EMPLOYMENT TRIBUNALS

Claimant: Ms L Casper

Respondent: Thomas Boyde Whyte

Heard at: South London (by video)

Before: Employment Judge Evans

Date of hearing: 26 May 2026

The Tribunal gave oral judgment with reasons in this claim on 26 May 2026. On 8 June 2026 the claimant made a request for written reasons pursuant to Rule 60 of the Employment Tribunal Procedure Rules 2024. Those written reasons are set out below.

The Tribunal's judgment given on 26 May 2026 was that the claimant's application for interim relief pending the determination of their claim of unfair dismissal failed and was dismissed.

WRITTEN REASONS

Preamble

1. On 8 May 2026 the claimant presented a claim of unfair dismissal to the Tribunal following her dismissal. Within that claim she included a claim for interim relief pursuant to section 128(1) of the Employment Rights Act 1996 ("the 1996 Act") on the grounds that she was unfairly dismissed contrary to section 103A of the 1996 Act. That application was listed for hearing before me today.

The hearing today, 26 May 2026

2. I had the following documents before me today:
    2.1. The claimant's evidence bundle running to 78 pages;
    2.2. The claimant's pleadings bundle running to 56 pages;
    2.3. The respondent's bundle running to 86 pages;
    2.4. A draft witness statement for Shena Franklin of the respondent running to seven pages;
    2.5. The claimant's written submissions;
    2.6. The respondent's comments on the claimant's written submissions.

3. Having checked the documents with the parties, and having discussed the issues as set out below, I then heard submissions. I did not hear any oral evidence. The submissions were

brief, and I adjourned at 10.50am to deliberate. I gave oral judgment at midday. I gave full reasons for my oral judgment.

The issues for the Tribunal to decide today

4. There was a brief discussion at the beginning of the hearing in which I outlined what I considered to be the relevant law (as set out below) and identified what appeared to me to be the relevant issues. The parties did not disagree with my identification of the relevant issues.

5. The claimant contends that the reason for her dismissal given by the respondent – that she had refused to work with a particular solicitor and that in light of that refusal there was no work for her – was not in fact the real reason. The real reason, she says, was that she made protected disclosures (with the result that her dismissal was automatically unfair under section 103A of the Employment Rights Act 1996 ("the 1996 Act")).

6. As such, what I had to determine was whether it was "likely" that on determining the claimant's unfair dismissal claim the Tribunal would find that the reason (or if more than one the principal reason) for the dismissal was that the claimant had made one or more protected disclosures (with the result that the dismissal was unfair under section 103A of the 1996 Act).

The law

7. An interim relief hearing is a hearing at which the Judge must make an "expeditious summary assessment" (London City Airport Ltd v Chacko [2013] IRLR 610). This is reflected in Rule 95 of the Tribunal's Rules of Procedure which provides that at such a hearing "…the Tribunal shall not hear oral evidence unless it directs otherwise".

8. Section 129(1) of the 1996 Act sets out the relevant test on an application for interim relief. It provides where relevant that:

   (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(d), 102(1), 103 or 103A, or…

   (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.

9. The meaning of "likely" in this context has been considered in a number of authorities. The oldest of these is perhaps Taplin v C Shippam Ltd [1978] IRLR 450, in which Slynn J held, at [23], that "likely" means does the claimant have a "*pretty good*" chance of success?

10. More recently, in Ministry of Justice v Sarfraz [2011] IRLR 562, it was interpreted by the then President of the EAT, now Lord Justice Underhill, as meaning "*a significantly higher degree of likelihood*" than just more likely than not. This is a fairly high bar, and the reason for it being a fairly high bar was explained, again by the then President, in Dandpat v University of Bath [2009] UKEAT/0408/09/LA. He explained the rationale for keeping it high (at [20]): if interim relief is granted, "*the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not* [a] *consequence that should be imposed lightly*."

11. Further, in order to succeed the claimant must show that it is "likely" that all the necessary component parts of the relevant claim will be proved. So, in the context of a claim that the reason or principal reason was that the claimant had made a protected disclosure, the claimant would need to show this in relation to matters including:
    11.1. that she made a disclosure of information;
    11.2. that she believed that the disclosure tended to show one of the types of wrongdoing identified in section 43B(1) of the 1996 Act;
    11.3. that such belief was reasonable;
    11.4. that she believed that the disclosure was in the public interest;
    11.5. that such belief was reasonable;
    11.6. that the reason or principal reason for the dismissal was the fact that she had made a protected disclosure.

Conclusions

12. The claimant needs to persuade me that a number of things appear likely:

    12.1. **Disclosure of information:** it is likely that she will persuade the Tribunal that she made a number of disclosures of information in relation to: (1) being asked to retrospectively prepare attendance notes; (2) alleged failures by a solicitor to properly record client instructions/make attendance notes generally; (3) alleged failures by a solicitor to explain their fees properly; (4) alleged claiming of excessive fees by a solicitor; (5) alleged failure to adequately assess capacity of an elderly client with diagnosed dementia. It appears to me likely because the documents before me show the claimant raising these and other matters orally and in writing with the respondent.

    12.2. That she believed that the disclosure tended to show one of the types of wrongdoing identified in section 43B(1) of the 1996 Act: in light of the way the claimant wrote about these matters contemporaneously, it appears to me likely that she believed that the disclosures showed the respondent had failed to comply with a legal obligation. The claimant identifies the relevant legal obligations in her claim form as being "legal, regulatory and professional obligations owed to clients" and certainly her factual allegations might well if proved show breaches of the SRA Code of Conduct for Solicitors and the SRA Principles.

12.3. **That such belief was reasonable:** given the contemporaneous and fairly detailed nature of the disclosures, it appears to me to be likely that such belief was reasonable, but I note that in reaching this conclusion I have not had put before me (understandably, given the point in the proceedings at which this hearing takes place) any documentation showing the careful consideration that the respondent says it undertook into the allegations. The Tribunal at the full hearing will doubtless have this at its disposal.

12.4. **That she believed that the disclosure was in the public interest:** having regard to Chesterton Global v Nurmohamed [2017] EWCA Civ 979 it is likely that the disclosures will be shown to be in the public interest: the number of people in the group (clients and potential clients) is sizeable, the nature of the interests affected (their right to be treated lawfully and fairly as clients) is significant, and the nature of the alleged wrongdoing and identity of the alleged wrongdoer all point in that direction.

12.5. **That such belief was reasonable:** again, it is likely that the claimant will persuade the Tribunal of this, given in my view the strength of the argument that a disclosure of this nature is in the public interest.

12.6. **That the reason or if more than one the principal reason for dismissal was that the claimant had made a protected disclosure**

12.6.1. The respondent's position: The respondent says that the reason for the claimant's dismissal was not the alleged protected disclosures at all. The respondent says the reason for the dismissal was that (1) the claimant refused to work with the solicitor whom she had been hired to work with because of her view of him as reflected in the protected disclosures; (2) in those circumstances the respondent had insufficient work in the Private Client department that she could do to justify her continued employment; (3) it had made an effort to consider whether she could work in the conveyancing or criminal law departments, and made a specific attempt to place her in the family law department. It would not have done these things if the reason for the dismissal was that she had made protected disclosures.

12.6.2. I note that there is some evidence that the claimant was recruited *specifically* to work alongside that solicitor and that by the time she was dismissed she was no longer prepared to do so. The attendance note prepared following the meeting with Ms Franklin on 16 March 2026 includes the following, which the claimant did not seek to amend when she provided a revised version of the meeting note:

"SF explained that LC was brought in to work alongside ME and since joining, LC has been training with DB, which is not how we anticipated.
LC advised that she wanted to come over and explain to SF why she feels there has been tension and the reasons why she feels she cannot work alongside ME."

12.6.3. Further, the respondent's attendance note of the meeting on 23 April 2026 notes:

> *"During the period of extension, the time spent working alongside PO has been considered carefully and it is clear that the volume of work undertaken solely with PO is insufficient to justify LC's salary on going within the Private Client department"*

"PO advised that the decision has been made simply due to the level of work being insufficient, Dennis leaving and LC now not working alongside Michael, which she was hired to do."
PO is the head of the respondent's private client department.

12.7. The claimant: by contrast, the claimant says that the reason for her dismissal was that she had made the alleged protected disclosures. The points she made in support of this contention include that:

12.7.1. She says she was not employed specifically to work with a particular solicitor. Her offer letter and statement of particulars say no such thing;

12.7.2. She says that she agreed with the head of department on 13 March 2026 that after the retirement of the will writer she would take on new instructions under his supervision (not under that of the solicitor with whom the respondent says she was employed to work);

12.7.3. She had not refused to work with the relevant solicitor. Rather she had said that she was struggling to work with him and felt uncomfortable. Initially, the respondent had accepted this and made arrangements which meant the claimant could complete her probationary period without working with the solicitor in question. Then, at the meeting on 23rd April, the termination of her employment had been announced at the outset, without any discussion of whether she could or would work with the relevant solicitor;

12.7.4. The respondent claimed that there was insufficient work in the Private Client department to justify her continued employment but this was plainly not true: by the end of April, the will writer had left, and the solicitor with whom she worked had always been very busy.

13. Balancing the materials before me, it does not appear to me to be "likely" that the Tribunal deciding the claimant's claim of unfair dismissal will conclude that the reason or principal reason for her dismissal was that she had made one or more protected disclosures. That is to say it does not appear to me to be "likely" that the Tribunal will conclude that the claimant's dismissal was automatically unfair under section 103A of the 1996 Act.

14. I reach this conclusion in light of the explanation of "likely" given by the President of the EAT in Ministry of Justice v Sarfraz [2011] IRLR 562: "*a significantly higher degree of likelihood*" than just more likely than not.

15. The bottom line is this: there is a significant factual dispute at the heart of this claim. That factual dispute is whether or not the claimant *refused* to work with the relevant solicitor or simply said that she struggled to work with him and felt uncomfortable doing so. The documentary evidence I have before me does not enable me to predict the decision that the Tribunal hearing the claim will make in relation to this factual dispute with any degree of certainty because, in broad terms, the documentary evidence does not strongly support either party's position. Much will, it seems to me, depend on the findings of fact made the Tribunal at the final hearing about what, exactly, the claimant said to the respondent on various occasions.

16. However, I should of course remind the parties that the task before me today was not the task of the Tribunal at the final hearing. If the facts as determined by the Tribunal at the final

hearing are that the claimant did *refuse* to work with the solicitor in question, clearly that will be a fact supportive of the respondent's anticipated response. That is to say the respondent's position that she was not dismissed because she had made protected disclosures but rather because she refused to work with the solicitor in respect of whom such protected disclosures had been made. By contrast, if the facts as determined at the final hearing are that the claimant did not *refuse* to work with the relevant solicitor, but simply indicated she was struggled to do so and was uncomfortable so doing, that would be a fact supportive of the claimant's position (although not determinative of her claim).

17. As such, although there are clearly serious questions for the respondent to answer, it does not appear to me that it is "likely" that the claimant will persuade the Tribunal at the final hearing that the reason or if more than one the principal reason for her dismissal was that she had made one or more protected disclosures.

18. The claimant's application for interim relief therefore fails and is dismissed.

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Employment Judge Evans
Date: 10 June 2026

Sent to the parties on:
Date: 11 June 2026