



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Saddler

Respondent: Kinvara Private Hospital Limited

Heard in Sheffield by CVP

ON: 30 September 2025

BEFORE: Employment Judge Brain

REPRESENTATION:

Claimant: In person

Respondent: Mrs L Howes, Solicitor

JUDGMENT

The claimant's application that there be an Interim Relief Order made pursuant to section 128 of the Employment Rights Act 1996 is refused.

REASONS

Introduction and preliminaries

1. The claimant was employed by the respondent as a deputy theatre manager. She was employed in that capacity between 30 June 2025 and 2 September 2025.
2. On 7 September 2025, the claimant presented her claim form to the Employment Tribunal. Her claim form included an application for an Interim Relief Order pursuant to section 128 of the Employment Rights Act 1996.
3. The claimant's interim relief application was dismissed. At the conclusion of the hearing, the claimant requested written reasons. These are now provided.

The relevant law

4. Section 128(1) of the 1996 Act provides that an employee who presents a complaint to an Employment Tribunal that they have been unfairly dismissed for one or more specified reasons may apply to the Tribunal for interim relief.
5. Section 128(2) provides that the Tribunal shall not entertain an application for interim relief unless it is presented to the Tribunal before the end of the period of

seven days immediately following the effective date of termination (whether before, on or after that date).

6. One of the specified reasons in section 128(1) in respect of which an interim relief application may be made is that the reason (or if more than one, then the principal reason) for the dismissal is that specified in section 103A of the 1996 Act. This provides that an employee who is dismissed shall be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if the reason (or if more than one, then the principal reason) for the dismissal is that the employee made a protected disclosure.
7. The claimant says that she was unfairly dismissed for having made protected disclosures. (She may pursue an unfair dismissal complaint upon this basis as the two years qualification period for the pursuit of unfair dismissal claims in section 108 of the 1996 Act is disapplied in such cases).
8. The Tribunal has jurisdiction to consider the claimant's interim relief application. This is because she made the application within seven days of the effective date of termination of her contract of employment.
9. Section 129(1) of the 1996 Act applies where it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the dismissal was for one of the reasons specified in section 128.
10. Where the Tribunal is so satisfied, then by section 129(1) the Tribunal must explain its powers. The Tribunal is required to ask the employer (if present) whether they are willing pending the determination or settlement of the claim to reinstate the employee (that is, to treat the employee in all respects as if they had not been dismissed) or to re-engage the employee in another job on terms and conditions not less favourable than those which would have been applicable had the employee not been dismissed.
11. If the employer is not willing to reinstate the employee or is not willing to re-engage the employee (or the employee is not willing to be re-engaged on the terms offered) then the Tribunal (if satisfied that the employee's refusal of the re-engagement terms is reasonable) shall make an Order for the continuation of the contract. A continuation of contract order is made pursuant to section 130 of the 1996 Act.
12. In this case, the claimant said that she was not seeking reinstatement as the relationship of trust and confidence between the parties had broken down. She was seeking a continuation of contract order.
13. Interim relief applications are, of necessity, determined expeditiously and on a summary basis (that is to say, without hearing evidence). By Rule 94 of the Employment Tribunal Procedure Rules 2024 the Tribunal must not hear oral evidence unless it directs otherwise. Accordingly, the Employment Judge deciding upon an interim relief application does not decide the issue as if it is a final hearing and does not make findings of fact that might bind the tribunal at the final hearing.
14. The burden of proof in an interim relief application rests with the claimant. The burden is to show that the claimant is likely to succeed. This is a high threshold. The Tribunal must be satisfied that it is likely that on determining the complaint to

which the application relates it will find that the complainant has been unfairly dismissed for the asserted qualifying reason.

15. This requires a significantly higher degree of likelihood than a “*more likely than not*” test. Further, the Tribunal must be satisfied as to the high likelihood of success upon all elements which go to make up the claim. In this case, therefore, the Tribunal must be satisfied of the high likelihood of the claimant establishing that she made one or more disclosures which qualify for protection pursuant to Part IVA of the 1996 Act and if so of the necessary causal link between the making of the disclosures on the one hand and the respondent’s decision to dismiss her on the other. As she has less than two years’ service, she has a burden of proof that the reason or if more than one the principal reason for her dismissal was that she made protected disclosures. At this stage, on a consideration of her interim relief application, it follows that the Tribunal must be satisfied that there is a high degree of likelihood that she will be able to discharge the burden of proof upon her about that causal link.
16. When hearing an interim relief application, the Tribunal’s task is impressionistic. The Tribunal must make a broad assessment on the material available and then make a prediction about what is likely to happen at the final hearing. To assist the Tribunal with this consideration today, each party presented a bundle of documents. The claimant’s bundle ran to 163 pages. The respondent’s bundle was of almost the same length (at 160 pages). The Tribunal also received helpful written submissions from each party.
17. An approach as to the process to be followed by an Employment Tribunal in hearing an interim relief application was suggested in **Raja v Secretary of State for Justice** ([UKEAT]/0364/09). The Employment Appeal Tribunal held (at paragraph 25) that:

“What a Tribunal has to do in an application for interim relief is to examine the material put before it, listen to submissions and decide whether at the final hearing on the merits “that it is likely that” the Tribunal will find that the reason or reasons for the dismissal is one or more of those listed in section 129(1). What is clear is that the Tribunal must not attempt to decide the issue as if it were a final issue.”
18. In **Parkins v Sodexho Limited** [2002] IRLR 109 the Employment Appeal Tribunal said (at paragraph 29) that the question to be asked at this stage is “*whether it was likely that the reason [for the dismissal] would be a qualifying reason at the final hearing.*”
19. The leading authority on the threshold test is **Taplin v CC Shippam Limited** [1978] ICR 1068. Slynn J said that, “We do not consider that Parliament intended that an employee should be able to obtain an Order under this section unless he achieves 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 ... 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.” Slynn J then went on to say that “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.”

20. In **Ministry of Justice v Sarfraz** [2011] IRLR 562, Underhill J said (at paragraph 16), *“In this context “likely” does not mean simply “more likely than not” – that is at least 51% - but connotes a significantly higher degree of likelihood.”* It follows therefore that to succeed an interim relief application the complainant in the case must show something nearer to certainty than probability. That is not to say, of course, that the complainant must show that it is certain that they will succeed at the final hearing. What is plain however is that they must show something significantly higher than a 51% chance of success.
21. As has been said, the likely to succeed test applies to all elements of the claim. The Tribunal therefore must be satisfied that the complainant in a public interest disclosure case made protected disclosures. By section 43B (1) of the 1996 Act, *“...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 - ...”* this being the six matters listed in section 43B(1)(a) to (f). These matters are often referred to as the ‘six relevant failures.’
22. Sections 43C to 43G stipulate to whom the protected disclosure must be made. This includes the complainant’s employer and organisations and bodies listed in the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017. The Care Quality Commission is one such prescribed body.
23. For there to be a public interest disclosure, there must be sufficient factual content and specificity. In **Cavendish Munro v Geduld** [2010] ICR 325 EAT, an example was given from a healthcare setting. The Employment Appeal Tribunal said that it would be sufficient for an employee to say to the effect that *“wards have not been cleaned for two weeks”* or *“sharps have been left lying around.”* Such a disclosure contains factual content and specificity as it conveys information. It is insufficient to make a general allegation such as *“you are not complying with health and safety requirements.”* It follows therefore that a disclosure which is general and devoid of specific information cannot be the disclosure of information about a relevant failure.
24. The person making the disclosure only has to have a reasonable belief in the factual information disclosed. It does not have to be correct. They must also have a reasonable belief that the disclosure is being made in the public interest. However, it is permissible for an employee to have mixed motives (advancing a matter both in their own interests and in the public interest).

Discussion and conclusions

25. In her statement of particulars (which is set out with admiral clarity) the claimant lists her disclosures in paragraph 2.2(a) to (o). (In fact, that at 2.2(m) is not a disclosure made by the claimant to the respondent but rather was an acknowledgment addressed to the claimant by the respondent. Plainly, this is not a disclosure made by the claimant).
26. The claimant made submissions that she also wished to rely upon an email which she sent on 5 August 2025 (page 33 of the claimant’s bundle). That was not in fact listed in the claimant’s statement of particulars. To include it she needs to apply to amend her claim to include it. (Towards the end of the hearing, after the Judgment upon the interim relief application had been given, the claimant confirmed her wish to apply to amend to include the email of 5 August 2025 to which the respondent consented).

27. In my judgment, it cannot be said that there is a pretty good chance with a high likelihood of success that the claimant will establish as public interest disclosures those at paragraph 2.2(a), (e) to (h) inclusive, (i) and (j). Taking each in turn:
- The disclosure at paragraph 2.2(a) is a WhatsApp message dated 16 July 2025 from the claimant to all theatre staff. This is a reminder for them to carry out certain routine tasks. This lacks the necessary factual content and specificity which is required. It does not even go so far as to make a generalised allegation of non-compliance with any health and safety or other requirements (such as in the example in **Cavendish Munro**) but rather is simply a message to members of staff reminding them to carry out key aspects of their role.
 - The matters at paragraph 2.2(e) to (h) all concern verbal disclosures. In paragraph 12 of her written submissions, Mrs Howes contended that the respondent was unaware of the matters. There is therefore plainly a factual dispute between the parties as to what (if anything) was said by the claimant to the members of staff concerned. As these matters depend upon the testing of all evidence at a hearing, it cannot be said to have the necessary likelihood of success to meet the test.
 - Those at paragraph 2.2(i) and (j) concern issues between the claimant and members of staff with whom she was expected to work. This concerns internal staff relations and cannot reasonably be thought by the claimant to be matters raised in the public interest. This therefore falls short of the high likelihood of success test.
28. The remaining disclosures are those in paragraph 2.2(b) (which is at page 75 of the claimant's bundle, 2.2(c) at pages 77 to 82, 2.2(d) at pages 84 to 93, 2.2(k) which is at page 51 of the respondent's bundle, 2.2(l) which is at page 89 of the respondent's bundle and the two disclosures at 2.2(n) and (o) to the CQC. Taking these in turn:
- That at page 75 of the claimant's bundle concerns a need to stock up on Hartmann's and put saline in the fluid warmer (those being used that day being cold).
 - Pages 77 to 82 concern out of date anaesthetic equipment.
 - Pages 84 to 93 raised concerns by the claimant about necessary medical stocks running low, presenting a risk to health and safety.
 - That at page 51 of the respondent's bundle concerns circuits not having been changed after 7 July 2025 and safety critical checks not having been done.
 - Page 89 is an email from the claimant dated 21 August 2025 about the competency of bank staff which presents a health and safety issue.
29. The claimant's referrals to the CQC were not available to the Tribunal. Plainly therefore it cannot be said that there is a high prospect of success with the claimant establishing these as protected disclosures, the Tribunal not having seen them.
30. It is the case that the claimant has better prospects of succeeding with her claim that she made protected disclosures about the matters in paragraph 28 than those listed in paragraph 27 above. Those in paragraph 28 on their face are all

about matters tending to show breaches of legal obligations and/or endangerment of health and safety and made in the public interest, concerning such matters in the context of a care home.

31. In her written submissions (in paragraph 23) Mrs Howes says that some of the claimant's claims were investigated, and no failings were discovered. As has been said, the claimant does not need to show that she was correct in her belief that the information in her disclosures showed one or more of the six relevant failures. She only has to show a reasonable belief that such was the case. However, there is an issue as to the reasonableness of her belief arising from the respondent's investigations which turned up no issues. This also goes to the issue of public interest - there can be none in the disclosure of baseless allegations. (The Tribunal does not suggest the claimant's allegations to be baseless. However, there is a triable issue about this matter which is not amenable to a summary determination such as this).
32. Mrs Howes also submitted that within the claimant's bundle (for instance at page 66) she relies in support of her allegations upon out-of-date stock shown in a black bin liner. The claimant's case is that this confirms the presence of expired consumables. The respondent's case is that they were taken out of commission precisely because they had gone out of date and then were to be donated elsewhere. This, said Mrs Howes, put in issue the reasonableness of the claimant's belief that expired consumables were being used.
33. Mrs Howes also said that the claimant was looking inside the bags for evidence to support her case. There is nothing in and of itself improper in the claimant seeking out evidence in support of her case. In **Okwu v Rise Community Action EAT 0082/2019** the claimant raised public interest disclosure issues in defence of allegations about her poor performance. Although that was part of her reason for making the disclosures, that did not rule them out as having also been made in the public interest. In the Tribunal's judgment, there is no reason why the claimant in this case collating evidence in support of her claim that out-of-stock materials were being used somehow stops the disclosures being made about them as being in the public interest.
34. However, there is sufficient in what the respondent has advanced before the Tribunal and in Mrs Howes' submissions to cast sufficient doubt upon the Tribunal's impression on the likelihood of the claimant succeeding at the final hearing in establishing that the disclosures set out in paragraph 28 are protected disclosures. If the Tribunal finds as a fact that the claimant's concerns were investigated and were found to be unproven then such will undermine her case that she had a reasonable belief in the matters alleged and that they were disclosed in the public interest. Upon this basis alone therefore, the Tribunal is not satisfied that there is a sufficient likelihood of success such that interim relief ought to be granted.
35. The other issue is, of course, that of the causal link between the disclosures on the one hand and the respondent's decision to dismiss the claimant on the other. The claimant was dismissed for falsification of records. The dismissal and appeals officers were both aware of the claimant's disclosures. She mentioned them at the disciplinary hearing. There is therefore no question upon that issue.
36. It was found by the respondent that the claimant had falsified the name of Kerri Jackson-Laver, a bank nurse. Ms Jackson-Laver was working alongside the claimant in the anaesthetic room around two weeks before the dismissal. The

respondent's case is that the claimant was checking the fridge temperature and was required to make a record of that. It was Ms Jackson-Laver's responsibility to check the machines, and the other items listed in the anaesthetic daily checklist at page 112 of the respondent's bundle. (Page 112 was in fact illegible. A better copy of this was sent to the Tribunal and to the claimant by Ms Howes during the hearing).

37. The respondent's belief that the claimant had falsified Kerri Jackson-Laver's signature was based primarily upon the evidence of Ms Jackson-Laver herself. Her statement to this effect is at page 113. She exhibits to her statement a screenshot showing her actual signature.
38. The claimant denied appending Ms Jackson-Laver's signature to the form at page 112. She denied signing in Ms Jackson-Laver's name. This therefore comes down to a contest between the veracity of the claimant's evidence on the one hand and the reasonableness of the respondent's belief in Ms Jackson-Laver's evidence on the other.
39. It follows therefore that even if the Tribunal was wrong to have found that the claimant does not reach the necessary threshold of likelihood of success upon the public interest disclosures, the interim relief application is still refused upon the basis of the likelihood of success of her establishing that the reason for her dismissal was that she made protected disclosures as opposed to the alleged misconduct of falsifying a colleague's signature on a document.
40. In the Tribunal's judgment, it certainly cannot be said that upon this issue the claimant enjoys prospects of success more approaching a certainty than mere balance of probability. This can only be decided by the Tribunal after hearing the evidence.
41. This is not to say that the claimant will not succeed upon this issue at the final hearing. The respondent placed reliance upon the fact that the name "Kerri" had been misspelt in page 112 using a "Y" as the final letter as opposed an "I". However, it is at least arguable that the final letter shown at page 112 is indeed an "I".
42. Often these cases turn on adverse inference. There are several points calling for an explanation from the respondent. What prompted Kerri Jackson-Laver to come forward in the first place and why did she wait two weeks to do so? Was there a concerted effort and collusion to procure evidence against the claimant and why?
43. Why did the respondent report the claimant to the CQC? Mrs Howes suggested that this was because the claimant was in breach of the duty of candour by seeking a monetary settlement from the respondent in her email of 7 August 2025. It is difficult to see where or how the claimant is in breach of that duty simply by making an approach to the respondent for settlement where the claimant does not suggest closing down or not cooperating with any enquiries about any of the issues raised.
44. The respondent also suspended the claimant for improperly taking photographs with the suggestion being that this was in breach of the General Data Protection Regulation. This was an allegation which was not pursued. The photographs the Tribunal has seen do not breach the GDPR as no living individual was identified within them. There may therefore be a suggestion that the respondent was seeking to improperly shut down the claimant's enquiries.

45. However, all of these are points for the final hearing. The credibility or otherwise of each party's positions can only be determined after hearing the evidence and having that evidence tested under cross-examination.
46. At this summary stage, the Tribunal is not satisfied that the necessary threshold of likelihood has been reached by the claimant that she made protected disclosures, or that the reason for the dismissal was because she made public interest disclosures. There are too many questions to be answered on both sides for the Tribunal to safely reach that conclusion.
47. Accordingly, the interim relief application is dismissed. The matter will now be discussed by an Employment Judge with the parties at the case management preliminary hearing which has been listed for **16 February 2026**.

Approved by Employment Judge Brain

Date: 9 October 2025.

.....

Sent to the parties on:

16 October 2025

For the Tribunal:

.....

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>