EMPLOYMENT TRIBUNALS

Claimant: Mr Andrew Parkinson

Respondent: Provident Financial Management Services Limited

Heard at: **Leeds** **On: 6-13 July 2018,**
Deliberations 27-28 September

Before: **Employment Judge Rogerson**

Representation
Claimant: Mr. S Brochwicz-Lewinski (counsel)
Respondent: Mr. B Napier QC (counsel)

RESERVED JUDGMENT

The complaint of unfair dismissal fails and is dismissed.

REASONS

1. This is a complaint of unfair dismissal where the issues to be determined are the reason for the dismissal, and the reasonableness of the dismissal having regard to the reason shown.

2. The respondent has the burden of showing the reason and relies upon the potentially fair reason of "SOSR" - "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held". The respondent relies upon the breakdown of trust and confidence which resulted from the claimant's conduct in relation to the events leading up to implementation of Project Accelerate on 6 July 2017 and the consequences of that implementation in the period between then and the claimant's dismissal on 24 August 2017.

3. As to the reasonableness of the dismissal it is for the tribunal to decide in accordance with the requirements of section 98(4) of the Employment Rights 1996, whether the employer, on the facts of the case as found by the

tribunal, and in all the circumstances, reached a decision, which an employer could reasonably have reached when it dismissed the claimant?

4. Although a complaint of unfair dismissal is usually relatively straight forward and can normally be dealt with within a day, this was not such a case. The hearing lasted five days, it involved 8 witnesses and 8 agreed bundles containing over 3000 pages of documents.

Findings of fact

5. I heard evidence for the respondent from:
    1. Mr. Chris Gillespie (Managing Director of the Consumer Credit Division ('CCD')).
    2. Mr. Jonathan Vardon (former Chief Information Officer).
    3. Ms. Sarah Barras (Head of Internal Audit for the CCD)
    4. Mr. Kenneth Mullen (General Counsel and Company Secretary).

6. For the claimant I heard evidence from:
    1. The claimant and 3 former colleagues:
    2. Mr. Kevin Whittington
    3. Mr. Pankaj Mistry.
    4. Mr. Jonathan Tarttelin.

7. Much of the evidence I saw and heard was not in dispute and was supported by the contemporaneous documents I saw. Where there was a dispute of fact relevant to the issues to be determined I have set out my findings in relation to those disputed facts.

Credibility

8. I found the claimant's evidence was not credible and his evidence was unreliable for the reasons I will refer to in more detail in my findings of fact. Even when the claimant was presented with contemporaneous evidence that undermined the position he was adopting he stubbornly refused to accept that he was wrong or had made a mistake.

9. In contrast I found the respondent's witnesses gave their evidence truthfully answering questions fully and honestly. Their answers were plausible and were corroborated by the other evidence that I saw. There was no attempt made by the respondent witnesses to misrepresent the facts or to mislead the tribunal in the evidence they gave at this hearing.

Background

10. Provident Financial Management Services Ltd ("PFMSL") the respondent in this case, is the primary legal entity in CCD, which is regulated by the financial conduct authority ("FCA"). The respondent is a subsidiary of the UK-based parent company 'Provident Financial Plc'('PF'). PF is a long established, business founded in 1880 and listed on the Stock Market in 1962, becoming a member of the FTSE 100 in 2015, and a successful member at that, before suffering catastrophic losses in 2017.

11. CCD is a very important part of the group's overall business. In 2016, it had profits of approximately £115 million with 782,000 home credit customers in the UK and Ireland. By contrast in 2017, it had recorded losses of £119 and the home credit customer numbers, fell to 527,000.

12. It provides financial services to retail customers, primarily in the "non-standard" or "sub- prime" market where customers are considered not to be well served by mainstream lenders. For some customers, home collected credit loans (known as 'doorstep' lending) will be the only option available to them because of poor or non-existent credit ratings or because they have multiple income sources, often in cash. Despite the advance of digital lending there was/is a significant customer need and market opportunity for home credit lending, which the respondent had successfully exploited prior to 2017.

13. The group is separated into three divisions which are the Consumer Credit Division 'CCD', Vanquis Bank (credit card provider) and Money Barn (a vehicle finance provider).

14. CCD is in turn divided into Home Credit, which provides home collected loans via face-to-face customer relationships, SATSUMA, which is an online provider, and GLO which is a guarantor loan business that is now closed for business.

15. The claimant joined the respondent on 1 April 2013 initially as Operations Director of the Home Credit Business reporting to Chris Gillespie, the then Managing Director of CCD.

16. In October 2013, Mr. Gillespie left the business and was replaced by Mr. Mark Stevens who remained in that role until his resignation on 30 June 2017. Mr. Stevens in turn reported to Mr. Peter Crook, who was the 'Group Chief Executive' until his resignation on 22 August 2017.

17. On 30 June 2017, the claimant took over the role as 'Acting Managing Director' which was the role he performed until his dismissal on 24 August 2017.

<u>Role of Sponsor</u>

18. The first factual dispute I had to decide was in relation to the claimant's role and responsibilities in relation to Project Accelerate.

19. The claimant was keen to highlight his senior position within the company, how he was valued internally and externally, his promotability and his proven track record for making operational changes. This demonstrated how successful he was, how much he was valued, trusted and relied upon as part of the senior management team.

20. At this hearing, however he has been very eager to distance himself from having any such position of seniority/authority/responsibility/accountability, in relation to Project Accelerate. One very clear example of this, is how he now interprets the meaning of project 'sponsor' in relation to Project Accelerate. He says:

> *"I was **never appointed project sponsor**. …when the term sponsor was used **I saw this** as meaning **customer of the other directors** that were tasked with delivering a service to my home credit directorate and to the project overall… **on a day-to-day basis the role of sponsor had no significance**"* (all highlighted text my emphasis).

21. The claimant has a written job profile which he accepted accurately 'captures' his role and responsibilities. Under the heading "*Managing Our Risks*" the job role provides that the claimant is required to "***lead where appropriate strategic change programmes as 'Sponsor', ensuring clear accountabilities and robust assurance"***. This was consistent with the leadership role the claimant had over the home credit directorate with his team of 12 direct reports.

22. Under the heading "*Doing the right thing for customers*", *the job profile includes "**to ensure our customers are at the heart of everything we do and our actions enhance customer relationships***". This makes it clear that leadership decisions had to be focused on the customer needs.

23. The claimant describes himself as someone who was up to his dismissal considered by the board as *"one of a small group of colleagues who were viewed as 'promotable' and 'ready now'".*

24. He refers to a lock in agreement made in July 2016, where the board agreed a retention award of £750,000. The agreement expressly provides that one objective of the award was for the claimant to "***drive delivery of value creating initiatives, beyond what is reflected in current plans, whilst controlling risks, including specifically Project Ryder" (which then became known as Project Accelerate)".***

25. The only 2 individuals who were given this type of agreement in relation to Project Accelerate were the claimant and Mr. Stevens.

26. The claimant was paid a salary of £309,258.90 per annum and received a bonus in 2016 of £260,606 reflecting his senior position within the senior management team. This level of salary would not be paid to someone performing the role of an 'internal customer' with no leadership responsibility as the claimant now suggests.

27. The Group Chief Executive, Mr. Crook and his Managing Director Mr. Stevens had told the claimant they could not execute the change of operating model required for Project Accelerate, without the claimant. This indicates that those in the most senior roles in the business relied upon the claimant's judgments in relation to this project.

28. The claimant's peers also viewed the claimant as the 'ultimate decision maker' 'in charge' of Project Accelerate. No one said the claimant was not the sponsor and no one described his day to day role on the project as insignificant. In fact, the best evidence came from Mr. Pankaj Mistry, a witness for the claimant. He understood the claimant was the project sponsor for Accelerate which meant, he was the person in charge at the

highest level. His name was on Project Accelerate. He was the 'go to' person for decisions, he was at the 'top of the tree'.

29. Ms. Sarah Barras (Head of Internal Audit for CCD) was equally clear in her evidence. "Project sponsor" is a commonly used term to identify the individual who leads a project who is ultimately responsible for its outcome. It is usually a senior executive with overall responsibility for bringing different workstreams together.

30. Mr. Vardon who joined the company in February 2016, in an equally senior position was told in no uncertain terms, that the claimant was the person in charge, the person that he was answerable to in matters concerning Project Accelerate. This was confirmed in November 2016, in an email sent by Mr. Stevens to Mr. Vardon when Mr. Vardon was informed that the claimant was "*the accountable sponsor and decision maker on Accelerate"*. The claimant was copied in on that email and responded by thanking Mr. Stevens. He did not contradict/correct the description of sponsor given by his Managing Director to another senior director at the time.

31. The corporate governance documents were also clear and consistent. The claimant as sponsor had delegated authority from the board to make decisions for Project Accelerate. The terms of reference for the 'Home Credit Senior Management Team' (HCSMT) which was the main decision-making body for Project Accelerate expressly provide that the claimant had the authority as the ultimate decision maker. The terms state:

    "*HCSMT is not a collective decision-making body. Decisions taken are those of the Home Credit Director" (the claimant) with authority delegated by the CCD Managing Director (Mr. Stevens*).

32. 7 out of 8 accountable executives leading the sub projects for Project Accelerate were part of the HCSMT and were the claimant's reports functionally. In contrast Mr. Vardon was not a member of the HCSMT and had no authority over the claimant's sub-reports.

33. It was clear that as sponsor the claimant had primary responsibility and the power to make decisions for Project Accelerate. He could hold his fellow directors to account in relation to matters of planning and implementation of Project Accelerate.

34. Although the claimant at this hearing attempts to distance himself from the true meaning of 'sponsor', he does more accurately reflect the true meaning in his own notes (2 December 2016) when he states that he needs "to have firmer control as sponsor for accelerate".

35. I found it very surprising, given all the above evidence (which was known to the claimant at the time), that he still chose at this hearing to say that he had never been appointed as 'sponsor' for Project Accelerate and that his role was insignificant and that of an 'internal customer' not leader. He has denied he had any delegated authority/responsibility for decision making and has maintained his position throughout the case despite all the evidence presented. The claimant could have accepted he was wrong or had made a mistake but he did not. Instead he has chosen to deliberately

misrepresent the true position at this hearing to bolster his case. I did not find the claimant was a truthful witness and this was not the only area where I had concerns about the credibility of the claimant's evidence.

Project Accelerate

36. Project Accelerate was the name given to a wide-ranging project to change how the credit business operated in the provision and collection of loans. The claimant's vision for the doorstep lending business was to move it into a centralised operation using, as an analogy, the parcel delivery (DHL) type model of operation. All customer contact was to be via a central call center which would replace the customer/agent direct phone contact. A 4-hour time slot would replace the mutually agreed time for the visit and those visits would be limited to 6 minutes. These were substantial operational changes to the existing model with other changes involved including staffing, training, technology and data management.

37. One change in staffing involved changing the employment status of the individuals involved in the loan issue and collection from self-employed agents to employed Customer Experience Managers (CEM). Historically, this work was carried out by self-employed "agents" and by the end of 2016 there were around 4,500 agents engaged by the home credit business. The agent/customer relationship was key to the success of the doorstep loan and collection business. The relationship worked because the customer had the agents phone number, visits could be arranged to suit the customer which in turn meant collections of loan repayments were regularly made. The personal nature of the relationship that developed between the customer and agent was a key to the success of the business.

38. In October 2016, the claimant provided a detailed presentation to the respondent's board of directors where he explained the perceived benefits of Project Accelerate. In the presentation the message given to the board was that project accelerate was not just about status change but was about "*systems, controls, technology, people*" and was about "changing the operating model to make it "*fit for purpose and future proof*".

39. The board approved Project Accelerate on the understanding that the claimant had primary responsibility for the implementation of the project as the Project Sponsor and that Mr. Stevens would report progress to the board, via the information provided by the claimant.

40. Given the importance of the project to the business, in July 2016, the claimant and Mr. Stevens had been offered by the board significant retention awards which are the lock in arrangements referred to above. The retention or 'lock in' specifically linked any payment of the award to the claimant's role and responsibility as the project sponsor.

41. During spring 2017, it became apparent that the impact of implementing Project Accelerate on the Home Credit business was worse than anticipated.

42. On 11 May 2017, at a Remuneration Committee meeting of Provident Financial, Mr. Crook explained that there had been a serious deterioration

in the performance of the Home Credit Business, because of the Accelerate Program, which was worse than expected. Mr. Crook therefore recommended that the performance related element of the retention bonus arrangement should not be paid to either the claimant or Mr. Stevens.

43. On the same day, Mr. Mullen attended a board meeting at which Mr. Stevens confirmed that the significant profit underperformance in the home credit business had arisen from "**worse than expected customer and agent disengagement arising from project accelerate**". Nevertheless, he proposed that the switchover planned for 1 July 2017 was achievable.

44. By 20 June 2017, performance of the home credit business had deteriorated to such an extent that Provident Financial issued a profit warning to the market. The profit warning explained the operational disruption to both sales and loan collections caused by Project Accelerate had resulted in forecast annual profits in CCD of 60 million compared to £115 million for 2016.

45. The Plc board met on 22 June 2017. Mr. Crook explained that after the switchover on 6 July 2017, the priority would be to try to normalise collections in advance of the fourth-quarter trading period, which was critical to the performance of the home credit business and to achieving the year end results. Mr. Stevens joined the meeting and confirmed that he and the claimant remained confident that the new model was the right strategic option for the home credit business and the potential upside was still achievable.

46. Mr. Mullen who was at the meeting said that the board was not provided with a true picture of the problems that existed at the time with the implementation of Project Accelerate by either the claimant or Mr. Stevens.

47. He gives two examples of information that has subsequently come to light which contradicts the picture presented to the board. Although this information was not in the respondent's knowledge at the time it was within the claimant's knowledge when he updating the board. The first is that on 11 May 2017, Mr. Parkinson had received a forwarded email in which Terry Sinclair, the General Manager of the South division of the home credit business said "*I'm being told some real horror stories and frankly I'm now very concerned. I now feel as do all RM's across the estate that we are heading for a major crisis!! A train crash I think best describes it*. The second email is 15 June 2017, in which the claimant states "***at this stage my confidence is low across every deliverable… We will deliver something. I'm just not sure what that something will be***".

48. On 30 June 2017, Mr. Stevens left the business and the claimant was appointed 'Acting Managing Director' of CCD. He took over as Managing Director before implementation on 6 July 2017, and could have delayed implementation, knowing there were problems with switchover to the new operating model.

49. It was put to the claimant that he failed to adhere to the warnings raised in the Critical Friend Report, which correctly anticipated many of the failings which subsequently occurred in Project Accelerate. The claimant effectively

rejected the warnings. Although the report suggested and he accepted a contingency plan was prudent, he did not put such a plan into place.

50. One of his responsibilities as sponsor of Project Accelerate was the planning and management including risk management. It was put to him that by failing to heed the warnings and plan for them he had made a mistake. The claimant did not accept he had done anything wrong.

51. Mr. Mistry confirmed that the claimant's stance on contingency planning prior to implementation of Project Accelerate was to "fix things on failure". He describes the claimant's approach was "let's see what goes wrong and then apply the right resources to fix it".

52. When Mr. Lewinski suggested to Ms. Barras that the claimant had considered 'workarounds' which would have been put into place to deal with any problems. She did not accept that was contingency planning. A contingency plan is the plan B, the something that takes effect in the event of a day 1 failure. It anticipates the problem in advance and ensures there is plan in place to deal with that problem. She was unable to find a contingency plan in the event of a catastrophic failure which was the claimant's responsibility as sponsor. A plan whereby everyone including the field staff would know what they were expected to do so they could then act quickly to avoid the catastrophe. It was about having the knowledge in advance to be forewarned and prepared. Fire-prevention not firefighting.

53. Consistently, the claimant has refused to accept he had any responsibility or there was any failure on his part in any way whatsoever that contributed to the failure of the project. He attributes sole responsibility for the failure to 'IT Technology and Data Analysis' which he says was Mr. Vardon's responsibility. He has consistently denied there were any operational failures.

54. However, decision making for the recruitment of the Customer Experience Managers(CEM's) was within the claimant's remit. How CEM's were allocated geographical territories. How the customer could contact the CEM, how the visit would be arranged (4hour window), how much time was going to be allowed for each customer visit (6 minutes). All these were operational/people issues which were outside of 'IT Technology or Data'. These were operational decisions made by the claimant at the HCMST meetings, individually not collectively.

55. Despite eventually agreeing these were 'operational' issues the claimant persisted in saying that sole responsibility for failure for the project lay with 'IT Technology and Data'. It was not until I pressed the claimant to explain his answer in light of the concession made that he eventually accepted these were operational failures of Project Accelerate and that a key part of his role was understanding the customer/agent relationship.The 'people' not 'IT technology or Data' side of the project.

56. Paragraph 11 of the ET1 confirms the position the claimant has adopted in these proceedings. "*It is accepted that the implementation of Project Accelerate was difficult due to issues which occurred in relation to IT and data management. Responsibility for these issues fell within departments*

which were outside the Claimant's directorate. Areas such as HR were not facing significant problems".

57. The claimant accepted recruiting/retaining enough agents to operate the new model was within a HR issue within his remit. He accepted a significant problem before implementation was that the new model only allowed for CEM's to be recruited on a full-time basis, and a lot of the existing agents left because they needed the flexibility in the hours they worked, which had been provided for in the previous model. Agent unhappiness at the new arrangement had been fed back into the HCSMT meetings but no changes had been made to the operating model implemented, in light of that feedback.

58. The claimant was appointed Acting Managing Director from 30 June 2017, a few days before the implementation date of the new operating model. He could have made changes or delayed implementation if there were problems. It was put to the claimant that even at this late stage he could have told the board there had been some mistakes in recruitment which needed to be rectified. He could have accepted that the focus should have been on status change first and that the attempts to go further were wrong. If he had done this he might have maintained the trust and confidence of the board. The claimant's answer to these questions was that he could not have said those things because he did not believe them. This answer chimes with that description of the claimant as someone "blindly wedded to the project" no matter what happened.

59. It was put to the claimant that he could have said, what he says now that the real problem was 'technology', that's where mistakes have been made and that was what he wanted to address because to continue with those problems would result in failure. Instead he maintained a position of unjustified 'blind' optimism, effectively asking the board, to trust him because he would make it work in the end. The claimant's response was that he did not see anything wrong with his approach or with the information he had given to the board because he was "*the temporary managing director only updating the board on the situation we found ourselves in*". His answer suggests he played no part in how that situation arose in the first place, when that was clearly not the case.

60. Mr. Mullen's recollection of the information given to the board prior to implementation was that the claimant never suggested that the implementation date should be postponed despite his knowledge of the difficulties that existed. The claimant's approach was that any difficulties caused by the transition to the new operating model would be mitigated once it was implemented.

61. The claimant writing in his notes at the time records "***trading: my accountability and, at present disastrous…. For the avoidance of doubt this is my department and I am confident that with my team we will sort it***".

62. Mr. Mullen recalls a meeting on 21 July 2017 of the Risk Advisory Committee of Provident Financial at which the claimant provided a different explanation to the one he gives in these proceedings for the disastrous

implementation of this project. At that meeting the claimant accepted there were "*a number of things that he would do differently*" which at the time he said primarily related to the Human Resources aspects of the project rather than any IT or data issues, which he now blames for the failure.

63. On 24 July 2017, the claimant attended a Plc board meeting. In his report as Managing Director, the claimant acknowledged that his project had "*encountered several issues… Some of these were data, some process and some human error*". However, the claimant told the board his team were resolving these issues and not only were they resolving them but were putting "***clear blue water between us and our competitors***". He anticipated that "***the steady improvement on our success measures will not only continue, but will pick up pace every day in this ground-breaking change***". His view of the state of the new operating model was not an accurate representation of the real state the business was in at the time.

64. In fact, contrary to the positive outlook the claimant was providing to the board, the credit business was deteriorating at a devastating rate of £10 million per week. It had lost large numbers of agents and customers.

65. Mr. Mullen describes how it appeared to him at the time that the claimant was so '*blindly wedded to his vision of project accelerate and to achieving his own personal ambitions that he was incapable of seeing how much damage it was causing to the business*'.

66. Mr. Mullen could see no other explanation why at the same time as the claimant was admitting trading was disastrous he was advocating significant salary increases for his direct reports. Mr. Crook, rejected that proposal on the basis that it was not appropriate to give salary increases to the claimant's team given the profit warning and the appalling results for July 2017. The claimant in email communications with his direct reports subsequently commented on this decision to say: "*sums up the way we are treated really"*.

67. By mid - August 2017, the extent of damage to the business had become clearer. While the claimant acknowledged profits for July 2017 were not good he remained confident that "operational improvements" would help turn things around.

Termination of employment.

68. On 18 August 2017, Mr. Mullen met with Andrew Fisher (Provident Financial Finance Director). Mr. Fisher warned that because of the extent of the deterioration in the financial performance of the home credit business a second profit warning was likely to be required.

69. On 21 August 2017, at a Plc board meeting Mr. Fisher explained that the home credit business loan collections were down 40% on the levels prior to the new model and sales were also showing substantial underperformance compared to the previous year.

70. Mr. Fisher was concerned that Provident Financial might breach its banking covenants if the home credit business was to fail. He therefore stressed the urgent need to correct the operational issues in the home credit business as the initiatives put in place by the claimant had little or no impact on performance. The business was falling a long way short of restoring customer services and the collections performance to acceptable levels. It was clear by this stage that urgent action was required to rescue the business, to save jobs and to avoid chaos for customers.

71. Mr. Crook accepted that in view of the circumstances, he had no alternative but to tender his resignation "*in consideration of the fact he would have little or no credibility as Chief Executive*". He accepted that because the failure had happened on his "his watch" he was accountable.

72. The minutes of that board meeting record that the board had come to the view that the claimant was not capable of turning the business around based on his management since implementation. Mrs. Wolstenholme (Chair) agreed to give serious consideration to any immediate changes required to stabalise the business. It was agreed she would present her recommendation to the board on 22 August 2017.

73. On 22 August 2017, Provident Financial issued a second profit warning. The announcement explained that the business was expected to suffer a pre-exceptional loss in the range of 80 million to £120 million. It also announced the resignation of Mr. Crook as Chief Executive with immediate effect.

74. Unsurprisingly, this announcement had a dramatic effect on Provident Financial share price which fell by 66% that day.

75. The wording of the public announcement stated that "*the new home credit operating model, which involves* ***employing full time customer experience managers to serve customers rather than using self-employed agents,*** *was deployed on 6 July 2017. This followed a period of* ***higher operational disruption than planned*** *between the announcement of the proposed changes on 31 January 2017 and deployment of the new operating model.* ***The impact of higher than expected agent attrition and reduced agent effectiveness on collection performance and sales resulted in the announcement on 20 June 2017 that forecast pre-exceptional profits from CCD would be reduced".***

76. On the evening of 22 August 2017, at another board meeting Mrs. Wolstenholme noted the negative publicity following this announcement which had referred to the fall in share price being the biggest fall in a FTSE 100 company for some time. The minutes record that she believed the claimant was responsible for "fundamental misjudgments" and that the business "had lost engagement with its customers". The claimant "**had failed to recognise this and take action**".

77. The board agreed that the performance of the home credit business under the claimant's management had been so catastrophic that his continued employment was untenable. They had lost trust and confidence in the claimant's ability to turn things around because since implementation there

had been no sign of improvement and the business was losing money at an alarming rate. The viability of the entire group and the jobs of thousands of employees were now at stake. The board unanimously agreed that the claimant should be asked to leave the business with immediate effect and that Mrs. Wolstenholme would communicate that decision to him.

78. The claimant was invited to a meeting with Mrs. Wolstenholme on 24 August 2017. He made some notes in preparation of that meeting where he begins with the words "*how want to play/need from me? Is it about how we, including me, **fix it** or not? If it is-talk through plan-confident of success. If not*….". The 'if not' comment, refers to the fact that the claimant anticipated he might be asked to resign an appreciated that his employment might come to an end if it was felt that he could not fix it. He would have accepted resignation with an agreed exit package if it had been offered at that meeting.

79. As to the meeting itself only the claimant and Mrs. Wolstenholme were present. Sadly, Mrs. Wolstenholme passed away in November 2017, so I only had the claimant's account. In his statement he goes into some detail about the discussion dedicating 3 pages to the meeting he had with Mrs. Wolstenholme. He recalls Mrs. Wolstenholme telling him "*your internal and external franchise is damaged and there is no coming back, as MD you are ultimately accountable"*. This language in 'company speak' appears to be communicating something the claimant already expected to hear when he refers to fixing /not fixing something that was broken. Mrs. Wolstenholme was communicating the boards view of an irretrievable breakdown in the relationship of trust and confidence.

80. Mrs. Wolstenholme asked the claimant about his planning and preparation for Accelerate. He explained that the root cause of difficulties with the project were "IT Technology, Analytics and Data" which had caused significant problems. He told her as Home Credit Director he was in fact the 'internal customer' of other directorates and had made his views widely known. Mrs. Wolstenholme responded by telling him that if these were the problems that had existed as the Managing Director he should have delayed implementation. He told her the departments that had '*let us down were not in his directorate*'. He told her HR was under his wing and that "*were* ***largely fully staffed with the hardware to do the job"***. ***Unfortunately, data analytics and other Tech were not fit for purpose and therefore team members in the field could not steer the ship as they had no visibility*"**. He denied that his poor planning or preparation were the cause of the huge disruption.

81. The claimant's position at this meeting was the same as at this hearing, he accepted no responsibility as the project sponsor (Home Credit Director), no responsibility as Managing Director and no fault whatsoever for the failure. By the end of the meeting, having heard the claimant's explanations Mrs. Wolstenholme had no confidence in the claimant's ability to 'fix' the problems that had created the crisis to rescue the business. It was clear from what the claimant told her that his approach was not going to change and was not in the best interests of the business for him to continue as the Managing Director. In those circumstances, at the end of the discussion Mrs. Wolstenholme returned to the subject of the claimant resigning and the

claimant declined to resign. As a result, Mrs. Wolstenholme said she would speak to Mr. Mullen. When she returned she informed the claimant his contract was terminated with immediate effect and handed the letter prepared by Mr. Mullen. It is accepted the claimant was not provided with an appeal against the dismissal decision.

82. Mr. Mullen accepts the letter written by him was written in haste, it contained errors and did not reflect the discussion that occurred, which he was not party to. It had been expected the claimant would take responsibility for what had happened and resign. From his recollection of the discussion, the claimant did not seem to appreciate the seriousness of the situation and claimed the business was showing “green shoots of recovery”. This statement was consistent with the claimant’s preparation notes where he records that he was still “confident of success”.

83. The claimant in his witness statement (paragraph 240) states:

> “*no matter which category the respondent chose to label my dismissal as, the fact remains their decision was based upon ‘belief’ based upon hearsay and conjecture rather than investigation and fact. The respondent’s assertion that they had to act with such urgency due to ‘exceptional circumstances’ and ‘general crisis’ was* ***of their own making*** *and* ***displayed their panic-stricken approach to crisis management****”*.

84. After the dismissal Mr. Mullen attended a further plc board meeting at which the termination of the claimant’s employment was approved by the board.

Post Dismissal Events

85. On 25 August 2017, Mr. Gillespie took over as Managing Director on a fixed term contract for 1 year.

86. He immediately carried out a review and prepared a strategic recovery plan to put into place an appropriate operating model which would also satisfy the Financial Conduct Authority (FCA).

87. The recovery plan identified two root causes of the problems caused by project:
    a. the new model was based on an assumption that the agent-customer relationship was of limited value, therefore could be replaced by technology centralised control.
    b. the new model had been implemented in an inflexible way which effectively treated the needs of the customers and employees as a secondary consideration.

88. Mr. Gillespie found there was an inflexibility in the way the customer experience was managed. Engaging customer experience managers on a full-time basis and requiring them to work inflexible shift patterns resulted in the loss of experienced customer experience managers. Prior to the project there were 4500 self-employed agents. After the project there were 2500, of which only around 60% were ex-agents.

89. Another area of 'inflexibility' he found was the decision to assign territories that did not work for the agent/customer relationship. The '6' minute time allocation for each customer visit was insufficient. The 'four- hour' window, was inflexible for the customer and customer feedback had indicated it was not what the customers wanted. Finally, the vision of a centrally based technology led service like the delivery of parcels by DHL did not reflect the importance of the customer/agent relationship that had previously been key to the success of the business.

90. All the above had demonstrated to Mr. Gillespie a fundamental misunderstanding of the home credit business. While a customer might be willing to wait at home for four hours for a parcel to be delivered, they were less likely to wait four hours for a loan payment to be collected. Mr. Gillespie took steps to reverse the changes made by the claimant by allowing part time working and flexible hours to bring back the experienced agents that had left. However, by this stage, 170,000 customers had been lost which had damaged the reputation of the business and resulted in the need to make redundancies because of the smaller customer base.

91. On 29 August 2017, the FCA did their own assessment of the business and made it clear that they were dissatisfied by the actions of the Senior Management Team identifying the claimant and Mr. Stevens for Project Accelerate. By letter dated 14 September 2017, they set out their concerns following visits to the respondent on the 29th 30th of August which had included interviews with relevant staff members. Mr. Stevens told the claimant he had spoken to the FCA on their behalf. It was reasonable for the respondent to conclude the FCA reference to the senior management team referred to Mr. Stevens and to the claimant.

92. The FCA letter sets out a few areas of concern they had which included inconsistent field practices resulting from the change in business model, inadequate first line oversight of field staff, ineffective and inadequate compliance, poor culture and decision-making process. The FCA found that it was unclear whether the board "*had accurate adequate site of the risks facing CCD".*

93. The FCA required the respondent to have clear and robust proposals to address the concerns raised to prevent customer detriment and to bring the firm into compliance with the FCA's requirements. This resulted in the turnaround plan prepared by Mr. Gillespie.

94. On 29 September 2018, the claimant's solicitors sent a letter before action in relation to a complaint of wrongful dismissal. In it any responsibility for the failure of Project Accelerate is clearly only attributed to 'IT, Data Program Management and Analytics'. The position of the claimant is made clear "he absolutely denied any responsibility" and alleged he had been dismissed as a 'scapegoat' for the business. He denied "any failure to rectify or inform the company in relation to project accelerate and accelerate operational issues".

95. Following the letter before action, Sarah Barrass employed as the 'Head of Internal Audit for the Consumer Credit Division within the group internal

audit function was asked to carry out a review of Project Accelerate. She met with individuals and examined contemporaneous documents.

96. Her evidence was not challenged in cross examination and I found Ms. Barrass was a credible and honest witness. She concluded that the core home credit concept was ignored, key service requirements were compromised and there was poor planning and governance. The project team was blindly wedded to the project and there was no contingency plan. She concluded that the claimant's approach had been to deliver something rather than focusing on achieving the best outcome for the customer.

97. She concluded the project was ill-conceived in parts, poorly planned and poorly executed. Although she accepts her review was conducted in hindsight rather than real time the issues she identifies "*would have been evident to a well-managed project team that properly understood and respected governance, the importance of planning and the concept of the home credit business and the importance of the customer".*

<u>The submissions.</u>

98. Both Counsel provided written submissions after the hearing, because there was insufficient time for submissions to be made orally. Both counsel also had the opportunity to respond to each other's written submissions. I considered all those representations before reaching my decision

<u>The Applicable law</u>

99. The applicable law is set out in sections 98 (1)(2) and (4) of the Employment Rights Act 1996 ('ERA 1996').

100. Section 98(1) provides that "*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 kind as to justify the dismissal of an employee holding the position which the employee held'*.

101. Section 98(4) ERA1996 provides that "*where the employer has fulfilled the requirements of subsection 1, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*

a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
b) *shall be determined in accordance with equity and substantial merits of the case".*

102. Both counsel refer to Polkey-v- AE Dayton Services Ltd 1988 1 AC 344 and to the seminal judgment of Lord Bridge and his analysis of the earlier version of section 98(4) which was section 57(3) of the Employment Protection Consolidation Act 1978.

> *“If an employer has failed to take the appropriate procedural steps in any particular case, the one question the industrial tribunal is not permitted to ask in applying the test of reasonableness posed by section 57(3) is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken. On the true construction of section 57(3) this question is simply irrelevant. It is quite a different matter if the tribunal is able to conclude that the employer himself, at the time of dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with*”.

103. I was also referred to the judgment of Lord Mackay in Polkey where he states:

> *“The only test of the fairness of a dismissal is **the reasonableness of the employer's decision to dismiss judged at the time at which the dismissal takes effect**. An industrial tribunal is not bound to hold that any procedural failure by the employer renders the dismissal unfair: it is one of the factors to be weighed by the industrial tribunal in deciding whether or not the dismissal was reasonable within section 57(3). The weight to be attached to such procedural failure should depend upon the circumstances known to the employer at the time of dismissal, not on the actual consequence of such failure.”*

104. If the unfair dismissal complaint succeeds and compensation is awarded, the Tribunal is invited to make deductions from any basic award in accordance with section 122(2) ‘ERA 1996’ if it finds “*any conduct of the claimant before the dismissal was such that it is just and equitable*” to do so. And to any compensatory award in accordance with section 123(6), if it finds that the dismissal was to “*any extent caused or contributed to by any action of the claimant*”.

The Conclusions.

105. The first issue to consider is whether the respondent has established the potentially fair reason relied upon of “*some other substantial reason of kind as to justify the dismissal of an employee holding the position which the employee held’*.

106. The reason for dismissal is “*the set of facts or beliefs known to the employer or it may be a set of beliefs held by him, which cause him to dismiss the employee (Abernethy-v- Mott Hay and Anderson 1974 IRLR)*”.

107. What were the set of beliefs/facts the board had/knew at the time of the dismissal? The respondent operates its business in the financial sector

where senior executives are expected to lead projects. The claimant had primary responsibility for Project Accelerate from 2016. He had successfully led operational change projects previously in the CCD business since joining in 2013, and had been rewarded for his success. Everyone internally/externally knew him to be the ultimate decision maker for the project because he was leading it as the appointed sponsor. He was at the top of the tree, the face and voice and the person whose name was on the project. As Home Credit Director he was given delegated authority from the board to lead and manage the project. His manager Mr. Stevens (Managing Director) and the CEO Mr. Crook depended on him to deliver the project. Express delegated authority was given to the claimant in the HMCTS terms of reference for the claimant to make decisions consistent with his role as the ultimate decision maker. HMCTS was the decision-making body for Project Accelerate. The claimant was trusted to manage the risks, prepare, plan and implement the operational changes required for project as he thought fit in the best interests of the customer. His role required him to and he was trusted to make decisions that put the customer at the heart of the decision-making process. His high level of salary and the lock in/ retention agreement of £750,000 which expressly related to the project was another indicator of the level of responsibility and the degree of trust the board placed in the claimant in relation to this project.

108. With that trust comes accountability for the outcome of the project whether it is a success or failure. The claimant understood that at the time when his notes record "*trading **my accountability** and at present disastrous…**For the avoidance of doubt** this is my department and I am confident my team will sort it out*".

109. From 30 June 2017, the claimant was appointed Acting Managing Director and was the most senior director in the CCD division. The claimant now had direct access to the board. Instead of passing information to the board via Mr. Stevens the claimant could directly supply any information he wanted to the board about Project Accelerate. Whether it was good or bad the board relied on the claimant to be honest so that they could be honestly appraised of the situation in the decisions they then made for the benefit of the business.

110. Prior to and post implementation of project accelerate the claimant presented a picture to the board which was not honest and did not reflect the reality of the situation. The board did not rush to dismiss the claimant after the disastrous consequences of implementation for which the claimant was accountable. They appointed him as the Managing Director and continued to rely on and trust him to take the necessary steps to turn things around.

111. Before implementation the claimant did not tell the Board, that the IT and Data systems would result in failure and implementation should be delayed. After implementation he presented a very rosy picture of the CCD business resolving the difficulties the project had encountered and putting clear blue water between the respondent's competitors and the business, when he knew that was not true, and he should have been raising a red flag.

112. The business was losing £10 million pounds per week, thousands of agents (4.500 to 2,500) and thousands (170,000) of customers. There were insufficient Customer Experience Managers in place to carry out the loan collection business which was the life blood of the business which was an operational mistake that had nothing to do with 'IT and Data Systems'. The claimant was unwilling to accept that mistakes had been made under his leadership. If he could not do that he could not rectify those mistakes and take the action necessary to turn the business around. The board were also left in a position where they could not take the steps that should have been taken to avoid further damage to the business which is what happened with the second profit warning on 22 August 2017 and the 66% fall in share price.

113. The board minutes at that time accurately reflect the need to take urgent action to put the right recovery plan in place to protect the future viability of the entire group and protect the jobs of thousands of employees. The minutes record the board's view that the claimant was responsible for fundamental misjudgments, had failed to recognise this and take the appropriate action to rectify this. As a consequence the business had lost engagement with its customers. The board genuinely believed the performance of the home credit business under the claimant's management had been catastrophic. They had no confidence in the claimant's ability to turn things around because since implementation there had been no sign of improvement and he had failed to honestly appraise the board of the real situation to enable them to act in the best interests of the business. His continued employment in these circumstances, when the viability of the business and jobs were at stake, was untenable. It was agreed the claimant should be asked to leave the business with immediate effect. He was asked to leave on 24 August 2017, he refused and was dismissed.

114. The claimant has suggested that the reason for dismissal whatever label is attached is not genuine. He suggests the decision "*was based upon belief, based upon hearsay and conjecture rather than investigation and fact".* I agree the dismissal decision was based on 'beliefs' and 'facts' not hearsay and conjecture. The set of beliefs/facts are as set out above in my findings and a key fact was the claimant's role and responsibilities at the time of his dismissal.

115. I am satisfied the respondent has shown the reason for dismissal was the loss of trust and confidence in the claimant as Managing Director of CCD which was a substantial reason which justified the dismissal and was a potentially fair reason.

116. Now turning to the reasonableness of the dismissal which must be considered in the context of the substantial reason that has been shown by the respondent to consider whether it was a sufficient reason for dismissing the claimant. Reasonableness must be judged at the time of dismissal, based on my findings of fact having regard to the requirements of section 98(4).

117. I found that before a decision to dismiss was made the claimant had a hearing and an opportunity to state his case. He prepared for that hearing where he knew his future employment as Managing Director was to be considered and that he may be asked to leave the business if he could not

'fix it'. He put his case and answered questions and gave his explanations for the failure of the project accepting no responsibility whatsoever for failure. His responses confirmed that his approach would not change if he continued as Managing Director. If he did not see that he had done anything wrong up to that point he was incapable of acting to rectify the situation. On that basis Mrs. Wolstenholme was not persuaded that a different decision should be made in light of his explanations. She asked the claimant to resign he refused and she dismissed him at the end of the meeting on the 24 August 2017.

118. There is an accepted failure to allow an appeal against dismissal which is supported by my findings of fact. Mr. Lewinksi submits that that procedural failure makes the decision to dismiss unfair.

119. Mr. Napier submits that was not the case here because of the 'highly exceptional' circumstances that existed at the time of dismissal (see paragraph 57-59 of the closing submission). He submits that:

> "*The claimant's dismissal on 24 August 2017 was based on the need for a change in leadership at the highest level, in order, to put in place a recovery plan that the claimant was unable or unwilling to provide. It was seen, as necessary to act, with great speed in order, to prevent failure of a business that had suffered and was continuing to suffer enormous financial losses. There was no time to conduct an inquiry into whether the claimant had been at fault and, if so, to an extent that merited the termination of his employment.*
> *Because of his level of seniority and because of the seriousness of the situation faced by the company, there was no way back. So, the option of placing the claimant on paid leave of absence while a full investigation was conducted into the reasons for the failure of Project Accelerate was unrealistic. It would have consumed the time and energies of senior management when there were more important things to be done to save the business and the livelihoods of those employed within it. Furthermore, when large companies suffer financial disasters those under whose leadership the failure has occurred usually leave. It is in a sense, the corollary to the high rewards that are given where leadership produces a successful outcome*".

120. Unsurprisingly, Mr. Lewinski does not agree with that position. At paragraphs 38 - 40 of his written response he states:

> "*it is suggested that it is a question of simple choice, in that it was felt there were more important things to do than to treat the claimant fairly. That is not a reasonable rationale, particularly given the resources of the respondent and the resources the respondent was able to dedicate to "investigating" Project Accelerate, and the claimant's responsibility for its failure, after his departure.* ***It is suggested that those who lead large companies that suffer financial disasters do the right thing and leave. Well, they might if the disaster was their fault or their responsibility****, but otherwise, would only be expected to do so upon agreeing mutually acceptable terms. Further the fact that an executive may be highly paid does not exclude the principles of fairness or*

employment law. Indeed, it might be argued that, the more senior the executive, the more profound the damage might be caused reputationally by summary dismissal. It is, ***of course disputed that the claimant had the primary responsibility alleged for project accelerate****. Finally, it surely cannot be said that a complete lack of process, consideration or opportunity to state a case can be said to be limb of Polkey necessarily raises again the lack of investigation. Without a proper enquiry, or even any attempt at one, the Respondent cannot possibly reasonably have concluded that consultation with the claimant would have been utterly useless*".

121. It is clear from both submissions that as a matter of accepted common practice it is accepted that senior executives who lead large companies that suffer financial disasters do the right thing and leave, if they are at fault or responsible for the disaster. However, Mr. Lewinksi makes it clear that situation does not apply here because the claimant has no responsibility as project sponsor and no responsibility for the failure of project accelerate. Unfortunately, my findings of fact do not support that submission.

122. The respondent could reasonably hold the claimant to account for the failure of the project because as a senior executive in the company the claimant had the ultimate responsibility for that outcome. The claimant would have expected to receive the rewards of success (£750,000) if the project succeeded, but also knew that he would be expected to take responsibility for failure. He would have resigned and left the business immediately (without any process) because trust and confidence would be lost in his ability to lead successfully thereafter. He understood that was the way things worked in the corporate finance sector at his level of seniority because in these circumstances resignation was seen by all as the right thing to do.

123. Mr. Lewinksi submits sole responsibility for failure rests with IT and those IT failures arguably "*changed the likelihood of achieving success in the project from difficult to closer to impossible"*. That submission makes the claimant's failure to delay implementation of Project Accelerate more remarkable in its omission. More importantly it supports the respondent's view at dismissal that the claimant had made fundamental misjudgments as Managing Director. If the claimant knew before implantation that the project was doomed to fail, why allow it to fail?

124. I also found the evidence given by Ms. Barass particularly persuasive when she said after her post dismissal investigation that this was not a case where it is only with the benefit of hindsight that the failures exposed in her investigation were clear and the claimant could not have been known or dealt with at the time. The claimant was clearly aware of the problems that existed before implementation at the time and went ahead regardless with no Plan B in place because he was blindly wedded to the project as implemented.

125. Based on my findings the respondent was entitled to dispense with an appeal because of the circumstances that existed at the time of dismissal. Judging the position at the time of dismissal the decision to dispense with

an appeal did not make the decision to dismiss unreasonable because it would not have altered the decision to dismiss which was reasonably made.

126. The circumstances at the time of the dismissal were exceptional and quite reasonably the priority for the respondent was the survival of the business in the context of a 2nd profit warning and losses leading to the largest fall in share price of a FTSE 100 company for some time. The most important thing the board had to do was to try and save the business and the livelihoods of those employed within it and they reasonably concluded they could not have done that if the claimant continued to lead the business because of his poor leadership to that point. A dismissal without an appeal in these circumstances was within the band of reasonable responses open to a reasonable employer.

127. Finally, at the beginning and end of this case the claimant has maintained a position that was unsustainable based on the unambiguous evidence presented at this hearing. He was the project sponsor with ultimate responsibility for project accelerate and was the Managing Director who was the most senior executive in charge at the time of his dismissal. The claimant's persistence in advancing a case contrary to the known fats has only succeeded in damaging his credibility as a witness and in undermining his case at this hearing.

128. In all the circumstances of the claimant's dismissal, and having regard to the requirements of section 98(4) and the band of reasonable responses the claimant's dismissal was fair and the claim fails.

Employment Judge **Rogerson**

Date: 26 October 2018