EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002528/2025

Preliminary Hearing held in Dundee by CVP on 16 April 2026

Employment Judge R Phillips

Mr G Livingstone	**Claimant** **In Person**
Ainscough Crane Hire Limited	**Respondent** **Represented by Mrs S Shaw, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The claimant was not a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of hypertension. His complaints of direct disability discrimination (section 13), discrimination arising from disability (section 15) and failure to make reasonable adjustments (section 20) are dismissed.

2. The claimant did not make a protected disclosure within the meaning of sections 43A–43B of the Employment Rights Act 1996. His complaint of automatic unfair dismissal under section 103A is dismissed.

3. A case management hearing will be listed to determine procedure in respect of any remaining complaints.

REASONS

Introduction

1. This was a preliminary hearing to determine two jurisdictional issues only:

    1.1. whether the Claimant was disabled within the meaning of the Equality Act 2010; and

    1.2. whether he made a protected disclosure under the Employment Rights Act 1996.

2. The claimant appeared as a party litigant. The respondent was represented by Mrs Shaw, Solicitor.

3. At the start of the hearing, I explained the purpose of the hearing. I explained that this was a hearing at which evidence would be heard to determine the two issues. At the end of the evidence and before submissions were made, the Claimant's position changed and he stated that he had thought that this hearing was for case management but that he was happy to go along with the hearing.

4. The respondent lodged a 97-page bundle on 7 April 2026, copied to the claimant. It was not an agreed bundle. Following brief adjournments, and by consent, four further pages were added to the bundle, with the respondent reserving its position as to relevance.

Issues to be Determined at the preliminary hearing

5. The issues to be determined, as noted above, were discussed at the start of the hearing. I summarised the factual and legal issues that arise from the definitions of a disabled person and of a protected disclosure, including the statutory provisions relevant to each issue. I also explained that the burden of proof is on a claimant to show that he satisfied the statutory definitions of disability and of a protected disclosure. The respondent produced in advance a skeleton argument.

Final preparations

6. The claimant explained that he was not legally qualified and that he was considering seeking further advice about his claims. He confirmed that he had not done so before this hearing. I reminded the claimant that the Tribunal gave him notice of the purpose of this hearing in a letter dated 30 January 2026 (covering issue 1) and updated on 26 March 2026 (adding issue 2). The claimant had over 10 weeks to prepare issue 1 and over 4 weeks to prepare issue 2. In the circumstances, I considered that it was in accordance with the overriding objective to deal with cases fairly and justly for the hearing to proceed. There was no application to postpone and the hearing proceeded. The Claimant gave evidence on oath. There were no other witnesses.

Findings in Fact

7. On the documentary and oral evidence presented, I have set out the essential facts as found for the purpose of determining the issue of disability status and whether a protected disclosure was made.

Disability

8. The claimant was employed by the respondent as a crane operator between October 2023 and July 2025. The claimant regularly carried out alternative duties of lift supervisor and slinger. The claimant found those extra responsibilities stressful.

9. On 19 April 2024, during an occupational health assessment at a third-party medical services company called Abbott, the Claimant was found to have raised blood pressure. He was previously unaware of having high blood pressure or hypertension and had experienced no symptoms.

10. After his blood pressure reading, the Abbott clinician told the claimant that his blood pressure readings were extremely high and advised him not to drive home. The claimant however “felt normal”. The claimant was told to see his GP, which he did.

11. A Certificate of Fitness for three months was issued in respect of the claimant’s medical assessment on 19 April 2024. That certificate recorded the claimant as being “fit for rooftop work only”.

12. On 24 April 2024, the claimant’s GP diagnosed “essential hypertension”. He was prescribed Ramipril daily. His medical records were 1.5 pages long and covered the period of the claimant’s diagnosis of “essential hypertension” only. They did not record any deterioration of condition, escalation of treatment, or significant reporting of symptoms in the period following diagnosis.

13. On 24 April 2024, Abbott emailed the claimant concerning the “Safety Critical Worker Medical Assessment” carried out on 19 April 2024. Abbott informed the claimant that he did not meet the required standard for the assessment in respect of general health, due to blood pressure, and that further information was required. Upon receipt of the required information, the clinician would review the assessment and make appropriate recommendations. The claimant was asked to obtain the requested information and to provide it to Abbott within six weeks.

14. The claimant was absent from work for approximately four weeks and returned to work on 27 May 2024.

15. On 27 May 2024, the claimant emailed Abbott with their requested information. In response, Abbott issued a Certificate of Fitness which lasted three years.

16. On 28 May 2024, the claimant attended a return-to-work interview with Mr Laidlaw, a manager at the respondent. The claimant had been absent for a total of 24 days due to hypertension. A record of the return-to-work interview was completed by Mr Laidlaw and signed by the claimant a few days later. The record asked whether the claimant's sickness absence was to be considered a disability under the Equality Act 2010 and the answer given was "No".

17. The GP medical records relied upon by the claimant and covering the period of his diagnosis with essential hypertension were printed by his GP practice in January 2026.

18. In the period between May 2024 and June 2025, the claimant's health and functioning were impacted. The impact included a change to his previously outgoing and friendly personality: the claimant became irritable, intolerant, and irrational. The claimant experienced disturbed sleep, which left him exhausted and made his daily commute distressing. On one occasion, he fell asleep in his car at work due to lack of sleep. As he approached the work site, he experienced physical symptoms of anxiety, including a pounding chest, and felt increasingly anxious and emotionally distressed.

19. Although he attempted to maintain a calm and professional demeanour at work, the Claimant's confidence deteriorated. His ability to assert himself, to work effectively with other trades, and to maintain spatial awareness on site, particularly within the lifting zone, was adversely affected. The Claimant took frequent breaks in the site toilet to manage his symptoms, using breathing and calming techniques to prevent hyperventilation and reduce anxiety.

20. In addition to the stress from working frequently more responsible and burdensome roles to his contracted role, the Claimant was concerned about the risk of a stroke and felt under stress as a result.

21. The Claimant was fearful that the extra duties as lift supervisor and/or slinger, which went beyond his role of crane operative, were causing him stress.

22. The claimant remains on hypertension medication and he believed that without his medication he would be dead.

23. The claimant was genuine in his concern about his health and was genuinely affected in the way he described.

24. The claimant did not experience the symptoms referred to in paragraphs 18, 19 and 20 after he had been suspended from duties in June 2025. The Claimant had a blood pressure reading taken shortly after his suspension and it was the lowest it had ever been. None of the symptoms referred to in paragraphs 18, 19 and 20 have been experienced by the claimant during his post-employment work as a slinger with a different employer. These symptoms were not caused by the claimant's hypertension.

Protected Disclosure

25. In or around February 2025, the claimant challenged Mr Jones in a private conversation in the Dundee bothy, asserting that Mr Jones was bullying a colleague, Mr Drummond, and telling him to stop. Mr Jones denied the allegation. The claimant accepted that he used "military terms" or colourful language, although he did not specify the words he used.

26. The claimant believed Mr Drummond was a disabled person. The claimant was genuine in his belief that Mr Jones was bullying Mr Drummond. However, the claimant did not make specific reference to any specific incidents during his verbal exchange with Mr Jones.

27. The claimant informed his line manager, Mr Laidlaw, about the claimant's conversation with Mr Jones.

28. The claimant also referred to the conversation with Mr Jones at the appeal meeting and questioned if his verbal exchange with Mr Jones about Mr Drummond may have been connected to later difficulties in his employment.

Observations on Evidence

29. I considered that the claimant gave his evidence in a straightforward manner. In cross-examination, the claimant accepted matters that he could not know: the cause of his stress or what Mr Jones understood by the claimant's verbal exchange in the Dundee bothy. While at times the claimant's evidence appeared a little exaggerated (that he would be dead without his hypertension medication), he was broadly credible and reliable in his evidence.

Law

Disability Status

30. The first issue for the Tribunal to determine was disability status.

Relevant law

31. Disability is one of the protected characteristics provided for by section 4 of the Equality Act 2010 ("EqA"). Section 6, EqA defines disability as follows:

"*(1) A person (P) has a disability if-*

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability."

32. “Substantial” means more than minor or trivial under section 212(1), EqA.

33. Further provisions are set out at Schedule 1 of the EqA, which includes that

“**2. Long term effects**

The effect of an impairment is long term if

(a) It has lasted for at least 12 months…..

5. Effect of medical treatment

(i) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if –

(a) Measures are being taken to treat or correct it, and

(b) But for that, it would be likely to have that effect…….”

34. Schedule 1, Part 2, paragraph 12, EqA states that the Tribunal must take into account such guidance as it thinks is relevant in determining questions relating to the definition of disability. ***Guidance on Matters to be taken into Account in Determining Questions Relating to the Definition of Disability (2011***) provides guidance on the matters which are to be taken into account.

35. The Guidance at paragraph B1 deals with the meaning of ‘substantial adverse effect’ and states ‘The requirement that an adverse effect on normal day-to day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.’

36. Paragraph B1 should be read in conjunction with Section D of the Guidance, which considers what is meant by ‘normal day-to-day activities’. Paragraph D2 states that it is not possible to provide an exhaustive list of day to-day activities. Paragraph D3 provides that: ‘In general, day-to-day activities are things that people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.’

37. Paragraph D16 provides that normal day-to-day activities include activities that are required to maintain personal well-being. It provides that account should be taken of whether the effects of an impairment have an impact on whether the person is inclined to carry out or neglect basic functions such as eating, drinking, sleeping, or personal hygiene.

38. ***The Equality and Human Rights Commission Code of Practice: Employment*** also has guidance on the question of disability status, at paragraphs 2.8 – 2.20 and Appendix 1.

39. In **Goodwin v Patent Office** [1999] IRLR 4, the EAT held that in cases where disability status is disputed, there are four essential questions which a Tribunal should consider separately and, where appropriate, sequentially. These are:

    39.1. Does the person have a physical or mental impairment?

    39.2. Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?

    39.3. Is that effect substantial?

    39.4. Is that effect long-term?

40. The burden of proof is on a claimant to show that he satisfies the statutory definition of disability.

Protected Disclosures

41. The second issue for the Tribunal to determine was whether a protected disclosure was made by the claimant.

    Relevant law

42. The statutory test for a protected disclosure is found in sections 43A-43H, ERA.

43. Section 43A states:

    "Meaning of "protected disclosure".

    In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

44. At the material time, section 43B(1) defined the meaning of a "qualifying disclosure" as follows:

    "*…a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, 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,

(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."

45. Case law has given guidance on what information must be disclosed for there to be a valid "disclosure of information", required by statute.

46. In **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38, the EAT held that it is not sufficient that the claimant has simply made allegations about the wrongdoer. In its Skeleton Argument, the Respondent quoted as follows from Mrs Justice Slade in the *Cavendish* case:

"*… 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.*"

47. The Respondent also referred to the important authority of **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436 (21 June 2018)), where the Court of Appeal held that the concept of 'information' as used in s 43B(1) is capable of covering statements which might also be characterised as allegations. 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. In the *Kilraine* case, the third purported disclosure was a written complaint that Ms Kilraine had been subjected to bullying and harassment by senior colleagues, including her line manager, which she said had been tolerated and at times encouraged by management. She alleged that she had been repeatedly sidelined and excluded, including from meetings relevant to her role, and that there had been numerous incidents of inappropriate behaviour towards her. The EAT held that the third disclosure said nothing specific and did not sensibly convey any information at all. The Court of Appeal in *Kilraine* upheld the EAT's decision and added that the claimant did not identify any relevant context for the statement said to constitute the third disclosure which might have informed or supplemented its meaning; nor did she specify any part of that context which was said to supply the relevant minimum factual content which could satisfy the test in s 43B(1).

48. The burden of proof is on a claimant to show that he made a protected disclosure as required by the statute.

Deliberations

Disability Status

49. The Tribunal's conclusions in relation to questions posed in **Goodwin v Patent Office**, in relation to the asserted impairment of hypertension, are set out below.

50. **Does the claimant have a physical or mental impairment?** Yes. The claimant has a physical impairment of hypertension, referred to in his medical notes as "essential hypertension". It was diagnosed on 24 April 2024 by his GP and the Claimant takes daily medication for hypertension. There was no evidence of any underlying cause for this condition. The claimant relies on that condition only to claim that he is a disabled person.

51. **Was there an adverse effect on the claimant's ability to carry out day to day activities as a result of the impairment?** To answer this question, the following further questions require to be considered: (a) what symptoms arise from the impairment? (b) what impact do those symptoms have? (c) which normal day-to-day activities are affected, and how?

52. The claimant had no noticeable symptoms caused by high blood pressure before his diagnosis in April 2024 and after his suspension in June 2025 and after he resumed employment elsewhere. At these times, he felt "normal". I have concluded therefore that there were no symptoms of hypertension at these times and this impairment had no adverse effect on his normal day-to-day activities.

53. I accepted that the Claimant had the symptoms he described. It was notable that the medical records produced by the Claimant did not refer to any of the symptoms he was relying on at the hearing, did not record the Claimant's perception that he was experiencing a change in symptoms of hypertension. I had to consider whether these symptoms (of irritability, intolerance, getting fed up and being irrational, feeling stressed and anxious and fatigue due to disturbed sleep) that the claimant experienced during the relevant period were symptoms arising from the impairment of hypertension or not. In my view, the symptoms complained about by the claimant during the relevant period did not arise from hypertension / high blood pressure for the following reasons: (1) although the claimant believed they were connected and accepted in cross examination that he was not an expert on what symptoms are caused by what condition, there was no medical evidence to support the position that the symptoms of irritability, intolerance, irrational behaviours, feeling fed up, feeling tired and stressed and anxious were caused by his hypertension; (2) the claimant gave evidence about the existence of workplace stressors at the relevant time, including the burden of responsibility he felt when carrying out the additional duties of lift supervisor and

slinger. This was a plausible alternative explanation for these symptoms complained about by the claimant; and (3) when workplace stressors were removed (e.g. during suspension or in employment elsewhere), the claimant did not experience the same symptoms that he contended were associated with hypertension, even though the claimant's condition of high blood pressure was persisting and he was (and is) still taking medication. I also considered whether the claimant's feeling that his chest was thumping hard could have been a symptom caused by the impairment. But the Claimant's own evidence that this was related to anxiety about arriving at work. I therefore concluded that none of the symptoms complained about between the date of diagnosis to June 2025 were related to hypertension.

54. With the conclusion that the claimant's condition of hypertension had no symptoms at the relevant times, it followed that that impairment had no adverse effect on his normal day-to-day activities. The claimant did not meet the onus of proving that his ability to carry out day-to-day activities was substantially adversely affected by the impairment of hypertension.

55. The stress-related symptoms described by the Claimant appeared to be situational and related to particular duties that he carried out as Lift Supervisor or Slinger or his anxiety that work-related stress could aggravate hypertension. However, workplace stress / anxiety is a mental impairment on which the Claimant was not relying for the purposes of his disability discrimination claim. It seemed likely that the symptoms described by the Claimant were stress or anxiety-related symptoms (as the respondent put to the claimant and submitted to the Tribunal), but it is unnecessary for me to make a determination about that.

56. Having concluded that the claimant's impairment of hypertension did not have any adverse effect on his normal day-to-day activities at the relevant time, the further questions about the effect of the impairment was substantial and long term did not fall to be answered.

57. The claimant was therefore not a disabled person for the purposes of section 6 of the Equality Act 2010.

Protected Disclosure

58. The statement made to Mr Jones by the Claimant amounted to an allegation of bullying and was expressed in very general terms. The Claimant accepted that it lacked reference to specific facts or incidents or other recent context concerning Mr Drummond.

59. Applying ***Cavendish*** and ***Kilraine*** and comparing the Claimant's purported disclosure with the purported third disclosure in ***Kilraine***, the claimant's statement was too general and devoid of factual content to constitute a disclosure of information within section 43B ERA. Confronting Mr Jones and telling him that

he was bullying John and to stop it is not a disclosure of information falling within the statutory provisions.

60. A statement can derive force from the context in which it was made and taken in combination with that context can constitute a qualifying disclosure. For example, pointing to sharps lying around a hospital while saying “you are not complying with health and safety standards” could suffice. However, the claimant could point to no context that could transform the statement into a disclosure of information, as required by section 43B.

61. The further questions of whether the disclosure was qualifying and protected did not fall to be answered.

Conclusions

62. The claimant is not a disabled person and did not make a qualifying disclosure, and therefore the claims under sections 13, 15 and 20 Equality Act 2010 and section 103A Employment Rights Act 1996 are dismissed.

63. A hearing on case management will be listed to determine further procedure for any remaining claims (such as unlawful victimisation).

Date sent to parties **20 May 2026**