



EMPLOYMENT TRIBUNALS

Claimant: Mr Abdul Atkir Khan

Respondent: The Home Office

Heard at: London South by CVP

On: 30 July 2026

Before: Employment Judge Martin

REPRESENTATION:

Claimant: In person

Respondent: Ms B Vekanta - Counsel

RESERVED JUDGMENT

The Claimant's application for interim relief under s.128 Employment Rights Act 1996 is refused.

RESERVED REASONS

Introduction

1. This is my judgment on the Claimant's application for interim relief. The Claimant's application for interim relief contends that he was automatically unfairly dismissed because of:
 - a. performing health and safety activities under **s.100 ERA**,
 - b. making a protected disclosure under **s.103A ERA**, and/or
 - c. performing trade union activities under **s.152 TULRCA**.

The Claimant only relied on b at this hearing and I therefore did not consider a or c.

2. The Respondent resists the application.

3. I had not had the opportunity to review the documents in any depth prior to the hearing so reserved judgment in order for me to do so. I had before me a 193-page bundle, written submissions from both parties, and additional documents provided by the Claimant. I did not hear oral evidence.

The Law

4. Interim relief is an exceptional remedy. The Claimant must show it is likely he was dismissed for an automatically unfair reason (s.129 ERA).
5. The test requires a high degree of certainty:
 - Taplin v Shippam [1978] IRLR 450,
 - Ministry of Justice v Sarfraz [2011] IRLR 562.
6. If interim relief is granted, the Respondent must continue the Claimant's contract and pay salary until final hearing, with no ability to recoup if the Claimant ultimately loses. The threshold is therefore deliberately high.
7. Section 128 of the Employment Rights Act 1996 ("ERA") provides that an employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and that the reason (or if more than one the principal reason) for the dismissal is one of those specified in -section 103A....may apply to the tribunal for interim relief.
8. Section 43B ERA provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters listed in sub-sections (a)-(f). Section 43C of the ERA requires the disclosure to be made in good faith.
9. Section 43B ERA of the Employment Rights Act 1996 sets out the types of disclosure 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, 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, or is likely to be deliberately concealed.

10. An application for Interim Relief will be granted where, on hearing the application, it appears to the tribunal that it is likely that on determining the complaint to which the application relates, a tribunal will find that the reason for dismissal is the prohibited reason relied on (s163 TULRCA)
11. The case of **Taplin v Shippam Ltd (1978) ICR 1068 EAT** defines “likely” in this context as a “pretty good chance of success”. That test has recently been re-affirmed in the case of **Dandpat v The University of Bath and Others UKEAT/0408/09/LA**
12. The standard of proof required is greater than the balance of probability test to be applied at the full hearing. The EAT recognised in Dandpat that such a high burden of proof is necessary as the granting of such relief will prejudice a Respondent, who will be obliged to treat the contract as continuing until the conclusion of the proceedings. Such a consequence should therefore not be imposed lightly.
13. The word “likely” goes beyond a finding of reasonable prospects of success. As set out in **Ministry of Justice v Sarfraz [2011] IRLR 562**: *“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”*.
14. Paragraph 14 sets out guidelines for the Tribunal to consider in this type of application.

“I have to decide that it was likely that at the final hearing the Tribunal will find five things: That the Claimant had made a disclosure to his employer; That they believed the disclosure tended to show one or more of the things itemised at (a) to (f) under section 43B(1); 1. That the Claimant had made a disclosure to his employer; 2. that the belief was reasonable; 3. that the disclosure was made in good faith; and 4. that the disclosure was the principal reason for his dismissal.”
15. **Cavendish Munro Professional Risks Management Limited –v- Mr Geduld [2009] UKEAT/0195/09** deals with what amounts to a protective disclosure.
16. My role is not to make findings of fact but to make a broad assessment on whether the Claimant’s claim as presented to me in this hearing has a pretty good chance of success. I followed the approach set out in **Al Qasimi v Robinson EAT 0283/17**:

“By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus very much an impressionistic one: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied”.

Background Facts

Employment

17. The Claimant commenced employment with the Home Office on 19 August 2002 and was appointed SEO on 14 December 2016. His employment was terminated on 21 April 2026 with him being paid in lieu of notice. Until the capability procedures that resulted in the termination of his employment he had no previous capability procedures.;

The Tap Pressure Email

18. On 26–27 March 2025, the Claimant raised concerns about tap pressure and hygiene in 2 Ruskin Square. He emailed his manager, Gillian Wood (“GW”), asking:

“Please advise... how I should raise the above issue, may I ask Adam or my union...?”

19. GW responded supportively:

“I agree the issue is a serious one and probably needs raising...”

20. On 27 March 2025, the Claimant emailed Steven Basey (“SB”) stating:

“My personal opinion is that it is not hygienic or in line with work and safety laws if the employer isn’t providing proper facilities for people to wash their hands.” The Claimant does not know SB. SB had responded to a previous ‘reply to all’ email about this issue.

21. Later that day, the Claimant forwarded the chain to GW, thanking her for her advice.

Performance Management

22. The Claimant was placed on an informal performance plan on 30 September 2025. Weekly one-to-ones took place. Feedback from colleagues in December 2025 described the Claimant as lacking strategic perspective and needing to take more responsibility.

23. A Stage 1 warning was issued on 17 December 2025, citing lateness, lack of preparation, confusing emails, and impact on team reputation. The Claimant appealed; the appeal was dismissed on 6 January 2026.

24. A Stage 2 final warning was issued on 17 March 2026; The Claimant appealed again; the appeal was dismissed.

25. On 21 April 2026, the Claimant was dismissed for poor performance. The dismissal letter stated:

“Your work performance is still unacceptable... you should be dismissed... on the grounds of poor performance.”

The Claimant appealed; the appeal was dismissed on 11 May 2026.

26. The Claimant did not mention or refer to the tap issue or any disclosure during any of his capability hearings or appeal hearings.

ET Proceedings

27. The Claimant's ET1 (19 April 2026) predated the termination of his employment and did not mention protected disclosures or issues relating to tap pressure.
28. The first mention of a protected disclosure was in the Claimant's interim relief amendment application on 21 April 2026, where he stated dismissal was "*possibly due to discrimination*" and that he "*helped them whistle blow*".

Submissions

Claimant

29. I carefully read the Claimant's written submissions. The Claimant said he made a protected disclosure and was thereafter scrutinised more closely. He said he was treated unfairly, bullied, and discriminated against. He relied on the 27 March 2025 email as the protected disclosure. At the end of submissions when asked if he had anything to add the Claimant said that in the last 12 months of his employment, pretty soon after the disclosure he was subjected to more scrutiny than he was used to. He said that before he was dismissed, he said it was unfair. He said that the real reason was not poor performance, it was to do with him challenging Ms Wood's behaviour. He said she criticised him for being absent when he was in the office, and he challenged her about this and she said this caused her some problems.

Respondent

30. The Respondent provided written submissions and submitted that the Claimant was dismissed for capability and there is ample evidence in the bundle to show this.
31. It was conceded that there may be an arguable case that the Claimant believed there had been a breach of health and safety or a legal obligation, and it was arguably a reasonable belief in public interest but there is no evidence it was the principal reason for dismissal.
32. The Respondent pointed out that Ms Wood supported the Claimant in raising the issue, and he thanked her for the help. It is therefore unlikely that she took against the Claimant because of it.
33. The Claimant did not mention the disclosure in any of his three internal appeals or in his ET1.
34. It was submitted that the disclosure occurred one year before dismissal.
35. Finally it was submitted that the Claimant's case is an "opportunistic attempt" to obtain salary pending hearing.

My Conclusions

Did the Claimant make a protected disclosure?

36. The Claimant's email raises hygiene concerns and refers to "work and safety laws". Given the Respondent's concession on this point, for the purposes of this decision, I find that it is arguable that he believed the matter tended to show a breach of health and safety obligations, and arguable that it was a disclosure which is protected. For the purposes of this decision I have taken the Claimant's case at its highest and proceeded on the basis that he did make a protected disclosure pursuant to s.103A ERA although no findings of fact have been made.

Was the disclosure the principal reason for dismissal?

37. I then considered whether it is likely the disclosure was the principal reason for the termination of the Claimant's employment. I spent some time and carefully considered the documents in the bundle relating to the capability procedure including the appeals. I find that the evidence before me does not convince me that the Claimant has a pretty good chance of succeeding in his claim that the principal reason for dismissal was that he made a protected disclosure rather than poor performance.

38. I noted that the disclosure occurred one year before dismissal and about eight months before the informal process was started. I take on board the Claimant's submission that it was shortly after making the disclosure that discussions about his performance started. I have made no findings of fact in this regard, that is for the final hearing.

39. Ms Wood appears to have been aware of the disclosure. However, the email chain shows that she supported the Claimant in raising the issue and the Claimant thanked her for her advice. The evidence I have read does not support the Claimant's argument that he has a pretty good chance of succeeding at final hearing in showing that Ms Wood turned against him because of the disclosure. It looks like any criticism levied appears to be because of the use of 'reply to all' which was not considered to be appropriate but that is a matter for the final hearing.

40. Another factor which does not show me the Claimant has a pretty good chance of success at the final hearing is that the Claimant did not mention the disclosure in any internal appeal of which there were three, or in any of the capability hearings. If he thought the reason for the capability procedure was because he raised a protected this is surprising. The Claimant also did not mention it in his original claim to the Tribunal which again is notable. It was only on 21 April 2026 once his employment had been terminated that it was first mentioned in his interim relief amendment application.

41. As can be seen from the bundle, the performance concerns were extensive and long-running, the documentation is substantial, and involved different people at the different stages.
42. Whilst the Claimant's asserts that scrutiny increased after the disclosure, this is not supported by contemporaneous documents and I only have the Claimant's word about this.
43. It is not my function in this hearing to resolve factual disputes; my role is to make a broad assessment about the likelihood that the Claimant has a "pretty good chance" of establishing that the protected disclosure was the principal reason for dismissal. On my assessment he can not do this.

Conclusion

44. The Claimant has not demonstrated that it is likely he was dismissed for an automatically unfair reason. The statutory threshold for interim relief is not met. The Claimant's application for interim relief is refused.

Approved by:

Employment Judge Martin

30th July 2026

Judgment sent to the parties on:

4th August 2026

For the Tribunal Office

Notes

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