



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Hayman

Respondent: Kerakoll UK Limited

Heard at: Cardiff **On:** 1 June 2026

Before: Employment Judge R Brace

Representation:

Claimant: In person

Respondent: Miss L Cunningham (of counsel)

Judgment on Interim Relief having been sent to the parties on 5 June 2026, after summary reasons had been given orally at the hearing on 1 June 2026 and written reasons requested by the Respondent in accordance with Rule 60 Procedure Rules on 19 June 2026, being referred to the Judge on 19 August 2026, the following written reasons are provided.

Written Reasons

Introduction

1. This was a public preliminary hearing to determine the Claimant's application for interim relief, an application that had been included within the Claimant's ET1.
2. Prior to the hearing, Regional Judge S Davies had issued directions for the parties to provide documents in support of and opposition to the application and:

- a. the Respondent had filed a 45 page bundle of documents and relied on a Response to the Application for Interim relief document and a Skeleton Argument;
 - b. The Claimant had provided a 48 page bundle of documents and had also provided written submissions.
3. No witness statements were provided by the Claimant and no verbal evidence was relied on.
4. It was agreed that:
 - a. the Claimant had been employed by the Respondent and had, on 21 April 2026, been dismissed.
 - b. On 25 April 2026, the Claimant had filed an employment tribunal claim with an attached 22-page Word document in which the Claimant set out some details of her claims and had included, amongst other complaints, a complaint of automatic unfair dismissal;
 - c. the application for interim relief has been made in time.
5. Some time was spent with the parties, before hearing any oral submissions, to further understand the disclosures the Claimant relied on for the purposes of any automatic unfair dismissal complaint.

The Law

6. Under s128(1) ERA 1996 an employee alleging unfair dismissal can claim interim relief if the reason (or principal reason) for the dismissal was one of the reasons set out in sub-section s128(1)(a). This include making a protected disclosure under the Public Interest Disclosure Act 1998 (s.103A ERA).
7. If the claimant has made a procedurally correct application the Tribunal must go onto to decide whether it is likely that he will succeed at the full hearing of the unfair dismissal complaint (s129 ERA 1996).
8. When considering the 'likelihood' of the claimant succeeding, the correct test to be applied is whether the claimant has a 'pretty good chance' of succeeding at full hearing (**Taplin v Shippam Limited [1978] IRLR 450 EAT**), which is greater than balance of probabilities.
9. A 'pretty good chance' was interpreted in a whistle-blowing case of **Ministry of Justice v Sarfraz [2011] IRLR 562 EAT**) as meaning 'a significantly higher degree of likelihood than just more likely than not'. The

Claimant must also show the necessary level of chance in relation to each essential element of s.103A ERA (**Simply Smile Manor House Ltd and ors v Ter-Berg [2020] ICR 570**).

10. The Claimant must therefore show that it is likely that the Tribunal at the final hearing will find that:

- a. She made the disclosure(s) to the employer (or in accordance with any of the sections 43C – 43H ERA 1996);
- b. She believed that it or they tended to show one or more of the factors listed in s.43B(1) ERA 1996;
- c. Her belief in that was reasonable;
- d. The disclosure(s) was or were made in the public interest; and
- e. The disclosure(s) was or were the principal cause of the dismissal.

11. 'Protected disclosure' is defined in s43A ERA 1996 as a qualifying disclosure (as defined by s.43B) which is made by a worker in accordance with any of the sections 43C to 43H. 'Qualifying disclosures' are defined by s.43B ERA 1996 as meaning 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 matters set out in s.43B(1) ERA 1996.

12. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (**Kilraine v LB Wandsworth [2016] IRLR 422**). It is not sufficient that there is simple an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld [210] IRLR 38**) and the test for 'reasonable belief' is a subjective test.

13. It must be in the reasonable belief of the Claimant that the disclosure is made in the public interest which will be a question of fact (**Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979**) and factors include:

- a. The numbers in the group affected;
- b. The nature and extent of the interests affected;
- c. Nature of the wrongdoing.

14. Further, and in addition, the Claimant has the additional hurdle of demonstrating that she has a 'pretty good chance' of showing that she was dismissed because she had made the disclosures.

Submissions

15. The Claimant confirmed that the disclosures relied on for the purposes of her automatic unfair dismissal claim were as follows and made on the following dates:
- a. On 31 July 2025, contained in her formal complaint that she had been subjected to sexual harassment at a work social event, that she asserts had taken place on 29 July 2025. She says that she disclosed information in relation to that alleged harassment and in doing so explicitly referenced the Equality Act 2010. She clarified that the legal obligation relied on is that not to subject a person to harassment under that legislation (Protected Disclosure A);
 - b. On 16 March 2026, in her grievance [C22]. She asserts that she disclosed information regarding concerns on discrimination and whistleblowing detriment, the grievance had explicitly referred to breaches of legal obligations under the Equality Act 2010, risks to health and safety (Protected Disclosure B).
16. These were referred to within the ET1.
17. For the preliminary hearing, the Claimant had within her written submissions included what appeared to be a further protected disclosure albeit referred to as a 'Protected Act', that on 11 February 2026, she had given witness evidence given in a formal grievance investigation of a grievance brought by a colleague. The Claimant clarified that she had been confused and she was relying on this as an additional protected disclosure as well as a protected act for the purposes of her victimisation complaint. She asserts that the information she disclosed was that a manager had vaped in front of a member of staff and in the colleague's car without that that colleague's permission [C15.2]. She says that the information tended to show that someone was not complying with a legal obligation i.e. a manager should not to put someone else at a health risk by smoking.
18. When asked why she asserted that it was her reasonable belief that the disclosures were in the public interest and not in the nature of a private dispute, she submitted that they were of interest to all female employees who worked with or under the individual manager she had complained about, as they too would be subject to monitoring. She asserts that she was not the only person affected and that she had raised at staff meetings about unfairness to employees generally including fundamental

employment rights not to be suspended without evidence, to a fair investigation and under UK GDPR. She relied on the timeline she had submitted [C1-9] of events:

- a. she says her complaint was buried after November, and she was coerced to go down an informal route and that subsequently there were covert investigations in relation to her fuel usage;
- b. After taking part as a witness in a colleague's grievance in February, she was on 12 March 2026 suspended without evidence and reinstated on 13 March 2026 albeit colleagues were not informed;
- c. On 16 March 2026, she had made a formal grievance and a grievance hearing had taken place on 31 March 2026, but has not completed;
- d. That after a pay rise in April, the Staff handbook was updated and sexual harassment was added to whistleblowing section;
- e. On 21 April 2026, she was dismissed whilst her grievance was active and she was on sick leave, with a claim that it was on performance grounds;
- f. The Claimant's disputes she does not have two years' service.

19. She submitted that the two grounds for dismissal cited by the Respondent, underperformance and relationship breakdowns, were 'pretextual' and that evidence will demonstrate that the reason for her dismissal were her protected disclosures.

- a. She asserts that performance arguments for dismissal are unsustainable as days before her dismissal she was given a pay rise and no performance concerns had been raised at any point in the previous 2 years;
- b. She asserts that the dismissal letter relies on language taken from her grievance and her statement of 11 February.

20. The Respondent's counsel submitted that the Claimant cannot establish she is a 'whistle-blower' under the provisions of s.43B Employment Rights Act 1996. She submits that:

- a. The Claimant has not referenced whistleblowing in any of her correspondence and that they are essentially private grievances that contain allegations not '*information*';
 - i. that in July 2025, the Claimant spoke of her perception of what was said, which was shy of amounting to a disclosure of information; that some of the conversations she had encouraged and were not professional.
 - ii. That in relation to February 2026, this was a new iteration of an alleged disclosure and it is the Claimant relaying an account given to her by someone else and does not cross threshold of disclosure of information;

- iii. That in relation to the third disclosure relied on in March 2026, the Claimant again does not give the Respondent any information and further that the reasonableness of any belief is undermined;
- b. Further, any disclosure has no '*public interest*' in that:
 - i. In relation to her complaint in July 2025, this was about her personal experience and perception of harassment, but is now reframed as a complaint about how the Respondent treats female employees. That whilst it was recognised that discrimination was a very important interest, the manner in which such an issue had been addressed by the Claimant was that she had spoken of her own experience and that it was 'provocative' for the Claimant to now suggest that her complaint was buried, or to position the mediation as something she was coerced to undertake;
 - ii. in relation to her concerns regarding vaping, the Claimant's account as to why it was a s.43(1)(b) disclosure was spurious and it was difficult to see how what the Claimant said could be in public interest as two employees were in the same car, with the employee only reporting their concerns to the Claimant and not the employer;
 - iii. her March 2026 grievance was not raised by the Claimant or her union representative as a public interest disclosure and that nothing had been said to determine that the Claimant had been 'blowing the whistle' and that the whole grievance was a personal matter with no evidence of covert investigation to demonstrate a reasonable belief that it was in the public interest;
- c. The timing of both is relevant:
 - i. The disclosure after the 29 July 2025 event was some weeks after Claimant's line manager had started a difficult managerial conversations with the Claimant and
 - ii. the grievance of 16 March 2026 followed her suspension to clarify the position on her use of fuel card.

21. In terms of causation, the Respondent submits that if the Claimant does establish she has a 'pretty good chance' of establishing any of the disclosures are protected, she does not have a 'pretty good chance' of establishing that they were the reason or principal reason for the dismissal as there is evidence of underperformance and relationship breakdown

Decision

22. I was not persuaded that today the Claimant has demonstrated that it is likely that she will succeed at the full hearing of her automatic unfair dismissal complaint - I did not consider that it could be said that the

Claimant had a 'pretty good chance of success' at full hearing (**Taplin**). In reaching this conclusion, I considered how the matter appeared to me on a broad assessment of the material available and not making any findings of fact.

23. I deal with the Claimant's complaint in July 2025, which she submits contains her first disclosure (Protected Disclosure A). Whilst I accept that the Claimant may be able to demonstrate that she disclosed information in relation to the conduct of work colleagues that she considered amounted to sexual harassment, and in turn a breach of a legal obligation and might very well demonstrate that she held a reasonable belief that her disclosure was in the public interest and not just a personal complaint, I was not persuaded that it could be said that the Claimant had a 'pretty good chance' of demonstrating that the reason or principal for the dismissal was that she had made such a protected disclosure as:

- a. The dismissal came some 9 months after that complaint and after mediation had been attempted;
- b. There was some evidence of performance issues in the preceding months:
 - iii. In the Annual Performance Review of January 2025;
 - iv. In the performance review of July 2025; and
 - v. In the 1:1 discussion on 12 February 2026;
- c. The reasons for the dismissal are explained in the dismissal letter of 21 April 2026.

24. In relation to what was said during the grievance investigation in February 2026, regarding a manager smoking or vaping in a colleague's car (Protected Act), even accepting that the Claimant might have conveyed some information, I was not persuaded that the Claimant had a 'pretty good chance' of demonstrating that it showed or tended to show a breach of legal obligation or that she reasonably believed that any such disclosure was made in the public interest. It was a second-hand account with no reference to wider health and safety concerns. I did not consider therefore that the Claimant was able to demonstrate at this stage that she had a pretty good chance of demonstrating that this was a disclosure of information that qualified for protection.

25. Finally, with regard to the final disclosures contained in her grievance of March 2026 (Protected Disclosure B), whilst again the Claimant may be able to persuade a tribunal that she disclosed information that showed or tended to show breaches of legal obligation in relation to equality legislation, I was not persuaded that the Claimant had a pretty good chance of demonstrating that she had a reasonable belief that any

disclosures at that stage were in the public interest and not a private dispute and no more.

26. I would repeat my conclusions at §23(b) and (c) in relation to causation in relation to the second and third disclosures.
27. This is a broad brush assessment and the position may change at a final hearing when all of the evidence is tested in cross-examination but I need to make a summary assessment at this preliminary hearing and having done so, consider that the Claimant has failed to meet the threshold for the granting of interim relief and on that basis the application for interim relief is refused.

Employment Judge Brace

Date: 20 August 2026

JUDGMENT SENT TO THE PARTIES ON

24 September 2026

FOR THE TRIBUNAL OFFICE