



EMPLOYMENT TRIBUNALS

Claimant: Mr Jaspal Singh

Respondent: EE Ltd

Heard at: East London Hearing Centre

On: 16, 17, 18 and 19 July 2024 with 13 August and 10 September 2024 (in chambers)

Before: Employment Judge Illing

Members: Mrs G Forrest
Mr L O'Callaghan

Representation

Claimant: In person

Respondent: Ms A Jervis (In-house Advocate)

RESERVED JUDGMENT

1. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
2. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.
3. The complaint of unfair dismissal is not well-founded and is dismissed.
4. The complaint of breach of contract in relation to notice pay is not well-founded and is dismissed.

REASONS

Procedural history

1. This is a claim for unfair dismissal, wrongful dismissal, discrimination arising from disability and a failure to make reasonable adjustments.
2. Case Management Orders had been issued by both EJ Barrowclough and Acting REJ Russell who clarified procedural requirements and the List of Issues.

3. The final hearing was listed for 4-days being 16, 17, 18 and 19 July 2024 in person. The 13 August 2024 and 10 September 2024 were deliberation days in chambers.
4. At the outset of the first day of the hearing, the claimant asked the Tribunal if it provided a hearing loop as he had recently been fitted with hearing aids. The Tribunal had a similar piece of equipment available and the claimant and the clerk were permitted to try the equipment in the hearing room, in private. The claimant decided that he did not need this equipment and he was able to fully participate in the hearing as he was able to adjust his own hearing as required.
5. Additionally, the Tribunal had had regard to the Equal Treatment Bench Book and discussed any further adjustments required with the claimant. No adjustments were requested and the Tribunal assured the claimant that additional breaks would be provided for and could be requested if necessary.
6. As a preliminary matter, the respondent's representative confirmed that they would not be calling Ms Alexandra Goode, who was the disciplinary hearing officer. The reason for this was that whilst Ms Goode was willing and able to attend, she was currently not at work for confidential personal reasons. It had been the respondent's decision not to call Ms Goode to give evidence.
7. On the second morning of the final hearing, the claimant had emailed the Tribunal to ask for an adjournment as he was unwell because of the stress of the hearing. However, he attended on time and the hearing proceeded with additional breaks to try to alleviate the stress.
8. On the third morning of the final hearing, the claimant was late. The hearing started 40-minutes late and the claimant did apologise for his lateness. Again, regular breaks were taken to reduce his concerns regarding the stress of the proceedings.
9. On the fourth morning, having been told to attend in the waiting room by 0930, the claimant was again late. However, the hearing was able to start at just after 1000. Again, regular breaks were taken.
10. All findings and decisions that follow are unanimous by the Tribunal.

The hearing

11. A bundle of 506 pages were provided to the Tribunal in both hard and electronic copy.
12. During the first day of the hearing, it was apparent that the claimant's bundle had an additional page. This was determined to be his page 108. Copies were taken and added to the remaining bundles as 108a. Care was taken when making page references to take this into account. Any references to page numbers in this Judgment are references to the page number of the Tribunal's copy of the document.

13. The respondent provided a further copy of the CCTV stills in the correct order. These were incorporated into the bundle as pages 308a – f.
14. We heard evidence for the claimant from the claimant himself.
15. For the respondent we heard evidence from:
 - a. Mr Kharoom Farooq, Regional Commercial Manager and initial investigation manager.
 - b. Mr Mark Ward, Regional Commercial Manager and investigation manager.
 - c. Mr Jaskaran Singh Shoker, Regional Manager and appeals manager.
16. During the third hearing day, the respondent explained that they had been able to recover the CCTV footage at the request of the Tribunal. The claimant objected to the inclusion of this footage, but the respondent did not. Having heard oral submissions from both parties, given that Mr Ward had viewed the footage to make decisions for the investigation process, the Tribunal decided that it was in the interests of justice for the CCTV footage to be viewed by the Tribunal. The claimant asked whether the CCTV footage began from when the customer entered the shop, and the respondent confirmed that it did.
17. The CCTV had been held by BT Security and was provided by the Compliance Manager, Ms Laura Lunan. The format was such that it would play on limited devices and Ms Lunan attended the hearing by CVP and played the CCTV to the Tribunal by sharing her screen.
18. The CCTV footage was shown to the point where the Customer was given the new phone. The parties were asked if they required any part to be replayed and a short section was replayed at the respondent's request. There were no other requests for it to be replayed.
19. At the point in the hearing when the CCTV was viewed, being the third day, the claimant, Mr Ward and Mr Farooq had already given evidence. The parties were granted the opportunity to cross examine these witnesses again in relation to the CCTV footage only. All three witnesses were cross examined again, with Mr Farooq attending by CVP.

Background summary

20. On 20 October 2021 Mr Ward received a call from BT Security following a concern being raised by the credit reference team member and the call on the 27 August 2021. The credit reference team member had made a written statement as to their concerns stating that the Customer had been confused on the credit referral call. The referral had stated that the Customer had wanted 3 more lines, but team member had heard the Customer say that he didn't want 3, he wanted 1.
21. The credit referral team manager also complained that following the call between themselves and the Customer had been cut short, i.e. hung up. They had called the store three times to try to speak to the Customer and

the phone had not been answered. Following their own procedures, these complaints were raised with the store's regional manager.

22. Mr Ward was at a regional meeting when he received the call from BT security, so he asked Mr Khuram Farooq to carry out an initial immediate investigation.
23. Mr Farooq interviewed the claimant on 21 October 2021 after which the claimant was suspended on full pay. The investigation meeting was reconvened and the claimant was interviewed by Mr Ward on 1 December 2021.
24. The investigation included interviews with Ms Scott (Assistant Store Manager), Mr Aylsbury, Ms Levy and Ms Lira-Martins, all Sales Advisors. A former Harlow Assistant Store Manager, Mr Rizah Topalli was also interviewed.
25. During the period of the suspension Mr Ward made weekly calls to the claimant as welfare checks. The claimant did not attend every scheduled call. He also maintained contact with the claimant via WhatsApp.
26. On 1 February 2022 the claimant attended the hospital for an MRI scan.
27. Ms Alexandra Goode (Regional Manager) held a disciplinary hearing on 22 February 2022. On 1 March 2022, at a reconvened hearing, the claimant was dismissed without notice.
28. The claimant appealed against his dismissal by email on 15 March 2022.
29. The claimant attended the hospital for an Ear Nose and Throat outpatient appointment on 25 March 2022. The claimant told the respondent about that appointment later that day and raised his deafness and tinnitus as mitigating circumstances. He also requested that the appeal was held in a face-to-face meeting.
30. The respondent invited the claimant to an appeal meeting on 6 April 2022.
31. Mr Ward was interviewed as part of the appeal, which was heard by Mr Jaskaran Singh Shoker, Regional Manager.
32. At his request, the claimant was sent a copy of the clinic letter on 3 May 2022 by the hospital.
33. The claimant provided the respondent with copies of the clinic letters.
34. The claimant's appeal was not upheld and he was informed of this outcome by letter dated 6 May 2022.

The claims and issues

35. The claims and issues were identified during the case management process and were contained at pages 82 – 85 of the hearing bundle.
36. In summary, the issues were as follows:

- a. Disability – disability was denied by the respondent. The claimant asserts that he is disabled by reason of acute sensory neural hearing loss and tinnitus of the left ear.
- b. S.15 Equality Act 2010 – Discrimination arising from disability.
 - i. The claimant asserts that the “something” is his behaviour on 27 August 2021, which led to his dismissal, which arose as a consequence of his disability. The substantial disadvantage is reduced comprehension due to the hearing loss. The respondent asserts that the claimant was dismissed for conduct unrelated to his hearing loss and / or tinnitus.
- c. S. 20 Equality Act 2010 – Failure to make reasonable adjustments.
 - i. The substantial disadvantage is reduced comprehension due to hearing loss;
 - ii. The PCP is having welfare meetings during his suspension from work by telephone.
 - iii. The reasonable adjustments are for in person meetings or for the auxiliary aid being speech to text software, such as Rogervoice.
- d. S.98 ERA – Unfair dismissal
- e. Wrongful dismissal / notice pay.

Findings of fact for Unfair Dismissal

Contract, policies and procedures

- 37. The claimant’s contract of employment is dated 5 April 2006 and his employment commenced on 14 April 2006. This contract of employment contains provisions for the payment of commission to the claimant and for notice periods.
- 38. The claimant was promoted in July 2018 to Store Manager at Harlow.
- 39. The respondent operates a number of relevant policies including the following:
 - a. Disciplinary policy and procedure
 - b. Standards of behaviour policy and procedure
 - c. Acting with integrity
 - d. Ethical Selling policy
 - e. Disability and Vulnerable Awareness Policy
- 40. The disciplinary policy and procedure, titled Handling Misconduct Fairly, provides for the following:

- a. The policy defines gross misconduct at section 9 and includes a definition in that:

9. What's gross misconduct?

It's 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).

- b. The non-exhaustive examples given include:

- *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 / or expenses).*
- *Seriously breaching our Standard of Behaviour policy (including breaking the rules on conflict of interest, offering or receiving a bribe, anti-corruption and bribery).*

- c. It also provides for Suspension at point 10; in that it provides for the respondent to conduct an investigation whilst the employer is out of the business.

41. Within the standards of behaviour policy and procedure, titled Setting the Standard, gross misconduct is repeated from the disciplinary policy.

42. This policy at point 2 provides for the expected level of behaviour, which includes:

- *Always work to the best of your ability, and act in the best interests of the company.*
- *Work with honesty, integrity and in a way that supports our company brand values.*
- *Protect our brands and company image and reputation.*
- *Keep our data and information safe and secure.*
- *Always put our customers at the heart of what we do.*
- *Work within the parameters set out by our policies and procedures.*

43. This policy at section 16 also sets out what the company's policy on equal treatment and ethical obligations in that, in summary, it states:

- *We should treat our customers fairly.*
- *We also have a responsibility to behave ethically.*

44. The Acting with integrity policy states:

Failure to protect our people, customers, assets, regulatory obligations or acting without integrity may be viewed as gross misconduct and will be dealt

with via our company disciplinary process. This sits in conjunction with the EE's Standards of Behaviour policy.

45. The Ethical Selling policy sets out what selling ethically means, including behaviour and legal obligations. This policy is incorporated into the respondent's employees' terms and conditions as selling ethically is essential to the respondent's brand reputation. The respondent is legally obliged to comply with Ofcoms Sales and Marketing Regulations.

46. The Disability and Vulnerable Customer awareness policy sets out the understanding of vulnerability in that it states:

Vulnerability means the customer's situation has exposed them to the risk of experiencing harm, loss or disadvantage.

47. It goes further to define a "vulnerable situation" because this is created by one of three things:

- *The individual (a customer's health condition)*
- *The wider circumstances (a life event)*
- *The actions taken by staff at EE*

48. Further this policy provides an acronym to enable employees to identify and support customers in vulnerable situations. It states:

When talking to a customer, the BRUCE model can help to identify and support customers with decision-making limitations:

B*ehaviour and speech – Look for indicators of a limitation in the customer's behaviour and speech*

R*emembering - is the customer experiencing problems with their memory or recall?*

U*nderstanding – Does the customer understand the information they are being given by staff?*

C*ommunicating – Can the customer communicate their thoughts, questions and ultimately a decision about what they want to do?*

E*valuating – Can the customer "weigh up" the different options open to them?*

49. We find that the policies and procedures were reasonable for a reasonable employer in these circumstances, to have. We also find that these policies and procedures are themselves reasonable.

50. The claimant has accepted during the disciplinary process and in evidence that he had knowledge of these policies and procedures. We find that claimant had knowledge of these policies and procedures, and it was reasonable for him to have that knowledge.

Background

51. The Respondent is a Global provider of hardware and software for the supply of mobile communication and broadband services.

52. The Claimant commenced employment in 2006 as a Phone Trainer and was subsequently promoted to store manager for the respondent's Harlow branch in 2018.
53. The claimant was a store manager for the respondent at the Harlow shop. The relevant team members consisted of the claimant as store manager, Ms Vicki Scott was assistant store manager, and 3 team members, Ms Karis Levy, Mr Bradley Aylesbury and Ms Tanya Lira-Martins.
54. In May 2020 the claimant suffered sudden hearing loss to his left ear. He also complained of perceived tinnitus in this ear. On 5 May 2020 the claimant attended a hospital appointment, by telephone, which confirmed this diagnosis. The claimant attended a follow up appointment on 8 May 2020 and the consultant was hopeful that the claimant's hearing would return.
55. The claimant informed his regional manager, Mr Sham Miah, of his condition at this time. The claimant did not take any sick leave, nor did he require any absence from work to attend medical appointments, whether at the hospital, GP or otherwise. The respondent offered the claimant support, but none was required.
56. In May / June 2021, the entire Harlow store team, except the claimant and Ms Scott resigned and left. Mr Aylesbury, Ms Levy and Ms Lira-Martins were recruited by the claimant and employed by the respondent following these resignations.
57. The circumstances leading up to the claimant's dismissal are centred around one customer, who will be referred to as "the Customer".

June 2021

58. The Customer attended the store on 3 June 2021 and 14 June 2021 where he was allocated 3 more phone lines. This brought the number of lines held by the Customer to 17. These transactions were recorded by the respondent's management information system, which is called Excalibur.
59. Following this transaction, the Customer was paying an average of £272 per month and his lines included 3 phone plans, six tablets, 4 mobile wi-fi plans, 3 watch plans and 1 SIM plan. 10 of these lines were unused.
60. Excalibur requires employees to enter their Unique Identification Number (UIN) when carrying out transactions. On 3 and 14 June 2021, the claimant's UIN was identified on Excalibur as the employee transacting with the Customer.
61. We find that the claimant transacted with the Customer on these dates adding 3 more lines to the Customer's account taking it to 17 lines.

July 2021

62. In July 2021 Mr Miah left the business and Mr Mark Ward was appointed as Regional Manager. The claimant reported into Mr Ward.
63. In July 2021 the respondent had a vacancy for a store in Basildon. This was a bigger store than Harlow and it would be a career development opportunity if the claimant was successful. The claimant applied for the role and carried out a presentation and interview for the vacancy. He performed well. However, he was not successful in this application as other candidates had more experience.
64. Mr Ward approached the claimant to offer the opportunity to work at the St. Alban's store. This would have also been a career development opportunity although this store was not as large as Basildon. However, the claimant did not apply for this role as it was a longer commute than Harlow.
65. Mr Ward offered the claimant a 6-month secondment, but the claimant did not want to go.

July / August 2021

66. On an unspecified date between July and 27 August 2021, the Customer attended the Harlow store. The claimant was not there. The Customer had wanted to speak to someone because he was receiving letters to pay for a broadband service that he didn't know that he had, and he was worried about the charges.
67. The Customer became agitated. He subsequently collapsed and an ambulance was called.
68. The incident was not recorded on Excalibur or any other internal system by Ms Scott.
69. We find that the claimant was not present when the Customer collapsed. We also find that Ms Scott informed him, as her manager, of the incident on an unspecified date later.

27 August 2021

70. On 27 August 2021 the Customer again attended the store.
71. Mr Aylesbury was a new employee with only 4-weeks of service. The Customer wanted an upgrade, but due to the number of lines in operation on his account, this needed a referral to the internal credit reference team.
72. The referral to the credit reference team was made online by Ms Scott. It is the claimant's position that he did not make the referral and it is the

respondent's position that the claimant told Ms Scott to make the referral. We find that this referral was made by Ms Scott at the request of the claimant.

73. The credit referral team called the store, which is standard procedure. The store phone was handed to the Customer and this call was recorded.
74. It is the claimant's position that he was not on the shop floor and did not transact with the Customer. It is the respondent's position that the claimant was on the shop floor and was involved in the transaction. We find that he was on the shop floor and did transact with the Customer. We find that the claimant handed the store phone to the Customer to speak to the credit referral team. We also find that the claimant sat in front of the Customer during this conversation and heard the Customer's side of the conversation.
75. Whilst the customer was on the phone to the credit referral team, it is the claimant's position that there was confusion with the Customer as to how many lines he required. The claimant admits to holding up 3 fingers to the Customer to indicate 3 lines and asserts that he then held up 1 finger to ask the question "3 or 1?". It is the respondent's position that the claimant only held up the 3 fingers and that he was telling the customer to ask for 3 lines, knowing that the Customer only wanted 1.
76. We find that the claimant did hold up 3 fingers and that he did not then hold up 1. We find that the claimant was informing the Customer that he wanted 3 lines.
77. We find that there was no confusion in the store between the claimant and either Mr Aylesbury or Ms Scott. The customer was confused as he wanted an upgrade and he was being sold 3 phones.
78. The call to the credit referral team was ended abruptly, i.e. hung up. The referral team called back three times, but the store phone was not answered. We find that the claimant hung up the call and muted it.
79. The Customer subsequently upgraded his handset, and no new lines were added to his account.
80. It is the claimant's position that following his overhearing the call between the Customer and the credit referral team, he had a strong word with Mr Aylesbury to address this miscommunication and confusion. We find that he did not.
81. We find that the claimant was on the shop floor throughout the period of the Incident, being from the credit referral to the transaction being concluded. We also find that the claimant heard the Customer's answers to the credit referral team and that he told the Customer to say, "3 not 1".

20 October 2021

82. On 20 October 2021 Mr Ward received a call from BT Security following a concern being raised by the credit reference team member and the call with the Customer on the 27 August 2021. The credit reference team member had made a written statement as to their concerns stating that the Customer had been confused on the call. The referral had stated that the Customer had wanted 3 more lines and the Customer had been heard to say that he didn't want 3, he wanted 1.
83. The credit referral team member also complained that following the call between themselves and the Customer had been cut short, i.e. hung up. They had called the store three times to try to speak to the Customer and the phone had not been answered. Following their own procedures, these complaints were raised with the store's regional manager.
84. Mr Ward was at a regional meeting at the time he received the call from BT Security and he therefore asked Mr Khuram Farooq to carry out an initial investigation.

Investigation

85. Mr Farooq met with the claimant on 21 October 2021 with a note taker present (Mr Liam Green).
86. At the outset of this meeting, the claimant confirmed that he was aware and understood the following policies:
- a. Ethical selling policy
 - b. Code of Conduct policy
 - c. Standards of behaviour policy
 - d. What to do to identify a vulnerable customer.
87. The claimant explained how he would identify a vulnerable customer explaining that he would *"listen first with your ear and pick up certain things with the customer, see how they were being treated by the advisor. Then touch base with the customer and the advisor and that if it was just an upgrade, just to make sure everything was fine."*
88. The claimant was told the Customer's name and asked if he knew them and the claimant stated that he did not.
89. Mr Farooq then played the audio clip of the conversation with the credit team member to the claimant. This recorded the following:
- Advisor (credit referrals): OK Brian, so what is it that you're buying from store today?*
- Customer: What am I...*
- Advisor (credit referrals): Buying from store*
- Customer: It's a new ummm... (pause) ummm mobile phone*
- Advisor (credit referrals): How many are you getting?*
- Customer: 1*
- Advisor (credit referrals): Just the 1?*
- Customer: The bloke says no. I've been told 3 by the salesman it's 3*

Advisor (credit referrals): 3...

Customer: 3...

Advisor (credit referrals): But are you sure you want 3... cus we don't want you paying for 3 if you only want 1

Customer: That's what I thought...

Advisor (credit referrals): Right, this is why I'm here... just to make sure that everything is correct cus we don't want you getting the wrong order

Customer: Yes. They keep selling me 3 or 4 telephones, I come in for 1 and end up getting the opposite. (Inaudible) I've got a tablet, when I came in for the tablet

Advisor (credit referrals): Yep

Customer: They gave us 3 of them

Advisor (credit referrals): Right

Customer: And I also bought a Wi-Fi booster, I asked for 1 of those but was given 3 of them. I was given a google phone.

Advisor (credit referrals): Ahh

Customer: Which I never asked for

90. Following the recording being played, the claimant accepted that the Customer seemed confused as he did not understand what the credit referral team member was asking for.
91. The claimant was asked why the Customer said that he is being told to say three lines and not one. The claimant said that this was because of a confusion between Mr Aylesbury and the Customer and that he wasn't aware of the conversation.
92. After the recording ended, Mr Farooq asked the claimant if he knew the Customer as the Customer had 17 lines. The claimant stated that he didn't know the name but might know him by face.
93. The claimant was asked who had put the referral through to the credit referral team and he didn't know.
94. Mr Farooq analysed the Customer's account on Excalibur and this showed that he had 17 lines with an average monthly bill of £272.
95. The claimant was shown his Excalibur record which had his UIN detailed. Excalibur is a management information system that records interactions between customers and the company in relation to their accounts. This information showed that the claimant had provided the Customer with 3 more phone lines in June 2021.
96. The claimant accepted during the meeting that during the call the Customer had sounded confused in that the customer actually wanted 3 lines but has become confused.
97. Mr Farooq showed the claimant some CCTV images. These images show the following:
 - a. The claimant handed the Customer a phone
 - b. Whilst the Customer is on the phone, Mr Aylesbury shows him 3 fingers

- c. The claimant then sits in front of the Customer and also shows 3 fingers
 - d. The claimant remains sat in front of the Customer and Mr Aylesbury and Ms Levy appear to be laughing at the rear of the store.
98. When asked about this, the claimant stated that the only thing he could think of was that the Customer asked for 3 and got confused on the phone and he just followed up what the customer was asking for.
99. The investigation meeting was adjourned briefly.
100. On reconvening, the claimant stated that he didn't know the size of the Customers family and he may have wanted all the additional lines for family members, that this was all confusion between the credit team member and the Customer.
101. The claimant told Mr Farooq that the Customer *"paid his bills... and has signed the contracts.... so it was his responsibility, otherwise you're telling me not to sell"*
102. The claimant also told Mr Farooq *"there is no confusion in store, only over the phone."* In evidence the claimant stated that there was confusion in store as he was confused whether the customer wanted 3 or 1. He said he had been told by Ms Scott and Mr Aylesbury that the customer wanted 3 and he believed them. When the customer said this, he held up 3 fingers to Mr Aylesbury to ask.

Suspension

103. At the conclusion of the meeting on 21 October 2021 the claimant was suspended on full pay and Mr Farooq read the suspension guide to the claimant. This was confirmed in writing by letter dated 28 October 2021.
104. We find that this was a reasonable course of action of a reasonable employer in these circumstances. This removed the possibility of interference in the investigation with any team members or the Customer himself.
105. During the suspension Mr Ward held weekly welfare meetings. These were held by Teams or by telephone. The claimant did not attend every meeting, despite this being a requirement from him.

Investigation meetings with team members:

Ms Karen Levy

106. Mr Farooq interviewed Karis Levy on 21 October 2021.
107. Ms Levy was a new member of the team and had been employed by the respondent for 3-months.
108. Ms Levy confirmed that she knew the customer. She also told Mr Farooq that it was the claimant who told Mr Aylesbury that the customer needs to take 3 lines. She was certain of this.

109. Ms Levy confirmed that whilst the Customer was on the phone to credit referral, the claimant sat in front of the Customer and pointed 3 fingers at him because the claimant kept telling the Customer “ask for 3” when they ask you and “ask for 3 and not just the 1”. That is the conversation he was having in the CCTV image. She also confirmed that Mr Aylesbury was laughing about this.
110. Ms Levy confirmed that the Customer was well known by everyone in the store and that he was known to be vulnerable. She then went on to tell Mr Farooq about the customers collapse in July or August 2021 during his time in the store to discuss the broadband service he was being asked to pay for. Ms Levy told Mr Farooq that she believed that the claimant was aware of this situation as Ms Scott had told him.

Ms Vicki Scott

111. Ms Scott, Assistant Store Manager, was interviewed by Mr Farooq on 22 October 2021. Ms Scott had been with the respondent for 4-years and was the only remaining member of the claimant’s original team.
112. Ms Scott confirmed that she remembered the Customer and that he had had a problem with broadband, resulting in an ambulance being called. She stated that he was a regular customer and that the claimant had served him.
113. During this interview Ms Scott stated that the claimant said that he would put the credit referral through for the Customer.
114. Ms Scott was re-interviewed on 17 December by Mr Ward and Mr Farooq. Ms Scott admitted that she had put the referral through without speaking fully to the Customer and without checking the number of lines. She said that she did this because the claimant had told her to do so. Ms Scott was subsequently disciplined and received a disciplinary sanction for her conduct.

Mr Bradley Aylesbury

115. Mr Bradley Aylesbury, Sales Advisor, was interviewed by Mr Liam Green on 25 October 2021. Mr Aylesbury had been with the store for 4-months.
116. Mr Aylesbury knew the Customer and confirmed that he believed that the Customer was vulnerable and was confused all the time.
117. Mr Aylesbury confirmed that he spoke to the credit referral agent before giving the phone to the claimant, who gave it to the Customer. He also stated that it was the claimant who told him to add the 3 lines, and that it was the claimant who can be hearing on the credit referral recording telling the Customer to add 3 lines, not one.
118. The meeting was reconvened on 9 December 2021, Mr Aylesbury raised the point that he had heard from a former colleague, Mr Rizah Topalli in that he believed that the claimant had done this to his team before and they all left over it. Mr Aylesbury was subsequently disciplined and received a disciplinary sanction for his conduct.

Ms Tanya Lira-Martins

119. Ms Tanya Lira-Martins, Sales Advisor emailed Mr Green on 27 October 2021 following a conversation between them. Ms Lira-Martins told Mr Green that on the same day as the Incident, the claimant had put through an internet sale in her name without her knowledge, or the customer's knowledge, and then cancelled this the following day.
120. Ms Lira-Martins also provided details of another incident with the Customer where the Customer had tried to return 2 tablets still in their sealed packaging. He had told her that he had been told that he had to take 3 to get the tablet that he wanted. Ms Lira-Martins referred this to the claimant but could not detail the outcome of their discussion.
121. On 17 November 2021, Ms Lira-Martins was interviewed by Mr Green. Ms Lira-Martins confirmed that the claimant knew who the Customer was and that every time the Customer came in, the claimant would make a joke and require the team to sell the Customer broadband. She said that he also knew how many lines the Customer had. On the day of the Incident, she told Mr Green that it was the claimant who told Mr Aylesbury to sell the Customer 3 lines. She also told Mr Green that the previous team left because of the claimant's actions.
122. The interview was reconvened on 8 January 2022 with Mr Ward and Ms Lira-Martins confirmed what she had told Mr Green regarding the broadband and the 3 lines being added to the Customer's account. Ms Lira-Martins stated that it was the claimant who was trying to add the lines and that Mr Aylesbury had told her that he was worried because the Customer only wanted 1 line but the claimant was trying to connect 3.

Reconvened Investigation with claimant

123. The meeting concluded on 21 Oct 21 and reconvened with Mark Ward on 1 December 2021. This meeting was by Teams.
124. The claimant again confirmed his understanding of the standards of behaviour policy.
125. The claimant told Mr Ward that he did not know the Customer.
126. Mr Ward asked the claimant, *"you have a customer with 17 lines, 10 of which were not used and an advisor was trying to add 3 more lines, what due diligence was done to understand why the customer wanted to add more lines"*. The claimant did not answer this question.
127. The claimant would not accept that the Customer was vulnerable. Mr Ward explained to the claimant that the Customer was elderly. The claimant asserted that to consider that the Customer was vulnerable because of his age was discriminatory. He stated that the Customer was not vulnerable because he paid his bill every month.

128. When asked why the customer was trying to add 3 more lines, when he had 17, ten of which were unused, the claimant said that he didn't know. He also stated that he didn't know the size of the Customer's family.
129. It was the claimant's account that if Mr Aylesbury had told him that the customer had so many lines, he would have investigated the account.
130. The claimant repeated his position that he would not class the Customer as vulnerable as he knows how much he was paying and how much he is going to be paying. If the Customer was vulnerable, the claimant stated that Ms Scott should have told him as she put the credit referral through.
131. Both Ms Levy and Mr Aylesbury described the customer as vulnerable to the investigation managers.
132. It was the claimant's position that the Customer was not vulnerable and that he could not recall the Customer on the day as he did not deal with the Customer. Ms Scott had made the credit referral and Mr Aylesbury had concluded the sale. He also stated that he did not know the size of the Customer's family. This was the claimant's position, and he repeated this to Mr Ward.
133. It was also the claimant's position that he was not on the shop floor, but in and out from the back office.
134. Mr Ward asked the claimant why no one answered the phone when credit referrals tried to call the store. The claimant did not know why. In evidence, the claimant stated that the volume must have been turned down.
135. In evidence the claimant stated that he had a strong word with Mr Aylesbury for hanging up the call to credit referral. He did not tell either Mr Ward or Mr Farooq this.
136. There was an adjournment to the meeting as Mr Ward told the claimant that he wanted to watch the CCTV. The claimant was not offered to watch the CCTV, nor did the claimant ask to see the CCTV.
137. Mr Ward told the claimant that he had seen the video and that that the claimant was there throughout the whole transaction.
138. The claimant had copies of the CCTV stills and Mr Ward confirmed to the claimant that the CCTV footage showed him on the shop floor throughout the Incident.
139. Mr Ward asserted in evidence that the CCTV stills showed the relevant images of the Incident. We find that the CCTV stills did show the relevant images of the Incident.
140. The claimant still could not recall the Customer or serving him that day. He states that the misunderstanding was on the phone, between the credit referral and the Customer and then the phone got put down.
141. The claimant was asked by Mr Ward to explain why he was trying to add 3 lines to the Customer account, when the Customer wanted an upgrade and

he replied that it was Mr Aylesbury, Mr Aylesbury was new and that the customer misunderstood the terminology that it was a bundle of 3 items, and that he was in and out of the store. This was contrary to Mr Ward stating that he was on the floor the whole time.

142. Mr Ward did discuss the claimant's health and the claimant confirmed he was stressed by that he was "*powerful and confident*" in what he did. He needed more personnel.

Rizah Topalli

143. On 8 January 2022 Mr Ward contacted Mr Rizah Topalli, the former assistant manager of the Harlow store, at his current store via Mr Topalli's store manager. This was arranged following an allegation raised by Mr Aylesbury. The meeting was focused on one question in that Mr Ward asked Mr Topalli "*Did you say to Bradley, Jas has done this before and his whole team left?*" Mr Topalli confirmed that he had and corroborated that new starters were picking up these practices from the claimant.

144. The meeting note recorded that this meeting was by Teams. In evidence, Mr Ward stated that this was a typo and the meeting was by telephone and that he had typed the notes himself.

145. We find that the meeting with Mr Topalli was by telephone and the reference to Teams on the meeting note was in error.

Investigation outcome

146. Following the investigation interviews by Mr Farooq, Mr Green and Mr Ward, Mr Ward prepared an investigation report and submitted this to the respondent. The report detailed that the facts were:

Having completed my investigations into the case of alleged misconduct, I've come to the following conclusions:

After completing the investigation, the Facts allegedly are:

- *Jaspal was involved in serving the Customer (our redaction) and did request the credit referral on 27/08/2021.*
- *The customer did have 17 lines already with 10 not being used.*
- *Three fingers were held up by Bradley & Jaspal to the customer whilst he was saying he only wanted 1 connection on the phone to credit referrals.*
- *All 17 connections were added or upgraded in the Harlow store.*
- *The customer is considered vulnerable and a regular visitor of the store by multiple staff members.*
- *If credit referrals had allowed the connections, it is alleged they would have processed them.*
- *Jas makes no attempt to question why the customer is confused and instead puts 3 fingers up to influence the customer to say 3.*
- *Jas claimed the Customer (our redaction) may have a big family and that is the reason for so many lines and then when reconvened and questioned on*

why 10 are not used he claimed thy (sic) must be used on WI-FI although could not actually give me clarity.

- *Jas has continued to change his version of events after adjournment after having time to reflect and having seen the evidence.*
 - *Multiple staff members mention Jas serves the Customer (our redaction) on a regular basis and they would consider him to be venerable (sic).*
147. Mr Ward did refer to the claimant using his mental health as mitigation. From the interview with Mr Ward, the only reference to mental health is the claimant's reference to his loss of hearing and the stress he is under. Nothing further is said.
148. The outcome was that the case was progressed to a disciplinary hearing.
149. We find that the Customer was vulnerable and it was reasonable for Mr Ward to believe this.
150. We find that the claimant was on the shop floor during the Incident and it was reasonable for Mr Ward to believe this.
151. We find that the claimant instructed Ms Scott to submit the credit referral and it was reasonable for Mr Ward to believe this.
152. We find that the claimant instructed Mr Aylesbury to try to sell 3 lines to the Customer and it was reasonable for Mr Ward to believe this.
153. We find that Mr Ward had the relevant CCTV stills that show the claimant on the shop floor. We find that the stills show the claimant holding up 3 fingers to the Customer and that the claimant did not then hold up 1 finger as asserted by him.
154. We find that Mr Ward had regard to all the investigation material to prepare the investigation report.
155. In evidence the claimant asserted that the witness statements from his colleagues (Scott, Aylesbury and Lira-Martins) had been fabricated or amended by Mr Ward. We have found that the statements were taken by three different managers. We find that the content of the statements is consistent, but not identical and no issue with the statements has been raised previously. We find that the statements have not been fabricated or amended.
156. We find we prefer the evidence of Mr Ward ahead of the claimant and it is consistent with the investigation documents.

Disciplinary

157. On 25 January 2022 the respondent, Ms Alexandra Goode sent the claimant a letter detailing the allegations against him.
158. The claimant was warned that the conduct may be considered to be gross misconduct and that one outcome could be dismissal without notice. The invitation confirmed that the meeting would be held on 1 February 2022 and would be by Teams. For this meeting, he was informed of his right to be

accompanied and was also invited to contact the disciplinary manager in advance of the meeting if he required any reasonable adjustments.

159. The letter enclosed the following documents:
- a. Disciplinary Policy and Procedure
 - b. Standards of Behaviour Policy and Procedure
 - c. Acting with integrity Policy
 - d. Disability & Vulnerability Policy
 - e. Call transcript
 - f. Statement from credit referral advisor / Excalibur evidence –showing sales processed in Harlow for Customer
 - g. The investigation meeting notes of the claimant's meeting
 - h. Investigation report dated 18 January 2022
 - i. Suspension letter dated 28 October 2021
160. The letter did not enclose the following documents, but the claimant was invited to request them beforehand, should he wish to see them:
- a. Recording of the credit referral call
 - b. CCTV images
 - c. Bradley Aylesbury interview
 - d. Karis Levy interview
 - e. Tanya Lira-Martins interview
 - f. Vicki Scott interview
161. The claimant did not request any further documents or adjustments prior to the disciplinary meeting. The invitation letter confirmed that the disciplinary process was confidential.
162. The interview meeting notes with Mr Topalli were not part of the disciplinary paperwork and were not taken into consideration.
163. The claimant was invited to a meeting by letter dated 1 February 2022 to be held on 22 February 2022. This informed the claimant that the meeting would be on Teams, as agreed and repeated the right to be accompanied.
164. The letter included the allegations against the claimant as follows:
- It is alleged that on 27th August 2021, in your role as store manager, you have acted dishonestly and failed to uphold the standards of ethical sales, by taking advantage of a vulnerable customer with the intention to gain additional sales, despite the customer requesting only 1 additional line only.*
165. The letter then provided further particulars, which were, in summary:
- a. The claimant had instructed the Customer to tell the credit referral team on the phone that he wanted 3 lines despite the Customer stating that he only wanted one.
166. The letter confirmed that the allegation was that his conduct was in breach of the following policies:

- a. Acting with Integrity Policy
- b. The Disability and Vulnerability Policy:
- c. The Standards of Behaviour Policy and Procedure

167. The claimant did not request a face-to-face meeting.
168. The disciplinary meeting was held on 22 February 2022 with Ms Goode as the disciplinary manager. The meeting was held on Teams with the claimant and Ms Goode. The respondent had a note taker being Ms Kirsty Evers and the claimant had a trade union representative being Mr Robert Seacombe.
169. At the outset of the meeting Ms Goode confirmed with the claimant that he understood the allegations against him and that he had received the documents.
170. During the interview, the claimant accepted that he knew the Customer. He confirmed that he had checked that the Customer could and had paid his accounts, but he did not accept that the Customer was vulnerable. He stated that Mr Aylesbury had conducted the transaction and that that it was Mr Aylesbury who told him that the Customer wanted 3 lines.
171. The claimant raised his health issues with Ms Goode and confirmed he had lost his hearing and had severe tinnitus. Ms Goode asked the claimant about this, but he did not provide any further evidence other than he could now remember the Incident.
172. The claimant stated that Ms Scott had not told him that the Customer was vulnerable and that she had made the referral.
173. The evidence from Ms Scott in her statement to the investigation was that she did not deal with the Customer on the day of the Incident but put through the credit referral following the Claimant's instruction. This was put to the claimant, but he stated that Ms Scott had made the referral, not him. The claimant does not answer this question.
174. We find that Ms Goode preferred the statements from Ms Scott and her colleagues ahead of the claimant's evidence.
175. Ms Goode asked the claimant if he had listened to or read the transcript of the credit referral meeting. The claimant stated that he had only just seen the transcript.
176. The claimant confirmed that he had overheard the Customer's side of the conversation with the credit referral team and that the Customer had wanted 1 line and not 3. He said that Mr Aylesbury was confused and that Ms Scott was responsible.
177. The Customer was discussed. The claimant stated that he knew the Customer well, that he was a nice guy, he sounded confused on the recording, but he was not vulnerable. The claimant accepted that he had helped the Customer previously with devices and set ups.

178. The claimant's representative accepted that the Customer was vulnerable, but the claimant did not. It was the claimant's position that the Customer had not been flagged on the system as vulnerable, so he wasn't.
179. The claimant denied that he was selling extra handsets to hit targets.
180. The claimant's position was:
 - a. that he wasn't aware that the Customer was vulnerable as this was not on the system,
 - b. that no-one had told him that the Customer had 17 lines,
 - c. that he had only dealt with him the once in June,
 - d. that Mr Aylesbury did the transaction, and
 - e. Ms Scott did the referral.
181. The meeting was adjourned. The claimant was sent a copy of the meeting notes and he was permitted to make amendments to these. His amendment added that the investigation report referred to Ms Scott noting that the Customer was vulnerable, but that a flag was not raised on the system to record this. This, the claimant stated, was contrary to policy.
182. The disciplinary hearing was reconvened on 1 March 2022, again by Teams. The claimant was represented by Mr Seacombe, again.
183. The allegations and policy breaches were recapped.
184. The claimant again confirmed that he did not consider that the Customer was vulnerable. He also confirmed that he had conducted credit referrals for the Customer in June 2021, despite denying to the investigation officer that he did not know him.
185. The claimant was asked why Ms Levy and Mr Aylesbury had said it was him who said to put through 3 lines, he stated that he was surprised by this and that he had done nothing wrong.
186. The claimant was also asked about his old team and he confirmed that they had all been involved in illegal activities and had all resigned before any formal sanction.
187. The meeting was adjourned for the outcome to be considered.
188. Upon reconvening, the claimant was told that he was dismissed with immediate effect. Ms Goode upheld all the allegations against the claimant and confirmed that she had considered all of the evidence and taken his mitigation and length of service into account. Ms Goode stated that she believed that there was a breakdown in trust and that at no point had the claimant showed remorse, accountability or ownership.
189. The respondent issued a letter confirming dismissal on 10 March 2022. This had an attachment with the rationale for the dismissal.
190. The outcome letter confirmed the following findings:

You raised and confirmed the following in response to the allegations:

- *You stated during your investigation meetings that you didn't know the customer in question, however after receiving all documents you stated at the hearing you do remember him, and that this customer was introduced to you by your ASM in August 2018 and is a regular at the store.*
- *You denied the allegations against you. You stated that Bradley, your new starter, had told you that this customer wanted 3 lines, a bundle and that was why you were seen to be holding 3 fingers up in the CCTV stills, as you were trying to clarify how many lines he wanted.*
- *You felt this customer was not vulnerable despite all your Team stating in their statements they felt he clearly was. You felt he was a little bit slow when interacting but you did not want to discriminate against him.*
- *You told me that you had completed your diligence checks by checking he could afford the lines, despite the customer having 17 lines and you didn't at any time question this despite also doing 3 referrals yourself again back in June 2021 and 10 lines having 0 usage.*
- *You stated the compliance at your store is good and that all the team are trained, yet you were surprised your ASM had not raised a red flag on this customer's account, given that they were aware they were vulnerable and due to the number of times they had served him.*
- *You also confirmed that you were responsible for ensuring the correct ethics are in place at the Store.*
- *You confirmed that at no point you were concerned about Bradley's ethics when serving this customer.*
- *You alleged, you only transacted with this customer once despite your UIN being present on transactions in both June and August 2021.*
- *You put forward that you know the difference between right and wrong and you have been with EE since the Orange days.*
- *You stated that your ASM had sent the referrals however in her statement she states that you requested she sent it.*
- *You informed me you suffer with severe tinnitus.*

My findings / concerns are as follows:

- *That you have been employed with the business for over 15 years at the time and fully understand what is required of you when you are interacting and transacting with our customers.*
- *I believe you knowingly took advantage of this customer in order to gain extra Sales. You are clearly seen in the CCTV still holding up 3 fingers when the customer was on the phone to the Credit Referrals Advisor. The customer clearly states he only wanted 1 line but that the salesman is saying*

its 3 and went onto state that your store keeps selling him 3 or 4 telephones when he only comes in with the intention of wanting 1. Upon being aware of this, you didn't then investigate what had happened, which would be an expectation of someone in your position.

- *Your actions caused the Credit Referrals Agent to be so concerned that they went onto raise their concerns formally about the store's dealings with this customer.*
- *You have acted without integrity.*
- *That you have breached company policies and failed to put the Customer at the heart of what we do.*
- *You failed to work with integrity and honesty.*
- *I believe there is a breakdown of trust between you and the business.*
- *You failed to take any ownership or accountability for your actions at your hearing.*
- *You failed to show any remorse or concern for the customer at your hearing.*
- *All the statements provided, state that you used to take advantage of this customer and even joked about adding a HBB on. In particular both Bradley and another Advisor have stated that you were the one who told Bradley that the customer needs to take 3 lines. Bradley confirmed he felt pressured by yourself to do this. The other Advisor present also confirmed that you had said to the customer "ask for 3 when they ask you, not just the 1." Ultimately the evidence shows you holding 3 fingers up at the customer and the witness statements collaborates the versions of events.*
- *That your actions have detrimentally impacted a vulnerable customer financially, which I cannot ignore.*

191. The letter confirmed that Ms Goode had considered mitigation and alternatives to dismissal. This included the following:
 - a. Length of service
 - b. Clean disciplinary record
 - c. Awareness of company policies and procedures
192. Ms Goode concluded that the allegations had amounted to an irreparable breakdown in the trust and confidence in the working relationship.
193. The claimant was given the right to appeal the disciplinary decision.
194. We find that the sole reason for the claimant's dismissal was his conduct on 27 August 2021 in relation to the Incident.
195. We find that Ms Goode genuinely believed that the claimant had acted in the manner alleged.

196. We find that Ms Goode had regard to all the investigation material prior to the disciplinary meeting.

Appeal

197. On 14 March 2022 the claimant sent an email requesting an appeal to the outcome of his disciplinary.
198. The respondent replied asking for details of the claimant's appeal.
199. On 15 March 2022 the claimant confirmed that in summary, he did not agree with the investigation report or the disciplinary outcome. He wanted to appeal on the following grounds:
- a. That the claimant's points had been overlooked.
 - b. That the report does not coincide with the events that occurred.
 - c. That the outcome was incorrect.
 - d. That it was not about him and he was not to blame.
200. By letter of 24 March 2022, sent by email, the respondent invited the claimant to an appeal meeting by Teams. This letter also confirmed that the claimant had the right to be accompanied and advised the claimant that if he needed any adjustments, then he should ask.
201. By email dated 25 March 2022, the claimant requested a face-to face meeting. It was agreed that this would be held in London.
202. Within this email, the claimant referred to further mitigating circumstances, being the deafness in his left ear and tinnitus. Because of these conditions, the claimant asked for the meeting to be face-to-face. He does not raise any other point of mitigation.
203. On 6 April 2022, the respondent sent the claimant a letter to invite him to an appeals meeting in Central London with Mr Jaskaran Singh Shoker. The claimant was informed of his right to be accompanied. Mr Shoker was new to the business and the claimant did not object to his appointment as appeals manager.
204. On 8 April 2022 the respondent again asked the claimant for his specific points of appeal.
205. On 12 April 2022, Mr Topalli sent an email to the respondent's ER Case Professional, Andrea Pretlove, stating that he had seen the investigation report regarding the claimant and asking for his statement to be withdrawn from the investigation. Mr Topalli stated that the claimant was one of the best store managers he had ever worked with and that the claimant did not apply pressure to new starters.
206. The respondent contacted Mr Topalli to determine how he had had sight of the confidential investigation report, but he did not reply.
207. On 13 April 2022, the claimant met with Mr Shoker in person. The hearing was recorded on Teams. In evidence Mr Shoker confirmed that the meeting notes were accurate to the best of his recollection.

208. The claimant attended the hearing with his employee representative, Mr Lee Memhi.
209. At the start of the hearing, the claimant provided Mr Shoker with a physical copy of the statement from Mr Topalli retracting his statement to Mr Ward. The claimant was unable to tell Mr Shoker how he had come by this statement or how Mr Topalli had seen the investigation report, given that the disciplinary process is a confidential process.
210. The first issue discussed was the medical evidence. The claimant stated that he had not disclosed it previously as it was personal. This included a discussion of when the claimant had told the respondent about his hearing loss. The claimant confirmed that he had told Mr Miah, but the claimant did not need anything further.
211. During the appeal, the claimant stated that this case was a matter of misunderstanding, miscommunication and mishearing. He stated that the shop floor was run by the Assistant Sales Manager, Ms Scott, and that he was carrying on with operational tasks in the back office. He states that he did not process the sale. He also states that he believes that Mr Ward's investigation report notes have been cherry picked, falsified and that he has been witchhunted.
212. The claimant also told Mr Shoker that he had apologised to the Customer once the call to the credit referral team had ended. He said that he explained that Mr Aylesbury was a new starter and apologised for any misunderstanding because of this.
213. Mr Shoker allowed the claimant to direct the conversation and to tell him anything that he wanted to discuss. The meeting was adjourned and Mr Shokah decided to widen his investigation into the appeal.
214. On 14 April 2022, the claimant provided the respondent with his medical evidence being:
- a. 5 May 2020 diagnosis of perceived total hearing loss on left side and continuous tinnitus.
 - b. 6 May 2020 That the hearing loss in the left ear was neural in character. That there was a 30% chance of the hearing returning to normal.
 - c. 12 January 2022 an invitation for an MRI on 1 February 2022
 - d. 23 March 2022 an invitation for an outpatient appointment on 25 March 2022
215. Also, on 14 April 2022, the claimant emailed Mr Shoker with more points for consideration within the appeal. In summary these were:
- a. That there was new evidence in relation to the Customer having had a seizure in the store and that this was the first he was aware of this.
 - b. That he should have been told about the seizure, it should have been on the customer's file and that the ASM had failed to follow policy.
 - c. How did Ms Lira-Martins know to email Mr Green?
 - d. That he was appealing against his name being forwarded to CIFAS.

216. On 28 April 2022 Mr Shokah met with Mr Ward by telephone.
217. Mr Ward confirmed that the original evidence was provided by BT Security, including the transcript, the CCTV footage and the CCTV stills.
218. Mr Shokah discussed Mr Ward's investigation with him.
219. Mr Ward confirmed that he had spoken to another colleague, Mr Adam Salah, and explained why the evidence was not relevant to the Incident. Mr Salah had served the Customer previously, but he had no part in the Incident.
220. Mr Shokah asked Mr Ward about Mr Topalli and Mr Ward confirmed that he had spoken to Mr Topalli as Mr Aylesbury had mentioned his name. Mr Ward confirmed that Mr Aylesbury had said that Mr Topalli had told him that the claimant had done this to his team before and that Mr Ward had spoken to Mr Topalli via the relevant line manager. The conversation was by telephone, with consent and Mr Ward made his own notes.
221. Mr Shokah also discussed the welfare meetings with Mr Ward. Mr Ward confirmed that he would agree meetings with the claimant for the following week and occasionally he would not attend.
222. On 5th May 2022, the claimant forwarded a further medical letter dated 6 May 2022 to Mr Shokah. This was the outcome from the appointment on 25 March 2022. The letter was provided by the hospital as proof of clinic attendance. The outcome confirmed that was conductive hearing loss in the right ear and moderate to severe sensorineural hearing loss in the left ear.
223. On 6 May 2022, the respondent sent the claimant an appeal outcome letter, which included a copy of the meeting notes. A copy of the audio recording was also offered.
224. Mr Shokah had extracted the following points of appeal:
 - a. The documentation regarding the claimant's hearing.
 - b. That the investigation was false, mis-leading and misrepresentative.
 - c. That there the store was operationally excellent and that there was no mis-selling from the Customer and People Dashboard.
 - d. That Mr Topalli wanted to retract his statement to Mr Ward as he did not agree with the points made.
 - e. That another colleague had been interviewed and their statement wasn't included.
 - f. That the compliance levels at the store were satisfactory.
 - g. That sales were made on the Customer's account when the claimant wasn't there.
 - h. That it was a witch hunt because of his gender or hearing.

- i. That there was new information regarding another colleague who had not been dismissed.
- j. That he was not aware of the Customer's seizure.
- k. That he should not be referred to CIFAS for fraud.
- l. How did Ms Lira-Martins know to email Mr Green?

225. Mr Shoker reviewed each point raised in the appeal and, in summary, responded to each:

- a. That the claimant had received support required when he was diagnosed, and that his hearing loss did not change the disciplinary outcome in that on 27 August 2021, he acted dishonestly.
- b. That Mr Shoker had investigated the investigation and was satisfied that the process was fair and constructive. He acknowledged that the process had taken too long but determined that there was no detrimental impact on the outcome.
- c. That the Customer and People Dashboard was not relevant to this case, or the investigation.
- d. There was concern regarding the confidentiality of the process given that Mr Topalli had seen the investigation report and that the claimant was unable to answer how this had happened or how he had obtained a physical copy of Mr Topalli's retraction. Mr Shoker accepted Mr Topalli's retraction and confirmed that it would not form part of his decision. He also stated that he deemed that there had been a serious breach of confidentiality during the process.
- e. Mr Shokah confirmed that he had spoken to Mr Ward and obtained the name of the additional colleague. He also confirmed that this statement was not relevant in the disciplinary matter regarding the claimant.
- f. Mr Shokah accepted that the store had excellent scores in relation to compliance. This indicated that there was an understanding of the policies mentioned in this case. He also stated that whilst compliance levels were positive, this didn't take away from the claimant's actions and involvement in the Incident.
- g. Excalibur showed that the claimant, identified by his Unique Identification Number (UIN), had transacted with the Customer in both June and August 2021. Mr Shoker did not accept that the claimant was not there when these transactions occurred.
- h. Mr Shoker was satisfied that the disciplinary decision had been made solely on the evidence and not the claimant's protected characteristics. This evidence included the transcript from the credit referral call with the complaint, CCTV stills and the audio recording.

- i. Mr Shoker confirmed that he was unable to discuss any case against any other colleague with the claimant.
 - j. The outcome confirmed that referrals to CIFAS included anything that includes and employee's integrity that goes against company policy and procedure.
 - k. In relation to Mr Green, Mr Shoker understood the claimant's concern to be that Mr Green had not been impartial in his role in the investigation. Mr Shoker was satisfied that Mr Green's involvement had been limited to assisting in taking statements and that there was no evidence to show any impartiality.
226. None of the claimant's points of appeal were upheld.
227. Mr Shoker considered all the claimant's points of appeal and noted:
- a. The evidence substantiates the allegations against the claimant.
 - b. His conduct had impacted on the Customer and the business.
 - c. That the claimant had had previous transactions with the Customer, who was vulnerable and had been taken advantage of.
 - d. That the claimant failed to work with honesty, integrity and with trust.
 - e. That the claimant had excellent compliance scores showing understanding of policies and procedures and that the claimant should know right from wrong.
 - f. That the evidence highlights a significant breakdown in trust and confidence.
 - g. That mitigation had been considered, but with his length of service and seniority it was the claimant's responsibility to provide diligence and supervision to protect customers.
 - h. That there was no remorse by the claimant or any acceptance of any impact on the Customer.
 - i. That as store manager he had failed to lead and nurture the correct behaviours.
 - j. That there was no new evidence or information to alter the original decision.
 - k. That the claimant's conduct has resulted in a breakdown in the trust and confidence of the working relationship.
228. We find that Mr Shoker had regard to all the investigation and disciplinary material prior to the appeal meeting.
229. Mr Shoker was satisfied that the original decision was fair, reasonable and appropriate.

230. We find that the respondent conducted a thorough appeal in circumstances where the claimant had not provided points of appeal. We find that this was a re-hearing of the disciplinary.
231. We find we prefer the evidence of Mr Shoker ahead of the claimant and it is consistent with the appeal documents.

Wrongful Dismissal

232. It is the claimant's position in evidence that when the Customer attended the store, he was in the back office. He stated that Mr Aylesbury had spoken to the Customer and that Ms Scott did the credit referral. The claimant stated that he did not have any part in this transaction.
233. We find that the claimant was involved in the Incident. We accept that he was in the back office when the Customer arrived at the store but find that he was engaged on the shop floor and with the Customer throughout the period of the credit referral call.
234. We find that the claimant understood the respondent's policies and procedures but failed to act in accordance with these. The claimant accepts that he heard the Customer's side of the conversation with the credit referral team, but he did not take action when the Customer stated, *"They keep selling me 3 or 4 telephones, I come in for 1 and end up getting the opposite"*.
235. The claimant accepted that the Customer sounded confused, but at no time did he accept that the Customer was vulnerable. This denial was on the sole grounds that the Customer was paying his monthly bills. We have found that the Customer was vulnerable. We find that the claimant acted in the manner alleged and that his conduct on 27 August 2021 was intentional and wilful.
236. We find that there was no remorse from the claimant at any time in the process or in these proceedings until the closing submissions.
237. We find that the claimant has shown no accountability or responsibility for his actions, seeking to pass the blame to Mr Aylesbury and Ms Scott.
238. This was a significant incident involving a vulnerable customer. We have found that the respondent has reasonable policies and procedures in place to ensure that employees act with integrity and honesty and put the customer at the heart of what they do. The policies and procedures also detail the potential consequences for failing to act in accordance with them, which includes dismissal without notice. We find that the claimant did not act in accordance with these policies and procedures on 27 August 2021.

Findings of fact for Disability

Disability

239. In February 2020 the claimant began to experience hearing difficulties and in May 2020 he lost his hearing in his left ear.

240. On 5 May 2020, the claimant attended the ENT department of Barking, Havering and Redbridge University Hospital with Acute sensory neural hearing loss in his left ear. This appointment was by telephone.
241. The Consultant ENT & Sleep surgeon recorded that the claimant “*awoke suddenly on 3rd May with what he perceived to be total hearing loss on the left side and a continuous tinnitus with no pain or discharge, balance issues, headache or facial weakness.*”
242. The Consultant requested hearing tests and then a routine follow-up after the pandemic to evaluate his hearing and to see if further intervention was required.
243. On 8th May 2020 the claimant was seen by a Consultant ENT Surgeon. The Consultant was satisfied that the hearing loss was neural and that there was a 30% chance that it would return, particularly as he had received treatment immediately. The prognosis was that the Consultant was hopeful that the claimant’s hearing would return. The claimant informed his manager Mr Sham Miah, his area manager, of his condition at this time, being May 2020.
244. We find that the respondent was aware of the claimant’s hearing loss and perceived tinnitus in his left ear from May 2020.
245. The claimant continued to work without taking any sick leave or any time off for appointments, whether to the GP or to a consultant appointment. There is no evidence of any medical appointments from the period of May 2020 until January 2022, when he received an appointment letter for an MRI.
246. The claimant was not in receipt of any treatment for his hearing or any consequential condition. In evidence, the claimant confirmed that he had not sought any medical assistance or support from his GP or otherwise. The claimant also confirmed that he had not taken any sick or other leave because of the hearing loss or tinnitus in his left ear. The respondents stated that the claimant would be permitted to take time off for medical appointments. We find that the claimant would have been permitted this time off if it had been requested, but it was not.
247. Whilst the claimant had told the respondent about his hearing loss, support was offered, but the claimant did not ask for any.
248. In evidence, Mr Ward, the claimant’s new regional manager, replacing Mr Miah, confirmed that there were no performance issues for the claimant. Mr Ward had met with the claimant and Mr Miah during a handover period and was aware of the claimant’s hearing loss and offered support. No support was requested by the claimant.
249. At the time the claimant lost his hearing, May 2020, most employees were working from home. The claimant asked not to be required to wear a headset for work. This request was granted.
250. There is no evidence or formal diagnosis or prognosis for the condition of tinnitus, nor were there any requests for support by the claimant.

251. In July 2021, the claimant applied for a promotion for a larger store at Basildon. He was required to give a presentation and be interviewed. He performed well in the selection process and was only rejected because another candidate had more experience than he had.
252. The claimant had no further treatment or medical appointments from May 2020 until March 2022, following an MRI in January 2022.
253. During this period the claimant was in regular contact with his manager, Mr Ward, via WhatsApp.
254. In evidence, the claimant stated that because of his hearing, he had become withdrawn from friends, family and at work. He stated that he would spend as much time as he could in the back room not wanting to engage with staff and customers because of how his hearing had affected his ability to communicate. The back room was a separate room from the shop floor, which was accessible to staff members only.
255. A contemporaneous thread of WhatsApp Messages dated from before the claimant's suspension on 21 October 2021 to the date of 28 February 2022 show a friendly and open chat between the claimant and Mr Ward. The claimant's oral evidence was that he had withdrawn from social activity and family events. However, this evidence is not consistent with the contemporaneous WhatsApp messages, which show that he was engaging with his manager to achieve the store's performance targets and that he was engaged in family life, including going to football matches.
256. Whilst there is medical evidence that confirmed the claimant's hearing loss and his perceived tinnitus, there is no medical evidence to support any adverse effect or substantial disadvantage the claimant may have been suffering as a consequence of these impairments, nor is there any record of any request for support required by him from the respondent.
257. During the disciplinary process, the claimant engaged in the investigation, disciplinary and appeal meetings and there is no record of the claimant misunderstanding any part of the conversation, or not hearing any part of the proceedings.
258. During the first investigation meeting, the claimant did have to lean in to hear the recorded call with the credit referral team. However, this was to the quiet audio recording of the call between the customer and the credit referral team. The claimant did not ask for this recording to be replayed.
259. During the second investigation meeting, the claimant did tell Mr Ward about his hearing loss and tinnitus but makes no reference to any impact on his work or his day-to-day life. The claimant's health was discussed and the claimant confirmed that he was fit and well for work. When pressed further he replies that he is "*powerful and confident*". When support is discussed, the claimant refers to his current staffing levels following the loss of most of his team in June 2021, due to their resignations.
260. All four of the claimant's work colleagues were interviewed as part of the investigation process. Not one of his colleagues made a comment or complaint to Mr Ward about the claimant not wanting to be on the shop floor

or that he was unable to carry out his work due to his hearing loss or any other issue. Nor did the colleagues make reference to the claimant's hearing loss.

261. EJ Barrowclough ordered the preparation of this statement by 9 February 2023. An undated impact statement was provided by the claimant. The statement focuses on the claimant's opinion now, not at the date of the alleged misconduct, it states, in summary, that:
- a. The claimant had lost his social life as a result of his loss of hearing.
 - b. That he could not concentrate at work.
 - c. That he had to ask colleagues to assist.
 - d. That he struggled to communicate other than face to face.
262. However:
- a. The impact statement is not supported by medical evidence, GP records or other contemporaneous documents.
 - b. The focus of the statement is towards the mental health of the claimant, which has not been raised previously.
 - c. The claimant was capable of attending work every day without issue, which included an hour's commute by car each way.
 - d. The claimant's work was not impacted by his impairment as there were no performance issues and he did not take any time off for medical appointments or sick leave.
263. We find that the claimant did have a physical impairment in that he had suffered an acute sensory hearing loss of his left ear. The consultant gave a 30% chance that the hearing would return, i.e. it was more likely than not that it would not return. We therefore conclude find that the hearing loss was long term.
264. If we take the claimant's claim at its highest and accept that he had a physical impairment of tinnitus, this is a long-term condition.
265. The alleged misconduct occurred on 27 August 2021; this is not disputed.
266. The welfare meetings started following the claimant's suspension on 21 October 2021 and ended on his termination date. The claimant was dismissed on 1 March 2021. These dates are also not disputed.
267. The claimant did not receive any treatment or support for either physical impairment until 25 March 2022 following an MRI and the loss of some hearing in the claimant's right ear. The medical evidence regarding the loss of hearing in the claimant's right ear is limited to a clinic letter dated 3 May 2022.
268. On balance, having reviewed the medical evidence, other contemporaneous documents together with the testimony from work colleagues during the investigation and the claimant's evidence to this Tribunal, we find that the impairments did not have an adverse effect that

was more than trivial on the claimant on 27 August 2021 or during the period of 28 October 2021 – 1 March 2022.

Discrimination Arising from Disability

- 269. The relevant date is the date of the misconduct being 27 August 2021. We will refer to this as the “Incident”. The date of the misconduct is not disputed.
- 270. The “something” pleaded by the claimant is that his behaviour on the 27 August 2021 arose as a consequence of his disability and the claimant has claimed that the substantial disadvantage was his reduced comprehension due to his hearing loss.
- 271. There is no medical evidence between May 2020 and March 2022. This is for both the physical impairment and any reduced comprehension issue that the claimant has asserted in evidence.
- 272. There is no other contemporaneous evidence of any request by the claimant for any support from the respondent or any medical provider to assist in preventing any reduced comprehension.
- 273. The claimant did not tell either investigating manager, the disciplinary manager or the appeal manager that he was confused or that his comprehension during the Incident was compromised because of his hearing.
- 274. Considering each stage of the dismissal process in turn:

Investigation

- 275. The claimant’s evidence at the initial investigation carried out by Mr Farooq was that the Customer was confused by the credit referral team and that the claimant had not been involved or could not recall being involved. It was also the claimant’s position that he did not know the Customer. The claimant was shown a picture of the Customer, and he stated that he did not know him. The claimant accepted that the Customer sounded confused on the recording of the credit referral call but would not accept that the Customer was vulnerable.
- 276. The claimant was then interviewed by Mr Ward as part of the investigation. Again, the claimant stated that he did not know the Customer. It was the claimant’s position that he had not carried out the transaction with the Customer as he was in the back room. Mr Ward informed the claimant that he would review the CCTV and the hearing was adjourned. On his return, Mr Ward told the claimant that the CCTV footage showed that the claimant was on the shop floor and was engaging with the Customer. The claimant did not ask to see the CCTV footage.
- 277. The claimant was shown six stills from the CCTV footage during both investigation interviews. These show the claimant passing something to the Customer and the claimant sitting in front of the Customer with a phone in one hand. The stills then show the claimant raising 3 fingers to the Customer. At this time Mr Aylesbury can be seen sitting at the rear of the shop and appears to be laughing.

278. The claimant's explanation was that the transaction had been completed by Mr Aylesbury. He continued to state that he did not know the Customer, that he could not recall the transaction and that the Customer was not vulnerable because he paid all of his bills. The claimant's explanation for the 3 fingers was that Mr Aylesbury was new and that the Customer had probably misunderstood that the bundle meant 3 products. He also stated that he was going in and out of the shop floor.

Disciplinary

279. The claimant was invited to a disciplinary meeting by email dated 25 January 2022. The meeting was to be held on 1 February 2022 by Teams. This invitation invited the claimant to contact the disciplinary manager prior to the hearing if he required a reasonable adjustment. The claimant did not ask for any adjustment for this meeting.

280. The evidence at the disciplinary was that he knew the Customer and that he was a nice guy. With regards to the Incident, the claimant stated it was Mr Aylesbury who had spoken to the Customer and that it was Ms Scott who had made the credit referral. The claimant stated that he overheard the Customer say to the customer referral team during a telephone call between the Customer and the team that he wanted 1 line and not 3. The claimant states that he thought that the Customer was confused and raised his fingers to check this with Mr Aylesbury. This was because the claimant believed the Customer to be seeking to buy a "bundle" of products, i.e. 3 products, but the Customer was telling the referral team that he only wanted 1 product. However, this is contrary to the evidence given by the claimant's colleagues who, during the investigation, stated that they were acting on the claimant's instructions.

281. At the outset of the disciplinary hearing, where the claimant was represented by an employee representative, the claimant confirmed that he had had snippets from the CCTV recording and his colleague's interview statements. He did not ask to see the CCTV in part or in full.

282. During this disciplinary hearing, the claimant's representative accepted that the Customer was vulnerable. However, the claimant did not. The claimant asserted that because the Customer was paying his bill on time, then he was not vulnerable.

283. Having taken into account the contemporaneous documents and the oral testimony given to the Tribunal, we find that the claimant knew the Customer, we also find that the Customer was vulnerable.

284. We find that the claimant was aware that the Customer had 17 lines, 10 of which were unused. We also find that the claimant instructed his colleagues to seek to apply 3 more lines to the Customer's account. We find that the claimant was not confused during this transaction, nor that he had any reduced comprehension of the circumstances or the transaction itself.

Appeal

285. The claimant appealed his dismissal. Within the email of appeal 15 March 2022, the claimant's focus is that the decision by the disciplinary officer is

- incorrect. There is no reference to his hearing, or any issue associated with it.
286. By email of 25 March 2022, the claimant raises his hearing loss in mitigation and asked for the appeal to be a face-to-face meeting, which was agreed. There is no reference to confusion or lack of comprehension in this email.
287. Following a request from the respondent for further details for appeal, the claimant submitted his concerns regarding the statement of Rizah Topalli.
288. The claimant submitted the limited medical evidence including the diagnosis letters of May 2020 and an appointment letter for an MRI in March 2022, with an outcome letter from his clinic appointment dated 6 May 2022.
289. In the appeal meeting itself the claimant did not raise any connection that his conduct was due to his hearing loss, confusion or any loss of comprehension because of his loss.
290. Following the appeal meeting on 14 April 2022, the claimant raised 3 further points in relation to evidence. There is no reference to his hearing, any perceived confusion or any lack of comprehension.
291. It was the respondent's assertion that the appeal meeting was a re-hearing of the disciplinary. We find that this appeal was thorough and the claimant was given every opportunity to answer the allegations that had been raised in the disciplinary. We find that this hearing was a re-hearing of the disciplinary.
292. The evidence to the Tribunal was that on the date of the Incident the claimant had been in the back room not wanting to engage with his team. He says that Mr Aylesbury, a sales advisor, had come through to ask him to do a credit referral. However, Ms Scott, the assistant manager did the referral. The claimant asserted that he had no part in the transaction with the Customer.
293. The CCTV images show the claimant handing the Customer an item. We find that it was the claimant who passed the store phone to the Customer to speak to the credit referral team, who had called.
294. The images on the CCTV also show the claimant engaging with the Customer by raising three fingers.
295. The claimant says that he raised three fingers because he was confused as he says that Ms Scott and Mr Aylesbury had said that the Customer had wanted to purchase a bundle or items, i.e. more than one.
296. The claimant had heard the Customer tell the credit referral team that he only wanted one. The claimant stated in evidence that he raised 3 fingers to Mr Aylesbury, followed by raising 1 finger again to Mr Aylesbury, in response to this. The claimant stated that the Customer was confused and he was checking with Mr Aylesbury that the Customer had wanted 3 products.

297. This is a customer who had 17 lines on his account, 10 of which were unused. The claimant did not dispute that he had added lines to the Customer's account in June 2021.
298. The claimant blamed Ms Scott and Mr Aylesbury for the confusion. In the investigation interviews, these colleagues stated that the claimant had told them to put forward the referral for three lines.
299. We find that the claimant held up 3 fingers towards the Customer and not Mr Aylesbury. We also find that he did not hold up 1 finger immediately afterwards.
300. We have considered the medical evidence, of which there is none in support of anything other than the initial hearing loss and perceived tinnitus. We have also considered contemporaneous documents and the claimant's impact statement and evidence to the Tribunal. We find that on balance the claimant was not confused when he was speaking to the customer on the relevant date of the Incident, nor did he have a lack of comprehension because of his physical impairments.
301. We accept the evidence from the claimant's team members in that they acted upon his instructions. We do not accept that the claimant was confused or misunderstood or lacked comprehension of what the Customer was seeking. We find that the claimant instructed Ms Scott and Mr Aylesbury to action the credit referral and to process the sale for 3 lines and that he knew what he was asking them to do.

Failure to make Reasonable Adjustments

Welfare Meetings

302. The claimant's claim is that the respondent failed to make reasonable adjustments for the welfare meetings. The relevant dates for these claims are 28 October 2021 – 01 March 2022, being the period following suspension until his dismissal on 01 March 2022.
303. Following his suspension, the claimant's manager, Mr Ward, who is a regional manager based in the Midlands, would call him at a pre-arranged time each week. They were also in regular contact via WhatsApp. The claimant was based in Harlow.
304. The welfare meetings were short meetings held so that Mr Ward could check in with the claimant and update him on the progress of the investigation. During these meetings the claimant was also given the opportunity to ask for any support needed.
305. The claimant failed to attend several meetings, even though participation was a requirement of the suspension policy.
306. Mr Ward offered to hold the meetings by Teams, but the WhatsApp evidence shows that the claimant was willing to participate in the meetings by either telephone call or Teams. The claimant did not request face-to-face meetings with Mr Ward. The claimant did not complain of any lack of comprehension or confusion regarding these meetings.

307. We find that there was no set procedure as to how the meetings were held or what was discussed during the meetings.
308. There was no medical or supporting contemporaneous evidence to support the claimant's claim that he could not participate in telephone or Teams meetings fully. The claimant confirmed in evidence that he had no problem in using the telephone or Teams, particularly from home as he was able to use his right ear for any call.
309. The evidence from Mr Ward was that he was travelling for work every day. We accept that Mr Ward lived in the Midlands and travelled across the region for work. We find that Mr Ward was flexible in how the welfare meetings were conducted and we find that it would not be practical for Mr Ward to meet with the claimant once a week for a short meeting particularly when the claimant did not always attend.
310. We have found that there was no set procedure as to how welfare meetings were held or what was to be discussed during the meeting. A PCP is a provision, criterion or practice, which should be construed widely. The claimant could choose the method by which the welfare meetings could be held and did so. We find that the conducting of welfare meetings was a PCP.
311. We find that there is no contemporaneous evidence in support of the claimant's claim that he could not participate fully in telephone calls or Teams meetings. We have found that the claimant did not ask for support or any assistance to enable him to participate in telephone calls or Teams meetings. We also find that the claimant did not suffer a substantial disadvantage by participating in welfare meetings, or other meetings, by telephone or Teams.
312. Taking into account the contemporaneous evidence and the testimony from the claimant and Mr Ward, we conclude that it would not be reasonable for Mr Ward to be required to meeting the claimant face-to-face on a weekly basis for a short meeting, when the claimant was able to participate fully by telephone or Teams.

Rogervoice

313. With regards to Rogervoice, this is a speech to text app that can be uploaded onto any device. It is free to download and use. The claimant discovered this app during his period of suspension. However, he did not ask the respondent to use this, nor did he upload it to his phone. At this time the claimant was using his personal phone, so the respondent could not require him to upload this without his consent.
314. We find that Rogervoice is an auxiliary aid. We find that the claimant did not download this app, nor did he ask the respondent to do so. We find that in failing to use the app, the claimant did not believe that it would assist him, or that he did not need this assistance. We also find that the respondent was not made aware of this app by the claimant.
315. We find that the respondent did not have the knowledge that this was required as the claimant had not raised this with the respondent at any time.

We find that it would not be reasonable for the respondent to require the claimant to upload Rogerveoice.

Credibility

316. It is clear from the contemporaneous documents, that the claimant's recollection changed during the investigation, disciplinary and appeal, specifically in relation to his knowledge of the Customer and the circumstances of the 27 August 2021.
317. For example, when he was originally asked if he knew the Customer, he denied knowing him. He repeated this denial when he was shown the CCTV still.
318. During the disciplinary he accepted that he knew the customer and that he was a good guy but would not accept that he had transacted with the Customer in both June and August.
319. The claimant has shown no remorse, accountability or responsibility for his actions, despite being the store manager. He did not step in to act when he heard the Customer's conversation with the credit referral team. To account for his actions, the claimant has tried to blame junior members of staff, when the evidence shows the claimant acting as alleged.
320. As a Tribunal, we are concerned regarding the written statement from Mr Topalli with his retraction and conduct of claimant in relation to this. The disciplinary process is a confidential one and Mr Topalli has seen a copy of the investigation report, written his retraction and the claimant has obtained a hard copy of this, albeit he was unable to explain how this happened to Mr Shoker.
321. The claimant objected to the Tribunal viewing the CCTV that Mr Ward had viewed as part of his investigation. This CCTV footage showed the claimant on the shop floor shortly after the Customer had arrived and during the telephone call with the credit referral team. The footage shows the claimant holding up 3 fingers only. He did not then hold up 1 finger as asserted by him. We have found that the claimant was not confused, nor did he show a lack of comprehension during the Incident but the explanation has evolved as evidence has been put to him.
322. The respondent's evidence was consistent, and we have found that the investigation and actions of Mr Shoker were thorough.
323. With regards to Ms Goode, who was not called. We have considered whether to draw adverse inferences and we find that we will not. The claimant did not raise specific points from the disciplinary in appeal and we accept that the transcript is a reasonable record of the discussion. The outcome of the disciplinary was thorough document that was also not appealed on any specific details regarding the dismissal.
324. We have found that where there is a conflict in evidence between the parties, we have considered all the evidence before us. However, where there are no supporting contemporaneous documents, following our above

points regarding credibility and the claimant's conduct, on balance, we have preferred the respondent's oral evidence.

Evidence

325. We have taken into account contemporaneous documents and oral testimony. We have found that the respondent's witnesses were more credible than the claimant and, unless stated otherwise, we have preferred the respondent witness testimony.

The law

Disability

326. Section 6 of the Equality Act 2010 provides:

- (1) *A person (P) has a disability if –*
 - (a) *P has a physical or mental impairment, and*
 - (b) *The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*
- (2) *A reference to a disabled person is a reference to a person who has a disability.*
- (3) *In relation to the protected characteristic of disability –*
 - (a) *A reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*
 - (b) *A reference to persons who share a protected characteristic is a reference to persons who have the same disability.*
- (4) *This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has a disability; accordingly –*
- (5) *A reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and*
- (6) *A reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*

327. Whether an adverse effect is 'substantial' or not may vary according to the time at which the assessment is made and the period over which it is considered.

328. In ***All Answers Ltd v Wes***, [\[2021\] IRLR 612](#) the question was the assessment of the likelihood of the adverse effect lasting for 12 months. The Court of Appeal relied on ***McDougall v Richmond Adult Community College*** [\[2008\] IRLR 227, 2008\] ICR 431](#) to hold that this assessment must be made as at the date of the alleged discrimination and must not take into account anything only known or occurring after that time. Therefore, whether the issue under consideration is if a condition is 'recurring' or 'long term', or if there is a substantial adverse effect, the approach must be the same, namely, to assess what would have been the position as understood at the date of the alleged discrimination. This seems also to be consistent with the approach of the House of Lords in ***London Borough of Lewisham v Malcolm*** [\[2008\] UKHL 43, \[2008\] IRLR 700](#).

329. When the severity of an impairment is in issue, the tribunal will be faced with conflicting evidence and will have to exercise its judgment in deciding what is, essentially, a question of fact and degree. In **Paterson v Comr of Police of the Metropolis** [2007] IRLR 763, [2007] ICR 1522, EAT, Elias J (at para 68) formulated the correct approach for deciding on the severity of a disabling condition as involving inquiry as to 'how the individual carries out the activity compared with how he would do it if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross-section of the population, then the effects are substantial.'

Discrimination arising from disability

330. Section 15 of the Equality Act 2010 provides:

(1) A person (A) discriminates against a disabled person (B) if —

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

331. For unfavourable treatment there is no need for a comparison, as there is for direct discrimination. However, the treatment must be unfavourable, that is there must be something intrinsically disadvantageous to it. It is not simply enough that the claimant thinks that they should have been treated better.

332. In **Sheikholeslami v University of Edinburgh** [2018] IRLR 1090 the Employment Appeal Tribunal held that:

"the approach to s 15 Equality Act 2010 is now well established ... In short, this provision requires an investigation of two distinct causative issues:

did A treat B unfavourably because of an (identified) something? and

did that something arise in consequence of B's disability?"

333. The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence."

334. **Naiser v NHS England** [2016] IRLR 170 outlines the correct approach to be taken. A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises. The tribunal must determine what caused the impugned treatment, or what was the reason for it. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it. The Tribunal must

determine whether the reason/cause (or, if more than one, a reason or cause) is 'something arising in consequence of B's disability'.

335. Section 15(1)(b) provides that unfavourable treatment can be justified where it is a proportionate means of achieving a legitimate aim. That requires: identification of the aim; determination of whether it is a legitimate aim; and a decision about whether the treatment was a proportionate means of achieving that aim.

The duty to make reasonable adjustments

336. Section 20 of the Equality Act 2010 imposes a duty to make reasonable adjustments on an employer. Section 20(3) provides that the duty comprises the requirement that where a provision, criterion or practice of the employer's puts a person with a disability at a substantial disadvantage in relation to a relevant matter in comparison with people who do not have a disability, to take such steps as it is reasonable to have to take to avoid the disadvantage.

337. Section 20(5) provides that the duty comprises the requirement where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

338. Section 21 of the Equality Act 2010 provides that a failure to comply with the requirement set out in section 20 is a failure to comply with a duty to make reasonable adjustments. Schedule 8 of the same Act also contains provisions regarding reasonable adjustments at work. The requirement can involve treating disabled people more favourably than those who are not disabled. Whether something is a provision, criterion or practice should not be approached too restrictively or technically, it is intended that phrase should be construed widely.

Unfair Dismissal

339. An employee has the right not to be unfairly dismissed, s. 94(1) of the Employment Rights Act 1996 (ERA). The relevant test is at s.s.98(1), (2) and (4) are relevant to this case. This states:

98. General.

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

- (a) the reason (or, 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— ...

- (b) relates to the conduct of the employee ...

(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."

340. The question of fairness in a conduct dismissal is **British Home Stores Ltd v Burchell** [1980] ICR 303 (EAT) which held that a dismissal on the grounds of conduct will be fair where, at the time of dismissal, a) that the employer must have a genuine belief in the misconduct; b) reasonable grounds for that belief; and c) the employer carried out as much investigation as was reasonable in the circumstances. we remind ourselves that I can only take account of those facts or beliefs that were known to those who took the actual decision to dismiss at the time of dismissal.

341. The test as to whether the dismissal fell within the band of a reasonable response are summarised within the judgment of Brown-Wilkinson J in **Iceland Frozen Foods Ltd v Jones** [1983] ICR 17, which states:

(1) the starting point should always be the words of S.98(4) themselves;

(2) in applying the section a tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the... tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct a tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) the function of the... tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

342. In considering the "band of reasonable responses" we also direct ourselves to consider the question as to whether the respondent has acted reasonably or unreasonably in deciding to dismiss in accordance with equity and the substantial merits of the case, s.98(4) ERA. **Newbound v Thames Water Utilities Limited** [2015] I.R.I.R. 734.

Wrongful dismissal

343. Wrongful dismissal is a claim of breach of contract by the employee against the employer for the unpaid notice pay.

344. The question of what level of misconduct is required for an employee's behaviour to amount to a repudiatory breach is a question of fact for the court or tribunal. The question is whether the conduct "so undermines the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment" (**Neary v Dean of Westminster** [1999] IRLR

288, approved by the Court of Appeal in *Briscoe v Lubrizol Ltd* [2002] IRLR 607 and by the Privy Council in *Jervis v Skinner* [2011] UKPC 2).

345. In **Sandwell & West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09**, the EAT summarised the case law and held that gross misconduct involves either deliberate wrongdoing or gross negligence. IN cases of deliberate wrongdoing, it has been held that it must amount to a wilful repudiation of the express or implied terms of the contract (**Wilson v Racher [1974] ICR 428 (CA)**)

Evidence

346. In **Matondo v Kingsland Nursery Ltd [2024] EAT 123** the EAT allowed the appeal where the ET had required the claimant's oral evidence, based on her recollection, to be corroborated by other evidence such as independent documentary records. There is no such rule of evidence. The EAT summarised that the ET should have appraised all of the different sources of evidence, as to their reliability and credibility, including the Claimant's oral testimony, contemporary (though not independent) communications reflecting what was said during employment, work records as relied on by the respondent and the respondent's evidence. The findings of fact should be determined based on the overall picture.

Submissions

347. Both parties provided closing submissions. The claimant did not provide these in writing

Conclusions

348. In reaching its conclusions the Tribunal also had regard to:
- a. Schedule 1 of Equality Act 2010 including Part 1: Determination of Disability and Part 2: Guidance.
 - b. Code of Practice on Employment (2011):
 - i. Chapter 2 Protected Characteristics
 - ii. Chapter 3 Direct Discrimination
 - iii. Chapter 5 Discrimination Arising from Disability
 - iv. Chapter 6 Duty to make reasonable adjustments

Disability

349. We find that the relevant dates for the issues raised are as follows:
- a. The alleged misconduct occurred on 27 August 2021. The relevant date for the s. 15 Equality Act claim, discrimination arising, is 27 August 2021.
 - b. The claimant was suspended on 21 October 2021 until his dismissal on 01 March 2021. The appeal was held on 13 April 2022. The

relevant dates for the s.20 Equality Act claims, failure to make reasonable adjustments, are 21 October 2021 – 1 March 2022.

Did the claimant have a disability?

Did the claimant have a physical or mental impairment?

350. On 5 May 2020, the claimant was diagnosed with acute sensory neural hearing loss and perceived tinnitus of the left ear. We have found that the claimant did have a physical impairment from this date.

351. We have found that the claimant informed his manager about his hearing loss and tinnitus. We have found that the respondent was aware of this physical impairment from 5 May 2020.

What is a “long-term” effect?

352. A long-term effect of an impairment is one:

- a. which has lasted at least 12 months; or
- b. where the total period for which it lasts is likely to be at least 12 months; or
- c. which is likely to last for the rest of the life of the person affected.

353. The Tribunal also had regard as to whether the impairment was progressive.

354. The initial medical documents support the possibility of relief from the loss of hearing in the left ear. There is no prognosis or diagnosis for the tinnitus.

355. The probability for the claimant’s hearing to recover was given as 30%. We find that, on balance, it was more likely than not that the claimant’s hearing was not going to recover. We find that whilst it was more likely than not that the claimant’s hearing would not improve, the medical evidence is that the claimant has had acute sensory hearing loss. There is no evidence to suggest that his hearing would become progressively worse.

356. There is no evidence in relation to the claimant’s perceived tinnitus. Taking the claimant’s claim at its highest, we accept that tinnitus is a long-term impairment.

Did it have a substantial adverse effect on the claimant’s ability to carry out day-to-day activities?

357. A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

358. An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how they carry out those activities.

What are normal day-to-day activities?

359. Normal day-to-day activities are those that are carried out by most men or women on a fairly regular and frequent basis. These include activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for oneself. Normal day-to-day activities also encompass the activities which are relevant to working life.
360. In any case where the individual is receiving medical or other treatment which alleviates or removes the effects, though not the impairment, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment.
361. The claimant attended one medical appointment at the onset of his impairment (May 2020). His next appointment was for an MRI in January 2022.
362. When the claimant informed his manager of his impairment, the manager offered support. The claimant confirmed that he did not need any support.
363. The claimant confirmed in evidence that he did not seek any further medical support, nor did he seek support from the respondent. We have found that the claimant did not receive any treatment or support for either physical impairment until 25 March 2022 following an MRI and the loss of some hearing in the claimant's right ear. The medical evidence regarding the loss of hearing in the claimant's right ear is limited to a clinic letter dated 3 May 2022.
364. We have found that the claimant engaged with his manager openly and confirmed that he was participating in family events including football matches.
365. We have also found that the claimant participated fully in the investigation meeting with Mr Ward and the disciplinary meeting with Ms Goode. The claimant first asked for support for the appeal meeting when he asked for this to be face-to-face. This request was on 25 March 2022.

Did the claimant have medical treatment to treat or correct the impairment?

366. The claimant confirmed in evidence that he did not seek medical assistance from his GP or other medical professional. The claimant did not receive any medical treatment on the relevant dates.

Conclusion as to disability for the relevant period of 27 August 2021

367. We have found that the physical impairments were long term.
368. We have found that the relevant date of the Incident was 27 August 2021.

369. On balance, having reviewed the medical evidence, other contemporaneous documents, including the testimony from work colleagues during the investigation and the claimant's evidence to this Tribunal, we have found that the impairments did not have an adverse effect that was more than trivial on the claimant at this time.
370. In conclusion, the claimant was not disabled on the relevant date of 27 August 2021.

Conclusion as to disability for relevant period of 21 October 2021 – 1 March 2022

371. We have found that the physical impairments were long term.
372. The relevant dates for the welfare meetings is the period 21 October 2021 – 1 March 2022.
373. During this period the claimant did not seek any medical assistance or support from the Respondent. We have found that the claimant participated fully in the investigation and the disciplinary hearings. The claimant was dismissed on 1 March 2022.
374. After the claimant's dismissal, the claimant asked for the appeal meeting to be held in person. The respondent took steps to assure that this happened.
375. On balance, having reviewed the medical evidence, other contemporaneous documents, including the testimony from work colleagues during the investigation and the claimant's evidence to this Tribunal, we have found that the impairments did not have an adverse effect that was more than trivial on the claimant at this time.
376. In conclusion, the claimant was not disabled during the relevant period of 21 October 2021 – 1 March 2022.

Discrimination arising from disability

377. It is accepted by the respondent that the claimant's dismissal was unfavourable treatment.
378. We have found that the claimant was not disabled at the relevant time, there is therefore no discrimination arising from a disability.

Failure to make reasonable adjustments

379. We have found that the claimant was not disabled at the relevant time, there is therefore no obligation on the respondent to make reasonable adjustments.
380. If there is a further relevant period extending to the conclusion of the appeal and if the claimant was deemed to be disabled for this period, the respondent made the reasonable adjustment of holding the appeal meeting in person.

Unfair dismissal

381. In reaching our conclusions we will answer the questions raised in the agreed list. This list has been prepared on the principles identified in **BHS v Burchell**.
382. We remind ourselves that we can only take account of those facts or beliefs that were known to those who took the actual decision to dismiss at the time of dismissal.

Was the claimant dismissed?

383. The claimant was dismissed, which is accepted by both parties.

If the claimant was dismissed, what was the reason or principal reason for dismissal?

384. We have found that the reason for the dismissal was conduct. We have also found that this was the sole reason for the dismissal.
385. The reason for the dismissal was the conduct of the claimant on 27 August 2021 in that he acted without honesty and integrity when transacting with a vulnerable Customer, contrary to the respondent's policies and procedures.

Was it a potentially fair reason?

386. Yes, conduct is a potentially fair reason for dismissal.

Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

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?

387. In accordance with the equity and substantial merits of the case did the Respondent act reasonably in all of the circumstances in treating this as sufficient reason for dismissing the claimant? The Tribunal will usually decide, in particular, whether:
- a. there were reasonable grounds for that belief;
 - b. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - c. the respondent otherwise acted in a procedurally fair manner;
 - d. dismissal was within the range of reasonable responses.

388. Taking each in turn:

Reasonable grounds for the belief

389. The claimant has admitted that he is aware of the respondent's policies and procedures. The conduct of the claimant was also captured on CCTV footage and recorded in CCTV stills. The call between the Customer and the credit referral team is also recorded as an audio recording and written transcript.

390. There is also supporting documentary evidence, which includes a written statement from the credit referral team member and statements from team members, including Ms Scott, Mr Aylesbury and Ms Lira-Martins. The statements from the team members identify the claimant as the person who instructed them to put the Customer forward for 3 more lines, when he only wanted 1.
391. There is further supporting documentation in the form of the Excalibur management information, which identifies the claimant by his UIN. This information confirmed that the claimant had had dealings with the Customer twice in June 2021 and again in August 2021, despite stating to the investigation that he did not know the Customer.
392. Additionally, the claimant has admitted that he held up 3 fingers to the Customer and has provided his own explanation as to why he did this. The claimant has confirmed that he has heard the Customer's side of the telephone call with the credit referral team but took no action.
393. We have found that the claimant's explanation has changed as the disciplinary process has progressed.

Did the respondent have a genuine and honest held belief in the misconduct?

394. The respondent investigated the complaint from BT Security immediately. The investigation took into account the Incident as it was recorded both on CCTV and on audio.
395. The respondent has taken into account statements taken from the credit referral team member and relevant members of the store team. It has also disregarded those statements that were not relevant to the Incident.
396. We have found that the claimant was aware of the company policies and procedures, which he also admitted to the respondent.
397. The belief that the claimant has acted as alleged was formed by the respondent's managers, including Mr Ward, Ms Goode and Mr Shoker, following the consideration of the claimant's explanation of the Incident and a review of the CCTV (video and stills), the audio recording and transaction and the relevant witness statements. The managers have also considered the admission by the claimant that he did hold up 3 fingers and his explanation for doing so. Additionally, the claimant's admission of his understanding of the respondent's policies and procedures was taken into account as was his assertion that the Customer was not vulnerable.
398. We have found that the managers did believe that the claimant had acted as alleged and we find that this was a genuine and reasonable belief for them to hold.

Was the belief reached following a reasonable investigation?

399. The respondent initiated an investigation into the complaint from BT Security, which was conducted by Mr Ward, assisted by Mr Green and Mr Farooq.
400. The claimant was afforded the opportunity to answer the allegations against him at both the disciplinary and appeal stages. We have also found that the

appeal manager, Mr Shoker, conducted a re-hearing of the case in that he carried out further investigations, following new assertions by the claimant against Mr Ward within his appeal.

401. We find that the respondent carried out a reasonable investigation and that the respondent's managers formed their genuine and reasonable belief that the claimant had acted as alleged, following this reasonable investigation.

Was the dismissal within the range of reasonable responses?

402. The circumstances of this case are as follows:

- a. The Customer was a vulnerable customer.
- b. The Customer had 17 lines on his account, 10 of which had had no usage logged to them.
- c. The respondent operates reasonable policies and procedures to protect its customers.
- d. The claimant was aware of these policies and procedures.
- e. The claimant was a long-serving employee who was employed as the store manager.
- f. The claimant heard the Customer's side of the conversation with the credit referral team. The claimant is captured on CCTV showing the Customer 3 fingers during the call where the Customer told the credit referral team that:

Customer: The bloke says no. I've been told 3 by the salesman it's 3

Customer: 3...

Customer: That's what I thought...

Customer: Yes. They keep selling me 3 or 4 telephones, I come in for 1 and end up getting the opposite.

- g. The claimant's answer as to whether he knew the Customer or not was inconsistent in both his oral answers and against management information, specifically Excalibur.
- h. The claimant's explanation was that the Customer was confused on the call to the credit referral team, but he wasn't vulnerable, because he paid his account every month.
- i. The claimant showed no remorse, accountability or responsibility for his actions.
- j. The claimant sought to blame his Assistant Store Manager and Sales Advisor for the miscommunication.
- k. The team members each identified the claimant as the person who had told them to put through the sale for the Customer as 3 lines.

403. Our starting point to consider this question is s.98(4) and we remind ourselves that this question is in relation to the reasonableness of the respondent's conduct and not what we consider to be fair. Additionally, we may not substitute the employer's decision with our decision as to what was the right course of action to adopt. We are to consider whether, in all of the circumstances, a reasonable employer would consider that the actions of the claimant were sufficient to warrant a dismissal.
404. In considering this we take into account all of the circumstances of the case as detailed above. We have found that the respondent formed a genuine belief that the claimant acted in the manner alleged and that this was a reasonable belief to hold. We have found that there was a reasonable investigation to form this belief.
405. In considering the "band of reasonable responses" we also direct ourselves to consider the question as to whether the respondent has acted reasonably or unreasonably in deciding to dismiss in accordance with equity and the substantial merits of the case.
406. The respondent is a provider of software and hardware services for the provision of mobile phones and broadband services. The Customer was a vulnerable customer who had 17 lines on his account, 10 of which had had no use.
407. The claimant was in a position of trust and responsibility, being a long serving employee and the store manager.
408. We have found that the policies and procedures operated by the respondent to be reasonable for a reasonable employer in these circumstances. Additionally, we have found that the claimant knew and understood these policies and procedures and the actions required of him, but he acted contrary to these on the date of the Incident.
409. Where the claimant understands what is required of them, particularly in these circumstances, it is fair and just for a reasonable employer to impose a sanction.
410. The Customer did raise a complaint on the call to the credit referral team, which was significant enough for the credit referral team member to report it and for BT Security to investigate. The outcome of the investigation was reported to the claimant's manager, which instigated the respondents own internal investigation.
411. We accept that this was the claimant's first disciplinary issue. However, the claimant was in a position of trust and responsibility and acted contrary to the respondent's policies and procedures on the date of the Incident. We have also found that the claimant instructed his team members to act contrary to these procedures and then endeavour to blame them for miscommunicating the requirements of the Customer.
412. Equity refers to fairness and justice and the question is whether the sanction by the respondent was fair and just in all of the circumstances. The conduct of the claimant is evidenced in the CCTV footage, stills, the audio recording and transcript and supporting documentary evidence as detailed above. We have found that the respondent reasonably and genuinely believed that

the claimant had acted as alleged on 27 August 2021 and that his conduct was contrary to the Acting with Integrity Policy, The Disability and Vulnerability Policy and The Standards of Behaviour Policy and Procedure.

413. We have also found that it was reasonable for the respondent to reject the contention by the claimant that the Customer was not vulnerable, that this was a miscommunication between Ms Scott, Mr Aylesbury and the claimant, and that this was a witch hunt.
414. In the alternative, the respondent says the reason was a substantial reason capable of justifying dismissal, namely a fundamental breach of trust and confidence. We have found that the claimant has acted as alleged, which is a breach of trust. This trust is a fundamental part of the protection of the respondent's customers, particularly vulnerable customers.

Did the respondent act reasonably in all of the circumstances in treating that as a sufficient reason to dismiss the claimant?

415. This includes a consideration of whether the respondent acted in a procedurally fair manner.
416. As a procedural point, we have considered whether the delay in the disciplinary process has rendered the process unfair. There was delay and the claimant was suspended on full pay for the period. The delay was explained by the respondent as due to operational issues including manager's absences. Whilst the disciplinary process took almost 5-months to complete, in the circumstances we do not find that the process was unfair.
417. As a further procedural point, we have considered whether the failure by the respondent to offer the claimant the opportunity to view the entire CCTV footage has rendered the disciplinary process unfair. With regards to the footage, we have made the following findings:
- a. That Mr Ward viewed the CCTV and told the claimant that he was doing so, and then told the claimant what he saw.
 - b. That Mr Ward showed the claimant the relevant stills from the CCTV.
 - c. That the claimant did not ask to see the footage at any time.
418. We find that failing to show the claimant the CCTV footage in these circumstances did not render the procedure unfair.
419. We have found that the claimant did fail to follow the respondent's policies and procedures.
420. We have found that the respondent held a genuine belief that the claimant did act as alleged and that this was a reasonable belief to hold.
421. The protection of vulnerable customers is central to the respondent's obligations as set out in its policies and procedures and its regulatory obligations to Ofcom. This includes a requirement for its employees to treat customers fairly and a responsibility to behave ethically. The consequences of failing to meet these standards is also communicated within the policies noting that failing to protect people, customers, assets, regulatory

obligations or acting without integrity may be viewed as gross misconduct and will be dealt with via the company disciplinary process.

422. Additionally, the Ethical Selling policy sets out what selling ethically means, including behaviour and legal obligations. This policy is incorporated into the respondent's employees' terms and conditions as selling ethically is essential to the respondent's brand reputation. The respondent is legally obliged to comply with Ofcom's Sales and Marketing Regulations.
423. Taking this all into account, we find that the respondent acted reasonably in treating the claimant's actions as a sufficient reason to dismiss him.
424. The respondent investigated the allegations before making a decision at the disciplinary meeting to dismiss. The claimant was afforded his rights to be accompanied and understood the allegations he faced. He was also given the opportunity to answer these allegations. There were delays in the process, but these were due to operational reasons. We find that the procedure followed was reasonable.
425. In conclusion, we find that the decision to dismiss would fall within the range of reasonable responses by a reasonable employer in all of these circumstances. We conclude that the dismissal was substantively and procedurally fair.
426. If asked to consider whether the claimant has contributed to his dismissal, we conclude that he was solely responsible for his actions and any compensation would be reduced by 100%.
427. If asked to consider any procedural defects, we conclude that if there were any procedural defects rendering the dismissal unfair, we find that, on balance of probability, it is 100% likely that the claimant would have been dismissed in any event.

Wrongful Dismissal

What was the claimant's notice period?

428. The claimant commenced employment on 14 April 2006 and his Effective Date of Termination was 1 March 2022. The claimant's notice period is therefore the Statutory amount of 12-weeks.

Was the claimant paid for that notice period?

429. The claimant was not paid for his notice period upon dismissal.

If not, was the claimant guilty of gross misconduct? / did the claimant do something so serious that the respondent was entitled to dismiss without notice?

430. We have found that the claimant has acted in the manner alleged. We have also found that the respondent operates reasonable policies and procedures to protect its customers.

431. The claimant's contract requires the respondent's employees to obey its policies and procedures.
432. The claimant was aware of the requirement to treat customers fairly and of the responsibility to behave ethically and to act with integrity and honesty.
433. We have found that the claimant acted in the manner alleged on the 27 August 2021 in that he, in his role as store manager, acted dishonestly and failed to uphold the standards of ethical sales, by taking advantage of a vulnerable customer with the intention to gain additional sales, despite the customer requesting only 1 additional line only. Furthermore, that he had instructed the Customer to tell the credit referral team on the phone that he wanted 3 lines despite the Customer stating that he only wanted one.
434. The explanation by the claimant has been that this was a miscommunication between the Customer and the credit referral team and / or a miscommunication between Mr Aylesbury and the Customer and / or a miscommunication between Ms Scott, Mr Aylesbury and himself. Also, that the Customer was not vulnerable as he was able to pay his monthly account.
435. We are satisfied that the claimant knew that he should not act in the manner alleged but did so, contrary to the respondent's reasonable policies and procedures and in doing so, we find that this was a fundamental and wilful breach of contract. We find that the claimant was guilty of gross misconduct and that he did do something so serious that the respondent was entitled to dismiss without notice.

**Employment Judge Illing
7 October 2024**