EMPLOYMENT TRIBUNALS

Claimant: Mr T Theivendram

Respondent: Lidl Great Britain Ltd

REASONS

1. Oral judgment and reasons having been given at the hearing on 15 March 2022, these written reasons are provided further to the Claimant's request.

<u>Claim</u>

2. By a claim form presented on 11 February 2021, the Claimant complains that his dismissal was unfair and discriminatory. The Respondent denies the claims, contending that the Claimant was dismissed for theft, fairly and without any discrimination.

<u>Preliminary Issues</u>

3. By an order of 29 August 2021, EJ Manley listed this preliminary hearing in public to determine:

   3.1 Whether the claim has been presented out of time and, if so,

   3.1.1 Whether it was reasonably practicable to present the unfair dismissal claim in time and

   3.1.2 Whether it is just and equitable to extend time for any race discrimination claim;

   3.2 if any claims can proceed because they are in time or allowed to proceed, whether any should be struck out as having no reasonable prospect of success.

   3.3 if they have little reasonable prospect of success and a deposit should be ordered as a condition of those allegations or argument proceedings.

<u>Documents</u>

4. I was provided with:

   4.1 an agreed bundle of documents running to page 144;

4.2 the Claimant's witness statement;

4.3 the Respondent's skeleton argument;

4.4 the Claimant's emails to the Tribunal of 21 & 22 June 2021.

Facts

Background

5. The Claimant was employed by the Respondent from 28 October 2014 until 9 September 2020, most recently as a Deputy Store Manager.

6. On 28 August 2020, the Claimant was called into an investigatory meeting with his store manager and another more senior manager from the region. He was asked about cashing-up and money going missing. He denied any wrongdoing, involvement or knowledge.

7. On 31 August 2020, the Claimant was called to another investigatory meeting, with the same two managers. The Claimant began by repeating his denials. Later during this interview, the Claimant said if the matter went to a disciplinary, he would need 30 minutes to give evidence. The Claimant then asked to speak to the more senior manager alone. After a private conversation, the investigatory meeting resumed and the Claimant was asked to repeat what he had said. He then admitted having taken money from the Respondent. The Claimant said he had done this to prove that other managers were stealing money from the business. The Claimant was then suspended. His suspension was confirmed in writing.

8. The police attended the Claimant's home and recovered cash bags containing more than £16,000. This had been taken from the store by the Claimant on 10 separate occasions.

9. By a letter of 4 September 2020, the Claimant was required to attend a disciplinary hearing on 7 September 2020, in connection with an allegation of theft. He was provided with the relevant documentary records. The letter warned he could be dismissed and advised of his right to be accompanied.

10. The disciplinary hearing took place on 7 September 2020, with an external manager as the decision-maker. The allegation was discussed with the Claimant, who explained he had taken all this money to show that it could be done (i.e. to expose vulnerabilities in the Respondent's systems and the scope for theft). The Claimant also raised personal issues.

11. The Claimant was summarily dismissed on 9 September 2020. The letter sent to him in this regard included:

> **- Having admitted removing several thousand pounds from store 1389 by means of secondary cash ups and then removing the secondary cash ups and cash sheets to hide the fact and with the Police having found the cash in Lidl marked cash bags at your home address, I am upholding the allegation of gross misconduct by means of theft.**

> **- The explanation of protecting the business Is not accepted, and whilst the additional points raised are unfortunate, they bare no part in the theft of the money.**

12. The Claimant appealed against his dismissal. The hearing took place on 5 October 2020 before another external manager. There was a lengthy discussion. His appeal was dismissed and the outcome letter included:

> **I have considered all the evidence available to me and I find the following:**
>
> **- You admitted to taking cash from the Uxbridge store on ten occasions, starting from 17th July 2020**
>
> **- You were not sure of the exact amount of cash, however you estimated at between £12000 & £15000**
>
> **- You explained the reason for taking this cash was to prove to Lidl the failure of the systems**
>
> **- You stated that because you did not run away this shows you are not a thief**
>
> **- You confirmed there is no Lidl document where it states an acceptable reason for taking cash from the building. You admitted "it's not acceptable"**
>
> **- You spoke to nobody else In Lidl prior to taking the cash from the building**
>
> **- Taking cash out of the building Is considered as theft, this constitutes gross misconduct**
>
> **Based on the above I find that the original decision to dismiss you was correct This decision is upheld.**

<u>Claim</u>

13. The Claimant contacted ACAS on 25 November 2020, received a certificate on 17 December 2020 and presented his claim on 11 February 2021.

14. The Claimant puts forward various reasons for his claim not being presented sooner. Broadly, he relies on poor mental health, unfamiliarity with Employment Tribunal rules and lack of finance.

15. As far as his mental health is concerned, the Claimant has provided no medical evidence to substantiate a mental illness during the material period. He confirmed in evidence that he received no medication or treatment for a mental health problem.

16. The Claimant said his GP offered to write down in a letter what the Claimant was then telling him but he did not see the point in paying £40 for that. This proposition appeared to imply some criticism of the doctor but I can see no grounds for it. Where a patient has been consulting with their GP and is receiving treatment, then the doctor can provide a summary of that position from their records and / or recollection. Where, however, there has been no such

consultation or care, and the patient attends explaining how poor their mental health had been at some point in the past, the doctor can do little more than offer to write down what the patient is then reporting.

17. I do not find the Claimant had any mental illness during the period of time between his dismissal and the commencement of these proceedings. This was undoubtedly a very stressful time for him, as not only did he lose his job but also he was facing criminal proceedings. That is not, however, the same thing as being ill. I am reinforced in this conclusion by the Claimant's email of 4 December 2020 to Lidl (i.e. post-appeal) in which he argues for his position at length. If the Claimant was well enough to write to his employer in this way, then it strongly suggests he could fill in a form ET1.

18. The Claimant is an intelligent man, who describes himself as an IT expert. Indeed, during the hearing today and without saying what he was going to do, the Claimant took over control of the CVP hearing to show a document (an email he sent to the Tribunal of 21 June 2021, which included the proposition that by doing as he did, he had exposed wrongdoing and was, therefore, a whistle-blower). After the rejection of his appeal against dismissal, he began to look online at how he might bring a claim in the Employment Tribunal. This led him to contact ACAS and commence conciliation for the purpose of bringing a Tribunal claim. I am unsure whether the Claimant was aware of the 3-month time limit for bringing a claim. I am, however, satisfied that any lack of knowledge on the Claimant's part was unreasonable. There is wealth of information about this available online, from ACAS, the CAB and many other sources. The Claimant also had a solicitor in the criminal proceedings, who prompted him to look at bringing a claim in the Tribunal. I do not accept that because English is not the Claimant's first language he could not understand information about the time in which to bring a claim. He had been employed by the Respondent for circa 6 years and rose to be deputy store manager. He would have been dealing with customers and staff in English, on a daily basis. The Claimant was able to explain himself satisfactorily during this hearing and had a tendency to speak at very great length.

19. I recognise the Claimant was in a difficult position financially, as he had just lost his job. Bringing a claim in the Tribunal does not, however, require the payment of a fee and a lack of money would not prevent him from bringing a claim.

20. The Claimant said ACAS warned him about bringing a claim and he construed this as a threat. I do not find the Claimant was threatened by ACAS. It may well be that advice was given about the difficulty he might have succeeding in a claim and this would be entirely proper, especially given the undisputed facts in this case.

21. Having considered all of the evidence available to me, it appears most likely that after having contacted ACAS, the Claimant decided not to bring a claim. Then, belatedly, in February 2021, he changed his mind and did then presented an ET1.

Law

<u>Time</u>

22. In the ordinary course, a claim under the **Employment Rights Act 1996** ("ERA") or the **Equality Act 2010** ("EqA) must be presented within three months. That time period is extended by the operation of the ACAS EC scheme:

    22.1 the period between the claimant contacting ACAS and the EC certificate being issued is not counted;

    22.2 if the time limit would otherwise expire in the period of one month following issue of the EC certificate, it is extended the end of that period.

23. Where a claim is presented outwith the primary limitation period, the Tribunal may have a discretion to extend time under the respective statutory regimes.

<u>Reasonably Practicable</u>

24. Where a claim is presented outwith the primary limitation period, the Tribunal has a discretion to extend time under ERA, where:

    24.1 it was not reasonably practicable for the claimant to have presented the claim within the 3-month period;

    24.2 the claim was presented within a further reasonable period.

25. The onus is upon a claimant to prove that is was not "reasonably practicable" for a claim to have presented within the specified time period. This represents a high hurdle to a late claim; see **Saunders v Southend on Sea Borough Council [1984] IRLR 119 CA**, May LJ giving the judgement of the Court said:

    > **22. In the end, most of the decided cases have been decisions on their own particular facts and must be regarded as such. However we think that one can say that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' is to take a view too favourable to the employee. On the other hand 'reasonably practicable' means more than merely what is reasonably capable physically of being done – different, for instance, from its construction in the context of the legislation relating to factories: compare Marshal v Gotham (1954) AC 360. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word 'practicable' as the equivalent of 'feasible' as Sir John Brightman did in Singh's case and to ask colloquially and untrammelled by too much legal logic – 'was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?' – is the best approach to the correct application of the relevant subsection.**

26. A claimant will not establish that it was not reasonably practicable to bring a claim before an Employment Tribunal simply by relying upon ignorance of the right to bring such a claim, or the time in which that might be done, rather the reasonableness of such ignorance will need to be established. In **Walls Meat Company Limited v Khan [1978] IRLR 499 CA**, Lord Denning MR said:

> **15. I would venture to take the simple test given by the majority in Dedman's [1973] IRLR 379 case. It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights — or ignorance of the time limit — is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences. […]**

27. With the passage of time the existence of Employment Tribunals and the right to bring claims of unfair dismissal and discrimination have become well known. As such, prospective claimants will in most cases struggle to persuade an Employment Tribunal that they were unaware of the right to bring a claim, and those who aware of such rights will, therefore, be on notice of the need to take advice as to how and when such a claim may be made; **see Trevelyans (Birmingham) Limited v Norton [1991] ICR 488 EAT**:

> **From the cases, it is our view that the following general principles seem to emerge. The first, as time passes, so it is likely to he much more difficult for applicants to persuade a tribunal that they had no knowledge of their rights in front of industrial tribunals to bring proceedings for unfair dismissal […] Second, that where an applicant has knowledge of his rights to claim unfair dismissal […] then there is an obligation upon him to seek information or advice about the enforcement of those rights.**

<u>Just and Equitable</u>

28. Where a claim is presented outwith the primary limitation period, the Tribunal has a discretion to extend time, where it is just and equitable to do so.

29. So far as material section 123 of the Equality Act 2010 ("EqA") provides:

> **(1) Subject to sections 140A and 104B proceedings on a complaint within section 120 may not be brought after the end of—**
>
> > **(a) the period of 3 months starting with the date of the act to which the complaint relates, or**
> >
> > **(b) such other period as the employment tribunal thinks just and equitable.**

30. An Employment Tribunal applying section 123(1)(b) has a broad discretion. A summary of the case law and multi-factoral approach was given by the EAT in **Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283** per HHJ Peter Clark:

> **11. A useful starting point is the judgment of Smith J in British Coal Corpn v Keeble [1997] IRLR 336. That was a case concerned with the just and equitable extension of time question in the context of a sex discrimination claim. Smith J, sitting with members, in allowing the employers' appeal and remitting the just and equitable extension question to the employment tribunal, suggested that in exercising its discretion the tribunal might be assisted by the factors mentioned in section 33 of the Limitation Act 1980, the provision for extension of time in personal injury cases. The first of those factors, as Mr Peacock emphasised in the**

> **present appeal, is the length of and reasons for the delay in bringing that claim.**
>
> **12. However, as the Court of Appeal made clear in Southwark London Borough Council v Afolabi [2003] ICR 800, in deciding the just and equitable extension question, a tribunal is not required to go through the matters listed in section 33(3) of the Limitation Act 1980, provided that no significant factor is omitted. That principle was more recently reinforced in a different context by the Court of Appeal in Neary v Governing Body of St Albans Girls' School [2010] ICR 473, where the leading judgment was given by Smith LJ. There, it was held that a line of appeal tribunal authority requiring a tribunal to consider the factors in the CPR, rule 3.9(1), as it then was, when deciding whether or not to grant relief from sanction following non-compliance with an unless order, was incorrect. Following Afolabi it is sufficient that all relevant factors are considered.**
>
> **13. Section 33(3) of the 1980 Act does not in terms refer to the balance of prejudice between the parties in granting or refusing an extension of time. However, Smith J referred to the balance of prejudice in Keeble, para 8, to which Mr Peacock has referred me. That, it seems to me, is consistent with the approach of the Court of Appeal in the section 33 personal injury case of Dale v British Coal Corpn, where Stuart-Smith LJ opined that, although not mentioned in section 33(3), it is relevant to consider the plaintiff's (claimant's) prospect of success in the action and evidence necessary to establish or defend the claim in considering the balance of hardship. That passage neatly brings together the two factors which, Mr Dutton submits, were not, but ought to have been, considered by this tribunal in the proper exercise of its discretion: prejudice and merits. I shall return to those factors in due course.**
>
> **14. What has emerged from the cases thus far reviewed, it seems to me, is that the exercise of this wide discretion (see Hutchison v Westward Television Ltd [1977] ICR 279) involves a multi-factoral approach. No single factor is determinative.**
>
> **15. Returning to the balance of prejudice, this concept arises elsewhere in our jurisdiction. For example, in deciding applications to amend the form ET1, the Selkent principle: Selkent Bus Co Ltd v Moore [1996] ICR 836.**

31. Importantly, there is no presumption that time will be extended; see **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 343 CA**, per Auld LJ:

> **25. It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule. […]**

32. The Court of Appeal considered the exercise of this discretion again in **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640**, per Leggatt LJ:

> **18. First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] EWCA Civ 15; [2003] ICR 800, para 33. […]**
>
> **19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).**

Strike Out

33. Rule 37(1)(a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 provides:

> **(1)At any stage of the proceedings, either on its own initiative or on the application of a party a Tribunal may strike out all or any part of a claim or response on any of the following grounds-**
>
> **(a) that it is scandalous or vexatious or has no reasonable prospect of success[…].**

34. The test of “no reasonable prospect of success” was considered in **North Glamorgan NHS Trust v Ezsias [2007] IRLR 603 CA**, per Maurice Kay LJ:

> **26 […] what is now in issue is whether an application has a realistic as opposed to a merely fanciful prospect of success. […]**
>
> **29 […] It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. […]**

35. The greatest caution should be exercised before striking out discrimination cases as having no reasonable prospect of success; see **Anyanwu v South Bank Students' Union [2001] IRLR 305 HL** per Lord Steyn:

> **24. In the result this is now the fourth occasion on which the preliminary question of the legal sustainability of the appellants' claim against the university is being considered. For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and**

> **plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest. Against this background it is necessary to explain why on the allegations made by the appellants it would be wrong to strike out their claims against the university.**

Deposit Order

36. Rule 39(1) provides:

> **Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ('the paying party') to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.**

37. In **Van Rensburg v Royal Borough of Kingston upon Thames [2007] UKEAT/0096/07**, Elias P addressed the lesser threshold of "little reasonable prospect of success":

> **26. Ezsias then demonstrates that disputes over matters of fact, including a provisional assessment of credibility, can in an exceptional case be taken into consideration even when a strike out is considered pursuant to rule 18(7). It would be very surprising if the power of the Tribunal to order the very much more limited sanction of a small deposit did not allow for a similar assessment, particularly since in each case the tribunal is assessing the prospects of success, albeit to different standards.**
>
> **27. Moreover, the test of little prospect of success in rule 20(1) is plainly not as rigorous as the test that the claim has no reasonable prospect of success found in rule 18(7). It follows that a tribunal has a greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response.**

Conclusion

Time Limits

38. The Claimant contacted ACAS on 25 November 2020, which was within 3 months of his dismissal on 9 September 2020. Given a certificate sent on 17 December 2020, the Claimant had until 17 January 2021 to present a claim. His ET1 presented on 11 February 2021, was 24 days late.

Reasonable Practicability

39. I am not satisfied that it was not reasonably practicable for the Claimant to have presented his claim within the time permitted. Neither ill-health, nor lack of knowledge or finance prevented him from bringing a claim. Whilst I am unsure whether he knew of the three-month limit, I am certain he could have found this out if he had made reasonable enquiries and any lack of knowledge about time limits on his part was unreasonable. The reason for his late claim is that he only decided to pursue this after time had expired.

40. Accordingly, the Tribunal does not have jurisdiction to determine the Claimant's unfair dismissal claim.

Just and Equitable

41. For the reasons already given and set out above, the Claimant does not have a satisfactory explanation for bringing a late claim. He was not prevented from bringing a claim. He at first decided not to do so and then later, changed his mind. That is not, however, determinative of the just and equitable discretion.

42. The Claimant's claim was 24 days late. It is difficult to see how the elapse of that period would prejudice the Respondent in answering the claim and that point has not been argued on its behalf.

43. As far as the Claimant is concerned, the prejudice to him in a refusal would be that he was prevented from pursuing his only remaining claim. Whilst this is a potentially significant factor in favour of extending time, in this case it is appropriate that I consider the likely prospects of the claim which he seeks to pursue. If the claim is apparently devoid of potential merit that would tend to weigh against extending time.

44. On the papers, the Claimant's claim would appear, most naturally, to be a claim of direct race discrimination with respect to dismissal. In his argument at this hearing, the Claimant said, for the first time, he was also relying on indirect discrimination and victimisation.

45. In terms of indirect discrimination, the Claimant said the reason why Lidl dealt with matters as it did was because he was a junior manager and the Respondent wished to protect more senior managers. Although not articulated very clearly, the Claimant's argument appeared to be that his store manager had stolen money from the Respondent, he was seeking to expose this and yet his thanks for so doing was dismissal. The Claimant went so far as to say he was "framed … to protect people at a higher level".

46. What the Claimant is saying about the differential treatment of him and his store manager, would if substantiated be more easily analysed as evidence of direct discrimination rather than indirect, with the store manager serving as a comparator. There was, however, no evidence at all of his store manager having stolen anything. Whilst the Claimant says he engaged in this activity to expose the weakness of the system and theft by other people, the only person who was in fact exposed as having taken money from the Respondent was the Claimant. The police found bags of cash, exceeding £16,000, in the Claimant's home and not that of the store manager. There is nothing to support the store manager as a comparator for direct discrimination. For the same reason there is no evidence to support the existence of the alleged PCP of protecting more senior managers.

47. As far as victimisation is concerned. The Claimant's conduct with the cash was not a protected act and no other protected act has been identified. The use of this term in the Claimant's witness statement does not suggest it had the statutory meaning in any event.

48. Returning to the direct race discrimination claim. The only point made by the Claimant today, which appeared to have anything to do with race, was an

allegation that on an earlier occasion when he had raised concerns about cashing up with his store manager, that person's response had included an offensive discriminatory remark. This allegation does not appear in the Claimant's claim form. It was not something which the Claimant raised previously in correspondence. Nor is it included in his witness statement for the hearing today. Furthermore, even if this had been said and was evidence of race discrimination by his store manager, that person was not the dismissal decision-maker, nor the appeal decision-maker. It is a new complaint wholly unrelated to the decision to dismiss the Claimant for theft.

49. The Claimant has identified no comparator, nor anything else which points toward his race being in any way involved in the decision to dismiss.

50. There is nothing to suggest the Claimant would be able to satisfy a Tribunal that there were facts from which, in the absence of an explanation by the Respondent, the dismissal could be found to be discriminatory.

51. On the contrary, the case for the Claimant's dismissal being non-discriminatory is overwhelming. There is a complete lack of realism in the way he brings his complaints about this matter. The Claimant took cash from the Respondent, on 10 occasions, over 2 months, totalling in excess of £16,000. During the first investigation he denied any knowledge of this whatsoever. Only during a second interview, belatedly, did the Claimant advance his explanation about exposing loopholes. That the Respondent found him guilty of theft in such circumstances is entirely unremarkable, indeed it would have been very surprising if they had come to any other conclusion.

52. Furthermore, on the Claimant's own account of what he did, this must amount to gross misconduct. Even if he had no dishonest intention, he taken a substantial sum of money from the Respondent, on ten occasions, without any permission to do so and in breach of company rules, falsifying and destroying financial records as he went. That the Claimant, subjectively, believes he was justified in doing all of this, takes him nowhere. It is difficult to see how such a misconceived venture could end otherwise than in dismissal.

53. The Claimant gives every impression of having a strong personal conviction that he is honest and was acting with a good intention, when he took £16,000 from the Respondent, on 10 different occasions, which involved him falsifying and / or destroying financial records each time, as well as taking the money off the premises and hiding it in his bedroom. That others were not so convinced does not remotely suggest discrimination.

54. Weighing all of these factors, I am not satisfied it is just and equitable to extend time. The lack of a good explanation for delay is not determinative. Whilst, superficially, the balance of prejudice might appear to favour the Claimant (the passage of time not making it more difficult for the Respondent to answer the claim and the Claimant losing his only remaining complaint) the absence of any real prospect of success in his discrimination claim leads me to the conclusion that, on balance, time should not be extended.

55. Accordingly, the Tribunal does not have jurisdiction to determine the Claimant's race discrimination claim.

Strike Out

56. Whilst the question of whether strike out should be ordered because the claims have no reasonable prospect of success, no longer arises, had it done so, I would have struck out the claims.

57. There is no reasonable prospect of the Claimant showing his dismissal was unfair. No alternative reason for dismissal has been advanced, credibly. In light of the Claimant's admissions and bags of cash found by the police in his bedroom, coupled with an astonishing explanation advanced for why this was all done for the Respondent's benefit, no sensible assertion can be made to the effect the Respondent was lacking in reasonable grounds or its investigation fell short. Dismissal must be a sanction within the reasonable band for stealing such a vast sum, on 10 occasions, by way of a complex process of falsification and destruction of financial records. The process would appear to be fair, the Claimant having ample opportunity to explain himself and comment on the evidence. His central complaint, namely that he was not believed or his explanation was not accepted as sufficient, does nothing to show unfairness.

58. There is no reasonable prospect of the Claimant showing his dismissal to be discriminatory. Whilst I am mindful that in the very great majority of discrimination cases, public policy will strongly favour the merits of a discrimination claim being assessed and determined at a final hearing, the present case is so clear cut and utterly devoid of merit that I can properly form a view about this on the material before me today.

59. The Claimant's view about his own conduct and the Respondent's reaction to it is wholly unrealistic.

EJ Maxwell

Date: 27 April 2022

Sent to the parties on:

18/5/2022

For the Tribunal Office:

N Gotecha