



EMPLOYMENT TRIBUNALS

Claimant: Christopher John
Respondent: The Ministry of Justice
Heard at: Bury St Edmunds Employment Tribunal
On: 14 May 2026
Before: Employment Judge Illing

Representation

Claimant: In person
Respondent: Mr S Crawford (Counsel)

JUDGMENT

The judgment of the Tribunal is that: -

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

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was A: audio only. A face to face hearing was not held because it was not practicable and all case management issues could be determined in a remote hearing.

Procedural history

1. This is a claim that was issued on the 18 March 2026 and is a claim for unfair dismissal and an application for interim relief.
2. The Claimant's employment ended on 13 March 2026 and the application is made within 7-days of this date.
3. The Claimant alleges that the reason for the dismissal, or the principal reason for the dismissal was because he made a protected disclosure.
4. The issues to be decided are:
 - 4.1. Was there was a protected disclosure; and
 - 4.2. Was the disclosure was the reason or the principal reason for the Claimant's dismissal.
5. The hearing was conducted by video. During the course of the hearing, the Tribunal received a request from a member of the media, Mr Tristan Kirk, Courts Editor, who was attending, for a copy of the documents referred to. His request confirmed the purpose for which he was requesting copies, which was to follow the proceedings and to understand the arguments and decisions as they are made. Further to a discussion with the parties, a copy of the documents, with personal details redacted, would be forward him to use on the proviso that the use was limited to the manner in which he would have been able to use them had this been an in-person hearing and he had been provided with a physical bundle. Mr Kirk confirmed that he was seeking to read the documents and gave an assurance that they would not be copied or placed online.

The Hearing

6. At the outset of the hearing, I explained that the purpose was to hear the Claimant's application in that I was required to determine whether the Claimant is likely to succeed in his claim that a protected disclosure was the sole or principal reason for his dismissal. I explained to the parties that I am required to evaluate the claim before me and make an impressionistic decision. I also explained that today's hearing would not be a mini trial, so there will be no evidence or witness cross examination, nor would I make any findings of fact.
7. Adjustments for the Claimant were discussed.
8. I had the following documents:
 - 8.1. Claimant bundle – 117 pages with index of 2-pages
 - 8.2. Claimant statement – 14 pages
 - 8.3. Respondent bundle 145 pages and as updated – 159 pages
 - 8.4. Respondent statement – Amber McIlwain – 5 pages
 - 8.5. 4 videos provided by the Respondent
 - 8.6. Map to the evidence 7-pages
9. The procedure for the hearing was that the Claimant would make submissions for his application, following this the respondent would make their submissions. The parties were directed to take me to pages in bundles if there was any specific

documentation they required me to review. Following this, I would review the documents and submissions and form my view.

10. I reviewed the documentation and videos that I was directed to and I also reviewed further documentation as provided, in so far as I was able to do so.

11. I make no findings of fact in the making of my evaluation.

The law

12. Rule 94 of the Employment Tribunal Procedure Rules 2024 provides that the hearing should be conducted as a Preliminary Hearing.

13. S.103A of the Employment Rights Act states:

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

14. It is s.43B of the ERA that sets out what a qualifying disclosure is. This states:

43B Disclosures 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, [F2 is made in the public interest and] 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,

[F3 (da) that sexual harassment has occurred, is occurring or is likely to occur,]

(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.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

S. 43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer,

Protected disclosures

15. In **Williams v Michelle Brown AM UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

“It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

Unless all five conditions are satisfied there will be not be a qualifying disclosure. [9 and 10]

16. There must be a disclosure of information. In **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38**, the EAT held that to be protected, a disclosure must involve giving information and must contain facts, and not simply voice a concern or raise an allegation:

“The ordinary meaning of giving “information” is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating “information” would be “The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around”. Contrasted with that would be a statement that “You are not complying with Health and Safety requirements”. In our view this would be an allegation not information.” [24]

17. However, in **Kilraine v London Borough of Wandsworth [2018] ICR 1850** the Court of Appeal held that:

“...the concept of “information” as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below [2016] IRLR 422, para 30, set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between “information” on the one hand and “allegations” on the other. ...

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute “information” and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.” [30 and 31].

“The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a “disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs

(a) to (f)]”. Grammatically, the word “information” has to be read with the qualifying phrase, “which tends to show [etc]” (as, for example, in the present case, information which tends to show “that a person has failed or is likely to fail to comply with any legal obligation to which he is subject”). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors’ letter in the Cavendish Munro case did not meet that standard.

Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731, para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.” [35 and 36].

18. “It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in the Cavendish Munro case [2010] ICR 325, para 24, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says “You are not complying with health and safety requirements”, the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the 1996 Act, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the Claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner” [41].
19. It is possible for several communications together to cumulatively amount to a qualifying disclosure even where each communication is not a qualifying disclosure on its own - ***Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601**. Here the Court of Appeal agreed with the approach of the EAT in ***Norbrook Laboratories (GB) Ltd v Shaw* UKEAT/0150/13** where it was held that three emails taken together amounted to a qualifying disclosure even where the last email did not have the same recipients as the first two, as the former emails had been embedded in the final email. It will be a question of fact for the tribunal at the final hearing to decide whether two or more communications read together may be aggregated to constitute a qualifying disclosure on a cumulative basis.

20. As regards the Claimant's belief about the information disclosed, the question is whether the Claimant believed **at the time** of the alleged disclosure that the disclosed information tended to show one or more of the matters specified in section 43B(1). Beliefs the Claimant has come to hold **after** the alleged disclosure are irrelevant. Whether at the time of the alleged disclosure the Claimant held the belief that the information tended to show one or more of the matters specified in s.43B(1) and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs. It is important for a tribunal to identify which of the specified matters are relevant, as this will affect the reasonableness question.
21. Whereas the test for reasonable belief is a low threshold, it must still be based upon some evidence. Unfounded suspicions, rumours and uncorroborated allegations are insufficient to establish reasonable belief.
22. The belief must be as to what the information **tends** to show, which is a lower hurdle than having to believe that it **does** show one or more of the specified matters. There is no rule that there must be a reference in the disclosure to a specific legal obligation or a statement of the relevant obligations nor is there a requirement that an implied reference to legal obligations must be obvious. However, the fact that the disclosure itself does not need to contain an express or even an obvious implied reference to a legal obligation does not dilute the requirement that the Claimant must prove that she had in mind a legal obligation of sufficient specificity at the time he made the disclosure - ***Twist DX and others v Armes and others* UKEAT/0030/30/JOJ**.
23. In ***Darnton v University of Surrey* [2003] IRLR 133** it was held by HHJ Serota that:
- "In our opinion, it is essential to keep the words of the statute firmly in mind; a qualifying disclosure is defined, as we have noted on a number of occasions, as meaning any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show a relevant failure. It is not helpful if these simple words become encrusted with a great deal of authority..."* [28] and
- "We agree with the learned authors that, for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken."* [32].
24. The issue of reasonable belief was considered by the EAT in ***Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4** where the following example was provided by way of illustration:
- "To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was*

reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrongdoing.” [62]

25. As regards the public interest, the Court of Appeal in **Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979**, identified the following principles:
26. There is a subjective element - the Tribunal must ask, did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest?
27. There is then an objective element - was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.
28. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. As per Underhill LJ:

“That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.” [29]
29. The reference to public interest involves a distinction between disclosures which serve only the private or personal interest of the worker making the disclosure, and those that serve a wider interest.
30. It is still possible that the disclosure of a breach of a claimant’s own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest. In such a case it will be necessary to consider the nature of the wrongdoing and the interests affected, and also the identity of the alleged wrongdoer. These are also referred to as the four factors in **Chesterton**.

31. It is not for the tribunal to determine if the disclosure was in the public interest. Rather the question is:
- 31.1. whether the worker considered the disclosure to be in the public interest;
 - 31.2. whether the worker believed the disclosure served that interest; and
 - 31.3. whether that belief was reasonably held.

Breach of a legal obligation

32. As regards legal obligation, in ***Boulding v Land Securities Trillium (Media Services) Ltd (2006) UKEAT/0023/06*** HHJ McMullen QC held the following:

“The legal principles appear to us to be as follow. The approach in ALM v Bladon is one to be followed in whistle-blowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see Lucas v Chichester UKEAT/0713/04). As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

33. *“Likely” is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260, EAT Cox J and members:*

“In this respect ‘likely/ requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the Claimant’s belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.” [24 and 25].

34. In ***Eiger Securities LLP v Korshunova [2017] ICR 561***, Slade J held:

“In order to fall within ERA s.43B(1)(b)... the ET should have identified the source of the legal obligations to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation...

The decision of the ET as to the nature of the legal obligation the Claimant believed to have been breached is a necessary precursor to the decision as to the reasonableness of the Claimant’s belief that a legal obligation has not been complied with” [46 and 47].

35. Accordingly, whilst the identification of the legal obligation does not need to be precise or detailed, it has to be more than a belief that what was being done was wrong.

Automatic Unfair Dismissal

36. Section 103A of the Employment Rights Act 1996 provides:

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.

37. The statutory question is what motivated a particular decision maker to act as they did – ***Kong v Gulf International Bank (UK) Ltd (Protect (the Whistleblowing Charity) intervening) [2022] IRLR 854*** [59].
38. The reason or principal reason for the dismissal means the employer’s reason. This can be the reason of the dismissing officer, but it may be necessary to look beyond that decision. In ***Royal Mail v Jhuti [2019] UKSC 55*** (at paragraph 60), the Supreme Court held that where the reason for dismissal is hidden from the decision maker behind an invented reason, it is for the tribunal to look behind the invention rather than to allow it to infect its decision, and provided the invented reason belongs to a person placed in the hierarchy of responsibility above the employee, there is no difficulty attributing that person’s state of mind to the employer, rather than that of the decision maker.
39. As regards the burden of proof, in ***Kuzel v Roche Products Limited [2008] IRLR 530***, the Court held:

“The tribunal must then decide what was the reason or principal reason for the dismissal of the Claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.” [59 and 60].

40. A case of whistleblowing dismissal is not made out simply by a “coincidence of timing” between the making of disclosures and the termination of employment - ***Parsons v Airplus International Ltd [2017] UKEAT/0111/17 [43]***.

Interim Relief

41. By section 128(1) Employment Rights Act 1996, an employee who presents a complaint of automatic unfair dismissal pursuant to section 103A may apply to the tribunal for interim relief.

42. Interim relief should be ordered only if it appears that it is likely that on determining the complaint the Tribunal will find that the reason or principal reason for the dismissal was a proscribed ground; s.129 ERA set out the procedure that is to be adopted:

129 Procedure on hearing of application and making of order.

[F1(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.

43. There is judicial guidance on the meaning of “likely” in this context.
44. With regards to the consideration of what is the reason for the dismissal, I refer to **Raja v Secretary of State for Justice UKEAT/0364/09/CEA** where the EAT held at paragraph 25:
- Accordingly, it seems to us, that we must find that the Employment Tribunal erred in the question they asked themselves in reality, as to the reason for dismissal, by asking themselves what was the reason for dismissal and forming a judgment about it rather than asking whether it was likely that the reason would be a qualifying reason at the final hearing.*
45. In **Parsons v Airplus International Ltd UKEAT/0023/16** the EAT held at paragraph 8 the following:
- On hearing an application under section 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 [to] say anything which might pre-judge the final determination on the merits*
46. **Taplin v CC Shippam Ltd [1978] ICR 1068** at 1073H, Slynn J held the following:
- The industrial tribunal should ask themselves whether the applicant has established that he has a “pretty good” chance of succeeding in the final application to the tribunal.*
47. Underhill J, at paragraph 1, of **Ministry of Justice v Sarfraz [2011] IRLR 562** the following:

“something nearer to certainty than mere probability”

48. And further at paragraph 16, of **Ministry of Justice v Sarfraz**[2011] IRLR 562 the following:

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.

49. The likely to succeed test applies to everything that the Claimant must prove, i.e. employment status and all elements of the whistleblowing claim. There must be a pretty good chance of succeeding at the full merits hearing. This is significantly higher degree of likelihood than 51%.

50. Accordingly the standard of proof required is greater than the balance of probability test to be applied at the final hearing.

51. As was noted in **Simply Smile Manor House and others v Ter-Berg** [2020] IRLR 97, the likely to succeed test applies to all elements of the claim.

52. The burden of proof therefore rests with the Claimant to persuade me that it is likely that the tribunal at a final hearing will find that he made the disclosures to his employer; that he reasonably believed that they tended to show one or more of the matters within s. 43B(1) ERA 1996; he reasonably believed that the disclosures were made in the public interest; and the disclosures was or were the principal cause of her dismissal. The EAT in **Sarfraz** referred to a fifth matter, which was the previous requirement for the disclosure to have been made in good faith, however this has since been removed by s. 18 Enterprise and Regulatory Reform Act 2013 and is now relevant only to the matter of compensation.

53. If all the above is established, the employee has made a protected disclosure.

54. For an automatically unfair dismissal claim under s103A ERA to succeed, the protected disclosure must be the sole or principal reason for dismissal.

55. When making a decision on an interim relief application I do not make any formal findings of fact which are intended to be binding at any later stage of the proceedings. I am assessing, amongst other things, the likelihood of disputed facts being proven in the Claimant's favour at the final hearing. There is only limited material available to a judge on an interim relief application but my decision has to be based on whatever material is available.

Submissions

56. Both parties have made submissions, which I have taken into account.

Background

57. The respondent is the Ministry of Justice. The Claimant was a trainee legal advisor within the criminal court system. I am told that the claimant's role was, in part, to act as an impartial advisor to magistrates.

58. In 2024, the Claimant has told me that he raised concerns with his manager, specifically Sarah Hopkinson (line manager at Reading Magistrates' Court), Andrew Przedborski (Senior Legal Manager) and others that magistrates were

not attending hearings in a manner that was consistent with the legal requirements. He states that the magistrates would attend the Single Justice Platform (SJP) remotely and that one would attend when located out of the country.

59. I am told that there were nine emails between 31 July 2024 to 09 December 2024, which the Claimant has identified as protected disclosures. A tenth email is undated.
60. The claimant states that following the raising of his concerns, he believed that he was treated differently and consequently he raised his concerns with Ms Hannah Meyer, who was the respondent's nominated officer for whistleblowing.
61. Further to this contact with Ms Meyer, the Claimant told the Tribunal that he received aggressive behaviour from Mr Przedborski.
62. Following this, the Claimant states that he again raised his concerns regarding the use / misuse of the SJP and remote sitting to his line manager Ms Kate Semmens (line manager at Guilford Magistrates Court).
63. The respondent states that it took the allegations raised by the claimant and investigated them.
64. The respondent states that Ms Nicola Reynolds was appointed to investigate the Claimant's concerns, and she responded to the Claimant on 19 December 2024 with her findings. Additionally, she informed the Claimant that she could not investigate the allegations of bullying as part of the whistleblowing investigation but provided him with a means to raise his concerns, i.e. a link.
65. The respondent states that in April 2025 it was asked to review the decision by Ms Reynolds and that they acted to do so. They state that Ms Catherine Blair was appointed to carry out this review.
66. As part of the review, the respondent states that the Claimant was interviewed and his concerns and points raised were taken into consideration. They also state that at this time Ms Blair enquired about the Claimant's wellbeing and the Claimant informed her that concerns at her new place of work had been worked through and he did not ask for any further action to be taken. I am told that Ms Blair sent a copy of the report to the Claimant on 07 April 2025.
67. I am told by both parties of an incident on 09 July 2025. At this time, the Claimant states that he was working as a reserve legal advisor and that the Court system was down, so he was waiting in the public area. He has told me that the police had wanted to arrest a person who was attending the Court for a hearing. He tells me that there was a concern as the individual was due to appear in Court and whether the arrest was to take place before or after the appearance.
68. The police attended the public area at the Court and from the video evidence provided, the police can be seen restraining a person on the ground. The video footage also shows the Claimant and his interaction with another person attending the Court.

69. The Claimant states that the youth, to use his phrase, made contact with his arm and kept moving forwards towards the police officers. He says that he pushed the youth away with his right hand on the side of his neck and thumb. He also believes that the youth struck him in the chest.
70. Following the incident, the Claimant states that he told both Ms Semmen and Mr Przedborski about the incident and expected no further action. He also states that he reported the matter as an assault to the police and he received a letter from the Chief Constable thanking him for his actions.
71. The respondent states that following the incident, the CCTV was reviewed and the Claimant was seen to be forcefully engaging with a member of the public in a public area in that he put his hand around the person's throat and pushed him, then held him in a head lock before releasing him to another member of the public.
72. The incident occurred on a Wednesday. On the following Monday at the conclusion of the court sitting, I am told that the Claimant was suspended, pending an investigation into the incident.
73. The incident was investigated by Ms Marie Williams, Legal Team Manager at Chesire Magistrates Court.
74. The respondent appointed Ms Amber McIlwain (Legal Team manager Cleveland, Durham and Northumbria) to conduct the disciplinary review. I am told that she was appointed from a different region to ensure that the investigation and subsequent decision could not be open to criticism of being weak or of not being investigated, settling scores or of being brushed under the carpet if no further action was taken. The respondent states that it was fair and proper to investigate and to obtain the Claimant's explanation for his conduct.
75. The respondent states that there was a degree of objectivity required stating that there were strong reasons for this as the CCTV footage suggested that a legal advisor in a criminal court had assaulted a member of the public.
76. The claimant tells me that Mr Przedborski was involved in the disciplinary process and was in communication with the disciplinary decision maker. I have not been taken to any evidence, nor found any in the bundle to support this.
77. The respondent states that it was appropriate to appoint an independent objective decision maker in these circumstances and that she was unaware of the concerns previously raised by the Claimant, until his representative mentioned them very briefly, as in the Claimant is a whistleblower, at the disciplinary hearing.
78. The clamant states that the respondent failed in its duty to allow him to attend the disciplinary hearing as they proceeded in his absence whilst they were still endeavouring to agree questions for an Occupational Health report and that there were very strong personal reasons for his being unable to attend, of which he says the respondent was aware.
79. The respondent tells me that the disciplinary hearing was adjourned 5 times to allow the Claimant's health to be taken into account. The hearing continued in March 2026 his absence because of this and that the Claimant's Trade Union

representative was in attendance and that questions for the hearing had been provided to the Claimant beforehand.

80. The video footage before me, I am told, was the footage reviewed by Ms McIlwain. The Claimant says that this footage was unlawfully obtained and that he has bodycam footage from the Police that was not considered.
81. I am told by the respondent that the legality or otherwise of the CCTV footage is not relevant, the relevance is that it was viewed by Ms McIlwain at the time of the disciplinary decision.
82. Following the meeting, I have been taken to a disciplinary outcome letter, which runs to 16-pages. The Claimant made no submissions on the content of this letter.
83. The respondent tells me that the letter is detailed and not only includes an evaluation of the objective evidence available to Ms McIlwain but also indicates that she reflected on her decision making and considered mitigation, before making a finding of summary dismissal for gross misconduct. I am told by the respondent that the majority of the facts of the incident of the 09 July 2025 were not disputed by the Claimant. The respondent says that the claimant did not show any insight as to the impact of his actions given that he was an impartial legal advisor in the public area of a remand court at the time of the incident.

Conclusions

84. The Claimant has issued a claim in the Employment Tribunal claiming that his dismissal was unfair and that the reason, or principal reason, for his dismissal was because he made a protected disclosure.
85. The Claimant says that Mr Przedborski has influenced the decision-making process and that the reason for his dismissal was not because of his conduct on the 09 July 2025, but because he was a whistleblower and had previously raised his concerns.
86. The respondent says that the incident on the 09 July 2025 is an independent series of events that could not possibly have been staged by the respondent. It states that the issues regarding the concerns raised by the claimant had been properly dealt with and that the claimant did not have any ongoing issues in the workplace. It states that it would be wholly improper of this, or any employer not to investigate the conduct that occurred on the 09 July 2025. It states that it appointed an independent and objective decision maker and that her findings reflected upon the conduct of the Claimant, which was not denied, and the subsequent submissions by him.
87. I am required to evaluate the claim before me and make an impressionistic decision, i.e. is the claim likely to succeed at trial. There has not been a mini trial, nor have I made findings of fact.
88. The burden of proof rests with the Claimant to show that his case is likely to succeed at trial, for each element of his claim. This is a high threshold and more that the more likely than not, i.e. 51%, test. As stated above, the required threshold is something nearer to certainty than mere probability.
89. To consider the evidence before me, I have made no findings of fact. This conclusion is my impression of the evidence presented, and I have considered each element of the claim as follows:

Employment Status

90. The legislation only provides protection to employee; his employment status has not been disputed by either party.

Protected disclosure

91. In considering whether the Claimant made a protected disclosure, I will break the test down into its relevant sections.

What did the Claimant say or write?

92. The claimant has not specifically outlined the actual detail of what he considers to be a protected disclosure.

93. The Claimant has provided a considerable number of documents that contain details about his concerns specifically in relation to SJP and remote hearings. He is a litigant in person and has identified ten separate emails within his claim form that he specifically relies on as disclosures. These are dated from 31 July 2024 through to 09 December 2024, with the tenth email undated.

94. From an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that he did make these disclosures.

Did they disclose information?

95. Given the volume of emails disclosed and the respondent's investigation into those concerns, from an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that his disclosures contained information.

Did they believe that the disclosure of information was made in the public interest

96. The disclosures were centred around the SJP and the conducting of hearings remotely, specifically where a magistrate was abroad. The claimant has stated that he believes that his concerns were genuine and that he had made his own enquiry of the law. He believes that the respondent was acting contrary to that law.

97. The Claimant stated that he was concerned about the use / misuse of the SJP and from an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that he believed that his disclosures were being made in the public interest.

Was that belief reasonable?

98. There have been no submissions from the respondent to assert that the Claimant's belief was unreasonable. From an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that his belief that his disclosure was in the public interest was reasonable.

Did they believe it tended to show one of the 5 legislative requirements?

98.1. a criminal offence had been, was being or was likely to be committed;

98.2. a person had failed, was failing or was likely to fail to comply with any legal obligation;

- 98.3. a miscarriage of justice had occurred, was occurring or was likely to occur;
- 98.4. the health or safety of any individual had been, was being or was likely to be endangered;
- 98.5. the environment had been, was being or was likely to be damaged;
- 98.6. information tending to show any of these things had been, was being or was likely to be deliberately concealed.

99. The Claimant has told me that he has made his own enquiry of the law and that following this, he believed that the SJP was being used contrary to his findings. This is not a circumstance where an individual must be correct in the identification of the legal obligation, what is required is that the Claimant had a belief that what was being done was wrong. From an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that he had that belief.

Was that belief reasonable?

100. Again, there have been no submissions from the respondent that the Claimant's belief was unreasonable. The Claimant has stated that he made his own legal enquiries and formed his own decision and believed that the respondent was acting contrary to the law. From an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that his belief was reasonable.

Was the qualifying disclosure made to the Claimant's employer?

101. The Claimant has stated that he made the disclosure to his line managers, senior line manager and to Ms Meyer who was the nominated person for whistleblowing.

102. From an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that he made a disclosure to his employer.

Did the Claimant make a protected disclosure?

103. In consideration of the above, from an overview perspective and in forming an impression, I believe that the Claimant is likely to succeed in persuading a Tribunal that he made a protected disclosure.

Was the qualifying disclosure the sole or principal reason for the Claimant's dismissal?

104. I turn to the question of whether this protected disclosure was the sole or principal reason for his dismissal. I have heard from both parties and the incident on 09 July 2025 itself is not disputed.

105. The incident occurred in the public area of a Magistrates Court. I have been told by both parties that the Claimant was involved in an incident with a third party whilst police officers were attempting to detain another person.

106. The respondent states that it initiated an investigation and disciplinary process with senior managers from outside of the Claimant's area of work to obtain an objective review of the circumstances. It states that it was proper for an investigation to be carried out and that by doing so with these managers was sensible and

consistent with an employer who did not want to open the process to criticism of settling scores or of brushing it under the carpet.

107. The respondent has stated that the decision maker had no knowledge of the Claimant's whistleblowing actions. Furthermore, that the outcome showed the manager reflecting on her decision, on the objective evidence and on the Claimant's own replies to her.
108. The respondent has also stated that the alleged misconduct has not been denied by the Claimant and that this was the basis for the disciplinary decision.
109. The Claimant has stated that Mr Przedborski was involved in this disciplinary process and that he had influenced the decision-making process. He has also stated that the decision was based on footage that was illegally obtained.
110. Forming an impression of the documents I have seen and the videos, they do not suggest a direct causal link between the alleged disclosures and the dismissal. Given the high threshold and burden of proof required of the Claimant, I do not believe that the Claimant is likely to succeed in persuading a Tribunal that he was dismissed because he made a protected disclosure.
111. This is not to say that the Claimant will not be able to satisfy the tribunal on the balance of probabilities that the reason or principal reason for his dismissal was because he made protected disclosures. It will be a matter for the final tribunal to determine the veracity of the Respondent's case and only then will it be possible to properly determine the motivation behind the dismissal. However, on the information before me, I cannot say that the final tribunal is likely to find that the reason or principal reason for the dismissal was the alleged disclosures.

Approved by:
Employment Judge Illing
Date: 15 May 2026

JUDGMENT & REASONS SENT TO
THE PARTIES ON: 15 May 2026

FOR THE TRIBUNAL OFFICE

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