EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr A Chambers	**v**	Car Shops Limited, t/a Carshop (1)
		Sytner Group Limited (2)

Heard at: Cambridge (by CVP)

On: 10 and 11 January 2022
In Chambers: 12 January 2022

Before: Employment Judge Tynan

Members: Ms E Deem and Mrs C A Smith

Appearances
For the Claimant: Mr David Flood, Counsel
For the Respondent: Mr Richard Wayman, Counsel

RESERVED JUDGMENT

1. The Claimant's claims against the Second Respondent are dismissed on the basis that they are withdrawn by him.

2. The Claimant's claim against the First Respondent that he was discriminated against on grounds of age is dismissed on the basis that it is withdrawn by him.

3. The Claimant's remaining claims against the First Respondent, namely that he was unfairly dismissed and dismissed in breach of contract, are not well founded and are dismissed.

REASONS

1. By a claim form presented to the Employment Tribunals on 13 January 2021, following Early Conciliation through Acas between 10 and

16 December 2020, the Claimant brought claims against the Respondents that he had been unfairly dismissed, unlawfully discriminated against on the grounds of age, and wrongfully dismissed. The latter claim arises from his summary dismissal for alleged gross misconduct.

2. The Claimant withdrew his age discrimination complaint on the first day of the Hearing. He also withdrew all of his claims as against the Second Respondent. The claim therefore proceeded as a claim for damages for breach of contract and for compensation for 'ordinary' unfair dismissal, the latter claim to be determined in accordance with the well established principles laid down in BHS Limited v Burchell [1978] ICR303 and Iceland Frozen Foods Limited v Jones [1983] ICR17. In this Judgment we refer to the First Respondent hereafter as the Respondent.

3. The Claimant gave evidence in support of his claim and also submitted a written statement by his former colleague, Floyd Pullen, who works for the Respondent as a Business Manager at its Northampton site. Mr Pullen was unable to attend the Tribunal to give evidence. Mr Pullen's statement was in the nature of a character reference, though he additionally addressed the Respondent's alleged business culture under its former owners and since the company became part of the Sytner Group. Although Mr Pullen's statement concludes by expressing the view that the Claimant was treated unfairly, made an example of and targeted by reason of his age, Mr Pullen does not have direct knowledge of the events giving rise to the Claimant's dismissal.

4. On behalf of the Respondent we heard evidence from:

   4.1 Andrew Hall, Senior Finance and Insurance Development Manager, who carried out an investigation into a potential compliance issue relating to the Claimant and recommended the Claimant should be referred for disciplinary action;

   4.2 Ross Tonks, employed as a Head of Business at the Respondent, who chaired a disciplinary hearing on 25 September 2019 at the conclusion of which he decided that the Claimant should be summarily dismissed for gross misconduct;

   4.3 Michelle Byrne, HR Advisor who provided Mr Tonks with HR support through the first stage of the disciplinary process;

   4.4 Jonathon Allbones, Customer Experience Director, who heard the Claimant's appeal against his dismissal and upheld Mr Tonks' decision that the Claimant should be summarily dismissed; and

   4.5 Fiona Cottle, People Director, who supported Mr Allbones from an HR perspective at the Appeal stage.

5. There was a single agreed Hearing Bundle running to some 527 pages. The page references that follow are to the page numbers of that Hearing Bundle.

6. Mr Flood and Mr Wayman made oral submissions in closing. In the case of Mr Flood, his oral submissions were supported by written submissions to which he spoke. We have carefully considered their respective submissions and re-read the witnesses' evidence in reaching our findings and in coming to a conclusion.

Findings of Fact

7. The Claimant commenced employment with the Respondent on 17 April 2002 and was summarily dismissed on 2 October 2020 after 18 years' service. At the date of his dismissal the Claimant was employed as a Senior Business Manager, a role he had held since 2004.

8. The Respondent is a used car supermarket. Its principal activity is the sale of cars, including organising finance for those vehicles. The Respondent is authorised and regulated by the FCA.

9. The Claimant has spent his career in car sales and was one of the most senior sales people at the Respondent. We find that he had a thorough understanding of all aspects of the sales process, including the requirements for regulatory compliance, as well as the need to satisfy the requirements of third party funders. This case concerns compliance issues potentially impacting two sales negotiated by the Claimant where finance was provided by a third party, Black Horse.

10. There is some suggestion by the Claimant and indeed by Mr Pullen, that under its previous owners the Respondent's focus was on getting deals through, with the result that a blind eye was turned to non-compliant practises. By the Claimant's own admission, paperwork was not his strength. He acknowledged that under the Respondent's current owners, process is *"king"*. In our judgement it is not to be criticised, indeed it is to be commended, for its professional, compliant approach to doing business.

11. On commencing with the Respondent, the Claimant was issued with a two-page statement of main terms and conditions of employment (pages 96 and 97). The Respondent's Employee Handbook was not included in the Hearing Bundle. At the Tribunal's request we were provided with Version 3 of the Respondent's Disciplinary Policy, the version in force at the relevant date. The Policy sets out the Respondent's expectations that employees will,

> *"maintain professional and responsible standards of conduct"*

and, specifically, that employees should,

"…observe and comply with all policies, procedures and regulations"

as well as,

"…complying with all reasonable instructions and requests as given by Managers".

12. Where disciplinary issues arise, the Disciplinary Policy envisages an initial investigation, though the Policy is not prescriptive as to the form that this may take including the format of any investigation meetings.

13. Potential disciplinary sanctions are identified at the third page of the Disciplinary Policy and includes as follows,

"Stage 4 Dismissal

In the case of Gross Misconduct or if all the appropriate stages of the warning procedure have been exhausted, the colleague will normally be dismissed. Colleagues will not normally be dismissed for a first instance of misconduct, other than gross misconduct. The company will issue the notice of dismissal in writing, setting out reasons for the dismissal and providing details of the route of appeal."

14. Examples of *"General Misconduct"* and *"Gross Misconduct"* are set out at the fourth page of the Disciplinary Policy.

15. Examples of General Misconduct include:

- Failure to follow established routines, methods, policies or procedures; and
- Minor negligence in the performance of duties.

16. Examples of Gross Misconduct include:

- Dishonesty, theft, fraud and / or falsification of company / personnel records;
- Breaking a legal requirement in connection with employment or regulatory;
- Abuse of company rules, policies and procedures; and
- Bringing the company in serious disrepute, or actions that have serious potential risk to the company's reputation.

17. The right to appeal is dealt with at the fifth page of the Disciplinary Policy and provides that an appeal hearing may be a complete re-hearing of the matter, or a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have become known. Mr Allbones' evidence that he proceeded by way of a

complete re-hearing was not challenged but in any event is apparent from his decision letter.

18. The Respondent's FCA Compliance Rule Book is at pages 380 – 396 of the Hearing Bundle and is supplemented by a F & I Housekeeping Manual (pages 397 – 473 of the Hearing Bundle).

19. The FCA Compliance Rule Book (generally referred to as the Handbook) documents the Respondent's FCA responsibilities in the following terms,

> *"All colleagues should ensure they follow compliance procedures at all times, they must observe high levels of integrity at all times and will consistently treat customers fairly, and discuss any queries or concerns they have with either their Operations Director, Head of Business, Retail Manager, F & I Compliance Manager or Chief Financial Officer.*
>
> *Failure to meet these basis conduct requirements will result in disciplinary action being taken."*

20. Having set out specific colleague responsibilities, the Handbook goes on to document the responsibility of all employees within the organisation to comply with both the spirit and letter of the requirements in the Handbook, before adding,

> ***"Failure to comply can result in additional training being carried out or in more severe instances, disciplinary sanctions, including dismissal."***

21. The Handbook requires that employees promptly report known or suspected breaches of procedure to the F & I Compliance Manager.

22. In a further section headed "Fraud Prevention / Proof of Identity" the Handbook documents that customer proof of identity is always required to help prevent fraud regardless of what requirements are adopted by third party funding partners. The Handbook goes on to provide,

> *"Driving licences – the rules:*
>
> - *Always see original driving licence;*
> - *Check that the driving licence is a true likeness of the consumer taking finance;*
> - *Confirm authenticity (via UV lamp);*
> - *Photocopy the authentic original and stamp / initial the copy for audit / evidence purposes; and*
> - *Follow this process in all instances (irrespective of finance house rules).*
>
> *Employees are referred to the Housekeeping Manual for further details.*

23. Page 13 of the Handbook (page 392 of the Hearing Bundle) contains a section headed "Integrity With Our Partners". This emphasises employees' responsibilities to act in good faith and integrity with the Respondent's partners at all times. The Handbook specifically provides,

> *"Do not provide misleading / false information, which may lead to a commercial decision being made that would not otherwise have been taken (e.g. proposing to a finance company that someone has been employed 10 years when it has been 10 months, etc.)"*

24. The version of the Handbook in the Hearing Bundle is stated to be Version 1.7 issued in October 2018, namely three to four months prior to the events that gave rise to the Claimant's dismissal.

25. On 25 October 2018, when Louise Brookes, the Respondent's F & I Compliance Manager, issued a copy of the Handbook to relevant staff she not only asked them to take time to read through the document but highlighted amendments in red and, for the avoidance of doubt, also summarised them in her email. Notably, this included highlighting the section on Fraud Prevention / Proof of Identity referred to above. We find that the Claimant was a recipient of Ms Brookes' email and, accordingly, that he received a copy of the October 2018 version of the Handbook on 25 October 2018.

26. In his witness statement, the Claimant states that by his own admission his paperwork is not the best. He also states that he is dyslexic. However, he did not suggest in his evidence at Tribunal that he was unaware of the provisions of the Handbook or that he had not seen Ms Brookes' email of 25 October 2018. On the contrary, the Claimant acknowledged that these had been discussed in regular Saturday catch up meetings. He also acknowledged during his Appeal Hearing that staff had been informed they needed to be compliant.

27. The F & I Housekeeping Manual was introduced in June 2018, again only a few months prior to the events in question. The Manual is to be read in conjunction with the Handbook and confirms that the F & I Compliance Manager is available should employees require further clarification or support in understanding the Respondent's procedures and standards. The Manual includes a detailed section on driving licence checks (page 441) and includes the following reminder to employees,

> ***"Even when it is not strictly required by our Finance Partner we would always see the original licence, check it and keep a copy on file"***

28. Later in the same section, which deals with Fraud Prevention / Proof of Identity, the Manual provides,

> *"The proposal details entered on DealTrak [the Respondent's finance system] must match the details provided by the customer. Under no circumstances should we enter misleading information to gain an acceptance."*

The Respondent's expectations in this regard could not have been more clearly or firmly expressed.

29. On 8 June 2018, Ms Brookes circulated an updated version of the Respondent's Finance Proposal Form, noting the amendments to this in her covering email. She wrote,

> *"Can I remind you that it is imperative that the Finance Proposal is completed and signed by the customer and the information entered onto DealTrak must reflect this. There have been several instances where the lender has retracted their acceptance as the information submitted was found to be incorrect when further security checks were completed with the customer."*

30. We are satisfied that her use of the word *"imperative"* was intended to impress upon employees, including the Claimant, how important this issue was and the Respondent's clear expectations in terms of compliance.

31. On 31 January 2019, a customer, LF purchased a vehicle from the Respondent with finance arranged through Black Horse. The Claimant entered information onto DealTrak that did not match the information on LF's completed Proposal Form. LF's nationality and residential status were recorded incorrectly. Furthermore, LF was classified on DealTrak as being in full time employment, whereas no information in this regard had been provided by LF on the completed Proposal Form. LF's driving licence was documented on DealTrak as due to expire on 28 February 2019, whereas it had in fact expired on 28 January 2019. The Claimant did not suggest at any time during the disciplinary proceedings, including during his appeal against his dismissal, or in his evidence at Tribunal, that this was a typographical error on his part.

32. LF returned the vehicle nine days later and exchanged it for a different vehicle. It was necessary for the paperwork to be completed and submitted afresh Again, the same incorrect expiry date for LF's driving licence was entered on DealTrak.

33. The Claimant has little or no recollection of either the deal or the customer. Throughout the disciplinary investigation and ensuing disciplinary proceedings, and in these proceedings, he was essentially reliant upon the available documents and his knowledge of the Respondent's processes and procedures, as well as his confidence in his own honesty and integrity, in order to put forward an explanation as to what may have happened. As we return to, his evidence at Tribunal was rarely couched in terms of what he believed he had done or would have done; he expressed himself emphatically in terms of what he had done, making it difficult to always

differentiate between what he was saying had happened and what he surmised had happened.

34. The available documentation confirms that the Claimant carried out a DVLA driving licence check in relation to LF which confirmed that the customer's driving licence was only valid until 28 January 2019. This was signed by LF on 9 February 2019 and placed on file.

35. On 31 January 2019 and again on 9 February 2019, the Claimant failed to inspect LF's original driving licence. Instead he relied upon a photo of the licence on LF's mobile phone. There was some suggestion by the Claimant at Tribunal that it was not always possible to undertake the necessary driving licence checks because there were insufficient UV lamps available for the purpose. However, we find that a significant number of new UV lamps had been purchased by the Respondent and distributed to its sites in or around February 2018.

36. There is a copy of LF's driving licence and passport at pages 130 and 131 of the Hearing Bundle, and again at pages 158 and 160. The Claimant certified these in the following terms,

> *"I certify that these proofs are first copies of the original seen by me, and that I have checked the customer's signature and the driving licence with a UV lamp".*

37. In providing those certifications, the Claimant made a false statement; he had not seen the original driving licence and he had not therefore been able to check the customer's signature on the driving licence using a UV lamp.

38. The second transaction of concern related to a customer, VS; it was alleged that on 1 August 2019 the Claimant had entered information for VS on DealTrak that did not match the information on the Proposal Form submitted by VS. Their stated UK nationality on DealTrak was at odds with the stated Romanian nationality on the Proposal Form. They were documented on DealTrak as living with their parents, whereas their residential status was not stated on the Proposal Form. Similarly, their job title, employment status and employer's details all appeared on DealTrak but were missing from the Proposal Form. Further aspects of the Proposal Form had been completed incorrectly and an amendment to the annual vehicle mileage had not been counter signed by the customer. This was in contravention of section 6.9 of the Manual referred to above.

39. None of the identified issues in relation to VS were disputed by the Claimant, save that he believed the nationality error may have arisen as result of a glitch in DealTrak that he believed had caused the nationality to defaulted back to the UK.

40. Issues in relation to LF came to light when Black Horse highlighted that the customer had potentially made a fraudulent application for finance. Ms

Brookes completed an initial Compliance Report on 17 June 2020. She identified the issue severity and risk to the business as both high. Reflecting what we find is a clear separation of responsibilities at the Respondent, Ms Brookes referred the matter to the Respondent's HR team.

41. A further Compliance Report at pages 220 and 221 of the Hearing Bundle evidences that VS's case was reviewed in or around March 2020 after the lender retracted acceptance for the Proposal due to a suspected *"theft case".* The Compliance Report, which is dated 12 March 2020, highlights the discrepancies between the finance Proposal Form completed by the customer and the information entered in DealTrak. As well as the other matters noted above, the Report highlighted section 6.9 of the Housekeeping Manual. The issue severity and risk to the business was noted in each case to be high and the matter was referred to HR for investigation. Whilst we do not have a complete picture, it seems likely that the concerns in relation to the VS transaction were escalated in light of the concerns that arose subsequently in relation to LF.

42. On or around 18 June 2020, Mr Hall was tasked with investigating the LF and VS matters. Ms Brookes had identified the issues that required investigation in an email to Mr Allbones dated 16 June 2020. Her email was in neutral terms; although she initially escalated her concerns to Mr Allbones we cannot identify anything in the email that might have precluded Mr Allbones' later involvement at the appeal stage. It was not a point taken by Mr Flood on behalf of the Claimant.

43. Whilst there is no evidence that Mr Hall was provided with terms of reference in terms of his investigation, we are satisfied that the two Compliance Reports provided a very clear summary of the matters giving rise to concern.

44. Mr Hall met with the Claimant on 5 and 27 August 2020. Both interviews were recorded. The initial interview lasted 32 minutes, the subsequent interview on 27 August 2020 lasted 33 minutes. The Claimant was not informed in advance of either meeting that he was to be interviewed. Accordingly, he did not have advance notice that a disciplinary investigation was to be undertaken or any prior indication of the matters of concern that had arisen, or an opportunity to prepare for the meetings.

45. Mr Hall's Investigation Report is at pages 270 – 277 of the Hearing Bundle. His Report identifies the allegations / issues as:

    1. failure to follow company processes; and
    2. fraud and conduct that has the potential to bring the organisation into disrepute.

46. The Report is a well structured document and includes a 'background' section which summarises the evidence obtained in relation into each transaction, including what we regard as a fair and accurate summary of

the accounts and explanations put forward by the Claimant in his two meetings with Mr Hall on 5 and 27 August 2020.

47. Whilst Mr Hall acknowledged in his Report that the Claimant had wanted to see the customers' hard copy files, his summary does not document what is evident from the meeting transcripts, namely that in both meetings, but especially on 5 August 2020, the Claimant emphasised that he had no recollection of the deal or the customer. The meeting transcript evidences that he used expressions such as, *"I've no idea whatsoever";* and *"I've got no clue whatsoever".*

48. Whilst the Claimant did not receive any written invitation to the Investigation Meeting on 5 August 2020, the transcript of that meeting evidences that following an initial introduction, Mr Hall set out fully the issues indicated by the Compliance Report in relation to the VS transaction, before then proceeding to show the Claimant copies of the transaction file on his laptop (pages 228 and 229 of the Hearing Bundle). The transcript also evidences that Mr Hall talked the Claimant through the Respondent's concerns by reference to the completed Proposal Form, contrasting this with a copy of the DealTrak history. Having done so, he then took the Claimant through each of the Respondent's concerns in turn. When the Claimant noted in the course of this discussion that he would want to see the paper file, Mr Hall asked him whether there was anything in particular that he wanted to have a look at. The Claimant answered in the negative but went on to say,

> *"No, just that I just put things on the front of the files so I know that it is me. I am not saying have you checked to see, did I, did I hand the deal over, have you checked all that or, was it handed over by someone else?"*

In other words, at that point in time he wanted to satisfy himself from the paper file that he was responsible for the matter rather than a colleague.

49. Mr Hall then moved on to the LF transaction, stating by way of introduction,

> *"So I am going to do the same as what we did before, I am just going to read out exactly what has been found by the Compliance Department if that's okay, and then we are really clear at what we are looking at, if that's okay with yourself?"*

50. The Claimant indicated he was in agreement and Mr Hall proceeded to provide a full outline of the Compliance concerns in relation to the LF transaction. Having done so, the Claimant's immediate response was,

> *"No, it doesn't ring any bells to me at all, whatsoever".*

51. Mr Flood submits that there was no reason to question the Claimant beyond this point. We disagree. Even if the Claimant could not recall the

deal or the customer, we do not think it unreasonable for Mr Hall to have explored with the Claimant the identified deficiencies in the Proposal Form and discrepancies with the information on DealTrak to ascertain whether, as a minimum, he agreed that there were deficiencies and discrepancies even if he was not in a position to account for them. Similarly, we do not think it was unreasonable for Mr Hall to explore with the Claimant his understanding as to the processes and procedures in relation to driving licence and passport checks. Having explored these issues with the Claimant, Mr Hall confirmed that he would secure the paper files from the Respondent's Swindon site where they were said to be in storage. The transcript indicates that Mr Hall intended to bring the discussion to a conclusion, but that the Claimant then became involved with him in a discussion around identity checks and the circumstances in which Black Horse would *"pay out"* in reliance on a passport as opposed to a driving licence. Mr Hall then brought matters to a conclusion and reiterated that he would secure a copy of the paper files.

52. The transcript of the second meeting on 27 August 2020, evidences that Mr Hall informed the Claimant that it was the second part of his investigation and that, as requested, he had retrieved the hard copy files. However, the Claimant had been given no advance notice of the meeting and had not been provided with copies of the files in advance. The transcript does not evidence that the Claimant objected to the meeting or had concerns at that time that he had not received any advance notice of it. Mr Hall informed the Claimant that he would be focusing during the meeting on the LF transaction.

53. Referring to the files, Mr Hall said,

> *"I don't know if you want them in any particular form";*

to which the Claimant responded,

> *"If you just tell me what your major query is? Perhaps we can then look at it together and then sort it out".*

54. It seems to us therefore that the Claimant was content to proceed on 27 August 2019 without having had advance sight of the files. Mr Hall reminded the Claimant of what they had been discussing on 5 August 2020. He clearly identified the primary issue of concern as being that the LF transaction had proceeded without a valid driving licence. Mr Hall acknowledged the Claimant's point that they were discussing a deal from 18 months before. Nevertheless, for the same reasons above, we think it was reasonable for Mr Hall to continue to interview the Claimant to secure his comments.

55. We note that the Claimant was not offered the opportunity to be accompanied at either meeting with Mr Hall, albeit this is not of course a statutory right.

56. Approximately 10 minutes into the second interview, Mr Hall introduced new information that had been received from Black Horse since the first interview, namely that the expiry date of JF's driving licence had been notified twice as being 28 February 2019. The Claimant's immediate response was that he did not understand where they had got that information from. A few minutes later he said,

> *"… I would not have changed that to a two deliberately in any way shape or form, okay, I would not have done that".*

We understand his reference to "two" being "February".

57. Later in the interview, Mr Hall asked the Claimant about his understanding of driving licence checks with reference to the requirement to see an original document and place it under a UV lamp. The Claimant responded,

> *"…to be honest, hardly anyone puts it on the UV lamp in this business, you know that as well as I know, to be honest.*
>
> *…you can look at everyone here, no one does it".*

58. At one point in the interview the Claimant suggested that it might be Black Horse's responsibility to check customer driving licences, though later seems to have accepted that this was not the case. However, he expressed himself as "flabbergasted" because it was something he said he would had not have done. He said,

> *"I would not have done it, so I don't know what's happened. I've got no idea."*

He continued in similar vein during the remainder of the meeting.

59. When invited by Mr Hall to offer some explanation as to why the expiry date had been notified incorrectly a second time to Black Horse, the Claimant said,

> *"Do it twice then it's not some mistake is it, so no"*

He continued to state in emphatic terms that it was not the sort of thing that he would have done. Mr Hall brought the meeting to a conclusion.

60. In a letter dated 22 September 2020, the Claimant was invited to attend a Disciplinary Hearing on 25 September 2020 to be chaired by Mr Tonks (pages 278 to 280 of the Hearing Bundle).

61. The matters under consideration were identified in some detail in three numbered paragraphs. A range of potential outcomes were identified, including dismissal. The Claimant was provided with various documentation and was reminded of his right to be accompanied by a

Trade Union Representative or work colleague and that his failure to attend could result in the Disciplinary Hearing continuing in his absence.

62. Whilst the Claimant had relatively short notice of the Disciplinary Hearing on 25 September 2020, the transcript of the Hearing (pages 281 – 315 of the Hearing Bundle) confirms that the Claimant was content to proceed and further that he did not wish to be accompanied. He also confirmed that he had read the Disciplinary Hearing invite letter and understood its contents. Nevertheless, Mr Tonks read the letter to him and summarised the materials that were available. He also confirmed that he had listened to the recordings of the two disciplinary investigation meetings on 5 and 27 August 2020. He identified that he had some supplementary questions and proposed going through the allegations in order.

63. They started with the incorrect nationality details entered on DealTrak. The Claimant said that he had spoken to a few colleagues and implied that they supported his account that after the correct nationality information had been entered, the customer's nationality would on occasion default back to UK. Mr Tonks did not ask the Claimant to identify which colleagues he was referring to and none of the Claimant's colleagues were spoken to about the matter. However, we accept Mr Tonks' evidence that he followed the matter up by speaking to Ms Brookes and asking her to check DealTrak for any potential glitches in this regard.

64. A little under half way through the Disciplinary Hearing, Mr Tonks moved on to the third issue of concern, namely that on two separate occasions the Claimant had seemingly entered an incorrect expiry date of 28 February 2019 in respect of LF's driving licence. Mr Tonks explained why that could amount to gross misconduct. He said that he was interested to hear what the Claimant had to say about the matter. The Claimant's immediate response was,

"To be fair, again, I can't remember back 18 months ago."

65. However, within a few moments the Claimant then sought to provide an explanation. He set the scene by reference to a recent deal that had completed where the customer did not have a photocard driving licence, but instead had the older paper version which he was in the process of updating. After speaking to an underwriter at Black Horse, the Claimant reported that he had been able to complete the transaction on the strength of a passport. He recounted that he had been on the phone for perhaps half an hour whilst the underwriter had discussed the matter with their manager and secured approval. Mr Tonks noted that the evidence indicated that approval had been forthcoming for Covid related reasons, namely that the DVLA was short staffed and that this may have caused the customer delays in securing his photocard driving licence. He questioned the relevance of this transaction to the matters under consideration, to which the Claimant responded,

> *"All right, the issue is, I would have rung and spoken to the … I would have spoken to the underwriter hence why in the file you have the passport and you had the DVLA check and you had the driving licence. I would have been instructed what to do and I would have done it accordingly."*

The Claimant went on to say that the only difference was that he had made a file note in relation to the more recent matter.

66. Mr Tonks returned to the fact that an incorrect expiry date had been provided to Black Horse, being the same issue Mr Hall had pursued with the Claimant. The Claimant said,

> *"Again, I would have spoken to the underwriter, explained to them what I had and they would have obviously instructed me what to do to send the information over to them…"* (page 298)

67. Mr Tonks asked the Claimant whether he was saying that he had been instructed by the underwriter to key in incorrect information in order to progress matter. The Claimant's initial response was,

> *"… yes, possibly that could have happened. I don't know, I can't remember".*

68. Mr Tonks asked whether there was any other possible explanation. The Claimant responded that there was not. Mr Tonks asked the Claimant whether changing the date amounted to fraud. The Claimant said it looked like fraud, but it had been Black Horse's decision to proceed. He went on to say,

> *"So all I am saying is, I would have been instructed and done exactly what I was told to do".*

69. Mr Tonks questioned why it had been necessary to key in any date if in fact the transaction could have proceeded on the strength of the customer's passport, to which the Claimant responded,

> *"This is what I am struggling to get my head around, the guy had the passport, but we've keyed in the driving licence with the wrong expiry date on it, even though he had a passport."*

The Claimant became more emphatic in his account. He said,

> *"I would have phoned up* [Black Horse], *spoken to them, explained the situation, what I've got, and I would have obviously sent the information across to them accordingly for them to pay out or not pay out, as the case may be".*

70. As the Hearing continued, the Claimant became a little more equivocal stating it was *"probably"* the advice he was given. Mr Tonks pressed him

as to whether he was remembering what had happened or was surmising. The Claimant's response was somewhat ambiguous, stating that he did not remember before then proceeding to provide an emphatic account as to what had happened. The Hearing continued in a similar vein through to its conclusion, including the Claimant telling Mr Tonks he was *"adamant"* he would have rung and spoken to Black Horse on the issue.

71. Mr Tonks also explored with the Claimant the fact he had been emphatic on 27 August 2020 that he would not have changed *"it"* to a *"2"* i.e, the expiry date from January to February, and how this could be reconciled with having been instructed by Black Horse to change the date. The Claimant acknowledged the point, stating,

> *"I see how it looks".*

72. Towards the end of the Hearing, Mr Tonks informed the Claimant that he needed to look into a couple of issues raised in the course of the Hearing. The Hearing adjourned at 12.06 pm before resuming at 2.20pm when Mr Tonks went through the three allegations in turn.

73. As regards the first allegation, namely the compliance failures in relation to the LF transaction, Mr Tonks concluded that the various errors were in breach of the FCA Compliance Handbook. On the nationality issue he stated that enquiries had been made of Ms Brookes and that it was not accepted that customers' nationality defaulted back to UK once their nationality had been entered in the system. As regards the second allegation, the concerns in relation to the VS transaction, Mr Tonks said that he also considered that this amounted to a breach of the FCA Compliance Handbook and as such a compliance failure. Mr Tonks reminded the Claimant of the 8 June 2018 email referred to above, which had emphasised that it was imperative that the Proposal Form was completed and signed by a customer and that the information entered on DealTrak should reflect the Form.

74. Mr Tonks then dealt with the third allegation and confirmed that during the adjournment contact had been made with Black Horse (page 317). He stated that the deal in relation to LF had been proposed to Black Horse at 2.58pm on 31 January 2018, with the pay-out commencing at 3.21pm and completing by 3.25pm. Further, that Black Horse had informed the Respondent there were no discussion notes on their system which would have been the case if there had been an inbound call from the Respondent. As regards the deal on 9 February 2018, Black Horse had informed the Respondent that this had been proposed at 10.34am with pay out commencing at 10.50am and completing by 10.53am. Again, Black Horse stated that there were no discussion notes on their system to indicate an inbound call from the Respondent. Mr Tonks went on to say that Black Horse had advised that its underwriters had no authorisation to make a decision, so that if the Claimant had called to secure authorisation for the deal notwithstanding LF's driving licence had expired, the matter

would have been referred to a manager for approval, but in the meantime at that immediate point Black Horse would have declined to pay out.

75. Accordingly, Mr Tonks did not accept that the Claimant had been (or could have been) instructed by Black Horse to enter incorrect information onto their finance system.

76. In the circumstances, Mr Tonks concluded that the Claimant had fraudulently entered an incorrect expiry date on two occasions in order to secure that the deal was paid out. He considered that the Claimant's actions had brought the Respondent into disrepute and could potentially have affected its relationship with Black Horse. He went on to express the view that during the Disciplinary Hearing the Claimant had failed to accept accountability for his actions and had not shown any remorse. In these circumstances and being of the view that there had been a breakdown in trust and confidence, Mr Tonks' decision was that the Claimant should be dismissed summarily for gross misconduct.

77. Mr Tonks went on to outline the Claimant's right of appeal and how any appeal would be handled.

78. Mr Tonks' decision to dismiss the Claimant was confirmed in a letter dated 2 October 2020. It is a detailed letter running to six pages which sets out not only Mr Tonks' conclusions, but the reasons for those conclusions. The letter does not specifically address the range of disciplinary sanctions available to the Respondent, nor did Mr Tonks identify any specific mitigating factors in the letter, though in the penultimate page of his letter, he referred to the Claimant being an experienced Senior Business Manager and to his failure to take accountability for his actions or show any remorse, from which we infer that he regarded these as potentially aggravating factors in the case. His letter clearly evidences that he considered apparently conflicting statements made by the Claimant at the meetings on 5 and 27 August and at the Disciplinary Hearing, as a factor in his decision that the Claimant had fraudulently entered the incorrect expiry date of the driver's licence in order to ensure the deal was paid out.

79. There is weight in Mr Flood's submission that the various transcripts do not unequivocally support that the Claimant provided conflicting statements in seeking to provide some explanation as to how it was that the same incorrect driving licence expiry date had been provided to Black Horse on two separate occasions. We also agree with Mr Flood that Mr Tonks' letter does not evidence a clear separation of thinking in terms of the Claimant's guilt and the discrete question of what disciplinary sanction should be imposed, particularly in light of the Claimant's long service with the Respondent.

80. By email dated 8 October 2020, the Claimant notified his appeal against his dismissal. The appeal itself is at pages 331 – 335 of the Hearing Bundle. The appeal was acknowledged on receipt by Ms Byrne who confirmed that she would be in contact with the Claimant again regarding

the Appeal Hearing arrangements. She asked that if he had any new evidence relevant to the case, he should provide this by 16 October 2020. She also asked the Claimant to let her know if he required any witnesses to attend the Appeal Hearing.

81. The Appeal Hearing took place on 27 October 2020. The transcript of the Appeal Hearing is at pages 337 – 361 of the Hearing Bundle. As noted already, it proceeded by way of a full re-hearing. It lasted 57 minutes. The Claimant was more emphatic in his account, for example stating, "They [Black Horse] wanted that business. They asked me to do it and I did it." He stated more than once that his memory had been jogged. He and Mr Allbones discussed the fact that Mr Tonks had spoken with Black Horse, and the Claimant was able to put forward his explanation as to why he believed Black Horse did not have any record of any inbound calls from the Respondent on 31 January and 9 February 2019 (page 346). He went on to say he knew he had spoken with Black Horse prior to them receiving the deal (page 352). Towards the end of the Appeal Hearing, though continuing to assert he had done nothing wrong, the Claimant stated that he could understand if the Respondent wanted to issue him with a final written warning.

82. Mr Allbones wrote to the Claimant on 12 November 2020 with his decision on the appeal. He structured this by reference to the key points raised by the Claimant in his letter of appeal and during the Appeal Hearing. As with Mr Tonks' letter at the first stage, it is a detailed letter that engages with each of the identified issues and provides Mr Allbones' rationale for his decision on what he identified as eighteen discrete points of appeal. His finding on appeal was that the allegations of gross misconduct were proven and that the appropriate disciplinary sanction was that of summary dismissal. He specifically noted his belief that there was not any relevant mitigation produced to justify a reduction in the sanction of dismissal.

The Law and Conclusions

Unfair Dismissal

83. Subject to any relevant qualifying period of employment, an employee has the right not to be unfairly dismissed by his employer – section 94 of the Employment Rights Act 1996 ("ERA" 1996). It is not disputed that the Claimant qualified for that right.

84. S.98 ERA 1996 provides:

> 98 General
>
> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show–

> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it–
>
> (a) …
> (b) relates to the conduct of the employee,
> (c) …
> (d) …
>
> (3) …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case.

85. Where this is in dispute, an employer bears the burden of establishing that it had a potentially fair reason for dismissing its employee. At the outset of his submissions, Mr Flood confirmed that it was accepted by the Claimant that the Respondent had discharged the burden upon it in this regard.

86. Where the reason for dismissal is misconduct, Tribunals should have regard to the long standing principles in British Home Stores v Burchell [1978] ICR 303 and Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. We have not felt it necessary to include the often cited passage from Arnold J's Judgment in Burchell. Jones is similarly long-standing authority that reminds Tribunals that their function is to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. In Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23 CA, the Court of Appeal confirmed that the band of reasonable responses applies to both the procedures adopted by the employer as well as the dismissal. Burchell and countless decisions since have served as a reminder that a Tribunal should be careful not to substitute its own view for that of the employer.

87. Until he withdrew his discrimination complaint at the Final Hearing, the Claimant had pursued his claims on the basis that following the change in ownership of the Respondent there had been a change in attitude towards the Claimant as an older employee, and that in standing up to this the Claimant had caused management to dislike him and want him out of the business. With the withdrawal of the age discrimination complaint, this line of argument effectively fell away even as regards the unfair dismissal complaint, with the result that Mr Flood's closing submissions were focused on what might be referred to as the procedural fairness or otherwise of the dismissal. It is implicit from his closing submissions, not least his acceptance of contributory fault of at least 50%, that it is accepted by the Claimant that the Respondent genuinely believed the Claimant to be guilty of misconduct. Nevertheless, for the avoidance of doubt, we are quite sure that both Mr Tonks and Mr Allbones genuinely formed the view that the Claimant was guilty of gross misconduct and did not have some hidden or alternative agenda in dismissing him. But for the issues that came to light, we can discern no motivation on either of their parts to secure the Claimant's removal from the organisation. They were reliable witnesses in this respect, demonstrating both in their evidence at Tribunal and also in the contemporaneous documents and minutes that they took their task seriously and sought to discharge their responsibilities with the integrity and gravity befitting of the situation.

88. The second limb of the Burchell test requires the Tribunal to ask whether Mr Tonks and, subsequently, Mr Allbones had reasonable grounds for their belief in the Claimant's guilt. In our judgment they did. We consider that they had ample information and materials before them to support their conclusions in relation to the three issues of concern. This was not a case where the essential basic facts were in dispute, where there were conflicting accounts of events, or where either the initial compliance review or the subsequent disciplinary investigation involved a failure to secure relevant information or materials. Instead, the essential basic facts were established early on in the Respondent's enquiries. Mr Hall secured a copy of the hard paper files and made these available to the Claimant when they met on 27 August, and copies were also supplied to the Claimant ahead of the disciplinary hearing. The issue was whether the Claimant could offer any explanation for the compliance failures evident on the face of the documents and, critically, for the same incorrect driving licence expiry date having been notified twice to Black Horse. There was some suggestion in cross examination that Mr Tonks should have followed up with the unidentified colleagues referred to by the Claimant on 25 September 2020 who may have been in a position to comment on their experience of using DealTrak, specifically whether it defaulted to UK nationality even when it had been populated with a different nationality. However, this was not included as a specific issue in Mr Flood's closing submissions. In any event, as noted in our findings above, Mr Tonks dealt with the matter by asking Ms Brookes to look at DealTrak's functionality. She reported back that she (or her team) had been unable to identify any glitches. We do not consider that Mr Tonks acted unreasonably in dealing with the issue in this way.

89. We turn then to the process itself. The Claimant's criticisms do not extend to the essential elements of a fair dismissal process; in other words, this is not a case where it is alleged that the Respondent failed to act in compliance with the ACAS Code of Practice. The Disciplinary Hearing invite letter is detailed and covers all the matters one might reasonably expect of such a letter, including a reminder of the Claimant's right to be accompanied. The Claimant had relatively short notice of the Disciplinary Hearing but was clear at the start of the Hearing that he was content to proceed and did not wish to be accompanied. The Hearing was adjourned to enable further enquiries to be made and, the decision having been announced following that adjournment, Mr Tonks sent a very detailed letter to the Claimant setting out his decision and rationale, and that reminded the Claimant of his appeal rights. The hearing minutes evidence that the Claimant was afforded the opportunity to state his case, that Mr Tonks listened carefully to what he said and engaged with what he was saying in a non-judgmental way to ensure that he fully understood the Claimant's case. The same observations can be made in relation to the appeal process.

90. The Claimant's criticisms are framed under nine headings in Mr Flood's closing submissions. Bearing in mind that neither party has the burden of proof in terms of s.98(4) ERA 1996 and that the Tribunal is required to consider the issue in the round rather than limit itself to any particular matter, we nevertheless turn to these nine matters:

Historical Allegations

91. The Respondent seems to have delayed investigating the VS transaction for three or so months after it was first flagged for HR follow up by Ms Brookes. The LF compliance review, either of itself or in conjunction with the VS matter, seems to have been the trigger for a more detailed investigation. We do not consider that the Respondent delayed unreasonably in the matter. The Claimant did not suggest that the Respondent had been negligent in not identifying concerns at an earlier stage; on the contrary the Respondent acted in response to concerns being raised by Black Horse. Mr Tonks and Mr Allbones acknowledged in cross-examination that they may not have explicitly factored any delay into their decisions and recommendations. However, the minutes of both hearings evidence them acknowledging the fact that the Claimant was being asked to account for his actions some 18 months earlier, and in the case of Mr Allbones, notwithstanding his apparent concession, he explicitly factored into his findings on appeal that in so far as there was any conflict in the Claimant's accounts this was understandable given, as the Claimant had pointed out in his letter of appeal, that he was addressing events that had occurred 18 months earlier.

Conflicting Accounts

92. Mr Flood submits that a representative would have sought to stop the first interview on 5 August 2019. That may or may not be the case but, as Mr Flood also recognises, the Claimant had no right to be accompanied. We agree that the better course would have been to have invited the Claimant to the meeting and to have provided him with some advance warning as to the matters to be discussed so that the Claimant could be prepared for it. However, we do not consider that this involved any material unfairness to the Claimant who, three weeks later, was still saying that he could not recollect any details of the deal or the customer. It may have been unwelcome to be pulled into the meeting without warning, but the transcript does not indicate this caused the Claimant any specific concerns or difficulties. On the contrary he spoke freely and at some length. What is relevant and important in our judgement is that Mr Hall commenced their first meeting by explaining the purpose of it, and then proceeded to read out the compliance concerns as these had been documented in each of the two compliance reviews before, in each case, breaking each matter down into its component parts and seeking the Claimant's comments in order to build a more complete picture. In other words, before being asked for his comments, the Claimant knew in relation to each transaction what the concerns were. We do not criticise Mr Hall for his approach, on the contrary he approached the concerns in a structured way and worked through them methodically with the Claimant. And when the Claimant expressed a wish to have the hard paper files, even though these were subsequently found to be identical to the files available to view on Mr Hall's laptop on 5 August, Mr Hall brought the discussion to an end and arranged to secured the files before meeting with the Claimant again on 27 August 2020.

93. As regards Mr Flood's submission that Mr Tonks relied upon allegedly conflicting accounts in reaching the conclusion that the Claimant acted fraudulently, the Claimant consistently stated that he had little or no recollection of the deal or the customer. However, he had provided a conflicting account in so far as he told Mr Hall during the investigation that he would never have altered the expiry date of LF's driving licence whilst suggesting to Mr Tonks on 25 September 2020 that he may have done so, albeit potentially on the instructions of Black Horse. Even if he was only surmising, the two accounts were in conflict. We do not consider it was an unreasonable conclusion for Mr Tonks to come to, one that was outside the band of reasonable responses. But in any event, any alleged unfairness was addressed on appeal by Mr Allbones conclusion that any conflict was understandable and accordingly that it would be disregarded. If anything, Mr Allbones had more reason than Mr Tonks to suggest a conflict in the Claimant's accounts, since by the time of the appeal hearing the Claimant's position (as with his evidence at Tribunal) was more emphatic in terms of having been instructed by Black Horse to alter the driving licence expiry dates, something that paragraph 18 of Mr Flood's written submissions fails to acknowledge. A feature of the Claimant's evidence at Tribunal was that he did not advance his explanation in

relation to the JF transaction in tentative terms but repeatedly as an assertion of fact.

94. We also concur with Mr Wayman's submission that the finding of fraud ultimately rests in the undisputed fact that the date of the driving licence expiry date was incorrectly notified to Black Horse on two separate dates. As we have noted already, the Claimant did not suggest during the disciplinary process or during these proceedings that it reflected a typographical error on his part.

New Information After Dismissal

95. There is weight in Mr Flood's submission that Mr Tonks announced the new information from Black Horse, together with his interpretation of it, as he was communicating the outcome of the Disciplinary Hearing and confirming that the Claimant would be dismissed. However, we are satisfied that any potential unfairness was addressed on appeal, the Claimant having specifically raised this issue within his sixth ground of appeal. In particular, the Claimant was able to put forward by way of explanation that any discussion with Black Horse would have happened before a Proposal Form was submitted and an associated record generated at Black Horse against which any discussions might otherwise have been recorded. Mr Allbones clearly engaged with the explanation offered by the Claimant and discussed it with him at the Appeal Hearing, but set out in his appeal outcome letter why he did not uphold this ground of appeal, specifically that whether or not the Claimant had spoken to Black Horse he had breached Company rules regarding valid proofs.

Inconsistent Evidence

96. Mr Flood submits that there were three evidential factors in the case that did not sit easily with a finding of fraud. Mr Flood's submission comes close to inviting the Tribunal to substitute its own view for that of the Respondent. We are careful not to fall into that trap. It is not clear on the face of the documents in the Hearing Bundle that the Claimant raised the second of the three evidential factors with Mr Tonks, namely that placing the DVLA check which evidenced that LF's driving licence had expired on the file was inconsistent with fraudulent activity. Be that as it may, the Claimant was not dismissed by Mr Tonks for allegedly covering up dishonesty. He was dismissed, amongst other things, because he twice provided (and does not dispute that he provided) an incorrect driving licence expiry date to Black Horse, which Mr Tonks concluded was done in order to ensure the deal was paid out. As regards the fact that any financial benefit to the Claimant was minimal (£82.50) and that LF's passport would have enabled him to secure finance for LF at the required level without recourse to the driving licence, the Claimant made these points during his investigation meetings (the recordings of which Mr Tonks had listened to prior to the Disciplinary Hearing); at both the Disciplinary Hearing and Aapeal Hearing he reiterated that he didn't need the money and that a copy of the driving licence was on file. Mr Tonks addressed the

fact that the passport was on file in his decision letter. Mr Hall's Investigation Report highlighted the Claimant's stated lack of financial motivation in the matter. Whilst this was not referenced in Mr Tonks' outcome letter, there is no suggestion in the letter or in the transcript of his decision announced at the conclusion of the Disciplinary Hearing that he was influenced by a belief that the Claimant had benefitted financially in the matter. His stated concern was that the Claimant's actions had brought the Respondent into disrepute and had the potential to affect its relationship with Black Horse.

Matters Beyond the Claimant's Control

97. In so far as Mr Tonks and Mr Allbones referred to the fact that LF had seemingly made no payments under his finance agreement with Black Horse and that the monies were seemingly irrecoverable, we do not regard this to have been an impermissible or unreasonable observation on their parts. We do not consider the Respondent to have acted outside the band of reasonable responses in bringing the potential consequences of the Claimant's actions to his attention.

98. Mr Flood's remaining submissions essentially go to the issue of whether dismissal was within the band of reasonable responses.

Length of Service

99. We do not read Johnson or Strouthos as saying that an employer must have regard to an employee's length of service, rather that a Tribunal will not fall into error if it has regard to an employee's lengthy service in concluding that dismissal was outside the band of reasonable responses; in other words, that there may be circumstances in which an employer will have acted unreasonably in failing to factor an employee's length of service into its decision. Mr Tonks acknowledged that the Claimant's long service could inform both the fact finding process as well as any decision on sanction, but that he had not approached his task in this structured way. He did not give the Claimant credit for his long service. On the contrary, he referred to the fact that the Claimant was an experienced Senior Business Manager and accordingly that he had the technical knowledge of all aspects of vehicle financing. We do not consider that to have been an unreasonable observation on his part. In any event, the Claimant raised his length of service and clean disciplinary record with Mr Allbones as the first of his 18 stated grounds of appeal. Mr Allbones' appeal outcome letter evidences that he gave the matter due consideration but concluded that it did not provide sufficient mitigation when balanced against the serious nature of the conduct in question. We do not agree that Mr Allbones regarded the Claimant's length of service as an aggravating factor, rather he reasonably had regard to the Claimant's seniority and long experience as confirmation that he understood the Respondent's processes and policies. We consider this to have been an entirely proper observation for him to make.

Post Incidents Service

100. We cannot see that the Claimant relied upon his performance and alleged regulatory compliance in the 18 months or so following the two deals during the disciplinary process as being matters both of probative value and relevant to sanction. It is not the function of the Tribunal to judge the fairness of the dismissal by reference to how the Claimant might have pursued his case had he been advised to do so at the time. In any event, the band of reasonable responses applies to the procedure adopted by the employer. We do not consider that the Respondent acted outside the band of reasonable responses in so far as Mr Tonks and Mr Allbones may not have given separate specific consideration to the Claimant's conduct and performance in the period following the two deals in question. The submission is somewhat undermined in the sense that the Claimant did 're-offend' six months after his compliance breaches in relation to the LF deal, so it was not in fact an isolated incident. In any event, and as noted above, Mr Allbones addressed the fact of the Claimant's long service and clean record in his decision on the first ground of appeal.

Inconsistency of Treatment

101. In Paul v East Surrey District Health Authority 1995 IRLR 305, the Court of Appeal said in relation to consistency that the question to be asked is whether the appeal panel's decision was so irrational that no employer could reasonably have accepted it. The Claimant raised the issue of consistency of treatment in his third and seventeenth grounds of appeal and Mr Allbones addressed them, including that three specific deals highlighted by the Claimant had seemingly resulted in the revised processes notified to the Claimant that had been breached by him, and further that they were in any event still potentially live matters. Mr Allbones provided an entirely rational explanation for the Respondent's approach to dealing with these matters. In our judgement, the evidence advanced by the Claimant at Tribunal fell some considerable way short of evidencing that Mr Tonks or Mr Allbones, or the Respondent more generally, acted irrationally in terms of how it dealt with compliance breaches that came to its attention.

Failure to Consider Sanction Separately

102. Mr Tonks clearly failed to consider sanction separately from his findings in relation to the Claimant's guilt. However, we are satisfied that this error was corrected on appeal notwithstanding the point was not anticipated or addressed in Mr Allbones' witness statement. We do not accept Mr Flood's submission that he approached his task on the basis that once gross misconduct was established, dismissal was inevitable. The appeal outcome letter evidences on the contrary that he considered both the Claimant's guilt and the appropriate sanction.

103. In conclusion, in our judgement a reasonable employer would have been entitled to reach the same conclusion that the Respondent did in this

matter. A finding of gross misconduct and dismissal for misconduct was within the range of reasonable responses. It cannot be said that no reasonable employer would have reached the same findings and dismissed in circumstances where the Claimant had acted in contravention of a clearly expressed and communicated requirement intended to prevent fraud.

Breach of Contract

104. We deal finally with the Claimant's claim that he was dismissed in breach of contract. The provisions of the Handbook and Manual, and the potential consequences of non-compliance with them, are clearly stated. Ms Brookes' emails were equally clear. The Claimant failed to inspect LF's original photocard driving licence, under a UV lamp or otherwise. He made a false declaration that he had done so. He twice provided an incorrect driving licence expiry date to Black Horse. Whilst we consider that it is highly unlikely he was instructed to do so by Black Horse, what matters is that in so acting he was in breach of the Respondent's communicated, documented policy intended to prevent fraud and to protect its business reputation, commercial interests and third party relationships. We can well understand why it strikes at the heart of the Claimant's reputation and sense of integrity for his conduct to be described by the Respondent as amounting to fraud. We think it highly unlikely that the Claimant acted as he did for personal gain, rather that he was simply focused on getting the deal done. However, this does not alter the fact that he contravened the Respondent's clearly documented policies and instructions as set out in detail in our findings above. We are satisfied that the Claimant's actions struck at the heart of the relationship of essential trust and confidence. He knew that compliance was imperative and he had been instructed that under no circumstances was misleading information to be provided in order to secure an acceptance. It was for Ms Brookes and the Respondent's senior management to determine appropriate standards within the business to ensure regulatory compliance. It was not within the Claimant's authority or a matter for his discretion to depart from the Respondent's documented policies and standards. We agree with Mr Wayman that whatever the culture of the organisation may have been under its previous owners, his conduct fell to be judged by the standards of the day. We are satisfied that his conduct fell very firmly within the ambit of gross misconduct, as defined. He falsified the records in relation to LF; he was in contravention of the Respondent's compliance rules; he abused its clearly stated rules, policies and procedures; and his actions represented a serious potential risk to the company's reputation. In our judgement he was in fundamental breach of the terms of his contract with the Respondent, entitling the Respondent to dismiss him summarily.

105. In all the circumstances we shall dismiss the Claimant's claims against the Respondent on the grounds that they are not well founded.

_____
Employment Judge Tynan

Date: 25 February 2022

Sent to the parties on:

25 February 2022

For the Tribunal Office