

## No Such Thing as a Free Lunch...?

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A large US Bank with operations in the UK (Bank) recently won a widely discussed case in the UK's Employment Tribunal after a senior analyst (Employee) sued the Bank for unfairly dismissing him over an expense form relating to "two sandwiches, two coffees, and another drink".

The Employee had worked at the Bank for seven years. He went on a business trip to Amsterdam, accompanied by his partner, where he ordered and later filed an expense claim for the aforementioned light lunch (as well as some inexpensive pasta meals).

When he was challenged over the expenses, the Employee confirmed that he alone had consumed the lunch, explaining, "On that day I skipped breakfast and only had one coffee in the morning. For lunch I had one sandwich with a drink and one coffee in the restaurant and took another coffee back to the office with me and had the second sandwich in the afternoon ... which also served as my dinner". After further queries about the expenses from the business, the Employee confirmed that, "All my expenses are within the €100 daily allowance. Could you please outline what your concern is as I don't think I have to justify my eating habits to this extent".

The Employee later confirmed that some of the food had, in fact, actually been consumed by his partner, who was visiting Amsterdam with him. After an internal investigation by the Bank, it was determined that the Employee had breached the Bank's expense management policy and ethics policy, and had intentionally lied during an internal investigation. Consequently, he was dismissed for gross misconduct.

The Employee (who, ironically, specialised in financial crime matters) argued that this was unfair: he had been on sick leave and claimed he was on medication when replying to emails about his expenses claim. He said that he also was grieving the loss of a family member.

Given the *de minimis* cost to the employer, was it really reasonable or proportionate to fire the Employee with immediate effect? To that question, the employment judge was clear: "This case is not about the sums of money involved. This case is about the filing of the expense claim and the conduct of the claimant thereafter". The Bank was vindicated.

The UK's Financial Conduct Authority (FCA) is yet to comment on this case, but it serves as a stark reminder of the concepts underpinning the FCA's standards of 'fitness and propriety'. Through the Senior Managers and Certification Regime (SMCR), the FCA requires regulated financial services firms to certify that their senior managers and certified employees are 'fit and proper' for their roles at the outset of their employment and on a rolling basis thereafter. The FCA's "FIT" section of the handbook outlines three pillars which encompass this concept: (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness.

Clearly, intentional deceit by an Employee falls foul of the FCA standards of honesty and integrity, but with an otherwise clean record and extenuating circumstances, does this arguable momentary lapse of judgment justify dismissal for gross misconduct and the subsequent negative FCA reference, which ultimately could be career-ending?

What is meant by 'fit and proper' often involves a degree of subjectivity on the part of the employer — especially in the context of tricky, real-life issues. However, in our view, we suggest that in the view of the senior managers at most FCA regulated firms, lying to management of your FCA-regulated employer as part of an internal investigation is almost certain to put you on the wrong side of the line.

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## CONTACTS

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