



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Crowther

**Respondent:** HBOS Plc

**Heard at:** Hull

**On:** 6 and 7 February 2019

**Before:** Employment Judge Maidment (sitting alone)

## **Representation**

**Claimant:** Mr L Roper, lay representative

**Respondent:** Mr R Kohanzad

# RESERVED JUDGMENT

The Claimant's complaint of unfair dismissal fails and is dismissed.

# REASONS

## **The issues**

1. The Claimant's sole claim is of unfair dismissal where the Respondent puts forward (and the Claimant accepts) that the reason for her dismissal was one related to conduct.

## **The evidence**

2. The Tribunal had before it an agreed bundle of documents exceeding 500 pages.
3. Having spent some time briefly identifying the issues with the parties and explaining the process the Tribunal would adopt, the Tribunal spent some time privately reading into the witness statements exchanged between the parties and relevant documentation. This meant that when each witness came to give evidence, they could do so by simply confirming the contents of their statements and, subject to any brief supplementary questions, then be open to be cross-examined on them.

4. The Tribunal heard firstly on behalf of the Respondent from Sally Howard, Senior Team Manager and Nina Hicks, Senior Hearing Manager. Then, on behalf of the Claimant, the Tribunal heard from Chris Rimel, Assistant Secretary of the Accord union, and from Lee Roper, the Claimant's former partner. Finally, the Tribunal heard evidence from the Claimant herself.
5. Having considered all the relevant evidence, the Tribunal makes the following findings of fact.

### **The facts**

6. The Claimant worked at the Respondent's Halifax Brandsholme branch in Hull as a Customer Service Assistant. In practice, the greatest proportion of her duties involved her acting as a cashier which involved facilitating customer transactions including the depositing or withdrawal of cash, the transfer of money between accounts and the payment of bills.
7. The Claimant's contract of employment included a requirement to comply with FSA rules and the Respondent's own rules. These included the Respondent's Code of Responsibility which made it clear that non-compliance could result in disciplinary action including dismissal. The Code reinforces the requirement to demonstrate honesty and integrity and that corruption or fraud would not be tolerated. A separate Colleague Conduct Policy available on the Respondent's intranet reiterates that the highest standards of professional and personal integrity should be displayed at all times in dealing with customers. It provides specifically that colleagues must not access customer accounts to perform any transactions. Further information is stated to be available on transacting on family and friends accounts by clicking on a hyperlink. This takes the user to further explanatory information which makes it clear that any transaction or enquiry on the account of a family member or friend without the presence of the customer would not be acceptable.
8. The Claimant reported to her Branch Manager, Kerry Orr. Ms Orr was aware from performance review meetings and more general discussion with the Claimant that the Claimant was having personal issues arising in part from mental health issues experienced by her former partner with whom she still lived. In the later part of 2017 the Claimant also learnt that her grandfather had a terminal illness – he died at the end of December. On 8 July 2017 the Claimant advised Ms Orr that she was looking to do some night-time bar work to increase her earnings and there was discussion regarding the possibility of the Respondent being able to give the Claimant additional hours. The Claimant was at various times reminded of her ability to contact the Respondent's own staff welfare team if that would assist her.
9. The Claimant was also on an action plan to seek to reduce the number of cash errors she was making. Whilst the Claimant was the main cashier at the branch (and therefore might be expected to be responsible for a greater

number of errors than others given the volume of transactions she performed), her errors were viewed as being at an unacceptable level where she needed to demonstrate extra care. These cash errors referred to mistakes made in cash handling and recording where the till did not balance with the amount of cash it ought to have contained. Cash transactions were recorded by the cashier in the relevant customer account when made with a recording at the same time automatically generated on an electronic journal. Tills were spot checked at various times and always, in addition, balanced at the end of each working day before being stored in the bank vault.

10. On 3 August 2017 Customer A made a complaint that whilst he maintained that he had paid £335 in cash into his account, he had subsequently noticed that only £235 had been credited to it. Mr Liam Craven, Assistant Branch Manager, investigated the matter and found that it was the Claimant who had served Customer A and that at the end of the working day, when the till had been dual checked by himself and another colleague, the till had been found to balance. That did not indicate any missing money. Mr Craven did not believe any error to have been made but, as a gesture of goodwill, it was agreed to credit Customer A's account with £100.
11. On 31 August 2017 Customer B was served by the Claimant. He returned to the branch querying that whilst he said he had deposited £650 to pay off his credit card bill, on checking his statement in September he noticed that only £550 had been credited. Again, it was found that the Claimant's till had balanced at the end of the working day on 31 August. This customer did not pursue any formal complaint.
12. On 6 October Customer C complained to Ms Orr that, whilst she had deposited £660 with the cashier, again indisputably the Claimant, the previous day, she had discovered that only £600 had been credited to her account. Upon investigation it was noted that no cash errors were recorded for 5 October. Ms Orr completed a physical check of the Claimant's cash till on 6 October. Within the till old/non-reusable notes were kept at a separate section at the back of the till in what was known as the "Scots and Grots" section. Ms Orr found a bundle of cash in this section with a figure written on it which was in fact £60 less than the actual amount of cash contained within the bundle. Separately, the till was £53.90 over the amount recorded as what it should have contained.
13. On 9 October a complaint was received from Customer D. He had come into the branch on 5 October, he said, with £140 worth of notes and £121 worth of change to pay into his account. Ms Orr recalled approaching him to see if he could be directed to the Respondent's immediate deposit machine but on being shown by him the change he had to deposit he was told to see a cashier, again the Claimant. On 7 October he returned to the branch to say that only the change had been credited to his account and made a formal complaint in respect of a £140 cash shortfall on 9 October. As already

referred to in respect of Customer C, no cash errors were recorded for 5 October and the till on that day again was found to balance.

14. At the end of the working day on 25 September 2017 Mr Craven had dual balanced the Claimant's till with her. A small cash difference of £6.90 was found, but the till was left as balanced ready for use the following day.
15. On 26 September the Claimant was not working, but attended the branch at around 9:30 am which Miss Orr subsequently reported to be unusual behaviour for the Claimant. The till the Claimant had used the previous day and which had been dual balanced was being operated by another cashier, Pauline McIntyre. She conducted a trial balance around mid-day and found that the till showed a cash shortage of £1000. Ms Orr reported this to the branch manager at Jameson Street, Hull, Mr Rothery. Ms Orr emailed the local director, Harvey Watson later that day (he had been uncontactable earlier) reporting that they were *"keying a cash error today of £1000 short for Pauline McIntyre"* and stating that they were unable to locate the error, all cash boxes and bags had been recounted and the electronic journals checked.
16. By this stage Ms Orr was concerned that there was a pattern of behaviour connected with the Claimant which she considered might not have an innocent explanation. She therefore reported her concerns about the aforementioned customer transactions to Human Resources on 10 October.
17. Steve Wheeler, an investigator with the Respondent's Group Investigations department, was appointed to look into the concerns. He reviewed the paperwork surrounding the customer complaints. He then interviewed the Claimant at the branch on 21 December 2017. The Claimant did not have any advance warning of the allegations under investigation. The interview of the Claimant was lengthy and of a probing nature. At times an element of scepticism can be detected in the responses of Mr Wheeler and his colleague to some of the answers given by the Claimant. The Tribunal accepts that the Claimant was shocked and upset at having been put through this type of meeting. The meeting was not however conducted in an oppressive manner or in a way which demeaned the Claimant. Whilst the Claimant maintained subsequently that the investigators had "sniggered" at her replies, that was not, she accepted, audible from the recording of the meeting which the Claimant subsequently listened to.
18. During the meeting the Claimant denied being under financial pressure. She was asked about the customer transactions. She maintained variously that the customers might not be accurate in their recollection of how much cash they handed over or that she had made other errors where she had paid out more than she ought to have to other customers, hence why the tills balanced at the end of the day. In cross-examination before the Tribunal

the Claimant accepted that it was unlikely that her errors would match so as to produce a till which balanced.

19. The Claimant was asked about her sources of income which she confirmed were simply from her wages with the Respondent and additional tax credit/benefit payments. She was asked if she had borrowed any money from anyone recently and she referred to having received £400 from her grandfather in the last week or two. When asked if that was a regular thing, she said it had been recently because she had a few issues with her car which she had to repair. She then, however, said that this had been over the last couple of weeks given that it was shortly to be Christmas. She said she had borrowed money for Christmas and, when asked the amount, said she didn't know but that it was £400 or maybe £1000. In terms of whether she had borrowed any money before then, she referred to that being "ages ago" in 2015 or 2016 when she had a big job to do on her car and had borrowed around £1600. She said that she had been given money from her grandfather in cash. The Claimant gave the Respondent authority to contact Barclays bank for information about her current account transactions.
20. The Claimant was then referred to the cash difference discovered on 26 September which was referred to as cash to the value of £1000 missing from "vault cash". This was an inaccurate statement by Mr Wheeler. The cash in the vault was the bank's major cash float kept securely and distinct from the cash in the till boxes. The Claimant was nevertheless asked about counting the cash at the end of their working day and it was put to her that Mr Craven had to go out into the banking hall quite urgently and that the following day the vault cash was £1000 down. The Claimant said that she did not have access to any vault cash. She did not then or at any subsequent stage say that she had at no time been left alone with any cash as she at one point explained to the Tribunal.
21. The investigators also asked the Claimant some questions about Mr Roper including the Claimant's relationship with him querying whether, from a state benefits perspective, they in reality lived as a couple. They then discussed how she carried out banking on his behalf which she described as including taking out cash with his bank card. She explained that Mr Roper was unwell.
22. Mr Wheeler handed to the Claimant at the end of the meeting a pre-prepared letter dated 21 December confirming the Claimant's suspension. In terms of the allegations against her, this simply referred to the customer complaint issues. The Claimant was told not to contact her colleagues or to enter the Respondent's premises other than as a customer. The letter reserved the right to the Respondent to change or add to the allegations whilst the matters were being investigated. Suspension was said not to be a disciplinary sanction or an indication that formal disciplinary action would be necessary. However, Mr Wheeler went on to state that he believed suspension to be appropriate given that the allegations were sufficiently serious that it would not be appropriate for the Claimant to remain in her role pending the

investigation outcome. No updated or revised letter of suspension was ever issued including, for example, the missing £1000 or her conduct in viewing Mr Roper's account.

23. After the investigation meeting concluded, Ms Orr spoke briefly to the Claimant. The Claimant mentioned the issue of missing vault cash to which Ms Orr responded that cash was not missing from the float kept in the vault but from a cash till, without being specific as to who had been using any particular till at the time the cash discrepancy had been discovered. The Claimant was clearly aware that the issue was money missing from a till and not the vault from the letter, described below, she wrote to Miss Howard after she had been invited to a disciplinary hearing.
24. By 30 January 2018 Mr Wheeler had completed a full investigation report. This described how the allegations had come to light and the Claimant's reaction at the investigation meeting. It recorded that he had discovered that the sum of £1040 in cash had been paid into the Claimant's Barclays bank account on 25 October 2017, a month after the discovery of the £1000 discrepancy in the till. Mr Wheeler noted that he had been advised by Ms Orr that the Claimant was on a cash error action plan which commenced on 28 October 2017. Mr Wheeler noted that no other colleagues at the branch had received similar complaints to the Claimant in 2017. He also noted that the Claimant had failed to fill out cash control sheets which would record the exact denomination of notes in the till when balancing it. It was also noted that the Claimant had accessed Mr Roper's account through the Respondent's systems and that this was indeed the most accessed account by her. The access taken place without Mr Roper being present. The recommendation was made that a formal disciplinary hearing be held at a level of gross misconduct on the basis that the Claimant had breached the Colleague Conduct policy in the areas of integrity and confidentiality.
25. On 5 January 2018 the Claimant wrote to Ms Orr raising a formal complaint about how she had been treated by Ms Orr and the investigators in that she felt that her personal family circumstances had not been taken into account, setting out that the investigators had made fun of her and sniggered at her answers.
26. On 9 January the Claimant wrote to Ms Orr with a sick note and asked for her to give her another point of contact. Mr Harvey Watson confirmed to the Claimant on 12 January that he would act as her point of contact for the branch.
27. On 19 February the Claimant submitted a further letter of complaint setting out concerns she had with the investigation meeting. On 20 February Mr Watson replied to this and the earlier letter of 5 January confirming that they would be considered as part of the disciplinary process. Mr Watson noted

that the Claimant had requested that they only communicate by text and email.

28. Miss Howard was appointed to conduct a disciplinary hearing. She spoke to Mr Wheeler by telephone on 23 February to discuss the case and reviewed all paperwork provided by him which included not only his investigation report but also various appendices which included cash till records, the log of the customer complaints, the summary of points which arose from the Claimant's investigation interview, the Claimant's own cash error action plan, a note of Mr Roper's contact with the branch after the Claimant's suspension and a summary of overall complaints received at the branch.
  
29. On 8 March, Miss Howard wrote to the Claimant inviting her to attend a disciplinary hearing to be held on 26 March. This followed an earlier but similar letter of 5 March which was superseded as the Claimant requested a change in the earlier disciplinary hearing date of 19 March.
  
30. The disciplinary invite set out the customer complaints and also, for the first time as an allegation, that the Claimant may have appropriated the identified cash difference of £1000 discovered on 26 September 2017. A further allegation related to the identification that the Claimant had accessed her ex-partner, Mr Lee Roper's, account on several occasions, which was said to have been, between 2 May and 19 December 2017, the most accessed account by her. Whilst the Claimant maintained that she had been confused during the investigation, as she thought she was being asked about her use of Mr Roper's bank card, the allegation was clear to her certainly at the stage of the disciplinary hearing. Miss Howard went on to explain that the allegations if upheld and considered to amount to gross misconduct could lead to the Claimant's instant dismissal. Under the heading of "*your mitigation*" she referred to the Claimant's letter of 19 February which had been passed to her making note of the Claimant's concerns and her difficult personal circumstances. It was noted that the Claimant had raised that she felt the manner of the investigation and subsequent suspension to have been unhelpful, that Ms Orr should have briefed the investigators regarding her personal circumstances before they interviewed her and that she should not have been asked certain questions.
  
31. Enclosed with the letter of invitation was Mr Wheeler's investigation report but not the appendices or any other supporting documentation. The Claimant requested a transcript of the investigation interview or a copy of the recording but Miss Howard was advised by the Respondent's Human Resources department that the Claimant could not have access to the recording until the day of the hearing and that she had the investigation report from which to prepare for the hearing. Miss Howard believed that she had disclosed all of the information she was obliged to under the Respondent's procedures.

32. The Claimant wrote to Miss Howard by letter of 14 March. In this, amongst other matters, she addressed the customer complaints. She also complained about the length of time it had taken to make her aware of the loss of £1000 on 25 September 2017. She asked for further clarification as to where the money had gone missing from. She said that Ms Orr had told her after the investigation meeting that the money had been in another cashier's till. She said that she had come into the branch on 26 September 2017 because she was out shopping and needed the toilet. The Claimant also submitted a written statement from Mr Roper which referred to their living arrangements, his state of health and the pressure on the Claimant.
33. The disciplinary hearing took place on 26 March. The Claimant was accompanied by a colleague from the branch, Jessica Carter. There was at the meeting a very full and detailed discussion of all of the allegations. Miss Howard had the appendices to the investigation report in front of her and referred at times to the relevant documentation. Miss Howard clarified that it was alleged that the missing £1000 was from the Claimant's till but discovered only the following day. As regards the customer who had come in to pay off his credit card, the Claimant referred to a bank giro slip having been put through by her. Miss Howard said she would see if it was possible to obtain a copy. Miss Howard questioned the Claimant about the sum of £1040 which had been deposited into her Barclays account on 25 October 2017. She said that this had been a gift from her grandfather of £500 to buy presents for each of his grandsons. When asked why she had not mentioned this before, she said that it was her children's money not hers, she had forgotten to mention it and couldn't remember depositing it. She said that she had used the money to buy her boys mobile telephones as Christmas presents. The Claimant explained her personal/domestic circumstances and the pressures therefore that she was under.
34. Miss Howard adjourned the meeting to carry out some further investigations. This included meeting with Ms Orr on 4 April 2018. Ms Orr, when asked if she had had any concerns about the Claimant's integrity previously, said that she had "*on and off for a number of years*". She confirmed that the Claimant had spoken to her about her well-being and Mr Roper and her grandfather not being well. She said the Claimant did not express any concerns about her home life affecting her work. She said that she had offered the Claimant support as her manager and access to employee assistance within the Respondent. Ms Orr described undertaking a full audit and branch search once the £1000 been found to be missing on 26 September 2017. She denied advising the Claimant that it had gone missing from another person's till and not hers. Miss Howard asked Ms Orr to get a copy of the giro slip for Customer B's credit card account and was told that Ms Orr would try to get it. She understood subsequently from Ms Orr that she had been unable to retrieve it.
35. On the same day Miss Howard also interviewed Mr Craven. She asked him, in particular, about the missing £1000. He described carrying out a dual



balancing of the Claimant's till at the end of the working day on 25 September. He said that the Claimant was then left to lock the till and place it in the safe. The till had been taken out the following day by another cashier, Pauline McIntyre. It was noticed by her that the money was missing from the till when she carried out a trial balance herself during the working day. It is noted that Ms McIntyre was never interviewed, nor were the transactions carried out by her reviewed by Miss Howard. Ms Howard said she did not feel that speaking to her would add any value – Ms McIntyre, she considered, was not going to admit to taking the money. In hindsight she said to the Tribunal that perhaps she ought to have spoken to her. It is also noted that at no stage did the Claimant raise that Ms McIntyre ought to be spoken to. At the appeal stage, her union representative, Mr Rimel made no request and agreed in cross-examination that it was not obvious to him that she should be spoken to.

36. Miss Howard listened to the recording of the investigation meeting several times and reviewed all of the documentation provided to her before reaching her decision. She did not disclose to the Claimant the notes of her interviews with Ms Orr and Mr Craven. On 5 April 2018 the Claimant wrote to her with comments on the notes of the disciplinary hearing.
37. Miss Howard wrote to the Claimant by letter of 22 May 2018 confirming her decision to terminate the Claimant's employment with immediate effect. Miss Howard did so after preparing a written rationale for her conclusions. She also explained her findings in some detail in the outcome letter.
38. As regards the allegations arising out of the customer concerns/complaints, she believed that on each occasion less than the customer had deposited had been credited to their account but in circumstances where the Claimant's till had been stated to balance on each occasion. She considered that no reasonable explanation had been provided for how that could have occurred. She believed that the volume of complaints relating to the Claimant received in such a short period of time was in excess of her colleagues and she did not believe 'cash errors' to be a reasonable explanation.
39. Regarding customer D, she noted that Ms Orr had approached the customer in the banking hall that day and that he had notes as well as coins to deposit. Customer B she noted had continually paid off his credit card in full each month, however on this one occasion £100 remained outstanding. She did not find that the Claimant had explained in respect of Customer C why £60 had been found in the 'Scots and Grots' section of the till unaccounted for. As regards customer A, again she did not feel that the Claimant had been able to provide an explanation as to why the full sum had not been credited. Given the number of cash discrepancies she did not believe that they could be caused by cash errors or that other cash errors had occurred in the same amounts given that the till had balanced.

40. As regards the missing £1000, she considered that when Mr Craven had left the Claimant with the cash till on 25 September 2017 the till balanced. The following day, when used by another colleague, it was found to be £1000 short and the missing cash could not be found. She considered that the Claimant had behaved unusually in attending the bank the following day when she was not working. She also noted that an amount very similar to the amount lost had been deposited in cash into the Claimant's own account the following month noting an inconsistency in the Claimant's explanations as to how she came about this money. She concluded on the basis of these factors that the Claimant had also taken this sum for herself. She noted that the Claimant said at the investigation interview that she had borrowed money from her grandfather at the beginning of December for Christmas presents and car repairs but subsequently stated that he had gifted her the sum of £1000 for her children, which sum she noted in fact been deposited in October 2017. If so, she did not feel that the Claimant had adequately explained why then she would need to borrow a further sum.
41. She also concluded that the Claimant had knowingly breached the Respondent's Code of Conduct in frequently accessing Mr Roper's account between May and December 2017. The Claimant did not deny doing so, but said that she believed her actions to be acceptable as she had not conducted any transactions on the account through the bank's systems and Mr Roper had given her authority to access the account. However, Miss Howard noted that this remained a breach of the Respondent's policy. Whilst during the disciplinary hearing the Claimant said that Ms Orr was always comfortable with her doing so, she noted that Ms Orr had denied any awareness of the Claimant's activities. This was expressed in an email from Ms Orr to Miss Howard dated 5 April 2018. She considered that this amounted to a further act of serious misconduct.
42. Before reaching her decision, it is clear that Miss Howard considered the Claimant's pleas in mitigation and in particular her difficult domestic and personal circumstances in the relevant period. Her view was that if the Claimant's health was affecting her performance, she would have expected to see problems in the Claimant's customer service, in her electronic transactions or in actions such as the setting up of direct debits or standing orders. Instead, the only action plan the Claimant was subject to related to cash errors. There were no perceivable failings in the Claimant's performance elsewhere. She did not consider that the Claimant's complaints about being belittled during the investigation were well-founded.
43. The Claimant had on 5 April also raised an additional grievance against Mr Watson regarding a lack of contact during her period of ill-health absence. She followed that up by a further grievance of 9 April against the Respondent complaining about how her health and well-being had been handled since her suspension. Miss Howard dealt with those in her disciplinary outcome letter. She considered that a health and well-being meeting should have

been conducted during March 2018 and further attempts could have been made to maintain contact with her. She did not, however, feel that this impacted upon the disciplinary process.

44. In conclusion Miss Howard considered that the Claimant ought to be dismissed despite the mitigating factors and the Claimant's clean record during a period of 14 years' service. Fundamentally, her conclusions were such that she could no longer trust the Claimant to undertake her role without the risk that similar conduct would re-occur. In her belief, the Claimant had taken customer money for personal gain on at least five occasions totalling a sum of £1340 and had accessed her ex-partner's account in breach of the Respondent's policies. She had then, in Miss Howard's view, sought to mislead the Respondent by providing inconsistent accounts during the disciplinary process.
  
45. Before the Tribunal, Miss Howard said that she would have come to conclusion of gross misconduct dismissal had she been faced with only the issue of the customer complaints. Had she been faced with only one complaint then she may not have come to a conclusion of wrongdoing but her findings demonstrated a pattern of behaviour and corroboration for the conclusion that these had not been instances of innocent error on the Claimant's part. However, had she been able to conclude that the Claimant had on any one occasion misappropriated customer monies this would have been an act of gross misconduct for which dismissal would have been appropriate sanction. As regards the missing £1000, Miss Howard considered that the customer complaint findings had played a part in her arriving at a conclusion as to the Claimant's guilt. The missing £1000 was not viewed in isolation but together with a pattern of behaviour indicating wrongful acts on the Claimant's part. Nevertheless, as regards the missing £1000, she still had separate evidence which suggested the Claimant's responsibility for the loss. She considered that only the Claimant and Ms McIntyre had the opportunity to take the cash but that in the Claimant's case, not only was there a pattern of behaviour from the customer complaints, but also the behaviour she regarded as suspicious of the Claimant returning to the branch the following day and her inability to consistently explain her receipt of a cash payment (of a similar sum to that missing) into her account shortly thereafter and in circumstances where the Claimant did not ordinarily have any source of income beyond her wages and tax credits/benefits. She was of the clear view that the conclusion that the Claimant had taken this sum would on its own have fundamentally breached trust such that dismissal would have been the appropriate sanction.
  
46. Finally, as regards the viewing of Mr Roper's account, she considered this was a serious breach of the Respondent's policy which might have justified dismissal. However, if this had been the only conduct found against the Claimant then she would have had to consider which sanction to apply as between a final written warning and the Claimant's immediate dismissal. If

she was to be consistent, she was aware of other employees being dismissed for viewing other people's accounts.

47. The Claimant appealed against her dismissal by letter of 29 May 2018. Ms Hicks was appointed to hear the appeal. Her role involved managing a team of hearing managers who heard disciplinary, grievance and appeal cases. She also heard such cases herself as and when required.
48. The Claimant's appeal included concerns about the conduct of the investigation meeting, the lengthy period of her suspension, her belief that suspension was effectively a punishment, the disciplinary outcome itself, the investigation which followed the hearing and the Respondent's approach with regard to her health and well-being.
49. The Claimant was invited to attend an appeal meeting on 13 July by letter of 12 June 2018. It was confirmed to the Claimant that arrangements had been made for the Claimant to listen to the recording of the investigation meeting on 9 July. Essentially, this pre-meeting was set up to enable the Claimant, who was now being represented by Mr Rimel of the Accord union, to have access to all of the documentary evidence. Ms Hicks considered that the Claimant ought to have time to consider the appendices to the investigation report and the further investigations carried out by Miss Howard (including the notes of interviews with Ms Orr and Mr Craven) but in circumstances where, for reasons of confidentiality and data protection, the documents could not simply be sent to her. It was more appropriate that she be invited into a meeting and given as much time as she required to review those documents.
50. Ms Hicks attempted to speak to Ms Orr on some points for clarification but had to resort to asking her some questions by email on 9 July to which Ms Orr responded. Amongst other things, she referred to having told Miss Howard that the credit card giro slip for Customer B was not stored at branch and that a request would need to be made to where it was stored in Middlesbrough. She said that Miss Howard had told her this was not necessary on 5 April. Mr Rimel had requested the giro slip, but Ms Hicks understood that it had been requested but had not been able to be obtained. She was of the view that it was not likely to have made a difference, particularly if the Claimant had written the amount deposited on it – the amount was commonly not completed by the customer at all. It is noted that the Claimant was not asserting that he had in this case. Ms Orr also explained how her concerns about the Claimant's conduct had grown and why she contacted Human Resources for advice on 10 October 2018. The Claimant then attended the full appeal hearing, accompanied by Mr Rimel, on 13 July. That meeting involved, again, a very full discussion of the allegations against the Claimant.

51. Mr Rimel submitted an opening statement which was considered by Ms Hicks. Ms Hicks also considered various testimonials provided by the Claimant and information regarding her personal circumstances including Mr Roper's health.
52. Ms Hicks confirmed her decision to uphold the decision to dismiss by letter of 25 July. Within this she explained her decision making in some detail. As regards the missing £1000, she addressed the Claimant's assertion that there was a lack of evidence other than circumstantial. She considered that Miss Howard was correct in concluding that the Claimant's explanations regarding the receipt into her account of the cash sum of £1040 were inconsistent. It also concerned Ms Hicks that the Claimant had attended the branch on her non-working day, which was out of character for her. On the basis of the evidence, including in relation to the separate customer complaints, she agreed with Miss Howard's conclusion that it was likely that the Claimant had taken the money.
53. Ms Hicks agreed with Miss Howard's conclusions regarding the issues which arose from the customer concerns/complaints. Ms Hicks took some time to ensure that she understood the till system used at the Brandsholme branch. She concluded that it was unlikely that the Claimant had simply made cash errors. If there was an innocent explanation, it was highly unlikely that the till would have balanced. She concluded that the Claimant must have intended to state that the till balanced even though it did not. She noted that the Claimant had also failed to complete the cash count control sheets for 4 and 5 October 2017. As regards customer C she understood how £60 might have been misplaced in the 'Scots and Grots' section, but noted that regardless of that the till was £53.90 (in separate denominations) over and that it was highly improbable for the Claimant to have genuinely declared the till to be balanced. The implication for her was that the £60 had been left to be taken the following day in circumstances where it was not guaranteed (due to random till changes sometimes being made) that the Claimant would get the same till, but highly likely. If someone else had taken the till and found it to contain more cash than it ought to have then there were unlikely to have been any repercussions. Ms Hicks was not concerned about the lack of CCTV evidence. Ms Orr had told Miss Howard on 4 April that she had asked about CCTV footage when she raised her concerns with Human Resources but was told that it could not be obtained. Ms Hick did not consider that it would have shown precise customer transactions.
54. She agreed with Miss Howard's conclusion that, if the Claimant had been affected by her personal issues, this would have shown up in her whole performance not just in errors in respect of cash deposits in isolation. All of the complaints were about cash deposits not being correctly credited to accounts. There did not appear to be any complaints in relation to withdrawals, transfers, bill payments, cheque deposits or any other type of transaction. She noted that the Claimant had not made it clear to the Respondent that any family concerns were impacting on her performance.

55. As regards accessing Mr Roper's account, she considered that this had been done without any authorisation having been sought by the Claimant from the Respondent.
56. She did not consider that there was any evidence, on listening to the tape, of improper conduct by the investigators at their interview with the Claimant.
57. She did not conclude that to be any significant gaps in the investigation. For her this was ultimately an issue of trust and integrity and she agreed with Miss Howard that there was no alternative to dismissal in the circumstances. She also believed that the Claimant had taken customer money for personal gain. She accepted that the Claimant had a clean disciplinary record and positive performance rating for 2017 but that conduct of the nature found against the Claimant could not be tolerated.

### **Applicable law**

58. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct - Section 98(2)(b) of the Employment Rights Act 1996 ("ERA").
59. In cases of misconduct a Tribunal normally looks to determine whether the employer genuinely believed in the employee's guilt of misconduct and that it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard. When considering the standard of reasonableness in the case of **A -v- B EAT/1167/01**, Elias J said as follows:

*"Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."*

60. This, however, is simply part of the Tribunal's fundamental application of Section 98(4) of the ERA provides:

*“(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
- (b) shall be determined in accordance with equity and the substantial merits of the case.”*

61. The Tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. A Tribunal has to determine whether the employer’s decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in the circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached, including the investigation.

62. A dismissal may be unfair if there has been a breach of procedure which the Tribunal considers as sufficient to render the decision to dismiss unreasonable. The Tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

63. The Tribunal was referred to the case of **Taylor v OCS Group Ltd ICR 1602** in support of the proposition that defects in the original disciplinary hearing and pre-dismissal procedures can be remedied on appeal. The Tribunal’s task is to assess the fairness of the disciplinary process as a whole.

64. If there is a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to what degree of likelihood the employee would still have dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

65. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to his dismissal – ERA Section 123(6).

66. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind of conduct on the employee's part that occurred prior to the dismissal.

### **Conclusions**

67. It is accepted that the Respondent terminated the Claimant's employment for reasons related to conduct, namely its conclusions that the Claimant had behaved dishonestly in respect of four customer complaints (where there were discrepancies in what the customers said they had deposited and what had been recorded as received by the bank), in the loss of £1000 discovered on 26 September 2017 and in her accessing her former partner's bank account.

68. Did then the Respondent come to its conclusions on the Claimant's misconduct on reasonable grounds and after reasonable investigation? The Tribunal is not seeking to determine for itself whether or not the Claimant was guilty of any of the acts of misconduct and the Tribunal makes no finding that she was. The issue is whether the Respondent acted reasonably in coming to its conclusions, not whether those conclusions were, on the balance of probabilities, correct.

69. As regards customer A, a complaint had been made that £335 had been paid into the account but only £235 credited to it. The Claimant had served this customer and does not suggest that the Respondent was mistaken in reaching that conclusion. The till and ledger records showed that the Claimant had been the cashier involved.

70. The Claimant had recorded £235 as having been received and this led to an automatic electronic recording on the journal of transactions on the till on the day of 3 August 2017.

71. The till balanced that day. That reflected the transactions recorded and that only £235 was received into the till.

72. The Respondent, at the disciplinary and appeal stages, considered the possibilities as to what may have occurred. Miss Howard understood that it was possible that the till might balance because the Claimant might have made a further error(s) that day and have paid out, mistakenly, an additional £100 to another customer(s) who wished to withdraw money. However, that would have involved the Claimant making two errors in the same day and the error would have had to have been in respect of the exact same amount of cash. She viewed that as highly unlikely. As stated above, the Claimant did not disagree.

73. Alternatively, there might have been a mistake in the counting of cash in the till at the end of the day and in arriving at a conclusion that the till balanced.



Again, however, she considered that this would have had to have involved a further mistake that day in exactly the same amount. The miss-counting would have had to have been £100 less than the actual cash in the till for the till to balance. Again, she considered this to be very unlikely.

74. It was also a possibility that the customer was lying in asserting that he/she had deposited more than he/she actually had.
75. Finally, the Claimant might have acted dishonestly in under recording the amount received and taking the excess cash herself. Ultimately, Ms Howard concluded that this was the most likely explanation - the Claimant had taken the money.
76. That conclusion was reached in the context of there having been three further customer complaints of a similar nature. On 31 August 2017, customer B maintained that he had deposited £650 in cash to pay off his credit card bill with the Respondent. On checking his September credit card statement, he noticed that he still had amount of £100 outstanding as only £550 had been credited to his credit card account. In terms of his honesty in making such assertion, Ms Howard noted that this individual was in the habit of paying off his entire credit card balance each month. Again, there is no dispute that the Claimant was the cashier who had served customer B. Further, the till on 31 August had balanced.
77. On 6 October 2017 customer C complained that £660 had been paid in but only £600 credited to her account. Again, there is no dispute that the Claimant was the cashier who had served this customer and no cash errors had been noted for the previous day when the transaction was made. The Branch Manager, Ms Orr, had checked the cash box and, in a section at the back of the till reserved for old notes, she found that a figure for the amount of cash within this section had been written on the bundle which was £60 less than the amount contained within it. Miss Howard's conclusion was that the Claimant had left the sum of £60 in the till, deliberately not credited to the customer's account, which she intended to take herself at a later point in time.
78. On 5 October 2017 customer D had also attended the bank to deposit an amount of cash, partly notes and partly coins. Ms Orr had approached him to see if she could direct him to the immediate deposit machine, but on realising that he also had coins to deposit, had directed him to the cashier counter. The customer subsequently maintained that he had deposited £140 in notes and £121 in coinage, but only the amount of coinage had been credited to his account. Again, there was no dispute that the Claimant had been the cashier who had assisted the customer and no till errors were recorded on 5 October 2017.

79. The Claimant was on an action plan to try to take additional care to eliminate cash errors as she had been responsible for a significant number in the preceding months. However, Ms Howard did not view the aforementioned transactions as illustrating cash errors. Indeed, again, in all of these cases the till had balanced such that no error was disclosed.
80. Again, she considered that it was unlikely for the Claimant to have made an error in paying out to an alternative customer an excessive amount identical to the shortfall recorded in respect of another customer on the same day. She regarded it is unlikely that on any given occasion there might be a miscounting of the till when balancing it at the end of the working day in the exact same amount as the shortfall credited to a customer account. She viewed it as even more unlikely for this to have occurred on four separate occasions over a brief period of time. Furthermore, while she understood that a customer might lie about the amount deposited, she felt it unlikely that all four customers, again in a relatively short timeframe, had sought to misrepresent to the bank the amount of money they had deposited. She considered that in the case of an isolated incident, she couldn't reasonably have doubted the probity of the Claimant. However, she was left with a group of customers raising similar concerns over a narrow time period in circumstances where this was not a common occurrence and where no similar pattern of events had occurred previously whether involving the Claimant or any other cashier. In all the circumstances, the Tribunal must conclude that Miss Howard came to her conclusion on the Claimant's misconduct on reasonable grounds.
81. The only additional investigation which it has been suggested ought reasonably to have been undertaken by the Respondent was the obtaining of the giro slip for Customer B's credit card payment. The issue was raised by the Claimant at her disciplinary hearing and, whilst it is not clear how strenuous the attempts were made to obtain it, the Tribunal is satisfied that Miss Howard at least made an attempt. Miss Hicks accepted that the giro slip might have been relevant, but the Tribunal accepts that she was unable to obtain it. On balance, however, the Tribunal does not consider the failure to retrieve and consider the giro slip to be sufficient to render the level of investigation unreasonable. It comes to this conclusion in the context of the Claimant not having made any positive case to the Respondent regarding the customer's completion of the slip and in circumstances where, had the slip not been completed at all or had it been completed by the claimant herself (as were both likely occurrences), then that would have taken the matter no further at all. The Respondent's degree of investigation again has to be seen in the context of this being only one of four distinct strands of investigation involving different customer transactions and where the Respondent's investigation in respect of the other transactions was entirely reasonable with no indication of any additional investigative steps which ought reasonably to have been undertaken in respect of those customer concerns.

82. At the disciplinary hearing Miss Howard also considered the separate allegation that the Claimant had taken the sum of £1000 from the cash till on 25 September 2017. At the end of that working day the Claimant and the Assistant Branch Manager, Mr Craven, had dual balanced the till, noting a cash difference in the sum of £6.90. The evidence before Miss Howard was that Mr Craven had then left the Claimant with the till before it was placed in the main safe. On 26 September the Claimant was not due to be working. The branch opened as usual at 9 am and the relevant cash till was being used by another cashier, Ms McIntyre. The Claimant had attended the branch at around 9:30 am which was reported by Ms Orr as being unusual and out of character for the Claimant on a non-working day. Around 12 pm Ms McIntyre undertook a routine trial balance of the cash till which showed a cash shortage in the sum of £1000.

83. This was not immediately raised as a concern by Ms Orr who in fact raised it when she made a report of her suspicions regarding the Claimant's activities following all of the aforementioned customer complaints – she took no action until she realised, in her mind, a pattern of behaviour. On 26 September the missing cash had been reported, as was a requirement of the Respondent's procedures, and a branch search had been conducted to determine whether there was any discrepancy in the amount of bulk cash kept in the safe or in the other tills.

84. Ultimately, Miss Howard concluded that this amount of cash had also been taken by the Claimant. Miss Howard reached that conclusion without there having ever been any questioning of Ms McIntyre and in circumstances where she understood that there was an opportunity for either the Claimant or Ms McIntyre potentially to have taken the money. She had considered that there was no value in speaking to Ms McIntyre who she considered would simply deny the allegation if put to her. Reaching a conclusion in the Claimant's guilt without that additional investigation and greater openness in the potential for another to have been responsible for the shortage might have rendered Miss Howard's conclusions unreasonable.

85. However, again, Miss Howard was not considering the allegation in isolation but against a background of her having concluded, on reasonable grounds as found by the Tribunal, that the Claimant was guilty of misconduct in the cash shortages which came to light as a result of the aforementioned customer complaints. There was also, in support of her conclusion on the missing £1000, the evidence that the Claimant had behaved unusually in coming into the branch the following morning when not a working day which she considered indicative of the Claimant's desire to see whether or not the shortage had been discovered. Most important, in terms of corroborative evidence for her conclusions, was the deposit of a cash sum of £1040 into the Claimant's personal Barclays bank account around one month after this loss had occurred. This was in circumstances where, on the Claimant's evidence, the only sources of income and ordinary receipts into her bank account came from her wages with the Respondent and benefit payments.

The Claimant had been questioned during the investigation and again by Miss Howard as to where this money had come from and Miss Howard reasonably concluded that the Claimant had given inconsistent explanations for the receipt of the cash, which damaged her credibility. Miss Howard reached her conclusion as regards the missing £1000 on reasonable grounds.

86. The Tribunal reaches that decision despite the Respondent's failure to interview Ms McIntyre. The Respondent's witnesses accepted that she probably ought to have been interviewed but the Tribunal accepts that this was not so (reasonably) obvious to them or indeed to the claimant or Mr Rimel at the time of the disciplinary process. Nevertheless, it might be said that the Respondent was focusing overly on ascertaining whether the Claimant's guilt of misconduct could be proven to its satisfaction rather than adopting a more open minded enquiry. On balance the Tribunal does not consider the failure to interview Ms McIntyre as taking the investigation outside a band of reasonableness. The Respondent was not looking at this allegation as the sole allegation of potential misconduct. This was not a one-off occurrence of a sum of money going missing where the Respondent ought, to have acted reasonably, to have interrogated every possibility, but rather a further instance where the Claimant's behaviour was in question against a view already formed on reasonable grounds that the claimant had taken customer money from four separate individual customers. That did affect the thoroughness of the investigation into the missing £1000 but does not render, in all the circumstances, the Respondent's conclusion unreasonable.
87. Finally, the Tribunal turns to the allegation regarding the Claimant having viewed Mr Roper's account. It was never disputed by the Claimant that she had done so and the Respondent turned its attention to the relevant policies and rules it maintained in respect of staff accessing the bank accounts of friends or family members. The Respondent reasonably concluded that the Claimant had breached its rules in this regard. The rules prohibited viewing, not just transacting. It was reasonable in relying on Ms Orr's statement that she had not approved what the Claimant had done, but any event, had approval been given in the way the Claimant maintained, that would not have meant that the Claimant had accessed Mr Roper's account compliant with the Respondent's rules of conduct.
88. The Tribunal considers next the disciplinary process adopted by the Respondent. The Tribunal considers that the questioning of the Claimant by the investigators was robust and at times with a degree of scepticism evident. Nevertheless, the investigators did not conduct themselves in a way which the Tribunal could conclude rendered the investigation meeting unreasonable. They had a justification in testing the Claimant's credibility with reference to her living arrangements with Mr Roper. The Claimant was told that the £1000 of missing cash had gone missing from vault cash which was inaccurate and misled the Claimant at the meeting. However, after the

meeting the Claimant was immediately aware from Ms Orr that the money was said to have gone missing from a cash till. Again, whilst the Claimant might say that she did not appreciate that the missing cash had been discovered by Ms McIntyre when she was operating the till which the Claimant herself had used the day before, she was certainly aware of the details and accurate background to this allegation by the time of the disciplinary hearing.

89. The Claimant's ultimate dismissal was not rendered unfair by the investigators giving to the claimant a pre-prepared letter of suspension nor by the subsequent addition of further allegations in circumstances where the suspension letter made it clear that the Respondent was at liberty to add to those allegations if that was appropriate in the light of further investigations.
90. The Tribunal considers that the Claimant ought reasonably to have been provided with the appendices to the investigation report prior to the disciplinary hearing and that she was at that hearing disadvantaged by not having access to all of the relevant material. Furthermore, the Claimant ought to have been provided with the notes of the interviews Miss Howard conducted with Ms Orr and Mr Craven on 4 April 2018. Miss Howard considered that she was giving the Claimant everything the Claimant was entitled to receive, but did not turn her mind sufficiently to the question of the degree to which the Claimant might understand and be able to respond to the allegations made. There was no consideration of the extent to which all of the supporting documentation genuinely contained confidential information or how that information might be redacted in any disclosure to the Claimant. There was no consideration of the possibility of the Claimant being given this documentation at a meeting prior to the disciplinary hearing as occurred at the appeal stage.
91. Of course, however, this evidence was disclosed to the Claimant at a pre-appeal meeting arranged by Ms Hicks at which the Claimant and Mr Rimel were able to take their time to go through and study the supporting documentation. The Tribunal is satisfied that the defect at the disciplinary stage in not disclosing this information to the Claimant was fully remedied by Ms Hicks such that the Claimant, certainly at the appeal stage, was armed with all the necessary information and evidence and able fully to address the allegations against her.
92. There was nothing at all problematical in the conduct of the disciplinary and appeal hearings themselves at which the Claimant was accompanied, in particular at the appeal stage, by a professional union official.
93. The sole remaining question the Tribunal is whether dismissal then fell within a band of reasonable responses open to the Respondent in the circumstances. In the context of the nature of the Claimant's employment,

this is perhaps the most straightforward question the Tribunal has to answer. It concludes that dismissal was indeed a reasonable sanction in circumstances of the Respondent's reasonable belief that the claimant was guilty of misappropriation of customer money and breaching rules relating to accessing accounts which were in place to protect customer confidentiality and indeed to protect any bank employee from accusations of impropriety or conflict of interest. The Claimant herself inevitably accepted that, if she was reasonably believed by the Respondent to have acted dishonestly, then dismissal would be the appropriate sanction.

94. The Respondent at the disciplinary and appeal stages took full account and considered in detail the Claimant's pleas in mitigation, including as regards her length of service, prior clean record and her difficult personal circumstances including as to her health and that of Mr Roper's. The Respondent's failure to obtain its own medical report regarding the Claimant's state of health was not an omission which rendered its conclusions unreasonable. Miss Howard and Ms Hicks were not seeking to act as medical experts in concluding that if the Claimant had been unwell to the extent of being unable to function properly at work, then this would have been evident more widely than errors in cash deposits. Their opinion was reasonably held.

95. In conclusion, the Claimant was fairly dismissed and her complaint of unfair dismissal must therefore fail.

Employment Judge Maidment

15 February 2019