EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr KH Arroud	**- V -**	OCS Security Ltd

Heard at: London Central (CVP) **On**: 8 September 2025

Before: Employment Judge Baty

Representation:

For the Claimant: Mr Ellis (lay person and friend)
For the Respondent: Mr Sendall (counsel)

JUDGMENT

The claimant's application for interim relief is refused.

REASONS

The complaint

1. By a claim form presented to the employment tribunal on 25 June 2025, the claimant brought a single complaint of automatically unfair dismissal under section 103A Employment Rights Act 1996 ("ERA") (dismissal because of having made a protected disclosure or disclosures). The claim contained an application for interim relief.

2. The claim was brought against OCS Security Ltd, which the claimant maintains was his employer, and four other named respondents. However, on 27 August 2025, the claim was rejected against those other four respondents, one ground for which was that a complaint of unfair dismissal can only be pursued against the employer. References to "the respondent" in the remainder of these

reasons are to OCS Security Ltd only, which is now the sole respondent to this claim.

3. The claim was not served on the respondent until 27 August 2025. On the same date, a hearing to consider the claimant's application for interim relief was listed for 1 September 2025 and notice of the hearing sent to the parties. That notice was in itself insufficient as less than the seven days' notice of the interim relief hearing required under section 128(4) ERA had been given to the respondent. In addition, the claim and notice of hearing documents were not in fact received by the respondent until the morning of 1 September 2025. Employment Judge Smart therefore duly postponed the interim relief hearing until 8 September 2025.

Adjustments

4. In his claim form, the claimant stated that he suffered from PTSD and would like as an accommodation for hearings to be held by video. Today's hearing was held by video (CVP).

5. The claimant was represented at today's hearing by Mr Ellis, who described himself as a lay person and friend of the claimant.

Documents

6. Numerous documents were provided for the hearing. Both representatives provided written submissions; in addition, a respondent's bundle and a claimant's bundle were provided; the respondent also provided a draft witness statement from a Mr Paul Carden, who was the individual who took the decision to dismiss the claimant.

7. Before hearing submissions from the parties, I had had the chance to read in advance both sets of written submissions, the draft witness statement, and those documents in the bundles which were referred to in those documents.

8. There was no live witness evidence and neither party suggested that there was any need for live evidence.

Duplication of claims - case number 3304623/2025 and potential transfer from the Watford tribunal

9. In his skeleton argument, Mr Sendall indicated that the claimant appeared to have presented two claims in different tribunals alleging automatically unfair dismissal under section 103A ERA.

10. The first of these is this claim in London Central, which, as indicated, included a complaint under section 103A ERA only (together with an application for interim relief).

11. The second is a claim in the Watford employment tribunal presented on 7 August 2025 under case number 3304623/2025, which did not claim interim

relief, but which did add complaints of direct disability discrimination; discrimination arising from disability; indirect disability discrimination; a failure to make reasonable adjustments; victimisation; disability-related harassment; ordinary unfair dismissal; whistleblowing detriments under section 47B ERA; unlawful deduction from wages; automatically unfair dismissal (health and safety) under section 100 ERA; detriments short of dismissal (health and safety cases) under section 44 ERA; and for notice pay.

12. Mr Sendall said that the respondent considered the two claims should be consolidated and heard together; he didn't mind whether that was in London Central or in Watford. Mr Ellis took instructions and said that the claimant agreed.

13. As the London Central claim was already in its first hearing and had been presented earlier, I indicated that I thought that it made sense for the Watford claim, which had been presented later, to be transferred to London Central and said that, subject to the consent of the Regional Employment Judge in Watford, I would arrange for this to be done. I indicated that it was likely that a preliminary hearing for case management would then be required in London Central to case manage both cases. Both representatives were happy with that approach.

14. The tribunal has since received the consent of the Regional Employment Judge in Watford. Accordingly, case number 3304623/2025 will be transferred from Watford to London Central and will be consolidated and heard together with this case 6023760/2025 in London Central.

The law

Interim relief

15. Sections 128-9 ERA provide that the tribunal may grant interim relief if it is *"likely"* that the claimant will be able to establish that the reason for dismissal is for making protected disclosures. This places the burden of proof on the claimant and would clearly exclude prospects of 50% or less, but there is important appellate guidance on the correct approach underscoring that the test is even higher still and involves a consideration of all factors that may defeat such a claim.

16. The meaning of *"likely"* in this context remains that identified in the seminal case of Taplin v C Shippam Ltd [1978] ICR 1068. Having explained that interim relief was *"an exceptional form of relief granted pending a determination of a complaint of unfair dismissal"*, Slynn J, giving the judgment of the EAT said:

> "We do not consider that Parliament intended that an employee should be able to obtain an order under this section unless he achieved a higher degree of certainty in the mind of the industrial tribunal than that of showing that he just had a "reasonable" prospect of success… The employee begins with a certificate from the trade union official certifying that there appear to be reasonable grounds for supposing that the reason for his dismissal was the one alleged. We consider that the tribunal is required to be satisfied of more than that before it can appear "that it is likely" that a tribunal will find that a complainant was unfairly dismissed for one of the stated reasons. We are not persuaded that there is a dichotomy between "probable" and "likely" as expressed by the chairman of the industrial tribunal. We find it difficult to envisage something which is likely but improbable or probable but unlikely and we observe that the Shorter Oxford English Dictionary

definition does define "likely" as "probable." Nor do we think that it is right in a case of this kind to ask whether the applicant has proved his case on a balance of probabilities in the sense that he has established a 51 per cent probability of succeeding in his application, as has at one stage been contended before us. Nor do we find Mr Hand's alternative suggestion of a real possibility of success to be a satisfactory approach. This again can have different shades of emphasis. It seems to us that the section requires that the employee shall establish more clearly that he is likely to succeed than that phrase is capable of suggesting on one meaning. On the other hand it is clear that the tribunal does not have to be satisfied that the applicant will succeed at the trial. It may be undesirable to find a single synonym for the word "likely" but equally, we think it is wrong to assess the degree of proof which has to be established in terms of a percentage as we have been invited to do.

The industrial tribunal should ask themselves whether the applicant has established that he has a "pretty good" chance of succeeding in the final application to the tribunal."

17. A clearer statement of the law has been set out more recently in Ministry of Justice v Sarfaz [2011] IRLR 562 EAT. Underhill P observed that the test of a *"pretty good chance of success"*, as referred to in Taplin (above), is not very obviously distinguishable from the formula *"a reasonable chance of success"*, which was rejected. However, in Underhill P's view, the message to be taken from Taplin was clear - namely, that *'likely'* does not mean simply "more likely than not" but connotes a significantly higher degree of likelihood, i.e. *"something nearer to certainty than mere probability"* (see paragraph 19 of Sarfaz).

18. The threshold set by the test of *"something nearer to certainty than mere probability"* is a high one and how to apply it is better understood by the unequivocal words of Underhill P in Dandpat v University of Bath UKEAT/0408/09 at paragraph 20 as follows:

"We do in fact see good reasons of policy for setting the test comparatively high, in the way in which this Tribunal did, in the case of applications for interim relief. If relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not a consequence that should be imposed lightly."

19. Accordingly, there is no injustice in a strict test being applied because, even if the claimant is unsuccessful at this hearing, he lives to fight another day and can still argue that he was unfairly dismissed for making protected disclosures at trial. This would in turn enable him to argue for an uncapped award. However, if the claimant is successful on this application, the sums payable will (subject to any appeal) be irrecoverable by the respondent, regardless of the outcome of the trial.

20. Further, it is clear that the test applies to every element of the complaint. So, in Hancock v Ter-Berg [2020] ICR 570 the EAT said at paragraph 35:

"…if status is disputed then the issue of employee status becomes yet another issue to be determined on the complaint, just as it would be for a claim of ordinary unfair dismissal. It seems to me that each and every issue that might be relevant to a claim of unfair dismissal is part of the "complaint" to be determined by the Tribunal."

21. Similarly, in Sarfaz, the Employment Judge had erred by not considering whether it was likely that the employee could show that his belief that the information tended to show a breach of the legal obligation was reasonable.

22. More recently, in Al Qasimi v Robinson EAT 0283/17 (a case involving a claim for automatic unfair dismissal under s103A ERA) HHJ Eady QC (as she then was) summarised the approach tribunals should take in interim relief applications as follows:

"By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus very much an impressionistic one: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied."

23. Sometimes it is just not possible within the confines of an interim relief hearing, with little time (let alone the absence of live evidence), for a tribunal to reach a clear view. In that instance, the proper approach is to make no order. In cases where a tribunal is faced with conflicting accounts of key facts and issues, it is perfectly open for it to conclude that the conflict cannot be resolved at an interim relief hearing and to refuse the claimant's application on that basis. In Parsons v Airplus International Ltd UKEAT/0023/16 the parties disagreed as to what the principal reason for dismissal was and whether the disclosures made by the employee amounted to protected disclosures. An employment judge refused the employee's interim relief application, noting that while some of the disclosures were likely to be found to be protected disclosures, resolution of the issue of whether these formed the principal reason for dismissal was less clear cut. Given that the employer was contending that it was the manner in which the disclosures were made, and not the fact of them being made, that had led to the employee's dismissal, the Judge observed that there was a potential issue as to whether motivations could be separated in this way and that a resolution would depend on fact finding and a careful analysis of the issues following consideration of the relevant case law. Whilst the Judge considered that the employee had a *"good arguable case"*, the tribunal was unable to say at this stage that they had a *"pretty good chance of success"*. On appeal, the EAT agreed that it was not appropriate at the interim relief stage to resolve any conflicts in the authorities or to reach a final view on the law of causation in the context of protected disclosures.

Requirements regarding interim relief applications and hearings

24. There are a number of procedural requirements set out in relation to interim relief applications.

25. Section 128(3) provides that: *"The tribunal shall determine the application for interim relief as soon as practicable after receiving the application."*.

26. As already noted, section 128(4) provides that: *"The tribunal shall give to the employer not later than seven days before the date of the [interim relief]*

hearing a copy of the application together with notice of the date, time and place of the hearing.".

Substantive law

Protected disclosures

27. For dismissal complaints relating to protected disclosures, colloquially referred to as "whistleblowing", an employee must first prove on the balance of probabilities that he or she made a protected disclosure. To do this the employee must first prove that he or she made a qualifying disclosure under s.43B of the ERA. 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 six categories set out at s.43B (a-f). The categories include the following, which are the categories relied on by the claimant for the purposes of his claim:

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and

(d) That the health or safety of any individual has been, is being or is likely to be endangered.

28. Crucially, it is not the happening of a matter within one of the above categories which is relevant to the establishment of the qualifying disclosure but merely whether the employee has a reasonable belief in its having happened, happening or the likelihood of its happening. A belief may still be objectively reasonable even where the belief is wrong or does not on its facts fall within one of the categories outlined about.

29. If the employee establishes that he or she made a qualifying disclosure, he or she must then prove that it was a protected disclosure. This can be done in a number of ways in accordance with s.43C-43H of the ERA. A disclosure made to an employer, as set out in s.43C, is one such way in which a qualifying disclosure can be a protected disclosure as well.

30. If the above is established, the employee has made a protected disclosure.

Dismissal - causation

31. For an automatically unfair dismissal claim under s103A ERA to succeed, the protected disclosure must be the sole or principal reason for dismissal. It is not enough if the protected disclosure formed part of the reason for dismissal; it must have been the sole or principal reason for dismissal.

Submissions

32. Both representatives relied on their written submissions and also made some further oral submissions to me.

33. I then adjourned to consider my decision. When the hearing reconvened, I gave the parties my decision and the reasons for it orally.

Decision

34. I decided to refuse the application for interim relief and did so for the following reasons.

35. As envisaged by HHJ Eady QC in Al Qasimi, this application was determined expeditiously and on a summary basis. Any findings set out below for the purposes of determining this application do not represent binding findings of fact which might tie the hands of the tribunal ultimately charged with the final determination of the merits of the claim.

36. The claimant maintains that he was employed by the respondent from 14 May 2022 until 22 June 2025, as a Mobile Security Supervisor. There is no dispute that the claimant was dismissed by the respondent.

37. There appears to have been an incident on the night of 26/27 January 2025 while the claimant was (on his own case) or should have been (on the respondent's case) on security patrol, during which the claimant was assaulted.

38. On 6 March 2025, the claimant sent an email to the respondent which he relies on as a protected disclosure for the purposes of his section 103A complaint. In summary, that email references the incident of 26/27 January 2025 and alleges that the respondent was in breach of health and safety law in relation to that incident.

39. Separately, the respondent conducted an investigation into the events of 26/27 January 2025, which led to a disciplinary hearing conducted by Mr Carden, as a result of which the claimant was dismissed. The respondent says that the conclusions of that process included that, at the time of the assault, the claimant was engaged in an unauthorised activity and was not working; that the assault did not take place on the mobile patrol route which the claimant should have been on, but rather that it took place on "Robert Street", which was not part of his route; that the claimant had been on Robert Street for prolonged periods of time on several other occasions and that this had not been an isolated incident as the claimant tried to make out; and that the claimant constantly changed his own version of events during the course of the investigation and subsequent disciplinary hearing. The respondent maintains that the claimant's dismissal was, therefore, for gross misconduct.

40. Provided to me were numerous contemporaneous documents which, if accurate, reflect the respondent's version of events. These include the detailed investigation and disciplinary documentation, together with the dismissal letter in which Mr Carden sets out his reasons for dismissing the claimant. In addition, there is the detailed statement provided by Mr Carden for this hearing. That evidence is indicative that there were very substantial reasons for believing that

the claimant was guilty of gross misconduct and that that was the reason for his dismissal.

41. By contrast, the claimant has not set out any rational basis for suggesting that the decision to dismiss him was in anyway influenced by his alleged protected disclosure. The claimant appears to rely on the fact that his alleged protected disclosure was made on 6 March 2025, only three months prior to his ultimate dismissal. That in itself is evidence of proximity but not causation.

42. A large part of Mr Ellis' submissions focused on the alleged serious impact of the dismissal on the claimant. However, that is not relevant to the issue of whether or not the claimant has a "pretty good chance" of succeeding in his claim in the first place.

43. This case is, therefore, one where one is a long way from being able to say that the claimant has a pretty good chance of succeeding in demonstrating that the reason for his dismissal was principally because of making his alleged protected disclosure. By contrast, if the large amount of corroborative evidence provided by the respondent is correct, it is more likely that the conclusion would be that the reason for dismissal is a belief by the respondent that the claimant committed gross misconduct. The application must fail for that reason alone.

44. In addition, if the respondent is correct, there is every chance that the tribunal will conclude that the claimant did not have a reasonable belief that the allegations made in his alleged protected disclosure did indeed tend to show that the health or safety of any individual had been endangered or that there was a breach of a legal obligation. If that is the case, then the 6 March 2025 email would not amount to a protected disclosure. It is, therefore, not possible to say that the claimant has a pretty good chance of succeeding in demonstrating that he made a protected disclosure. For that reason too, the interim relief application cannot succeed.

45. In summary, therefore, I cannot say that the claimant has a pretty good chance of succeeding in his complaint. Therefore, his application for interim relief must be and is refused.

46. I would in fact go further than that and say that, on a summary assessment of the evidence before me, it is unlikely that the claimant will succeed in his complaint at all.

Section 128(3) ERA

47. That determines the interim relief application. However, both parties had made submissions to me regarding the impact of section 128(3) ERA on this interim relief hearing. By way of reminder, that section states that *"The tribunal shall determine the application for interim relief as soon as practicable after receiving the application"*.

48. I omitted to deal with these submissions orally at the hearing, for which I apologise. Furthermore, whether I had dealt with them or not would have made

no difference to the substantive outcome of the interim relief application, which failed for the reasons set out above.

49. However, for completeness, I address those submissions now in these written reasons.

Submissions

50. As noted, the claimant's claim form, which included the application for interim relief, was presented on 25 June 2025. Mr Sendall contended that there had been a failure to determine the application as soon as practicable after receiving the application and that the application should be dismissed on that basis.

51. He submitted that, even if the application could have been determined on the original 1 September 2025 interim relief hearing, that would still have been 68 days after the claim was received by the tribunal; and that the claim was now being determined 75 days after the application was received. He noted that no explanation had been provided by the tribunal as to why it would not have been practicable to have heard this application shortly after the application was received and long before the 75th day after it was received.

52. He noted (correctly) that it is a fundamental feature of interim relief that it is determined as a matter of urgency and that any delay causes prejudice to both parties. He further submitted that the respondent is especially prejudiced by any delay because, if relief is granted, it increases the period of time for which the employer is obliged to continue to pay the claimant with no possibility of recovering the sums paid if the claimant's claim is ultimately unsuccessful at the final hearing. He submitted that it would be wholly unjust to impose a requirement for the respondent to make payment to the claimant for those 75 days when it would never be able to recover that sum if the claimant's claim fails.

53. Finally, he submitted that if, as the respondent believes, it would have been practicable to have heard this application prior to 8 September 2025, the employment tribunal has no jurisdiction to hear it now because it is a statutory requirement to hear the application as soon as practicable and, therefore, it should be dismissed.

54. Mr Ellis's submission on this point was essentially that the decision as to when to list an interim relief hearing was in the hands of the employment tribunal and that it would be wholly unfair for the claimant to lose his opportunity to bring his application for interim relief as a result of any delay on the part of the tribunal administration.

My conclusions

55. I consider that there is a lot of force in the arguments made by Mr Sendall, and acknowledge the significant prejudice that there would be to the respondent if an order for interim relief had been made after such a delay in listing the interim relief hearing. However, I also fully accept that it would be

unjust for the claimant to lose his opportunity to make his interim relief application because of a failure on the part of the tribunal.

56. The test, however, relates to whether or not the hearing to determine the application was listed as soon as practicable after receiving the application.

57. I certainly consider that the hearing could and should have been listed earlier. However, when assessing practicability, one also needs to take into account the limited administrative resources of the tribunal; the large workload that the tribunal's administrative staff have; the fact that those members of administrative staff are not trained lawyers and, even if they are given guidance, may not be as appreciative of the urgency of listing such hearings as judges and counsel are; and the fact that, inevitably, in a large organisation, things sometimes get missed and fall through the gaps.

58. It is against that background that practicability must be assessed. In other words, even a severely delayed interim relief hearing can have been listed as soon practicable after receiving the application.

59. In these circumstances, whilst I consider that the hearing should of course have been listed earlier, I consider that the tribunal nonetheless determined the application as soon practicable after receiving it. Accordingly, the tribunal did still have jurisdiction to hear the application.

Written reasons

60. Having given my decision orally, I asked the parties whether they would like written reasons.

61. Mr Ellis said that the claimant would like written reasons for the decision and these have been duly produced.

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Employment Judge Baty

Dated: 24 September 2025

Judgment and Reasons sent to the parties on:

26 September 2025
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For the Tribunal Office