EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000654/2025

Held in Edinburgh via Cloud Video Platform (CVP) on 24 July 2026

Employment Judge Murphy (sitting alone)

X	**Claimant** **In person**
Erskine Veteran Charity	**Respondent** **Represented by:** **Mr L Entwistle –** **Solicitor**

JUDGMENT

The judgment of the Tribunal is that the respondent's application to strike out parts of the claim is REFUSED.

REASONS

1. A continued preliminary hearing took place on 24 July 2026. The claimant (X) attended in person and the respondent (R) was represented by Mr Entwistle. The first part of the hearing on 24 July 2026 was conducted as a public preliminary hearing to decide the respondent's application to strike out parts of the claim.

2. X brings complaints of automatic unfair dismissal because of a protected disclosure or disclosures and that she was subjected to detriments on the grounds of making a protected disclosure or disclosures (among other complaints).

3. It is these complaints with which the respondent's strike out application is concerned. The claimant asserts she made three protected disclosures. These are articulated in EJ O'Donnell's Case Management Note of 22 May

2025 at paragraph 6. R seeks strike out of the complaints so far as they are based on two of the alleged protected disclosures, namely:

(i) *In May/June 2024, she alleges she disclosed that a manhole cover was damaged at one of the respondent's sites. She says that this information shows or tends to show that the health and safety of individuals had been, is being or likely to be endangered (s43(1)(d) ERA). She says that this disclosure was made to the respondent in the form of her manager, Dougie Beattie, as well as a manager at the maintenance contractor used by the respondent*; and

(ii) In July 2024, she alleges that she disclosed information that the risks involved in driving were being ignored and were a higher risk that they were said to be. She says that this information shows or tends to show that the health and safety of individuals had been, is being or likely to be endangered (s43(1)(d) ERA). She says that this disclosure was made to the respondent in the form of her manager, Dougie Beattie.

4. The document headed 'Claimant's responses to respondent's answers' says this about the manhole matter (para 8):

> *I had at one time previously reported a damaged manhole cover, that a resident fell into and injured themselves, to the maintenance and requested that all manhole covers are inspected in the following days after the incident. I was told by Steven that this would be done only as a routine activity, only as and when the grass was cut.*

5. X says this about the driving matter (at para 6 of the document headed 'Claimant's responses to respondent's answers'):

> *When it came to a risk assessment for the Support at Home project I had been told by DB not to do the risk assessment for the Project Manager, but just guide and support him. So I did. However, he didn't understand how to do risk assessments and I was trying to guide him without doing all the work for him. I emailed DB a number of times regarding this and questioned how a Project Manager was not aware on how to conduct risk assessments. I do not understand at all how I am getting accused of not being able to do risk assessments when the risk assessment DB is specifically referring to is the responsibility of the PM, and his support at home project and was not my responsibility to complete. Emails sent to DB would show that I had had conversations with DB regarding the issues I was having with the PM completing the risk assessments. It is categorically wrong for DB to be*

> *claiming I do not know how to do risk assessments. The real issue came down to DB not agreeing with me that driving for work is high risk. If I reported that it was a high risk, it would shut the programme down and therefore DB was adamant that it was a low risk, in order for the business operations to accept the project. DB spoke to me aggressively and intimidatingly when he did not want to discuss my views on the risk assessment levels any further. He told me that he would not discuss it any further and the conversation was shut down and I was never to mention it again. It was wrong of DB to address the risk assessment in this manner, and was not the correct approach. The Health and Safety Executive clearly state that driving is a high risk activity. So, even with control measures in place it can never go down to a low risk. The least I could get it to would be medium risk. But the PM had not answered my questions about if driving on motorways or A/B roads, for me to complete my overall assessment of the residual risk.*

6. R submitted a written strike out application on 8 May 2026. A hearing was, at that time, already listed for 19 June 2026 to decide the claimant's disability status. EJ O'Donnell ordered that the strike out application and other applications subsequently made by the claimant for privacy orders should also be decided at that hearing. On 22 May 2026, X sent in a written response to the strike out application. At the hearing on 19 June 2026 there was insufficient time to hear the strike out application and the hearing was continued to 24 July 2026. In the meantime, on 2 July 2026, X wrote to the Tribunal to provide further written submissions in relation to R's application.

Parties' submissions

7. At the hearing on 24 July 2026, parties were given the opportunity to supplement their written submissions with oral submissions and did so.

8. I have not set out the parties' written or oral submissions in full but have summarised these. I have, however, considered the submissions in their entirety in coming to this decision.

9. In Mr Entwistle's written application of 8 May, he provided submissions summarising the legal framework and also set out the procedural history of the case. Mr Entwistle made his application under Rule 38(1)(a) of the ET Rules 2024. He said that the whistleblowing complaints have no reasonable prospects of success so far as predicated on these alleged disclosures because there is no reasonable prospect of X establishing that these amounted to qualifying disclosures for the purposes of section 43B of the Employment Rights Act 1996 (ERA).

10. Regarding the 'manhole cover', Mr Entwistle said X has not demonstrated that any real or potential risk to an individual's health and safety arose from said manhole cover. To date, he said, X has only alleged that a manhole cover was damaged and this showed there was a 'health and safety issue' (which she allegedly reported to the onsite maintenance team and DB).

11. In relation to the 'driving risks', he maintained in his written application that the alleged 'higher risks' relating to driving were "merely the Claimant's opinion". Though R had identified driving as a 'lower risk' activity, the claimant simply disagreed. In Mr Entwistle's submission. Therefore, according to R, no disclosure took place as alleged or at all.

12. In X's initial written response of 22 May 2026, she argued that a case cannot be thrown out early if both sides disagree on what actually happened. She said her position is that she was fired "*because her safety checks uncovered serious failures: 8.5mm fire door gaps, failure to inspect other manhole covers after an incident, lone working definition disputes, not being able to chair meetings that Dougie was always going to chair anyway, and driving risk assessment 'risk levels', and that the hostile attitudes and behaviours from others, relating towards my findings, impacted my mental health. The Respondent claims I just had performance issues. This can only be sorted out at a proper trial.*"

13. She also said that *"under official safety guidance (HSE INDG382), work-related driving carries a risk of death and is a High-Risk activity."* She said her manager, Dougie Beattie (DB), pressured her to 'falsify' the safety rating to 'low risk' and when she wouldn't, he told her to no longer work on the risk assessment. She said that DB shut her down because if the driving risk was marked as high, the organisation's pilot program could not go ahead. She said she was forced to use a flawed risk matrix that jumped directly from high risk to low risk with no moderate option in between.

14. In her email of 2 July 2026, she repeated that a whistleblowing complaint cannot be struck out where there is a crucial core issue of fact between the parties. She cited **Ezsias v North Glamorgan NHS Trust** in support of this proposition. She said her disclosures have strong prospects of success, and made the following submissions in relation to each challenged disclosure:

> *1. The Home Visits and Driving Risk Assessment Claim*
>
> *What happened: The Project Manager was compiling a brand-new risk assessment for community volunteers making home visits to residents. This form should have covered major hazards like lone working, aggressive individuals, dogs in houses, personal safety*

walking from the parked car, parking in lit areas etc.. Driving was a specific section inside this wider assessment.

The Incomplete Document: The assessment was inadequate and was not compiled to a suitable and sufficient standard. Answers to critical safety questions had to be pulled from the Project Manager while I was attempting to guide him in what needed to be considered. I had to keep returning the document to him to add critical things he had forgotten—including asking whether volunteers were required to execute motorway driving—which I was never given answers to before being shut down by Dougie Beattie, my line management.

The Matrix Dispute: To help the project move forward safely, I found a standard risk matrix on the internet which clearly broke down physical consequences using criteria like first aid only, or hospital visit etc..

The Falsification: My line manager, Dougie Beattie, was hostile towards this because it made driving a high-risk activity and he said that 'jeopardised the project launch'. He sternly instructed me to use a flawed intranet matrix. His chosen matrix mathematically deleted the Moderate safety tier in Column 5, jumping directly from High to Low to force a false green safety rating across these notable volunteer risks. I made it clear that at best, we could only bring the calculation down to a moderate risk if my necessary questions about the type of roads were answered. Instead, I was completely silenced — abruptly and fiercely told not to discuss it again and the task to help the project manager with the risk assessment was taken away from me completely!

Public Interest: Standing my ground to ensure that a new project sending volunteers into unknown homes is backed by a legally compliant safety assessment—rather than letting management use a broken tool to hide risks to conceal operational failures —is a genuine public safety matter.

2. The Manhole Cover Safety Claim

What happened: A father living in one of the rented houses on the estate stepped into a manhole and was hurt while trying to get his son's football, because the lid was either broken or left completely off. The official corporate accident report that I have requested will confirm which.

Why it was unsafe: After this accident, I informed Steven from the facilities team that we needed to check every manhole cover on the estate to assess the condition of each, in order to protect the public *and residents, including children, and prevent another incident. Management flatly refused and told me they would only be checked, as and when, at the time when the grass was being cut by the groundsmen, in routine work hours.*

Public Interest: Trying to stop residents and children from falling into open holes after a member of the public was already injured is a major public safety matter.

15. In relation to the manhole cover point, Mr Entwhisle said that what X described in the email was an instruction followed by a difference of opinion rather than a disclosure of information. Likewise with respect to the category of risk to be allocated to the driving risk assessment, he said X was voicing an opinion on which R had a different opinion. There was, said Mr Entwistle, no suggestion in C’s email that the matrix she supplied included information satisfying s.43B(1). Mr Entwistle relied on **Cavendish** in support of his contention that what was communicated did not amount to a disclosure of information. Mr Entwistle acknowledged that X’s case must be taken at its highest for the purposes of deciding R’s strike out application. He said that even if the facts she alleges were proved, the communications would not amount to protected disclosures.

16. X said that R brought up the issue regarding the driving risk assessment to make out she was not competent in her role. She said the evidence shows that DB did not understand risk assessments. She said the evidence supported her competence in H&S matters. She said she was being asked to ignore the fact that the driving risk was a high risk. She said R wanted this struck out because the documents support her case. She said her dismissal was not due to competence but due to her pointing out health and safety things. She alluded to the case of **Kilraine v London Borough of Wandsworth** IRLR 422 EAT, and said that a communication could be both an allegation and information at the same time. She said the issues should go to a final hearing and the Tribunal should hear evidence.

Relevant Law

17. Under Rule 38(1)(a) of the ET Rules 2024, a Tribunal may strike out all or part of a claim on the grounds that it has no reasonable prospect of success. In determining such applications, the claimant’s case must ordinarily be taken at its highest and, if the question of whether it has reasonable prospects of success turns on disputed factual issues, it is unlikely that strike out will be appropriate (**Cox v Adecco** UKEAT/0339/19).

18. A two-stage process is required. First, the Tribunal must determine whether one of the specified grounds for striking out has been established. If so, the

Tribunal then must go on to decide as a matter of discretion whether to strike out the claim, order it to be amended, or order a deposit to be paid (**HM Prison Service v Dolby** [2003] IRLR 694).

19. The power under the Rules for a Tribunal to issue a deposit order is found in Rule 40:

> ***40.***—*(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").*
>
> *(2) The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*
>
> *(3) The Tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.*
>
> *(4) If the depositor fails to pay the deposit by the date specified by the deposit order, the Tribunal must strike out the specific allegation or argument to which the deposit order relates*

20. Section 43B of the Employment Rights Act 1996 ("ERA") sets out categories of qualifying disclosure and includes the following text so far as relevant.

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

21. In **Cavendish Munro Professional Risks Management Limited v Geduld** 2010 ICR 325, the EAT held that to be a disclosure of information, it must contain facts rather than simply make an allegation. As long as the worker 'reasonably believes' that the information tends to show one of the matters required in section 43B(1), the disclosure will qualify even if the information turns out to be untrue or inaccurate.

22. In **Parsons v Airplus International Ltd** UKEAT/0111/17, HHJ Eady summarised the caselaw on s.43B(1) at para 23:

> (1) This is a matter to be determined objectively (**Beatt v Croydon Health Services NHS Trust** [2017] IRLR 748 CA);
>
> (2) More than one communication might need to be considered together to answer the question whether a protected disclosure has been made (**Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540 EAT);
>
> (3) The disclosure has to be of information, not simply the making of an accusation or statement of opinion (**Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38 EAT); That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information? **Kilraine v London Borough of Wandsworth** IRLR 422 EAT.

23. As mentioned, if there was a disclosure of information, it is only necessary for a claimant to show a reasonable belief that the disclosure was (i) in the public interest and (ii) that it tended to show one of the categories in s.43B(1)(a) to (f). This aspect is subjective and the individual characteristics of the worker should be taken into account in assessing whether the subjective belief was indeed held. In **Korashi v Abertawe Bro Morgannwg University Local Health Board** [2012] IRLR 4, EAT, a case involving alleged disclosures by a doctor, Judge McMullen affirmed the subjective nature of this test generally and added the following observations:

> *(1) This emphasis on the personal position of the claimant in general may look like a watering down of the 'reasonable belief' test but it can in fact have the opposite effect—many whistleblowers (especially in the medical area) will be insiders with a high level of knowledge, so that (paradoxically perhaps) that factor may increase the level of reasonableness required by the legislation; there may be things that might be reasonable for a lay person to have believed (however mistakenly) that certainly would not be reasonable for a trained professional to have believed. On a broad level, this could be seen as analogous to the* imperitia culpae adnumeratur *rule in the Law of Tort (ie that culpability increases with skill).*
>
> *(2) Where, as here, there are a plethora of disclosures, the requirement is that there was a reasonable belief in relation to*

> *each; it is not enough that the claimant can be shown to have believed in the general gist of his or her complaints.*

24. What is the correct interpretation of the word "likely" where it appears in the subparagraphs of s.43B(1)? This was considered in **Kraus v Penna PLC and anr** [2004] IRLR 260. The EAT, when reasoning its approach to the question, considered the construction given to this word where it appears in other employment legislation. The EAT concluded that 'likely' in s.43B(1), as it appears throughout sub-paragraphs (a) to (f), should be construed as 'requiring more than a possibility, or a risk, that an employer (or other person) might fail to comply with the relevant legal obligation. The EAT said the information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is *probable or more probable than not* that the employer will fail to comply with the relevant legal obligation (para 24).

25. **Kraus** went on to further rule that, for the purposes of s.43B(1)(b), the breach of the legal obligation must have actually existed. This ruling has since been overturned by the Court of Appeal (**Babula v Waltham Forest College** [2007] IRLR 346). Nevertheless, the part of the reasoning in **Kraus** which hinges on the interpretation of the word 'likely' in all sub paragraphs of s.43B(1) remains good law and was not overturned by **Babula.** With respect to the EAT's analysis of the 'likely' requirement in **Kraus**, the Court of Appeal said at para 76:

> *In Kraus v Penna, the tribunal – as indicated in the passage from paragraph 21 of the EAT's judgment which I have set out in paragraph 44 above, found that Mr Penna did not have a reasonable belief that the information he disclosed tended to show that a failure on the part of Syltone to comply with its legal obligations was **likely**. On that basis, s.43B(1)(b) was plainly not satisfied. In the instant case, the appellant's belief that the information he was disclosing met the criteria in s.43B(1)(a) was, in my judgment, plainly reasonable, even though it turned out to be wrong.*
>
> *It is also, I think, significant that s.43B(1) uses the phrase 'tends to show' not 'shows'. There is, in short, nothing in s.43B(1) which requires the whistleblower to be right. At its highest in relation to s.43B(1)(a) he must have a reasonable belief that the information in his possession 'tends to show' that a criminal offence has been committed: at its lowest he must have a reasonable belief that the information in his possession tends to show that a criminal offence is likely to be committed. The fact that he may be wrong is not relevant, provided his belief is reasonable … (s.43C(1)(a)).*

26. Section 43L contains interpretative provisions including the following:

> ***43LOther interpretative provisions.***
>
> *(1)In this Part—*
>
> *“ qualifying disclosure ” has the meaning given by section 43B;*
>
> *“ the relevant failure ”, in relation to a qualifying disclosure, has the meaning given by section 43B(5);*
>
> ***…***
>
> *(2) In determining for the purposes of this Part whether a person makes a disclosure for purposes of personal gain, there shall be disregarded any reward payable by or under any enactment.*
>
> *(3) Any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention*

Discussion and decision

‘Manhole Cover’ alleged protected disclosure

27. R disputes as a matter of fact that X made the disclosure about the damaged manhole to R. The pleaded position of the respondent is that they accept one of their cottage tenants fell into a manhole cover and hurt his leg. R says the tenant phoned R and reported it to another member of DB’s team.

28. I am mindful that I require to take X’s case at its highest and that, in circumstances where there are disputed facts, it is unlikely strike out will be appropriate (**Cox v Adecco**). Although the claimant has given further information in her email of 2 July 2026, I do not understand that she was suggesting this was to alter or replace her position regarding the basis on which a protected disclosure is asserted as set out in EJ O’Donnell’s note at para 6.

29. It is X’s position that she reported the damage to the manhole and the injury to the resident. I take her case at its highest and assume, for present purposes, that she will prove on the balance of probabilities that she indeed made this report to R (while acknowledging R’s contrary position). It may be relevant to acknowledge here that it matters not whether someone else (such as the tenant) may also have reported the matter. Nor would it necessarily undermine X’s position if the evidence showed the tenant made the report about the manhole prior to X bringing the matter to R’s attention. The bringing of the matter to R’s attention, even in circumstances where R is already aware

of it, can yet amount to a 'disclosure of information' (s.43L(3)). Taking X's case at its highest, I assume she will prove to the Tribunal that she "*reported a damaged manhole cover, that a resident fell into and injured themselves, to the maintenance and requested that all manhole covers are inspected".* She requires to show a reasonable belief that this disclosure was made in the public interest and that it tends to show that the health and safety of an individual had been endangered, was being or was likely to be endangered.

30. I am satisfied that, if made as she describes, X has reasonable prospects of establishing that her report tended to show the health and safety of an individual had been endangered (regardless of whether she can also show that any individual's health and safety was likely to be so). As to the 'public interest' element, I note the point made by R that the damaged manhole cover was located closely outside the tenant's house. Nevertheless, I am not satisfied that without hearing evidence, it could safely be concluded on the available material that there is no reasonable prospect of X establishing that she reasonably believed that her alleged report was made in the public interest. I bear in mind that even if X were wrong in such belief, that is not relevant as long as her belief was reasonable.

31. In relation to this alleged protected disclosure, I am not satisfied that X has no reasonable prospects of meeting the requirements of section 43B(1) of ERA. I therefore decline to strike out this complaint on the basis of Rule 38(1) of the ET Rules 2024.

'High risk' driving alleged protected disclosure

32. My understanding of X's position based on her pleaded case, her 'Responses to the respondent's answers' document, the characterisation of the protected disclosure in the Case Management Note and the further information in her email of July 2026 is as follows. The context was that she was commenting on a risk assessment which R was compiling. This risk assessment was being compiled by a project manager of R's in relation to a project whereby it was proposed that community volunteers would make home visits to residents. R (according to its pleaded response) is a "charity engaged in the provision of medical care home services to armed forces veterans as well as supported accommodation to younger veterans, assisted living apartments, a pilot support at home service and activity centres". I infer from the information in the ET1 paper apart and X's email of 2 July 2026 that, at the time she says she made the communications she relies upon, her position is that the project of the volunteers making the home visits had not yet begun. (X refers in the email of 2 July to DB being hostile to her approach *"because it made driving a high-risk activity and he said that 'jeopardised the project launch'"*).

33. As to what she says was disclosed, it is her case that she told DB that the "*risks involved in driving* [in relation to the project] *were being ignored and were a higher risk that they were said to be".*

34. R's pleaded position is that "*the Claimant stated that driving, which is one of the essential key aspects of the service, was rated as "high" risk. This assessment would make the service unworkable and meant that the service could not be delivered until the risk was reduced. As reduction of the driving part of the service was not possible this would effectively prevent the service being provided. DB spoke to the Claimant in relation to her assessment and on doing so the Claimant became visibly upset and relied on the assessment that if a car was crashed there would be a risk of severe harm or death. DB, who at all times spoke in a measured and professional way, acknowledged that if a car was crashed there would be a risk of severe harm or death but reminded the Claimant that the likelihood of a crash was low*.."

35. Again, I take X's case at its highest. I assume for present purposes that she will establish that, either in one communication or in a series of communications at the material times, she told DB (explicitly or implicitly) that volunteers on this project will be driving to visit residents under the pilot project; that it was not known what roads they might be driving on; and that driving is a high risk activity in relation to health and safety.

36. Mr Entwistle argues that no information was disclosed, merely X's opinion of the risks. I am not persuaded that there is no reasonable prospect of X establishing that such a communication or series of communications amounted to a 'disclosure of information'. I remind myself that a disclosure of information may be made alongside a statement of opinion (**Kilraine**) and further that there can be a disclosure of information when the person receiving the information is already aware of it (S.43L(3)). With that in mind, I am not satisfied that a communication that volunteers will be driving for the purposes of a pilot project and that this carries a health and safety risk cannot in and of itself amount to a 'disclosure of information'. Whether or not X's assertion that the risk was a high one ought properly to be classified as an expression of opinion, I am mindful that the inclusion of an element of opinion does not exclude that there was nonetheless a 'disclosure of information'.

37. As indicated earlier, I understand that X's case is that the pilot project had not begun when she made the disclosure. There is, therefore, no suggestion that her alleged 'disclosure' tended to show that the health and safety of any individual had already been or was, at the time of the disclosure, being endangered. The only questions are whether X has reasonable prospects of establishing a reasonable belief that her disclosure tended to show it was 'likely' to be so (when the project got underway) and that the disclosure was in the public interest.

38. I bear in mind that she does not require to prove that she was ultimately correct that the information disclosed tended to show likely endangerment to health and safety. She needs only establish that she had a reasonable belief that the disclosed information tended to show this.

39. It is R’s position that DB stated to the claimant that the likelihood of crashing was low due to the requirement for driving licences, taxation and insurance of vehicles, the driving policy of R and risk assessments. R’s position is that DB provided X with national statistics of fatal crashes in Scotland which R says DB told her was 0.02%.

40. It is unknown whether X disputes that DB said this to her or not. In any case, it is alleged to have been said in response to the ‘information’ X says she ‘disclosed’. X’s belief that the information she disclosed tended to show likely endangerment (if she held one) would have already been formed at the time of making the disclosure. That is to say, any such belief was already formed before and without the benefit of any counter arguments or statistics which DB may have put forward in response.

41. I assume, for present purposes, that X will prove that, as a matter of fact, she held the subjective belief at the point of disclosing the information that it tended to show that likely endangerment of an individual’s health and safety. To succeed, she would require to further establish the reasonableness of that belief.

42. X is, on her own account, qualified by IOSH in delivering Managing Safely training courses to others, in managing risk and completing risk assessments and has delivered training for a number of organisations, as well as having marked risk assessment test papers overseen by IOSH (para 6 of X’s document containing responses to the ET3 response).

43. It is important to focus on the specific belief which X must prove was reasonable to satisfy the legislation. It is not a generalised belief that ‘driving is a high risk activity’. To meet the requirements of s43B(1)(d), she must establish that it was reasonable for her (with her characteristics, qualifications, job role and experience) to believe an individual’s health and safety was ‘likely’ to be endangered by the driving envisaged by the project. ‘Likely’ means more than a possibility or a risk but that it is ‘probable or more probable than not’ that the health and safety of an individual would be endangered.

44. X has put forward very little material in the way of knowledge or information that she says founded or supported such a belief. She has asserted that the HSE consider driving a high risk activity and she has observed that ‘there are so many unexpected potential outcomes that are not in the drivers control.’

Elsewhere, she has also said that 'under official safety guidance (HSE INDG 382) work related driving carries a risk of death and is a High-Risk activity'.

45. I understand it to be uncontroversial from R's point of view that car accidents, when they occur, can cause severe injury and even death. It is also not understood to be controversial between the parties that road traffic accidents can be caused not by the actions of the driver but by those of other road users so that outcomes are not always within a driver's control. Neither of those observations addresses the fundamental question of whether X's asserted belief that her disclosure tended to show that endangerment to an individual's health and safety was 'likely', meaning 'probable' was a reasonable one.

46. I bear in mind the observations of Judge McMullen in **Korashi.** He commented that many whistleblowers will be insiders with a high level of knowledge, so that (paradoxically perhaps) that factor may increase the level of reasonableness required by the legislation. That seems to me to be an observation which could have particular applicability in a case like this one. As someone whose qualifications and professional experience is concerned with managing risk and safety, these factors may operate to increase 'the level of reasonableness required' as it was put by Judge McMullen in **Korashi**. As the EAT said, there may be things that might be reasonable for a lay person to have believed (however mistakenly) that certainly would not be reasonable for a trained professional to have believed.

47. I have referred to a dearth of information from C concerning the knowledge, analysis, or evidence on which she says her asserted belief was predicated. There is the assertion that HSE considers driving high risk but there is no further information about the context in which HSE is said to have made this statement or what empirical evidence they based it upon. On the information currently available, it is not clear whether the Health and Safety Executive in making this statement was referring only to the seriousness of the consequences (what you might call the 'stakes') or whether they were also making any pronouncement about the probability of health and safety being endangered. With all that said, I keep in mind that X hasn't had the opportunity of giving evidence on the matter and that the question of whether it was reasonable for this particular claimant to have held the belief she purports to have held will be highly fact sensitive. In the circumstances, I am not satisfied at this stage that there are no reasonable prospects of X successfully establishing she held the belief and that it was reasonable for her to do so. I therefore decline to strike out the complaint based on this alleged protected disclosure.

48. However, I record significant reservations about her prospects of establishing that she had a belief which was *reasonable* that her disclosure tended to show *likely* endangerment to health and safety. As mentioned, she has thus

far put forward little evidence /information/knowledge as an asserted basis for a subjective belief to that effect. That omission remains despite X having now written and spoken rather extensively on the matter with the purpose of seeing off R's challenge to her prospects of succeeding on this alleged disclosure. Even if one (perhaps generously) assumes that it was inferable from her disclosure that she believed motorway driving or driving on other higher risk roads would probably be involved, she has referred to little by way of information that guided her to believe the probability of endangerment was elevated beyond a possibility to 'more probable than not'. I bear in mind X's qualifications and background. To be satisfied the belief was 'reasonable', a Tribunal might take the view that it expects more in the way of an objective empirical basis for such a belief about a risk offered by someone in a professional capacity being paid for their risk assessment expertise than it might from a lay person (**Korashi**).

49. In the circumstances, though I do not exclude *any* reasonable prospect of C establishing the requisite belief and its reasonableness, I assess that she has little reasonable prospect of doing so. In these circumstances, I am considering making a deposit order under Rule 40 of the Employment Tribunal Rules 2024 as a condition of X being allowed to continue to advance the allegations premised on the alleged qualifying disclosure concerning driving identified at para 6(c) of EJ O'Donnell's Case Management Note.

50. Before doing so, however, I have ordered X to provide information in relation to her ability to pay a deposit (see the separate Case Management Order of even date).

Date sent to parties **6 August 2026**