



EMPLOYMENT TRIBUNALS

Claimant: Miss N Markievicz
Respondent: Cleshar

Heard at: Watford Employment Tribunal (by CVP)
On: 25 February 2026
Before: Employment Judge Dick

Representation

Claimant: In person
Respondent: Mr P Linstead (counsel)

REASONS

Introduction

1. At the conclusion of the hearing in February I gave an oral judgment with reasons, refusing the claimant's application for interim relief. At the same hearing I also gave reasons for refusing the claimant's application for preservation and disclosure of various documents. Written records of those decisions were sent to the parties on 23 March 2026 and these written reasons were requested, within the required timescale, by the claimant in accordance with Rule 60. I apologise for the delay since then in providing them.
2. There is no dispute that the application for interim relief was made in time and that the claimant otherwise has the legal standing required to make the application. I note in passing that the claim was accepted by the Tribunal as a claim for interim relief despite the fact that interim relief is not explicitly asked for anywhere in the claim form, aside from by the claimant ticking a box saying "my claim consists of a complaint of unfair dismissal which contains an application for interim relief". As the claim was accepted by the Tribunal and there did not appear to be any material change of circumstances, it seemed to me that I was bound to consider the application, so that is what I did.

The law on interim relief

3. S 129 of the Employment Rights Act 1996 ("ERA"), says that an application for interim relief should be granted if "it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will

find” that the reason or principal reason for dismissal was one of the automatically unfair reasons referred to in s 128(1).

4. The correct test for me to apply has been set out in Taplin v C Shippam Limited [1978] ICR 1068, which is whether or not the claimant has a “pretty good chance” of success at a final hearing. This is a fairly high bar, although of course it is not insurmountable. It is clearly a higher standard than the balance of probabilities which the Tribunal usually applies.
5. At interim relief hearings the default position is that there will be no oral evidence unless the Tribunal directs otherwise (and I did not). Findings of fact are not made. Instead, an “expeditious summary assessment” is to be conducted (London City Airport Ltd v Chacko [2013] IRLR 610). The process was described by HHJ Eady QC as she then was as a necessarily “broad-brush approach” and “very much an impressionistic one” in His Highness Sheikh Bin Sadr al Qasimi v Robinson UKEAT/0283/17. I was also referred to some other authorities. I have not found it necessary to refer directly to all of them, though two are dealt with below.
6. The particular complaint in this case is automatically unfair dismissal because of making a protected disclosure, or whistleblowing as it is more commonly known. The Taplin test must be met for each element of that complaint here. S 103A ERA provides that an employee who is dismissed shall be regarded 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. In such circumstances the employee is said to be subject to an automatically unfair dismissal.
7. This is a case where the claimant was employed for less than two years. Two years’ service is required to bring a claim for ordinary unfair dismissal, but is not required to bring a claim for automatically unfair dismissal. Where the employee lacks the requisite two years’ continuous service to claim ordinary unfair dismissal, at the final hearing of their claim for automatically unfair dismissal they will have the burden of showing, on the balance of probabilities, that the sole or principal reason for dismissal was an automatically unfair reason (see Ross v Eddie Stobart Ltd EAT 0068/13 in relation to the particular case of a “whistleblowing” dismissal). In this case, then, the claimant will have the burden of proving that the sole or principal reason for her dismissal was that she made a protected disclosure.
8. By operation of s 43A and s 43C(1)(a) ERA, a disclosure will be protected if it is a qualifying disclosure made by an employee to an employer. By s 43B, a qualifying disclosure means any disclosure of information which, in the reasonable belief of the person making the disclosure, is made in the public interest and tends to show one or more of five things, or concealment of those things, (“the wrongdoing”). One of those things (s43B(a)) is that a criminal offence has been committed, is being committed or is likely to be committed. Another (s 43B(b)) is that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. In the case of a disclosure directly to an employer, the Tribunal will therefore consider the following. First, was there a disclosure of information? It is immaterial that the

recipient is already aware of the information (s 43L(2)). Second, did the claimant reasonably believe two things: (i) that the information tended to show the relevant wrongdoing and (ii) that the disclosure was in the public interest? So far as both beliefs (i) and (ii) are concerned, it is the claimant's belief at the time of making the disclosure (not any later) that is relevant, and the belief must be genuine, subjectively held but objectively reasonable.

Decision on interim relief

9. I considered the written evidence, which consisted of witness statements from the claimant and from Mr Tiernan and Mr Bell, who were employees of the respondent. I also considered the contents of a 57 page bundle as well as written and oral submissions made by the parties.
10. It is important to note here that I am considering whether there is a pretty good chance of success on the complaint of automatically unfair dismissal because of whistleblowing. The rules do not permit me to consider whether the claimant may have a pretty good chance of success on any other complaint that she may or may not be bringing such as ordinary unfair dismissal or whistleblowing detriment. So, I have to consider the likely chance of the success on each element of the claim for automatically unfair dismissal because of whistleblowing. As it appears to me, there will be two broad issues that the Tribunal will have to determine at the final hearing.
11. First, it will be for the claimant to prove that she made protected disclosures within the meaning of section 43B. She will have to prove that there was a disclosure of information, and I take account of the authorities that say that, depending on the context, a mere allegation may amount to a disclosure of information. That will not necessarily be so and will depend on all the circumstances. (The well-known example is somebody simply saying "You are breaching health and safety obligations" – not a disclosure of information – as contrasted with somebody saying that whilst pointing to a wet floor – which may well amount to a disclosure.) The claimant would also have to prove that she reasonably believed that disclosure, firstly, was in the public interest, and, secondly, tended to show one of the two sorts of wrongdoing I refer to above. As I have said, the burden on the claimant would be to prove all of those things.
12. Second, the claimant would also have to prove that the reason, or principal reason, for the dismissal was that she made a protected disclosure.
13. I stress that I do not make factual findings as part of this process. I am, rather, required to form an impressionistic view about the claimant's chances of success. Factual findings come much later in the process.
14. In approaching my task, I keep in mind, as Mr Linstead reminded me on behalf of the respondent, that the contents of the ET1 form (the claim form) are important. This is made clear in Chandhok v Tirkey [2015] IRLR 195 at para 16: "The claim, as set out in the ET1, is not something just to set the ball rolling... It sets out the essential case". Mr Linstead also referred me to Mechkarov v Citibank UKEAT/0119/17, in which it was said that the claim form must be considered as a whole and, in a complaint of public interest disclosure, should

be given a generous reading. In my judgment it is important not to take overly mechanistic approach here and also to keep in mind that the strict time limits in interim relief cases means that a claim form is often prepared in a hurry. So, in this case, I do not draw any particular conclusions adverse to the claimant where, for example, her statement might provide more information or even slightly different information to what is on the claim form. At this early stage of the proceedings, I think it is appropriate to take account of both of those documents, both in assessing what the claim is as well as in assessing what the strength of the claim is.

15. I deal first with the claimant's prospects of proving that she made protected disclosures. Regarding the first disclosure, the claimant says in her claim form that in a meeting she told her manager, Mr Bell, about suspected irregularities at the respondent's Cockfosters Depot, including mismanagement of documents and potential diversion of funds. On its face, that is probably more of an allegation than an assertion of fact. But, as I have already said, I think it is also important to take account of what the claimant says in her witness statement, where she provides rather more detail, which could in my judgment be said to amount to a disclosure of information rather than a mere allegation. She says that she disclosed that her colleagues at Cockfosters were refusing to provide her access to essential project documentation including drawings, permits and certificates, which, she continues, prevented her from carrying out her duties and gave rise to a reasonable belief that project resources and financial transactions could be being mismanaged or improperly handled. So far as the reasonableness of that belief is concerned, in my judgment the context is important here. The claimant's job title was Document Controller and it appears to me that there is unlikely to be any dispute with the respondent's assertion that her duties did not include compliance. Of course, as the claimant points out, that does not mean that she would not have thought it appropriate to report wrongdoing, but it does seem to me, in that context, that the claimant may have some difficulty with proving that the respondent's employees refusing her access to documents gave rise to a reasonable belief on her part that there was wrongdoing (and so that her disclosure showed either the mismanagement of resources or financial impropriety). In my judgment, it is quite a leap from someone who does not have a compliance role being denied access to documents to a conclusion that that the denial of access must, or even may, show some wrongdoing. And that is on the face of the claimant's case, without going on to consider whatever evidence the respondent might call. Now, Mr Bell, for his part, in his statement, does accept that the claimant told him that she had suspicions of criminality, explaining that her specific suspicion was that when a colleague had told her not to go into a certain folder on a shared drive, she concluded that he was hiding something from her. Mr Bell continues that, when asked, the claimant told him that the folder was the "Drawings" folder. Mr Bell goes on to explain why that should not give rise to suspicion, setting out the reasons why someone might deny access for legitimate reasons. It seems to me that there is, at the very least, a triable issue on that point – perhaps the claimant's argument will be accepted, but perhaps Mr Bell's will. I come to the conclusion that I cannot say that the claimant has a good chance of proving that she had a reasonable belief that the information she disclosed to the respondent tended to show wrongdoing.

16. Having heard from the claimant it seems to me that she will have a pretty good chance of persuading the Tribunal that she genuinely believed that she was making disclosures in the public interest. That however is not the test that I have to apply here. But I do accept that the claimant would have a somewhat better chance of establishing here, *if* all the other elements of her claim were made out, that she had a reasonable belief that what she was disclosing was in the public interest. So, I do not address that point in any more detail.
17. The second protected disclosure which the claimant relies upon is as follows. On the same day as the first, the claimant asked another manager, Mr Tiernan, to speak about something. It does not appear to be disputed that she sent him a WhatsApp text saying "Can we talk tomorrow? I want to tell you something about Cockfosters". This alone of course would not be a disclosure of information, but in her claim form the claimant says that in their subsequent conversation she told him about suspected irregularities and mismanagement at Cockfosters, potentially including financial impropriety. In her statement, the claimant says that she disclosed:

Suspected irregularities and mismanagement at the Cockfosters Project, specifically that colleagues were withholding or restricting access [i.e. the claimant's access] to essential project documentation, including drawings, permits, certificates and site-specific risk assessments.
18. Again, even on the claimant's case, similar points apply, in my judgment, to that first pleaded protected disclosure as they do to the second. In other words, it is still a leap from access being withheld to documents for someone in a non-compliance role to a reasonable belief that that lack of access tends to show wrongdoing. Again, that would be even before the Tribunal had to take account of Mr Tiernan's evidence, which is to the effect that the claimant told him she had concerns about four named people and that the basis for her concern was that they did not want her to see drawings, by which she meant the architectural site drawings. Again, the witness explains why that might not necessarily give rise to a reasonable suspicion of wrongdoing. There is plainly an issue to be tried here, but that is not the same thing as saying that the claimant has a pretty good chance of success.
19. I would come to the same judgment about public interest on the second disclosure as I would in regard to the first disclosure. But, ultimately, for the same reasons that I have already explained, it does not seem to me that the claimant has a pretty good chance of proving that the second disclosure was a protected disclosure.
20. It is therefore not strictly necessary for me to consider the likelihood of the claimant succeeding on the second element of her claim, whether the sole or principal reason for her dismissal was the disclosures. I do accept that the claimant potentially has a stronger case there. She might point, for example, to the timing of her dismissal, two days after the disclosures. She might also point to the fact that the respondent's stated reason for the dismissal, which relied heavily on her being overqualified, was no truer when she was dismissed than it was when she was taken on, although it has to be said that is not the only reason the respondent asserts for the dismissal. (There is also mention in

the dismissal letter of the claimant's performance during the probationary period.) The claimant might also point to the fact that she was nowhere near the end of her probationary period and might also point out that there does not appear to be any mechanism, so far as I can see at least, a for review of her probationary period at the point when the respondent purported to review it. She might also reasonably point to some of the circumstances of her dismissal, i.e. exactly how it happened. But some of the things relied upon by the claimant are disputed – they might be decided in the claimant's favour, but they might not. Others things, the respondent says, have innocent or reasonable explanations, some of which are set out some length in Mr Tiernan's statement where he deals with what he says were concerns about the claimant's performance. I stress that the claimant no doubt disputes all or very much of that. But, ultimately, a lot in this case is going to depend on what the Tribunal makes of the witnesses and what they assert. Even if the burden were to shift to the respondent to prove that the reason for the dismissal was not public interest disclosures (and I cannot see that it could, given the claimant's length of service), it does not seem to me that there is a pretty good chance that the claim will succeed on that point either.

21. The application for interim relief is therefore refused.

Disclosure etc

22. I was also asked by the claimant to make orders that the respondent either now disclose relevant documents in this case (in particular, those relating to the project about which the claimant says she was whistleblowing) or refrain from destroying them. As to the latter, which is referred to as a preservation order, the civil courts, or at least the High Court, appear to me to have an injunctive power to restrain destruction of documents. I do not appear to have the same power. That said, I do accept that there would be nothing to prevent me from making a case management order relating to destruction of documents. It might be questionable whether there were any powers to enforce that order. But I approached the application on the basis that I may at least have such power. Plainly I do have the power, even at this early point in the proceedings, to make an order for disclosure of relevant documents.

23. Rule 33 is as follows:

Disclosure of documents and information

The Tribunal may order any person in Great Britain to disclose documents or information to a party (by providing copies or otherwise) or to allow a party to inspect such material as might be ordered by the county court [...]

24. The test applied by the County Court for whether an order for disclosure of documents should be made is as set out by the Court of Appeal in Canadian Imperial Bank of Commerce v Beck 2009 IRLR 740. Documents will be disclosable if they are (i) "relevant" and (ii) "necessary for fairly disposing of the

proceedings". A document is "relevant" for these purposes if it is likely to support or adversely affect the case of one or other party.

25. The power to order disclosure is usually exercised at a somewhat later stage in the proceedings. There are good reasons for that. The order is to disclose all relevant documents, and in a case of this complexity it will be made at a preliminary hearing at which the Tribunal determines, and puts in writing, the issues that will be decided at the final hearing. What documents are relevant of course depends on what those issues are. If orders about specific disclosure are made before that general order, the parties have to deal with disclosure twice and will be put to more work. In my judgment, it would usually only be appropriate for me to make the orders that the claimant seeks at this early stage in proceedings if there were at least a reasonable suspicion that the respondent might start destroying documents or failing to preserve them, or if those documents were necessary for the claimant to properly prepare for the preliminary hearing. Neither of those appear to be the case here. In my judgment, the claimant simply has not established any grounds whatsoever to suspect that the respondent might destroy documents. I accept Mr Linstead's submission that there is nothing to separate this case from any other case of this sort where a claimant is alleging whistleblowing and wrongdoing on a respondent's part. So, ultimately, I can see no reason to depart from the usual procedures. It is not necessary to make a preservation order, and it is not necessary to make an order for specific disclosure at this early stage.
26. As I observed during the course of submissions, the respondent's legal representatives were present at the hearing and will be in no doubt about their client's legal obligations to disclose evidence. But I would have made the same decision even if the respondent was not legally represented. Of course, if there are particular documents sought by the claimant, there is no reason why she not identify them now to the respondent and seek voluntary disclosure.

Approved by:

Employment Judge Dick

22 May 2026

JUDGMENT SENT TO THE PARTIES ON
26 May 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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