EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR C KITCHEN	AND	HARRIS MEMORIAL SURGERY

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 1ST OCTOBER 2025
(VIA VHS VIDEO)

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- **IN PERSON**

FOR THE RESPONDENT:- **MS R BASTIN**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's application for interim relief pursuant s128 Employment Rights Act 1996 is not well founded and is dismissed.

Reasons

1. By a claim form submitted on 27th August 2025, arising from the claimant's dismissal on 22nd August 2025, the claimant brings a number of claims including a claim for

automatic unfair dismissal (S103A ERA 1996) asserting that the reason (or principal reason) for his dismissal was that he had made public interest disclosures within the meaning of s43B ERA 1996.

2. The application before me today is for an order for interim relief in the making of a continuation of a contract of employment order (s129 ERA 1996). The respondent resists the application on the basis that it is not "likely" (within the meaning of s129) that the tribunal which determines the complaint will make a finding that the claimant was automatically unfairly dismissed pursuant to s103A ERA 1996.

3. Hearing - I have read the bundle of documents for the hearing, which includes the pleadings and various other documents as set out below. I have not heard any oral evidence. Rule 94 (ET Rules 2024) provides that the tribunal shall not hear oral evidence unless it directs otherwise, and the directions for the hearing provided that no evidence would be heard. This reflects the fact that the tribunal is not at the preliminary stage making findings of fact, but making a summary determination of the likelihood of success on the basis of the information before it. The tribunal's task is to make a summary assessment of the written material and determine whether it is "likely" (see below) that the claimant will succeed in his claim for automatic unfair dismissal, and if so whether it is appropriate to grant interim relief in the form of a continuation of contract order. Accordingly the "facts" as set out below are not findings of fact but a recitation of the events as described by the parties in the pleadings and other documents which I have taken into account in coming to my conclusions. I have not heard any evidence and am not making or purporting to make any finding of fact binding on any future tribunal.

Law

4. A summary of the law is set out below.

5. "Likely" - The tribunal can only make one of the orders set out in section 129 if it holds that it is "likely" that the tribunal which determines the complaint will find (in this case) that the reason or principal reason fell within s103A. "Likely" in the context of s129 means that there is "a good chance" that the tribunal will find in the claimant's favour; and a good chance means something more than the balance of probabilities, indeed a significantly higher likelihood (*Ministry of Justice v Sarfraz [2011] IRLR 562 per Underhill P*). That test applies to all aspects of the claimant's claim that may be in issue.

6. The respondent submits that there are two fundamental aspects of the claim which are in dispute, and that on the information before the tribunal there is not "a good chance" that the final tribunal will find in the claimant's favour in respect of either of them. They are:

i) Protected Disclosures – The respondent submits that on an assessment of the existing documentary evidence the claimant is unlikely to establish that he has made any protected disclosure.

ii) Reason or principal reason for dismissal-The respondent submits that the reason for the termination of the claimant's employment is clearly set out in writing; is supported by documentary evidence; and that there is nothing, or at least nothing sufficient, to indicate that the reason given was not the true reason.

7. Respondent / Employment History –The respondent is a GP Surgery based in Cornwall and is operated as a partnership, the partners being Dr Andrew Fripp and Mr Robert Seymour. The claimant was employed as Head of Compliance and Patient Experience from 11th March 2024 until 22nd August 2025 when he was dismissed purportedly by reason of conduct.

8. Public Interest Disclosures - In his ET1/ Particulars of Claim, and in his application for interim relief; and in his response to the directions for this hearing the claimant has set out a number of asserted protected disclosures on which he relies:

   i) 28/1/25 - The claimant emailed the Executive Group alleging Sharon James (Office Manager) "aggressive management" was causing staff distress and patient safety risks through inadequate staffing and hostile environment;

   ii) April – June 2025 – The claimant alleges multiple disclosures to Dr Fripp/ Mr Seymour and Debbie Holborn;

   iii) June 2025 – Formal grievance;

   iv) External Disclosures (Clinical and Governance Failures) – 27 June 2025 and 1st July 2025 to CQC / NHS ICB/ NHS Whistleblowing Team;

   v) External Disclosure (GDPR/Data Breach) 6th August 2025 to ICO.

9. The claimant contends that these contained information tending to show breaches of legal obligations, health and safety regulatory standards, and the commission of criminal offences falling within s43B(1) ERA 1996. He contends his belief was reasonable and that the disclosures were necessarily in the public interest as they concerned patient safety and regulatory compliance in relation to a GP Surgery.

10. Evidence before me – The email of 28th January 2025 is in the bundle. The issues it raises are:

I) The issue of the equipment funded by Access to Work for the claimant if he had to move office;
II) Complaints about staff feeling they are walking on eggshells around Sharon;

11. The respondent points to the fact there is no explicit reference or disclosure of any information relating to patient safety in the email and the claimant's assertion that there was is factually incorrect.

12. There is, in my judgment at very least a significant issue as to whether this disclosure is a qualifying disclosure, and there is in my judgement no basis for holding that is "likely" that at the final tribunal will hold that it was.

13. With the exception of the 6th August disclosure discussed below, none of the other disclosures relied on are in the bundle and it is not possible for me to make any assessment of the prospects of success of them .

14. 6th August 2025 – Disclosure of "Whistleblower Report". This was sent to the ICO, CQC/ NHS and the HSE. It asserts "systematic non-compliance" with data protection regulation, and refers to previous disclosures to the CQC and ICB in respect of patient safety. There are also complaints about the respondents treatment of his own SAR.

15. In a letter of 19th August 2025 the respondent disputes that the disclosures are public interest disclosures; contending that if they had been the claimant would have used the respondent's internal whistleblowing policy, and that these are in fact retrospective concocted allegations made in retaliation for the disciplinary process. The claimant cannot have had a reasonable belief in them and/or had no reasonable belief that they were in the public interest in that the claimant was pursuing a private grievance against the respondent. In this hearing it was submitted that in addition it is clear that many of the complaints relate to personal issues in relation to the claimant and that at least some of the allegations are not capable of being protected disclosures.

16. As set out above, in my judgement it is not "likely" that the final tribunal will hold that the January 28th email is a protected disclosure; and I do not have any means of assessing any of the other disclosures relied on other than 6th August 2025. That document appears to contain serious allegations, which, subject to the issue of reasonable belief would appear to be highly likely to contain some allegations which would be held to be protected disclosures, and are certainly at this stage on their face sufficient to satisfy the "likely/a good chance" test. The question for me is whether the issue as to reasonable belief in the context that the disclosures were made, during the period of a disciplinary investigation, is sufficient to hold that there is a genuine dispute of fact which means that it is not possible to determine at this stage that it is likely that the tribunal will hold that it amounts to a protected disclosure, in that there is a purely factual dispute which can only be resolved having heard the evidence.

17. Whilst this is very finely balanced, I have concluded that there is sufficient in the respondents assertion to hold that here is a genuine issue of fact which can only be resolved at the final hearing. It follows that, in my judgement, at this stage and on the information before me, it is not possible to conclude that it is "likely" that the final tribunal will hold that the claimant has made any protected disclosure.

18. This is necessarily fatal to the interim relief application; however I bear in mind that I have not seen all the documentary evidence in respect of the disclosures and it may be that subsequently his claims are much stronger than they appear to me at

present; and that in any event that I maybe wrong in that analysis. As a result I have to gone on to consider the issue of dismissal as well.

Dismissal

19. On 13th June 2025 the claimant was invited to a disciplinary hearing, which was held on 26th June 2025, in respect of eight specific allegations, and sent copies of the documents to be used at the hearing . The hearing was conducted by an external Peninsula Consultant whose report was sent on 5th August 2025 and upheld a number of the allegations as misconduct and/or serious misconduct. Whilst the recommendation was for a final written warning, but noted that there would be nothing unlawful about the respondent choosing to dismiss.

20. The disciplinary process was paused to allow the claimant's grievance to be investigated.

21. By a letter of 19th August the respondent raised other disciplinary issues, the most serious being allegations as to the claimant responding to a patient complaint without consulting Dr Fripp

22. The claimant was dismissed by a letter dated 22nd August 2025. It accepted the conclusions of the report as to the misconduct/serious misconduct; concluded that the claimant's explanations for his conduct were "unsatisfactory" ; and that given his short length of service and he total breakdown of trust and confidence that he was dismissed with immediate effect.

23. Causal Link between the disclosures and the Dismissal – The claimant alleges that reason, or principal reason, for his dismissal was having made one or more of the alleged protected disclosures. He asserts that the link between the disclosures and the dismissal is established by "..the employers overt consciousness of guilt, managerial hostility (Dr Fripp/ Mr Seymour), and the timing of regulatory intervention.

24. The history of management hostility is, he asserts, evidenced by:

    i) Ignoring and dismissing the concerns raised in the 28th January email;
    ii) The "targeted removal" of duties including the cleaning contract management in February 2025;
    iii) Dr Fripps hostile reaction to the claimant handling a patient complaint.

25. Regulatory intervention - – The claimant contends that the outcome of the grievance was that the concern raised was not a whistleblowing concern, despite the ICB FTSU Champion informing the respondent that the concerns were being looked at as protected disclosures. The claimant invites the tribunal to draw the inference that as the ICB FTSU Guardian contacted him at 13.51 on 22nd August 2025 to confirm the ICBs obligation to investigate; and as he received his dismissal letter later the same day that his dismissal was specifically in response to that confirmation from the ICB

26. Sanction - The dismissal was a harsher sanction than that recommended by the HR consultant which was for a first and final written warning; which is only explicable by reference to the disclosures.

27. COT3 – In addition the claimant relies on the respondents settlement proposals contained in a draft COT3 agreement which proposed that he agreed not to pursue the regulatory complaints, as demonstrating that the respondents real purpose was to avoid regulatory oversight. The respondent contends that these are legally privileged and/or inadmissible pursuant to s111A(3) ERA 1996. That issue has necessarily not yet been resolved and for my purposes today I bear in mind that there is at least an issue as to the admissibility of the this evidence and that should be cautious at this stage of placing weight on evidence before the issue is resolved.

28. Respondent - The respondent submits that:

i) Its concerns as to the claimant's conduct pre-dated any disclosures,
ii) The disciplinary process was commenced prior to any of the external asserted disclosures, and is therefore demonstrably not connected to them;
iii) Ms Bastin during the course of the hearing took me to the underlying documentary evidence in respect of each of the disciplinary allegations, which demonstrates that they were genuine and that there is an evidential basis for them;
iv) It follows, that the commencement of the disciplinary process cannot have any link to any protected disclosures;
v) That the investigation, was conducted by an external consultant, was thorough, evidence based, and concluded that the claimant had committed a number of acts of misconduct/serious misconduct;.
vi) The report was received before the claimant made the external disclosure on 6th August 2025, and necessarily before the respondent was or could have been aware of it;
vii) There is therefore clear and obvious documentary evidence supporting the reason for dismissal that cannot be related to any disclosure;
viii) It follows that there is at very least a genuine issue as to the reason for dismissal and that it follows automatically that it cannot be held at this stage that it is "likely" that the final tribunal will find in the claimant's favour.

29. In response the claimant made relatively detailed submissions about each of the disciplinary allegations, and it is clear that there are underlying factual disputes as to almost all of them.

30. Conclusion – In my judgement the respondent is correct. There are clearly points that can be made by both sides as to the reason for the dismissal. However the respondent's assertions are supported by clear documentary evidence and it does not appear to me at this stage that it is possible to conclude that there is any particular, and certainly not a high degree of probability that its evidence will be rejected. It is not essentially in dispute that here are factual disputes as to all or nearly all of the allegations that resulted in the claimant's dismissal. In the end in my judgement, this is a paradigm case in which the outcome will turn on the findings of fact, and inferences drawn by the final hearing tribunal as to the reason for dismissal.

31. It follows that in my judgement the information before me does not support the conclusion that it is "likely" that the claimant will succeed at trial; and it follows that his is not a case in which it is appropriate to make a continuation of contract order.

Employment Judge Cadney
Dated: 1 October 2025

Sent to the parties on
4 November 2025

Jade Lobb
For the Tribunal Office