EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001212/2026 Interim Relief Hearing by Cloud Video Platform at Edinburgh on 16 June 2026

Employment Judge: M A Macleod

Mrs W Smolec	**Claimant** **In Person**
TGC Facilities Management Limited	**Respondent** **Represented by** **Ms N Gray** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's application for Interim Relief is refused.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 22 May 2026 in which she complained that she had been automatically unfairly dismissed on the grounds that she had made protected disclosures to the respondent.

2. She also made application for interim relief. A Hearing to determine that application was listed to take place at 10am on 16 June 2026, initially in person at the Aberdeen Employment Tribunal, and then, with the agreement of parties, by CVP.

3. The claimant appeared on her own behalf, and Ms Gray appeared for the respondent.

4. Each party presented a bundle of documents, and the claimant also presented a short submission setting out the basis upon which the Tribunal should grant her application for interim relief. Both parties made short oral submissions.

Submissions

5. In the claimant's submission, she set out the narrative upon which she seeks to rely in this case. She said that during her employment, a number of employees had approached her with concerns that they had not been enrolled into the workplace pension scheme and that no pension contributions were being made on their behalf. She considered that this demonstrated that the respondent was not complying with its legal obligations regarding pension auto-enrolment and pension contributions.

6. The claimant maintained that she raised these concerns internally on several occasions, with Callum Cruickshank in May 2025, with Andrew Alleway in September 2025, internally in January 2026 and then externally with the Pensions Regulator in August 2025 and 23 March 2026. Further she said that she made a further disclosure to Mr Alleway in May 2026 about what she believed to be serious wrongdoing affecting company clients, namely that contracted staffing hours had been reduced on certain sites while the clients continued to pay the respondent for full contracted hours. She raised this by email on 15 May 2026.

7. The claimant expressed the view that Mr Alleway was aware of the two sets of disclosures which she had made, relating to the pensions and to the client contracts.

8. She asserted that Mr Alleway made the decision about her dismissal, being well aware of her disclosures.

9. She submitted that the investigation into alleged misconduct was rushed and evidence was treated selectively in order to paint the claimant in a very bad light. The respondent did not properly investigate the alleged complaints before dismissing her.

10. She said that she found it very disturbing that the respondent in their response to the claim said that they knew about the pensions issues from 2024, but did nothing to resolve them. This proves, she said, that the disclosures were not treated as they should have been because they already knew there was a problem. There was no intention to resolve the issues.

11. She argued that the reason given for her dismissal – allegedly unprofessional behaviour towards colleagues – was not, in her view, the real reason for dismissal. She made repeated disclosures regarding pensions compliance and legal obligations affecting multiple employees, and contacted the Pensions Regulator regarding those concerns. Mr Alleway was aware of her disclosures and he was responsible for the decision to dismiss her. She had no previous disciplinary warnings and the disciplinary procedure was unusually rushed and resulted in dismissal within days. The dismissal closely followed the making of her disclosures.

12. The claimant therefore submitted that she had a strong likelihood of establishing at the final Hearing that her protected disclosures materially influenced and were the principal reason for her dismissal.

13. For the respondent, Ms Gray referred briefly to the legal tests to be applied, and confirmed that the respondent opposes the application for interim relief.

14. She submitted that there is a significant factual dispute between the parties in this case.

15. The respondent disputes that the claimant raised protected disclosures which met the test within section 43B of the Employment Rights Act 1996. At best she raised disputed factual events. The respondent has produced documents in support of her case, whereas the claimant has produced very few.

16. The claimant did not disclose information to the respondent but made allegations about operational matters.

17. The respondent did not have knowledge of the claimant's disclosures at the time of dismissal. The decision to dismiss the claimant was taken by David Moncur, who had not been made aware of the disclosures. The claimant's assertion that Mr Alleway made the decision to dismiss was simply incorrect.

18. The claimant's complaint to the Pension Regulator was anonymous and therefore the respondent could not know that she was the person who had raised the matter externally.

19. The respondent maintains that the decision to dismiss the claimant was, in any event, for a justifiable reason unrelated to the alleged disclosures. The dismissal followed a fair and structured process in which the claimant was made aware of the allegations, given an opportunity to defend herself and was given a hearing to deal with the allegations. There were complaints from more than one individual and the outcome letter sets out the basis for the dismissal.

20. At no stage during the disciplinary hearing did the claimant raise the question of pensions or client contracts with Mr Moncur.

21. The respondent was not aware of the pensions concerns in 2024, and Ms Gray expressed concern that the claimant should have claimed this.

22. Shortly after the respondent took over responsibility for the claimant's employment, Mr Alleway met with the claimant and handwritten notes (R28) demonstrate that pensions were discussed, and that the matter was being dealt with in conjunction with the pensions administrators.

23. The facts in this case are significantly contested between the parties, and require an evidential Hearing to allow all facts to be led and determined by the Tribunal. It would be unjust to award a very costly remedy in circumstances where it cannot be said that the claimant is likely to be successful at the full Hearing.

24. The claimant replied by saying that the notes of the disciplinary hearing omit an important point, that Mr Moncur said that he would require to speak to the witnesses and present a case to the Board before making a final decision. The claimant contends, therefore, that Mr Alleway was informed of and involved in the decision to dismiss her, and that the respondent was therefore aware of the disclosures at the point of dismissal.

Discussion and Decision

25. This is an application for interim relief. Section 129(1) of ERA provides that if it appears to the Tribunal that it is likely that it will find that the reason or principal reason for the dismissal was either under section 103A or section 104F of ERA.

26. Both parties referred me to ***Taplin v C Shippam Ltd*** [1978] IRLR 450, in which the EAT defined likely as meaning "a pretty good chance of success". Further, Mr Justice Underhill, in ***Ministry of Justice v Sarfraz*** [2011] IRLR 562, EAT, observed that the test of a pretty good chance does not simply mean "more likely than not" but connotes a significantly higher degree of likelihood, "something nearer to certainty than mere probability."

27. It falls to the claimant (the applicant in terms of the application) to establish the necessary level of likelihood in relation to each and every element of the claim (***Hancock***, below).

28. I noted ***Hancock v Ter-Berg*** UKEAT/0138/19/BA, and the judgment therein of the Honourable Mr Justice Choudhury, then President of the Employment Appeal Tribunal. In particular, I referred to paragraph 41 of the judgment, in which Mr Justice Choudhury stated that there was no real warrant, either in

terms of the statutory provisions or on any wider basis, for adopting any approach which assumed any issue in favour of either party.

29. I also considered paragraph 45 of the judgment. There, Mr Justice Choudhury said:

"…the Respondent is not, it seems to me, substantially prejudiced by taking the approach which applies the same LTS [likely to succeed] test to all aspects of the complaint that may be in issue. The safeguard for the Respondent who seeks to maintain that the complainant is not an employee, or was not dismissed at all, will be the full merits hearing at which the outstanding issues will be conclusively determined. Moreover, there is no or little risk of the right to seek interim relief being abused by persons who are not even arguably employees or who clearly did resign voluntarily. The experienced Tribunal hearing the interim relief application would undoubtedly quickly nip such abusive claims in the bud on the basis that the applicant gets nowhere near the LTS threshold in respect of those issues. Even cases where an applicant was able to establish a 51% chance of establishing employee status would not be eligible for interim relief…"

30. While there are aspect of that case which do not apply here, this extract has some helpful points of more general application.

31. In relation to the claim under section 103A, the claimant must demonstrate that it is likely that the Tribunal will find that she made a disclosure, that she reasonably believed that the disclosure tended to show one or more of the matters listed in section 43B(1) of the 1996 Act; that the disclosure was made in the public interest; and that the disclosure was the sole or principal cause of dismissal.

32. The claimant's argument is essentially that it is clear in her view that she was not dismissed for reasons of conduct, but because she had raised protected disclosures. She argues, in particular, that the timing of the dismissal was on the same day as she made her final disclosure. She dismisses the respondent's argument that the reason for dismissal was her conduct.

33. There are a number of points which require to be considered here.

34. There is a dispute as to whether or not the claimant made protected disclosures which qualify within section 43B(1) of the 1996 Act. On the information before me, the complaints which the claimant made, relating to the pension scheme and the client contracts, were raised on a number of occasions by her, but it is not entirely clear with whom she raised the issues on each occasion. Nevertheless, the respondent disputes that she was doing any more than raising allegations, rather than disclosing information,

and that in any event, it was clear from the information provided by them that they were investigating the matters raised in a careful and appropriate manner.

35. At this stage, I am unable to reach any firm conclusion as to the precise nature, timing and content of the disclosures alleged to have been made by the claimant. It will be essential for the Tribunal to hear evidence, subject to cross-examination, by the claimant, and from witnesses called by the respondent, in order to determine what was said, how it was said, to whom it was said and whether it can be found to have comprised a disclosure of information rather than a set of allegations. That, fundamentally, is a matter for the Tribunal hearing the full evidence.

36. Accordingly, I cannot find on the information before me that it is likely – that there is a pretty good chance – that the claimant will succeed in demonstrating that her alleged disclosures amounted to protected disclosures in terms of section 43B.

37. Further, it is the claimant's clear contention that she was not dismissed for the reason given by the respondent, but for having made protected disclosures, including the final disclosure on 15 May 2026. Again, in my judgment, there is too much in dispute between the parties for any conclusion to be reached about this in the claimant's favour at this stage. The standard for the claimant to overcome is a high standard – a pretty good chance which is something nearer certainty than mere probability – and in this case the claimant's assertion is met by evidence, including documentary evidence, from the respondent which is said by them to demonstrate that the reason for dismissal was the claimant's conduct, arising from a number of staff complaints.

38. I cannot conclude, for the avoidance of doubt, that the respondent definitively dismissed the claimant only for, or principally for, the reason of conduct; but that is not my task here. My task is to decide whether or not, on the information I have, the decision to dismiss was likely to have been because the claimant made protected disclosures. Since there is a degree of uncertainty at this stage as to whether or not the claimant made qualifying disclosures, it cannot be said that the claimant has a pretty good chance of succeeding in this claim at this stage. The matter requires full evidence to be led by both parties in order for the Tribunal to reach any concluded view about this.

39. There is some doubt about the claimant's position with regard to the final disclosure: the disciplinary hearing which led to her dismissal had already taken place by that date (15 May) and therefore it is difficult to see that such a disclosure could undermine a process which was already well under way.

40. There is also the disputed question of the respondent's knowledge. The claimant's submission clearly asserts that Mr Alleway was the dismissing officer, but the respondent says that it was Mr Moncur. On reflection, the claimant changed her position to saying that Mr Alleway, being on the Board, would have been consulted about the decision. That is an entirely different matter, and weakens the claimant's assertion that the decision maker did know about the alleged disclosures. That assertion will require to be tested in the Hearing before the Tribunal. It would be unsafe for me to reach any conclusion about that matter without hearing that evidence, which is not available today in this Hearing.

41. Accordingly, having considered the parties' submissions and the information available to me, it is my conclusion that the claimant's application for interim relief should be refused for the reasons set out above.

Date sent to parties **18 June 2026**