EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000523/2025

Interim Relief Application Hearing in Chambers held in Glasgow on Friday 8 August 2025

Employment Judge Campbell

Mr F Mooney	**Claimant** **In Person**
Lanarkshire Health Board	**Respondent** **Represented by:** **Mr D James,** **Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The requirements of section 129(1)(a)(i) of the Employment Rights Act 1996 have not been met and the application for interim relief is unsuccessful.

WRITTEN REASONS

Background

1. The claimant was employed by the respondent between 4 April 2022 and 25 June 2025. He was engaged as a Healthcare Assistant.

2. The claimant was suspended from working between 13 May 2022 and 7 February 2025. He was then suspended again on 17 February 2025 and remained so until the end of his employment.

3. In between the two suspension periods he was placed on unpaid leave. This followed meetings on 3 and 6 February 2025 at which various alternatives to the claimant being suspended were discussed. The options were to go on

unpaid leave, on paid annual leave, or on sickness absence. Consideration of redeploying the claimant into another role was also proposed.

4. He raised the current claim on 27 February 2025. He alleged disability discrimination (including harassment and victimisation) and detriment on the grounds of making protected disclosures. He relies on a number of predominantly mental conditions or disorders as amounting to disability. This hearing was not concerned with whether he was or was not a disabled person, or whether he was unlawfully treated in connection with having disability as a protected characteristic.

5. On 25 June 2025 the claimant was dismissed by the respondent. On 27 June 2025 he applied to amend his claim to include complaints of automatic unfair dismissal by reason of making protected disclosures under section 103A of the Employment Rights Act 1996 ('ERA') and in the alternative a 'standard' claim of unfair dismissal under section 94 of ERA.

6. The claimant applied to be granted interim relief in relation to his automatic unfair dismissal complaint. The amendment was allowed, the respondent lodged amended grounds of resistance in reply and this hearing was fixed to determine the interim relief application. The claimant submitted a note on 9 July 2025 titled 'skeleton argument' in which he set out his position on why interim relief should be granted.

7. The claimant made a complaint to the Independent National Whistleblowing Officer (INWO), the individual appointed in Scotland to consider disclosed concerns within the NHS. Initially the officer said that it was premature to provide a view on whether the claimant had made protected disclosures, and that the claimant had to complete a procedure involving the respondent. The claimant raised further matters and in a letter dated 20 June 2025 the INWO sought clarification of certain details from him, which he provided. The INWO then issued a 'Statement of Reasons' dated 10 July 2025. This correspondence was produced to the tribunal.

8. The claimant later applied to have the interim relief application determined on the basis of written submissions and thus without the parties' appearance at the hearing. The respondent opposed this. Considering both parties' positions I took the view that the tribunal's overriding objective as set out in rule 3 of the Employment Tribunal Procedure Rules 2024 would be best served by the hearing being dealt with on the basis of the papers. I took into account that the default approach to interim relief hearings is that witness evidence will not be given, and therefore the only or main element of individual input provided by each party (or their representative) on the day would be by way of

submissions. Those could be provided in writing, which I ordered along with the provision of any relevant background documents. I considered also that the scope of the hearing evidentially in this case does not appear to be unduly wide or complex. The relevant matters are well defined and set out in existing written documents. I also took into account the claimant's representations about his own capacity as linked to his medical conditions. In particular, he maintains that he requires time to process new information and cannot always respond immediately when it is provided. Elements of a hearing as it would proceed normally might place him at a disadvantage.

9. The parties duly submitted documents for my consideration at this hearing. The claimant provided a bundle and the respondent provided its own bundle together with a note of submissions, a signed statement by Mr Stephen Peebles (said to be the person who decided to dismiss the claimant), the findings of the INWO dated 10 July 2025 and some case authorities. I also considered the claimant's skeleton argument dated 9 July 2025 as referred to above.

10. Importantly, the claimant had raised a number of complaints against the respondent previously and those were determined at a hearing in December 2024. The complaints included allegations of discrimination against him relating to the terms and application of the respondent's Dress Code Policy. A number of factual findings were made by the tribunal. The tribunal's written judgment was issued to the parties on 13 January 2025. The allegations of unlawful discrimination were not upheld. Those complaints were not identical to the ones made in the current claim, but relate to some of the same facts and events. I refer to this below as his previous claim.

Relevant law

1. Provisions in relation to the remedy of interim relief are found in sections 128 to 132 ERA.

2. Section 128(1) reads as follows:

> "***128 Interim relief pending determination of complaint.***
> *(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—*
>
> *(a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*
>
> *(i) section …103A,*
>
> *…*
>
> *may apply to the tribunal for interim relief.*"

3. Section 129 ERA states:

> "***129 Procedure on hearing of application and making of order.***
>
> *(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 …103A.*
>
> *(2) The tribunal shall announce its findings and explain to both parties (if present)—*
>
> *(a) what powers the tribunal may exercise on the application, and*
>
> *(b) in what circumstances it will exercise them.*
>
> *(3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—*
>
> *(a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or*
>
> *(b)if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.*
>
> *(4) For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.*
>
> *(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.*
>
> *(6) If the employer—*
>
> *(a) states that he is willing to re-engage the employee in another job, and*
>
> *(b) specifies the terms and conditions on which he is willing to do so,*
>
> *the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.*

(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.

(8) If the employee is not willing to accept the job on those terms and conditions—

(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and

(b) otherwise, the tribunal shall make no order.

(9) If on the hearing of an application for interim relief the employer—

(a) fails to attend before the tribunal, or

(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),

the tribunal shall make an order for the continuation of the employee's contract of employment."

4. A body of case law has evolved in relation to the way in which employment tribunals should consider applications for interim relief. Where relevant, case authorities and the applicable propositions they demonstrate are referred to below.

LEGAL ISSUES

The following legal issues had to be considered in relation to this application:

1. Was it likely that the claimant's complaint of automatically unfair dismissal by reason of having made protected disclosures would succeed at a full hearing, and in particular was it likely that:

    a. The claimant made one or more disclosures of information to his employer or another responsible person as provided for in section 43C ERA;

    b. He held a genuine and objectively reasonable belief that the information disclosed tended to show any of the circumstances set out on section 43B(1) ERA applied;

    c. He held a genuine and objectively reasonable belief that his disclosures were in the public interest; and

d. To the extent that he did make any protected disclosures, the sole or principal reason for his dismissal by the respondent was the making of one or more of them.

Consideration of the alleged protected disclosures

1. The claimant sought to rely on the following as being protected disclosures in terms of sections 43B to 43H of ERA:

   a. Verbal disclosures at meetings on 2 and 22 May 2022 – these are referred to below as '**disclosures 1a and 1b'** as they are closely related in time and content;
   b. A written disclosure by letter dated 22 January 2025 – '**disclosure 2**'; and
   c. A written disclosure by letter dated 1 June 2025 – '**disclosure 3**'.

   Each is considered in turn below in terms of whether it is likely to meet the criteria of a protected disclosure. He made each to his employer, and so there is no issue around whether they would be 'protected' as long as they were 'qualifying' disclosures under section 43B.

   I record here that the claimant refers in his note of submissions to a grievance dated 12 May 2022. The respondent disputes that it received any such document and the tribunal which decided his earlier claims made that finding at paragraph 139 of its judgment. Given that, I could not make a finding now without further evidence that the grievance was at least likely to have been submitted. I noted also that the claimant did not include such a document as part of the disclosures he wished to rely on when submitting his application to amend his claim. It is therefore not considered further in this judgment.

Disclosures 1a and 1b

2. The claimant attended a meeting on 2 May 2025 with Nurses Coyle and Smith. The purpose was to discuss how his hair could be managed so as to comply with the respondent's Dress Code Policy. He alleges that he made a disclosure of information – **disclosure 1a -** about the likelihood or fact of health or safety of any individual having been or currently or potentially being endangered, which if so would qualify under section 43B(1)(d).

3. A transcript of the meeting was provided by the claimant. The meeting appears to have been a short one. The specific words spoken by him and relied upon as a protected disclosure were as follows:

> *"My hair can't be put up, even when it's put up, it needs constant readjustment or it gets in the way between me and patients, so it does break the policy at that point as well. So as far as just putting it back, that's the safest in my opinion."*

4. The respondent is aware of the transcript and does not appear to challenge it or dispute that these words were said. It is likely therefore at this stage that they were, and I have considered whether they are likely (in the sense expressed in ***Robinson*** below) to amount to a protected disclosure on that basis.

5. The claimant submits that he believed at that time that wearing his hair tied up above his collar *'was unsafe, physically unsuitable, and disruptive to patient care.'* He also says that he was raising '*a specific, practical concern in a live clinical setting. The concern related to patient-facing risks caused by physically unstable adaptations to a medical support worker's PPE-adjacent hairstyle – a matter affecting more than one person and the quality of patient care.*'

6. Whilst noting how the claimant views his words now, it is what he said and reasonably believed at the time which matters. Although he uses the word 'safest', the context of the conversation is not about patient safety and appears more to be about basic practicality. A tribunal may find that the word was used in that wider sense. Also apparent in the surrounding exchanges is that it is not accepted by the respondent that the claimant could not wear his hair up in some way. Ms Coyle mentions that other staff, with and without dreadlocks, have found a way to wear longer hair in compliance with the policy. The respondent may therefore challenge whether the claimant was correct, or reasonable in any belief that he held, that he could not wear his hair above his collar as others with similar hair characteristics do. If the claimant Is found to have believed that his hair could not be suitably secured, and that it becoming unsecured without warning could be a risk to patient safety (which he now appears to be saying) it may challenge the reasonableness of that belief. Without more detailed evidence on that point than has been provided, it cannot be said at this stage that the claimant is likely to prove that such a belief was both genuinely and reasonably held at the time.

7. The above matters highlight that it cannot be found at this stage that the claimant has a 'pretty good chance' of proving that disclosure 1a was protected.

8. The claimant also sought to rely on part of a prepared statement he delivered orally at a meeting on 12 May 2025 with Ms Coyle – **disclosure 1b**.

9. The statement was produced and the claimant highlighted the passages he asserted were protected disclosures. Those are considered in turn below:

    a. *'The first time it was raised with me in front of others, I explained my dreadlocks can't be put up but simply told it "needed" to be up and that was the bottom line. There was no discussion and instead I was met with a demand that my dreadlocks needed to be "put up" and threatened I would lose my job.'* – this was said to be information showing a reasonable belief in the breach of a legal obligation, namely the obligation on an employer not to threaten an employee who refuses to follow an unsafe or unlawful instruction. It is likely that a tribunal would find that the claimant believed that a legal obligation was being, or was likely to be, infringed, namely his right not to be unfairly dismissed for a discriminatory reason in breach of the Equality Act 2010. He is disclosing information about that at this point in his statement. However, it is credibly arguable that his belief was not reasonably held, not least because the tribunal in his earlier claim found that he had not been discriminated against. That in itself is not the test of whether the claimant's belief at the time of the disclosure was reasonably held, since only in January 2025 was the point finally determined. It could have been reasonable for him to hold the belief at any time up to that point. But on the evidence provided it cannot be said that he is likely to show that his belief is reasonable. Similarly, the question of whether he reasonably believed his disclosure to be in the public interest, given that on the face of it the alleged breach related only to himself, remains too open.

    b. *'I explained my dreadlocks can't be "put up" as my dreadlocks are too long, varying lengths, heavy and thick'* – this was said to be related to a breach of health and/or safety of one or more individuals within section 43B(1)(d). These words do not obviously convey information that the claimant believes there is, was or would be such a risk. It is not likely that he would persuade a tribunal that they did. The surrounding context of this passage is focussed on perceived discrimination. As such the issues identified in (a) above would apply.

    c. *'I had explained that my hair couldn't be put up and if there was a way to keep my dreadlocks up, it would need frequent adjustment, be damaging and interfere with my patient care which is a breach of dress policy'* – this was alleged to be a further disclosure of concern about

risk to health and safety, both of patients and staff and also a breach of a legal obligation to provide safe care. This wording is similar to disclosure 1a, made at the meeting on 2 May 2022. It does not clearly convey information about a risk to health and safety and it cannot be said that it is likely that a tribunal would accept that such information was disclosed. If the claimant genuinely held a belief that there was a risk to his or patients' health or safety, the reasonableness of that belief realistically could be challenged.

d. *'Discrimination continued as the dress code was enforced with no alternatives discussed other than a solution for a mistaken belief that there was a problem'* and *'I explained I was being discriminated against, had become victim of harassment and victimisation and that I was protected by the [E]quality [A]ct and what was happening was actually illegal'* – these comments were adjacent and said to relate to a breach of legal obligation, namely an employer's duties under the Equality Act. They are subject to the same obstacles as (a) above. They are also less detailed than other comments relied on, and face the additional potential challenge of whether they impart 'information' rather than simply convey a more general sentiment of grievance or injustice.

e. *'If health and safety was paramount and risk to patients real, why was I allowed to return for a further six full 12 hour shifts from the first discriminatory incident?'* – relied on as a communication about concern over health and safety. It is not clear that the claimant is conveying here that he believed there to be a risk. He appears to be questioning the respondent's stated belief in risk, and potentially suggesting the opposite, namely that there is not a risk. This is incompatible with a finding that it is likely he would be able to establish he made a protected disclosure.

f. *'HR had given permission to "redeploy" myself away from patient facing clinical work and I would be working in Medical Records "where I would be safe" "away from patients" "behind a screen" as if I was an industrial accident waiting to happen because of my dreadlocks."* – the claimant believed that he was making a disclosure about the breach of a legal obligation, namely that he was put in a less desirable role because he raised a concern about safety. It is not clear what legal obligation would have been breached, as he does not specify. It may have been the explicit terms of his contract, but if so it is appreciable from the respondent's papers that it maintains it had the power under his contract to ask him to undertake different duties away from

patients. It may have been the more fundamental obligation to maintain mutual trust and confidence by not, for example, exercising a power to vary the claimant's duties in a capricious or punitive way. As a third option, he may again be intending this to be a reference to the anti-discrimination provisions of the Equality Act. In the absence of necessary clarity and evidence it is not possible at this stage to conclude that it is likely the claimant will show the words he used at this point in his statement amounted to a protected disclosure.

g. *'As a white Scottish Male Rastafarian who expressed his religion through the growth and protection of his dreadlocks I am protected by the Equality Act 2010.'* – this was stated to be a disclosure about a breach of legal obligations. However, it is not. It is a further restatement of the claimant's general rights. It conveys no new information about a relevant matter which was believed to have happened, be ongoing, or be anticipated to happen.

h. *'The exceptional nature of dreadlocks cause them to have unique needs. The physical attributes make it more susceptible to breakage. It cannot easily be straightened or wrapped without damaging the hair'* – relied on as a disclosure in relation to risk to health or safety. This also does not on the face of it meet the test for a qualifying disclosure under section 43B. It is a general statement of fact or opinion but does not provide information about an actual or anticipated risk to health or safety. Its focus is different, being on the difficulty the claimant perceives in wearing his hair in a way which complies with the respondent's policy. The respondent may wish to test aspects of what he says, bearing in mind for example that Ms Coyle put to him in the meeting of 2 May 2022 that other staff wore dreadlocks and were able to wear thrm above their collar. The claimant's belief may or may not be reasonable in that regard, and may be challenged and require to be proved. It cannot be found at this preliminary stage that the claimant is 'likely to' show this was a protected disclosure.

i. *'Policies that may seem neutral can sometimes have a disproportionate impact on people with dreadlocks. For instance, a policy that bans dreadlocks could apply to all employees, but would disproportionately affect Black or Rastafarian employees or students. Managers should be trained on cultural sensitivity regarding natural hair. Proportionately out of 100 people, if 20 people are Rastafarian with dreadlocks that cannot be put up and 80 are not. Out of 20 Rastafarians, 100% will be impacted.'* – this is a further statement of

general rights and beliefs. It does not convey information about one of the prescribed matters listed in section 43B.

10. I was conscious not to take too fragmented an approach to this particular document. I considered whether the statement in its totality could amount to a protected disclosure even if the individual passages highlighted appeared not to. However, the challenges already identified were inescapable. Any alleged disclosure which actually conveyed information about a potential health or safety risk was clearly open to a potentially credible challenge as to whether the belief was held at the time, and if so whether that belief was reasonably held. Any disclosure of information about a perceived breach of legal obligation was clearly being squarely opposed by the respondent and in addition had potentially already been ruled out (or at least cast in doubt) by the previous tribunal's findings. It could only be decided on the evidence at a full hearing and the claimant's prospects at this early stage were not sufficiently strong.

Disclosure 2

11. Some time passed between disclosures 1a and b and disclosure 2, which was said to have been made by way of the claimant's letter to the respondent dated 22 January 2025, a copy of which was produced. Of relevance, this letter was ostensibly written approximately a week after the judgment of the previous tribunal was issued, in which all of his discrimination complaints were dismissed. The letter must therefore be viewed in recognition of the findings made by the tribunal where relevant, as the claimant would have known what those were.

12. It is noted that the respondent agrees that it received the letter, but only on 1 June 2025 and not before. This came before the conduct hearing on 11 June 2025 and the issuing of the dismissal letter on 25 June 2025. It could therefore still have played a part in the decision to dismiss.

13. The claimant does not appear to say clearly in his submissions which situation(s) within section 43B(1) was or were referenced in the letter. It again appears that he is relying on subsections (b) – failure to comply with a legal obligation and (d) – risk of endangerment to health or safety of any individual.

14. The letter is lengthy but focuses predominantly on revisiting the history of the claimant's disagreement with the respondent over the management of his hair in a patient environment and the fairness of the Dress Code Policy, from the beginning of his service in April 2022 onwards. It does not raise any new factual allegations of risk to health and safety of any individual. He is slightly

clearer than before in saying that having to secure his dreadlocks above his neck would lead to a regular requirement to readjust them, '*which could interfere with patient care, thus presenting a safety risk*'. It is still not fully apparent how that risk would be manifested. Nor could it be assumed that the respondent would know the answer, and agree with it. Again, therefore, it was not a point that could be viewed as factually uncontroversial and nor could the claimant be said to be likely to establish it at this point.

15. The letter arguably does provide information about new allegations of breach of legal obligations. He refers to being suspended for almost three years, other procedural failures, lack of meaningful engagement with his grievances and retaliatory motives. He added detail to those themes by providing a 'timeline of retaliatory action following disclosure' and a 'chronology of key events'. Later in the letter he touches on Article 3 of the Human Rights Act 1998 (strictly speaking the European Convention on Human Rights) safeguarding the right not to suffer inhuman or degrading treatment and his rights as a data subject under the Data Protection Act 2018 and the UK GDPR. By virtue of the passing of time alone since the disclosures made in 2022 there are new complaints, at least some of which could be interpreted as allegations of breach of his legal rights.

16. The respondent's reply to this is that the claimant is trying to re-litigate matters decided by the tribunal in its judgment of 13 January 2025. This appears to be correct up to a point, particularly in relation to the lengthy passage of the letter seeking to challenge the validity of the Dress Code Policy. It does not cover every aspect of the letter because the events and related evidence were not evaluated by the tribunal through the prism of a protected disclosure claim. In addition, and as referred to above, the claimant need only have had a reasonable belief that the information he passed on to his employer met the criteria for a qualifying disclosure. Even if it was proven later that he was 'wrong' in the sense that a tribunal did not agree with his position, the belief may nevertheless have been reasonably held at the time of the disclosure.

17. That said, however, the reasonableness of the claimant's belief in any infringement of his legal rights cannot be evaluated without recognising that the previous tribunal made factual findings and reached conclusions that there had been no unlawful discrimination. It would be extremely difficult at this stage to separate out any new matters raised in the letter from those which have been considered by the previous tribunal and made the subject of factual findings. To take one example, the tribunal found that the Dress Code Policy was not discriminatory against him. This is one of the foundations of the letter of 22 January 2025.

18. There are additional challenges for the claimant. The respondent does not admit the factual allegations which he makes. Evidence would therefore need to be heard. It also disputes whether any belief allegedly held about health and safety risk or breach of legal obligations was genuine and reasonable. Again this would need to be tested in a full hearing, as it is not so obvious on the papers that the claimant's position will likely be established. Thirdly, it is noted that the tribunal did not accept as fact some of the details of events asserted by the claimant in his previous case. By way of example, some comments attributed by him to colleagues as incidents of harassment were found, on balance, not to have been made in the way the claimant described, or in some cases at all. This highlights that a mere assertion may not be enough at this stage to show that the point is 'likely to' be established or the legal test 'likely to' be satisfied.

Disclosure 3

19. **Disclosure 3** was said to have been by letter dated 1 June 2025 which the claimant produced. This is a shorter letter than that of 22 January 2025, spanning four pages. It largely reasserts the position the claimant took in his earlier tribunal claim, and in doing so suggests he did not accept the tribunal's findings.

20. The letter states at the outset that the claimant is 'submitting this whistleblowing disclosure under the Public Interest Disclosure Act 1998'. The remainder of the letter is taken up with criticism of the Dress Code Policy, outlining the claimant's views as to why it is indirectly discriminatory, not evidence- or science-based, and contradictory to other equality standards. The letter closes with a series of requested actions which include suspension of part of the policy and a review of its terms.

21. As such, the claimant is taken to be relying once more on disclosures under subsections (b) and (d) of section 43B(1).

22. The letter does not raise any substantially new arguments which were not included in his letter of 22 January 2025. In some areas it cites additional supporting material but the essential information is the same – that the policy is unlawful because it is discriminatory and it creates rather than minimises risk to health and safety.

23. In its point number 4 the letter could be read as supplying information about a risk to health and safety. The claimant references headaches and neck strain being caused by wearing his hair up, and there being an increased contamination risk due to frequent touching. What is said there is not self-

evidently true and would require evidence. Again, I do not have the material before me which would allow me to be satisfied that this would be likely to be unchallenged, or unsuccessfully challenged, by the respondent.

24. In summary, the contents of disclosure 3 are not likely to amount to a protected disclosure.

25. As this was the final communication the claimant relied upon, he was unable to establish at this stage that he had likely made any protected disclosures. As such, his application for interim relief would have to be refused without further consideration. Nevertheless, for completeness I considered whether there was a probable link between the disclosures and the reason(s) for dismissal.

Connection between protected disclosures and dismissal

26. If the claimant is able to establish at a final hearing that he made protected disclosures, his claim would only succeed if one or more of them was the sole or principal reason for his dismissal.

27. The respondent provided a signed statement from a Mr Peebles, the person said to have chaired the panel which took the decision to dismiss the claimant. It refers to the dismissal letter issued to the claimant on 25 June 2025, which was also produced.

28. Mr Peebles said that the panel found the claimant to have committed an act of gross misconduct by willfully refusing to engage with his managers to explore a way for him to work whilst complying with the Dress Code Policy. He said it was also concluded that there was an irretrievable breakdown in the working relationship between the claimant and the respondent. He added that the panel consciously considered the disclosures the claimant had made and material from the INWO, and was satisfied that the above findings were not influenced by them.

29. I can no more accept what is in Mr Peebles' statement as proven fact as I can accept assertions made by the claimant – this was not a hearing where evidence was given by witnesses under oath and open to cross-examination. However, the statement has some evidential value at this stage as it purports to be the evidence which Mr Peebles would give at a future hearing, if and when he is called to do so. It is sufficient at present to at least cast doubt on whether the claimant would be likely to succeed in tying the reason for his dismissal to any disclosures he made.

30. Therefore, even had the claimant been likely to show that any of his alleged protected disclosures would satisfy the relevant test, he was not likely to go on and establish that any of them, together or individually, were the sole or main reason for his dismissal.

31. Finally, I considered the letter from INWO dated 10 July 2025. The view had been expressed that the claimant's concerns set out in his letter of 22 January 2025 about the Dress Code Policy would not be protected disclosures because they were too personal in nature to qualify as being in the public interest. The INWO considered itself unable to make any finding that the claimant was subjected to a detriment or dismissed because of making disclosures. This letter does not help the claimant's case.

Legal analysis and conclusions

32. The Employment Appeal Tribunal helpfully reiterated in ***His Highness Sheikh Khalid Bin Saqr Al Qasimi v Ms T Robinson*** UKEAT/0283/17/JOJ the approach which an employment tribunal should take when considering an application for interim relief based on a claim of unfair dismissal by reason of the making of protected disclosures. In particular, paragraphs 5 to 18 of the judgment set out a summary of the legal framework to such applications.

33. Paragraph 9 of the judgment is a reminder that the word 'likely' in section 129 has to be read as meaning having a 'pretty good chance of succeeding', not merely a possible chance or 'could well happen'. The metaphorical bar is deliberately set high because of what is at stake if the application is granted – a respondent may have to reinstate a claimant, or at least restore their pay and benefits, for a number of months pending the outcome of the claim at a final hearing. Furthermore, there is no provision for the claimant to pay any of that back should their claim ultimately be unsuccessful. The remedy has been described judicially as 'draconian' and the word 'likely' has to be approached with this in mind.

34. Paragraph 11 confirms that the 'likely' test has to be applied to each component of a claimant's case, i.e. whether they made a disclosure of information, whether they did so to their employer or another permitted person, whether they had a real belief, reasonably held, in circumstances within section 43B(1) applying and whether they similarly had a genuine and reasonable belief that their disclosure was being made in the public interest. The test would also apply to the overall assessment of whether a claimant had been dismissed wholly or principally for making their disclosure(s).

35. Paragraph 12 refers specifically to claims based on more than one alleged protected disclosure. It says that in those cases an employment tribunal must be satisfied that the 'likely' test applies to the relevant criteria for each putative disclosure, not just some or at least one of them. However, where a disclosure is said to have been made across a number of communications – as in the current claim - they may need to be considered together. In that paragraph the separate point is made that there must be a disclosure of information and not merely the making of an allegation or statement of opinion, which can be similar but is not the same.

36. Applying the principles of ***Robinson*** as I have done above, I found that the claimant was unable to establish today that he was likely to succeed at a future full hearing in his claim of automatic unfair dismissal under section 103A.

37. The test contained in section 129 gives no apparent discretion to an employment tribunal to award the remedy of interim relief by granting a continuation order once it has concluded that it is not likely that the relevant claim will succeed at a full hearing. Therefore, the application must be refused.

38. Nothing in this judgment should be taken as establishing facts relevant to the claim, which will be a task for the future tribunal dealing with the full hearing (assuming no extrajudicial resolution in the meantime). By then it is likely that the parties' respective cases will have progressed and become more focussed, and the parties will have disclosed further relevant documents to each other. It is at this hearing that the relevant evidence, and the witnesses, will be examined in full, in contrast to the necessarily provisional assessment of the claimant's case at this early stage.

39. As this application has now been dealt with the claim will proceed as normal, presumably by way of listing a case management hearing.

Date sent to Parties **25 August 2025**