



EMPLOYMENT TRIBUNALS

Heard at Croydon (by video) **On** 24 November 2025

Claimant Ms Kristine Turlo

Respondents (1) Zotefoams plc & (2) Clare Farmer

Before Employment Judge Fowell

Appearances

Claimant Mr Ariyan Hawez, lay representative

Respondent Simon Robinson, Partner, Robinson Ralph Ltd

JUDGMENT ON A PRELIMINARY ISSUE

1. The application for interim relief is allowed.
2. The claimant is reinstated to her former role with first respondent pending the determination or settlement of her complaint of automatically unfair dismissal under section 103A Employment Rights Act 1996.
3. The claimant's application to rely on a document, inadvertently disclosed by the respondent and containing litigation advice privilege, is refused.

REASONS

Introduction

1. These written reasons in relation to the application for interim relief are provided at the request of the respondent. I was not asked for reasons in relation to a separate decision made at this hearing, on the admissibility of a document covered by legal advice privilege, but those reasons can be requested separately if need be.
2. As usual, some editing has taken place for the sake of clarity, and here and there some points are expanded, so these written reasons shall stand as the final version.
3. Ms Turlo has brought a claim for automatically unfair dismissal on the basis that she is a whistleblower, i.e. that she made protected disclosures, and at the same time has made this application for 'interim relief'.

4. Interim relief is a powerful remedy. It can involve reinstatement or re-engagement, or even an order that the contract of employment continues until the final hearing. That would mean that Ms Turlo could continue to be paid until then, and even if she lost her case in the end she would not have to pay the money back.
5. All that requires the claimant to succeed. Section 129 states that an application can succeed where it is 'likely' that the Tribunal will ultimately find in her favour, i.e. that they will conclude that the principal reason for dismissal was that she had made a protected disclosure.
6. How likely is 'likely'? The Employment Appeal Tribunal decided in the case of **Taplin v C, Shippam Limited** [1978] ICR 1068 that this meant that the claim needed a 'pretty good chance' of success.
7. That case has been considered more recently by the Employment Appeal Tribunal in **Ministry of Justice v Sarfraz** 2011 IRLR 562, EAT. There, Mr Justice Underhill held that 'likely' does not mean simply 'more likely than not' but connotes a 'significantly higher degree of likelihood', i.e. 'something nearer to certainty than mere probability'.
8. It is also important to bear in mind that the claimant has to show this likelihood of success (or near certainty) overall. In a typical whistleblowing case there may be several issues - whether there was a legally protected disclosure, whether it was made in the public interest and whether the disclosure was the principal reason for the dismissal. Any weak link in that chain would mean that interim relief is not appropriate.

The appropriate test and approach

9. It is of course very difficult to assess these probabilities at a short hearing of this sort and without hearing any oral evidence. In fact, rule 94 of the Employment Tribunal Rules of Procedure provides that the Tribunal 'must not hear oral evidence' unless it directs otherwise.
10. In **Al Qasimi v Robinson** EAT 0283/17 Her Honour Judge Eady QC explained the correct approach:

'By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus **very much an impressionistic one**: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her

case, and to explain the conclusion reached on that basis' [Emphasis added]

11. So, I have to form a view on the material available whether there is a pretty good chance overall (in the sense of much nearer to certainty than an even chance) that this claim will succeed in due course.

The evidence presented

12. Witness statements have been provided from Ms Turlo and from Mr Agnew on behalf of the company. He was the Financial Controller and it was his decision to make Ms Turlo redundant.
13. Ms Turlo says in her statement that she joined the company in November 2022 as Payroll Administrator and that as she became more familiar with the system she identified a number of significant compliance risks, the first being that salary was being deducted under a salary sacrifice scheme from women on statutory maternity pay. She says that she raised this concern with her line manager and later with the HR team and was told that the deductions reflected company policy. She then escalated that concern to the Financial Controller who confirmed that the deductions were unlawful and needed to stop. The affected employees then had to be reimbursed. No evidence was presented today to challenge that point.
14. She goes on to say that shortly afterwards she was removed from HR team meetings and told that her attendance would be project-based from then on.
15. Her statement then makes reference to a colleague, AK, a member of the HR team who has since brought her own tribunal claim. AK was more receptive to her disclosures, treated the matter seriously and supported corrective action. It seems that AK went on to raise her own whistleblowing disclosures and according to Ms Turlo that further affected her own position - she was asked not to speak to AK. Members of the HR team, she says, reacted negatively to their co-operation and she was then viewed with hostility.
16. That all took place in late 2024. She goes on to say that in January 2025 she identified further issues including unpaid overtime and breaches of the national minimum wage. These appear to be similar concerns to the earlier ones about maternity pay, the principle being that wage deductions cannot be made below a certain level. Again, she says that her concerns were ignored. A new senior HR Business Partner joined in March 2025, she repeated her concerns and was told to wait and see. Her workload then increased and, she says, there was visible irritation towards her in meetings. However, in August 2025 these breaches were finally accepted by the business as accurate and the company then refunded over £100,000 to factory workers who had been underpaid. Again, no specific evidence has been advanced to dispute that point.

17. Ms Turlo goes on in her statement at paragraph 20 to say that at the same time, in August 2025, a decision was taken to replace her with a Payroll Manager. She makes the point that she was not informed about this at the time and was not given any opportunity to apply for that role; in fact her position was placed at risk on 2 September and the new Payroll Manager was appointed on 3 September. Hence, the reason put forward by the respondent for her dismissal was on grounds of redundancy.
18. Looking at the relevant legal tests, the first question is whether she made a protected disclosure, as defined by s.43A of the Act. Pointing out that people are being underpaid appears to be a clear disclosure of information that the company “has failed, is failing or is likely to fail to comply with any legal obligation to which [it] is subject.” In fact it is difficult to see how that can be disputed. The fact that there was a substantial reimbursement of wages shows a breach of a legal obligation.
19. The next question is whether this was made in the public interest. That test has been considered in a number of cases, particularly in **Chesterton Global Ltd and anor v Nurmohamed (Public Concern at Work intervening)** 2018 ICR 731, CA. That case concerned disclosures about accounting practices at the firm and the Court of Appeal identified a range of factors that would be relevant including
 - a) the numbers in the group whose interests the disclosure served
 - b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
 - c) the nature of the wrongdoing disclosed
 - d) the identity of the alleged wrongdoer
20. It is not suggested that there was any deliberate wrongdoing here, just that there were shortcomings in the payroll system or an oversight, but clearly to be reimbursing over £100,000 from those on minimum wage there must have been a considerable group affected.
21. Those sums will have been very important to the employees concerned. So, it is difficult to see on what basis the respondent could dispute that these issues were raised in the public interest. Certainly, there was no particular interest personal to Miss Turlo being served. But even if that is incorrect, she only needs to show that she had a reasonable belief that the disclosure was in the public interest, and that seems to be even more difficult to dispute.
22. If Ms Turlo can establish that she did make a protected disclosure, the next question is whether she was dismissed as a result. By s.103A Employment Rights Act 1996:

“An employee 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.”

23. For such an ‘automatically unfair dismissal’ it is not necessary to have two years’ qualifying service. Those without two years’ service have the burden of proving this principal reason. As explained by the Court of Appeal in **Kuzel v Roche Products Ltd** [2008] IRLR 530, those with two years’ service (as here) just have to provide some evidence to show that it was for a different reason – i.e. whistleblowing. The tribunal may agree, or find that it was for another reason altogether. But there is no particular burden of proof to discharge.
24. The crux of the matter is whether this was a genuine restructuring, as the company say, or a decision to dismiss because of her raising these payroll issues.
25. Mr Askew’s witness statement effectively begins his account on 25 September 2025, when a letter was issued to Ms Turlo setting out the basis of the proposed redundancy, and he says that shortly after that he became involved in the process as the hearing officer, so he was not directly involved in any of the earlier concerns.
26. He does say that Ms Turlo raised these same points in their hearing, and she pointed out that she had a performance score of four out of 5, so it seems at that point he decided to carry out some further investigation. He talked to Claire Farmer, the Chief People Officer (and second respondent), also Ms De Saedeleer, Ms Turlo’s line manager, Sue Scott, Group HRIS Manager and Cavell Weatherley, a Consultant at Frontier Software Limited.
27. He says that he had consistent feedback that Ms Turlo was performing as expected for a payroll administrator but not at the level expected of a payroll manager. Ms De Saedeleer told him that the positive scores were more about her living the appropriate employee values and that she was effective as a payroll administrator but was not over-performing or over-delivering.
28. Also there were said in the witness statement to be “repeated payroll processing errors (around national minimum wage and statutory sick pay)”, which suggests that she was being blamed for the very concerns she was raising. In any event that provides a link between the concerns and her dismissal and that link does not just appear in Mr Askew’s statement but in her dismissal letter.
29. But Ms Turlo’s case is that she was also training on an apprenticeship course at Level 5 to qualify as a payroll manager and had been told in her appraisal that this would place her “in a position to fully manage payroll and support structure in the future.” That strongly suggests that it was expected to make that step up in due course.

30. In those circumstances it does strike me as odd that the company, having invested in her training and development in this way, would suddenly decide that they could not wait for that progression to be achieved, and that the restructuring would simply have to take place immediately.
31. The respondents have submitted that the dismissal was long after the initial concerns were raised, but this decision to restructure was made in the same month as the reimbursements. It was also just announced – it is not a case of announcing a new structure and then asking Ms Turlo if she wanted to apply. That could easily have been done. If she did not want to apply she could have stayed on pending that recruitment exercise, something which might be conceivably have taken a few months. If she did want to apply for that role then it could have been advertised and she could have put her name forward in competition with other applicants. As it was, she was left with no option. No real explanation has been given for the speed or timing of the decision.
32. Drawing those threads together, there is what appears to be a clear protected disclosure, made in the public interest, and the timing and questionable nature of the redundancy exercise is such that it appears (and it is no more than an appearance) that the claim has a pretty good chance of success. Accordingly, the application succeeds.
33. Once that test is met then further questions arise under s.129 of the Act. The first is whether the company is willing to reinstate the claimant and after some uncertainty, they said yes. For these purposes it seems to me sufficient that they are willing to reinstate her to her previous title and level of salary although no doubt there will be discussions to be heard about the division of work between her and the newly appointed Payroll Manager.
34. For her part, Ms Turlo had some reservations about going back. If the company had only been willing to re-engage her in a similar role at the same level then a question would arise as to whether or not she would be willing to return, and if not whether that decision was reasonable. As it is, the company have agreed to reinstate her and that is the end of the matter.

Employment Judge Fowell

Date: 28 November 2025

Sent to parties on:

30th December 2025

For the Tribunal Office

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