EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
S Hill	v	L T Charity

Heard at: Reading (in public; by video) **On**: 20 May 2026
Before: Employment Judge W Anderson

Appearances
For the claimant:
For the respondent:

JUDGMENT ON INTERIM RELIEF

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

REASONS

The Hearing

1. The claimant was employed by the respondent from 7 May 2024 until 27 March 2026 when he was dismissed. The claimant claims that he was automatically unfairly dismissed by the respondent for making protected disclosures contrary to section 103A of the Employment Rights Act. He also claims ordinary unfair dismissal. The claim was filed on 30 March 2026

2. This application for interim relief was presented within seven days of the effective date of termination which was 27 March 2026.

3. The claim of ordinary unfair dismissal not being relevant to this application, the issue I had to determine in relation to this application was whether it appears to me to be likely that on determining this claim a tribunal will be satisfied that:

    1. There was a protected disclosure; and
    2. That disclosure was the reason or the principal reason for the claimant's dismissal.

4. I made clear at the outset that I would not hear any oral evidence as this was not a fact finding hearing, but I would decide the application on the basis of the written documents to which I was specifically referred and also the submissions of the parties. I was provided with a joint bundle of 142 pages which included witness statements from both parties. In addition, I received a skeleton argument from each counsel.

5. I reviewed all of the material I was directed to. Submissions from counsel are not set out separately but are referred to in my reasons where relevant. If I have not specifically referred to a particular submission, that should not be taken to mean that I have not had regard to it in my overall assessment.

6. Oral judgment was given with summary reasons. Mr Afeeva requested full written reasons.

The Law

Protected Disclosures

7. The Employment Rights Act 1996 provides:

S. 43B(1) 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, is made in the public interest and tends to show one or more of the following—

…

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

…

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

…

(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, …

Automatic Unfair Dismissal

8. 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.

9. 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]**.**

10. In paragraphs 56 and 57 of that judgment Lady Justice Simler addressed the matter of separability where the protected disclosure formed part of the factual matrix leading to a decision to dismiss but it is disputed as to whether that was the reason for it:

'I would endorse and gratefully adopt the passages I have cited as correct statements of law. They recognise that there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. In such cases, as Underhill LJ observed in Page, the protected disclosure is the context for the impugned treatment, but it is not the reason itself.'

'Thus *the "separability principle" is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistle-blowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.'*

11. The ET should focus on the reasons for dismissal not simply that context and the question cannot be answered by simply applying a 'but for' analysis. ***Salisbury NHS Foundation Trust v Wyeth [2015] UKEAT/0061/15 [46]***

Interim Relief

12. 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.

13. Section 129 sets out the procedure to be adopted by the tribunal before considering making such an order.

14. Interim relief can be ordered where the tribunal finds that it is likely that a final hearing will decide that the reason (or principal reason) for dismissal was the employee having made protected disclosures. The test for interim relief applications was initially set out in the decision in the case of ***Taplin v Shippam Ltd*** **[1978] ICR 1068 EAT** which at paragraph 23 defined the word "likely" as a "pretty good chance of success". In ***Ministry of Justice v Sarfraz*** **[2011] IRLR 562** it was held at paragraph 16 that the word likely "*does not mean simply "more likely than not" — that is at least 51 per cent — but connotes a significantly higher degree of likelihood."*

15. In ***Dandpat v The University of Bath and Ors*** **UKEAT/0408/09** the EAT observed that the meaning of the word likely is context specific and it sought to distinguish the meaning of that word in interim relief hearings from its use when, for example, determining whether someone is disabled. It was held at paragraph 20:

"We do in fact see good reasons of policy for setting the test comparatively high, in the way in which this Tribunal did, in the case of applications for interim relief. If 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 consequence that should be imposed lightly."

16. Accordingly, the standard of proof required is greater than the balance of probability test to be applied at the main hearing.

Background

17. I have set out below my understanding of the events that culminated in the claimant's dismissal, based on the information before me today. I did not hear oral evidence, and these are not findings of fact that will bind any future tribunal.

18. On 2 March 2026 the claimant discovered that one of the respondent's vehicles was untaxed. The discovery was made as the vehicle broke down and the RAC would not come to attend because, as it told the claimant it had checked in the DVLA website and found that the vehicle was untaxed.

19. The client notified his line manager, Ben Wheeler, via WhatsApp and later another employee of the respondent, Karen Williams, by email that the vehicle was untaxed. The respondent concedes that these communications amount to a protected disclosure.

20. In between the two communications the claimant, having had contact from Mr Wheeler who said that the previous owner should have notified the DVLA of a change of ownership, wrote a WhatsApp message for his wife in which he referred to Mr Wheeler's information about the reason the vehicle was untaxed as bullshit and Mr Wheeler as a 'twat'. The claimant then inadvertently sent the WhatsApp message to Mr Wheeler instead of to his wife.

21. The claimant apologised to Mr Wheeler via WhatsApp as soon as he realised what he had done and went to the office to apologise to him in person the next day. He also told the respondent's HR team about what had happened. HR instigated an investigation into the incident and concluded that a disciplinary hearing was appropriate.

22. The claimant was invited on 18 March 2026 to a disciplinary meeting on 20 March 20206. Charges were 1. inappropriate use of language, 2. disrespectful language and 3. disclosure of company confidential information The claimant attended disciplinary meetings on 20 and 25 March 2026. On 27 March 2026 he was advised in writing that his employment was terminated due to an irretrievable breakdown of trust between the claimant and the respondent.

23. The claimant sought a review. The respondent did not offer a review as it said there was no right where the claimant had been employed for less than two years but the respondent's CEO carried out a paper review of the termination decision and upheld it.

Decision and reasons

24. When making a decision on an interim relief application the tribunal does not make any formal findings of fact which are intended to be binding at any later stage of the proceedings. The tribunal is assessing the likelihood of disputed facts being proven in the claimant's favour at the final hearing. That decision must be based on whatever material is available at the preliminary hearing.

25. In submissions both parties' counsel agreed that the matter I needed to focus on in reaching a decision as to whether to grant interim relief was the causation aspect of the claimant's s103A claim, i.e. whether the making of a protected disclosure was the reason or principal reason for his dismissal.

26. The respondent has conceded that a protected disclosure was made by the claimant by way of a WhatsApp message to Ben Wheeler on 09:19 and an email to Karen Williams at 10:33 on 2 March 2026. The communications concerned the fact that one of the respondent's vehicles was untaxed and had been so for a number of months.

27. It is the respondent's case that the claimant was dismissed due to accidentally sending a WhatsApp message to his line manager, Ben Wheeler, at 9.43 on 2 March 2026, which was intended for the claimant's wife and in which he refers to Mr Wheeler giving him information regarding the untaxed vehicle as bullshit and calls him a 'twat'. The claimant was advised in the dismissal letter

that the dismissal was due to the use of the of unprofessional language leading to the damage to his relationship with Mr Wheeler and the disclosure of confidential business information in that WhatsApp regarding the untaxed vehicle.

28. It is the claimant's case that the protected disclosure was the principal reason for his dismissal. Mr Areeva further made the argument at this hearing that the protected disclosure is not separable from the chain of events that led to dismissal.

29. On separability Mr Afeeva, for the claimant, said that the WhatsApp existed only because of the minibus disclosure, the confidentiality allegation was regarding the minibus, the trust issue arose from criticism of the explanation of the minibus problem and the dismissal letter relied on discussion of the respondent's handling of that issue.

30. It is the position of the respondent, as put by Ms Clarke, that these are in fact 'but for' arguments. Based on the documentation before me I agree. If the vehicle had not been untaxed there would have been no protected disclosure and therefore the WhatsApp message sent to Mr Wheeler would not have been written, but I am not persuaded that a tribunal at a final hearing is likely to conclude that this means the two acts are inextricably linked so that in assessing the reason for dismissal a distinction cannot be drawn between the disclosure and the conduct complained of by the respondent, i.e. the contents of the WhatsApp that was intended for the claimant's wife. On the information before me there appears to be a clear distinction between the two and I am not convinced that a tribunal at a final hearing would be likely to conclude that the fact that the WhatsApp message came about because of the incident that led to the protected disclosure means that the principal reason for the dismissal was the protected disclosure.

31. Furthermore, there is little before me which persuades me that a tribunal at a final hearing would be likely to find that the protected disclosure was an operative cause of the dismissal. Mr Afeeva submitted that the language used, and the aspersions cast, in the WhatsApp are not of sufficient seriousness to lead to a conduct dismissal, his point being that this indicated that the respondent's stated reasons for dismissal were not the actual reasons. He also referred in this context to what was in his submission the weak foundation for the charge of disclosing confidential information. Of course, whether a dismissal for the reasons given was reasonable, is not a matter for my consideration today, and the only relevance of this argument is where it is an indication that the reasons given by the respondent were not the real reasons, but the reasons provided to cover up a dismissal for making a protected disclosure. As Ms Clarke noted, there is no indication in the documents or the witness statements that the respondent was irked by the disclosure. Mr Afeeva said the claimant had been seen as a pest, had put the respondent's nose out of joint, exposed the organisation and particularly Mr Wheeler for its failings and this led them to manufacture reasons to remove him. I have not seen any evidence to support that conclusion. The claimant reported that a vehicle was untaxed. The respondent responded by immediately ensuring that matter was rectified. The claimant did not make the

complaint that he was being punished for having raised the matter of the untaxed vehicle rather than because of the WhatsApp during the process that led to his dismissal. He acknowledges that not taxing the vehicle was a genuine mistake. The language used in the WhatsApp is disrespectful and the claimant accepted that the WhatsApp should not have been sent. I do not think that the reasons given for the decision to dismiss are so remarkable, as suggested by Mr Afeeva, that it is likely that a tribunal would conclude from them that they were not the actual reasons and the real reason was the protected disclosure. I conclude this having taken into account the claimant's other submissions on this point which included that the claimant and Mr Wheeler continued to work in the same team for four weeks and that Mr Wheeler had not raised a complaint about the claimant at the time that the claimant made his actions known to HR, also that the disclosure of confidential information accusation and conclusion was unclear.

32. As noted above I am not making findings of fact in this exercise but simply assessing the information before me in order to decide whether it is likely that the tribunal at the final hearing would conclude that the protected disclosure was the reason or principal reason for his dismissal. As both counsel set out in their submissions that is a high bar. Likely means a pretty good chance and the test is significantly higher than the balance of probabilities.

33. It is my view on the information before me that the likelihood of a tribunal concluding that the protected disclosure of 2 March 2026 was the reason or principal reason for the dismissal is low, and I therefore refuse the application for interim relief.

Approved by:

Employment Judge W Anderson

Date: 20 May 2026

Sent to the parties on: 15 June 2026

For the Tribunal Office