

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 important procedural safeguards through statutes such as the Employment Rights Act 1996¹ and the ACAS Code of Practice², structural characteristics of the hospitality industry, including high labour turnover, precarious employment arrangements and weak collective representation, may undermine the practical operation of those safeguards in some workplaces. The article argues that available literature and illustrative Tribunal decisions raise concern that procedural fairness may be inconsistently implemented within parts of the hospitality sector. It concludes that reforms to unfair dismissal law, particularly a reduction in the qualifying period for ordinary unfair dismissal, 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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¹ Employment Rights Act 1996 c. 18

² 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

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.³

This article examines how effectively procedural fairness requirements in disciplinary and grievance proceedings protect workers in the UK hospitality sector. Adopting a combined doctrinal and socio-legal approach, it analyses legislation, case law, and academic literature and selected hospitality-sector tribunal decisions to examine the relationship between legal standards and workplace practice.

The article argues that, although UK employment law establishes important procedural safeguards, the available literature and illustrative tribunal decisions suggest that those safeguards may be inconsistently implemented in parts of the hospitality sector. The risk may be particularly acute where high turnover, insecure work, weak collective representation and informal management practices limit workers’ capacity to challenge unfair treatment.

The reduction of the ordinary unfair-dismissal qualifying period from two years to six months, applying to dismissals effective from 1 January 2027, is an important reform.⁴ It may extend ordinary unfair-dismissal protection to a substantial group of workers who would previously have fallen outside the statutory scheme. However, it does not remove the protection gap entirely for employees dismissed before reaching six months’ service. The article therefore considers whether the potential development of an implied contractual duty of procedural fairness, particularly following *Burn v Alder Hey Children’s NHS Trust*⁵, could offer an additional route to protection. The scope of any such duty remains uncertain, and *Burn* should be understood as contributing to an ongoing doctrinal debate rather than establishing a general contractual right to procedural fairness.

Methodology and Scope

This article adopts a combined doctrinal and socio-legal approach. The doctrinal analysis examines the statutory and common law framework governing procedural fairness in disciplinary and grievance proceedings, including the Employment Rights Act 1996, the Employment

³ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

⁴ UK Government, Press release: An update on the Employment Rights Bill
<<https://www.gov.uk/government/news/an-update-on-the-employment-rights-bill>> (published 27 November 2025) accessed 15 June 2026

⁵ *Burn v Alder Hey Children’s NHS Trust* [2021] EWCA Civ 1791

Relations Act 1999, the Equality Act 2010, the ACAS Code of Practice on Disciplinary and Grievance Procedures, and relevant appellate authority. This approach is appropriate because the central research question concerns the adequacy of the legal standards through which procedural fairness is defined, enforced, and remedied.

The socio-legal dimension situates those legal standards within the structural conditions of the UK hospitality sector. It draws on peer-reviewed research concerning precarious work, employee turnover, weak collective representation, managerial discretion and worker voice, alongside selected Employment Tribunal decisions involving hospitality employers. Tribunal decisions were selected where they concerned disciplinary action, grievance handling, dismissal, alleged retaliation, ACAS Code compliance or related procedural defects within hotels, restaurants, bars, cafés or comparable hospitality businesses.

The tribunal decisions are used as illustrative case studies rather than as a representative empirical dataset. They cannot, by themselves, establish the prevalence of procedural unfairness across the hospitality sector, particularly because reported litigation is likely to capture disputes serious enough to reach a tribunal. The article therefore does not claim to provide quantitative evidence of sector-wide practice. Rather, it uses tribunal decisions alongside academic and policy literature to identify recurring risks and to assess whether the existing legal framework adequately protects workers where those risks arise.

Doctrinal Framework: Legal Standards of Procedural Fairness

Disciplinary and grievance procedures are governed by a combination of statute, common law principles and statutory codes of practice. The starting point is the statutory right not to be unfairly dismissed under Part X of the Employment Rights Act.⁶ Under the Employment Rights Act, an employee with the required continuous service of two years⁷ can bring a claim for unfair dismissal⁸ (it should, however, be noted that this does not apply to cases of automatic unfair dismissal or wrongful dismissal).⁹ It should be further noted that the Employment Rights Act 2025 will reduce this qualifying period for dismissals effective from 1 January 2027.¹⁰ Tribunals consider both the substantive reason and the procedure adopted when determining whether somebody has been unfairly dismissed¹¹; for instance, due to a disciplinary or grievance

⁶ Employment Rights Act 1996 c. 18, Part X

⁷ Employment Rights Act 1996 c. 18, s. 108

⁸ Employment Rights Act 1996 c. 18, s. 94

⁹ ACAS, 'Dismissals: Unfair dismissal', <<https://www.acas.org.uk/dismissals/unfair-dismissal>> accessed 15 July 2025

¹⁰ UK Parliament, *Employment Rights Bill* <<https://bills.parliament.uk/bills/3737>> accessed 12 June 2026

¹¹ Douglas Brodie, 'Disavowing an Implied Term of Fairness' (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 157-172

procedure. As per section 98 of the Employment Rights Act¹², 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.¹³ The Tribunal must determine whether, in all the circumstances and in accordance with equity and the substantial merits of the case, the employer acted reasonably in treating the stated reason as sufficient to dismiss. This assessment is commonly described as the “range of reasonable responses” test.¹⁴ The application of this test, including the extent to which Tribunals should defer to employer judgement and tolerate procedural imperfection, remains contested in the academic literature and is considered further below.

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

¹² Employment Rights Act 1996 c. 18, s. 98

¹³ 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

¹⁴ 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

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?’ (2024), *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

not legislation, but employment Tribunals must consider it when determining whether an employer acted in a procedurally fair manner (as per section 207A of the Trade Union and Labour Relations (Consolidation) Act).¹⁹ An employer who fails to follow the Code will not automatically be held liable. However, in relevant proceedings, a Tribunal may adjust compensation by up to 25% where either party has unreasonably failed to comply with the ACAS Code.²⁰ Where an employee is dismissed without being informed of the allegation, given an opportunity to respond or offered a fair appeal, the process is likely to be inconsistent with the Code and may support a finding of unfair dismissal, subject to the circumstances of the case.^{21,22}

Section 10 of the Employment Relations Act²³ gives workers, rather than employees alone, the right to be accompanied by a trade union representative or colleague at qualifying disciplinary and grievance hearings. This provides workers with support and representation in what may be an intimidating process, and an employer's refusal to permit a companion can itself form the basis of a Tribunal claim.

Separate statutory protections apply where an employee is dismissed because they made a protected disclosure, or where a worker is subjected to detriment for whistleblowing.²⁴ A grievance may constitute a protected act under the Equality Act²⁵ where it alleges discrimination or another relevant contravention; in that event, subsequent detrimental treatment may amount to victimisation. These rights reinforce the broader proposition that procedural fairness is shaped not only by unfair-dismissal law, but also by statutory protections concerning representation, equality and protected disclosures.

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 racial harassment by a manager, after which they are disciplined on a

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

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

²⁴ Public Interest Disclosure Act 1998 c. 23

²⁵ Equality Act 2010 c. 15, s. 27

²⁶ Equality Act 2010 c. 15, s. 27

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 decision illustrates how discriminatory treatment and flawed grievance procedures can intersect, potentially engaging both Equality Act³⁰ duties and the implied duty of mutual 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.

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 potentially significant implied obligation concerns grievance handling. In *Goold WA (Pearmark) Ltd v McConnell*³⁴, the Employment Appeal Tribunal held that there was a fundamental implied term requiring an employer reasonably and promptly to afford employees an opportunity to obtain redress for grievances. The decision has been relied upon as support for the proposition that serious failures to address a formal grievance may engage

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

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

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

the implied term of mutual trust and confidence, particularly where the failure forms part of conduct capable of amounting to a repudiatory breach.

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. The Tribunal found in favour of the claimants and awarded a 25% uplift. This decision illustrates the legal consequences that may follow where a hospitality employer fails to follow a fair process and where disciplinary and grievance procedures are handled superficially. It provides a sector-specific example of the practical importance of fair grievance handling where concerns may involve matters such as tip allocation, bullying or unsafe working conditions.

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 regime. To date, disputes about an implied term requiring procedural fairness in disciplinary proceedings have been controversial. The scope for implying a wider contractual duty of procedural fairness remains contested and is considered in the literature below.

The case of *Augustine v London Britannia Hotel Ltd*³⁸ provides an important counterexample to the procedural-failure cases considered elsewhere in this article. The claimant, a guest service agent, was dismissed for gross misconduct following a disciplinary process, and the Tribunal rejected both the unfair-dismissal and wrongful-dismissal claims. The Tribunal's dismissal of the claims indicates that it regarded the employer's investigation, consideration of the evidence and opportunity afforded to the claimant to respond as falling within the range of reasonable responses. This does not, however, remove the wider doctrinal concern that the range of

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

³⁸ *W Augustine v London Britannia Hotel Ltd*: 2207972/2016

reasonable responses test may set a relatively deferential threshold for Tribunal scrutiny of employer decision-making.³⁹⁴⁰

The value of Augustine lies in showing that the existing legal framework can accommodate operationally defensible disciplinary decisions where an employer undertakes a proportionate investigation, provides adequate notice of the allegation, gives the employee a meaningful opportunity to respond and reaches a reasoned outcome. Read alongside the procedural-failure decisions considered elsewhere, the decision in Augustine suggests that the principal issue may be the consistency of implementation in particular workplaces rather than an inherent inability of employment law to regulate hospitality disciplinary processes.

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 contribution⁴¹, coming after the remarks made in the case of *Burn v Alder Hey Children's NHS Foundation Trust*⁴² 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.”⁴³ 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

³⁹ Aaron Baker, ‘The ‘Range of Reasonable Responses’ Test: A Poor Substitution for the Statutory Language’ (2021), *Industrial Law Journal*, Vol. 50, Iss. 2, pp. 226-263

⁴⁰ 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

⁴¹ Philippa Collins and Gabrielle Golding, ‘An Implied Term of Procedural Fairness During Disciplinary Processes: Into Contracts: Into Contracts of Employment and Beyond?’ (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 125-156

⁴² *Burn v Alder Hey Children's NHS Trust* [2021] EWCA Civ 1791

⁴³ Philippa Collins and Gabrielle Golding, ‘An Implied Term of Procedural Fairness During Disciplinary Processes: Into Contracts: Into Contracts of Employment and Beyond?’ (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 125-156

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.⁴⁴ 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 terms⁴⁵ could open the floodgates. This creates a clear controversy: 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)⁴⁶ 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).⁴⁷ 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 context-sensitive approach may be necessary for small employers with limited HR capacity, but it may also create a risk that resource constraints are treated as a justification for inadequate procedural safeguards. 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.⁴⁸ Others have highlighted that the Polkey principle (*Polkey v AE Dayton Services Ltd*)⁴⁹ allows for a reduction in compensation if the outcome would likely have been the same with a fair procedure. Further,

⁴⁴ Douglas Brodie, 'Disavowing an Implied Term of Fairness' (2024), *Industrial Law Journal*, Vol. 53, Iss. 2, pp. 157-172

⁴⁵ 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

⁴⁶ Brian Towers, *The Handbook of Employment Relations: Law and Practice* (4th edn, Kogan Page, 2003)

⁴⁷ Aaron Baker, 'The 'Range of Reasonable Responses' Test: A Poor Substitution for the Statutory Language' (2021), *Industrial Law Journal*, Vol. 50, Iss. 2, pp. 226-263

⁴⁸ 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)

⁴⁹ *Polkey v A E Dayton Services Ltd* [1987] IRLR 505; [1988] ICR 142 (HL)

Collins⁵⁰ 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 significant counterargument is that unfair-dismissal law is concerned with substantive reasonableness rather than procedural perfection. The statutory test does not require employers to adopt identical or highly formal procedures in every case. Instead, it requires the Tribunal to assess whether the employer acted reasonably in the circumstances, taking account of the nature of the allegation, the resources available and the practical context in which the decision was made.

*Stiucia v Dorchester Hotel Ltd*⁵¹ illustrates this approach. A long-serving waiter dismissed on capability grounds challenged the fairness of the process. The Tribunal concluded that, notwithstanding procedural shortcomings, the dismissal fell within the range of reasonable responses. The decision demonstrates that procedural defects will not necessarily undermine the outcome where the Tribunal concludes that the substantive decision was reasonable and that any deficiencies did not compromise overall fairness.

This approach has an important practical rationale. Hospitality businesses, particularly smaller establishments, may operate with limited HR capacity, extended operating hours and immediate customer-facing pressures. Procedural flexibility may therefore be legitimate where it remains compatible with core safeguards: adequate notice of allegations, a proportionate investigation, a meaningful opportunity to respond and, where practicable, an impartial appeal. The concern advanced in this article is not that every procedural imperfection should invalidate a decision, but that informality becomes problematic where it obscures the reasons for a decision, constrains employee voice or prevents meaningful scrutiny of disciplinary and grievance outcomes.

The doctrinal debate therefore concerns the appropriate standard of Tribunal scrutiny, rather than whether employers should be denied operational flexibility altogether. Baker argues that the range of reasonable responses test is doctrinally incoherent because it artificially raises the threshold for successful unfair-dismissal claims by treating “employer reasonableness” as more permissive than ordinary reasonableness. His critique does not require Tribunals to disregard

⁵⁰ Hugh Collins, ‘Unfair Dismissal: Procedural Fairness after Polkey’ (1990), *Industrial Law Journal*, Vol. 19, Iss. 1, pp. 39-43

⁵¹ *F Stiucia v Dorchester Hotel Ltd*: 2200076/2020

operational context; rather, it supports a clearer distinction between the statutory standard of reasonableness and the circumstances in which deference to employer judgement is justified.⁵²

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)⁵³ 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).⁵⁴ According to studies by the TUC, such workers are “vulnerable workers” who lack voice and recourse.⁵⁵ 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.⁵⁶ Scholars have asserted that fairness at work should not be a perk of long service⁵⁷, 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).⁵⁸ The Employment Rights Act 2025⁵⁹ will reduce the ordinary unfair-dismissal qualifying period from two years to six months. This legislative development has been welcomed in trade union research and by scholars as promoting universally fair treatment. The hospitality industry generally sees very high turnover rates⁶⁰, with many employees never reaching 2 years of service in one establishment. As a result, this reform could be significant – as employers will know that any dismissal may be scrutinised by a Tribunal for procedural fairness. Literature

⁵² Aaron Baker, ‘The ‘Range of Reasonable Responses’ Test: A Poor Substitution for the Statutory Language’ (2021), *Industrial Law Journal*, Vol. 50, Iss. 2, pp. 226-263

⁵³ Department for Business Innovation & Skills, *Resolving Workplace Disputes: Final Impact Assessments* (UK Government, 2011)

⁵⁴ UK Government, *Employment Rights Bill: Economic Analysis* (2024)

⁵⁵ TUC, *Health and safety: Time for change – Reclaiming health and safety at work – Vulnerable workers*

⁵⁶ 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

⁵⁷ Ewan McGaughey, ‘Unfair Dismissal Reform: Political Ping-Pong with Equality?’ (2012), *Equal Opportunities Review*, Iss. 26

⁵⁸ 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

⁵⁹ UK Parliament, *Employment Rights Act 2025* <<https://bills.parliament.uk/bills/3737>> accessed 12 June 2025

⁶⁰ 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

⁶¹ The Access Group, ‘How to reduce staff turnover in the hospitality industry’ <[---

11](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=)

produced by the Institute of Employment Rights (i.e. “Manifesto for Labour Law”)⁶² has long advocated for such a reform, viewing the required 2-year qualifying period as a roadblock for justice for millions of workers.⁶³

Hospitality Sector Studies

The Tribunal decisions discussed are used as illustrative case studies rather than as representative evidence of sector-wide practice. Their value lies in demonstrating how legal principles operate when disputes reach formal adjudication. The broader conclusions advanced in this article therefore rest not on Tribunal decisions alone, but on their convergence with academic research concerning labour insecurity, turnover, weak collective representation and barriers to employee voice within the hospitality sector.

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’.”⁶⁴ Research on hospitality and catering identifies circumstances in which basic employment law obligations may be inconsistently observed.⁶⁵ An example of this can be seen in the case of *D Vogiazinos v Sola Fine Dining Ltd and Others*⁶⁶, 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). Read alongside Ioannou and Dukes’ research⁶⁷, *Vogiazinos* provides a sector-specific illustration of how non-compliance with procedural requirements may arise in hospitality settings. The decision is consistent with the wider scholarship suggesting that minor legal breaches may become normalised in workplaces characterised by informality, weak enforcement and limited worker voice. In that context, some workers may be less likely to perceive a breach of their rights as one capable of challenge. This can be linked to the sociological concept of voice versus exit (Hirschman): many hospitality

⁶² Institute of Employment Rights, *Manifesto for Labour Law* <<https://www.ier.org.uk/Manifesto/>> accessed 27 July 2025

⁶³ 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

⁶⁴ 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

⁶⁵ 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

⁶⁶ *D Vogiazinos v Sola Fine Dining Ltd and Others*: 2201528/2024

⁶⁷ 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

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.⁶⁸

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, combined with poor working conditions and a high migrant workforce, makes hospitality workers potentially vulnerable to exploitative employment practices.⁶⁹ A recent Tribunal decision, *L Ayad v WL Retail Ltd*⁷⁰, provides a relevant illustration. The claimant’s complaint about workplace temperatures was followed by reduced hours and dismissal, and the Tribunal found automatic unfair dismissal and awarded compensation including an ACAS uplift. This case illustrates the vulnerability that may arise where workers raise health-and-safety concerns in insecure employment settings. Giousmpasoglou asserts that whilst extensive legal protections exist within legislation, meaningful change remains elusive without better enforcement and cultural shifts.⁷¹ According to a journal article by Walker and Nickson, the notion of “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.⁷² 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*⁷³, 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 decision illustrates circumstances in which managerial decision-making may override procedural safeguards and provides a useful example of the risk that reputational or operational pressures may affect the fairness of disciplinary decision-making.⁷⁴ Walker and Nickson demonstrate the stark differences between formal HR policies and hotel management in practice day to day. In the context of hotel operations, pressures for customer service and profit can lead to a negation of employee fairness considerations.

⁶⁸ Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, 1972)

⁶⁹ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

⁷⁰ *L Ayad v WL Retail Ltd*: 2223333/2024

⁷¹ Charalampos Giousmpasoglou, ‘Working Conditions in the Hospitality Industry: The Case for a Fair and Decent Work Agenda’ (2024), *Sustainability*, Vol. 16, Iss.19

⁷² Victoria Walker and Dennis Nickson, ‘Socially irresponsible HRM: findings from the UK hotel sector’ (2025), *Journal of Business Ethics*, Vol. 197, pp. 581-595

⁷³ *A Williams v The Westbury Hotel Ltd*: 2200385/2020

⁷⁴ 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

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.⁷⁵ 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”.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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.⁸⁰ As a result, the presence (or absence) of trade unions recurs in discussions regarding the enhancement of procedural justice in the hospitality industry.

Key Decisions Shaping Procedural Fairness

The principles outlined above are illustrated by the following decisions, which demonstrate the practical application of procedural fairness standards in workplace disputes. The modern law of procedural fairness and misconduct dismissal originates from *British Home Stores Ltd v Burchell*.⁸¹ An employer needs to have an honest belief that an employee is guilty of misconduct

⁷⁵ 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

⁷⁶ 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

⁷⁷ 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)

⁷⁸ 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

⁷⁹ Department for Business & Trade, *Trade Union Membership, UK 1995-2022: Statistical Bulletin – National Statistics* (UK Government, 2023)

⁸⁰ 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

⁸¹ *British Home Stores Ltd v Burchell* [1978] IRLR 379, EAT

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.⁸² 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*⁸³, 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).

Procedural fairness has independent legal significance. In the case of *Polkey v AE Dayton Services*⁸⁴, 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.⁸⁵ 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 unfairness⁸⁶ (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*⁸⁷, 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 seen as a way to “cure” defects. In the case of *West Midlands Cooperative Society Ltd v Tipton*⁸⁸, 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*⁸⁹, 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

⁸² 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

⁸³ *Sainsbury's Supermarket Ltd v Hitt* [2002] EWCA Civ 1588

⁸⁴ *Polkey v A E Dayton Services Ltd* [1987] IRLR 505; [1988] ICR 142 (HL)

⁸⁵ ‘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

⁸⁶ 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

⁸⁷ *S Todd v Bedrock Bars Ltd*: 1811573/2018

⁸⁸ *West Midlands Co-operative Society Ltd v Tipton* [1986] IRLR 112, HL

⁸⁹ *Jurys Inn Group v Tatarova* UKEAT/0295/10/JOJ

independent and robust appeal can repair prior flaws, whilst the lack of any appeal is a severe procedural vice.⁹⁰

Procedural fairness also governs grievances. In the case of *W A Goold (Pearmak) Ltd v McConnell*⁹¹, 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.⁹² This risk has heightened with the Worker Protection (Amendment of the Equality Act 2010) Act⁹³, which created a positive duty (as of 26 October 2024)⁹⁴ 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.⁹⁵

Suspension should not be knee-jerk. In the case of *Gogay v Hertfordshire CC*⁹⁶, 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 customer-facing hospitality settings, managers may sometimes remove employees from duties at short notice⁹⁷, making it important to record clear, case-specific reasons for any suspension or exclusion from work. *Sunshine Hotel Ltd v Goddard*⁹⁸ illustrates how a procedurally defective disciplinary process may undermine the fairness of an outcome. While this case was about unfair dismissal and not suspension, it illustrates the same risk identified in the case of *Gogay v Hertfordshire CC*⁹⁹: when hospitality employers act hastily, without proper cause or reason, it can seriously undermine trust and procedural fairness.

⁹⁰ 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

⁹¹ *Goold WA (Pearmark) Ltd v McConnell* [1995] IRLR 516, EAT

⁹² Equality Act 2010 c. 15

⁹³ Worker Protection (Amendment of Equality Act 2010) Act 2023 c. 51

⁹⁴ Worker Protection (Amendment of Equality Act 2010) Act 2023 c. 51, s. 40A

⁹⁵ *R Taylor-Hamieh v The Ritz Hotel Casino Ltd*: 2201970/2019

⁹⁶ *Gogay v Hertfordshire County Council* (2000) IRLR 703

⁹⁷ Focus on Labour Exploitation, *Flex Participatory Research Working Paper 2* (2021)

⁹⁸ *Sunshine Hotel Ltd trading as Palm Court Hotel v Mr R Goddard*: UKEAT/0154/19/00

⁹⁹ *Gogay v Hertfordshire County Council* (2000) IRLR 703

Remedies remain aligned with the rulings in cases such as *Johnson v Unisys Ltd*¹⁰⁰ and *Edwards v Chesterfield*.¹⁰¹ Such cases demonstrate 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.¹⁰²

Conclusion

This article concludes that UK employment law establishes a substantial framework for procedural fairness in disciplinary and grievance proceedings. However, the academic literature and illustrative Tribunal decisions examined suggest that the practical operation of those safeguards may be uneven in parts of the hospitality sector, particularly where high turnover, weak collective representation and informal management practices limit effective employee voice. The evidence does not establish that procedural unfairness is universal across the sector; rather, it identifies recurring risks that may make formal protections less accessible or less effective for some workers.

The reduction of the ordinary unfair-dismissal qualifying period is likely to extend access to ordinary unfair-dismissal protection for many hospitality employees. It may therefore increase the practical incentive for employers to adopt fair disciplinary and grievance procedures at an earlier stage of employment. The key question at present is whether this legislative shift can truly transform a workplace in which procedural safeguards are weakly embedded 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 if future appellate authority develops the implied contractual duty of procedural fairness discussed in *Burn v Alder Hey*.¹⁰³

Further research using systematic analysis of Tribunal outcomes, worker interviews, employer interviews and sector-specific survey data would be required to assess the prevalence, causes and consequences of procedural unfairness across the hospitality sector more conclusively.

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¹⁰⁰ *Johnson v Unisys Ltd* [2001] UKHL 13

¹⁰¹ *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2011] UKSC 58

¹⁰² 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

¹⁰³ *ibid*

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