



Tribunals
Judiciary

Judge Susan Walker
President
Employment Tribunals
(Scotland)



Courts and
Tribunals Judiciary

Judge Barry Clarke
President
Employment Tribunals
(England and Wales)

Presidential Guidance

Applications for interim relief

Introduction

1. [Rule 8 of the Employment Tribunal Procedure Rules 2024](#) (the “Rules”) empowers the Presidents to issue guidance as to matters of practice and as to how the powers conferred by the Rules may be exercised. Such guidance must be published in an appropriate manner to bring it to the attention of claimants, respondents and their advisers.
2. This joint guidance concerns the way in which Employment Tribunals in England, Wales and Scotland deal with applications for interim relief in unfair dismissal claims under [section 128 of the Employment Rights Act 1996](#) (“ERA”) or [section 161 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#) (“TULRCA”).
3. Interim relief is an emergency measure. It is not an injunction/interdict, although it operates in a similar way, in that it prevents a dismissal from taking effect until the tribunal has heard the complaint of unfair dismissal. If interim relief is granted, the tribunal may order the employer to reinstate the claimant or to re-engage them in an equivalent role, or the tribunal may make a “continuation of contract order” (which has the effect of keeping the employee suspended on full pay until the full hearing). Because of the effect of those orders, there is a high threshold for claimants to satisfy the tribunal that interim relief should be ordered. Most applications therefore do not succeed.
4. This guidance is issued in response to two recent trends. The first is a significant increase in applications for interim relief, largely in protected disclosure cases, and often indicating use of artificial intelligence (“AI”). In previous years, across Great Britain, the Employment Tribunals would receive perhaps 20 such applications a year. Now most offices are receiving a similar number each month. The second is a significant increase in the amount of documentation which accompanies such applications. As explained below, the tribunal seeks to list such applications swiftly because of their emergency nature. To make way for them, other hearings are

often postponed or delayed. Because the success rate of applications for interim relief remains low, these trends have an adverse effect on the administration of justice, including causing unnecessary delay to other users. Further complexity is added when, in response to applications for interim relief, parties then make consequential applications (and counter-applications) for costs/expenses.

5. This guidance focuses on protected disclosure cases only because they are the most common. It aims to provide an overview to assist claimants in deciding whether to seek interim relief. Employment Tribunals must have regard to this guidance, but they are not bound by it.

The availability of interim relief

6. Interim relief can only be sought in specific types of unfair dismissal complaints. The types of complaints are specified in two statutory provisions.
7. The first provision is [section 128 ERA](#). This covers unfair dismissal complaints where the reason or principal reason for the dismissal is said to be one of the following:
 - Activities as a designated health and safety representative or member of a safety committee ([section 100\(1\)\(a\) and \(b\) ERA](#));
 - Activities as a representative for working time purposes ([section 101A ERA](#));
 - Activities as a pension fund trustee ([section 102 ERA](#));
 - Activities as a representative (or candidate to become one) for the purposes of consultation in relation to redundancies or the transfer of an undertaking ([section 103 ERA](#));
 - One or more protected disclosures ([section 103A ERA](#));
 - Certain “blacklisting” cases ([section 104F ERA](#)); and
 - Certain reasonable acts or omissions by an employee in relation to trade union recognition ([paragraph 161 of Schedule A1 to TULRCA](#)).
8. The second provision is [section 161 TULRCA](#). This makes interim relief available where the reason or principal reason for dismissal is trade union membership or activities covered by [section 152 TULRCA](#).
9. If interim relief is granted, either side may apply for a variation or revocation of the order if there is a relevant change in circumstances: see [section 165 TULRCA](#) and [section 131 ERA](#). This guidance should be taken as applying equally to such applications.

Additional procedural requirements

10. Even if a claimant is pursuing an unfair dismissal complaint which falls within one of the above categories, there are two additional procedural requirements which must be satisfied.
11. The first requirement is that the claim form must be presented to the tribunal before the end of the period of seven days immediately following the effective date of termination. The tribunal has no power to extend this time limit. An application for interim relief made outside this time limit is not a valid application.

12. The second requirement applies only to certain types of trade union dismissals under [section 152 TULRCA](#). The claimant must produce a certificate from an authorised union official covering the requirements in [section 161\(3\) TULRCA](#).

Early conciliation exemption

13. Unfair dismissal complaints are “relevant proceedings” as defined by [section 18 of the Employment Tribunals Act 1996](#). They are therefore subject to the requirement under [section 18A of that Act](#) to obtain an ACAS early conciliation certificate before presenting the claim.
14. However, [regulation 3 of the Employment Tribunals \(Early Conciliation: Exemptions and Rules of Procedure\) Regulations 2014](#) provides that a claim may be presented without such a certificate under regulation 3(1)(d) if:

The proceedings are proceedings under Part X of the Employment Rights Act 1996 and the application to institute those proceedings is accompanied by an application under Section 128 of that Act or Section 161 of the Trade Union and Labour Relations (Consolidation) Act 1992 ...

15. A claimant wishing to rely on this exemption should tick the appropriate box at section 2.3 of the ET1 claim form instead of providing an early conciliation number. However, **ticking that box to claim the exemption is not in itself an application for interim relief**. Unless the claim form also contains a valid application for interim relief, the exemption will not apply and the claim form will be rejected under rule 13 of the Rules.
16. Even if there is a valid claim for interim relief and a certificate is not required for the unfair dismissal complaint, any other complaints raised on the same claim form will be rejected if there is no early conciliation certificate. However, there is nothing to stop a claimant obtaining an early conciliation certificate before presenting the claim if other complaints are pursued.
17. An application for interim relief can be withdrawn at any time. Withdrawal will not affect the progress of the unfair dismissal complaint itself.

Legal test for interim relief

18. The legal test the tribunal applies when deciding whether to order interim relief is set out at [section 129\(1\) ERA](#) and [section 163\(1\) TULRCA](#). This is whether “it appears to the tribunal that it is likely that on determining the complaint to which the application relates”, the tribunal will find that the reason or principal reason for dismissal was the reason relied upon by the claimant.
19. This has long been interpreted as requiring the tribunal to determine whether the claimant has a “pretty good chance of success” at the final hearing: *Taplin v C Shippam Ltd* [1978] ICR 1068. This test is not satisfied if the tribunal simply thinks it is more likely than not that the claim will succeed: *Wollenberg v Global Gaming Ventures (Leeds) Ltd* EAT/0053/18. The test is set comparatively high for reasons of policy: *Dandpat v University of Bath* EAT/0408/09. It is something nearer to certainty than mere probability.
20. In assessing whether there is a pretty good chance of success, the tribunal will take into account all elements of the claim, not just the reason for dismissal. This

may include preliminary matters such as whether the claimant was an employee (if this is disputed), whether the claimant's resignation should be construed as a dismissal (a "constructive" dismissal), and whether a protected disclosure has been made: *Ministry of Justice v Sarfraz* [2011] IRLR 562.

Case management

21. [Section 128 ERA](#) requires the tribunal to determine an application for interim relief as soon as practicable after receiving the application. The tribunal must give the parties at least seven days' notice of the interim relief hearing. An interim relief hearing is a public hearing: *Queensgate Investments LLP and others v Millet* [2021] ICR 863.
22. There are strict rules about postponing interim relief hearings. [Section 128\(5\) ERA](#) prevents the tribunal from postponing the hearing except where it is satisfied that special circumstances exist which justify it in doing so. Such exceptional circumstances might include illness on the part of a participant, or if the notice of the application and hearing has not been properly served on the respondent. As with all postponement applications, evidence of the reason for the application should be provided.
23. The tribunal should send the application for interim relief to the respondent at the same time as providing the notice of the claim. However, the interim relief hearing may well take place before the last date for providing a response to the claim. An interim relief hearing can still proceed even if the employer has not yet responded to the claim, although in those circumstances a respondent might wish to provide the tribunal with a draft of the response form it intends to present in due course.
24. Interim relief proceedings are governed by [rule 94](#) of the Rules. This provides that [rules 52 to 54](#) (preliminary hearings) apply. Importantly, [rule 94](#) says that **the tribunal must not hear oral evidence unless it directs otherwise**. It is highly unusual for a tribunal to direct that it will hear oral evidence. This is because the tribunal is not making factual findings. Instead, it is carrying out an expeditious summary assessment of the prospects of success based on the material which has been deployed at short notice: *Al Qasimi v Robinson* [EAT/0283/17](#).
25. Because the tribunal is carrying out such an assessment, and not hearing evidence or making factual findings, **the parties must ensure that the material placed before the tribunal is proportionate**. In *Wollenberg* (above), the Employment Appeal Tribunal urged the parties "carefully to consider preparation for any [such] hearing. Such hearings are intended to be short. They are, as the cases make plain, intended to be broad assessments by an employment judge who cannot be expected to grapple with vast quantities of material."
26. It follows that tribunals will make case management orders seeking to limit the amount of material which can be placed before the tribunal for an interim relief application. That might include limits on the number of pages in a file of documents or word limits in draft witness statements or written submissions.
27. To give effect to the summary nature of the interim relief process and to accord with the overriding objective to deal with cases fairly and justly, applications for interim relief will be listed, by default, before an Employment Judge sitting without members for a hearing by video lasting **no more than three hours**. That allocation

of time will only be extended in exceptional circumstances. It is expected to involve: one hour for the judge to read the materials provided, 30 minutes for each side to make oral submissions, and one hour for the judge to reach a decision and provide a short oral judgment with reasons.

28. If the parties provide the tribunal with material exceeding what can be read and understood in the time allocated, the judge will require them to identify the most important documents on each side and then restrict consideration to those documents. In a case involving alleged protected disclosures, key documents are likely to include copies of any disclosures made by email or in writing and a copy of any key documents relating to the dismissal (such as the dismissal letter).
29. A particular difficulty arises in practice when legal submissions are generated using AI. While there is no objection in principle to the use of AI, it often results in submissions that are too long and complex, contain irrelevant material and fail to focus on the key points in the case. Litigants who use AI to assist them have a responsibility to ensure that what is submitted is concise, relevant and accurate.

If the application for interim relief succeeds

30. If the tribunal decides to grant interim relief, it must explain its decision to the parties and then explain its powers as they appear in [sections 129](#) and [130 ERA](#).
31. The employer will be asked whether it is willing pending the determination or settlement of the case to reinstate the employee and, if not, to re-engage the employee in another job on terms and conditions which are no less favourable.
32. If the employer is willing to reinstate the employee that will be ordered, and the employee will go back to work for the employer until the final hearing. If the employer is willing only to re-engage the employee, the employee will have to go back to work in the equivalent job unless it is reasonable to refuse that alternative.
33. If neither reinstatement nor re-engagement is appropriate, or if the employer has failed to attend the interim relief hearing, the tribunal will make an order for continuation of the contract of employment. Such an order means that the contract continues for the purposes of pay and other benefits but the employee is not required to work. The tribunal specifies in its order the amount to be paid by the employer for each pay period going forward.
34. If an order is made for reinstatement or re-engagement but the employer fails to comply, the tribunal must make an order for continuation of the contract and order compensation which it considers just and equitable.

Tribunal decisions

35. The decision whether to grant interim relief is in the form of a judgment. This is because it finally determines part of the claim relating to the remedy of interim relief. The judgment can be the subject of an application for reconsideration or an appeal in the same way as any other judgment.
36. Reasons will usually be given orally and may be provided in summary or full form. The right to obtain written reasons under [rule 60](#) applies. According to the Employment Appeal Tribunal in *Al Qasimi* (above), the reasons should be provided

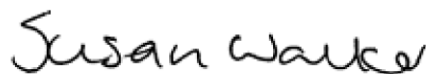
“not in an over-formulistic way but giving the essential gist of [the] reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied”.

Practical observations

37. Based on the experience of dealing with applications for interim relief in cases about alleged protected disclosures, the following practical observations can be made.
38. First, to have a pretty good chance of showing that one or more disclosures are protected, the claimant must have a pretty good chance of showing that: (a) they disclosed information, not simply a bare allegation; (b) they reasonably believed that the information tended to show one of the types of wrongdoing identified in [section 43B\(1\) ERA](#), and (c) they reasonably believed that the disclosure was made in the public interest because it affected other people, not just the claimant personally.
39. Second, the claimant will need to show that there is a pretty good chance the tribunal will find that the protected disclosure caused the dismissal. The employer usually disputes this. If an employer identifies an apparently good reason for dismissing the claimant that is unrelated to a protected disclosure, this is usually something the tribunal will need to decide at the final hearing on the basis of full evidence. It is difficult to see how the claimant will show that they have a pretty good chance of success, unless they have clear evidence that this was not the real reason.
40. Third, the more hurdles the claimant faces in order to succeed with the claim, the more difficult it will be to persuade the tribunal that there is a pretty good chance of success. For example, a dispute about employment status, or a dispute about whether the claimant’s resignation should be construed as a dismissal, will make it even less likely that interim relief will be granted.
41. Fourth, cases which are complex because they rely on a large number of disclosures may make it more difficult for a claimant to succeed because there may be no clear link between any specific disclosures and the decision to dismiss. In contrast, those cases which are strong and which have a pretty good chance of success are generally easily identified and explained.
42. This Presidential Guidance has effect from 22 June 2026.



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