EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000667/2026

Preliminary Hearing held in Dundee on 13 April 2026

Employment Judge A Kemp

Mr N Ferry	**Claimant** **In person**
Luxion Sales Ltd	**Respondent** **Represented by:** **Mr M Briggs** **Advocate** **Instructed by** **Ms C Parkinson** **Solicitor**

JUDGMENT

The application for interim relief under section 128 of the Employment Rights Act 1996 does not succeed.

Introduction

1. This Preliminary Hearing was arranged to determine an application for interim relief made by the claimant under section 128 of the Employment Rights Act 1996 ("the Act"), The claimant alleges that his dismissal by the respondent was automatically unfair under section 103A of the Act, amongst other claims. There was no dispute that the claimant had made his claim timeously for interim relief.

2. The Claim Form simply designed the respondent as "utilita", which did not appear to me likely to be a legal entity. After discussion and consideration

of a document bearing to be a contract of employment, and the letter of termination that it was agreed had been issued, it appeared that the employing entity was Luxion Sales Ltd, at the same address as given on the Claim Form. The claimant applied to amend that, and that was not opposed. I have dealt with that, and a separate application for orders as to anonymity and for restricted reporting, by separate Note.

3. The respondent has not yet entered appearance by a Response Form, but set out its position before me through Mr Briggs. Neither party argued that I should hear oral evidence, on which the cases of ***NASUWT v Harris*** UKEAT/0061/19 and ***Dandpat*** (cited below) are relevant. It is competent to do so given the terms of Rule 94, but not the norm in interim relief hearings as that Rule indicates. It appeared to me that in the circumstances of the present case it was appropriate to hear submissions only.

4. I therefore did not hear oral evidence, but considered the parties' submissions, the documents that the parties had each prepared separately, and a witness statement for the claimant, and one for Ms Katie Matzelaar, who had decided dismissal. I read both witness statements and, in relation to that for the claimant, the documentation to which it referred.

5. Before the submissions were made I explained that I could assist the claimant to an extent under Rule 3, but not so as to act as if his solicitor. I require to remain impartial between the parties.

Background

6. The following background is a summary of the main aspects of the position as I have understood it to be from the parties' submissions and documentation put before me. For the avoidance of doubt I have not made any findings in fact as if at a Final Hearing as I have not heard any evidence. The background is not intended as an exhaustive exposition of matters.

7. The claimant was employed by the respondent from 9 February 2026.

8. On about 4 February 2026 the claimant received a label and other details for use at work with the respondent, which had incorrect information about him on it. He spoke to ACAS about that. He had at that time a separate Claim against a previous employer ongoing at the Employment Tribunal, which concerned a claim for having made protected disclosures to them.

9. On 10 February 2026 the claimant had a conversation with his manager, known only as Joe, which he considered was not in appropriate terms. It appeared to the claimant to question the medical condition he suffered from, and the medical advice received.

10. On 12 February 2026 the claimant was collected from his home address by Joe, and they spent over three hours involved in training.

11. The claimant had decided to record their conversation in light of the claimant's beliefs about the conversation on 10 February 2026. He did not tell Joe that he was doing so. The recording started from the point of Joe arriving.

12. On 13 February 2026 the claimant emailed Mr Bill Bullen, the CEO of the respondent, setting out a series of concerns related to the conversation on 12 February 2026. The claimant later sent the respondent a copy of the recording of the conversation, which the respondent had asked him for.

13. After having had four days training and work the claimant was signed as unfit for work by his GP and did not return to work with the respondent. The respondent raised with him a failure to follow their absence reporting procedures, and explained what they were.

14. The issue was passed to the People department of the respondent, which deals with human resources matters. On 18 February 2026 the claimant asked Ms Olivia Pooley one of the People Advisers to start a formal grievance. She communicated with him by email and sought to set up a meeting with him to discuss the grievance, but he replied to state that they had the information they needed and he was not medically able to attend. Correspondence between them continued, including with further information from the claimant on 1 March 2026.

15. The grievance was passed to Mr John Milligan of the respondent. He wrote two letters of decision to the claimant dated 13 March 2026. The first partly upheld the grievance in relation to some comments made by Joe, and stated that Joe would receive training, and the second rejected the grievance related to an alleged data breach.

16. On 17 March 2026 Ms Katie Matzelaar, a People Partner of the respondent, wrote to the claimant terminating his employment with effect from that date. She referred in the letter to his attendance, that on 13 March 2026 he did not attend work, that on 16 March 2026 he provided a certificate from his doctor referred to "problems at work", later amended to being under investigation by a cardiologist. Reference was made to further messages that had been sent on 1 and 6 March 2026. She stated "The training you received was described by your medical team as causing such significant stress that it presented a substantial health risk. Given these circumstances we do not believe that continuing in the role is in the best interests of either party." It was noted that the claimant had worked for four days of the five weeks of his employment.

17. The letter also referred to an alleged fundamental breach of trust and confidence by using what was described as a concealed recording device during a meeting with a manager. The letter stated “it is our belief that this was done with the intention of entrapment and to create leverage for financial gain.”

18. No form of disciplinary procedure was followed prior to the sending of the letter of dismissal.

Claimant’s submission

19. The claimant had provided a submission which also referred to a number of authorities, all of which I considered (although I did not regard all as relevant to the issue before me). In relation to the disclosures he referred to a number of allegations including a comment from Joe as to smart meters being a taboo phrase, using a pre-determined wording for selling that had been banned by Ofgem and the subject of criminal proceedings, improper details as to comparison of charges, improper comments about a 14 day cooling off period, breach of data protection law to obtain details of customers to call, and improper advice on third party verification. He argued in effect that these were qualifying and protected disclosures, and were the sole or principal reason for dismissal. In essence the claimant argued that the purported reason for dismissal was a sham, and that the respondent had failed to investigate what he had disclosed but rather dismissed him for making the disclosures. The grievance had not properly addressed the issues the recording of the conversation disclosed, which was breaches of regulation and related matters for consumer protection. He had been penalised for making those disclosures with the reference to his attendance and the recording he had made breaching trust and confidence not the real reasons. The authorities relied on included ***Jhuti*** (cited below).

Respondent’s submission

20. The following again is a basic summary of the submission. The claimant had three particular mountains to climb, and would not be able to do so for each. The first was in relation to the authority of ***Jhuti*** which was contended to be where the dismissing officer dismissed for an invented reason. Here the reasons were set out in writing and based on objective facts. The second was to explain the respondent’s response, where there had been an investigation into issues, which the claimant says was a whitewash, but that is less likely than that there was an investigation into his grievances, and the sole or principal reason was not the alleged disclosure. The third was the claimant’s own behaviour in recording the conversation and refusing to participate in the grievance. It looked like the claimant entered employment with a mindset of suspicion. The claimant

would be cross examined over that. Prima facie there were good reasons for the dismissal.

The law

21. The following is a basic summary of the statutory provisions. Section 103A of the Act provides that if the reason, or if more than one the principal reason, for a dismissal is the making of a protected disclosure the dismissal shall be regarded as unfair. What is a qualifying and protected disclosure is set out in section 43A and B of the Act. The claimant requires to prove that he held a reasonable belief that there was a matter falling within those provisions, (likely to be argued for the claimant as either a criminal act or breach of a legal obligation in the circumstances of this case).

22. The issue of what was the reason or principal reason for dismissal has been considered in a number of cases. That has included the Supreme Court in ***Royal Mail Group v Jhuti*** [2020] IRLR 129, and earlier authorities including Co-operative Group v Baddeley [2014] EWCA Civ 658 and ***Abernethy v Mott, Hay and Anderson*** [1974] IRLR 213. The initial onus in a case where the principal reason for dismissal is alleged to be on what are often called protected grounds, and where as here the claimant does not have the service necessary to claim unfair dismissal under section 94 of the Act, is on the claimant to raise a *prima facie* case, or at least the articulation of issues requiring explanation which is capable of establishing that alleged principal reason (see ***Dahou v Serco Ltd*** [2017] RIRL 81) and if that is done the onus may then shift to the respondent to prove that the sole or principal reason was not a protected disclosure.

23. The provisions as to interim relief are found in sections 128 and 129 of the Act. Section 128 states 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."

24. Section 129 states as follows:

"**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 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.
(2)The tribunal shall announce its findings and explain to both parties (if present)—
(a)what powers the tribunal may exercise on the application, and
(b)in what circumstances it will exercise them.
(3)The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
(a)to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or
(b)if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
(4)For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
(5)If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
(6)If the employer—
(a)states that he is willing to re-engage the employee in another job, and

> (b)specifies the terms and conditions on which he is willing to do so, the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
> (7)If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
> (8)If the employee is not willing to accept the job on those terms and conditions—
> (a)where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
> (b)otherwise, the tribunal shall make no order.
> (9)If on the hearing of an application for interim relief the employer—
> (a)fails to attend before the tribunal, or
> (b)states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3), the tribunal shall make an order for the continuation of the employee's contract of employment."

25. The Tribunal can in summary make an order for interim relief if it is "likely" that the claim for automatic unfair dismissal will succeed. The meaning of the word "likely" for this and similarly worded statutory provisions has been considered in several cases. The leading case is ***Taplin v C Shippam Ltd*** [1978] ICR 1068. The EAT there held that it must be shown that the claimant has a "pretty good chance" of succeeding, and that that meant something more than merely on the balance of probabilities. That approach to the word likely in this context has been followed in several subsequent decisions, for example, ***Dandpat v The University of Bath and Anor*** UKEAT/0408/09, ***Raja v Secretary of State for Justice*** UKEAT/0364/09, ***Ministry of Justice v Sarfraz*** [2011] IRLR 562 and ***His Highness Sheikh Khalid Bin Saqr Al Qasimi v Ms T Robinson*** UKEAT/0283/17/JOJ. An application for leave to appeal ***Dandpat*** on whether that was the correct interpretation of the word likely was refused by the Court of Appeal, reported at [2010] EWCA Civ 305.

26. In the case of ***Ministry of Justice v Sarfraz*** [2011] IRLR 562*,* which was a case regarding interim relief in the context of protected disclosures specifically, the EAT held that "likely" connotes "a significantly higher degree of likelihood" than probability. It has been held that is not appropriate to attempt to decide the case as if at a Final Hearing – ***Parkins v Sodexho Ltd*** [2002] IRLR 109. The approach to interim relief was explained in ***London City Airport v Chacko*** [2013] IRLR 610*,* in which the EAT considered the nature of the interim relief hearing and commented as follows

> "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."

Discussion

27. In basic summary I require to consider whether the claimant is likely, in the sense of having a pretty good chance which is significantly higher than more probable than not, to succeed at the Final Hearing on the claim under section 103A. That is less than what may be described as absolute or near certainty, but more than likelihood. I do so on the basis of what is a summary procedure, and without the benefit of hearing all the evidence that would be heard at the Final Hearing, with that evidence tested in cross examination. There is a relatively high bar for the claimant to overcome if interim relief is to be ordered.

28. There are arguments to be made for both parties. Looking at the position from the perspective of the claimant, his dismissal did follow his raising a number of issues with the respondent which can be seen in emails. The witness statement from the respondent did not accept that a qualifying disclosure had been made. It is not entirely clear on what basis the matters raised by the claimant were believed to be breaches of criminal law, or breach of a legal obligation as opposed to regulation falling short of a legal obligation. The claimant does not require to prove actual breach, but that he had a reasonable belief of that. In that regard whether or not there was a breach is one factor to consider. There is at present some lack of clarity over these aspects, but some aspects of what the claimant raised with the respondent are in my opinion might be regarded as protected disclosures such as to meet the statutory test for interim relief in this regard, but that is subject to the comments I make below as to the claimant's credibility and reliability when tested in cross examination.

29. It seems to me on this basis that the focus shifts to the issue of the sole or principal reason for dismissal, and whether or not the claimant meets the statutory test for interim relief in that respect. The claimant argues that it was the making of those disclosures that was the reason, or principal reason, for the dismissal. He denies the allegations made against him to

the effect that he entered employment seeking to engineer a claim, and in simple terms argues that the reasons given for dismissal are a form of smokescreen, fabricated by the respondent to seek to hide the real reason.

30. He has some points that support his position. They include firstly that he raised a variety of grievances, and precisely how they were investigated is not entirely clear. That may be as he did not participate in them when invited to, but the letters of decision give little detail, and there was no other document before me to explain what exactly had been done, and what was made of each matter that the claimant thought that he had raised as a protected disclosure. On the face of it he was raising matters of compliance with regulatory or legal obligations. There is the possibility at the least that his doing so could be regarded by the respondent as damaging to them in some way.

31. Secondly his dismissal did not appear to follow any particular procedure – although he had very short service. The terms of any applicable Disciplinary Policy were not before me. It did follow the separate grievance process, but appears rather to have come without prior warning being given that dismissal was being considered.

32. Thirdly the respondent on the face of it did little to address the allegations made by the claimant from the recording, which were to the effect that what his manager had said was either a breach of regulation of some form not a crime, that being one of fraud. Training of the manager was referred to, rather than any form of disciplinary action. It is far from obvious that the circumstances amount to fraud in law, but it seems to me fairly clear that he was alleging serious wrongdoing and improper conduct. The treatment of those allegations appears to be less than full and robust from the material before me.

33. Fourthly his attendance record was part of the reason for dismissal, but that attendance is said to have been affected by the very conduct of the manager complained about.

34. Fifthly the claimant's dismissal was also said to be on the breach of trust and confidence from surreptitious recording of the manager. That is not necessarily unlawful, and no document was referred to by the respondent which referred to that being contrary to a disciplinary process or similar.

35. There are other aspects to the claimant's allegations but it seems to me that these are the main ones to consider when making the assessment for purposes of interim relief.

36. For the respondent there is the fact of two grievance decisions by one manager, and the letter of dismissal giving essentially two reasons for the dismissal by another manager. The first reason is that his attendance was

for only four days, and that their understanding of the medical evidence he had submitted was that he had a risk of a heart attack from further employment, to paraphrase. It is factually true that his attendance was for only four days, after which he was off work, as he accepted. It was said that he had not followed absence reporting processes in March 2026, as the letter set out. It did not appear that the claimant disputed that. It appears that those procedures had been emailed to him prior to that.

37. The second reason was the use of a concealed recording device, and what was a form of surreptitious recording of a manager. That was again accepted by the claimant as having been done. It is not unheard of for employers to regard such secret recording of other staff as being gross misconduct. The respondent argued that they thought that there had been an attempt at entrapment.

38. This is also in the context of the claimant having short service, said to be still in a probationary period, and where the tone of some of his correspondence is not obviously consistent with what might normally be expected, as noted below.

39. Having considered all the material I had I have come to the conclusion that the claimant does not meet the relatively high test for an award of interim relief. There are a series of facts which are disputed, and which require evidence to be heard. On the face of the letter and statement of the dismissing officer the reasons for dismissal are those given. There is material in each case to support the two reasons given. What the claimant will require to do is to challenge the credibility and reliability of that evidence. He may succeed in doing so, but I do not consider that it can be said that he has the pretty good chance of doing so required by authority.

40. It would require the Tribunal not to accept the evidence of the dismissing officer and most likely the grievance officer too. From my experience that is not an easy task for the claimant to succeed with. It is not clear to me from the material I had that the claimant has established a prima facie case on which the burden of proof shifts, but if he does the evidence of the dismissing manager will be key to determining whether the claim succeeds or not. At this stage there is simply conflict in the evidence, and I do not consider that the claimant's prospects meet the statutory test.

41. It is also relevant that he has an existing claim against another employer, a previous one, which from his email of 13 February 2026 indicates is of a similar nature as he says "I am currently a whistleblower in a legal dispute" with his former employer. It was not I consider entirely clear why the conversation on 12 February 2026 was recorded in the manner that it was. If matters had happened on 10 February 2026 as he claimed there were other ways to address that, including by asking a People Adviser about it, or by raising a grievance, for example.

42. The respondent viewed what happened as entrapment. That may or may not have been the intention of the claimant, but the respondent's belief is a matter that is part of the factual dispute between the parties. I noted the reference to ACAS conciliation in the email from the claimant of 18 February 2026, which is a very early stage for that to have been mentioned in the circumstances at that time, being only 9 days after he had commenced employment. He had only a few days earlier raised issues with the CEO. The last sentence of that email about having the evidence added to his current case is not easy to understand save as an implied form of threat. There are concerns from these matters that the allegations of entrapment have some basis.

43. It may also be relevant that the claimant's engagement with the grievance process was not as full as it could have been, even with medical issues. These matters all raise questions as to whether the claimant's evidence will at a Final Hearing be accepted. Whilst the focus is on the reason or reasons for dismissal, if his evidence is not accepted on issues such as what his belief was when making the disclosures the claim will fail. It seems to me that there is a not insignificant risk for the claimant in that regard, which at this stage is not possible to quantify accurately but supports the view that the claimant has not met the statutory test for strike out.

44. The claimant seeks to rely on ***Jhuti***, but it did not appear to me that the circumstances of that case are relevant to those here. In this case it appears that the decision maker for dismissal took a decision after the grievances were dealt with by someone else. It is possible that each of them were involved in a conspiracy to dismiss the claimant for entirely different reasons to those given in the dismissal letter, and that the grievance was conducted to avoid dealing with what the claimant was fully alleging, such that the two processes are part of a sham. But it appears to me that that possibility does not meet the high statutory test or would fall within the principle referred to in ***Jhuti.***

45. The claimant also sought to rely on case law about affirmation as the respondent asked for the recording. That is however in a different context, and does not I consider directly assist me in applying the test for interim relief.

46. Looking at all matters before me in the round it seems to me that there are a number of areas where the position of the claimant is open to a material level of doubt, and where there will be a conflict in evidence which means that at this stage I cannot say that the claimant has a pretty good chance of success so as to meet the test in section 128 of the Act.

Conclusion

47. I have therefore refused the application for interim relief. For the avoidance of doubt the decision should not be taken as indicating that the claim under section 103A is likely to fail. It may or may not succeed after the Tribunal has heard all of the evidence at a Final Hearing, at this stage one cannot know. Nothing that I have said is intended in any way to affect that final determination of the claim, which will be on contested evidence given on oath and subject to cross examination. It is also liable to include further documentation I have not had sight of.

48. I have framed this decision as a judgment in light of the decision of the EAT in ***Queensgate Investments LLP and others v Millet*** UKEAT/0256/20/RN which held that interim relief was a substantive claim. This decision determines that claim, and falls within the definition of judgment in Rule 2 of the Employment Tribunal Procedure Rules 2024 in light of that.

49. Matters of case management are addressed separately by way of a Note issued of even date.

Date sent to parties 17 April 2026