EMPLOYMENT TRIBUNALS

Claimant: Dr J Ndikum

Respondent: Chiesi Ltd

Heard at: Manchester (by CVP) **On:** 14 April 2026

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: In person
Respondent: Mr L Murdin, counsel

JUDGMENT in the interim relief application having been approved on 14 April 2026 and written reasons having been requested in accordance with rule 60 of the Employment Tribunal Rules of Procedure, the following written record of the summary reasons provided orally on 14 April 2026 is provided in accordance with rule 60(4B).

SUMMARY REASONS

The Law

1. Under section 129 of the Employment Rights Act 1996 the test is whether it appears to me that it is likely that that the claimant's claim will succeed. Here the relevant claim is that of automatic unfair dismissal due to having made a protected disclosure under section 103A of the Employment Rights Act 1996.

2. The test is whether it is likely that, when determining the complaint, the Tribunal will find that the principal reason for the dismissal of the claimant was that the claimant had made a protected disclosure.

3. In considering whether a claimant is likely to succeed, consideration must be given to all elements of the requisite test. Whether a protected disclosure is likely to be found to have been made, is part of that test. A part of the test is whether it is likely to be found that the principal reason for the dismissal was a protected disclosure made (which was referred to as the causal link in the respondent's submissions).

4. In explaining my decision, I will refer to the case of **Chesterton v Nurmohamed** [2017] EWCA Civ 979, one of the very large number of cases to which the claimant has referred (he summarised it as setting out the public interest four-factor test). That case set out what must be considered when determining whether a claimant reasonably believed that their disclosure of information was made in the public interest.

5. The section 129 test requires me to carry out an expeditious summary assessment as to how the matter appears on the material available, doing the best I can with the argument and untested evidence advanced by each party. This necessarily involves a far less detailed scrutiny of the parties' cases than will ultimately be undertaken at the full hearing. I am not required to make findings of fact. I must make a decision on the likelihood of success based upon a broad assessment on the material available.

6. Likely to succeed, has been said to mean whether the claimant has a pretty good chance of success at the full hearing, which was the test set out in **Taplin v C Shippam Ltd** [1978] IRLR 450, a case to which I was referred by both parties. **Ministry of Justice v Sarfraz** [2011] IRLR 562 said that it meant a significantly higher degree of likelihood than just more likely than not. The burden of proof is more onerous than that at the final hearing.

Conclusions – applying the Law to the Facts

7. What made this interim relief application particularly difficult to determine, was the enormous amount of documentation which I had been provided. The document attached to the claim form containing the particulars of claim had 143 pages, much of it in closely typed relatively dense text. The Tribunal's electronic case file contained 119 documents, the vast majority of which have been provided by the claimant. This is clearly going to be a complex case which will require many days to be heard. It is not straightforward. That complexity did not assist the claimant in his argument that he is <u>likely</u> to succeed in his claim.

8. In identifying the alleged protected disclosures relied upon, I was referred to three versions of the list of those upon which the claimant relied, and I suspected that there may be other versions within the many documents provided. The three are:

8.1. A table containing 14 alleged disclosures at page 15 of the particulars of claim (page 32 of the respondent's bundle);

8.2. 6 alleged protected disclosures listed and detailed at page 62 of the particulars of claim (page 79 of the respondent's bundle); and

8.3. 21 alleged protected disclosures listed at page 70 of the claimant's bundle. That is a list prepared after the claim had been entered, which the claimant told me he had composed after he had more time to consider what he thought were the protected disclosures Made (after he had needed to enter the claim within seven days).

9. I could only consider for this application whether the claimant was likely to show that the 14 or 6 alleged disclosures in the particulars of claim were protected disclosures. I could not consider whether the 21 alleged protected disclosures might be, as they were not currently part of the pleaded case.

10. The respondent had addressed the 14 alleged protected disclosures included in the claim form, within the grounds of response which it had submitted at paragraphs 40-43 (page 552 of the respondent's bundle). It addressed the alleged disclosures one by one at paragraph 42. I will not reproduce what was said.

11. Whilst the claimant asserted that the disclosures relied upon were all in writing and (at least some) would have been included within the documents sent to the Tribunal, I was not specifically taken to any of the alleged disclosures in the course of the hearing, to show me exactly what was said. I expect that some of what is listed may contain disclosures of information, but others may not. It is difficult to see, for example, that the claimant is likely to show that the contents of an occupational health report in October 2025 will show the claimant disclosing information to the respondent which fits within the requirements of section 43B of the Employment Rights Act 1996.

12. Most importantly, for my decision, it was uncertain whether the claimant will be able to show that he reasonably believed that any of the alleged disclosures made involved the disclosure of information which was in the public interest (even if they did involve the claimant disclosing information which he reasonably believed fitted within the sub-sections of section 43B(1) of the Employment Rights Act 1996).The respondent's counsel submitted that they all involved the employer and employee relationship, and matters raised about issues of health, terms and conditions, treatment and grievances. They appeared to do so. It is certainly possible that the claimant might evidence that he reasonably believed that one or more of the things disclosed were in the public interest, but considering what is relied upon I did not find at this stage that he was <u>likely</u> to do so.

13. I considered very carefully what the claimant said in paragraphs 235-254 at pages 66 and 67 of his particulars of claim (pages 83 and 84 of the respondent's bundle of documents). That was where the claimant set out why it was he said that the disclosures were made in the public interest. He informed me that he is better able to address matters in writing than orally, so I carefully considered what he had written, albeit I observed that his oral submissions at the hearing were eloquent and well-delivered. It may be that the claimant is able to demonstrate at the final hearing that when he raised his personal concerns he believed them to be in the public interest (applying the test set out in **Chesterton**) because of the potential harm to other employees, the impact on patient safety, and/or in the context of the pharmaceutical industry. That is an issue to be determined at the final hearing. I did not believe that the claimant was likely to do so (applying that phrase in the way I have described when explaining the law).

14. Orally, the claimant referred to the fact that one of his alleged disclosures was about not only his circumstances, but the impact on colleagues. The argument that he believed that that particular disclosure of information made was in the public interest would appear stronger for that alleged protected disclosure. However, that applied to disclosure C1 in the list of 21 alleged protected disclosures (about Dr

Iqbal) (listed at page 70 of the claimant's bundle). That was not an alleged disclosure listed in the grounds of complaint – it was not currently one of the 14 listed at page 15 of his employment particulars and it was unclear whether it was part of the first of the six alleged at page 62. I could not say, based upon that argument, that the claimant was likely to succeed on that basis.

15. As I found that it was not likely that the claimant would show that he had made one or more protected disclosures, the interim relief application failed. I did go on to address some of the other relevant issues.

16. The respondent submitted that it could not be said that the claimant was likely to succeed in his claim that the dismissal was because of any of the protected disclosures relied upon. It said that even taking the claimant's documents as pleaded on their own they did not show a causal link between any alleged protected disclosure(s) and the dismissal. I considered what was alleged, but I found that I was not in a position to say that the claimant was likely to show that the principal reason for his dismissal was that he made a protected disclosure (even if protected disclosures had been found to have been made).

17. The claimant made a number of very valid criticisms of the process followed by the respondent in dismissing him. In his skeleton argument, he listed six procedural issues with the dismissal which he contended meant that the dismissal was procedurally defective to a point of nullity. I was told that the claimant was dismissed in breach of the absence policy, as well as other policies. It was contended that the ACAS code of practice on disciplinary and grievance procedures was breached. The absence of a right of appeal was something which stood out from the dismissal letter. I was not required to make a determination about whether the procedure was a fair one. What the claimant submitted raised valid questions about the process followed. However, as the respondent's counsel explained when I asked him about those issues, it would have been an enormous leap for me to decide that acting outside the procedures meant that it was likely to be found that the dismissal was because of protected disclosures (and it was said that even the claimant in his skeleton argument did not go that far). I accepted the claimant's point in response, that to an extent those are the things I needed to consider in my summary expeditious assessment, but I found that I simply could not say on the facts of this case that the procedural flaws that existed meant that the claimant was likely to show that the principal reason for the dismissal was any of the alleged disclosures relied upon.

18. As the claimant highlighted in submissions, the dismissal letter of 13 February 2026 (page 612 of the respondent's bundle) did include some elements which could result in a causal link being identified at the final hearing. The letter referred to the nature tone and volume of communications as being part of the reason for the decision to dismiss. The letter referred to some allegations against the business and named individuals as being part of the reason. The claimant also highlighted the apparent inconsistency between the reliance upon both too much communication and not enough communication within the letter. I was mindful that it would be for the respondent to evidence that the dismissal was not because of a protected disclosure or disclosures, if they were made. However, as I have said, the complexity of the case and the matters to be considered, meant that I was not in a position to say that it was likely that the claimant would prove that the principal reason for the dismissal

was matters raised which would be found to be protected disclosures, even in the light of what was said in the letter about communications and allegations generally.

19. The claimant made a very significant number of points both in his written and oral submissions and in his many documents. I meant no disrespect to him or those submissions in not addressing them all. It would be impossible in practice to do so. It was not in accordance with the overriding objective and dealing with matters in a way which was proportionate to the issues, to do so. I have explained the reasons why I reached the decision which I did in the interim relief application. However, I addressed some of the issues raised as follows:

19.1. The claimant referred to an unverified statement of truth and the inclusion of a draft paragraph in the grounds of response submitted. There is no requirement in the Employment Tribunal for statements of truth. I agreed with the claimant's point made verbally that a professional representative has a duty to ensure that what is submitted to the court is true. The inclusion of an unanswered question as paragraph 30 of the grounds of response suggested a lack of care in the response being submitted, but it did not mean that the interim relief application should succeed or that the remainder of the grounds of response should not be considered;

19.2. I did not find that the respondent had breached any rules or requirements in preparation for the hearing. Interim relief hearings are unique and are by their very nature prepared in a hurried way. I was mindful of the duty to ensure that the parties were on an equal footing when considering the submissions at the hearing. I decided the outcome for the reasons explained (not because of procedural issues);

19.3. The respondent had not debarred itself from taking part in the hearing. It had done so appropriately.

19.4. I understood and accepted the importance of interim relief as an application and process which Parliament has provided for a claimant. A well-resourced respondent was entitled to resist such an application, in accordance with dealing with cases fairly and justly;

19.5. I understood the impact which dismissal has had on the claimant. He will still be able to pursue his complaints after the hearing. I focused on the interim relief application. I had not made factual findings and had not decided the ongoing claims;

19.6. I noted that the claimant said that the response form was contradicted by the respondent's documents – the claimant will be able to pursue those arguments as part of the final hearing in the claims;

19.7. I understood the point made by the claimant about the lack of reference to the reason for the suspension and how it arose in the response form and the respondent's bundle. I noted the email obtained by the claimant, described as the Boxee retraction. I considered that as part of the relevant circumstances in the case;

19.8. I noted what the claimant said about contact with his psychiatrist without consent and contact with the emergency services, and his contention that those concessions materially supported his interim relief application. I understood why they might support elements of his various claims more broadly, but I did not find that they supported the interim relief application or his case on the issues relating to protected disclosures and whether they were the principal reason for the claimant's dismissal;

19.9. There is always something of an evidential vacuum in an interim relief hearing, but I considered the case as pleaded and the documents as provided;

19.10. I noted what the claimant said about the volume of his written filings and his contention that the length was a direct consequence of him being neuro-divergent, rather than evidence of unreasonable behaviour. As I have said, the length and number of the documents provided made it more difficult for me to identify the issues and to find that the claimant was likely to succeed. The claimant will need to be mindful of the need for greater specificity in documents going forward and he will need to try to be more focussed if possible. I did not consider the length of the documents as something in and of itself which was relevant to my decision;

19.11. I understood the points made by the claimant about the human cost, asymmetry of impact, and balance of harm. However, those were not matters which meant that the claimant was likely to succeed in his protected disclosure unfair dismissal claim, considering the actual claim brought (for the reasons I have explained);

19.12. I was not striking out the ET3, making an unless order, making a referral to the Attorney General, or issuing a default Judgment. My focus had been on determining the Interim Relief application. There will need to be a preliminary hearing (case management) in this case, with a longer time estimate than usual. The orders for the case to be prepared for final hearing will need to be addressed at that hearing. I was concerned that the claimant asserted that there was a procedural landscape in which a fair hearing was impossible, but I did not consider that to be the case when only the interim relief application had been heard.

20. As I have explained, by its nature an interim relief Judgment is a brief one based upon limited scrutiny, without hearing evidence or having that evidence tested. The Tribunal who conducts the final hearing will undertake a far far more detailed consideration of the evidence and the issues in the claims. My decision did not mean that the claimant will not succeed in his claims, but applying the test required of me, he did not succeed in his interim relief application.

Employment Judge Phil Allen

15 April 2026

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

12 May 2026

FOR THE TRIBUNAL OFFICE

Notes
Summary reasons for this Judgment having been provided, written full reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of these written summary reasons.

Public access to employment tribunal decisions
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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 may be payable. 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/