EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4105494/2017

Held in Edinburgh on 11, 12, 13 July, 18 October and 22 November 2018

Employment Judge: Mark Mellish (sitting alone)

Miss S Mahomed	Claimant In Person
Lloyds Bank PLC	Respondent Represented by:- Mr K McGuire – Advocate

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant was fairly dismissed from her employment with the respondent.

The claimant's claim of breach of contract, in relation to notice pay, is dismissed.

The claimant's claim in relation to holiday pay is dismissed by consent between the parties.

REASONS

Introduction

1. The claimant submitted complaints of unfair dismissal and breach of contract (i.e. in relation to notice pay).

2. Originally, the claimant also sought an award in relation to holiday pay; it seemed, in respect of accrued but untaken holiday. However, this matter was subsequently resolved between the parties on the basis that no holiday pay was owed. The respondent's representative asked that the holiday pay claim should be dismissed and the claimant agreed that was appropriate. The tribunal therefore dismissed that element of the claim.

3. It was conceded on behalf of the respondent that the claimant had been dismissed. The claimant made it clear that, if successful, she sought compensation only, by way of remedy.

4. At the commencement of the hearing, the tribunal raised the issue of whether, if there was a need to consider remedies, the tribunal should look at a separate Hearing. The claimant was unrepresented. Neither the claimant nor the respondent's representative raised any objection to the proposal to sever remedy. The tribunal decided that remedies should be severed and dealt with in a separate Hearing, if necessary.

5. The case was originally listed for a three day hearing in July 2018. It was, however, necessary for the case to be continued to 18 October and 22 November 2018 to hear the claimant's case and the parties closing submissions.

6. Evidence was led for the respondents from Mrs Joanne Laird (Team Manager), Ms Fiona Donaldson (Data Privacy Manager; though she held the post of Risk and Control Manager, Corporate Pensions at the relevant time) and Mr Scott

Gunderson (Senior Operations Manager). The claimant gave evidence on her own behalf.

7. At the commencement of the fourth day of the Hearing, the claimant made an application for a Witness Order, in respect of Ms L Mackie (a former colleague). Having heard and balanced the respondent's arguments against the claimant's, the tribunal decided that the application should be refused. The application was only made following the conclusion of the respondent's case. The tribunal did take into account the fact that the claimant was not represented and was not familiar with practice and procedure. However, the tribunal decided that did not absolve the claimant from the responsibility to pursue a potential witness as best she could to establish whether Ms Mackie was willing to attend voluntarily. It seemed that the claimant had spoken to Ms Mackie on Monday 15 October 2018, arranging to contact her later but she did not ask Ms Mackie to attend the tribunal on 18 October even though the latter seemed willing to assist in general terms. Further, the claimant had not sought to contact Ms Mackie via the respondent's solicitors, nor did she pursue Ms Mackie between the 15 and 18 October. In addition, the tribunal was not convinced in terms of the relevance of the evidence which might be given by Ms Mackie; the claimant referred to a meeting in or around June 2016, whilst the focus of the case was clearly around telephone calls made in May 2017. The claimant also raised issues regarding alleged work practices in her Team. However, the tribunal's view was that she could give evidence herself in relation to these matters.

8. Two Bundles of Productions were lodged with the tribunal: (i) a bundle numbered from pages 1 to 165 (in this Judgment, the page references will be R1 etc); (ii) a supplementary bundle, marked B, numbered from pages 1 to 22 (in this Judgment, the page references will be C1 etc). A number of documents were subsequently added to the "R" bundle as follows: (i) a copy of the Disciplinary Policy (pages 166 to 174); (ii) a letter from the Manager of Citizens Advice Edinburgh to the claimant dated 5 October 2017 (pages175 to 176); (iii) a copy of a Lloyds Banking Group document entitled "Our Values In Action (pages 177 to 194) and (iv) redacted transcripts of telephone calls dated 19 and 31 May 2017

(pages 195 to 209). Although the respondent's representative objected to the inclusion of the Citizens Advice Edinburgh letter on the grounds of relevance and the fact it had not been put to the respondent's witnesses (the claimant's application to include it was made on 18 October 2018, following the conclusion of the respondent's case), the tribunal decided it would be in the interests of justice to add it to the bundle. The respondent's representative confirmed that, if it was admitted, he could deal with the document in submissions.

9. The original recordings of the telephone calls on 19 and 31 May 2017 were obtained and played to the tribunal; the above mentioned redacted transcripts were subsequently produced and added to the bundle.

10. During the course of the hearing, the respondent's representative provided a "Cast List", together with documents showing an outline of the Lloyds banking Group and the Corporate Telephony Team in Scottish Widows.

11. Written submissions were provided by the claimant and the respondent's representative; in addition both parties made oral submissions.

Findings of Fact

12. The Tribunal found the following facts to be admitted or proved:-

(i) The claimant worked for the respondent as a Telephony Assistant/Consultant.

(ii) The claimant's date of birth is 2 May 1961.

(iii) The claimant commenced employment with the respondent on 21 August 2000. She was dismissed on 4 August 2017.

(iv) The claimant was originally engaged as a Client Service Administrator in Commercial Finance; this was from the beginning of her employment until November 2014. As a result of a potential redundancy situation (the claimant's department was closing down), she was redeployed to Scottish Widows. The latter is the Pensions, Protection and Retirement Company within the Lloyds Banking Group.

(v) The claimant worked in Scottish Widows as an Administrator in the "Leavers Team" from the end of November 2014 until June 2016, when she moved to the CORE Telephony Team. The claimant's manager was Ruth Welsh and the "coaches" in the Team included Sunny Gautam and Walter Berwick. The claimant's day to day role was to answer telephone calls in relation to pension queries. At first the claimant dealt with Independent Financial Advisers ("IFA's"). However, from 2 February 2017, when she worked in the Members Helpline ("MHL"), she also dealt with individual customers. Scottish Widows "Corporate Telephony" includes both the MHL and CORE Telephony.

(vi) The respondents have a Colleague Conduct Policy (pages R92 to R98). Under the sub heading "Professional Integrity", point 1.1 states as follows:

Colleagues must behave in a manner that at all times places the customer first and observes proper standards of market conduct.

Colleagues who are dealing with customers whether directly or indirectly should:

- Act with skill, care and diligence in providing services to customers;
- Give clear, fair and balanced information and communicate clearly to the customer;
- Act with integrity and not do or say anything that might mislead customers;

- If giving advice, do so competently and recommend only those transactions which are within their authority to do so and which are suitable for the customer;
- Keep the customer's information confidential and in line with the Group Information & Cyber Security Policy.

(vii) On 2 June 2017, Ruth Welsh approached Joanne Laird (a Team Manager) to ask about her availability to undertake an investigation. Mrs Laird confirmed she was available and agreed to carry out an investigation concerning the claimant. Mrs Laird did not know the claimant. Ms Welsh presented Mrs Laird with a number of telephone calls, asking her to review them and then meet with the claimant to discuss. There were two calls which Mrs Laird described in evidence as being of a "good nature" and three which were "under question". Mrs Laird was given an A4 sheet with "I" numbers for each of the calls; with a brief description of the content. She was also given a copy of a coaching document from November 2016. The calls included conversations involving the claimant and a customer as well as the claimant and an IFA (the latter call on behalf of customers). Mrs Laird sat in a room and listened to the calls in order to get a sense of what they were about. Mrs Laird could access a recording of the calls by entering the "I" number for each call into the respondents system.

(viii) All telephone calls are automatically recorded, usually for training/monitoring purposes. Every month coaches and Team Managers are responsible for sampling a proportion of their colleagues' calls.

(ix) In the claimant's case, concerns did not arise due to call monitoring as such but due to one side of a conversation being overheard by a manager, who then tested some calls.

(x) Mrs Laird compiled a list of questions, based on the calls she had reviewed, to use in a meeting with the claimant.

(xi) Mrs Laird approached the claimant at work and asked her to attend a meeting room. Mrs Laird then conducted an Investigatory Meeting with the claimant. Mr Sean Grant also attended to take notes. These notes of the meeting on 2 June 2017 were subsequently typed up (pages R38 to 50).

(xii) At the outset, Mrs Laird explained that the meeting was an investigatory meeting and not part of the disciplinary process at that stage and that no disciplinary action would be taken at the meeting.

(xiii) Mrs Laird explained that some of her initial questions (recorded on the second half of page R39) were intended to build a picture of whether there had been coaching. Mrs Laird took from the answers that there had been coaching and that the claimant understood her role. Mrs Laird explained that there were times when a Telephony Assistant needed help with processes and procedures and therefore would have a coach provide training at the desk.

(xiv) Mrs Laird asked the claimant about “5 star” and “NPS” (pages R40 and R41); the claimant, albeit after a little prompting in relation to the latter, confirmed she had heard of the terms. In her evidence, Mrs Laird explained that 5 Star is what Scottish Widows measure themselves against in the Call Centre industry and that they had achieved 5 stars in the past two years (having moved from 1 star three years ago). There is a process in which members, advisers and employers are asked to rate the service from Scottish Widows. “NPS” means Net Promoter Score; it relates to feedback from members and advisers, who are asked to rate calls and how likely they are to recommend products and services. Mrs Laird said that feedback is imperative; they are only in their jobs because of the customers. She went on to explain that the service provided to customers is what keeps them coming back; it also builds Scottish Widows reputation and brings in more customers.

(xv) When asked about her understanding of transferring calls to another department, the claimant replied “It shouldn’t be a straight through transfer ... I don’t like conference calls as I don’t feel very confident but I know that’s how you should transfer them to a different department”. When asked whether she avoided doing conference calls, the claimant replied “yes”. When asked whether she had asked for help with how to do them, the claimant replied “Yes and the coaches have helped ... I do know the process, yes”. The claimant then confirmed that she knew the correct way to do a conference call.

(xvi) In her evidence, Mrs Laird explained that a “straight through transfer” would involve just dropping the customer to the next line without an introduction; a good service would include not making the customer go through e.g. additional security checks. When transferring, it is important that it becomes a three way conference call so the customer knows who he/she is being transferred to, rather than just being “dropped”. Further, Mrs Laird explained that a straight through transfer would join the back of a queue; a conference call would take the customer direct to an adviser. The original adviser steps out of the call after saying goodbye.

(xvii) Passing a customer through to a colleague without any introduction is known as a “cold transfer”.

(xviii) Mrs Laird reminded the claimant that she had had a feedback session with Sunny Gautam on 18 November 2016; he highlighted concerns regarding call handling. However, Mrs Laird was able to refer the claimant to two calls on 22 February 2017 which showed that, following the coaching in November, there had been improvements in the claimant’s call handling.

(xix) Mrs Laird then referred the claimant to a telephone call she took from a customer on 19 May 2017 (page R43). The call was played to the claimant. In her evidence, Mrs Laird explained that the caller was asking for assistance with the meaning of a letter he had received from Scottish

Widows. Mrs Laird said that the claimant told the customer to go away and just read it. The customer became frustrated and asked to speak to a manager. However, the claimant "cold transferred" the customer to another department (the MHL). Mrs Laird said that the customer would have been faced with another advisor from another department, who could not help, rather than the manager he had asked for. Mrs Laird thought that, from the claimant's answers to her questions, the claimant understood that the service provided was not what the employer would have expected. The claimant accepted during the Investigatory Meeting that she had transferred the caller to the MHL rather than to a manager and that it was a "cold transfer".

(xx) Mrs Laird then referred the claimant to the first of two calls she had dealt with on 31 May 2017 (page R44). Both of these calls were played to the claimant in the Investigatory Meeting. With regard to the first call, the caller was an IFA who sought assistance. Mrs Laird explained in her evidence that the service provided by the claimant caused frustration and the IFA asked to speak to a manager. However, the claimant "cold transferred" the IFA to another department (i.e. Retirement Accounts) rather than to a manager. When asked in the Investigatory Meeting by Mrs Laird why she had chosen to do a cold transfer to an incorrect area, the claimant replied "To get rid of him I suppose, I'm sorry".

(xxi) Mrs Laird then moved on to the second call on 31 May 2017 (page R44); this involved the same IFA. In her evidence, Mrs Laird said that the Retirement Account agent had transferred the caller back to the claimant. At the beginning of the call, there was silence for around 6 minutes after the IFA asked to speak to a Supervisor; the claimant did not speak. When asked in the Investigatory Meeting why she did not acknowledge the customer at the start of the call the claimant replied "I knew who he was, I realised as soon as I took the call". The IFA is then put through to Kate Clarke (a coach), who has a discussion with him. During the course of that discussion, the IFA indicates that he wishes to make a complaint about the

claimant. Kate Clarke then transfers the IFA back to the claimant to go through the complaint with him. After some further discussion, the call ends. The claimant informed Mrs Laird that the customer terminated the call. In the Investigatory Interview, when Mrs Laird asked "Did you take the caller through security", the claimant replied "No, I should have. I know that". Mrs Laird asked "Do you know that is a breach" and the claimant replied "Yes I recognise that". Mrs Laird then asked "Did you let Kate know he hadn't been taken through security" and the claimant replied "No".

(xxii) The respondents have a complaints recording system called "Resolve". In her evidence, Mrs Laird explained that complaints have to be logged immediately and updated within 48 hours. In the Investigatory Meeting, the claimant said that she had asked Hannah Gilbert (a coach) for help with logging the complaint but accepted that it had still not been logged on Resolve.

(xxiii) Having completed the questioning, Mrs Laird left the room to contact HR to take advice on the next steps; she is required to speak to HR at this point in an Investigatory Meeting. It was decided that the claimant should be suspended. The claimant was then advised that she was being suspended on full pay. She was also told the reasons why that decision had been taken.

(xxiv) Following the Investigatory Meeting, Mrs Laird completed a document entitled "Factors for Consideration" (pages R51 to R55). This was submitted to HR. In her evidence, Mrs Laird explained that this document breaks down the reasons for suspension.

(xxv) Mrs Laird prepared a letter dated 2 June 2017 (pages R56 to R58) which confirmed the decision to suspend the claimant, on full pay, with immediate effect. Mrs Laird said in evidence that the minutes of the Investigatory Meeting would have been enclosed. Mrs Laird also explained to the tribunal that, having sent the letter on 2 June 2017, she then

received a telephone call on 7 June 2017 from the claimant, who said that she had not received the paperwork. Mrs Laird said that the letter was reissued on 8 June 2017. However, the claimant made contact on 15 June 2017 and again said that she had not received the papers. Mrs Laird contacted HR to confirm the claimant's address and sent another copy of the correspondence. A hard copy was also given to Fiona Donaldson to give to the claimant when possible. HR had confirmed that Mrs Laird had the right address.

(xxvi) HR had some difficulty appointing a Hearing Manager for the next stage in the proceedings. Mrs Laird explained in her evidence that this was due to timing and people having annual leave. She said that a Hearing Manager needs to be available for a period of 6 to 8 weeks, to allow for any necessary investigatory work and meetings. Mrs Laird said that the claimant was kept informed via a telephone conversation; the claimant was told that the difficulty was due to annual leave and that the respondent was working as fast as it could.

(xxvii) Ms Fiona Donaldson (then Risk and Control Manager, Corporate Pensions) was appointed as the Hearing Manager. She was employed on Band E, whereas the investigator was on Band D; the respondent's procedures require the person conducting a disciplinary hearing to be one band above the person who conducted the investigation.

(xxviii) Ms Donaldson was provided with a copy of the minutes of the Investigatory Meeting (pages R38 to R50), together with a copy of the "Factors for Consideration" document (pages R51 to R55). She was also provided with reference numbers for the relevant telephone calls involving the claimant; Ms Donaldson listened to these prior to the Disciplinary Meeting.

(xxix) By letter dated 7 July 2017 (pages R59 to R62), the claimant was invited to a disciplinary meeting which was to be held on 21 July 2017. The letter

set out section 1.1 of the "Colleague Conduct Policy" and alleged that the claimant had breached this, specifically: "On 19 May 2017 and 31 May 2017 you knowingly chose to cold transfer a customer through to another area in order to avoid passing him to a manager as he requested displaying behaviour that is inconsistent with our values or Codes of Conduct. Again on 31 May 2017 when the customer was transferred back you knowingly placed the customer on immediate hold without completing any security which subsequently resulted in a security breach. When this call came to an abrupt close whilst taking details to log a complaint you knowingly made no attempt to call the customer back, log the complaint on Resolve or leave any detailed notes in relation to your call with the customer resulting in the complaint not being logged within our 48 hour timescale as per the internal process displaying non compliance with LBG policies, procedures or regulatory responsibilities". The letter went on to state the alleged actual/potential risks and impacts of the claimants actions i.e. a direct customer impact resulting in them needing to make another call and a complaint, increased service pressures potentially affecting colleagues and customers and potential financial loss/reputational damage to the respondent.

(xxx) The letter confirmed that, if the allegations were upheld and considered to constitute gross misconduct, there were a number of options open as outlined in the Disciplinary Policy (a copy of which was enclosed) and the claimant might be dismissed with or without notice or pay in lieu of notice.

(xxxi) Also, enclosed with the letter were copies of the Colleague Conduct Policy, the minutes of the Investigatory meeting and the Factors for Consideration document.

(xxxii) In her evidence, Ms Donaldson confirmed that the "Conduct Rules" (set out in the Appendix to the letter at page R62) turned out not to be relevant to the claimant; the claimant did not work in an area they were applicable to. (*Note: These "Conduct Rules" [which can, if breached, lead to a report*

to the FCA] must be distinguished from the respondent's "Colleague Conduct Policy", which is relevant to the claimant's case).

(xxxiii) The Disciplinary Meeting took place on 21 July 2017. Ms Donaldson chaired the meeting and was accompanied by Caroline Hall, who was present to take notes. The notes of the meeting were subsequently typed up (pages R63 to R73). The claimant attended and was accompanied by Hilda Childs, a friend.

(xxxiv) The claimant submitted a statement to the hearing, which she read out (pages C3 to C3a).

(xxxv) Having discussed the allegations with the claimant, Ms Donaldson asked whether there were any mitigating circumstances, either in the workplace or at home; the claimant replied to the effect that there were no issues she could identify that would have caused a change in her behaviour.

(xxxvi) Ms Donaldson did not make a decision on the day. She subsequently received and reviewed a typed version of the minutes of the meeting. She also looked at the "positive feedback" documents provided by the claimant (which appear from pages C2a to C2s). Ms Donaldson reviewed all of the evidence prior to making a decision.

(xxxvii) Mrs Donaldson sent a copy of the minutes of the disciplinary hearing to the claimant by letter dated 25 July 2017 (page C4). On 30 July 2017 (pages C5 to C5d) the claimant replied to Ms Donaldson with her comments on the minutes.

(xxxviii) On 2 August 2017, Ms Donaldson wrote to the claimant to confirm the outcome of the Disciplinary Meeting (pages R74 to R76). The claimant was informed that the decision had been made to dismiss her for reasons of gross misconduct, without notice. The letter begins by reciting section 1.1 of the Colleague Conduct Policy, together with the allegations and the

actual/potential risks and impacts of the claimants actions (*as set out in paragraph xxix above*). Ms Donaldson then goes on to set out the reasons for her decision which are, as follows:

- You did not act in line with the expected behaviours of LBG and failed to put our customers first while observing Group Colleague Conduct Policy specifically around acting with Professional Integrity;
- You failed to act with integrity providing balanced information and communication clearly to the customer;
- You failed to follow ID & V process at the start of a call and this is non compliant with managing calls into the business;
- You failed to follow due process in recording and logging a known complaint displaying non compliance with LBG policies, procedures or regulatory responsibilities;
- You did not listen to your customers needs and as such this did not allow you to treat your customers fairly.

(xxxix) Ms Donaldson went on to state "Based on my rationale I have made the decision that you have not acted with due skill, care and diligence which ultimately creates additional service pressure impacting customers and colleagues and may potentially cause financial and/or reputational damage to the business. I have deemed that your performance is not in line with LBG expectations and is creating risk to the business and our customers. Accordingly, your employment will terminate with effect from 4 August 2017".

(xl) Finally, Ms Donaldson's letter informed the claimant that she had the right to appeal against the decision.

(xli) On 7 August 2017, the claimant wrote to Ms Donaldson (page R78) to indicate her wish to appeal.

(xlii) Ms Donaldson replied to the claimant on 12 August 2017 (page R79) requesting that she state her grounds of appeal.

(xliii) The claimant replied by letter dated 14 August 2017 (page R80) setting out her grounds of appeal. They were as follows:

- My service to you over 16 years has been exemplary;
- It is common practice that security procedures are breached but I have been singled out;
- Regarding the registering of the complaint within 48 hours, I did several times advise our Complaints Champion;
- Dismissal for gross misconduct seems to be too extreme when there are other options available.

(xliv) On 25 August 2017, the respondents Head of Colleague Conduct Management Team (HR) wrote to the claimant (page R81) with regard to the disciplinary hearing outcome letter. The claimant was informed that the finding in respect of the Conduct Rule breach was made in error as the Conduct Rules did not apply to her in respect of her actions. When Ms Donaldson was asked about this in evidence, she confirmed that by the time she was delivering the outcome of the disciplinary process, HR had confirmed that a breach of the Conduct Rules was not applicable. Ms Donaldson said that the letter of 25 August was incorrect, in that she had not found the claimant in breach of the Conduct Rules in her letter of 2 August 2017.

(xlv) Mr Scott Gunderson (Senior Operations Manager) was appointed to hear the claimant's appeal; along with colleagues at the same grade, he had received an email seeking a volunteer to do so.

(xlvi) Mr Gunderson spoke to HR to get the background to the case and was provided with copies of the relevant documentation i.e. the minutes of the Investigatory Meeting and the associated Factors for Consideration

document, the minutes of the Disciplinary Meeting and the outcome letter, the original appeal letter and the claimant's letter confirming the grounds of appeal. He was also able to access and listen to the relevant telephone calls prior to the appeal hearing.

(xlvii) Mr Gunderson was provided with a copy of the feedback documents which had been provided by the claimant to Ms Donaldson (pages C2a to C2s).

(xlviii) By letter dated 5 September 2017 (page R82), Mr Gunderson wrote to the claimant to invite her to attend an Appeal Meeting on 15 September 2017. That date was not convenient for the claimant; she wanted a friend to be available to accompany her to the meeting. The meeting was therefore postponed to an agreed date the following week. Mr Gunderson wrote to the claimant by letter dated 15 September 2017 (page C7) to confirm the new date for the appeal hearing i.e. 22 September 2017.

(xlix) The Appeal Meeting took place on 22 September 2017. Mr Gunderson chaired the meeting and was accompanied by Nicole Moyes, who was present to take notes. The notes of the meeting were subsequently typed up (pages R83 to R87). The claimant attended and was accompanied by Hilda Childs, a friend.

(l) The meeting gave the claimant an opportunity to speak about her grounds of appeal.

(li) Mr Gunderson did not make a decision on the day of the meeting; he was to investigate further prior to making a final decision.

(lii) Following the Appeal Meeting, a copy of the minutes were sent to the claimant. The claimant replied by letter dated 27 September 2017, providing her comments on the contents (pages C8 to C8b).

(liii) Mr Gunderson prepared a document entitled “Rationale for Decision and Sanctions” (pages R88 to R89).

(liv) Mr Gunderson wrote to the claimant to confirm the outcome of the Appeal Meeting. The letter was dated 4 October 2017 (pages R90 to R91). However, it seems that the letter was sent out shortly thereafter; Mr Gunderson’s evidence was that he would have changed the date on the final version. Mr Gunderson sent the claimant a text message on 5 October 2017 by way of update (page C9), informing her that the letter would not arrive with her the following day as originally intended as the investigation had taken slightly longer than anticipated. Mr Gunderson said that the claimant should expect the letter to arrive by recorded delivery early the following week.

(lv) Mr Gunderson informed the claimant that her appeal had not been successful. He set out the reasons for his decision in relation to each of the claimant’s grounds for appeal (see paragraph xliii above).

(lvi) In relation to the first ground, Mr Gunderson explained that he had carried out an investigation into the claimant’s recent service with the respondent and had not found sufficient evidence to back this up. He stated “The evidence that I have found has proven that whilst you have been successful within the Group in the earlier part of your career, this has not been displayed within your current role. You have required a significant level of support in order to successfully perform your day to day duties”.

(lvii) With regard to the second ground, Mr Gunderson confirmed that he had investigated the matter. He stated “I am confident that the correct action has been taken in dealing with breaches in a confidential manner, as has been the case with your individual situation”. In his evidence to the tribunal, Mr Gunderson said that he had taken action to investigate with operational managers; this showed no issues regarding security breaches in the Team either month to month or systemically. He said he could

therefore decide whether the claimant had been singled out; he did not believe she had been "treated more harshly".

(lviii) In relation to the third ground of appeal, Mr Gunderson stated "In line with local processes for complaint handling, it was your responsibility to log the complaint within the relevant timescales. Whilst you had been seeking help to log the complaint, you did not escalate this to the appropriate level when you had the opportunity".

(lix) With regard to the fourth and final ground of appeal Mr Gunderson stated "I have considered this carefully as part of my investigation and whilst other options were available, I believe the correct sanction has been applied. The levels of customer service that you provided in the instances of 19/5/2017 and 31/5/2017 were unacceptable and caused reputational damage to the Group. Having carried out a full investigation, I do not believe that these incidents are completely isolated. Furthermore, I do not see any evidence to suggest this level of service would significantly improve in the immediate future if the sanction was any different. Also whilst each case is reviewed in its own right the outcome is not inconsistent with other cases of this nature".

Claimant's submissions

13. The claimant, in summary, submitted that:-

(i) She was employed as a Telephony Consultant by the respondent and was dismissed on 4 August 2017.

(ii) The investigation was not fair. She felt she was targeted and that dismissal was a harsh decision.

(iii) The tribunal will have to decide the following issues: 1. Did the respondent carry out a reasonable investigation; 2. Was the decision to dismiss harsh; 3. Why did the respondent not give her a warning or final warning; 4. Did the respondent follow the ACAS Code; 5. She raised her concerns with management that they were not allowing her to practice the respondent's values/code of conduct; 6. She was under pressure taking call after call; 7. She asked for assistance to log the complaint several times but assistance was not provided; 8. It is common practice that security and data are breached; 9. Were the respondent's witnesses credible; 11. She was put on a high priority line for staff who are skilled in pensions. She was never taken off that line. She received bonuses and pay rises. This would never happen if she was not performing in accordance with the respondent's values.

(iv) Fairness required the respondent to make proper enquires.

(v) The respondent failed to understand the Conduct Rules. This is mentioned even though Fiona Donaldson (the second witness at this hearing) said she did not rule on this. Ms Donaldson kept mentioning at the Disciplinary Hearing that the claimant had breached the Conduct Rules and would be reported for this. Why did the claimant receive a letter from Human Resources apologizing about the findings in relation to the Conduct Rules. Why is there this confusion.

(vi) The respondent failed to investigate why the Complaints Champion did not assist her with the logging of the complaint. At the same time the claimant also told a manager Kate (the same manager who spoke to the Financial Adviser who wanted to complain about the claimant) that the Complaints Champion was not assisting her with the logging of the complaint. Kate knew the claimant had a complaint to log as the Financial Adviser told Kate he wanted to complain about the claimant and he explained to Kate what the issue was. This means Kate knew the complaint should be logged. This was the claimant's first time to log a complaint. If the claimant did not

know how to log a complaint and she was asking for assistance from a Complaints Champion, who is put in place by management to help with this, and the Complaints Champion does not assist, what does this say. This was all about keeping the claimant on the telephones to answer calls and beat targets. To log the complaint, the claimant would have to have been off the telephones.

(vii) The respondent failed to look into the claimant's complaints about coaches asking her to take call after call without logging them. The tribunal is referred to the claimant's meeting with the manager Sean Grant soon after she started in the Telephony team (Lorna Mackie was present at this meeting as the note taker). See page C5b, point 8; the claimant complained about coaches asking her to take call after call and not letting her record the caller's requests. Sean Grant told the claimant she should listen to the coaches. During her 1-1 at the end of May 2017 with Lorna Mackie (the latter was a manager at this time) (see page C5a, point 3) Ms Mackie told the claimant that if mentors asked her to take a call she should say "no" and tell them she was logging calls. The claimant challenged the coach Sunny (*Gautam*) who was present at the meeting. Lorna Mackie confirmed it was good the claimant challenged him.

(viii) During this meeting, the claimant said to Ms Mackie "it has just dawned on me that it is the coaches' performance requirement to beat the target of how many calls are answered". Ms Mackie quickly said, "you don't worry about this". This proved the claimant was "spot on".

(ix) This shows that managers were aware of what was going on but did not want to do anything about it. Simply put, to beat the targets set to answer the number of calls. This is important to the respondent as customers would definitely complain, when the respondent telephones them for feedback that they were kept waiting on the telephones.

(x) Managers did not want the claimant to carry out her work as per the company's Code of Conduct/policies.

(xi) The Financial Adviser the tribunal heard on the recording clearly states to the claimant that he had called the day before and was promised some information would be emailed to him but he had not received it and that is why he was calling again. This is service pressure. The claimant told him there was no record of his request. This shows this does happen. Yet the claimant was dismissed.

(xii) The claimant was under pressure, taking call after call. See page C5a, third paragraph line 20; when the claimant complained to coaches that she was taking call after call and others were sitting free they told her she was on a "high priority call line" because she was skilled and they were on a "low priority line".

(xiii) The respondent is citing other cases, for example, British Home Stores Ltd v Burchell, Foley v Post Office, and Midland Bank plc v Madden for the tribunal to follow when ruling but the claimant's case is different.

(xiv) The Respondent's third witness, Mr Gunderson, is not credible. When the claimant asked him at this hearing about her request for an Appeal which was taking too long and that she had to constantly chase for it and that a call was made as well, Mr Gunderson said he had no knowledge of it. This is not true. Citizens Advice chased the claimant's appeal (page R175). He sent the Appeal invite on the same date and also called the claimant and left a message to call him.

(xv) Mr Gunderson also said at this hearing that he had not seen any documents and then he back tracked and said he had seen the feedbacks. (See also page R84, third paragraph after grounds of appeal point 4). Yet he told the claimant at her Appeal hearing he had not seen any documents and that he wanted to be impartial.

(xvi) Mr Gunderson at this hearing said training is given in the Telephony Team. That is not correct; you learn on the job.

(xvii) The Respondent's first witness at this hearing, Mrs Laird, was not credible. The claimant asked her about the day she suspended the claimant; she had told the claimant she would receive the suspension letter within 48 hours confirming everything that had been said. Mrs Laird replied, she had not said the claimant would receive the suspension letter within 48 hours. However, the tribunal should refer to page R49; straight after the bullet points**,** it is written "I will advise you of your suspension within the next 48 hours"**.** She also says that the claimant would receive the notes taken at the meeting separately. The claimant never received this as well. The day the claimant was suspended will always be with her and that means she remembers clearly what Mrs Laird was telling her when she suspended her.

(xviii) The next question asked of Mrs Laird was whether telephone calls from customers can be directed to anyone working on the telephones. She said "no". This cannot be correct as how is it that the caller who complained about the claimant was a Financial Adviser, yet the claimant was working on the "member helpline" and was in the team that receives calls only from members. This shows calls can be directed.

(xix) The Disciplinary Hearing Manager was dismissive of the suspension letter. See page R66 first paragraph, line 2 from the last line; she says the suspension letter was sent several times. This shows she was dismissive of everything the claimant said at the Disciplinary hearing. She never let the claimant finish answering her question of, how would the claimant turn this around if given another chance (page R70 paragraph 2). The Disciplinary Manager was dismissive of everything the claimant said. This cannot be a fair hearing. If the suspension letter was sent several times how is it that the claimant never received it.

(xx) The claimant was treated badly. She never received the suspension letter and had to keep chasing for her hearings. The respondent was not interested in giving her any consideration. She was anxious, worried and did not know what was going on. This in itself was a punishment. This is against ACAS Code of Conduct.

(xxi) With respect to the Appeal Hearing, the ACAS Code of Conduct was not followed. The claimant had to keep chasing for the appeal hearing.

(xxii) The ACAS Code of Conduct says hearings should be heard without delays, yet the disciplinary hearing was held after almost 2 months.

(xxiii) The Appeal Hearing manager, Mr Gunderson did not properly investigate the claimant's reasons for Appeal. He basically followed exactly Ms Donaldson's decision. The claimant told him at the Appeal hearing to ask Ruth Welsh (Manager) for all the feedback she had from Scottish Widows customers about the claimant. He said at the tribunal hearing that he had not seen any feedbacks. This cannot be possible. The claimant also told Mr Gunderson at the Appeal hearing that data protection and security breaches often happen and gave him examples of colleagues giving information out to callers; when the callers called back the claimant had to say to them, she could not give them any information as they did not have authority. They then said to the claimant, so and so gave them information. The respondent has recordings of all these calls.

(xxiv) The claimant asked for training on how to handle taking call after call in her 1-1 with Sunny Gautam in November 2016 but he told her there was no need for it as he understood it is not easy to keep a professional manner taking call after call. The disciplinary hearing manager said the claimant asked for "soft skill" training. This is not correct (see page C5b, point 6 line 5 from the bottom).

(xxv) The claimant worked in Commercial Finance for 15 years. This job did not require her to take call after call. It was nothing like the Telephony team; this is a call centre.

(xxvi) The disciplinary outcome was too harsh. Everything the respondent has accused the claimant of, happens all the time; breaching of security, data protection and not giving information to callers. This happens when staff are called from other areas of the company to assist in the Telephony team. The latter were always short of staff due to sickness and staff leaving. The staff sent to assist on the phones are “new recruits”; they have no knowledge of Pensions, they do not get any training. Security is breached, data protection is breached, and incorrect information is given all the time. This was all about getting calls answered quickly.

(xxvii) The Disciplinary Hearing Manager recognised the claimant was skilled after reading her feedback from customers.

(xxviii) The claimant told the Disciplinary Hearing Manager that she was under pressure and explained that she was taking call after call as instructed by coaches (see page R67, paragraph 3 line 3) but others were sitting free not logging calls. Why did she not look into this.

(xxix) The claimant has been honest about everything she has said in this hearing and throughout her ordeal and has nothing to hide. She is ashamed of what she said to the Financial Adviser because she does not behave this way. The claimant was under so much pressure that she had not even realised what she said to the Financial Adviser until the recording was played to her by Mrs Laird on 2 June 2017 when she was suspended.

(xxx) The claimant’s manager has all the feedbacks from Scottish Widow’s customers and they are just as complimentary as the ones from claimants bundle (pages C2 to C2u). The claimant does not know these people, she

has never met them. She just asked them for their honest opinion about her and they gave it.

(xxxi) Why did the claimant allow the tapes (*of the relevant telephone recordings*) to be heard at this hearing. She knew what they contained but just wanted everything to open and honest, ensuring the judge knew what this was all about. She has nothing to hide.

(xxxii) Pensions are complex; rules and regulations change all the time. Information given to customers is not accurate all the time. Even the coaches do not know all the answers and incorrect information is given to callers.

(xxxiii) The majority of calls the claimant blind transferred were numbers they cannot bring up on their system and therefore they are blind transferred (see page R68, third paragraph, second last line). Coaches were aware that she did not like doing conference calls so why did she not get a warning (see page R68, paragraph 3 line 5). The Coaches never warned her about this because she hardly got calls to do conference calling.

(xxxiv) Mentors in the team were saying the claimant was the hardest working member in the team.

(xxxv) The claimant was targeted because no one else gets dismissed for what she did; they do the same.

(xxxvi) The coaches did not care for the company values as they just wanted the claimant to take call after call and they did not allow her to record the caller's queries. It shows they did not care for the respondent's values. The managers were also not concerned about the respondent's values.

(xxxvii) The security she breached was that one only, as the claimant knew who the caller was and she was nervous.

(xxxviii) The claimant worked only about six months in the Financial Advisers Team and then she was put in the Member Helpline Team. She had very little knowledge of dealing with Financial Advisers; six months is not enough. Pensions are complex, it is impossible to learn about pensions in six months. Yet, she was told she was on the high priority call line as she was skilled.

(xxxix) Team targets for answering calls were set every month; if targets were exceeded management brought in "goodies" to show their appreciation.

(xl) It is a high priority for the respondent to get calls answered quickly.

(xli) The tribunal is asked to find that the claimant was unfairly dismissed.

Submissions on behalf of the respondent

14. On behalf of the respondent, it was in summary submitted that:-

(i) The claimant was fairly dismissed because of her misconduct in relation to mishandling of calls with a customer on 19 May and an independent Financial Adviser on 31 May 2017 and related matters. The claims for unfair dismissal and notice pay should be dismissed.

(ii) Three witnesses gave evidence on behalf of the respondent; Mrs Laird (who carried out the investigation into the alleged misconduct and had a meeting with the claimant), Ms Donaldson (who chaired the disciplinary hearing) and Mr Gunderson (who heard the claimant's appeal against her dismissal). Each of the respondent's witnesses gave evidence in a helpful and credible manner. Their evidence in chief was designed to assist the tribunal. They answered the questions put to them in cross examination reliably and credibly. There was no evasiveness in their answers or

attempts not to answer the questions put to them. The evidence of the respondent's witnesses should be accepted as credible and, if there are material differences between their evidence and the claimant's evidence, the evidence of the respondent's witnesses should be preferred.

(iii) There are some concerns regarding the claimant's evidence; the claimant seemed to be a witness who wanted to lay the blame at the door of the respondent rather than accepting her own misconduct. Not surprising in an unfair dismissal claim but her reluctance to accept was of a serious nature. In addition, things emerged piecemeal; for example the claimant talked of "Resolve" being a new system and never having logged a complaint before. This did not come out in the claimant's evidence in chief and was not put to the respondents witnesses.

(iv) The relevant factual background leading to the claimant's dismissal was explained by the respondent's witnesses and is set out in the notes of the investigatory process and disciplinary meetings. To a large extent, the claimant accepts (or at least at the time of her dismissal and appeal accepted) that her actions in relation to the calls on 19 and 31 May 2017 fell well below the standards accepted by the respondent and that she could not offer an explanation for her actions. The claimant did not, for example, in the disciplinary process seek to suggest that she had not "cold transferred" the callers in an inappropriate and unhelpful manner. Therefore, much of the important factual evidence relied on by the respondent has been accepted by the claimant.

(v) The claimant's position in her statement to the disciplinary hearing and her grounds of appeal was that she had worked for the respondent for over 16 years and that, up until the matters that led to her dismissal, she had a good record with the respondent. The respondent's submission is that these matters were taken into account in relation to her dismissal.

(vi) With regard to the issue of delay, the calls took place on 19 and 31 May 2017. The investigatory meeting took place on 2 June 2017; relatively quickly after 31 May. Proscribed "Timescales" are set out at page R171 (*in the Disciplinary Policy*). The letter inviting the claimant to attend the disciplinary meeting went out on 7 July 2017 (page R59). Before that, at the end of the investigatory meeting, it was explained that the claimant was suspended, with reasons. The respondent says that it sent out a confirmation of suspension letter; the claimant says she did not receive it. In any event, the invitation to the disciplinary meeting came fairly quickly after the investigatory meeting. The disciplinary meeting itself was on 21 July 2017. The "Timescales" do not prescribe when meetings are to take place. Mrs Donaldson said it took time to find a Chair for the disciplinary meeting (as it did for the appeal hearing). If there was undue delay (and the respondent's position was that there was no undue delay) then it had very little, if any, effect regarding fairness. Matters were still fresh in people's minds and the call recordings were available.

(vii) The investigatory hearing was pretty thorough; it became clear early on that the claimant knew what it was about and she was given an opportunity to give her point of view.

(viii) With respect to the interpretation of "... 2 out of 100?" on page R42, Mrs Laird gave clear evidence on it. More importantly, when looking at the disciplinary points which went forward (as in the invitation to the disciplinary meeting on page R59), the interpretation of that piece of evidence was not significant. Mrs Laird was the investigator; she played no part in the decision to dismiss.

(ix) With regard to the letter from HR at page R81, Mrs Donaldson informed the tribunal that she did not take the "conduct rules" point into consideration; she had been informed by HR that it was not relevant. When Mrs Donaldson was taken to R81 and asked, why did the letter go out, she replied that she had no idea. It appears on the face of it slightly

unusual that a letter like that at R81 goes out. It was an innocent mistake. It is not a relevant issue regarding fairness; the tribunal heard evidence from the decision maker who said she did not take the conduct rules into account. Mrs Donaldson was looking at the Colleague Conduct Policy and the integrity issue. While this is a point the claimant had mentioned, the respondent says it is not an issue which impacts on the fairness of the dismissal.

(x) When we come to the appeal, the claimant talks of delay. The disciplinary hearing took place on 21 July 2017, the decision letter was dated 2 August 2017 and the claimant then indicated on 7 August 2017 that she was minded to appeal. On 14 August 2017, she sent a letter setting out her grounds of appeal (page R80). The appeal went ahead. The invitation letter was dated 5 September 2017; the claimant says it was only received later, it did not come soon enough. Mr Gunderson said that the letter would have gone out near when it was dated. The appeal hearing took place on 22 September 2017. The claimant accepted that, apart from the anxiety of waiting, she was unable to point to delay (if there was any) causing her prejudice. The respondent says it does not impact on fairness.

(xi) The claimant talked about training. However, the claimant accepts that there were Coaches/Mentors there who she could turn to for assistance. In the investigation, the claimant accepts they were helpful. In the conversations with a scheme Member and IFA, there was a reasonable request to be transferred to a Manager; the claimant deliberately chose not to transfer the customer/IFA to a Manager. The claimant did not say that her lack of training resulted in, contributed to or influenced her not knowing how to transfer a caller to a Manager. It was a choice by the claimant not to do so. The claimant has not put forward a case that it was a mistake. The claimant accepted she did this, once to get rid of someone. The complaints of a lack of training/coaching do not add up. Even if there is a lack of coaching/training on certain aspects, there was certainly not a lack of training on how to transfer someone to a Manager.

(xii) With regard to the calls on 31 May 2017, there are two issues; the security protocol and logging the complaint afterwards. “Security” is a straightforward matter of taking the name, address, NI number and date of birth. The claimant did not do that on 31 May when the caller was put back through. It is where the data protection issues arise; she was remiss in doing the security checks properly. Information regarding a particular account could be given to a caller when it is not known who he or she claims to be.

(xiii) The concern is that the IFA was put through to a Supervisor without doing the security checks. The Supervisor would have assumed the checks would have been done and could have given out information.

(xiv) In relation to logging the complaint, it is common ground that the complaint was not logged. It is the responsibility of employees involved to log a complaint; the respondent thinks the claimant accepts that but she goes on to say that she was asking Hannah (*Gilbert, a Coach)* for assistance. This is a belated attempt to excuse her own behaviour. The claimant was aware that the complaint was not logged; she had not even called the IFA back (in order to log the complaint, she would have to speak to the person making the complaint again). The claimant seems to say that she starts to log the complaint but the IFA hangs up.

(xv) The respondent relies on the potentially fair reason of conduct. There can be no doubt at all that, at the time of the claimant’s dismissal, the respondent believed her to be guilty of the misconduct alleged against her and that it had reasonable grounds for doing so. Furthermore, based on the largely uncontested evidence of the respondent’s witnesses, there can be no doubt that the respondent’s belief was based on a reasonable investigation into the claimant’s behaviour.

(xvi) The claimant was dismissed because of her conduct in relation to the wholly inadequate manner in which she dealt with (1) a call with a customer on 19 May 2017 and (2) two calls from an IFA on 31 May 2017. In relation to the first call, the claimant accepted that she "cold transferred" the customer to another department when she should not have done this and that this was not the correct thing to do. In relation to the second call, the claimant accepted that she did not deal with that in a satisfactory manner. Once again, she "cold transferred" the IFA to another department and when he was reconnected to her, she transferred him to her manager without going through the required security questions. In addition, she then failed to log a complaint in the appropriate manner. The respondent's investigation into these matters was thorough. The claimant was given numerous opportunities to explain her actions. The claimant was afforded an appeal against the decision to dismiss her. Mr Gunderson looked at the points raised in the appeal letter and carried out his own investigation.

(xvii) A finding should be made that the decision to dismiss the claimant was within the range of reasonable responses open to the respondent. It is clear that the respondent takes call handling and customer care very seriously. The respondent's witnesses explained why this is the case. The reasons for the claimant's dismissal are summarised in the dismissal letter from Fiona Donaldson.

(xviii) In all the circumstances, the tribunal should dismiss the claim and make a finding that the claimant was not unfairly dismissed.

(xix) In relation to the notice pay claim, we are looking at a breach of contract that entitles the employer to terminate without notice. At page R173 (*in the Disciplinary Policy*) there is a list of "Misconduct examples", including "Negligence or behaviour likely to cause offence to other employees, Bank customers or the general public" and "Breach of Bank's policies, rules, standards and procedures". At the end of the list it states "It should be noted that the above misconduct may also constitute Serious or Gross

Misconduct". Customers clearly asked to be transferred to managers and the claimant did not do it; this is shoddy treatment and a breach of the respondent's policies and standards. With regard to section 1.1 of the Colleague Conduct Policy (page R93), what was required by bullet points 1 and 3 was not done. In conclusion, not only is it conduct which justifies the sanction of dismissal, it is also gross misconduct which justifies the sanction of dismissal without notice.

Relevant Law

15. The law relating to unfair dismissal is contained in section 98 of the Employment Rights Act 1996 ("the ERA"). It is initially for the employer to establish that the claimant was dismissed for a potentially fair reason, one of which is a reason relating to "conduct".

16. The leading case relating to conduct as a reason for dismissal is **British Homes Stores v Burchell** 1980 ICR 303 which states that in order for an employer to rely on misconduct as the reason for dismissal there are three questions that the tribunal must answer in the affirmative, namely, as at the time of the Claimant's dismissal:

    (i) Did the respondent believe that the claimant was guilty of the misconduct alleged?
    (ii) If so, were there reasonable grounds for that belief?
    (iii) At the time it formed that belief, had it carried out as much investigation into the matter as was reasonable in the circumstances.

17. If the employer succeeds in proving there was a potentially fair reason for the dismissal, then whether the dismissal is to be considered fair or unfair depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the

employee. This question has to be determined in accordance with equity and the substantial merits of the case (section 98(4) of the ERA) and includes an assessment of whether the procedure adopted by the employer was fair. It is now well-established that an employer may be found to have acted unreasonably under section 98(4) on account of an unfair procedure alone. This was the result of the decision in **Polkey v AE Dayton Services Ltd** 1988 AC 344.

18. What has to be assessed is not whether the dismissal is "fair" to the employee in the way that is usually understood but whether, with the knowledge the employer had at the time, the employer acted reasonably in treating the misconduct that he believed had taken place as reason for dismissal. It is not relevant whether in fact the misconduct took place. The question is whether, in terms of **Burchell,** the employer believed it had taken place (with reasonable grounds and having carried out a reasonable investigation) and whether in those circumstances it was reasonable to dismiss.

19. The tribunal must be careful not to assume that merely because it would have acted in a different way to the employer that the employer has therefore acted unreasonably. The well-known case of **Iceland Frozen Foods Ltd v Jones** (1983) ICR 17 makes it clear that there may be a "band of reasonable responses" to a given situation. One reasonable employer may react in one way whilst another reasonable employer may have a different response. The tribunal's task is to determine whether the respondent's decision to dismiss, including any procedure adopted leading up to dismissal, falls within that band of reasonable responses. If so the dismissal is fair. If not the dismissal is unfair.

20. If the tribunal finds that the claimant has been unfairly dismissed it can order reinstatement or alternatively award compensation. The claimant has indicated in this case that she seeks compensation only.

21. The Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 provides that proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum

if the claim arises or is outstanding on the termination of the employee's employment.

Discussion and decision

22. The claimant in this case had worked for the respondent for almost 17 years. She was originally employed in the Commercial Finance department as a Client Service Administrator. In November 2014, due to a potential redundancy situation, she moved to Scottish Widows (the Pensions, Protection and Retirement Company within the Lloyds Banking Group). The claimant worked as an Administrator in the "Leavers Team" until June 2016, when she moved to the Corporate Telephony as a Telephony Assistant/Consultant. Her role was to answer telephone calls in relation to pension queries.

23. As detailed above, the disciplinary process stemmed from the claimant's conduct during telephone conversations on 19 and 31 May 2017; with respectively a customer and an IFA.

24. There are a number of issues raised in the proceedings which can conveniently be dealt with at this point.

25. The claimant raised the issue as to whether the respondent's witnesses were credible; she expanded upon this in her submissions to the tribunal. The respondent called three witnesses: Mrs Laird (the investigator), Ms Donaldson (who chaired the disciplinary hearing and dismissed the claimant) and Mr Gunderson (who dealt with the claimant's appeal against dismissal). The tribunal found them to be credible witnesses. Their evidence was coherent and straightforward; it assisted the tribunal in reaching its conclusions.

26. With respect to the issue of "delay" (the claimant having submitted that the respondent was in breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures) , it should be noted that the whole disciplinary process

spanned just over a period of four months; this did not seem to the tribunal to amount to an excessive period of time. The relevant telephone calls took place on 19 and 31 May 2017. Mrs Laird was appointed and conducted an Investigatory Meeting very shortly thereafter, on 2 June 2017, following which the claimant was suspended. The claimant was invited to attend a disciplinary hearing by letter dated 7 July 2017. The Disciplinary Meeting itself took place on 21 July 2017. Ms Donaldson's decision letter was dated 2 August 2017. On 7 August 2017, the claimant indicated that she wanted to appeal. On 14 August 2017, following a request from the respondent, the claimant wrote a letter setting out her grounds of appeal. The claimant was originally invited to an appeal hearing on 15 September 2017; by letter dated 5 September 2017 (albeit the claimant says that this letter was not received by her until a week later). The Appeal Meeting was rearranged (to accommodate the claimant's wish to be accompanied by a friend) and took place on 22 September 2017. Mr Gunderson conducted some further enquiries with regard to the claimant's grounds of appeal and informed her in writing of the outcome by letter sent shortly after 4 October 2017.

27. The claimant complained that she did not receive the confirmation of suspension letter dated 2 June 2017 from the respondent. She produced a letter to the respondent's HR department dated 4 July 2017, apparently sent via her manager Ms Welsh (pages C1 and C1a). In summary, the claimant enquires if she is still under suspension, that it is over 4 weeks and she has not received any communication. The tribunal's findings with regard to the sequence of events surrounding the preparation of the confirmation of suspension letter and the aftermath are set out at paragraph 12 (xxv) above and need not be repeated here. The tribunal's conclusion is that the letter in question was sent to the claimant on some 3 occasions. Further, it was sent to the correct address; Mrs Laird checked the detail with HR. The tribunal did not find the claimant's evidence on this matter to be entirely credible; it is likely that the correspondence would have been delivered to her in the ordinary course of the post.

28. The tribunal noted that the respondent had some difficulty appointing a manager to hear the disciplinary hearing; it took some time. However, the tribunal accepted the respondent's explanation for this. Managers were taking annual leave and the person appointed needed to be available for a period of 6 to 8 weeks in order to allow for any necessary investigatory work and meetings. Mrs Laird confirmed that the claimant was kept informed via a telephone conversation. However, in any event, by 7 July 2017 a letter of invitation to attend the disciplinary hearing was despatched to the claimant. The tribunal was therefore not persuaded that there was undue delay. However, even if here had been such delay, the tribunal could not see that it would have had an impact in relation to fairness; the events in question were recent and undoubtedly fresh in people's minds and the recordings of the relevant telephone conversations were available.

29. The clamant also complained of delay in relation to the appeal hearing. The claimant's grounds of appeal were set out in her letter of 14 August 2017. The Appeal Meeting took place on 22 September 2017, although the respondent's originally offered a hearing 7 days earlier on 15 September 2017. The claimant produced a letter dated 31 August 2017, which she had sent to the respondent's HR department (page C6); she enclosed a copy of her appeal letter of 14 August and said that unless she received a reply within 7 days, ACAS had agreed to take her case for early conciliation. The claimant also produced a copy of a letter from Citizens Advice Edinburgh dated 5 October 2017 (page R175 to R176) and addressed to the claimant herself. (This letter is referred to in paragraph 8 above; although the tribunal considered it to be in the interests of justice to admit the letter, it should be noted that it was produced on the fourth day of the case and never put to the respondent's witnesses in cross examination). The letter appears to record telephone contact between the CAB and the respondent in early September 2017, with a view to pursuing the progress of the claimant's appeal.

30. The timescales set out in the respondent's Disciplinary Policy (page R171) provide that appeals should be raised within 14 calendar days of receiving an outcome letter, that they will be acknowledged within 7 calendar days and that appeal hearings will normally be held within 21 calendar days. The first offered

hearing date therefore seems to be beyond the normal target date set out in the Policy (although the latter is not clear as to when the 21 day period begins and it does state "will normally be held").

31. To summarise, the claimant does seem to have pursued an appeal hearing date and the respondent does appear to have arranged a hearing outside of their normal target period. However, the tribunal again found that this did not amount to undue delay; the appeal was heard within a reasonable period after the grounds were submitted. Even if this did amount to undue delay, the tribunal could not see that it would have a significant impact in relation to fairness. There was no prejudice to the claimant. The events in question were still fairly recent; further, the minutes of the investigatory interview and the disciplinary hearing were available, as were the recordings of the telephone calls.

32. With regard to the letter from HR dated 25 August 2017 (page R81) Ms Donaldson's evidence was that she did not take the "Conduct Rules" point into consideration: HR had informed her that it was not relevant. The claimant raised this as an issue in the tribunal. However, the tribunal concluded that this is not an issue which impacts on the fairness of the dismissal. Indeed, in light of the decision makers evidence, it does not seem relevant.

33. It is, of course, for the respondent to establish that the claimant was dismissed for a potentially fair reason. The tribunal concluded that the reason for dismissal was conduct.

34. The tribunal was satisfied, on the basis of the evidence before it, that the respondent had a genuine belief that the claimant was guilty of the misconduct alleged. Ms Donaldson was provided with a copy of the minutes of the Investigatory Meeting, together with a copy of the Factors for Consideration document; she also had access to recordings of the relevant telephone conversations. Ms Donaldson heard from the claimant in the Disciplinary Meeting. The claimant was afforded the opportunity to put her case and was able to submit and read out a typed statement.

35. The tribunal was further satisfied that the respondent had reasonable grounds for holding that belief. During the Investigatory and Disciplinary Meetings the claimant largely seemed to accept that her conduct in relation to the calls on 19 and 31 May 2017 fell well below the standards expected by the respondent.

36. The tribunal was satisfied that, at the time the respondent formed that belief, it had carried out as much investigation into the matter as was reasonable in the circumstances. The Investigatory Meeting conducted by Ms Laird was thorough, the claimant knew what the meeting was about, the relevant telephone calls were played to her and she had the opportunity to provide an explanation and generally to give her point of view.

37. The tribunal was satisfied that the respondent acted reasonably in treating the said reason (i.e. the misconduct that it believed had taken place) as a sufficient reason to dismiss the claimant.

38. Further, the decision to dismiss fell within the band of reasonable responses; the respondent takes call handling and customer care very seriously. Ms Donaldson made that abundantly clear in her letter dismissing the claimant, setting out the reasons for her decision in some detail (see paragraph 12 xxxviii above). Alternative sanctions may have been available to Ms Donaldson but in this case, it could not be said that dismissal fell outside of the band of reasonable responses.

39. The tribunal found that even if (contrary to its findings) there had been faults with regard to the investigatory and disciplinary process, they would have been rectified by the Appeal Meeting and the subsequent enquiries made by Mr Gunderson. The meeting was properly conducted and Mr Gunderson's subsequent enquiries were thorough. In reaching his decision, he took the claimant's length of service into account, he investigated and rejected the claimant's allegation that it is common practice that security procedures are breached and that the claimant had been singled out, he concluded that it was

the claimant's responsibility to log the complaint within the relevant timescales and he considered whether the correct sanction had been applied.

40. In conclusion, the tribunal decided that the claimant was fairly dismissed from her employment; therefore, her claim must fail.

41. Finally, and in relation to the notice pay claim, the tribunal concluded that the claimant's conduct amounted to a breach of contract that entitled the respondent to dismiss her without notice. The tribunal accepted the submissions made on behalf of the respondent as set out in paragraph 14 (xix) above. In short, not only was this misconduct such as to justify the decision to dismiss, it was also gross misconduct which justified dismissal without notice.

Employment Judge: Mark Mellish
Date of Judgement: 23 January 2019
Entered in register: 28 January 2019
And copied to parties