Case No: 6007865/2026

EMPLOYMENT TRIBUNALS

Claimant: Mr B McLeod

Respondent: Marks & Spencer plc

REASONS

FOR REFUSAL OF INTERIM RELIEF

Introduction

1. At the conclusion of a hearing on 17 March 2026 I gave an oral judgment with reasons, refusing the claimant's application for interim relief. A written judgment was sent to the parties on 12 May 2026. The claimant requested written reasons for my decision at the hearing in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2024. After the hearing I realised that I had not, as I would usually, made sure that the parties were aware that written reasons would be published, in full, online. I asked the Tribunal administration to write to the claimant to inform him of that fact, indicating that I would provide the reasons unless he indicated to the Tribunal within 7 days that he wished to withdraw the request. The claimant did not make any such indication and indeed later positively repeated his request. I apologise for the delay since then in preparing these reasons, which has been caused principally by pressure of other work

The law and procedure

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.

3. I am applying section 129 of the Employment Rights Act 1996 ("ERA"), which 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 statutory automatically unfair reasons.

4. The correct test for me to apply is as set out in Taplin v C Shippam Limited [1978] ICR 1068 – 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. In this case I decided the application on the basis of written and oral submissions from the parties, witness statements from the claimant and Mr Pantelis Panayiotou, and a 245 page agreed bundle.

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.

7. 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.

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 six things, or concealment of those things ("the wrongdoing"). These include: that a criminal offence has been committed, is being committed or is likely to be committed (s 43B(1)(a)), that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (s 43B(b)); that that the health or safety of any individual has been, is being or is likely to be endangered (s 43B(d)). In the case of a disclosure directly to an employer, the Tribunal will 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.

The issues

9. I have to decide whether there is a pretty good chance that the claimant will succeed in the claim that the sole or principal reason for the dismissal was whistleblowing, as opposed to there being some other reason for the dismissal. For the purposes of whether the application for interim relief succeeds, it would merely have to be some other reason, not some *good* other reason. As the claimant had more than two years' service, at a final hearing he would need to prove that he made a protected disclosure (or disclosures) and produce some evidence to suggest that the disclosure(s) were the principal reason (Kuzel v

Roche Products Limited [2008] ICR 799), after which the burden would fall on the respondent to prove the reason for the dismissal. This is what I mean below when I refer to what the claimant will have to show at the main hearing.

10. The main issues for trial on the automatically unfair dismissal claim seem likely to be as follows. First: did the claimant reasonably believe that he (a) disclosed information tending to show wrongdoing, and that (b) the disclosure was in the public interest? Second: was the sole or principal reason for his dismissal the fact that he made one or more protected disclosures?

11. I emphasise that I make no factual findings at this stage. My task is confined to forming what I refer to above as the "broad-brush" assessment of the claimant's likely prospects of success. For the sake of brevity, in these reasons I will use the word "disclosures" rather then, for example, "purported disclosures" but I make clear that I am not making any finding that there were in fact disclosures within the meaning of s 43B ERA.

Overview

12. The claimant asserts that he was racially harassed by one of his managers in the first part of 2025 and physically assaulted by one of his managers on 15 April 2025 when, he says, an item was snatched from his hand. There is plainly a factual dispute about whether that incident, on any reasonable characterisation, amounted to an assault. The respondent says that at around that time the claimant had refused to follow reasonable management instructions. There followed an investigative meeting on or around 14 May, which the claimant describes as unlawful; I will return to that shortly. In June, the claimant became the subject of an investigation into a number of alleged incidents of misconduct. The respondent says that, following investigation, no further action was taken.

13. On 4 July 2025 the claimant was signed off work by his GP. There appears to be no real dispute that he did not thereafter return to work until his dismissal in February 2026, save perhaps for a short period in September. The claimant also says he was subjected to a number of other inappropriate or unlawful actions by the respondent around the time he was signed off work. He submitted two grievances about all of this in which he alleged bullying by three managers and stated that he no longer wished to work with them or another named employee. The respondent's position is that both grievances were investigated and not upheld, and that the same outcome followed on appeal.

14. It is in that context that the claimant says he made nine protected disclosures between 29 September 2025 and 23 February 2026. He alleges that he was subjected to retaliations which he says were detriments, including: failure to investigate his concerns, escalation and proceeding with disciplinary action, and ignoring his safety complaints and that he was ultimately dismissed on 27 February 2026.

The disclosures

15. There is no dispute that what disclosures were made were made to the claimant's employer.

16. Each disclosure was by email, a copy of which I was provided. The claimant points out that the disclosures, all of which were explicitly said within the body of the email to be protected disclosures, were treated by the respondent as protected disclosures. I accept that must carry some weight but ultimately the Tribunal will have to take account of the content – and not the form – of those disclosures. I will consider each of the nine in turn, and in in particular whether the claimant has a pretty good chance of showing that he reasonably believed that the disclosure tended to show wrongdoing and/or whether he reasonably believed his disclosure to be in the public interest.

17. The first disclosure, on 29 September 2025, alleged that the respondent was operating an unlawful disciplinary process contrary to statute and the ACAS Code, by holding informal investigatory meetings without prior notification of what the allegations were and where those interviewed were denied a right to be accompanied. That in my judgment was based quite straightforwardly on a misunderstanding on the claimant's part of statute and the Code, which do not provide for a right to be accompanied at the investigatory stage, nor for prior notification of the subject of the meetings at that stage. The claimant will, in my judgment, have difficulty showing a reasonable belief that the respondent's process was unlawful.

18. The second set of disclosures, on 30 September, concerned the claimant's assertion that the respondent's grievance policy allowed managers to downgrade or refuse grievances about themselves. Again in my judgment this based on a misunderstanding, this time of the policy. The policy permits informal resolution of grievances, which, the Tribunal is likely to find, is entirely in line with standard and accepted practice, and provides for escalation to a formal procedure. The claimant will have difficulty establishing what he says is a reasonable belief that this policy created a risk of cover-ups or health and safety breaches whereby acts of violence were not investigated. If those policies were misapplied in the claimant's case – ultimately a matter for trial – the claimant might have a legitimate complaint about that, but not necessarily a *whistleblowing* complaint. The claimant's real complaint, the Tribunal may well find, was that his own grievance about what he said was workplace violence (i.e. the alleged assault) was not investigated to his satisfaction. Whether it was properly investigated is a factual matter for trial, but, the Tribunal is likely to find, it all relates in reality to the claimant's personal dispute with the respondent rather than to any wider policy of the respondent. In my judgment the claimant will therefore have some difficulty in proving that he reasonably believed the disclosure was in the public interest.

19. The third disclosure, on 1 October 2025, alleged a two-tier disciplinary system and management tolerance of violence whereby senior staff were not investigated for these sorts of things whereas front-line staff were. In substance, the Tribunal may find, it was a complaint that his manager was not disciplined for the alleged assault whereas he was investigated for something else. The claimant will have difficulty showing a reasonable belief that this complaint was in the public-interest and difficulty showing the information he disclosed tended to show this was a company-wide two-tier process, rather than simply identifying two separate things with which he was dissatisfied.

20. The fourth disclosure, on 2 October, amounted to the claimant reiterating the complaint that his manager was not disciplined, and asserting that he himself

should not have been investigated for things such as shouting at another member of staff (a matter on which the respondent says no action was in fact taken). Again, the claimant will have considerable difficulty in my judgment in showing that he reasonably this was a disclosure in the public interest rather than a complaint relating to his own private dispute with the respondent.

21. The fifth disclosure, on 5 October, was again a complaint that the alleged assault had not been investigated. In substance it was a challenge to how his own case had been handled, such as being asked to attend a meeting with the manager he says assaulted him. Again the claimant will have considerable difficulty showing a reasonable belief that this raised matters of wider public interest rather than his own private interests. Although the complaint purports to identify systemic failures, the Tribunal may well take the view that in reality it is little more than a critique of the respondent's policies, and that, so far as the relevant points are concerned, the policies are in line with standard industry practice.

22. The sixth disclosure, on 6 October, was described as a complaint about management failure to address workplace violence and safety concerns. The Tribunal may well consider that in substance rather than form it was a reiteration of the claimant's complaints about how his case had been dealt with. There will clearly be a factual issue at trial about whether or not the respondent properly investigated the claimant's grievances but here again the claimant will face the same difficulties regarding his reasonable belief that the disclosure was in the public interest.

23. The seventh disclosure, also on 6 October, concerned sickness absence procedures which the claimant says were unsafe because they compelled employees to maintain direct contact with line managers during sickness absence. The claimant asserted that this created foreseeable health risks. Again, whilst framed about concerns about health and safety, the Tribunal is likely to consider that in it was in reality a critique of policies which are consistent with standard industry practice. The claimant will have difficulty showing that he reasonably believed he was disclosing wrongdoing in the statutory sense. The disclosure also contained a complaint about inconsistent application of sick pay. Again, the Tribunal is likely to consider that it amounts in substance to a complaint how the claimant's own case was being dealt with and so the claimant will also have difficulty in relation to his reasonable belief about whether the disclosure was in the public interest.

24. The eighth disclosure, which the claimant characterises as one relating to unlawful wage practices, was on 13 October. He asserted that he and other employees were unable to access payslips for a six-month period. He later refers to his belief that a large number of employees were affected. On the face of it, I accept, that is a complaint of breach of legal duty, but in the absence of any clear assertion about the number of employees affected, again the claimant may have some difficulty – though perhaps less than with the other disclosures – of proving that he had a reasonable belief that the disclosure was in the public interest. The claimant also complained of unlawful deductions from his own pay. Again, the claimant will have some difficulty in proving that he reasonably believed this disclosure was in the public interest rather than being about his own private dispute with the respondent

25. On 10 November the claimant wrote to a number of senior employees of the respondent. These communications are not asserted to be further protected disclosures, albeit the claimant is critical of the actions of those persons in sending the complaints back to HR. For my part I consider that claimant will find it difficult to show that sending the complaint back to HR was unreasonable in these circumstances, given that those complaints were about the claimant's treatment and that – I assume – those persons would have had no personal knowledge of the claimant's case.

26. The ninth disclosure, on 23 February, is characterised by the claimant as a complaint about failure to provide a safe system of work, including a complaint about failure to implement reasonable adjustments in his own case, such as separating him from the people about whom he had complained. Again, the Tribunal will likely consider that in substance that this was a complaint about his own treatment. The will face the same difficulty regarding his reasonable belief in the public interest as with the earlier disclosures.

27. Overall, therefore, the claimant does not in my judgment have a pretty good chance of establishing that any or all of the nine disclosures were protected disclosures.

28. I turn now to causation, i.e. was the sole or principal reason for the dismissal that the claimant had made the disclosure(s). I remind myself again that the burden will fall on the respondent in the circumstances I have set out above. The claimant relies on the fact that he was dismissed shortly after his final disclosure. That is correct as far as it goes. He also says that the respondent failed to investigate his concerns, returning the matter to HR and insulating senior management, threatened to dismiss him on capability grounds, escalated disciplinary steps after the disclosures, and that persons implicated in his complaints later left the business or were demoted. (If that happened it might be said to undermine rather than strengthen the claimant's case that the respondent was not taking his concerns seriously, but that will be a point for trial.) The claimant will further say that HR mischaracterised his request for reasonable adjustments as a capability issue and will also say that what the respondent says was a breakdown in the working relationship arose directly from his protected disclosures and the respondent's failure to investigate them.

29. On the other side of the balance, while the respondent accepts that the dismissal followed soon after the final disclosure, Mr Panayiotou, who says he decided to dismiss that claimant, states that the final disclosure was emailed 50 minutes before the meeting which he chaired began, and that he did not see it. That is plainly a matter for the trial, but it is not inherently implausible. The respondent says that the claimant's grievances were investigated and not upheld. The fundamental point, the respondent will say, is that it has ample evidence of there having been a breakdown in the relationship (i.e. what the respondent says was the reason for the dismissal) which had nothing to do with the claimant's disclosures. The claimant had been absent from work for many months; he was declining to return and an impasse had been reached. The respondent further says that the decision to dismiss was taken by Mr Panayiotou as an independent person with no prior involvement or knowledge of the events before February 2026. No evidence has been produced, at least at this stage, which could support an inference for example that Mr Panayiotou was influenced by any others. Mr Panayiotou says that, though he was aware,

by the time of the dismissal, of at least some of the disclosures, they did not influence his decision. He points out that the claimant had been off work for some time, had declined to attend meetings to manage ill-health and that on the claimant's own account he had been fit for work since September 2025 with adjustments, but was refusing to come back to work before the adjustments he wanted were made. The nature and reasonableness of those adjustments will be a matter for the trial. But some, the respondent says – such as a referral to OH or work elsewhere – were offered to the claimant but not accepted. The respondent will say that other adjustments were not reasonable. One sought by the claimant, for example, involved separation from five people involved in his grievance. Essentially, says Mr Panayiotou, the claimant was refusing to work with those people. The respondent characterises this as a request that would, in effect, remove the store's management structure. The respondent says that it was simply not a reasonable request and that therefore an impasse had been created which the respondent was unable to resolve other than by dismissal. In his statement Mr Panayiotou sets out five particular reasons why he says there had been an irretrievable breakdown in the employment relationship, and will say that the disclosures were not a factor in his decision to dismiss.

30. A lot will depend on the view the Tribunal takes at trial of the evidence it hears. Plainly there are cases to be made on both sides. But ultimately I accept the respondent's submission that it has good prospects of discharging the burden, if the burden shifts, of proving that the principal reason for dismissal was not any protected disclosure. The claimant therefore does not have a "pretty good chance" of success on that causation element either.

31. I therefore refused the application for interim relief.

Approved by:

Employment Judge Dick

10 June 2026

SENT TO THE PARTIES ON

11 June 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/