



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Ransom

**Respondent:** Royal Mail Group Limited

**Heard at:** Newcastle Employment Tribunal, via Cloud Video Platform (“CVP”)

**On:** 3-6, 18 October 2022

**Before:** Employment Judge Robertson

**Representation**

**Claimant:** In person

**Respondent:** Mr R Chaudry, Solicitor Advocate, Weightmans

## RESERVED LIABILITY JUDGMENT

The claimant was not unfairly dismissed by the respondent. His claim of unfair dismissal is not well-founded and fails.

## REASONS

### The Claimant’s claim

1. By a Claim Form presented on 26 August 2021, the claimant, Mr Ransom, brought a claim of unfair dismissal arising out of the summary termination of his employment on 10 June 2021. The respondent contended that the claimant had been fairly dismissed for a reason related to conduct.

### The Hearing

2. Mr Ransom represented himself at the hearing. The respondent was represented by Mr Chaudry, Solicitor Advocate.
3. The parties had prepared an agreed bundle of documents consisting of 953 pages. During the course of the hearing, additional documents were produced which were added as pages 937A, 937B and 954 – 1,022, giving a main bundle of 1,024 pages. In addition to this, the claimant produced the

copy of the documents which Mr Hulme has sent to him as part of the appeal process, in the original order, all of which appeared (albeit in a different order) in the main bundle: these were referred to as Bundle A. In this Judgment, the page references in brackets are to page numbers in the main bundle.

4. The respondent called five witnesses:
  - 4.1. Ben Todd, Resourcing Manager;
  - 4.2. Thomas Carver, Customer Office Manager;
  - 4.3. Margaret Evans, Operational Postal Grade at the time of the claimant's dismissal;
  - 4.4. Ashley Taylor, Customer Operation Manager;
  - 4.5. Philip Hulme, Independent Case Manager.
5. The claimant gave evidence on his own behalf.
6. I explained to the parties that I would only read documents to which I was referred in the statements or in evidence.
7. At the preliminary hearing on 28 September 2021, the claimant's claim was identified as being one of unfair dismissal. However, the claimant referred at several points in his witness statement to suffering from a disability and to reasonable adjustments not having been made. There was also a brief reference to disability in his ET1. After discussion at the start of the final hearing, the claimant confirmed that he was only pursuing a claim of unfair dismissal and that the above matters ought to be considered as part of the procedural fairness of the dismissal.
8. During the course of the hearing, the claimant indicated that he believed that the Tribunal ought to listen to the recording of the initial security interview which had taken place as he did not agree entirely with the minutes of that meeting. Following discussion, he accepted that he had had the opportunity to raise any concerns he might have had with the accuracy of those minutes during the fact-finding meeting, formal conduct interview and appeal process. He also accepted that, as the Tribunal's role was not to conduct an inquiry but rather to consider the fairness of the dismissal, it was not necessary for me to listen to the recording. As such, there was no need for me to consider (1) whether to make an order for specific disclosure or (2) the proportionality of a postponement of the hearing.
9. Searches were undertaken for the documents which were shown to the claimant during the course of the security interview, and also for the documents which the security team located after their initial search. They were not located and were not before me.
10. It was necessary to adjourn the case part-heard on 6 October 2022 and the case was re-listed for a further one day hearing on 18 October 2022 to deal with the remainder of the evidence and submissions. Unfortunately, the claimant experienced internet problems on the afternoon of 18 October followed by problems with sound, which delayed the conclusion of the evidence. I heard all of the evidence in relation to liability at the hearing. Although we agreed that I would hear evidence as to contributory conduct and Polkey at the same time as evidence in relation to liability, due to the delays caused by technical difficulties the respondent still needed to cross-examine

the claimant in relation to those matters. Accordingly, I explained that I would make a decision as to liability and that remedy would need to be dealt with at a later date, if relevant. The parties agreed to submit written submissions following the hearing and they were content to provide those by 4pm on Wednesday 19 October. I informed the parties that I would inform them if I had any questions about those submissions but, in the event, it was not necessary for me to contact them.

### **Findings of fact**

11. Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral), the written submissions made on behalf of the parties and the relevant statutory and case law (notwithstanding the fact that, in the pursuit of some conciseness, every aspect might not be specifically mentioned below), I record the following facts either as agreed between the parties or found by me on the balance of probabilities.

### **Background**

12. The claimant was employed by the respondent from 10 May 1999 to 10 June 2021 when he was summarily dismissed. The claimant was employed as an Operational Postal Grade. Prior to his dismissal, he had been working in the role of Delivery Office Manager Support (“DOM Support”).
13. Ms Evans had previously carried out the DOM Support role. In October 2017, the claimant absorbed part of Ms Evans’ role which related to RCS work and his hours were increased from 32 to 38 hours per week to reflect the additional duties he was required to undertake. During Ms Evans’ leave, and on her weekly day off, the claimant also provided cover for Ms Evans’ role which involved inputting overtime.
14. In June 2019, Ms Evans was transferred into another role, and at that point the claimant took over the remainder of Ms Evans’ DOM Support role. This was initially a temporary arrangement in response to a colleague’s hospital admission but became a permanent arrangement in or around June 2019. She and the claimant had worked together for several years up to that point. Ms Evans had been contracted to work 25 hours per week in her DOM Support role. From this point, the claimant took over the main responsibility for inputting the overtime for the Stockton office into the two systems used by the respondent: PSP and RCS (as to which, see further below). He also controlled the route manager system.
15. From June 2019, the claimant’s contractual hours of work were 7:36 hours per day from Monday to Friday. His contractual hours of work were 07:00 to 14:36 but, when he took his 40 minute meal break at the end of his shift (which he usually did), his shift would end at 13:56.
16. The respondent’s usual policy is that, for safeguarding reasons, an individual who inputs overtime has their own login details which enables them to input overtime for any employee other than themselves. However, there had been difficulties in obtaining login details for the claimant and therefore (with the knowledge of the respondent’s managers) he had, since around 2014, used Ms Evan’s login details. This enabled him to enter his own overtime. In practice, Ms Evans had inputted the claimant’s overtime until June 2019, but

after that he had entered his own. This placed the claimant in a position of particular trust within the respondent.

17. As to PSP (People Service Portal), overtime is inputted into that system and it shows the overtime which has been paid to each individual. RCS (Resource Control System), on the other hand, is used to manage the total number of hours 'used' to run the Stockton office. Whereas the PSP system records the overtime paid to each individual, the RCS system does not: it holds 'bulk' overtime figures, as well as individuals' contractual hours. The claimant, Mr Todd and Mr Carver worked together to ensure that the records held on the PSP and RCS systems matched.
18. The general process for recording and claiming overtime payments involves several stages. I set out the usual process in this paragraph but note that there was a dispute about whether this process applied in its entirety to the claimant and also that it was accepted as part of the claimant's dismissal and appeal that there were some exceptions to the way the process operated in practice. First, employees must obtain managerial authorisation to work, and therefore claim for, any overtime in advance: I shall refer to this as 'pre-authorisation'. That pre-authorised overtime is then 'forecast' onto a sheet which records the overtime which is planned for the following week. Once the overtime has been worked, it is then recorded onto a P552 sheet and is signed by the employee. The total overtime claimed on that sheet is noted and a manager is required to sign the sheet to confirm their approval to the overtime being claimed: I will refer to this as 'post-authorisation'. The distinction between pre-authorisation and post-authorisation is often lost in the documents and that did not assist in resolving the dispute. The claimant and Mr Todd sat together to review the completed P552 sheets on a regular basis and, once they were satisfied that the overtime sheets were accurate, the overtime payments were processed by the claimant into PSP for payment to individuals.
19. The Reward Guide states that overtime working beyond an employee's normal contractual hours should only be authorised by managers, where it is required, and that overpayments identified as suspected fraud would be dealt with under the terms of the appropriate national procedures.
20. The respondent's Conduct Agreement and Conduct Policy apply to disciplinary matters and set out the procedure which ought to be followed at the fact-finding, formal conduct and appeal stages. The Conduct Agreement and Conduct Policy include a fact-finding stage, which may include examination of relevant documents, and a fact-finding meeting (60). The Conduct Policy makes clear that a grievance can include part of a fact-finding file (62).
21. The Attendance Policy sets out guidance for managing absence, including providing for contact between an absent employee and their manager and absence review meetings.

### ***Collision***

22. In late June or early July 2020, Mr Carver noted a 'collision' on the PSP system. The collision was that the claimant had booked overtime on the day he was taking annual leave. Following this, Mr Carver obtained reports of the

overtime which the claimant had claimed and been paid. These showed that the claimant had claimed overtime for all of the week in question (early July 2020). These also showed that the claimant had been paid for around 700 hours of overtime for the financial year 2019-2020; and for around 220 hours of overtime for the first 13 weeks of the financial year 2020-2021. Mr Carver spoke to Mr Todd about the matter.

23. Mr Carver raised the matter with the respondent's security team. In the interim, Mr Carver continued to monitor the claimant's overtime claims for weeks 14 and 15 of the financial year 2020-2021 (29 June – 11 July 2020). He was concerned that, during that period, the claimant was claiming overtime which had not been pre-authorised or post-authorised and which he was not working as he was leaving work between 12:30 and 12:45.

### ***Security interviews***

24. On 8 July 2020, two members of the respondent's security team (Mr McCartney and Mr Hancock) attended the Stockton office and discussed the matter with Mr Carver and Mr Todd.

25. The minutes record that, following Mr Carver's overtime checks, Mr Carver had noted that the claimant had been paid, "excess quantities of overtime dating back to 2018." Mr Carver clarified that the overtime claims were excessive as there was no need for the claimant to claim such amounts as his work could be completed well within his rostered hours. The minutes refer to overtime checks having revealed the claimant's overtime claims to amount to around £13,553, broken down as follows:

- 25.1. 3/4/2018 - 23/3/2019: 282.88 hours;
- 25.2. 3/4/2019 - 23/3/2020: 685.94 hours;
- 25.3. 30/3/2020 - 4/7/2020: 256 hours.

26. During that discussion, Mr Carver and Mr Todd showed the security team representatives sample P552 overtime sheets for the period 16-21 December 2019. The minutes record that Mr Carver and Mr Todd had informed the security team that, "it would be impossible for [the claimant] to work the hours claimed and that his overtime was added to the 552 post managerial authorisation. None of this overtime had been authorised or discussed with [Mr Carver or Mr Todd]." It appeared that this last comment related to the period 16-21 December 2019 as the minutes also state that it was extremely rare for the claimant to be required to work overtime, thus contemplating that some overtime had been authorised during the three years being looked at. After the security team had copied the sample P552 sheets, those sheets were returned to storage (to which the claimant had access).

27. On 15 July 2020, the claimant asked Mr Carver about the recent lack of contact from him and asked specifically if it concerned the overtime. Although the claimant's statement states that Mr Carver informed him that there was a problem with his overtime, the claimant accepted under cross-examination that Mr Carver had told the claimant that he had received a notification and could not discuss the matter, which is consistent with Mr Carver's evidence. On the basis of that, the claimant gave evidence, which I accept, that he understood that his overtime was being looked at; however, he thought that there was to be an audit rather than a security investigation. The claimant

then indicated to Mr Todd that he should not worry, all of his overtime had been recorded, and he could check back ten months as all of his overtime was in order.

28. The security team held a meeting with the claimant on 16 July 2020. I will refer to this as the “security interview”. This meeting was recorded, and was conducted in accordance with the Police and Criminal Evidence Act 1984 Codes of Practice. The minutes of the meeting (293-295) record the suspected offences to be (1) fraud by false representation and (2) fraud by abuse of position.
29. During the claimant’s security interview, the claimant indicated that: he knew what he was to be interviewed about; the overtime claims were not excessive; all of his overtime was authorised by Mr Carver or Mr Todd and during his regular discussions with them he was told to submit overtime claims as and when he thought necessary; and that he had worked every hour that he had claimed. The claimant made it clear to the security team that the 552 sheets were all in order and showed that his overtime claims were authorised.
30. The minutes state that, following the security interview, the 552 sheets (which had been returned to storage) were revisited and found to have been altered since the initial audit. The minutes describe that additional PSP printouts in the claimant’s name had been added to the Saturday documents and double or triple stapled to the originals, including the sample documents for 16-21 December 2019. The two versions of the documents viewed by security were not before me but an example of a PSP print-out which the claimant had added to the back of P552s with the claimant’s overtime tallies was at 938.
31. During the Tribunal hearing, the claimant disputed the accuracy of the minutes of this meeting. In particular, he said that, firstly, he had revealed to the security team that he had added PSP printouts to the back of the overtime sheets in his own name (documenting the claimant’s overtime payments) and these had been double or triple stapled to the originals, dating back ten months and, secondly, that the team had checked the documents during the meeting, not afterwards as stated in the minutes. He accepted that he had had opportunities to raise any concerns with the accuracy of the minutes during the subsequent stages of the process and believed that he had done so at the conduct meeting and the appeal. During cross-examination, the claimant said that the issue with the minutes was the order and that the content was correct, and accepted that he had not previously discussed his own overtime tallies with his managers – reiterating his position that he had full autonomy.
32. During cross-examination, the claimant rejected the suggestion that he had not told security that he had *altered* around ten P552 sheets, but I find that his appeal submission (577) which was more contemporaneous was more likely to be accurate in this regard. As such I find that at the security interview he admitted to adding sheets (but not to altering sheets), and at the fact-finding meeting he admitted to retrospectively altering sheets.
33. Following the security interview, the claimant was searched, escorted from the building and sent home in accordance with the respondent’s 24 hour cooling off period.

34. The claimant reported that he was absent due to sickness that afternoon and did not return to work prior to his dismissal. He submitted fit notes in respect of his absence. On 17 July 2020, Mr Todd wrote to the claimant to provide details of the arrangements for sickness absence which included a requirement on the claimant's part to maintain contact with the office and submit fit notes, and states (amongst other things) that Mr Todd would be in touch with the claimant to discuss his absence and offer support. That did not happen due to the involvement of Mr Todd as a witness in the investigation. The claimant was, however, invited to attend occupational health assessments (as to which, see further below). The claimant gave evidence that the respondent's approach to his absence worsened his condition but in light of the occupational health report (405-406) which relates his ill-health to the on-going disciplinary process, I find that there was insufficient persuasive evidence on which to base such a finding.

***Fact-finding stage***

35. Paul Bowman of the respondent was initially appointed to investigate the matter and invited the claimant to attend a fact-finding meeting by telephone on 27 July 2020. The letter stated that the invitation was issued following information from the respondent's security team concerning alleged fraudulent overtime claims. No documentation or further details as to the matters to be discussed were provided at that time. The claimant did not attend the meeting due to his sickness absence.

36. On 3 August 2020, the claimant was assessed by occupational health. The report refers to the claimant's absence as being due to work-related stress, and reports that the claimant was suffering from anxiety and mood-related symptoms. The report opines that, due to the severity of the claimant's symptoms, the claimant was: not fit for work in any capacity; was not fit to attend a management meeting under formal procedures in person or by telephone; and was not fit to formulate a written response. However, the report also opines that the swift resolution of the conduct allegations (when the claimant was well enough to participate) was likely to help aid his recovery.

37. Mr Bowman invited the claimant to a further fact-finding meeting, to take place in person or by telephone on 14 September 2020. The claimant did not attend that meeting due to his sickness absence. Again, no documentation or further details as to the matters to be discussed were provided in advance of that meeting.

38. On 24 November 2020, the claimant complained by email to Roger Turvey, Service Delivery Leader. The attachments to the claimant's email were not before me. In his email, the claimant states that he had attended counselling and had sent recommendations to Mr Carver. The claimant also said that he hoped to attend a fact-finding meeting as soon as possible and raised concern that he had not been contacted by any manager during his absence, and had not received replies from Mr Carver or Jamie Walton (Operations Manager, Tees Valley). The claimant referred to raising a grievance, complaining that no-one had explained what to expect before the fact-finding investigation. The grievance was not before me and Mr Taylor could not recall it, but he believed that full information and documents were not usually provided to employees in advance of a fact-finding interview.

39. Following that email, a fact-finding meeting was arranged for 27 November 2020 and took place in person. The invitation letter was not before me, although the security executive summary (293-295) was included with the invitation. Darren Kidman of the respondent chaired that meeting as Mr Bowman was shielding due to COVID-19. The claimant was accompanied by a colleague, Paul Lee.
40. At that meeting, the claimant gave his statement (which I shall refer to as his 'investigation statement' (306-314)) and evidence bundle (694-753) to Mr Kidman. In his investigation statement, the claimant states that the fraud allegations presented to him in the security interview included the following:
- 40.1. Unauthorised overtime claims over a 2.5 year period;
- 40.2. Unwarranted overtime claims over a 2.5 year period;
- 40.3. An unauthorised overtime claim entered by the claimant regarding a future date.
41. There was a dispute about whether, at the start of the meeting and before Mr Kidman had reviewed the claimant's documents, Mr Kidman had indicated that he would be passing up the case to a more senior manager, such that the outcome of the meeting was pre-determined. Mr Lee's handwritten notes (440) state, early in the meeting and prior to reviewing the claimant's evidence pack, that "DK talks of passing up info." The claimant's evidence was that Mr Kidman said that he would pass up the claimant's evidence pack. He raised this both prior to his dismissal and at the appeal stage, and alleged that the lack of a full investigation by a separate investigating officer prejudiced the whole case. In subsequently deciding upon the claimant's dismissal, Mr Taylor considered it would have been unusual for such a comment to be made, but concluded that it was a moot point as it was "blatantly obvious" that the case would need to be determined by a more senior manager.
42. The claimant's position as to the reasons for his overtime claims included the following, which included some 'ghost overtime':
- 42.1. *He had absorbed Ms Evans' full time role in June 2019:* In his investigation statement, the claimant stated that, "I did make it clear to Mr Carver and Mr Todd that I would need to be claiming overtime when I needed to, due to this 100% increase in my workload." He also stated that Mr Carver and Mr Todd, "knew and fully understood that [he] would be claiming regular overtime, just by the fact that [he] had absorbed another entire full time duty over the last three years." In the same context he also said (313), "All of the overtime that I did claim wasn't authorised by my line manager because, as I have shown here it was never ever required to be." He made the point that his overtime claims prior to June 2019 were much lower. At the fact-finding meeting (317 – 321), the claimant said that he had occasional discussions with Mr Todd and Mr Carver around his overtime and it was accepted that he would need to claim in light of this and the revision work, and, "as far as [he] was concerned it was all agreed and above board." He also referred to having been told to claim his overtime as and when it was available.



- 42.2. *He had been asked to carry out additional office revision work over a nine month period starting around August 2019:* In his investigation statement, he said that Mr Carver had agreed by email to overtime being claimed for the additional out of office revision work over the nine month period.
- 42.3. *He had carried out additional election work due to two elections in 2019;*
- 42.4. *He had worked 30 Saturdays over the previous 2.5 years and some of his annual leave, all with the express agreement of Mr Todd or Mr Carver.* In relation to this, the claimant, in his investigation statement, noted that he had worked four weeks of his annual leave in the previous year and that Mr Todd and Mr Carver had agreed that he would be paying himself overtime for that work.
- 42.5. *He had, in early July 2020, pre-paid some overtime to himself for work to be performed during his annual leave which was booked for the week commencing 31 August 2020.* The claimant accepted that, in early July 2020, he had paid himself two days' overtime for work that he had not yet performed. He said that he was going to work his scheduled annual leave in the week commencing 31 August 2020. His position was that it was his choice whether to work his forthcoming annual leave, and he had signed it off and authorised it without the knowledge of any manager, but pre-payment by the claimant to many staff was standard practice. As to the pre-payment of annual leave, the claimant said that he would speak to Mr Todd or Mr Carver around cancelling leave and they were happy for him to do so; however, I find that in the context he was referring to them having agreed to the previous weeks of worked annual leave.
43. In the claimant's investigation statement (and one of the documents submitted to Mr Taylor at the formal conduct meeting) (313 and 498), the claimant referred to having conceded at the security interview that he would have claimed 'ghost overtime' that year as he would on occasion finish early after claiming early overtime, "therefore apparently 'fraudulently' claiming that overtime." An example of ghost overtime is where employees complete additional work for which the respondent is paid a particular rate, but do so in less time than anticipated: on occasions, those employees are still paid for the overtime they had agreed to work. The claimant's position was that this was standard practice for extra work and no questions would be asked unless it was 'lapsing' of duty work.
44. In the claimant's investigation statement, he stated that all of the overtime that he claimed was, "fully warranted and justified," largely due to his absorption of Ms Evans' duties, and that his claims were, "less than 20% of what [he] was entitled to claim." He also referred to another employee being paid ghost overtime for carrying out two full duties being fully justified (clarifying, "he may not be doing the hours, but he is sure doing all of the work,") and the managers agreed and always authorised it. The claimant continued by saying, "I complete five hours of somebody else's duty work every single day and somehow I'm apparently not entitled to claim anything at all in overtime?" He states that the overtime he claimed in that period (in context, an apparent reference to the previous three years) was "fully representative" of the time

that [he] worked in the unit, and “all legitimate and fully reflective of the amount of work that I have done.” He referred to working Saturdays and occasional Sundays and starting work early, having never taken a full break, and to being encouraged to, “get [himself] away”. In the claimant’s investigation statement, he said that he signed in to work each day. He accepted that his underlying health condition and coronavirus had often led to him finishing early that year (2020) and stated that, “[he] had still claimed early overtime as [he] actually did all of the extra work,” and had claimed overtime for revision and additional duties.

45. In his investigation statement, the claimant also stated that he had told the security interview team that security cameras, signing on sheets and emails sent from his PC could confirm that he had worked the annual leave dates in question. That statement also refers to the claimant being asked to remove overtime for an employee due to work their annual leave to enable Mr Carver to confirm their annual leave dates, and so Mr Carver must have been aware that the claimant had worked his annual leave dates as the same process would have been followed.
46. The claimant submitted that, in practice, there were several exceptions to the general process for recording and claiming overtime. In his investigation statement and the accompanying documents, the claimant referred to several P552 sheets which were unsigned by a manager and to various text messages and other correspondence in which he had been asked by managers to add, amend and delete overtime claims for other employees on P552 sheets and to process the payments. He was clear that these showed that he had the authority to input and authorise overtime claims in the PSP system (including his own) himself, without post-authorisation by a manager. He also sought to demonstrate that there were occasions when overtime was paid in advance of the hours actually being worked so as to try to ensure that the office worked to its budgeted hours in the RCS, with the agreement of Mr Todd and Mr Carver. The claimant worked closely with Mr Todd and Mr Carver in operating these systems and he said that the documents showed that he had some discretion as to which employees would be paid their pre-authorised overtime in advance.
47. In the claimant’s investigation statement, he states that because he was, “concerned,” that there was to be an audit, he retrospectively amended P552 sheets to correct several discrepancies between those and the PSP print-outs showing his own overtime claims. He emphasised that retrospective amendments were commonplace. In the fact-finding meeting, the claimant accepted that he had altered the sheets in this way, and admitted that, “this wasn’t the best idea.” At the fact-finding meeting, the claimant was asked about the security team’s report that additional sheets had been added to the back of the P552 sheets, and the claimant said that his usual practice was to attach other documents at different times, including his PSP screenshot of his overtime claims: it appeared that the claimant was saying that those attachments had been there all along but security had not noticed them. The claimant also raised concerns about P552 sheets being destroyed by Mr Todd.
48. At the fact-finding meeting, the claimant said that his overtime was entered onto a P552 post-authorisation as agreed in June 2019 with Mr Todd and Mr Carver and they were fully aware of it. The claimant stated in his investigation

statement at 313 that, “all of the overtime that I did claim wasn’t authorised by a manager because, as I have shown here it was never ever required to be....it was different for me.” He described the role he had in inputting and amending overtime claims in the PSP and RCS systems without managerial scrutiny. He stated (310) that he could decide when and how to pay his, and others’, overtime to fit the hours allowed in the RCS system – including overtime ‘banked’ from previous weeks. He said that, “this was not necessarily added onto the P552 sheets on a daily basis, in fact it was not always entered into the correct day that [he] had worked it.”

49. Mr Kidman’s minutes of the fact-finding meeting (317 – 321) record the claimant confirming that he would carry out around 5 hours’ overtime per week due to his absorption of Ms Evans duties and the revision work. He also said that his overtime claims were 20% of what he was entitled to claim, and he did work it all.
50. The claimant was sent Mr Kidman’s notes of the fact-finding meeting. The claimant submitted amendments to the notes, but his amendments were not formally dealt with by Mr Kidman despite the claimant chasing for clarification. Both the minutes and the claimant’s amendments were available to Mr Taylor.
51. I accept the claimant’s evidence that he said, in the fact-finding meeting: the double or triple stapling of the sheets was to, essentially, attach different documents and his own PSP screenshot sheets; and he had altered around ten P552 sheets after security had taken their photocopy as there had been discrepancies relating to his overtime on the P552 sheets.
52. Following the fact-finding meeting, Mr Kidman allowed the claimant to attend the respondent’s Coulby Newham office to gather evidence from the respondent’s computer systems. Having done so, the claimant forwarded several emails to Mr Taylor between 10 and 14 January 2021.

### ***The claimant’s dismissal***

53. Following the fact-finding stage, Mr Taylor was appointed to deal with the next stage of the case. I accept Mr Taylor’s cogent evidence that he had the appropriate seniority to deal with the claimant’s case (being of equal grade to Mr Carver) and find that he was able to investigate and reach his own decision independently.
54. Mr Taylor considered all of the evidence before him in deciding that there was a case to answer. Mr Taylor did not see the laminated overtime sheets used in the security interview. On 15 January 2021, he invited the claimant to attend a formal conduct interview on 19 January 2021. The invitation letter informed the claimant that there were two allegations of gross misconduct: fraudulent overtime payments and dishonesty, and warned that he risked dismissal for gross misconduct if those allegations were upheld. Mr Taylor did not provide a description of the allegations in that letter but he believed (and I accept) that the claimant understood the nature and basis of both allegations as he had attended the security interview and the fact-finding interview, had submitted a detailed investigation statement and evidence bundle relevant to the issues at the fact-finding stage.

55. Further, with this letter, Mr Taylor sent the claimant documentary evidence which he labelled A to L (as listed in the index at page 416 of the bundle). The claimant's investigation statement was not included, nor was the majority of the evidence bundle which he had submitted at the fact-finding stage (although the claimant accepted that he received this from Mr Taylor before the formal conduct interview took place). The PSP print-out of the claimant's overtime payments for 2018/2019, the second page of the minutes of the security interview with the claimant (page 294), the final invitation letter to the fact-finding meeting and the claimant's reply slip were not included.
56. In the event, that meeting did not go ahead as the claimant stated that he was on sick leave for stress and anxiety.
57. Following an occupational health assessment on 8 March 2021, it was recommended that the conduct process be swiftly resolved and the claimant be provided with the full agenda in writing in advance of any meeting to enable him to fairly and fully prepare with the required support.
58. Having reviewed that letter, Mr Taylor proposed that the process be conducted in writing. The claimant responded that a swift resolution to the conduct case would be beneficial but he did not believe that dealing with the case in writing would be fair. He asked for a face to face meeting, referring to a previous occupational health report, and said that he hoped to be able to attend such a meeting in the near future. Mr Taylor agreed to wait until the claimant was well enough to attend a face to face meeting.
59. Mr Taylor waited several weeks before inviting the claimant to attend a meeting on 19 April 2021. Taking into account the occupational health advice, Mr Taylor provided the claimant with the questions in advance. Mr Taylor informed the claimant that, if he did not attend this meeting (being the third attempt to hold the meeting) he would proceed with the case on the evidence available to him. Mr Taylor informed the claimant that he had enclosed the documentation which he would be referring to when considering his decision.
60. Mr Taylor's email of 15 April 2021 also referred to being in possession of the documentation which the claimant had recently submitted, and said that the claimant could decide at the end of the conduct interview which part he would like to submit as mitigation under the conduct process. He offered to send copies to the claimant to help him to prepare. Mr Taylor subsequently sent the claimant the printed copies of the emailed documentation that the claimant had sent him in January 2021.
61. This meeting was re-scheduled for 21 April 2021 and the claimant attended that meeting, accompanied by Mr D O'Neil. At that meeting, Mr Taylor checked that he and the claimant were working from the same documents. It was identified that the second page of the security interview minutes (294) was missing from the claimant's copy of the documents. Mr Taylor tried to give the missing page to the claimant during the meeting and offered time for him to read it, but the claimant refused to accept it and to answer questions about it, relying on the respondent's policy which required documents to be provided 48 hours in advance. Mr Taylor decided to proceed as he was satisfied that the claimant had been sent the document at the fact-finding stage and he had given the claimant the opportunity to read it. The claimant

did not mention that he had not received the emailed documentation from January 2021 but, in any event, he already had a copy.

62. At the meeting, Mr Taylor asked the questions of the claimant which he had sent to him in advance. At the end of the meeting, the claimant gave Mr Taylor his 'conduct interview submission' (as to which, see further below). Paragraphs 63-77 below summarise the claimant's position at this stage of the process – either during the formal conduct interview or in his conduct interview submission.
63. Mr Taylor took the view that, as there were many hundreds of p552s for the Stockton office, he would take "a reasonable cross-section" and asked the claimant about specific entries. Those were sheets relating to 9–13 December 2019, which Mr Taylor had annotated with 'week 37' and 'document F' for ease of reference. It was identified that the claimant had received a total of 29 hours' overtime pay that week. The claimant could not be specific as to those overtime claims due to the passage of time but provided copies of text exchanges and said that these indicated that he had been picked up from home at around 5am that week (although in fact the text messages only relate to four days out of the five). The claimant specifically confirmed that he had added 2 hours' overtime to the Tuesday 10/12/19 P552 for week 37 of 2019/2020 (432, 560) but said that he was regularly asked to amend sheets by employees (at the request of their manager) and managers, and he would update the manager's totals every day and authorise the payments.
64. When asked at the meeting why the P552s and PSP did not match for that week (documents E and F) the claimant pointed to an error in Mr Taylor's question (435) (which, even if corrected, would not have meant the entries matched). He went on to say that he did not know if they matched because incomplete information had been provided but, in any event, entries never matched due to overtime being paid in different weeks to it being worked. At the conduct meeting, when asked whether he had entered his own overtime onto the P552 (generally the last entry on the sheet) and changed the manager's total after he had totalled the amounts, the claimant confirmed that he had but emphasised that this was standard practice (he disputed this in the appeal (579) but accepted that he had done so before me).
65. They discussed the claimant having received 9 hours' overtime pay on 13 December 2019 (661) but the p552 for that date only included an entry of 2 hours' overtime (499). However, 499 is clearly not a complete copy of all of the overtime sheets for that day and it was not clear how the remaining 7 hours came to be paid. The claimant noted that he did not have full copies of all of the office overtime sheets or his PSP overtime screenshot; a 2 hour claim had been missed; overtime was not always recorded on P552 sheets and many overtime payments were made on different days to that on which it had been worked. He reiterated this in his appeal submission to Mr Hulme.
66. In the conduct interview, the claimant confirmed that, in week 37 of FY 2019/2020, he had entered his overtime and amended the total after the manager had signed it, save for the Thursday '89.59' total. In his conduct interview submission, he explained that such alterations were usual practice and he was allowed to operate every step of the whole authorisation of overtime process.

67. The claimant's position before Mr Taylor was that post-authorisation by a manager was not necessary in practice and it did not always happen. He said that employees did not always sign P552 sheets to confirm that they had actually worked the overtime. He said that amendments were made to P552s by the claimant at the request of employees (who had managerial authorisation to do so) and managers, such as to remove an overtime claim when an employee had opted to be given time off in lieu instead. He said that there were also occasions when overtime was paid at a later date, such as when an employee had agreed to work overtime during a period of booked annual leave (when the employee might claim for some of the overtime hours on the actual day of the annual leave, but carry forward the remainder to be paid on a subsequent date).
68. In the conduct interview submission, he reiterated that in light of his absorption of Ms Evans' duties, "it was discussed and accepted that [he] would be required to claim regular overtime." The claimant also said that he had discussed his overtime claims with Mr Carver and Mr Todd when it was appropriate, and that Mr Carver and Mr Todd were told on a weekly basis what overtime was claimed. The claimant also said that he decided when he needed to claim excess overtime due to his specific workload, and that was agreed and understood with Mr Todd and Mr Carver.
69. The claimant also said, of the 256 hours of overtime paid to him in weeks 1-14 of the financial year 2020 – 2021, Mr Carver and Mr Todd had given him permission to book this overtime. The claimant had produced a document (labelled by Mr Taylor as Document B), which indicated that the worked annual leave and days off amounted to 99 hours in the FY 2020/2021 and 137 hours in the FY 2019/2020. The claimant had claimed an additional 157 hours and 549 hours in those years respectively. In addition, the claimant confirmed that he had claimed 9.6 hours of overtime for working his day off on 15 June 2020, and the fact he had worked could be confirmed by checking his work emails. It is worth noting that, in the conduct interview submission (496), after referring to working annual leave and Saturdays, the claimant states, "management did not have to request me to work that overtime, I was allowed to make that decision myself when I felt that overtime was required to be performed, or when it was absolutely essential that I was available to work overtime."
70. In his conduct interview submission, the claimant made the point that he did not have access to the weekly cover sheets where he kept a record of his overtime so he could not be specific about actual worked dates and times but he confirmed that the average of 11.21 hours over the 14 week period in FY 2020/2021 and an average of 10.55 hours over the FY 2019/2020 were correct. These are more than double the figure of 5 hours per week which he had told Mr Kidman about. It is worth noting that these averages do not include the overtime claims for worked annual leave and days off. The claimant said that, "considering I was actually completing another full time duty, that was a fraction of what overtime I was entitled to claim on average, some of that overtime will have been 'carried over' from previous weeks. If I had not absorbed 25 hours of another duty in June 2019, Royal Mail would have had to pay somebody else 25 hours a week to complete that work."

71. At the conduct interview, the claimant also said that Mr Carver and Mr Todd were aware that the claimant had been completing out of office revision work since Summer 2019 and overtime for that work was discussed and accepted. He referred to needing to learn the new route manager system. He also said that the election work in 2019 entitled him to claim some overtime, and provided a copy of an email from Mr Walton which provided that the nominated election person could claim reasonable hours for distributing material and collating data, to a maximum of 4 hours per day.
72. The claimant reiterated that his overtime payment for 8 July 2020 was in fact a pre-payment of two days' annual leave for the week commencing 31 August 2020, and that the claimant working annual leave suited Mr Todd and Mr Carver but made the point that pre-payment of overtime was not unusual. He accepted that he had inputted the overtime onto a P552 and authorised it himself without a manager's knowledge. He explained that that was part of his role, and said that it had been agreed with Mr Carver and Mr Todd in June 2019 that the claimant could claim his overtime as and when required to suit the balance for the previous week. In the conduct interview, he said that this claim was recorded on pre-payment sheets which Mr Todd had destroyed but that Mr Carver would have good faith in the claimant to ensure that this was not claimed again.
73. The claimant also said that the pre-payment sheets were destroyed weekly and pointed to the respondent's Business Standards document which makes clear that it is a criminal offence to "claim money from the company for hours you did not work," and could lead to dismissal for gross misconduct. The claimant said that managers were aware that this pre-payment practice was gross misconduct and quoted from another document (438) which states that overtime must only be claimed and authorised when it has actually been worked.
74. At the conduct meeting, Mr Taylor asked the claimant whether he thought he was entitled to claim 35 hours per week and the claimant responded, "I don't think anyone could have argued with it." The claimant disputed that this was what he had said, but I prefer the clear and persuasive evidence of Mr Taylor as to his recollection in this regard. Although that is not recorded in Mr O'Neil's handwritten notes, it is consistent with the spirit of the claimant's response according to Mr O'Neil's notes and it would be reasonable for the note-takers to have noted down different points rather than every point verbatim. I do not accept that the claimant read out his conduct interview submission in full as there simply would not have been time for this during the one hour conduct meeting.
75. The claimant said that he started earlier than his scheduled duty time every day and occasionally finished earlier than his scheduled duty end time, and again referred to his previous concession to having claimed ghost overtime. He stated that Mr Carver and Mr Todd had encouraged and allowed him to leave early, regardless of whether he was claiming overtime for that day, as he was completing the extra duty work.
76. Mr Taylor asked the claimant about any reasons which might have led him to conclude that the allegations were not genuine. The claimant said that he raised concerns about Mr Todd being unwell with COVID-19 and referred to an email from 2015 which referred to a possible restructure.

77. At the end of the meeting, Mr Taylor gave the claimant an opportunity to offer any 'mitigation' (that being, the claimant's explanation or defence to the allegations). The claimant submitted the 'conduct interview submission', which was a written 57 page document to Mr Taylor to consider (416-444 and 495-522) and confirmed that everything he wanted to say was in that document. I find that this contained fuller answers than those he had given in the conduct interview itself.
78. In the course of making his submission, the claimant did not re-supply to Mr Taylor the entirety of the investigation evidence bundle and the emails sent to Mr Taylor in January 2021. Although the claimant's evidence before me was that this was because he had assumed that Mr Taylor had decided that those documents would not have a bearing on his decision, I am not persuaded that that was the case. The claimant appears to me to be a well-organised individual. He knew that Mr Taylor already had the documents; and in any event he believed that he had covered everything he wanted to say in his conduct interview submission (which repeats much of his earlier submissions) as he said at the time.
79. Following the meeting, Mr Taylor sent the draft minutes to the claimant for his comments. The claimant responded by letter with suggested amendments, enclosing the handwritten notes of his colleague. He also pointed to factual errors in the documents which had been identified at the conduct meeting but did not appear to have been followed up. Mr Taylor considered the claimant's amendments but did not agree with them.
80. Following the conduct meeting, Mr Taylor interviewed Mr Carver and Mr Todd. Although the claimant's position was that Mr Taylor had asked Mr Todd obscure and deliberately misleading questions, and had misrepresented the discussions at the conduct interview, I am not persuaded that that was the case; he merely para-phrased some of the claimant's responses and he did so in a fair and reasonable way. I accept Mr Taylor's persuasive evidence that he investigated the claimant's possible innocence and find that he kept an open mind. Having carried out those interviews, Mr Taylor did not consider that further investigation was needed into what they had said.
81. Mr Carver, in his interview with Mr Taylor, confirmed that the claimant had worked annual leave and Saturday dates during the financial years 2019/2020 and 2020/2021, and considered that the dates discussed sounded accurate. He said that he was not aware of, nor had he authorised, the other overtime claimed by the claimant. When asked whether the claimant had worked his day off on 15 June 2020, Mr Carver recalled that the claimant had worked one day, which would have been 7:36 hours, but he did not know why the claimant had claimed 9 hours. Mr Carver said that he was not aware of, and had not authorised, the pre-payment of annual leave on 8 July 2020 for the week commencing 31 August 2020, and the claimant should have asked Mr Carver first.
82. Mr Carver said that the claimant never worked more than his contracted hours; he was not aware of the claimant starting earlier; and he was not aware that any manager had authorised this. He told Mr Taylor that the claimant always left at the end of his shift on time. Mr Carver accepted that in practice overtime might be paid to employees on different days from when it is



worked, but said that the key point was that all of that overtime was actually worked by those employees, whereas in the claimant's case, he "simply didn't work it at all." Mr Carver said that the claimant's replacement completes his workload within 38 hours per week.

83. Mr Carver described Mr Todd's shock when the claimant's actual overtime claims had been discovered. Mr Carver disputed that the removal of another employee's role (Mr Metcalfe) impacted on the claimant's work but was clear that, if overtime were to be needed, it would have been discussed with himself or Mr Todd. Mr Carver accepted that there had been an increase in the claimant's hours previously when he had absorbed another role, but he did not know the detail. As to the revision and election work, Mr Carver recalled a discussion with the claimant in which Mr Carver had said, "if you struggle to get on top let me know and if you are happy to stay back a few times to get on top of this I'm fine for you to do that." Mr Carver recalled, "how that conversation ended was by Mick saying he will have time to do that within his job anyway. Then after that at no point did Mick ever ask me if I was happy for me to work overtime to get on top of the notifications." Under cross-examination, Mr Carver said that it was difficult to recall whether the claimant had worked overtime for revision work but, from memory, he had not. Mr Carver said that the claimant did not enter his overtime on a manager forecast sheet because he did not work the overtime.
84. In Mr Todd's interview with Mr Taylor, Mr Todd confirmed that the claimant had been authorised to work certain annual leave and Saturday dates during the financial years 2019/2020 and 2020/2021, and considered that the dates discussed sounded accurate. Other than that, he said, "there was never any overtime agreed with Mick... There was no need for any additional overtime within the DOM support Role. If there ever was, it would have been discussed and agreed with... me or Tom." When asked whether the claimant had worked his day off on 15 June 2020, Mr Todd thought that he might have done so but he should not have claimed more than 7:36 hours. Mr Todd disagreed that the claimant had covered Mr Metcalfe's role (and said that the claimant had never asked for overtime against that duty) but he had been given an increase in his contracted hours to 38 hours when he had been given the DOM Support role. He also advised that the claimant's replacement completed the duty within 38 hours. Under cross-examination, Mr Todd accepted that the claimant had worked a Sunday (17 November 2019) with his knowledge (290 and 931) but could not recall whether Mr Taylor asked him about that in his interview.
85. Mr Todd stated that he was not aware that the claimant had started work one or two hours before his scheduled duty time and commented that he used to see the claimant walk into work some days from around 06:30. Mr Todd said that, if the claimant ever started early, that was not agreed and no overtime for doing so was agreed. Mr Todd also said that the claimant left at least 20 minutes early every day and, although he expected a bit of give and take, he did not think that the claimant ever needed to work past his contracted hours on a weekly basis. As to the respondent's general practices, Mr Todd accepted that overtime might be moved to different days within the RCS but by the time the RCS was submitted on a Monday for the previous week the overtime had always been worked.

86. Mr Todd also told Mr Taylor that, “[the claimant] clearly had written all his overtime claims on the bottom of every overtime sheet after the manager had signed them off. I used to collate all the overtime sheets...on a daily basis and sense check them over. Not once in my 4 years as the resourcing manager did I ever see a handwritten claim from Mick Ransom on any of the overtime sheets. This has clearly been carefully calculated by M Ransom after he has inputted the overtime into the RCS after I have sense checked the overtime sheets over.”
87. Mr Taylor did not interview Ms Evans or the claimant’s line manager, Mr Timothy, but the claimant had confirmed that Mr Timothy would not know about his overtime.
88. Mr Taylor sent the notes of those interviews to the claimant under cover of a letter which gave the claimant two days in which to provide any comments on the statements. Although the claimant had been given longer to prepare his answers to the questions prior to the conduct interview, as the claimant had been fit to attend the conduct meeting in person, Mr Taylor reverted to the normal 2 day timescale. The claimant did not ask for more time in which to respond, on the basis that the policy did not provide for this. Had he made such a request, I find that Mr Taylor would have granted him more time.
89. Although Mr Taylor did not state in his letter that he would be relying on the interviews with Mr Todd and Mr Carver in making his decision, that was apparent from the fact that it had been sent to the claimant for his comments. The claimant provided detailed comments in response, within the timescale given to him by Mr Taylor, (which I shall refer to as the “claimant’s response submission”). In that document, the claimant made a general point that Mr Taylor had not explained or evidenced the allegations of fraudulent overtime payments and dishonesty, nor had the allegations been made clear in the security interview, and raised a concern that Mr Carver had reached a prejudicial conclusion already. As to the issue of the claimant’s replacement, the claimant stated that two employees had replaced the claimant.
90. In the claimant’s response submission, he also submitted (502), “all of my actions should not be judged by an expected set of Royal Mail Group rules and values that the management team at Stockton-on-tees does not adhere to...I claimed overtime when I thought it was needed because it was justified and I was allowed to do that by management. I entered and signed off my own overtime sheets ‘post-authorisation’ because I was allowed to do that by management. I entered that overtime onto the overtime sheets and into PSP whenever and wherever it suited the RCS because I was allowed to do that by management. I amended, added and deleted my own overtime on the overtime sheets many times over, as I did with many other staff entries, because I was allowed to do that by management. I worked my annual leave and I claimed overtime for that work over a long period. I have proved in my evidence that management accepted that situation, and were all fully aware of that situation.” He also said that overtime payments were in practice made without P552 sheets being completed.
91. The claimant pointed to a text message exchange from 16 November 2019 showing that Mr Todd and Mr Carver had been aware that the claimant was being picked up to start work on a Sunday at 4am. He highlighted that ghost overtime was paid to other employees. He relied on emails to and from Mr

Carver, including one saying that he understood that the claimant, “is happy to work a bit of overtime to complete work” (368). I find that those emails contemplate the possibility of overtime for revision work but do not authorise the claimant to claim overtime, and the references to the cost of the revision work is in the context of the respondent’s budgeting rather than the cost of overtime pay.

92. Having received the claimant’s response submission, Mr Taylor believed that he had sufficient information to reach a decision, and proceeded to make his decision. Mr Taylor’s evidence during the hearing (which I accept) was that he gathered the documents which he had sent to the claimant in advance of the conduct meeting, the documents submitted by the claimant, and the notes of the interviews with the claimant, Mr Carver and Mr Todd, and reached his decision based on those. Consistent with his response to Mr Hulme’s question at the appeal stage (869), I also find that Mr Taylor reviewed the fact-finding evidence bundle and the emails which the claimant had submitted to him in January 2021.
93. Mr Taylor’s evidence during the Tribunal hearing was that he had definitely shown everything he had used in reaching his decision to the claimant. However, his witness statement (paragraph 37) states that he also took into account other overtime sheets which the claimant was not shown at the conduct meeting. These documents were relevant to his conclusion that the claimant had inputted his overtime at the bottom of the sheet after it had been signed off by a manager. In the claimant’s response submission, the claimant had accepted that he had added his own overtime entries after managerial authorisation and so this was not an issue which was in dispute at that stage.
94. Prior to the claimant’s dismissal, his role had been advertised as a temporary role but, had the claimant not been dismissed, he would have returned to that role. Mr Taylor did not seek to accelerate the dismissal to avoid the need to deal with any implications which might have arisen from the forthcoming OH referral.
95. Having reached his decision, Mr Taylor invited the claimant to a meeting to give him the decision face to face but the claimant requested a written decision. Mr Taylor confirmed his decision to summarily dismiss the claimant in a letter dated 10 June 2021. He enclosed his deliberations and conclusions, and informed the claimant of his right to appeal.
96. Mr Taylor upheld both allegations of fraudulent overtime payments and dishonesty. Although the security interview notes referred to overtime claimed in the FY 2018/2019, this year was not discussed at the conduct meeting. It is clear from Mr Taylor’s decision and evidence that only overtime claimed in the FY 2019/2020 and FY 2020/2021 was taken into account in reaching his decision.
97. In relation to the allegation of fraudulent overtime payments, Mr Taylor concluded that the claimant had been paid 256 hours of overtime in 2020/2021 and 686 hours of overtime in 2019/2020 and noted that the claimant had never denied making these payments to himself. Mr Taylor concluded that Mr Todd or Mr Carver had authorised 99 hours of this overtime in 2020/2021 and 137 hours of this overtime in 2019/2020. This was for working days off and annual leave.

98. As to the remainder (706 hours), he preferred the evidence of Mr Carver and Mr Todd and concluded that, whilst the claimant was entrusted with inputting pre-authorised overtime into the system, the claimant did not have the authority to pre-authorise his own overtime. As such, he concluded that the claimant needed managerial pre-authorisation to work and claim each specific period of overtime. He took the view that, because the claimant had sought authority to work overtime on some occasions (working annual leave and days off), he knew that he needed approval.
99. Mr Taylor concluded that Mr Carver and Mr Todd had not authorised the remainder of the overtime (706 hours) in those years, including the pre-payment of annual leave for 31 August 2020. He also concluded that the claimant had added his entries to the bottom of overtime sheets after managerial authorisation, which the claimant had admitted. Mr Taylor concluded that there was no evidence before him which suggested a change in the claimant's relationship with Mr Todd and Mr Carver. Mr Taylor believed that the concerns they raised about the claimant's overtime were genuine.
100. Mr Taylor accepted that there was a practice of moving overtime around (concluding that, "overtime is moved to be paid on different days and to a much lesser extent, weeks from when it is worked in Stockton D.O." (536)), but found that the key point was that there was no suggestion that the overtime had not been worked by other employees in those circumstances. He accepted that ghost overtime was sometimes paid but concluded that no such overtime had been authorised in the claimant's case. He considered a text message exchange (which appeared to show that the claimant attended work early for a week in December 2019) but concluded that, whilst he might have started early, it was very likely that he finished early and no overtime was authorised simply because the claimant chose to, "flex," his own working hours. Taking into account the claimant's points in relation to performing additional work, Mr Taylor concluded that the claimant's scheduled duty hours were sufficient to carry out his role and overtime had not been authorised for any additional hours worked. Mr Taylor also concluded that the claimant had not worked the 706 hours' overtime.
101. As to dishonesty, Mr Taylor upheld this allegation and concluded that the claimant had admitted to altering P552s after 6 July 2020 (when security had taken copies) and had added his name and amended the manager's totals in an attempt to cover his tracks. Under cross-examination, Mr Taylor said that his understanding was that, at the security interview, the claimant had admitted to amending the sheets (i.e. having written on them) and not simply adding sheets to the back. However, it is clear from Mr Taylor's decision (531) that he based his decision on the claimant's admissions to having altered the sheets in the fact-finding meeting and conduct interview rather than the security interview.
102. Mr Taylor considered whether the respondent's procedures had been followed. Mr Taylor considered the time it had taken to complete the procedure and explained this by reference to a number of factors.
103. Mr Taylor then responded to the claimant's conduct interview submission, noting his belief that the claimant's replacement was carrying out the role in 38 hours. He did not accept that the claimant would have entered

overtime on separate sheets for the same day, and did not accept that pre-payment overtime sheets would not exist. Mr Taylor preferred the evidence of Mr Carver and Mr Todd when there was disagreement with the claimant. Mr Taylor did not consider that it was necessary to interview Ms Evans as he did not dispute anything that she said in her statement and he did not believe that Ms Evans had entered overtime which the claimant had not worked before June 2019.

104. Mr Taylor considered the appropriate penalty and decided that summary dismissal was appropriate in the circumstances, notwithstanding that the claimant had long service and a clear conduct record. Taking into account the position of trust which the claimant occupied, Mr Taylor took the view that he had lost all trust and confidence in the claimant being able to continue to meet the respondent's standards and expectations.
105. Under cross-examination, Mr Taylor accepted that the entry for Thursday 12 December 2019 on the PSP sheet was different from the PSP print out of overtime paid for that day, but considered that the claimant had been paid for 2 hours and not 3 and that did not mean that it was not fraud. He was clear that the point was that it was unauthorised overtime.
106. Mr Taylor accepted under cross-examination that the total figure for unauthorised overtime hours was almost certainly wrong but was "as close as makes no difference to the overarching circa 700 hours of fraudulent overtime." He accepted that the overtime entries for all of those 700 hours were not all put before the claimant, and referred to the minutes of his interviews in relation to the specific overtime payments he had enquired about.

### ***Appeal***

107. The claimant appealed his dismissal in a letter dated 11 June 2021. His appeal was dealt with by Mr Hulme. In view of the COVID-19 pandemic, Mr Hulme wrote to the claimant on 23 June 2021 asking him to confirm whether he wanted the appeal meeting to take place by video or telephone, or in writing, and enclosed the documents which had been passed to him (all of which are included in Bundle A). Some of the documents considered at the conduct meeting stage were not included, and the claimant pointed this out and sent all of the documents which had been submitted previously (either by him or on behalf of the respondent to him) to Mr Hulme. Mr Hulme therefore had a complete set of documentation in his possession. Mr Hulme had not sought to withhold any documents from the claimant, nor did he take any documents into account which the claimant had not seen (apart from the interviews conducted subsequently, which are dealt with below). Although the claimant believed that the respondent had sought to withhold significant documents from Mr Hulme, there was insufficient evidence on which to base such a finding.
108. A further occupational health report was produced on 25 June 2021. This advised that the claimant was likely to be suffering from a disability and advised that the appeal should progress in a timely way and that advice be sought from human resources as to progressing the appeal and the support that could be provided during the appeal. Mr Hulme read that report and did not seek further input from occupational health or human resources before

progressing the claimant's appeal as the claimant agreed to proceed in writing.

109. The claimant chose to put forward his appeal in writing. He was unwell at the time and gave evidence that he had not appreciated that he could have asked for a meeting in person.
110. On 29 June 2021, three days before the deadline for submitting his appeal documents, the claimant provided an appeal statement, a grievance against Mr Taylor and a pack of documents of around 280 pages. I will refer to this as the claimant's "appeal submission".
111. In his appeal submission, the claimant accepted that he had paid the overtime in question to himself (157 hours in FY 2020/2021 and 549 hours in FY 2019/2020, totalling 706 hours). The claimant submitted that the documents provided to him in advance of the formal conduct meeting did not refer to overtime being 'unexplained' (a term used by Mr Taylor in his conclusions), unauthorised or unwarranted, and contained no description of or substance to the allegations of fraudulent overtime payments or dishonesty, and did not provide any evidence that he had altered overtime sheets.
112. The claimant raised concerns about the investigation being delayed and insufficiently thorough. He complained that Mr Taylor had not quoted him accurately when interviewing Mr Todd and Mr Carver. He also raised concerns that Mr Taylor had not investigated or taken into account all of the documentation that the claimant had submitted or commented on each point or document, and that had led Mr Taylor to reach conclusions which were incorrect or unsupported by the evidence. The claimant raised concerns in relation to the process that was followed (including the incomplete documentation supplied to him) which led to his dismissal.
113. The claimant reiterated other points made previously at earlier stages of the process. He submitted that his ill health was not properly taken into account and supported at each stage of the process. He raised concern that the decision to dismiss him had been taken by Mr Taylor the day before the claimant's occupational health assessment was due to take place. He submitted that Mr Taylor was not an appropriate decision-maker due to his seniority. In particular the claimant contested Mr Taylor's finding that the evidence before him did not suggest a change in the claimant's relationship with Mr Todd and Mr Carver (in light of 85-87). The claimant also contested Mr Taylor's finding that (in the context of ghost overtime) no mention had ever been made of such additional work on the basis that the claimant had made reference to this. The claimant also submitted that sufficient account had not been taken of the impact of the revision work and that the claimant's replacement did not carry out all of the claimant's previous role.
114. In particular the claimant contested Mr Taylor's finding that the claimant was not entitled to overtime if the claimant started work early but also left early (that is, he only worked his scheduled duty hours at a different time from normal). The claimant submitted this was because the practice at Stockton was different.
115. The claimant submitted that the security report (293-295) referred to the 'altering' of 552 sheets, which read in context was actually a reference to

adding additional sheets to the back. The claimant said this was part of his normal process. The claimant said (577) that he had not added additional documents to the back of the P552 sheets after he suspected an audit; security had missed them when they had taken the original photocopy. However, he volunteered that he had altered around ten P552 sheets because of discrepancies in his overtime as he thought there was to be an audit and it was standard practice to do so (but denied having admitted this at the conduct interview). He submitted that Mr Taylor had incorrectly concluded that the claimant had admitted to altering the sheets at the security interview in the knowledge that the security team were investigating.

116. In the appeal submission to Mr Hulme, the claimant reiterated that he was authorised by managers to enter his own overtime onto P552 sheets after they had authorised the sheets. He said that this was evidenced by Mr Todd and Mr Carver having authorised him to work particular days off and annual leave dates, but never having seen a handwritten overtime entry from the claimant, and so they must have known that he added his entries later to suit the RCS. The claimant said (579) that Mr Todd had said that “he had not seen a single entry in my name once in 4 years.” In fact, Mr Todd said, “Not once in my 4 years as the resourcing manager did I ever see a handwritten claim from Mick Ransom on any of the overtime sheets.” Under cross-examination, Mr Todd said that this had been misconstrued as he was referring to unauthorised overtime; that is, the 1-2 hours of unauthorised overtime claimed on other days, not the overtime which had been authorised and worked during annual leave and Saturdays.
117. The claimant also submitted (606) that Mr Taylor had accepted in his conclusions that, “overtime is paid ‘weeks from when it is worked’.” That takes Mr Taylor’s letter out of context, as his letter (which I have quoted at paragraph 100 above) actually refers to overtime being paid in different weeks from when it is worked, not that it is paid weeks (the implication being several weeks) from when it is worked.
118. The claimant also asked for further investigation to take place into several different points (590 (that Mr Taylor had attempted to conceal the truth about the absorption of Ms Evans’ duties and related matters), 591 (that Ms Evans be interviewed), 594 (that the overtime sheets for week 15 of the FY 2020/2021 be investigated), 595-596 and 608 (to establish that ‘actual’ pre-payment overtime sheets were destroyed, whereas the claimant emailed screenshots of pre-payment overtime sheets to managers on a weekly basis), 603 (that the claimant’s own evidence and submissions be investigated and considered)).
119. The claimant disputed the accuracy of the minutes of the conduct meeting on the basis that they were not consistent with the conduct interview submission from which he said that he was reading.
120. The grievance against Mr Taylor related to his handling of the conduct process, and included an allegation that Mr Taylor had bullied and intimidated the claimant at the conduct meeting by trying to give the claimant the missing page (294) of the security report at the meeting, and had not taken his medical condition into account in doing so.

121. In addition to considering the claimant's appeal submission, Mr Hulme interviewed Mr Carver, Mr Todd, Mr Walton and Mr Taylor by telephone. Mr Taylor's interview was consistent with his decision to dismiss the claimant, except that he summarised his conclusion as being that the claimant had been paying himself overtime that was neither authorised nor justified, and this was both fraudulent and dishonest. I find that Mr Taylor viewed the overtime claims in question as both fraudulent and dishonest. Mr Walton informed Mr Hulme that he was aware that some overtime was prepaid in the unit to guarantee compliance and he was also aware of the way in which hours were forecasted and budgeted but there was nothing underhand about this.
122. In his appeal interview, Mr Todd said that any overtime which the claimant completed would need to be authorised and denied that he was aware of, or had authorised, the overtime highlighted in the investigation. In context, Mr Todd was referring to the overtime over and above that which had been authorised for working annual leave and days off. He accepted that the claimant had occasionally started work early to speak to staff about route planning but there would always be a discussion with his manager on those occasions, and the claimant would either leave early or book overtime.
123. Mr Todd said that the claimant would never do overtime during the week and typically would never really work his full hours (working 06:00-13:00, even though he was not due to finish work until 13:36), but they left him to it as he was efficient. Mr Todd said that the claimant would only do overtime on Saturdays.
124. Mr Todd described the process by which the claimant's hours had increased and he had taken on Ms Evans' duties differently to the claimant. He was clear, however, that he and Mr Carver had not agreed that the claimant's absorption of Ms Evans' duties entitled him to claim overtime as and when required when it suited the budget, explaining that it would not make sense to remove the hours and then pay overtime. He also emphasised that, when overtime was required, the claimant would seek permission to work on a Saturday: Mr Carver's position was consistent with that of Mr Todd.
125. In their appeal interviews, Mr Todd and Mr Carver agreed that P552s were working documents and were continually updated in practice, although Mr Carver clarified that managerial authorisation was needed for any changes. Mr Carver also said (862) in relation to the claimant that, "there were hundreds of hours that he'd claimed over a period of time and hadn't worked...the claims hadn't existed on p552's until Michael Ransom had gone back and retrospectively added his name in, moreover in some circumstances would squeeze his name in between others which again [seemed] highly questionable, rather than adding this in at the bottom."
126. In their appeal interviews, Mr Todd and Mr Carver accepted that there was a practice of pre-paying overtime to employees for the following week when the office was having a 'good' week but the overtime would be worked by those employees. Mr Carver appeared to accept that annual leave was prepaid on occasion but only for the following week, and in that event the scheduled leave should be moved into a different week.



127. In his appeal interview, Mr Carver said that the claimant, “would work some of his annual leave and would come in on his days off, which they knew about, was authorised and included on the p552’s. If Michael Ransom had ever said he needed extra time he would have been paid, however there were hundreds of hours that he’d claimed over a period of time and hadn’t worked. It was this that he’d questioned and reported to security as there was no necessity or therefore justification for the overtime.” Mr Carver did not believe that there had been a misunderstanding on the claimant’s part as he knew how the office worked as well as the need to justify any hours spent and the need for efficiency to make savings where possible. Mr Carver said that the claimant would not work beyond his contracted hours during the week, and always asked for authorisation to work his day off and ensured this was recorded. As to the election work, Mr Carver said that the claimant had completed this in his normal scheduled duty times and it would not therefore merit any overtime payment. Mr Carver said he was unsure about the revision work but the claimant could have spoken to him or Mr Todd if extra time was needed but he had not done so.
128. Mr Hulme considered all of the evidence before him and approached the appeal as a re-hearing. Although the Conduct Agreement (68) states that further investigation would be shared with employees and time given to consider it, Mr Hulme did not send notes of his interviews with those individuals to the claimant before he reached his decision as he did not consider that they contained new evidence. He considered the claimant’s request that he interview Ms Evans but agreed with Mr Taylor’s view that it was not necessary.
129. Mr Hulme concluded that he believed the claimant had been dishonest in fraudulently making overtime payments to himself that were not authorised and that he had not worked and in retrospectively amending p552 sheets in an attempt to cover his tracks. He upheld the decision to dismiss in the circumstances. Mr Hulme accepted that there could be errors but had no doubt that a good proportion of the overtime claimed by the claimant was fraudulent. Whereas Mr Taylor’s decision clearly relates to the FY 2019/2020 and FY 2020/2021, it is not clear from Mr Hulme’s decision whether he was only considering those two financial years or whether he was also considering the FY 2018/2019 which was discussed prior to and at the security interview. On balance, I find that Mr Hulme only took into account the FY 2019/2020 and FY 2020/2021 as he was focused on whether Mr Taylor’s conclusions were correct, and those related solely to those two years.
130. In his decision, Mr Hulme grouped the claimant’s points into several overarching points, and then set out in detail his reasoning in relation to each one. He read all of the documents which the claimant had submitted as part of his appeal in reaching his decision.
131. Mr Hulme accepted that there was a practice of pre-payment (and, at times, belated payment) of overtime which had been worked, and that at times employees were paid for working annual leave. However, he did not accept that these practices could ever be viewed as commensurate with the claimant having paid himself hundreds of hours of overtime that he had not worked. He considered the claimant’s concern that his overtime claims could have been on P552s for different sections of the Stockton office, and preferred Mr Taylor’s position on this point (880).

132. He preferred the evidence of Mr Todd and Mr Carver and found that the claimant did not work beyond his duty times (including that election work could be done within his duty times) and “would invariably leave at 13:00”. He also accepted Mr Todd’s evidence that the claimant typically did not work his scheduled duty hours during the week (including when doing election and route planning work) and any overtime worked needed to be authorised, and the claimant always obtained managerial authorisation for Saturday overtime. He also accepted Mr Carver’s evidence that the claimant only ever worked overtime on Saturdays but this was always agreed and authorised by management. Mr Hulme took into account Mr Todd’s position that the claimant would have made management aware if he had worked later than his duty times and, had he done so, he would have been entitled to overtime. Mr Hulme also considered Mr Todd’s position that the claimant would occasionally attend early but would either get the time back through leaving early or book overtime, and there would always be a discussion on those occasions. Mr Hulme also concluded that the claimant’s absorption of additional duties did not mean that he was entitled to claim overtime as it had been determined that the additional work could be done within the claimant’s 38 hour week.
133. Mr Hulme accepted the evidence of Mr Todd and Mr Carver and concluded that the overtime which Mr Carver identified and reported to security (other than annual leave and days off already worked) had not been authorised by management, and nor were management aware of them. As such, Mr Hulme believed those claims were fraudulent and therefore dishonest. Mr Hulme considered it implausible that anyone would be permitted to claim overtime in the manner suggested by the claimant i.e. whenever it was required and fitted in with the office being ahead of forecast and the budget permitted. Mr Hulme concluded that there had been no misunderstanding on the part of the claimant concerning overtime. Mr Hulme considered the claimant’s allegation that pre-payment sheets were destroyed and followed this up separately to the appeal, but did not consider this to be relevant to the appeal itself. Mr Hulme considered that Mr Taylor and Mr Todd had, “no axe to grind,” and preferred their evidence.
134. As to the procedural aspects, Mr Hulme considered these and concluded in particular that: the claimant had been aware of what the case entailed from the outset; Mr Taylor had been the manager to have determined that the case should proceed to a conduct meeting (rather than Mr Kidman); Mr Taylor had approached the issue of the missing security report reasonably; and there had been a reasonable investigation. He concluded that the claimant’s concerns about the procedure did not, individually or collectively, undermine the overall fairness of the procedure or the validity of the decision to dismiss. As to the claimant’s position that there had been insufficient contact during his sickness absence, Mr Hulme considered that there could have been more contact during the earlier stages but the position had been confused to an extent by his managers being witnesses in the case, but did not consider that this would mitigate his behaviour in being dishonest through making fraudulent overtime payments. Mr Hulme considered that the claimant’s grievance about Mr Taylor had been dealt with in his appeal conclusions.

135. Mr Hulme concluded by saying that the claimant had failed to meet the standards of the respondent's Code of Business Standards and conduct code. Mr Hulme considered that the claimant's conduct amounted to gross misconduct and that this had led to the trust and confidence in the claimant being fundamentally undermined, compounded by the claimant's failure to accept that he had done anything wrong and maintaining that the payments were justified. As such, he concluded that the claimant's summary dismissal was appropriate and he upheld his dismissal.

***Other evidence relevant to the question of fairness***

136. It was suggested to the claimant in cross-examination that his extensive submissions before the fact-finding stage and at later stages demonstrated that he knew exactly what the allegations against him were. The claimant responded that dishonesty had never been mentioned.

137. It was also suggested to the claimant that he must have understood that altering documents was dishonest, to which the claimant responded that understanding should not be presumed; allegations must be described in detail. He also did not accept that altering sheets retrospectively was dishonest; he acknowledged that it was technically wrong and gave a false impression as to what had happened but said that it happened regularly.

138. During cross-examination, the claimant accepted that he did not have written authorisation to the effect that there was no need to tell a manager that he would be working overtime. He referred to a verbal agreement with Mr Todd and Mr Carver when his colleague had gone into hospital and he had absorbed Ms Evans' duties on a temporary basis. He gave evidence that they had agreed that he did not need to tell a manager that he was going to request an overtime payment. He said that it had been acknowledged by them that any overtime he needed to claim would still be a saving for the unit. He denied that he had made an assumption concerning the claiming of overtime. He also referred to an email he had sent in November 2019 (367) referring to being busy with his RCS, overtime and election work and asking people to bear with him as he had also been admitted to hospital with a blood clot.

139. The claimant's evidence at the hearing was that Mr Todd had accepted in his evidence at the hearing that the claimant was the only person in the unit that did not need to forecast, i.e. let a manager know in advance when he was expecting to work overtime. I find that Mr Todd was clear that the claimant did not complete pre-printed forecast sheets for his own overtime but he did need to discuss overtime with his manager in advance of it being worked. The claimant said at the hearing that he had occasionally opted to tell Mr Todd about working overtime on Saturdays and annual leave; he said that Mr Todd would generally be working on Saturdays and working a day off was a different scenario. He also said that there would be occasional discussions about overtime for a particular type of work on other days as there would be a discussion about getting another employee to start work early and sit with him, but it was his decision if he needed to speak to staff about route planning.

140. The claimant gave evidence that the money he was paid was fully representative of the time he worked, and there was no requirement to record

time correctly or claim overtime on days it was worked. The claimant confirmed during the hearing that his position was he had worked all of the overtime he had claimed.

141. When asked in cross-examination how the respondent could have worked out whether overtime was genuinely worked or not, the claimant referred to sign in sheets, CCTV and the ability to check his computer to ascertain the time he had logged on. He said that there was no evidence that he had ever failed to complete any work. This was not put to the respondent's witnesses in cross-examination, and had only been raised by him in the context of checking that he had worked the annual leave he had claimed during previous years (which the respondent accepted).
142. At the hearing, the claimant thought that the respondent's witnesses had misunderstood the position in relation to the documentation in that they thought that all of the overtime claims had not existed, whereas he had admitted to altering around 10. He also said that the PSP screenshots of his own overtime claims which he added to the back of the p552s were not part of the evidence against him. On balance, I find that Mr Todd and Mr Hulme were clear about what the claimant had said in this regard as they had read the documents and in light of my other findings. I have made findings about the documents they took into account.
143. As noted above, the claimant had been sent home on Thursday 16 July 2020 and did not return to work. He had not, therefore, worked any overtime for the Friday or Saturday of that week. Nevertheless, at the hearing it was noted that the PSP screenshot for the claimant's overtime that week shows one hour of overtime on the Friday and 11:36 hours of overtime that Saturday. On the other hand, another document (937B) appeared to show that he was not paid overtime for that week. The claimant gave evidence that those two documents could not both be correct and, if one was wrong, any of the documents in the case could be.
144. Mr Todd's witness evidence was that that the claimant did not start work one or two hours before his scheduled start time and in any event an early start had not been agreed or authorised. However, under cross-examination, Mr Todd said that the claimant's contracted hours were 07:00 – 14:30 but he was flexible and worked 06:00 – 13:30. Mr Todd gave evidence that the claimant took his meal break at the end of his shift, and so he was able to finish 40 minutes earlier. When asked about the discrepancies between the different witnesses as to the claimant's actual start and finish times, Mr Todd said that there would be times (which he described as "one-offs") that the claimant started work at 05:00 – 05:30 for specific work but the claimant would leave early rather than claim overtime and there would always be a discussion on those occasions. Mr Todd also said that it was not possible to retrospectively change overtime sheets and he would not ask the claimant to do so; however, in view of his previous reference to the sheets as being working documents, I find on balance that he was referring to amendments after the overtime payments had been processed.
145. Ms Evans' evidence was that the claimant left work at 12:30 without fail. However, she accepted under cross-examination that this was not the case as there were text messages in the bundle which showed him leaving at 14:30. She started work at 07:00 and arrived at work before that. She said

that she had arrived at work on a couple of occasions at 06:35 and the claimant was not there. She also said that most staff did not arrive until 07:00 and so no-one really knew when he arrived, although he was seen arriving between 06:15-06:30 on occasion. However, it was unclear whether this was before or after she moved to a different role. She was clear that every employee needed pre-authorisation to work overtime. She understood that, after the claimant's dismissal, two employees had been performing his role. She left the business in November 2021.

### ***The issues***

146. The issues as to liability to be determined were agreed at the start of the final hearing as follows:

146.1. What was the reason or principal reason for dismissal?

146.2. Was the reason a reason which related to conduct?

146.3. If the respondent has satisfied the Tribunal that the reason for dismissal related to conduct, did it act reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the claimant? This involves considering the following:

146.3.1. Whether the respondent genuinely believed that the claimant had done the thing for which he was dismissed;

146.3.2. Whether, in forming that belief, the respondent carried out a reasonable investigation;

146.3.3. Whether the respondent had reasonable grounds for its belief;

146.3.4. Whether the sanction of dismissal was reasonable;

146.3.5. Whether the respondent followed a fair procedure.

### ***Submissions***

147. After the evidence had been concluded, the parties filed written submissions addressing the issues in this case. It is not necessary for me to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from my findings and conclusions. It is enough to say that I fully considered all the submissions made, together with the statutory and case law referred to, and the parties can be assured that they were all taken into account in coming to my decision.

### ***Relevant law***

#### ***Unfair dismissal***

148. It is for the employer to show the principal reason for dismissal and that it is a reason falling within section 98(2) of the Employment Rights Act 1996 ("ERA") or that it is for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

149. A reason for dismissal is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee: *Abernethy v Mott, Hay and Anderson [1974] ICR 323, CA*. In a more recent analysis in *Croydon Health Services NHS Trust v Beatt [2017] ICR 1240, CA*, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.
150. Section 98(4) of the ERA poses a single question namely whether the employer acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the claimant. It requires the Tribunal to apply an objective standard to the reasonableness of the investigation, the procedure adopted and the decision itself. However, they are not separate questions – they all feed into the single question under section 98(4). Whilst an unfair dismissal case will often require a tribunal to consider what are referred to as 'substantive' and 'procedural' fairness, it is important to recognise that the tribunal is not answering whether there has been 'substantive' or 'procedural' fairness as separate questions. The burden here is neutral.
151. The Tribunal must take as the starting point the words of s98(4). It must determine whether in the particular circumstances the decision to dismiss was within the band of reasonable responses which a reasonable employer might have adopted. In assessing the reasonableness of the response, it must do so by reference to the objective standard of the hypothetical reasonable employer (*Tayeh v Barchester Healthcare Ltd [2013] IRLR 387, CA @ para 49*). The Tribunal must not substitute its own view as to what was the right course of action.
152. In misconduct cases, the approach which a Tribunal takes is guided by the well-known decision of *British Home Stores v Burchell [1978] IRLR 379, EAT*. Once the employer has shown a valid reason for dismissal there are three questions for the Tribunal to consider:
- 152.1. Did the employer carry out a reasonable investigation?
- 152.2. Did the employer believe that the employee was guilty of the conduct complained of?
- 152.3. Did the employer have reasonable grounds for that belief?

### **Sanction**

153. When determining whether dismissal is a fair sanction, it is not for the tribunal to substitute its own view of the appropriate penalty for that of the employer.
154. Consequently, there is an area of discretion with which management may decide on a range of penalties, all of which might be considered reasonable. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable, but whether dismissal was reasonable. However, this discretion is not untrammelled, and dismissal may still be too harsh a sanction for an act of misconduct.

### ***Fair procedures***

155. A dismissal may be unfair because the employer has failed to follow a fair procedure. In considering whether an employer adopted a fair procedure, the range of reasonable responses test applies: *Sainsbury plc v Hitt [2003] I.C.R. 111, CA*. The fairness of a process which results in dismissal must be assessed overall.

### **Conclusions**

156. It is not in dispute that the respondent's reason for dismissal was genuine or that it related to conduct and is thus a potentially fair reason. Therefore, the complaint of unfair dismissal turns on section 98(4) of the ERA. I must apply the law as per the guidelines in *Burchell* and not substitute my opinion for that of the respondent.

157. The essential question is whether the respondent (acting through Mr Taylor and Mr Hulme) acted reasonably in treating the reason for dismissal as a sufficient reason for dismissal in all the circumstances.

### ***Did the respondent genuinely believe that the claimant had done the thing for which he was dismissed?***

158. It is first necessary to consider what the claimant was dismissed for. I have found that Mr Taylor believed that the claimant had fraudulently and dishonestly claimed 706 hours' unauthorised overtime relating to the FY 2019/2020 and 2020/2021 and that, in retrospectively amending the p552 sheets, he did so dishonestly in an attempt to cover his tracks. Although Mr Taylor conceded that the total of 706 hours was almost certainly wrong, I conclude that he held a genuine belief that the claimant had claimed the "bulk" of the hours for which he was found guilty. Mr Taylor believed that the claimant had not worked these hours. I have found that Mr Taylor believed the claimant had done these things and I conclude that belief to have been genuine.

159. As to Mr Hulme, he upheld the claimant's dismissal for being dishonest in fraudulently making overtime payments to himself that were not authorised and that he had not worked, including retrospectively amending p552s to correct discrepancies in relation to the claimant's overtime claims. I found that only the FY 2019/2020 and 2020/2021 were taken into account. Although Mr Hulme (unlike Mr Taylor) was express in his decision that he believed that the claimant's fraudulent overtime claims (including his retrospective amendment of p552s) were dishonest, both Mr Taylor and Mr Hulme genuinely believed that the claimant's fraudulent conduct was dishonest. A reasonable employer would understand fraudulent conduct as being dishonest. The reference to dishonesty in this context did not represent a change to the nature or substance of the allegations. Rather, Mr Hulme applied another label. Mr Hulme upheld the dismissal on the same basis as Mr Taylor's original decision to dismiss, being based on the same overtime claims which were found to have been fraudulent and the retrospective amendment of p552s in an attempt to cover his tracks. I have found that Mr Hulme believed the claimant had done these things and I conclude that belief to have been genuine.

***In forming that belief, did the respondent carry out a reasonable investigation?***

160. What amounts to a reasonable investigation must be viewed in the context of the claimant's admissions. By the time of his dismissal, the claimant had admitted to: paying himself the overtime in question; not obtaining specific pre-authorisation to each period of overtime claimed; claiming ghost overtime; entering and authorising his own claims after P552s had been authorised by a manager; and to altering P552s to correct discrepancies in relation to his own overtime when he suspected an audit.
161. What the respondent needed to do was to carry out a reasonable investigation. It did not need to overturn every stone nor carry out a full investigation into matters which were not in dispute.
162. The claimant's position, in summary, was that he did not need pre-authorisation for each specific period of overtime claimed as he had the authority of Mr Todd and Mr Carver to make his own decision to work overtime when needed to get his job done (as to which, see further below) and, although he discussed and obtained pre-authorisation for specific periods of overtime with them on occasion, this was not required. The position of Mr Todd and Mr Carver was, in summary, that the claimant needed pre-authorisation for each specific period of overtime but he only obtained this for the particular dates they discussed with him in advance: this included particular Saturdays and Sundays (listed by the claimant on 644), some early starts for a specific purpose (Mr Todd confirmed this at the appeal), and part of the claimant's annual leave in the FY 2019/2020 and FY 2020/2021 which he had worked. Their position was that the claimant knew that he needed pre-authorisation as he discussed certain specific requests for pre-authorisation with Mr Todd. In summary, the claimant's position was that the overtime which he had claimed was worked (although he admitted to claiming ghost overtime and confirmed he claimed overtime if he started work early, even if he finished early). The position of Mr Todd and Mr Carver was that only the pre-authorised overtime had been worked and the remainder of the overtime claimed had not.
163. I have found that the respondent conducted security interviews, reviewed a cross-section of documentary evidence relating to the claimant's overtime claims in the financial years in question, and conducted a fact-finding meeting with the claimant prior to the formal conduct interview. It was not necessary for information and documents to be provided to the claimant in advance of the fact-finding meeting, although in fact the security interview minutes were provided in advance.
164. The claimant attended a formal conduct interview to discuss the allegations of fraudulent overtime payments and dishonesty. He had previously participated in the security interview and fact-finding interview. He had been sent Mr Taylor's questions and evidence in advance. He was therefore aware of the nature and basis of the allegations and able to prepare a detailed response even though the allegations had not been described specifically by the respondent in the letter inviting him to the conduct interview. Following the conduct meeting, Mr Taylor conducted interviews with Mr Todd and Mr Carver by telephone. The claimant was then given an



opportunity to comment on those interviews, which he did. The claimant submitted detailed statements and evidence bundles relating to the allegations and the basis for them which, I have found, were considered by Mr Taylor in reaching his decision.

165. As part of the appeal, Mr Hulme reviewed the claimant's extensive appeal bundle which included all of the documentation submitted at the fact-finding and formal conduct stages as well as the claimant's initial appeal and his appeal submission. Before making his decision, Mr Hulme conducted interviews with Mr Taylor, Mr Walton, Mr Todd and Mr Carver by telephone. Mr Hulme did not ask the claimant to respond to those interviews but I conclude that this was a reasonable approach to take as the claimant had already commented on the subject matter discussed in those interviews. The interviews did not therefore amount to new evidence which, under the Conduct Agreement, needed to be put to the claimant. Mr Hulme also considered all procedural issues raised by the claimant.
166. Although Mr Kidman did not interview Mr Todd or Mr Carver at the fact-finding stage and did not produce an investigation report, the potential serious nature of the allegations were such that he would have passed the case to Mr Taylor to decide whether to bring disciplinary allegations against the claimant in any event. The claimant was not therefore deprived of the possibility of the matter not being pursued beyond the fact-finding stage as he submitted. I conclude that Mr Taylor reasonably decided that there was sufficient evidence on which to commence disciplinary proceedings and, as part of those proceedings, Mr Taylor interviewed those individuals himself.
167. The claimant submits that, in an email on the eve of the formal conduct interview, Mr Taylor advised him to prepare a statement in advance of that meeting (414); however, as he did not have any details of the security report (this is a reference to the missing page 294) or any details of the conduct allegations, the claimant submits that he could not answer the questions fully when preparing his statement. I have found that Mr Taylor made this suggestion on 15 April, six days before the conduct interview. I have made findings and reached conclusions elsewhere in this section on the claimant's understanding of and ability to respond to the allegations and evidence against him generally. As to the missing page, I have found that the claimant had received the missing page 294 previously and conclude that he was able to use the document previously received in order to prepare fully.
168. The claimant was interviewed by Mr Taylor before he interviewed Mr Carver and Mr Todd. The claimant claims that this meant that he was not aware of the case or the evidence against him at the conduct interview, and this had a detrimental impact on his ability to defend himself at the conduct interview. Although the specific allegations were not described to him in detail in the letter inviting him to the conduct interview, the claimant was aware of the substance of the allegations and evidence against him; that being, in relation to being paid for 706 hours' overtime in FY 2019/2020 and FY 2020/2021 which had not been pre-authorised (and needed to be) and had not been worked, along with retrospectively amending p552s to correct discrepancies in relation to his own overtime when he suspected an audit. He understood that his conduct was considered to be potentially fraudulent and dishonest. That is evident from the content of the meetings, the questions and evidence provided to him in advance and his own detailed submissions

and representations during the internal process. Mr Taylor allowed the claimant to comment on his notes of his interviews with Mr Todd and Mr Carver before reaching his decision. As such, the claimant was able to (and did) comment on the evidence before the decision to dismiss him. He had a further opportunity to comment on the evidence before him as part of the appeal.

169. Towards the end of the claimant's cross-examination, he said that the respondent did not review CCTV footage, computer log-in records or sign in sheets for all of the periods in question. However, this matter was not put to the respondent's witnesses in cross-examination. In reaching a conclusion on this issue, I note that the claimant is a well-organised individual who expressed himself fully in every other respect. He raised these points at a very late stage when it was not possible to scrutinise the points with the respondent's witnesses. I therefore attach limited weight to this point in my conclusions. However, it is clear from the conclusions of Mr Taylor and Mr Hulme that they believed there were occasions when overtime was paid in advance of the hours actually being worked or carried forward to be paid at a later date. As such, even if they had investigated these matters, it would have been impossible to track exactly which hours the claimant had actually worked and match it to specific overtime claims. Further, the sign in sheets which were before me were completed by the claimant with a start time of 06:00 but no finish time was included. There was no evidence as to the extent of CCTV footage or computer records or whether any such records still existed at the time. What the respondent had was evidence from the claimant's managers who worked closely with the claimant. Their evidence was inconsistent but indicated that, whilst the claimant might have started work early, he generally left work by around 13:00 each day (if not earlier). In those circumstances, if he had started work at 06:00, he would not have worked more than his contracted daily hours of 7:36. The claimant had, in conceding that he had claimed ghost overtime, in essence accepted that he had not worked additional hours – rather, he had started early and left early, and claimed overtime for the early start. Mr Taylor and Mr Hulme concluded that 'ghost overtime' had not been authorised. For there to be a reasonable investigation, it was not therefore necessary to ascertain the claimant's precise working hours.

170. Although it was identified that the documents relating to week 37 of the FY 2019/2020 discussed at the conduct interview were incomplete, Mr Taylor did not obtain a full copy and nor did Mr Hulme. However, the claimant had admitted to adding his overtime and amending most of the totals for that week after the P552 had been authorised by a manager. The issue was not simply whether the claimant's overtime was on a P552 sheet; in view of the claimant's admissions, the key issues at the dismissal and appeal stages were whether the claimant's overtime had been pre-authorised and post-authorised by a manager and whether it needed to be, and whether he had worked all of the overtime he had claimed. Whether or not there were additional overtime entries for that week does not affect that admission.

171. Further, the claimant's admission to retrospectively altering documents meant that it was not possible to ascertain whether overtime records were original or had been amended. The claimant alleges that his PSP screenshots recording all overtime he had claimed each week, which he attached to the back of the P552 overtime sheets, were evidence that a full

record of his overtime claims was being kept and this was not appropriately taken into account by the respondent. I do not accept this. I have found that Mr Taylor correctly understood the position between the sheets being altered and the sheets added to the back of the P552s, and I conclude that his conclusions were not therefore made on a “false premise” as the claimant submits. Further, in line with my conclusion above, it was not necessary for Mr Taylor or Mr Hulme to ascertain whether the claimant had in fact attached a record of his overtime claims to the other P552 sheets.

172. Ms Evans was not interviewed as part of the investigation but she had provided a statement. Mr Taylor accepted that Ms Evans had entered the claimant’s overtime between April and June 2019 but he did not believe that she had entered overtime for the claimant which he had not worked and he did not dispute her evidence. Although the claimant submits that Mr Todd and Mr Carver had not agreed with her statement and she should therefore have been interviewed, their evidence is aligned when the context is properly understood (as to the difference between pre-authorisation and post-authorisation). The background as to the claimant’s absorption of additional duties in June 2019 could have been clarified with Ms Evans but did not go to the issue of whether the claimant’s overtime claims for taking on those additional duties needed pre-authorisation. I conclude that it was reasonable not to interview Ms Evans in the circumstances.

173. It was also not necessary to interview the claimant’s line manager, Mr Joshua Timothy, as the claimant had confirmed that Mr Timothy did not know about his overtime. It was not necessary to interview Mr Lee or Mr O’Neil as the points which the claimant raised about the accuracy of the minutes were considered and the claimant’s proposed amendments were retained with the respondent’s version of the minutes.

174. The claimant submits that the only specific overtime claim which he, Mr Todd and Mr Carver were asked about during the internal process (a worked day off on 15 June 2020) was accepted as having been authorised. At the hearing, Mr Todd accepted under cross-examination that he had authorised the only other specific overtime claim he was asked about (another worked day off on 19/11/2019). The claimant submits that he should therefore have been given the opportunity to explain the origin of the remainder of his overtime payments. Taking into account my findings and earlier conclusions, I conclude that it was not reasonable to expect Mr Taylor and Mr Hulme to examine every overtime entry with the claimant and the other witnesses in view of the volume of claims and the claimant’s admissions. It was reasonable to consider a cross-section with them, which they did. Also, as the claimant’s position was that overtime was not necessarily claimed on the day it related to, it would have been impossible to track each entry. There was an acceptance on the part of Mr Todd and Mr Carver that the claimant had pre-authorisation to work particular days off and the specific questions highlighted above were specific examples of that. The claimant had several opportunities to explain the origin of the remainder of his overtime claims and he did so extensively. His explanation was considered by Mr Taylor and Mr Hulme in reaching their decisions and was not accepted.

175. The claimant’s position is that the investigation was prejudiced by the delay in conducting interviews. It is correct that, on occasion, the witnesses could not recall the specific dates they were asked about and this is

understandable given the passage of time. It would have been possible to conduct the interviews more swiftly and to focus on more recent examples of overtime claims; it was not clear why the respondent chose to focus on overtime claims from late 2019. However, a significant part of the delay resulted from the claimant being unwell. I conclude that, whilst not ideal, the pace and the focus of the investigation was reasonable in the circumstances.

176. The claimant submits that the respondent did not consider the possible reasons that he had given for Mr Todd and Mr Carver reporting concerns to security. In light of my findings, I conclude that these matters were considered by both Mr Taylor and Mr Hulme and they concluded that the evidence of Mr Todd and Mr Carver was to be preferred.

177. Although the respondent did not carry out all of the investigations which the claimant sought, I am satisfied that the scope of the respondent's investigation was reasonable in the circumstances.

178. I conclude that the respondent did carry out a reasonable investigation in the circumstances.

***Did the respondent have reasonable grounds for its belief?***

179. I bear in mind the seriousness of the allegation against the claimant. In a case where there is a suggestion of attempted fraud on the employer, any employer, acting reasonably, would look for cogent evidence before acting on genuinely held suspicions.

180. Taking into account my conclusions above, I also conclude that the respondent had reasonable grounds for its belief. By the time of his dismissal, the claimant had admitted to paying himself the overtime in question, not obtaining specific pre-authorisation to each period of overtime claimed, claiming ghost overtime, entering and authorising his claim after the P552 had been authorised by a manager, and to altering P552s to correct discrepancies in relation to his own overtime when he suspected an audit.

181. The respondent accepted that overtime was pre-paid and paid belatedly, that annual leave was worked at times, that the claimant was responsible for the PSP and RCS and was asked by managers to add, amend and delete claims, and that ghost overtime was paid to employees on occasion. However, much of the claimant's evidence bundles related to general practices and other employees. Whether the respondent had reasonable grounds for his dismissal boiled down to whether or not (in view of the duties he was carrying out and the discussions and emails between him and his managers) the claimant needed managerial pre-authorisation to each specific period of overtime he claimed, and if so whether he understood that and obtained it. Whether he worked the overtime he claimed was also an issue. In view of my conclusions above, I conclude that the respondent had reasonable grounds for believing that the claimant had done the things he was dismissed for and the things for which his appeal was upheld. Both Mr Taylor and Mr Hulme accepted that there could be errors in the calculations but were satisfied that the claimant had claimed the majority of the overtime in question without the required pre-authorisation and that he had not worked.

182. The claimant understood the nature and basis of the allegations and had had several opportunities to put his side of the story. Mr Taylor and Mr Hulme weighed the evidence and upheld the allegations.

***Was the sanction of dismissal reasonable?***

183. I conclude that the sanction of dismissal was within the band of reasonable responses. These were allegations of fraud and dishonesty. It was within the band of reasonable responses to dismiss the claimant in view of the serious nature of the allegations which were upheld, having considered (as it did) the claimant's length of service, clean disciplinary record up to that point and possible alternatives to dismissal.

***Did the respondent follow a fair procedure?***

184. In assessing this aspect of fairness, I consider the respondent's submission that procedural issues do not sit "in a vacuum" and should be considered together with the reason for dismissal, in assessing whether, in all the circumstances, the employer acted reasonably in treating the reason as a sufficient reason for dismissal (*Sharkey v Lloyds Bank plc [2015] UKEAT/0005/15*). Whilst an unfair dismissal case will often require a tribunal to consider what are referred to as 'substantive' and 'procedural' fairness it is important to recognise that the tribunal is not answering whether there has been 'substantive' or 'procedural' fairness as separate questions.

185. I have found that the claimant was told, in the letter inviting him to the conduct interview, that he was to face allegations of fraudulent overtime payments and dishonesty and those were potentially gross misconduct. He was provided with evidence in advance of the interview. However, the letter did not set out a detailed description of the allegations he faced. This breached the respondent's Conduct Agreement and the ACAS Code of Practice on disciplinary and grievance procedures. Although I have concluded that the claimant understood the nature and basis of the allegations against him, such that he was able to provide extensive submissions to Mr Taylor relating to those allegations, it is not for an employer to assume that the employee understands the allegations he faces. The question here is not whether providing a further explanation would have made a difference or whether the employee was prejudiced by the failure. A reasonable employer would have provided a specific explanation of the allegations to help the claimant to understand the case he was facing and prepare his response accordingly.

186. However, the appeal was conducted as a re-hearing and in a thorough manner by Mr Hulme who reviewed all of the evidence, including the claimant's appeal submission, and conducted further interviews. By the time of the appeal, the claimant had received the detail of the reasons for his dismissal from Mr Taylor. The respondent had therefore, by then, clarified specifically the case against the claimant and the claimant was able to prepare his appeal fully. In light of this, and my earlier conclusions as to the claimant's understanding of the allegations against him and his ability to participate in the otherwise thorough process, I conclude that the appeal was sufficient to cure the deficiency of the earlier stage of the process. In reaching this conclusion, I also take into account my earlier conclusion that

the decisions reached by Mr Taylor and Mr Hulme were reached on the same basis.

187. Both Mr Taylor and Mr Hulme were independent, and that independence was not compromised by Mr Hulme interviewing Mr Walton, a senior colleague, as part of his investigation.
188. I will deal with the other key submissions which were raised by the parties below. I have found that the claimant's grievance at the fact-finding stage related to the information which should have been passed to those involved under the Conduct Agreement. Those were issues which the claimant also raised as part of the disciplinary process and Mr Taylor considered that an appropriate procedure had been followed in relation to that issue. I conclude that it was appropriate for the grievance to be dealt with as part of the disciplinary process. Mr Hulme also considered all procedural issues raised by the claimant.
189. I conclude that Mr Taylor's approach to the documentation at the conduct interview was within the band of reasonable responses. Page 294 was missing but the claimant already had a copy and he had not raised the issue in advance. Despite the recommendation from occupational health, it was reasonable in those circumstances to offer to give the claimant time to read it. Although the claimant subsequently raised a grievance that this amounted to bullying and harassment on Mr Taylor's part, I conclude that Mr Hulme dealt with this in a reasonable way as part of the appeal.
190. The claimant submitted that the support which the respondent provided to him in relation to his mental ill-health also rendered the dismissal procedurally unfair. It was not ideal that the claimant had little contact with the respondent in the early stages of his absence. However, he did benefit from occupational health assessments and managerial contact was then put in place. He was only given two days in which to prepare his conduct interview response but he could have asked for more time and, had he done so, this would have been granted. The claimant made several requests during the process and I conclude that, had he needed more time, he would have asked for it.
191. Also, the appeal was conducted in writing. The claimant submits that he should have been offered a face-to-face meeting, particularly in light of his medical condition and the occupational health report. However, in light of the COVID-19 situation and the claimant's chosen option to proceed in writing, along with his extensive appeal submission, I conclude that Mr Hulme acted reasonably. Had the claimant wanted a meeting in person, he could have asked for a meeting in person and Mr Hulme would have considered that request and whether any additional support was needed. Alternatively, the claimant could have chosen the option of having a video hearing which would have been the closest option to a face to face meeting. Considering the claimant's mental ill-health at the time, I conclude that the approach taken to the fact-finding meeting, the conduct interview stage and the appeal stage was within the band of reasonable responses. The occupational health advice (with which the claimant agreed) was to resolve the process swiftly and so it was reasonable to seek to progress it. The claimant was able to participate in a detailed and thorough way at each stage of the procedure. I conclude that the respondent's approach and support in relation to his mental

ill-health could have been greater but was not sufficient to render the procedure unfair.

192. As to the claimant's allegations that particular pages of documents were intentionally omitted at different stages of the procedure, I have found that was not the case. In any event, those documents were put before individuals and considered at all relevant stages, I conclude that the omission of documents was dealt with in a reasonable way and not in a way which was unethical, prejudiced or unfair as the claimant submits.

193. I conclude that the procedure followed by the respondent was within the band of reasonable responses. Any flaws were minor in nature or were rectified by the appeal, and were not sufficient to render the procedure outside of the band of reasonable responses.

***Conclusion***

194. The respondent dismissed the claimant for a potentially fair reason relating to his conduct. Applying section 98(4), in all the circumstances of the case, the respondent acted reasonably in treating that conduct as a sufficient reason to dismiss the claimant. The claimant was not unfairly dismissed.

Employment Judge Robertson

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Date 8 December 2022