

## EMPLOYMENT

# WRC Considers fairness of dismissal of employee subject to Central Bank's Fitness and Probity Standards

3 June 2020

*Permanent TSB v Christopher Callan* was a rare example of a dismissal case relating to fitness and probity in the regulated financial sector and was the focus of a briefing earlier this year and available [here](#). In this briefing, we focus on yet another case of this nature which will be of interest to employers in the financial sector - *A Bank Official v A Bank ADJ-00015710*.



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## BACKGROUND

The complainant was a Customer Services Advisor which was deemed to be a **"Control Function"** under the Central Bank of Ireland Reform Act 2010. As such, she was subject to the Fitness and Probity Standards set out by the Central Bank. She had nearly 18 years' service at the date of her dismissal.

The facts of the incident that led to her dismissal were as follows. An elderly customer attended a branch of the Bank and requested that a savings account be set up that would pay him interest on a monthly basis. The complainant set up a different account in error and sent the relevant documents to the Bank's administration centre. On realising her error, and without making either the customer or the Bank aware of it, the complainant sought to remedy the matter by issuing a change of request to the Bank's administration centre. As a result the customer's file was reviewed, discrepancies were noticed and an investigation into the matter commenced. The outcome of the investigation was that the complainant had fraudulently altered a customer transaction document, thereby breaching Bank procedures and fitness and probity standards.

Following the investigation, the complainant was required to attend a disciplinary hearing and was subsequently dismissed on the grounds of gross misconduct. In the dismissal letter, the Bank outlined the extremely serious

consequence of altering a customer transaction document. The Bank noted that the document that had been fraudulently altered by the complainant had a statutory basis and the Bank had adopted specific procedures regarding the processing of such documents which employees were required to follow. It also noted the complainant, in occupying a controlled function, was subject to fitness and probity standards which require such persons to be honest, ethical and to act with integrity. The Bank found that the complainant's ability to comply with these standards were **"fundamentally undermined"** by her actions. While the Bank acknowledged that the complainant's actions did not result in any financial gain for her or financial loss to the Bank or the customer, it did not consider this relevant to its deliberations stating that **"The alteration of a transaction document is an extremely serious matter which could potentially expose the Bank to reputational damage and undermine its relationship with its customers, which it works extremely hard to maintain and protect. Additionally, it fundamentally undermines the trust and confidence the Bank can have in any staff member who engages in this conduct. Given the nature and gravity of your actions, we have no alternative but to find that your actions amount to gross misconduct."**

In considering whether any sanctions other than dismissal might have been appropriate, the Bank considered the

complainant's length of service and employment history. However, given the gravity of the conduct and the fact that the complainant occupied a controlled function, the Bank concluded that dismissal was the appropriate sanction.

The complainant appealed her dismissal and at the same time alleged she was subject to "**inappropriate and unwelcome behaviour**" by her line manager one of the two people who had carried out the investigation. As a result, her appeal of her dismissal was paused while an independent third party investigated her allegations against her line manager. These allegations were not upheld. The complainant insisted at all times that she did not forge the customer's signature. However, her appeal was not upheld by the Bank.

### DECISION OF THE ADJUDICATION OFFICER

The Adjudication Officer said that the questions it had to consider was whether the Bank had "**acted as a reasonable employer would have acted in similar circumstances**" and whether in so doing, it had followed fair and appropriate procedures (including the Bank's own procedures).

The Adjudication Officer found that the Bank had followed its own procedures and had investigated the matter fully. It had also investigated the complaints made by the complainant against her line manager.

The Adjudication Officer said it was necessary to achieve a level of understanding of the "**magnitude of the alleged offence**" and in so doing he referenced the Bank's reasons for dismissing the complainant as set out in the dismissal letter. The Adjudication Officer then considered the appeal process and complimented the thorough and comprehensive appeal process conducted by the appeal decision maker.

The Adjudication Officer, in finding that the complaint was not well-founded and therefore failed, held that he had no alternative but to accept that the decision to dismiss was one that was made by a reasonable employer who had fully investigated the facts and on the balance of probability took the decision to dismiss the complainant.

### ASSESSMENT

This case is yet another rare example of a dismissal case relating to fitness and

probity in the regulated financial sector.

Similar to **Permanent TSB v Christopher Callan**, this case:

1. illustrates that an Adjudication Officer will not substitute his/her own judgment where the decision to dismiss is within the range of reasonable responses available to an employer;
2. illustrates that the length of service and record of an employee, which are regularly used by employees as a defence to their actions, may come against an employee who occupies a regulated role and is fully aware of the repercussions of his/her actions;
3. illustrates that the fact that an employee did not gain financially, or that the employer or a customer did not suffer financially, from an employee's action will not immunise an employee from the possibility of dismissal; and
4. supports the view that it is reasonable for employers in the regulated financial sector to dismiss employees occupying controlled functions for breach of fitness and probity standards where that breach has led to a fundamental breakdown of its trust and confidence in them.