EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4119209/2018

Held in Glasgow on 7, 8, 9 and 10 May 2019

Employment Judge: F Jane Garvie

Mr M McGlinchey	**Claimant** **In Person**
British Gas (Centrica)	**Respondent** **Represented by:-** **Mr G Dunlop – Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim should be dismissed.

REASONS

Background

E.T. Z4 (WR)

1. In his claim, (the ET1) presented on 12 September 2018 the claimant alleged that he had been unfairly dismissed. The date of receipt by ACAS of the Early Conciliation was 7 August 2018 and the date of issue by them of the Certificate was 22 August 2018 and, accordingly, the claim was presented in time. The respondent was directed to lodge a response, (the ET3) within 28 days of the claim being sent out on 13 September 2018. No ET3 was received and a Rule 21 Judgment in terms of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure Regulations 2013 was issued by Employment Judge Robert Gall, directing that the complaint of unfair dismissal succeeded and the remedy would be determined at a Hearing.

2. By e-mail of 19 October 2018 the respondent's representative advised that they had now been instructed and anticipated being instructed to submit an application for reconsideration. They duly presented a proposed ET3 and an explanation as to why it had been presented late. At a Preliminary Hearing held on 7 January 2019 before Employment Judge Mary Kearns she directed that the original decision be revoked, the time for presenting the response be extended to 22 October 2018 and the response was thereafter accepted on that date.

3. Notices for the Final Hearing were issued on 12 February 2019 and 4 days were set aside for the Hearing. Thereafter the claimant applied for Witness Orders in terms of Rule 32 of the 2013 Regulations and these were issued by Employment Judge Muriel Robison on 29 April 2019 for Mr Lennon, Ms Philp, and Mr Kane.

4. A bundle of documents was provided by the respondent. The claimant had the opportunity to see these documents before the start of the Final Hearing.

5. Since this claim was of unfair dismissal the respondent's evidence was given first followed by the claimant and his witnesses. Evidence was led on behalf of the respondent by Mrs Michelle Gillespie who was formerly employed by the respondent but now works for another organisation. Mrs Tania Greaves also gave evidence on behalf of the respondent as did Mrs Lydia McClay.

6. The claimant gave evidence on his own behalf as did Ms Stacey Philp, Mr Reece Kane and Mr Owen Lennon.

7. It was agreed that the parties would provide closing submissions in writing and arrangements were made for these to be provided to the Tribunal on Friday 10 May 2019.

8. It was also agreed that the respondent would first provide their written submission to the claimant so that he would have the opportunity to see this in advance of providing his own submission. As indicated, both parties provided their submissions to the Tribunal and addressed the Tribunal briefly on these on 10 May 2019 after which it was confirmed that the Tribunal's decision was being reserved and would be issued in writing at a later date.

Findings of Fact

9. The Tribunal found the following essential facts to have been established or agreed.

10. The claimant was employed by the respondent as a Customer Service Agent. He commenced employment on 1 May 2009 and his employment was terminated on 31 May 2018. He worked with a team of colleagues and they took incoming calls from customers and potential customers in relation to insurance products.

11. The respondent has two types of insurance product which can be taken out by existing or new customers. The first is referred to as Kitchen Appliance Cover ("KAC") which is an insurance product in terms of which an existing or new customer has a 14 day 'cooling off' period applied. The purpose of this is to prevent a new or existing customer making a claim in the first 14 days of the insurance policy. The terms of that policy are set out at Page 137 of the bundle under the heading, "Kitchen Appliance Cover". It reads as follows:-

" ● We'll repair the kitchen appliance(s) included in your agreement.

- If we can't repair an appliance that's less than three years old or it's not economic to do so, we'll contribute the full cost of replacing it with a similar model. If it's more than three years old we'll contribute 30% towards a similar model.

- We'll cover up to £1,000 to gain access to your appliance so we can repair it.

- We'll cover Accidental Damage. So you're protected if you (or anyone else living in your house) accidentally breaks anything covered in your agreement.

- We don't cover breakdowns in the first 14 days.

- We don't cover any design faults or damage caused by anyone else you've used for repairs.

- We don't cover repairs to cooker hoods or extractor fans."

12. It is only after the expiry of the first 14 days that a claim can be made. The respondent would then make arrangements for the appliance in question to be checked by an engineer and, if it was beyond economic repair, then the insured would receive cash or vouchers representing 30% of the value of the product. Payments for KAC are made by monthly direct debit.

13. The respondent also has a second type of insurance cover which is referred to as Repair & Cover Kitchen Appliance Cover, ("R&C" or "R&CKAC") which entitles an insured customer (new or existing) to make an initial one off lump sum payment in addition to the premiums that are payable under a KAC Policy.

14. The lump sum would be either £69, according to the claimant, or £79 according to Mrs Gillespie. That lump sum payment entitles the insured to an immediate visit from an engineer who would either repair the appliance or refund the lump sum if it was found to be beyond repair.

15. The R&C cover does not give any entitlement to the insured receiving 30% of the value of the appliance. The respondent's explanation for this is that appliances such as large fridge/freezers and some other appliances can cost thousands of pounds and so it would not be economic for them to do so.

16. When she was employed by the respondent Mrs Gillespie was responsible for the customer service operation within the respondent's insurance service in Glasgow where the claimant was based. It was her role to ensure that that operation ran correctly and to ensure there was retention activity of customers. The respondent employs approximately 66,000 staff throughout Great Britain.

17. During her career with the respondent Mrs Gillespie would be involved in handling approximately three disciplinary proceedings each year.

18. The respondent has a Disciplinary Policy and Procedure, (Pages 26-34 inclusive). The procedure is updated from time to time. The version provided which is stated to be as at 15 August 2016 is not exactly the same as the version used in October 2015 but the changes were very minimal.

19. Mrs Gillespie had had no previous dealings with the claimant directly. The examples of gross misconduct were set out at Section 5.3, (Page 30). The two referred to in relation to the claimant were as follows:-

"● Theft, fraud, deliberate falsification of records or serious dishonesty at work while another is

● Viewing, accessing or modifying your own, of friends or family members' British Gas account information"

There is also provision at Section 7.2 to suspend an individual on full pay, (Page 31).

20. Before the disciplinary hearing took place the claimant had by letter dated 13 February 2018, (Pages 51/52) been invited to attend an investigation meeting to be held on 22 February 2018 with a Mr Danny Rizzo a Team Manager and

a Mr Steohen Scott, another Team Manager. He had the right to be accompanied by a trade union representative if he wished to do so.

21. This letter indicated that the purpose of the investigation was that a colleague had access to the claimant's own British Gas account for his personal benefit/gain in August 2016 by adding KAC when the claimant had a breakdown and, separately, that the claimant had access to his own home services account and made changes to this account.

22. The claimant duly attended the fact finding investigation, accompanied by his trade union representative. This was conducted by Mr Rizzo with Mr Scott acting as the "scribe", (Pages 55/58). The notes were typed by Mr Scott and were later shown to the claimant following the conclusion of that meeting. The meeting set out the allegations made against the claimant. At Page 55 there is reference to the two allegations already set out in the invitation letter.

23. The claimant queried why his account was being looked at and it was explained that there was a separate ongoing investigation which had uncovered some concerns where other employees had been accessing colleagues' accounts and making changes.

24. The claimant was asked if he knew the waiting period for a customer to make a claim when they bought KAC for a product that was in good working order at the time of the sale/purchase of the insurance cover. The notes record that the claimant responded this was 14 days.

25. He was also asked if he knew what a R&CKAC policy was and he explained this, (Page 56). He also referred to his then line manager having informed him that he did not require an R&KAC but rather a "normal KAC" and to book an appointment for an engineer to call. The claimant then asked Ms Philp to put through a KAC and book an appointment for an engineer to visit and check his appliance. The claimant would not have accepted a KAC had his line manager not instructed him to do so. He gave the names of colleagues, including Ms Philp and his line manager and it was noted they and Mr Kane might have to be interviewed later by the investigating team, (page 56).

26. The claimant has also explained that when he arrived at work he had asked if anyone wanted “a R&CKAC sale” and he was “waving my bank card”. However, he was told by his immediate line manager that he did not require to use that, i.e. the R&CKAC but instead could proceed directly with the KAC policy.

27. The claimant accepted that an engineer had subsequently called at his home and had deemed that the appliance in question was beyond economic repair and he therefore received vouchers towards a new appliance for about £200 based on 30% of its value as the appliance in question was more than 3 years old.

28. Had the claimant taken out the R&C cover he would have had to pay £69 for an immediate visit by an engineer to check the equipment and, if the equipment had been found (as it was) to be beyond repair then the £69 would have been repaid to the claimant but he would not have been entitled to the value of vouchers for 30% of the equipment’s replacement cost.

29. The meeting also discussed the issue of the claimant having been said to have accessed his own homecare account in breach of the respondent’s rules.

30. The claimant explained that the equipment he purchased was under warranty from the September to the following September. He had intended cancelling the KAC but, when he spoke to a colleague she said he could not cancel it although she could, instead, change the cover to another appliance. That colleague was unable to make the changes on her system as her computer crashed and so the claimant spoke to another colleague who was able to put the change through using the claimant’s computer system which he granted access to do so.

31. The claimant was told that this change had been effected on 13 March 2017 although the claimant could not recall the exact date, (Page 58).

32. The claimant was questioned as to why when he had not paid anything towards the insurance cover at the point the engineer called out and that he

had also received £245 worth of vouchers towards new equipment since the appliance was beyond economic repair, whether he thought it "strange that this could happen", (again Page 58). The claimant's position was as follows:-

> "No. I could go online and book out R&CKAC. There are loopholes in BG processes and hundreds of people access own accounts all the time."

33. Following the conclusion of the meeting Mr Rizzo then interviewed a Mr Lee Murray and the claimant's immediate Line Manager, (Pages 59/60). Ms Philp was also interviewed on the same day, (again Page 60) while Mr Kane was interviewed as well, (Page 61).

34. The claimant was then invited to what was described as a Fact Find Investigation Outcome Meeting, (Pages 62/63). The claimant was present with a Union representative. He was informed by Mr Rizzo that there was, in his view, sufficient evidence that there had been gross misconduct and misconduct and the matter would now be referred to a disciplinary hearing manager, (Pages 62/63).

35. Mr Rizzo prepared a report dated 21 March 2018, (Pages 64/70). This included appendices which included the claimant's interview notes and the notes with the other individuals who were interviewed together with the notes from the outcome meeting.

36. The claimant attended the disciplinary hearing on 18 May 2018 although the notes refer to the date (incorrectly) as being 18 May 2017, (Page 85). This meeting was chaired by Mrs Gillespie with a co-chair also present, a Mrs Eleanor Curran. The claimant attended with a Union representative and there was also a third individual who is described as the "Scribe". The notes from the meeting are set out at Pages 85/91.

37. It was confirmed that the claimant had access to the interview notes from the individuals who had been interviewed and that, if necessary, additional interviews could be held with them. The claimant explained that he would like to be present if they were to be interviewed. Mrs Gillespie explained that these individuals were not under investigation but the claimant would be allowed to

see the notes from the interviews and his trade union representative could ask questions on his behalf as the representative would be allowed to attend any such interviews.

38. The claimant's position was that the investigation pack as set out was "very one sided – they've only looked for my guilt, never at any point did they look for my innocence."

39. Mrs Gillespie is recorded as having responded, "That's what we're here for is to look for your innocence – I'll proceed today by going through the allegations, the investigations summary and then speak to witnesses that you deem necessary", (Page 86).

40. During the course of the Hearing the claimant was asked if he had questioned why his Manager had told him to take KAC rather than R&CKAC. The claimant's response is recorded as:-

> "there was a debate between the team and at the end of the day, I was told by a superior to carry out the actions. (Stacey did carry out the action of adding the products to my account)."

41. The claimant indicated that when he was suspended on 12 January 2018 he understood that his line manager had checked the claimant's account to see if the manager's name was on the "wrap note" but he understood it was not there. This information came to the claimant from some of his colleagues.

42. At the end of the Hearing Mrs Gillespie indicated that she wanted to clarify some points and would interview other individuals and questions would be put to those individuals which were agreed with the claimant and his Union representative, (Page 91).

43. Subsequently, Mrs Gillespie with Mrs Curran also in attendance as the co-chair interviewed Mr Lennon, (Pages 92/93), then Mr Reece Kane, (Page 94), next Ms Philp, (Pages 95/96) and finally the claimant's Line Manager,(Pages 97/98).

44. Copies of the interview notes were e-mailed to the claimant's Trade Union representative on 21 May 2018, (Page 99). Time was taken to consider all that had been said at the disciplinary hearing and the subsequent interviews held with the other members of staff, (see above).

45. Enquiries were also made about access to the claimant's own customer account but there was no "digital footprint" of other employees having done so.

46. By letter dated 31 May 2018, (Pages 100/103) Mrs Gillespie informed the claimant that her decision was that his employment with the respondent should be terminated.

47. Her letter explained that the reason for dismissal was that:-

> "There is evidence of gross misconduct relating to the allegation of having a colleague access your account for personal gain/benefit."
>
> This is a breach of:
>
> **3.3.5** During the course of employment or in the circumstances arising from it, employees shall not commit acts of theft or fraud against other employees or the employer, or customers or partners.
>
> The evidence presented, confirms that a colleague accessed your account and set up a Kitchen Appliance Cover. This is allowed in an immediate visit to review your broken appliance, with no cost to yourself as a customer and financial gain as a result, - providing you a voucher for £245. This financial gain was made despite no premium being paid for the additional cover. The additional cover which should have been purchased is referred to as Repair and Cover, this would have incurred a cost of £69 upfront with £5.95 per month thereafter. However, there was a significant breach in process allowing a variance in cover being added to your account, allowing you immediate assistance and financial gain without any cool off period or premium. You have advised that this was

set up, following instruction from a manager at a level above yourself, and you confirm that this was only set up as a result of this instruction. This progressed despite your own knowledge and experience and being aware that this was not normal process. We will be reviewing this allegation you have made and continue to investigate this instruction as per the information you have given us. However, as an organisation, we cannot tolerate a clear breach in process and regulation, and the offence is without question evident of insurance fraud.

- There is also misconduct relating to an allegation in March 2017, you accessed your personal British Gas account and made modifications,

3.5.5 Employees must not use any British Gas Services Computer system for which they have no authorised access.

You have advised at the meeting that you were aware of this and accepted that you knew this was not right. You did advise that a colleague was the one who made the changes to your account, on your PC while you were there. You were unable to identify who that person was, therefore, we can only conclude that you have accessed and made changes to your own account. I appreciate that there was no financial gain on this amendment, however as stated this remains a breach in our process.

These offences represent breaches of the British Gas Rules of Conduct as above."

48. Mrs Gillespie then went on to set out how the decision had been reached and that, taking into the account the evidence presented and the information the claimant had presented about his colleagues understanding the sequence of events and that consideration was given to the statements from all those who had been interviewed which suggested this cover was initiated on instruction from another person.

49. Her letter continued as follows:-

> "However, that does not exclude the evidence that there has been personal financial gain for yourself on your homecare account at the alleged time.
>
> We have reviewed the additional activity in your account relating to misconduct, where there is evidence confirming you have accessed your own personal account with changes being made under your own username. You have acknowledged that this was the case, and that a colleague made the changes to your account, on your PC while you were there. You were unable to identify who that person was, therefore, we can only conclude that you have accessed and made changes to your own account. I appreciate that there was no financial gain on this amendment, however as stated this remains a breach in our process."

50. The letter concluded that, despite considering the representations made she had not been able to find any mitigating circumstances and the panel concluded that it was not appropriate to impose a lesser sanction. Information was then set out as to how the claimant could appeal against the decision, (Pages 102/103). By letter dated 6 July 2018, (Pages 105/106) the claimant was invited to an appeal hearing to be heard by a Ms Claire Freeland and Ms McClay with a note taker present, (Pages 107/108).

51. The documentation in relation to the appeal process was then passed to the Appeal Managers, (Page 109).

52. Notes of the appeal hearing were made, (Pages 110/111).

53. The claimant was accompanied at the appeal meeting by Mr Fallon his Trade Union representative. By letter dated 17 July 2018, (Pages 112/114) Ms Freeland informed the claimant of the outcome of that appeal hearing. She noted the issues that had been discussed at the appeal hearing under eight bullet points set out at page 112. It was noted that the claimant had been absent from work for work related stress from 10 August 2017 until 5 December 2017 but the investigation was not progressed until 8 January 2018

and the panel was satisfied there was no prior knowledge of any alleged wrongdoing whilst the claimant was absent from work through sickness.

54. The panel noted that the timescale which was taken to investigate the allegations against the claimant were not typical of what would be expected however this was an extremely complex case involving multiple members of staff and it took time to reach a "fair decision."

55. The conclusion of the panel was that the delays did not impact on the claimant's ability to defend the allegations and there would have been no change in the outcome if the timescale had no delays to them.

56. Whilst noting that the overall situation had impacted on the claimant personally the panel concluded that, as the claimant had not sought professional medical assistance, he was capable of defending the allegations brought against him.

57. The conclusion was that the claimant had knowingly allowed the act in question to occur and to benefit financially and reference is made to the respondent's disciplinary policy.

58. Whilst the panel was satisfied that there were others involved the claimant was an equal party.

59. In relation to insurance cover this was for the period from 15 February 2015 to 14 February 2017 which did not cover appliances. The cover taken out was on 29 August 2017 and this meant that, by accepting the vouchers for £245 (the appliance being found to be beyond economic repair) the claimant had gained financially. The role of the appeal panel was then set out, (Page 119).

60. The panel considered the statements that had been taken and noted that no challenge had been made to the statements obtained at the appeal hearing and nor did it find there was evidence that the claimant was, as he alleged, the victim of a witch hunt and that there was no evidence to support the allegation the claimant had been treated unfairly.

61. It was also noted that the claimant had been supported throughout the process by a trade union representative.

62. The appeal panel's decision was to uphold the original decision of dismissal. The claimant had provided a statement as to his position, (Page 114a).

63. The claimant's appeal against the decision to terminate his employment was set out at pages 115/116.

64. It is relevant to record that Ms Philp was subject to a disciplinary process for having carried out the line manager's instruction for a KAC to be put in place and an engineer immediately booked without the requisite 14 day "cooling off" period. She was clear that she recalled the claimant asking to take out a R&KAC but being informed by the line manager to use a a KAC instead. As the Tribunal understood it, she was not dismissed and the disciplinary penalty imposed was either removed or modified. The claimant's line manager was dismissed but this dismissal post dated the claimant's dismissal.

65. As indicated above, both parties provided written submissions and the Tribunal was grateful to them for doing so. In reaching its decision it gave careful consideration to the submissions provided by them.

66. The submissions are set out below for completeness.

67. **Submissions**

Submissions for the Respondent

1. Relevant Legislation & Legal Principles

   i. ERA 1996 section 94-an employee has the right not to be unfairly dismissed by his employer.

   ii. In determining fairness it is for the employer to show the reasons (principal if more than one) justify dismissal section 98(1);

   iii. dismissal is fair if the reason(s) relate to the conduct of the employee 98(2).

iv. In determining if the dismissal is fair or unfair depends on whether the employer acted reasonably (or unreasonably) in treating the reason as sufficient for dismissal in the circumstances (having regard the size & administrative resources of employer) (section 98 (4)(a)).

v. The determination of fairness of the dismissal requires to be determined in accordance with equity & the substantial merits of the case (section 98(4)b)).

vi. In considering (applying) section 98(4) the ET should have regard to the test in *BHS Ltd v Burchell* 1980 ICR 303 at page 304 B-H.

vii. First there must be a belief on part of employer. Secondly that the employer had reasonable grounds to sustain the belief. Thirdly that in forming the belief the employer had carried out investigations as reasonable in the circumstances. *Burchell* reminds us that it is not the role of the ET to be sure of the evidence or adjudicate on the guilt or innocence of the employee.

viii. The issue for consideration is whether the employer acted reasonably (section 98). The ET should not substitute its own views for those of the employer (*Foley v Post Office*-at page 1295 G-H), and an ET should not consider what it may have done (differently) (at page 1287 D-F).

ix. A tribunal requires to consider whether the decision to dismiss fell within the band of reasonable responses, and not whether it would have taken the same decision as the employer (*Iceland Frozen Foods v Jones* [1982] IRLR 439 see page 1 for summary in the headnote) A tribunal should look at whether the decision falls within such a band of reasonableness i.e. was the decision so wrong that no reasonable or sensible employer could have taken it (paras 15 and 17).

x. If some employers would dismiss and others would not dismiss then the dismissal is fair (*British Leyland UK Ltd v Swift 1981* IRLR 91 (see Headnote on page 92)-where employee had a long and clean service record.

xi. An act of gross misconduct can lead to immediate dismissal as it is a breach by the employee which repudiates the contract. It is necessary to investigate the conduct and give the employee a proper opportunity to state their position/case. The employers must genuinely believe that the employee was guilty of the misconduct, have reasonable grounds for so believing and have carried out investigation as is reasonable in the circumstances (*BHS v Burchell* page 304 C-F).

xii. In assessing reasonableness of a disciplinary process it is necessary to look at the procedure as a whole. Later internal appeals may cure any deficiencies at an earlier stage regardless of whether or not the appeal stage includes any rehearing of the evidence (Lady Wise in *Khan v Stripestar Ltd* at paragraph 11 (2016 unreported) approving the reasoning in *Taylor v OCS Group Ltd* [2006] ICR 1602.

xiii. Delay in dismissal can render a dismissal unfair. However this generally arises where an employee is lulled into the belief that the incident was closed and not where investigations are ongoing (*Refund Rentals v McDermott* [1977] IRLR 59)

xiv. *Polkey v Dayton Services Ltd* [1988] ICR 344 at 364-Where the failure to take procedural steps would not have affected decision to dismiss then the consequences are that the employee may recover no compensation.

2. <u>R&C and KAC</u>

i. Before considering the issues relating to this claim it is worthwhile noting the key differences between the two insurance products discussed over the past few days.

ii. Kitchen Appliance Cover ("KAC") without any repair and cover may be taken out by an existing or new customer. The cover is an insurance product and therefore subject to the principle of utmost good faith. Regardless of whether an existing or new customer, there is a 14 day 'cooling off' period. The term is perhaps a misnomer as in effect the 14 day period prevents any claims being made in the first 14 days (see page 137 for the C's policy exclusions). Following the expiry of the 14 days a claim may be made and where an appliance is beyond economical repair. In those circumstances the insured will receive cash or vouchers representing 30% of the value of the product. Payment for KAC may be made by monthly direct debit.

iii. Repair & Cover Kitchen Appliance Cover ("R&C" or "R&C KAC" as referred to in some documents) entitles the Insured customer to make an initial one off lump sum payment in addition to the premiums payable under a KAC policy. The evidence was that the lump sum was either £69 (evidence of C) or £79 (evidence of Michelle Gillespie "MG"). The lump sum entitles the Insured to an immediate visit from an engineer who will either repair the appliance or refund the lump sum. R&C does <u>not</u> give rise to any entitlement of the Insured to receive 30% of the value of the appliance (Evidence in Cross of C). This, it is submitted, is entirely sensible, as some modern appliances such as large fridge freezers and some more traditional appliances, such as range cookers, cost £1000's.

iv. The significance of this issue is that even had the C taken out R&C in August 2016 he would not have been entitled to make a claim under the policy for £245, as he did.

3. Submissions on Findings in Fact (Substantive Issues)

i. The Respondent does not seek to repeat the evidence of witnesses heard over the period 7-9 May 2019. Nor does the R seek to draw the Tribunals attention to each and every relevant document. However the R does highlight some of the key issues which hopefully may be of assistance.

ii. Below the R seeks to highlight some of the issues which arise under the tests identified in authorities such as *Burchell.* To an extent the application of evidence may overlap the tests identified in *Burchell*, but are not repeated under the tests for reasons of brevity.

iii. **Reason for the Dismissal** (see letter of dismissal on pages 100-104)

- The C was dismissed for (1) gross misconduct occurring in August 2016 relating to the arrangements surrounding the securing of an insurance policy and claiming against that policy added by a colleague to the C's homecare account held with the R (as noted in the letter of dismissal as "There is evidence of gross misconduct relating to the allegation of having a colleague access your account for personal gain/benefit"); and (2) misconduct during March 2017 relating to accessing and modifying by C of his account with the R as the C (as noted in the dismissal as "There is also misconduct relating to the allegation in March 2017, you accessed your personal British Gas account and made modifications"

iv. **What was the conduct**

- The conduct is more fully detailed in the reasons chapter of the dismissal letter (pages 101-102). There are two

conduct issues identified. First the Gross Misconduct and secondly the Misconduct.

- It is noted the C benefitted as the Insured under an insurance policy and made a claim against an appliance broken before the inception of the policy. This is the gross misconduct issue. The C (as the Insured) consequently received payment of £245 following an engineer's visit and further discussions with the underwriters of the policy. Despite ample opportunities to refuse or cancel the claim the C accepted the payment. The evidence of MG was that the C sold KAC and R&C and was aware of the restrictions which applied as noted above. The C attempted to suggest that there were new restrictions which were communicated to him first on 29 August by his team leader Gary Bishop ("GB"), despite the C selling the policies and not having been advised or trained of any changes. There was no evidence of any changes occurring either before the 29 August 2016 or indeed after, which may have supported the C's witness evidence at the Tribunal.

- The second matter is the issue of the misconduct. The gross misconduct arises from the C having accessed his own account and made changes/modifications. There was no evidence (described as a (digital) footprint) of any persons other than the C having accessed his account.

v. **Was there a genuine belief in the misconduct & what were the grounds for that belief**

- The evidence of MG was that the C sold both KAC and R&C Policies and was aware of the differences. It is self-evident that the C was aware by his own assertion that he sought R&C cover (pages 56 and repeated on 57) but that GB stated to enter it as "normal KAC" (see page 56). C's evidence is that he was aware of R&C and what it offers (page 56) and also the waiting/cooling off period under KAC (page 56). The C's assertion that a person could wait 14 days misses the point entirely that this is not what happened, and in any event would simply be an alternative method of insurance fraud or deceit.

- The gross misconduct in August 2016 and misconduct in March 2017 followed a Standard Quality Audit (evidence of TG). Other persons including John Milroy were identified to have acted improperly in relation to the R's systems to their financial benefit. Like the C Mr Milroy was suspended and resigned during a disciplinary process before a decision to dismiss could be considered. Similarly GB was dismissed but importantly not until July 2018, post-dating C's dismissal. GB's investigation was "after May 2018" (evidence of Tanya Greaves ("TG")). Accordingly the issues relating to GB's dismissal were not before MG in reaching a decision on C's gross misconduct. Stacey Philp was also disciplined for her role but not suspended or dismissed as she did not benefit financially (evidence of MG). SP gave evidence that she had never known insurance fraud to be authorised or approved previously. It should not be lost sight of that the C was in the business of selling these policies and had been doing so for 7 years.

- Other employees were interviewed who, without exception, were all aware of the key differences between

R&C and KAC. None stated that there had been any changes which would give rise to C being entitled to claim the £245 as he did.

- There was competing witness evidence as to what GB had stated, however the R assessed the issue of the gross misconduct having regard to the C's assertions. This included determining whether dismissal would be reasonable on the basis that GB did communicate his approval or authorisation for the C to agree to the policy as the Insured.

- Turning to the act of misconduct in March 2017 the C knew that he was not entitled to access his account. This was in the Staff Handbook (Evidence of MG) and also in the Disciplinary Policy at page30 (MG). The C recognised himself that he was not entitled to do so, but appeared to suggest that it had become common practice amongst employees. This was inconsistent with the C's own evidence during the investigation and disciplinary process that he sought to have another employee change his account in March 2017, which change had no financial consequences but involved a change of product. If the C believed that he was entitled to access his account it would not explain a colleague trying to make the change then when her PC allegedly crashed. The C could have sought assistance from one of the other 400 PC users. There is also no footprint, (i.e. digital evidence) of another colleague using his PC. It also explains SP's role in the KAC cover in August 2016, rather than the C simply accessing his own account.

- The witnesses who made the decision to dismiss and not to overturn on appeal had no prior knowledge of the C.

vi. **Are those grounds reasonably held**

- The test is whether the belief is reasonably held. It is not a matter of considering guilt in the context of the criminal burden of proof or indeed civil burden of proof.

- The R had the evidence of a number of witnesses. All the witnesses were clear that R&C cover was required where an appliance was broken or needed repair e.g. Owen Lennon (OW) at page 92; Reece Kane (RK) at 94; GB at pages 59 and 97; SP at page 60. As noted above the C himself admitted this was the correct cover. There was no evidence of the C being forced to take KAC and could have refused or cancelled the engineer or cancelled the cover (evidence of MG).

- The C stated that he got on fine with GB (Evidence in Cross and page 89)

- GB denied authorising or approving the insurance cover as KAC (page 97). The C and SP who both went through a disciplinary process and relied upon their version of events blamed GB. The R was entitled to weigh the evidence and draw its own conclusions. The R had regard to the explanation provided by the C (see pages 101) that the KAC was set up following a manager instruction but concluded that the C's own knowledge and experience was aware what was done was not appropriate, and even if the evidence that GB instructed/approved the cover that this did not detract from the fact that there had been personal financial gain (page 102) due to insurance fraud (evidence of MG).

vii. **Do the reasonable grounds follow a reasonable investigation**

- It is submitted that the R undertook a thorough and comprehensive investigation at both the investigation stage and disciplinary stage. Those investigations were properly reviewed at the appeal stage. Any failure at the disciplinary stage, which is not accepted, may be cured at the appeal stage.

- A 20+ page Investigation Report was compiled by Mr Rizzo following speaking to various witnesses and holding 2 meetings (page 55-58 and 62-63) with the C. The C was given an opportunity to name witnesses he wished to be interviewed (page 56). Those witnesses were interviewed Lee Murray; Gary Bishop; S Philp and R Kane (pages 59-61).

- Following the 2 investigation meetings the C attended one of two disciplinary meetings. At the first disciplinary meeting the R offered to interview further witnesses with the C's trade union rep present, and also permit the C to draft questions (see page 85 and 91). MG stated that "we are a fresh pair of eyes and we want to do more of an investigation" (page 90).

- The investigations were not limited to witness statements and included digital interrogation of the C's computer to establish if there was any evidence of electronic evidence to support the C's assertion that others had accessed his account. On the contrary there was evidence that other persons had not done so as contended. E.g. No evidence of Lindsay McNamara (evidence of MG) and that GB always added his footprint when accessing computers.

- At the appeal stage there was a further consideration of all the evidence including all paperwork from the two previous processes. There was the consideration of the issues raised by the Claimant and the evidence of Linda McClay should be commended as addressing the issues without documentary prompting or assistance. In contrast the C could only indicate that he was not happy with the appeal but could offer no detail of his complaint with the procedure.

viii. **Is decision to dismiss within the range of reasonable responses**

- As noted above the ET need not, and should not, be troubled with asking whether the Tribunal would have dismissed the C. The issue is whether dismissal was within a band of reasonable responses. A dismissal does not fall outwith the spectrum of reasonableness and consequently unfair simply due to finding that some employers would not have dismissed a C.

- The issue is whether no reasonable employer would have dismissed the C.

- The C's evidence was that he was "advised it was ok" and therefore he followed the advice (page 78) When questioned why he followed the advice when he felt it to be "wrong" (page 78). C stated he did not question it this is 2016 as he had previously been disciplined for questioning a manager. However in cross examination the C accepted that not following managers instructions occurred in 2017 and therefore cannot have been in his mind in 2016. Therefore the C knew what was being

done was wrong and not normal as identified in the letter of dismissal.

- The "insurance fraud" (evidence of MG and letter of dismissal) was committed by a person whose role involved the advising, and sale of the policies which he wrongfully obtained benefits from those policies.

- The evidence of MG was that the act of gross misconduct, would itself have been sufficient to warrant dismissal. LM's evidence was that at appeal the acts of gross misconduct and misconduct were always considered together, which the R was entitled to do.

- It is submitted that dismissal was a reasonable response. The R was not required to continue to employ the C where he had shown himself capable of "insurance fraud" (letter of dismissal page 101). The R reached that decision having full regard to all the evidence including (as C will be aware) the advice/instruction of GB, which even if true did not cause the R to reach an alternative decision not to dismiss the C.

- To R was faced with an experienced employee who sold insurance products who admitted that what he did was "wrong" and "not normal" and secured a windfall payment as an Insured under a policy of insurance that he asked to be sold to himself. In dismissing for that alone, ignoring the other misconduct, cannot be said to be outwith the range of reasonable responses.

4. <u>Remedy/Financial Issues</u>

i. Compensation is sought by C; the duty is on the Claimant to mitigate any loss. The C secured a new position in less than 3 weeks, starting on 18th June 2018 (see ET1 on page 5) There

is no documentary evidence of the wage loss for the period since May to October 2018 before the ET, despite the order of the Tribunal dated 9th January 2018.

ii. C has indicated the sums claimed on page 8 of the ET1 (page 8 of Bundle)

- Seeks loss of wages of £986.30 when out of work (Basic award calculated below)
- Seeks Statutory Redundancy of £3,461.49 (position not redundant)
- Seeks loss of earnings for new salary of £2,000 (no loss see below)
- Seeks lost commission whilst suspended of £2916.67 (no notice of calculation or evidence of loss)
- Loss of statutory rights seeks £500 (£300 appropriate)

iii. Evidence-C's pay was £1,663.79 gross (1,334.81 net) per month. (page 121) The C elected not to lodge his P60. The C accepted he was earning Commission during the period April to August 2017. The C's total gross pay as at 31 March 2018 was £21,016. This amounts to £1,751 per month. Accordingly any commission, of which there was no evidence, amounted to less than £100 per month, and thereafter would require to be taxed and subject to NI reducing the maximum monthly loss to £70 In any event any claim for commission should be disregarded for want of evidence. The new position in June 2018 had monthly net or gross salary of 1500 (Page 5) If this is gross then net is £1314 (using uktaxcalculators.co.uk) so loss is nil.

iv. Basic Award (Gross) section 119(2) 1 week per year up to 41 then 1.5 weeks-Section 122(2) the award shall be reduced if just and equitable e.g. due to conduct or if employment refused. Claimant was born in December 1977 (page 1) and had 9 years service (page 4) Based on £1663 the loss is (1663 x 12/52 x 9) = £3,453.

v. Compensatory award (net) section 123 (burden of proof on C to prove)-No award should be made as work could have been secured within a month (approx) (see page 5). The basic award represents over 6 months net wages by which time the C had obtained a new position. C appears now to have new position since Oct 2018 earning up to £2,085 net per month (see page 127 for example). Like the basic award the compensatory award requires should be reduced due to conduct.

vi. The percentage reduction can be up to 100%, and some guidance is found in (*Hollier v Plysu Ltd* 1983 IRLR 260 para 18 on page 262).

vii. Loss of Statutory Rights £300 (approximately).

viii. In the event that dismissal is unfair *Polkey* and conduct of C should be taken into account.

ix. Conduct can cause the basic and compensatory award to be reduced by up to 100%. Fairness is a separate issue from contributory conduct. Even where a C can show that they did not know the conduct to be wrong e.g. where they were acting on advice of a more qualified individual the ET may still make a reduction (60% in *Allan v Hammett* 1982 ICR 227).

x. In the present circumstances, the Claimant's conduct would merit a full reduction of 100%.

5. Misc Issues

i. Delay-It is fully recognised by the R that the period of 4 months from discovery of the incident and suspension to dismissal is a longer than normal which is regrettable. Whilst the issue of delay is not a ground of the present proceedings the R would offer some brief observations.

ii. First that there are a number of small pockets of delay but certainly no substantial periods of delay. There is no question of the months passing with nothing been done to progress the investigations. Rather there were some gaps between the investigations etc. The length of time taken to complete the fact finding investigations (including meetings and gathering evidence) and disciplinary hearings and investigations was due to various issues. The Claimant was one of a few individuals identified following an audit. This resulted in a comprehensive investigation by Mr Rizzo. There was some lost time due to the unavailability of the C's Trade Union representative (page 55), although the R also recognises that this was not the sole cause of the delay and that generally the delays are regrettable as recognised by the R's witnesses.

iii. There were gaps due to the sickness of an employee of the R. Following the initial investigations there were further meetings before the 21 page Investigation Report was [prepared at the end of March (page 83). Thereafter a decision could not be reached at the disciplinary hearing as the C wished additional investigations to be undertaken which required (at the C's request) his Trade Union representative to be in attendance.

iv. The C was suspended on full pay and vitally (it is submitted) was under in no way led to believe by the R that the separate incidents of misconduct and gross misconduct had been closed. The investigations were ongoing and on no reasonable view can the C have been said to have been lulled into believing

that the allegations of gross misconduct and misconduct were no longer being considered for disciplinary action by R. E.g. in the context of dishonest conduct a gap of 10 weeks in an investigation did not cause a delay which was unfair even although the employee had thought that the allegations had been dropped (*Refund Rentals Ltd v McDermott* [1977] IRLR 59 at para 19). The present circumstances are therefore to be distinguished from unfairness which was found to arise where there was a gap of 7 months during which there were entirely no investigations before commencing in month 7, and not until 10 months before the disciplinary hearing took place (*RSPCA v Cruden* [1986] ICR 205 at 209 B-G (facts)) There was no postponement or discernible 'pause' in the present proceedings as in *RSPCA*, which would be sufficient to render the dismissal unfair.

v. Acceptance/Acknowledgement-There can be circumstances where ignorance and acceptance of conduct justifying dismissal may cause an employer to hesitate and consider whether dismissal is a reasonable response. The R submits that there was no such attitude displayed by the C. The C knew that the sums obtained from the insurance claim were wrong but at all times sought to blame a manager and/or colleague in respect of the gross misconduct. Furthermore (under the same acts) the C sought to justify the wrongdoing on the basis that there were "loopholes" (as the C put it) which would enable payments under the policy to be secured by alternative deceits. In respect of the misconduct the C sought to justify his own actions on the basis that "99%" of other employees were equally guilty of accessing their own accounts. Such an outlandish remark is with no evidential basis and wholly inconsistent with Stacey being required in the act of gross misconduct, and also the outcome of the audit.

vi. Notwithstanding the C knew he was not entitled to access his accounts or make a claim under the policy he stated that there would be “fireworks” and that he wanted “paid off and a settlement” (page 83). It is submitted that the lack of acceptance was not an issue which weighed in the R’s mind when dismissing but is a matter that the ET would be entitled to have regard to when considering the reasonableness of the outcome or contributory conduct.

vii. Finally it should be noted that the C was represented throughout all 3 stages of the process, namely investigation, disciplinary, and appeal.

6. Conclusion

i. The R respectfully moves the Tribunal to dismiss the claim. It is submitted that the decision to dismiss the C was clearly within the band of reasonable responses.

ii. As identified above the C was an experienced advisor responsible for both advising on and sales/brokerage of insurance policies. He was also entrusted with accessing the R’s computer systems relating to inter alia insurance products and policies. The C knowingly was part of a scheme to commit insurance fraud. The C was the only direct financial beneficiary of the fraud. The C was not forced to participate in the fraud but did so in the misguided belief that he thought it would be possible to be shielded from consequences of his wrongdoings, by casting blame on a more senior person (team leader). In any event the R took into account the C’s version of event and remained satisfied that there was sufficient evidence to show that the C’s actions amounted to gross misconduct. The process by which the R reached its decision was fair, thorough and considered.

iii. The R undertook a full investigation interviewing a number of people on repeated occasions and interrogating hard and electronic documents. This investigation also considered the second issue of misconduct by the C, namely the accessing of his own account. In line with the earlier allegation the C sought to state others had been involved, of which there was no tangible evidence. The R considered all the evidence. The evidence included an audit demonstrating the lack of any foundation for the assertions made. The R was entitled to reach the conclusion that the C had accessed his own account. There were reasonable grounds for reaching such a conclusion.

iv. Following disciplinary hearings the C was dismissed. The C appealed against the dismissal. Independent managers were appointed to consider the appeal and any flaws in the earlier investigations. The appeal panel properly directed themselves to the issues and carried out a proper appeal and reached reasons conclusions.

v. The C may disagree with the conclusions reached and the method by which they were reached (e.g. the C's rep being in attendance at interviews with third parties and without the C present). However it is submitted that on no reasonable view does this does not render the dismissal unfair, including the process by which the decision to dismiss was reached.

vi. Unless the R can be of any further assistance to the ET the motion is refreshed to respectfully move the Employment Tribunal to dismiss the claim

Claimant's Submissions

1 It is my opinion that I was unfairly dismissed by British Gas.

2 As discussed throughout the proceedings, I can confirm that I never knowingly tried to defraud my former employer. Unfortunately, on

orders from my Manager at the time, cover was taken out. In hindsight, this is a decision which I regret and I would not have risked mine and my family's livelihood for £245.

3 It is true that I sold the products which I had cover for but I did not process claims or know of the processes in relation to claims in August 2016. I held cover with British Gas from February 2016 until moving home in February 2018 and had never made any claims before or after this incident.

4 I feel that British Gas did not investigate this matter timeously or fully. I had to chase up the disciplinary proceedings and make requests to have witnesses interviewed, which never happened as per MG.

5 It is my opinion that a decision had been arrived at before any investigations had been carried out.

6 In relation to the Respondent's claim that I am not earning less in my new employment is incorrect.

7 My annual salary at British Gas, before commission, at the date of dismissal was £20,445 and my annual salary at my new employment is £18,500. The loss of commission is £1,995.

8 (20445 – 18500 = 1995)

9 The payslips provided by British Gas are for the months of my suspension and therefore do not show any commission earned. The annual income relied on by the Respondent is not a typical year due to the fact that I was on sick leave from August until 23 December 2017 and then suspended from 12th January 2018 until dismissal.

10 My calculation for loss is commission is based on the previous years' earnings of £26,535.58. Subtracting my annual salary at that time of £19,574, leaves a figure of commission of £6,961.58. My calculation is based on 20 weeks lost commission of £2,677.30.

11 (26535.58 – 19574 = 6961.58 / 52 x 20 = 2677.30)

12 With regard to my new employment, the Respondent makes reference to the November 2018 payslip showing a net payment of £2,085.85. This payslip contains a tax rebate and is not a typical wage, although it does show my reference salary being the same amount as other months.

13 My calculation for loss is earnings is based on being out of work for 17 days. My basic salary at date of dismissal was £20,445 and I am therefore claiming £952.23 for loss of earnings.
(20445 / 365 x 17 = 952.23

The Law

68. Section 98 of the Employment Rights Act 1996 states:-

"**98 General**

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

(a)…

(b) relates to the conduct of the employee

(c)…

(d)…

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was 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.

Observation on the Witnesses

69. There was limited conflict of evidence before the Tribunal from the various witnesses. The claimant as stated in his written submission, (see above) explained that he had never knowingly tried to defraud the respondent and that he followed orders from his manager and so the wrong type of insurance cover was taken out which was, with hindsight, a decision which he regretted. His view was that the respondent's decision to dismiss him had been arrived at before any investigation was carried out.

Deliberation and Determination

70. The respondent set out the relevant legislation which is set out above and various cases to which the Tribunal requires to give its attention when reaching its decision.

71. The Tribunal was reminded that it must not substitute its own view for that of the employer – see ***Foley*** above and nor should it consider what it might have done differently.

72. The test to be applied is set out in the well-known case of ***Burchell***.

73. The Tribunal also requires to consider whether the decision to dismiss fell within the band of reasonable responses, not whether it would have taken the same decision as the employer – see ***Iceland Frozen Foods*** above and that

if some employers would dismiss and others would not, then a dismissal can still be fair – ***British Leyland v Swift***.

74. In making an assessment of the reasonableness of the disciplinary process it is necessary to look at the whole procedure and, in particular, the Tribunal was directed to the decision in an unreported Judgment of the Employment Appeal Tribunal in ***Khan*** (see above) which approved the reasoning in an earlier case of ***Taylor v OCS Group Ltd***.

75. The Tribunal was also invited to consider the decision refund rentals if an instant appears to have been closed but not where investigation is ongoing and finally if there was a failure to take procedural steps consideration has to be given to whether a ***Polkey*** deduction is applicable should the Tribunal find that the dismissal was unfair.

76. The respondent also made the point that while the investigation was in relation to an issue regarding insurance cover taken out in August 2016, the investigation itself did not start until 2018 as a result of separate unrelated matters coming to the respondent's attention.

77. The respondent's position was that the claimant was dismissed on two grounds, the first being gross misconduct in relation to the use of the insurance cover being the incorrect policy of KAP rather than R&C KAP and second, misconduct in relation to accessing and modifying the claimant's account.

78. The respondent's position was that the claimant benefited as the insured under an insurance policy and made a claim against an appliance which was already broken before the inception of the policy.

79. He therefore received vouchers towards a replacement appliance when the engineer concluded that the appliance in question was beyond economic repair.

80. The respondent's position was that the claimant could, at that point, have refused or cancelled the claim but, instead, he accepted the payment of vouchers.

81. Mrs Gillespie was clear that the claimant knew about the separate terms that applied to KAC and R&C and the restrictions that applied. The claimant's position was that it was his team leader who informed him that he should use the KAC product and not the R&C product and the claimant suggested that there had been changes in the policy but there was no evidence that Mrs Gillespie could see before 29 August 2016 or afterwards which would have supported the claimant's evidence on this point. The second issue was that of misconduct on the grounds that there was no evidence of a digital footprint of anyone other than the claimant having access to his own account.

82. The respondent reminded the Tribunal that the employer has to show that there is genuine belief in the misconduct and the grounds for that belief.

83. The evidence of Mrs Gillespie was that the claimant knew of the different types of policies. He knew that when he asked to take out R&C cover but was told by his line manager that he should take out KAC cover instead, even though he knew the R&C cover was the appropriate cover since the appliance in question needed to be repaired. He also knew that there was a waiting/cooling off period under KAC. Any assertion by the claimant that someone could wait 14 days was, in the respondent's submission, missing the point entirely as this was not what happened and, in any event, would simply have been an alternative method of ensuring fraud or deceit.

84. Another individual was suspended and resigned during the disciplinary process invoked against that individual and the line manager himself was dismissed but this after the claimant's dismissal had taken effect.

85. Ms Philp was disciplined but not suspended or dismissed as she had not benefit financially but it was she who had dealt with the processing of the paperwork for the claimant for the KAC policy. It was also pointed out by the respondent that the claimant had been in the business of selling these policies

for a number of years and all the other employees interviewed knew of the key differences between R&C and KAC. None of them suggested there were changes which would have allowed the claimant to claim the vouchers which he did.

86. In considering whether to dismiss the claimant, the respondent took into account the issue of his line manager and whether he had given approval or authorisation for the claimant.

87. In relation to the act of misconduct the claimant was aware that he should not have accessed his own account and it was unclear how the claimant could maintain that another employee sought to change his account on his behalf and when that person's PC crashed the claimant then asked another of the team to act by making the changes on his account. There was no digital evidence of this having occurred since only the claimant's details appeared in relation to his own PC.

88. The question for the Tribunal is whether the belief of the respondent of the misconduct was reasonably held.

89. The respondent's witnesses were clear that R&C was the cover required when an appliance was broken and needed to be repaired and this included the claimant's own witnesses, Mr Lennon and Mr Kane as well as the line manager. The claimant had accepted that this was the correct cover.

90. It was suggested there was no evidence that the claimant was forced to take out KAC as he could have refused or cancelled the engineer or cancelled the cover which he had obtained. His manager denied having approved or authorised the insurance cover as KAC but both the claimant and Ms Philp blamed the line manager.

91. It was for the respondent to weigh the evidence and draw its conclusions and the conclusion they reached was that the claimant had the KAC cover set up having maintained that he was following his manager's instruction. The employer concluded the claimant knew from his own knowledge and experience that it was not appropriate. It was further submitted that, even if it

had been instructed by a higher level manager, this did not detract from the fact there had been personal gain due to insurance fraud.

92. The next issue for the Tribunal is whether there was a reasonable investigation. It was submitted that there was a thorough and comprehensive investigation both at the investigation and disciplinary stage and these were reviewed at the appeal process. It was also pointed out that further statement were obtained and there was a digital interrogation of the claimant's computer to establish if there was any evidence to support the claimant's assertion that others other than himself had accessed his account but no such evidence was available. These matters were all considered at the appeal stage and the claimant was not able to offer more details of his complaint about the process at that appeal meeting.

93. The Tribunal was reminded that it is not for it to decide whether it would have dismissed the claimant but rather whether dismissal was within the band of reasonable responses open to a reasonable employer, acting reasonably in the circumstances.

94. It was pointed out that the issue, in effect, is whether no reasonable employer would have dismissed the claimant.

95. The Tribunal took into account all the points set out by the respondent at subheading viii of its written submission and, having done so, it concluded that the Tribunal could not say that this was a case where no reasonable employer would have dismissed the claimant in the circumstances.

96. Accordingly, the Tribunal concluded, applying the law to the above finding of fact that the decision to dismiss the claimant came within the band of reasonable responses and so it could not find that the dismissal was unfair. It therefore follows applying the law to the above findings and this claim must be dismissed.

97. For completeness, the Tribunal noted that the respondent had set out detailed submissions in relation to compensation in the event that the claim was

successful but given the claim has not succeeded, the Tribunal does not require to reach a determination on them.

98. In reaching its decision the Tribunal took into consideration the length of time of the claimant's suspension through to the conclusion of the disciplinary process. It was not persuaded that the delay, while regrettable, was such as to render the dismissal procedurally unfair.

99. The Tribunal therefore concluded, in all the circumstances, that the respondent's decision to dismiss the claimant was within the range of responses open to a reasonable employer and, accordingly, the claim cannot succeed and it is therefore dismissed.

Employment Judge	**F J Garvie**
Date of Judgment	**03 June 2019**
Entered in register and copied to parties	**04 June 2019**