EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000099/2025 &
8001985/2025

Held: Dundee Employment Tribunal

by video on 17 October 2025

Employment Judge O'Dempsey,

Mrs G Wilson	**Claimant** **In Person**
Diageo Scotland Limited	**Respondent** **Dowey** **(Consultant)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application for interim relief is refused.

REASONS

1) This case came before me on 17 October 2025 for an interim relief application to be determined.

2) The claimant and respondent have supplied skeleton arguments which are not incorporated into these reasons but should be read along side them.

Law

3) Before going into the submissions on factors that were made to me I set out the legal test.

4) Section 103A at the 1996 Act provides "a person who is dismissed shall be

regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".

“Likely”

5) Section 129 of the Employment Rights Act 1996 provides that interim relief should be granted where it appears to the tribunal that it is **likely** that the reason for the dismissal is that the claimant has made a protected disclosure. In this context the term "likely" connotes a significantly higher degree of likelihood than "more likely than not". It is not a test amounting to "beyond reasonable doubt".

6) So "Likely"[1] in this context means more than just a "reasonable prospect of success" but there is no need for the claimant (on whom the burden of proof rests for all elements at this stage) to establish that she "will" succeed at trial. I must consider whether she has "a pretty good chance" (**Taplin** v **C Shippam Limited** [1978] IRLR 450 (EAT) approved in **Raja** v **The Secretary** of **State** for **Justice** UKEAT/0364/09 and in **Dandpat** v **University** of **Bath** and another UKEAT/0408/09) or whether the case "looks like a winner" (**Derby Daily Telegraph Limited** v **Foss** EAT/631/91).

7) I am entitled to approach the evidence by making as good an assessment as I am promptly able of whether the claimant is “likely” to succeed. There will be of course, far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim. Essentially, I am having to do the best I can with the untested evidence advanced by each party (see **London City Airport Ltd v Chacko** [2013] IRLR 610 (EAT)).

8) I have to make that assessment in relation to factual disputes of whatever complexity, but it is that assessment that I need to make (see **Raja** v **Secretary** of **State** for **Justice** UKEAT/0364/09). I should not reject a claim for interim relief because it involves a lot of documents and/or detailed allegations. What I should do is invite the parties to identify the parts of the claim and documents relevant to the

[1] “Likely” is therefore a (possibly unhelpful) term of art in this context which can cause confusion. I summarise the test by using **“likely”** where I mean this standard and using likely without quotes or **probable** where I mean better than 50% prospects of success not reaching the higher standard of “likely” as described in this paragraph.

interim relief application.

9) It is the same assessment I need to conduct when considering the question of "separability"; when an employer is saying that it was the manner in which the disclosures were carried out rather than the disclosures themselves that was the principal reason for dismissal. I should be wary of the employer seeking defend an interim relief application on this basis. Giving it too great a scope would wholly undermine the very limited scope that is available for interim relief, given the test of "likely" to be applied. Whilst one case suggests that the manner in which activities are carried out should not ordinarily be carried out should not ordinarily be taken into account (**Mihaj** v **Sodexho Ltd** UKEAT/0139/14), I think that this approach is incompatible with the principle in **Burgess** v **Bass Taverns Ltd** [1995] EWCA Civ 40 that not all activities taking place under the auspice of a union, "however malicious, untruthful or irrelevant", would fall within the definition of "trade union activities". So I take the view that if the employer's defence is that it was the manner in which the protected disclosure was made, I should apply common sense to the ease with which such an allegation can be made at this stage, but should also apply the **Taplin** test to that element of the case.

10) The point is an important one so I set out the law in a little more detail here.

11) In **Bass Taverns** the Court of Appeal at paragraph 14 stated in relation to the facts of that case:

"I am very far from saying that the contents of a speech made at a trade union recruiting meeting, however malicious, untruthful or irrelevant to the task in hand they may be, come within the term 'trade union activities' in [what was then] Section 58 of the Act.

12) In the EAT decision of **Lyon** v **St James Press Ltd** [1976] IRLR 215 Phillips J stated, at paragraph 16, that the statutory protection given to trade union activities

"...must not be allowed to operate as a cloak or an excuse for conduct which ordinarily would justify dismissal; equally the right to take part in the affairs of the trade union must not be obstructed by too easily finding acts done for the purpose to be a justification for dismissal. The marks are easy to describe, but the channel

between them is difficult to navigate."

13) The EAT went on to make clear that wholly unreasonable, extraneous or malicious acts done in support of, in that case, trade union activities might be a ground for dismissal which would not be unfair.

14) The error of the judge in **Mihaj** was failing to apply the approach set out in **Bass Taverns**. He determined that an Employment Tribunal at a full Liability Hearing was not likely to hold that the dismissal of the Claimant fell within the statutory protection because of the way in which trade union activities were carried out. However the EAT said that the issue to decide was whether an ET was likely to find that the Claimant was dismissed for carrying out trade union activities. The way in which those activities were carried out was not relevant unless it was such as described in **Bass** or **Lyon**, namely acting in bad faith, dishonestly or for some extraneous cause or in any other way such as to take those actions outside the proper scope of trade union activities.

15) No question of bad faith has been raised in this case, at this stage, by the respondent.

16) It should also be clear the concept of the scope of trade union activities is a different concept of the question of whether the reason for dismissal was a protected disclosure (or a set of protected disclosures).

17) In a Public Interest Disclosure case the tribunal must find in this sense that it was "likely" that the final hearing the tribunal will find that the disclosure was the principal reason for her dismissal. Only this point is relevant in this case due to the concessions made by the respondent for the purposes of the interim relief hearing before me concerning whether there were any protected disclosures. Thus the manner of conveying concerns (and other behaviour) can be considered but I should proceed cautiously when I am being told by a respondent that it was the manner in which the protected disclosure was conveyed that was the principal reason. If the employer is arguing that the dismissal was not for a protected disclosure (or the manner of conveying it) but for a wholly different reason, I have to consider whether the claimant's claim (in the light of that assertion which I evaluate) is "likely" to succeed.

18) The Tribunal Rules 2024, rule 94, provide that I must not hear evidence unless I direct otherwise. The question of interim relief is a preliminary issue. On 1 October 2025 a notice of hearing for this interim relief application was set out.

19) These applications are summary in nature and, in most cases, the tribunal will rely on the ET1 (the ET3 need not even have been submitted at this stage), written submissions, documents and sometimes witness statements. In the current case the parties have had a great deal more time than is usual to prepare for the hearing because of earlier interim skirmishes recorded in previous judicial decisions.

20) It is not important whether the materials are formally presented in the form of a witness statement or whether, as is common enough in all forms of interim applications in an employment tribunal, they took the form of a mixture of submissions and contemporary documents. This, I hope, gives a sense of the summary nature of the procedure.

The claimant's case

21) The claimant says that she was dismissed on 1 August 2025 and that the principal reason for dismissal was making protected disclosures about serious compliance and safety failures at one of the respondent's sites. This is a site handling highly flammable ethanol. In her skeleton argument summary she refers to disclosures. The claimant says she was summarily dismissed within 48 hours of submitting tribunal evidence which was done on 31 July 2025.

22) The claimant gives her salary as £2914.77 p per month. She seeks this from 1 August 2025 until 13 October 2025 when she says that she received new employment.

23) The claimant says that the reason for dismissal was given to her as "some other substantial reason" namely a breakdown in working relationship and loss of trust. The letter refers to the tribunal proceedings. In her application for interim relief she says that the dismissal reason was a pretext and that the true reason was the protected disclosures and she says that the timing, the content of the letter both show this. She also makes reference to what may be without prejudice matters and

I do not pay any regard to those at this stage.

24) She says that her disclosures are protected disclosures and in particular that she has a pretty good chance of success at the final hearing based on the sexual harassment reporting. She also says that the non-investigation showed a miscarriage of justice and code of conduct breach. She says that the health and safety contraventions show dangers to employees visitors and the wider general public; and she says that the non-compliance notice matters show legal breaches. All of these she says were in the public interest because they related to workplace safety, public revenue and justice.

25) She says that she stands a pretty good chance of success in relation to showing the reason for dismissal as being the protected disclosures because the dismissal took a place 11 days after the case management preliminary hearing disclosure and only a day after adding further evidence about human resources misconduct and the fact that the letter focused on her tribunal -related disputes including the data subject access request for harassment records, sick pay denial post disclosure. She says that these suggest retaliation.

26) She then cites the evidence she wishes to rely on namely the emails to Sarah Walton reporting harassment; the case management preliminary hearing notes of 21 July 2025 which detailed the human resources non-investigation. She relies on emails to Stuart Duncan, Emma Eldridge, and others about compliance and legal risks. She cites correspondence about non-compliance. Discrepancies and then finally she relies on all the tribunal documents filed.

27) She says that the proximity to the preliminary hearing and the reference to the tribunal proceedings together with the settlement offer (which for the present I ignore) indicate that the disclosures were the principal reason.

28) The claimant says that if her "combative tone" is raised as a defence then the disclosures that she made were professional and the disputes arose from protected acts.

29) In her interim relief application she requests reinstatement to her role as risk and Customs and Excise coordinator.

30) She says that she has been on statutory sick pay since 8 July 2025.

31) At page 34 of the bundle there is a letter of 1 August 2025. This is the termination letter and gives an "overview of concerns." It says that it was important that the respondent be completely transparent and honest with the claimant about the respondent's concerns so that she was clear about her reasons for dismissal.

32) The first thing that is said is that the claimant had been out of business for a period of sick leave since January 2025 but that any steps that the claimant has taken to engage with the respondent had been in a "negative and unconstructive manner."

33) The respondent says that the claimant has disputed nearly every decision that has been taken by the business and shown "a complete lack of respect" for the respondent as her employer.

34) It goes on "You have sought to challenge your colleagues decisions and actions on each turn preferring instead to put everything into some sort of dispute."

35) It then goes on to say this "as recent example, you sought to challenge (the respondents) position in respect of your data subject access request (despite having been provided with a clear explanation for your concerns); and you took issue with the reasonable explanation that was given to you in terms of the company's decision not to extend your sick pay beyond your contractual entitlement in line with our company policy."

36) It says that the way in which the claimant "raised and pushed your concerns was, at times, inappropriate in the volume of emails that you are sending to colleagues was significant, unreasonable and unusual."

37) On page 35 the letter then goes on to say that "it is not the fact of you challenging decisions and actions that is the crux of the issue here." It then goes on to say the tone and manner of the claimant's correspondence had been inappropriate, unprofessional and was not aligned with the company's values.

38) The letter then complains that the claimant had copied in an external legal representative to internal correspondence and says that this was wholly inappropriate and completely unprofessional. The letter complains that the claimant persistently demands responses by specific time periods. It says this "is not how I would expect an employee of this business to correspond with us" particularly in response to a reasonable request made by the respondent.

39) The letter then says that they had wanted to meet the claimant in person to discuss the ongoing sickness absence and next steps in relation to her employment. It says that the concerns it was raising would have been raised at that meeting but the claimant's approach and intransigence towards the request has compounded the respondent's position that a long-term employment with the business was not viable. Says there are significant relationship issues with herself and the respondent and her colleagues.

40) The respondent has set out its position in Ground of Resistance.

The hearing

What I told the parties I would and would not read

41) At the hearing itself the parties produced 2 different bundles the claimant's running 234 pages the respondents running to 425 pages. I told parties that I would read the pleadings and that I had read the application the letter of dismissal and that I would read the skeleton arguments in the 2 statements that had been sent in. I also told parties that unless I was taken to specific documents in their submissions I would not be reading them.

Concessions and disputes

42) The claimant's claim concerns series of protected disclosures some of which are admitted by the respondent to be protected disclosures.

For the purposes of the interim relief hearing the respondent accepted that

disclosures number 6, number 9, number 11 number 12 and disclosure 13 constitute protected disclosures. These were, on the face of them obviously protected disclosures.

Which other disclosures are "likely" to be proved by the claimant?

43) In addition I accept that there is a pretty good chance that the following were protected disclosures. Disclosure 1 on 7 May 2024 when the claimant reported stock discrepancies, unpaid duty etc. I accept that it is clear what the relevant failure under the Employment Rights Act is (the email is on page 352 of the respondent's bundle) that email specifically says that there was an issue with staff gifting that had not been duty paid and did not have a duty stamp applied. It also says that there are a few destructions with waste alcohol from the portable VAT had been destroyed.

44) It should be remembered that what the claimant has to show is that she had information tending to show breach of legal obligation the lack of particularisation of the legal obligation is not in my view particularly relevant in this context, given the context of the case.

45) Similarly in relation to disclosure 2 on 2 September 2024 the claimant emailed Mr Galbraith and shared an FRA report regarding HSC compliance. I think it is highly "likely" that the information that she disclosed in the documents to which she makes reference showed information which tends to show a relevant failure.

46) Moreover given the job she did in the status that carries with it her views as to whether failure had occurred or whether there were defects needs to be given proper regard. In that context it seems to me that it is "likely" that she will show that she reasonably believed that the information tended to show a relevant failure. These disclosures are also manifestly in the public interest given the context and I consider she will have little difficulty establishing the point, so she is "likely" to succeed on this point.

47) I recall when I look at disclosure number 3 that subsequent transmission of the same information is a separate and distinct disclosure. In relation to this particular disclosure it seems to me that although she is probably going to be able to show that it is a protected disclosure, I cannot go so far as to say that it is “likely” that she will prove it.

48) In relation to disclosure 4 namely 30th of October 2024 the claimant emailing regarding FRA rectification decisions, the email makes reference to another email on 22 October 2024 which in turn refers to the DS fire safety quote. In this regard it is unclear what specific failures the disclosure relates to or whether there is a wrongdoing which the information tends to show. It may be that there is such a wrongdoing and it may be that the claimant will succeed at trial but I cannot say at this stage that it is ““likely”” that this was a protected disclosure.

49) In relation to disclosure number 5 which is that on 4 November 2024 the claimant sent a grievance email to Sarah Walton stating that Stuart Duncan had harassed her on 24 July 2024 with inappropriate personal comments, it seems to me that the claimant is ““likely”” to show that the unsolicited personal comments which were the inappropriate raising of personal sexual topics were a protected disclosure. I accept that the claimant has is ““likely”” to show that disclosure of that information was in the public interest and indeed that the claimant reasonably believed that at the time.

50) In relation to disclosure 6 which is that on 18 November 2024 the claimant sent an email regarding urgent action on high risk are a items, the respondent accepts that this is a protected disclosure but says that the dismissing office or was not a recipient of the email and that the disclosure came 8 months before the claimant's dismissal. In relation to that argument I think that the claimant is “likely” to show that Mr Irwin knew about the disclosures because his witness statement, without indicating any timeframe for this, indicates that he knew of the majority of the protected disclosures or alleged protected disclosures as he calls them, via the employment tribunal proceedings. It is highly “likely” that he knew about the individual protected disclosures on what is in front of me at the moment. I return to these points later when I discuss prospects for the claimant showing the causal link between the reason for dismissal and these or any of the other early protected disclosures.

51) In relation to disclosure number 7, which is that on 25 November 2024 claimant sent an email to the respondent concerning stock discrepancies and HMRC and potential safety risks. The respondent argued that the claimant does not state stock discrepancies were unreported to HMRC and that there were potential safety risks.

52) With this information alone and without a great deal more context, the statement that a section 196 excise notice was being attached does not show that it is “likely” that there was information there that tended to show breach of legal obligation of some sort. It may be that when one fully understands the significance of the reference to the s196 Notice, it would become “likely”, and it may be that the claimant will win on this point, but in this summary exercise I cannot give that point the appropriate level of “likelihood”.

53) In relation to disclosure number 8 which is the claimant sent an email to the respondent stating that there was FRA non-compliance and that there were fire hazards, this must be seen in the context of the fact that the claimant says that she is raising again that the respondent was non-compliant. Although the respondent's bundle has a heading on this page of "email chain provided in full" it is plain that the email makes reference to a different email which I do not appear to have. At trial of course the full context will be before the tribunal and it may well be that this will be shown to be a protected disclosure. However on bases the information which is before me and to which my attention was drawn, I cannot say that there is a pretty good chance that this was a protected disclosure.

54) In relation to disclosure number 10 which is that on 2 December the claimant made a communication to the respondent stating that there were high risk CMAH actions and FRA risks, I am prepared to accept that it is “likely” that the claimant will establish that this disclosed information that tended to show one of the relevant failures but I cannot say, on the basis of the information before me that it is “likely” she will be able to show that this was a protected disclosure.

55) In relation to disclosure number 14 which is that on 17 December 2024 the claimant sent an email to EE querying cells 7 stock check discrepancies the text appears to raise questions rather than providing information. Looking at the context within which it is written, one can see that it appears to be a response to an email

dated 17 December 2024 from Emma Eldridge stating that any discrepancies would be shared and investigations requested. It does not seem to me that on the information I have at the moment that the email from the claimant discloses information and when one reads it in the context of the email sent by the claimant on 17 December 2024 at 10:33 AM which states some questions asking whether the respondent could advise if the discrepancies found last week during the stock check had been added to the discrepancy file and/or shared, whilst it is probable that this will be found to be a protected disclosure I cannot say at this stage that it is “likely” it will be found to be a protected disclosure.

Causation

56) Is the claimant “likely” to be able to show that the disclosures were the principal reason for the claimant's dismissal?

57) Mr Irwin prepared a witness statement for this hearing. The parties have had a much greater time than is usual in relation to an interim relief application to consider and prepare for the hearing because the respondent initially challenged whether or not the claimant could bring an interim relief order because she had not started a claim for dismissal. This was resolved by employment Judge Hoey and was resolved in favour of the claimant amending to include dismissal being sufficient.

58) The respondent appears to rely on Mr Irwin's witness statement and his assertion that the protected disclosures had no bearing at all on the claimant's dismissal. In the letter of dismissal, which appears to be carefully worded, it states "I must be clear that it is not the fact you challenging decisions and actions that is the crux of the issue here. (The respondent) absolutely encourages an environment where employees concerns can be raised in a constructive and collaborative way".

59) The respondent says it was the manner in which the claimant conducted herself which had led to a breakdown in working relationships and a conclusion that the employment relationship was no longer tenable in doing so the respondent appears to suggest that there was a problem with the claimant being suspicious of being invited to a meeting to discuss her sickness absence and appropriate next steps when the respondent was not appearing to follow its own sickness absence procedure, was not prepared to provide the claimant with an agenda for the meeting,

and did not make any effort to explain what "appropriate next steps" might be.

60) I find it highly surprising that Mr Irwin was asserting that in 15 years of managing a group of employees which is in the region of 7-8000 people strong he had never come across some of the behaviour that the claimant was exhibiting. However that is his evidence. I also found it highly surprising, to say the least, that the claimant challenging the respondents failure to follow procedures and in particular the sickness absence procedure was somehow inappropriate. The tone of the claimant's emails whilst questioning and challenging was not inappropriate and was not on its face rude or aggressive (or passive-aggressive).

61) To a certain extent Mr Irwin's assertions about his mental state and the reasons for dismissal need to be tested in cross-examination and of course I accept that that means there are strictures on the analysis I make at the moment. However that does not mean I cannot or should not consider whether it is “likely” that the claimant will show that the posited reason is not the real reason. I have to consider whether, as a matter of first impression, I can accept that the claimant is “likely” to be able to prove that his asserted reasons were not his reasons.

62) One of the matters that the respondent appears to want to rely on is the claimant's email of 12 January 2025 in which she said she did not have contact with anybody involved in her 11 November 2024 grievance. It seems to me that that expression of not wanting to have contact when an employee is off sick particularly with stress in the context of the grievance is not unusual at all and I do not understand how it is that Mr Irwin might have thought that this was part of the reason why the claimant should be dismissed.

63) The respondent focused on an email sent on 3 June 2025 to Sarah Walton. The respondent complains that the claimant requested no less than 12 different action points and reserved the right to escalate matters to her tribunal. Looking at what she says in that email she explains that she is involved in whistleblowing employment tribunal. She points out that she considers that the matters might amount to detriments within the meaning of the Employment Rights Act 1996 on the basis, which may or may not be correct, that the there was an impact on her "in my capacity as a protected whistleblower".

64) Of course there is no such categoric protection as a claimant in a detriment case needs to link the detriment to a particular protected disclosure or group of disclosures.

65) She lists a number of things that she wants the respondent to do. However it seems to me that the tone of the email, whilst it is assertive, is not aggressive and is not particularly unusual for someone who is in the middle of a dispute with their employer which has reached the stage of the tribunal. Whilst that is how it appears to me, the tribunal considering the question of whether the posited reason is not the real reason will have to consider whether, however, misguided, that reason was the real principal reason (or part of the set of principal reasons) for the dismissal.

66) The respondent however complains that the claimant also applied for an extension of company sick pay for exceptional circumstances and that there was something the matter with her continuing to argue that the idea that her circumstances were exceptional circumstances. The respondent emphasised both in Mr Irwin's witness statement and in relation to an email within the bundle that the exemption is variously typically or normally used in terminal illness cases. However it does not seem to me that there is any real issue about an employee continuing to press for discretion to be exercised in their favour emphasising their particular circumstances. I consider that it is probable that the claimant would be able to show that this was not part of the real reason for dismissal.

67) The respondent then says that the claimant sent what they describe as accusatory emails to employees involved in the matters about which she was complaining to the tribunal. In the course of what appears to be an invitation to potential witnesses (who it appears the claimant would want to cross examine rather than lead evidence from) the claimant points out that the person is under no legal obligation to assist in that participation was entirely voluntary. The claimant appears to have been quite open about the fact that this was part of the employment tribunal because she copies this request to the employment tribunal and the respondent's representative. It is arguable, but I would not put it much higher than that for the respondent that their concern about the claimant's actions on this point could be viewed as somewhat synthetic and an experienced human resources officer might well be criticised for failing to manage those emails by explaining to the recipients how the tribunal process works and how a claimant may well be matters to the

tribunal.

68) However it seems to me that whether or not I accept what the respondent says on this point as probable the chances of the claimant showing that this is a completely false explanation for the reasons for dismissal, whilst they may be high, and not so high for me to say that the assertion that these reasons were not genuine is “likely” to succeed.

69) The respondent also complains that the claimant started to refer to her employment tribunal claim in what they describe as work-related emails. However the concept of work-related emails that the respondent appears to use is a slightly odd one. The passages cited by the respondent appear to relate to emails that are sent in respect of a grievance appeal on 10 February 2025. It appears that the claimant was concerned about the lack of response from Mr Irwin, although she says that he had typically acknowledged his prior submissions of fit notes promptly. She explains what she is seeking to do is to ensure proper documentation. She explains that in the context of being involved in employment tribunal involving both her line managers and on-site HR.

70) The explanation that the claimant has put forward in that email would not create very much concern amongst HR professionals, which the recipient and Mr Irwin both are. The respondent also relies on the request for an extension of company sick pay being copied into the respondent solicitors. However again the claimant makes clear her intention to include the complaint she makes in that email in the tribunal claim and that is the explanation she gives for copying in the respondent's legal adviser.

71) The respondent also places emphasis on correspondence dated 29 July 2025 in an email sent to Jane Bissett Gillian Bissett. This related to the offer of alternative meeting times. The claimant having said that she is fully committed to engaging constructively and transparently with absence management said that she was deeply concerned by the respondent's lack of transparency particularly in relation to the statement that "there is no set agenda for the meeting". She specifically complains about the ambiguity, which I accept was there, combined with the respondent's failure to address the initial request on 29 July 2025 for a detailed written agenda and confirmation of impartiality. Claimant said that all this risked creating a process that could prejudice her ongoing tribunal claim.

72) She also says that there were for her significant concerns about Ms Bissett's impartiality. She complains that the ongoing back-and-forth correspondence could have been avoided had the respondents addressed the initial request for a detailed written agenda and assurances of impartiality.

73) Thus far, there is little in the claimant's email that the respondent could legitimately have complained about. It is not uncommon at all for employees who are in the situation of having a conflict with their employer which has gone to a tribunal to become very concerned at the lack of clarity and lack of following a procedure.

74) The tone of the email suggests that the claimant would not cooperate however with having a meeting and she set a deadline for the supply of clarification on whether correspondence contravenes any specific absence management policy requirement and if so details of that policy; the detailed written statement specifying the exact topics of discussion regarding her absence in the next steps and confirming that they did not relate to matters forming part of her tribunal claim, to address the ambiguity created by the statement that there is no set agenda.

75) It is quite clear that the claimant was not very happy about the respondents, rather odd, approach to setting this meeting, but it seems to me at this stage that although it is probable that the claimant will establish causation, it is not “likely”. The respondent’s point that reliance on this email part of the principal the reason she was dismissed stands a substantial prospect of being established (in the sense that the claimant is not “likely” to rebut this assertion). This is because the email goes on to say that the claimant was respectfully requesting full disclosure of Ms Bissett's involvement with the site including any current or past professional relationships with management, and HR personnel involved in her absence management or tribunal claim. She says that this is to ensure impartiality as required by the ACAS code. However it seems to me that the respondent can argue with some merit which tribunal will need to assess that the tone of this part of the email and subsequent parts goes well beyond what an employee (even if they had concerns about impartiality) would normally require.

76) It may be that when the tribunal at the full hearing considers these points and

the point requiring confirmation that Paul Anderson has no professional or personal relationships with individuals involved in the claimant tribunal claim that they will reach the conclusion that these were, in the context of large organisation with experienced personnel officers insufficient reasons or were not the actual reasons for the treatment of the claimant, but I cannot say at this stage that the claimant has shown that it is “likely” that the claimant will rebut this is part of the reason put forward by the respondent.

77) In relation to the claimant being combative with the respondent’s subject access team, the respondent complains and treats as part of the reason for dismissal that she remarked in an email of 6 June 2025 when thanking the data privacy team for replying to her request and sending attachments that the claimant said "it doesn't make sense.". This is a selective quote.

78) In fact what the claimant says is "I have reviewed the content and it doesn't make sense. I am still off from work so why does the second one refer to me returning to work?" She then makes a couple of other points and closes with the passage which the respondent seems to place emphasis on which is "this requires further investigation," however looking at the email it is clear that she is remarking on the fact that none of the emails that have been sent to her were dated and she asked for copies of the dates the emails were sent which will have been system generated and documented.

79) Once again it does not seem to me that this is particularly strong argument on behalf of the respondent. The tribunal that hears the case will be confronted with the detail of what the data team sent and to which she is replying.

80) Finally the respondent appears to rely on the claimant requesting responses to her emails with unreasonable timeframes. In relation to an email of 3 June respondent complained that the claimant put a response time of close of business on Friday, 6 June 2025. The claimant does put a time limit for response what she says is "if you can please acknowledge receipt of this email, and respond by COB on Friday, 6 June 2025 to address my concerns." There appears to have been no threat attached to that and in particular at that stage she was not saying that she was immediately going to take matters to a tribunal if that time-limit is not complied with. She does however reserve the right to escalate matters to the tribunal if

unresolved.

81) The respondent refers to an earlier email on 21 April 2025. This states that the claimant is seeking a witness order.

82) It is in that context that the claimant says if I received no response by 22 April 2025 I will note this in my tribunal bundle and may consider requesting witness order under rule 32 et cetera though I hope this will not be necessary.

83) The respondent appears to be suggesting that there was something wrong with putting a deadline on a response after which the person who is being written to in order to see whether they would cooperate (and pointing out to them that they had no legal obligation to assist) was in some way something which the respondent could treat as something over which action would normally or reasonably be taken (probably conduct although the respondent's counsel sought to draw a distinction between conduct which undermines trust and confidence which she sought to say be treated as some other substantial reason and misconduct). In relation to the second of those emails I can see very little merit in the respondent's argument and it may well be that the tribunal that his the full hearing will determine that if this was part of the respondents reasons but it seeks to rely on, it should take this into account when assessing the credibility of Mr Irwin when he claims that things other than a protected disclosure were the reason or principal reason for the dismissal. However at this stage I cannot say that it is “likely” that the claimant will show that the reasons for dismissal or principal reasons for dismissal were the particular protected disclosures that she relies upon.

84) Next the respondent relies on a deadline set on 14 August 2025. Of course the difficulty with this is that it post dates the dismissal and cannot be relevant. The respondent submitted to me that it was in some way relevant that the claimant failed, and this must be being asserted as part of the reasons for dismissal, to appreciate that her colleagues as well as corresponding with her were trying to fulfil their own roles.

85) There is nothing in the documentation I have been shown in regard to those three emails that suggests that people were unable to carry on with their ordinary business.

86) The respondent relies on the dismissal letter of 1 August and says that the following were the reasons for the dismissal.

87) First challenging colleague's decisions and actions at each turn and putting everything into some sort of dispute. The assertion that the claimant was putting everything into some sort of dispute may or may not be right. At this stage there was some evidence to suggest that she was putting some of the matters that she was concerned with into not only some sort of dispute but into an employment tribunal, which dealt, amongst other things with victimisation for having made protected acts. What is not clear to me is that the claimant is "likely" to be able to prove that Mr Irwin's view (which may be criticised on other grounds) that the claimant was seeking to challenge her colleagues decisions and actions at every turn was not the real reason for dismissal.

88) Indeed she needs to go further than that and to show that not only was that not the real reason but she must at this stage showed that it is "likely" that the protected disclosures that she claims were the real reason or principal reason for dismissal.

89) I think that the respondent may struggle to show that what the claimant was doing was always to challenge her colleagues decisions and actions or that there was something reprehensible by the disputes that the claimant raised. However there is enough in the material that I have been taken to by the respondent to show that I cannot say that it is "likely" that the claimant will show that these are not the real reasons, however much difficulty it may create for the respondent in respect of other parts of the claimant's claim.

90) Next the respondent relies on the volume of emails that the claimant was sending to colleagues being significant unreasonable and unusual. On the basis of the materials that I have been showing many of the emails that were sent to HR people were reasonably typical of emails to be sent by somebody who was in conflict with their employer to the extent that they had taken them to the tribunal. The HR manager's view that this was a reason that undermined trust and confidence or a substantial reason for dismissing somebody in the position of the claimant is one which the respondent may well struggle to establish. However I cannot say that the claimant is "likely" to be able to prove that, however misguided that view was, it was

not the genuine reason for dismissal.

91) It is of course open to the tribunal, and perhaps even it is likely that they will be able, to find that this reason was simply put forward to cover the real reason, but on the basis of the material that is before me I cannot find to the requisite high standard ("likely") that that is what is going to happen or is probable to happen.

92) The respondent also relies on the way in which the claimant approached the request for a meeting. Mr Irwin described this as wholly inappropriate (to copy in the external legal representative) and completely unprofessional. I have made reference to this above. Different tribunal's might well take different views on whether this is a colourable or even legitimate reason. It may also create difficulties for the respondents in terms of the other parts of the claimant's claim. The question for me is whether the claimant is "likely" to be able to prove that this reason was not genuinely held and that the real reason or principal reason was that the claimant had made a particular protected disclosure.

93) Next the respondent asserts that there were significant relationship issues amongst the claimant the respondent and the claimant's colleagues. The dismissal letter emphasised that these would be the ones that the claimant would be required to work alongside if she was to return from sick leave.

94) At this stage of the process, and setting aside the obvious human resources systems that exist to enable employers and employees to resolve this precise kind of situation, the employer can point to an arguable case for there being relationship difficulties. The question of whether people were expressing concerns, which was not properly indicated with any specificity by Mr Irwin in his witness statement, are matters that the tribunal will have to assess. The tribunal will also have to assess why those people were expressing concerns or the basis for the relationship issues before it is going to be able to say whether in fact those relationship issues relate to protected disclosures or something else. Similarly the notion that numerous people (the number of which is still not been specified) within the business and express concerns about them being required to work with the claimant in the future given her behaviour is something that will need to be tested. At this stage and with the kind of impressionistic view I must take necessarily given the nature of an interim relief application is that I cannot say that the claimant can show that those concerns

related to protected disclosures that she had made as opposed to behavioural issues on her part or indeed illegitimate behaviour issues on the part of those who are saying that they could not work with her (if any).

95) The respondent also in the dismissal letter relies on "ill will towards" quote" the respondent as the claimant's employer. The respondent may experience difficulties in relation to other parts of the claimant's case because it is not clear to me that the claimant was exhibiting ill will towards her employer save in so far as she had brought employment tribunal proceedings, including those relating to protected disclosures, however it is for the claimant to show that she is “likely” to be able to prove that the view, rightly or wrongly held, that she had ill will towards her employer was simply masking the real reason, namely the protected disclosures, or that what the respondent was talking about when it talked about ill will was in fact the making of the protected disclosures. At this stage I do not think she has produced enough for me to be able to say that she stands a pretty good chance of doing this.

96) Finally the respondent wants to rely on the statement made in the dismissal letter "however I want to be clear that, the fact of your raising such employment tribunal proceedings (and/or the allegations contributing to these proceedings) have no bearing on my decision to dismiss you." This may well be viewed as simply a self-serving statement in a letter of dismissal written by a professional, that is material that will need to be assessed, going as it does to the question of whether the dismissing officer Mr Irwin in fact was not telling the truth when he said this, but was in fact using this simply to mask the real reason namely the making of the protected disclosures.

97) The respondents sought to rely on the case of Panayotis. It seems to me that this has very little instructive factual or indeed legal material which would assist me. It does of course raises the question which the claimant no doubt will want to pursue at the full hearing as to the parallels between what happened in that case and what happened in her case.

98) The volume and tone of the claimant's emails are asserted to have got to the point of being unmanageable I think it is more probable than not that a tribunal will reject that submission. However that is not the point. If the tribunal accepts the Mr Irwin genuinely believed that they had got to the point being unmanageable then,

however much in human resources terms criticisms may be made of him, that will be the genuine reason.

99) Similarly the claimant may well be able to show the full hearing that although the disclosures happen 7 months before (subject to one or two which I am going to come to below) that they had a bearing on the decision to dismiss. However in my impressionistic view at this stage, that is a point that could go either way at the full hearing.

100) In my view the claimant may well be able show that Mr Irwin did know the detail of the protected disclosures at the earliest stage. She will then have the difficulty of seeking to explain why if the respondent was looking for an excuse to dismiss it did not act earlier. In that respect she has the perfectly respectable argument that the respondents were in fact biding their time and waiting for an excuse to dismiss her. That point is of course arguable but the point is arguable both ways and this means it is not ""likely"" that the claimant will be able to establish the causation in this instance.

101) The respondent also argues that Mr Irwin made clear that raising concerns was part of the claimant's day-to-day role. Whilst this is correct the claimant can perfectly reasonably argue that she did raise matters as part of her job, but nothing (she says,) was done about the concerns that she raised and therefore she escalated matters to other people and put matters in writing precisely because nobody was listening to her when she was doing her job. I think that she is "likely" to be able to establish that this was the reason she escalated. The fact that it was part of her job to raise concerns, in those circumstances does not detract from the nature of the information disclosed, nor does it render it less probable that the reason for dismissal was the protected disclosure.

102) The respondent makes the point that the claimant does not show at this stage any evidence that the respondent did nothing in respect of her complaints, and this of course is going to be an evidential matter that may significantly impact upon the question of whether the claimant makes out the relevant causal connection between the protected disclosure and the reason for dismissal. It is one of the reasons why, on the basis of the material to which I was taken at the hearing, I think it is not ""likely"" that the claimant will establish the principal reason (or reason) for dismissal

was one or other of the disclosures.

103) The respondent also makes the point that the fact that it was part of her job to raise concerns means that it is more probable that it was the manner in which she was communicating with a colleague that led down led to the breakdown in working relationships.

104) I think the tribunal “likely” to find that Mr Irwin was aware of the protected disclosures. It is of course at the point at which he makes the decision to dismiss that his awareness or otherwise must be judged. I think it is more probable than not that the tribunal will find that he did know about the detail of the protected disclosures. He said he was aware of them via the tribunal proceedings. He also said that he was aware of them for the purposes of giving instructions.

105) Whilst the claimant's assertion that Mr Irwin knew about the protected disclosures is probably going to be proved by her it raises the issue of when, on her case, he knew about them and what was happening in the gap. Can the claimant say that it is probable that she will show that there was a causal connection between the protected disclosures and the reason for dismissal? I have to say that she may do this and it may be that is more probable than not that she will do this, but I cannot say that it is “likely” that she will do so.

106) In the procedural history of this case there have been several points of difficulty. First, the claimant's claim for unfair dismissal under section 103A was raised by way of an amendment to her existing claim. As a result of what appears to have been a misunderstanding of what she was to do (which is no criticism because the claimant is representing herself and has had to do all the research for her case on her own it appears) she believed that she needed to provide further details of the amendment (or what would usually be called further specification) by presenting a new claim. She did so and the respondents took the view that these were not provision of specification. Again that may be understandable, although I do remark that there does not appear to be in any other document which provided further details of the claim, and so the respondent's stance that these were not specification of the amended claim is one with which I had limited sympathy.

107) I treat the particulars that have been provided as particulars of the amended

claim or further specification of it. It may be that the parties will be able to agree going forward that that is how that document ought to be treated in the circumstances as the claimant's explanation of why it was presented in that way. Hopefully further unnecessary interlocutory hearings can be avoided.

108) However in that document the claimant specified further protected disclosures in 2025 including one the claimant includes a reference to 29 June 2025 namely the submission of a grievance to Sarah Walton (HR director) for absence management policy breaches.

109) She also refers to 18 July 2025 when she says she submitted a further grievance to Sarah Walton against Kenny Irwin and Joanne banks for failing to investigate Stuart Duncan and what the claimant says is a false claim of having a private conversation of a sexual nature with her.

110) It was plain to me that in relation to that allegation at least looking at the documents which consisted of an email but also a detailed grievance which referred to breaches of health and safety, breach of the equality act and the respondent's vicarious liability for Mr Duncan's alleged behaviour; and also the breach of the duty on the employer to prevent sexual harassment, that is “likely” to be a protected disclosure.

111) However the problem, which the claimant admitted quite readily in submissions, was that she cannot show that Mr Irwin knew about that document on the information we had at this stage. It may well be that she will be able to prove this and it may well be that when disclosure is completed in respect of this part of the claim documents will emerge showing that he did know about it. It may also be that in cross examination he may accept or assert in his own evidence that he did know about this document. It will then be for the tribunal that hears the case to determine whether or not the disclosures that are referred to under the heading of key events, which are not yet formally specified but are plainly there, will be found to be the real reasons for her dismissal. However at this stage I cannot say that she stands a pretty good chance of establishing that connection for any of them.

112) I said to the claimant that she had come very close to obtaining a interim relief order. This is because I think it is more probable than not that she will succeed at

the full hearing. The problem is that I cannot find that she reaches the highest standard which is very unhelpfully described in the authorities as "looking like a winner" or having a significantly higher degree of likelihood than the balance of probabilities. Although I do not accept that the standard is that of certainty the case law does indicate that it must be something nearer to certainty than mere probability.

113) For all of those reasons, and whilst I have a great deal of sympathy for the claimant's arguments, I cannot make an interim relief order. This application is dismissed.

Postscript

114) The claimant after the oral reasons were given made an application for the proceedings to be sisted, pending appeal; she also renewed an application she had made on 13 October 2025 for an order for documents. She had not renewed that latter application before me. If she had done, I would have agreed, in the light of the nature of the interim relief hearing, and the timing of the application that it was not in the interests of the overriding objective to make such a disclosure order. The hearing is not supposed to be the final hearing and both sides may well come to it with less evidential material than they would like. It is for these reasons that interim relief hearings are judged on an impressionistic basis, but applying the "likely" test referred to above.

115) It is a separate matter, and one which the claimant recognises in her email of 20 October 2025, that she has renewed her application for disclosure. That is a matter which a judge can take up at the next case management hearing.

Case management hearing

116) **I direct that a case management hearing be listed by video**, to deal with (as necessary) any applications for specific disclosure of documents and or general disclosure of documents as well as timetabling the case through to the final hearing as appropriate. I add this: it is not in any party's interest that this matter runs on for longer than it has to; the parties ought to be co-operating with each other to assist the tribunal in achieving the overriding objective. That means that although they disagree about the rights and wrongs of the case itself, they must co-operate with each other in relation to agreeing case management matters. That requires the parties to engage with each other in dialogue (most of which the tribunal does not

need to be copied into). The case is now at a point, regardless of appeal, where the parties ought to be able to co-operate with each other to agree a timetable through to trial. I very much hope that they feel able to do this and not to use large amounts of public time and resources over matters which, with co-operation, could be matters of agreement. One point which the parties ought to bear in mind is that even if case management on this case starts immediately, it will not come on for hearing for a considerable period of time, and probably much longer than either the claimant or the respondent think probable.

117) As to the application to sist the main proceedings, the claimant argues for a sist until the written reasons are provided (which has now been done). She referred to **Bache** v **Essex County Council** [2000] IRLR 251 in support of the argument in support of a sist. However it seems to me that if the Employment Appeal Tribunal permits an appeal to proceed, it can make directions to ensure that the appeal hearing is expedited in the light of any deadlines within the tribunal proceedings, and, as such, failing to sist does not prevent the claimant from participating in proceedings. If the parties co-operate with one another there is no reason why proper and ordinary case management of this case cannot take place. Any appeal will be concerning the discrete point about whether an interim relief order ought to have been made, so I do not understand why the existence of an appeal on that issue should hold up the case management which will have to take place in any event (and it is simply a question of when that takes place).

Date sent to parties **03 November 2025**