



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Bux

**Respondent:** EE Limited

**Heard at:** Manchester ET (in public, CVP)

**On: 5, 6 October 2023  
and 16 November 2023**

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

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms R Page (solicitor)

# RESERVED JUDGMENT

- 1) The correct name of the respondent is EE Limited
- 2) The complaint of unfair dismissal under Part X Employment Rights Act 1996 is not well-founded and is dismissed.

# REASONS

## Introduction

1. By a claim form presented on 21 March 2023 (having entered early conciliation on 16 January 2023 and provided with an Early Conciliation certificate dated 27 February 2023), the claimant complained of unfair dismissal only in relation to his dismissal for gross misconduct on 6 December 2022.

2. By a response form, the respondent resisted the complaint. It accepted that it had dismissed the claimant but contended that it had fairly dismissed the claimant for misconduct.

### Claims and Issues

3. The issues to be determined by the Tribunal were discussed and agreed at the outset of the hearing. These were as follows:
  - 3.1 Has the respondent shown the reason or principal reason for dismissal. The respondent says the reason is misconduct.
  - 3.2 Was it a potentially fair reason under section 98 Employment Rights Act 1996?
  - 3.3 If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?
  - 3.4 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
    - 3.4.1 The respondent genuinely believed the claimant had committed misconduct;
    - 3.4.2 there were reasonable grounds for that belief;
    - 3.4.3 at the time the belief was formed the respondent had carried out a reasonable investigation;
    - 3.4.4 the respondent followed a reasonably fair procedure;
    - 3.4.4 dismissal was within the band of reasonable responses.

### *Remedy for unfair dismissal*

- 3.5 Does the claimant wish to be reinstated to their previous employment?
- 3.6 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 3.7 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 3.8 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 3.9 What should the terms of the re-engagement order be?
- 3.10 What basic award is payable to the claimant, if any?
- 3.11 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 3.12 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 3.13 What financial losses has the dismissal caused the claimant?
  - 3.13.1 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - 3.13.2 If not, for what period of loss should the claimant be compensated?

- 3.13.3 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 3.13.4 If so, should the claimant's compensation be reduced? By how much?
- 3.13.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 3.13.6 Did the respondent or the claimant unreasonably fail to comply with it?
- 3.13.7 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 3.13.8 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 3.13.9 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 3.13.10 Does the statutory cap of fifty-two weeks' pay or £93,878 apply?
4. Although the **Polkey** and contributory conduct issues concerned remedy and would only arise if the claimant's complaint of unfair dismissal succeeded, I agreed with the parties that I would consider them at this stage and invited them to deal with these issues in evidence and submission.
5. I explained to the claimant that his claim form included a claim of unfair dismissal only. However, his schedule of loss referred to wrongful dismissal and a failure to provide a statement of terms and conditions. The claimant explained that he had used a template schedule of loss and had referred to the failure to provide a statement of terms in error. He accepted he had received such a statement from the respondent (50-53). The claimant had also included in his witness statement the words "*discrimination in all its various forms is an unavoidable truth and applies very much to this case*". I explained to the claimant, that in order to pursue claims other than unfair dismissal claim, he would need to apply for, and be granted, permission to amend his claim form. The claimant had not applied to amend his claim form prior to the hearing and did not apply for any amendment of his claim form at the hearing. Therefore, we proceeded on the basis of the agreed claims and issued referred to above.
6. Although the **Polkey** and contributory conduct issues concerned remedy and would only arise if the claimant's complaint of unfair dismissal succeeded, I agreed with the parties that I would consider them at this stage and invited them to deal with these issues in evidence and submission.

#### **Procedure/Documents and evidence heard**

7. This was a hearing where the claimant, respondent's representative (Ms P age, Solicitor) and the respondent's witnesses participated remotely via CVP.

8. I heard oral evidence from the claimant, on his own behalf. The claimant did not call any witnesses. On behalf of the respondent, I heard oral evidence from Ms Lisa Nield (Team Leader), Mr Steven Smithson (Operations Manager) and Ms Marie Rawlinson (Operations Manager).
9. I was also provided with written witness statements from the claimant, Ms Nield, Mr Smithson and Ms Rawlinson.
10. During the hearing I was referred to documents within a joint Bundle of documents which contained 265 pages.
11. At the conclusion of the evidence each party made oral submissions. Ms Page (the respondent's legal representative) also provided me with written submissions.

### **The Findings of Fact relevant to the Issues**

12. The relevant facts are as follows. Where I have had to resolve any conflict of relevant evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed bundle of documents.
13. The claimant, Mr Bux, was employed by the respondent, EE Limited, as a Customer Advisor at the time of his dismissal. In his role he dealt with customer orders relating to home moves and other queries. During his employment he had never worked in the BT shop team.
14. The Claimant was employed from 10 January 2000 until his dismissal on 6 December 2022 on the grounds of gross misconduct. The Claimant said his employment started on 1 January 2000, but the respondent says that it started on 10 January 2000. Nothing turns on the small difference in commencement date as the claimant has significantly more than the requisite two years continuous service with the respondent to present his claim of unfair dismissal, but I noted that the claimant's statement of personal terms and conditions dated 13 December 1999 records that the claimant's employment will commence on 10 January 2000. At the time of the claimant's dismissal the claimant had been employed for nearly 23 Years. In his claim form (and attached particulars of claim) the claimant refers to actions he has taken and that his "*employer of 23 years has taken issue with it*". The actions he refers to are those that were under consideration during the disciplinary process that led to his dismissal.
15. It was not disputed that the claimant had a clean disciplinary record.
16. The claimant commenced employment on 10 January 2000 pursuant to a Statement of Personal Terms and Conditions ("Employment Contract") dated 13 December 1999 between himself and British Telecommunications ("BT") (50-53). As the claimant explained in his witness statement, in the last couple of months of his employment, the name of his employer changed to EE Limited following "*an internal migration across to EE as part of an organisational and branding name change.*" The claimant accepted the respondent's contention that the legal entity who was his employer at the time of his dismissal was EE

Limited which is part of the larger BT Group. I therefore ordered that the respondent's name be amended by consent to EE Limited.

17. The respondent is a large employer with more than 34,000 employees at the time the claim was responded to. It has a designated Human Resources function.
18. The "BT Shop" is a website where people can go to buy products from the respondent, including high value electronic products such as mobile phones and gaming consols such as PS5. However, the claimant, as an employee of the respondent, enjoyed discounted rates on purchases he made for personal use. The applicable employee discount was automatically applied if he made his purchases via his BT Shop employee account which was attached to his unique Employee Identification Number (EIN). From time to time, employees of the respondent/BT were informed of special and generous discount offers on specific BT Shop products. These were only available to employees and subject to certain limitations (such as one order per employee). One example of such a special offer is at page 137 of the bundle, where the first 450 employees to order a Samsung Galazy Z Flip or Fold phone were entitled to a 50% employee discount on the price of the phone. the offer made clear that employees were strictly limited to purchasing either one 'Flip' or one 'Fold' phone under the offer.

#### ***Standards of Behaviour and Disciplinary Policies and Procedures***

19. The respondent has well defined standards of behaviour and disciplinary and policies and procedures (66-115). These policies and procedures applied to the claimant - they each expressly state that the respective policy and procedure applies to those who work for BT in the UK or in EE. Having considered the "change history" at the end of each of these policies/procedures at pages 66-115 of the bundle, I can see that the relevant parts of these policies and procedures were also in place at the relevant time, even where the bundle contains the most up to date version of the policy/ procedure.

#### ***Standards of Behaviour Policy and Procedure***

20. The respondent's policy on Standards of Behaviour states that the respondent has a set of values which it expects employees to demonstrate in carrying out their job. The Policy is non contractual and is stated to be "a guide". In the section entitled "Why do we have this policy?" The respondent states:

*"We want to make our business successful by promoting a healthy, safe and supportive environment that's based on integrity, mutual respect and ethical behaviour. We all have a role to play, working in line with our company standards and values. This policy helps you understand what those standards are and what may happen if you don't stick to them."*

21. In the section entitled "Our guiding principles" the respondent states-

*“This policy complies with UK law and the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice.*

- *We’ll deal with any disciplinary issues in a thorough, fair and professional way.*
- *Minor issues may be dealt with informally, but no formal warnings will be given without the formal process being followed.*
- *A disciplinary investigation may lead to a formal meeting and a warning being given.*
- *An independent manager will be the decision maker for the alleged misconduct.*
- *We’ll explain the reason for any disciplinary warnings to help you improve or change your behaviour.*
- *We won’t normally dismiss you for a first offence, unless it’s classed as gross misconduct.*

These guiding principles are also reproduced in the respondent’s Disciplinary Policy. (93)

22. The Respondent’s Standards of Behaviour Procedure (76-94) set out the expected level of behaviour for its employees at section 2 and lists requirements that employees are expected to comply with when conducting themselves *“no matter what the situation.”* (79)
23. In evidence, Mr Smithson explained that the relevant requirements that he believed had been breached by the claimant were:
  - *Work with honesty, integrity and in a way that supports our company brand values; and*
  - *Work within the parameters set out by our policies, standards and guidelines.*
24. Sections 3 and 4 of the Standards of Behaviour Procedure, contains the respondent’s definition of misconduct and gross misconduct and include non-exhaustive lists of examples of misconduct and gross misconduct (80). Gross misconduct is defined as *“a serious offence which leads to a breakdown of the trust which we’ve placed in you as an employee. It’s a breach of your contract of employment. It also includes serious misconduct which is likely to have a negative impact on our business, brand or reputation. Acts of gross misconduct may lead to summary dismissal (being dismissed without notice or payment in lieu of notice). The list below doesn’t include everything but gives you some examples of what may be seen as gross misconduct.”* In evidence, Mr Smithson identified the following examples as relevant to his decision:

- *Theft, fraud or other acts of dishonesty (like deliberately falsifying records to inflate your commission or expense claims, abusing your company credit card, phone and expenses); and*
- *Any behaviour, either at work or externally that could have a negative impact on our business, brand or reputation (including doing something obscene, indecent or malicious) or that has significant negative impact on your role.*

The respondent's misconduct and gross misconduct definitions and non-exhaustive examples are also reproduced in the respondent's Disciplinary Procedure (104 and 106).

*Disciplinary Policy and Procedure (95-115)*

25. The Respondent's Disciplinary Policy reproduces the respondent's guiding principles for dealing with disciplinary issues as set out in the Standards of Behaviour Policy. The respondent's Disciplinary Procedure (which is to be read alongside the Disciplinary Policy) sets out the respondent's procedure for dealing with disciplinary issues (107-109). The Disciplinary Procedure also details that employees have a right of appeal against any disciplinary decision and sets out the respondent's appeal procedure (112).

***Investigation***

26. The respondent was first alerted to a potential disciplinary issue in September 2022. The claimant's line manager, Ms Wahida Patel, and Ms Lisa Nield (Team Leader) were each contacted by Ms Alex Dawson in the BT Shop team. Ms Dawson informed them both that she suspected two advisers (the claimant and one member of Ms Nield's team) were exploiting the system on the BT shop. Ms Dawson informed them that she was in the process of collating more information and when she concluded her investigation sent Ms Nield and Ms Patel the information she had gathered. This included a spreadsheet of information gathered by Ms Dawson for 35 orders made between December 2021 and October 2022 which Ms Dawson believed were suspicious (132-135). She also provided other documents (136-140) including a printout of the claimant's BTShop employee account, details of a limited exclusive employee offer for Samsung Galaxy Z phones and the terms and conditions for discount vouchers. Ms Dawson subsequently found that three colleagues and the Claimant were involved with the suspicious orders.
27. The BT Shop conducted some further investigations and then provided Ms Patel and Ms Nield with a spreadsheet containing information they had gathered (132-135). The spreadsheet provided by the BT Shop team showed details of orders made between December 2021 and October 2022 the BT Shop regarded as suspicious and had been and who was involved in making these alleged orders. It was alleged that these orders breached the respondent's Standards of Behaviour.
28. The spreadsheet (132-135) recording Ms Dawson's findings included the following information:

- multiple orders (35) had been made by the claimant and three of his colleagues for PS5 gaming consols and mobile phones;
  - the delivery address and delivery name appeared on the orders in different ways, with some orders linked to a business Almaalik Ltd or the name Mohammed Bux (or versions of it) rather than the name of the employee making the order;
  - A business name (Almaalik Ltd) was linked to orders made by the claimant;
  - that employee discounts that had been applied to all but two of the orders and gave the value of these discounts.
  - that some of the orders on the claimant's BT shop employee account had been cancelled by the BT Shop;
  - on some orders a discount voucher code (entitling the user to a 10% discount) had been applied in addition to the employee discount (135).
  - multiple orders of the Samsung Galaxy Z flip 4 phone and Pixel mobile phone had been made by the claimant which enjoyed a large employee discount (£416.66 and £166.66 respectively per phone). Some of these orders had been cancelled by the BT Shop;
29. Ms Nield and Ms Patel, decided to conduct formal investigation meetings into allegations of misuse of employee benefits purchased through the BT Shop by the claimant and his three colleagues- who were spread across their two teams. The claimant and his three colleagues were all formally investigated.
30. The claimant attended two investigation meetings with Ms Nield on 4 November 2022 and 11 November 2022. The notes of these meetings are at pages 119 to 129. I find these notes are an accurate record of the investigation meetings. The claimant did not dispute their accuracy it is expressly recorded after the first investigation meeting (at which the claimant made a number of noteworthy admissions) that the claimant accepted the notes were true and accurate. The notes of the investigation meeting record that during the meetings the claimant was referred to evidence documents that Ms Nield had gathered during the meeting and questioned about them.
31. Ms Nield conducted the investigation in relation to the Claimant, produced an investigatory report, decided it was appropriate to suspend the claimant with pay after the first investigation meeting, and recommended that the claimant faced disciplinary action for alleged gross misconduct. Ms Patel attended the first investigation meeting as a notetaker but was not able to attend the second investigation meeting.
32. Ms Nield had not worked for the BT Shop or used it. Throughout her investigation she was supported by the BT Shop team in relation to obtaining further information about the orders and any questions she had regarding BT Shop systems and processes. During the investigation, Ms Nield gathered various



evidence documents which are appended to her investigation report. I can see from the investigation meeting notes that some of these documents, including the spreadsheet, were shown to the claimant during the investigation meetings and the rest were provided to the claimant with his disciplinary meeting invite letter. The evidence documents, in addition to the spreadsheet were:

- a copy of the terms and conditions for the 10% discount voucher code used on some of the orders which were regarded as suspicious. The terms and conditions (139) stated that the discount voucher was “*for 10% of your next order*”, that the discount could not be used on apple branded products or gaming consoles and employees of the respondent were not entitled to use the discount voucher code in conjunction with their employee discount.
  - a copy of the email sent to the respondent’s employees detailing the terms of the exclusive employee BT Shop offer for Samsung Galaxy Z flip 4 phone offer. The email is entitled “*The biggest deal we have ever done*” and explained that under the offer the mobile phones Samsung Galaxy Z Flip 4 of Galaxy Z Fold 4 were “50% off” (137) The email also stated that “*This deal is only available to the first 450 employees, so grab it whilst you can. Because of this, it is strictly one per employee of either Samsung Galaxy Z Flip 4 of Galaxy Z Fold 4.*”
  - a copy of the default customer information screen of the claimant’s BT Shop employee account. The default customer information gave the name of the customer as Almaalik Ltd,
  - A breakdown of the orders made from the Claimant’s account and one of his colleagues (Ms Ali). These breakdowns included the total value of the orders and the discounts applied to each order, the delivery name and delivery address.
  - a copy of WhatsApp messages between Ms Ali and the claimant in which Ms Ali provided the password and user name for her BT shop account and the respondent requested that she use a particular voucher code (141) on the “first order.” ;
33. Prior to his second investigation meeting, the claimant asked Human Resources if his second investigation meeting could be postponed due to bereavement in his family. The claimant was informed that the time could be moved back to a later time but needed to go ahead that day. The claimant attended the second investigation meeting and did not repeat his request for postponement to Ms Nield.
34. During his two investigation meetings the claimant accepted that:
- 34.1 That he had made multiple orders for high value electronic goods;
  - 34.2 That the delivery address (in its alternative forms) for all 35 orders was his residential address;

- 34.3 That the delivery name Mohammed Bux (in its various forms) was his son;
- 34.4 That his son was an employee and buyer for Almaalik Ltd, a company which Ms Nield had established that Almaalik was a re-seller of electronic goods;
- 34.5 That Almaalik Ltd and/or his son's name was used on some of these orders. When asked by Ms Nield "*Why is that business name linked to orders that have been placed to be delivered to your home address?*" the claimant responded "*My son is an employee of almaalik, sometimes the orders I place are for me, he may buy stuff for it, and buys stuff does his own thing. If its not my item, I'm not going to be dealing with that item. He separates it out and puts it as almaalik. He puts it a reference so he knows its for him not for me. I place the order on the BT shop for my son, to distinguish who it is for, he will put that on under that business name.*" The claimant also said "*My son uses mine and has his own as well. If there is a discount he will ask me and ill tell him there is and he may use mine, and the others he places on his account.*" (sic);
- 34.6 That some of the orders were for his son and his son's friends who the claimant had known for several years as he had coached them in football for many years. He said that these friends also worked together with his son for Almaalik Ltd. The claimant said that the products he ordered for his son were for personal use;
- 34.7 That his son had used some of the discount vouchers he had received when purchasing PS5 gaming consols, but not in combination with the claimant's employee discount;
- 34.8 That he had asked the three colleagues referred to in the spreadsheet to place orders on his behalf using their own employee discount. At the first investigation meeting he said that "*When family and friends [were] asking for phones or play stations – and I ask them to buy these for them.*";
- 34.9 Having been referred to the document at 138 in the bundle – the claimant accepted that he had logged into a colleague's account (Ms Ali) using her user name and password. The claimant accepted that he had made seven orders to be delivered to his address with his son's name as the delivery name. The claimant said he had Ms Ali's permission to place each of these orders;
- 34.10 He had applied the 10% discount voucher code to some of his orders in addition to his employee discount. He said that he had not seen the terms and conditions of the discount voucher and was not aware he was breaching the terms and conditions of the voucher;

- 34.11 He had given colleagues discount codes to use on some of the orders he had asked them to make for him.
- 34.12 That the delivery name on most of the orders made by his colleagues was his son's - Mohammed Bux;
- 34.13 He had purchased items for other people from the BT Shop using his employee discount. When asked by Ms Nield whether he had ever purchased items for other people using your discount, he said "*Yeah I have for loads of people, family friends, sister, nieces, most of my orders are family and frineds (sic).*" He said "*Majority of the ones iv done, will be mine or for family and friends or ome iv ordered for my sons. Adnan and my son are buyers for almalik – and that's nothing to do with me (sic).*" ;
- 34.14 That he was aware of the limitation on ordering the Samsung Galaxy Z Flip mobile phone as part of the special employee exclusive offer detailed at page 137 of the bundle. He accepted he had still tried to order more than one phone and had asked his colleagues to order more for him on their BT shop accounts when he couldn't order any more. He said "*The phones because they are limited to 1 or 2 I know this, I have asked to get me one as I cant get any more, I have always said its an amazing deal and if you don't want to use it can you get one for me and I will pay you for it. (sic)* " When asked whether he thought this was acceptable he said "*I think if they are entitled to 1 then they are my family so why can't they use the discounts/ offer and get the products and I pay for it at cost price.*"
- 34.15 That he had been "selling off" some of the goods he had ordered. In answer to Ms Nield's question -"*Have you been selling them off?*" the claimant said "*I have the few ones but majority are for family and friends. I sell them to family and friends on whats app groups – to family and friends (sic).*" He said he sold these items on for cost price and that he "*did not receive anything*". He denied selling them on to Almaalik or receiving any money from Almaalik. He said that Almaalik was just a reference that he used when the orders were for his son or his son's friends who also worked at Almaalik.
- 34.16 That he had contacted the BT shop when he couldn't place any orders. He said "he knew something was up, they told me my account was suspended for a while and giving to family members etc."
35. After the first investigation meeting, having considered what the claimant had said at this investigation meeting, Ms Nield decided to suspend the claimant. Ms Nield sent a letter to the claimant on 4 November 2002 (142-143) informing him that he was suspended until further notice whilst investigations were carried out into the allegations of misconduct "*in particular during December 2021-October 2022, Salim Bux, has allegedly purchased goods form (sic) the BT*

*shop using his employee discount and having the goods delivered to an alternative address which is linked to a Business name. I became aware of this through the BT shop who flagged multiple orders.”* Ms Nield advised the claimant that this suspension was a precautionary suspension and was not disciplinary action and it did not mean that he was guilty of any misconduct. She explained that the decision to suspend him had been made *“to make sure the integrity of the investigation is protected and to protect the business.”* Ms Nield also advised that the respondent would keep the suspension under review and would try to make his suspension no longer than needed. It was confirmed that the respondent would continue to pay his basic salary in the normal way. And that he continued to be employed by the company throughout his suspension and it didn't affect his terms and conditions of employment.

36. Ms Nield put together the first part of her investigation report in which she recorded that she had investigated the case of the claimant allegedly purchasing goods via the BT Shop using his employee discounts and vouchers for financial gain and that the claimant had confirmed at the meeting that he had “sold on” products on occasions. She recommended that the case be progressed as gross misconduct under the company’s disciplinary procedures and the claimant be placed on precautionary suspension. In evidence Ms Nield said that she recommended progressing the case as gross misconduct due to what she felt was the fraudulent nature of his conduct. Ms Nield did not finalise her investigation at this stage and made other enquires and invited the claimant to a further investigation meeting so that she could investigate with him some further allegations that had been raised when Ms Nield had undertaken investigation interviews with the claimant’s colleagues.
37. After the first investigation meeting with the claimant, Ms Nield proceeded to investigate some of the claimant’s colleagues that were involved in this matter. During these meetings allegations were made by the claimant’s colleagues that the claimant had asked several people to order products for him and that he had accessed two colleagues’ accounts to make orders. It was also alleged that the claimant had given them discount voucher codes to use but had not provided them with the vouchers and so they had not seen the terms and conditions. Ms Ali also alleged that she had asked the claimant to stop using his log in details. Ms Nield also asked these colleagues what they thought the claimant needed these products for. One of his colleagues confirmed that he had told her that he was re-selling these products to a business for a higher price to make profit. With regard to the rest of his colleagues, some were under the impression he needed the products for his kids and others that he was struggling financially. Ms Nield said in evidence that the claimant’s colleagues had expressed being very shocked by the claimant’s conduct and *“felt duped as this was a person they trusted.”*
38. At the second investigation meeting, Ms Nield asked the claimant about the allegations his colleagues had made. The claimant accepted that he had approached several colleagues to order for him and had accessed his colleagues account (Ms Ali) to order multiple products to his address. When Ms

Nield asked him why he approached his colleagues to place orders, the claimant explained that he would ask his colleagues to order products for him which had limitations of 1-2 per employee. He said he would ask them as they were entitled to one of these limited products, and he considered these colleagues as family- "*if they were entitled to one why not order it for him*". The claimant said he was not aware of the terms and conditions for the discount vouchers and so had only provided the voucher codes to his colleagues.

39. At the second meeting, Ms Nield showed the claimant the spreadsheet giving details of the 35 orders linked to his address (132-135) and gave the claimant "an overview of the value of orders placed for 'personal use.'" Ms Nield told me in evidence that she did this to put some perspective on his actions. Ms Nield told the claimant that there were 35 orders placed to his address and linked to an employee BT account and these orders had a total value of £16,127.15 and an overall discount of £4,164.32. Ms Nield acknowledged that some of these orders had been cancelled, explaining that 19 orders had been invoiced at value of £6,421.71 and total discount of £1514.86 and 16 orders had been cancelled, with a total value of £9,705.44. Ms Nield asked the claimant why he needed so many products for personal use. The claimant told Ms Nield that the products were not for him and acknowledged that listening to her perspective using Almaalik as a reference was not a "wise choice."
40. Ms Nield also asked whether he was aware of any limitations for ordering high value items. He was shown a copy of the email at page 137 regarding the limitations on Samsung Galazy Z phones. The claimant confirmed he was aware of the limitation on some products. When asked why he had attempted to order more than the limit he explained he would do so because the order was cancelled so he tried again.
41. Before concluding the second investigation meeting Ms Nield asked the claimant if there was anything he wished to make her aware of. The claimant summarised his position. He said that the previous the orders were split between his son and his friends who he knew personally since they were six and had been to school football and college with his son and who also all work for the same company as my son. He said that "around 2/3 of all these orders were for them the rest were for my family." The claimant said he had never sold any of the goods on to Almaalik and had never made a penny profit from the phones and PS5s. He said that the name Almaalik was purely put down as a reference not as a business and that all the orders were delivered to his home address and there was no registered company at his address. He concluded by saying "on reflection this looks like poor judgement on me part to allow Almaalik to be associated with the order journey. This has nothing to do with my Son employer, I also want to apologise that from my poor judgement to you and also to my colleagues who have tired to assist me in [sic]."
42. Following the second investigation meeting on Ms Nield completed her investigation report appending the evidence and policies/procedures she had gathered and/or considered (116-142). She re-confirmed her recommendation

that the case be progressed as gross misconduct under the company's disciplinary procedures. She confirmed that she had *"Investigated the case of allegedly purchasing goods via the BT shop using his employee discounts and vouchers for financial gain. Sal confirmed in the meeting that he has 'sold on' products on occasions."* Ms Nield said in evidence that she felt that she had all the information to progress this case to the next stage. There are two references highlighted in red in Ms Nield's investigation which the claimant contends are points of further investigation. The first is *"Salam has raised that he wasn't aware of any limitation on the playstations 5"* and the second reference is *"when was the shop account created"*. Ms Nield had asked the claimant had set up his BT account name in business name Almaalik and had shown him the default customer information page of his BT account. The claimant denied that he had set up his BT employee account in the name of Almaalik. Ms Nield confirmed that she did not conduct any further investigations in relation to the comments highlighted in red.

43. During the second investigation meeting Ms Nield provided the claimant with some further detail of her findings of fact- *"I would like to point out that BT Shop is an online consumer retail site not a business reselling site .. looking at your account and order pattern you are purchasing goods with personal gain (heavily discount) and allowing an employee of an online reseller (Almaalik) to purchase (with heavy discount / personal gain) to resell on the website . the reason I believe this is because every order on your account links to a business name – they are all desirable and high value and no one individual needs the amount of products you are purchasing for personal use."* Why are you giving discount codes to a business yet stating the products are for personal use? The claimant responded *"This is not for a business. This is what I'm trying to say. I am looking back. What an idiot I have been. Why have I put this as the reference? And my son has advised his friends that my dad may be able to get them a discount. I stress again, if I had this kind of gain, I wouldn't be driving the car."*
44. At the conclusion of her investigation Ms Nield uploaded the investigation report and appendixes to the HR system. The case was passed to Mr Steve Smithson (Operations Manager) to take forward given he was Ms Nield's line manager.

### ***Disciplinary Meeting and Outcome***

45. Mr Smithson considered Ms Nield's investigation report and appendixes. He also reviewed the investigation reports of the claimant's colleagues to gain a better understanding of this case and from them said he *"understood the claimant was not honest with his colleagues about the reason he was ordering products for" and that one of the Claimant's colleagues suggested he was selling these products to a business to make profit."*

On reviewing the documents Mr Smithson identified the following allegations that were a breach of the respondent's Standards of Behaviour:

- 45.1 Orders connected to a business name Almaalik;

- 45.2 Selling on products purchased with employee discount;
  - 45.3 Use of vouchers in conjunction with the employee discount;
  - 45.4 Exceeding limitation on products that were limited to one per employee;
  - 45.5 Asking colleagues to order on his behalf and accessing his colleagues' account;
46. The claimant was not provided with copies of these investigation reports as the colleague's disciplinary processes was still ongoing and they were not part of the claimant's file. They were also not included in the agreed bundle as the parties agreed these documents were not relevant. However, it is clear from the notes of the second investigation meeting and disciplinary meeting that the colleague allegations referred to by Ms Nield and Mr Smithson in their witness statements were raised with the claimant by the respondent during the disciplinary process and he was given an opportunity to respond to them. The claimant accepted in cross examination that Mr Smithson had "inferred" that some of his colleagues, particularly Ms Ali, felt they had been put under pressure to order. He said he had provided context.
47. The claimant was invited by Mr Smithson to a disciplinary meeting on 24 November 2022 by a letter dated 14 November 2022. (145). Mr Smithson was an independent manager – having had no prior involvement with the claimant (other than being in the same building as him).
48. The disciplinary invite letter detailed the allegation that was to be discussed as *"Serious Breach of our standards and behaviour policy, specifically, that between December 2021 – October 2022 Salim Bux, has allegedly purchased goods from the BT shop using his employee discount and having the goods delivered to an alternative address which is linked to a business name"*. Mr Smithson sent with the invite letter, the respondent's disciplinary policy and procedure and a copy of Ms Nields Investigation report together with the associated evidence that was gathered by Ms Nields (116-141).
49. The claimant accepted in cross examination that he received Ms Nields investigation report which included the notes from his two investigation meetings and the evidence documents marked Evidence 2,3,4,5,6 and another document marked Evidence 6 (136 –141). He denied receiving the spreadsheet at 132-135 and being shown a copy of it during the investigation meetings. I prefer the evidence of the respondent that the claimant was sent a copy of the spreadsheet and was shown the spreadsheet during the investigation meetings. The invite letter records that the investigation report and associate evidence was sent to the claimant and the spreadsheet was listed as one of the appendices to the investigation report. There is also a reference in the notes of the second investigation meeting to the claimant having been shown evidence of the 35 orders on powerpoint. The spreadsheet (131-135) is the only "evidence" document which refers to all 35 orders. In any event the documents marked

“evidence 4 and evidence 6” (the first number 6 document” (138 and 140) contain more user friendly summaries of the relevant information contained in the spreadsheet regarding orders made on the claimant’s BT Shop employee account and Ms Ali’s BT Shop employee account. The claimant accepts that he received these documents prior to his disciplinary meeting.

50. The claimant was informed that he would be given a full opportunity to state his case and respond to the allegations. The claimant was also informed of his right to be accompanied in his invite letter and warned that if there was evidence to support any of the allegations outlined above, this could amount to gross misconduct which if confirmed could mean he would be summarily dismissed.
51. The disciplinary invite letter and documents were sent to the claimant several days before his disciplinary meeting took place on 24 November 2022. The claimant was accompanied by his union representative, Mr David Hill. Having considered the notes of the disciplinary meeting, I find that the claimant was given a full opportunity to state his case and it was a two way process (146-156). In his witness statement the claimant says of the disciplinary meeting that the “hearing ran its course with the required formalites.
52. At the start of the meeting, Mr Smithson confirmed that aim of the meeting was to provide the claimant and opportunity to respond to the allegations detailed in his invite letter, stressed that no decision had yet been made, agreed that breaks could be taken if required and explained the potential outcomes.
53. I accept Mr. Smithson's evidence, that at the outset of the meeting the claimant’s representative raised a query about the allegations, particularly in relation to the reference to an alternative address- given all the orders had been sent to the claimant’s residential address. There was a discussion about the allegations and Mr Smithson read out the alleged breaches of the respondent’s standards of behaviour referred to above in sub –paragraph 45.1-45.5 above. He also clarified what was meant by *“having the goods delivered to an “alternative address which is linked to business name”*. Mr Smithson explained that this was a reference to the different ways that the delivery address was referred to on the orders-such as with a house name, without a house name, with a company name, without a company name. I also accept Mr Smithson’s evidence that he asked the Claimant and his representative if they wanted to postpone the disciplinary meeting until the invite letter was amended to record the clarified allegations, but “they wanted to go ahead” and “saw it as a paperwork error.” carry on with the meeting. I can see from the notes of the disciplinary meeting (147) that towards the end of the meeting the claimant’s representative says “just want to address the invite letter **which we have discussed** [*my emphasis*] needs to have the right allegation. In cross examination, the claimant said he could not recall this conversation but “*was not saying anything different [to Mr Smithson].*” In his rational document, Mr Smithson’s refers to these allegations and his findings. In evidence to me, the claimant was able to clearly articulate the allegations that he believed he was responding to, which was consistent with the allegations at sub–paragraph 45.1-



45.5 of this judgment. I also note his appeal letter also uses headings consistent with these allegations.

54. The claimant raised no concern in his grounds of appeal or in his claim form that he was not aware of the allegations he was expected to respond to. Mr Smithson confirmed in cross examination that he was 100% aware that all the orders had been delivered to the claimant's address regardless of the variation in how the delivery address and name was put on the order. I am satisfied that he was provided with sufficient information to enable him to answer the case at the disciplinary meeting and if not then, certainly by the time of the appeal.
55. During the disciplinary hearing the claimant referred to the contents of a supporting document (205 –217). The claimant sent a copy of this supporting document to the respondent on 28 November 2022. In this document, the claimant referred to how, in recent years, he suffered many bereavements of family and friends (including his father) and health issues, including long covid and inflamntory Arthritus. He raised these matters by way of explanation:
- 55.1 for why he had ordered products for family and friends (to say thank you and show appreciation for their support during this difficult time); and
- 55.2 for why he had used Almaalik as a reference on some of the orders (He said that due to the volume of orders and health issues he asked his son to manage everything including payments and deliveries. I simply used my sons name with Almaalik as a reference to differentiate the deliveries for my son to manage as I was struggling with the Arthritic Pain in my knees and feet.”
56. Mr Smithson first referred the claimant to document 140 in the bundle which provided details of the 24 orders made from the claimant's BT employee account. This included the following delivery details of the 24 orders that were placed on the claimant's BT Shop employee account (147 and 140) including those which had subsequently been cancelled by the BT Shop:-

*8 Orders to Mr S Bux (no business name)*

*13 Orders to Mohammed Bux (Almaalik ltd)*

*2 Orders to Salim Bux (Almaalik ltd)*

*1 order to Salim Bux (Blackburn Rd Adress)*

Mr Smithson confirmed what these orders had been made up of five Google Pixel phones, 12 PS5 gaming consols, 2 Iphone 14, two Galaxy Flip phones, Home Wi-Fi, BT phones, Sony headphones. Mr Smithson confirmed that the value of the orders that had been placed on the claimant's BT Shop employee account was £8,839.71 excluding VAT, that the employee discount on these orders was £2323.12 and that there was an additional discount on these orders of £371.93 due to use of an additional discount coupon of £371.93. (140). The

claimant raises in his witness statement that these records were “extremely inaccurate, unbalanced and unfair”, not “easily legible” and the inclusion of cancelled orders greatly distorted the total cost and discount savings.

57. At the disciplinary meeting the claimant argued that what was actually delivered to him was within the limits of what he was entitled to as the rest of his orders had been cancelled by the BT Shop. He argued that he was not aware of any limitation on the number of Iphones and PS5's he could buy and suggested this. Document 140 refers to Apple Iphone 14 and PS5 gaming consols being in constraint market wide when the claimant ordered them. It does not say that there is a specific limitation on the number an employee could buy for their personal use such 1 per employee. Mr Smithson was clear under cross examination that when making his decision he understood there was no specific limitation on buying Iphone 14 and PS5 gaming consols but there was in relation to the orders of Google Pixel phones and Samsung Galaxy Z Flip phones orders made by the claimant on his own account and his colleagues account.
58. The claimant accepted that he was aware there was a specific limitation on both of these phones of 1 per employee and he had tried to buy more. He told Mr Smithson that he was given permission by the BT Shop to order two Google Pixel phones but the BT Shop cancelled the rest of his orders. He had only been able to buy 1 Samsung Galaxy Z Flip phone and his other order had been cancelled. The claimant accepted that he had asked his colleagues to buy further mobile phones for him using their entitlement once he had reached his limitation.
59. Mr Smithson did discuss with the claimant why he had ordered a large number of PS5 gaming consols for personal use using his employee discount and his colleague's (Ms Ali's) account. He raised that these items were popular, in market constraint and so could be re-sold at a premium.
60. Referring to the record of the order made from the claimant's BT Shop Account (140) Ms Smithson asked the claimant to expand more on the statement he had made during the investigation- that he was buying these products for friends and family. The claimant answered this by saying there was a “cultural disconnect.” He said that money was not a motivator for him. He spoke about volunteering, coaching football to his son and his friends and how he considered his son's friends family. He said that his son and his friends worked together at Almaalik. He explained that since his father had died, his house was the “base camp” for everything they did as a family and his nieces and nephews would come to the house. He said a lot of demand fell on him, he had had some serious health issues, long covid, inflammation of the knees this had impacted the decisions he made day to day. His said his friends had been a great support for him over the years and he saw this as “*being able to give back.*” He said people would ask him for support with ordering and upgrading products.

61. The claimant accepted that on occasion he had sold on some products. He said that these were unwanted products he had asked colleagues to order for him so he could give them to others. He said he didn't want to go back to whoever was the colleague and so he sold them on. He said he only received the price he had paid for the products. He was asked if he could prove this and he said he had statements. The claimant did not provide any statements.
62. Mr Smithson raised with the claimant that he had stated in his investigation meetings that he was aware of limitations on some products (e.g. mobile phones), yet he had tried to order more than the allocation or attempted to get colleagues to order them on his behalf. Mr Smithson asked the claimant why he would try to circumnavigate the system knowing it was wrong. The claimant said he was not initially aware of the limitation on the Google pixel phone, but after placing a number of orders he was told he could have two and no more by the BT Shop. Then with the Samsung Galaxy phone he wondered whether there was a limit on the model type. He ordered two and one went through, and one was cancelled. I note the claimant gives another explanation in his witness statement for ordering two Galaxy phones.
63. The claimant told Mr Smithson that that once he realised there was a limit on these two phones he reached out again to his colleagues (who he regarded as family) to order more for him using their entitlement.
64. Mr Smithson repeatedly asked the claimant whether he had been honest with his colleagues why he wanted the goods with limitations and why he couldn't order them from his own account. The claimant gave different and conflicting answers to these questions, which Mr Smithson said made him believe that the claimant had not been honest with his colleagues as to the reason. The claimant admitted he had not told "all of them" that he knew the products were limited. Mr Smithson asked whether his colleagues knew he was "*buying in bulk and that [he] was selling on*". The claimant responded "*only 1 or 2 of them. I never bought for the intension of selling*". When asked what people thought these order were for, the claimant said he just said "for family and friends". He said people had supported him and this was a way to return the favour. He also told Mr Smithson that he thought he had said to most of his colleagues that they could use the offer if they wanted for themselves and, if not, could he please have it.
65. The claimant was referred to the terms and conditions of the discount voucher. A copy of the voucher and the terms and conditions had been sent to him in advance of the disciplinary meeting (139). This document showed that the voucher did not contain the terms and conditions or refer to a pop up. The voucher contained a reference to a webpage where the full terms and conditions could be found- "*for full voucher terms and conditions, please visit [bt.com/shop/thanks](http://bt.com/shop/thanks)*". The claimant accepted that he had been in breach of the terms and conditions of the discount voucher by using the voucher in conjunction with employee discounts. In mitigation, he said it was a genuine mistake. He said that he did not know the terms and conditions when he had used them, that the system had accepted the vouchers (when it had rejected them on orders

- PS5), so he thought it was ok to use them. He said the BT shop had not notified him that there was an issue and it was reasonable to think it was not clear how to view them as Ms Nield had tried at the investigation meeting to pull them up and had not been able to. He apologised for his oversight by not seeing the terms and conditions of the voucher.
66. He admitted accessing the BT Shop accounts of two colleagues to make orders for delivery to him when they were not present. He said he and Ms Ali made the first order on her account together but *“there was then more demand. Orders on mine were cancelled and so I needed to do [it] on another account”*. (141)
67. Mr Smithson put to the claimant that he had said that he had been ordering for his son and his friends who all work for the same company (Almaalik) and asked the claimant to confirm the nature of Almaalik’s business. He said *“they sell high end goods”* and that one of the goods they sold was PlayStations. Mr Smithson asked the claimant *“would it be right to say they sell consoles? If they sell consoles, would it be right to say they could sell on. The claimant responded, “its only £15 discount for me this is not much.”* Later in the meeting the claimant said that he had received 8 vouchers from his PS5 purchases with the BT Shop. Mr Smithson questioned the fact that the claimant was in ownership of half a dozen PS5s and that said that he knew he could make a profit on them. The claimant’s rep said to make a profit the orders be made during Christmas and the claimant had ordered them in January. Mr Smithson rejected this as not credible and said that PS5’s were in high demand at the time the claimant obtained them.
68. The claimant said that none of the orders had been delivered to a business address and there was no business registered at his address. He said he struggled with his mobility and to move the orders so he *“just said I would have them delivered to the Almaalik boys name as that is what I call them – the Almaalik boys.”* He said *“these boys have been the school, college and playing football together for years”*.
69. The claimant explained that he had created his BT account 15-20 years ago and that it had not been created in the name of Almaalik. He said Almaalik was a reference only.
70. Mr Smithson asked the claimant how he thought he had impacted his colleagues with his actions. The claimant said that he was *“embarrassed and uncomfortable with how things had played out.”* He said that he knew his intention was good and had always been good and he had only asked people to order for him who he had a significant relationship with, that he classed as family. He said it *“was awkward that there is a question on who has done wrong.”* He said that if he had seen the terms and conditions for the voucher and known the voucher couldn’t be used with the employee discount *“we wouldn’t be here”*.
71. When Mr Smithson asked *“how would it be if I made a decision to allow you back in the office”* the claimant said that with some it would be fine with others he

would have to reach out, answer questions and concerns. He was asked why he thought people would feel that way and responded that there were doubts although he was certain that 99-100% of people wouldn't have an issue.

72. The claimant was asked whether there was anything wrong in what he had done. He responded that "there are elements. Terms and conditions". He said he did not feel he was doing anything wrong with the amount of ordering. He said that in his mind he was "gifting and seeing the offers." When Mr Smithson said that gifting was when you gave someone something for free, the Claimant responded that "*there was a cultural thing here where people are family*". He said that in his mind he had "done with this with good intention." The claimant's representative said that his understanding was the claimant "doesn't see anything wrong with purchasing for others. Aware of limitations so reached out to other friends and family and asked them to provide for another family member." The claimant later confirmed in his reflection statement that he did not see anything wrong in asking his colleagues to order for him.
73. Mr Smithson took the claimant through the orders and what the sales name and delivery name was on them. He asked why some of the orders were in his name but others were in his son's name. These orders were for mobile phones and PS5s. The claimant said when the order was for him he put his name but he added his son's name if it was "*anything for his son and his boys*" so that he did not need to unpack it and move boxes around. The claimant said it was "naive of [him] to have any link to the Almaalik name as a reference.
74. Mr Smithson asked the claimant the reason his son was ordering through the claimant's account when he had his own. The claimant explained that the reason was that his son was able to get £15 discount, which was a lot for a student.
75. Mr Smithson said to the claimant- "*if you were sat where I am looking at this where you are ordering high end goods from BT for a business name who sell high end goods. What would you think? The claimant responded " Yes, I get it – I don't have time for this. I don't have time, but i give my time to coaching and supporting my sister."*
76. The claimant gave a reflection statement in which he said:-
- *"Using Almalik (sic) was poor judgement*
  - *Never had a bad intention*
  - *I have seen the T&Cs then we wouldn't be here*
  - *I can verify on email the authority for extra goods by BT shop*
  - *I am surprised that with the voucher code worked with the phones – tells me its fine.*

- *I never had an email to confirm what I can and can't do. They could have emailed me and said we cancelled but just order again without the voucher.*
- *I've been here a long time – I am a trusted colleague and friend*
- *I would never jeopardise my relationship*
- *The only thing I got in excess was the ps5 – this was only a discount of just over £100.*
- *If there was a game to be played, I would have ordered consistently. Nothing in feb, march, April, may etc All I can leave you with is that I have took leave from work to give back to the ethnic minority groups to do good. I have built relationships and trust. I am frustrated that I am here. No good deed goes unpunished.”*

77. The claimant's representative asked for a short adjournment and the claimant returned to the meeting and extended his apologies to his colleagues. Mr Smithson gave evidence that he did not believe the apology was genuine or sincere. He explained that this was because the claimant had maintained throughout the meeting he had not done anything wrong, him apologised straight after a short adjournment requested by his union representative, suggested he had been prompted to apologise. To conclude the meeting, Mr Smithson summed up all points made by the claimant and his representative, and this was agreed by the claimant.
78. Mr Smithson decided that he did not need to undertake any further investigation having considered the claimant's written and oral representations. He gave evidence that he was reminded by Human Resources that he needed to take account of all mitigating circumstances when forming a decision. In cross examination, the Claimant asked Mr Smithson what further investigations he had conducted in relation to the points highlighted in red in Ms Niels investigation report. Mr Smithson confirmed that he had addressed the comment about PS5's during the disciplinary meeting as he had had a conversation with the claimant about limitations. Mr Smithson confirmed he had not conducted any further investigations into the BT Shop customer information in relation to when the account was created and the reference to two account numbers linked to his account (one being a business account) as the claimant had confirmed during the disciplinary that he used Almaalik as a reference on some of his orders. He did not check when the claimant had opened his account as he did not see the relevance of this date and it did not have any impact.
79. By letter dated 2 December 2022 (157-159), Mr Smithson informed the claimant of the outcome of his disciplinary meeting. He included with his letter a document detailing his rationale for the decision (160-162). The outcome letter stated

*“I am writing to confirm my decision having considered all of the information available to me and having listened to what you said at the disciplinary meeting, I’ve decided to summarily dismiss you for gross misconduct in line with the company’s disciplinary policy.*

*Reason/s for the dismissal The reason/s for your dismissal for gross misconduct was a result of your conduct.*

*My reasons for this decision are shown in the attached rationale. In reaching this decision I’ve taken into account the mitigation put forward and due to the seriousness of the misconduct I have also considered all the possible alternatives such as a lesser sanction when making my decision to summarily dismiss you for gross misconduct.”*

80. The claimant was informed that his last day of employment would be 6 December 2022 and, as he had been dismissed from the company for gross misconduct, he was not entitled to notice or payment in lieu of notice.
81. The claimant was informed in the outcome letter of his right of appeal against Mr Smithson’s decision.
82. I am satisfied Mr Smithson considered all the evidence and applied his mind to the mitigating circumstances which the claimant had raised at the disciplinary meeting before coming to his decision, including his length of service and clean record. I am also satisfied that he considered whether a lesser sanction than summary dismissal was more appropriate. Mr Smithson provided the claimant with a detailed rationale for his decision which referred to the claimant’s explanations/mitigating circumstances and his conclusions with regard to these (160-162). His evidence to the Tribunal was clear, thoughtful, and consistent with his outcome letter and the rational document of 2 December 2022.
83. Mr Smithson concluded that the claimant had committed gross misconduct and the allegations of serious breaches of the respondent’s Standards of Behaviour policy and procedure (as set out in sub-paragraph 45.1 to 45.5 in this judgment), were proven, relying significantly on the claimant’s admissions during the investigation and disciplinary meetings. He considered that the claimant’s actions were of a fraudulent nature, he had abused his employee benefits and that the claimant had behaved in a way that could have a negative impact on the respondent’s business. Mr Smithson considered the following examples given in the definition of gross misconduct in the respondent’s disciplinary procedure were relevant to his decision but also noted in evidence that the list of examples of gross misconduct was non –exhaustive: -
  - *“Theft, fraud or other acts of dishonesty (like deliberately falsifying records to inflate your commission or expense claims, abusing your company credit card, phone and expenses); and*

- *Any behaviour, either at work or externally that could have a negative impact on our business, brand or reputation (including doing something obscene, indecent or malicious) or that has significant negative impact on your role.*

Mr Smithson concluded that the seriousness of the claimant's conduct coupled with the lack of a credible explanation led to his decision to dismiss the claimant.

84. In his rational Mr Smithson recorded the admissions that the claimant had made and came to the following conclusions: -

84.1 that the claimant had admitted using discount vouchers outside of the Terms and conditions. Mr Smithson said he appreciate that the claimant had not read these, BT had no legal responsibility to prevent use of these vouchers in this way and by using them the claimant was agreeing to the T&C's and it is your responsibility to understand them;

84.2 that the claimant had admitted logging onto a colleague's BT Shop account (without them being present) and utilised their staff discount on orders for himself;

84.3 that the claimant had confirmed that after reaching his own personal limit on goods, he asked colleagues to order on his behalf (thus circumnavigating the agreed amounts), and that any goods ordered were passed to him for onward "distribution". Whist Mr Smithson acknowledged the cultural elements of what the claimant had raised in the meeting, he concluded that the claimant had deliberately continued to order goods from the BT shop through other people, even when he had reached his limits, and these goods were passed to the claimant to distribute as he saw fit. In doing this the claimant had circumnavigated the allowance that he had;

83.4 that the claimant, by his own admission, received some of these goods, that were no longer required and "sold these on" using other methods such as WhatsApp, Facebook and EBay;

84.5 that the claimant had explained that Almaalik was simply a reference for his son and his friends, and the claimant thought with hindsight that this is poor judgement using it as a reference. Mr Smithson said that he appreciated that there was a cultural difference in understanding of "friends and family" particularly with the extended family, however, the volume of goods ordered by the claimant could not be ignored. He believed that the claimant's admission that some of the goods were sold on other sites (such as WhatsApp, Facebook and EBay) combined with the use of a business name that sells electronic goods such as mobile phones and consoles, lead Mr Smithson to believe that some of these goods were purchased for onward sale, leading to potential loss of profit and business for BT/EE.



- 84.6 that the claimant's conduct had indicated "a breakdown of trust between *employer and employee*". In evidence he said that he did not believe that this trust could be restored. He took into account the "massive impact" the claimant's conduct had had on his colleagues who had also had to go through the disciplinary process and therefore he did not think it was appropriate to keep him in the business.
85. In evidence, Mr Smithson gave more detail on his considerations. He confirmed that he had considered the claimant's point that the order list contained both cancelled orders as well as those that had been delivered to him and the claimant felt that the numbers looked inflated as a result. Mr Smithson considered that all the orders were relevant as they showed an intention that the claimant had to circumvent the system by ordering two galaxy phones when he knew he could only have one. He also thought they were relevant as the claimant had expressed that the cancelled orders prompted him to ask his colleagues to order for him or access a colleague's account which led to more breaches. He confirmed that he had considered the cultural disconnect the claimant mentioned and that his house for a base for all the family but he did not find that this justified the breach of policy or was a credible explanation for fraudulent conduct. The claimant had raised that he was a foster carer and football coach but Mr Smithson could not see how this was relevant. Mr Smithson considered the claimant's explanation that the reason he had ordered these products was to give back to family and friends as they had helped him when he was going through health issues. Mr Smithson did not find this was a credible response as it did not justify the breach of policies. In cross examination Mr Smithson said that the mitigation he considered was only that which the claimant raised at the disciplinary meeting. He accepted that the claimant had referred to covid and arthritic pain but was not aware of the claimant raising these conditions as mitigation for his actions in their own right and so had not considered them.

### Appeal

86. The claimant appealed against the decision to summarily dismiss him on 13 December 2022. He said that the decision to dismiss him was unfair and unreasonable and raised the following grounds of appeal (163 –166):
- 86.1 Voucher T& C- That the inclusion regarding the uses of discount vouchers was unreasonable based on the evidence. The claimant said he fully accepted that the use of the vouchers was a genuine mistake having accepted a failure on his part to check the Terms of Conditions. He felt that this issue should have been removed due to the system wrongly accepting the voucher and his genuine mistake in not reading the terms and condition – believing instead the respondent should resolve shortcomings through system development and training.
- 86.2 Logging into another account-. The claimant accepted that he had logged onto his colleagues BT account without them being present and

processed orders to his home address but he said Ms Ali was a close personal friend, he had permission, didn't know they needed to be present and they had struggled to organise getting together to make the orders because they were both experiencing health issues and multiple family bereavements. On reflection he agreed that sharing the BT shop Password was an error of judgment and mistake on his part and very much out of character and that he apologised for the concerns raised and that he was certain it would not happen again. He strongly refuted there was any intention of wrongdoing or malice having orders delivered to his house.

- 86.3 *Colleague orders*: He said that he honestly and genuinely didn't know that he couldn't request assistance of his long-standing friends/family at work to order for his family and friends. He said he wasn't aware of any restriction, the items were never intended for him and had he known he would not "*have considered asking my colleagues and place them in any sort of difficulty or embarrassing situation*". He said his understanding was that this issue would be dealt with as an isolated issue and not part of multiple issues. He said "he believed that this particular issue could have been considered as a serious breach as opposed to part of gross misconduct."
- 86.4 He felt that the volume of orders appeared to be the respondent's key concern and this was primarily down to him not being fully aware or keeping track of the extent of my orders in trying to help many of his family and friends. He also believed the inclusion of the cancelled orders may have helped to create a false narrative regarding the volume and "*possibly prejudiced the overall outcome*".
- 86.5 Onward Sale – he believed there had been a misunderstanding as to how this had been carried out. There was no deliberate act or intention to buy with the intention to sell – he said he only sold unwanted items which could not be returned. He said he would like to emphasise "that [he] was now firmly aware there were clearly defined borders."
- 86.6 Employment Role and Mitigation- he said in his role he had never had access to the inner workings or systems associated with the BT Shop so could not take any particular advantage. He said that it would be "*reasonable to issue a warning considering my 23 years' service without issue and exemplary record*." He said the whole issue was entirely out of character and it would be reasonable to issue a warning considering the mitigation factors including multiple bereavements of close family and friends, multiple health issues.
- 86.7 He said he was the sole income earner in his family and in summary he said he was "hoping we can work together to repeal the decision that has been brought forward against myself with a lesser sanction". He said he fully appreciated [the respondent's] concerns and acknowledged

mistakes had been made by him. He included with his grounds of appeal document some documents about his volunteering experiences to reinforce his good nature and character.

87. Ms Marie Rawlinson (Operations Manager) was the appeal manager, having accepted a request to hear an appeal, was given access to the HR system where she could view the relevant documents from the claimant's disciplinary. Ms Rawlinson also listened to the recording of the claimant's disciplinary meeting. She had not been previously involved in the matter and had had no prior dealings with the claimant. In her role, she was responsible for about 200 people and had experience dealing with disciplinary cases.
88. Ms Rawlinson (Operations Manager) wrote to the claimant on 15 December 2022 (167-168). She informed the claimant of his right to be accompanied. The appeal meeting took place on 20 December 2022 and the claimant was again accompanied by his union representative, Mr Hill.
89. The appeal meeting was a face to face meeting but recorded through Microsoft Teams with the claimant's consent which also produced a transcript (169-199). Unfortunately, the transcript does not differentiate between the different speakers and shows Ms Rawlinson's name as the only speaker and there are typographical errors but I do not accept the claimant's submission that it is "*no longer a reliable document*" particularly when read alongside Ms Rawlinson's rational document and the claimant's grounds of appeal letter.
90. In his witness statement the claimant stated that the appeal hearing ran its course with the required formalities.
91. The claimant was given an opportunity to explain his grounds of appeal. During the appeal the claimant explained that initially he did not think it was wrong to ask his colleagues to order for him because the orders were for family and friends, and he considered his colleagues in the Blackburn site his family. However, he said that after liaising with his union representative he realised this was fundamentally flawed and admitted he had been wrong for asking others and putting them at risk. He accepted that the business had been impacted by his actions because of the time it had taken to investigate this situation and the questions and doubts his colleagues had, but he did not think his actions were or would be a problem compared to his 23 years of service.
92. He said he wished that the system worked in a way that would recognise that he had an employee discount and would not let voucher codes go through. He said that he had reflected on the consequences that the amount of orders he had made on colleagues who may have wanted to use their allowances but could not because he had ordered so many.
93. Ms Rawlinson asked the claimant to explain why he would use Almaalik as a business name. He explained that this was a reference he used as the orders were for his son and six of his friends who worked part time for Almaalik. Ms Rawlinson asked the claimant "*how that would look from the respondent's*

*perspective when he was ordering electronic goods for employees of a company that sells the same".* The claimant accepted that from the respondent's perspective this would raise concerns. When asked why he had not used their personal names as a reference, given he had said he had know these people personally for years, he had no explanation but acknowledged it was a lack of judgment.

94. The claimant said he thought of the BT Shop as independent of his employment as he had never worked for the BT Shop and he treated the discount vouchers as though he was ordering from other websites such as Amazon, Curry's or uber eats. Ms Rawlinson spent some time discussing the claimant's mitigation with him, including clarifying what he meant in relation to his health issues and bereavements. In relation to his health issues and bereavement, the claimant raised the same points as he had raised in his supporting document at his disciplinary. He also explained that he was struggling with the level of responsibility he now had following the death of his father. He told Ms Rawlinson that he had had to focus on family, bereavements and his health so may not have fully grasped how using the vouchers and asking his colleagues to order for him would be viewed so seriously by the respondent at the time.
95. The claimant's appeal did not succeed. Ms Rawlinson sent an outcome letter dated 9 January 2023 (200) which confirmed that his appeal was unsuccessful, and the outcome of the disciplinary meeting held on 24/11/2022 remained in place. She stated that she was comfortable that Mr Smithson's decision was fair, reasonable and appropriate. With the outcome letter she provided a written rational for her decision (201-202). In it she confirmed that she had concluded that Mr Smithson's decision was correct. She concluded that no new evidence had been provided to her in regard to mitigation provided. She said that, whilst she appreciated that the claimant now accepts the seriousness and she could see a difference in his attitude towards the offence since his meeting with Mr Smithson and the appeal meeting, the claimant had confirmed to her that he did not think that he had done anything wrong at the time. Ms Rawlinson said she recognised that he was now sorry for your actions and understood the severity of your behaviour, but she was concerned by the amount of time it had taken for him to display remorse. Ms Rawlinson expanded on this in her evidence. She said that she was concerned that the claimant had apologised in the hope it would change the decision and not because he understood the consequences of his actions. During the appeal meeting she raised with the claimant that having listened to the recording his "*what you are saying is very different now is very different to what you were saying in the original meeting*" and asked him to help her understand when his thought process had changed. He explained that when he said he didn't think he had done anything wrong he meant that he had no malicious intent behind his actions or financial gain. Ms Rawlinson also said she was concerned that during the appeal meeting, in contradiction with his earlier apology, the claimant was still maintaining that the system should not have allowed him to use his voucher and he wished the system had a way to check that and he did not see that there was an issue with asking his colleagues to order for him. These contradictions caused her to

question the claimant's integrity and remorsefulness. In cross examination, Ms Rawlinson confirmed to the claimant that it was not just finding in the breach of terms and conditions

96. Ms Rawlinson concluded that the charges and behaviours that have been proven fell below the standards of behaviour expected of BT employees. Whilst she sympathised with the situation the claimant had found himself in with the extra responsibility as head of the family, but she confirmed that the volume of orders made by the claimant could not be ignored and she agree with the points made in Mr Smithson's rationale. She concluded that there had been a breakdown of trust which she felt was irreconcilable. Products had been sold on, there was improper use of discount codes as well as accessing another employee's account.
97. Ms Rawlinson did not consider his conduct was justified by the struggles he said he was experiencing as the head of the family following the death of his father or his contention and she concluded it did not explain the connection of the orders to the business name, Almaalik as the claimant had mentioned he knew all of his son's friends personally and could have easily written their names in the reference. Ms Rawlinson did not find the claimant's argument that he was not aware there was a link between his employment and the BT Shop credible, but concluded that even if there was no direct connection it did not excuse his actions. Ms Rawlinson expressly refers to the claimant's long service in her rational and I find considered the claimant's long service and clean disciplinary record but didn't think these were enough to reverse the decision to dismiss and give a lesser sanction- she said "for me it fell short" as she had concluded that she could not be confident that such misconduct would not be repeated and the claimant could maintain an honest relationship with the business.
98. Ms Rawlinson confirmed in her appeal outcome letter that she felt the disciplinary process has been followed correctly and that she did not feel, after reviewing the case as a whole, the original meeting and rationale that the decision made was unfair or unreasonable.
99. Prior to making her decision on whether the sanction was fair and appropriate, at the claimant's request, Ms Rawlinson spoke to his manager (Ms Wahida Patel) for a character reference. The appeal outcome letter makes a brief reference to this conversation and states that this conversation did not change the outcome of Ms Rawlinson's decision.
100. Ms Rawlinson's gave evidence that Ms Patel informed her that the relationship with the claimant was unstable at first but then it settled (the claimant had referred himself to initial issues with his manager). Ms Rawlinson said that she then asked Ms Patel whether she thought the Claimant's conduct was out of character. Ms Rawlinson said she "*did not get out of character.*" Ms Patel said she did not believe it was out of character as the claimant had previously displayed signs of dishonesty. Ms Patel told Ms Rawlinson that the claimant

had previously been investigated for dishonesty. Ms Rawlinson confirmed to the claimant in cross examination that after speaking to Ms Patel she did not delve further into her comments about an investigation. Ms Rawlinson explained that she did not believe it was for her to delve into this investigation as she was only concerned with his appeal.

101. Ms Rawlinson did not inform or discuss with the claimant the contents of the character reference given by Ms Patel. Ms Rawlinson recorded in her outcome letter that she had spoken, at the claimant's request, to Ms Patel and this did not change the outcome of her decision.
102. The claimant denied at the start of his evidence that he had ever been investigated for dishonesty.

### The Law

#### Unfair dismissal

103. Section 94 of the Employment Rights Act 1996 (the ERA) confers on employees the right not to be unfairly dismissed. The employee must show that he was dismissed by the respondent under section 95 of the ERA but in this case the respondent admits that it dismissed the Claimant (within section 95(1)(a) of the ERA ) on **6 December 2022**.
104. Section 98 of the Employment Rights Act 1996 states:
  - (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, if 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) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

- (b) relates to the conduct of the employee,
  - (c) is that the employee was redundant, or
  - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) ....
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
  - (b) shall be determined in accordance with equity and the substantial merits of the case.
105. The reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: ***Abernethy v, Mott, Hay and Anderson [1974] ICR 323, CA***. In determining the reason for a dismissal, the tribunal may only take account of those facts (or beliefs) that were known to the employer at the time of the dismissal.
106. I was guided by the EAT judgment in ***British Home Stores v Burchell [1980] ICR 303***, being mindful that the employer must show that it had a genuine belief in the employee's guilt, held on reasonable grounds and after carrying out a reasonable investigation. I was also guided by the Court of Appeal in ***Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23 CA*** that the reasonable band of responses test applies to the whole disciplinary process and not just the decision to dismiss.
107. I was guided by the EAT judgment in ***British Home Stores v Burchell [1980] ICR 303***, being mindful that the employer must show that it had a genuine belief in the employee's guilt, held on reasonable grounds and after carrying out a reasonable investigation. I was also guided by the Court of

Appeal in **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23 CA** that the reasonable band of responses test applies to the whole disciplinary process and not just the decision to dismiss. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

108. In accordance with the Employment Appeal's Tribunal's guidance **Iceland Frozen Foods Ltd v Jones 1982 IRLR 439 I** was mindful, in reaching my conclusions, not to substitute my own view of the what the appropriate sanction should have been for that of the respondent's, but I should consider whether the decision to dismiss fell within the band of reasonable responses open to a reasonable employer in the particular circumstances of the case. It is therefore irrelevant whether or not the Tribunal would have dismissed the employee or investigated matters differently if it had been in the employer's shoes of the employer (**London Ambulance NHS Trust v Small [2009] IRLR 563 CA and Foley v Post Office [2000] ICR 1283**)
109. A fair investigation requires the employer to follow a reasonably fair procedure. By section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 Tribunals must take into account any relevant parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. The ACAS Code of Practice 1 – Disciplinary and Grievance Procedures provides, at paragraphs 4, 9 and 10:
4. ... whenever a disciplinary ... process is being followed it is important to deal with issues fairly. There are a number of elements to this:
- ...
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- .....
9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally
- be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.
10. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.



- 110 The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.
111. If the three parts of the **Burchell** test are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee (instead of imposing a lesser sanction) was within the band of reasonable responses, or whether that band fell short of encompassing termination of employment.
112. In a case where an employer purports to dismiss for a first offence because it is gross misconduct, the Tribunal must decide whether the employer had reasonable grounds for treating the misconduct as gross misconduct: see paragraphs 29 and 30 of **Burdett v Aviva Employment Services Ltd UKEAT/0439/13**. Generally gross misconduct will require either deliberate wrongdoing or gross negligence. Even then the Tribunal must consider whether the employer acted reasonably in going on to decide that dismissal was the appropriate punishment. An assumption that gross misconduct must always mean dismissal is not appropriate as there may be mitigating factors: **Britobabapulle v Ealing Hospital NHS Trust [2013] IRLR 854** (paragraph 38).

### Conclusions

113. The claimant and Ms Page provided me with submissions which I have considered and refer to where necessary in reaching my conclusions.
114. Ms Page reminded me that as part of my assessment of whether the respondent's response fell within the band of reasonable responses the Tribunal must only consider the reasonableness of the employer's conduct, not the level of any injustice to the employee as confirmed in **Chubb Fire Security Ltd v Harper [1983] IRLR 311**.
115. Reminding myself that it is not my role to substitute my view of what was reasonable and focusing on the band of reasonable responses open to a reasonable employer in the particular circumstances I found the following:-

### Was the claimant dismissed?

115. The employee must first show that he was dismissed by the respondent under Section 95 ERA. In this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the ERA) on 6 December 2022.

### Was the dismissal fair or unfair?

116. Turning to whether the dismissal was fair or unfair. Section 98 ERA deals with the fairness of dismissals and this is a two stage process. The first stage is for the respondent to show a potentially fair reason for dismissal and secondly, if that is done, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

### What was the reason for dismissal?

115. The claimant's claim form did not allege that his dismissal was for some reason other than conduct and he did not challenge Mr Smithson or Ms Rawlinson evidence that he was dismissed because of his conduct or put to them that they had dismissed him for an alternative reason. Notwithstanding this, the claimant submitted in his closing submissions that he "*didn't believe reason was misconduct –they didn't articulate [the] real reason*". I am satisfied that the respondent has shown that the reason for dismissal was conduct i.e. the beliefs held by Mr Smithson (and upheld by Ms Rawlinson) that the claimant had committed serious breaches of the respondent's Standards of Behaviour Policy and Procedure and breakdown of trust which cumulatively amounted to gross misconduct (i.e. that the claimant had used discount voucher codes in breach of terms and conditions along with his and his colleagues' employee discount, he had accessed a colleague's BT Shop account (without them being present) and utilised their staff discount on orders for himself and after reaching his own personal limit on goods, asked colleagues to order on his behalf (thus circumnavigating the agreed amounts) for onward "distribution" and that some of the goods ordered were purchased for onward sale to a business which sold electronic goods (and was linked to his address) rather than for his personal use. The decision to dismiss the respondent was taken following a disciplinary meeting attended by the claimant and his union representative. A letter of termination and accompanying rational document was sent to the claimant on 2 December 2022 (157-162) confirming that the reason for dismissal was his conduct and confirming the Mr Smithson's decision that he the claimant had committed gross misconduct for the reasons outline above.
116. Section 98 ERA identifies a number of potentially fair reasons for dismissal. Conduct is a potentially fair reason under section 98 ERA. The Respondent has satisfied the requirements of section 98(2) ERA.

Was the dismissal fair under section 98(4) ERA?

117. This second stage of the test involves deciding whether the respondent acted reasonably or unreasonably in dismissing for the reason given in accordance with Section 98(4) ERA.
118. Applying **Burchell** and *Sainsbury Supermarkets Limited v Hitt* [2003] IRLR 23, and taking into account the size and administrative resources of the respondent (i.e. that it is large employer with a dedicated Human resources function and comprehensive policies, I reached the following conclusions:

Did the respondent genuinely believe the claimant was guilty of misconduct?

119. I find that the respondent did genuinely believe the claimant was guilty of misconduct. The evidence of Mr Smithson and Ms Rawlinson was clear about why they had dismissed the claimant or upheld the decision to dismiss. The disciplinary and appeal rationale documents were detailed and unambiguous in their conclusions.

Was that belief held on reasonable grounds?

120. I find that this belief was based on reasonable grounds.
121. I was referred to the notes of the claimant's two investigation meetings and his disciplinary meeting and the evidence documents which Mr Smithson considered before he made his decision. There was no dispute that the claimant had made a number of significant admissions during his investigation and disciplinary meetings in relation to the allegations. These included admitting that he had ordered products for delivery to himself on a colleague's BT Shop employee account and used her employee discounts. That he had asked colleagues to order for him when he had reached his limitation on certain products and/or his orders were being cancelled. The claimant admitted that he had been applying a discount voucher to orders from the BT Shop in breach of the terms and conditions of that voucher and had asked his colleagues to use these vouchers on some orders in addition to their employee discount. Mr Smithson had evidence from which I find it was reasonable to form the belief that the claimant was circumventing the BT shop systems in relation to employee exclusive offers which entitled the employee to large discounts on certain phones but were only entitled to order one. He also had evidence of the terms and conditions that applied to the discount vouchers and the terms on which exclusive and limited offers had been offered to the respondent's employees.
122. The claimant admitted during the disciplinary process that on occasion he had sold products he had ordered, Mr Smithson had evidence that there was a business name (Almaalik Ltd) linked to multiple orders made by the claimant of high value electronic goods such as PS5 gaming consoles and mobile phones which were in high demand. The claimant had admitted that this company was a re-seller of high value electronic goods and that his son (and his son's friends) worked for this company part time. He confirmed his son was a buyer for Almaalik. The claimant admitted that he had bought products for his son and/or his friends on his BT Shop employee account and his colleague's account. However, he argued these were for personal use only and not for onward sale and he had only used the company name as a reference. The claimant also argued that he was unaware of the terms and conditions and that he could not ask his colleagues to order for him. I find there were reasonable grounds for Mr Smithson to reject the claimant's arguments in light of the volume of orders, the claimant's admissions and the evidence before him regarding the use of the Almaalik Ltd name on certain orders, what Almaalik Ltd sold and that the claimant's sons and friends worked part time for Almaalik. Ms Rawlinson records in her outcome letter that no new evidence emerged in the course of the internal appeal. I find The respondent decided on reasonable grounds, after a proper inquiry, that the claimant was guilty of misconduct.

*Was there a fair and reasonable investigation?*

123. Reminding myself that the band of reasonable responses test applies to the investigation as well as the decision to dismiss, I reject the claimant's contention that the respondent did not carry out a reasonable

investigation. I find that there was a fair and reasonable investigation taking into account the admissions the claimant made during the disciplinary process and the large size and significant resources of the respondent. Initial investigations were made by the BT Shop Team which provided Ms Nield with a large spreadsheet of relevant information about what the BT Shop (a retail website) considered “suspicious orders” made on the claimant’s account and three of his colleagues, employee discounts applied, the use of vouchers and delivery names and address.

124. Ms Nield then interviewed the claimant and sought an explanation for his behaviour. She also undertook interviews with the claimant’s colleagues and after these interviews decided to invite the claimant back for a second investigation interview to give him an opportunity to provide a response to new allegations that had been raised by his colleagues. Ms Nield was supported by the BT Shop team in obtaining further information about the BT Shop processes, how to make an order, and the orders the BT shop considered the “suspicious orders”. The claimant argues that the investigation was not fair and reasonable because Ms Nield had never worked for BT shop and had never made an order. I find a reasonable employer could decide that it was not necessary for the investigating manager to be someone who worked for the BT Shop given the nature of the allegations, the initial investigation undertaken by the BT Shop team which provided Ms Nield with a detailed spreadsheet of information taken from the BT System and other evidence, and the ongoing support being provided by the BT team to Ms Nield’s investigation.
125. Ms Nield did not provide a detailed summary of her findings of fact at the end of her investigation report, but I find this did not fall outside the band of reasonable responses. The claimant had made a significant number of admissions during the investigation meetings and Ms Nield had recorded these admissions and the explanations provided by the claimant by reproducing the very detailed notes from her investigation meetings in her investigation report and appending to her report all the evidence she had gathered during her investigation and the relevant policies. Within these meeting notes were also the claimant’s responses to the allegations that were put to him that had been made by his colleagues during their investigation interviews.
126. The claimant argued that the investigation was not fair as he was not able to postpone his second investigation meeting following a bereavement and he had a different notetaker at the second investigation meeting. The claimant did not ask Ms Nield personally for a postponement and attended the second investigation meeting and gave clear and detailed responses. I find that a reasonable employer could decide not to postpone the meeting in the circumstances and have a different notetaker at the investigation meetings.
127. The claimant believed the investigation was not reasonable because Ms Nield and Mr Smithson did not investigate when he had set up his BT Shop Employee account or whether PS5 gaming consols were subject to limitations, as he suggested was Ms Nield’s view, had suggested that he had set up his BT Shop employee account in the name of the business Almaalik Ltd. I find

that a reasonable employer could decide it was not necessary to undertake these further investigations in light of the investigations which had been carried out and the evidence which had emerged. Mr Smithson gave evidence that he did discuss PS5s with the claimant at his disciplinary meeting and was not under the mistaken belief that they were subject to a specific limitation like the Samsung Galaxy phone. He also gave evidence that he did not investigate further when the claimant set up his BT Shop employee account as the claimant had already admitted that he used this name on his BT account for some of the orders (but argued that it was a reference) and so the date was irrelevant to his decision.

128. At the appeal stage, Ms Rawlinson conducted some further investigations. At the request of the claimant, she contacted the claimant's line manager for a character reference. Ms Rawlinson gave evidence that Ms Patel told her that the claimant's conduct was not out of character, he had displayed signs of dishonesty in the past and previously been investigated for dishonesty. The claimant argued that it was unreasonable for Ms Rawlinson not to verify or validate the information given by his manager. I find that a reasonable employer could decide it was not necessary to undertake these further investigations in light of the investigations which had been carried out, the evidence which had emerged and the fact that this was a character reference, at the claimant's request and with an individual nominated by the claimant. The claimant was clearly upset and surprised that his manager had not provided a positive character reference, but it is only where the employer's decision is so unreasonable as to fall outside the band of reasonable responses that the tribunal can interfere. I do not find that this decision not to undertake further investigations was so unreasonable as to fall outside of the band of reasonable responses.
129. In her submissions, Ms Page (the Respondent's solicitor) referred me to the case of **Shrestha v Genesis Housing Association Ltd [2015 EWCA Civ 94]** as authority for the position that it is not for the respondent to extensively investigate every line of defense advanced by the employee in order to conduct a sufficient investigation. I agreed with the respondent's submission that due to the claimant's admissions the amount of inquiry required was reduced. **[ILEA v Gravett 1988 IRLR 497]**.
130. I find that the steps the respondent took to investigate were fair and reasonable in all the circumstances of the case.

***Reasonably fair procedure***

131. Taking into account the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015, the respondent's disciplinary policy and procedure and reminding myself the band of reasonable responses test applies to the whole disciplinary process I conclude that the respondent followed a reasonably fair procedure.
132. The respondent provided the claimant with two opportunities to present his case during the investigation with Ms Nield. He was given an opportunity to answer new allegations that had been raised by his colleagues at a second investigation meeting. He was provided with copies of the relevant policies

and evidence that the respondent sort to rely on (including Ms Nield's investigation report and its appendices, a reasonable time in advance of the disciplinary hearing. The disciplinary letter and attachments contained sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at the disciplinary meeting. I was satisfied that the claimant was made aware of the allegations which he would face. Mr Smithson clarified the allegations at the outset of the meeting to correct the allegation contained in the disciplinary invite letter. He gave the claimant the option to postpone the meeting but the claimant and his representative wanted to continue.

133. In the disciplinary invite letter the claimant was informed of his right to be accompanied and was accompanied by a union representative at both his disciplinary and appeal meetings. The claimant was shown the evidence the respondent relied on in advance of the disciplinary meeting and asked for his response at both the investigation interview and/or at the disciplinary meeting. The claimant attended a disciplinary meeting and provided oral and written submission. He was notified in writing of Mr Smithson's decision and provided with a rational document. He was informed of his right of appeal in the disciplinary outcome letter and attended an appeal meeting accompanied by the same union representative. I find that both Mr Smithson and Ms Rawlinson considered and applied their minds to the mitigation and/or explanations the claimant presented, including cultural considerations, his long length of service and clean disciplinary record.
134. The claimant did not raise any allegations about an unfair procedure in his claim form but in his closing submission he alleged it was an unfair procedure. I have already addressed above his allegations of unfairness regarding the investigation. The claimant also said that he had not received copies of his colleagues' investigation reports or been referred to the spreadsheet of 35 orders under investigation. He submitted that this made the process and decision unfair, as he did not have the full information. As set out in my findings of fact, I was satisfied that the claimant was informed at the second investigation meeting and/or the disciplinary meeting of the relevant allegations made about him by colleagues during their own investigatory interviews and that he was given an opportunity to respond to them. I do not find that the decision not to provide the claimant with the investigation reports of his colleagues fell outside the band of reasonable responses. I find that a reasonable employer could decide to inform the claimant of the allegations and give you an opportunity to respond to them rather than providing the investigation reports. As I said in my findings of fact, I was satisfied that the claimant was shown a copy of the spreadsheet showing the 35 orders under investigation by Ms Nield and given an opportunity to respond so reject the claimant's submission on this point.
135. I find the ACAS Code of Practice and the respondent's disciplinary policy and procedure was complied with.
136. Finally, the question is whether dismissal was a fair sanction. *Did the employer act reasonably in treating this reason as sufficient reason to dismiss the employee?*

137. Reminding myself again that the tribunal must not substitute its own view for that of the employer and it is only where the employer's decision is so unreasonable as to fall outside the band of reasonable responses that the tribunal can interfere, I find that the respondent acted reasonably in characterising the misconduct as gross misconduct and in treating the claimant's conduct as sufficient reason to dismiss him. In the respondent's Standards of Behaviour Procedure and Disciplinary Procedure gross misconduct is defined as "*a serious offence which leads to a breakdown of the trust which we've placed in you as an employee. It's a breach of your contract of employment. It also includes serious misconduct which is likely to have a negative impact on our business, brand or reputation. Acts of gross misconduct may lead to summary dismissal (being dismissed without notice or payment in lieu of notice). The procedures also include a non – exhaustive list of what may be seen as gross misconduct.*" In evidence, Mr Smithson identified the following examples as relevant to his decision:
- *Theft, fraud or other acts of dishonesty (like deliberately falsifying records to inflate your commission or expense claims, abusing your company credit card, phone and expenses); and*
  - *Any behaviour, either at work or externally that could have a negative impact on our business, brand or reputation (including doing something obscene, indecent or malicious) or that has significant negative impact on your role.*
138. The respondent reasonably believed that the claimant had used discount voucher codes in breach of terms and conditions along with his and his colleagues' employee discount, he had accessed a colleague's BT Shop account (without them being present) and utilised their staff discount on orders for himself and after reaching his own personal limit on goods, asked colleagues to order on his behalf (thus circumnavigating the agreed amounts) for onward "distribution" and that some of the goods ordered were purchased for onward sale to a business which sold electronic goods (and was linked to his address) rather than for his personal use. It was reasonable and open to the respondent to reach that conclusion. Although the claimant had long service without any previous disciplinary warning, these were serious offences both reasonably believed that there had been an irreconcilable breakdown in trust.
139. I find that the mitigation the claimant presented, including but not limited to, his length of service and clean record and personal circumstances were carefully considered by Mr Smithson and Ms Rawlinson before making their decisions to dismiss the claimant and uphold the decision to dismiss. I find that notwithstanding the claimant's mitigation, the respondent's decision to summarily dismiss the claimant was still within the band of reasonable responses.
- 140 I am therefore satisfied that this was a fair dismissal and the claim of unfair dismissal is dismissed.

.....  
Employment Judge McCarthy  
20 January 2024

Judgment sent to the parties on:  
22 January 2024  
For the Tribunal:

**Note**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>