

Neutral Citation Number: [2026] EAT 38

Case No: EA-2025-001597-NK

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 09 March 2026

**Before :**

**His Honour Judge James Tayler**

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**Between :**

**Mr. O. E. Olarewaju**

**Appellant**

**- and -**

**Bupa Care Services Limited**

**Respondent**

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**Mr. O. E. Olarewaju, the Appellant in person**  
**Timothy Wilkinson (instructed by Clarion Solicitors Limited) for the Respondent**

Hearing date: 4 March 2026  
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**JUDGMENT**

**SUMMARY**

**WHISTLEBLOWING, PROTECTED DISCLOSURES**

The Employment Tribunal did not err in law in refusing an application for interim relief.

**HIS HONOUR JUDGE JAMES TAYLER:**

**The Issue**

1. The issue in this appeal is whether the Employment Tribunal erred in law by providing insufficient reasons for refusing an application for interim relief.

**The Judgment appealed**

2. This is an appeal against the judgment of Employment Judge Sudra refusing an application for interim relief at a hearing on 25 September 2025. The judgment was sent to the parties on 2 October 2025.

**The relevant complaint**

3. The respondent is a provider of long-term care for older people. The claimant commenced employment with the respondent as a Care Assistant on 24 July 2023. The claimant asserted that he was dismissed on 8 August 2025 for the reason, or principal reason, that he made protected disclosures.

**Outline of the relevant law**

4. The term “qualifying disclosure” is defined by section 43B **Employment Rights Act 1996** (“**ERA**”). There must be a 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 matters set out in sub-sections 43B(1)(a) to (f) **ERA**, that in **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ 979, [2018] ICR 731, Lord Justice Underhill described as “wrongdoing”. A qualifying disclosure made to the employer will be a protected disclosure.

5. Section 103A **ERA** provides:

103A. Protected disclosure.

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.

6. On a complaint that a dismissal is automatically unfair pursuant to section 103A **ERA**, an application may be made for interim relief pursuant to section 128 **ERA**:

128 Interim relief pending determination of complaint.

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section.... 103A... may apply to the tribunal for interim relief.

7. Section 129 **ERA** sets the test for granting interim relief:

129 Procedure on hearing of application and making of order.

(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that **it is likely** that on determining the complaint to which the application relates the tribunal will find—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section.... 103A, ... [emphasis added]

8. The statutory test is whether it is “likely” that the section 103A **ERA** complaint will be made out. The authorities demonstrate that the term “likely” requires a greater chance than mere balance of probabilities. To the extent any paraphrase assists, that in **Taplin v. C Shippam Ltd** [1978] IRLR 450 has best stood the test of time: there must be a “pretty good chance of success”.

9. The reasons of the Employment Tribunal should be sufficient for the unsuccessful party to understand why he lost: **Meek v City of Birmingham District Council** [1987] IRLR 250, CA. This does not require a very detailed analysis but that, on a realistic reading of the judgment, the party can understand the reason why the application failed: **Simpson v Cantor Fitzgerald Europe** [2020] EWCA Civ 1601, [2020] ICR 236.

10. Gavin Mansfield QC, Deputy Judge of the High Court, as he then was, said in **Bah v Berendsen UK Ltd** UKEAT/0256/19/AT:

52. In my judgment, the question of the adequacy of Reasons has to be seen as fact specific in its content. Having had regard to the decisions in *Greenwood* and in *Meek*, and in particular the passage in *English v Emery Reimbold* referred to in *Greenwood*, it is clear that there is no bright line as to what amounts to adequate Reasons.. It is a matter of assessment on the facts of a particular case.

11. The context in which the Employment Tribunal is required to provide reasons when determining an application for interim relief is that the Employment Tribunal conducts a broad summary assessment. In **London City Airport Ltd v Chacko** [2013] IRLR 610, Mr Recorder Luba QC said:

Discussion and conclusions

In my judgment the correct starting point for this appeal is to fully appreciate the task which faces an employment judge on an application for interim relief. The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The employment judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant *is* ultimately likely to succeed in his or her complaint to the employment tribunal but whether ‘it appears to the tribunal’ in this case the employment judge ‘that it is likely’. To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance which must of necessity involve a 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.

12. In **Parsons v Airplus International Ltd** UKEAT/0023/16/JOJ His Honour Judge Shanks stated:

[8] On hearing an application under s 128 the Employment Judge is required to make a summary assessment on the basis of the material then before her of whether the Claimant has a pretty good chance of succeeding on the relevant claim. The Judge is not required (and would be wrong to attempt) to make a summary determination of the claim itself. In giving reasons for her decision, it is sufficient for the Judge to indicate the “essential gist of her reasoning”: this is because the Judge is not making a final judgment and her decision will inevitably be based to an extent on impression and therefore not susceptible to detailed reasoning; and because, as far as possible, it is better not say anything which might pre-judge the final determination on the merits.

13. This is not to underestimate the potential importance of interim relief. Where there is material that demonstrates that it is likely that the complaint will be made out, interim relief can provide very significant protection to a whistleblower through the continuation of a contractual right to payment of wages. Conversely, the relatively high threshold for awarding interim relief limits the number of

employers that pay out substantial sums in wages, that may not be recoverable if the complaint fails at the full hearing.

### **The Judgment of the Employment Tribunal**

14. Employment Judge Sudra appreciated that it was not his role to determine the application on the merits or to make findings of fact:

6. I do not make any findings of fact, however, it is useful to summarise the Claimant's claim under s.103A ERA and the parties' submissions.

15. Employment Judge Sudra summarised the material provided at the hearing:

7. I had before me:

- i. a bundle from the Respondent consisting of 84 pages;
- ii. ii. a bundle from the Claimant consisting of 494 pages;
- iii. iii. a witness statement from the Claimant;
- iv. iv. and skeleton arguments (with authorities) from both parties.

16. Employment Judge Sudra confirmed in the reconsideration judgement that the material had been considered.

17. Employment Judge Sudra summarised the protected disclosures relied on by the claimant, although the claimant asserts that he missed one out.

18. The circumstances of the claimant's dismissal were briefly explained:

10. On 7th February 2025 the Claimant was suspended from duty, on full pay, because he was alleged to have committed gross misconduct. Following an investigation into the allegations against the Claimant he was invited to a disciplinary hearing scheduled for 7th August 2025 to be chaired by Bryony John (Home Manager).

11. The disciplinary hearing convened as planned and the Claimant attended and was accompanied by his companion of choice, Bola Popoola. Having considered the evidence available and having had regard to the Claimant's representations, Ms. John decided that the only viable sanction was summary dismissal. The Claimant was informed of Ms. John's decision on 8th August 2025 and he was advised of his right to appeal the dismissal.

19. The claimant's submissions were summarised:

12. The Claimant's submissions were verbose. He said that he made disclosures in good faith as he believed that the Respondent had breached legal obligations and that this had had an adverse effect upon his health. **Although the Claimant's submissions were lengthy, they were mainly concentrated on his belief that there had been a conspiracy to dismiss him and that in order to do this, the Respondent had falsified documents and its staff had colluded to discredit his version of events when he had complained of being sexually assaulted.** The claimant then went through each of his alleged disclosures and explained why he had made them. [emphasis added]

20. Employment Judge Sudra then summarised the respondent's submissions:

13. Mr. Sugarman supplemented his skeleton argument with oral submissions. The law was correctly and fairly set out in Mr. Sugarman's skeleton argument. **I heard that none of the Claimant's disclosures identified a breach of a legal requirement and that they related to matters personal to the Claimant and were incapable of meeting the definition of a protected disclosure.** I was also reminded that in an application for Interim Relief the bar was deliberately set very high, due to the obvious arduous effects a successful application could have on a Respondent, and that '...The Judge is not required (and would be wrong to attempt) to make a summary determination of the claim itself' (*Parsons v. Airplus International Ltd* UKEAT/0023/16/JOJ, 4 March 2016, [2016] All ER (D) 217 (Mar)).

14. **The Respondent had received multiple complaints from several staff about the Claimant's alleged intimidating and aggressive behaviour.** Faced with a plethora of complaints it was said that the Respondent had no choice but to investigate the allegations as it would have been remiss of the respondent not to do so. **The investigation was conducted by a neutral and unbiased manager who had had no previous involvement with the Claimant** and she had undertaken a thorough investigation interviewing at least 13 members of staff. Following the investigation there was a case to answer and thus, a disciplinary hearing was held which had resulted in the Claimant's summary dismissal.

15. Mr. Sugarman submitted that **even on a cursory consideration of the papers it was readily apparent that the Claimant was investigated and dismissed because of his misconduct and not because he had raised concerns** (which the Claimant says were protected disclosures and the Respondent maintains that they were not). There was no nexus between the Claimant's disclosures and his dismissal and the Claimant had failed to raise a prima facie case in this respect. Mr. Sugarman concluded by saying that the respondent had tried to informally manage the Claimant and could have taken formal action at an earlier stage but had not. Therefore, there was a 'pretty good chance' that the Claimant would fail to establish that he had made any protected disclosures and his application for Interim relief was far from being made out.

21. The relevant law was set out in paragraphs, the numbering of which has gone awry, under the heading "The Law". The relevant principles were accurately summarised.

22. I shall return to the conclusion of the Employment Judge when analysing the one ground of appeal that was permitted to proceed.

## The EAT sift

23. The appeal was considered at the sift stage by Marcus Pilgerstorfer KC, Deputy Judge of the High Court. His opinion was set out in a letter sealed on 19 December 2025. Judge Pilgerstorfer dismissed grounds asserting: lack of analysis of the protected disclosures (Judge Pilgerstorfer noted that the Employment Judge decided that the claimant was “not likely to succeed on the issue of causation”); application of the wrong causation test; failure to draw inferences; failure to review documents; overlooking key evidence; not properly applying the interests of justice test for reconsideration; and, alleged irregularities, including an assertion of bias. A challenge to the rejection of these grounds was dismissed by Lord Fairley (P) in a Rule 3(10) Order sealed on 30 January 2026.

24. Judge Pilgerstorfer permitted only one ground of appeal to proceed, stating:

(iii) Finally, the Claimant argues that insufficient reasons were given by the Tribunal. He says the core reasons for rejecting his case were not outlined and that there was no mention of his 5 February 2025 disclosure or care home risks. In relation to this the Tribunal was alive to the guidance in *Parsons v Airplus* cited at (the second) §12 of the judgment. That extract makes the point that reasons on an interim relief adjudication can legitimately be more summary in form than after a final hearing: “the essential gist of [the Judge’s] reasoning” is sufficient. In my view this aspect of Ground 3 does cross the arguability threshold and should proceed to a full hearing. The reasons given by the Judge are brief. Whilst the competing submissions are summarised (Claimant’s case §12; Respondent’s case §15), it is arguable that the operative part of the judgment (see esp (the second) §18) merely states the result without providing the essential gist of why the Claimant had not demonstrated it was likely that his s103A claim would succeed or why the Respondent’s competing case was likely to be preferred. Whether that argument should succeed, or whether the essential gist is given by a fair reading of the judgment as a whole is a matter for a full hearing.

## The conclusion of the Employment Judge

25. The conclusion of Employment Judge Sudra was brief:

18. I conclude that the Claimant has not satisfied that burden (which is a very difficult one to surmount). He has not convinced me that his claim for being dismissed for making a protected disclosure is nearer to certain, rather than a possibility. He has not demonstrated at this very early stage in the proceedings, that it is likely his claim will succeed at a full hearing, nor that it has a pretty good chance of success. ...

20. These are not matters that I can, based on the evidence currently available, assess in such a way as to enable me to conclude that the claimant has a pretty good chance of success.

## **Analysis**

26. It is always necessary to read a judgment as a whole. While the conclusion was brief, I consider when the judgment is read as a whole the primary determination of Employment Judge Sudra clearly was that the evidence provided, on a summary assessment, was not sufficient to reach a conclusion that the claimant was dismissed because of making protected disclosures, rather than because of the misconduct that was alleged against him. While I would not go quite as far as Judge Pilgerstorfer who suggested that the sole basis of the analysis was that it was not likely that causation would be made out, it clearly was the main plank of the decision. The claimant asserted that allegations and documents were falsified, there was a conspiracy to dismiss him and that staff had colluded to discredit his version of events. Such assertions are difficult to establish. The respondent provided documents demonstrating that complaints had been made against the claimant, they were investigated and the dismissal was decided upon by an independent manager. This is clear from the judgment of Employment Judge Sudra, even if not spelt out again when the conclusion was reached. The bundle included a witness statement from the dismissing officer.

27. In his oral submission at the EAT, the claimant focussed on the assertion that Employment Judge Sudra did not refer to an alleged protected disclosure on 5 February 2025, in which he sought reasonable adjustments and asserted that there were risks in the care home. This was not referred to in the claim form, and I do not consider that the Employment Judge can properly be criticised for limiting consideration to the pleaded case, despite the fact that the disclosure was referred to in the claimant's witness statement and included in the bundle. More importantly I consider it is clear that Employment Judge Sudra focussed on the issue of causation.

28. Employment Judge Sudra had to form an overall summary assessment, on the basis of the evidence before him, of whether it is likely that the claimant was dismissed for the reason, or principal reason, that he made protected disclosures. On a fair reading of the judgment overall I consider it is clear that Employment Judge Sudra concluded that such an outcome was not likely because there was

a documented process that supported the dismissal having been for reasons related to the claimant's conduct.

29. It would not have been appropriate for the Employment Judge to make findings of fact. The assessment of Employment Judge Sudra that it is not likely that the complaint will be made out is not a finding of fact. It is an initial assessment, that might be proved wrong once the full evidence is heard.

30. I appreciate the very difficult financial circumstances of the claimant and the health issues he faces. I also note what he says about his very difficult personal circumstances.

31. I have to consider the one ground of appeal before me and I have concluded that the reasoning of the Employment Tribunal, while brief, was sufficient to tell the claimant why his application for interim relief failed. The appeal is dismissed.