Case No: 6019063/2025

EMPLOYMENT TRIBUNALS

Claimant: Ms Melike Yavuz

Respondent: HCA International Limited

Heard at: London Central (in person) **On:** 22 July 2025

Before: Employment Judge B Smith (sitting alone)

REPRESENTATION:

Claimant: Mr H Giani (Counsel, instructed directly)
Respondent: Mr C Milsom (Counsel)

JUDGMENT ON INTERIM RELIEF

The claimant's application for interim relief is refused.

REASONS

1. In making a determination of the claimant's application for interim relief I took into account an agreed bundle of 635 pages. I also had sight of the parties pre-hearing correspondence. The parties were both represented by counsel.

2. Both parties relied on written and oral submissions and there was also a bundle of authorities relied on by the respondent. I had due regard to those authorities even if they are not expressly mentioned in these Reasons. In

particular, the respondent's authorities are relevant to type of matters the claimant will need to prove in order to be successful in a claim of automatic unfair dismissal by reason of having made a protected disclosure.

3. In addition to the above material, during the respondent adduced (by consent) the claimants payslips from November 2023 to June 2025. The respondent says that these indicate the claimant being paid a 'Bureau allowance' throughout the relevant period, consistent with their case that her role was as part of the Bureau (ie. a flexi-pool) as opposed to a substantive appointment.

4. In response to questions raised by the tribunal, the claimant also relied on an email about the respondent's change in email retention policy dated 31 May 2024. It was not necessary for me to see that document as the content was referred to (by consent) by the representatives. Similarly, the claimant relied on the content of an email dated 22 November 2023 introducing her as Head of Anaesthetic, and it was not necessary for me to see the content of that email. I record that although the claimant relied on this as proof of her having been given a substantive role (that she says should have been outside of the scope of the redundancy), this email predated the date on which she was recommended for a substantive role she claims she was given. It was therefore of limited assistance to her arguments.

5. No adjustments were requested by the parties for the hearing although the Tribunal was conscious of the claimant's health conditions. The Tribunal also fully understood the importance of this application to the claimant.

6. Although the claimant had raised concerns about procedural fairness in the run up to the hearing, it was confirmed that no application to postpone or for any particular further measures was made other than for the tribunal to take into account the fact that the parties had prepared at a rapid pace for today's hearing. I was satisfied in any event that the claimant had been given adequate time to prepare given the nature of these hearings and that a postponement would not have been in the interests of justice and would have been contrary to the overriding objective. The parties agreed in any

event that the concerns raised by the claimant did not require resolution by me before determining the interim relief application.

7. I raised with the parties the fact that the claimant had provided previously to the tribunal a document entitled 'ET1 amendment'. The claimant's counsel put this as more of an enhancement or clarification of the claim and so was a document to be read in conjunction with the ET1. Whether or not this amounted to an amendment application was something the parties agreed did not require resolution before the application for interim relief was determined. This is because the application was only about the claim of automatic unfair dismissal and there was nothing in that document which would be determinative of the application, and the tribunal was entitled to take it into account when making its decision on interim relief. I did so. I considered that document as appropriate and did not hold the lack of any formal application to amend the claim against the claimant (even if such an application is in fact required).

8. I outlined the procedure to the parties at the start of the hearing. I read the agreed documents and then heard the parties' oral submissions

9. I fully took into account the relevant passages of the Equal Treatment Bench Book and the Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings given that the claimant has various health conditions. I was also conscious that applications such as these are necessarily prepared at a rapid pace by the parties and did not hold that fact against the claimant. I was also conscious that I was assessing the case before a detailed disclosure exercise had taken place and that inevitably I did not have all of the documents that will be available at any final hearing. I was also not hearing witness evidence.

10. In summary, ACAS Early Conciliation started on 20 May 2025 and ended on 21 May 2025. The ET1 was presented on 21 May 2025. The claimant was employed at the respondent, a private healthcare company which owns and operates several hospitals and other medical facilities, since 9 May 2022 in the role of Senior Business Operations Manager (the exact job title

and changes will be a matter for determination at the final hearing). On the face of the ET1 the claimant brings claims of unfair dismissal, disability discrimination, whistleblowing detriment and dismissal, redundancy payment, notice pay, holiday pay, arrears of pay and for other payments. Subject to clarification in the future, there may also be a claim of victimisation or an amendment application to include victimisation and further whistleblowing detriments.

11. The claims are as follows on the basis of the ET1 and the respondent's Grounds of Resistance, with observations on the documentary evidence included where appropriate.

12. The claimant's alleged protected disclosure was dated 21 March 2024, in summary, she says making allegations of systematic overcharging by the respondent to the NHS, allegations about patient prioritisation. Having considered the disclosure itself, the exact scope of the disclosure and what it says (and implies) is a matter of dispute between the parties. From the documentary evidence, this was an email sent to Sherril Reilly and Ryan Moyer.

13. The claimant later escalated the matter two individuals at the respondent's USA-based parent company on 17 October 2024.

14. The claimant says that after her initial disclosure she was excluded from the role of Head of AHUB Operations without explanation; on 1 May 2024 her team was moved to PSG where the alleged financial misconduct had occurred, and she alleges that her previous role was given without advertisement to a colleague with no relevant experience on 24 May 2024. The claimant was put at risk of redundancy through which she applied for 14 roles but was interviewed for only one, and her case is that she was effectively blocked from those roles because of her disclosures. She also relies on conditions of work-related PTSD, severe depression and anxiety she says were caused by sustained exclusion and retaliation by the respondent. The claimant was dismissed by reason of redundancy on 14 May 2025. The termination date of the claimant's employment is 6 August

2025. The claimant states that no one else was made redundant although one other is said to have taken voluntary redundancy and sought external work.

15. The respondent relies on the following. It says that the claimant was in a non-clinical flex pool service in the role of Senior Business Operations Manager which was in effect staff bank. The claimant was posted primarily to the role of non-clinical manager of the respondent's Anaesthesia HUB ('AHUB'). This provided private anaesthetic cover to the NHS. In December 2023 the claimant applied and was interviewed for the substantive (non-bank) role of Head of AHUB. The claimant was the preferred candidate but after a disagreement about salary the respondent says that no permanent role was offered to the claimant. A decision was made in May 2024 to transfer the AHUB to fall within the Physician Services Group ('PSG') which already operated a larger similar hub supporting consultant surgeons and it was considered efficient to consolidate the functions of both hubs. Following a review, it was concluded by Ms Morton (Assistant Vice President – PSG Operations) that a dedicated Head of AHUB was not justified and in order to understand the team and structure and identify areas for improvement Ms Morton took direct management of AHUB. Ms Morton decided to advertise a new role in June 2024 as an internal vacancy: Head of Operations PSG. This included oversight of AHUB but with broader responsibilities. The claimant did not apply for the role.

16. The respondent's case continues to state that there was a proposed restructuring after October 2023 involving disbanding the non-clinical flex pool team. Ten members of staff including the claimant were placed at risk of redundancy following a meeting on 14 August 2024. The first group consultation meeting was on 14 August 2024; the second consultation meeting was on 9 September 2024; the third consultation meeting was on 30 September 2024; the fourth consultation meeting was on 14 October 2024. A fifth consultation meeting was proposed on 17 October 2024 for 22 October 2022. The claimant had emailed Mr Moyer on 10 October 2024 to complain about her treatment having not been appointed to a role she had applied for, and she complained that she had been excluded because she

had reported fraudulent activity about internal financial corruption and NHS fraud activities. After issues were raised by Mr Moyer about the consultation process, a review was carried out. This review was carried out by a Mr Forrest but it concluded that the consultation had been conducted correctly

17. The claimant was signed off as not fit to work from 23 October 2024 to 27 January 2025. A fifth consultation meeting took place on 14 April 2025, the consultation having been on hold since October 2024. A review into the claimant's concerns about allegations of fraudulent activity was carried out by an external law firm and none of the allegations were upheld. A sixth consultation meeting took place on 14 May 2025. Mr Thomas made the decision to dismiss and the claimant was given 12 weeks' notice. The claimant appealed her dismissal on 20 May 2025 by way of two emails. The appeal meeting was on 23 June 2025 and it was refused on 15 July 2025. The appeal was heard by Mr Leach, the Chief Human Resources Officer. It did not uphold allegations that the claimant never should have bene placed at risk, that the claimant had been promoted and then excluded from the role of Head of AHUB, criticisms of the redundancy process, or that there was a conspiracy between relevant individuals and the claimant's disclosures.

18. The respondent also says that the alleged protected disclosure of 21 March 2024 was limited to an email between the claimant and Ms Reiley and Mr Moyer raising concerns as having '*significant operational and financial implications for our department and potentially our relationships with the NHS'*. The claimant said that booking and financial arrangements for NHS cases were not being followed in accordance with agreed processes and rates. The claimant forwarded this email on 17 October 2024 to Mr McAlevey, Executive VP, Chief Legal and Administrative Officer and the SVP and Chief Ethics and Compliance Officer for the respondent in the USA.

19. The respondent says that the claimant was fairly dismissed by reason of redundancy. It denies that either email is a protected disclosure or that she was otherwise treated differently because of those disclosures.

20. The parties submissions are adequately set out in the written submissions and it is not proportionate to repeat them in these Reasons.

21. In Taplin v C Shippam Ltd [1978] IRLR 450 EAT, the EAT held that it must be shown that the claimant has a *'pretty good chance'* of succeeding in the relevant claim.

22. A 'pretty good chance' of success was interpreted in *Ministry of Justice v Sarfraz* [2011] IRLR 562, EAT, as meaning *'a significantly higher degree of likelihood than just more likely than not*'. Underhill P stated that:

'[16] …In this context 'likely' does not mean simply 'more likely than not' – that is at least 51% - but connotes a significantly higher degree of likelihood" and

…

[19]…the essential point which emerges from Taplin: 'likely' connotes something nearer to certainty than mere probability.'

23. Rule 94 Employment Tribunal Procedure Rules 2024 provides that: *'When a Tribunal, hears an application for interim relief… the Tribunal must not hear oral evidence, unless it directs otherwise*.' There was nothing in this case that justified a direction for oral evidence.

24. The tribunal must make its best assessment on the available documentary evidence provided by the parties: London City Airport Ltd v Chacko 2013 IRLR 610 EAT [23].

25. Section 43A ERA says:

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

26. Section 43B ERA says:

> *(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 of more of the following: -*
>
> *(a) that a criminal offence has been 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,*
>
> *[…]*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*
>
> *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*
>
> *[…]*

27. Section 43C ERA says:

> *(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*
>
> *(a) to his employer,*
>
> *[…]*

28. The burden is on the claimant to prove each of the necessary elements: Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13/LA at [44] (HHJ Eady QC):

The burden of proof in this regard is on the employee. As observed by HHJ McMullen QC in Boulding v Land Securities Trillium (Media Services) Ltd EAT/0023/06:

"24 . . . As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

25 'Likely' is concisely summarised in the headnote to Kraus v Penna plc *[2004] IRLR 260:*

> *'In this respect 'likely' requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.'*

29. The Claimant must establish a disclosure of information that they reasonably believed tended to show a breach or likely breach of a legal obligation. It is not sufficient for the claimant to make allegations without conveying facts: Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 per Slade J at [24]. A mere expression of opinion does not amount to a disclosure of information: Goode v Marks & Spencer plc UKEAT/044/09 per Wilkie J at [38].

30. For the purposes of this part, notions of information and mere allegations are not mutually exclusive. Allegations can amount to disclosures information depending on the content and the surrounding context: Kilraine v London Borough of Wandsworth [2018] ICR 1850. There is no rigid dichotomy between information and allegations (at Kilraine at [30]). The disclosure has to have '*sufficient factual content and specific such as is capable of tending to show'* one of the five wrongdoings: per Sales LJ in Kilraine at [35].

31. In the context of the relevant failure, 'is likely to' means that the information disclosed should tend to show in the claimant's reasonable belief that the relevant failure was 'probable or more probable than not': Kraus v Penna [2004] IRLR 260 EAT.

32. The leading authority on whether the discloser has a reasonable belief that the disclosure is made in the public interest is Chesterton Global Limited v Nurmohamed [2018] ICR 731. The Tribunal must consider all the circumstances, including the numbers in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer. There may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker: Chesterton at [37].

33. Section 103A says:

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure).

34. The reason for the dismissal is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee: Abernethy v Mott, Hay and Anderson [1974] ICR 323.

35. It was held in Nicol v World Travel and Tourism Council and anors [2024] ICR 893 at [82]`:

'…whistleblowers are intended to be protected because they have raised something of substance which Parliament has decided merits protection. For employers to be fixed with liability, therefore, they ought to know at least something about the substance of what has been made; that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about.'

36. Having considered all of the documents and the parties' submissions carefully, I do not find that the statutory test for granting interim relief is met in this case. The claimant does not have a pretty good chance of success, in my judgment.

37. The principal reason for this is that the claimant was dismissed, purportedly by reason of redundancy, in circumstances were a redundancy exercise was clearly carried out by the respondent, and the documents and points made by the claimant do not, on my analysis, suggest a pretty good chance of success in demonstrating that the reason or principal reason for her dismissal was her having made a protected disclosure. This was not a case where an employee was dismissed without warning, process or procedure, and with no apparent reason. Whilst I stress that such a scenario is not the only case where a pretty good chance could be established, the dismissal of the claimant is in a context which, at least superficially, is for documented reasons that on their face have nothing to do with any disclosure that the claimant made, and in a context of rational business decision making.

38. Also, I consider that the respondent has at least an arguable answer to each and every point made by the claimant in support of her claim of automatic unfair dismissal and that most of these answers are well documented. The claimant relies on a suggestion that she was not in fact correctly in the pool of individuals who should have been at risk of redundancy because she was not in the to-be-disbanded flexi/bureau pool, rather she says she had in fact been interviewed and given a substantive (non-flexi pool) role. However, this is not supported by her payslips, which indicate that she was still in receipt of additional pay for the flexi-role, the email she says introduces her to the post pre-dates the interviews for the role, and the documents relied on by her in terms of extracts from organograms and job descriptions do not

necessarily on their face show that she was no longer part of the flexi-pool. This is because her day-to-day job title did not necessarily indicate that she was a substantive employee. Also, the respondent relies on the fact that in an email dated 19 April 2024 from the Chief HR Officer it expressly refers to the claimant being in the flexi-pool. I do not consider that this email is something that is likely to give the claimant a good chance of establishing this point because the wording used in fact tends to suggest that she was still in the flexi-pool. Also, the respondent suggests that the claimant did raise the suggestion that she was not in fact in the flexi-pool, and therefore wrongly selected for redundancy, until her appeal.

39. Whilst the claimant argues that in the 19 April 2024 email it suggests that the Chief HR Officer has identified that the claimant was unlikely to be successful in applying for a new role of PSG Head of Operations, this is far from compelling evidence that she was going to be dismissed by reason of her having made a protected disclosure. Exactly what is meant by that comment will be a matter for later fact finding and evidence. The parties also are in dispute about whether the new role of PSG Head of Operations was in fact the same, or substantially the same, as the claimant's role, but I do not consider that the claimant has established on the documents available that she has a pretty good chance of showing that this was part of a sham arrangement where she was being shut out from her own role as a result of having made a protected disclosure and that this led to her dismissal.

40. I do not consider that the claimant's analysis of the chronology demonstrates that she has a pretty good chance of success. For example, the respondent rightly points out that the overall process leading to the restructure which entailed the disbanding of the claimant's unit – along with all of the other affected individuals – started significantly before her alleged protected disclosure, in October 2023. The claimant also seeks to suggest that her second alleged protected disclosure was timed such that the respondent brought forward a consultation meeting. However, this is not demonstrated on the documentary evidence available: the timing of the later consultation meeting was in fact communicated to the claimant before the second alleged protected disclosure. Whilst the claimant through her

counsel's oral submissions now asserts that she had in fact completed an online form before the meeting communication to her, I am not in a position on the available material to find that this is something that is likely to be a strong factor in her favour.

41. I also do not consider that a change in the respondent's email retention period is something from which I can draw a strong inference that they were seeking to destroy emails on the topic of her alleged protected disclosure. This is because on the chronology it would not have that effect: whilst historic emails may have been deleted, the claimant's alleged protected disclosure was about recent events, and emails about those events would remain preserved even around the time of this hearing.

42. The claimant's case is said to involve a wider conspiracy involving a wide range of individuals, however I do not have sufficient material from which I can find that the claimant is likely to establish this in evidence. In particular, the claimant may have difficulties establishing that the dismissing officer was even aware of her protected disclosures.

43. Whilst the claimant refers to the redundancy process as a sham, the others who were at risk having been said to have found other roles within the respondent, this does not give rise to a strong inference that the claimant was dismissed and singled out because she made a protected disclosure. There are ample other reasons why some might be able to find other roles compared to the claimant which have nothing to do with her disclosures. Also, there is a clear dispute of fact between the parties about the reason why the claimant's job applications to other roles as part of the consultation were unsuccessful. There is insufficient material from which I can infer that this was as the claimant said it was, and that I could infer from those circumstances that there was something suspicious about her dismissal.

44. There appears to be no real challenge to the fact that the unit that the claimant appeared to be part of was to be disbanded and that a redundancy process would follow, even if the claimant does not accept as fair or reasonable that which affected her as part of that process. However, this does not set the stage for a clear inference that the reason she was dismissed was because she had made a protected disclosure.

45. I stress that I am not making findings of fact and have not heard all of the evidence. My observations are limited to the claim that would enable interim relief to be granted. I must do the best that I can with the material available. However, in the circumstances as they are, the circumstances of the claimant's dismissal do not call, in my judgment, for an explanation such that she has a pretty good chance of success in establishing that the reason, or the principal reason, for her dismissal was because she made a protected disclosure, or that she otherwise has a pretty good chance of success.

46. For all of the above reasons, the claimant's application is refused.

Approved by:
Employment Judge B Smith
23 July 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 July 2025
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FOR THE TRIBUNAL OFFICE