

Justice Deferred: Examining Procedural Fairness in the UK Hospitality Sector in Disciplinary and Grievance Proceedings

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Abstract

This article examines whether procedural fairness requirements in UK disciplinary and grievance procedures effectively protect workers in the hospitality sector. Drawing on doctrinal analysis of employment legislation, case law and academic literature, alongside socio-legal evidence from tribunal decisions and industry research, it demonstrates a significant gap between legal doctrine and workplace practice. While the UK legal framework formally establishes robust procedural safeguards through statutes such as the Employment Rights Act 1996 and the ACAS Code of Practice, structural characteristics of the hospitality industry (including high labour turnover, precarious employment arrangements and weak collective representation) frequently undermine the practical operation of these protections. The article argues that procedural fairness in hospitality remains largely aspirational rather than operational. It concludes that reforms to unfair dismissal law, particularly the removal of the two-year qualifying period, alongside potential judicial recognition of an implied contractual duty of procedural fairness, could significantly strengthen worker protections within the sector.

Keywords: Procedural fairness, unfair dismissal, disciplinary procedures, grievance procedures, UK employment law.

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Introduction

Procedural fairness is a central tenet of UK employment law, concerning principles of “fair dealing” and natural justice between employers and employees. These principles are most

significant with regard to the hospitality sector – an industry known for its high turnover rates, informal workplace cultures and susceptibility to worker exploitation.¹

This article examines how effectively procedural fairness requirements in disciplinary and grievance proceedings govern the UK hospitality industry. Adopting a doctrinal and socio-legal approach, it analyses legislation, case law, and academic literature to expose the disparity between legal doctrine and lived reality. Hospitality Tribunal cases are used throughout to test legal principles against sector practice.

To conclude, the evidence presented confirms that procedural fairness in the UK hospitality sector is largely aspirational rather than operational. The gap between robust principles of employment law and the informal, power-laden realities of the workplace means that legal rights are frequently sidestepped with impunity.

The proposed legislative removal of the two-year qualifying period for unfair dismissal claims is a welcome reform², as it would directly impact both grievance and disciplinary procedures. The current two-year ‘free pass’ of sorts would be removed for disciplinary procedures, and employers would be required to embed procedural fairness from day one. For grievance procedures, it would provide crucial protection against retaliatory dismissal, emboldening employees to voice concerns without fear of resulting detriment.

However, this reform alone may not be sufficient. The judicial stance on an implied contractual term of procedural fairness is shown through the case of *Burn v Alder Hey Children’s NHS Trust*³. Such a term could provide a legal foundation for fairness that is not dependent on length of service, thereby empowering all workers and closing the gap between legal promise and workplace reality – allowing employees to challenge flawed disciplinary action, such as an unfair written warning, as a breach of contract even without dismissal. It would also allow a procedurally flawed grievance investigation to be a standalone contractual breach, thereby giving workers a remedy for procedural injustice itself. This would ensure that fairness is a contractual right for all, rather than a mere statutory privilege for some.

Doctrinal Framework: Legal Standards of Procedural Fairness

Disciplinary and grievance procedures are primarily governed by both statute and soft law codes of practice, evolving from common law concepts. It begins with the following: the statutory right not to be unfairly dismissed (Part X of the Employment Rights Act).⁴ Under the Employment

¹ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

² UK Government, *Employment Rights Bill: Economic Analysis* (2024)

³ *Burn v Alder Hey Children’s NHS Trust* [2021] EWCA Civ 1791

⁴ Employment Rights Act 1996 c. 18, Part X

Rights Act, an employee with the required continuous service of two years⁵ can bring a claim for unfair dismissal⁶ (it should, however, be noted that this does not apply to cases of automatic unfair dismissal or wrongful dismissal).⁷ It should be further noted that future reforms intend to remove this qualifying period.⁸ Tribunals consider both the substantive reason and the procedure adopted when determining whether somebody has been unfairly dismissed⁹; for instance, due to a disciplinary or grievance procedure. As per section 98 of the Employment Rights Act¹⁰, even if an employer proves a potentially fair reason for dismissal (e.g. redundancy, capability, misconduct), the fairness of the process is of vital importance to Tribunals, as it:

“Depends on whether in the circumstances...the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.”

Employers must therefore follow fair dismissal procedures. The Tribunal is likely to consider whether the employee was informed of the allegations (for instance, in disciplinary proceedings), was offered an opportunity to respond, whether evidence was adequately investigated, and whether a right of appeal was offered.¹¹ Over time a “range of reasonable responses” standard has developed: a dismissal is fair if the employer’s decision and process fall within the range of responses a reasonable employer might have adopted.¹² Tribunals will not question minor procedural defects if the overall process was within the band of reasonable responses.¹³ On the other hand, shocking procedural failures will usually result in a dismissal being deemed unfair. For instance, denying an employee any chance to explain the allegations against them in a disciplinary hearing or failing to investigate a serious grievance (which can lead to a constructive dismissal claim) would probably result in an unfair dismissal.¹⁴

⁵ Employment Rights Act 1996 c. 18, s. 108

⁶ Employment Rights Act 1996 c. 18, s. 94

⁷ ACAS, ‘Dismissals: Unfair dismissal’, <<https://www.acas.org.uk/dismissals/unfair-dismissal>> accessed 15 July 2025

⁸ UK Parliament, *Employment Rights Bill* <<https://bills.parliament.uk/bills/3737>> accessed 15 July 2025

⁹ Douglas Brodie, ‘Disavowing an Implied Term of Fairness’ (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 157-172

¹⁰ Employment Rights Act 1996 c. 18, s. 98

¹¹ Philippa M Collins, ‘Finding Fault in the Law of Unfair Dismissal: The Insubstantiality of Reasons for Dismissal’ (2022), *Industrial Law Journal*, Vol. 51, Iss. 3, pp. 598-625

¹² Aaron Baker, ‘The ‘Range of Reasonable Responses’ Test: A Poor Substitution for the Statutory Language’ (2020), *Industrial Law Journal*, Vol. 50, Iss. 2, pp. 226-263

¹³ Philippa M Collins, ‘Finding Fault in the Law of Unfair Dismissal: The Insufficiency of Reasons for Dismissal’ (2022), *Industrial Law Journal*, Vol. 51, Iss. 3, pp. 598-625

¹⁴ Hugh Collins, ‘Unfair Dismissal: Procedural Fairness after Polkey’ (1990), *Industrial Law Journal*, Vol. 19, Iss. 1, pp. 39-43

The ACAS Code of Practice on Disciplinary and Grievance Procedures (the “ACAS Code”)¹⁵ is an important source with regard to procedural standards.¹⁶ This statutory code (as per section 199 of the Trade Union and Labour Relations (Consolidation) Act)¹⁷ provides minimum standards that employers should follow to ensure that any disciplinary or grievance procedures are handled both fairly and reasonably.

The ACAS Code sets out key steps including written notification of allegations, a meeting to discuss the issue, the right for an employee to state their case with a companion, and a right of appeal.¹⁸ The Code also deals with grievance procedures and encourages employers to have a formal procedure for raising and dealing with grievances promptly and fairly. The ACAS Code is not legislation, but employment Tribunals must consider it when determining whether an employer acted in a procedurally fair manner (as per section 207(A) of the Trade Union and Labour Relations (Consolidation) Act).¹⁹ An employer who fails to follow the Code will not automatically be held liable, but Tribunals can increase compensation by up to 25% for unfair dismissal if the employer fails to reasonably follow the provisions of the Code.²⁰ This means that the ACAS Code sets up certain baselines for procedural fairness – for instance, if somebody is dismissed with no meeting and no warning, this will almost certainly breach the Code and be deemed unfair (unless the circumstances are truly exceptional). ACAS’s guidance emphasises that employers must follow a “full and fair procedure.”²¹²²

There are many statutory rights which support procedural fairness. As per section 10 of the Employment Relations Act, every worker (not merely employees) has the right to be accompanied by a trade union representative or colleague to any formal disciplinary or grievance

¹⁵ ACAS, ‘Code of Practice 1: Code of Practice on disciplinary and grievance procedures’ <<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures/html>> (published 11 March 2015) accessed 13 July 2025

¹⁶ Philippa Collins and Gabrielle Golding, ‘An Implied Term of Procedural Fairness During Disciplinary Processes: Into Contracts of Employment and Beyond?’ (2023), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 125-156

¹⁷ Trade Union and Labour Relations (Consolidation) Act 1992 c. 52, s. 199

¹⁸ ACAS, ‘Code of Practice 1: Code of Practice on disciplinary and grievance procedures’ <<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures/html>> (published 11 March 2015) accessed 13 July 2025

¹⁹ Trade Union and Labour Relations (Consolidation) Act 1992 c. 52, s. 207A

²⁰ Thomson Reuters: Practical Law, ‘When can breach of a relevant code of practice affect compensation?’ <[https://uk.practicallaw.thomsonreuters.com/8-385-3040?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/8-385-3040?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 21 July 2025

²¹ ACAS, ‘Code of Practice 1: Code of Practice on disciplinary and grievance procedures’ <<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures/html>> (published 11 March 2015) accessed 13 July 2025

²² Deborah Hann, Paul Latreille, David Nash and Richard Saundry, ‘Custodians of contemporary pluralism? Acas’ evolving role in addressing conflict during a time of economic and regulatory flux’ (2023), *Industrial Relations Journal*, Vol. 54, Iss. 4-5, pp. 321-340

hearing.²³ This means that workers have support and the option of representation in what can be an intimidating process, and an employer's refusal to allow a companion can itself be the basis of a Tribunal claim. Also, a worker who is disciplined or dismissed for exercising a legal right (including the right to accompaniment or to raise a grievance) is protected against victimisation. A worker would automatically have an unfair dismissal claim if they were dismissed or subjected to a detriment for making a grievance pertaining to discrimination or for whistleblowing. Such is unlawful under the Equality Act²⁴ as well as the Public Interest Disclosure Act.²⁵

The Equality Act expressly prohibits victimisation, which is when a worker is treated badly because they have committed a "protected act" – such as complaining of discrimination or giving evidence in somebody else's grievance.²⁶ In the hospitality sector, this may arise if an employee raises a grievance about the racial harassment by a manager, after which they are disciplined on a pretext. This would be in breach of both the Equality Act²⁷ and unfair dismissal protections.²⁸ An employer may also be liable if the disciplinary process itself is tainted by discrimination. An example of this would be where a manager imposes a more serious punishment on a BAME employee for the same conduct that others commit, does not treat the concerns of a BAME employee seriously or fails to make reasonable adjustments in a hearing for a disabled worker. This was starkly illustrated in the case of *Sylvester v Notley Abbey Ltd and J Holmes*²⁹, where a mixed-race receptionist succeeded in claims of direct race discrimination, harassment and victimisation. The Tribunal was heavily critical of the employer's "sham" grievance investigation and their failure to take concerns seriously – finding that the grievance manager approached matters with a closed mind. Whilst the company had written policy on equality and harassment, their inadequate implementation resulted in a constructive dismissal finding. This case highlights how discriminatory cultures and flawed grievance procedures can interlace, thus violating both the Equality Act³⁰ and implied duties of trust and confidence.^{31,32} In this way, procedural fairness is not only reasonableness under general employment law, but also interlinked with equality law obligations to ensure processes are applied in a non-discriminatory manner.

²³ Employment Relations Act 1999 c. 26, s. 10

²⁴ Equality Act 2010 c. 15, s. 27

²⁵ Public Interest Disclosure Act 1998 c. 23

²⁶ Equality Act 2010 c. 15, s. 27

²⁷ Equality Act 2010 c. 15

²⁸ ACAS, 'Dismissals: Unfair dismissal', <<https://www.acas.org.uk/dismissals/unfair-dismissal>> accessed 15 July 2025

²⁹ *G Sylvester v Notley Abbey Ltd and J Holmes*: 3308236/2023

³⁰ Equality Act 2010 c. 15

³¹ ACAS, 'Implied duties: What implied duties are' <<https://www.acas.org.uk/implied-duties>> accessed 19 August 2025

³² Suzanne Nulty, "Not dark enough to be offended" – Hotel Receptionist wins Tribunal claim', *Weightmans* <<https://www.weightmans.com/media-centre/news/not-dark-enough-to-be-offended-hotel-receptionist-wins-tribunal-claim/>> (published 20 January 2025) accessed 13 August 2025

It should also be noted that numerous contracts and employee handbooks stipulate disciplinary and grievance procedures and protocols, and employers frequently make these non-contractual to mitigate further legal risks. It is not unusual for written policy to say “the following procedures do not form part of your contract of employment.”³³ This means that an employee may not be able to sue for breach of contract mainly because the precise steps in the handbook were not followed. Instead, a claim for statutory unfair dismissal is the primary remedy for a procedural unfair dismissal (or, if sufficiently serious so as to destroy trust and confidence, the employee resigns and claims constructive dismissal). One implied term that is particularly significant relates to grievances. It was held in various Tribunal cases that, even in the absence of a specific clause, there is an implied term that employers will deal with employee grievances promptly and reasonably. In the case of *Goold WA (Pearmark) Ltd v McConnell*³⁴, the Employment Appeal Tribunal held that “there is a fundamental implied term in the contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance.” In other words, a failure to consider an employee’s formal grievance can amount to breach of contract (and a breach of the duty of mutual trust and confidence).

Parallels can be drawn between the above case and that of *Stefanko and others v Maritime Hotel Ltd and Mr N Doherty*³⁵ where the Tribunal found that the hotel’s disciplinary and grievance procedures were conducted in a superficial manner. As such, the Tribunal found in favour of the claimants and awarded a 25% uplift. This highlights the importance of having a fair process in place when disciplining employees, as well as when employee raise concerns. In the hospitality industry, when grievances may include complaints about a tip misallocation, bullying, or unsafe working conditions, the law requires that such complaints be taken seriously and addressed in good faith (however, this was not the case here).

Ultimately, common law has generally proven reluctant to imply wide procedural fairness obligations into employment contracts with respect to disciplinary matters, on the basis that unfair dismissals are meant to be dealt with by statute. The House of Lords case of *Johnson v Unisys Ltd*³⁶ established the “Johnson exclusion zone”, holding that an employee cannot recover common law damages in relation to the manner of the dismissal beyond the statutory scheme.³⁷ As a result, even if an employer did breach an implied term of trust and confidence in the way it dismissed an employee, losses suffered as a direct result of the dismissal (such as lost earnings) are not ordinarily recoverable in contract so as not to undermine the statutory unfair dismissal

³³ Beacon Country House Hotel Limited, *Employee Handbook* (Issue 1, March 2020)

³⁴ *Goold WA (Pearmark) Ltd v McConnell* [1995] IRLR 516, EAT

³⁵ *K Stefanko and others v Maritime Hotel Ltd (in Voluntary Liquidation) and Mr N Doherty*: 1401755/2016 and others

³⁶ *Johnson v Unisys Ltd* [2001] UKHL 13

³⁷ Hugh Collins, ‘Compensation for Dismissal: In Search of Principle’ (2012), *Industrial Law Journal*, Vol. 41, Iss. 2, pp. 208-227

regime. To date, disputes about an implied term requiring procedural fairness in disciplinary proceedings have been controversial. Nonetheless, as mentioned above (and as will be demonstrated later), recent case law (e.g. *Burn v Alder Hey NHS Foundation Trust*)³⁸ indicates a possible acceptance of such an implied term. This could result in significant impacts on workers (in particular, those who currently do not benefit from unfair dismissal protection due to lack of service or status – as is the case with many hospitality workers).³⁹

The case of *Augustine v London Britannia Hotel Ltd*⁴⁰ offers a crucial counterpoint to the prevailing narrative of procedural failure in the hospitality sector. Here, the hotel dismissed a guest service agent for gross misconduct following a disciplinary hearing. Augustine's unfair and wrongful dismissal claims were not upheld, and the Tribunal upheld the employer's process as fair. The Tribunal's decision suggests that the employer was able to demonstrate that its actions fell squarely within the "range of reasonable responses" test⁴¹, implying that the process consisted of a reasonable investigation being conducted, evidence being adequately considered, and Augustine being given a fair opportunity to respond (in line with the principles derived from *Burchell*).⁴²

As such, this case serves as a useful illustration that the statutory framework is not inherently broken; when hospitality employers adhere to formal procedures, the law tends to protect managerial decisions. However, the significance of this case lies in its rarity. When set against cases such as that of *Sylvester v Notley Abbey Ltd & J Holmes*⁴³ (where grievance investigations were found to be a "sham") and *Williams v The Westbury Hotel Ltd*⁴⁴ (where the disciplinary process was "superficial"), *Augustine v London Britannia Hotel Ltd* showcases that the issue is not a deficiency in legal doctrine, but a widespread and systemic failure of implementation within the sector's prevailing informal culture. It demonstrates that while the path to procedural fairness exists in law, it is a path infrequently taken by many employers in the industry. This case also clearly illustrates the boundary of the "Johnson exclusion zone", thereby confirming that challenges to the manner of dismissal are strictly confined to the statutory unfair dismissal scheme.⁴⁵

³⁸ *Burn v Alder Hey Children's NHS Trust* [2021] EWCA Civ 1791

³⁹ Carla M Forster and Carolina Lopez de Llergo Perez, 'Evolution of Implied Terms in the Contract of Employment' (2024), Bristol Institute for Learning and Teaching Student Research Journal, Iss. 5

⁴⁰ *W Augustine v London Britannia Hotel Ltd*: 2207972/2016

⁴¹ Aaron Baker, 'The 'Range of Reasonable Responses' Test: A Poor Substitution for the Statutory Language' (2020), Industrial Law Journal, Vol. 50, Iss. 2, pp. 226-263

⁴² *British Home Stores Ltd v Burchell* [1978] IRLR 379, EAT

⁴³ *G Sylvester v Notley Abbey Ltd and J Holmes*: 3308236/2023

⁴⁴ *A Williams v The Westbury Hotel Ltd*: 2200385/2020

⁴⁵ Philippa M Collins, 'Finding Fault in the Law of Unfair Dismissal: The Insubstantiality of Reasons for Dismissal' (2022), Industrial Law Journal, Vol. 51, Iss. 3, pp. 598-625

Literature Review: Academic Perspectives on Procedural Fairness in Hospitality

A substantial body of literature considers both the legal doctrine of procedural fairness as well as its applications in sectors such as hospitality. This review will look at some important issues raised in the literature, including implied contractual equity, unfair dismissal, and empirical studies on hospitality workplace practices. It also combines insights from industrial psychology fields and employment relations – seeing as procedural justice is a concept that is studied beyond mere black letter law.

A significant academic debate has emerged regarding implying a contractual duty of procedural fairness in employment. The aforementioned article by Collins and Golding is a significant contribution⁴⁶, coming after the remarks made in the case of *Burn v Alder Hey Children's NHS Foundation Trust*⁴⁷ by the Court of Appeal. In this case, members of the court were “receptive to the introduction of a duty that would require employers to act in accordance with procedural fairness during disciplinary processes.”⁴⁸ Collins and Golding offer the first detailed exploration of such an implied term, arguing that it would be a logical development of employment law to guarantee fair treatment as a contractual right. They probe into the scope and necessity of said term, and how it could overcome the limitations of the Johnson exclusion (which forbids common law remedies at present). One of their more interesting arguments is that an implied contractual duty of fairness could be extended to not just protect employees (with contracts of employment) but also workers in less secure forms of work. This could be highly relevant to the hospitality industry, where many staff are casual workers or zero-hour contract holders (who generally do not have full protection against unfair dismissal). Conversely, Brodie advises against this – responding directly to Collins and Golding, asserting that implying a broad fairness term would be misguided.⁴⁹ He suggests that it may create incoherence of dismissal law and unpredictability with regard to employer liability. Brodie's perspective is one that favours tradition – he considers the statutory unfair dismissal scheme (that incorporates compensation caps and a 2-year qualifying threshold) to reflect a policy balance. As such, bypassing this current statutory scheme via implied terms⁵⁰ could open the floodgates. This creates a clear controversy:

⁴⁶ Philippa Collins and Gabrielle Golding, ‘An Implied Term of Procedural Fairness During Disciplinary Processes: Into Contracts: Into Contracts of Employment and Beyond?’ (2023), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 125-156

⁴⁷ *Burn v Alder Hey Children's NHS Trust* [2021] EWCA Civ 1791

⁴⁸ Philippa Collins and Gabrielle Golding, ‘An Implied Term of Procedural Fairness During Disciplinary Processes: Into Contracts: Into Contracts of Employment and Beyond?’ (2023), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 125-156

⁴⁹ Douglas Brodie, ‘Disavowing an Implied Term of Fairness’ (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 157-172

⁵⁰ Bandar Sharar, ‘Comparing the laws of England, Wales and Italy Relating to the Unilateral Modification for the Terms of Operational Contract during the COVID-19 Pandemic’ (2021), *Liverpool Law Review*, Vol. 42, pp. 465-483

should the common law imply a term of procedural fairness in order to protect workers without statutory coverage, or would such judicial intervention improperly disturb the finely balanced legislative scheme?

Evaluations of the Unfair Dismissal System

Many have assessed how well the UK's current unfair dismissal regime (which has been in place since 1971)⁵¹ actually delivers fairness and fair outcomes. A common criticism within the literature is the fact that procedural fairness in Tribunals has, at times, been diluted by the "range of reasonable responses" test (which is deferential of employers' decisions).⁵² As noted by some authors, not all Tribunals mandate an ideal procedure, only a reasonable one allowing a less formal process to be used in the case of small employers or businesses with limited HR capacity. In hospitality, this is often disingenuous. On one hand, it acknowledges a practical constraint (a small restaurant would not necessarily have an HR manager that can follow the system step-by-step). However, this may also excuse substandard practices. It has been noted that procedural missteps have been too readily excused when citing the band of reasonable responses.⁵³ Others have highlighted that the Polkey principle (*Polkey v AE Dayton Services Ltd*)⁵⁴ allows for a reduction in compensation if the outcome would likely have been the same with a fair procedure. Further, Collins⁵⁵ has pointed out that the Polkey principle may mean that employers are less inclined to follow procedure, as they can argue that strong evidence of misconduct means that any procedural missteps did not affect the end result. Nevertheless, Polkey does not save an employer from the finding that a dismissal was unfair – it only affects the remedy. As such, the stigma and basic award for unfair dismissal still applies. Thus, the literature stresses that following a fair process is in the employer's own interest, in order to avoid unfair dismissal liability and workplace conflict.

A key counterargument is that the law prioritises substantive justice over procedural perfection, a principle clearly visible in the UK hospitality industry. In the case of *Stiucia v Dorchester Hotel Ltd*⁵⁶, a long-serving waiter who suffered from back problems was dismissed on the grounds of capability. The Tribunal noted that the hotel's procedural shortcomings were not to its detriment, as the decision to dismiss the waiter was within the band of reasonable responses. This case

⁵¹ Brian Towers, *The Handbook of Employment Relations: Law and Practice* (4th edn, Kogan Page, 2003)

⁵² Aaron Baker, 'The 'Range of Reasonable Responses' Test: A Poor Substitution for the Statutory Language' (2020), *Industrial Law Journal*, Vol. 50, Iss. 2, pp. 226-263

⁵³ Courts and Tribunals Judiciary, *Discrimination in Employment/Industrial Courts: Presentation to the Annual Conference of the Commonwealth Magistrates' and Judges' Association Cardiff*, (11 September 2023)

⁵⁴ *Polkey v AE Dayton Services Ltd* [1998] AC 334

⁵⁵ Hugh Collins, 'Unfair Dismissal: Procedural Fairness after Polkey' (1990), *Industrial Law Journal*, Vol. 19, Iss. 1, pp. 39-43

⁵⁶ *F Stiucia v Dorchester Hotel Ltd*: 2200076/2020

highlights how hotels can avoid liability in practice, even where processes are less than meticulous, so long as the Tribunal considers the employer's overall response to be proportionate. From this perspective, the case does not show a flaw, but rather a system prioritising a substantively fair outcome over minor procedural errors. This is reminiscent of similar cases where employers are not found liable for detriment despite procedural missteps, and risks relaying a message that procedural diligence is secondary to managerial prerogative – thereby reinforcing the very culture where legal standards are treated as aspirational rather than mandatory.

Crucially, unfair dismissal claims require two years of continuous service. Researchers have observed that this threshold (which was increased from 1 to 2 years in 2012)⁵⁷ disproportionately excludes many young, part-time, or precarious workers from legal protection during the early period of their employment (including protection from unfair grievance and disciplinary proceedings, which may then lead to them being dismissed without a substantive reason).⁵⁸ According to studies by the TUC, such workers are “vulnerable workers” who lack voice and recourse.⁵⁹ Prior to this, the aforementioned qualifying period was criticised for allowing employers to dismiss staff before they have worked for the company for two years on “subjective” grounds.⁶⁰ Scholars have asserted that fairness at work should not be a perk of long service⁶¹, especially as the rule allows for “widespread arbitrary management practice” to persist in sectors such as hospitality (where a casualised workforce often lacks the rights to challenge a “hire and fire” culture).⁶² As of late 2024, the UK Government has brought forward the Employment Rights Bill⁶³, which aims to remove the two-year qualifying period, making unfair dismissal protection a right from day one.⁶⁴ This legislative development has been welcomed in trade union research and by scholars as promoting universally fair treatment. The hospitality industry generally sees

⁵⁷ Department for Business Innovation & Skills, *Resolving Workplace Disputes: Final Impact Assessments* (UK Government, 2011)

⁵⁸ UK Government, *Employment Rights Bill: Economic Analysis* (2024)

⁵⁹ TUC, *Health and safety: Time for change – Reclaiming health and safety at work – Vulnerable workers*

⁶⁰ Simone Carrà, ‘The Cost of the Dismissal, and the Predictability of Firing Costs: an Employment Solution to the Financial Crisis?’ (2017), *Global Jurist*, Vol. 12, Iss. 2

⁶¹ Ewan McGaughey, ‘Unfair Dismissal Reform: Political Ping-Pong with Equality?’ (2012), *Equal Opportunities Review*, Iss. 26

⁶² Jeremy Head and Rosemary Lucas, ‘Does individual employment legislation constrain the ability of hospitality employers to “hire and fire”?’ (2004), *International Journal of Hospitality Management*, Vol. 23, Iss. 3, pp. 239-254

⁶³ UK Parliament, *Employment Rights Bill* <<https://bills.parliament.uk/bills/3737>> accessed 15 July 2025

⁶⁴ Ewan McGaughey, ‘A Social Recovery, Workplace Democracy and Security: COVID-19 and Labour Law’ (2021), *King’s Law Journal*, Vol. 32, Iss. 1

very high turnover rates⁶⁵⁶⁶, with many employees never reaching 2 years of service in one establishment. As a result, this reform could be a true game-changer if enacted, as employers will know that any dismissal may be scrutinised by a Tribunal for procedural fairness. Literature produced by the Institute of Employment Rights (i.e. “Manifesto for Labour Law”)⁶⁷ has long advocated for such a reform, viewing the required 2-year qualifying period as a roadblock for justice for millions of workers.⁶⁸

Hospitality Sector Studies

Empirical and socio-legal studies focusing on hospitality paint a worrying picture of how procedural fairness often plays out (or not) in practice. Ioannou and Dukes’ 2021 article is especially illuminating. Their case study research discovered that “microbreaches of the law [are] common practice in the sector – akin to industry norms or ‘custom and practice’.”⁶⁹ Hospitality workplaces often sidestep basic legal obligations, such as following the correct grievance or disciplinary steps.⁷⁰ An example of this can be seen in the case of *D Vogiazinos v Sola Fine Dining Ltd and Others*⁷¹, where a Michelin-starred restaurant was found liable for (amongst other breaches) failing to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Tribunal, consequently, required the restaurant to pay compensation to the claimant (including a 25% uplift for breach of the ACAS Code). These norms create a culture of impunity whereby neither management nor workers view certain legal breaches as out of the ordinary. As a result, Ioannou and Dukes argue that workers are “less likely to perceive breach of their legal rights as an injustice worthy of challenge.”⁷² A worker dismissed following an unfair process may simply accept this as “just how the industry is” rather than lodging a tribunal claim.

⁶⁵ Jung Woo Han, ‘A review of antecedents of employee turnover in the hospitality industry on individual, team and organizational levels’ (2022), *International Hospitality Review*, Vol. 36, Iss. 1, pp. 156-173

⁶⁶ The Access Group, ‘How to reduce staff turnover in the hospitality industry’ <[⁶⁷ Institute of Employment Rights, *Manifesto for Labour Law* <<https://www.ier.org.uk/Manifesto/>> accessed 27 July 2025](https://www.theaccessgroup.com/en-gb/hospitality/resources/hospitality-staff-and-hr-resources/reduce-staff-turnover/#:~:text=What%20causes%20employee%20retention%20issues,a%20lack%20of%20career%20prospects.>”> accessed 22 August 2025</p></div><div data-bbox=)

⁶⁸ Jessica Elgot, ‘Labour’s employment rights bill: what key changes will it bring?’, *The Guardian* <<https://www.theguardian.com/law/2024/oct/10/labour-employment-rights-bill-key-changes>> (published 10 October 2024) accessed 5 July 2025

⁶⁹ Gregoris Ioannou and Ruth Dukes, ‘Anything goes? Exploring the limits of employment law in UK hospitality and catering’ (2021), *Industrial Relations Journal*, Vol. 52, Iss. 3, pp. 255-269

⁷⁰ Lindsay Judge and Nye Cominetti, *From rights to reality: Enforcing labour market laws in the UK*, Resolution Foundation <<https://www.resolutionfoundation.org/publications/from-rights-to-reality/>> (published 16 September 2019) accessed 5 August 2025

⁷¹ *D Vogiazinos v Sola Fine Dining Ltd and Others*: 2201528/2024

⁷² Gregoris Ioannou and Ruth Dukes, ‘Anything goes? Exploring the limits of employment law in UK hospitality and catering’ (2021), *Industrial Relations Journal*, Vol. 52, Iss. 3, pp. 255-269

This can be linked to the sociological concept of voice versus exit (Hirschman): many hospitality workers simply exit jobs quietly rather than voicing complaints, as they are worried about being blacklisted in the industry, or that their efforts would prove futile.⁷³

Other studies echo these findings. Giousmpasoglou has called for a “Fair and Decent Work Agenda”, and has noted that the hospitality sector has weak union representation – and that this, combines with poor working conditions and a high migrant workforce, makes hospitality workers ripe for exploitation.⁷⁴ A recent Tribunal case, *L Ayad v WL Retail Ltd*⁷⁵ underlines this: a café worker whose complaint that winter temperatures inside the café had dropped to around 12 degrees (with the door being kept open to allow footfall) suffered reduced hours and ultimately dismissal. The Tribunal found in favour of the claimant, citing automatic unfair dismissal following a disciplinary proceeding (which came about due to the claimant’s protected disclosures, thereby subjecting her to detriment) and awarded compensation – including an uplift as per the ACAS Code. Giousmpasoglou asserts that whilst extensive legal protections exist within legislation, meaningful change remains elusive without better enforcement and cultural shifts.⁷⁶ According to a journal article by Walker and Nickson, the notion “socially irresponsible HRM” in the UK hotel sector documents how some large hotel chains in the UK preach social responsibility whilst having HR practices which tolerate and even encourage misconduct against employees.⁷⁷ For example, managers are generally given unchecked discretion which may lead to issues such as arbitrary disciplinary decisions.

The risks posed by such unchecked discretion can clearly be seen in the case of *Williams v The Westbury Hotel Ltd*⁷⁸, where a Michelin-starred chef was fired after a private event. The Tribunal found his dismissal to be unfair, describing the disciplinary process as predetermined and “superficial”. This case illustrates how, in hospitality, managerial prerogative can trump procedural fairness – this is particularly true where concerns over reputation and ownership influence decision-making.⁷⁹ Walker and Nickson demonstrate the stark differences between formal HR policies and hotel management in practice day to day. In the context of hotel

⁷³ Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, 1972)

⁷⁴ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

⁷⁵ *L Ayad v WL Retail Ltd*: 2223333/2024

⁷⁶ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

⁷⁷ Victoria Walker and Dennis Nickson, ‘Socially irresponsible HRM: findings from the UK hotel sector’ (2025), *Journal of Business Ethics*, Vol. 197, pp. 581-595

⁷⁸ *A Williams v The Westbury Hotel Ltd*: 2200385/2020

⁷⁹ Katherine Price, ‘Chef Alyn Williams wins unfair dismissal case against the Westbury’, *The Caterer* <<https://www.thecaterer.com/news/alyn-williams-unfairly-dismissed-westbury>> (published 16 February 2021) accessed 29 August 2025

operations, pressures for customer service and profit can lead to a negation of employee fairness considerations. For instance, management in a hotel may fire a waiter for making a minor mistake as a cautionary tale to “set a standard”, perhaps bypassing warnings and fair processes, as the young waiter is unlikely to challenge the decision. Such practices are “socially irresponsible” from both a legislative and an ethical perspective.

The current literature examines power imbalances and fear in the hospitality industry. Many hospitality workers are on zero-hour contracts or depend on rota hours assigned by their managers.⁸⁰ Due to such insecurity, they may avoid raising grievances or insisting on their procedural rights. As noted by Donaghey, Cullinane, Wilkinson and others, “management, through agenda-setting and institutional structures, can perpetuate silence over a range of issues, thereby organising employees out of the voice process”.⁸¹ In other words, even if there is a formal grievance procedure, employees may be too fearful to use it until the situation becomes intolerable, at which point employees tend to quit rather than formally complain. According to Moore, Atunes, White and others, restaurant and pub employees are often dismissed, on the spot, for trivial or unfair reasons.⁸² While this sort of behaviour is technically unfair, it rarely makes it to a Tribunal because the sums at stake are small and many hospitality staff are not unionised or aware of their rights.⁸³ UK Government data suggests that only around 3-4% of accommodation and food staff are unionised as of a few years ago, one of the lowest of any industry.⁸⁴ Academic commentators, such as Papadopoulos and others, argue that this lack of collective representation makes it far more likely that unfair practices will occur and persist, as there is generally no one to assist workers to contest unfair disciplinary actions, unfair grievance proceedings, or to ensure that the actions of employers are in alignment with the law.⁸⁵ As a result, the presence (or absence) of trade unions recurs in discussions regarding the enhancement of procedural justice in the hospitality industry.

⁸⁰ Gregoris Ioannou and Ruth Dukes, ‘Anything goes? Exploring the limits of employment law in UK hospitality and catering’ (2021), *Industrial Relations Journal*, Vol. 52, Iss. 3, pp. 255-269

⁸¹ Jimmy Donaghey, Niall Cullinane, Adrian Wilkinson and others, ‘Reconceptualising employee silence: problems and prognosis’ (2011), *Work, Employment and Society*, Vol. 25, Iss. 1, pp. 51-67

⁸² Sian Moore, Bethania Antunes, Geoff White, Stephanie Tailby and Kirsty Newsome, *Non-Standard Contracts and the National Living Wage: A Report for the Low Pay Commission* (University of Greenwich, University of the West of England, University of Sheffield, 2017)

⁸³ Orestis Papadopoulos, Marti Lopez-Andreu and Mandi Jamalian, ‘Violation and lack of awareness of employment rights in the United Kingdom’s hotel industry: Isolation, fragmentation and barriers to labour enforcement’ (2021), *Industrial Relations Journal*, Vol. 52, Iss. 4, pp. 315-330

⁸⁴ Department for Business & Trade, *Trade Union Membership, UK 1995-2022: Statistical Bulletin – National Statistics* (UK Government, 2023)

⁸⁵ Orestis Papadopoulos, Marti Lopez-Andreu and Mandi Jamalian, ‘Violation and lack of awareness of employment rights in the United Kingdom’s hotel industry: Isolation, fragmentation and barriers to labour enforcement’ (2021), *Industrial Relations Journal*, Vol. 52, Iss. 4, pp. 315-330

Key Decisions Shaping Procedural Fairness

The modern law of procedural fairness and misconduct dismissal originates from *British Home Stores Ltd v Burchell*.⁸⁶ An employer needs to have an honest belief that an employee is guilty of misconduct before dismissing him/her. Further, they must have reasonable grounds for such a belief and have carried out as much investigation as was reasonable in the circumstances.⁸⁷ Later authority confirms that the reasonableness of the investigation is assessed according to the same standards as the ultimate decision to dismiss. In the case of *Sainsbury's Supermarkets Ltd v Hitt*⁸⁸, The Court of Appeal held that the band of reasonable responses test applies as much to the adequacy of the investigation as to the fairness of the dismissal. In the hospitality sector, common allegations against employees include till shortages, intoxication, rude conduct to guests, alleged theft, and so on. *Burchell/Hitt* means that proportionate inquiry must be sought before reaching a decision (e.g. CCTV review, interviewing all relevant staff, considering exculpatory explanations). This should apply to all allegations, with deeper inquiry where the allegation is career-ending (e.g. for dishonesty or violence).

Fair procedure has its own bite. In the case of *Polkey v AE Dayton Services*⁸⁹, the House of Lords indicated that a failure to follow a fair procedure will render a dismissal unfair, even if the dismissal might still have occurred. In such cases, Tribunals will make what is known as a “Polkey deduction” to reduce the award when a fair process would have made no difference.⁹⁰ With regard to hospitality, even seemingly clear-cut cases (e.g. a server filmed assaulting a customer) still require the essentials: notice, hearing, decision, and appeal – so as to avoid a finding of procedural unfairness⁹¹ (albeit with a likely Polkey deduction). The requirement for employers to follow a prescribed process was highlighted in the case of *S Todd v Bedrock Bars Ltd*⁹², where the General Manager was summarily dismissed during a heated exchange – the complete absence of procedure meant that the Tribunal held that the dismissal was unfair. Appeals, however, can be

⁸⁶ *British Home Stores Ltd v Burchell* [1978] IRLR 379, EAT

⁸⁷ ACAS, ‘Investigations at work – Step 3: Carrying out an investigation’ <<https://www.acas.org.uk/investigations-for-discipline-and-grievance-step-by-step/step-3-carrying-out-an-investigation#:~:text=be%20fair%20and%20objective,and%20need%20for%20the%20case.>> accessed 14 July 2025

⁸⁸ *Sainsbury's Supermarket Ltd v Hitt* [2002] EWCA Civ 1588

⁸⁹ *Polkey v AE Dayton Services Ltd* [1998] AC 334

⁹⁰ ‘Polkey deduction’, n, Thomson Reuters: Practical Law <[https://uk.practicallaw.thomsonreuters.com/7-201-7057?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-201-7057?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 19 July 2025

⁹¹ ACAS, ‘Code of Practice 1: Code of Practice on disciplinary and grievance procedures’ <<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures/html>> (published 11 March 2015) accessed 13 July 2025

⁹² *S Todd v Bedrock Bars Ltd*: 1811573/2018

seen as a way to “cure” defects. In the case of *West Midlands Cooperative Society Ltd v Tipton*⁹³, the House of Lords stated that overall fairness could be judged including the internal appeal. This can be seen in the case of *Jurys Inn Group v Tatarova*⁹⁴, where the Employment Appeal Tribunal stated that flaws within the beginning of the hotel’s disciplinary procedure were cured due to a subsequent fair appeal process. As such, an independent and robust appeal can repair prior flaws, whilst the lack of any appeal is a severe procedural vice.⁹⁵

Procedural fairness also governs grievances. In the case of *W A Goold (Pearmak) Ltd v McConnell*⁹⁶, it was held that an employer’s failure to deal with an employee’s grievance could amount to a breach of the implied term of mutual trust and confidence. In the context of the hospitality sector, if employees raise a grievance about bullying or sexual harassment, and their grievance is not dealt with adequately by the employer, the employer can be at risk of a constructive dismissal claim and liability under the Equality Act.⁹⁷ This risk has heightened with the Worker Protection (Amendment of the Equality Act 2010) Act⁹⁸, which created a positive duty (as of 26 October 2024)⁹⁹ to take reasonable steps to prevent sexual harassment. A recent example is the case of *Taylor-Hamieh v Ritz Hotel*, where a casino hostess succeeded in a sex discrimination claim against the Chief Executive of the casino who subjected her to a series of sexist remarks and victimisation. The Employment Tribunal held that she was unfairly dismissed, discriminated against on the grounds of her sex and pregnancy, and victimised after she raised a grievance.¹⁰⁰

Suspension should not be knee-jerk. In the case of *Gogay v Hertfordshire CC*¹⁰¹, the Court of Appeal held that unjustified suspension may amount to a breach of trust and confidence, and that the real question is whether said suspensions were the result of “reasonable and proper cause.” In bars/pubs, sending someone home is commonplace.¹⁰² Managers ought to record clear case-specific reasons for doing so; however, *Sunshine Hotel Ltd v Goddard*¹⁰³ showcases how hospitality employers may sometimes fail to adopt such reasonable steps. Here, the Tribunal found the disciplinary process to be procedurally defective, noting a lack of fair investigation and reasonable justification for the outcome. While this case was about unfair dismissal and not

⁹³ *West Midlands Co-operative Society Ltd v Tipton* [1986] IRLR 112, HL

⁹⁴ *Jurys Inn Group v Tatarova* UKEAT/0295/10/JOJ

⁹⁵ Allison Ballard and Patricia Easteal, ‘Procedural fairness in workplace investigations: Potential flaws and proposals for change’ (2018), *Alternative Law Journal*, Vol. 43, Iss. 3, pp. 177-183

⁹⁶ *Goold WA (Pearmark) Ltd v McConnell* [1995] IRLR 516, EAT

⁹⁷ Equality Act 2010 c. 15

⁹⁸ Worker Protection (Amendment of Equality Act 2010) Act 2023 c. 51

⁹⁹ Worker Protection (Amendment of Equality Act 2010) Act 2023 c. 51, s. 40A

¹⁰⁰ *R Taylor-Hamieh v The Ritz Hotel Casino Ltd*: 2201970/2019

¹⁰¹ *Gogay v Hertfordshire County Council* (2000) IRLR 703

¹⁰² Focus on Labour Exploitation, *Flex Participatory Research Working Paper 2* (2021)

¹⁰³ *Sunshine Hotel Ltd trading as Palm Court Hotel v Mr R Goddard*: UKEAT/0154/19/00

suspension, it illustrates the same risk identified in the case of *Gogay v Hertfordshire CC*¹⁰⁴: when hospitality employers act hastily, without proper cause or reason, it can seriously undermine trust and procedural fairness.

Two further anchors matter. To begin with, the right to be accompanied (by a colleague or trade union representative) to disciplinary and grievance hearings is a day one right and applies to workers and employees alike.¹⁰⁵ Further, the ACAS Code of Practice¹⁰⁶ sets a baseline for fair processes; Tribunals must take this into account and may increase or decrease any compensation award by up to 25% for unreasonable non-compliance.¹⁰⁷

Remedies remain aligned with the rulings in cases such as *Johnson v Unisys Ltd*¹⁰⁸ and *Edwards v Chesterfield*.¹⁰⁹ Such cases showcase that damages for the manner of a dismissal are largely limited to the statutory unfair dismissal scheme (caps apply). However, injunctions can be granted to restrain egregiously unfair processes pre-dismissal.¹¹⁰ A more recent vector is *Burn v Alder Hey Children's NHS Foundation Trust*¹¹¹, where the Court of Appeal signalled its support (in influential obiter) for an implied contractual duty for disciplinary processes to be fair – with potential for success in breach of contract claims from short-service workers in ongoing or warning-only processes absent an unfair dismissal claim. While the case of *Burn v Alder Hey Children's NHS Foundation Trust*¹¹² was not settled by the Supreme Court, it has practical traction and could open up a route for hospitality's short-tenure workforce.

Conclusion

This article concludes that procedural fairness (as a current legal doctrine) governs the hospitality sector inadequately – persisting as an aspirational framework rather than operational in practice. Although the current legislative framework and case law are sufficiently robust in theory, their effectiveness is neutralised by the structural realities of the industry: e.g. high staff turnover, pervasive informal management, and a profound power imbalance. The way in which the UK

¹⁰⁴ *Gogay v Hertfordshire County Council* (2000) IRLR 703

¹⁰⁵ Employment Relations Act 1999 c. 26, s. 10

¹⁰⁶ ACAS, 'Code of Practice 1: Code of Practice on disciplinary and grievance procedures' <<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures/html>> (published 11 March 2015) accessed 13 July 2025

¹⁰⁷ Trade Union and Labour Relations (Consolidation) Act 1992 c. 52, s. 207A

¹⁰⁸ *Johnson v Unisys Ltd* [2001] UKHL 13

¹⁰⁹ *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2011] UKSC 58

¹¹⁰ Karen Plumbley-Jones, 'Supreme Court grants injunction to stop Tesco firing and rehiring employees', *Womble Bond Dickson* <<https://www.womblebondnickson.com/uk/insights/articles-and-briefings/supreme-court-grants-injunction-stop-tesco-firing-and-rehiring>> (published 18 September 2024) accessed 12 July 2025

¹¹¹ *Burn v Alder Hey Children's NHS Trust* [2021] EWCA Civ 1791

¹¹² *ibid*

currently enforces individual workers' rights in grievance and disciplinary proceedings is fundamentally incompatible with a precarious, non-unionised workforce whose rational response to unfairness is often exit, not voice. Impunity is prevalent, and the law is frequently sidestepped within the industry without consequence.

The proposed removal of the two-year qualifying period for claims of unfair dismissal will mean that employers must embed fairness from day one. The key question at present is whether this legislative shift can truly transform a hostile workplace environment into one that adequately follows the principles of procedural fairness. Nonetheless, this proposed reform to UK employment law presents a notable first step to closing the currently wide gap between legal promise and workplace reality, particularly when combined with the judicial development of an implied contractual duty of fairness as envisioned in *Burn v Alder Hey*.¹¹³

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AI Statement

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