EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001943/2025 Interim Relief Hearing at Edinburgh on 28 August 2025

Employment Judge: M A Macleod

Alastair Logan	**Claimant** **In Person**
Diligenta Limited	**Respondent** **Represented by** **Mr R Allen** **Barrister**

DECISION OF THE EMPLOYMENT TRIBUNAL

The Decision of the Employment Tribunal is that the claimant's application for Interim Relief is refused.

REASONS

1. This case called for a hearing at 10am on 28 August 2025 to determine the claimant's application for interim relief dated 9 August 2025.

2. The claimant appeared on his own behalf, and Mr Allen, barrister, appeared for the respondent.

3. Each party presented a bundle of documents, and a skeleton argument, to which they respectively spoke. The claimant presented his submission first, followed by Mr Allen. The claimant was then given the right of reply to the respondent's submission, and Mr Allen responded briefly. The hearing concluded at 2.30pm.

4. In light of the length of the hearing, and the substantial nature of the bundles produced, I adjourned the hearing at that point, and advised the parties that I would prepare and issue a Decision by no later than 29 August 2025.

5. I will summarise the submissions made by the parties, as briefly as possible, and then set out the basis for my decision.

Submissions

6. The claimant initially submitted that the Tribunal should hear evidence in this hearing. He relied upon ***Hancock v Ter-Berg*** UKEAT/0138/19/BA, and the judgment therein of the Honourable Mr Justice Choudhury, then President of the Employment Appeal Tribunal. In particular, he referred to paragraph 41 of the judgment, in which Mr Justice Choudhury stated that there was no real warrant, either in terms of the statutory provisions or on any wider basis, for adopting any approach which assumed any issue in favour of either party.

7. He also pointed to the terms of paragraph 45 of the judgment. There, Mr Justice Choudhury said:

   "…the Respondent is not, it seems to me, substantially prejudiced by taking the approach which applies the same LTS [likely to succeed] test to all aspects of the complaint that may be in issue. The safeguard for the Respondent who seeks to maintain that the complainant is not an employee, or was not dismissed at all, will be the full merits hearing at which the outstanding issues will be conclusively determined. Moreover, there is no or little risk of the right to seek interim relief being abused by persons who are not even arguably employees or who clearly did resign voluntarily. The experienced Tribunal hearing the interim relief application would undoubtedly quickly nip such abusive claims in the bud on the basis that the applicant gets nowhere near the LTS threshold in respect of those issues. Even cases where an applicant was able to establish a 51% chance of establishing employee status would not be eligible for interim relief…"

8. Mr Allen opposed the claimant's application to have evidence heard. He observed that the purpose of the hearing is not to hear evidence unless exceptional circumstances apply. He pointed out that ***Hancock*** related to a case in which, at the point when interim relief was considered, there was a preliminary issue relating to employment status.

9. I directed that in all the circumstances there was no reason to depart from the normal practice of hearing only submissions, and not evidence. I could see no basis upon which the claimant would be prejudiced by being prevented from leading evidence, but was of the view that there was

potential prejudice to the respondent if I were to hear and make findings of fact on the evidence of the claimant, when there would be no opportunity to lead evidence on behalf of the respondent, and very limited opportunity to cross-examine and thereby challenge the claimant's evidence.

10. The claimant then proceeded with his submission.

11. He has two claims, primarily, which are the subject of the interim relief application: firstly, a complaint that he was automatically unfairly dismissed on the ground that he had made protected disclosures, contrary to section 103A of the Employment Rights Act 1996 (ERA); and secondly, a complaint that he was automatically unfairly dismissed on the basis that he had been blacklisted, contrary to section 104F of ERA.

12. He referred to the well-known authorities in this regard, including ***Taplin v Shippam Limited*** [1978] IRLR 450, and to the statutory basis of his application, found in sections 128 to 132 of ERA.

13. The claimant set out the 3 protected disclosures he relies upon in this case.

14. The first disclosure he relies upon took place on 15 March 2025, when he submitted to the respondent that the practice of requiring a disabled employee to state that they are fit for work without reasonable adjustments, which failing they would not be paid during their probationary period. He submitted that his probationary period was extended by 3 months without substantive workload, and this amounted to a PCP breaching certain provisions of the Equality Act 2010 (the 2010 Act). He went on to complain that the actions of Alex Mulvaney amounted to a criminal act, namely blackmail, to the effect that a disabled employee would suffer an indefinite financial penalty unless he were prepared to state that he is fit for work without reasonable adjustments.

15. The second disclosure he relies upon took place on 10 July 2025, relating to blackmail and the adverse effects of such behaviour by companies. The claimant asserts that he presented certain facts of unfair interview practices and dishonest feedback for both Lloyds Bank and Diligenta interviews during 2025.

16. The third disclosure the claimant relies upon took place on 18 July 2025, in which he alleged that there was a failure on the part of the respondent to hold directors to account, in contravention of the Companies Act 2006. He asserted that the reporting of factual matters and genuine concerns led directly to the claimant's dismissal, arising from an abdication of responsibility.

17. He then referred to the claim under section 104F of ERA. He pointed to the Employment Relations Act 1999 (Blacklists) Regulations 2010 which prohibit the compilation, use or reliance on lists which identify trade union members or those engaged in trade union activities. Regulation 5 prohibits refusal of employment on a prohibited list.

18. In paragraphs 19 to 27, the claimant set out a number of issues arising from previous employments, and maintained that he had been blacklisted due to being a member of a trade union by a sequence of employers. The respondent had been guilty of conduct which mirrored that of previous employers, and in the claimant's view, there is no innocent explanation for the fact that he had received a poor induction, was isolated, had communications restricted, suffered non-cooperation, was subjected to false allegations and was given different treatment and advice.

19. The claimant links the respondent's conduct back to an incident which occurred while he was working at Sellafield in 2005.

20. Essentially, the claimant's position is that there are 20 years of documented coincidences, and it follows that there must be 20 years of blacklisting. As he put it (paragraph 34): *"If Diligenta were not guilty of blacklisting the claimant in terms of recruitment and unfair dismissal why have they acted to perpetuate stated stressors, advice of past treatment and dismissed in such unusual SOSR reasons with no prior warning. Why have they provided unfair interviews and dishonest feedback to restrict employment and demonstrated by detailed notes of meetings?"*

21. He argued that the respondent simply cannot provide a justification for the dismissal, and that it is therefore impossible that this could be defined as a fair dismissal, or that a fair procedure had been followed. The reason given by the respondent was a pretext for the real reasons for dismissal, which were because he presented protected disclosures, and was blacklisted.

22. For the respondent, Mr Allen submitted that the burden of proof is and remains on the claimant to demonstrate that interim relief should be granted.

23. In the skeleton submission presented, the respondent had sought to extract from a complex claim the protected disclosures being relied upon. Mr Allen noted that the claimant is relying upon 3, whereas the respondent had believed there were 5. He proceeded on the basis that in this case, there are 3 protected disclosures being put forward by the claimant.

24. With regard to the first disclosure, there is a basis in the claimant's pleadings for him to rely upon the email of 15 March 2025 as a protected disclosure. With regard to the second disclosure, however, there is no basis in the pleadings for the claimant to rely upon a disclosure made on 10 July 2025. Despite considerable detail being provided by the claimant in his claim, nothing is said about any communication on that date, nor is it said how the disclosure was communicated to the respondent or anyone else. With regard to the third disclosure, on 18 July 2025, Mr Allen accepted that this was pleaded in the claimant's claim.

25. He then posed the question whether the claimant made a disclosure of information in either of the pleaded disclosures.

26. With regard to the email of 15 March 2025, (R72) there is no explanation of the context, which is fundamentally required. It makes reference to criminal acts, but does not make out the basic core facts required for a disclosure, even on the highest pleaded case put forward by the claimant.

27. However, the terms of the email are, he argued, inherently personal and not in the public interest, and there is no objective basis upon which to establish the claimant's subjective belief was reasonable. As he put it, the claimant's position is extreme, on any view.

28. The claimant's concerns were personal to him, and were dealt with in internal investigation.

29. With regard to the second alleged disclosure, Mr Allen said that since this is not a pleaded allegation, there is little that the respondent can say about it, and it cannot succeed at this stage.

30. With regard to the third alleged disclosure, there is no information disclosed. The respondent is not at all clear what is being alleged here other than broad references to failing and blacklisting.

31. He pointed out that even if the claimant were to prove that the disclosures met the statutory test, he would still require to prove that the dismissal was on the grounds of the disclosures (or the blacklisting alleged) as the sole or principal reason.

32. The claimant had only been employed for a matter of months, and his probationary period was extended. The reasons for dismissal are thorough (R248ff) under four headings of concern which underpin a litany of concerns which the respondent had with the claimant's performance.

33. Mr Allen submitted that the purpose of the hearing was not to determine the basis of the dismissal, but the Tribunal should consider that, looking holistically at this letter of dismissal, careful thought has been given to the reasons for the dismissal and that evidentially none of the reasons given could be said to be because of having made disclosures or being blacklisted.

34. Given that the claimant lacked the minimum qualifying service for unfair dismissal, Mr Bailey, the dismissing officer, was not obliged to carry out the extensive and fair process which he did, but he did so anyway.

35. It is not near likely, said Mr Allen, that the claimant would establish at a final hearing that the sole or principal reason for the claimant's dismissal was either that he had made protected disclosures or that he had been blacklisted,

36. On the blacklisting claims, Mr Allen pointed to the terms of paragraph 34 of the claimant's skeleton. He argued that there is extensive and cogent witness evidence which will support that there were a litany of reasons why the claimant was dismissed at the end of his probation. The "breadcrumb trail" which the claimant relies upon does not stand up to any scrutiny.

37. The key question is what about this issue related to the respondent against what relates to the other organisations who employed the claimant over 20 years. The claimant does not assert any facts from which the Tribunal could decide that section 104F is met in his case. He submitted that the pleadings (R75, R84, R85, R86, R87 and R89) spend a lot of time describing the alleged effects upon the claimant, but do not plead any relevant facts in relation to the claim itself. He has not established the treatment he says is linked to the blacklisting.

38. Mr Allen therefore invited the Tribunal to refuse the application for interim relief.

39. In response, the claimant accepted that the burden of proof remains on the claimant in this hearing. He suggested that the Tribunal will not have seen a case such as this.

40. With regard to the protected disclosures, he said that he was not relying upon information but upon facts. He repeated that there is no innocent explanation, for example, for Mr Mulvaney sending him a letter that he was either fit for work or would not be paid (a copy of which is not available nor produced to this Hearing).

41. Essentially, the claimant argues that because he made the disclosures and was shortly thereafter dismissed, there is a clear link between the two. I challenged him that he must demonstrate that dismissal happened not just after the disclosure, but because of the disclosure. Of itself, I suggested, because something happens after something else does not mean it was caused by the something else.

42. The claimant's position is that if the Tribunal considers all the circumstances, and the change in tone after he made the disclosures, it will be obvious that the claimant was unfairly dismissed.

Discussion and Decision

43. This is an application for interim relief. Section 129(1) of ERA provides that if it appears to the Tribunal that it is likely that it will find that the reason or principal reason for the dismissal was either under section 103A or section 104F of ERA.

44. Both parties referred me to ***Taplin v C Shippam Ltd*** [1978] IRLR 450, in which the EAT defined likely as meaning "a pretty good chance of success". Further, Mr Justice Underhill, in ***Ministry of Justice v Sarfraz*** [2011] IRLR 562, EAT, observed that the test of a pretty good chance does not simply mean "more likely than not" but connotes a significantly higher degree of likelihood, "something nearer to certainty than mere probability."

45. It falls to the claimant (the applicant in terms of the application) to establish the necessary level of likelihood in relation to each and every element of the claim (***Hancock***).

46. In relation to the claim under section 103A, the claimant must demonstrate that it is likely that the Tribunal will find that he made a disclosure, that he reasonably believed that the disclosure tended to show one or more of the matters listed in section 43B(1) of ERA; that the disclosure was made in the public interest; and that the disclosure was the sole or principal cause of dismissal.

47. That means looking to the disclosures currently alleged in the ET1 paper apart. It is noted that the parties referred in submission to ***Chesterton Global & Anor v Nurmohamed & Anor*** (Rev 1) [2017] EWCA Civ 979 in seeking to determine whether the disclosures were made in the public interest.

48. I referred to ***Cavendish Munro Professional Risks Management Ltd v Geduld*** 2010 ICR 325, which set out the principle that a worker's disclosure should disclose facts, and not merely amount to allegations.

49. The claimant relies upon 3 disclosures. It is not for me to determine in this hearing whether or not the claimant made protected disclosures: that may be a matter for a later hearing to determine. No evidence has been heard in this hearing, and it is therefore to the claimant's case, at its highest, that I must look in order to consider the likelihood that he will be able to persuade the Tribunal to find that he was dismissed on the grounds of having made protected disclosures.

50. It is my view that there is some doubt as to whether or not the claimant is likely to persuade the Tribunal that he made protected disclosures under section 43B in relation to each of the disclosures he relies upon. In my view, his first disclosure (15 March 2025) may amount to a disclosure of information, but may well be considered to be personal concerns rather than matters of public interest; that the second disclosure (10 July 2025) may be found not to form part of his pleaded case, and therefore cannot be relied upon; and the third disclosure (18 July 2025) may be found to suffer from too little specificity and much too broad generality in its terms to be likely to succeed.

51. Further, I accept the respondent's submission that there is a significant dispute between the parties as to whether or not the protected disclosures were the reason or principal reason for his dismissal. The issue is plainly one which cannot be resolved until evidence is heard and findings of fact made by the Tribunal following examination and cross-examination of that evidence, led by both sides. The dispute is stark: the claimant asserts that there was not simply an issue of time between the making of his disclosures and the decision to dismiss him, but that there was apparent a change of attitude towards him by the respondent's management after he did so; while the respondent submits that there was no such change in attitude, and that the letter of dismissal is thorough, careful and well-reasoned, setting out the reasons for dismissal clearly and unambiguously for the claimant.

52. In my judgment, it cannot be said that the claimant has a "pretty good chance" of succeeding in his claim of automatically unfair dismissal under section 103A of ERA. It is quite clear to me that the claimant has conflated the tests which the Tribunal will require to address in determining this issue. He argued persistently that the decision to dismiss him on grounds of some other substantial reason was carried out unfairly, in that witness statements were produced the day before the hearing, he was not listened to and the

decision was predetermined by the respondent. However, the Tribunal is not primarily concerned with the fairness of the dismissal in terms of section 98 of ERA. The claimant lacked the minimum qualifying service upon which to base a claim of “ordinary unfair dismissal”, in which some of the questions he was raising may have been relevant; however, in this case, the question is whether or not he has a “pretty good chance” of demonstrating that the reason for his dismissal, or the principal reason, was that he made protected disclosures.

53. It is my view that there are too many uncertainties before the claimant which make it less than likely that he will succeed in his claim under section 103A of ERA.

54. I should say that the claimant’s submission opened with a number of observations about the semantic similarities between certain words, such as likely, probable and certain. He said he derived his submission from some background engineering knowledge, from AI and from elsewhere. It seemed to me that this submission did not disrupt the Tribunal’s understanding of what a “pretty good chance” means, in the context of the authorities on this subject.

55. I turned then to the claims made by the claimant about blacklisting. The claimant’s submission essentially boils down, in my view, to two points: firstly, that he has been the subject of blacklisting for 20 years, since an incident at Sellafield in 2005, by a series of employers, of which the respondent in this case is the last; and secondly, that the way in which the respondent acted towards him was very similar to the manner in which all of the other employers he had worked for had treated him.

56. I regard the claimant’s submissions as being largely outwith the scope of his claim before this Tribunal. He is plainly very aggrieved about the events at Sellafield, and views everything which has happened to him since then through the prism of those events. However, in my view, his claim under section 104F is very unclear. He said in his submission that he believes that he has been blacklisted because of his membership of a number of trade unions over the years, but at no stage has he been clear as to the precise basis of the blacklisting, or how this related in any way to the respondent.

57. The claimant’s approach to submissions was to suggest that it was impossible for the Tribunal either to disagree with his viewpoint or to see an innocent explanation behind the actions of the respondent (or his previous employers). I respectfully disagree with the claimant. It appears to me that his claim under section 104F is extremely unfocused, and that at this stage, there is a serious risk that the respondent may be suggested to be

responsible for the actions of other employers, over which they have no control. Further, the claimant's accusations against the respondent are, in my view, capable of an innocent explanation, on the basis that they are clearly the subject of factual dispute in the witness statements presented by the respondent, and may arise from actions or behaviour of the claimant himself which, in the view of the respondent, undermined the relationship between employer and employee.

58. I do not suggest that the respondent is certain to succeed in their claims: it is plain that there is a considerable body of evidence to be led and challenged before the Tribunal can reach any conclusion about the claims made.

59. However, in my judgment, the claimant's approach to the blacklisting claims is not one which suggests that there is a pretty good chance that he will succeed. It cannot be said that the claimant is likely to succeed, on the information available in the pleadings and documents to which I was referred, at least partly because it is entirely unclear to what extent he holds the respondent responsible for the actions of other employers.

60. As a result, it is my judgment that it cannot be said that the claimant is likely to persuade the Tribunal that the real reason for his dismissal was blacklisting.

61. It is therefore my decision that the claimant's application for interim relief should be refused.

62. I would add that I have not concluded, and could not conclude at this stage, that the claimant's claims have no reasonable prospect of success, since that would involve a different analysis under a different legal test. The claimant is free to proceed with all claims, and the Tribunal will determine those claims at the appropriate time after hearing relevant evidence and argument. My decision is purely based on the conclusions I have reached in relation to the interim relief application.

Entered in register: 29 August 2025
and copied to parties