



# EMPLOYMENT TRIBUNALS

**Claimant:** Mark Hannah

**Respondent:** Wesco Anixter

**Heard at:** CVP

**On:** Monday 9<sup>th</sup> & Tuesday 10<sup>th</sup> June 2025

**Before:** Employment Judge Winfield

## Representation

Claimant: In person

Respondent: Robert Lassey, (Counsel)

# JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimant's claim for unfair dismissal is well founded and succeeds.

# REASONS

## Claims and Issues

2. Mr Mark Hannah (the 'Claimant') was employed by Wesco Anixter UK Limited (the 'Respondent') as a Location Manager at the Respondent's Plymouth Sales Officer. The Claimant was employed from 16 January 1995 until 6 June 2024, when the Claimant's contract of employment was terminated summarily on the grounds of gross misconduct.
3. The Respondent is a leading provider of business-to-business distribution, logistics services and supply chain solutions. The business is split into three business units, one of which is Electrical & Electronic Solutions (EES). EES supplies a range of products (such as fasteners and fittings) and solutions to customers, including original equipment manufacturers (OEMs).
4. The Respondent states the reason for dismissal of the grounds of gross misconduct is:
  - a. Between November 2023 and April 2024, Ryan Paice, an employee who directly reported to the Claimant, conducted fraudulent sales booking

activity. In particular, Ryan Paice manually amended the rep code of sales orders with a negative gross profit, by transferring them from Mr Paice's rep code to the Claimant's rep code.

- b. The reason for amending the rep code in this way is that Ryan Paice could have achieved financial gain; and
  - c. The Claimant was complicit and aware of Mr Paice's activity between November 2023 and April 2024.
5. These together are in this judgment labelled the "Allegation".
6. The Claimant asserts that they did were not aware of Mr Paice's activity and was not complicit in it as a result. As such, they should not have been unfairly dismissed for this reason.
7. The Claimant is seeking compensation.

### **Procedure, Documents and evidence heard**

8. There was no agreed List of Issues produced by the parties or any preliminary hearing relating to case management. Case management orders were issued on 21 February 2025, which accompanied the notice of the hearing. Those orders required that:
- a. A bundle was produced that was limited to 100 pages; and
  - b. Written statements of the Claimant shall be limited to 3,000 words in total and of the Respondent 5,000 in total.
9. There was a final hearing bundle (known hereafter as the Bundle) of 156 pages, plus one witness and associated witness statement from the Claimant (that being the Claimant), with two witnesses and associated witness statements on behalf of the Respondent. Those witnesses were:
- a. Mark Hannah on behalf of the Claimant; and
  - b. Gemma Reynolds and Ryan Hamer on behalf of the Respondent.
10. It was clarified at the beginning of the hearing that the Claimant was not making a wrongful dismissal claim.
11. It was agreed between the parties that evidence on the principle of remedy and quantum, including hearing from both the Claimant and Respondent orally, would all be dealt with via a separate hearing. Whilst the Respondent did send through submissions on the principle of remedy at the end of the hearing days, the Claimant did not and in order to ensure both parties are able to make necessary submissions and respond to them, this is why it will be properly dealt with in one hearing. For the avoidance of doubt, remedy relates to the principles set out in paragraph 17, part (e), of this judgment.
12. This claim for unfair dismissal was heard over two days. I have heard oral evidence from the Claimant and from the Respondent. I have seen written submissions from the Respondent and the Claimant. Both parties gave oral closing submissions and the Respondent chose to also provide a written

skeleton argument. I also heard evidence on the principle of remedy at this stage, rather than the quantum. I have carefully considered the documentary evidence provided, together with the parties' oral evidence and any written closing submissions.

13. I explained at the beginning of the hearing process to all parties that I had to have regard to the Equal Treatment Benchbook (that includes the Overriding Objective) and the Employment Tribunal Procedure Rules 2024 (the 2024 Rules), to ensure that the case is dealt with, amongst other things, fairly, and that parties are on equal footing.
14. I made clear that the parties could request a break at any point and if they had any additional needs or requirements, they could simply ask the Tribunal.

### **Claims and List of Issues**

15. The Claimant was (a) an employee as a Location Manager at the time his employment was terminated; (b) in employment for in excess of two years continuously; and (c) dismissed by the Respondent. There is no dispute here between the parties on this item.
16. By means of an ET1 dated 30 June 2024 the Claimant has brought a sole claim of unfair dismissal.
17. The issues for me to therefore consider are outlined below. I have summarised the appropriate legal tests for me to consider as key issues (which I will explain in more detail later), alongside the submissions made in that agreed list of issues:
  - a. Was the Claimant dismissed for a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996?
  - b. Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?
  - c. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
  - d. Did the Respondent adopt a fair procedure?
  - e. I then need to consider remedy. I have included it here for completeness, however, as explained above it was agreed between the parties that this would be dealt with via a separate hearing:
    - i. If the Respondent did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?;
    - ii. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the misconduct alleged; and

iii. To what extent has the ACAS code been followed.

**Facts Identified – the actions relating to the alleged Misconduct**

18. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings of fact are limited to those that are relevant to the issues listed above, and necessary to explain the decision reached. Where there is any disagreement between the parties on matters relating to fact, I explain the evidence I prefer below and the reasons for this.
19. The Claimant was responsible for the line management of two members of staff who undertake the sales orders for customers at the Plymouth location: Mr Ryan Paice and Miss Charlotte Adams. Mr Paice has been employed by Anixter/Wesco for approximately 6 years and Miss Adams approximately 3 years.
20. Ms Gemma Reynolds was the Claimant's line manager from May 2023 and was based in the Midlands. Ms Reynolds was responsible for the sales and gross profit (GP) of the UK OEM and Safety businesses. Several Location Managers report into Ms Reynolds, including the Claimant when employed by Respondent. Ms Reynolds reports into Erica Kirk (EES Senior Sales Director for OEM UK & Ireland). Ms Reynolds only visited the Claimant once in person at the Plymouth office during that time, however the Claimant and Ms Reynolds liaised very regularly on Teams and via email (as set out in the witness statement of Ms Reynolds).
21. Mr Paice and Miss Adams were able to achieve a bonus as an addition to their salaries based on their sales performance against their allocated accounts, the largest Plymouth account was that of Princess yachts. This was managed by Mr Paice (bonus plan pages 128 and 129 of the Bundle), which provided the opportunity to earn bonus payments based on the GP of his individual 'book of sales'.
22. For each sale, Mr Paice made with a positive sale (i.e. above zero), he earned base commission. This ranged from 0.5% to 3% of the quantum depending on his cumulative gross profit earned through the year.
23. Additionally, Mr Paice had a target gross profit percentage of 18.6%. As explained by Ms Reynolds in her witness statement, *"depending on his achieved GP percentage across the year, Mr Paice could (on a sliding scale) receive up to a 20% bonus of all commission already paid at the end of the year if his annual total GP met or exceeded 19.6%, or have up to 20% of his commission already paid clawed back if his annual total GP was 17.6% or below"*.
24. Conversely, as a Location Manager, the Claimant was eligible to participate in a bonus scheme (namely the Sales Incentive Program), which provided the opportunity to earn quarterly bonus payments based on the overall financial performance (revenue and GP) of the Plymouth sales office. Of importance here, is that gross profit of an individual sale was not a direct relevant factor in Claimant's bonus scheme.

25. All Respondent sales and GP are recorded in IAP, an online sales reporting platform. Each sale is assigned to an individual employee via a unique 'Rep Code'. This all occurs automatically when operations staff use a scanner at customer sites.
26. It is not normal practice to change the person assigned a Rep Code. It could happen on occasion if authorised by senior management a specific business reason. This could happen, for example, if an account was not particularly profitable but had been won for strategic reasons.

#### Employment, Policies and Procedures

27. The Claimant's terms and conditions of employment are set out in an employment contract (see Bundle pages 37-42), which confirmed he was subject to Respondent's disciplinary procedure (pages 130-136 of the Bundle). The policy states as follows:

##### *Gross Misconduct*

*The following are examples of conduct falling within the definition of gross misconduct and which may entitle the Company to dismiss without notice or payment in lieu:*

*theft, fraud, falsification of Company records or any dishonesty involving the Company, its employees, customers or authorised visitors or attempts to commit such offences.*

*This list is not exhaustive. It illustrates the type of conduct that normally merits dismissal for a first offence. If the Company is satisfied, following investigation and disciplinary hearing, that the employee has committed gross misconduct, the Company will normally dismiss the employee without notice or pay in lieu. In some circumstances, demotion or suspension without pay may be used as alternative sanctions.*

#### The relationship between the Claimant and Ryan Paice

28. By his own admission at the hearing, the Claimant had an open and frank relationship with his staff members, which included Mr Paice. In his witness statement, which was explored during the hearing and confirmed by the Claimant but unchallenged by the Respondent, the Claimant explains at paragraph 18 of his witness statement:

*In February 2024 Mr Paice approached me in my office to advise me that his partner was pregnant and confirmed he had recently secured a new job opportunity with another company but had chosen not to leave at that point as he wanted to stay until after the birth of his child and use his entitled paternity leave, he said "I was planning to leave Anixter as I no longer trust them " I am Fucked off " by the way the company has treated me over the recent job interview as he still had received no feedback and felt he was being treated in a similar way to a previous colleague who left in a comparable situation that would result in a loss of income. He went on to confirm he would be leaving Anixter once he had taken his paternity entitlement.*

29. The Claimant was friends with Mr Paice, however this was only in a workplace capacity, for example arranging a Christmas party and having a drink as part

of a workplace event. The Respondent made submissions and cross examined the Claimant that the relationship between him and Mr Paice was akin to a close personal friendship. There is a message from Mr Paice to the Claimant in the Bundle (page 66) following the Claimant's dismissal stating he considered the Claimant to be a "good boss and a good friend". However, the Claimant was credible in explaining through the hearing that whilst this was friendship in a work setting, it was nothing more than this. There is no evidence to suggest otherwise.

30. The Claimant spoke openly with his staff about bonus structures and how they were calculated within the Plymouth office environment. The Claimant and Respondent both agree this occurred but disagreed the extent to which the Claimant directed Mr Paice as to how to structure his own bonus arrangements. I find here that whilst the Claimant did speak openly about bonus structures and how they operated in practice, I do not find that at any point the Claimant specifically directed Mr Paice to actively do anything or undertake any specific actions in relation to his bonus payment. I will provide my reasons for this in explaining my overall rationale later in the judgment, as the evidence outlined below supports this overall conclusion in the context of the chronology of events that unfolded.

**31. The circumstances surrounding the Allegation**

32. In early March 2024, Ms Kirk queried with Ms Reynolds several 'negative' billings she had identified on the Princess Yachts account. A negative billing is where the GP of the sale is below zero – so a loss is made on the sale. Ms Reynolds reviewed them in IAP and noticed they were being billed against the Claimant. Ms Reynolds reported this to the inhouse legal department (this is set out in the witness statement of Ms Reynolds).

**Further findings of fact – the Investigation, Disciplinary and Appeal Process**

*The investigation*

33. The Respondent carried out an investigation in relation the Allegation.
34. On 11 March 2024, the Respondent appointed Eric Munshower (Director, Security & Investigations based in Pittsburgh, USA) to investigate the suspicious sales booking activity by Mr Paice. The Claimant was not suspended whilst this was undertaken.
35. Between April and May 2024, Mr Munshower conducted a (primarily IT-based) investigation of IAP and other computer systems. As part of this investigation Mr Munshower interviewed the Claimant, Ms Reynolds Mr Paice and Ms Kirk. Mr Munshower conducted his investigation and produced two investigation reports – one regarding the Claimant (page 64 of the Bundle) and another related to Mr Paice (page 121 of the Bundle).
36. At the same time, and prior to being notified of the investigation, on 11th April 2024, the Claimant noticed an anomaly on what is known as the Princess Yachts account and made a note of this in his daybook (page 53 of the Bundle) to speak with Mr Paice who was responsible for the Princess Yachts account on his return from annual leave.

37. Mr Munshower's preliminary findings were that, since November 2023, Mr Paice had transferred all sales processed for Princess Yachts with negative GP from his own Rep Code to that of Claimant, which resulted in an artificial increase in Mr Paice's overall GP percentage to 3%.

38. Mr Munshower interviewed the Claimant on 18 April 2024. The conclusions of this interview and the investigation report of the Claimant is as follows:

*3.2. MH was interviewed on 18 April 2024 by me along with witness Helen McNamara (HR Manager). During the interview MH claimed he was unaware of RP's actions to move all negative gross profit sales on the Princess Yacht's account to MH in mainframe until he discovered several of the questionable transactions "About a week ago". When asked if he confronted RP about these transactions he stated, "not yet, but I'm planning to". I further asked him if he has access and reviews his sales team's sales transactions daily. He stated he tries to but may miss a day or two from time to time. When asked how he didn't catch these transactions earlier he stated, "I must have missed them".*

*3.3 As a manager of a team of sales employees it is MH's responsibility to review his team's sales activity with a high frequency. RP's fraudulent transactions should have been discovered and addressed immediately. In my opinion, MH was aware of RP's actions yet did nothing about it because he was enabling the behaviour with the intent of helping RP met his annual sales goals.*

39. In the Investigation Report relating to Ryan Paice, Mr Munshower writes as follows:

*3.1 Since November 2023, all sales RP processed in Mainframe for the Princess Yacht's account having an estimated negative gross profit had been transferred from RP's 'rep code' to MH's rep code in Mainframe. The effect of this artificially inflates RP's achieved GP percentage but has no effect on Hannah's GP percentage.*

*3.2. RP was interviewed on 17 April 2024 by me along with witness Helen McNamara (HR Manager). During the interview RP admitted that he did move all negative gross profit sales on the Princess Yacht's account to MH in mainframe due to projected loss for items he could not sell for a profit. He stated he started this in November 2023 by doing it a few times but increased the frequency starting in January 2024. To date his actions have resulted in an approximate 3% gain in his overall GP numbers. RP also stated he did this to offset items that due to changes in the contract Wesco could not make profit on. When asked if he informed his management of his concerns he said "yes, and MH was supposed to forward his concerns to higher management". RP also stated he was only him that processed the transactions in question. When asked if he understood that what he did was wrong and could be considered fraud he answered "yes, but I was trying to protect the company".*

40. In Mr Munshower's view, the Claimant('s):

- a. should have discovered Mr Paice's fraudulent transactions; and
- b. behaviour had enabled the fraudulent activity.

## **Commencement of Disciplinary Proceedings**

41. Based on these investigation reports and in consultation with Helen McNamara (our then UK HR Business Partner), on 3 June 2024 Ms Reynolds commenced formal disciplinary proceedings against Claimant (page 62-63 of the Bundle) and Mr Paice (Pages 119-120 of the Bundle) in accordance with the disciplinary procedure (Pages 130-136 of the Bundle). She invited each to attend disciplinary hearings to take place on 6 June 2024.
42. The allegations of gross misconduct and summary grounds were set out in their invitation letters (pages 62-63 and 119-120 of the Bundle, respectively). Each were warned that a possible outcome of the hearing was dismissal and informed them of their right to be accompanied. Neither party was accompanied.
43. Later the same day, Ms Reynolds received an email from Mr Paice stating various points for Ms Reynolds consider in advance of his disciplinary hearing (pages 117 to 118 of the Bundle). Mr Paice's email states as follows:

*I believe I had an agreement with my manager that I could move the negative JG basket from my rep code to his due to increases from this vendor with Anixter unable to pass these increases onto customer at a sensitive time with contract negotiations ongoing that I was not involved in. Upon reflection I wish I had put this all into an e-mail and copied higher management into this and worked with higher management to a solution together that could have prevented this situation.*

*In regards to allegation of gross misconduct, I would dispute that what I have done is gross misconduct as I had an agreement with my manager and at no point have I hidden transactions, in fact everyone can see on IAP the transactions that are processed daily under each rep code and you can see orders with JG parts on so I certainly wasn't hiding anything or acting in a sinister way. I also assume any monthly bonus we receive is reviewed and signed off at various levels within management, if this was thought to be gross misconduct and that I was doing something that I didn't believe I could do this surely should have been brought up with me monthly and certainly should have been highlighted to me sooner than April 17<sup>th</sup>.*

*Following the call I received on 17th April when I was informed this could be seen to be fraudulent activity not one order has been put under another rep code other than mine including JG basket (which I believe we are soon to receive a further price increase therefore making a larger loss).*

*I have been working for Anixter for nearly 6 years now and have never had an issue or allegation towards my ethics and business practices which I believe should be evidence to show that during this period I believed there to be an agreement in place in relation to the negative JG basket and that I was told I could this basket onto another rep code. You can see from the data and my time at Anixter that this is an isolated incident and I believe this issue is more a lack of communication and collaboration across the board rather than gross misconduct which you can see from the data and my time here that if this was gross misconduct it would be wildly out of character.*

*In regards to financial gain I would like to point out that I received no bonus payment for the month of December 2023 which would have been January 2024 payslip, my understanding is that I did not meet my GP% required to*



*qualify for this (see attached January payslip to demonstrate this) so any benefits that removing the JG basket would have not been applicable for that month.*

44. At no point during the entire disciplinary or appeal process, was the Claimant made aware of the existence of this email or the specific allegations that Ryan Paice had made about the Claimant.

### **Disciplinary Hearings**

45. On 6 June 2024, Ms Reynolds held a disciplinary hearing with Claimant at 08.30 am (notes at pages 68- 69 of the Bundle) and another with Mr Paice at 09.30 am (notes at pages 123-124 of the Bundle).

#### Disciplinary Hearing with the Claimant

46. A notetaker was present and notes are available of the meeting as explained above. The relevant paragraphs from these notes are set out as follows:

*Gemma asked if Ryan had ever approached him about it. Mark said that Ryan had approached him on the Wednesday that someone from America had called and spoke to him about John Guest negative billings. Mark asked what he had said? Later that day Mark received a teams from Eric asking him to join a call with him the following day. Mark then spoke to Gemma to say he had a call from Eric, what's this about and he got on a call with him the next day.*

*He initially assumed he was talking about negative billings about John Guest, he agreed and said that yes it all goes out negative, it has done for a while, not much we can do about it. He said he'd totally got the wrong end of stick and when he clarified again, he said that Ryan had been transferring negative billings to him. Mark was horrified as to what he was saying, he used different words, but it translated to fraud.*

*Mark said that Eric had asked if he checked the billings, Mark said yes, he tries to but doesn't both days. What he meant by this is that an email comes through with billings on which isn't great, so he doesn't really look at it. What he does check everyday is the sales, GP and he looks at the customers. He doesn't check if a sale has gone through and if its in his name. Every one of Princess Yachts and John Guest billings are negative, he knows this, and he doesn't look at it.*

*Gemma asked him what he saw. Mark confirmed that he saw JIT billings on his account code. Mark said he loads order, does spot buy orders for everybody, he sells stuff but doesn't understand why JIT billings were on his account code. He was going to speak to Ryan to see why it was getting there and there must be a problem with the JIT but didn't speak to him. He cannot remember where it was that he saw it. He cannot remember where it was, it must have been a sale for the previous day 10th April. He saw a number against him on that day against his name. Gemma asked if he then checked anything else. Mark didn't, he just made a note that day to check with him.*

*Gemma asked what he thought about it now. Mark said he's transferring codes. He's spoke with Ryan about it and he'd said yes he has because of the low margin and it was affecting him.*

*Gemma asked if there was anything else Mark wanted to bring up. Mark said when he spoke with Eric on the phone, he was completely floored by what he was saying. He would not be party to Fraud, it's not him. He's been with the company for 30 years. He's always been honest.*

*Mark said that on the documents it said that Gemma had witnessed the fraudulent activity. Gemma confirmed that she had been given sight of the information – the billings being scanned in the morning against one rep code and then in the afternoon against a different rep code. This was written up as part of Eric's investigation.*

*Mark said if he's guilty of anything then he's guilty of being too trusting, he doesn't go looking for these things. He trusts people and doesn't assume they would do that. He is horrified to be sat there.*

47. For clarity, the "John Guest" account is part of the same sales accounts originally in the name of Ryan Paice, as the Princess Yachts accounts, referenced above.

Disciplinary Hearing with Ryan Paice

48. On 6 June 2024 at 9:30am, Ms Reynolds then held a disciplinary hearing with Mr Ryan Paice. A notetaker was present and notes are available of that meeting (123-124 of the Bundle). The relevant paragraphs from those notes are set out as follows:

*Gemma said that Ryan had put in there that he believed he had agreement from his manager, can he expand on that. Ryan said how could he not have had an agreement with his manager if he didn't know that Mark wasn't bonused on his code. Mark had said to him he could put it onto his code as he isn't going to get a bonus or be affected by it. How could he have done that unknowingly if he didn't know that information. Gemma asked if it was discussed with Mark. Ryan said it was when the John Guest increases were coming in. Gemma asked when this was. Ryan said it was in November. Ryan highlighted to him that we weren't making any money on the hose clips for John Guest. He asked him what we were doing about it. Mark said at the time, they were negotiating a contract etc, Ryan said he understood but he was the one that would be losing. Mark said that he could use his rep code as he didn't get bonused on it. It was all verbal and not written down anywhere.*

*Ryan added that he has conversations with Mark every day and highlights any grievances or problems that he sees as an when they happen. In hindsight he realises that it should be in writing and everything should be sent to Gemma. Gemma confirmed it should go through a chain of people. Ryan highlighted this to Mark in November and now we're in June and nothing has changed. Ryan knows what happened is wrong and shouldn't have been done but he believes it has been done with the approval of his manager and is signed off every month by his manager and possibly higher.*

...

*Gemma said to confirm that Ryan did this by agreement because he knew it would affect his numbers and his bonus. Ryan said he'd put it to management, and they understood why and said that he had no influence on the matter. Ryan wanted it to get resolved but realised it wasn't his job to do so. Ryan noted that*

*he'd seen the presentation that had been done recently and was disappointed that he hadn't been asked for any input on this. He believes all of this is because of a lack of communication from all at Anixter.*

*Gemma mentioned that he had said 'protecting' in his interview. Ryan has no idea what context this was in and cannot remember what he meant by it. He was in no way protecting the company.*

...

*Ryan added that he just needs to know what is happening as it is causing him stress. He got offered a job in February, if he'd have known that this was coming, he'd had left then. Gemma confirmed we would resolve this as quickly and efficiently as possible. Ryan confirmed he had nothing else to add.*

49. There was then a short break and then a follow up meeting at 11:30am on the same day (see page 125 of the Bundle). The relevant paragraphs are as follows:

*Gemma confirmed that she has reviewed the information, she thanked Ryan for his time and his honesty, adding that she had taken some time consider the outcome.*

*Gemma confirmed that Ryan had accepted that he'd done it, that it was a small location and that he had done so after speaking to his manager. Gemma also considered that it had stopped straight away after it had been discussed with Eric. Gemma confirmed that Ryan had also been very open and transparent.*

*The letter stated that it was gross misconduct, but Gemma feels that with the above mitigating factors, she will propose a final written warning. A letter will be issued. Ryan will have time to read it and that he has the right to appeal if he would like to. The letter will be issued at the start of next week.*

*Gemma asked if Ryan has anything to add. Ryan thanked Gemma for taking his side into consideration and for understanding that it wasn't done maliciously.*

*Gemma would like Ryan to keep the matter confidential. Ryan agreed.*

### **Decision to Dismiss**

50. On 10<sup>th</sup> June 2024, by way of letter and post, the Respondent made a decision to dismiss the Claimant and terminate their contract without notice and without a prior warning, on the grounds of gross misconduct (pages 71 and 72 of the Bundle). This was undertaken for the following reasons:
- a. Between November 2023 and April 2024, Ryan Paice, an employee who directly reported to the Claimant, conducted fraudulent sales booking activity. In particular, Ryan Paice manually amended the rep code of sales orders with a negative gross profit, by transferring them from Mr Paice's rep code to the Claimant's rep code.
  - b. The reason for amending the rep code in this way is that Ryan Paice could have achieved financial gain.

- c. The Claimant was complicit and aware of Mr Paice's activity between November 2023 and April 2024 on the basis that:
- i. It is likely that transferring the sales from Mr Paice's rep code is the Claimant's idea. Mr Paice would not have been aware that a sales associated with the Claimant's rep code would not affect his bonus plan *"if you did not tell him, thus creating the 'win-win' situation whereby neither his [or] [the Claimant's] bonuses were negatively impacted"*;
  - ii. The Claimant admitted they were aware of the issue before the disciplinary process. However, it was found that the Claimant did not do anything to substantively highlight the issue to Mr Paice or management to try and stop it. The Claimant's recollection of the events and the way it was dealt with was vague – this suggests that the Claimant did not address the issue in any meaningful way, as explained above;
  - iii. The Claimant's defence that they did not check IAP is "unbelievable". *IAP is considered a "foundation tool" of the business, the Claimant should be aware it is critical that the tool is reviewed on a near-daily basis. In the unlikely event the Claimant did not check IAP (which was considered by the Respondent to be unlikely), the failure to do this is an "unacceptable dereliction of your duty as a manager of the business and does not excuse you"*.

51. On the basis of the above evidence, it was decided that the appropriate sanction was summary dismissal for the following reasons:

- a. The Claimant was complicit and/or aware of the fraudulent activity happening. The Claimant provided Mr Paice with a fraudulent solution for their financial gain.
- b. The Claimant was evasive in the detail surrounding why, as the manager, did not challenge Mr Paice or escalate it when the issue was discovered. Ms Reynolds concluded that the Claimant was not honest and open during the disciplinary process.
- c. The Claimant failed to use the IAP software available to the management team to monitor and manage the business, which is an *"unacceptable dereliction of the duty as a manager of the business"*.
- d. The Claimant ran the Plymouth location autonomously and with only minimal supervision due to its location. Given the breaches and evasive behaviour, this led to an *"irretrievable breakdown in trust and confidence between [the Claimant] and the company"*. Given the relative independent of the role and that being to run the Plymouth location, alternatives to dismissal were not considered appropriate (such as a final written warning).

52. There was a right to appeal against the decision.

53. At the same time, the formal letter reflecting the decision made at the disciplinary hearing of Ryan Paice was also sent out to Mr Paice. This confirmed what was set out in the disciplinary meeting, as follows:

*Following the disciplinary hearing, I am satisfied that you committed gross misconduct for the following reasons:*

*1. In our IAP system, you manually amended sales orders with a negative gross profit from your Rep Code to your manager's Rep Code between November 2023 and April 2024.*

*2. This activity represented serious misconduct because it could have resulted in financial gain to you. This is because through your commission structure you receive a higher bonus when you achieve a higher overall gross profit margin.*

*After careful consideration of the available sanctions, I decided that the appropriate sanction was a final written warning for the following reasons:*

*1. This activity was serious and fraudulent. It could have had the effect of increasing your commission resulting in financial gain to you.*

*2. Your conduct throughout this disciplinary process has mitigated the severity of the sanction I have imposed. When questioned, I found you to be honest and open about the activity. Furthermore, you provided circumstantial evidence that your line manager was aware and authorised this activity.*

*3. I consider that a final written warning will have the desired effect, i.e. that you will learn from this experience and not conduct the same or similar serious misconduct again.*

### **The Appeal Hearing**

54. The Claimant appealed his decision in an email to Laura Macken on 16 June 2024.

55. The Grounds of appeal were set out in an email (Bundle pages 76 to 77). In summary, the Grounds of appeal were as follows:

- a. *The Claimant had no part or knowledge of Ryan Paice's decision to transfer negative sales orders to his rep code. The Claimant was unaware this was taking place and did not suggest this was a way Mr Paice could increase his bonus payments.*
- b. *The Claimant did not provide Mr Paice with a fraudulent solution and was in no way complicit with the activity.*
- c. *The Claimant's team were aware that his bonus was based on branch numbers and they were broadly aware through many conversations how the bonus system worked.*
- d. *The Claimant noticed his rep code on the Princess Yacht JOT account on Thursday 11<sup>th</sup> April 2024 after returning from a meeting with Princess Yachts. The Claimant noted to raise this with Mr Paice upon his return to work on Monday 15<sup>th</sup> April 2024 after taking three days holiday. The Claimant did not think Mr Paice was trying to operate in a fraudulent*

*manner but thought there was a possibility of a system error – the Claimant wanted to understand what this related to.*

*e. The Claimant does use IAP daily and did not state he never used it. It was used for a variety of reasons and for reporting tools but the Claimant did not “drill down” into individual sales within his team.*

*f. The Claimant had worked for the Respondent for 30 years with an “impeccable record”.*

56. On 20<sup>th</sup> June 2024, Ryan Hamer wrote to the Claimant via email to invite him to attend a disciplinary appeal hearing (pages 78 and 79 of the Bundle).

57. Mr Hamer was appointed as the disciplinary appeal manager by Laura Macken (HR Business Partner), as he is more senior than Ms Reynolds and had no prior involvement in the matter (page 2 of Mr Hamer’s witness statement). Mr Hamer used to manage the Claimant and has known him personally for a number of years, as explained in the Teams transcript between Mr Hamer and Ms Reynolds in the Bundle (Pages 98A to 98K of the Bundle).

58. Mr Hamer was employed by the Respondent as its EES Senior Sales Director for the UK and Ireland. He is the profit and loss (P&L) owner for EES UK & Ireland’s commercial and industrial (C&I) customer segment, responsible for managing C&I sales locations and business development teams (per page 1 of his Witness Statement).

59. There is a transcript of the appeal meeting recorded via Microsoft Teams in the Bundle (pages 81 to 98). Relevant extracts of that meeting are set out below. “MH” is the Claimant and “RH” is Mr Hamer.

*The first ground of appeal was to say the Claimant “had no part of knowledge of Ryan’s decision to transfer John guest sales orders to my Rep Co. I was unaware of this taking place” (RH reads out)*

*MH: And the instruct[ion] has come for me to do it. Yea...well, no, I absolutely refute that. I did not. You know, I was not aware that Ryan was doing it.*

*The John Guest codes have always been at a low margin. I don’t if you remember from your time always, always low. Last year they went into a negative because we didn’t put a price increase in. I’m aware that they’re low.*

*RH: On that point...then why haven’t [you] picked it up on either IAP three PTS or any of Margaret’s reports?*

*MH: I mean I don’t. I do look at it, as I said, I know I’m aware that John Guest goes out low...I look at it as a group (on P3), I don’t go into Ryan’s sales reports to see, that he’s changed it to me. You know, I’m fully aware John Guest is a negative...did I look at it to see if it was going out of my numbers as a loss? No, I didn’t.*

*RH: Cause that’s on the sales Rep dashboard of P3, isn’t it? If you click on there, it would show you that’s it’s gone under your code.*

*MH: Yeah, yeah, I’m aware it’s on there, but again, it’s not something I use. I don’t. I didn’t go into sales Rep I’m looking at the overall top line numbers.*

Onto the second point on appeal, RH reads out

*"I have stated and confirmed that my team that my bonus is based on the branch numbers. So, whilst I want my team to achieve bonus, my focus is always on the final number...would Ryan know that would affect that? By moving it to yours?"*

*MH: Yeah, well I've talked openly. Yeah, I've talked openly in the branch over the years...I've said it, I've stated it. My number is based on the branch numbers, not on yours. I want them to earn their bonus and if they are earning theirs, I should be earning my bonus. So, I've openly said that my bonus is not affected by yours. It's affected by the whole branch number...the number it's not just a number, it is the number. That's all I talk about in a branch, the number.*

...

*I mean, Gemma's aware of that. I'm aware of that...Ryan's aware of it because I've said it in the branch. I mean, I've said it openly. I mean, I think a bit further on...it's daily communication over the years".*

*RH: The other one [the other point in the appeal], on the final notes you admitted that you were aware of the issue before this disciplinary process.*

*MH: "I saw JIT sales going out on my name. I thought, why are the JIT sales going out of my name? I didn't go into them too look at them. I made a note in my daybook and all I've simply written is PY question mark and the intention was I would speak to [Ryan Paice] and what we've been doing recently is clearing out old JIT locations. You know Princess Yachts have been around forever and we got some really old locations in there. I thought it might be something to do with that. I don't know what it was, but I'm gonna note to talk about [it] with Ryan. When I was next in the branch, when he was in the branch...I just assumed it was all JIT locations or something. I don't know what it was, but I didn't think that it was him transferring. I didn't go into it. I just saw why is that pv question mark and that's what I did".*

*RH: It obviously says that [you] noticed the sales of [the record] and PY JIT accounts. This was on Thursday 11<sup>th</sup> April after returning from a visit with Christina. So, at that point in time then I understand what you're saying is Ryan was off on holiday, but so at that point, did you have a look on any of the IAP or P3 just to have a quick review of what that possibly could be?*

*MH: Not, it was Thursday afternoon, it was after work I've got back late. You know I just made a note of it and my [intention] was to have another look at it. No, I didn't go in to look at it to see about it. My intention was to talk to him about it when he was back in the branch and just not to talk to him, to say, you know, just to understand it because I didn't understand it.*

*RH: The other [ground of appeal] where you say you categorically did not say you did not use IAP, which I think there was a guy called Eric who did part of the investigation, if I read this right from the US.*

*MH: Yeah*

...

*RH: So obviously you are saying you did use IAP but only the top level. So obviously I use we all use IAP every day and obviously I click into it, do you just use the top line level then?*

*MH: Yeah. Yeah, I just look at top line sales and numbers and various other reports on there. But I don't click down into.*

*RH: Just look at the location number. Right, right.*

*MH: This, oh you know their sales...I'm aware it's there and I've looked at it since, but I haven't been clicking down into their actual sales to...study them, to understand, you know, [ins] and outs of it. I'm aware it's there. I use IAP for lots of things, but not clicking down into the -*

...

*RH: So the other thing is obviously on there, Mark, is that absolutely [you] dispute comments regarding not being open and honest and...as you say very you know it's incredibly disappointing after 30 years.*

...

*RH: I think based when I look at the notes of dismissal, It's like a double edged sword, a little bit, it's like...was you implicit on telling Ryan and you know, when did we really understand potential the consequences of what could happen by saying, right, just put it on my code and we'll sort it down the line not knowing it was potentially fraudulent. But then there's the other case of, OK, if Ryan has gone about it himself and he's done whatever it is done, then we've got the fact that as a manager, we should have picked this up on numerous reports that we've got.*

*MH: Yeah I understand that. Yeah. But one I didn't tell him to put it on my. You know my Rep code and two, yes, I didn't pick up on because I was not drilling into their accounts to see checking for fraudulent, you know, activity. I'm fully like I say I'm fully aware about John Guest. I'm looking at you know all my top accounts in terms of their numbers, not the fact that the sales rep [codes] are you know potentially changing things.*

*RH: Yeah. OK. So that's your notes. Is there anything else in the disciplinary because like I said, at this moment in time, it's not really for me to stop deciding whether I believe it's right or wrong. I just wanted to understand on your view of why you felt it was wrong, the action that they took. And then I'm going to go away and I'm going to talk to all the relevant parties just to get their take on it as well. Because, like I said I'll then put my submittal through to HR*

...

*RH: Yeah. Okay. So that's your notes. Is there anything else in the disciplinary because like I said...*

...

*MH: You know, I went into the meeting with Gemma. How can I put this? I don't want to I you know – what the heck – and I walked out the door that day, you*



*know. This is different. I mean I've been reading through it, I've got some, you know. I've made notes. I've done stuff and you know, and looked at it...*

*RH: Anything else in particular?*

*MH: I mean...the only thing I was going to say...you know, I think [Ryan Paice] earned a bloody good bonus last year...I'm on record as saying I think you know the inside guys bonuses, you know, needs to be reviewed...if they earn a bonus, absolutely fine. But you know, if they, if it comes their way and you know and I earn a bonus. Well, great. That's because that is the bonus scheme. But you know, personally, I think the bonus scheme is, shall we say, slanted or not, You know, I don't know why I'm saying this. I'm saying it because he had a good bonus last year. I don't think he should expect to earn that every year because clearly, you know, he's not going to run it every year. And this year he's not, you know, and we had a conversation collectively in the branch. And I said, well, yeah, you, you know, we're not going to earn bonus this year because we're \$3 million away from where we're going to be. Plus, we lost another account plus, you know.*

*RH: Yeah*

*MH: So you know the bonus is the bonus. I'm aware of it. I think you're only bonus [is] last year. I don't really [know] why I'm saying that, but you know.*

*RH: But just on that one then, so that on the bonus. So obviously this is the issue by the looks of it started in November last year.*

*MH: Yeah.*

*RH: Which I understand that you know if the location isn't doing very well this year, but if he's [had] a good bonus last year. Why? Why would he? Why would he start to do that?*

*MH: Exactly. That's the point I'm trying to make. Why would he do it then. You know why? Well? John Guest went into a loss the end of last year, cause, we didn't put the prices up....why is he doing that when he earns nearly 14.5k bonus last year? What effect is it going to have? I don't know?*

*RH: OK. Do you believe that he knew what he was doing by moving? That would take it off. It would stop the negative on his Commission.*

*MH: Really. Yeah.*

*RH: Um. I've not got anything else, Mark. Unless you have, like I said, he's – I'm. I'm going to go away and speak to everybody else because...to understand it wholeheartedly, because like I said, I've only got all the notes which I've gone through over the last couple days to understand it, and I've just obviously gone through your notes. I just want to know if there's anything else that you believe we're missing or and so I can go away and have a look at.*

*...*

*MH: Where? You know where did. All right. We found it. It's happened. It's, you know, and like you say, we're both trying to understand why he decided to it*

when he did it anyway. So where is it, then? That Gemma thought I must be party to it? What? How does that come about?

RH: I'm not offshore and it's something that I will have to ask Gemma on how she came to that conclusion...So I will take that away and that'll be one of the questions that I have for Gemma.

...

RH: So, the findings [from Eric, in America, as part of the investigation]...so he's saying, as a manager of a team of sales employees, [there was a] responsibility to review team sales activities with high frequency. Ryan Paice's fraudulent transactions should have been discovered and address immediately, in my opinion. Mark Hannah was aware of Mr Paice's actions yet did not action about it because he was enabling the behaviour with the intent of helping Mr Paice meet his annual sales goals. So whether it's regard Gemma came to that conclusion, but obviously whether she's taken on what Eric's assumptions are.

...

RH: ...So, you are saying that's 100% not right?

MH: I've never discussed it with him, agreed it with him, said it's a good idea to do this...we've talked like say we have talked about sales and bonus this year and do you know the conclusion has been and will is that the Plymouth [branch] will not earn a penny in bonus, right? I won't, I wouldn't. And there they are nowhere near what? You know, 2023 numbers were. And that was always, know you, our way and in fact you know we've got two numbers at the branch.

RH: OK

MH: Ryan, you've worked with me. You know how to work. We've got a spreadsheet. We've forecast and we do all that. We've got two numbers. We've got the branch number and our number. Yeah, and you know we have our number is what we're working to and how can I put it? I've always strived to, you know, get the number. You know, it's always been the number and this year, I'm not, you know, I wasn't going to do the number. And I've almost felt I'm going to this isn't you know, the most relaxed I've been about not doing the number ever because the number was unattainable.

RH: Yeah.

MH: Unless something major happened which wasn't going to happen, I believe this year and that's something major was well, we'll work on other things. Forget the other things. They were small, incremental things. But the big thing we needed Princess Yachts its probably might not. Well, I felt it wouldn't happen this year. At best, it'll be next year. So we have two numbers at the branch we've been working with.

...number and our number and I've been totally laid back about it and that's now I know that sounds wrong, but as long as we do our number, I felt we were doing. The best we could great. We're working on other things. Fantastic. But there's two – or three million sort is where we are this year and that's unachievable unless something major, major. But there's only one account that can do that.

RH: Okay.

*Yeah. I think one of the last things, one of the last points, I think Gemma obviously put...I find your defence that you did not check IAP. Unbelievable. IAP is a foundation tool of our business...*

*MH: Well, again, I didn't say I don't check IAP. What I do is I check IAP to look at things on IAP. What I don't do is drill down into, clearly into what the sales are just, you know what? Whatever you're calling that is.*

60. The meeting terminated on Microsoft Teams. On the same day, 27 June 2024, in the afternoon, another Microsoft Teams meeting took place between Ryan Hamer and Gemma Reynolds. This has been included as a transcript as is set out in pages 98A to 98K of the Bundle. Paragraphs I consider to be most relevant are set out below. Ryan Hamer is "RH" and Gemma Reynolds is "GR" for ease of reference:

*RH: Areas of where we would notice it as managers where it would and I said look, did you not review? IAP said. But he only reviewed the. The top level, it didn't really drill into the detail which I asked him. Well, that's our job, which he said yes, but I don't do that.*

GR: Okay.

*RH: The other one was P3, where I said, you know, we've all done the P3, do you have you got plans and do you review them with your guys which he answered no. And I said, he says I only see the top line. It says, well, we're supposed to evaluate the performance of the individuals on the P3 page. And then from there you would have seen straight away like I did, that your name is on there with a, with an amount and a negative value.*

GR: Yep.

*RH: And obviously I asked when he when he said he first saw this potential thing and he put in his diary regarding PY question mark on the 11th of April. I had then asked him again. So, if you knew that some, if you thought something was wrong, then why didn't you then go back and start looking into the details to see on IAP or P3, what the issues was? And he couldn't really answer that.*

GR: Yep.

*RH: So what? Obviously, I can see that Eric did an initial investigation so. So, what, what was your, I mean obviously I think I know the answer of did he whether he - Him and Ryan did this together. Obviously, the only those guys can answer that one. But the fact of the matter is, it's neglect of his position, of reviewing all the reporting structure, what is missed, which is gross misconduct.*

*GR: Yep, Yep, I exactly right and obviously I'd also interviewed Ryan. Don't forget as well before Ry. So obviously he made it clear in his statement as well that he had discussed it, because how would he know that Mark doesn't get influenced on his bone? Is it bonus by individual lines? So that was one thing that Ryan had said that he and Mark had spoken about it. And Mark said transfer it because it doesn't impact me because I'm on an overall bonus rather than an individual account bonus*

RH: Yeah

GR: And Ryan's words were how would I know that unless I'd been told that. But my view was the same IAP's. The 1st place that every manager should go to every day and also go down into your salespeople. Because how do you not pick up on freight? How do you not pick up on any individual line issues on, you know, something's been billed incorrectly. So yeah. So, I mean, that's where I went. And when I did ask him about why he didn't.

RH: Yeah.

GR: Approach Ryan because I think Eric also asked that question. He didn't get an answer. He didn't give an answer to Eric. I don't think in the notes, but when he spoke to me about it, he said, well, Ryan was on holiday. I had it in my notes. Then I had the call with Eric, and I just didn't just do it. And that's and then I said to him, that was a neglect then as well, wasn't it?

RH: What? Yeah, that's what I said it said because regardless of whether he's on holiday or not, you should have gone and looked at the data.

GR: Yeah. Agree.

RH: Yeah, yeah. cause. As I said to mark, I don't need to drill down into the details, but I still do it every day. Yeah, OK alright. But so other, I mean obviously with.

GR: Yeah.

RH: There was things about where it says, look, Princess, you're, you know, we talked about putting all the accounts on to the onto the JIP exceptions. You know where we pay the 0.5% agreement which I said to him, but that's irrelevant to this in question because this is about moving. Negative ones. It's nothing to do with that at all. I think you just bringing that up for a reason, trying to muddy the water a little bit.

GR: Yeah.

RH: That that's what I got.

GR: Yes. Yeah. I mean he for me, they were purpose. I took some. I don't know whether you've got the evidence there, but I took some screenshots, Ryan and they were definitely.

RH: Oh, I've not got no, I've not got that.

GR: Oh, right, OK. I took screenshots over a number of days that I sent to Eric and in the morning, they were against Ryan's code, and by the afternoon they were against Mark's code. So, they're all JIT items. I got Karen Kearney to check all that so that nothing was outside of being JIT.

RH: Yeah.

GR: That was being transferred, so I'd already validated that bit. Sorry I didn't realise you didn't have that info, but that was that.

*RH: So, what if I know? You know, if I do that, I'd see bookings as a minus and then as a plus, when I'm checking me bookings up as well on a daily basis.*

*GR: Well, he wasn't doing it. He was doing it on bookings at booking stage. So, every day against bookings in the morning, they scan all Princess Yachts. So, by the afternoon, he'd change some of the all the negative lines across to a different Rep code. So, they hadn't been billed either.*

*RH: Right. So, it does not delete it, it did not delete the lines and reload them. It just changed the Rep code.*

*GR: Absolutely right. Yes. And Ryan, to be fair to Ryan, he did not deny he was doing it at all, but he was doing it as he said, under the agreement of his manager.*

*RH: [Transcript writes "Bye" – could be a typo/speaking to someone else]. Yeah. What I said to Mark is that I believe, sorry, I couldn't really say. It says I'm under the impression that you may have done this on the basis that you probably didn't really understand the consequences. You know, understand that this is an - it's a fraudulent activity. And just that's why I may have been a bit blasé and say, just put it on my Rep Co until we get it sorted, not actually realising that it's fraud. That's why I think Mark's probably he's. That's why they cover up is worse than the actual crime.*

*GR: Yeah, yeah. And that's the well you. You've seen my notes and you've seen what I gave as the outcome because for me he was negligent. As a manager, you know, and I made, and I made it quite clear to him. I can't trust. I need to have people around me like you do, Ryan, that you've got to trust. And yeah, ultimately. You know, if I was sat in Ryan's shoes and my bosses had said to me. Yeah, it's OK, transfer it, then you wouldn't necessarily elevate it. Thinking, thinking anything was wrong because he's agreed it so.*

*RH: Yeah. Yeah.*

*GR: I agree with you on that, that concept that he's. Yeah, he's got more accountability than Ryan has. Who's a junior guy?*

*RH: Yeah, yeah. And obviously a lot of the questions that I asked him he answered him in the right way, which actually proves his neglects of duty. When I asked about P3. Pts, IAP, Margaret's daily reports Margaret's monthly reports and obviously the answer to every one of those was I don't really look into the detail.*

*GR: Yep, and I can confirm that cause I've got access to his emails, and he had 1800 unread emails in his inbox, Ryan. Unbelievable, isn't it?*

*RH: Yeah, you'll be able to do what I do is just click on them all and put them right Alt, right.*

*GR: I didn't see seriously, and most of them were Margaret's. Charlotte was also doing a daily report because he hadn't given them access to Margaret's reports. It was just it's ridiculous, if I'm honest with you. I just can't get my hat off. It's everybody's first job. IAP IAPIAPIAP it is, though, isn't it?*

*RH: Yeah. Yeah. Yeah. Like I say, I still do it every morning and I drill down into the details just to make sure nothing looks a bit weird.*

*GR: Exactly. So how do you ever know if something's gone through at the wrong cost? Or you know, how do you know if somebody's had fat fingers and done something on freight that they shouldn't have done? You know, you and I have. Probably. We've all picked up on loads like that over the years. So, yeah, I just didn't. Didn't fall for it, I'm afraid.*

*RH: Yeah. No, no, I'm in agreement. I think. It still has to stand, as I've said to Laura said that the fact of the matter is that I do really believe they have colluded together to do this. He's because I said to Lawrence, I know Mark Hanner as well as anybody because he used to work for me. And I know I know how he reacts in a tough situation, and he's got very flustered when you questioned him about it, and he tried to think.*

*GR: If I'm honest with you and.*

*RH: In \*\*\*\*, I'm going to I'm going to blame it all on Ryan. I've got to save myself.*

*GR: Yes, absolutely agree with you. And that was another thing that came into my head. And when I had the sort of discussions afterwards that throwing Ryan under the bus like that was just really awful, if I'm honest with you.*

*RH: Yeah, if he held his hands up and said, do you know what, I thought I was doing the right thing. Then it might be a different story. This might have been a final written warning and a slap on the wrist.*

*GR: Exactly. Exactly right. Exactly right. It. It was clearly all negative. And I, I do genuinely believe that most internal salespeople wouldn't have a clue what the location managers are. Bonus on, Ryan. So, you know, for Ryan to make it quite clear that he was told to do that because it didn't impact mark on a bonus. It does overall on his bonus obviously, but it doesn't impact him in the same way it does Ryan. Then there was definitely some collusion there and Ryan made it clear, you know, I did it. I'm not saying I didn't do it. I was, I was set. I was, I was. I was told it was OK to do it so.*

*RH: Yeah.*

*GR: He really did put his hand up and he was very honest.*

*RH: Yeah, yeah, yeah. And I think he tried to alert as well it was. This year, but I did say to Mark, I said look, this is not, I know you've told me Ryan's not going to wear any bonus this year because you've [lost business]. But the fact that matter is this started in November last year when you're telling me that Ryan was earning really good bonus. And this is when the John guest items obviously have become a negative. And why would Ryan really know to transfer them over on a [JIT] unless you've discussed it?*

*...*

*GR: Yeah. And I and I think they started to do it last year because looking visually forward into this year and I calculated it out based on sales to date that it would have impacted Ryan's margin by 2% by the end of this year if it had carried on as it had and that 2% would have been his multiplier at the year end,*

*Ryan, as you well know. So, it would have, he would have got a benefit this year, but I think that's they started it last year, you know, because they knew what was on the horizon.*

*RH: Right. Yeah. No, no, I completely agree.*

*GR: Ok*

*RH: Right. Well, I think that'll do then like I said is I don't think the outcome is going to change because like I said, irrespective of what he and Ryan agree is you've got it. It's like it's like I've said tomorrow it's a double-edged sword here because you've got one. Did you time to do it? You're telling you didn't, but then you've got neglective duties, which is you should have been tracking all this information as a manager, which you clearly haven't. And you said you haven't. So that's a gross misconduct, as it says in the policy, so that that is a sackable offence.*

*GR: Yep. Yeah. Well, that that was my thinking behind it anyway, from everything that I've gathered. So yeah.*

*RH: Yeah. OK. All right, that will do me. Thank you very much for that.*

*GR: No problem and sorry to have dragged you into it but thank you.*

*RH: No, it's a. It's a shame. I mean, I know he's done 30 years. He's a nice guy. I've. I've always liked Martin. Bit of a fumbler, but yeah, yeah.*

*GR: I know, I know, it isn't nice after that that number of years, but at the end of the day, you've got to have people around you that are going to grow the business and look after it in the right way, haven't you?*

61. Mr Hamer states rejected the Claimant's appeal. A letter was sent to the Claimant (pages 99 to 102 of the Bundle) on 2 July 2024 via email and next day delivery. It states as follows:

*I was appointed to investigate your appeal as I had no prior involvement in the matters and circumstances raised within your appeal, and in particular the decision to terminate your employment for gross misconduct. To assist with the investigation of your appeal, I summarized your appeal into the following overarching complaints:*

*1. You had no knowledge of Ryan Paice's decision to transfer negative gross profit (GP) sales orders to your sales rep code and did not suggest or agree to this. Gemma should not have reached the opposite conclusion.*

*2. You had intended to raise sales you had noticed assigned to your sales rep code for the PY JIT account with Ryan Paice as you thought this was a system error. This is indicative of you acting and not being complicit in Ryan Paice's actions.*

*3. Gemma was incorrect to conclude that you do not use IAP; you use it daily. Instead, you use IAP but do not drill down into your team's individual sales looking for irregularities. I investigated your appeal accordingly and, in doing so, spoke to both you and Gemma Reynolds to discuss your concerns and obtain the necessary information to make findings in respect of your appeal.*

***Findings In your appeal letter***

*You state that the notion that Ryan Paice's practice of transferring negative GP sales from his rep code to yours was your idea is completely incorrect. Furthermore, as concluded by Gemma, you deny that Ryan Paice came to you to discuss this situation or that you suggested to him the transfer solution.*

*We discussed this further at our meeting as, if this was indeed the case, it raises the query as to why you did not notice the issue or raise it with Ryan. You explained to me that you had no knowledge of Ryan's activity. I queried whether it would not have been obvious from reviewing your and Ryan's individual sales activity in IAP, P3 or Margaret Burn's reports.*

*You explained that you only review sales activities on a group/location basis and do not review individual employees' sales activity. Furthermore, you confirmed that you did not identify the negative GP sales activity on P3 because you did not regularly review your own individual performance.*

*I discussed with Gemma how she came to reach her conclusion that she found it likely that the idea to transfer sales from Ryan Paice's rep code to yours was your idea; and that you did not check IAP was "unbelievable"; and that your failure to have identified this issue and taken appropriate action was an unacceptable dereliction of your duty as a manager.*

*With the benefit of having spoken to both of you and considering all the evidence (including both of your perspectives), I conclude that Gemma's conclusions were reached reasonably and are valid.*

*In my assessment, there were multiple sources of information (IAP, P3 or Margaret Burn's reports) from which you could have readily identified that negative GP sales were being associated with your sales rep code over a sustained period from November 2023 by Ryan Paice.*

*Had this been identified sooner, you acknowledge that this practice should not have been happening and should have been immediately investigated and addressed.*

*It is an expectation of all our sales managers that they review the sales data in IAP and P3 daily and that extends not only to group/branch performance but to that of the individuals that make up that sales team.*

*If I was to accept that you had no knowledge, I agree with Gemma that it is unacceptable that – because you chose not to review your team's individual's performance as is expected – you failed to identify that Ryan Paice was transferring negative GP sales to you for a prolonged period.*

*While I accept that you may have accessed IAP and P3 daily, you admit yourself that you do not review individual sales performance on a regular basis and it is this failure which, in my view, is the more concerning aspect and, if I were to accept you had no knowledge, the reason why this issue was not identified or addressed sooner.*

*Accordingly, I agree with and accept as reasonable Gemma's conclusion that failing to review individual sales performance in IAP and P3 to identify this issue earlier was a dereliction of your duties and does not excuse you.*



*I acknowledge and accept that, historically, you have been open about how your bonus is calculated (i.e. on branch rather than individual performance) with your team. However, explaining to your team in a broad sense how your bonus is calculated does not in my view explain how Ryan Paice came to perform specific transfers of negative GP sales to your sales rep code, know that this wouldn't affect your bonus pay outs, or come to your attention and be addressed.*

*In my assessment, it is unlikely to be a practice that Ryan or any other sales employee would devise by themselves from general knowledge - confident that it both would achieve the desired effect and would not be pulled up – unless the details and mechanics were discussed and either explicitly or tacitly agreed to by their manager (in this case, you). In your appeal letter, you state you first became aware of the issue on Thursday 11 April and planned to address it with Ryan Paice on Monday 15 April, when he returned from annual leave. You state that you did not address it with Ryan when he returned from leave, that it was “very much on [your] agenda” to do so at your “first available opportunity”. However, I note that (a) you acknowledge you had conducted no general investigation of the issue (such as reviewing IAP or P3); and (b) such meeting with Ryan had not taken place by Thursday 18 April (when Eric Munshower raised the issue with you as part of the disciplinary investigation). On balance, it is my assessment that you knew about Ryan Paice's practice of transferring his negative GP sales to you and that you agreed to him doing so (either explicitly or tacitly). I therefore agree with Gemma in this regard and conclude that her conclusion was reasonable. In my view, is too convenient that Ryan Paice devised this transfer scheme on his own; that it had the effect of increasing his bonus while not affecting yours; that he knew that it would have this effect from general conversations you had about your bonus being based on branch performance, not individual performance; that Ryan had been conducting this activity on a routine basis since November 2023; that you had only noticed the practice one week prior to Eric Munshower's investigation hearing; that you had not taken any action to address the issue; but that you were about to do so.*

*As did Gemma, I find it more likely that you had knowledge of this practice; that (as Ryan stated in his witness statement), you and Ryan had discussed this practice; you had at the very least implicitly agreed to it, and you had not taken any action (including conducting any general investigation of the issue or urgently holding any meeting with Ryan) because you found the practice to be acceptable. Sadly, I am satisfied that it is likely a practice you agreed to on your own because you were unaware of and did not expect the ultimate consequences of your actions. If, alternatively, you genuinely did not have knowledge of this practice, then it is my conclusion that you ought reasonably to have known about the situation by diligently reviewing the sales information available to you on a regular basis as is expected of you. It cannot be acceptable in my view that your deliberate ignorance of the issue would otherwise excuse you. Accordingly, in such a scenario, I consider you equally guilty of gross misconduct. In summary, your appeal against your dismissal is dismissed. For the reasons set out above, I uphold Gemma Reynold's original decision to terminate your employment summarily for gross misconduct. This decision is now final and there is no further right of appeal.*

- a. Mr Hamer did not find that the Claimant genuinely did not have knowledge of this practice of Mr Paice transferring the rep codes i.e. there was no “alternative” decision of negligence or dereliction of duty (the latter being the words of Ms Reynolds); and
- b. In reaching a decision at appeal, Mr Hamer spoke with Mr Hannah and then Ms Reynolds separately.

### **The position of the Claimant post Appeal**

63. As set out in the Claimant’s own witness statement, the Claimant had nothing to gain from endorsing any form of fraudulent activity, financially or otherwise.

64. Since being dismissed from his role, the Claimant writes the following in his witness statement (page 30). Again, none of this is challenged by the Respondent and upon asking questions of the Claimant at the hearing, I find his evidence to be credible:

*The impact of losing my employment with Wesco/Anixter has been significant. It has been extremely difficult to find any permanent employment and I am open and honest with prospective employers at interviews about my dismissal. I am currently carrying out temporary work for an agency as a warehouse operative packing boxes which is not the type of employment that I would under normal circumstances aspire to and my lifestyle has unfortunately been changed as a direct result of a significant drop in income. In my working career, I have never been unemployed, I have had only 2 jobs in my entire career prior to joining Wesco/Anixter, both where I left on a Friday and started the following Monday. The strain of this process and applying for multiple roles at various levels with no success has been extremely difficult to accept and has had a significant impact on my mental health and general wellbeing.*

### **Conclusion relating to the Facts**

65. To summarise the above, from all of the evidence before me and through extensive questioning and examination at the hearing, I make the following conclusion of fact, which is in dispute between the parties and is an important conclusion in this Claim.

66. I find that the Claimant did discuss bonus structures with his staff, however whilst he was open and transparent about how this operates and how a bonus is achieved, I find on the balance of probabilities that the Claimant did not authorise, direct, tell or ask Mr Paice to transfer any rep codes from his own account to that of the Claimant’s. I find this because of the following:

- a. The Claimant had nothing to gain from undertaking this behaviour and Mr Paice would gain financially from this behaviour, in addition to having other personal motivations to remain with the Respondent (see paragraph 28 of the judgment).
- b. The Claimant knew and was aware that this behaviour i.e. asking Mr Paice to transfer Rep Codes into his account, would be dishonest; and
- c. The Claimant’s evidence on this point has been completely consistent throughout the investigation, disciplinary process and the appeal. He has referred consistently to the fact that:

- i. He discussed bonus structures with his staff; and
- ii. He had no awareness that these transfers were happening before the investigation took place.

67. I rely particularly on the disciplinary hearing notes, the grounds of appeal and the Teams transcript, in addition to the fact that the Claimant's evidence was credible throughout the hearing process. For example:

- a. Paragraph 38 of the judgment: *During the interview MH claimed he was unaware of RP's actions to move all negative gross profit sales on the Princess Yacht's account to MH in mainframe until he discovered several of the questionable transactions "About a week ago";*
- b. Paragraph 46 of the judgment, notes of the disciplinary hearing: *He initially assumed he was talking about negative billings about John Guest, he agreed and said that yes it all goes out negative, it has done for a while, not much we can do about it. He said he'd totally got the wrong end of stick and when he clarified again, he said that Ryan had been transferring negative billings to him. Mark was horrified as to what he was saying, he used different words, but it translated to fraud;*
- c. The transcript interview of the appeal hearing with Ryan Hamer (there are numerous examples throughout, but the following are useful examples of the consistency of the narrative):
  - i. *MH: And the instruct[ion] has come for me to do it. Yea...well, no, I absolutely refute that. I did not. You know, I was not aware that Ryan was doing it.*
  - ii. *I don't go into Ryan's sales reports to see, that he's changed it to me. You know, I'm fully aware John Guest is a negative...did I look at it to see if it was going out of my numbers as a loss? No, I didn't.*
  - iii. *MH: Yeah, well I've talked openly. Yeah, I've talked openly in the branch over the years...I've said it, I've stated it. My number is based on the branch numbers, not on yours. I want them to earn their bonus and if they are earning theirs, I should be earning my bonus. So, I've openly said that my bonus is not affected by yours.*

## **The Law**

68. Section 94 of the Employment Rights Act 1996 ("ERA") confers on employees the right not to be unfairly dismissed: *"An employee has the right not to be unfairly dismissed by his employer"*. They can enforce that right by complaining to the Tribunal. The employee must show that they were dismissed by the employer under section 95. This states: *"For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . . , only if) - (a) the contract under which he is employed is terminated by the employer (whether with or without notice)"*.

69. Section 98 of the ERA provides that on a complaint of unfair dismissal it shall be for the employer to show what the reason for dismissal was and that it was one of the reasons set out in s.98(2). These relevant sections of statute state:

*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,*

70. Section 98(4) provides that where the employer has shown what the reason for the dismissal was, then: *"...the determination of the question whether the dismissal was fair or unfair, (having regard to the reason shown by the employer)- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and (b) shall be determined in accordance with equity and the substantial merits of the case"*.

71. The duty of the Tribunal where an employee has been dismissed because the employer suspects or believes that he has committed an act of misconduct is expressed by Arnold J., in the case of *British Home Stores Ltd v Burchell [1978] IRLR 379, 380* (Burchell), as follows:

*"What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question ... entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time ... First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief and ... thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate on the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further."*

72. The burden of proof is neutral. This was made clear in *British Leyland (UK) Ltd v Swift [1981] IRLR 91* that the Tribunal must not substitute its own view for that of the employer. In particular it is not for the Tribunal to ask whether a lesser sanction would have been reasonable, but rather whether or not a reasonable employer might dismiss the employee (judgment at [11]). Moreover, conduct of an employee after an offence was discovered/alleged is a relevant consideration for an employer to take into account in deciding whether it is reasonable to dismiss (judgment at [12] and [22]):

*"If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view. One would quite*

*reasonably dismiss the man. The other would quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair: even though some other employers may not have dismissed him”.*

73. It was held in the case of Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 that: *“it is the function of the [employment tribunal] 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 that band, the dismissal is fair. If the dismissal falls outside the band it is unfair.”*
74. The case of J Sainsbury plc v Hitt [2003] IRLR 23 held that when considering whether an employee has been unfairly dismissed for alleged misconduct, the 'band of reasonable responses' test applies as much to the question of whether the employer's investigation into the suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss the employee for a conduct reason. It also applies to sanction, as stated in the case of In Vaultex UK Ltd v Bialas [2024] EAT 19; [2024] IRLR 495 at [18]-[19]. The ACAS Code of Practice on Disciplinary and Grievance Procedures 2004 provides guidance which the Tribunal must take into account when considering whether a dismissal is fair or unfair (Lock v Cardiff Railway Co Ltd [1998] IRLR 358).
75. With respect of the range of reasonable responses to the issue of investigation into misconduct, the matter is judged as a whole when assessing the reasonableness of the investigation and Burchell does not require each line of defence to be investigated: Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94; [2015] IRLR 399 at [23].
76. A 'reason for dismissal' has been described as *“a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee”* — Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA. Ordinarily, when identifying the employer's reason for dismissal, courts need generally look no further than the reasons given by the appointed decision-maker. Indeed, in Orr v Milton Keynes Council 2011 ICR 704, CA — a case concerned with the question of the reasonableness of dismissal rather than the reason for it — the Court of Appeal held that it is the person deputed to carry out the employer's functions whose knowledge or state of mind counts as the employer's knowledge or state of mind.
77. Hewston v Ofsted 2023 EAT 109 illustrates the importance of forewarning employees of the types of conduct that might attract dismissal, particularly for a single offence, either through a clear disciplinary policy or through guidance and training. Hodgson v Menzies Aviation (UK) Ltd EAT 0165/18 also makes clear that summary dismissal on a first offence not amounting to gross misconduct may be justified in specific situations.
78. Regarding consistency of treatment, Section 98(4)(b) of the Employment Rights Act requires tribunals to determine the reasonableness of a dismissal *“in accordance with equity and the substantial merits of the case”*.
79. In Hadjioannou v Coral Casinos Ltd 1981 IRLR 352, EAT, EAT there recognised the importance of consistency of treatment but placed more

emphasis on the employer's ability to be flexible in such matters. The EAT accepted the argument that a complaint of unreasonableness by an employee based on inconsistency of treatment would only be relevant in limited circumstances. Through more recent case law, those limited circumstances relevant to this Claim is that of irrationality i.e. that no reasonable employer would ever have accepted that reason for dismissal (see, for example, Kier Islington Ltd v Pelzman EAT 0266/10).

80. Henderson v Granville Tours Ltd 1982 IRLR 494, EAT concerned reliance on third party information – it can be unreasonable to dismiss on customers' complaints alone. There needs to be further investigation to find a reasonable belief in the misconduct. Sneddon v Carr-Gomm Scotland Ltd 2012 IRLR 820, Ct Sess (Inner House), if the ultimate position is based on a single individual, that is not corroborated and is strongly contested by the employee, then a reasonable employer should have gone back to third-party witnesses.
81. It is a founding principle of any process or proceedings that an individual should not give any appearance of bias or partiality. Parties involved at different stages of the process collaborating after a hearing or during it need to be considered carefully (Lawton v Park Cake Bakeries EAT 90/88). The decision of an individual needs to be theirs and theirs alone.
82. A failure to carry out a reasonable and proper procedure at each stage of the dismissal process, including the appeal stage, can render the dismissal process procedurally unfair (Stoker v Lancashire County Council 1992 IRLR 75, CA). If the appeal hearing is itself fundamentally flawed, however, it cannot remedy earlier defects — Byrne v BOC Ltd 1992 IRLR 505, EAT, which may be due to bias or other defects in the appeal process.
83. The employee's length of service is a relevant consideration, but it can work both "for" or "against" the employee's case Somers v Metropolitan Police Authority ET Case No.2318747/10, i.e. that if you have a long career, with length of service comes a fuller understanding of what should or should not be done within a business.
84. An employee must know the full nature of allegations being made. Any disciplinary charges should be precise and the employee should know the case against them - Strouthos v London Underground Ltd 2004 IRLR 636, CA. If the employer fails to make evidence available at the disciplinary hearing, this does not render a dismissal unfair provided the employee is fully aware and can actually respond to the allegations. In addition, any such statements should be peripheral to the decision reached (Hussain v Elonex plc 1999 IRLR 420, CA). In addition, a procedural irregularity and thus an unfair dismissal could result if the employee is not given specific material that could have helped their own case (Old v Palace Fields Primary Academy EAT 0085/14).
85. Additional scrutiny is required when an employee's career could be blighted, for example in cases such as fraudulent behaviour. A tribunal should look very carefully at the investigation to consider whether it was reasonable but there is no specific or additional onus on the employer depending on the nature of the role Moncrieffe v London Underground Ltd EAT 0235/16.

## **Submissions of the parties**

86. The Claimant submits that a fair process was not followed and that he was not fairly dismissed. In summary, the Claimant maintains – and as set out in his closing submissions at the hearing and his witness statement:

- a. The Claimant was not aware that Mr Paice was committing fraudulent; and
- b. The Claimant was not complicit in this activity in any way.

87. The Respondent submits that the decision to dismiss the Claimant was within the band of reasonable responses available to the Respondent for the Claimant's conduct. In the circumstances, the Claimant's dismissal was fair, both procedurally and substantively. The Respondent formed a reasonable belief in the Claimant's guilt of gross misconduct based upon a reasonable investigation. The Respondent acted reasonably in treating the reasons for dismissal as sufficient reasons for dismissing the Claimant.

### **Conclusions**

1. The issues were determined as follows.

#### *Was the Claimant dismissed?*

2. The Respondent accepts that it dismissed the Claimant, and it asserts that it was for a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.
3. It is not contested between the parties whether the Claimant was dismissed. I find that the Claimant was dismissed.
4. I find that there is a potentially fair reason pursuant to s.98(2)(b) ERA – by virtue of the fact the Claimant was alleged to have enabled fraudulent activity within the business. There is no other evidence available from the Claimant or elsewhere that this was not a conduct-based reason.

#### *Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?*

5. There are some fundamental issues in the way that the investigation was undertaken by the Respondent and, whilst the belief by the Respondent may have been genuine, I find it was not following as reasonable an investigation as was warranted in the circumstances. I also find that a fair procedure was not followed in specific instances in addition. I make this finding because:

- a. In the original investigation of Mr Paice by Mr Munshower, whilst Mr Paice admitted that he had transferred the rep codes to the Claimant, he did not in anyway reference that the Claimant had specifically authorised this conduct, rather in the interview that "concerns" had not been raised to higher management. In addition, when asked why he had undertaken that activity, Mr Paice stated he was *"trying to protect the company"*.
- b. In the original investigation of the Claimant by Mr Munshower, the Claimant was adamant that he had not authorised the transfer of the Rep codes to his own account. Mr Munshower then concludes that the

Claimant authorised the fraudulent transaction, however there is no specific enabling evidence available as to why this conclusion was reached. There is no causal link between the conclusion and the investigation and none could be elucidated from the evidence at the hearing (see paragraph 38 of this judgment).

- c. On being informed that a disciplinary hearing would be undertaken, only then did Mr Paice email the disciplinary hearing manager, Ms Reynolds, with a specific narrative explaining that the transfer of the rep codes was explicitly authorised by the Claimant (paragraph 43 of this judgment)
- d. Ms Reynolds took the email of Mr Paice at face value and as an indication of Mr Paice's honesty. No further investigation was conducted or additional questions asked of the investigating manager (to point b above). No consideration was given to the motivations of the parties and reliance was placed on the individual that had perpetrated the fraud as being honest. For example, no consideration was ever given to the fact that the Claimant had nothing whatsoever to gain from the conduct (paragraph 48 of the judgment).
- e. The email from Mr Paice was not explained, made available to, or presented to the Claimant by the disciplinary hearing manager or the appeal hearing manager. As such, the Claimant was not able to properly respond to the questions raised at the disciplinary hearing. This is a procedural failing during the disciplinary process. Particularly, this put the Claimant at a disadvantage during the disciplinary hearing, as he was unable to specifically respond to allegations. Ms Reynolds concluded that the Claimant was "vague", however if a reasonable investigation and then fair procedure had been conducted, this conclusion may not have been reached (paragraph 49 of this judgment).
- f. Mr Hamer, at appeal, was not provided with all of the relevant and pertinent information gathered through the investigation or disciplinary process, or had not read it prior to making a decision. Particularly, he did not know that Mr Paice had written this email to Ms Reynolds and neither was he aware of the fact that rep codes had been specifically transferred from one JIT account to the other (see the transcript between Mr Hamer and Ms Reynolds in full).
- g. The basis upon Mr Hamer's decision was a meeting with the Claimant, then a separate meeting on the same day with the disciplinary hearing manager. In the latter meeting, the disciplinary hearing manager, Ms Reynolds, presented Mr Hamer with additional information and her reasons for her decision. Mr Hamer made a decision to uphold the appeal through a conversation with Ms Reynolds - a decision was made in that same forum without undertaking further reasonable investigation himself, or reading the documentation to which Ms Reynolds referred. Mr Hamer at no point, including in his witness statement, makes clear that his decision has been made objectively and independently (see the transcript between Mr Hamer and Ms Reynolds in full).
- h. Whilst gross incompetence or a dereliction of duty was referenced by both Ms Reynolds and Ms Hamer as being an alternative reason for dismissal, both parties are clear that this is not the reason and the basis



upon which a decision has been made. As such, the reason for the dismissal is the enabling of fraudulent behaviour. If this was not the reason for the dismissal and the Claimant was merely grossly negligent in his duties, additional reasonable investigation would then be required into the behaviours of Mr Paice and then the sanction imposed upon him would also need to be reviewed.

6. Given the above, it is then not possible for the sanction itself to be fair, as its foundations is based upon a process of investigation that fell outside of the band of reasonable responses, with associated procedural failings.

### **Conclusions**

7. My task, is to consider if the employer's actions, taken in their totality, and in accordance with the Burchell test, fell within the band of reasonable range of responses.
8. The short point is that for a range of reasons summarised above, the actions here did not fall within the band of reasonable responses, both in terms of a reasonable investigation and through the conducting of a fair procedure. This is through the Respondent's behaviour in its totality, whilst also considering above the various elements of the Respondent's behaviour and their own conduct.
9. As this decision only relates to liability, it is not for me to decide here whether the Claimant would have been dismissed in any event, that being a matter for consideration elsewhere in a hearing related to remedy and quantum.
10. I have not gone as far as to consider the issue of a fair sanction as, regardless of this, the dismissal is rendered unfair. The Claim is well founded and succeeds.
11. There will be a separate case management order issued regarding remedy and quantum, which will include listing this matter for a hearing at a future date.

**Approved by  
Employment Judge Winfield**

**4 September 2025**

Sent to the parties on  
05 September 2025

For the Tribunal Office

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### **Recording and Transcription**

**Case No: 6013239/2024**

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

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