EMPLOYMENT TRIBUNALS

Claimant: **Mrs L Mitchell**

Respondent: **Radfield Homecare**

Heard at: **Croydon (via CVP)** **On:** **23 January 2026**

Before: **Employment Judge Leith**

Representation
Claimant: In person (with her son, Mr Mitchell)
Respondent: Mr Peel (Legal Consultant)

JUDGMENT having been sent to the parties on 26 February 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. This is the Claimant's application for interim relief. I heard the application on 23 January 2026. I heard submissions from the Claimant, and from Mr Peel on behalf of the Respondent. I had before me a bundle of 188 pages (which included a witness statement prepared by the Claimant for the purposes of the interim relief application). References in [square brackets] are to pages within that bundle.

Law
Interim relief

2. Section 128 of the Employment Rights Act 1996 provides as follows:

> **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 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
> (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

3. Section 129(1) deals with the test for an interim relief application. It provides as follows:

(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 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.

4. In the case of *Taplin v C Shippam* [1978] ICR 1068, the EAT noted that the correct test to be applied is whether the Claimant has as "pretty good chance of success" at full hearing. This is a significantly higher test than "more likely than not" – *Wollenberg v Global Gaming Ventures (Leeds) Ltd and anor* EAT 0053/18. The "likely to succeed" test applies to all disputed elements of the claim.

5. In *Al Qasimi v Robinson* EAT 0283/17, Her Honour HHJ Eady described the correct approach to such applications as follows:

'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; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied.'

Disclosure

6. A protected disclosure is defined in section 43A of the Employment Rights Act 1996 as a qualifying disclosure (as defined in s.43B) which is made by a worker in accordance with any of sections 43C to 43H.

7. In order for a disclosure to be protected, the worker must have a reasonable believe that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur. The test contains both a subjective and an objective limb. The worker must subjectively believe that the information disclosed tends to show one of the relevant failures, and that belief must be objectively reasonable (*Phoenix House Ltd v Stockman* [2017] ICR 84 EAT). The worker's individual circumstances are to be taken into account, but an objective standard is applied (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 EAT).

8. The worker must also reasonably believe that the disclosure is in the public interest. The term "public" can refer to a subset of the general public, even one composed solely of employees of the same employer. In order to be in the public interest, a disclosure does not need to serve the interests of person outside the workplace. Even where a disclosure is personal in character, there may be features of the case that make it reasonable to regard disclosure as being in the public interest (*Chesterton Global Ltd v Nurmohammed*). The Court of Appeal in *Nurmohammed* set out four factors which are of assistance:

    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, and
    d. the identity of the alleged wrongdoer.

Automatically unfair dismissal

9. Section 103A of the Employment Rights Act 1996 ("ERA") provides as follows:

> "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."

10. The reason for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to dismiss, or which motivates them to do so (*The Co-operative Group v Baddeley* [2017] EWCA Civ 658).

Background

11. In reciting the factual background, I am not making findings of fact that bind Tribunal at final hearing.

12. The Claimant was employed by the Respondent as a domiciliary care worker

13. On 29 October 2025, a manager posted details of a new client in the work WhatsApp group, noting that the client was HIV positive [171]. The message noted that the details were not for discussion in the group chat, and that any concerns should be shared with management. The message also encouraged carers to read the care plan before each visit.

14. The Claimant checked the client's care plan, and became aware that he additionally had a diagnosis of viral hepatitis. There is some dispute over whether there was any need for the Claimant to do so – the Respondent's position is that the client lived in an area which the Claimant did not and would not be required to cover.

15. On 10 November 2025, the Claimant asked her Trade Union for advice. She was advised to check whether the Respondent had any specific policies and procedures in place for blood borne viruses. The Claimant could not find any specific reference to clients with blood borne viruses in the Respondent's infection control policy. She undertook some research regarding Hepatitis B.

16. On 10 November, the Claimant emailed her supervisor, Caroline Sadler, asking of there were any policies and procedures for working with clients with Hepatitis B. She also explained that based on her research, employers should be providing appropriate training and immunisation [70]. Ms Sadler responded that she would forward the Claimant's email to two other mangers, Jo [Garder] and Samuel [Holmes].

17. On 11 November 2025, the Claimant emailed Ms Gardner about the same concerns. Ms Gardner responded that she would look into them and get back to her.

18. On 12 November 2025, Ms Gardner responded substantively to the Claimant. She explained that Respondent's policies used "universal precautions" language rather than referring specifically to blood-borne viruses ("BBVs"), but that the controls did cover the risk from BBVs. She explained that the Hepatitis B vaccine was only recommended for workers who were at risk of injury from blood-contaminated sharps, or of being deliberately injured or bitten by patients/clients [76].

19. The Claimant replied on 13 November 2025 asking if there were specific policies on working with clients who had tested positive for Hepatitis B or who were HIV positive.

20. Also on 13 November, the Claimant contacted the CQC and the HSE. She sought guidance from the HSE about BBVs and infection control. She explained to both the CQC an the HSE that staff had not been provided with appropriate training, policies or procedures.

21. Also on 13 November 2025, the Claimant exchanged a number of WhatsApp messages with Shani, the Respondent's Infection Control Officer, in which: [179]

    a. The Claimant explained that the Respondent should have specific policies and procedures and training for dealing with Hepatitis B and HIV, and should also provide the Hepatitis B vaccine.
    b. Shani responded that under infection prevention and control they wear more protecting clothing for covid than for HIV or Hepatitis B
    c. The Claimant explained that she had spoken to "health and safety" that morning and that they had said that the Respondent was not following the proper procedures.
    d. In response to a query about what procedures were not being followed, the Claimant explained that the Respondent had no specific polices and procedure on working with clients with Hepatitis B, no advice on what staff should do if they get a cut or on waste disposal, and that staff should be given a Hepatitis B vaccination.

22. On 15 November 2025, the Claimant was removed from the Respondent's WhatsApp group. On 17 November, she was suspended from work.

23. The Claimant was invited to an investigation meeting, which was conducted by Samuel Holmes, Director on 20 November 2025 [142]. The notes of the meeting recalled that during the meeting the Claimant described what she had done as whistleblowing, and Mr Holmes informed the Claimant that she was not covered by the whistleblowing policy. When the Claimant then asked for a copy of the policy, he refused to provide it to her. He explained that he did not consider it was whistleblowing because it was not in the public interest, as the disciplinary as about the Claimant being investigated

for breach of confidentiality and misconduct. When the Claimant then asked him what whistleblowing is, he replied “please don’t try and divert the meeting”.

24. Later on in the meeting, the notes recorded that Mr Holmes described the Claimant reporting matters to the CQC and Health and Safety as “maliciously motivated”, and explained that that characterisation was because it was “deliberately intended to cause disruption and undermine the management team”.

25. The Claimant was then invited to a disciplinary hearing to take place on 12 December 2025. The meeting was postponed to 19 December 2025 at her request.

26. Shortly before the hearing was due to start, the Claimant raised a grievance. She requested that the grievance be dealt with before the disciplinary hearing. The Claimant then did not attend the disciplinary hearing, as she had not had a response regarding her grievance. The disciplinary hearing was then apparently conducted in the Claimant’s absence.

27. On 22 December 2025, the Claimant was sent a letter notifying her that she was summarily dismissed.

28. The letter referred to four allegations, each of which was upheld;

    a. Breach of confidentiality and data protection. The outcome letter referred to the Claimant accessing the client’s care record without having any need to do so, then disclosing medical information to colleagues who were not involved in the client’s care, and sharing confidential client information via WhatsApp, which was said to be inappropriate.
    b. Malicious misinformation to colleagues and external parties – the outcome letter referred to the Claimant sending WhatsApp messages to colleagues containing inaccurate, exaggerated and unsubstantiated claim, accusing management of lying and putting staff at risk, and escalating concerns externally without allowing internal processes to address the matter.
    c. Breach of trust and confidence – the outcome letter referred to the Claimant escalating routine matters to external bodies without justification, and refusing to accept explanations or guidance provided by management and misuse of whistleblower protections.
    d. Failure to attend the disciplinary hearing.

<u>Conclusions</u>

29. Against that background, I turn then to consider the Claimant's application, bearing in mind the necessarily impressionistic view that I must take.

30. I start with the disclosures relied upon. The Claimant relies on the disclosures to the HSE and CQC, and also to the infection control officer on 13 November 2025.

31. It seems to me to be unarguably correct that:
    a. Each of those, on the Claimant's case, contains a disclosure of information, which tends to show at the very least that the health and safety of individuals may be at risk.
    b. The disclosure to the infection control officer was to Claimant's employer, and the HSE and CQC are prescribed bodies.

32. The Respondent's position is that the disclosures relied upon were not in the public interest, because they were merely about the Claimant's own personal employment relationship and affected her and only her. I do not think that argument is well founded. The Claimant's case is that she was concerned about her colleagues. Bearing in mind *Nurmohammed*, for a disclosure to be in the public interest it does not need to be the interests of the whole of the public – a subset is sufficient. While it will ultimately be a matter for evidence, I think there is a pretty good chance that the Claimant will succeed in showing that she reasonably believed that the disclosures she made were in the public interest.

33. The Respondent's position was also that the Claimant did not believe the information she was disclosing to be substantially true. The Claimant had done a considerable amount of research into the matters she was making disclosures about. It seems to me again that there is a pretty good chance that the Claimant will succeed in showing that she believed the information to be substantially true, and that that belief was objectively reasonable.

34. So it follows then that I conclude that there is a pretty good chance of the Claimant showing that she made a protected disclosure.

35. I turn then to the dismissal. The dismissal letter appears, on its face, to refer to the Claimant's disclosures, by referring to disclosures to "external organisations". I think it is likely that that was a reference to the CQC and HSE. The timing gives rise to a significant concern about the reason for the suspension and subsequent dismissal. So too does the apparently off-hand way that Mr Holmes appeared to deal, in the investigation meeting, with the Claimant's suggestion that she was a whistleblower. What is important, of course, is not whether Mr Holmes objectively believed that she had made protected disclosures, but rather whether the disclosures the Claimant had made were the sole or principal reason for her dismissal.

36. Set against that:

    a. The Respondent's contention in the dismissal letter that the Claimant accessed the client's care record inappropriately appears to be at least arguable. And that is a matter which the Respondent was entitled to take very seriously, given the nature of the Claimant's role and the importance of protecting the confidentiality of the Respondent's clients.
    b. Similarly, the Respondent's contentions in the dismissal letter regarding discussing that matter with colleagues appear to be at least arguable. And of course the timing would equally fit with that being the real reason for the dismissal (or at least a part of it).
    c. It is at least arguable that the Respondent was entitled to take the Claimant's non-attendance at the disciplinary hearing into account. The hearing had already been postponed once at her request. The grievance could reasonably have been perceived as an attempt to filibuster the disciplinary process.

37. The test for automatically unfair dismissal is that the protected disclosures must be the sole or principal reason for the dismissal. Stepping back and taking the impressionistic approach I am required to, I consider that there is enough in the matrix of events surrounding Claimant's dismissal, and the reasons given in the letter, that I cannot be satisfied that there is a pretty good chance of the Claimant showing that the disclosures she relies upon were the sole or principal reason for her dismissal.

38. It follows therefore that the application is dismissed.

Approved by:

Employment Judge Leith

Date: 13 March 2026