

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000132/2026

Held in Dundee on 6 October 2026

Employment Judge M Sutherland

S Anderson	**Claimant** **In Person**
R.T. McEwan Limited	**Respondent** **Represented by:** **Represented by:** **N O' Shaughnessy - Counsel [Instructed by Backhouse Jones Ltd]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant made a protected disclosure under Section 43A of the Employment Rights Act 1996.

REASONS

Introduction

1. The claimant was employed by the respondent from March 2024 until December 2025 latterly as their Transport Manager. The claimant made complaints of protected disclosure detriment and dismissal which are denied by the respondent. A hearing was listed to today to determine whether the claimant made a protected disclosure under Section 43A of the Employment Rights Act 1996.

2. The claimant appeared on his own behalf. The respondent had professional representation.

3. A joint bundle of documents was agreed and lodged.

4. The claimant gave evidence on his own behalf. The respondent did not call any witnesses.

5. Both parties made submissions.

6. The following initials are used in this judgment by way of abbreviation –

Initials	Name	Job Title
RM, MD	Raymond McEwan	Managing Director
SA, TM	Scott Anderson	Transport Manager (the claimant)

List of Issues

7. The issues to be determined were as follows:

    a. *Did the claimant disclose information to their employer?*

    b. *Did they reasonably believe it tended to show that:*

        i. *a person had failed, was failing or was likely to fail to comply with any legal obligation?*

        ii. *the health or safety of any individual had been, was being or was likely to be endangered?*

    c. *Was that belief reasonable?*

    d. *Did they believe the disclosure of information was made in the public interest?*

    e. *Was that belief reasonable?*

Findings in fact

8. The Tribunal makes the following findings in fact:

9. The respondent operates as a transport, logistics and distribution company. It has two operating centres: Myreside Farm, Inverkeilor, Arbroath, DD11 5RL and Claverhouse West Industrial Park, Dundee, DD4 9UB. Under the respondent's Vehicle Operator License the Transport Manager for these operating centres was RM, MD ("the statutory Transport Manager").

10. The claimant commenced employment as a "Transport Co-ordinator" and he acted under the supervision of NM, MD. In April 2025 he was promoted to the position of Transport Manager (the "the nominated Transport Manager)". He was based in the Dundee operating centre. He continued to act under the supervision of the MD until June 2025.

11. The claimant was a statutory Transport Manager in respect of different operating centres but not in respect of the respondent's operating centres. RM, MD advised the claimant that he was being appointed as their statutory Transport Manager and together they applied to the Traffic Commissioner to appoint the claimant as a statutory Transport Manager in addition to RM, MD. It takes around 2-6 weeks to be appointed. In May 2025 the Traffic Commissioner sought further information which was provided. In around June 2025 the respondent withdrew the application and they did not reapply for the claimant to become statutory Transport Manager. The respondent did not advise the claimant of this and the claimant discovered this in November 2025.

12. During the period from June to December 2025, the claimant carried out the functions of the statutory Transport Manager. Throughout that time RM, MD remained the statutory Transport Manager.

13. On 19 September 2025 a Traffic Examiner visited the operating centre at Inverkeillor ('DD11 5RL'). During that visit the Traffic Examiner spoke with RM, MD. The Traffic Examiner did not speak with SA, TM. On 1 October 2025 the Traffic Examiner prepared a Visit Report which noted that the operation was satisfactory – no action needed. The report reached conclusions regarding various matters including that RM, MD was "Director/Transport Manager", that he was in position as the statutory transport manager and had the required levels of management control ("continuous and effective control"). The claimant was referred to on the form as "Scott who works in the Transport Office" and was not referred to as their nominated Transport Manager.

14. On 12 November 2025 the claimant sent an email to RM, MD and HR marked "without prejudice - projected conversation" stating "the combination of being misled into performing legally regulated duties without authority and the inappropriate handling of my dependant-leave situation has resulted in a fundamental breakdown of trust and confidence" and "To avoid escalation through ACAS, an Employment Tribunal or the Traffic Commissioner, I propose that we resolve this matter privately through a confidential settlement" including the immediate termination of his employment and payment of £100k; "This proposal is made entirely without prejudice and on a protected-conversation basis, enabling both parties to explore a private, professional and mutually beneficial resolution without further disruption or reputational risk".

15. In the email he described two events; "1. Incident on 11/11/25 – Emergency Dependants Leave" and "2. O-Licence Application and Transport-Manager Status".

16. In respect of the first he described events relating to dependent leave for care of his young daughter who was unwell.

17. In respect of the second event he stated: “At your instruction I carried out every core Transport Manager function, including: Reviewing and signing driver infringements; Delivering toolbox talks and compliance briefings; Ensuring daily vehicle-check compliance and record keeping; Investigating incidents and completing insurer documentation; and Liaising directly with insurers, enforcement bodies and compliance authorities. I performed these duties in good faith, believing I had been formally appointed to the role”; he has learned that his application for appointment as statutory Transport Manager had been retracted; “This means that I was performing legally regulated Transport Manager duties without authorisation, in breach of the Goods Vehicles (Licensing of Operators) Act 1995 – Schedule 3 and the Senior Traffic Commissioner’s Statutory Document No. 3 – Transport Managers, which require that a named, professionally competent person “continuously and effectively manages” transport operations. This has exposed both the company and me to potential regulatory scrutiny and placed my professional reputation and good repute with the Traffic Commissioner in serious jeopardy. I have always acted with integrity and diligence, but I now feel deceived and compromised by the company’s handling of this matter”.

Observations on the evidence

18. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).

19. In April 2025 the claimant was advised he was being appointed as a statutory Transport Manager and an application was submitted; an application takes 2 – 6 weeks; he is a statutory Transport Manager in respect of other operating centres; in May 2025 the Traffic Commissioner sought further information which was provided; from June 2025 he carried out the duties of a statutory Transport Manager at their operating centre. He gave credible evidence that from June 2025 he was no longer supervised by the MD. It is considered likely that from June 2025 the claimant believed that he was a statutory Transport Manager in his own right and he was not therefore carrying out the duties under the delegation and supervision of the MD as the statutory Transport Manager.

20. On 11 November 2025 the claimant discovered that the application to become statutory Transport Manager had been withdrawn and the respondent had not told him. It is considered likely that the claimant believed that the respondent had misled him into acting as a statutory Transport Manger without authority,

this was in breach of the Goods Vehicles (Licensing of Operators) Act 1995 and this merited escalation to the Traffic Commissioner.

21. The claimant gave credible evidence that the core function of the TM is to ensure compliance with a view to keeping the workforce and public safe. He asserted in cross examination that there was of course a public interest. In the circumstances it is considered likely that he believed that information was in the public interest. The fact that he believed that the behaviour of the company had "exposed both the company and me to potential regulatory scrutiny and placed my professional reputation and good repute with the Traffic Commissioner in serious jeopardy" and that he sought to agree a confidential exit package to mitigate that risk did not undermine his belief in the public interest.

Discussion and decision

Protected disclosure

22. Under Section 43A Employment Rights Act 1996 ('ERA') a protected disclosure is a qualifying disclosure made by a worker to his employer (Section 43C) or to a prescribed person (Section 43F). The burden of proving a protected disclosure rests upon the claimant.

23. Under Section 43B ERA 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 relevant wrongdoing including "(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" and "(d) that the health or safety of any individual has been, is being or is likely to be endangered."

Disclosure of information

24. The disclosure must be an effective communication of information but does not require to be in writing. The disclosure must convey information or facts, and not merely amount to a statement of position or an allegation *(**Cavendish Munro Professional Risks Management Ltd v Geduld*** 2010 IRLR 38, EAT*)*. However, an allegation may contain sufficient information depending upon the circumstances *(**Kilraine v Wandsworth London Borough Council*** [2018] ICR 1850, Court of Appeal*).*

Reasonable belief

25. The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure *(**Chesterton Global Ltd v Nurmohamed*** [2018] ICR 731, Court of Appeal). Their genuine belief must be

based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.

Relevant wrongdoing – (c) breach of a legal obligation

26. A qualifying disclosure arises where there is disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that a person has failed, is failing or is likely to fail to comply with a legal obligation. It includes any legal obligation including under contract. There does not require to be a legal obligation only a genuine belief in it on reasonable grounds. The relevant legal obligation should be capable of identification from the information disclosed.

Relevant wrongdoing – (d) endangering health or safety

27. A qualifying disclosure arises where there is disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that the health or safety of any individual has been, is being or is likely to be endangered. It does not necessarily entail breach of a legal obligation.

In the public interest

28. 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 relevant wrongdoing.

29. The worker must genuinely believe that disclosure is in the public interest. That belief must be based upon reasonable grounds which may be easier to satisfy where the wrongdoing amounts to a criminal offence or an issue of health and safety. Where the worker has a personal interest in the relevant wrongdoing, it may be relevant to consider the number of other workers affected, the nature and importance of the interest, and the identity of the wrongdoer (***Chesterton***).

Did the claimant disclose information?

30. The respondent submits that the claimant did not disclose information and that it was simply an allegation. That is not accepted. The claimant conveyed the following facts: that he carried out the core statutory Transport Manager function (which he described); that he believed he “had been appointed formally appointed to the role” of statutory Transport Manager (this can reasonably be inferred from his reference to “application for appointment” etc); and that he was “performing legally regulated Transport Manager duties without authorisation in breach of the Goods Vehicles (Licensing of Operators) Act 1995” “which require that a named, professionally competent person “continuously and effectively manages” transport operations.”

Did the claimant reasonably believe the information tended to show relevant wrongdoing?

31. The respondent submits that any belief that the claimant subjectively held as to the alleged failure of the respondent to comply with its legal obligations was not objectively reasonable based on the evidence and/or resources available to him (***Babula v Waltham Forest College*** [2007] IRLR 346 (CA) [59]).

32. The respondent accepts that the claimant was carrying out the delegated tasks of a statutory Transport Manager. The respondent submits that "Despite the above delegation, as the nominated [i.e. statutory] Transport Manager, Mr Raymond Neil McEwan remained in continuous effective control of compliance fulfilling his statutory responsibilities, under the Goods Vehicles (Licensing of Operators) Act 1995. This position is supported by the Traffic Examiner Visit on 19 September 2025 and the consequent Report dated 1 October 2025, which assessed the respondent's operation as satisfactory, requiring no action, and awarded the respondent the best assessment score of 0."

33. The Traffic Examiner visited the operating center in Inverkeilor; the Examiner did not visit the operating centre in Dundee where the claimant was based. The Examiner spoke with the MD; the Examiner did not speak with the claimant who was their nominated Transport Manager. It appeared that the Examiner was not advised that there was a nominated Transport Manager (in the Examiner's report the claimant was referred to as "Scott who works in the transport office").

34. The claimant had been advised that he was to be formally appointed as a statutory Transport Manager and an application was submitted. That application was withdrawn but the respondent did not advise the claimant who only discovered this in November 2025. The claimant believed that the respondent was in breach of the Goods Vehicles (Licensing of Operators) Act 1995 and there was a reasonable basis for his belief because the respondent had advised him that he was being appointed as a statutory Transport Manager and an application was submitted; he then carried out the duties of a statutory Transport Manager; and he was not told by the respondent that the application had been withdrawn and he only discovered this in November. Whilst it is competent to delegate the functions of a statutory Transport Manager they must remain in effective and continuous control. It was reasonable for the claimant to believe that the MD did not remain in effective and continuous control if the claimant believed he was acting as a statutory Transport Manager in his own right rather than under the delegation and supervision of the MD.

35. Contrary to the respondent's submission there was in the circumstances a reasonable basis for the claimant's belief that the statutory Transport Manager

MD did not remain in "effective and continuous control" of the transport operations and as such was in breach of the 1995 Act.

Did the claimant reasonably believe the disclosure was made in the public interest?

36. The respondent submits that the claimant did not believe that his disclosure was in the public interest, the grievance being, in substance and in form, the pursuit of a private employment dispute; that it was apparent from the wording of the grievance that he was purely concerned for his own potentially liability and professional reputation and that he expressly proposed a private, professional and mutually beneficial resolution to avoid further disruption or reputational risk and it was therefore not a disclosure made in the public interest.

37. The respondent referred to **Parsons v Airbus International Ltd UKEAT/0111/17/JOJ** which notes at para. 24 that "the ET's findings… made clear the sole reason for the Claimant raising the issue of minutes was her self-interest. This was not a partly self-interest/partly public interest case such as **Chesterton** - there was simply no evidence that the public interest was in the Claimant's mind at all".

38. The claimant believed he had been misled into performing legally regulated duties without authority, that this was in breach of the Goods Vehicles (Licensing of Operators) Act 1995 and this merited escalation to the Traffic Commissioner. He believed that the behaviour of the company had "exposed both the company and me to potential regulatory scrutiny and placed my professional reputation and good repute with the Traffic Commissioner in serious jeopardy" and he sought to agree a confidential exit package to mitigate that risk.

39. While the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to form any part of their motivation in making it (**Chesterton**). The Tribunal requires to make factual findings about whether, whatever may have been their motives, the claimant genuinely considered that their disclosures were in the public interest (**Elena Bibescu v Clare Jenner Limited t/a Jenner's [2026] EAT 30**). The claimant believed that the disclosure was in the public interest notwithstanding his motivation for seeking a confidential exit package. Contrary to the respondent's submission the circumstances arising in **Parsons** do not apply.

40. The respondent submits that even if the claimant held a subjective belief that his disclosure served the public interest, it was not objectively reasonable for the claimant to hold this belief because there is no public interest to the disclosure.

41. The respondent accepts that the overarching purpose of the 1995 Act is the health and safety of public road users. It is reasonable to infer that any failure to exercise effective and continuous control would have implications for public safety. The respondent submits that since the claimant had been a statutory Transport Manager before there was no risk to the public in him acting without legal authority. That is not accepted since the claimant would be undertaking the duties of a statutory Transport Manager but without the scrutiny of the Traffic Examiner.

42. The claimant therefore reasonably believed that his disclosure was made in the public interest.

Conclusion

43. The judgment of the Tribunal is that the claimant made a protected disclosure under Section 43A of the Employment Rights Act 1996 by virtue of his email of 12 November 2025.

Date sent to parties **22 October 2026**