Case No: 6036876/2025

EMPLOYMENT TRIBUNALS

Claimant: Brett Turner

Respondent: Cambridge Wine Merchants Limited

Heard at: Cambridge Employment Tribunal (by CVP)

On: 12-13 October 2026

Before: Employment Judge David (sitting alone)

REPRESENTATION:

Claimant: Ms A Niaz-Dickinson, Counsel

Respondent: Mr T Perry, Counsel

RESERVED JUDGMENT

1. The judgment of the Tribunal is as follows:

    a. the complaint of unfair dismissal succeeds.

    b. Compensation shall be reduced by 60% pursuant to Polkey and by 50% for contributory conduct.

    c. Any compensatory award shall be increased by 15% pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992.

    d. Remedy will be determined at a separate hearing.

FULL WRITTEN REASONS

Introduction

1. The claimant Mr Brett Turner was a founder, director and 45% shareholder of the respondent, Cambridge Wine Merchants Limited. There was no dispute that the claimant was an employee of the respondent within the meaning of the Employment Rights Act 1996. He had worked for the respondent from 25 February 1993 until his dismissal on 9 June 2025.

2. Following a period of ACAS Early Conciliation, which commenced on 22 July 2025 and concluded with the issue of an Early Conciliation Certificate on 2 September 2025 (reference R222301/25/92), the claimant presented an ET1 on 7 October 2025 alleging ordinary unfair dismissal. The respondent presented an ET3 and Grounds of Resistance on 17 November 2025 resisting the claim in its entirety.

3. The claimant's case is that he was unfairly dismissed following an inadequate and incomplete investigation, that he engaged with the investigation process and provided detailed written responses, and that the respondent failed to follow a fair procedure before dismissing him. The respondent's case is that the claimant engaged in serious misconduct relating to remuneration and payroll arrangements, that two employees raised serious complaints concerning his conduct and management style, that he frustrated the investigation process, and that dismissal was fair because of misconduct and/or an irretrievable breakdown in trust and confidence and working relationships.

Preliminary Issues

4. Although adjustments had not previously been requested, due to difficulties hearing in the court room (the air-conditioning was loud), the claimant requested to sit at the front of the hearing room, next to counsel, because of hearing difficulties. I allowed that request.

5. During the hearing a concern was raised by respondent's counsel regarding interruptions during witness evidence. That matter was addressed and resolved during the hearing.

6. During the course of the evidence, the claimant's representative raised an objection concerning a question asked by the respondent in re-examination. Having considered the parties' respective submissions, I allowed the question on the basis that it was relevant to issues arising from the evidence given during the hearing.

7. There was also discussion concerning self-incrimination during the claimant's evidence when questions were asked about payroll arrangements involving connected parties. Both counsel and I explained the position to the claimant at various stages of the hearing, and he proceeded with the benefit of that warning.

8. I would like to thank both counsel for the helpful way in which the hearing was conducted, and for their very helpful submissions emailed to the tribunal. Their submissions contained useful case law essential to deciding this matter. I would also like to thank the CVP clerk in Watford for directing those submissions to me in a timely way.

9. I note that both parties were content for the Tribunal to determine the issue of Polkey at the liability hearing. Ms Niaz-Dickinson submitted that the relevant factual matters had been sufficiently explored during the evidence and that the Tribunal was in a position to assess the likely outcome had a fair procedure been followed. Mr Perry adopted a similar position. Having heard the evidence and submissions, I am satisfied that I have a sufficient evidential basis to make findings concerning the likelihood of dismissal following a fair procedure and it is therefore appropriate to determine the issue at this stage.

Issues

10. The issues I was required to determine were:

    10.1. What was the reason, or principal reason, for the claimant's dismissal?

    10.2. Was the reason: a. conduct; or b. some other substantial reason, namely an alleged breakdown in trust and confidence and working relationships?

    10.3. If the reason was conduct: a. did the respondent have a genuine belief in the claimant's misconduct; b. was that belief based on reasonable grounds; and c. was the investigation reasonable?

    10.4. Did the respondent act reasonably in treating the reason for dismissal as sufficient reason to dismiss the claimant?

    10.5. In particular: a. did the respondent follow a fair procedure; b. was the claimant given a fair opportunity to respond to the allegations; c. was the respondent entitled to conclude that the claimant was not engaging with the investigation process; d. was dismissal within the range of reasonable responses?

Remedy (if the dismissal was unfair)

11. Would the claimant have been dismissed had a fair procedure been followed and, if so, should compensation be reduced pursuant to *Polkey v AE Dayton Services Ltd*?

12. Did the claimant, by culpable or blameworthy conduct, contribute to his dismissal and, if so, should compensation be reduced?

13. Did either party fail to comply with the ACAS Code of Practice and, if so, should any adjustment be made to compensation?

Facts accepted or not in dispute

14. I find the following matters were agreed or not materially disputed:

    14.1. The claimant and Hal Wilson had worked together within the business for many years and between them exercised substantial influence over the company. The claimant principally dealt with retail operations whilst Hal Wilson principally dealt with finance and wholesale operations.

    14.2. During March 2025, complaints were raised by at least two individuals, one of whom was John Stowell. The parties requested that the identity of the second complainant is anonymised. I agreed as I was satisfied that knowledge of their identity is not material to my findings or an understanding of them.

    14.3. The claimant was suspended on 11 March 2025.

    14.4. An investigation commenced and Jackie Turner was engaged to conduct that investigation.

    14.5. An investigation meeting took place on 23 April 2025.

    14.6. The claimant subsequently provided written responses to the allegations.

    14.7. No completed investigation report was produced.

    14.8. No disciplinary hearing took place.

    14.9. No appeal hearing took place.

    14.10. The claimant was dismissed by letter dated 9 June 2025.

Credibility and reliability of the witnesses

15. I heard witness evidence from Hal Wilson, Jackie Turner, and the claimant. I found all witnesses sought to assist the Tribunal honestly. However, I did not accept all aspects of their evidence.

16. I found Hal Wilson to be a genuine witness who honestly believed serious misconduct had occurred. However, I found difficulties in aspects of his evidence concerning the decision-making process because he accepted that, before dismissing the claimant, he had not reviewed a number of important investigation documents, including the claimant's written responses and the detailed investigation material.

17. I found Jackie Turner to be a careful witness. Her evidence was particularly important regarding the scope of the investigation; the information provided to the claimant and what occurred during the investigation meeting.

18. I found the claimant's evidence candid in important respects. Most significantly, he accepted that three individuals who were paid through the respondent's payroll did not undertake work for the respondent. However, I do not accept his contention

that he had effectively been cleared of the allegations in respect of these and other financial matters by May 2025.

FINDINGS OF FACT

Background

19. Having considered the oral and documentary evidence as a whole and, where there was a dispute of fact, having assessed the credibility and reliability of the witnesses against the contemporaneous documents, I make the following findings.

20. The claimant, a founder member of the respondent, had worked within the respondent's business for many years and was also a 45% shareholder. Together with Hal Wilson, he exercised substantial influence over the company. The claimant was principally responsible for retail operations, whilst Hal Wilson focused on finance and wholesale operations.

21. In March 2025, concerns were raised regarding the claimant's conduct within the business. By letter dated 11 March 2025, the claimant was suspended on full pay pending investigation. The letter asserted that serious concerns had arisen regarding the claimant's conduct as both a director and employee. It alleged that the claimant had authorised substantial payments to himself, including an £85,000 back salary payment, a £40,000 pension contribution and further salary increases, without proper authority. It further alleged that the claimant had caused payments to be made to three connected parties, namely Madeleine Mason, Elliot Mason and Sarah Date, whose roles within the business were questioned. The letter also referred to two formal complaints concerning the claimant's conduct and management style, concerns regarding disclosure of confidential information, alleged interference in a separate disciplinary process and an alleged failure to engage appropriately in company governance. The claimant was informed that those matters were being investigated and that the investigation could result in disciplinary action up to and including dismissal for gross misconduct.

22. I accept the evidence of Jackie Turner that her role was to conduct a fact-finding investigation. However, the claimant was provided only with a summary of the employee complaints and not the underlying complaint material. Whilst Jackie Turner explained that this approach was adopted to protect the complainants, she accepted in evidence that the claimant did not receive the original complaints and that concerns were raised during the investigation meeting regarding the limited detail available to him when responding to the allegations. I find that the information provided to the claimant lacked important detail.

23. An investigation meeting took place on 23 April 2025. The meeting dealt almost exclusively with the employee complaints. I find that the connected-party payment allegations, which later formed an important part of the respondent's case, were not explored during the meeting and that Jackie Turner asked no questions concerning those allegations. Jackie Turner accepted in evidence that she asked no questions concerning those allegations and that her intention had been to continue the investigation at a later stage.

24. I find that the claimant attended the investigation meeting, answered questions, provided explanations and context, indicated that he wished to provide further written information and subsequently did so. Jackie Turner accepted that many of the points raised by the claimant and on his behalf during the meeting were appropriate. Although she considered that the meeting did not proceed as she had originally intended and that she was unable to conduct it as a conventional fact-finding exercise, she accepted that there was nothing inappropriate in the claimant's own conduct during the meeting and nothing in the meeting record which demonstrated that he had personally derailed the investigation. I therefore do not find that the claimant refused to participate in the investigation process.

25. Following the meeting, the claimant provided detailed written responses through his solicitor, Iain MacDonald, by email dated 28 April 2025. The written response addressed both the allegations raised during the investigation and matters which the claimant considered relevant to the wider dispute between himself and the respondent.

26. On 29 April 2025, following receipt of the claimant's written responses, Jackie Turner sent an email stating that she considered it preferable to await forthcoming discussions on 3 May 2025 concerning the future of the business and that pursuing further investigatory steps at that stage would not be constructive. In her oral evidence, she accepted that discussions concerning the future operation and governance of the business were taking place in the background and that she understood that the respondent's investigation had been placed on hold.

27. I find that the investigation was effectively placed on hold whilst discussions concerning a possible restructuring or "reset" of the business were taking place. Consistent with that position, Jackie Turner accepted that she had intended the investigation process to continue, that she envisaged further investigation meetings taking place, that she commenced but did not complete an investigation report and that no investigation findings were ever reached.

28. No final investigation report was produced. No investigation findings were reached. No disciplinary hearing took place, and no appeal hearing took place before the claimant was dismissed on 9 June 2025.

Financial Arrangements

29. The claimant provided oral evidence that he arranged for payments to be made to Elliot Mason, Madeleine Mason and Sarah Date. The claimant accepted that none of those individuals undertook work for the respondent. I therefore find that the claimant caused three individuals to be employed and paid through the respondent's payroll despite performing no work for the respondent.

30. The claimant accepted mistakes had been made, apologised for aspects of those arrangements, and in some respects offered repayment. I find that these matters were serious and capable of amounting to misconduct.

31. I find that concerns also arose regarding payments made to the claimant personally. The respondent's case was that those payments had not been

authorised by Hal Wilson, whose approval was required. A significant issue between the parties concerned the extent to which remuneration changes required express approval from Hal Wilson. The claimant's position was that remuneration had been the subject of open and longstanding discussion between the parties, that requests for increased remuneration were communicated openly through company systems, and that payroll and finance functions ultimately fell within Hal Wilson's sphere of responsibility. The respondent's position was that requests for increased remuneration were not the same as authority to implement them and that a number of payments were processed without the necessary approval. I find that this dispute was genuine and unresolved at the time of dismissal. I also find it significant that a number of the payments and remuneration arrangements relied upon by the respondent concerned matters which had occurred many months earlier. There was evidence that some requests for increased remuneration were communicated openly and that Hal Wilson was copied into, or otherwise aware of, at least some communications concerning them. Whilst awareness is not synonymous with approval, the absence of any contemporaneous challenge, objection or intervention forms part of the factual context in which the parties' dispute concerning authority must be considered. I do not find it necessary to determine finally whether every payment made to the claimant lacked authority. That issue was one of the matters which the respondent had begun investigating but which remained unresolved when the investigation was halted and the claimant was dismissed. What I do find is that the circumstances surrounding those payments were capable of giving rise to genuine and serious concerns on the part of the respondent and properly formed part of the matters under investigation.

Employee Complaints

32. I find that complaints concerning the claimant's management style, treatment of staff and conduct within the business were made by employees of the respondent. I accept that those complaints were regarded as serious by the individuals concerned and formed a genuine part of the respondent's concerns. However, I do not find that the making of a complaint establishes the truth of the allegations contained within it. The investigation process was never completed, no findings were reached, and many of the allegations remained untested. Accordingly, I make no finding that all or any particular allegations contained within the complaints were true.

33. I find it significant that the claimant was not provided with the underlying complaint notes. Instead, he received only a summary of the allegations. Jackie Turner accepted that the original complaints were not disclosed and that only the summary document was provided to the claimant before the investigation meeting. She further accepted that concerns were raised during the meeting regarding the lack of detail available to the claimant when responding to the allegations.

Decision to Dismiss

34. I accept that Hal Wilson genuinely believed serious wrongdoing had occurred and genuinely believed that trust and confidence in the claimant had been damaged. I also accept that he had genuine concerns regarding the financial arrangements involving both the claimant and connected parties, together with concerns arising

from complaints made by employees. However, I find that the concerns identified at the point of suspension were not entirely consistent with the reasons ultimately relied upon in support of the dismissal. In particular, certain matters emphasised in the suspension letter featured less prominently in the dismissal decision, whereas the respondent's perception that the claimant was frustrating the investigation process and the resulting breakdown in trust and confidence assumed greater prominence as events progressed. Whilst there was overlap between the two, the focus of the respondent's case developed during the course of the investigation and subsequent events.

35. However, before deciding to dismiss, Hal Wilson had not reviewed the investigation transcript, had not reviewed the claimant's detailed written responses, had not reviewed the detailed complaint notes and did not have the benefit of completed investigation findings. I also attach significance to the fact that the investigation process had not concluded and that a number of the matters relied upon by the respondent remained unresolved at the time dismissal was decided upon.

36. I further find that during April and May 2025 there were ongoing discussions concerning governance arrangements, a possible "reset" of the business and the claimant's future role within it. I do not accept Hal Wilson's evidence that he was entirely detached from those discussions or from the actions being taken on the respondent's behalf by its then legal representatives. Contemporary documents demonstrate that proposals were actively being formulated and discussed. Both the claimant and Hal Wilson attended the meeting on 3 May 2025 at which those proposals and the future operation of the business were discussed. While I accept that the claimant had not been exonerated, the existence of those discussions is difficult to reconcile with a contention that dismissal had already become inevitable. Rather, the evidence indicates that alternative arrangements were actively being explored while the investigation remained incomplete.

37. I also found aspects of Hal Wilson's evidence regarding decision-making to be unsatisfactory. In a number of areas, he sought to distance himself from decisions, communications and actions undertaken on behalf of the respondent. This included his evidence concerning the ongoing reset discussions and aspects of the remuneration arrangements which had operated within the business. I do not accept that he was as detached from those matters as his evidence suggested. Whilst I accept that responsibility and authority within the respondent were at times informal and not always clearly documented, I find that Hal Wilson was more aware of, and more involved in, those matters than he was prepared to acknowledge in his evidence.

Relevant Law

Section 98 Employment Rights Act 1996

38. The respondent must establish the reason, or principal reason, for dismissal and that it is a potentially fair reason within section 98 ERA 1996. Once that burden is discharged, the Tribunal must determine under section 98(4) whether the respondent acted reasonably in treating that reason as sufficient to justify dismissal.

Reason for Dismissal

39. In accordance with *Abernethy v Mott Hay and Anderson*, the Tribunal must identify the set of facts known to the employer, or beliefs held by the employer, which caused the dismissal.

Conduct Dismissal

40. Where misconduct is relied upon, the principles in *British Home Stores Ltd v Burchell* apply. The Tribunal must consider:

40.1.1. Whether the employer genuinely believed the employee guilty of misconduct.

40.1.2. Whether the employer had reasonable grounds for that belief.

40.1.3. Whether the employer carried out as much investigation as was reasonable in the circumstances.

Fairness

41. Even where the Burchell test is satisfied, the Tribunal must consider section 98(4). The question is whether dismissal 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. *Iceland Frozen Foods v Jones*, *HSBC v Madden* and *Tayeh v Barchester Healthcare* reflect those principles.

SOSR and Loss of Trust and Confidence

42. Where dismissal is said to arise from a breakdown in trust and confidence, authorities such as *Tubbenden Primary School v Sylvester* and *Leach v Ofcom* establish that procedural fairness remains important, particularly where the alleged loss of trust derives from allegations of misconduct.

43. Whilst *Gallacher v Abellio Scotrail Ltd* demonstrates that dismissal without a formal procedure may exceptionally be fair in relationship breakdown cases, each case turns on its own facts.

Procedural Fairness

44. The fairness assessment applies to the entirety of the process, including any appeal stage: *Taylor v OCS Group Ltd*. The ACAS Code remains relevant when considering procedural fairness.

Polkey

45. Under *Polkey v AE Dayton Services Ltd*, a dismissal may be unfair because of procedural defects, yet compensation can be reduced where the Tribunal concludes that dismissal would probably have occurred had a fair procedure been followed.

Application of the law to the facts

Reason for Dismissal

46. Applying *Abernethy v Mott Hay and Anderson*, I find that the dismissal resulted from a combination of matters rather than any single event. I find that the respondent dismissed the claimant because of:

    46.1. concerns relating to payments made to connected parties;

    46.2. concerns relating to payments made to the claimant himself;

    46.3. employee complaints regarding the claimant's conduct and management style;

    46.4. the respondent's belief that the claimant and his representatives were frustrating the investigation process; and

    46.5. a resulting loss of trust and confidence and deterioration in working relationships.

47. I therefore conclude that the respondent had established potentially fair reasons falling within both conduct and SOSR.

48. I also accept that this was a composite dismissal of the type considered in *Robinson v Combat Stress*. It is therefore necessary to consider the totality of the reasons relied upon by the respondent and the overall fairness of the dismissal, rather than considering each matter in isolation.

49. However, I find that the principal reason for dismissal was conduct.

Genuine Belief

50. I am satisfied that the first limb of *Burchell* is established.

51. I accept that Hal Wilson genuinely believed serious misconduct had occurred. I also accept that he genuinely believed that trust and confidence between himself and the claimant had broken down.

52. In particular, I accept that he genuinely believed:

    52.1. the claimant had arranged payments to connected parties;

    52.2. those individuals had not performed genuine work for the respondent;

    52.3. unauthorised payments had been made; and

    52.4. the working relationship had deteriorated to an unacceptable extent.

53. I therefore conclude that the respondent held a genuine belief in the claimant's misconduct and that the first limb of *Burchell* is satisfied.

Reasonable Grounds

54. I am also satisfied that the second limb of *Burchell* is met.

55. The claimant ultimately accepted that three individuals, namely Elliot Mason, Madeleine Mason and Sarah Date, received payment through the respondent's payroll despite undertaking no work for the respondent. I have found as fact that the claimant arranged for those individuals to be employed and paid despite performing no work for the respondent.

56. The claimant repeatedly accepted that mistakes had been made, apologised for aspects of the arrangements and offered repayment in relation to some of the sums involved.

57. Those matters plainly provided grounds for serious concern. I reach that conclusion principally by reference to the connected-party payroll arrangements, which I have found as fact occurred. My finding that the respondent had reasonable grounds for concern does not depend upon a conclusion that all allegations concerning the claimant's personal remuneration arrangements had been established. They were capable of amounting to misconduct and justified investigation. I therefore conclude that the respondent had reasonable grounds for the concerns it held and that the second limb of *Burchell* is satisfied.

Investigation

58. In assessing the third limb of *Burchell*, I have applied the range of reasonable responses test. The question is not whether I would have investigated the matter differently, but whether the investigation undertaken fell within the band of reasonable investigations open to a reasonable employer in the circumstances.

59. I accept that the respondent commenced an investigation and appointed Jackie Turner to undertake a fact-finding exercise. I also accept that the matters under investigation were serious and warranted careful examination.

60. However, having considered the evidence as a whole, I am not satisfied that the investigation was completed to a reasonable standard.

61. The claimant received only a summary of the employee complaints and not the underlying complaint material. The allegations were expressed in broad terms. The investigation meeting on 23 April 2025 dealt principally with the employee complaints and did not substantially explore the connected-party payment allegations which later formed an important part of the respondent's case. No investigation report was produced and no findings were ultimately reached.

62. The respondent submits that the investigation did not progress because the claimant and his advisers sought to frustrate, undermine or derail the investigation process. I accept that the investigation meeting did not proceed in the manner

originally anticipated and that broader discussions took place regarding the future operation of the business and possible governance arrangements. I also accept that parallel discussions were occurring concerning a proposed "reset" of the business.

63. However, I do not find that the claimant himself refused to engage with the investigation. He attended the investigation meeting. He answered questions. He repeatedly indicated a willingness to provide additional information. He subsequently submitted written responses. I attach particular weight to the evidence of Jackie Turner, who accepted that the claimant provided responses to the matters put to him and did not identify any conduct on his part which made continuation of the investigation impossible.

64. Whilst the investigation meeting did not proceed as intended, I am not persuaded that further investigation was incapable of being carried out. No further investigatory meeting was arranged, the claimant's written responses were not followed up, no report was prepared and no findings were reached. In those circumstances, I conclude that the respondent formed the view that the claimant was not engaging before the investigation process had been exhausted. Whilst I accept that the investigation meeting did not proceed as intended and that legal representatives diverted discussion towards wider business issues, I am not satisfied that further investigation was impossible. In particular, the respondent chose not to pursue further investigatory meetings after receiving the claimant's written responses.

65. Applying *Burchell* and *Graham v Secretary of State for Work and Pensions*, I find that the respondent did not carry out as much investigation as was reasonable in the circumstances.

66. The third limb of *Burchell* is therefore not satisfied.

SOSR and Breakdown of Trust and Confidence

67. I accept that by the time of dismissal there had been a substantial deterioration in the relationship between the claimant and Hal Wilson. I also accept that the respondent's concerns regarding trust and confidence were genuine.

68. I have considered the authorities relied upon by the parties, including *Gallacher v Abellio Scotrail Ltd*, *Tubbenden Primary School v Sylvester* and *Leach v Ofcom*.

69. In my judgment, the present case is materially different from *Gallacher*. This was not a case where the employer simply concluded that an irretrievable breakdown in relationships had occurred and proceeded directly to dismissal. Unlike Gallacher, this case had already entered a disciplinary process. An investigator had been appointed, allegations had been formulated, complainants had been interviewed and an investigation meeting had taken place. The claimant disputed those allegations and participated in the investigation process. The respondent had therefore itself accepted that investigation and procedure were required.

70. Further, the alleged breakdown in trust and confidence arose substantially from allegations of misconduct. In such circumstances the procedural safeguards ordinarily associated with conduct dismissals remain important. As recognised in *Tubbenden*, a tribunal must examine not merely whether trust and confidence was said to have been lost, but how that situation arose and whether the process adopted was fair.

71. I therefore do not regard this as one of the rare cases in which procedural safeguards could reasonably be dispensed with altogether.

Procedural Fairness

72. The respondent submits that any further procedure would have served no useful purpose. I have considered that submission carefully and I am unable to accept it.

73. The investigation had not concluded. No findings had been produced. No disciplinary hearing took place. The claimant was not given an opportunity to answer all allegations before the ultimate decisionmaker. No appeal hearing took place.

74. I also attach significance to the fact that, before dismissing the claimant, Hal Wilson had not reviewed a number of important materials, including the investigation transcript, the claimant's detailed written responses and the detailed complaint material.

75. I have also considered the evidence concerning the discussions about a possible "reset" of the business and the claimant's future role. Whilst I do not regard those discussions as demonstrating that the claimant had been exonerated, they do not sit comfortably with the proposition that dismissal had already become inevitable before the investigation process had concluded.

76. Applying *Taylor v OCS Group Ltd*, I conclude that the process, viewed as a whole, fell materially short of the standards expected of a reasonable employer.

77. I therefore conclude that the respondent failed to follow a fair procedure.

Range of Reasonable Responses

78. I accept that the allegations were serious.

79. I accept that the respondent had genuine concerns and reasonable grounds for those concerns.

80. I further accept that a reasonable employer could regard the admitted payment of individuals who performed no work for the respondent as conduct capable of amounting to misconduct. Indeed, I have found as a fact that the claimant employed and paid three individuals who undertook no work for the respondent.

81. Those findings do not, however, determine the issue before the Tribunal.

82. The question is whether the respondent acted reasonably, in all the circumstances, in treating those matters as a sufficient reason for dismissal in the manner in which it did.

83. In assessing that question I have regard to the incomplete investigation; the absence of investigation findings; the absence of a disciplinary hearing; the claimant's lack of opportunity to answer the allegations before the decision-maker; and the respondent's decision to dismiss before the disciplinary process had run its course.

84. Standing back and considering the matter overall, I conclude that the dismissal fell outside the range of reasonable responses open to a reasonable employer. This is not because the Tribunal disagrees with the respondent's concerns, many of which were plainly legitimate, but because the process adopted before dismissal fell outside the band of reasonable responses open to a reasonable employer.

85. Accordingly, the dismissal was unfair pursuant to section 98(4) Employment Rights Act 1996.

Polkey

86. I have considered the submissions made on behalf of both parties together with the principles in *Polkey v AE Dayton Services Ltd*, *Software 2000 Ltd v Andrews*, *Davidson* and *Manzie*.

87. I note that both parties were content for the Tribunal to determine the issue of Polkey at this stage. Ms Niaz-Dickinson submitted that the relevant factual matters had been sufficiently explored during the evidence and through cross-examination. Mr Perry similarly invited the Tribunal to determine the issue on the evidence before it. I am satisfied that there is a sufficient evidential basis to do so.

88. I am satisfied that this is not a case in which the procedural defects make it impossible to assess what would probably have occurred had a fair procedure been followed.

89. In carrying out that assessment, I place particular weight upon my findings that the claimant arranged for three individuals to be employed and paid despite undertaking no work for the respondent, that substantial sums were paid through payroll, that the claimant accepted mistakes had been made, that he apologised for aspects of the arrangements and that trust and confidence had significantly deteriorated by the time of dismissal.

90. I have also considered the fact that the investigation remained incomplete, that no findings had been reached, that there were ongoing discussions concerning a possible reset of the business and that alternative arrangements were actively being explored. Those matters demonstrate that dismissal was not inevitable at the stage at which the claimant was dismissed.

91. Nevertheless, had a fair investigation been completed, had findings been reached and had a fair disciplinary hearing taken place, I find that there remained a

substantial likelihood that the claimant would have been dismissed. In particular, I regard the admitted payroll arrangements involving individuals who undertook no work for the respondent as matters likely to have carried very significant weight in any disciplinary process.

92. In assessing the likelihood of dismissal, I have considered both the strength of the respondent's concerns and the matters which remained unresolved at the time of dismissal. On the one hand, the claimant accepted that three individuals had been paid through the respondent's payroll despite undertaking no work for the respondent and accepted that mistakes had been made. On the other hand, the investigation had not been completed, no findings had been reached, the claimant had not been questioned about all of the matters subsequently relied upon by the respondent, and discussions concerning alternative arrangements for the future operation and governance of the business remained ongoing. In those circumstances, I do not regard dismissal following a fair process as inevitable. Equally, I consider dismissal to have been the more likely outcome had a fair investigation and disciplinary process been completed.

93. Doing the best assessment I can, I conclude that there was a **60% chance** that the claimant would have been dismissed following a fair procedure. Accordingly, compensation should be reduced by **60% pursuant to Polkey**.

Contributory Conduct

94. I have considered whether the claimant, by culpable or blameworthy conduct, contributed to his dismissal. I find that he did. I have found as a fact that the claimant arranged for three individuals, namely Elliot Mason, Madeleine Mason and Sarah Date, to be employed and paid through the respondent's payroll despite undertaking no work for the respondent. I have also found that the claimant accepted that those individuals performed no work, accepted that mistakes had been made and apologised in relation to aspects of the arrangements.

95. That conduct was blameworthy and contributed directly to the circumstances which led to the claimant's dismissal.

96. I recognise that the dismissal has been found unfair because of significant procedural deficiencies. However, the claimant's own conduct materially contributed to the respondent's concerns and to the eventual breakdown in trust and confidence.

97. In assessing the extent of the reduction, I have taken into account both the seriousness of the conduct and the extent to which it contributed to the respondent's concerns and eventual decision to dismiss.

98. Doing the best assessment that I can, pursuant to section 123(6) Employment Rights Act 1996, I conclude that it would be just and equitable to reduce compensation by **50%** for contributory conduct.

ACAS Uplift

99. I have considered whether any adjustment should be made pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992. I am satisfied that the ACAS Code applied to this dismissal because allegations of misconduct formed a substantial part of the respondent's reasons for dismissal.

100. I have found that: the investigation was not completed; the claimant was not provided with sufficient details of the allegations; no disciplinary hearing took place; no disciplinary findings were reached; and no appeal hearing took place.

101. These were substantial failures to comply with the ACAS Code. I have considered the extent of the non-compliance and the circumstances of the case as a whole. Whilst I accept that the respondent faced genuine concerns regarding the claimant's conduct, I conclude that the procedural failings represented a significant departure from the standards expected by the Code.

102. In all the circumstances, I consider that an uplift of **15%** is just and equitable.

Conclusion

103. For those reasons, the complaint of unfair dismissal succeeds. Compensation shall be reduced by 60% pursuant to Polkey and by 50% for contributory conduct. Any compensatory award shall be increased by 15% pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992. Remedy will be determined at a separate hearing.

Remedy

104. The Tribunal will consider remedy at a separate hearing to be convened.

Approved by:

Employment Judge David

15 October 2026

Judgment sent to the parties on:

3 November 2026

For the Tribunal

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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