EMPLOYMENT TRIBUNALS

Claimant: **Mr J Crespo**

Respondent: **Apple Retail UK Ltd**

Heard at: **Pontypridd** **On: 11-13 September 2018**

Before: **Employment Judge C Sharp**

Members: **Mr W Davies**
Mrs P Palmer

Representation:
Claimant: Mr C Howells (Counsel)
Respondent: Ms T Barsam (Counsel)

JUDGMENT having been sent to the parties on 19 September 2018 and reasons having been requested by the respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. The claims before the Employment Tribunal are claims of disability discrimination under s.20 and 15 of the Equality Act 2010 and a claim of unfair dismissal under the Employment Rights Act 1996. The Tribunal has unanimously found that the claims in their entirety are not well founded and will be dismissed.

Background

2. Mr Crespo, the claimant, was employed as a Creative Specialist in the Cardiff store of Apple Retail UK Ltd, the respondent. The respondent needs little introduction as it is part of one of the most well-known corporate groups in the world. The claimant commenced his employment with the respondent on 29 June 2010. A creative specialist is an employee who is able to train customers in how

to use the products sold by the respondent to achieve their goals; for example, to train a customer in how to use Apple products to produce and edit a film. Creative specialists are part of what was referred to as the "Joint Venture" ("JV") program; this is where business customers enter into a JV agreement to be able to access the services of creative specialists and those who work at the "genius bar", and receive a pre-agreed number of hours of training.

3. The claimant also worked as a professional musician outside of his role with the respondent, performing and teaching. This was known to the respondent throughout the employment relationship.

4. The respondent has a number of policies which it requires its employees to follow. The most relevant policy in this case is the business conduct policy. This policy, amongst other things, instructs employees to notify their manager before taking other employment. It also states that employees with additional outside employment or a business must not use their position at Apple to solicit work for their business or other employer. The policy requires that employees who participate in businesses which are in the same area of their work for the respondent or compete with Apple's present or reasonably anticipated business, products or services require written permission from their manager (and other Apple employees). The policy defines a conflict of interest as "any activity that is inconsistent with or opposed to Apple's best interest, or that gives the appearance of impropriety or divided loyalty". It warns employees that if they are not sure if there is a conflict of interest, they should discuss the matter with their manager, HR or the business conduct helpline. This point is reiterated in the training materials, as is the point that discussing your side business with Apple customers in store is a conflict of interest. The policy was described as "central" to the way the respondent and does business and is important enough to require annual training.

5. There is no dispute that by 2016 the respondent was concerned about the claimant's mental health. It arranged for an occupational health report to be made about him. On 9 November 2016, the occupational health specialist confirmed that the claimant had suffered from depression, but said that it was not a substantial mental impairment which affected his ability to carry out daily activities (despite being long-term). The respondent conceded at the outset of this hearing that the claimant was disabled at the time of the relevant events for the purposes of the Equality Act 2010; by the time submissions were made (following oral evidence), Ms Barsam on behalf of the respondent conceded that the respondent had knowledge of the claimant's disability. Accordingly, the tribunal will not dwell on the details of the claimant's mental health impairment within these written reasons.

6. On 23 January 2017, the claimant asked Mr Gary Carter, People Manager at the Cardiff store of the respondent, if he could reduce his regular working hours. Precisely that was said at that meeting is in dispute, and we will return to that point

later in the course of these reasons, but there is no dispute that the respondent agreed to the claimant's request.

7. On 25 January 2017, the claimant commenced work on a project for Project One Installations Ltd ("Project One"). The project involved the claimant, using his own Apple equipment and software as well as a drone, filming footage, editing the footage into a final video and composing music to be played with the completed film. This work was to be used by a client of Project One. Project One at the time was a JV client of the respondent and had met the claimant in his role as a creative specialist. The undisputed evidence was that Project One used the JV program actively and had accessed many of Apple's services as a result.

8. On 27 March 2017, the respondent received an anonymous report about the claimant's activities outside of his role for the respondent. It alleged that the claimant was recorded as an administrator for Project One on the JV system; it is undisputed that Project One added the claimant to the system using his personal email address, but stated this was a "clerical error".

9. Mr Carter was asked to investigate the matter. On 30 March 2017, he informed the claimant in the plant room that he was going to be brought into the office to attend an investigatory meeting. There is a dispute about how much notice the claimant was given, and we will return to this point later, but it was accepted by both parties that the respondent's general practice was not to give any warning at all of investigatory meetings to get the best quality evidence. Mr Carter's evidence was that he did give the claimant some warning as he was aware of his disability and felt that it was a reasonable adjustment to the standard practice.

10. At the investigatory meeting, which while lengthy, contained within it several adjournments (one of which was approximately two hours), the claimant gave what he later accepted was a wholly dishonest account of his relationship with Project One. The claimant said that "*I have nothing to do with them*", and later accepted that his answers to Mr Carter at that meeting were dishonest and misleading. Mr Carter during an adjournment also called Project One and asked to speak to the claimant, only to be told that he was not available at that time. This evidence was put to the claimant, who denied that he was working for Project One and had no idea why Project One had confirmed that he did have a role there.

11. The respondent decided to commence disciplinary proceedings against the claimant on the grounds that it believed the claimant had breached the business conduct policy in relation to conflicts of interest and outside employment. On 7 April 2017, the disciplinary hearing took place and the claimant was summarily dismissed for gross misconduct by Ms Kirsten Mills, the dismissing officer. The claimant appealed and an appeal hearing took place on 27 April 2017. On 11 May 2017, Mr Michael Blackburn, the appeal officer, wrote to the claimant and told him that his appeal had been unsuccessful.

12. The parties entered into the Acas early conciliation process between 29 June 2017 and 29 July 2017, and the claimant issued his claim in the Cardiff Employment Tribunal on 25 August 2017. The final hearing heard oral evidence from the claimant, Mr Gary Carter, Ms Kirsten Mills and Mr Michael Blackburn.

The issues

13. At the outset of the hearing, the tribunal set out the legal issues to be determined, to which the parties agreed. It was agreed to deal with liability only at first. The legal issues agreed were as follows:

a) a claim of failure to make reasonable adjustments under s.20 of the Equality Act 2010 –

(i) was there a provision, criterion or practice ("PCP"), which is pleaded as the practice of conducting disciplinary investigatory meetings without notice – the respondent accepts that this PCP exists;

(ii) did the PCP put a disabled person at a substantial disadvantage in relation to such meetings or disciplinary proceedings generally? The claimant says that the lack of warning caused him to have a panic attack, feel anxious and lose control of his symptoms, which caused him to be dishonest at the investigatory meeting, and Mr Howell submitted that the appropriate comparator was "a person not suffering from depression in the same material circumstances as the claimant";

(iii) was the claimant substantially disadvantaged by the PCP? He says that his concentration, memory and decision making skills were affected adversely and the finding of dishonesty was also a disadvantage.

(iv) did the respondent take such steps as was reasonable to take to avoid the disadvantage? The respondent says that the claimant was given notice of the investigatory meeting, while the claimant's position is that he should have been given notice, the allegations in advance and the evidence in advance.

b) a claim of discrimination arising out of a disability under s.15 of the Equality Act 2010 –

(i) did the respondent treat the claimant unfavourably? The claimant's position is that the finding that he was dishonest at the investigatory meeting and his dismissal was unfavourable treatment.

(ii) was the unfavourable treatment because of something arising in consequence of the claimant's disability? The claimant's position is that the failure of make reasonable adjustments to the investigatory meeting caused him to withhold information at the investigatory meeting; in other words, because he lost control of the symptoms of his depression, the claimant was dishonest, but this was something arising from his disability.

(iii) if the answer to the question above is yes, can the respondent show that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

c) a claim of unfair dismissal –

(i) was the principal reason for the claimant's dismissal his misconduct?

(ii) did the respondent have a genuine belief in the guilt of the claimant?

(iii) was the belief based on reasonable grounds?

(iv) did the respondent carry out a reasonable investigation in the circumstances of the case?

(v) was dismissal within the range of reasonable responses open to a reasonable employer?

(vi) was the procedure used fair?

(vii) if an issue is identified by the tribunal, would the claimant still have been dismissed? What difference to the final outcome did the issue have on the dismissal of the claimant and timing?

(viii) did the claimant by his conduct contribute to his dismissal? If so, what extent did his conduct contribute to the dismissal?

Submissions

14. Both Mr Howells and Ms Barsam made written and oral submissions to the tribunal following the oral evidence. Those submissions were carefully considered by the tribunal and referred to when relevant within these reasons. The tribunal was also referred to the cases of *Pnaiser v NHS England and another* UKEAT/0137/15/LA and *Project Management Institute v Latif* [2007] IRLR 579. There was little dispute about points of law between the learned counsel, which the exception of one minor and subtle point about the nature of the test when

consider whether any substantial disadvantage was caused by the PCP. Both agreed that the test was objective, but Mr Howells on behalf of the claimant submitted that the existence of the substantial disadvantage was subjective (though he accept the burden was on the claimant to show it existed). Ms Barsam submitted that the claimant's view on whether the PCP caused the substantial disadvantage was of limited relevance; the test was objective.

Disputed facts

15. There were only two disputed facts that needed determination by the tribunal. The first was whether there was a pre-meeting in the plant room before the investigative meeting that took place in March 2017, and more importantly, how much notice of the investigative meeting was given at that pre-meeting. The claimant's witness statement was silent about the pre-meeting and it appeared that his initial position was that there was no pre-meeting. His position before the tribunal was that there was only about 10 to 15 seconds warning before the investigatory meeting. Mr Carter's oral evidence at the hearing was that there was about 10 minutes' warning. There was therefore an obvious conflict of evidence.

16. The tribunal's conclusion, reached after considering the evidence and on the balance of probabilities, was that neither witness was wholly correct. What was discussed in that pre-meeting (and neither party disputed the gist of that pre-meeting), would have taken more than 10 seconds to say, but was unlikely to have taken 10 minutes. We noted Mr Carter's evidence to the appeal officer during the appeal process that he gave a couple of minutes' notice of the investigatory meeting. We bore in mind the evidence that we had heard from both the claimant and Mr Carter that between them there was a friendly relationship, a friendly working relationship in the workplace; the claimant's oral evidence was that Mr Carter dealt with him "*like a mate*".

17. We also noticed that Mr Carter over-rode the established policy of the respondent and gave the claimant notice of the investigative meeting because he was aware of the claimant's disability and mental health issues generally. The tribunal considered Mr Carter's evidence showed that he was a considered and measured person who approached his duties with care. The tribunal accepted the submission of Mr Howells that it was noteworthy that Mr Carter said he gave 10 minutes' notice after that time estimate was suggested by Mr Howells himself to the witness. We did not accept that this meant that Mr Carter was an opportunistic person; the view of the tribunal was that Mr Carter had simply accepted the suggestion put to him by counsel acting on behalf of the claimant. In light of the above evidence, the determination of the Tribunal is that the claimant was given a couple of minutes' notice of the investigative meeting; it was certainly more than seconds and it was less than 10 minutes.

18. The second set of disputed facts concerned what was said in the conversation between the claimant and Mr Carter on 23 January 2017 where the

claimant asked to reduce his hours. The claimant says that he told Mr Carter he was going to be filming and editing a video and composing music. Mr Carter's evidence is that he was told that claimant would be filming a video and composing of music, but he was not informed about the editing. Both agree the claimant refused to tell Mr Carter for whom he would be undertaking this work.

19. The tribunal was invited by Ms Barsam on behalf of the respondent to take into account the credibility of the two witnesses. She suggested that the claimant's account of facts at times had been inaccurate, while Mr Carter's had always been accurate. The Tribunal preferred to take a different approach and look at consistency of evidence. Mr Carter's evidence throughout has been consistent on this point and is supported by the evidence of Mr Cox who is a manager of the claimant. Mr Cox's evidence was that the claimant when telling him about his new work said nothing about editing and refused to disclose the identity of for whom the work was being done. The claimant's accounts throughout various stages of these proceedings has been inconsistent.

20 In addition, we considered the importance that the respondent placed on the business conduct policy (and the evidence presented which showed employees were asked to carry refresher training every year on this policy) and the care that Mr Carter generally appeared to give his duties. We concluded that it was more likely than not that if the word "editing" had been mentioned by the claimant, it would have been a red flag for Mr Carter and caused him to make further enquiries. We also considered it significant both in the conversation with Mr Carter and later with Mr Cox the claimant refused to disclose the identity for whom he was carrying out the work, Project One (a JV client). On the balance of probabilities, the tribunal finds that the claimant did not tell Mr Carter in this meeting that he was going to be editing video.

Disability discrimination

21. First, the tribunal considered the claim of failure to make reasonable adjustments. The respondent by the time of submissions conceded both disability and knowledge of the disability, and the existence of the PCP as pleaded by the claimant in his ET1. It is clear from the evidence that the PCP was not applied to the claimant as notice was given. The PCP pleaded was not that insufficient notice was given; the question really is whether reasonable steps had been taken to adjust the PCP in the claimant's case.

22. It is agreed by the parties that the claimant must show that the PCP is such that it would cause a disabled person to suffer substantial disadvantage, that the comparator is somebody not suffering from depression in the same material circumstances and that the specific disadvantage that the Claimant relies upon is a panic attack, anxiety, and loss of control over his symptoms caused by his disability of depression. It was also accepted that the word substantial means more than trivial. Having considered the authorities put forward by the parties

representatives and their submissions the Tribunal asked the following questions and came up with the following answers.

23. The first question we asked was whether there was a substantial disadvantage suffered by the claimant? The disadvantage pleaded was lack of concentration, issues with memory, poor decision making and a finding of dishonesty. We separated out for this question the issue of the finding of dishonesty. The tribunal was not satisfied that the claimant suffered from a lack of concentration and inability to use his memory and poor decision making on the basis of the evidence put before it. It considered the transcript of the investigation meeting notes. In its view, these notes showed that the claimant answered questions, and he elaborated on his responses; in his own evidence, the claimant accepted that he knew the answers he was giving was not correct. There was no evidence in the notes or in the oral evidence of Mr Carter or the claimant of any physical signs of what he described as his "emotional fetal position". Indeed, the claimant's own evidence was that he adopted a defensive position mentally, but this is not sufficient to establish that he suffered from a lack of concentration, inability to recall memories and poor decision making skills.

24. Part of the reason why the tribunal reached this conclusion was a point that arose in more detail during oral evidence of the claimant. He said that during the first adjournment in the investigatory meeting, he went and took legal advice. No exception was or should be taken to anybody taking legal advice, but this action showed in essence the claimant managed to think "I need advice", he then identified a friend - a lawyer who would be able to give him that advice, he contacted that friend, he explained to the friend what was going on and then discussed the matter with him. These are not the actions of a person who is unable to concentrate, unable to recall memories and not able to make a decision. In addition, the claimant confirmed the evidence in the hearing bundle that he had gone through previous investigatory meetings without any warning, albeit at a different point in time and when the seriousness of his mental health issues cannot be established, and was able to interact (even when he was the subject of the investigatory meeting) in a meaningful and sensible way. In conclusion therefore, the tribunal was not satisfied that the claimant suffered from any issues in relation to concentration, memory or decision making during the course of the investigatory meeting.

25. In relation to the finding of dishonesty, the tribunal found that this was a substantial disadvantage suffered by the claimant. No-one who is found to have been dishonest could be described as having suffered anything other than a disadvantage. This finding led the tribunal to the next question to be answered, which was "was the PCP of conducting a disciplinary investigative meeting without notice the cause of the finding of dishonesty?" The tribunal found that it was not. The finding of dishonesty was caused because the claimant was dishonest in the investigatory meeting. He was evasive, he denied the true position in the face of evidence presented to him, he was misleading and, according to his own oral

evidence, he made a choice not to tell the truth. This occurred at an investigative meeting, a fact-finding session at which the claimant was offered and took several adjournments (and indeed took legal advice in one of those adjournments). There is no evidence that the claimant lied in previous investigatory meetings. The tribunal therefore was unable to find that the PCP was the cause of the disadvantage of the finding of dishonesty. In light of that finding, the tribunal did not make any further findings in relation to the s.20 claim.

26. The tribunal turned next to the s.15 claim of discrimination arising from disability. It is always essential to bear in mind the precise wording of the legislation, and the first issue is whether the respondent treated the claimant unfavourably. The respondent conceded in its submissions that the claimant suffered unfavourable treatment; a finding of dishonesty and dismissal cannot be seen as anything other than a disadvantage.

27. The unfavourable treatment, which the tribunal has found and the respondent concedes occurred, was carried out by Ms Mills, the decision maker who decided to dismiss the claimant and made the finding of dishonesty by the claimant at the investigation stage. Was this unfavourable treatment because of something arising from the claimant's disability? The tribunal separated out the two parts of the unfavourable treatment. The questions it asked were: why was the finding of dishonesty made, and why was the claimant dismissed?

28. In relation to the finding of dishonesty, the tribunal bore in mind its previous finding that the finding was made because the claimant was dishonest. The claimant did not establish that his dishonesty arose out of his disability. There is no doubt that the claimant suffered a significant degree of distress and anxiety during the investigative meeting, but we were not persuaded by his evidence that it was because of his disability or not caused by the fact that he was in an investigatory meeting. Depression is a serious mental health impairment, particularly in the claimant's case with his history of suicidal ideation. There is no evidence before the tribunal that depression causes dishonesty or can lead to dishonesty, other than the claimant's assertions. There is no cogent medical evidence that supports the position that the claimant was dishonest because of something arising from his disability. As Ms Barsam reminded the tribunal, it is not unusual for employees to fail to tell the full truth at an investigatory meeting. The claimant's account of feeling defensive and knowing that he was not telling the truth is not sufficient to establish that the reason he was dishonest is because of something that arose from his disability. It is pertinent to point out again that at previous investigation meetings, there is no evidence that the claimant was dishonest. The tribunal could not conclude on the basis of the evidence before it that the finding of dishonesty was made because of something arising from the claimant's disability; it was made because the claimant was dishonest.

29. The tribunal then considered the reason for dismissal. More will be said in the section dealing specifically with the unfair dismissal claim and those comments

should be considered in conjunction with this aspect of the case to avoid repetition. The respondent's position is that the claimant was dismissed for three reasons : (1) that he had deliberately failed to disclose a potential conflict by withholding information from Gary Carter between January 2017 and March 2017, (2) that he had used his role for the respondent to gain work for himself outside of the respondent and (3) that he had put himself in a conflict of interest by performing work for one of Apple's business customers that was similar to the services Apple provided to the customer. Ms Mills' evidence was that these were the reasons why she dismissed the claimant and that the issue about dishonesty was trivial. In essence, her evidence was that matters had moved on from what had happened at the investigative meeting to the core issues.

30. The tribunal, having considered all of the evidence before it, accepted Ms Mills' evidence that the reasons for the dismissal were those as set out in her outcome letter. There was no evidence that anything arising from the claimant's disability was a reason for his dismissal. As a consequence, it concluded that the unfavourable treatment of dismissal was not due to something arising from the claimant's disability as the three reasons were unconnected to the claimant's disability. No further findings were made in relation to this claim.

Unfair dismissal

31. The tribunal considered the unfair dismissal claim. There was no dispute between the parties concerning the respondent's genuine belief in the guilt of the claimant. There was no dispute about whether a reasonable investigation was carried out. There was no dispute as to whether dismissal was within the range of reasonable responses, and based on the submissions before the tribunal there did not appear to be any dispute as to whether the procedure adopted was fair. The tribunal did look consider the procedure adopted in any event, and in its view, based on the evidence, it concluded that it was a fair procedure and complied with the ACAS Code of Conduct for Grievances and Disciplinaries. The core of this claim was about whether there were reasonable grounds for the respondent's conclusions (through the mind of the dismissing officer) about the three reasons given for the claimant's dismissal.

32. In relation to the first reason, the alleged deliberate failure to disclose the potential conflict to Mr Carter between January and March 2017, the tribunal found that there were reasonable grounds to support such a conclusion. The claimant himself admitted that he deliberately refused to disclose the identity for whom he was working to Mr Carter and Mr Cox. He admitted that at the time he knew that Project One was a JV client with whom he had had several interactions. The claimant did not disclose this information at any point while he was undertaking the work, despite carrying out refresher training on the business conduct policy in March 2017 and despite discussing the matter with his wife.

33. Mr Howells' submission was that the business conduct policy did not require full details to be given to the respondent. In the judgment of the tribunal, to have a meaningful discussion about alternative employment, it is necessary to disclose the identity for whom you are working, particularly when you know that entity is a client of your employer's business. On the face of it, there was a potential conflict of interest. The claimant's evidence was that he was doing editing using Apple software and equipment for Project One, albeit those items belonged to him, not Apple. As the respondent, through its creative specialists, teaches customers (including JV clients) how to do the editing using its products, the fact that the claimant himself filmed the footage and composed the music did not in our view affect the fact that the editing activity was a potential conflict. The fact that the work was done for a JV client, who met the claimant though his employment by the respondent, raised the potential for a conflict, both perceived and potential. It is relevant that after the events in question this JV client was lost to the respondent, though the reasons are unknown. The respondent was concerned that Project One no longer needed to be a JV client if it could access the service through the claimant direct. The tribunal concluded that in all the circumstances and based on the information before Ms Mills at the time of dismissal, she had reasonable grounds to conclude that this allegation had been found proven against the claimant.

34. The tribunal then considered the second reason, which was that the claimant "used [his] role to gain for himself outside of the respondent"; this is the point about non-solicitation. There was no dispute as to the definition of the word "solicitation". However, the question in this case is when solicitation, if it happened at all, occurred? In the hearing bundle at page 196(j), there is a copy of some of the training undertaken by the claimant and it sets out an express direction that discussing your side businesses in the store with an Apple customer is not acceptable. Having considered all the evidence, including the letters from Project One and the evidence of the claimant, Ms Mills concluded on the balance of probabilities that there was a conversation in store about the claimant's skills with Project One. The tribunal agrees this was a reasonable conclusion in light of the evidence available, including the claimant's ability to remember personal details about the director of Project One and his family from their interactions in store – it showed that there was a more than usual personal connection in play. Ms Mills' own investigations showed that it was not possible for Project One to contact the claimant randomly over the internet as he was not listed as a videographer.

35. Ms Mills at the time of dismissal did not know about the Linkedin message between the claimant and Project One, but this later evidence was raised by the claimant at the appeal stage. In the tribunal's view, it appears to be the most likely method of communication between the claimant and Project One, following a discussion in store between the owner of Project One about the claimant's skills, including both making films for his son, as a musician and editing. The claimant was a trainer on editing using Apple products and as part of the JV program, clients were offered assistance in learning how to edit film. Ms Mills considered that it

more likely than not that it was following discussions in the respondent's store that Project One decided it would be convenient to ask the claimant to undertake work. A Linkedin message was then sent and that is likely to be how the claimant's telephone number was then given to Project One through the Linkedin message system. In the judgment of the tribunal, there were reasonable grounds for this conclusion.

36. In Ms Mills' opinion, the solicitation was the conversation in store about the claimant's wider skills and the tribunal concluded that this was a reasonable conclusion reached on reasonable grounds. We also bore in mind page 208 of the hearing bundle which makes clear that trying to be hired or obtain business activities through a connection built or established through employment by the respondent is a conflict of interest. The tribunal agrees that in this case there is no other credible explanation as to how Project One would have known about the claimant if it had not been a JV client of the respondent and dealt with him initially in that capacity.

37. That left the third reason of there being a conflict of interest caused by the work undertaken by the claimant for Project One. No-one could seriously argue that the claimant, a private individual, was seeking to challenge a multi-national company through his work for Project One in South Wales. However, both the claimant and the respondent were offering similar services. The respondent had created and was selling the editing software used by the claimant on behalf of Project One. More seriously, the respondent was paid by business customers, including Project One, to access the skills of its staff, including the claimant, to teach how to use such editing products and get the most value from the respondent's products using them to their full effect.

38. Project One was a JV client of the respondent's and while Ms Mills did not make the same observation as Mr Blackburn in his oral evidence that there was a risk that Project One were getting an in-house creative specialist by instructing the claimant directly, it was not unreasonable for the respondent to view the private relationship between the claimant and Project One as a threat to the continued existence of Project One as a JV client.

39. Ms Mills' evidence was that there is an actual or potential conflict of interest when an employee who has met a client through the auspices of the JV program is then asked to use the products, on which he delivers training for the respondent as part of the JV program, as part of his private work for that JV client. Her position was that the respondent was potentially being deprived of future business from that JV client. The Tribunal noted that on the evidence before it Project One had been a very active JV client for several years and then, after it asked the claimant to undertake work for it, ceased to be a JV client. It no longer sought training from the respondent after December 2016; the claimant undertook for Project One from January 2017 onwards. It is unknown why Project One ceased to be a JV client, but it was not unreasonable for the respondent to note that Project One's

involvement with Apple significantly reduced after it gave work to the claimant directly. The tribunal concluded that Ms Mills did have reasonable grounds on which to conclude that there was an actual or potential conflict of interest, particularly in light of the wording of the business conduct policy and the examples given in training.

40. The tribunal also considered the effect that the claimant's dishonesty at the investigatory meeting had on the decision to dismiss. It accepted Ms Mills' evidence that it was trivial, as matters had moved on, and it was what the claimant had done, or not disclosed, regarding his work for Project One at the appropriate time that was the reason for dismissal. The dishonesty at the investigatory meeting itself was trivial in her view compared to the breaches of the respondent's business conduct policy, a policy which it viewed as fundamental to its business. The claimant's refusal to disclose the identity of the entity for which he was doing private work, despite being asked on two occasions by the respondent, in Ms Mills' opinion meant that the respondent could not trust the claimant, which in the circumstances this was not an unreasonable conclusion, but further shows that the actions of the claimant at the investigator meeting were not critical to the decision to dismiss.

41. In light of the finding that the claimant had been fairly dismissed, the tribunal did not go to make any further findings.

_____

Employment Judge C Sharp
Dated: 27 September 2018

REASONS SENT TO THE PARTIES ON

……06 October 2018…….

……
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS