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EMPLOYMENT TRIBUNALS

Claimant: Mr K O'Donnell

Respondent: 1) Barclays Bank UK Plc
2) Barclays Bank Plc

Heard at: East London Hearing Centre

On: Thursday 4 April 2019, Friday 5 April 2019 and
Tuesday 21 May 2019

Before: Employment Judge Jones

Representation

Claimant: Mr P Powlesland (Counsel)

Respondent: Miss M Shiu (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is that the Claimant was fairly dismissed. The claim fails and is dismissed.

REASONS

1 This was a complaint of unfair dismissal which the Respondent resisted.

2 The Tribunal apologises to the parties for the delay on the promulgation of the Judgment and Reasons in this case. This was due to the pressure of work on the Judge and her ill health.

The Evidence

3 The Tribunal had agreed bundle of documents which consisted of two lever arch files. The Tribunal had witness statements from the witnesses who appeared before it. The Claimant gave evidence on his own behalf and for the Respondent, the Tribunal heard from Steve Renfrew, Director and the Claimant's line manager; Robin

Reynolds, Director, disciplinary hearing manager and Graham Nicoll, Managing Director; who heard the Claimant's appeal.

4 The Tribunal make the following findings of fact from the evidence in the hearing. The Tribunal has not made findings of fact on all the evidence but only the evidence relevant to the issues that it had to decide.

Findings of Fact

5 The Claimant began his employment with the 2nd Respondent in December 2007. At the time of his dismissal, the Claimant was employed as a Vice President – Wealth Manager at the company's office in Manchester. The Claimant's employment was transferred to the 1st Respondent by TUPE transfer on 1 September 2017. That happened during a period of structural reorganisation of the Bank.

6 Between 2016 and 2017, the Respondent conducted a Discretionary Back Book Alignment Exercise (DBBA). According to Mr Renfrew, this was a major review and remediation project across the wealth management and private client and legacy private bank businesses to align the clients of both newly acquired and legacy parts of the Respondent's business to the core Barclays Bank Plc investment portfolios and fee schedules.

7 As part of the DBBA activity, Wealth Managers, such as the Claimant, were required to contact clients to review all aspects of their investments, including an assessment of their risk profile, the fees the Respondent was charging and whether the investments that the clients had, continued to be suitable for their needs and requirements. This process required the clients' personal and financial circumstances to be updated on the Respondent's systems by the respective Wealth Manager. Each banker was asked to conduct this exercise for their portfolios from May 2016 onwards. The project was expected to last for around a year. Each banker's portfolio contained around 80 to 85 DBBA cases, including that of the Claimant.

8 The Tribunal finds it likely that the DBBA work was not particularly income generating for the Wealth Manager but was important to the Respondent in terms of aligning the information on the clients' records with up-to-date information that the Respondent needed to have on them. It was also necessary to do the project to maintain those clients and to cultivate the Respondent's relationship with them. In order to comply with the DBBA process the Respondent expected its Wealth Managers to meet with their clients or speak with them on the phone to go through checks with them to ensure that the information on the Respondent's systems was updated and accurate in relation to their circumstances. The Respondent has various policies on how to complete this work and the Claimant was expected to comply with those.

9 The Respondent has a set of Conduct Rules of which the Claimant was aware. The Respondent's Conduct Rules were in the bundle of documents at page 61. The Conduct Rules state that they are aligned with the Respondent's existing values and behaviours, referred to as 'the Barclays Way' and the associated ways of working with which staff would have already been familiar. The Conduct Rules state as follows:

- ‘1. *You must act with integrity.*
2. *You must act with due skill, care and diligence.*
3. *You must be open and cooperative with the FCA, PRA and other regulators.*
4. *You must pay due regards to the interest of customers and treat them fairly, and*
5. *You must observe proper standards of market conduct.’*

10 The Conduct Rules came into effect on 7 March 2016 for senior managers and certified individuals which includes material risk takers, former approved persons and those with customer facing roles such as mortgage advisers. From 7 March 2017, the Rules were extended to include all individuals based within the UK and overseas colleagues that deal with UK customers/clients. The Claimant received annual training on these rules. A breach of these rules would be where an individual is personally liable for the conduct. This would arise where a person’s conduct was deliberate or the standard of conduct was below that which would be considered reasonable in the circumstances.

11 Each Wealth Manager had an admin assistant referred to as an WME (Wealth Manager Executive) or a PBE (Private Banker Executive). The Respondent had a Client Contact Notes policy (page 363), which set out the actions expected of the Claimant as the Private Banker (PB) or his PBE on the Respondent’s client records management (CRM) system. It set out a requirement to keep detailed notes of all client contact on the CRM.

12 For example, if the conduct was via a phone call, then they (either the Private Banker or the Private Banker Executive) should write up the client contact note as a phone call activity including details of the phone number used, subject of the call, details of the phone call and the owner of the call, which would be the person who created the phone call activity. They should also upload any letter sent to the client on the client account on CRM. Uploading the document to CRM would confirm the dispatch of the original correspondence to the client. If there was a meeting with the client, whether led by the client or initiated by the bank, the notes should include a short description of the reason for the meeting and should recall whether the meeting was a follow up or otherwise. The notes should also include any trading instructions, including price information and any information on the exchange and any time limits for the trade. It should also include any post trade confirmation calls or other confirmations steps agreed between the bank and the client. The procedure stated that the information recorded should be kept as factual and succinct as possible, but should include exactly what advice was provided, when and where, how, who by, to whom, on what basis; any changes in the client’s circumstances/financial information and who attended the meeting with the client. Any copies of documentation given to the client should be attached to the note, which should be stored electronically. The client contact note should be completed by marking the activity as complete. The policy ends

with the following sentence, *“Care: it is strongly recommended that the note is carefully checked before completing it (i.e. clicking the ‘Save and Complete’ button) as it can only be re-opened in exceptional circumstances.”*

13 The Respondent had a Client Suitability Policy which related to the DBBA project as well as other work. The Client Suitability Policy clearly stated that the provision of suitable investment recommendations was a regulatory requirement for all authorised individuals in the UK private bank within the Respondent. There were several detailed component parts that needed to be considered, understood, and recorded to demonstrate suitability. The policy aimed to give detailed guidance on policy, procedure and process to be followed in order to meet the suitability requirements. There were two parts to the concept of suitability: client suitability and product suitability. To be able to provide suitable investment advice to its clients, the Respondent needed to understand all relevant client information which would then be documented in the client consultation document (CCD); including risk profile, investment knowledge, experience and understanding, additional preferences and investment objectives. The Personal Banker was responsible for the underlying suitability process for his client and therefore for conducting the risk profiling process and gathering all the client suitability information as defined in the policy document. The Personal Banker must capture the client’s investment objectives and agree the risk profile. That assessment would then make the basis of any advice/recommendations given to the client as products could then be selected that meet the client’s objectives while ensuring that the portfolio remained within the agreed risk profile and taking account of the client’s assets.

14 When organising to meet a client, the details of the meeting (or the call) would be scheduled in the Private Banker/Wealth Managers diary. Either the Wealth Manager or their PBE would enter these into Outlook. Mr Renfrew recalled the Claimant frequently speaking to him about what he had coming up in his diary and his impression was that the Claimant was much involved in organising his diary and did not leave that all to his PBE/WME.

15 Once the meeting or call had taken place with the client, a record of what was discussed and what advice had been given would be saved into the Respondent’s Client Records Management (CRM) system in accordance with the Client Contact Notes procedure outlined above. An update would also be added to the DBBA tracker which allowed the Respondent to check progress throughout the project. According to Mr Renfrew, while a PBE might join a meeting and update some of the records, it is the responsibility of the Wealth Manager to check what is written and to attest that it is accurate. This accords with the Client Suitability Policy referred to above. That clearly stated that it was the Wealth Managers responsibility to conduct the risk profiling exercise for each client and to gather all the client’s suitability information. The responsibility for sending out a client’s suitability letter during that process was entirely that of the relevant Wealth Manager rather than their PBE. Wealth Managers were authorised by the Financial Conduct Authority (FCA) rules whereas a PBE was not.

16 One of the points of dispute between the parties in this case was whether the Claimant had an unmanageable case load during the period 2016 to 2017. The Tribunal find that in that period, the Claimant mainly had two types of cases. Those

related to the DBBA project and new work. The workload generated by either caseload depended on the size or complexity of the client but it is likely that as the DBBA process involved review work with existing clients, it was the new work which was likely to generate commission and more visibility for the Claimant. Mr Renfrew confirmed that portfolios for Wealth Managers was usually between 100 and 115 clients and that in 2016, the Claimant was running an extremely busy book, as was everyone else in the office. In 2016, the Claimant raised with the Respondent whether it was possible for some clients to be moved from him, not because they created too much pressure on him but because he wanted to do different work. I say this because at the same time, the Claimant was asking for more work and more responsibility and full access to quality introducers.

17 Mr Renfrew's evidence was that the Claimant was always proactive in meeting clients and involving clients in the Respondent's hospitality events. He managed to get through his work very quickly and at team meetings, the Respondent frequently referenced the Claimant's file notes and other file work as examples to the team of how to get things done or how to manage their workload in an efficient manner.

18 The Claimant's evidence was that in 2016 the DBBA project took place over a prolonged period of stress for him brought on by the fact that he was experiencing lack of support and had an overwhelming volume of work to complete. He stated that he had over 300 cases to complete in a 12-month window, which created a pressured environment for him.

19 The evidence was that the Claimant had no more DBBA clients than anyone else at the time and that he was managing his total caseload well. The DBBA caseload was around 80 and it had to be completed within a year which meant that he could do about 2 cases a week and get through it. Although the Claimant, like his colleagues, had a lot of clients in total, the Respondent did move some clients away from him once they recruited additional Wealth Managers. The evidence was that all the Respondent's Wealth Managers were busy. By 2017, each person had less DBBA files as the Respondent had done some recruitment.

20 Mr Renfrew recalled the Claimant speaking to him in 2017 to complain that he felt he had a heavy workload. Mr Renfrew confirmed in his evidence that although everyone was busy, the Claimant and everyone would have liked to have fewer DBBA clients as it was not seen as commission generating work. In 2016, the Claimant was seeking promotion and wanted to do work that would support his bid for promotion. Although he spoke to Mr Renfrew about his work load, Mr Renfrew's evidence was that it was not ever "*I am struggling*" but was more "*I am really gearing up for promotion*" and wanted work that would assist him in achieving promotion which was new client work. The 1:1 records show that there were regular discussions about the "*pipeline*" which is likely to be a description of the flow of new work that would earn him commission and promotion. The Respondent assisted him by taking away cases to give him capacity to take on new work. This was successful and the Claimant was promoted in March 2017. Mr Renfrew denied telling the Claimant to "*put up or shut up*" in any discussion about workload. Instead he supported and assisted the Claimant in managing the workload so that he could achieve his promotion.

21 The Tribunal finds that in 2016 the Claimant complained about his WME/PBE. His complaint was that AC was not working well and that she was inefficient. The Respondent changed the Claimant's WME in November 2016. This was recorded in the notes of the 1:1 discussions the Claimant had with Mr Renfrew. She had been assigned to another manager. Mr Renfrew agreed that she was not the most efficient but confirmed that she was not working with the Claimant in February 2017.

22 The Claimant spent some time in evidence in the tribunal hearing discussing the "set regarding" function of the Outlook system. Mr Renfrew confirmed in his evidence that the "set regarding" function in the Outlook system could stop functioning for a couple of days but that it was a simple process to call up the Respondent's support section and get them to put it back on. He confirmed that he had never experienced the "set regarding" function not linking into CRM. If one had a meeting with the client, you would cue the date in and so there should not be any long-lasting problem with the set regarding function.

23 I looked at the notes taken during the Claimant's 1:1's with Mr Renfrew to see what discussions there were about workload at the time. The notes for the 1:1 held in June 2016 recorded that the Claimant had "onboarded" clients or work valued at £7.8 million which meant that he was meeting his year-to-date targets. The DBBA project was noted as 56% completed and that it should get finished and that his focus in order of priority should be the DBBA project, then revenue and then items referred to as NNA and NNC. 17 cases were identified for re-allocation from the Claimant's book. But the Claimant was recorded as being on track with his DBBA work. In the 1:1 in July 2016 at page 70, Mr Renfrew recorded that the Claimant's work on the DBBA project was ongoing and that his activity in relation to new clients was very high as he had a strong pipeline for new work. The Claimant was noted as being on track with regards to revenue in relation to the year-to-date. The notes from the August 2016 1:1 confirmed that the Claimant was making good progress so far on the DBBA project and that he needed to stay focused. The list of action/areas for development on page 98 was firstly review DBBA movement, focus on planning pipeline, arrange client care calls and, lastly to arrange a 1:1 with his new QTCM. By September 2016, the Claimant had 76% of his suitability review tracking under the DBBA process completed and, 61% review tracking completed (see page 124). As already stated, he completed the DBBA project ahead of time. In the 1:1 held in October 2016, DBBA was noted as being closed. The Claimant was on track with his continuing professional development (CPD) and his activity was recorded as strong. There were no issues recorded in relation to any other matter in the notes of the 1:1 held in February 2017. The notes recorded a decision that he was to forward 27 clients on to someone else. Those clients were taken away from the Claimant and given to other Wealth Managers.

24 Mr Renfrew's assistant sent a note dated 28 October 2016 to the team with a report on the progress with the DBBA project. The note reminded everyone that they had to focus on DBBA to get the project complete by the end of the year and recorded that the Claimant only had 10 cases left to go on his part of the project. It was the lowest amount for any of the other Wealth Managers listed. That was the number of discretionary alignment of cases. The Claimant was recorded as only having 2 suitability cases left to complete. He was ahead of everyone else in his progress with the work on the DBBA project.

25 By 3 February 2017, which was the date of the other note sent to the team by Mr Renfrew's assistant, the Claimant had 1 discretionary alignment case left to complete.

26 Mr Renfrew remembered discussing the Claimant's quick progress through the DBBA project with him during one of their 1:1 meetings. The Claimant explained to him that he was trying to make the process more efficient by preparing file notes before meetings. Mr Renfrew was aware that this was the way in which the Claimant approached some of the aspects for his role. He did not have any concerns with that approach at the time as he expected the Claimant to comply with the Respondent's policies and procedures.

27 The Claimant's case was that he had templates created for the DBBA meetings held with clients and that once he had the meetings with the clients, he would pass the information on to his PBE for her to update the file note onto the CRM system. Mr Renfrew confirmed that although it was possible to pre-populate some of the forms necessary for the DBBA process before meeting the client, the CCD form should be completed by the Wealth Manager having asked questions of the client and amended it as they go. It should be a record of the meeting. Although the Wealth Manager could use the pre-existing record on which to base the conversation, the form itself should be where they record the outcome of the conversation as outlined above under the Client Contact Notes Policy.

28 According to the records on the Respondent's Client Record Management (CRM) system, the Claimant met with a client referred to as Client A, on 13 February 2017 for a DBBA meeting. The notes on the CRM recorded that several matters had been discussed including an increase in fees.

29 A re-organisation of client portfolios in late 2017 resulted in some clients from the Claimant's portfolio being allocated to GB, who was a new Wealth Manager. On 17 January 2018, GB met with Client A's son to discuss his parents' portfolio. Client A's son managed his parents' affairs under a power of attorney.

30 During the meeting with Client A's son, GB confirmed that the increase in the Respondent's fees had already been covered by the Claimant in his last meeting with Client A. She referred to a CRM note dated 13 February 2017. Client A's son disputed that a meeting had taken place with the Claimant and denied that his parents had received a follow up letter confirming the discussion. The meeting and the letter were referred to in the record on the CRM. GB showed the CRM note to Client A's son but he was clear that there had been no meeting and that his father had not received any letter from the Claimant about an increase in fees. Client A's son categorically denied that the Claimant had met his parents at their home on 13 February 2017 and discussed the fees and the changes to the service under the DBBA project, as had been detailed in the file note. He informed GB that he and his parents had never met the Claimant. When GB showed him a copy of the suitability letter that had been recorded on the file as having been sent to Client A, Client A's son confirmed that his parents had never received it.

31 On her next time in the office, GB spoke to Mr Renfrew about this matter. They had a brief conversation after which, Mr Renfrew advised GB to speak to the Claimant about it as at the time, they both thought that there was likely to have been an explanation that would provide clarity on what had happened. It is likely that they both thought that a conversation with the Claimant would clear the matter up. Later in the day, after she spoke to the Claimant, GB had a longer discussion with Mr Renfrew about this. During that second discussion, they tried to look at the note on the Respondent's CRM system but found that the note was no longer there. They discovered that the Claimant had deleted it. It was Mr Renfrew's unchallenged evidence that to reopen the file note, the Claimant would have needed to ask permission from either Mr Renfrew as his line manager or a WME manager. The Claimant had not asked Mr Renfrew for permission to reopen the record but had instead spoken to the WME manager to be allowed to do so. GB confirmed that when she had spoken to the Claimant about it earlier that day, the Claimant decided to phone Client A's son to discuss the matter. GB sat in on the discussion between the Claimant and Client A's son and informed Mr Renfrew that she remained concerned about what had happened. GB had printed a copy of the CRM file note before the Claimant deleted it so Mr Renfrew was able to take a copy of it.

32 The Claimant recorded a note of the conversation that he had with Client A's son in January 2018, on the system and sent a letter to the client recording their discussion. Mr Renfrew called Client A's son to ensure that he was happy with the service he had received. Client A's son was unhappy with the Claimant's actions and considered that during their telephone call earlier that day, the Claimant had been trying to "*put words in his mouth*" by suggesting that they had a DBBA conversation before, even though they had not. Mr Renfrew was able to smooth things over with him but it took approximately 45 minutes and he was concerned about what appeared to have been the Claimant's actions.

33 In his evidence, the Claimant stated that he reopened the file note with the intention of correcting the meeting note. However, there was no explanation of why he did not seek permission from his line manager, Mr Renfrew to do so and if he was reopening the file to correct the meeting note when the meeting itself had not occurred, what correction he was intending to make or how it came to be deleted. The file note, Mr Renfrew confirmed, was a very good record of a DBBA meeting except that the meeting had not happened.

34 Mr Renfrew had a fuller discussion with the Claimant about this matter on 30 January. A copy of the meeting notes was in the Tribunal bundle. At the time, the Claimant stated that the interaction with Client A should have been recorded on the CRM system as a telephone call with Client A's son rather than a meeting as the meeting had been cancelled at short notice because Client A was unwell. The Claimant also stated that he was under pressure to get DBBA done and that he had prepared the file notes and letters beforehand. He accepted that it should not have been put on the system as an appointment or meeting. The Claimant explained what had happened as a misunderstanding and that it should not have been referred to Mr Renfrew.

35 Mr Renfrew was concerned that if he had got into difficulties, the Claimant had not come to him to ask for assistance. The Claimant was an experienced banker and

the note that had been made on the CRM did not appear to be a draft but was a complete and personalised note which he had then deleted. Mr Renfrew decided that this was a matter that required further investigation and he decided to suspend the Claimant. He wrote to him on 30 January 2018 to confirm his suspension.

36 The letter stated that the Claimant was suspended on full pay from 30 January 2018 pending the current investigation concerning *“the allegations of falsifying a meeting record and corresponding letter to Client R.”* Also, *“there are allegations that following the discovery of this, you appear to try and cover it up. This is especially important as you are a Certified Person.”* The Claimant was informed that his suspension was precautionary as was standard in the Respondent’s procedures because he was a Certified Person and to allow an open investigation to progress as smoothly as possible. It was not a disciplinary sanction.

37 A copy of the Respondent’s disciplinary policy was enclosed with the letter. Also enclosed was a flow chart for line managers which outlined the key steps in the disciplinary procedure. Following his suspension, the Claimant was sent a copy of the minutes from his meeting with Mr Renfrew on 30 January. The Claimant responded with some comments and alterations.

38 Mr Renfrew informed the Respondent’s compliance team about his discussion with the Claimant and what had happened with the file note. He asked compliance to look at other cases so that the Respondent could try to understand what had been happening with the Claimant’s work and if there were any potential risks to other clients.

39 The Respondent appointed Alan Hobby, Director - Head of Wealth Planning, to investigate this matter. Mr Hobby met with the Claimant on 14 February. During their meeting, the Claimant was adamant that he had done nothing wrong and that what had happened was essentially, that his record keeping had let him down. He stated that he had re-opened the record to make it more accurate. He also stated that it was likely that he had a series of telephone calls with Client A and Client A’s son in which he had done the DBBA checks as he was supposed to. As Client A’s son had not made a formal complaint, he felt he did not have to take the matter to Mr Renfrew and instead, he could rectify what had happened himself. On reflection, he agreed that it should have been treated as a concern. After the meeting, the Claimant reviewed the notes of their discussion and sent an email to Mr Hobby to ask that he note that he had capacity issues and lack of support during the DBBA project and that he had struggled with the volume of work he had been given.

40 Mr Hobby interviewed GB and Mr Renfrew as part of the investigation. Further concerns regarding fee disclosure and suitability assessments apparently conducted by the Claimant during his DBBA work were identified by the compliance team. The Respondent identified 13 clients, listed as Clients B - N who, according to the its records, had been interviewed by the Claimant and had a suitability letter sent out to them - all on 28 June 2016, which seemed unlikely. Also, the letters and notes for these different clients were very similar to each other. They had different dates for the last record of appointment on CRM and had either no reference to DBBA or limited reference to DBBA on the record. In his report, Mr Hobby stated that he checked

6 additional DBBA meeting notes and reviewed them and that all 6 were virtually identical and lacked the personalisation of the meeting note with Client A. It looked like what the Claimant had done was to upload suitability letters into the files as meeting notes rather than making separate notes of meetings with the clients.

41 The investigation report drew the following conclusions in relation to Client A: - Although the Claimant stated that he had informed Client A's son about the increase of the fees by telephone rather than in a meeting, the Respondent was unable to locate any call on its systems to Client A's son in which he did so. The last recorded telephone call between the Claimant and Client A's son on the Respondent's system was on 25 October 2016. The Respondent located and listened to the recordings of 10 telephone calls made by the Claimant from 25 October 2016. None of those calls were between the Claimant and any member of Client A's family. The only record was the disputed call on 13 February 2017 which the Claimant had deleted after his conversation with GB. No meeting with the Client A had ever been booked as the client had been ill. There was no evidence that the DBBA suitability letter had ever been sent. No documentation existed regarding the fee increase in October 2017 – either in CRM or elsewhere and there was no evidence that anything had been sent to the client about it. The investigation report noted that this client had been identified as one of the more difficult DBBA client conversations that had to be had as he was unwell and both he and his wife were elderly. The Claimant had been aware of this. It had also been noted that this was one of the conversations that needed to be handled with care. In addition, when changing clients' fees, there was an expectation that a client conversation would take place, documentation provided to the client and all actions recorded on CRM. On this occasion, that had not happened.

42 A review of diary and other phone records in relation to Clients B – N was also done, but the Respondent was unable to confirm that the meetings the Claimant attested to on the CRM system, had taken place. It was submitted on the Claimant's behalf in the Tribunal hearing that if the meeting records had been filed in the wrong place, then the Respondent would not have found them and that it was likely that they had been misfiled. However, the Tribunal finds that the Respondent did not only look in the records for 28 June, but as stated above, it reviewed all its diary, phone and other records.

43 The Respondent undertook an analysis of all 14 clients' records, i.e. Clients A – N, cross referencing the CRM with the DBBA tracker which had key actions including the completion of the portfolio review on it; diaries, phone records and reception records, visitor logs and meeting room logs. If the meetings had happened, or if those clients had attended the offices for meetings at any time or if the Claimant had been booked to go out and see them on any other date, something should have appeared in the Respondent's systems, but the records did not confirm that those meetings had taken place.

44 The Tribunal find that the purpose of the DBBA process was to check that the advice previously given on these clients' investments was still accurate. It was also an opportunity to assess the ongoing suitability of their investments, to record any changes in circumstances, any unexpected expenditure such as health related costs or new dependants and to inform them of changes in the service being provided by the

Respondent such as a change in fees or in the manager assigned to look after their investments. Although Mr Renfrew had not been concerned when the Claimant told him some months earlier that he sometimes pre-populated some of the file notes to save time, it was his and the Respondent's expectation that the Claimant would conduct the meetings/review with clients in accordance with the DBBA process and would make notes and populate the forms with accurate information gleaned from those meetings. The Respondent expected the Claimant as a Certified Person to meet with Client A, review and advise him as necessary regarding his investments, his life situation and his finances and in relation the increase in the Respondent's fees. As Mr Renfrew stated in his witness statements at paragraph 49; in Client A's example, at the end of the investigation the Respondent concluded that the Claimant increased the fees without speaking to the client which was unacceptable, especially as Client A was vulnerable. This posed a major risk for the Respondent and its clients.

45 On 2 March 2018 the Claimant wrote a letter of grievance to the Respondent's HR. In it the Claimant complained that the investigation into the additional clients apart from Client A had caught him unawares at his meeting with Mr Hobby and about the length of time the investigation process had so far taken.

46 At the end of the investigation it was decided that there was a case for the Claimant to answer. On 12 April 2018, the Respondent wrote to the Claimant to invite him to a disciplinary hearing to be held on 18 April. The letter enclosed a copy of the Respondent's disciplinary policy. It also advised the Claimant that he had a right to be accompanied by a trade union representative or a colleague and informed him that Mr Reynolds would chair the hearing and be accompanied by a note taker.

47 The allegations of misconduct to be considered at the disciplinary hearing were stated as follows: -

47.1 That the Claimant had falsified client records, in particular:

47.1.1 that he had added entries to the client record management stating that he had met with clients when such meetings had not taken place;

47.1.2 that he had completed records for at least 13 discretionary back book alignment (DBBA) clients where it is stated that meetings with those clients took place on the same day yet the visitor log held no records of those meetings, nor were there any records of calls being made from the Claimant's landline or mobile telephone to those clients;

47.2 That the Claimant failed to complete the requisite DBBA review for his clients, including providing the documentation that should have been sent to clients, such as the DBBA suitability letter;

47.3 That he deleted one particular client meeting note from the CRM system when another banker asked him about the meeting considering that was the appropriate way to maintain an audit record; and

47.4 That the Claimant updated CCD with historic information leading to the attestation of current suitability being inappropriate.

48 The letter informed the Claimant that the above allegations were considered serious and would be discussed in the context of potential breaches of the Respondent's Client Contact Note Policy, Client Suitability, Fees Disclosure Policy, the Barclays Way, and The Barclays Values; which were all outlined in the enclosed investigation report. The Claimant was informed that he was also in scope of the Conduct Rules and that at the disciplinary hearing, the hearing manager would consider whether the allegations were a breach of one or more of those rules. The Claimant was informed that the disciplinary meeting could result in many sanctions being imposed - up to and including his dismissal. Also, that if he resigned his employment prior to the conclusion of the disciplinary process, the Respondent may refer to the fact of his resignation in any reference that it was asked to provide in relation to his employment for a prospective employer. Lastly, the Claimant was informed that the Respondent was required under the FCA rules to report any breach of the Conduct Rules. If the Claimant was found to have done so, the Respondent was required to provide details of the conduct rule breach and any disciplinary sanction on any regulatory reference for a period of six years.

49 The Claimant attended the disciplinary hearing chaired by Mr Reynolds. Mr Reynolds confirmed in the hearing that he had been a disciplinary manager approximately ten times before conducting the Claimant's disciplinary hearing and had a good experience of applying the Respondent's policies and procedures. Once the Claimant received the invitation to disciplinary hearing, Mr Reynolds telephoned him to give him the names of the clients whose records had been looked at in the investigation in addition to Client A as they had been listed in the investigation report using the letters A - N. The Respondent did not want to write the names down in an email as it wanted to keep client names confidential. The Claimant had not had access to the company's secure emails or systems during his suspension and the Respondent wanted the Claimant to be aware of the identity of the clients referred to so that he could prepare for the disciplinary hearing.

50 Mr Reynolds had not known the Claimant before this but had previously been asked to be a disciplinary hearing manager for a hospitality tickets issue that had arisen with the Claimant in 2017. Mr Renfrew investigated that matter and he recommended that the matter proceed to a disciplinary hearing. The Claimant was invited to a disciplinary meeting to be held on 26 January 2018. When Mr Renfrew decided to suspend the Claimant for the Client A matter, the disciplinary hearing for the hospitality ticket issue had not yet occurred. When the Client A matter arose, the Respondent decided to put the hospitality tickets' issue to one side as the Client A allegations were considered to be more serious. Mr Reynolds made no decision and had not yet made up his mind on the hospitality ticket issue at the time that he was asked to conduct the disciplinary hearing in relation to the Client A/DBBA matter. There was no evidence that he had formed an opinion on it.

51 The Claimant attended the disciplinary hearing on his own for the Client A/DBBA matters. He confirmed that he was aware of the Respondent's Individual Accountable Regime and the Conduct Rules and accepted that he was in scope of the

Conduct Rules in facing these allegations. They first discussed what had happened with Client A. The Claimant was adamant that he had had a full DBBA conversation with Client A's son although he could not remember when that had happened. He could not confirm whether the correct documentation had been sent to the client at the time. There was no evidence of a proper DBBA or fee discussion during the call between the Claimant and Client A's son on 13 February 2017. Further investigation into the call noted on the CRM as having occurred on 25 October 2016 revealed that out of all the calls recorded that day, there were no calls that related to Client A. The Claimant was adamant that he had had a meeting with Client A.

52 A note made by Mr Renfrew of the discussion he had with Client A's son was also in the investigation bundle. The note recorded that Client A's son stated that he had not received the letter that GB had shown him when they met and as far as he was concerned, his father, who is "*picky on paperwork*" had no record of receiving any letter from the Claimant. He also complained that in their call in February 2018 the Claimant tried to suggest that things had happened, which had not. He was surprised when the Claimant wrote to him afterwards as the information recorded in the letter was not how the call went. He informed Mr Renfrew that he had only spoken to the Claimant once or twice and that following the meeting he had with GB, he suspected foul play. He sensed what had happened and did not want any part of it. He did not want the Claimant to call or to take a call from him. The Respondent was aware, that Client A's son had formally been employed by the firm as a senior manager and so understood the Respondent's processes and the documents that it needed to send out when assessing suitability for clients.

53 The Claimant admitted in the disciplinary hearing that he had deleted the CRM meeting note dated 13 February 2017 and that he was aware that there would be an audit trail of the call on the system. Although there was no record of the suitability letter going out to Client A, the Claimant believed that it had been sent out although he could not say when that had happened or where the Respondent could find it on the system.

54 Mr Reynolds considered with the Claimant the records for Clients B to N, details of which were contained in appendix 15. He noted that the date of the DBBA suitability letter seemed to be the same on all those files. The Claimant had documents in relation to some of those clients in the pack sent to him in preparation for the disciplinary hearing. At appendix 4 and appendix 5, Client G can be seen at page 327 and Client N is at page 341 of the hearing bundle. Those were sent to the Claimant along with the investigation report and the Respondent's policies and procedures, in preparation for the disciplinary hearing. The Claimant also had a list, at appendix 15, of Clients B to N with the dates of the suitability letter recorded as having been sent to each, which was stated as 28 June 2016 and the summary of the CRM activity prior to the DBBA appointment for each. This note prepared by the Respondent was an analysis of the information gleaned from the investigation. It was set out as a table and raised a question on the wording of the suitability letters and whether they were identical. Some differences were highlighted such as Client I's suitability letter which had additional wording in relation to tax.

55 In the investigation report, Appendix 4 contained three DBBA file notes. Appendix 5, beginning at page 333 contained additional DBBA file notes for different clients. The Claimant was given file notes for more than 2 of the 13 clients although it was not clear how many. In the tribunal hearing, the Claimant agreed that the file notes were not of the standard that the Respondent required. The Respondent's case was that what the Claimant had done was to copy suitability letters into the files in place of minutes of meetings he held with the clients. The Respondent could find no record of those meetings having taken place on 28 June 2017. The Claimant was asked whether he had 13 client meetings on 28 June. He stated that it was possible that he was changing WME at the time, which may have contributed to what had happened on these files. He also blamed the graduates and temps who had been assisting the department at the time. The Claimant stated that he could not remember if he had had these client meetings on the same day. By the end of the meeting the Claimant confirmed that he had met all 13 clients on the list and had written to all regarding the DBBA. The Claimant stated that there had been a "*balls up*" of the record keeping. He blamed capacity issues and what he considered to be a lack of support from management in dealing with those, as the reasons for the unsatisfactory paperwork.

56 The Claimant asked Mr Reynolds to contact the 13 clients to find out whether they could confirm that he had met with them as part of the DBBA process. The Respondent had not contacted any of the other clients in its investigation.

57 At the end of the disciplinary hearing, Mr Reynolds informed the Claimant that he would decide within the following week and would let the Claimant know as soon as he had. Following the disciplinary hearing, Mr Reynolds decided to do some further investigation to make sure that he had covered everything and had all the necessary details on which to base his decision. He also wanted to follow up on some of the points the Claimant raised. As he stated in disciplinary hearing, Mr Reynolds considered this to be a serious matter for the clients and the Respondent as well as for the Claimant.

58 As part of his further investigation, Mr Reynolds checked the Claimant's expense claims to see if there was any information such as receipts, that could support the Claimant's position that he had met with clients. He checked the CRM and Outlook systems and DBBA tracker. He did not find any information that could assist. On 11 May, Mr Reynolds wrote to the Claimant to invite him to have a follow up discussion with him in the light of the information gleaned from these further enquiries he had undertaken. In that email, he reminded the Claimant of the allegations against him. He stated that he would be informing the Claimant of his findings and final decision but his evidence to the Tribunal was that he had not yet made his final decision and would not do so until after the further discussion.

59 On 17 May, Mr Reynolds sent the Claimant an email with an attachment which was a review of the 13 clients. The information was contained in a table. In this table, Mr Reynolds provided more details than had been in the initial table prepared as part of the investigation. The table showed the information that had been in the CRM records, what had been in the original investigation and the information that he had been able to find subsequently. In the email of 17 May, Mr Reynolds went through each of the

clients, in addition to Client A and set out the information in the Respondent's possession. There were records of the Claimant meeting with some of the clients but there was no evidence of meetings on the 28 June 2016 and the DBBA had not been mentioned in the meetings that had occurred. It was not clear from the records whether suitability letters had actually been sent out to these clients.

60 Mr Reynolds' second discussion with the Claimant took place on 18 May. They had intended to meet in person but as Mr Reynolds was in Guildford while the Claimant was in Manchester, they agreed to have a telephone call rather than a meeting. This was the second part of the disciplinary hearing. It was likely that Mr Reynolds had information about the 13 additional clients on his screen at the time of this call. Mr Reynolds in his live evidence confirmed that he read out the information on his screen to the Claimant who was in the Manchester office. The Claimant did not have the additional paper documentation with him at the time but may well have had the information on his screen. He was still in possession of the documents from the initial disciplinary hearing as well as Mr Reynolds' email from the day before with the review document. Mr Reynolds could not remember whether the Claimant had any additional information in his screen. This meeting was essentially for him to report back on the investigation as he had done on the CRM files as directed by the Claimant. They had focussed mostly on Client A in the first meeting and Mr Reynolds wanted another opportunity to hear the Claimant's explanation of what had happened on the other files. The Claimant did not need clients' names for this second meeting as Mr Reynolds had already given him their names prior to the initial disciplinary meeting and he was given the client key in that first meeting. The notes show that the Claimant could discuss each individual client and that he was familiar with their matters and able to discuss with Mr Reynolds the work that he was clear that he did on each file.

61 The minutes record that Mr Reynolds stated that it had been at the Claimant's request that he had done a deep dive on the clients and that the purpose of the call was to "show" him the findings of that investigation. The minutes record that the Claimant reminded him that he had had no access to the system for four months and that he had no paper copies of the records they were looking at. That also suggests that they were both looking at screens during this meeting.

62 The notes of the meeting of 18 May shows that the Claimant and Mr Reynolds went through each of the clients from A to N. They had detailed discussions about each one. A scrutiny of the transcript of the telephone call at pages 496 to 506 confirms that it is likely that they were looking at the records while having this discussion as the discussion is detailed. The information referred to in the discussion is more than the information that is in Mr Reynolds' review table at 512. In the Claimant's recorded responses, he does not say that he was unable to see the information or that he did not have the records. He is recorded as referring to mitigation by saying that at the time he was working 12-hour days, that he passed the information on to the support staff for them to upload onto the system or that this was all the matter of incomplete or inadequate record keeping and not his fault. Once again, he suggested that it was the fault of the WME and/or the graduate and temp staff not being suitably trained.

63 At the end of the meeting, the Claimant agreed that it was inconceivable that he could have held 13 meetings in one day. However, the Claimant would have had to attest on each file that he had completed all the activities on CRM. In his cross-examination during the hearing, the Claimant confirmed that it was he who created the records rather than his WME or temps/graduates.

64 Following the meeting, Mr Reynolds listened to the record of the telephone conversation that Mr Renfrew had with the son of Client A. He also noted that the son of Client A used to be a managing director of the Respondent's North West Regional Wealth Business and therefore, was knowledgeable about the industry and the processes the Respondent should have been following. Client A's son would have understood the importance of the meeting - especially a conversation about a change in fees - and whether that discussion had occurred. In addition, the Claimant had admitted that no meeting had taken place with Client A and that the file notes had been wrong, although it was his position that there had been a call at some time with Client A's son to discuss the fees. The Respondent still could not find any record of such a call and Client A's son denied that such a call had taken place. Taking all that into consideration, Mr Reynolds concluded that it was unlikely that there had been a meeting or call to conduct the DBBA process or discuss fees and that the evidence supported what Client A's son had said as opposed to the Claimant's assertions.

65 Mr Reynolds considered whether he should speak to the other clients as the Claimant had suggested. He considered what assistance this would give the Respondent in this process. Most of the clients was elderly and vulnerable and any conversation with them about this was likely to cause them anxiety. As they would have had other conversations/meetings with the Claimant during his time as their Wealth Manager, it was likely to be difficult for them to remember which meeting they were being asked about. Any query about this was likely to cause them to be worried or concerned about the service they were getting from the Respondent rather than assist with the investigation. It was likely to upset them, which appeared to have been the result of the Respondent's conversations with Client A's son. The Respondent had a record keeping system which was supposed to evidence the work a Wealth Manager did with his clients. It should not be necessary to rely on the clients' ability to recall what work had been done with them. For those reasons, Mr Reynolds decided not to speak to the clients about this.

66 Mr Reynolds was clear that it was not possible to accidentally upload information onto the CRM files or the DBBA notes or the CDD system. The Claimant would have had to organise meetings using Outlook, he would have needed to upload information to CRM with a note of the meeting. He would then need to separately update the DBBA tracker with his progress on the case. In his opinion, it was possible to make an error in relation to one client or one matter but an accidental error across all systems for multiple clients was not possible.

67 During the Tribunal hearing, the Respondent disclosed the investigatory report and the 17 appendices to it, which included all the DBBA, CRM and CCD records for each of the 13 clients as well as the draft and final investigation reports. The Claimant had not had paper versions of the full report and appendices before this hearing. The documents confirmed what Mr Reynolds discussed with the Claimant on 18 May.

68 In conducting the disciplinary process and the further investigation arising out of it, Mr Reynolds decided not to speak to the Claimant's PBEs - AC and the person who took over from her. Mr Reynolds considered that if it was true that the failings on the Claimant's files were because the files were completed by his PBEs then that would be a different but equally serious breach of the Respondent's policies and likely to be considered gross misconduct. It would be a breach for the Claimant as one of the Respondent's senior employees, to allow others to access his computer systems. He also chose not to speak to the PBEs because the systems record who does what on them and the records for Clients A – N showed that the records in question were all made by the Claimant. Lastly, the Respondent's Client's Suitability Policy and the other policies discussed above made it clear that it was the Private Banker/Wealth Manager who had the responsibility for overall suitability, advisory investment advice and ensuring that there was product suitability for these vulnerable clients which meant that it was appropriate for the Claimant to be held responsible for the records.

69 After considering the information provided by the Claimant in the two meetings held with him, the investigation report and the further detail from his own scrutiny of the documents, Mr Reynolds concluded, that the evidence showed that the Claimant had committed gross misconduct. He upheld each of the disciplinary allegations. In relation to allegations 1, it was his decision that the Claimant had falsified client records. This was a reference to there being a record on the system that he had met with Clients A, C, D, E, F, I, J, K and N where there was no supporting evidence that those meetings had taken place or that DBBA had been discussed with them, as had been stated in the records.

70 In relation to some clients he questioned the veracity of the Claimant's meeting notes on the system as it was unlikely that they could be relied on. There was no evidence that Client's D and C had attended meetings at the Respondent's offices, which the Claimant had attested to in his notes. In relation to Client's B and G, Mr Reynolds found some evidence that partial or full DBBA conversations had taken place with these clients but, the record keeping for those two clients was poor. In relation to Client H, L and M, they had all moved away from the discretionary portfolio management service in 2016, yet the Claimant recorded that he had conducted meetings with and sent letters to them when they were no longer part of the service. For those reasons, Mr Reynolds concluded that in relation to allegation 1, the Claimant had not completed the work that he had attested to having completed.

71 In relation to allegation 2, while the Claimant had completed notes stating that he had done DBBA reviews of the client's files, there was no supporting evidence that he had in fact met with those clients and discussed DBBA with them. The Respondent had a responsibility to ensure that those conversations had happened. The Respondent should be able to rely on its records and should not need to speak to the clients to be able to confirm that regulatory meetings took place. As Mr Reynolds confirmed in his witness statement, if the FCA were to audit the Respondent, it would not speak to the clients, it would expect the Respondent's records to be able to confirm whether meetings had been held with them and what had been discussed. The records were supposed to show compliance with the regulatory obligations. The CRM record was central to this. The Respondent would not have been able to rely on the records for these clients in such a situation.

72 In relation to allegation 3, Mr Reynolds concluded that the Claimant deleted Client A's meeting note from the CRM system. The Claimant had admitted this. He also concluded that if the Claimant had had a conversation with Client A's son about the fees, there would be no reason for him to delete the note. He questioned the Claimant's integrity on this point. In relation to allegation 4, he concluded that the Claimant had most likely updated CCD with historic information. Given that he had not met with Client A and it was unlikely that he met with Client A's son, he must have used historic data to support his claim of updating their financial circumstances on the system. This was a breach of the Respondent's Client Suitability Procedure.

73 Mr Reynolds concluded that the Claimant had made serious consistent breaches of the rules that he was supposed to follow. It was the Claimant's responsibility rather than the responsibility of any support staff or graduates or temps. It was his decision that the Claimant was guilty of all the disciplinary allegations and the breaches of the Conduct Rules and had committed gross misconduct. It was his evidence that this was a decision that he had come to on his own and which he had not been pressured to take.

74 Mr Reynolds' evidence was that once he decided that the Claimant had committed gross misconduct, he gave separate consideration to the question of what was the appropriate disciplinary sanction to impose on the Claimant. He considered that what the Claimant had done was serious and that it was likely that the Claimant had done so deliberately. Mr Reynolds considered that what the Claimant had done had had a significant impact on the Respondent's ability to provide outstanding service to its clients. This was particularly so in relation to Client A and his son as demonstrated in the feedback that the son gave to Mr Renfrew.

75 He considered the Claimant's points in mitigation including that he had been busy with the DBBA and dealing with new clients. He concluded that the Claimant had not been the only person who had been busy at the time and that if he had brought serious concerns about his ability to complete tasks to his line manager, then it was highly likely that he would have been given support in addressing this issue. Although the Claimant's case at the hearing was that he had raised these concerns and been ignored or not supported, in the disciplinary hearing he told Mr Reynolds that Mr Renfrew had supported his desire to be promoted - he referred to him providing '*vociferous*' support - and that work had been taken off him and given to other Wealth Managers to assist him. Mr Reynolds considered that being busy did not justify taking the shortcuts the Claimant appeared to have done with the DBBA project. He was aware that the Claimant was likely to lose his job and his certified status over this. He reminded himself that the Claimant was a Wealth Manager and a certified person which is a senior position at the Respondent and was expected to honour the Respondent's values, such as acting with integrity and valuing the relevant Code of Conduct but had failed to do so. It was his decision that a final written warning would not be appropriate and that the Claimant should be summarily dismissed.

76 On 9 July 2018 Mr Reynolds wrote to the Claimant to inform him of his decision. Mr Reynolds confirmed that the Claimant's employment was terminated, without notice, based on gross misconduct. Mr Reynolds informed the Claimant that his misconduct was also in breach of the Conduct Rules. He upheld all the allegations in

the Claimant's invitation letter. Mr Reynolds' decision was to terminate the Claimant's employment summarily for gross misconduct. In the letter, he went through each of the Clients A to N, set out the Claimant's explanation and his conclusions with reference to the evidence on the CRM, CCD and DBBA records. He informed the Claimant that the Respondent would report the conduct breach under the FCA/PRA rules to the FCA and PRA and would include details of the conduct rule breach and the disciplinary sanction on any regulatory records. The Claimant's certificate in relation to his certified role, would also be withdrawn.

77 The Claimant was advised of his right to appeal. Enclosed with the dismissal letter were the disciplinary meeting notes and a copy of the review/appendix created by Mr Reynolds in relation to Client's A to N.

78 The Claimant wrote to the Respondent to appeal against his dismissal. The grounds of appeal were that the Respondent ought to have spoken to the clients to confirm whether or not the Claimant had had the meetings as stated in the records, that the investigation evolved from the allegations regarding the hospitality tickets which was unfair, that the investigation was not sufficiently thorough, that procedural failings meant that he had been unable to properly prepare his defence, that mitigating circumstances had not been taken into account, making his dismissal unfair; and that his genuine errors and failures to recollect had been misinterpreted as deliberately falsifying documents or misleading colleagues and clients.

79 As part of his appeal the Claimant stated that he re-opened the file note on the CRM in relation to Client A when he realised that the record was incorrect and that there was no attempt to falsify client records or to do anything other than correct an earlier mistake. The Claimant did not explain how that resulted in the record being deleted. He complained that it was unlikely that his were the only DBBA reviews that were incomplete. In relation to mitigating circumstances, he referred to a long period of stress brought on by severe capacity issues, a lack of support, competing business priorities and an overbearing volume of work to complete during the time within which these reviews were conducted.

80 The Claimant's appeal was conducted by Graham Nicoll who was the Respondent's Managing Director, Midlands, Wales and West, Scotland and Northern Ireland. In that role, he was responsible for the Respondent's Wealth Management teams across those regions. Mr Nicoll had not been involved in the previous disciplinary process and did not know the Claimant or Mr Reynolds before conducting the Claimant's appeal. He had only recently re-joined the company four months prior to conducting the appeal hearing. He was not with the Respondent when the DBBA process started but once he took on the appeal he spoke to team managers and other Wealth Managers to understand the project and gain a good understanding of process. He had also worked as a Wealth Manager in the past.

81 On agreeing to conduct the Claimant's appeal, he wrote to the Claimant on 28 August to ask him to confirm whether he was appealing against both the disciplinary sanction and the conduct rules breaches and any other information which the Claimant considered would be appropriate for him to review as part of the appeal process. As part of his preparation for the appeal hearing, the Claimant asked for and received copies of his year-end appraisals for 2016 to 2018.

82 On 4 October, Mr Nicoll wrote to the Claimant to invite him to an appeal hearing on 16 October to be held at the Respondent's Manchester office. He enclosed a copy of the Respondent's disciplinary policy and advised him that he could be accompanied by a trade union representative or a colleague. A note taker would also be present and the Claimant was provided with telephone numbers that he could call if he had any queries about the process.

83 The Claimant was unable to attend the appeal hearing in person and contacted Mr Nicoll a few days beforehand and to arrange for the meeting to be conducted by telephone. The Claimant was unaccompanied during the call. There were notes from the meeting in the bundle of documents. Mr Nicoll began the meeting by asking the Claimant whether he wished to expand on any of the points in his appeal letter. He informed the Claimant that the purpose of the appeal hearing was to go through the Claimant's grounds of appeal and for Mr Nicoll to ask him any questions for clarification, if he needed to do so.

84 They began the appeal hearing by discussing the DBBA process. The Claimant wanted to know whether Mr Nicoll had sufficient background knowledge of the project. He confirmed that he had and that he had gone through the file notes and familiarised himself with the subjects since taking over the regional business. The Claimant confirmed that he was appealing against the dismissal and the decision that he had breached the Conduct Rules. During the appeal hearing, the Claimant confirmed that the cases that were looked at were activities that happened two years prior to the hearing and therefore it had been difficult for him to remember as he had no access to the systems. He also confirmed that he saw the file notes for all the clients considered during the investigation, with the names blanked out. The Claimant complained that the Respondent had initially been investigating him around the hospitality tickets for the football match and that it had then changed the investigation to the DBBA issue. Later in the hearing, the Claimant accepted that the records were not correct and that it was unlikely that the mostly elderly clients would remember the conversations that he had with them. He continued to blame changes in support staff for what had happened and stated that that was a point that had been overlooked in the Respondent's considerations. He stated that it was likely to have been his PBE that put the file notes on and that they may have cut and pasted the suitability letters into the CRM. The Claimant admitted that he had pre-prepared file notes to '*create some efficiency to mass manage*' the DBBA project.

85 The Claimant told Mr Nicoll that he had been facing a large workload. He alleged that if the issue with the football tickets had not arisen, the matter concerning the DBBA project would not have been escalated. He believed that Mr Renfrew had done this. The Claimant mentioned that he had raised a grievance around January/February and heard nothing more about it. Mr Nicoll was not aware that the Claimant had raised a grievance but confirmed that he would consider it as part of his consideration of the Claimant's appeal.

86 They discussed Client A and the meeting that was recorded as having happened with the client. During the discussion the Claimant accepted that the investigation had been instigated because of a client concern raised by Client A's son in relation to a meeting that he said had not taken place and the meeting note. The

Claimant accepted that but alleged that the whole situation had been exacerbated by poor management of the situation by Mr Renfrew. The Claimant confirmed that there had not been a client meeting for Client A or Client A's son but suggested that it may have been one of his colleagues or someone supporting him that put the note on to the CRM system. The Claimant accepted that the Respondent's clients placed their trust in the Wealth Managers and that they should take that trust seriously and act with integrity at all times. The Claimant complained that the DBBA project had been impossible to do and alleged that Mr Renfrew had dismissed his workload issues and had used inappropriate language to him and told him to "*put up and shut up*" when he complained. He alleged that he complained to Mr Renfrew that he had too many clients. He referred to having 300 client cases and that the Respondent had picked a few of his cases rather than look through all 300 of his client cases to see evidence of his work.

87 The Claimant explained that his allegations in relation to procedural failings affecting his ability to prepare his defence was that the initial meetings that he had had with Mr Hobby was in relation to him not having a meeting with Client A and subsequently, the investigation had expanded. He said that he had been told that he had not completed the suitability documentation for Client A and that as far as he was concerned, he completed the suitability by writing to the clients and to the son, after he spoke to GB. Having said that, he also stated that he had been unable to defend himself in relation to the suitability point.

88 Following the hearing, Mr Nicoll decided to investigate some of the points the Claimant raised in the meeting in order to thoroughly consider the appeal. He met with Mr Renfrew on 22 October. There was a note of the conversation in the trial bundle. They went through all the Claimant's points of appeal and Mr Renfrew was able to provide information to Mr Nicoll on his relationship with the Claimant, the hospitality/football tickets issue, the DBBA project, the Claimant's grievance and the Claimant's workload. Mr Renfrew's perspective was that his relationship with the Claimant was a good one and he had provided the Claimant with support for his promotion and with his workload. Mr Renfrew was unable to provide any clarification on the grievance that the Claimant referred to as the only document he had from the Claimant was an email on 24 January 2018 when the Claimant complained about the delays in the investigation on the football tickets/hospitality issue. Mr Renfrew sent that document together with documents that he had on the DBBA project to Mr Nicoll after their meeting.

89 During his consideration of the Claimant's appeal Mr Nicoll located the grievance that the Claimant sent in on 2 March 2018 in which he complained about what he referred to as the poor handling of the investigation and disciplinary processes with regard to the DBBA and Client A matters. Mr Nicoll was told that the HR team had informed the Claimant at the time that his concerns about the process would be considered as part of the investigation and disciplinary process that at that point had just begun started. Mr Nicoll considered that these issues as part of the appeal process.

90 The following were raised in the grievance and was considered as part of the appeal. The Claimant's concern that the allegations against him had changed during the process. He considered that the Respondent suspended the Claimant because of

the complaint from Client A's son and the concerns raised by the Client A matter. The investigation by compliance raised other issues which then became part of the investigation. The Claimant was given an opportunity to comment on all these matters when he met Mr Hobby during the investigation.

91 He considered the Claimant's relationship with Mr Renfrew and concluded that it was likely that Mr Renfrew was being upfront and truthful with him in their discussion about the Claimant's performance at work. He reviewed the notes of the Claimant's 1:1 with Mr Renfrew to see if there was any indication from those discussions that the Claimant had been struggling with his work. He did not find anything to support that claim. He also met with Mr Reynolds on 23 October. Mr Nicoll discussed with Mr Reynolds, the weight he had put on the Client A issue, including the conversation that Mr Renfrew had with Client A's son. Mr Reynolds confirmed that he considered that the issues regarding Client A alone were sufficient grounds for disciplinary action. He confirmed that he had not been aware of any grievance about the previous disciplinary matter and that the Claimant had not raised that issue with him.

92 After considering all the evidence Mr Nicoll concluded that there was no evidence that the concerns the Respondent had over the Claimant's performance of his DBBA work was linked to the hospitality tickets issue or that Mr Reynolds had the hospitality tickets issue in his mind when he decided to dismiss the Claimant.

93 Mr Nicoll concluded that the disciplinary process had been fair and in line with the Respondent's internal processes and that although it took longer than perhaps would have been ideal, there had been regular communication with the Claimant throughout the process and he had been kept updated. He decided that on balance, the matter had progressed in line with the Respondent's values and the regulatory requirements.

94 Mr Nicoll concluded that any issues that the Claimant had with the process had been dealt with within the disciplinary and appeal process itself. There was therefore no need to have a separate response to the Claimant's grievance.

95 Mr Nicoll sets out in his witness statement how he dealt with each of the points that the Claimant raised in his appeal. He was satisfied that there was a reasonable business rationale for the Respondent not meeting or speaking with the clients and that there was sufficient underlying evidence that the Respondent had in its possession from which it could reach fair and reasonable findings. He concluded that it was apparent from the discussion with Client A's son and indeed the Claimant himself, that the Claimant had not met with him or any member of his family on the date the detailed meeting note referenced. He was confident that the information provided by Client A's son was persuasive in that regard.

96 Mr Nicoll was not convinced that it was necessary to speak to the other clients to check whether they had met with the Claimant. The Claimant had uploaded poor paperwork onto the Respondent's systems which reflected a lack of care and diligence on his part which rendered it unreliable as a record of advice to/meetings with clients. That was the Respondent's focus. The Respondent's systems were designed to demonstrate that the necessary meetings, checks and processes had been followed. It

was not reasonable and should not have been necessary for the Respondent to speak to clients, many of whom were elderly or vulnerable, many months after a meeting was alleged to have taken place to confirm that its processes had been followed. This was even more so, when the Claimant agreed that it was arguable whether the clients would remember that a meeting had happened.

97 In addition, in an audit situation it would be the Respondent's responsibility to prove that it had had those meetings with the clients rather than for the clients to prove that there had/had not been those meetings. The FCA or other regulatory body would not speak to the clients but would simply interrogate the Respondent's records.

98 Mr Nicoll confirmed that while he endorsed a Wealth Manager having a template for a meeting note to ensure that all relevant points were covered, it would not be possible for the Wealth Manager to fully finalise this before the meeting had taken place as they would not know what issues would come up or what questions the client would ask. Each client's circumstances would be different and warrant personalisation of the meeting and advice given. In his witness statement, Mr Nicoll stated that '*so many of the notes were almost identical to each other*'. It was not his case that they were identical. They were very similar. In his view, the Claimant was cutting corners rather than ensuring client suitability and took tick box steps to complete the DBBA project.

99 In relation to the recorded meetings the Claimant had with Clients B - N, on 28 June 2017; Mr Nicoll concluded that it was simply not possible for that to have happened and that the Claimant admitted as much in the disciplinary hearing with Mr Reynolds. A Wealth Manager could meet with two or three clients a day and the work involved in writing up those meetings and dealing with the resulting paperwork would mean that no more meetings could take place that day. It would have been impossible for the Claimant to have met with 13 clients on the same day, as he attested.

100 Mr Nicoll concluded that the football tickets issue had not been pursued by the Respondent and was unrelated to these proceedings. These disciplinary proceedings had been based on a separate investigation that was triggered by the complaint from Client A's son. Once the Respondent had focused on Client A, the investigation then progressed into a wider review of the Claimant's DBBA records. He had not found any evidence that anyone was looking for potential disciplinary action against the Claimant. GB had done the right thing by raising this issue with Mr Renfrew. Mr Nicoll was firmly of the belief that if the football tickets issue had never happened, the DBBA disciplinary would still have progressed to disciplinary action in the same way. The Respondent has a duty of care to its clients and the responsibility to investigate such matters when they arise. Such matters should be escalated. Mr Nicoll found that the Claimant had been sent the investigation report together with appendices. He concluded that the Claimant had all the information that the Respondent considered in coming to its decision to dismiss him, that he understood the allegations against him and had been able to respond to those allegations in the disciplinary process. The Claimant had not asked for the complete paperwork in relation to all of the clients during the disciplinary process, which contrasted to him asking for it in preparation for this Tribunal hearing.

101 Mr Nicoll considered the Claimant's point on whether the investigation had been sufficiently thorough. He concluded that the Respondent had clearly looked at the circumstances surrounding Client A, the Claimant's dealings with Client A and Client A's son and that Mr Reynolds had undertaken his own investigations leading to the review document which he sent to the Claimant before their telephone conversation and which had also been attached to the dismissal letter. He concluded that the Claimant had had an opportunity to present his mitigation to the allegations on both 18 April and 18 May and that he had the opportunity to prepare further for the appeal meeting. Mr Nicoll concluded that even though it is possible that the WME went into the CRM system to add an email, a letter or a note, the person who completed the activity was the person responsible for the information on it. The computer audit trail made it clear that the Claimant had added the documents in question to the system. The system name stamps and date stamps activity on it and that confirmed that the notes in question had all been added by the Claimant.

102 Mr Nicoll concluded that it would be difficult to accidentally create a false meeting note and it was therefore likely that that was a deliberate act by the Claimant. Mr Nicoll was clear in the tribunal hearing that the Respondent works in a regulated environment and correct and accurate documentary evidence of discussions with clients and of the advice given, is vital. In providing a meeting note which was not accurate, in relation to a meeting that had never taken place, the Claimant breached Conduct Rule 1 which stated that colleagues must act with integrity. Added to that was the Claimant's action is attempting to delete the 13 February 2017 meeting note relating to Client A which he concluded was another deliberate act. The Claimant had not informed Mr Renfrew about it. This also raised an integrity issue with Mr Nicoll. He concluded that there were several other clients for which the quality of the Claimant's meeting notes had been extremely poor. He also breached Conduct Rule 4. There were entries of separate meetings taking place with 13 clients on the same day, 28 June in a particular office, which was not supported by any of the Respondent's records.

103 Mr Nicoll concluded that the Claimant's mitigation had been considered. He considered the following points –

- 103.1 that it may have been a busy time for the Claimant as lots of demands are placed on Wealth Managers;
- 103.2 that the Claimant's workload was not dissimilar to other colleagues and peers. But, after reviewing the Claimant's 1:1 documentation and considering the contents of his discussion with Mr Renfrew, he did not find any record of the Claimant mentioning that he was unable to sleep or suffering particular levels of stress at any point;
- 103.3 that the Claimant had not raised a formal grievance about the workload with Mr Renfrew. It was unlikely that he had done so, as the Claimant was seeking promotion around this time and part of that would be to convince management that he was able to cope with his workload;

103.4 that it was unlikely that Mr Renfrew would have ignored the Claimant if he had raised issues of stress/workload with him. He concluded that it was unlikely that anything Mr Renfrew did contributed to the Claimant's actions. He concluded that the Claimant's mitigation point could not excuse his conduct.

104 Mr Nicoll concluded that there was nothing that the Claimant had raised in his appeal that could justify any other decision apart from upholding the decision to dismiss. Mr Nicoll confirmed that he agreed with Mr Reynolds' conclusion that the Claimant's conduct was gross misconduct and that he had breached Conduct Rules 1 and 4. Mr Nicoll's decision was that the Claimant's conduct was so serious, that summary dismissal was reasonable in the circumstances. The Claimant's appeal was not upheld and Mr Nicoll wrote to him on 30 November to explain his decision and to confirm that this marked the end of the Respondent's disciplinary process.

Law

Unfair dismissal

105 In this case, the tribunal is concerned with the question of determining the reason for the claimant's dismissal and whether it is one of the reasons set out in section 98(2) of the Employment Rights Act 1996 (ERA). The burden is on the respondent to show the reason for the dismissal and that it is a potentially fair reason i.e. that it relates to the claimant's conduct or capability.

106 A dismissal that falls within that category can be fair. To decide whether it is fair or unfair, the tribunal needs to look at the processes employed by the respondent leading up to and including the decision to dismiss. In cases concerning the employee's conduct, a three-stage test must be applied by the respondent in reaching a decision that the employee has committed the alleged act/s of misconduct. This was most clearly stated in the case of *British Homes Stores Ltd v Burchell [1980] ICR 303*, as follows. The employer must show that: -

106.1 he believed the employee was guilty of misconduct;

106.2 he had in his mind reasonable grounds which could sustain that belief;
and

106.3 at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

This means that the employer does not need to have conclusive direct proof of the employee's misconduct but only a genuine and reasonable belief of it which has been reasonably tested through an investigation.

107 The investigation conducted by the employer should be a reasonable investigation. An employer is under the obligation to carry out as much investigation into the matter as is reasonable in all the circumstances of the case. As stated in the case of *W Weddel & Co Ltd v Tepper* 1980 IRLR 96:

“that means that the employer must act reasonably in all the circumstances, and must make reasonable inquiries appropriate to the circumstances. If they form their belief hastily and act hastily upon it, without making the appropriate inquiries or giving the employee a fair opportunity to explain himself, their belief is not based on reasonable grounds and they are certainly not acting reasonably”.

108 If the tribunal concludes from all the evidence that there is a genuine and reasonable belief in misconduct; then the next step for the tribunal is to decide whether, taking into account all the relevant circumstances, including the size of the employer’s undertaking and the substantial merits of the case, the employer has acted reasonably in treating it as a sufficient reason to dismiss the employee. In determining this, the tribunal has to be mindful not to substitute its own views for that of the employer. Whereas the onus is on the employer to establish that there is a fair reason, the burden in this second stage is a neutral one. The *Burchell* test applies here again and the tribunal must ask itself whether what occurred fell within “the range of reasonable responses” of a reasonable employer. The law was set out in the case of *Iceland Frozen Foods v Jones [1982] IRLR 439* where Mr Justice Browne-Wilkinson summarised the law concisely as follows: -

“We consider that the authorities establish that in law the correct approach for the ... tribunal to adopt in answering the question posed by [section 98(4)] is as follows:

- (1) the starting point should always be the words of section 98(4) themselves;
- (2) in apply the section (a) the tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (members of the tribunal) consider the dismissal to be fair;
- (3) in judging the reasonableness of the employer’s conduct (a) tribunal must not substitute its decision as to what was the right course to adopt for that of employer;
- (4) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, while another quite reasonably would take another;
- (5) the function of the Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.”

109 In addition, the Respondent relied on the case *Taylor v OCS Group Ltd 2006 ICR1602* in which the EAT held that where in claims of unfair dismissal, complaint is made about the employer’s disciplinary procedure, the employment tribunal should focus on the statutory test in section 98(4) of the Employment Rights Act 1996 and look

at the substance of what happened throughout the disciplinary process. What mattered was whether the overall process was fair, notwithstanding any deficiencies at any stage; and that further, the Tribunal should consider the fairness of procedural issues together with the reason for dismissal and decide whether, in all the circumstances, the employer had acted reasonably in treated it as a sufficient reason to dismiss. The EAT held that the employment tribunal in that case had separated procedural unfairness from the misconduct and had failed to assess the fairness of the disciplinary process as a whole.

110 The Respondent also referred to the case of *Sharkey v Lloyds Bank PLC* [2015] All ER 199 in which the EAT held that a dismissal was not unfair even though there were several procedural shortcomings in the procedure adopted by the employer. In that case, Langstaff J said that a “*procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there had been a reasonable investigation*” and that “*substance and procedure run together.*”

Applying Law to Facts

111 The Tribunal will now go through the list of issues in this case and set out its judgement on each of the issues considering both parties’ submissions, the facts set out above and the relevant law.

112 Issue 1: *should the claim against Barclays Bank PLC (the second Respondent) be dismissed given it was not the Claimant’s employer?*

113 The Tribunal had no evidence from the Claimant supporting his claim that the second Respondent should remain a Respondent in this case.

114 In this Tribunal’s judgment the Claimant was initially employed by the 2nd Respondent but by the time of these disciplinary proceedings he had transferred to the 1st Respondent’s employment. He had been an employee of the 1st Respondent since 1 September 2017. There was no evidence submitted by the Claimant to challenge this.

115 In this Tribunal’s judgment there were no claims against the 2nd Respondent in this case. The Claimant was not employed by the 2nd Respondent at the time of these disciplinary proceedings or his dismissal.

116 The claims against the 2nd Respondent are dismissed.

Unfair Dismissal

117 Issue 2: - *What was the reason or the principle reason for the Claimant’s dismissal? In particular, was the reason or principle reason for the Claimant’s dismissal conduct within the meaning of section 98(2)(b) of the Employment Rights Act 1996 (ERA) or some other substantial reason of a kind such as to justify the dismissal of a Claimant within the meaning of section 98(1)(b) of the ERA?*

118 The Respondent submitted that the Claimant was fairly dismissed by reason of gross misconduct. The Claimant did not dispute that he was dismissed for misconduct. It was the Claimant's case that it was not fair that he should be dismissed as there were mitigating facts that the Respondent had not taken into account and the Respondent's had been inadequate. However, although he suggested that the issue of the hospitality tickets was somehow connected with his dismissal, it was not his submission that there was another reason for his dismissal.

119 The Tribunal was aware that there was an issue related to the Claimant's handling of hospitality tickets that had been recommended to a disciplinary hearing but that this matter was put to one side when Client A's son told GB that there had been no meeting with the Claimant and that he was sure that his father had not received a letter from him. The issue of the hospitality tickets was not explored at the hearing although it was addressed in the Claimant's witness statement. It was not part of the disciplinary process followed by the Respondent which resulted in the termination of the Claimant's employment. There was no evidence that it was in the minds of the decision makers.

120 There was no evidence that these quite separate issues were related or that one had influenced the other. The Claimant alleged that Mr Renfrew wanted to get rid of him because of the hospitality tickets issue. Mr Renfrew was his line manager at the time but he did not investigate the issue related to Client A. The matter was handed over to Mr Hobby for an independent investigation. Mr Reynolds had not yet conducted the disciplinary hearing into the hospitality tickets issue when he was asked to chair this disciplinary process and Mr Nicoll had nothing to do with it.

121 In this Tribunal's judgment, the evidence was that the Claimant was dismissed because of his misconduct as it related to his handling of Client A's records and that of the 13 other clients and the breaches of the Conduct Rules and Suitability Procedure that those records demonstrated, including his apparent failure to complete the DBBA process.

122 The issues on which the Claimant rested his complaint that his dismissal was unfair in the hearing were the same issues that he relied on in his appeal letter namely the following:

- 122.1 That he had an excessive workload and that these failings somehow were caused by or contributed to by that workload;
- 122.2 That the Respondent had failed to properly investigate the allegations against him;
- 122.3 That there was no deliberate falsification of meetings or records and that what took place was a result of poor/inaccurate record keeping which did not warrant summary dismissal;
- 122.4 That the Respondent withheld the complete CRM records for the 13 clients from him, which somehow hampered his ability to respond to the allegations in the disciplinary hearing and that this was more than a

procedural failure by the Respondent in a procedure leading up to his dismissal;

122.5 That the Respondent had not investigated other ways of determining whether the meetings had actually taken place;

122.6 That the meeting records for the 13 clients, recorded as having occurred 28 June could have been recorded or saved elsewhere on the system and that the Respondent would not have found it as they were making the wrong searches;

122.7 That the Respondent's failure to interview the WMEs and the clients amounted to substantial failings; all of which amounted to substantial failings on the Respondent's part in coming to its decision that it was appropriate and reasonable to dismiss the Claimant for these conduct matters.

123 This Tribunal's assessment of the evidence begins with consideration of whether the Respondent had a genuine belief that the misconduct had occurred.

124 Even though the Claimant was busy, the evidence was that he was managing his caseload and that he was ahead of his colleagues in completing the DBBA process. Although he spoke to Mr Renfrew, his manager about his caseload during their 1:1 meetings, this Tribunal's judgment having considered the meeting notes and the Claimant's and Mr Renfrew's evidence is that their conversations were more about how he can get more commission generating work and increase that clientele while complying with the Respondent's requirements for him to complete the DBBA process rather than that he was not coping with the workload that he had. The Claimant was keen to be promoted and Mr Renfrew wanted to support him to achieve that. There was no record of him complaining that he was overburdened, that he could not complete his work or that he was not coping.

125 In this Tribunal's judgment, the purpose of the DBBA exercise had been to review client's investment needs, their risk profiles and their circumstances and to align their portfolios to the Wealth Manager framework and the new fee tariffs. This was an important activity for the Respondent and was within a regulated environment. Each Wealth Managers had to attest that they had completed the work and had to manually close the files on the CRM system. In so doing, they were confirming that they had done the work and that their work had met the Respondent's core suitability obligations. Although this was work that could be partly managed by pre-populating forms, there was no substitution for going through those after interviewing clients, and entering the respective information for each client and then signing off the record. The Wealth Manager also had to ensure that suitability letters were sent out to the clients which was a separate document and different from the meeting notes entered into the system.

Client A

126 In this case, it is this Tribunal's judgment that the Respondent properly investigated circumstances surrounding Client A when it was brought to their attention by one of the Claimant's colleagues. The issue arose when Client A's son strongly

questioned the veracity of a record on the Respondent's system that had been made and closed off by the Claimant. It had nothing to do with the hospitality ticket issue. It was a serious matter and it was appropriate that there should be inquiries made into it.

127 Those investigations led the Respondent to conclude that, contrary to the record, there had not been a suitability meeting with Client A. There was no meeting or telephone call with Client A's son about the DBBA process or to inform him of the increase in fees. These were serious breaches of the Claimant's obligations as the Wealth Manager. Those obligations lay with him and not with his WME or any temps or interns who might have been assisting him. There had also been a note created on the system which did not reflect reality.

128 Mr Reynolds and Mr Nicoll were particularly concerned about the Claimant's handling of the Client A matter and the records. When questioned about this matter by GB, the Claimant attempted to delete the note on the system. The normal process if he wanted to re-open a file to amend it would be for the Claimant to speak to either Mr Renfrew or the WME's senior manager to get permission to do so. In this instance, he chose to speak to the WME's manager and the evidence was that he deleted the note rather than amending it. The reference to him attempting to delete it was made because although he deleted the electronic record, GB had printed a copy off before he did so which meant that the Respondent retained a copy of the record which it was able to reply on in the disciplinary proceedings.

129 It is clear from the evidence that the Respondent, Mr Reynolds who made the decision to dismiss the Claimant, genuinely believed that the Claimant had not had a meeting to discuss the DBBA process and the fee schedule changes with Client A or with Client A's son. The Respondent had a genuine belief from the Claimant's admissions and the evidence, that the Claimant had committed gross misconduct in relation to the work that should have been done under the DBBA process for Client A, the obligation to accurately record his interactions with clients, the obligations he had as the client's Wealth Manager to conduct the suitability review and advise him of the increase in fees; all of which he failed to do.

130 The Respondent has regulatory requirements that it had to comply with and which it delegated to the Claimant, as Client A's Wealth Manager. It was clear to the Tribunal that the way in which the Claimant had handled Client A's file was the most serious matter for Messrs Renfrew, Reynolds and Nicoll.

Clients B - N

131 In this Tribunal's judgment it was reasonable, given the failures in the handling of Client A's case, for the Respondent to ask compliance to have a look at the Claimant's other DBBA files to see whether this was an isolated case, given the regulatory regime in which the Respondent operates and the obligations on the Claimant as a Wealth Manager in the DBBA process and generally. If compliance had found that the handling of Client A was an isolated case this would have assisted the Claimant as there may have been particular circumstances surrounding that case that could have mitigated the situation. The Claimant was also bound by the code of conduct and a certified person. It was appropriate that the Respondent should look at other examples of his work to see if this was an isolated incident.

132 It was not Mr Reynolds decision that the Claimant had committed gross misconduct because the records on the CRM for those 13 clients were identical in terms of each and every single word that was written. The main issue for the Respondent was that those meetings could not all have happened on 28 June as recorded on the system. That was reflected in the disciplinary allegation which was that he had falsified records and completed records stating that the client meetings all took place on the same day while the visitor and call logs held no records of calls or meetings having occurred. He was also charged with failing to complete the requisite DBBA review for those clients.

133 The issue of the similarity of the meeting notes was an additional comment Mr Reynolds made while discussing the records with the Claimant. The reason for his dismissal was recorded in the dismissal letter and showed that the main issue for the Respondent was that the meetings were unlikely to all have happened on the same day as recorded. In addition, the notes were almost identical and were not personalised as would be expected if they arose from meetings with different clients with different circumstances. In this Tribunal's judgment, the discussion at the disciplinary hearing focussed on whether the meetings could all have happened on 28 June, whether they did, why they were recorded as having happened then and whether the clients were given the service – did they get a DBBA review.

134 The Respondent conducted a thorough investigation into this matter. It interrogated the Respondent's systems and it provided the Claimant with a summary of its findings together with copies of some of the CRM records from the system and the investigation report. Mr Reynolds provided him with the rubric so that he could work out which client was whom in the anonymised list of B - N. Everyone knew who Client A was and the identity of Client A was not an issue between the parties. The Claimant was provided with the full CRM record in relation to at least 2 and more likely more of the 13, with sufficient detail on the others so that he could identify who they were and fully discuss them. It is also possible that he had the records on the screen in front of him when he had the further discussion on the investigation with Mr Reynolds on 18 May. Even if he did not, Mr Reynolds provided the Claimant with his review of the 13 clients as well as their names and other details. This was a fuller review than had been in the investigation report sent to him before the disciplinary hearing. Although the Claimant complained at the start of the disciplinary hearing that he had not had access to the Respondent's systems during his suspension, he had no difficulty in responding to the allegations. He had sufficient information to be able to respond as the minutes show that he discussed each client in detail and put forward an explanation of what he said he had done for each one and why. He talked about each client in a knowledgeable way.

135 In a perfect investigation the Claimant would have been given the full investigation report and all appendices before the disciplinary hearing. That did not happen here. The Claimant was only given copies of all the appendices and the full CRM records for all 13 clients at the Tribunal hearing. However, there was nothing in those records that the Claimant would have been able to use to prove that the meetings had taken place. The documents disclosed during the hearing confirmed the Respondent's position. It is this Tribunal's judgment that the Claimant was in possession of sufficient information at the disciplinary hearing and at the appeal to be

able to discuss fully all the allegations that he faced and to explain what he had done on each client file and why.

136 In this Tribunal's judgment the Respondent's decision not to interview the WMEs as part of this investigation and disciplinary process was reasonable. Firstly, the evidence was that it was the Claimant who uploaded the information on the system. The system kept an audit trail of everyone who worked on it and the Claimant was identified in these clients' records as the person who had uploaded these meeting records. Secondly, even if the WME's had assisted the Claimant in pre-populating forms with information from previous records in preparation for Claimant's meetings with the clients, it was ultimately the Claimant's responsibility to ensure that meetings actually took place with those clients and that the information uploaded on to the system was correct and accurate and a reflection of the discussion that he had with the clients. Lastly, the regulatory requirements on Wealth Managers require him to have done so. Any errors were his responsibility.

137 The evidence was that the Claimant could not recall meeting these clients and there was no record elsewhere on the system of him meeting with those clients. If there were meetings on the system, then they would have shown up as a result of the Respondent's enquiries. The Tribunal did not accept the Claimant's explanation that it was simply a matter of the Respondent looking in the wrong place for the record. Searches were not just made by date i.e. 28 June, but they also made of the Claimant's expense claims, the CRM and Outlook systems and the DBBA tracker, phone records, visitor logs and reception records but the records did not match or confirm his stance that those meetings had occurred.

138 There were several buttons to click and several systems to be updated independently in order to create false records for Clients B – N. The Respondent came to a reasonable conclusion that what happened with those 13 clients could not have been a mistake or an administrative error or sloppy record keeping. The Claimant would have had to upload information to CRM with notes of the meeting. He would have needed to update the DBBA tracker with his progress. He would also have had to organise meetings using Outlook. The computer system records who uploaded information to it. The system recorded that it was the Claimant who made all the additions referred to in the investigation. The Respondent concluded that it was highly unlikely that the records of meetings and DBBA/suitability with the 13 clients resulted from accidental errors in recording because of the numerous different systems that would have had to be updated to present that false picture.

139 It is this Tribunal's judgment that Mr Reynolds genuinely believed that the Claimant had committed gross misconduct as alleged. He did so based on evidence obtained from the Respondent's reasonable investigations.

140 Taking into consideration all the relevant circumstances, it is this Tribunal's judgment that there were no significant procedural failings here and that the Respondent conducted a fair and reasonable investigation into the issues raised by the Claimant's handling of Client A and the other 13 clients in his compliance with the DBBA process and in relation to the Conduct Rules and the requirements of its Client Suitability Policy. Mr Reynolds genuinely believed the conduct alleged had occurred and did so based on evidence obtained by reasonable investigations.

141 It is this Tribunal's judgment that the Claimant understood the allegations against him, that he took part in the investigation and that he had sufficient information during the investigation to enable him to defend himself, respond to the allegations and have a fair disciplinary hearing. All the issues he brought up at the disciplinary and the appeal stages were considered by the managers and investigated and the Claimant had further opportunity to comment on the results of the further investigations. The Respondent based its reasonable belief that the Claimant had committed gross misconduct on the outcome of its reasonable investigations.

142 Even though he was busy, the Claimant was not so busy as to justify his gross misconduct. The evidence did not support his claim that the shortcuts that he made were appropriate, reasonable, professional or in line with his responsibilities as one of the Respondent's Wealth Managers. The Claimant failed to provide the service to Client's A – N as he was obliged to do in his role as a Wealth Manager in relation to the DBBA process and the process for increasing fees. Those failures breached at least two of the Conduct Rules.

143 In the circumstances, it was appropriate and reasonable that the Respondent concluded that he was guilty of gross misconduct and that was the reason for his dismissal.

144 *Issue 3: was the Claimant's dismissal fair within the meaning of section 98(4) of the Employment Rights Act 1996? In particular, did the 1st Respondent act reasonably in treating that reason as sufficient for dismissing the Claimant?*

145 Mr Reynolds came to the decision regarding the appropriate sanction to be imposed on the Claimant after considering the severity of his gross misconduct, the Claimant's position in the business and his points in mitigation.

146 The Claimant's gross misconduct was serious. This was particularly so in relation to Client A because not only had a record of a call been made when it was unlikely that the call had happened, also, the Claimant had tried to delete the note when asked about it and had tried to cover up his failings by telephoning Client A's son and suggesting to him that he had previously conducted the DBBA process with him on the telephone when he had not. The Claimant's handling of this matter had the potential to significantly impact the quality of the service the Respondent provided to its customers. Client A's son was someone who had previously worked for the Respondent and was therefore knowledgeable about the Respondent's procedures and what should have been done if the Claimant had been providing a service in accordance with those procedures. His frustration and annoyance about what had happened is evident from the telephone conversation that he had with Mr Renfrew.

147 It was also reasonable that the handling of Clients B – N's files was of concern to the Respondent. The DBBA process was quite a serious regulatory process to ensure that the clients who had invested what was likely to have been their lifetime savings with the Respondent were getting appropriate advice and a professional service from the Respondent's Wealth Managers who had been entrusted with this task. It may have been seen as a mundane administrative task by the Claimant but the evidence was that it was not.

148 The Claimant had breached Conduct Rules 1 and 4. By falsifying the Respondent's records he had not acted with integrity. He had also not paid due regard to the interests of customers and treated them fairly in keeping records of meetings that had not taken place and in using historical data to update files. The Claimant had not kept to his obligations as a Certified Person and had breached the Respondent's client suitability procedure and the client contact notes procedure. He had jeopardised the Respondent's relationship with its clients and put the Respondent at risk within the regulatory framework. If the FCA had asked to see records of the DBBA process being carried out with any of Clients A – N the Respondent would not have been able to prove that it had completed the process with those clients.

149 It was reasonable for Mr Reynolds to conclude that the Claimant's conduct had been deliberate and that he had not demonstrated a match to his responsibilities as a Wealth Manager or as a Certified Person in respect of his work for Client A and for Clients B - N. The Claimant as a Wealth Manager was an investment advisor and had failed to comply with the duties of his job.

150 In this Tribunal's judgment, Mr Reynolds did consider whether a lesser sanction could be appropriate such as a final written warning but, felt that the actions the Claimant displayed meant that he had put the Respondent, its reputation and its clients at risk and therefore the only appropriate action was summary dismissal. Also, the evidence was that the Claimant was an experienced banker and was aware of the Conduct Rules, his obligations under the DBBA process and his obligations as a Certified Person. There was no training need identified here.

151 It was also inappropriate for the Claimant to seek to blame the WME's or the Respondent's temps/graduates for what had happened as the evidence showed that the relevant records had been signed off by him. Although we spent time in the hearing discussion AC's apparent incompetence the fact was that she was not his WME at the time that the records for Client A – N were completed. They were therefore his responsibility.

152 In relation to mitigation, Mr Reynolds accepted that the Claimant was busy at the time. All Wealth Managers were busy completing the DBBA process on their clients as well as the constant pressure to get new clients and build a portfolio. The Claimant was also chasing promotion at the time and so had that as an additional pressure that he imposed on himself. Mr Reynolds could see that Mr Renfrew had tried to support the Claimant in getting his promotion and in managing his workload. However, the Claimant's position was not unique and it did not justify him taking shortcuts with his work.

153 Taking into account all the above, it is this Tribunal's judgment that it was reasonable for the Respondent to conclude that summary dismissal was the most appropriate sanction to impose on the Claimant. That was a sanction that was open to Mr Reynolds and Mr Nicoll was not given any reason why he should overturn that decision.

154 In this Tribunal's judgment the decision to dismiss the Claimant for gross misconduct was within the band of reasonable responses open to the Respondent once it concluded that as a Wealth Manager within the Respondent's business he had

committed gross misconduct having falsified client records, attempted to delete records when challenged and attempted to suggest to a client that things were not as the client remembered as well as completed records of meetings on other files where it was unlikely that those meetings had occurred. The Respondent operates within the highly regulated financial industry and it is reasonable and appropriate that it has an expectation that its senior employees will comply with the various codes and procedures that are in place and imposes severe sanctions on those who deliberately breach them.

155 The Claimant was dismissed because he committed gross misconduct. This was within the band of reasonable responses open to the Respondent. His dismissal was fair and reasonable.

156 The complaint of unfair dismissal fails and is dismissed.

Employment Judge Jones

Date: 25 February 2020