Case Number: 6024823/2025

EMPLOYMENT TRIBUNALS

Claimant: **Ms S Weightman**

Respondent: **Vico Homes Limited**

Heard at: **Leeds Employment Tribunal (via CVP)**
On: **24th July 2025**

Before: **Employment Judge Singh**

Representation
Claimant: In person
Respondent: Mr S Shepherd (Solicitor)

JUDGMENT

1. The Claimant's application for interim relief is refused

REASONS

Background

2. The Claimant submitted her claim on the 2nd July 2025. In the ET1 she ticked the boxes for a whistleblowing claim and a unfair dismissal claim.

3. On the 3rd July 2025 the Claimant applied to amend her claim and make an application for interim relief. She attached a statement to her application.

4. The Claimant had been dismissed on the 30th June 2025 and so her application has been made within 7 days of the effective date of termination.

The hearing

5. A hearing was listed for the 15th July 2025 but had to be postponed due to the Claimant being unavailable. It was relisted for the 24th July 2025.

6. The Claimant had provided the above referenced statement. That statement was 52 pages and included documents as evidence. The Respondent had submitted their grounds of resistance in which they

addressed the issue of interim relief.

7. I also asked questions of the Claimant to gather further information as to the complaints the Claimant was bringing and why interim relief should be granted. The Respondent was also allowed to make submissions on that point.

The applicable law

8. Section 128(1) of the Employment Rights Act 1996 ("ERA") provides that an employee who presents a complaint of unfair dismissal, and alleges that the reason for his dismissal is the making of a protected disclosure under section 103A of the Employment Rights Act, may apply to the Tribunal for interim relief. The claimant's application in this case has been brought in time, pursuant to section 128(2) ERA.

9. The procedure on hearing an application for interim relief is set out in section 129 ERA, namely that interim relief shall be granted where it appears to the Tribunal it is likely that, on determining the complaint of unfair dismissal, the Tribunal will find that the reason or principal reason for the dismissal was that the claimant made a protected disclosure and so was unfairly dismissed for doing so.

10. The task for the Tribunal is to make a broad assessment of the case on the basis of the material available to it at the interim relief hearing, and to consider what is likely to be the result at the final hearing of the claimant's claim.

11. The leading case of *Taplin v C Shippam Limited [1978] IRLR 450* held that "likely" in ERA section 129 does not mean simply "more likely than not". The test is one of likelihood of success; that is to say whether the claim has more than reasonable prospects of success, or a "pretty good chance" of success at a final hearing.

12. In the case of *Ministry of Justice v Sarfraz [2011] IRLR 562* the Employment Appeal Tribunal confirmed that the word "likely" in section 129 ERA does not simply mean "more likely than not", it connotes a significantly higher degree of likelihood, something nearer to certainty than mere probability. The test is therefore set comparatively high.

13. To succeed with an interim relief application, therefore, the burden of showing there is a "pretty good chance of success" is on the claimant, who must show that he has a good case for saying his dismissal was because of a protected disclosure on the basis that there are more than reasonable prospects of succeeding with that contention.

Protected disclosure dismissal

14. Section 103A ERA provides that an employee who is dismissed shall be regarded 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 as defined in section 43A ERA.

15. A disclosure which qualifies as a "protected disclosure" is a disclosure of

information to the employer or to a prescribed person which, in the reasonable belief of the worker is in the public interest and tends to show one or more matters set out in ERA section 43B, including a failure to comply with a legal obligation, or that a criminal act has been committed.

16. The disclosure must be of information, that is to say of facts but not mere opinion or allegations, for which see *Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325*. Giving judgment, Slade J stressed that the protection extends to disclosures of information, but not to mere allegations. Disclosing information means conveying facts.

17. The disclosure must also be the reason, or if there is more than one reason, the principal reason. The burden is on the Claimant to show the causal link between them.

Findings

18. Based on the information that I was presented with at the hearing, I made the following findings

19. The Claimant said she relied upon 2 disclosures. The first was about health and safety and the second was about a breach of a legal obligation.

20. If the disclosures were about those things, they would relate paragraphs 43B(1)(d) and 43B(1)(b) of the Employment Rights Act 1996.

21. In relation to the health and safety disclosure, the Claimant explained that she had made a verbal complaint to her line manager in November 2024 about bullying by a colleague. She said this related to health and safety because she had mentioned that her health was suffering because of the treatment.

22. The Respondent accepted that the Claimant had made complaints to her line manager in around that period. The Respondent had heard complaints from both the Claimant and the other person.

23. The Claimant says that in her complaint she also said that other colleagues were being bullied and that this therefore satisfied the “public interest” element of the test in s43B.

24. Given this was a verbal complaint and there was no contemporaneous evidence about what was said, I did not believe that based on the information in front of me that it was “likely” that the Claimant would succeed with showing that this amounted to a protected disclosure.

25. It was not clear whether the Claimant’s complaint would fall under s43B. It was not clear whether what she said would be found to be a “disclosure of information” or that it would be found to be showing that the health and safety of an individual was being endangered. I felt that this would be need to be tested at a full hearing.

26. Further, I was not satisfied that there was a “pretty good chance” of the Claimant being able to show her complaint was in the public interest. I do not know the extent she mentioned colleagues in her complaint or whether

a tribunal would be satisfied that this was wide enough to be considered the “public”.

27. In relation to the second disclosure, the Claimant initially relied upon a conversation she had had with a board member late on the 24th June, going over onto the early hours of the 25th June.

28. The Claimant said that in that phone call she had raised that the Respondent was not complying with a legal obligation about keeping data that would evidence that they had been complying with safety regulations. The Claimant said the phone call was followed up by a WhatsApp message sent afterwards.

29. A copy of the WhatsApp message was in the bundle but I noted there was only part of the message included. The Claimant had written some text below the message which she said was a verbatim record of what was in the message but it is still the case that I have not seen the original message.

30. The Claimant’s words stated that she had flagged “serious concerns around data integrity and availability”. The Claimant explained that a recent audit by external auditors flagged that the Respondent was at risk if there was an inspection by their regulator because they could not readily evidence that they had complied with health and safety regulations.

31. However, the Claimant did not specify what legal obligation the Respondent was not complying with. I also note that the Claimant refers to an earlier audit which the Respondent is already aware of. As such, I was not convinced that she had a pretty good chance of showing that this was a disclosure of information that would qualify as a protected disclosure under the Employment Rights Act.

32. Further, I was not sure how she would show the public interest element. Although the data related to health and safety issues, the Respondent was not actually being accused of not complying with health and safety regulations, only of not being able to evidence that they had done so by lack of readily available data. Although they may be under a legal obligation to hold that data (and that has yet to be proven), failing to keep such data has an impact on the Respondent (as they may be penalised by the regulator) but I do not see how this has the wider impact the Claimant is saying it does.

33. Further, I did not consider that the Claimant had evidenced that these alleged disclosures would likely be found to be the reason for her dismissal.

34. The Claimant focused on the performance improvement plan she had been placed on and alleged that it was a complete sham as her performance was not lacking. However, I could make no finding about this as I did not have sufficient information about it do so.

35. Further, even if she is able to show the PIP was a sham, this would not be enough for her claim to succeed. She would need to go on and prove that if the PIP wasn’t the reason for the dismissal, her disclosures were.

36. In relation to the November 2024 disclosure, I noted that no action was taken against the Claimant until May 2024 when she was placed on the PIP. I asked why the Respondent would wait so long before taking steps to start to dismiss the Claimant if they felt they were so unhappy about her disclosure in November. I did not consider the answer to be sufficient for me to find it is likely he claim would succeed at a tribunal.

37. It was also apparent that the Respondent already knew about the content of the audit before the Claimant's phone call. If that was the case, it was difficult to see how the Claimant was making a protected disclosure telling them something they already knew.

38. I also asked about the timing of the second disclosure. This took place late on the 24th June 2024. Earlier that day the Claimant says that the Respondent had told her they were dismissing her. If that was the case, that disclosure cannot be the reason for the dismissal as it occurred afterwards.

39. The Claimant then said that the Respondent had attempted to renege on the dismissal after the phone call and had a protected conversation with her. When that fell through, they then fell back to the dismissal.

40. The Respondent denied this. They said that on the 24th, the Claimant had been told the Respondent was ending her employment but would be contacting her to discuss the terms of the termination and whether a mutual agreement could be reached. The letter of the 25th June that was in the Claimant's statement confirmed that was the case.

41. The Respondent said that an agreement could not be reached and so the dismissal took effect. Had an agreement been reached the Claimant would have still left their employment, the only thing that would have been different is the reason for leaving and a payment being made.

42. I accepted that evidentially it appeared the Claimant's dismissal was decided upon by the Respondent before the phone call and as such it did not appear likely the Claimant's claim in relation to this would succeed.

43. The Claimant said then that she had also raised these concerns in previous 1-2-1 meetings she had had with her manager. She could not provide details of them or what was said as she was not able to access her emails from the Respondent. I have to make a finding based on what is in front of me rather than what could possible appear at the final hearing. Based on what was in front of me I was not satisfied that the Claimant would be able to show it was likely she had made other disclosures and that they were the reason for her dismissal.

44. As I did not consider it likely that the Claimant's claim would succeed, the application for interim relief must be refused.

Employment Judge Singh

25th July 2025

Notes .

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/