



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 6002431/2023**

5

**Held in Glasgow on 23 – 26 July and in Chambers on 6 August 2024**

**Employment Judge L Murphy**

10 **Mr A Dunn**

**Claimant  
In Person**

15

**Altrad Services Limited**

**Respondent  
Represented by:  
Mr M Dulovic -  
Barrister (E&W)**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

25 The judgment of the Tribunal is that the claimant did not make a protected disclosure for the purposes of Part IVA of the Employment Rights Act 1996 (ERA). His claim of automatically unfair dismissal pursuant to section 103A of ERA is, therefore, dismissed.

### **REASONS**

30 **Introduction**

1. The claimant was employed by the respondent from 9 May 2023 until he was dismissed on 17 August 2023. He complains that his dismissal was automatically unfair under section 103A of ERA because, he says, the reason or principal reason for his dismissal was that he made a protected disclosure.  
35 The respondent denies the claim in its entirety.

2. A final hearing was listed to take place at the Glasgow Tribunal over 4 days. A number of matters delayed the progress of the hearing, and it became clear

that there was no prospect of concluding the hearing on liability and remedy within the time allocated. Part way through the hearing, in light of those circumstances, it was decided with the agreement of both parties to convert the hearing to a substantive Preliminary Hearing (PH). The purpose of the PH was limited to deciding the preliminary issue of whether or not the claimant (C) made a protected disclosure.

3. The witnesses attended the Tribunal in person. C gave evidence on his own behalf. R led evidence from Johanne Moohan, HR Business Partner at the material times. Evidence was taken orally from the witnesses. The Tribunal was provided with a set of productions running to approximately 318 pages. The bundle was not agreed between the parties. C had concerns about potential omissions. He was permitted to and did check his own records on his phone throughout the hearing to identify whether any documents to which he wished to refer were missing. Two additional documents were produced to the Tribunal in the course of the hearing and admitted into evidence (the National Agreement for the Engineering Construction Industry 2022/23 ('the Blue Book') and minutes of a grievance appeal hearing).
4. The following abbreviations are used in this judgment for witnesses and others referred to in the evidence and findings in fact.

The claimant	C
The respondent	R
Christopher Casey, Investigating Manager for Stage 1 Grievance	CC
Jimmy Leonard, Grievance Appeal Manager	JL
Johanne Moohan, HRBP	JM
Kenny Reilly, C's line manager	KR
Melissa Cassidy, Admin	MC

*Issue to be decided*

5. Following a Preliminary Hearing on 23 February 2024, EJ Hoey issued a Note which, among other matters, set out the issues the Tribunal would decide. At the hearing in July 2024, that list was refined and shortened in light of the conversion of the final hearing to a substantive PH. The revised list of issues is as follows:

*Section 43B of ERA*

- (i) C says he made a disclosure within a Tik Tok video he posted on 25 July 2023. In respect of that video:

- a. Did he disclose information?
- b. Did he believe it tended to show that R had failed, was failing or was likely to fail to comply with a legal obligation?
- c. Was that belief reasonable?
- d. Did he believe the disclosure of information was made in the public interest?
- e. Was that belief reasonable?

*Section 43G of ERA*

- (ii) If C made a qualifying disclosure, it was not a disclosure to his employer, R. The Tribunal will decide whether the disclosure falls within the category set out in section 43G of ERA. It will require to decide:

- a. Did C believe that the information disclosed and any allegation contained in it were substantially true?
- b. If so, was that belief reasonable?
- c. Did C make the disclosure for the purposes of personal gain?

- d. Did C previously make a disclosure of substantially the same information to R?
- e. In all the circumstances of the case, was it reasonable for C to make the disclosure (having regard, in particular, to the matters listed in s.43G(3) of ERA).

### Observations on the evidence

6. There was substantial contemporaneous documentary evidence in this case. Many of C's communications were by email. The content of relevant meetings in connection with the grievance process followed were captured in detailed notes. Though I heard evidence about certain areas of dispute between the parties, these related to factual matters which ultimately proved not to be relevant to the restricted issue for decision at the preliminary hearing. It was unnecessary, therefore, to resolve such conflicts.
7. I have made findings in fact relevant or potentially relevant to the issues identified which relate both to s.43B and s.43G of ERA. In the event, I have determined that the claim fails on the basis that the disclosures do not satisfy the requirements of section 43B of ERA. The findings in fact relevant to these issues are principally found in paragraphs 9-10 below. Given my conclusions regarding section 43B, it was unnecessary to progress to consider the requirements of s.43G but for completeness I have included in the judgment findings in fact relevant to those provisions.

### Findings in Fact

8. The following facts, and any further facts set out in the 'Discussion and Decision' section, are found to be proved on the balance of probabilities or have been agreed by the parties. The facts found are those relevant and necessary to my determination of the issues. They are not intended to be a full chronology of events.
9. C was employed by R from 9 May 2023 until he was dismissed on 17 August 2023.

*The alleged protected disclosure on 25 July 2023*

10. C posted a video of himself on Tik Tok on 25 July 2023. In the video banners or posters bearing R's branding and logos were visible and prominent. The video lasted around 5 minutes or so. It featured C alone, who spoke throughout the duration of the video. The Tik Tok was available to be viewed by the public at large. I was not sent to R or the ICO or a legal advisor or Minister of the Crown or other prescribed person for the purposes of Part IVA of ERA. Relevant excerpts are reproduced from a transcript of the video below.

10 ...

*Well there we go here is one of the companies in question who is blacklisted who was in court on the power station.*

15 *Why because we are tied to national agreements have to pay unions and can't fucking say nothing or we get blacklisted like I did but doesn't matter we know about that.*

*So why are you doing a video on the company? Well now from this week I'm going all out...*

*Public interest So what is your issue tin hat? So I got a start in Grangemouth in May. Turned up.*

20 *So, when you work away under the National Agreement you got to obviously get lodgings every night you get a train fare from your local station to their one. Travel time whatever it may be from where you live to the job.*

25 *So I have turned up a day induction, now you have got to do a lodge form, they give you it works out at £300 a week. ... so anyway you fill a declaration form. One box to say I have dependents at home; one that says I have rent or a mortgage so you don't get taxed... So I have turned up, ticked the box: Got dependants, got rents. Now 'cause it is me, they went we don't know where you live.*

Well, I said you do because I have already filled in my application form and you have given me a train fare from where I have just put to here and you have given me travel time so you must know ... Well you need to prove it. Well, the declaration form plus I have been through a court case last year with you with all the other companies. Do you think I am going to lie?

... So anyway we want your rent agreement or you are not getting - you are getting taxed. But luckily I have got it on my e-mail. Well, they walked out then.

I said: "you do know it's a data breach? There is other ways that I have signed the declaration and you have already paid me my travel time and that on that fucking house. What is your issue?"

So anyway, I send it with an e-mail straight after saying that is a data breach do you want to sort it out?

They ignored me. Ignored me.

Well, bearing in mind they robbed me about a grand in the first 10 days of working, so I was on the sick.

Work induced stress 'cause when I put my first wage query in they put me in a room with a scary site manager, various other people. Not to me walked off for me own getting stressed, robbing me money.

... So I walked off stressed not because I was scared. Stressed because they were robbing me ...

So anyway leave site so it kicks in data breach what are yous doing why are you done that?

Ignore, ignore

So I phone the Information Commissioner's Office. Explain they can't do that I said a declaration form from the HMRC website says that you just say that form if they don't believe you or they think you have told it wrong. Then get the evidence then take it to court get the form.

So I have to phone the ICO getting accountability, bearing in mind my partner at the time might have had a protection order from a previous relationship and didn't want that getting out. So, in the meantime ICO kicked in - all good.

5 They have now said – Altrad - we want your rent agreement but not your name not your fucking how much you pay and none of your spouse's or partner's name. So, how do you know what is on the rent agreement prove I live there if none of that is on it? ...

10 So now they have gone all quiet 'cause the ICO try to blend it down because I am on the bore. No, no, no. How do you know my partner hasn't got these Protection Orders you don't give information like that.

...

Oh [makes noises] accountability well they have all gone quiet so it's time to highlight now bearing in mind that I have gone through Stage One, Two.

15 That Altrad got people everywhere. How do you know she did and she has got an ex fella that might be in jail might have friends that work for these from an area and might be able to get access to the information? Oh ... accountability. Well, they have all gone quiet so it's time to highlight now bearing in mind that I have gone through Stage 1, 2.

20 ... These are now saying to deal with all of this and my money robbed, come to our Head Office. Everything is on a USB and I went : "where is all my data I have asked for with the ISO involved they won't send it bearing in mind that I have got a black list here waiting for appeal...

...

...

25 I am not a fucking little rat who is going to allow you cunts to rob me and that's fucking that.

And everyone else by the way, everyone's all warming up I am glad that you have let it drag out so now we have got an ICO breach with the data breach

*with the ICO going quiet. So I am going to start doing lives addressed from day one I am also filming a podcast ...*

*...*

5 *The YouTube channel coming now I have been waiting fucking months when I can highlight these by name, ICO breaches galore.*

*When you are away and sign a declaration you certainly then don't give the fucking every bit of information on your personal, Altrad. Do you not know there are things on our rent agreements that we don't want you to see? You are fucking embarrassing...*

10 *...*

*So, it's all getting highlighted. And we have only got the law courts left. And by the time they kick in you will be tuned in and if that fails. That proves we have got no union which we know, no fucking work rights what we know...*

*...*

15 *So Tin Tandy has been fucking waiting to fucking highlight these bastards for fucking ages.*

#### *C's commencement of employment and his terms and conditions*

11. C was employed as a Thermal Insulation Engineer in Grangemouth  
20 petrochemical complex. He had not been employed by R before 9 May but had worked in the sector for many years as had two previous generations of his family. C was employed under collectively bargained terms known as the Blue Book. Because of C's previous experience in the industry, he felt well versed in the terms and conditions laid down in the Blue Book. C was also  
25 issued with an individual 'contract of employment' which he signed electronically before his employment commenced on 5 May 2023 (the Individual Contract').

12. The Individual Contract confirmed his employment with R commenced on 9 May. It stipulated he was contracted to work 38 hours per week over 5 days



and that he was to be paid weekly. C attended induction on 9 May 2023 in Grangemouth. He travelled from his home in Rotherham to Grangemouth by car on Monday 8 May 2023 (a bank holiday) and stayed in a hotel that night in advance of his start the next morning.

- 5 13. C's Individual Contract included the following clauses, so far as relevant to the issues to be decided at the PH:

...

3. *Place of work*

- 10 3.1 *Your initial place of work will be Petroineos-Grangemouth however, in accordance with clause 1.3, at any time during the Employment Period you may be required to work temporarily or permanently from any other location, site or place as the Company or the Group may reasonably require.*

...

- 15 4. *Pay*

...

- 20 4.2 *You may be paid additional payments such as travel, lodge, tool allowance, overtime rates and sick pay in line with the local/national agreement. If you require a copy of the local/national agreement, please contact your line manager.*

...

- 25 4.5 *You are not entitled to any payments in respect of expenses unless these are expressly authorised in advanced by the Company. Expenses will only be paid by the Company where these are supported by receipts, vouchers or some other evidence of payment by you. manager.*

6. *Holiday*

5 6.1 *The Company's holiday year runs between the first Monday in January to the first Sunday of the following January. If your employment starts or finishes part way through the holiday year, your holiday entitlement during that year shall be calculated on a pro rata basis rounded up to the nearest half day.*

6.2 *You are entitled to 25 days paid holiday during each holiday year plus the normal public holidays as recognised in England and Wales; or in Scotland; or in Northern Ireland (dependant on your location as may vary from time to time).*

10 ...

## 7. *Incapacity*

...

15 7.3 *Subject to your satisfying the relevant requirements you shall receive sick pay in accordance with the absence policy or relevant site arrangements.*

14. The version of the Blue Book in place at the material time contained these provisions, so far as relevant.

## 5.6 *TRANSPORT EXPENSES AND TRAVELLING TIME PAYMENT*

20 *On starting employment on 'away contracts' employees qualifying for accommodation allowance under NAECI 9.2 shall be entitled to transport expenses and travelling time payment calculated in accordance with NAECI 9.4.*

...

## 9. *TRAVEL AND ACCOMMODATION*

25 ...

### 9.2 *ACCOMMODATION ALLOWANCE*

#### (a) *Eligibility*

*An employee who, by agreement with his / her employer, lives away from home shall be entitled to an accommodation allowance ... subject to satisfactory completion of the approved application form...*

...

5 (c) *Weekly payment*

*Accommodation allowance shall be paid for seven days in each week except in the case of a broken week.*

(d) *Reimbursement of accommodation retainers*

10 *Where an employee is required to make a payment to retain his / her accommodation when it is not occupied and the employee is absent with permission he / she should be reimbursed, upon production of proof of payment to the employer satisfaction, the sum actually paid, up to the following maximum amounts:*

...

15 (iii) *for certified sickness and other absence with permission up to the maximum in NAECI Appendix A.5 (c), but limited to a period of no more than 14 days.*

....

20 9.4 *TRAVELLING EXPENSES ... ON COMMENCEMENT, TERMINATION AND TRANSFER OF EMPLOYMENT*

...

(b) *Transport expenses*

25 *On commencement and termination of employment on 'away contracts' employees entitled to accommodation allowance shall be entitled to transport expenses, comprising fares or vouchers, reimbursed at full standard class single rail fares between the mainline stations nearest to the site and the employee's place of residence...*

(c) *Travelling time payment*

*In addition to transport expenses employees covered by this Section shall be entitled to a payment for travelling time of one hour at the basic rate for the first 30 miles and a half hour for each subsequent twenty miles or part thereof of the journey one way but the travelling time payment shall apply both at the start and at the finish of an 'away contract'. Distances for the purposes of this clause are measured by the fastest route option on the RAC Route Planner ...*

10 *HOLIDAYS WITH PAY*

10.1 *ENTITLEMENT*

(a) *Full annual and public holiday entitlement*

*The full NAECI holiday entitlement consists of 5 weeks of annual holiday and 8 days of public holiday per annum. All holiday entitlement is to be taken during the leave year... in which it arises.*

...

10.4 *SELECTION OF PUBLIC HOLIDAYS*

*The eight public holidays are normally:*

- *New Year's Day*
- *Good Friday*
- *Easter Monday*
- *May Bank Holiday*
- *Spring Bank holiday*
- *Summer Bank Holiday*
- *Christmas Day*
- *Boxing Day*

...

#### 10.10 PAYMENT FOR WORK DONE ON PUBLIC HOLIDAYS

Payment will be made at Overtime Rate B for all hours worked on the 8 public holidays. These days will be computed from midnight to midnight. In addition a day off in lieu will be taken at a convenient later date and paid in accordance with NAECI 10.3.

...

15. Before C posted the Tik Tok video on 25 July 23, C had developed a number of concerns about his employment with R and various communications had been exchanged between C and R. C attended work between 9 and 17 May 2023 (excluding the weekend) then went off sick following an exchange with the site manager, John O'Neil, on the 17th. Although C had not previously been employed by R, he had been employed in the sector in the past and believed he had been blacklisted by a number of companies, including R. He had a considerable distrust of R as a result of his belief that R had 'blacklisted' him from before his employment began. C remained off sick for the remainder of his employment with R. He stayed in the hotel near Grangemouth initially after leaving the site on 17 May and returned home to Rotherham by car on 23 May 23, where his absence continued.

#### Background to C's Tik Tok allegation that R was 'robbing' him money

16. **Bank Holiday pay:** C's first pay after commencing employment with R was on 18 May 2023. He was paid 7 hours of 'Travel Time' totalling £133.77, relating to his travel between Rotherham and Grangemouth on 8 May. He was not otherwise paid any monies in respect of the 8<sup>th</sup> May in his first pay packet, for which he received his pay slip on 17 May. On receiving the payslip, C raised a wage query in a handwritten form with his manager, KR. He believed he had been underpaid in relation to 8<sup>th</sup> May 2023 which was a bank holiday. C believed he was entitled to be paid in full for the bank holiday on 8<sup>th</sup> May 2023 and not merely travelling time. He believed such entitlement derived from the Blue Book. C was never told by R or the agency who recruited him

for R that his employment started on 8<sup>th</sup> May. He was told it started on 9<sup>th</sup> May and that he was to be on site on that date. He believed that was not relevant because he had spent 8 May travelling and because had worked for R for the remainder of the week in which the bank holiday had taken place.

- 5 17. As well as the wages query given to KR on 17 May 2023, C raised his concern in various other communications before 25 July. In relation to this and other concerns discussed below, it is unnecessary to specify all occasions when C raised the matter with R. In relation to each matter, just one or two examples are given. Regarding pay for the early May bank holiday, at a grievance meeting he attended on 12 June 2023 with CC (the Grievance Investigation Manager) and JM (HRBP), C said, “... *I left on a Monday 8<sup>th</sup> to come to Scotland for a bank holiday to find digs ...I am not even being paid it... not paying bank holidays it's illegal. ... someone is stopping my money or do you pay everyone no bank holidays?...*”
- 10
- 15 18. CC issued a grievance outcome letter on 26 June. With respect to the bank holiday pay point, his letter said “*You believe you are entitled to payment for the bank holiday on the 8 May. Your start date was 9 May and you were paid 7 hours travel time for the 8 May. We are not able to pay a bank holiday when you were not employed with the company.*”
- 20 19. The 29 May 2023 was recognised by R as a public holiday in England but R’s Scottish sites were operational on that date. By that date, C was signed off sick and was at home in Rotherham. He did not work or travel in relation to his employment that day. R did not pay C any additional monies in recognition of the public holiday on 29 May. C was unhappy about this and raised this with R in various communications. At a grievance appeal meeting on 12 July 2023, chaired by JL, C said “*it comes off the address on the laws of where you get your bank holidays.*” JL understood C meant that he considered the applicability of the bank holiday should be determined by his own home address (as opposed to the work location). On 25 July 2023 when C posted his Tik Tok video, he had not yet received the outcome of his grievance appeal
- 25
- 30 regarding the matter.

20. **Travel expenses to value of 'standard' train fare.** In C's first pay packet on 18 May 2023, he was paid £78.80 in respect of 'Fares' according to his pay slip. C believed that the train fare reimbursed to him of £78.80 in respect of his travel from Rotherham to Grangemouth on 8 May 2023 was light. He  
5 believed he was entitled to a standard full single fare on an 'anytime' ticket for that date which he believed was valued at £126. C believed that this entitlement derived from the Blue Book and that it was irrelevant, based on those terms, whether he drove or took the train. C's wage query to KR on Wednesday 17 May 2023 raised this point. C also referred to his concern  
10 about the fare value in various other communications to R. At the grievance meeting on 12 June 2023 with CC and JM, he said, "*That fare, sending me on a super saver ticket – you find one on a bank holiday. You owe me more .. it is a standard fare you get ... payroll should know this.*"
21. In CC's grievance outcome letter of 26 June, on the fare point, CC said "*You travelled on the 8 May from Rotherham to Polmont. The average cost of this fare is £56 with the trainline website. We paid you £78.80 which is the upper limit.*"  
15
22. On 12 July 2023, at the grievance appeal meeting with JL, C repeated his concerns about the amount of the fare paid by R for his journey on 8 May  
20 2023. C also believed he was entitled to the value of a single train fare for a ticket from Polmont to Rotherham in respect of his journey home on 23 May 2023. He raised this in a number of communications including at the grievance appeal meeting on 12 July 23 when he said "*Also. What? ... now you're not giving me a fare home from Grangemouth, cos I'm on the sick through work induced stress because, what, you wanna receipt?*" Later in the same  
25 meeting, he said "*So I've lost wages. I'm not getting what I'm due anyway ... I could quote several sections of the Blue Book right of the things I'm asking for and go through it all now. But I think everyone can read the Blue Book ...*"
23. When he posted his Tik Tok video on 25 July, he had not yet received any  
30 further response on the issue of the travel expenses from Grangemouth back to Rotherham.

24. **Sick pay:** C had concerns about his sick pay. On 17 May 2023, he had left site and self-certified a sickness absence from that date based on work-related stress. On 23 May 2023, he returned home to Rotherham. C had a medical appointment on 24 May 2023 and received a sicknote from them on 5 25 May 2023, a copy of which he sent to R that day. It covered the period from 24 May to 21 June 2023. On Friday 26 May, C also sent to R a copy of his self-certification certificate to cover the earlier period from 17 to 23 May 2023. C was then signed off for a further period by his doctor, from 20 June to 31 July 2023, attributed to 'work induced stress'. C sent this further sicknote to R. 10
25. C did not receive any sick pay at all until 15 June 2023. In the period to that date, he raised the issue of his sick pay multiple times with R. For instance, on or about 6 June he said in an email to R (sic): "*Do now I have no sick pay, another legal requirement... I am now in a situation I xannot get food ... I 'm going to a solicitor.*" On 15 and 22 June 2023, C received Company sick pay and SSP relating to the GP certified period from 23 May to 21 June. On 29 15 June, he received Company sick pay and SSP which included arrears of sick pay for the self-certified period from 17 to 23 May.
26. C received no sick pay in his pay packet on 6 July. By that time he had 20 received no sick pay in respect of the period covered by his second sick line (from 20<sup>th</sup> June 2023). C raised this with R in numerous communications. An example is an email he sent on 6 July 23 to R when he said: "*Can you confirm I'll be getting from 20<sup>th</sup> of June to date, and next week and so in us ok I can't feed my kids ...I need my sick pay.*" The sick pay was subsequently paid in respect of that period. 25
27. **Lodge Allowance and Accommodation retainers.** C believed he was entitled to be paid lodge allowance for the period from 8 to 23 May 23 (when he returned home from Grangemouth). R paid C lodge allowance for the period from 8 to the morning of 18 May. In the grievance outcome letter of 26 30 June 2023, CC told C that, if C could provide receipts for the lodged paid, R would reimburse the cost of an accommodation retainer at the rate of £12 per day for the period 18-23 May. C raised concerns about this to R. For example,



on 30 June, in his grievance appeal letter, he said (sic) *“All my wages as per blue book agreement have been ... with held and I’m getting asked for receipt’s for my fare and lodge, this is not required as per blue book. As for lodge I’m asking for full amount until I left. As HR left in accommodation for a week, retainers are for keeping your room available ...”* This was discussed at C’s grievance appeal hearing on 12 July. At the time when he posted his Tik Tok on 25 July, C had not received an outcome in relation to this appeal point.

*Relevant background relating to C’s Tik Tok allegation that R made a ‘data breach’*

28. On around 10 May at his induction, C had a conversation with one of R’s administrators, Melissa Cassidy. C was claiming for accommodation allowance. MC provided him with a form to complete. The form, an Altrad *pro forma* template, included a declaration that the particulars in it were true. C indicated in the form that he required to pay for lodging. He ticked the declaration that the permanent address given was either *“freehold or leasehold or a tenanted property for which, by virtue of a written agreement on a commercial basis, I have a continuing financial obligation whilst working away”*. The form included the following text below the signature line: *“All Employees with the exception of those who are married, evidence is required to prove that your permanent home address is either rented, mortgaged or owned by you.”*

29. MC then asked C for a copy of his rent agreement or mortgage agreement and told him that, if this was not provided, he would be taxed on the lodge allowance. C was frustrated as he did not have a hard copy of his rent agreement to hand, and he feared being taxed on this expense in his first pay. He offered MC his driver’s license and a letter addressed to his home in Rotherham to prove his residency there. MC said words to the effect that these were not acceptable and insisted that C provide a copy of his rental agreement. C found an electronic copy of his rent agreement and sent a soft copy to MC’s email address. The copy he sent also contained C’s partner’s name as she was also a tenant in the property at the time.

30. Later that evening, C called his partner. He mentioned to her that he had been asked to, and had, provided a copy of the rental agreement to R. His partner became upset. Her circumstances were sensitive and it was important her that her whereabouts was kept very private owing to personal safety concerns if that information reached the wrong hands.

31. On 14 May, C sent an email to MC. He said (sic):

*Hi Melissa*

*I'm just letting her know I'm taking up a no win no fee case on why I had to send my rent agreement for not being taxed on my lodge, as i explained on mu induction, I dint need to send evidence as its a declaration form I'm signing.*

*You said I need to send my rentvor. Mortgage agreement as per altrad policy*

*...*

*Its illegal and data breach*

*Me and my misses will be pursuing thus claim*

*...*

32. R did not know about the sensitivities of C's partner's circumstances and he did not disclose these. There was a data breach case in many communications to R thereafter. Around 25 May 23, C made a query to the ICO about R's practice in relation to insisting on taking copies of rent agreements. C's understanding of their advice was that if they received 6 complaints about the matter then it would be viewed as a collective and there would be some escalation in the ICO's processes. C raised the 'data breach' issue at the grievance hearing on 12 June 23, when he said, among other things: "*Oh sorry where has my rent agreement gone? You do not have secure storage on site to store it. You said you send it to HMRC... It is major what you are doing.*" Later in the meeting, he also said: "*no secure email address, no secure storage.*"

33. CC's grievance outcome letter of 26 June said, so far as relevant (sic):

5 *“ur lodge forms are collected by the site admin team and scanned in via e-mail and sent to our head office. Original documents are destroyed in a shredder onsite. Our business systems are protected by our internal digital security team and only individuals who need access for the purpose of processing would access this information. Electronic copies are then destroyed as appropriate. There is no evidence of a breach of ICO or GDPR guidelines. We have been fully transparent and completely comply with the Information Commissioners Office guidelines we are also audited on this process.”*

10 34. C appealed on 30 June 23, again asserting a data breach. He also emailed R's data protection team on 12 July. He said (sic):

*Could you please confirm on what legal basis under UK gbp law you require my rent agreement, to not be taxed on my lodge money for working away from home.*

15 ...

*Even if you needed more evidence, why was there no process to explain why, how you receive and store and purpose to resend it to HMRC, also why would a 6 week bank slip not be sufficient as my rent agreement has mine and my ex partner's personal information on it...*

20 *...I legal declaration form is normally enough, as it's a legal document ... if wrong I can be hold accountable...*

25 35. On 14 July, R's Data Protection team replied: *“we require your rent agreement as proof of expenses lodging – we are happy for you to provide a redacted version – however it must not have your name ... or the landlord, dates and costs redacted.”* C had repeated his assertions about a data breach at the 12 July grievance appeal meeting with JL. When he posted his Tik Tok on 25 July 2023, he was awaiting the grievance appeal outcome.

*C's warnings to R before posting Tik Tok video on 25 July 23*

36. R published posters at 4 locations around the Grangemouth site with the words BREAK THE SILENCE. This poster said: *"If you have any concerns regarding fraud, bribery or corruption, please help us put an end to it by taking one of the actions below."* It suggested talking to the line manager or HR Business Partner. It also provided an email address and phone number for a free, confidential service called 'Altrad Speak Up'. In the short period C spent on site before going off sick, he did not notice these posters so he did not contact 'Altrad Speak Up'. As set out above, he pursued his concerns through a formal grievance process and raised them in numerous additional emails to R.

37. On 25 July 2023, C sent two emails to R before he posted his Tik Tok video. In one email he said (sic) (among other things) *"Yiu confirmed I'll have my stage 2 answer today, still no email... I ... will be going public... I'll be doing lives on my social network, highlighting all tigs wrong. An data breach on many others, rent agreement."* The other email included the following (sic):

*Not one has come across, I'm now setting up a you tune [YouTube] channel from my tik tok to highlight the pot of yas, ICO included if they flap on this accountability...*

*Ico have until today*

...

*Bern [Been] waiting weeks to start this*

...

38. On 26 July 23 (the day after the Tik Tok was published), R issued a grievance appeal outcome letter to C. On 27 July 2023, C intimated he wished to appeal that outcome. C's Tik Tok video of 25 July subsequently came to R's attention. R invited C to a disciplinary investigation meeting in this connection which took place on 9 August 2023. R explained that the allegation was a breach of R's Social Media Policy relating to his online posts. At the end of the meeting,

C said: “I wish you would hurry up and pay me off. I am not the only one struggling. You put me in starvation...” The process progressed to a disciplinary hearing on 17 August 2023 when R terminated C’s employment. The reason given by R was gross misconduct which R stated to be a breach of its Social Media Policy.

### Relevant Law

39. Section 43B of the Employment Rights Act 1996 (“ERA”) sets up 6 categories of qualifying disclosure.

‘(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

40. In the case of **Cavendish Munro Professional Risks Management Limited v Geduld** 2010 ICR 325, the EAT held that to be a disclosure of information, it must contain facts rather than simply make an allegation. As long as the

worker 'reasonably believes' that the information tends to show one of the matters required in section 43B(1), the disclosure will be a qualifying one even if the information turns out to be untrue or inaccurate. In **Kilraine v London Borough of Wandsworth**, the Court of Appeal clarified **Cavendish** and rejected any proposition that the categories of 'information' and 'allegation' are mutually exclusive. It would depend whether a statement with an allegation had 'sufficient factual content and specificity' to show a relevant failure.

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41. In **Kraus v Penna PLC and anor** 2004 IRLR 260, the EAT said that the word 'likely' in relation to the failure to comply should be construed as 'requiring more than a possibility, or a risk, that an employer (or other person) might fail to comply with the relevant legal obligation.'

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42. Section 43G applies where the asserted disclosure was not made to the worker's employer or any other category of person identified in the preceding provisions. It provides:

*43G Disclosure in other cases*

(1) *a qualifying disclosure is made in accordance with this section if –*

(a) ...

(b) *the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,*

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(c) *he does not make the disclosure for purposes of personal gain,*

(d) *any of the conditions in subsection (2) is met, and*

(e) *in all the circumstances of the case, it is reasonable for him to make the disclosure.*

25

(2) *The condition is referred to in subsection (1)(d) are –*

...

(c) *that the worker has previously made a disclosure of substantially the same information –*

(i) *to his employer ...*

5 (3) *in determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to –*

(a) *the identity of the person to whom the disclosure is made,*

(b) *the seriousness of the relevant failure,*

10 (c) *whether the relevant failure is continuing or is likely to occur in the future,*

(d) *whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,*

15 (e) *in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and*

20 (f) *in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer, the worker complied with any procedure whose use by him was authorised by the employer.*

25 (4) *for the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.*

**Submissions**

43. Mr Dulovic spoke to a skeletal written submission. Mr Dunn gave an oral submission in which he had the opportunity to comment of Mr Dulovic's submission. The entire content of both submissions (written and oral) has  
5 been carefully considered and taken into account in making the decision in this judgment. Failure to mention any part of these submissions in the judgment does not reflect a lack of consideration. The submissions are addressed in the 'Discussion and Decision' section below, in which I set out where the submissions were accepted, where they are not, and the reasons  
10 for this.

**Discussion and Decision**

44. In this case, the only alleged protected disclosure(s) on which C relies are those said to be contained in the Tik Tok video of 25 July. C says the reason for his dismissal was that he made a protected disclosure or disclosures  
15 specifically in that Tik Tok video. This is not what might be described as an 'aggregate case' where it is claimed that several communications taken cumulatively together amounted to a protected disclosure. The relevance or potential relevance of the findings in fact regarding previous communications by C to R is not whether these individually or cumulatively were themselves  
20 qualifying disclosures or whether the Tik Tok was one when aggregated with these. The findings in fact about prior communications have been made instead in contemplation of the issues raised by section 43G, including whether substantially the same information had previously been disclosed to R and the reasonableness of the Tik Tok disclosures.

25 45. From C's submission, I understand he asserts three qualifying disclosures in the Tik Tok, namely: statements about a 'robbing' allegation; statements about a 'data breach' allegation; and statements about a 'bullying' allegation. I now analyse these in turn against the requirements of Part IVA of ERA.



*The 'Robbing' Allegation*

46. **Did C disclose information?** Mr Dulovic's submission was that apart from some information relevant to the data breach allegation, the video was 'notable for its wild careless accusations with absolutely no detail to substantiate it.' He said there was colourful use of language but no detail in relation to the money claim. C said there was information in the video which was true and which occurred. He said he had nowhere to go to take this further in terms of having exhausted the grievance stages in the Blue Book.
47. I reviewed the content of the video. C said on four or five occasions in the video that R had 'robbed' him. The most detail he provided is found in this sentence: *'Well, bearing in mind they robbed me about a grand in the first 10 days of working, so I was on the sick'*.
48. I bear in mind the importance of assessing C's statements in light of the particular context in which they were made. C's statements about R 'robbing him' were made in a video in which also shared information from which the audience would infer that C was employed by R. He doesn't say so in those plain words, but he talks about having 'got a start in Grangemouth' and goes on to describe some events at an induction process before later naming the respondent and also talking about going off sick. The information disclosed in the video as a whole conveys tolerably clearly that C is alleging that R, his employer, 'robbed' him in the amount of around £1,000 within the first ten days of his employment.
49. The statements about R 'robbing him' can readily be characterised as an allegation that R had failed to comply with a legal obligation or even that a criminal offence had been committed. However, I am not persuaded that C's rather laconic comments about a 'robbing' contain sufficient factual content and specificity to be characterised as 'information' which 'tends to show' a legal obligation failure. The interpretation to be placed on C's words would entail considerable speculation about what is being said to have taken place. A viewer would require to speculate whether C intends to convey that the money was literally forcibly taken from his person or whether he is alluding to

some other financial dispute with R. I recognise that there is not a rigid dichotomy between 'information' on the one hand and an 'allegation' on the other, but the lack of specificity in the video is problematic for C's case.

50. C had previously given that detail and specificity to R in relation to his concerns over sick pay, wages and expenses. That is nothing to the point at this stage. That factual specificity was lacking in the Tik Tok communication. I reiterate that this is not a so-called 'aggregate case'. The immediate issue is whether the video disclosed 'information' which tended to show a legal failure, in C's reasonable belief. I conclude, in relation to the 'robbing' allegation that it did not. I don't accept, on balance, that C believed it did, having regard to the content and if he did, the belief was not objectively reasonable. Accordingly, I find that there was no qualifying protected disclosure in the video in relation to C's 'robbing' allegation.

51. **Did C reasonably believe that the disclosure of the information was in the public interest?** It is not necessary to go on to consider the remaining limbs of the test laid down by sections 43B or the requirements of 43G. However, if I am wrong about the 'information' question I record briefly that I would, in any event, have found C's belief that the 'robbing' disclosure was in the public interest was not reasonable. R accepted that C genuinely held a belief that the disclosure was in the public interest. I too am satisfied he did so, having observed the emphatic and emotional character of his evidence on the matter.

52. However, the legislation requires that the belief is reasonable. With respect to the 'robbing' complaint, C said that his parents were members of the public and that they had had to fund his visit to Scotland for the proceedings and his clothing to attend the Tribunal. Mr Dulovic said delays in processing payments was not a legitimate matter of public interest and that the matter was being dealt with through a fair grievance process.

53. I recognise that the involvement of any personal interest on the part of a claimant will not necessarily exclude a disclosure from protection. No doubt, there can be cases where there is a mix of public and personal interest where

the disclosure will qualify for protection. However, on the facts and circumstances of this particular case, I am not satisfied C's belief in an element of public interest was objectively reasonable. I don't underestimate C's distress in relation to delays in the receipt of certain payments, including, in particular, his sick pay. However, there was no evidence to suggest he believed he was exposing a systemic or recurring failure on R's part that affected multiple employees. On the contrary, C attributed much of his treatment by R to a perception that he personally was blacklisted and being targeted by R in its treatment of him.

54. The requirement for a reasonable belief that it is made in the public interest relates specifically to the 'information' disclosed as opposed to all of C's knowledge and views about the monetary complaints he had. Nothing in the information given about a 'robbing' in the Tik Tok identified or hinted at an assertion that C's experience was symptomatic of a failure by R which was its workforce more widely. Even if C held a belief that it did so, that belief was not reasonable in relation to the terms of the actual disclosures made on 25 July 2023 about being 'robbed'.

*The 'data breach' allegation*

55. **Did C disclose information?** Mr Dulovic acknowledges that the video contains some information about data protection rights to privacy, non-disclosure of personal data and secure retention of personal data. However, my understanding of his submission is that R disputes that the information disclosed by C tended to show that R had breached or was breaching a legal obligation. C submitted that there was clearly information regarding the signing the declaration form under threat of being taxed on his lodgings.

56. I reviewed the content of C's Tik Tok and extracted the following excerpts which seem to me to be the material parts relating to the 'data breach' allegation.

*"So, when you work away under the National Agreement you got to obviously get lodgings every night ... So I have turned up a day induction, now you have got to do a lodge form*

... so anyway you fill a declaration form. One box to say I have dependents at home; one that says I have rent or a mortgage so you don't get taxed... So I have turned up, ticked the box: Got dependants, got rents.

5 ... So anyway we want your rent agreement or ... you are getting taxed. But luckily I have got it on my e-mail...

I said: "you do know it's a data breach? There is other ways that I have signed the declaration and you have already paid me my travel time and that on that fucking house..."

10 So anyway, I send it with an e-mail straight after saying that is a data breach ...

Ignore, ignore

So I phone the Information Commissioner's Office. Explain they can't do that ... bearing in mind my partner at the time might have had a protection order from a previous relationship and didn't want that getting out...

15 That Altrad got people everywhere. How do you know she did and she has got an ex fella that might be in jail, might have friends that work for these from an area and might be able to get access to the information? Oh ... accountability. Well, they have all gone quiet so it's time to highlight now bearing in mind that I have gone through Stage 1, 2.

20 57. This content conveys the factual information on which C's allegation of a 'data breach' is based. There is sufficient specificity for it to be characterised as a disclosure of 'information', in C's reasonable belief.

25 58. **Did C reasonably believe that the disclosure of the information tended to show a failure to comply with a legal obligation?** Mr Dulovic does not dispute that C held a belief that the information disclosed tended to show a person had failed to comply with a legal obligation. He disputes, however, that such belief was reasonable. C submitted that he was stressed at the time, but that he believed everything in the video was true; he said that he lived it. He

said his belief was reasonable because a member of the public (his former partner) was in harm and, he said, is still suffering now.

59. C was emphatic and in a heightened emotional state when giving evidence about this matter. He repeated his concerns many times. There is little doubt that they were heartfelt and I find his belief that his disclosure showed a compliance failure by R was genuine.
60. I turn to whether that belief was reasonable. C never identified specifically the legal obligation which he believed had been infringed but said, when I asked him, broadly that he believed R had breached the GDPR. On 26 June, R had told C in response to his grievance that '*... Our business systems are protected by our internal digital security team and only individuals who need access for the purpose of processing would access this information. Electronic copies are then destroyed as appropriate. There is no evidence of a breach of ICO or GDPR guidelines...*' On 14 July, in response to C's email enquiring about the legal basis for requiring his rent agreement, R had told him: '*we require your rent agreement as proof of expenses lodging – we are happy for you to provide a redacted version – however it must not have your name ... or the landlord, dates and costs redacted*'.
61. C had emailed the rent agreement to MC in May at her request. He had not, when doing so, raised concerns about how it would be stored. Nor did he raise any concerns at that time about the provision of his partner's data in the rent agreement which he provided without enquiring about the possibility of redaction. The template lodge form he signed indicated evidence would be required to prove that C's permanent home address was either rented, mortgaged or owned by him. His terms and conditions specified payment of lodge allowance was subject to satisfactory completion of the approved form.
62. Though C had complained to the ICO, it was not established on the evidence that the ICO had informed him that they agreed with him that a data breach had taken place. By the time C posted the Tik Tok, the ICO had been in receipt of his complaint for around two months and there was no evidence that they

had told him that they had identified failures by R. Indeed, C alluded to the ICO's inaction in the video and in other email communications to R.

- 5 63. Given the vehemence of C's evidence, I don't doubt that he was incensed about R's practice of asking for a rent agreement when he felt his signed declaration form should suffice. I am satisfied, however, that at the time of the Tik Tok he had been told R's reason for doing so and that he understood the reason which related to ensuring the proper tax treatment of the allowance and guarding against potential tax fraud.
- 10 64. C said in evidence words to the effect that he distrusted the alleged security of R's systems; that R hadn't scanned the document in because he sent a soft copy; and that there was no security whatsoever on how he sent it (that is, via MC's email address). However, C did not give evidence which suggested any objective basis for his apparent distrust of R's digital security measures in relation either to MC's email or the HR system where R had told him the digital copy agreement was stored. This was not something which had been the subject of detailed enquiry by him in the course of his voluminous email communications with R.
- 15 65. Having regard to the facts and circumstances as known to C at the time about the request for and retention of a copy of his rent agreement, I am not persuaded that his belief that his Tik Tok tended to show a failure to comply with a legal obligation was objectively reasonable. C did not articulate what aspect of data protection law he felt was being breached in the situation he described either in his video or during his evidence to the Tribunal.
- 20 66. It is not for the Tribunal to identify whether a GDPR breach took place. Rather, what I have to decide is whether C has proved on the balance of probabilities that his belief that the information disclosed tended to show a legal failure was reasonable. Having weighed all the evidence, I find that although he genuinely believed the information tended to show a legal failure, it was not reasonable for him to do so. In particular, it was not reasonable in light of what C had
- 25 30 been told by R about (i) R's reason for requesting the rent agreement

evidence, (ii) the manner in which it was stored, and (iii) the opportunity for providing a redacted version.

67. It follows that the alleged protected disclosure regarding the 'data breach' does not qualify for protection because the provisions of section 43B(1) are not satisfied.

*The 'bullying' allegation*

68. During his submission, C asserted that he also disclosed in his Tik Tok that he 'got bullied'. Mr Dulovic submitted that there was scant detail about the allegation. He said it was too vague and amounted to a bare allegation without facts being put forward.

69. I have reviewed the transcript of the Tik Tok and the only utterance that appears to have any relevance to a potential bullying allegation is the following: "*Work induced stress cause when I put my first wage query in, they put me in a room with the scary site manager, various other people. Not to me walked off for me own getting stressed robbing me money.... So I walked off stressed not because I was scared ... because they were robbing me ...*"

70. C did not specify in evidence or submissions what legal failure or other category of protected information he says this statement tended to show. At its highest, C described the site manager as 'scary' and said he went off with work induced stress. I am not persuaded that this suffices to be characterised as information that could be objectively believed to tend to show a legal failure or health and safety endangerment. C provides no factual detail about any alleged conduct by the site manager while in the room. Indeed, having called him 'scary', he goes on to say that he was not scary to him and that he was not scared. On the evidence, I do not accept that C genuinely believed his brief narration in the Tik Tok tended to show a relevant failure or other protected matter for the purposes of the whistleblowing legislation. In any event, if I am wrong and such a belief was truly held, I am satisfied that, viewed objectively, it was not reasonable having regard to the scant content of the disclosure.

*Conclusion*

71. As none of the three allegations relied on qualify for protection, C's claim of automatic unfair dismissal under s.103A cannot succeed and is dismissed. For the avoidance of doubt, standing my conclusions that the allegations do not qualify for protection having regard to s.43B of ERA, I have not analysed C's disclosures in the Tik Tok against the requirements of s.43G and make no findings about whether or not those are met.

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**Employment Judge: L Murphy**  
**Date of Judgment: 28 August 2024**  
**Entered in register: 29 August 2024**  
**and copied to parties**