EMPLOYMENT TRIBUNALS

Claimant: Mr M Burch

Respondent: Ashford Borough Council

Heard at: Croydon (via CVP) **On:** 29 July 2025

Before: Employment Judge Leith

Representation
Claimant: In person
Respondent: Mr Healy (Counsel)

JUDGMENT

The Claimant's application for interim relief is dismissed.

REASONS

1. The Claimant claims automatically unfair dismissal under section 103A of the Employment Rights Act 1996. He makes an application for interim relief; this hearing was listed to consider that application. The Respondent has not yet filed a response (and the deadline for doing so has not yet expired). Mr Healy clarified for the purposes of today's hearing that the Respondent's case is that the Claimant was not an employee of the Respondent. The Respondent further denies that the there was a protected disclosure, and denies that the reason for the Claimant's termination was any disclosure he had made.

2. I had before me:

    2.1. The Claimant's case bundle of 18 pages (which included the Claimant's witness statement), plus 27 numbered appendices, and a documented entitled "closing evidence". These had been consolidated by the Respondent into a single PDF file numbering 713 pages.
    2.2. The Respondent's bundle of 153 pages, including the witness statement of Dapo Olugbodi and the Respondent's skeleton argument.

3. In light of the volume of documents, I explained to the parties at the outset of the hearing that in addition to the claim form I had read the Claimant's case bundle and "closing evidence" document, the Respondent's skeleton

argument, and the witness statement of Mr Olugbodi. I explained that they would need to specifically refer me to any other documents they wished me to read.

4. I heard submissions from Mr Healy on behalf of the Respondent, and from the Claimant. I retired to deliberate, after which I delivered my judgment with reasons orally. The Claimant requested written reasons.

Law

Interim Relief

5. Section 128 of the Employment Rights Act 1996 gives claimants who claim automatically unfair dismissal the right to apply for interim relief. Section 129(1) deals with the test for an interim relief application. It provides as follows:

> (1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—
>
> (a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
>
> (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
>
> (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
>
> (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.

6. The remaining part of section 129 deals with what happens if the Tribunal concludes that it is likely that the Claimant will succeed in the claim.

7. In the case of *Taplin v C Shippam* [1978] ICR 1068, the EAT noted that the correct test to be applied is whether the Claimant has as "pretty good chance of success" at full hearing. This is a significantly higher test than "more likely than not" – *Wollenberg v Global Gaming Ventures (Leeds) Ltd and anor* EAT 0053/18.

8. The "likely to succeed" test applies to all disputed elements of the claim. This includes the Claimant's status, if that is in dispute – *Simply Smile Manor House Ltd and ors v Ter-Berg* [2020] ICR 570.

Employment and worker status

9. An "employee" is defined by section 230(1) Employment Rights Act 1996 (ERA) as being "an individual who has entered into or works under (or,

where the employment has ceased, worked under) a contract of employment." "Contract of employment" is defined as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider relevant factors in considering whether someone is an employee. An irreducible minimum to be an employee will involve control, mutuality of obligation and personal performance, but other relevant factors will also need to be considered.

10. The contract of service must be with the employer. Where there is a tripartite relationship, the Tribunal must consider the possibility of an implied contract of service – *Brook Street Bureau (UK) Ltd v Dacas* [2004] EWCA Civ 217

Protected Disclosure

11. A protected disclosure is defined in section 43A of the Employment Rights Act 1996 as a qualifying disclosure (as defined in s.43B) which is made by a worker in accordance with any of sections 43C to 43H.

12. Section 43B(1) provides as follows:

43B Disclosures qualifying for protection

(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, is being or is likely to be deliberately concealed.

13. The worker must have a reasonable belief that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur. The test contains both a subjective and an objective limb. The worker must subjectively believe that the information disclosed tends to

show one of the relevant failures, and that belief must be objectively reasonable (*Phoenix House Ltd v Stockman* [2017] ICR 84 EAT). The worker's individual circumstances are to be taken into account, but an objective standard is applied (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 EAT).

Automatically unfair dismissal

14. Section 103A of the Employment Rights Act 1996 ("ERA") provides as follows:

> "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."

15. The reason for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to dismiss, or which motivates them to do so (*The Co-operative Group v Baddeley* [2017] EWCA Civ 658).

16. In *Kuzel v Roche Products Limited* [2008] ICR 799, the Court of Appeal said Tribunals should adopt a three-stage approach to deciding the reason for dismissal:

    16.1. First, the employee must prove that he or she made a protected disclosure and produce some evidence to suggest that they have been dismissed for the principal reason they have made a protected disclosure, rather than the potentially fair reason advanced by the employer;

    16.2. Secondly, having heard the evidence of both sides, it will then be for the employment tribunal to consider the evidence as a whole and to make primary findings of fact on the basis of direct evidence or reasonable inferences; and

    16.3. Thirdly, the tribunal must decide what was the reason or principal reason for the dismissal, on the basis that it was for the employer to show what the reason was. If the employer does not show to the Tribunal's satisfaction that it was its asserted reason, then it is open to the Tribunal to find that the reason was as asserted by the employee. However, the Tribunal is not bound to accept the reason alleged by the employee. The true reason for dismissal may be one not advanced by either side.

Factual background

17. For the purposes of this hearing I am summarily assessing whether it is likely that the claim will succeed, having regard to the evidence before me.

I am not making findings of fact that will bind the Tribunal at final hearing, and nothing in my judgment should be read as such.

18. The Claimant was engaged by the Respondent Local Authority as a Compliance Specialist. His engagement started on 5 June 2025.

19. The ET1 refers to the Claimant being engaged in an "interim capacity". Within the note he prepared for this hearing, the Claimant describes himself as being "employed as a contractor through a third party under IR 35 conditions". He accepted in submissions that he did not contract directly with the Respondent.

20. The documents before me show that:

    20.1. The Claimant was supplied by an agency, Service Care Solutions

    20.2. He was engaged via an Umbrella Company, Arch Finance Limited.

    20.3. The Claimant completed timesheets, which he passed to Arch Finance. Arch Finance then invoiced the Respondent for the work set out on those timesheets, and the Respondent paid Arch Finance for the work done by.

21. The Claimant's case is that his appointment was part of the Respondent's recovery plan following an adverse regulatory judgment in July 2024. His case is that after being in post for two weeks, he discovered that the Respondent was falsifying evidence and reporting inaccurate data.

22. In the course of his submissions, the Claimant drew my attention to a number of areas where he explained that the Respondent's officers were making inaccurate reports to the Respondent's scrutiny committee. Specifically, the Claimant explained that in areas such as fire doors and asbestos checks, the reports to the Scrutiny Committee stated that compliance was at 100% whereas other contemporaneous documents showed that that was not the case. The Claimant also referred to an Electrical Condition Report produced by an employee of the Respondent's electrical services division, in respect of a property owned by the Respondent. The summary of the report stated that the installations at the property being assessed were "satisfactory". The Claimant drew my attention to issues set out within the "observation and recommendations" section of the report which, according to the narrative on the report form, should have prevented the installation being assessed as "satisfactory". The Claimant explained that this was just one example.

23. The Claimant's case is that he reported falsified evidence and inaccurate data to his line manager. He does not specify in the ET1 when or how he made that report, or what specifically he reported. His case is that he was then put under pressure to continue to falsify the data.

24. There was before me a screenshot of what purported to be a text message exchange between the Claimant and Paul Ingram, his line manager, on 2 July 2025. The Respondent queries the authenticity of that exchange. The

Respondent's case is that, having taken instructions from Mr Ingram, Mr Ingram denies sending the text messages in the exchange. The screenshot of the messages showed the following:

> Mr Ingram: Mick, I have seen your compliance figures bring them inline with last month's reporting, we can extend your contract to 6 months and correct them without reporting discrepancies
>
> Claimant: Paul I'm not doing that, report the truth admit mistakes and we can fix together.
>
> Mr Ingram: Don't blame me if your contract is cancelled and you lose your wages.
>
> Claimant: Wow really caus I won't lie?
>
> Mr Ingram: No because you want to highlight issues rather than just correct them in the background

25. The Claimant's case is that he was asked to outline the issues to Mr Olugbodi, which he did by email on 3 July 2025. The Claimant's email to Mr Olugbodi of 3 July 2025 was in evidence before me. It said this:

> "The key issues that I am seeing:
> - A trend relate to the remedial actions and evidence capture following highlighted issue from a subject specialist (risk assessor). The action is being closed without suitable evidence. We have no assurance for the Chief Exec and Directors.
> - Fault rectification not being completed but as we have certificate (even though unsatisfactory) we report compliant.
> - High level risks not being given enough focus.
> - Poor record keeping.
> - Lack of minor works certificates.
> - No audit on works sign off.
> - Block Inspectors not systemised.
>
> These combined create ambiguity around compliance"

26. On 4 July 2025, the Claimant's engagement was terminated. That decision was communicated to the Claimant by Mr Olugbodi. The Claimant's evidence was that he was told the reason was that he was "over delivering".

27. Mr Olugbodi's evidence was that he had made the decision to terminate the Claimant's engagement because of issues with his performance. He referred in his witness statement to a number of issues with the way he perceived the Claimant was interacting with colleagues, supported by contemporaneous documents. Mr Olugbodi's evidence was that the termination of the Claimant's engagement was nothing to do with the issues

he had raised regarding compliance, or the Respondent's approach to compliance or reporting.

Conclusions

Status

28. The Claimant himself accepts that he was engaged via a third party. The remedy of interim relief is only available in a complaint of automatically unfair dismissal, which is a complaint which can only be brought by a (former) employee. On the evidence before me, the Claimant had no direct contractual nexus with the Respondent. There was no evidence before me of ambiguity in the relationship which might suggest that it was necessary to look behind the contractual framework. Nor had the relationship developed over time away from what had originally been intended by the parties – the engagement only lasted slightly under a month.

29. It follows then that it is not likely that the Claimant will persuade the Tribunal that he worked under a contract of employment with the Respondent.

30. On that basis alone, the application for interim relief cannot succeed. But because I have heard arguments on the other points in dispute, I shall also deal with them briefly.

Disclosures

31. The claim form does not make it clear, in anything but the most high-level sense, what it is that the Claimant relies on as constituting his protected disclosures. The claim form refers to the Claimant reporting to his line manager that the Respondent was falsifying evidence and reporting inaccurate data. The Claimant's line manager was Mr Ingram.

32. In submissions, the Claimant carefully took me through the documents which he considered outlined the Respondent's wrongdoing. That is relevant to whether the Claimant reasonably believed that there was wrongdoing. And of course there can be no protected disclosure where an individual does not reasonable believe that wrongdoing (of the type set out in section 43B) has occurred. I have no difficulty in concluding that it is likely that the Tribunal at final hearing will conclude that the Claimant reasonably believed that wrongdoing had taken place. But belief is not enough. There must be a communication of information which tends to show wrongdoing. And I was not taken to anything, either in the claim form or in the evidence before me, to show what specific information the Claimant relied upon having disclosed to Mr Ingram.

33. A complaint of automatically unfair dismissal is a complaint that the Claimant was dismissed for the sole or principal reason that he made a disclosure of information which met the test in section 43B. That is, what is important is the information the Claimant disclosed, not what was in his mind. I can only assess the application based on what has been pleaded and the evidence before me. On what is before me, I cannot say that it is

likely that the Claimant will succeed in showing that he made a protected disclosure to Mr Ingram.

34. I was specifically referred to the Claimant's email of 3 July to Mr Olugbodi. That email did not, for example, refer in terms to health and safety being put at risk, or to legal obligations being breached. The best summary of that email is the last sentence of it, which referred to "ambiguity" around compliance. That does not, in my judgement, unambiguously tend to show one of the prescribed categories of wrongdoing. That is, it is not obvious on the face of it that the email contained a protected disclosure.

35. It might be arguable that, taken in context of other things said by the Claimant as well as Mr Olugbodi's own knowledge of the situation, the email could *potentially* constitute a protected disclosure. But for the purposes of the exercise I must carry out, I certainly cannot say it is *likely* that it contained or constituted such a disclosure.

Dismissal

36. I would also have concluded that it is not "likely" that the Tribunal will conclude that the sole or principal reason for the Claimant's dismissal was the disclosures he made.

37. The high point of the Claimant's case regarding causation is the purported text message exchange with Mr Ingram. The Respondent called into question the genuineness of that exchange. The last message in the exchange sits entirely on all fours with the Respondent's position in these proceedings, and is at odds with Claimant's own evidence. It is, in my judgment, inherently implausible that the Claimant would have falsified a message in those terms. And of course I do not have any evidence before me from Mr Ingram. For the purposes of today's hearing only, I consider that it is likely that the text message exchange was genuine.

38. Mr Ingram's messages certainly suggests, in broad terms, that he was not open to hearing disclosures about compliance issues, and that if the Claimant continued to make such disclosures his engagement would be terminated. But looking at the causation question in respect of the dismissal:

    38.1. Mr Ingram was not the dismissing officer.

    38.2. There was no evidence that Mr Olugbodi was aware of the text message exchange; much less that he agreed with what Mr Ingram was saying.

    38.3. There was no evidence that Mr Olugbodi was aware of any specific disclosures made by the Claimant to Mr Ingram.

    38.4. Critically, there is a significant factual dispute between the parties regarding the Claimant's performance, and regarding what was said to the Claimant about the reason for his termination. The Claimant's case is that there were no issues with his performance, and that he had been told as much by the Respondent. Mr Olugbodi's evidence is that the Claimant was not performing as required, and that there were issues with his behaviours. Those are important

factual disputes that will need to be resolved by the Tribunal in due course.

39. Bearing all of that in mind, within the limitations of the relatively summary assessment of merits I must conduct, I cannot say that it is "likely" that the Tribunal would conclude that the sole or principal reason for Claimant's termination was any disclosures he made to the Respondent.

40. So for all of those reasons, even if I had concluded that it was likely that the Claimant would succeed in establishing that he was an employee of the Respondent, I would have dismissed the application for interim relief in any event.

Postscript

41. At the conclusion of my oral judgment, the Claimant asked for written reasons for my decision. I did not ask him why he was asking for written reasons; he has an absolute right to request them. He nonetheless explained, without being asked, that he was requesting written reasons because he wanted there to be a public record of the Respondent's approach to health and safety and compliance, in case there is a fatality as a result. I explained to the Claimant, in general terms, that:

    41.1. These proceedings are about the Claimant enforcing his rights as against the Respondent. The Tribunal is not concerned with whether or not, objectively speaking, the Respondent's practices are dangerous or inappropriate or fail to comply with regulatory requirements. Nor is the purpose of litigation in this Tribunal to raise a health and safety issue or to seek to pressurise another party.

    41.2. The Tribunal has the power to award costs against a party where they have acted vexatiously, abusively, disruptively or otherwise unreasonably. That includes abusing the Tribunal process, such as where litigation is pursued for a reason other than its proper purpose. The relevant provision is Rule 74 of the Employment Tribunal Rules of Procedure. And although I did not specifically refer to this during the hearing, the Tribunal also has the power under Rule 38 to strike out a claim if the way a claim has been conducted is scandalous, unreasonable or vexatious.

42. I explained that what the Claimant had told me about his rationale for seeking written reasons caused me some concern as to the purpose for which he was pursuing the litigation. The Claimant confirmed that his motivation in bringing the claim was purely to enforce his own rights rather than to pursue any other agenda.

Approved by:
Employment Judge Leith
Date: 30 July 2025

Case No: 6025509/2025
Sent to the parties on:
Date: 28 August 2025

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