



EMPLOYMENT TRIBUNALS

Claimant: Miss A McKinley Waithe

Respondent: Connells Group

Heard at: London South (in person) **On:** 1 December 2025

Before: Employment Judge Hart

Representation:

For the claimant: Litigant in Person

For the respondent: Ms Redman (Counsel)

JUDGMENT having been sent to the parties on 17 December 2025 and written reasons having been requested in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

INTRODUCTION

1. Miss McKinley Waithe applied for interim relief under section 128 of the Employment Rights Act 1996 (ERA 1996) in relation to a claim for automatic unfair dismissal on the grounds that the reason or principal reason for the dismissal was that she had made a protected disclosure under Part IVA ERA section 103A.

THE HEARING

2. The hearing was in person. Miss McKinley Waithe represented herself. The respondent was represented by Ms Redman of counsel.
3. For the hearing I was provided with the following documents:
 - 3.1 An agreed hearing bundle of 151 pages, the references to page numbers in this judgment are to the pages in this bundle.
 - 3.2 A witness statement from Mr Loughnane (on behalf of the respondent)
 - 3.3 The respondent's skeleton argument.
 - 3.4 The claimant's timeline of events.

4. I heard submissions only. The Employment Tribunal Procedure Rules 2024 (ET Rules) rule 94 provides that a tribunal “*shall not hear oral evidence unless it directs otherwise*”. My role at this stage is to form an impressionistic view, not make findings of fact. Therefore, I considered that it was not necessary for me to hear oral evidence. I accepted Mr Loughnane’s witness statement as hearsay and considered it alongside the documents in the hearings bundle and the parties’ submissions.
5. Miss McKinley Waithe’s application for interim relief was refused and reasons were provided orally at the hearing. The respondent requested written reasons on 18 December 2025.

Narrative of events

6. I will set out a narrative of events as they appeared to me on an expeditious summary assessment of the documents I have seen. I stress that I am not making findings of facts but setting out my impression of events emerging from what was placed before me.
7. On 16 October 2024 Miss McKinley Waithe commenced employment with the respondent as a Lettings Manager.
8. On 18 June 2025 Mr Mottram (Senior Branch Manager) submitted a grievance against Miss McKinley Waithe complaining about her behaviour towards himself and others. This was investigated by Mr Woods (Senior Area Director) and on 25 July 2025 he recommended disciplinary action: **pg 78**
9. On 1 July 2025 Miss McKinley Waithe submitted a counter grievance against Mr Mottram about bullying, harassment and discriminatory behaviour: **pg 38**.
10. On 15 July 2025 there was a BBC Panorama documentary about conditional selling practices in the estate agent business. This is a practice where sales negotiators in the office and customers were under pressure to use the in-house mortgage advisor or have their offers refused.
11. On 16 July 2025 Miss McKinley Waithe attended a grievance hearing with Ms Wilson (Area Lettings Manager) to go through her grievance against Mr Mottram. At the end of this hearing in response to the question, what does a resolution look like she suggested moving Mr Mottram to another office. She then stated “*From a business view, he shouldn’t be in the business, reason is he’s unprofessional and I know he conditionally sells*”. This was the extent of her disclosure at this time.
12. On 22 July 2025 the respondent received 3 complaints about Miss McKinley Waithe’s behaviour. An investigation was conducted by Mr Bikerdike (Area Manager). On 12 August 2025 he recommended the matter go forward to a disciplinary hearing: **pg 87**.

13. On 1 August 2025 Miss McKinley Waithe received the outcome of her grievance: **pg 84**. This was that:
 - 13.1 the complaint of threatening behaviour by Mr Mottram and his management style was not upheld;
 - 13.2 the complaint about Mr Mottram's racist and offensive behaviour was partially upheld; and
 - 13.3 the complaints of attendance, timekeeping, conditional selling and suspected drug use, were to be investigated separately.
14. On 18-19 August 2025 the respondent considered whether to investigate the conditional selling allegation separately under the whistleblowing procedure: **pg 96**.
15. On 29 August 2025, Miss McKinley Waithe received a final written warning to remain on file for 24 months: **pg108–109**. This was for:
 - 15.1 bringing or potentially bringing the Group into serious disrepute;
 - 15.2 rudeness to colleagues on multiple occasions; and
 - 15.3 unprofessional and inappropriate conduct and behaviour toward colleagues.

Miss McKinley Waithe was informed that *“a repeat of similar misconduct, or any other instance of misconduct of any kind, could result in further disciplinary action and sanctions being imposed on you which could result in dismissal from the company.”*

16. On 9 September 2025 Ms Dlugoszewska (HR) contacted Miss McKinley Waithe to obtain more details of her allegations of conditional selling. Miss McKinley Waithe responded, stating that she did not wish to provide this information because she felt vulnerable and feared for her job. Ms Dlugoszewska responded stating that the disclosure *“would be protected under the whistleblowing policy, whereby you are protected from retaliation. We will treat the matter anonymously and the subject of any investigation would not be told about the disclosure.”*: **pg 114**. Miss McKinley Waithe did not respond to this email.
17. On 16 September 2025 the respondent received a new complaint from Mr Mottram that Miss McKinley Waithe had given his personal data to a landlord: **pg 110**. This was investigated by Mr Nestor (Area Director). He interviewed Mr Mottram and 3 witnesses in the office who all corroborated the allegation made. He also interviewed the landlord and Miss McKinley Waithe.
18. On 29 September 2025 Mr Nestor submitted his investigation report: **pg 110-113**. He recommended that: *“that this case progresses to a formal disciplinary due to the admission of failing to follow a request from the Senior Branch Manager, which resulted in their personal data being given to a customer without consent.”*: **pg 112**.
19. On 30 September 2025 HR chased Miss McKinley Waithe for a response to its request that she have a discussion with Mr Grafton (Group Head of

Compliance) about her conditional selling complaint: **pg 114**. Miss McKinley Waithe did not respond to this email.

20. On 2 October 2025 Mr Loughnane (Head of Lettings) was asked to conduct a disciplinary hearing in relation to the personal data complaint against Miss McKinley Waithe. On 8 October 2025 Mr Loughnane received Mr Nestor's Investigation report: **pgs110–113**.
21. On 14 October 2025 Miss McKinley Waithe spoke with Mr Grafton. She has not set out in her claim form what was said at this meeting. The same day Miss McKinley Waithe was invited to attend a disciplinary hearing with Mr Loughnane: **p.122–124**
22. On 16 October 2025 Miss McKinley Waithe attended a disciplinary hearing: **p.125–128**. At the end of the with Mr Loughane asked if there was anything to add to which Miss McKinley Waithe responded: *"I have witnessed many things that have never been reported such as conditional selling and racist comments that have not been reported."* Mr Loughnane adjourned the meeting and spoke with Ms Lakomek (HR) and was informed that these issues were subject to a separate investigation. He decided that these issues were not relevant to the disciplinary issue, and due to the final written warning already on file he decided to dismiss Miss McKinley Waithe.
23. On 20 October 2025 Miss McKinley Waithe was sent a letter setting out Mr Loughnane's decision: **pgs 145–147**. He stated that:

"The reason for my decision is the breach of the Group's Data Protection Policy. Specifically, you shared a colleague's personal data with a customer without their consent. While the customer did not open the documents and therefore did not view the information, the act of handing over the paperwork without verifying its contents constitutes a failure to exercise appropriate care and diligence. This breach is not mitigated by the outcome, as the responsibility lies in the action itself.

In addition, you failed to follow a direct instruction from a senior manager. You acknowledged during the hearing that you should have checked the file before sharing it, which further demonstrates a disregard for expected standards.

You were already subject to a live final written warning at the time of this incident. As such, and in line with our disciplinary procedure, the combination of these actions has led to the decision to terminate your employment with notice."
24. On 23 November 2025 Miss McKinley Waithe submitted a claim form claiming automatic dismissal for whistleblowing and interim relief: **pg 5**.

THE LAW

Interim relief provisions

25. Section 128 of the ERA 1996 permits an employee claiming unfair dismissal to apply for interim relief in cases where it is asserted that the reason or principal reason for the dismissal was due to making a protected disclosure (whistleblowing).
26. Under section 129, the test for awarding interim relief is where “it appears to the tribunal that it is likely” that the reason or principal reason for the dismissal was the protected disclosure. This has been interpreted by the courts to mean a “*pretty good chance of success*” i.e. more than 51%: **Taplin v C Shippam Ltd** [1978] ICR 1068 and “*something nearer to certainty than mere probability*”: **Ministry of Justice v Sarfraz** [2011] IRLR 562 (EAT). The tribunal should avoid making findings of fact that may tie the hands of the tribunal at the final hearing. The task at this stage is an “impressionistic one”: **Al Qasimi v Robinson** (EAT 0283/17).

Whistleblowing provisions

27. Section 103A of the ERA 1996 provides that an employee will be regarded 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.
28. In order for a disclosure to be a “protected disclosure” it must satisfy two conditions:
 - (1) it must be a qualifying disclosure made in accordance with section 43B(1) of the ERA 1996; and
 - (2) it must be made in accordance with one of the six specified methods in section 43C-H of the ERA 1996.
29. Section 43B(1) of the ERA 1996 defines a “qualifying disclosure” as:

“... 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—

 - (a) a criminal offence had been, was being or was likely to be committed;*
 - (b) a person had failed, was failing or was likely to fail to comply with any legal obligation;*
 - (c) a miscarriage of justice had occurred, was occurring or was likely to occur;*
 - (d) the health or safety of any individual had been, was being or was likely to be endangered;*
 - (e) the environment had been, was being or was likely to be damaged;*
 - (f) information tending to show any of these things had been, was being or was likely to be deliberately concealed.”*
30. A qualifying disclosure made to an employer will be a “protected disclosure” under Section 43C of the ERA 1996.

DISCUSSION AND CONCLUSION

31. On the case as currently pleaded Miss McKinley Waithe does not have a “pretty good chance” of establishing that she has made a protected disclosure:
- 31.1 The 18 July 2025 disclosure appears on the basis of my impressionistic view of the documentary material to be an allegation not a disclosure of information, since it merely referred to Mr Mottram conditionally selling without providing any detail in support of the allegation.
- 31.2 The 14 October 2025 disclosure is referred to in the claim form but does not set out the details of what was disclosed. Therefore I am not in a position to form a view as to whether it is likely to satisfy the definition of a protected disclosure, but I consider with further and better particulars there is potential that it may.
- 31.3 The 16 October 2025 disclosure is not referred to in the claim form, but in any event appears to be, on the basis of an impressionistic view of the documentary material, an allegation not disclosure of information since it just refers to conditional selling without provided further information.
32. In relation to the disclosure to Mr Grafton on 14 October 2025 (if found to be disclosure of information). Depending on what was disclosed, I am prepared to accept taking Ms McKinley Waithe’s case at its highest that she has a “pretty good chance” of establishing that the disclosure was a protected disclosure and that the disclosure was done in the public interest rather than for any private motive. However, on my impressionistic assessment of the documentary evidence, she does not have a “pretty good chance” of establishing that the reason or principal reason for her dismissal was that she had done this disclosure. This is because:
- 33.1 The complaint against Miss McKinley Waithe which led to her dismissal was made on 16 September 2025, and therefore pre-dated her disclosure.
- 32.1 The investigation into this complaint was conducted and completed by 29 September 2025, and therefore also predated her disclosure.
- 32.2 The internal email correspondence with HR suggests that Ms McKinley Waithe’s disclosure was being taken seriously and HR had reassured her that her disclosure would be confidential and anonymous. On the narrative provided to me there was no evidence that Mr Loughnane was aware of the protected disclosure prior to the 14 October 2025 hearing.
- 32.3 Miss McKinley Waithe raised this issue at the end of the disciplinary hearing. Mr Loughnane adjourned to obtain further information and was informed by HR this was being looked at separately. Mr Loughnane will say in evidence that he concluded that the disclosure was not relevant to the disciplinary issues that he was considering. This provides a potentially plausible explanation, albeit it will need to be tested at a final hearing.
- 32.4 Further, dismissal was a permissible outcome given that the allegations against Mis McKinley Waithe were found proven and she was on a final written warning.
- Therefore, I cannot be satisfied that Miss McKinley Waithe has a “pretty good chance” of showing that her protected disclosure was the reason or principal reason for her dismissal.

CONCLUSION

33. The application for interim relief is refused. This matter will now proceed to a liability and remedy hearing.

This judgment has been approved by:
Employment Judge Hart
Dated: 11 January 2026

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