EMPLOYMENT TRIBUNALS

Claimant: **Maaly Nassar**

Respondent: **Elsevier Limited**

Heard at: **Bury St Edmunds Employment Tribunal**

On: **22 June 2026**

Before: **Employment Judge Illing**

Representation
Claimant: In person
Respondent: Ms A Greenley (Counsel)

JUDGMENT

The judgment of the Tribunal is that: -

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

REASONS

Procedural history

1. This is a claim that was issued on the 29 May 2026 and is a claim for unfair dismissal and an application for interim relief.

2. The Claimant's employment ended on 21 June 2026, and the application is made within 7-days of this date.

3. The Claimant alleges that the reason for the dismissal, or the principal reason for the dismissal was because she made a protected disclosure.

4. This claim is linked to claim 6014486/2025, but not yet consolidated, in which the Claimant is claiming detriment because of the making of protected disclosures.

The Hearing

5. The hearing bundle contained 628 pages

6. There was also a Claimant bundle of 457 pages, which is incorporated into the main bundle.

7. There was a separate index, without page numbers and one witness statement form Mr Frederik van den Broek on behalf of the Respondent.

8. I have also received a skeleton argument on behalf of the Respondent.

9. The Claimant also provided a witness statement and skeleton argument.

10. The parties were invited to provide the Tribunal with specific page numbers that they wished the Tribunal to review. Both parties took the opportunity to do so. The Tribunal reviewed all of the pages to which it was referred, in so far as it was able to do so in the time available.

The law

11. Rule 94 of the Employment Tribunal Procedure Rules 2024 provides that the hearing should be conducted as a Preliminary Hearing.

12. S.103A of the Employment Rights Act states:

> *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*

<u>Interim Relief</u>

13. 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. S.128 ERA provides:

128 Interim relief pending determination of complaint.

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(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(1)(d), 102(1), 103 or 103A, or

(ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening

words of section 104F (1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

14. S.129 ERA 1996 sets out the procedure for determining whether an application for interim relief should be permitted or not. S. 129 requires that interim relief should be ordered only if it appears that it is likely that on determining the complaint the Tribunal will find that the reason or principal reason for the dismissal was a proscribed ground.

129 Procedure on hearing of application and making of order.

(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(1)(d), 102(1), 103 or 103A, or

(ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.

15. There is judicial guidance on the meaning of “likely” in this context.

16. With regards to the consideration of what is the reason for the dismissal, I refer to **Raja v Secretary of State for Justice UKEAT/0364/09/CEA where** the EAT held at paragraph 25:

Accordingly, it seems to us, that we must find that the Employment Tribunal erred in the question they asked themselves in reality, as to the reason for dismissal, by asking themselves what was the reason for dismissal and forming a judgment about it rather than asking whether it was likely that the reason would be a qualifying reason at the final hearing.

17. In **Parsons v Airplus International Ltd UKEAT/0023/16** the EAT held at paragraph 8 the following:

On hearing an application under section 128 the Employment Judge is required to make a summary assessment on the basis of the material then before her of whether the Claimant has a pretty good chance of succeeding on the relevant claim. The Judge is not required (and would be wrong to attempt) to make a summary determination of the claim itself. In giving reasons for her decision, it is sufficient for the Judge to indicate the "essential gist of her reasoning": this is because the Judge is not making a final judgment and her decision will inevitably be based to an extent on impression and therefore not susceptible to detailed reasoning; and because, as far as possible, it is better not [to] say anything which might pre-judge the final determination on the merits

18. **Taplin v CC Shippam Ltd [1978]ICR 1068 at 1073H,** Slynn J held the following:

The industrial tribunal should ask themselves whether the applicant has established that he has a "pretty good" chance of succeeding in the final application to the tribunal.

19. Underhill J, at paragraph 1, of **Ministry of Justice v Sarfraz [2011] IRLR** 562 the following:

"something nearer to certainty than mere probability"

20. And further at paragraph 16, of **Sarfraz** the following:

In this context 'likely' does not mean simply 'more likely than not' – that is at least 51% - but connotes a significantly higher degree of likelihood.

21. The likely to succeed test applies to everything that the Claimant must prove, i.e. employment status and all elements of the whistleblowing claim. There must be a pretty good chance of succeeding at the full merits hearing. This is significantly higher degree of likelihood than 51%.

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

23. As was noted in ***Simply Smile Manor House and others v Ter-Berg* [2020]** IRLR 97, the likely to succeed test applies to all elements of the claim.

24. In summary, the burden of proof therefore rests with the Claimant to persuade me that it is likely that the tribunal at a final hearing will find that she made the disclosures to her employer; that she reasonably believed that they tended to

show one or more of the matters within s. 43B(1) ERA 1996; she reasonably believed that the disclosures were made in the public interest; and the disclosures was or were the principal cause of her dismissal. The EAT in ***Sarfraz*** referred to a fifth matter, which was the previous requirement for the disclosure to have been made in good faith, however this has since been removed by s. 18 Enterprise and Regulatory Reform Act 2013 and is now relevant only to the matter of compensation.

25. If all the above is established, the employee has made a protected disclosure.

26. For an automatically unfair dismissal claim under s103A ERA to succeed, the protected disclosure must be the sole or principal reason for dismissal.

27. When deciding an interim relief application, I do not make any formal findings of fact which are intended to be binding at any later stage of the proceedings. I am assessing, amongst other things, the likelihood of disputed facts being proven in the Claimant's favour at the final hearing. There is only limited material available to a judge on an interim relief application, but my decision has to be based on whatever material is available.

28. It must be noted that in this case, the Claimant was dismissed, the Respondent says, by reason of redundancy. Interim relief may 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 one contrary to s.103A ERA 1996. However, interim relief is not available to an employee where the Tribunal considers their selection for redundancy is likely to be found to have been unfair pursuant to s.105 ERA 1996 as s.105 is not one of the provisions listed in s.128 ERA 1996 in respect of which interim relief is available.

29. The application of (the equivalent Northern Irish provisions to) ss. 139 & 105 ERA 1996 to interim relief was considered in ***Bombardier Aerospace v McConnell and Ors [2008] IRLR 51 at 19.*** This, in effect, adds an extra step into the interim relief process for the Claimant. The Claimant has accepted that she is not, at this hearing, seeking to be found that the selection was unfair, she understands that it is for her to prove to the Tribunal that it is likely that the Tribunal at the final hearing will find that the redundancy process was fabricated. It is only if I draw this conclusion, will I then be required to consider each protected disclosure.

30. For completeness, I refer to s.105 ERA 1996 in relation to redundancy:

<u>Redundancy</u>

31. Section 105 ERA 1996 provides:

> *"Redundancy (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,*
>
> *(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held*

positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that any of subsections

(2A) to (7N) applies. …… (

3) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 100 (read with subsections (2) and (3) of that section). ……

(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A. ……….

(7) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104 (read with subsections (2) and (3) of that section). ……….

(9) In this Part "redundancy case" means a case where paragraphs (a) and (b) of subsection (1) of this section are satisfied."

<u>Protected disclosures</u>

32. S.43B of the ERA sets out the following:

***43B 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—

(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.

(2)For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3)A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4)A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(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).

33. In ***Williams v Michelle Brown AM* UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

34. *"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.*

    Unless all five conditions are satisfied there will not be a qualifying disclosure. [9 and 10]

35. With regards to each protected disclosure, the Claimant will need to prove that it is likely that the Tribunal at the final hearing will find that each step of the protected disclosure requirements are met and that it was likely that she was dismissed because of this, i.e. causation.

36. Before detailing further legal discussion regarding the tests regarding protected disclosures. The first issue in relation to redundancy is considered before progressing further.

Submissions

37. Both parties have made submissions, which I have taken into account.

Conclusions - redundancy

38. This is an application for interim relief following the Claimant's dismissal. The respondent states that the reason or principal reason for the dismissal is redundancy. S. 105 ERA falls outside of the protection afforded by interim relief, except where the Claimant can prove that it is likely that the Tribunal at the final hearing will find that the redundancy process was a sham, i.e. fabricated.

39. The Claimant has issued a claim in the Employment Tribunal claiming that her dismissal was unfair and that the reason, or principal reason, for her dismissal was because she made a protected disclosure.

40. I am told that the Claimant has another claim in the Employment Tribunal, which includes details of the Protected disclosures. I make no findings of fact and state that the Claimant says that the Protected disclosures occurred in March 24, June 24, July 2024, August 2024, January 25. She also relies on her grievance as a Protected disclosure, which was March 2026. I am told that there are 7 Protected disclosures relied upon on these dates.

41. With regards to the protected disclosures, the Claimant tells me that her disclosures were treated as misconduct and she was disciplined. The resulting warning, I am told, was used in her performance review and in later management treatment, including with regards to her role and the 2025 performance assessment and the redundancy process.

42. The legal obligation, I am told, is the lack of consistency between the Skilled Worker visa and how the role has subsequently been represented and applied in practice. I am also told that the legal obligation includes the data delivery to pharmaceutical and life science customers, which is regulated, the risk to the Claimant and her placement and that this goes beyond impacting on the Claimant as an individual.

43. The Claimant says in summary that if the redundancy rationale is true then her Skilled worker role definition for the Home Office is not. She asserts that the redundancy rationale is not true, which would then mean that her role definition for the Home Office is true.

44. The Claimant states that the Respondent has mischaracterized her role as workflows or scripts, when it in fact delivers datasets and drug-development solutions for customers that combine the Respondent's datasets, AI tools, SciBite Technology and software licensing and renewals. She says that she was complaining about her role being diminished and mischaracterized and yet the redundancy rationale relied on the diminishment of her role as the reason for the redundancy rationale. i.e. that the protected disclosures and the redundancy rationale were materially the same factual issue.

45. In May 2025, it appears to be common ground that the Professional Services teams of SciBite and the Respondent merged. The Claimant also states that her Skilled Worker Visa was extended by 2 years at this time.

46. Following the merger, the Claimant says that she was assured by Mr Van Den Broek, her manager, that she would continue to customer facing data science work following the merger.

47. In June 2025 I am told that the Claimant received an email from Mr Van Den Broek which I am told shows that Mr Van Den Broek was trying to restrict her involvement in customer-facing meetings. I make no findings of fact, and my impression of this email is that Mr Van Den Broek is following up a 1:1 meeting and is instructing the Claimant not to worry if she is not invited to every meeting and that there appear to be some coaching points too.

48. I am told that the Claimant had a performance review for 2025. This was carried out by Mr Van Den Broek. I am told that this was for the entire year following the merging of the two professional teams. This was completed in December 2025 and the Claimant had the details of this in January 2026.

49. I am told that the Claimant raised a grievance in March 2026 which included the complaint that Mr Van Den Broek was misrepresenting her work, along with issues of policy compliance and customer engagement. I have been taken to a document by the Claimant headed “Protected disclosure”. The document is undated but I am told that this is the March 2026 grievance. The Claimant states the following are Protected disclosures:

    49.1. Customer risk and delivery integrity.

    49.2. Misrepresentation of role, work, expertise and customer delivery capability across customer-facing and leadership facing contexts.

    49.3. Misue of performance processes across management.

50. The Claimant says that the restructuring and reorganization within the business, which moved her role into Professional Services / Consulting happened in May 2025. She says that she raised concerns at the time that her customer facing role was being misaligned with the consultancy role.

51. The Claimant also states that causation flows from the role diminishment and mischaracterization, which she says the Respondent has used to fabricate the rationale for the redundancy.

52. The Claimant says that her role aligned with the Respondent’s strategy and business model and that it aligned with the Skilled Worker role definition as submitted to the Home Office. She also tells me that her work generated revenue and at the time of her dismissal her work was not historical or obsolete.

53. I am told by the Claimant that no further restructuring or reorganization was announced after May 2025.

54. The Claimant asserts that Mr Van Den Broek’s proposal is fabricated and that it contradicted the departmental Professional Services strategy and the year 2026 slides that described the Claimant’s customer focused AI services direction, which her work was aligned with. She tells me that this was the same as her protected disclosures.

55. The Claimant says that her work was in fact continuing and that in April 2026 she presented her blogs to the April Professional Services Group Meeting with Mr Andreas Matern, another manager. I am told that this work was ongoing, customer facing and generating revenue.

56. The Respondent says that the first claim in the Tribunal by the Claimant predate Mr Van den Broek becoming the Claimant’s manager. I am told that Mr Van den Broek states that whilst he was aware of this claim, he was not aware of the content of it.

57. I am told by the Respondent that the respondent company acquired a company by the name of SciBite in 2020. Following the acquisition, the business was subjected to a restructuring process. I am told that the Claimant’s role, and the vacant equal role and two other roles within the SciBite Product Management function were identified as at risk for potential redundancy. I am told that this review took place in November 2025 and was finalized in December 2025. The decision was communicated to the Claimant in January 2026.

58. I am told that in August 2025, an employee in the same role as the Claimant left to start a new role within the business. This vacancy was advertised but not filled.

59. The respondent states that in January 2026 it presented the Proposed Reorganisation (subject to consultation) to the Claimant. I have been taken to a presentation, which sets out the Current Situation, Current Challenges and a proposal with timelines. The presentation itself is 15-slides.

60. I am told that this proposal was part of a final phase of integration of SciBite within the respondent's business and had the objective of aligning structures, removing duplication and establishing a scalable and consistent operation model across the business.

61. I am told that there were two data scientists within the Professional Services team, albeit one role was vacant. I am told that the assessment was in relation to the role, not the job holder and applied equally to both roles. I am told that both roles were not required in the new business structure. Any work required moving forwards, I am told, was to be repurposed within the overall team structure into consultant positions and that the focus and capability mix would be different and would align with consultant roles already within the Professional Services team. I am told that the emphasis would be on consultancy and customer engagement rather than customer specific data science delivery and research and development.

62. The rationale for the redundancy, I am told, was explained to the Claimant and states that the business rationale for the proposal was to move full liability and responsibility to customers. This, I am told, was intended to support a more consistent approach across customers and, I am told, this new approach was in line with the Respondents' consultancy delivery model.

63. I am told that the Claimant received a letter dated 15 January 2026 informing her that she was at risk of redundancy and it also detailed the business rationale. I am told that the letter included a consultation timeline, details regarding redeployment, details of redundancy payments and details of the Employee Assistance Programme.

64. The respondent states that the proposal at leadership level was prepared in November and December 2025 and this was prior to any consultation with the Claimant and prior to the Claimant raising concerns regarding the redundancy process or her role.

65. I am told that there were four consultation meetings between the Claimant and the Respondent. I am told that the Respondent has a Redundancy Policy and that the process was in line with this.

66. I am told that the respondent's HR (Naomi Hill) provided the Claimant with suitable alternative employment opportunities and encouraged the Claimant to look for any vacancy that would be of interest.

67. During consultation, I am told that the Claimant raised her concerns and proposals to avoid redundancy and for redeployment. I am told that these were taken into consideration. I am told that Mr van den Broek considered the Claimant's proposal to avoid redundancy but that his assessment remained that the future operating model did not require the Data Scientist role.

68. I am told that in March 2026 the Claimant raised a grievance during the redundancy process. The respondent tells me that this was a complaint against the underlying business rationale for the proposed reorganisation or the conclusion that the Data Scientist role was redundant. This grievance was not upheld.

69. I am told that following the consultation process, the decision to make the Claimant redundant was upheld in May 2026 and that the reasons were communicated to her in writing.

70. I am required to evaluate the claim before me and make an impressionistic decision, i.e. is the claim likely to succeed at trial. There has not been a mini trial, nor have I made findings of fact. Before I move to consider the Protected disclosures, I must evaluate whether I believe that from an impressionistic point of view, whether a Tribunal at the final hearing are likely to find that the redundancy was fabricated to select the Claimant for dismissal.

71. The burden of proof rests with the Claimant to show that her case is likely to succeed at trial, for each element of the claim. This is a high threshold and the test for “likely” means closer to certainty rather than the more likely than not, i.e. 51%, test.

72. To consider the evidence before me, I have made no findings of fact. This conclusion is my impression of the evidence presented.

<u>Is it likely that the Tribunal at the final hearing will find that the redundancy was fabricated?</u>

73. I have been told that the respondent acquired SciBite in 2020 and that there was a merger process following the acquisition.

74. I have been told that the Claimant has raised a number of allegations that she states are protected disclosures and that these are the subject of Employment Tribunal proceedings, which were issued on 24 April 2025.

75. It is the Claimant’s contention that the respondent has diminished her role and misrepresented her work as a customer facing data scientist and has then subsequently used this reasoning for the rationale to support the decision to make her redundant. She asserts that the redundancy process itself was fabricated. She asserts that she was dismissed because of her making protected disclosures.

76. The Claimant states that the Respondent’s manager Mr Van Den Broek knew that she had concerns that he was diminishing her role. The respondent states that this complaint was not raised until the grievance in March 2026 and could not therefore be in the mind of Mr Van Den Broek at the time of the reorganisation decision being made.

77. It is the respondent’s contention that the redundancy was the final stage of the integration of SciBite into the respondent’s business. I am told that a decision was made in November 2025 and into December 2025 to seek to reorganise the Professional Services team, which had been merged in May 2025. I am told that the reorganisation, by the removal of the data scientist role, would align the team’s processes with the Respondent’s business strategy, in that the proposal was to move full liability and responsibility for tasks within the Claimant’s role to the customer. I am told that this would create and support a more consistent approach across the customer base.

78. These are circumstances where, I am told, there has been an acquisition and then a merger of two businesses. I am told that the reorganisation was to address duplications and to align the business models from the two businesses to that of the Respondent’s business.

79. I am also told that the other role of data scientist had remained vacant from August 2025 and was also removed from the business structure as part of the reorganisation.

80. It is not for me to look behind the rationale of a respondent's decision to carry out a redundancy process, the question I must first answer is from an overview perspective and in forming an impression, do I believe that the Claimant is likely to succeed in persuading a Tribunal that the redundancy was fabricated.

81. I have considered all of the documents that I have been taken to and have reviewed what I can in the time available. There is a considerable amount of documentation and evidence that will require full review once this matter reaches the final hearing. It appears, on the face of it and I repeat, I make no findings of fact, that the Respondent is seeking to continue its integration process of SciBite and align the customer delivery strategy to that of the Respondent's strategy. I am told that the proposal was presented to the business leadership and that it was conducted with HR support and, I am told, it was in line with the redundancy policy and procedures. I am also told that the entire role, i.e. both positions, were removed from the business structure as part of this reorganisation.

82. From the documents that I have seen and taking into consideration the submissions from both parties, I am not persuaded that the Claimant is likely to succeed in persuading a Tribunal that the redundancy was fabricated.

83. This is not to say that the Claimant will not be able to satisfy the tribunal on the balance of probabilities that the reason for the redundancy was fabricated, or that the reason or principal reason for his dismissal was because she made protected disclosures. It will be a matter for the final tribunal to determine the veracity of the Respondent's case and only then will it be possible to properly determine the motivation behind the dismissal. However, on the information before me, I cannot say that the final tribunal is likely to find that the redundancy was fabricated.

84. Given that I have determined that I do not believe that the Claimant is likely to succeed in persuading the Tribunal at the final hearing that the redundancy was fabricated, I will not continue to consider the protected disclosures themselves as this application now falls outside of the protection afforded to interim relief.

85. The Claimant's application for interim relief is refused.

Approved by:

Employment Judge Illing
Date: 26 June 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON:

17 July 2026

FOR THE TRIBUNAL OFFICE