact that none of these issues were relevant to your "management style" which is the only factor that you believe the Bank should take into consideration when determining your Values rating or responding to the grievance you raised. Bill, Anna and I, fundamentally disagree with your position on this. The values rating reflects all aspects of your conduct, behaviour and management style and the examples given above got to the core and scope of the Bank's values. As a senior leader of the Bank, you were expected to lead by example and consistently demonstrate a high standard of conduct related behaviour in all aspects of your work, at all times, which was clearly not always the case – you did not always live the Bank's values as is reflected in the D rating.

- (a) Speak Ups raised by employees. During the course of 2015, the Bank spoke with three Speak Up disclosers regarding your behaviour and conduct. The employees, who were all more junior than you, wished to remain anonymous for fear of reprisal from you, however, the comments described a culture of bullying and harassment by you. This was further corroborated by more informal feedback from a number of other employees about your behaviour and treatment of colleagues.
- (b) Feedback and conduct of the Regional Management team. There were issues of "trust" cited with 3 of the employees interviewed as part of this review.

Conclusion

This assessment and award of values rating and associated bonus is entirely at the Bank's discretion. On review of the above findings, a values rating of "D" – "the employee only **sometimes** lives the values and demonstrated expected behaviour" for the 2015 performance year is a reasonable conclusion. The conduct and behaviour of most senior employees significantly influences not only their direct team but the wider business and communities. On the basis of the above findings, the Bank upholds the D values rating and the zero bonus award."

27. Before reviewing the grounds upon which it is contended that the decision not to award a bonus was irrational it is worthwhile citing from the decision of Mummery LJ in *Keen v Commerzbank* supra:

"[39] ... I must make it clear that it is not the function of the court to usurp the bank's exercise of its discretion. It is for the bank to decide whether to pay a bonus and if so, how much, when and in what amount and form. The court is not entitled to substitute itself for the bank. The court is not the bank. It does not employ the staff of the bank or pay them. The court's function is limited to deciding whether the bank acted in breach of the contract term relating to the discretionary bonus decisions...

[40] ... The only function of the court is to decide on the legal limits to the bank's contractual discretion and whether the bank has acted within or outwith the limits. Apart from that consideration the bank, not the court, is the judge of what it should pay its staff."

[59] ... the bank had a very wide contractual discretion ... It would require an overwhelming case to persuade the court to find that the level of a discretionary bonus payment was irrational or perverse in an area where so much must depend on the discretionary judgment of the bank..."

28. The Claimant pleads five matters which are contended either individually or collectively to afford an arguable case of irrationality.
29. First a comparison is drawn with the rating of B for the six months ending 30 June 2015 in contrast to the D rating for the whole year. But as pleaded in the Defence Mr. Winters had only been Mr. Papadopoulos' manager for four weeks at the time of the half-year grading and was in no sense arguably irrational in choosing to adopt the grading of B for the previous year pending a more formal assessment.
30. In his email of 17 March 2016 Mr. Winters justified the full year rating by reference to the fact that multiple complaints had been raised about Mr. Papadopoulos' management style as being "*intimidating, aggressive and bullying*". Indeed this was perceived as consistent with the reservation expressed at the time of the July "B" rating as regards his management style where feedback referred to "*stylistic issues which have been the source of friction*".
31. Second, reliance was placed on the disparity with the earlier reasons given by Mr. Medappa in particular conduct related issues arising in the UAE and Afaq related issues. The two complaints were indeed not referred to in Mr. Winters' email and could be treated as "dropped". This is a matter of no significance. As explained in *Faieta v. ICAP* [2017] EWHC 2995 (QB) at para: 63: "the fact that some of the reasons advanced have been shown to be incorrect does not render the decision making process irrational". The fact remains that the dominant motivating factor is set out clearly in the last paragraph of Mr. Winter's email.
32. Third, it is submitted that the conclusion relating to Mr. Papadopoulos' management style was devoid of merit and baseless. But this is to embark on the illegitimate process of inviting the Court to step into the shoes of the decision maker and to determine whether the bonus decision was reasonable.
33. Fourth, it is submitted that the grievance process was inadequate and improperly conducted. But this can have no bearing on whether the decision in respect of which the grievance procedures were engaged was perverse. By definition the decision is the threshold to the grievance procedure and is irrelevant to the process of identifying and assessing the reasons for the original decision.

34. Fifth, it was contended that in negotiating the Settlement Agreement, SCB was "*adopting an approach that certain payments made pursuant to the Settlement Agreement could be set off against any bonus payment*". In fact there is no material to support the conclusion that Mr. Winters adopted this approach (maybe in contrast to other executives) but even if he had, it does begin to demonstrate irrationality.
35. In the result, I reject the Claimant's argument that the issue of irrationality constitutes a ground for asserting an arguable breach of contract. SCB is entitled to immediate judgment on the claim. There is no real prospect of the Claimant succeeding and it is not suggested that there is some other reason for a trial, let alone a compelling one.
36. There remains the counterclaim based on Clause 17. Given my conclusion on the scope of Clause 14, the counterclaim would have no prospect of success and should also be struck out. In pursuing a claim for a bonus under Clause 13, the restriction imposed by Clause 14 is not engaged.
37. I reserve the issue of costs but indicate that as presently advised I would make no order.