EMPLOYMENT TRIBUNALS

Claimant: Mr Dale White

Respondent: T.P.M. Management Limited

Heard: Online, using Microsoft Teams

On: 28 and 29 April 2026

Before: Employment Judge Winfield

Representation

Claimant: Mr Christopher Mallon BL (Counsel)
Respondent: Ms Evelyn Nevolin, instructed by Large & Gibson (solicitor advocate)

JUDGMENT

The judgment of the Tribunal is as follows:

The Claimant's complaint of unfair dismissal is well founded and succeeds.

The Claimant's complaint of wrongful dismissal is well founded and succeeds.

The Claimant's complaint of unauthorised deductions from wages and associated national minimum wage underpayment is not well founded and is dismissed.

REASONS

Procedure, documents and evidence

1. This was the final hearing of the Claimant's complaints of unfair dismissal, wrongful dismissal and unauthorised deductions from wages / alleged national minimum wage underpayment. Early Conciliation commenced on 10 February 2025 and concluded on 24 March 2025 (main bundle pp. 1 and 4). The claim form (ET1) was presented on 24 March 2025 (main bundle pp. 2-13). The amended particulars of claim are at main bundle pp. 22-27. The Response Form (ET3) and Grounds of Resistance are at main bundle pp. 28-41.

2. A Notice of Final Hearing and case management orders were issued on 8 October 2025 listing the matter for a final hearing on 28 and 29 April 2026 (main bundle pp. 44-47). Those case management orders stated that the bundle was initially limited to 100 pages and witness statements to 3,000 words for the Claimant and his witnesses, and 5,000 words for the Respondent and their witnesses.

3. There was a later request to enlarge the bundle limits, which was partially allowed to 250 pages, the initial request being 600 pages. In practice, I was taken to a main bundle, a separate documents bundle / supplementary bundle, and a number of later admitted documents.

4. The hearing was conducted remotely. There was initially some difficulty in accessing the usual CVP hearing platform and the parties ultimately proceeded using Microsoft Teams so that all participants could properly join and take part in the proceedings.

5. I was provided with the main bundle, a separate documents bundle / supplementary bundle, the Claimant's witness statement ("WS Claimant") and the Respondent's witness statement of Mr Andrew Kille ("WS Respondent"). Some additional documents were introduced during the hearing. Those included: (a) the National Minimum Wage calculation spreadsheet / workings; (b) the draft list of issues; (c) the transcript of the audio recording of the Claimant's suspension on 2 January 2025; (d) historic internal fire risk assessment forms; and (e) a letter from the Claimant to the Respondent sent in 2017. I explained to both parties that I would accept those additional documents only where both parties had been able to review them and where they were taken to me specifically in evidence or submissions.

6. Not all late documents tendered during the hearing were admitted. The Respondent sought to include a series of committee minutes, which were substantial in length. Taking into account the overriding objective, the time available and the need to deal fairly with the case, I admitted part of that additional material and took the admitted documents into account together with the main bundle and the separate documents bundle. It was also agreed between the parties that the substantial documentation already before the Tribunal was sufficient to enable each side fairly to advance its case.

7. I heard oral evidence from the Claimant, Mr Dale White, and from the Respondent's witness, Mr Andrew Kille, the chairman of the board of directors. The parties' written closing submissions were sent by email after the hearing. I did not review those submissions until both had been exchanged between the parties.

8. In reaching the findings set out below, I have considered the pleadings, the main bundle, the separate documents bundle / supplementary bundle, the admitted additional documents, the oral and written evidence, and the parties' written and oral submissions. I do not set out every point canvassed before me, but I have taken the whole of the evidence into account in determining the issues that arise.

9. Throughout the hearing I had regard to the overriding objective and to the need to deal with the case fairly. The parties and witnesses took breaks when needed and any individual circumstances were accommodated in the way the hearing was run.

10. I had to reserve judgment in this case for two principal reasons (a) due to the technical issues at the beginning of the hearing, there was a delay in it starting; (b) there were issues between the parties with documents being sent and received between them and to the Tribunal. Some time needed to be afforded for parties and the Tribunal to review those documents.

Claims and Issues

11. The Claimant was employed by the Respondent from 4 May 2004 until his dismissal on 10 February 2025. He was employed as steward at the residential complex comprising Tower House, Medford House and Parkside, Clarendon Road, Southsea. This claim arises out of the ending of that employment, the Respondent's allegations concerning the Claimant's role in relation to fire safety and the Claimant's complaint that he was underpaid by reference to the national minimum wage.

12. The complaints pursued at the final hearing were unfair dismissal, wrongful dismissal and unauthorised deductions from wages / national minimum wage underpayment. Although the Claimant also relied on allegations of bullying, harassment and micromanagement as part of the factual background, those matters were not pursued before me as separate freestanding statutory causes of action. The list of issues provided during the hearing made that clear and I have approached the case on that basis.

13. The issues I had to determine were as follows.

    a. **Unfair dismissal**
        i. what was the reason or principal reason for dismissal;
        ii. whether the Respondent genuinely believed the Claimant had committed the misconduct relied upon;
        iii. whether there were reasonable grounds for that belief and a reasonable investigation;
        iv. whether the Respondent otherwise acted in a procedurally fair manner; and
        v. whether dismissal fell within the range of reasonable responses.

    In addressing those questions, the central factual disputes included the extent of the Claimant's practical responsibilities in relation to fire safety, whether the July 2024 email was dishonest or mistaken, the significance of the Respondent's own fire safety systems and governance, and the relevance of training, long service and previous disciplinary record.

    b. <u>Wrongful dismissal / notice pay</u>: what notice entitlement the Claimant had and whether the conduct relied upon by the Respondent amounted to gross misconduct, so as to entitle the Respondent to dismiss summarily and without notice.

c. National minimum wage / unpaid wages:
    i. whether, during the relevant pay reference periods, the Claimant was remunerated at a rate below the prevailing national minimum wage;
    ii. whether the accommodation offset was correctly and lawfully applied;
    iii. whether any sums had been repaid so as to extinguish or reduce the claim; and,
    iv. if the complaint succeeded, what compensation would be due.

d. Time limits: in relation to the wages complaint:
    i. whether the claim was presented within the time limit under section 23 of the Employment Rights Act 1996; if not
    ii. whether there was a series of deductions and whether the claim was presented within time by reference to the last deduction; and
    iii. if necessary, whether it had been reasonably practicable to present the complaint earlier.

Findings of fact

14. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings are limited to those relevant to the issues listed above and necessary to explain the decision reached. Where there is disagreement between the parties on matters of fact, I explain below the evidence I prefer and the reasons for doing so.

15. The Claimant commenced employment with the Respondent on 4 May 2004 as steward. He lived on site in accommodation at the complex as part of his employment package. The Respondent is the management company responsible for the residential complex comprising Tower House, Medford House and Parkside, Clarendon Road, Southsea. The board of management consisted of flat owners and the Claimant was the only full-time employee of the company. The contractual material relevant to the factual matrix included that he was employed as “Steward”, was required to work “40 hours per week”, and that “lodging [was] provided” as part of the package. The duties material also referred to matters including “check smoke alarms regularly”. Other relevant features of the role were that he was expected to report matters requiring attention and to deal with routine practical issues in and around the buildings (main bundle pp. 48-50; WS Claimant; WS Respondent). There is a document at page 50 of the main bundle titled “Work Schedule”. The parties disputed the status of that document in relation to the contract of employment. The Claimant’s evidence was that he had never seen it. I treat it as a document relied on by the Respondent as reflecting duties it said were expected of the steward in practice, however I do not treat it as an agreed variation of contract or as a document shown to have been expressly accepted by the Claimant. The Claimant did not sign any other contract after this date, including a proposed new contract issued in 2024 (main bundle p. 50 and pp. 83-109; hearing evidence of the Claimant and Mr Kille).

16. The Claimant's role developed over many years in a relatively informal way. In practice it involved caretaking, dealing with residents, minor maintenance, contacting contractors, reporting matters to the board and being generally available on site. Both the Claimant and Mr Kille agreed that the role had historically been lightly supervised.

17. From about 2013 onwards, the Claimant of his own accord produced and completed a series of internally generated fire risk assessment forms for the buildings. Those forms were not the later professional assessments obtained in 2021 and 2022, but earlier in-house documents completed by the Claimant using an internal or template-based format. They named or described him as the person carrying out the forms and, in some instances, used titles such as steward, steward / health and safety officer or building manager. I treat those documents as evidence that the Claimant had longstanding practical involvement with fire-safety administration and related record-keeping. I do not, however, treat them as conclusive proof that he had been formally trained, contractually designated or lawfully appointed as the person with overall responsibility for fire safety (historic internally generated fire risk assessment forms admitted during the hearing; hearing evidence of the Claimant; disciplinary report Bundle pp. 286-287; WS Respondent, paras 22-27).

18. In 2021 the board instructed the Claimant to obtain a professional Fire Risk Assessment and the Claimant did so by arranging for an external company, BBFS, to carry it out. In November 2022 the board again instructed the Claimant to obtain a professional Fire Risk Assessment and he again did so by arranging for BBFS to complete it. On that second occasion the Claimant accompanied the assessor, received the report on 23 November 2022, printed it and shared it with the board. I find that he read the report and understood that it contained recommendations with time limits, including Priority A items. As recorded at page 38 of the separate documents bundle, Priority A meant: *"Action is required to be completed no later than 1 month from the forwarding date on the cover of this assessment."* I also find that the overall conclusion of the 2022 assessment was that a Tolerable risk rating was reasonable for the occupancy and that there was no change from the previous assessment (separate documents bundle pp. 1-55, especially pp. 4, 10, 16 and 38; WS Claimant, paras 7-8; WS Respondent, paras 22-24).

19. Legal responsibility for fire safety remained with the Respondent company and board. The Claimant's role was a practical one: he was involved in obtaining the assessments, communicating with the board about them and, where directed or where matters fell within his ordinary functions, taking practical steps in response. That practical role did not displace the Respondent's own responsibility for ensuring that the recommendations identified in the 2022 assessment were planned, monitored and acted upon (separate documents bundle pp. 1-55, especially pp. 2-5, 10 and 38; main bundle pp. 114-116; WS Claimant, paras 7-8; WS Respondent, paras 24, 26-27 and 38-41).

20. During 2023 and 2024 the composition and approach of the board changed. The older board had historically operated in a relatively informal and lightly supervised way. New members joined with greater professional governance

experience and, by the time Mr Kille became chair in December 2023, there was a deliberate move towards a more structured and professionalised approach to supervision, compliance and cost control. I accept that this was the Respondent's perception and intention. I also accept that the Claimant experienced that shift as pressure, criticism and a negative change in the way he was expected to work (contract consultation minutes: main bundle pp. 83-90; WS Respondent, paras 16-20 and 28-34; hearing evidence of Mr Kille and the Claimant).

21. By mid-2024 the board had begun to focus more directly on the outstanding position under the 2022 Fire Risk Assessment. As part of that process, the board decided that the latest assessment position should be audited. Mr Kille's evidence was that around May 2024 Simon Boorah, one of the directors, was asked to undertake that audit role. The evidence does not establish a single formal start date for a completed audit process. What it does establish is that, during 2024, Simon Boorah became the director tasked with reviewing fire-safety compliance against the 2022 recommendations and with bringing a more structured audit process to that area. By email dated 16 July 2024, Mr Kille informed the Claimant that the board had reviewed the 2022 Fire Risk Assessment and referred to a forthcoming audit (main bundle p. 116; WS Claimant, para 13; WS Respondent, paras 43-47).

22. By early May 2024, and probably shortly before then, the Respondent had engaged Croner / Bright HR as its external HR and health and safety adviser. I make that finding from the 3 May 2024 contract consultation minutes recording that HR had been outsourced, the 7 May 2024 email from Mr Kille referring to "our HR company", and the 23 July 2024 email expressly stating that TPM had employed Croner / Bright as its HR and health and safety company (main bundle pp. 83-93; separate documents bundle p. 58). Croner's role then developed in three ways. First, it was involved in the 2024 contract revision process and the issuing of the employee handbook. Secondly, it was used to provide advice and support on health and safety training and, later, on disciplinary matters. Thirdly, Croner "Face2Face" consultants were engaged to conduct the investigation, the disciplinary hearing, the grievance appeal and the dismissal appeal relating to the Claimant, each followed by a written report (main bundle pp. 239-246, 282-290, 300-306 and 353-360; WS Respondent, paras 58-60 and 71-82).

23. On 18 July 2024 Mr Kille asked the Claimant to update him on progress in relation to the recommendations in the November 2022 Fire Risk Assessment, including the Priority A items identified in it. The question was: *"We reviewed our Fire Risk Assessment, you are currently the named person for fire safety, there were a list of recommendations on the FRA, can you please update me on the progress of those recommendations"*. On 20 July 2024 the Claimant replied: *"All priority A items have been dealt with. B items - All chute door bat wing seals will require replacement before the next visit. We were given latitude on this as none were in poor condition when the report was made. Three other B items are the responsibility of residents and they are aware of the work. Now that Simon is the appointed responsible person, then he should do this."* (main bundle pp. 114-116; WS Respondent, paras 40-41; hearing evidence). That exchange later became central to the Respondent's case on dishonesty.

24. On 17 September 2024 there was a meeting between board members and the Claimant which the Respondent described as a "line in the sand" meeting. I find that the board intended it as an informal performance-related reset rather than a formal disciplinary hearing. I also find that the Claimant personally experienced it negatively and as containing an element of hostility: he perceived it as part of an effort to build a case against him. A list of concerns was raised with him, albeit no formal disciplinary sanction was imposed at that stage (meeting invitation and outcome materials: main bundle pp. 122-125; WS Claimant, paras 14-16; WS Respondent, paras 49-52; hearing notes).

25. Later in September 2024 the Claimant was signed off work for a period with work-related stress. I accept that the deterioration in relations with the new board was a significant feature in that absence. During roughly the same period there were also attempts to require or encourage the Claimant to complete online health and safety training through the Respondent's HR system. I find that there were real difficulties with the work phone and access to the online training, that those difficulties were raised but not satisfactorily resolved, and that the Claimant did not receive proper fire-safety training before dismissal (main bundle pp. 143-144 and 365-367; separate documents bundle p. 58; late admitted screenshot / email regarding H&S training difficulties; WS Claimant, paras 16-18; WS Respondent, paras 25 and 53-57).

26. On 20 November 2024 the Claimant raised a formal grievance about bullying, harassment and the treatment he had received in relation to his role and contract. A grievance meeting was held on 10 December 2024. The grievance was not upheld and the Claimant appealed. His appeal was later rejected on 7 February 2025 (grievance, grievance meeting and appeal documents: main bundle pp. 149-162, 173 and 300-309; WS Claimant, paras 17-18 and 24; WS Respondent, paras 58-60).

27. By late 2024 Simon Boorah's audit work had produced interim and then final material identifying a number of outstanding items from the 2022 Fire Risk Assessment, including Priority A items. As recorded at page 38 of the separate documents bundle, Priority A meant: *"Action is required to be completed no later than 1 month from the forwarding date on the cover of this assessment."* As explained previously, the overall conclusion of the 2022 assessment was that a Tolerable risk rating was reasonable for the occupancy and that there was no change from the previous assessment. The outcome of Simon Boorah's 2024 audit was therefore not that the building as a whole was reclassified as intolerable or unsafe in overall terms, but that a number of the specific recommended actions from the 2022 assessment, including Priority A items, remained outstanding by late 2024. Those materials fed into the board's growing view that the Claimant had not accurately reported the position and that disciplinary action should be taken (main bundle pp. 163-172; separate documents bundle pp. 16 and 38; WS Respondent, paras 45-48).

28. On 2 January 2025 the Claimant was suspended from work pending investigation. The suspension was communicated in person by Mr Kille and another director and there was an audio recording of that encounter, later transcribed, in the separate documents bundle at pages 63-67. The

Claimant's evidence was that the meeting took place in a public space at work and he found that humiliating. The Respondent denied that the matter was handled in an inappropriate way and said it was intended to be neutral. I accept, based on the Claimant's oral evidence, that he would have felt humiliated by the manner and setting of the suspension meeting. However, as will be explained below, I do not regard that issue as determinative of the dismissal claims (main bundle pp. 178-179; separate documents bundle pp. 60-67; WS Claimant, para 19; WS Respondent, paras 63-70).

29. An investigation meeting took place on 8 January 2025 and a disciplinary hearing followed on 20 January 2025 (main bundle pp. 180-246 and 247-290). The allegations taken forward against the Claimant were, in summary, that:

    a. he had failed to ensure that the recommendations in the November 2022 Fire Risk Assessment had been implemented within the relevant timeframes;
    b. had failed to inform the Respondent of outstanding recommendations requiring implementation;
    c. had deliberately and fraudulently misled the board by stating in his email of 20 July 2024 that all Priority A items had been dealt with; and
    d. had thereby endangered the health and safety of residents contrary to the Respondent's policies (main bundle pp. 247-248 and 311-314).

30. The Claimant maintained that he had not been given proper advance access to the case against him and disputed key aspects of the allegations. The Respondent maintained that he had received the relevant materials and had a fair opportunity to respond. I find that a real process did take place, with an investigation, hearing and appeal, but that the process was materially limited in the way the allegations were framed and reasoned through. In particular, the investigation and later reasoning proceeded on the basis that the Claimant was effectively the person responsible for ensuring implementation of the 2022 Fire Risk Assessment recommendations, whereas the evidence before me required more careful examination of the distinction between the Claimant's practical role and the Respondent's own responsibility as management company and board, together with the July 2024 email chain at main bundle pp. 114-116 and the 2024 audit / handover materials at main bundle pp. 163-172.

31. I therefore find that, although the process was procedurally real, the quality of its reasoning was insufficiently rigorous in several important respects and did not adequately engage with the substantive role ambiguity, lack of training, weaknesses in the Respondent's own systems, and the distinction between inaccuracy and dishonesty which lay at the heart of the case.

32. On 10 February 2025 the Claimant was dismissed with immediate effect for four counts of gross misconduct. He appealed, but the appeal was unsuccessful and the dismissal was upheld on 24 March 2025. I find that the board accepted the external HR recommendation rather than independently re-framing the matter. The charges and dismissal reasoning remained rooted in alleged failures connected with the 2022 Fire Risk

Assessment recommendations and the July 2024 email (main bundle pp. 311-361; WS Claimant, paras 25-28; WS Respondent, paras 78-82).

33. There was also a separate issue about the Claimant's pay and national minimum wage. By 2024 the Respondent undertook a review of the Claimant's pay position by reference to salary, accommodation offset and the applicable national minimum wage rates. That exercise showed, on the Respondent's case, that for most earlier years the combination of salary and offset placed the Claimant above the applicable minimum rate, but that from April 2023 there had been a shortfall, increasing further from April 2024. The spreadsheet calculation produced for the Respondent showed an underpayment of £340.60 for 2023-24 and £481.68 for 2024-25 up to the point then assessed, giving a total of £822.28, and stated that the Claimant's salary should be increased to £1,679.07 per month (main bundle p. 459; separate documents bundle pp. 56-57; late admitted spreadsheet / workings).

34. The Respondent then increased the Claimant's pay with effect from July 2024 and made a back-payment through payroll in July 2024. The contemporaneous email of 4 July 2024 stated that the Claimant would be given an immediate pay rise to £20,148.84 per annum or £1,679.07 gross per month, that the payroll provider had been instructed to ensure future national minimum wage compliance, and that the underpayment of £822.28 would be paid in the July salary payment (separate documents bundle pp. 56-57). The July 2024 payslip shows gross pay of £2,501.35 comprising salary and a "Top Up" payment of £822.28 (main bundle p. 451). Thereafter, the monthly payslips show salary at £1,679.07 gross per month until the termination of employment, save for the final February 2025 payment which reflected accrued holiday only (main bundle pp. 452-458).

35. The parties' positions then diverged. The Respondent's case was that the July 2024 uplift and top-up corrected the relevant underpayment and brought the ongoing salary into line with national minimum wage requirements thereafter (WS Respondent, paras 35-37; main bundle pp. 451-459). The Claimant's case, as reflected in his witness statement and written submissions, was that there had been a much longer-running and larger underpayment, said by him to total £11,957 after credit for the July 2024 payment, and that the accommodation offset should not have been applied in the way contended for by the Respondent (WS Claimant, paras 30-31; Claimant's written submissions; late admitted spreadsheet / workings). I accept as a fact that the July 2024 correction payment was made and that the salary was increased from that point. Whether that extinguished the legal claim, and whether the claim was in time, are matters I address below in the conclusions.

Submissions of the Parties

36. The Claimant submitted that he had been unfairly and wrongfully dismissed after a long period of service in circumstances where the Respondent - and in particular those advising it in the disciplinary process - fundamentally misunderstood the statutory framework in the Regulatory Reform (Fire Safety) Order 2005. The Claimant's central submission was that the Respondent failed to distinguish between the "responsible person", whose

duties under the 2005 Order remained with the management company and board, and any "competent person" who might be appointed to assist. He submitted that he was never formally appointed, trained or managed as a competent person within the meaning of that legislation, and that the Respondent's misunderstanding of that distinction infected the whole of the disciplinary process. On the Claimant's case, the Board and Croner wrongly treated him as if he bore direct compliance responsibility for implementing the 2022 Fire Risk Assessment recommendations, when his actual role was historically informal, practical and subordinate to board control. He contended that his July 2024 email was, at worst, mistaken or over-optimistic rather than dishonest; that the investigation and appeal failed to engage with the Respondent's own primary statutory responsibility, governance failures, lack of systems and lack of training; and that dismissal for gross misconduct was therefore outside the range of reasonable responses and not contractually justified. In relation to wages, the Claimant submitted that he had been underpaid by reference to national minimum wage for a longer period and to a greater extent than the Respondent accepted, that the accommodation offset had not been lawfully or transparently applied, and that the complaint was in time as a continuing series of deductions.

37. The Respondent submitted that the reason for dismissal was the Claimant's conduct and that dismissal was fair and lawful because the Claimant had, over a prolonged period, failed properly to discharge responsibilities which formed part of his role in practice, including responsibilities connected with fire-safety checks, follow-up, record keeping and reporting. The Respondent's closing submissions emphasised that, whatever the precise legal language of the Fire Safety Order 2005, the Claimant had for years carried out practical fire-safety functions, was the person who obtained and handled assessments, kept relevant records, and was the employee to whom the Board looked for implementation and updates. It contended that the 2022 Fire Risk Assessment recommendations included matters of obvious importance and that by July 2024 the Claimant gave a clear factual assurance to the board that all priority A items had been dealt with when that was not true. The Respondent submitted that this was not an innocent error but a serious and dishonest misrepresentation, made in the context of longstanding failures to progress urgent fire-safety matters, and that the resulting loss of trust and confidence plainly amounted to gross misconduct. It further submitted that a reasonable investigation was carried out with external HR support, that the Claimant was given notice of the allegations, an opportunity to respond and an appeal, and that dismissal fell well within the range of reasonable responses in a fire-safety context. As to wages, the Respondent submitted that any minimum wage shortfall had been identified, calculated and corrected, that the accommodation offset was properly brought into account, and that in any event the wages complaint was out of time save to the extent of any limited, already-remedied underpayment.

The Law

38. In relation to unfair dismissal, section 98 of the Employment Rights Act 1996 provides, so far as material:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

39. Section 98(2) provides that "A reason falls within this subsection if it … (b) relates to the conduct of the employee". Section 98(4) provides:

"where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

40. In this case the Respondent relies on conduct, namely alleged misconduct and gross misconduct arising out of the Claimant's handling of the 2022 Fire Risk Assessment recommendations and his communications to the board about them.

41. Where conduct is relied upon, the Tribunal must consider the reason for dismissal by reference to the employer's state of mind, applying the formulation in *Abernethy v Mott, Hay and Anderson* [1974] ICR 323 (Court of Appeal), that a reason for dismissal is the set of facts known to the employer, or beliefs held by it, which caused it to dismiss. In a conduct dismissal, the well-known guidance in *British Home Stores Ltd v Burchell* [1980] ICR 303 (Employment Appeal Tribunal) applies. The Tribunal must consider whether the employer believed the employee to be guilty of the misconduct alleged, whether it had reasonable grounds for that belief and whether, at the stage at which that belief was formed, it had carried out as much investigation into the matter as was reasonable in the circumstances. The reasonableness of the investigation is not assessed by asking whether every conceivable step was taken, but by considering the gravity and nature of the allegations, the material available to the employer, and whether the overall investigation fell within the range of reasonable responses open to a reasonable employer. The Tribunal must not substitute its own view for that of the employer merely because it might itself have reached a different conclusion: *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17 (Employment Appeal Tribunal). Nor is a misconduct investigation required to attain the standard of a criminal enquiry; the question remains one of reasonableness in all the circumstances: *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 (Court of Appeal).

42. Even where the employer establishes a potentially fair reason and satisfies those matters, the Tribunal must go on to decide under section 98(4) of the Employment Rights Act 1996 whether, in all the circumstances and having regard to equity and the substantial merits of the case, the employer acted

reasonably or unreasonably in treating that reason as sufficient to dismiss. That requires the Tribunal to consider both substance and procedure. The question is whether dismissal fell within the band of reasonable responses open to a reasonable employer in these circumstances; it is not whether dismissal was the sanction the Tribunal would itself have imposed: *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17 (Employment Appeal Tribunal). In a misconduct case the Tribunal may take into account, where relevant, matters such as the seriousness of the allegations, the employee's length of service and disciplinary record, any training or guidance provided, whether responsibilities were clear, whether there were mitigating features, whether the employee was given a fair opportunity to answer the allegations, and whether an appeal formed part of an overall fair process. The ACAS Code of Practice on Disciplinary and Grievance Procedures is not itself determinative, but it is relevant to the assessment of procedural fairness; and the Tribunal considers the whole process including any appeal: *Taylor v OCS Group Ltd* [2006] IRLR 613 (Court of Appeal). There is no rule that an employer must give first or final written warnings before dismissing for gross misconduct: where the conduct is properly viewed as sufficiently serious to destroy trust and confidence or to amount to a serious and wilful breach, immediate dismissal for a first act may fall within the range of reasonable responses. Equally, the mere labelling of conduct as "gross misconduct" does not make summary dismissal reasonable or inevitable. The Tribunal must examine the context, including whether the rule or expectation was clear, whether the employee had been trained or warned, whether similar conduct had been tolerated or condoned, whether the employee had long service and a clean record, and whether a lesser sanction was one a reasonable employer could have adopted. In that respect, the authorities are capable of supporting either side depending on the facts. In *Brito-Babapulle v Ealing Hospital NHS Trust* [2013] IRLR 854 (Court of Appeal), the Court of Appeal recognised that some misconduct is so serious that dismissal may be justified even as a first offence. By contrast, in *Newbound v Thames Water Utilities Ltd* [2015] EWCA Civ 677, [2015] IRLR 734, the Court of Appeal upheld a finding of unfair dismissal in a health and safety context where, although the conduct was serious, the relevant practice had previously been tolerated, training and communication of the new requirement were insufficient, and long service and mitigation had not been given adequate weight. Those cases do not lay down inconsistent principles; they illustrate that the question remains one of overall reasonableness on the particular facts.

43. In this case, because the parties' submissions centrally raised the distinction between the Respondent as the "responsible person" and the Claimant as an alleged "competent person", the statutory context of the Regulatory Reform (Fire Safety) Order 2005 forms an important part of the background against which reasonableness must be assessed. So far as material, Article 3 identifies the "responsible person"; Article 5 places the fire-safety duties under the Order primarily on that responsible person; Article 9 requires a suitable and sufficient fire risk assessment; and Article 11 requires appropriate arrangements for the planning, organisation, control, monitoring and review of preventive and protective measures.

44. Central to the Claimant's case is Article 18 ("Safety assistance"), which requires the responsible person to appoint one or more competent persons

to assist in undertaking the preventive and protective measures, and provides at article 18(5):

"A person is to be regarded as competent for the purposes of this article where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the preventive and protective measures."

45. Article 18(8) further provides that, where there is a competent person in the responsible person's employment, that person must be appointed in preference to a competent person not in his employment.

46. Article 21 ("Training") requires the responsible person to ensure that employees are provided with adequate safety training both when first employed and when exposed to new or increased risks because of changed responsibilities or systems of work, and requires that such training include suitable and sufficient instruction on the precautions and actions to be taken, be repeated where appropriate, be adapted to new or changed risks, and take place during working hours. Article 23 imposes duties of co-operation and reporting on employees. The Tribunal is not enforcing the Fire Safety Order in these proceedings, but those provisions are relevant to the parties' competing arguments about role, responsibility, competence, training, and the reasonableness of the Respondent's belief and investigation.

47. The wrongful dismissal claim is distinct. It depends not on section 98 of the Employment Rights Act 1996, but on whether, as a matter of contract, the Respondent was entitled summarily to dismiss the Claimant without notice. The question is whether the Claimant committed conduct amounting to a repudiatory breach of contract, commonly described in the employment context as gross misconduct. Not every act of misconduct, carelessness or error of judgment will suffice. The conduct must be sufficiently serious to go to the root of the contract or to destroy the relationship of trust and confidence so as to entitle the employer to terminate without notice. In determining that issue, the Tribunal must make its own finding on the facts; it is not confined to reviewing the reasonableness of the employer's belief. Dishonesty or deliberate conduct which poisons the employment relationship will commonly satisfy that test, but gross negligence may also do so if it is sufficiently grave and weighty: *Adesokan v Sainsbury's Supermarkets Ltd* [2017] EWCA Civ 22, [2017] ICR 1020 (Court of Appeal). A dismissal may therefore be fair for the purposes of unfair dismissal law and yet wrongful if the conduct proved does not amount to repudiatory breach; equally, conduct amounting to gross misconduct will ordinarily justify summary dismissal.

48. The unlawful deductions complaint falls to be considered by reference to sections 13 and 23 of the Employment Rights Act 1996. Section 13 prohibits deductions from wages unless authorised by statute, by the worker's contract, or by prior written consent. A failure to pay wages properly due can amount to a deduction for these purposes. The Tribunal must therefore identify whether there were wages "properly payable" and, if so, whether any deduction was authorised. The concept of wages in Part II is broad, but it still requires legal entitlement to the relevant sum: *New Century Cleaning Co Ltd v Church* [2000] IRLR 27 (Court of Appeal). A complaint under

section 23 must ordinarily be presented within three months of the deduction complained of, or within three months of the last in a series of deductions, subject to the statutory extension for early conciliation. Whether there is a "series" is a question of fact and context, not a purely formal exercise: *Chief Constable of the Police Service of Northern Ireland v Agnew* [2023] UKSC 33, [2023] ICR 1309 (Supreme Court). In a case where the complaint is framed by reference to national minimum wage underpayment, the Tribunal must identify the relevant pay reference periods, determine the remuneration properly attributable to those periods, and decide whether the pay received, after applying the statutory rules including any permitted accommodation offset, met the applicable minimum rate. The existence of a later corrective payment may be relevant to remedy and to whether any sum remains outstanding, but it does not of itself remove the need to determine whether there was an underpayment in the first place, over what period, and whether the complaint was presented in time.

Application of the Law to the Facts and Conclusions

49. The Respondent's case is that the principal reason for dismissal was conduct, namely the Claimant's alleged failure to ensure that the recommendations in the 2022 Fire Risk Assessment were implemented, his alleged failure to notify the Respondent of outstanding matters, the contents of his email of 20 July 2024, and the alleged consequent endangerment of residents (separate documents bundle pp. 1-55; main bundle pp. 114-116 and 247-314). On the evidence before me, I am satisfied that the Respondent did dismiss for a conduct reason rather than for capability, redundancy or some other substantial reason. The disciplinary charges, the dismissal letter and the appeal process all proceeded on that basis. The real issue is therefore whether the Respondent acted reasonably in treating that conduct as a sufficient reason to dismiss.

50. I accept that by late December 2024 and January 2025 the board, and in particular Mr Kille, genuinely believed that the Claimant had failed properly to deal with important fire-safety recommendations and had inaccurately represented the position to the board. The audit material compiled by Mr Boorah, the 2022 Fire Risk Assessment, the July 2024 email exchange and the Claimant's own longstanding involvement with fire-safety administration all provided material on which such a belief could in principle be formed (separate documents bundle pp. 1-55; main bundle pp. 114-116 and 163-172; historic internal fire risk assessment forms admitted during the hearing). I therefore find that the first limb of *Burchell* is satisfied.

51. I also accept that there were grounds for concern. The July 2024 email was inaccurate; the later audit did reveal outstanding matters from the 2022 Fire Risk Assessment; and the board was entitled to take fire safety seriously (main bundle pp. 114-116 and 163-172; separate documents bundle pp. 1-55). However, the critical legal question is not simply whether there were facts capable of alarming a reasonable employer. It is whether, taking those facts together and viewing them through the lens of section 98(4), the Respondent acted reasonably in treating them as misconduct of such seriousness as to justify dismissal. In my judgment, that question cannot be answered without careful attention to the actual scope of the Claimant's role. On my findings of fact, the Claimant undoubtedly had practical

involvement with fire-safety administration over many years, including obtaining assessments, keeping logs and reporting matters. I have also taken into account the contractual wording requiring him to work as "Steward", to work "40 hours per week", that "lodging [was] provided", and the duties wording including "check smoke alarms regularly" and "Twice weekly - Check fire alarms throughout the premises" (main bundle pp. 48-50). That wording supports the conclusion that the Claimant's role included practical duties touching on fire alarms and related building safety matters. It does not, however, by itself establish that he bore sole, clearly defined and trained responsibility for ensuring implementation of the November 2022 Fire Risk Assessment recommendations. The Respondent's reasoning, and the external HR reasoning it adopted, tended to transform a long-standing but informal practical involvement into something much closer to sole operational responsibility. That was an important analytical error.

52. I recognise that the Respondent's process was not a sham. External HR support was obtained; an investigation meeting, disciplinary hearing and appeal were held; and the Claimant was given opportunities to respond (main bundle pp. 178-179, 180-246, 247-314 and 332-361). But a process may be genuine and still fall short of what fairness requires. In this case, the Respondent and its advisers did not sufficiently grapple with four interlocking features of the evidence. First, there was an absence of clear fire-safety training, despite the Respondent's later attempt to hold the Claimant to what were effectively compliance-based expectations. Secondly, the Respondent's own systems for tracking, allocating and monitoring implementation of the 2022 recommendations were weak and only belatedly professionalised. Thirdly, the Respondent as management company and board remained the legally responsible entity in fire-safety terms, yet its disciplinary reasoning treated the Claimant's shortcomings as if they could be viewed in isolation from that wider governance failure. Fourthly, and importantly, the Claimant's July 2024 email, although inaccurate, was not proved on my findings to be a deliberate lie. The Respondent was entitled to investigate whether it was dishonest; but fairness required it also to confront the realistic alternative possibility that the email reflected confused understanding, overstatement, or muddled communication in an area where responsibilities had been historically blurred. I do not consider that the Respondent's investigation and disciplinary reasoning dealt adequately with that possibility.

53. When I stand back and consider the matter in the round, I conclude that dismissal for gross misconduct fell outside the range of reasonable responses. I do not reach that conclusion because fire safety was unimportant, nor because the Claimant's conduct was beyond criticism. I reach it because the sanction must be assessed against the whole factual context, including the specific question whether immediate dismissal without prior warnings was a reasonable response here. I accept that there are cases in which a first act of misconduct, particularly where dishonesty, deliberate concealment, wilful defiance of an essential rule, or some other plainly trust-destroying conduct is proved, can justify immediate dismissal without any prior warning. That is the force of the Respondent's submission and it is a proposition supported in principle by authority. I also accept, however, that the authorities support the converse proposition that where the conduct occurs in a setting of unclear responsibilities, inadequate

training, prior tolerance or condonation, long service and a previously clean record, a Tribunal may properly conclude that immediate dismissal was outside the band even though the subject matter is serious. In my judgment this case falls into the latter category. This was a long-serving employee with no prior warnings, operating for many years in an informal and lightly supervised role, in a setting where the Respondent itself had not put in place a sufficiently clear framework for implementation of the 2022 recommendations and had not provided adequate fire-safety training. In those circumstances, the deficiencies proved against the Claimant, including the inaccurate July 2024 email, did justify serious concern and disciplinary action. But a reasonable employer, properly directing itself to the ambiguity of role, the absence of training, the Respondent's own governance failings, the Claimant's long and previously unblemished service, and the absence of proved dishonesty, would in my judgment have regarded this as a case for correction, warning, closer supervision or some lesser sanction rather than immediate dismissal for gross misconduct. The Respondent was entitled to be seriously concerned; it was not entitled, acting reasonably, to treat the matters proved as sufficient to justify dismissal at the highest level of sanction without first considering and giving proper weight to those powerful mitigating features.

54. It follows that the unfair dismissal complaint succeeds. The Respondent has shown conduct as the reason for dismissal, and I accept that it genuinely believed the Claimant had committed serious misconduct. But, taking the matter in the round, the Respondent did not act reasonably in all the circumstances in treating the matters proved as sufficient reason for dismissal. The grounds for the Respondent's belief were materially affected by the role ambiguity and by the failure properly to distinguish between the Claimant's practical involvement and the Respondent's own primary responsibility and systems. As I have found above, the investigation, disciplinary and appeal process was not merely imperfect in presentation but insufficiently rigorous in reasoning. That included the fact that the dismissal appeal was conducted through Croner Face2Face and resulted in a further Croner appeal report (main bundle pp. 353-360), yet that appeal process did not cure the earlier defects. Instead, it substantially repeated the same flawed analysis by continuing to treat the Claimant as if he had direct and sufficient responsibility to ensure implementation of the 2022 recommendations, by continuing to rely on labels such as "competent person" and "Health & Safety Officer" without adequate scrutiny, and by failing to engage properly with the lack of clear fire-safety training, the weakness of the Respondent's own systems, and the realistic possibility that the July 2024 email was inaccurate without being dishonest. The board then adopted that Croner appeal reasoning when rejecting the appeal (main bundle p. 361). Once those features are properly taken into account, dismissal for gross misconduct without prior warnings fell outside the range of reasonable responses. The dismissal was therefore unfair within the meaning of section 98 of the Employment Rights Act 1996.

55. The wrongful dismissal claim therefore also succeeds. The question here is a contractual one: whether the Respondent was entitled summarily to dismiss the Claimant without notice because his conduct amounted to repudiatory breach or gross misconduct. That requires the Tribunal to make its own assessment of the conduct actually proved; it is not enough that the

employer reasonably believed the conduct to be serious. I accept that prior warnings are not a legal prerequisite to summary dismissal where the misconduct proved is truly gross. But that proposition does not assist the Respondent on the facts I have found. In my judgment, the proved conduct does not reach that contractual threshold. I have found that the Claimant's July 2024 email was inaccurate, but I have not found that it was a deliberate lie (main bundle pp. 114-116 and 163-172). I have also found that, although the Claimant had practical involvement with fire-safety matters, his responsibilities had developed informally over many years, were not clearly or exclusively defined, and were not underpinned by proper fire-safety training or a clear managerial system for implementation of the 2022 recommendations. In those circumstances, the shortcomings established against him are properly characterised as serious failings in performance, judgment and communication within an ill-defined and weakly supervised system, rather than as conduct so grave as to amount to a renunciation of the contract or to destroy the relationship of trust and confidence in the strict contractual sense. This is not a case where dishonesty, deliberate concealment or some other plainly trust-destroying act was proved. Nor is it a case where the Claimant, acting with clear delegated authority and training, wilfully refused to comply with essential safety obligations. The absence of prior warnings is not decisive in itself, but it is part of the wider context showing that the matters proved were not of the character that entitled the Respondent to leap immediately to summary dismissal without notice. The Respondent was entitled to criticise him and to take disciplinary action. But on the findings I have made, it was not contractually entitled to dismiss him without notice. He was therefore entitled to notice or pay in lieu of notice.

56. In relation to the wages complaint, I accept that there was at least some historic underpayment by reference to national minimum wage and that the Respondent made a corrective payment in July 2024 (main bundle pp. 448-459; separate documents bundle pp. 56-57; late admitted spreadsheet / workings). The evidence before me, however, does not justify the broader claim advanced by the Claimant that very substantial sums remained due across the entire period claimed. The Respondent's spreadsheet and accompanying calculations show that corrective action was taken and that the most recent underpayment identified by the Respondent was remedied in July 2024. On the evidence and arguments presented, I am satisfied that the wages complaint, so far as pursued as an unlawful deductions complaint, was not presented within the time limit prescribed by section 23 of the 1996 Act. The effective last deduction relied upon by the Claimant preceded the presentation of the claim by more than three months, even allowing for early conciliation, and I do not find a continuing series extending beyond the corrective payment in July 2024. It follows that the complaint under section 13 / section 23 is not well founded and, in any event, I would have held that the evidence did not establish any further sum remaining due beyond what had already been corrected.

57. I therefore conclude that the Claimant succeeds in his complaints of unfair dismissal and wrongful dismissal, but does not succeed in his complaint of unlawful deductions / national minimum wage underpayment.

Conclusions

1. Issue (a), unfair dismissal: I conclude that the Respondent dismissed the Claimant for a conduct reason, but that the dismissal was unfair. Although the Respondent had genuine concerns and some basis for them, it did not act reasonably in all the circumstances in treating the matters proved as sufficient reason for dismissal. In particular, the Respondent failed adequately to address the ambiguity of the Claimant's role, the absence of proper fire-safety training, the Respondent's own systems and governance failings, and the realistic possibility that the July 2024 email was inaccurate without being dishonest. I also conclude that, although the law does not require prior warnings before every dismissal for gross misconduct and although an immediate dismissal may in some cases be justified for a first offence, this was not such a case. Given the Claimant's long service, clean disciplinary record, the lack of training and clarity, and the mitigating features I have identified, dismissal for gross misconduct without prior warnings fell outside the range of reasonable responses. That conclusion is reinforced by the fact that the appeal, conducted through Croner Face2Face and embodied in the Croner appeal report (main bundle pp. 353-360), did not remedy the earlier defects in the reasoning but repeated them, and the board then adopted that analysis when rejecting the appeal (main bundle p. 361).

2. Issue (b), wrongful dismissal / notice pay: I conclude that the Respondent was not contractually entitled to dismiss the Claimant without notice. The conduct actually proved against the Claimant amounted to serious shortcomings in performance, judgment and communication, but did not amount to repudiatory breach or gross misconduct in the strict contractual sense. Although prior warnings are not a necessary legal precondition to summary dismissal where a first act is truly gross, the proved facts here did not justify immediate dismissal without notice and without prior warnings. The Claimant was therefore entitled to notice or pay in lieu of notice.

3. Issue (c) and (d), time limits and unauthorised deductions from wages / national minimum wage underpayment: I conclude that the Claimant's complaint does not succeed. Although there was some historic underpayment, the Respondent identified and corrected the underpayment it accepted in July 2024, and I am not satisfied that the broader complaint was either proved on the evidence or presented within the applicable time limit under section 23 of the Employment Rights Act 1996.

4. For those reasons, the Claimant's complaints of unfair dismissal and wrongful dismissal succeed. His complaint of unlawful deductions from wages / national minimum wage underpayment is dismissed.

5. Remedy will be listed and determined at a separate hearing.

Case No: 6010118/2025

Approved by
Employment Judge Winfield
Date: 6 June 2026

Sent to the parties on
25 June 2026

Jade Lobb
For the Tribunal Office

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