



EMPLOYMENT TRIBUNALS

Claimant: Mr M Pintus
Respondent: Soho House UK Limited
Heard at: East London Hearing Centre
On: 30 June 2026
Before: Employment Judge Townley

Representation

For the Claimant: In person

For the Respondent: Ms A Defriend (of Counsel)

JUDGMENT

1. The Claimant's application for interim relief pursuant to s 128 of the Employment Rights Act 1996 (ERA) having been dismissed with summary reasons delivered orally on 30 June 2026, and due to lack of time at the hearing, I indicated that I would provide written reasons

REASONS

Background and Procedural history

1. The Claimant's application for interim relief pursuant to s 128 ERA was brought by ET1 issued on 23.05.26. The Claimant commenced employment with the Respondent (the UK branch of a global private membership club) as a floor manager on 30.09.24 until his resignation, with immediate effect, on 17.05.26. The Claimant alleges constructive dismissal which is denied by the Respondent. Within his claim form, the Claimant presented various complaints, including a complaint of automatic unfair dismissal contrary to s 102A ERA. He relies on the presentation of his formal grievance, dated 28.04.26, as a protected disclosure - which included allegations about personal mistreatment and a section headed

'Protected disclosure: Systemic Regulatory and Tronc Non-Compliance'. He relies on the following alleged detriments as repudiatory breaches of contract resulting in his alleged dismissal - (i) communications with the Human Resources (HR) Department in relation to his entitlement to sick and HR's refusal to pay sick pay for his sickness absence commencing 29.04.26 and (ii) HR's refusal to appoint an external investigator for his grievance.

2. In support of his application for interim relief the Claimant submitted a bundle of 187 pages (including a skeleton argument, witness statements, and other documents including payslips). The Respondent submitted a bundle consisting of 15 pages (including a skeleton argument, witness statement of Ms L McDonagh (Head of Human Resources at the Respondent) (who was originally appointed as the grievance officer before the Claimant's objection to her appointment) and the Respondent's Sickness Absence Pay policy for its UK employees).

The Application

3. The Claimant says that following the April 2025 minimum wage increase, he observed that the fixed tronc was reduced by the same amount as the increase in basic pay. He believed that the tronc was being used to preserve a fixed total pay figure and offset payroll costs, rather than being allocated fairly in the interests of staff. It was his belief that those matters tended to show potential non-compliance with HMRC tronc requirements and the Employment (Allocation of Tips) Act 2023. Because the same structure and payroll processes appeared capable of affecting a large workforce, he also believed the disclosure was made in the public interest (Claimant's statement, pp 8 – 9). The Claimant says that the reclaimed alleged tronc overpayments was an act of victimisation, that the company director had given a dismissive response to his allegations, and that there was a pervasive 'culture of fear' regarding management retaliation.
4. The Respondent denies that Claimant's allegations in full and avers that his claim is weak and that his application for interim relief should be refused as he has failed to show that it he is likely to succeed on all the elements of his automatic unfair dismissal claim.
5. The Respondent argues that the Claimant is unlikely to succeed in his automatic unfair dismissal claim for the following reasons. The Respondent denies that the Claimant was dismissed and that he is unlikely to be able to show that (i) the communications from HR refusing to pay him contractual sick pay when he commenced sick leave on 29.04.26 and (ii) HR's refusal to appoint an external investigator for his grievance amounted to a breach of the implied term of trust and confidence. The Respondent argues that it had reasonable and proper cause for those refusals and that the Claimant had exhausted his entitlement to sick pay when he commenced the relevant period of sick leave. The Respondent further submits that as the Claimant argues that the Respondent's sickness policy was either not properly communicated or, alternatively, was misinterpreted, his own claims requires evidence in order to decide it.
6. In respect of the handling of the Claimant's grievance, the Respondent argues that it acted in accordance with the relevant ACAS guidance and

therefore the Claimant is unlikely to be able to persuade a tribunal that there was a repudiatory breach of his contract and that he was constructively dismissed. The Respondent also says that the Claimant's pleaded reasons for constructive dismissal may not reflect his true reasons for leaving and it argues that the Claimant was setting himself up as potentially constructively dismissed before he purported to make his protective disclosures and it denies that the events since his grievance, on which he now seeks to rely, amounted to the main reason for him deciding to terminate his employment. In respect of the alleged protected disclosure through the Claimant's grievance of 28.04.26 the Respondent argues that given that the majority of matters raised therein were personal grievances to him, he is unlikely to be able to show that he believed or reasonably believed that any disclosure of information made in his grievance was made in the public interest. The Respondent also argues that further the Claimant is unlikely to be able to show that the Respondent's decisions not to pay him contractual sick pay or to appoint an external investigator for his grievance were the reason or principal reason why he made a protected disclosure and the Respondent submits that it had reasonable and proper cause to make those decisions and therefore a tribunal would be unlikely to find that the reason for those decisions was in fact the nefarious reason for which the Claimant had made a protected disclosure.

7. The Respondent also points to inconsistencies in the Claimant's evidence regarding his contractual sick pay - for instance he states that Mr Hamson, his line manager, had previously refused sick pay for earlier absences, yet he was not joined in the grievance as the Claimant did not consider his actions to be retaliatory. The Respondent argues that it is therefore difficult to see why he so regards HR's communications to the same effect to be retaliatory and that this is a manifest weakness in the Claimant's case.
8. At the hearing, the Respondent indicated that, in the event that the Claimant's application is granted, it would not be prepared to reinstate the Claimant's employment.

The law to be applied

Section 129(1) ERA indicates that the threshold for interim relief is met where:

'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 dismissal is "one of number of prohibited or prohibited reasons which would amount to the dismissal being automatically unfair".'

The list of reasons includes that an employee has made a protected disclosure (s 103 ERA).

The caselaw indicates that this test requires the tribunal to carry out 'an expeditious summary assessment' of how the matter appears on the material available (*London City Airport Ltd v Chacko* [2013] ICR 610, EAT).

Whether it appears 'likely' to the tribunal means more than a reasonable prospect of success (*Taplin v C Shippam Limited* [1978] ICR 1068 at 1074; *Dandpat v University of Bath* EAT/0408/09) in relation to all elements of the claim, not just the

reason for dismissal (*Ministry of Justice v Sarfraz* [2011] IRLR 562).

It therefore follows that in whistleblowing constructive dismissal cases, the tribunal must find it likely that:

- (a) The claimant was an employee;
- (b) The claimant made a disclosure to his employer;
- (c) That he genuinely believed that the disclosure tended to show one or more of the things itemised at (a) – (f) of s 43B(1) ERA;
- (d) That the belief was reasonably held;
- (e) That he reasonably believed that the disclosure was made in the public interest;
- (f) That the respondent committed a repudiatory breach of contract;
- (g) That the Claimant resigned in response to that repudiatory breach;
- (h) That the Claimant did not affirm the contract before resigning, and
- (i) That the disclosure was the principal reason for the conduct said to amount to a repudiatory breach.

If the threshold for interim relief is passed, s 129(2) – (9) provides for the powers of the Employment Tribunal ...

The following guidance is provided in *The Joint Presidential Guidance on 'Applications for interim relief (with effect from 22.06.26):*

- (a) *Due to interim relief being an emergency measure with substantial effects, claimants are required to satisfy a 'high threshold' of showing the tribunal that interim relief should be ordered. Most applications therefore do not succeed.*
- (b) *The guidance was issued in response to two recent trends (1) the significant increase in applications for interim relief, often indicating use of artificial intelligence, and (2) the significant increase in documentation accompanying such applications. These trends, coupled with the low success rate of such applications, have led to an adverse effect on the administration of justice,*
- (c) *The test for interim relief is "something nearer to certainty than mere probability" of success at the final hearing.*
- (d) *Because the tribunal is carrying out an expeditious summary assessment, both parties must ensure that material placed before the Tribunal is proportionate'.*

Protected disclosures

Section 43B ERA defines a qualifying disclosure as:

(1) ... 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-

...

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject ...'

A qualifying disclosure becomes a protected disclosure if it is made in accordance with s 43C(1) ERA, which includes where the worker makes the disclosure to his employer.

A disclosure of information means 'conveying facts' as opposed to making allegations or expressing dissatisfaction (*Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] ICR 325),

There must be sufficient factual content tending to show one of the matters in s 42B(1) ERA in order for there to be a qualifying disclosure (*Dobbie v Felton* [2021] RLR 679 EAT)

When deciding whether the worker had the relevant 'reasonable belief the test is both objective (the belief was reasonably held) and subjective (the worker actually had the belief). On the facts believed to exist by an employee, a judgment must be made, first, as to whether the worker held the belief and, secondly, as to whether objectively, on the basis of the facts, there was a reasonable belief in the truth of the complaints (*Korashi v Avertawe Bro Morgannwg University Local Health Board* [2021] IRLR 4; *Phoenix House Ltd v Stockman* [2017] ICR 731).

The following factors are relevant in determining whether the disclosure was reasonably believed to have been made in the public interest (*Chesterton Global Ltd v Nurmohamed* [2018] IRC 731):

- (a) The numbers in the group whose interests the disclosure serves;
- (b) The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affected a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
- (c) The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;
- (d) The identity of the wrongdoer – the larger or more prominent the wrongdoer (in terms of the size of its relevant community, ie staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest.

Constructive unfair dismissal

There is a dismissal when an employee terminates the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct (s 95(1)(c) ERA).

In order to claim constructive unfair dismissal, the employee must establish that:

- (a) There was a fundamental breach of the contract by the employer
- (b) The Employer's breach caused the employee to resign
- (c) The employee did not delay too long before resigning, thus affirming the contract (*Western Excavating (ECC) v Sharp* [1978] ICR 221, CA)

The implied term of trust and confidence will be breached only where there was no reasonable or proper cause for the employer's conduct, and that conduct was in a manner calculated or likely to destroy or seriously damage the relationship or trust and confidence between employer and employee (*Malik v BCCI* [1997] IRLR 462 at 468, HL)

Automatic unfair dismissal

Section 103A ERA 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'.

There appears to be no authority on the question of, in the context of 'last straw' automatic constructive dismissal cases, the extent to which the repudiatory conduct needs to be shown to have been motivated by the protected disclosure. In *Pye v Community Integrated Care* ET case no 2401872/2026, it was held that a constructive dismissal was not automatically unfair because the final straw for the claimant's dismissal was not motivated by their protected disclosure.

Conclusions

9. The Claimant has, in my view, failed to show that he is likely to succeed on all the elements of his automatic unfair dismissal claim. The case law is clear that whether it appears 'likely' means more than a reasonable prospect of success in relation to all elements of the claim and not just the reason for dismissal. The Presidential Guidance indicates that the bar is a high one, namely, '*something nearer to certainty than mere probability*'. As detailed above (which I will not repeat here), the Claimant's case is disputed in all legal and factual respects by the Respondent. The Respondent has also presented evidence, most particularly in the statement of Ms McDonagh, which directly challenges the Claimant's version of events. Furthermore, on the Claimant's own case, it is advanced that either the Respondent's sickness policy was not properly communicated or was misinterpreted. As alternative possibilities are raised, it is clear that it is necessary for the tribunal to hear evidence before making a finding on this aspect of the Claimant's case. Furthermore, the Respondent has set out the aspects of the Claimant's case which it disputes and has presented a contrary version of events. It follows that this is a case which can only be decided following a full interrogation of the evidence at a full merits hearing.

It is not one which is suitable to be dealt with on a summary basis.

10. I make no assessment or comment about the merits of the respective cases of either party.

Approved by:
Employment Judge Townley
Dated: 17 August 2026

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