Case Number: 6002340/2026

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms K Fox	**v**	Virium Technology Limited

Heard at: Bury St Edmunds by CVP **On:** 20 February 2026

Before: Employment Judge K J Palmer (sitting alone)

Appearances
For the Claimant: Ms E Stearn (Counsel)
For the Respondent: Ms B Omotosho (Solicitor)

RESERVED JUDGMENT
Pursuant to an interim relief application conducted by CVP

1. The Claimant's application for interim relief is refused.

RESERVED REASONS

1. This hearing was listed before me for one day to determine the Claimant's application for interim relief under sections 128-129 of the Employment Rights Act 1996 ("ERA"). This is an application against the Respondent on the grounds that the Claimant alleges that she was automatically unfairly dismissed for "whistleblowing" under section 103A ERA.

2. I had before me a bundle running to some 84 pages. I had a witness statement from the Claimant. On the morning of the hearing I received further documentation including a witness statement from Mr Kevin Burrows of the Respondent, a further additional bundle running to some 25 pages and a skeleton argument in writing from Ms Stearn. These additional documents were not forwarded to me in time for the commencement of the hearing. In fact, they were sent through by Ms

Stearn to my clerk and forwarded on to me at 10.40 am. The upshot is that the parties were therefore not in a position to proceed at 10.00 am and some time was lost on the morning of the hearing getting important documents through to me, all of which resulted in us being unable to complete today's hearing and necessitating my having to reserve my judgment. This is unfortunate. Both parties were equally complicit.

3. I heard detailed oral submissions from both advocates and have had regard to all the evidence and those submissions in arriving at my decision.

THE LAW

4. It is well established that interim award applications are usually conducted on the basis of documents only and without calling oral evidence pursuant to Rule 94 of the Employment Tribunal Rules of Procedure 2024.

5. There is little dispute between the parties as to the law in respect of this application. The application is pursued under section 129 of the ERA 1996 and has been amplified by case law. The applicable test is whether "applying Taplin v C Shippam [1978] IRLR 450 the Claimant has a "pretty good" chance of succeeding in proving that the sole or principal reason for her dismissal was she had made one or more protected disclosures.

6. In Ministry of Justice v Sarfraz [2011] IRLR 562 EAT, Underhill P, stated with reference to the test in Taplin that:

"In this context "likely" does not mean simply "more likely than not" – that is at least 51% - but connotes a significantly higher degree of likelihood. Simler J understandably declined to express that higher degree in percentage terms, since numbers can convey a spurious impression of precision is what is inevitably an exercise depending on the Tribunal's impression…

… the Judge had understood the essential point which emerges from Taplin:

"likely" connotes something nearer to certainty than mere probability…"

7. Where an employee claims that he or she was dismissed contrary to section 103A ERA, the question for consideration is whether the protected disclosure was the reason or principal reason for the dismissal. If it was, then the dismissal will be automatically unfair.

43BDisclosures qualifying for protection.

(1)In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

(a)that a criminal offence has been committed, is being committed or is likely to be committed,

(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d)that the health or safety of any individual has been, is being or is likely to be endangered,

(e)that the environment has been, is being or is likely to be damaged, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

8. There are two separate requirements here:

   (a) A genuine belief that the disclosure tends to show a relevant failure in one of the five respects (or deliberate concealment of that wrongdoing) ; and
   (b) That belief must be a reasonable belief. Reasonableness involves applying objective standards to the personal circumstances of the disclosure.

9. If the disclosure has a sufficient degree of factual context and specificity, then that belief is likely to be regarded as reasonable (Kilraine v London Borough Wandsworth [2018] ICR 1850. The belief has to be that the information in the disclosure **tends to show** the required wrongdoing not just a belief that there is wrongdoing. The disclosure may still be a protected disclosure even if the information does not stand up to scrutiny. A belief may be a reasonable belief and even if it is wrong (Babula v Waltham Forest College [2007] ICR 1026).

10. There must be a reasonable belief on the part of the worker that the disclosure was in the public interest. This requirement has two components – first a subjective belief at the time that the disclosure was in the public interest; and secondly, that the belief was a reasonable one.

11. The EAT observed in Dobbie v Feltham t/a Feltham Solicitors [2021] IRLR 679: “If the aim of making the disclosure is to damage the public interest it is hard to see how it could be protected”.

12. In Parsons v Airplus International Ltd EAT 0023/16, the parties disagree as to what the principal reason for dismissal was and whether the disclosures made by the Claimant amounted to protected disclosures. An employment

judge refused the Claimant's interim relief application noting that whilst some of the disclosure made were likely to be found to be protected disclosures, resolution of the issue whether these form the principal reason for dismissal was less clear cut. Given that the employer was contending that it was the manner in which the disclosures were made and not the fact of them being made that had led to the Claimant's dismissal, the Employment Judge observed that there was a potential issue as to whether motivations could be separated in this way and that a resolution would depend on fact finding in a careful analysis of the issues following consideration of the relevant case law. While a claimant had a "good arguable case", the Employment Judge was unable to say, at the interim relief application stage, that she had a "pretty good chance of success". On appeal the EAT agreed that it was not appropriate at the interim stage relief to resolve any conflicts in the authorities or to reach a final view on the law of causation in the context of protected disclosure.

13. In Shinwari v Vue Entertainment Limited UKEAT/0394/14, Simler J held:

"In my judgment there is nothing… that prohibits the drawing of a distinction between the making of protected disclosures and the conduct by the employee that follows which, were then related to those disclosures, is separable from them. Of course, care must be taken to ensure that an argument to that effect advanced by an employer is properly scrutinised so that the legislation is not abused. But there is nothing, in my judgment, in principle to suggest that such a distinction cannot be drawn".

Conclusions

14. The Claimant seeks interim relief under section 129 ERA. In summary, the Claimant must show that there is a pretty good chance that the Tribunal will find that:

    1. She made protected disclosures to the Respondent:
    2. She believed that it, or they, tended to show, one or more of the matters itemised in section 43B(1)(a) – (f) ERA
    3. That her belief was reasonable.
    4. That she believed that the disclosures were made in the public interest.
    5. That that belief was reasonable, and
    6. That the disclosures were the cause, or the principal cause of her dismissal.

15. The Claimant relies on two protected disclosures. The Claimant started her employment with the Respondents in April 2024 and was dismissed on 9 January 2026, purportedly by reason of redundancy.

16. The Claimant's responsibilities included sales strategy, organic growth initiatives, customer relation management and procuring/upselling to existing clients, product and vendor sourcing and the development of revenue generating.

17. The Respondent provides tailored IT solutions for businesses including housing development, networking and security. The first disclosure is an alleged verbal communication on 13 November when the Claimant was in a meeting with Mr Burrows, the Managing Director of the Respondent, Mr Holloway, who is a consultant and two other employees who were in the Claimant's department. The contents of that discussion appear to be the subject of a factual dispute. The witness statement before me from Mr Burrows does not accord with the Claimant's version of events. There is a document headed "minutes of that meeting" before me in the bundle at page 25. The subject matter of the Claimant's alleged disclosure was the TPS register, which is the telephone preference service. This is mentioned in those minutes at paragraph 3.

18. Interestingly, in the Claimant's subsequent grievance outcome at page 59 of the bundle in front of me, the Respondents accept that during the course of this meeting the Claimant made a verbal disclosure which constitutes a protected disclosure for the purposes of section 43B.

19. However, in submissions Ms Omotosho points out that the fact that the Respondents, in their grievance outcome accepted that the verbal disclosure relied upon on 13 November was a disclosure is not relevant to the issue as to whether it was or not in law.

20. The second disclosure relied upon is a written one set out in an email that was before me at paragraph 77 of the bundle and also relates to the question of the TPS screening before making calls to generate sales leads that had been discussed in the meeting of 13 November.

21. The Respondents do not accept that this was a protected disclosure nor have they done at any stage.

22. That email was responded to by Mr Holloway and covered, amongst other things, the TPS screening discussed at the 13 November meeting.

23. So that, in essence, it is the Claimant's case that similar concerns were raised at the 13 November meeting and in writing on 19 November. It is on the basis of these two purported disclosures that the Claimant relies.

24. She says she was dismissed or that the principal reason for her dismissal was because of these disclosures and she asserts that they are protected disclosures under 43B of the ERA.

25. Only a matter of a few days later there took place a shareholder meeting in which a decision was taken to close down the sales department.

26. I have minutes of that meeting before me in the bundle at pages 28-31. Those minutes set out that those present were Mr Burrows, a Miss Claudia Weiniger and Daniel Stone. The minutes set out a rationale for a business decision based upon lack of revenue being generated by the sales team and conclude that up to that point in 2025, sale of marketing had generated zero income with a year to date expense to support that department of £140,000.00. The rest of the business comprised of service desk,

operations and infrastructure had all generated a profit amounting to some £865,000.00. Whereas sales and marketing had actually lost £140,000.00. The document, which is a lengthy and comprehensive document sets out that three individuals would be at risk of redundancy in the sales and marketing team. That is the Claimant, a Mr Fitch and a new employee, Miss Kahnom, would all be at risk of redundancy.

27. Pursuant to the shareholders meeting a redundancy process was commenced on 4 December 2025. It was paused because the Claimant raised a grievance on 11 December, alleging, amongst other things, that she was being mistreated by reason of her protected disclosure. The redundancy was put on hold until the outcome of the grievance on 23 December and was reconvened in January with the Claimant being dismissed, purportedly by reason of redundancy on 9 January 2026.

28. It is the Claimant's case that the redundancy was a sham and not genuine. The detailed minutes before me in the bundle the Claimant says were not disclosed during the course of emails she sent to the Respondent seeking minutes of the shareholders meeting and that these were not disclosed by the Respondents until this hearing. The suggestion is that these have been created after the event for the purposes of this hearing and are therefore essentially fabricated.

Interim relief – not applicable to redundancy.

29. The Respondents argue that the true reason for the dismissal is redundancy and that as a result, interim relief is not available in such circumstances. They refer me to the case of Bombardier Aerospace – Short Brothers PLC v McConnell [2007] NICA 27. They say pursuant to the authority of this case interim relief is not available where the true reason for dismissal was redundancy.

30. They argue that it is the Claimant's case that only the procedure relating to the redundancy dismissal was a sham. The Claimant's counter that argument on the basis that that is not what they are asking the Tribunal to determine. They consider the whole redundancy dismissal to be a sham and that the reason for the dismissal is that the Claimant was earmarked as a troublemaker and Mr Burrows, with the assistance of Mr Holloway, decided to get rid of her.

31. It is important to remember that in this decision I make no findings which could bind a subsequent Tribunal.

32. I simply have to apply the test set out above to determine whether there is a pretty good chance that the disclosures relied upon would be protected and, if so, whether there is a pretty good chance that the Claimant will be able to show that the reason or principal reason for the dismissal was those protected disclosures or one of them.

33. I am not here to determine the genuineness of the redundancy or otherwise, save in respect of answering those above questions.

34. In both the written submissions from both advocates and the oral submissions I have been asked to consider a number of factors in weighing my decision in respect of the "pretty good chance" test.

35. The Claimant's Ms Stearn, asked me to consider the proximity of the alleged disclosures to the then redundancy in that the two disclosures relied upon were only a matter of days before the shareholder meeting where a decision was taken to close down the Claimant's department. Ms Stearn also says that whilst on the face of it there were three individuals in that department who were then subjected to a redundancy consultation procedure, that is a sham in that one, Mr Fitch was offered an alternative role which he took up in due course and the other was an employee recently hired. She argues that this illustrates that it is highly likely that the redundancy was a sham.

36. She draws my attention to the suspicious emergence of the detailed minutes for the purposes of this hearing when all attempts by the Claimant, during the redundancy process and the grievance process to elicit minutes had proved fruitless.

37. Ms Omotosho, on behalf of the Respondents, argues that of twelve members of staff within the Respondents , three members were put at risk. One was redeployed and two were dismissed, one of which was the Claimant. She refers me to the Bombardier case and says that an interim relief application was not appropriate where there is a genuine redundancy. She says it was a genuine redundancy on the basis that the department in question ceased to operate and there was good reason for closing it down because it had made no revenue at all.

38. Ms Stearn points to activities within that department in the latter part of 2025, shortly before the purported redundancy decision was taken. She said the Claimant and others in the team were given a pay rise, that there was a refurbishment of their office space and all of this points to the decision being taken on 26 November to shut the department down, being purely a reaction to the Claimant's disclosures.

CONCLUSIONS

39. The test applicable that I have set out above is a high bar. What is being sought by the Claimant is a continuation of her contract during the course of these proceedings or reinstatement. All parties, however, agreed that for the purposes of practicability, even if I were to conclude that this application for interim relief was well founded, it would be unlikely that it would make sense for me to order reinstatement in light of the breakdown in relations between the Claimant and those at the Respondents. However, the Claimant seeks continuation of her contract throughout the course of these proceedings which could be lengthy. The bar, therefore, for me to make an award is high.

The first protected disclosure.

40. This was a verbal disclosure made in the meeting of 13 November. I had documents in front of me that purport to be minutes of that meeting. Mr Borrow's witness statement in front of me paints a different picture of the discussion, the subject matter of the Claimant's alleged protected disclosure. It is true that in the grievance outcome the Respondents accepted that this amounted to a disclosure but I accept Miss Omotosho's submissions that that is irrelevant. What matters is whether a Tribunal concludes that it was so protected. Without further detailed analysis of evidence which will be given about that meeting and those discussions, which are likely to involve disputes of evidence between the parties, I cannot conclude that the high bar set out in the legal analysis above, has been cleared by the Claimant. I cannot therefore say that there is a pretty good chance that this would amount to a protected disclosure. There is always a lack of certainty with respect to protected disclosures relied upon which are made verbally and it will be necessary for the evidence to be fully tested at trial to determine whether this amounts to a protected disclosure under section 43B.

The second protected disclosure

41. This is the email of the 19 November from the Claimant to Kevin Burrows and Ian Holloway. This, to an extent, continues the discussion about TPS screening that was clearly part of the subject matter in the discussion on 13 November. Whilst on the before me seems that there is a pretty good chance that that second disclosure will be a qualifying and protected disclosure where the Claimant's claim fails is that I cannot conclude, on the basis of the evidence before me, that the very high bar has been crossed for me to draw a conclusion that there is a pretty good chance that is nearer to certainty more than probably that the Claimant will be able to show that the dismissal was due principally to one or more of the disclosures.

42. My reasoning as to why I do not conclude that the Claimant will have a pretty good chance of showing that the reason, or principal reason for the dismissal was the disclosures is that despite the proximity of those alleged disclosures to the redundancy process, there does, on the face of it at least, appeared to have been conducted a detailed analysis of the company's position prior to the decision to terminate the sales and marketing team. That is set out in a document which is before me. The Claimants dispute the genuineness of that document but that is something that will have to be tested at trial. Certainly a decision was taken and it is not for a Tribunal to look behind the logic or sense of that decision unless there is overwhelming evidence that the decision is a sham. On the face of it, the sales and marketing team were making a loss and a commercial decision was taken to close down that department. Three individuals were placed at risk and all were treated the same on the face of the evidence before me with one being redeployed and two being dismissed, one of whom was the Claimant.

43. In summary, therefore, I cannot conclude that the Claimant has a pretty good chance of succeeding in her claim for automatic unfair dismissal under section 103A.

44. For those reasons the application for interim relief is dismissed.

Approved by:

Employment Judge K J Palmer

Date: 5 March 2026

Sent to the parties on: 17 March 2026

.....
For the Tribunal Office

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or Reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/