Interim Relief in the Employment Tribunal

An empirical study

Suresh Patel

Mishcon de Reya
It's business. But it's personal.

At Protect, we see over thousands of new cases annually through our free Legal Advice Line for whistleblowers giving us a uniquely broad evidence base on emerging patterns. We have shaped the thinking around whistleblowing since 1993, helping Parliament and regulators set the rules and intervening in major appeal cases. We have over 30 years' experience helping employers diagnose system weaknesses, develop triage models, and strengthen speak-up culture.

Foreword

Interim relief is, on paper, the most powerful protection available to a dismissed whistleblower in the UK. The possibility of continuing to receive a full salary (potentially for years) while awaiting a final hearing should be a vital shield against the immediate economic devastation of a retaliatory dismissal.

But in reality, things are rather complicated. We know that the legal test is set at a very high bar (the "pretty good chance of success" at succeeding on all the issues required for a whistleblowing dismissal to be automatically unfair). We know that the deadline to lodge a claim is punishingly short (7 days). And we know that, as most applications are decided on papers, with very limited (if any) oral evidence, how well those papers are drafted matters even more than usual. In short, the process feels practically impossible for those unable to afford proper (and fast!) legal advice.

Yet, until now, much of our understanding of how interim relief works out in practice has been anecdotal. By undertaking a rigorous review of several hundred Employment Tribunal judgments, this report provides an unprecedented, empirical look at how applications for interim relief are playing out "on the ground". It also helpfully looks at the origins and evolution of interim relief over time. What emerges from that body of evidence is sometimes troubling, and in places at odds with received wisdom about how the regime operates. Navigating hundreds of tribunal judgments, Mishcon has masterfully translated a complex mountain of data into a clear narrative, with immediately actionable findings.

This report is not just for lawyers. It matters to us all. The whistleblowing framework is at a pivotal moment: whistleblowing claims have increased exponentially and tribunal waiting times have reached a crisis point.

The honest truth is that UK whistleblowing law is not working well enough. Not for workers, who too often find that the protections Parliament intended for them are out of reach in practice. Not for businesses, who without effective whistleblowing frameworks are exposed to the reputational, regulatory and financial consequences of undetected wrongdoing. And not for society, which depends on people being able to speak up without fear of punishment when something is seriously wrong.

The Government has committed to a dedicated consultation on the whistleblowing framework. This report arrives at precisely the right moment.

As Joint Chief Executive of Protect, the Whistleblowing Charity, I am proud to commend it, and I hope it is read, debated, and acted upon.

Sybille Raphael
Joint Chief Executive, Protect

Section A: Origins and purpose of this research paper

This research paper was born of two observations in relation to applications for Interim Relief in the Employment Tribunal.

The first was that the number of applications seemed to be on the rise. Though no official statistics had yet been published (as to which, see below), employment lawyers were increasingly commenting - on social media and elsewhere - that they were being instructed on Interim Relief cases far more frequently than in previous years.

The second was that Interim Relief was so difficult to obtain that it was rarely advisable to apply for it. Further, there was opacity around the factors that tended to improve (or undermine) a claimant's chances of success. It was clear that claimants faced considerable challenges when applying for Interim Relief; but what exactly those challenges were, and how they might be overcome, remained something of a mystery.

However, on 22 June 2026, the Presidents of the Employment Tribunals published joint Presidential Guidance on *Applications for interim relief* ("**PGAIR**").[1] This was the first time that the perceived recent rise in applications was officially confirmed. According to the PGAIR, there had been a "*significant increase in applications for interim relief, largely in protected disclosure cases, and often indicating use of artificial intelligence*".[2] Most Employment Tribunal offices were said to be receiving around 20 applications for Interim Relief each month; previously, perhaps 20 such applications were received nationwide each year.[3]

That dealt with the first observation. But what of the second? Aside from limited "Practical observations" (some of which are discussed below), the PGAIR has relatively little to say about matters that impact a claimant's prospects of success.[4] Likewise, legal publishers offer (often very helpful) analyses.[5] However, these tend to be anecdotal and lack a comprehensive empirical basis.

This research paper hopes to address those lacunae. Based on a review of several hundred Employment Tribunal judgments, it aims to equip practitioners and policymakers with real-world insights into how applications for Interim Relief are playing out "on the ground"; and the sorts of factors that are, and are not, likely to affect a claimant's chances of succeeding. It also considers the extent to which the Interim Relief regime remains fit for purpose within today's Employment Tribunal system.

This research paper is structured as follows: after this introduction, subsequent sections B – E discuss, respectively, the origins and evolution of Interim Relief; the methodology adopted in this research; its findings; and its conclusions.

[1] Presidential Guidance: Applications for interim relief.
[2] Para 4.
[3] *Ibid*.
[4] Paras 37 – 41.
[5] For instance, Is interim relief the next big thing? by Paul Mander and Matthew Ramsey, published 28 September 2009 on Practical Law; and IDS Employment Law Handbooks > Vol. 17, paras 7.69 – 7.70.

Section B: Origins and evolution of Interim Relief

A full exposition of the law relating to Interim Relief is beyond the scope of this report. However, it is worth briefly setting Interim Relief in its historical and legislative context.

Interim Relief was first introduced by sections 78 - 80 of the Employment Protection Act 1975 ("**EPA 1975**"). Under section 78(1) EPA 1975, a claimant could apply for Interim Relief if they were claiming unfair dismissal on the basis that they were dismissed for the reason, or principal reason, that they (i) were (or proposed to become) a member of a particular trade union; or (ii) had taken part (or proposed to take part) in the activities of a particular trade union of which they were (or proposed to become) a member.[6]

A claimant had to submit their application by no later than seven days after their effective date of termination. They also had to provide a signed certificate from an authorised official of the relevant trade union confirming that (i) the claimant was (or proposed to become) a member of that union; and (ii) there appeared to be "reasonable grounds" that the claimant was dismissed for the reason, or principal reason, complained of.[7] Their application would be determined "as soon as practicable", with hearings only postponed in "special circumstances".[8]

To be granted Interim Relief, the claimant would have to convince the (then) Industrial Tribunal that they were "likely" to succeed in their complaint for unfair dismissal.[9] This required the claimant to show that they had a "pretty good" chance of success.[10] If they did, the claimant would be reinstated, re-engaged or receive a continuation of contract order - which had the effect of preserving the claimant's employment contract for the purposes of pay, other benefits and continuity of service[11] - pending determination or settlement of their claim.[12] The claimant was not required to repay any sums received during this period, regardless of whether their claim for unfair dismissal ultimately succeeded.

In many ways, Interim Relief was a product of its time and, in particular, the tensions in industrial relations during the 1970s. As noted in *Harvey on Industrial Relations and Employment Law*, Interim Relief was created to quell the industrial unrest that could arise where an employer dismissed a trade unionist employee, regardless of its reasons for doing so:

"*An employment tribunal will, if asked, eventually rule on the justice of the dismissal, but, in the normal course of events it will be some weeks before the complaint is heard. Meanwhile, the dismissal might provoke industrial action, and what begins as a local skirmish can soon escalate into a major battle. An application for interim relief is intended to head off such industrial trouble before it begins, or at least before it becomes too serious, by allowing an employment tribunal to give a preliminary ruling at an emergency hearing.*

When the right to seek interim relief was first introduced (Employment Protection Act 1975 s 78), the problem was perceived to be acute: contemporaneous statistics suggested that dismissals of a shop steward or other workplace representative accounted for no less than 40 per cent of working days lost through industrial action…"[13]

[6] s.78(1) EPA 1975.
[7] s.78(2) EPA 1975.
[8] ss.78(3) – (4) EPA 1975.
[9] s.78(5) EPA 1975.
[10] *Taplin v C Shippam Ltd* 1978 ICR 1068, EAT.
[11] s.79(1) EPA 1975.
[12] ss.78(5) – (9) EPA 1975.
[13] Harvey on Industrial Relations and Employment Law > Division NI Labour Relations, paras 593 – 594. This analysis was cited by the Court of Appeal (Northern Ireland) in *Bombardier Aerospace (t/a Short Brothers Plc) v McConnell* [2007] NICA 27, para 7.

The Interim Relief regime of the EPA 1975 would eventually be recast in sections 161 – 166 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULR(C)A 1992**"), via the Employment Protection (Consolidation) Act 1978 ("**EP(C)A 1978"**). It was subject to minor amendments along the way. Nonetheless, the Interim Relief regime of TULR(C)A 1992 today is materially identical to that of its predecessors under the EPA 1975 and EP(C)A 1978.[14]

In parallel, the availability of Interim Relief was being extended beyond trade union contexts. By virtue of amendments to the EP(C)A 1978 during the 1990s, Interim Relief became available for other types of unfair dismissal claim, including dismissals for the reason, or principal reason, of a claimant's (i) health and safety activities or membership of a health and safety committee; (ii) trusteeship of an occupational pension fund; and (iii) role as (or candidacy to become) an employee representative for the purposes of collective redundancy consultations under TULR(C)A 1992 or information and consultation processes under the Transfer of Undertakings (Protection of Employment) Regulations 1981.[15] Substantively and procedurally, this was essentially the same Interim Relief regime that applied to trade union dismissals, though a claimant was not required to obtain a signed certificate from a relevant union official.

In time, the availability of Interim Relief in respect of these further claims would be enshrined in section 128 of the Employment Rights Act 1996 ("**ERA 1996**"). There, it would also be extended to others, such as dismissals (i) for activities as a working time representative; (ii) related to certain trade union "blacklisting" cases; and (iii) related to certain trade union recognition procedures under TULR(C)A 1992. A relatively late addition was unfair dismissal under section 103A ERA 1996 for the reason, or principal reason, of having made a protected disclosure – aka "whistleblowing". Interim Relief became available for putative whistleblowers in July 1999, when section 9 of the Public Interest Disclosure Act 1998 came into force. Various other claims have also been added,[16] and there have been (now abandoned) discussions about whether some of the new provisions being introduced under the Employment Rights Act 2025, such as fire and rehire and failures to comply with collective consultation obligations, would also attract Interim Relief protection.

[14] Perhaps the biggest difference between the Interim Relief regimes of the EPA 1975 and TULR(C)A 1992 is that, under the latter, Interim Relief is also available where the employee claims that they were dismissed for the reason, or principal reason, that they: (i) had made use (or proposed to make use) of trade union services; (ii) failed to accept an unlawful inducement relating to union membership, union activities or collective bargaining; or (iii) were not, or had refused to become, a trade union member (ss.152 and 161 TULR(C)A 1992).
[15] s.77A EP(C)A 1978.
[16] See, for example, s.12(5) Employment Rights Act 1999 and Reg 18(5) Employee Study and Training (Procedural Requirements) Regulations 2010

Section C: Methodology

Turning to methodology, this research was carried out using the publicly available decisions on the Employment Tribunal decisions webpage.[17] On 19 April 2026, these decisions were filtered by the "Interim Relief" jurisdiction code to create a snapshot of available decisions (purportedly) relating to Interim Relief as at that date. This produced a list of 721 decisions. These decisions were then manually reviewed to extract the judgment that determined the application for Interim Relief.[18] These judgments were then segmented into three categories:

i. **The Basic 500.** This category comprised just over 500 of the most recently published Interim Relief judgments. These judgments related to a range of underlying unfair dismissal claims and were included regardless of whether full reasons for the decision were provided.[19] They broadly covered hearing dates from the start of 2020 to March 2026 (with a small number predating that).

   The Basic 500 were analysed to capture basic data relating to the Interim Relief hearing. These included: (i) which region heard the application; (ii) the date of the hearing; (iii) whether the hearing was held in-person or remotely; (iv) whether the claimant was represented; (v) whether the respondent was represented; (vi) the claimant's sex; and (vii) whether the claimant succeeded and, if so, their remedy.

ii. **The Reasoned 100.** This category comprised just over 100 of the most recently published Interim Relief judgments where both (i) the claimant was claiming unfair dismissal under section 103A ERA 1996; and (ii) full reasons for the decision were provided. These judgments broadly covered hearing dates from November 2024 to March 2026. All of these judgments were also within The Basic 500.

   The Reasoned 100 were analysed to capture more complex data, especially in relation to claims under section 103A ERA 1996. These included: (i) whether oral evidence was heard; (ii) the respondent's purported reason(s) for dismissal; (iii) the nature of the claimant's disclosure(s); (iv) the number of disclosures alleged to have been made; (v) whether the claimant brought other claims in addition to unfair dismissal under section 103A ERA 1996; (vi) the Employment Judge's findings in relation to protected disclosures; and (vii) the Employment Judge's findings in relation to causation.

iii. **The Success Cases.** This category comprised all judgments where the claimant succeeded in their Interim Relief application across the 721 decisions responsive to the "Interim Relief" jurisdiction code. There were 44 such judgments, covering hearing dates from January 2017 to March 2026. 35 of these judgments were also within The Basic 500; nine were also within The Reasoned 100.

   The Success Cases were analysed in accordance with the approaches above. All 44 were analysed to capture the same data categories as were captured in relation to The Basic 500 ("**The Success Cases (44)**"). In addition, 23 of these 44 judgments were fully reasoned and related to claims under section 103A ERA 1996. These 23 were also analysed to capture the same data categories as were captured in relation to The Reasoned 100 ("**The Success Cases (23)**").

[17] Employment tribunal decisions - GOV.UK.
[18] Around 8% of these 721 decisions were discarded as either irrelevant or because no judgment for Interim Relief was available.
[19] Indeed, where judgments did not provide full reasons, it was often not possible to glean the nature of the underlying unfair dismissal claim.

As far as practicable, The Success Cases therefore sought to comprise all successful applications for Interim Relief across all Employment Tribunal decisions that were publicly available online as of 19 April 2026.[20] That said, 44 or, as the case may be, 23 judgments remain a small sample size, which should be borne in mind when considering certain of the findings below.

Finally, an AI-powered legal operating system ("**ALOS**") was used to facilitate this research. Through an extensive iterative process, the ALOS was trained on how to extract the relevant data from judgments. In respect of The Reasoned 100 and The Success Cases, the ALOS undertook the first attempt before its efforts were manually reviewed and (to the extent necessary) corrected by a human. Therefore, all reviews of The Reasoned 100 and The Success Cases were subject to human oversight.

The same approach was initially taken to The Basic 500. However, after approximately 30% of The Basic 500 had been analysed - first by the ALOS and then by a human - it was clear that the ALOS was proving highly successful at extracting the relevant data. Indeed, its outputs were consistently over 98% accurate (perhaps aided by the fact that the nature of the data was relatively straightforward). It was therefore decided that, going forward, full human oversight could be dispensed with, though random spot-checks were still carried out (according to which the ALOS continued to be over 98% accurate). As a result, around 40% of The Basic 500 have been manually reviewed by a human; around 60% have not.

[20]The Success Cases may well have failed in that task. Among other things, there were likely relevant judgments whose decision was unresponsive to the "Interim Relief" jurisdiction code.

Section D: Findings

Types of claim and success rates

Turning now to the findings of this research, it is worth starting with two headline points: (i) the types of unfair dismissal claim in respect of which Interim Relief was most commonly sought; and (ii) overall success rates.

Figure 1 shows that 97% of applications for Interim Relief were brought on the basis of claims under section 103A ERA 1996; with 3% on the basis of claims under TULR(C)A 1992.[21] **Figure 2** shows that just 7% of claimants succeeded in obtaining Interim Relief.[22]

Figure 1
Type of unfair dismissal claim

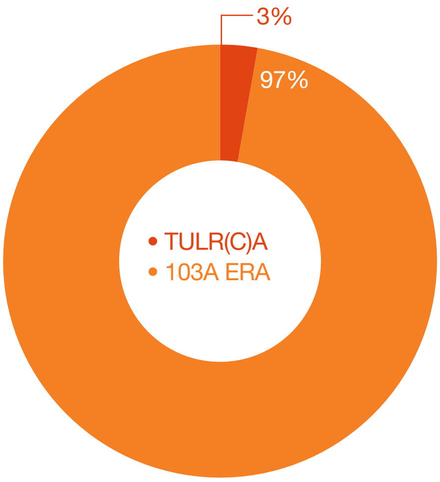
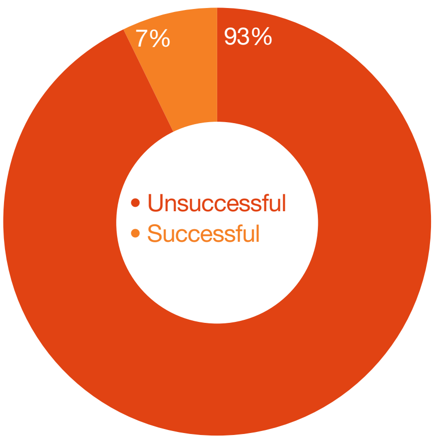


Figure 2
Success rates



It is difficult to contextualise this 7% figure, as there are no publicly available statistics on success rates in unfair dismissal claims under section 103A ERA 1996 or TULR(C)A 1992.[23] Underhill P (as he then was) explained in *Dandpat* that Interim Relief ought not to be too readily available: "*We do in fact see good reasons of policy for setting the test comparatively high…If relief is granted the [employer] is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the [employee], until the conclusion of proceedings: that is not a consequence that should be imposed lightly*".[24] But does 7% suggest that the bar has been set *too* high?

In answering that, it is worth remembering Interim Relief's trade unionist roots. As noted above, a claimant applying for Interim Relief under the EPA 1975 was required to obtain what was essentially an endorsement from a union official that their unfair dismissal claim had "reasonable grounds". Further, the claims in respect of which Interim Relief was available centred on the single issue of causation – i.e. whether the claimant was dismissed because of their membership of, or activities relating to, a trade union.[25]

By contrast, the claimant who seeks Interim Relief on the basis of section 103A ERA 1996 comes before an Employment Judge with no such third-party endorsement of their case. Further, this claimant must show that they are "likely" to succeed not only on causation – i.e. that they were dismissed for making a protected disclosure – but also that they made a protected disclosure in the first place. This requires the claimant to show *additionally* that they are "likely" to succeed on five separate, technical issues: (i) that there was a disclosure of information; (ii) that the claimant believed the disclosure to be in the public interest; (iii) that that belief was reasonably held; (iv) that the claimant

[21]This is the only Figure in this paper whose source is not The Basic 500, The Reasoned 100 or The Success Cases. Rather, it is based on a sample of just over 200 of the most recently published judgments with full reasons. These judgments broadly cover hearing dates up to March 2026, going back to the start of 2022 (with a small number predating that).
[22]Source: The Basic 500. "Unsuccessful" includes applications that were withdrawn, revoked or out of time.
[23]So far as is relevant, the Tribunals Statistics Quarterly for Employment Tribunals presents data under the headings of "Public Interest Disclosure" and "Unfair dismissal": https://www.gov.uk/government/collections/tribunals-statistics.
[24]*Dandpat v University of Bath and another* UKEAT/0408/09, para 20.
[25]See n. 6 above.

believed that the disclosure tended to show a relevant wrongdoing; and (v) that that belief was reasonably held.[26]

In other words, a whistleblower would appear to face more barriers to obtaining Interim Relief than a trade unionist. But if the vast majority of applications are now brought on the basis of section 103A ERA 1996,[27] and the Interim Relief regime is essentially unchanged from its EPA 1975 origins, the bar to success, in real terms, may have inadvertently become harder to clear.

Parties

Turning to the parties, whether a claimant had representation materially affected their chances of success. As **Figure 3** shows, claimants were represented in just over 25% of hearings.[28] However, as can be seen in **Figure 4**, when claimants succeeded, they were represented 59% of the time.[29]

Figure 3
Was the Claimant represented?

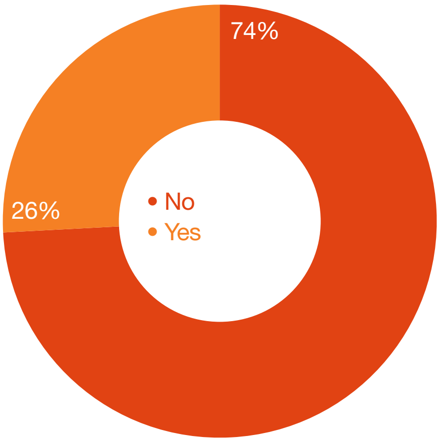
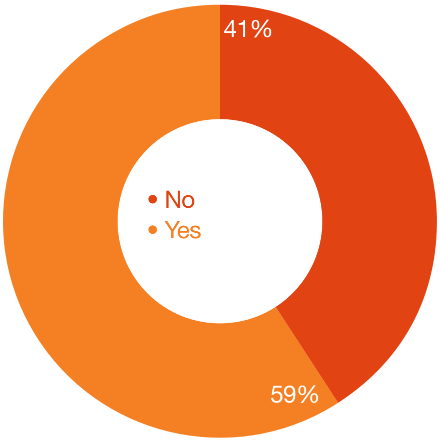


Figure 4
Was the Claimant represented (Success Cases)?



This suggests that, despite the (no doubt) best efforts of Employment Judges to ensure that a lack of representation did not adversely affect claimants' prospects, there is clearly further to go in levelling the playing field for litigants-in-person.

By contrast, respondents were represented in 87% of hearings (**Figure 5**).[30] However, when claimants succeeded, a respondent's representation was less important than whether it attended the hearing. When respondents lost, 25% of the time they had failed to attend (**Figure 6**).[31]

[26] *Williams v Brown* UKEAT/0044/19, para 9. See also *Simply Smile Manor House Ltd and ors v Ter-Berg* 2020 ICR 570, EAT for the proposition that a claimant must show that they are "likely" to succeed on each substantive issue to be determined at the full hearing.
[27] That said, the Employment Rights Act 2025 significantly strengthens, and raises the profile of, trade unions. It remains to be seen whether these changes will lead to more Interim Relief applications under TULR(C)A 1992.
[28] Source: The Basic 500. "No" includes where the claimant did not attend; was represented by lay individuals (including family members); and where a representative's qualifications/capacity was not specified. "Yes" includes representation by counsel, solicitors, litigation friends, employment law consultants, FRU representatives and trade union representatives. The same approach was applied in Figure 4.
[29] Source: The Success Cases (44).
[30] Source: The Basic 500. "Yes" captures where at least one respondent obtained external representation. It therefore includes representation by counsel and solicitors but also other providers of employment law and HR services. "No" includes where a respondent was represented by one of its own employees or officers, even one who is legally qualified such as in-house counsel. The same approach was applied in Figure 6.
[31] Source: The Success Cases (44).

Figure 5
Was the Respondent represented?

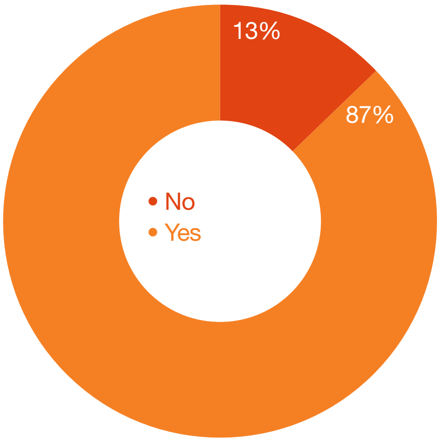
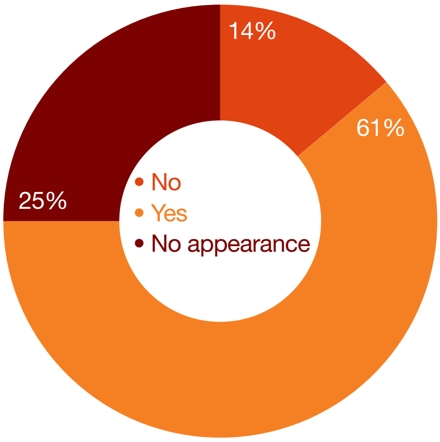


Figure 6
Was the Respondent represented?
(Success Cases)



In relation to a claimant's sex, **Figure 7** shows that 61% of applications were made by men, with 39% made by women.[32] Almost identical percentages can be seen in successful cases, with 60% of successful applications made by men and 40% by women (**Figure 8**).[33]

Figure 7
Men vs. Women

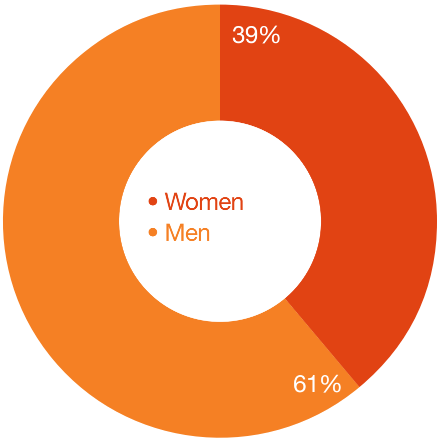
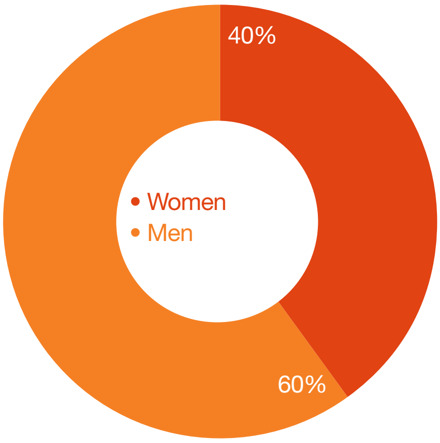


Figure 8
Men vs. Women (Success Cases)



Therefore, though more applications were made by men than by women, each sex succeeded in proportion to their respective number of applications.[34]

[32]Source: The Basic 500. A claimant's likely sex was identified by their honorifics (e.g. Mr, Mrs, Miss etc.), first name and/or the pronouns used to describe them. The same approach was applied in Figure 8.
[33]Source: The Success Cases (44).
[34]It remains to be seen whether s.43B(1)(da) ERA 1996 will lead to more applications by women. This came into force on 6 April 2026 under the Employment Rights Act 2025; and makes a disclosure that sexual harassment has occurred, is occurring, or is likely to occur, a further type of qualifying disclosure for the purposes of the ERA 1996.

Hearings

Turning to hearings, **Figure 9** shows that around two-thirds of applications for Interim Relief were heard remotely.[35] Likewise, **Figure 10** shows that around two-thirds of successful applications were heard remotely.[36]

Figure 9
Remote vs. in-person

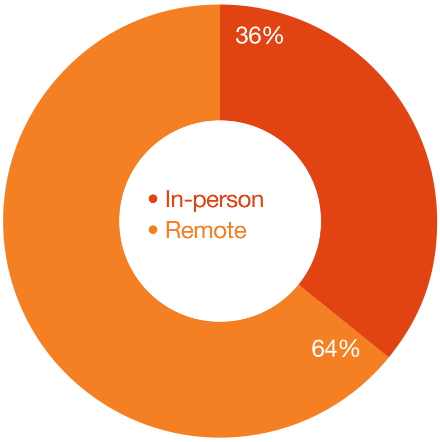
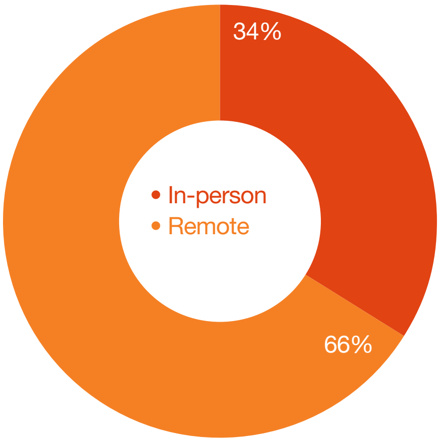


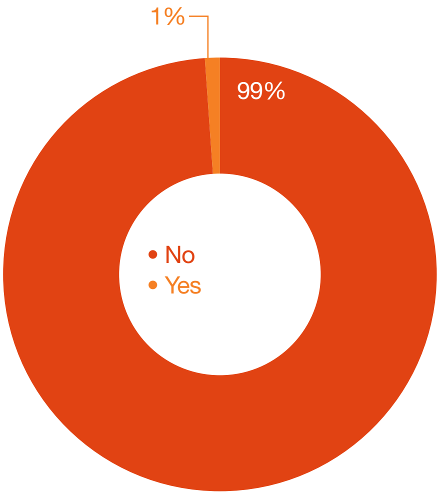
Figure 10
Remote vs. in-person (Success Cases)



This suggests that whether a hearing was held remotely or in-person had no material impact on a claimant's chances of success. In any event, this point may now be academic as recent Presidential Guidance (separate to the PGAIR) has confirmed that Interim Relief hearings will default to video.[37]

In terms of evidence, **Figure 11** shows how rarely witnesses were cross-examined, with oral evidence heard in just 1% of cases.[38]

Figure 11
Was oral evidence heard?



[35]Source: The Basic 500. Readers will note from the Methodology that the vast majority of these hearings took place after (or during) the COVID-19 pandemic when there was a significant shift towards greater reliance on remote hearings. "Remote" includes hybrid hearings and those held via telephone. "In-person" includes where the judgment was silent as to whether the hearing was held remotely or in-person. The same approach was applied in Figure 10.
[36]Source: The Success Cases (44).
[37]Presidential Guidance: On matters relating to the mode and listing of hearings; remote participation in hearings; and electronic documents, para 6.4.
[38]Source: The Reasoned 100.

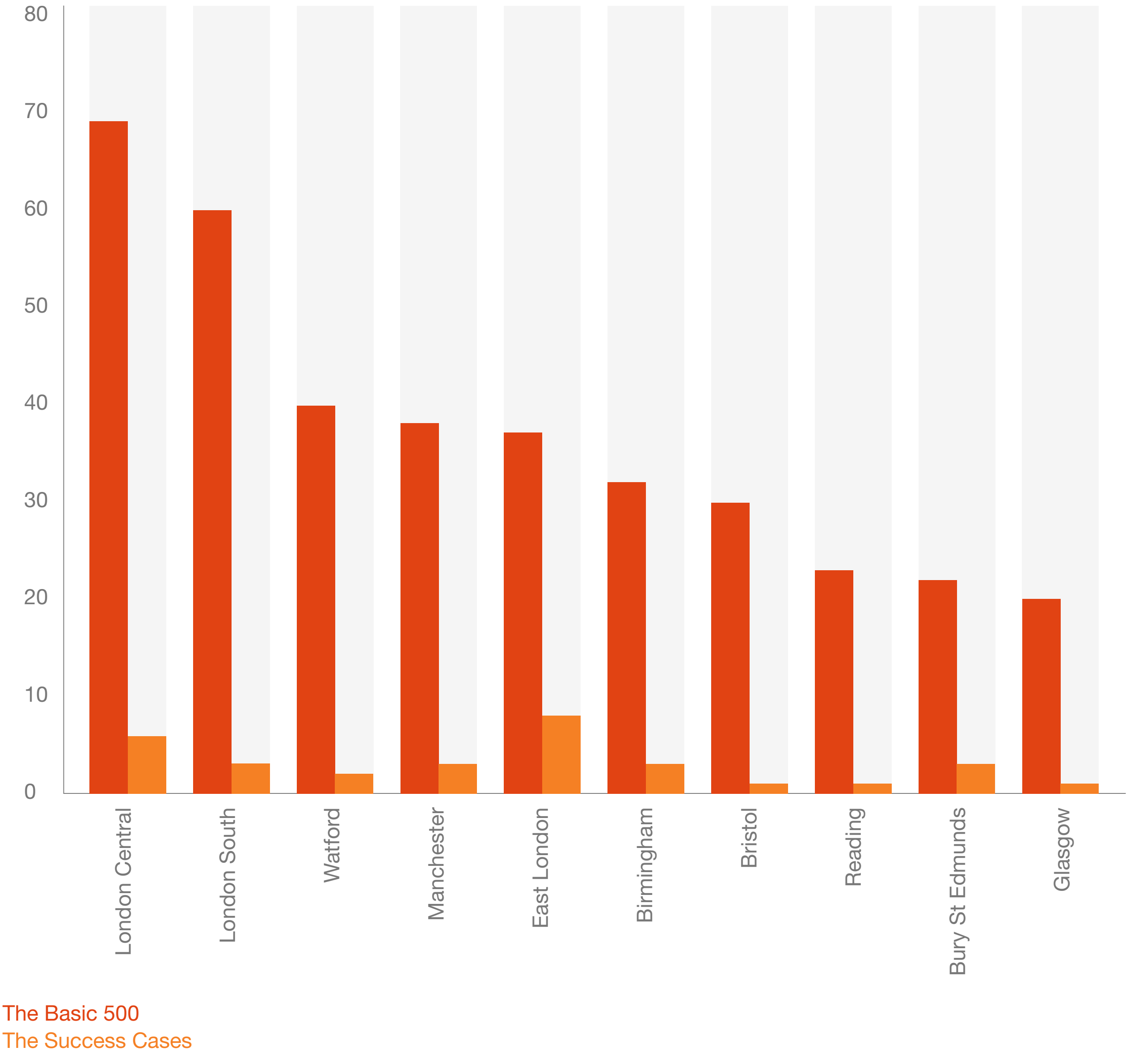
This aligns with Rule 94 of the Employment Tribunal Procedure Rules 2024, which governs applications for Interim Relief and states that "*the Tribunal must not hear oral evidence unless it directs otherwise*". It is also consistent with the approach espoused in case law, which requires an Employment Tribunal to undertake an "*expeditious summary assessment*"[39] and "*avoid making findings that might tie the hands of the ET ultimately charged with the final determination*".[40]

However, as discussed further below, the lack of opportunity to test evidence is often to a claimant's disadvantage.

Regional variation

Figure 12 is intended to give an indication of regional variation. Along the x axis are the ten regions which (according to the published decisions) heard the most applications for Interim Relief. The first data series (in dark orange) shows the number of applications by region.[41] The second (in orange) shows the number of successful applications by region.[42]

Figure 12
Regional variation



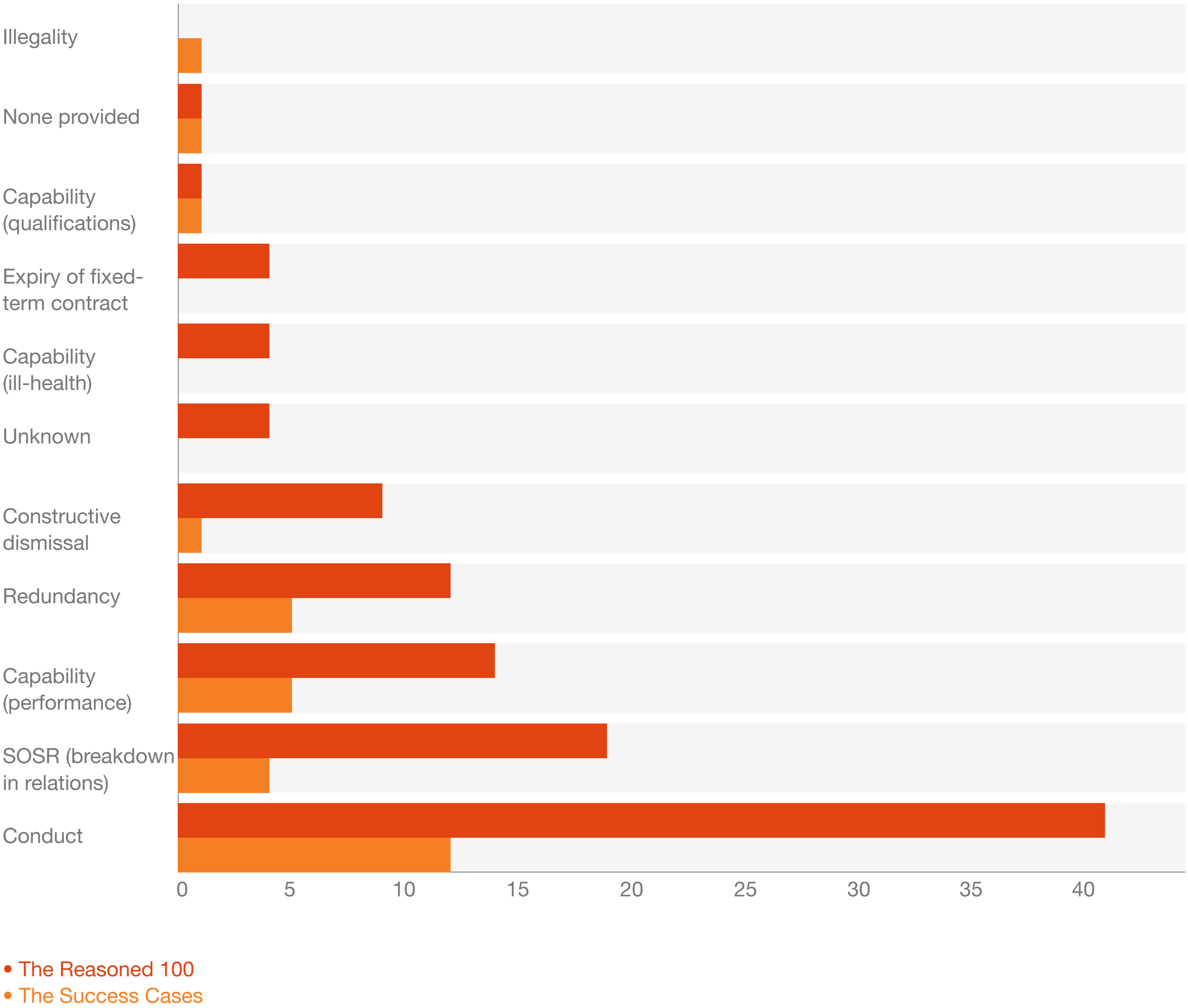
[39] *London City Airport Ltd v Chacko* 2013 IRLR 610, EAT, para 23.
[40] *Al Qasimi v Robinson* EAT 0283/17, para 59.
[41] Source: The Basic 500.
[42] Source: The Success Cases (44).

The sample size of the second data series is limited and, as such, these results could be significantly altered by just a handful of further cases. That said, **Figure 12** would appear to suggest that a claimant was disproportionately more likely to succeed in East London; and perhaps disproportionately less likely to succeed in Watford.

Reason for dismissal

Figure 13 concerns the purported reason(s) for dismissal put forward by respondents. The first data series (in dark orange) shows the most common reasons relied on by respondents.[43] As can be seen, respondents tended to cite a claimant's conduct above all other reasons, followed by SOSR (breakdown in relations); capability (performance); and redundancy. The second data series (in orange) shows the reason(s) relied on by respondents in successful applications.[44]

Figure 13
Reason for dismissal



[43]Source: The Reasoned 100.
[44]Source: The Success Cases (23).

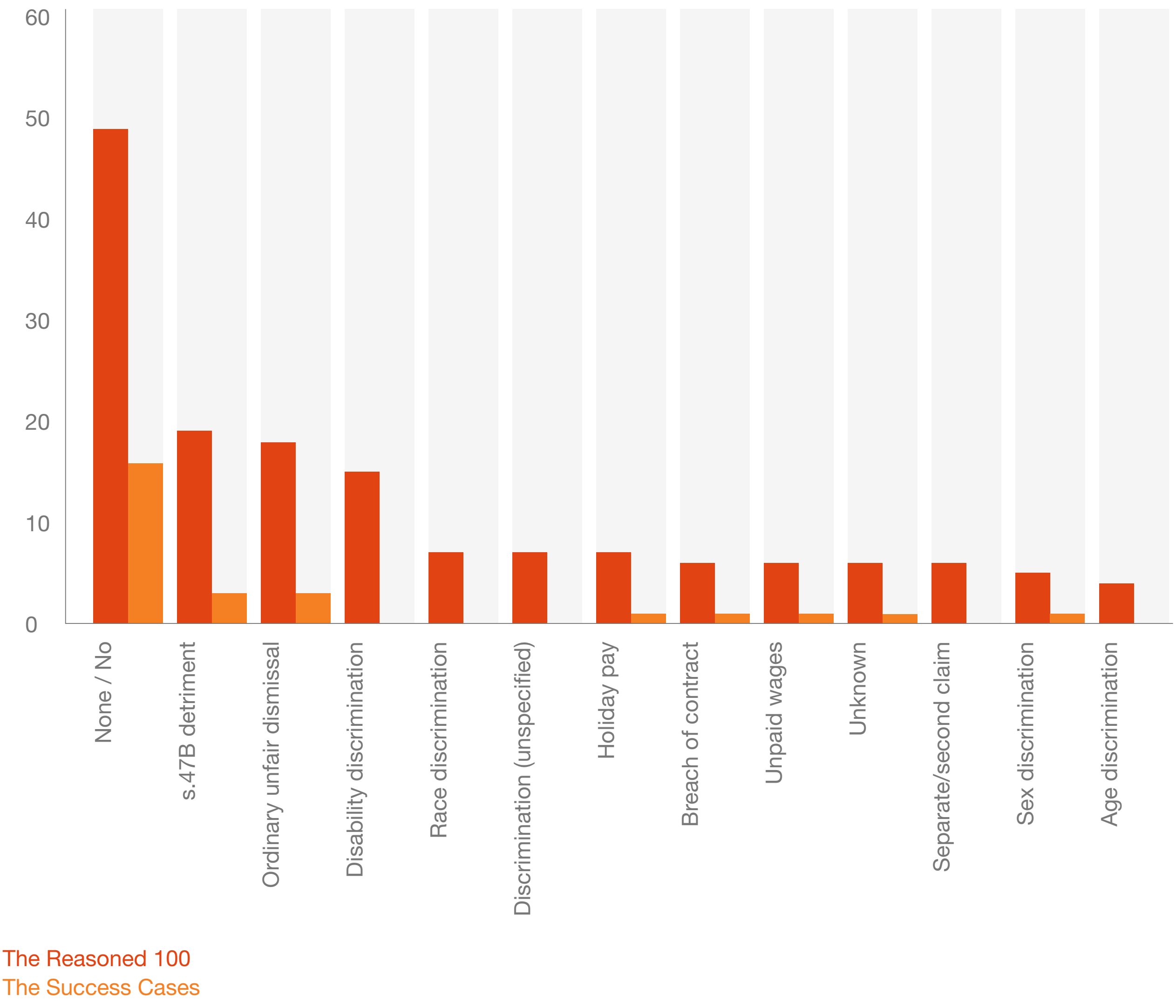
The first and second data series broadly mirror each other, which suggests that no one reason was materially easier, or more difficult, for a claimant to succeed against. This included redundancy, which arguably undermines the view that redundancy represents a particularly challenging reason for claimants, on account of the need to show that the purported redundancy was entirely fabricated.[45]

Additional claims

Figure 14 considers the additional claim(s) brought by claimants alongside their claim for unfair dismissal under s.103A ERA 1996. The first data series (in dark orange) shows the most common additional claims.[46] As can be seen, in the majority of cases no such claims were brought. After that, the most common were for ordinary unfair dismissal; for detriment on the ground of making a protected disclosure contrary to section 47B ERA 1996; and various discrimination claims.

The second data series (in orange) shows the most common additional claim(s) brought by claimants who succeeded in their application for Interim Relief.[47]

Figure 14
Additional claims



[45]For instance, *Rathee v JSW Steel (UK) Ltd* Case No: 6029127/2025, para 3.8, in reliance on *McConnell* at n. 13 above (though, in fairness, this was not quite how the point was put in *McConnell*).
[46]Source: The Reasoned 100. References to discrimination include direct and indirect discrimination, harassment, and victimisation. The same approach was applied in the second data series.
[47]Source: The Success Cases (23).

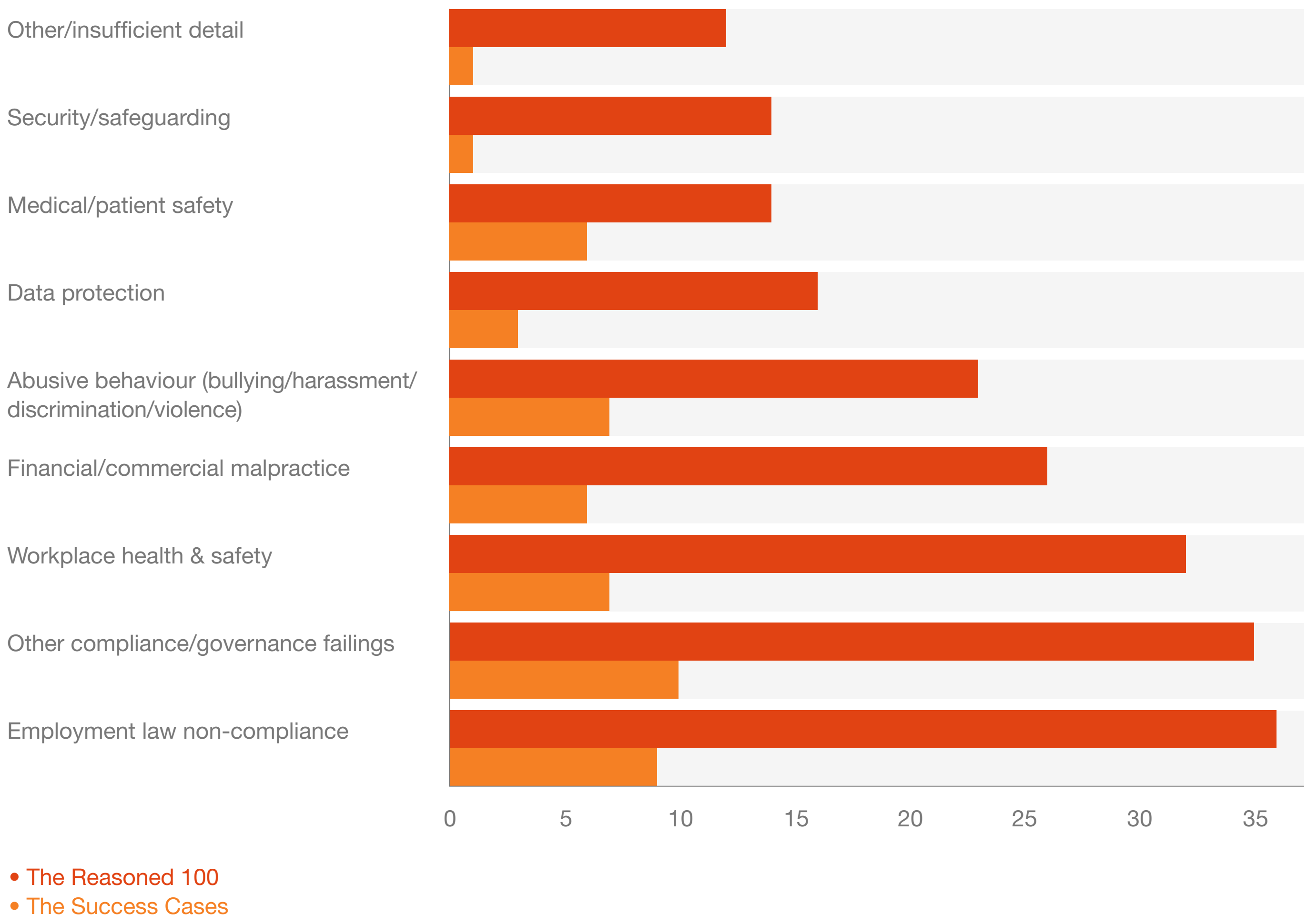
This gives rise to two, related observations.

The first is the strong correlation between successful applications and claimants whose only claim was for unfair dismissal under section 103A ERA 1996. The second is the near-total absence of discrimination as an additional claim in successful applications. Taken together, this suggests that additional claims can be unhelpful for claimants seeking Interim Relief, especially those which revolve around questions of causation. Where a claimant's case was that they were also dismissed for an *additional* reason unconnected to any protected disclosure - such as a protected characteristic or protected act for the purposes of the Equality Act 2010 - that tended to undermine their application.[48]

Nature of disclosures

Figure 15 considers the nature of the disclosures relied on by claimants. As the first data series (in dark orange) shows, employment law non-compliance was the most common type of complaint, followed by general non-compliance or governance failings; workplace health and safety concerns; financial or commercial malpractice; and abusive behaviour.[49] The second data series (in orange) shows the nature of the disclosures relied on in successful applications.[50]

Figure 15
Nature of disclosures



[48]For instance, *Abdelaal v The University of Manchester* Case Number: 6023996/2025, para 29.
[49]Source: The Reasoned 100.
[50]Source: The Success Cases (23).

Overall, the nature of the disclosures appears to have had little impact on claimants' prospects of success. That said, claimants whose disclosure(s) related to medical or patient safety were disproportionately likely to obtain Interim Relief. The reasons for this are unclear (and, again, the small sample size should be noted). However, this may have been due to the inherent public interest in raising such concerns, with the result that the claimant had a somewhat easier route to showing that they had "likely" made a protected disclosure.

Number of disclosures

Figure 16 shows the number of purported protected disclosures made by claimants.[51] As can be seen, in the majority of cases claimants alleged that they made 1 – 3 such disclosures. Broadly the same trend can be seen in **Figure 17**, which shows the number of protected disclosures relied on in successful applications.[52]

Figure 16
Number of disclosures

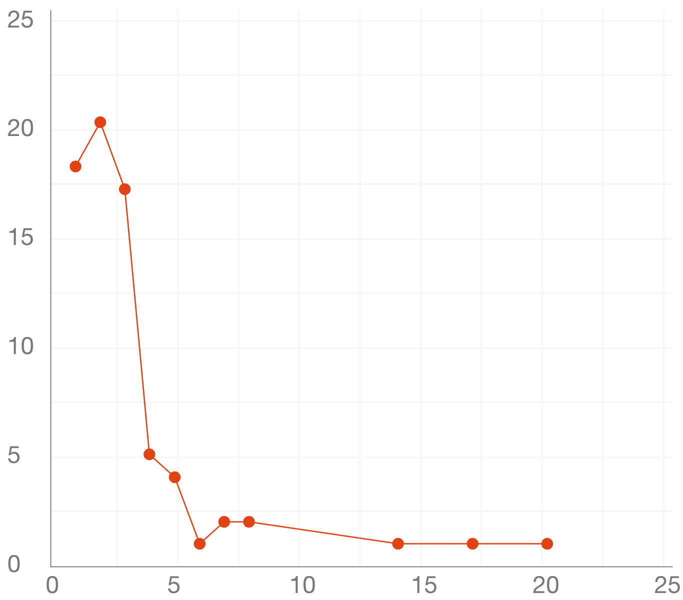
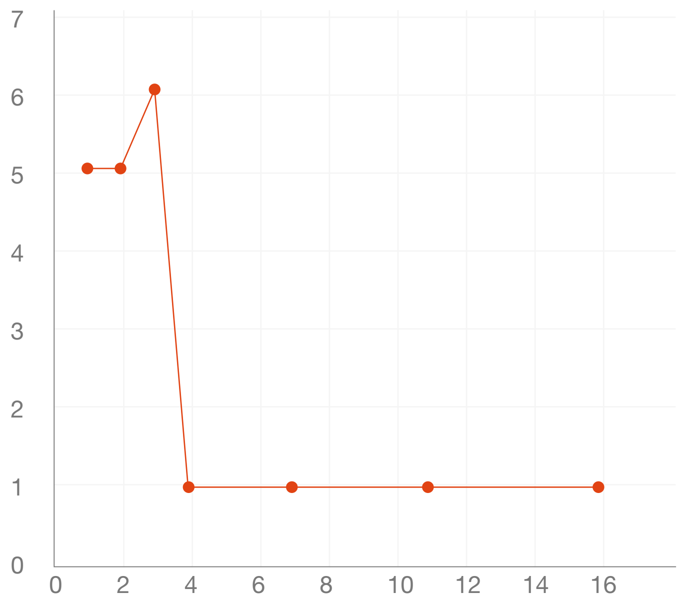


Figure 17
Number of disclosures (Success Cases)



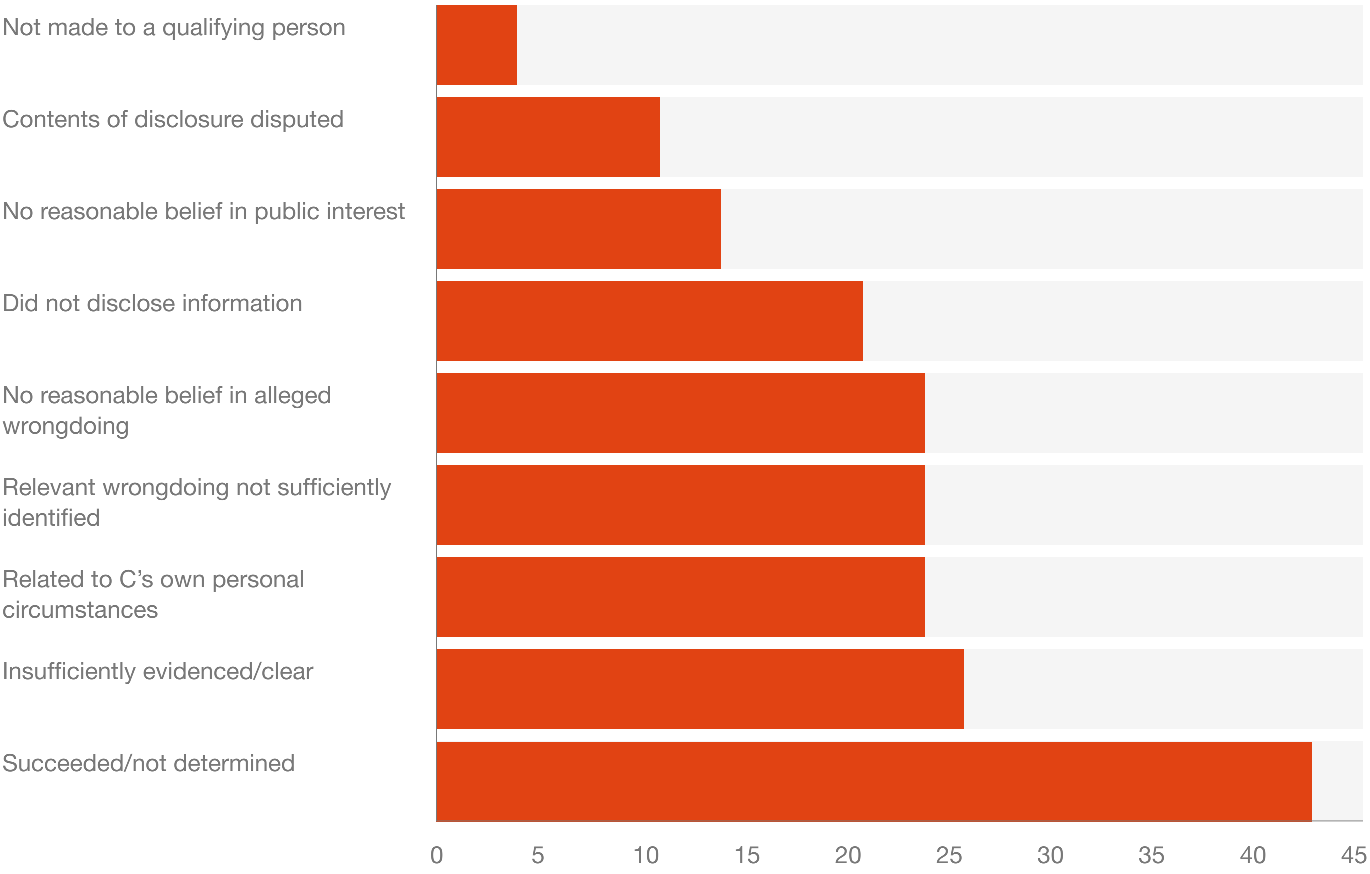
So less is usually more when it comes to the number of protected disclosures. This aligns with the PGAIR's "Practical observations", in that "*[c]ases which are complex because they rely on a large number of disclosures may make it more difficult for a claimant to succeed because there may be no clear 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.*"[53]

Analysis of protected disclosures

Turning to the substantive elements of a claim under section 103A ERA 1996, **Figure 18** presents the most common determinations made by Employment Judges in relation to protected disclosures.[54] Save for one determination (discussed further below), each essentially explains why a claimant failed on the question of protected disclosures, with more than one determination capable of applying in a given case.

[51]Source: The Reasoned 100.
[52]Source: The Success Cases (23).
[53]Para 41.
[54]Source: The Reasoned 100.

Figure 18
Analysis of protected disclosures



Three points are particularly noteworthy.

First, the most common determination was either that the claimant succeeded on the question of protected disclosures or no determination was made on it (usually because the point was conceded or the application could be disposed of on causation alone). If claimants so rarely stumbled at the protected disclosure stage, and yet succeeded in just 7% of applications,[55] this suggests that causation remained the key battleground in obtaining Interim Relief and, by extension, the most challenging obstacle for claimants to overcome.

The second is the combined prevalence of the determinations that (i) the protected disclosure was insufficiently evidenced or clear (the second most common); and (ii) the relevant wrongdoing was insufficiently identified (the fourth most common). This underscores the value of having clear documentary evidence that communicates, quickly and succinctly, the content of the disclosure(s) relied on. To borrow a phrase from another aspect of Employment Tribunal procedure, the best protected disclosures "shouted out" from the documents.[56]

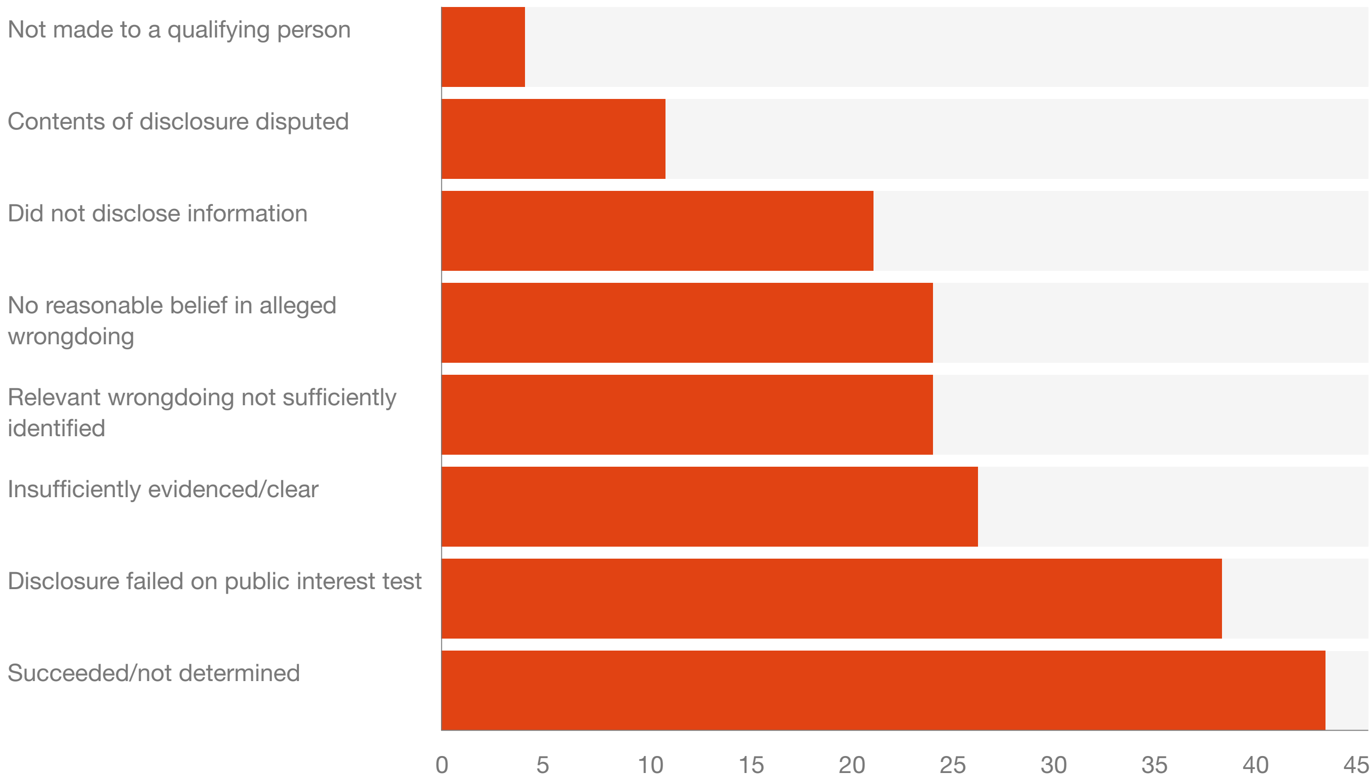
This will continue to be an important quality going forward. According to the PGAIR, Interim Relief hearings will now default to being listed for no more than three hours comprising (i) one hour for reading in; (ii) one hour for oral submissions (i.e. 30 minutes for each party); and (iii) one hour for deliberation and judgment.[57] Such time constraints will surely only heighten the need for documents that are capable of summarily conveying the substance and significance of disclosures.

[55] Figure 2.
[56] For instance, *McLeary v One Housing Group Ltd* UKEAT/0124/18/LA, para 88, in relation to construing pleadings.
[57] Para 27.

The third is the combined prevalence of the determinations that (i) the complaint related to the claimant's own personal circumstances (the third most common); and (ii) the claimant appeared to have no reasonable belief that the disclosure was in the public interest (the seventh most common).

Strictly speaking, these were distinct determinations: the former arose where an Employment Judge observed that the issue complained of was essentially a private dispute involving the claimant; the latter where an Employment Judge expressed doubts about the claimant's belief that their disclosure was in the public interest. However, there is also a case for amalgamating these two categories under the umbrella heading, "Disclosure failed on public interest test". In those circumstances, as can be seen in **Figure 18A**, the public interest requirement emerged as the most common reason for applications failing on the issue of protected disclosures.

Figure 18A
Analysis of protected disclosures
(Alternative chart)

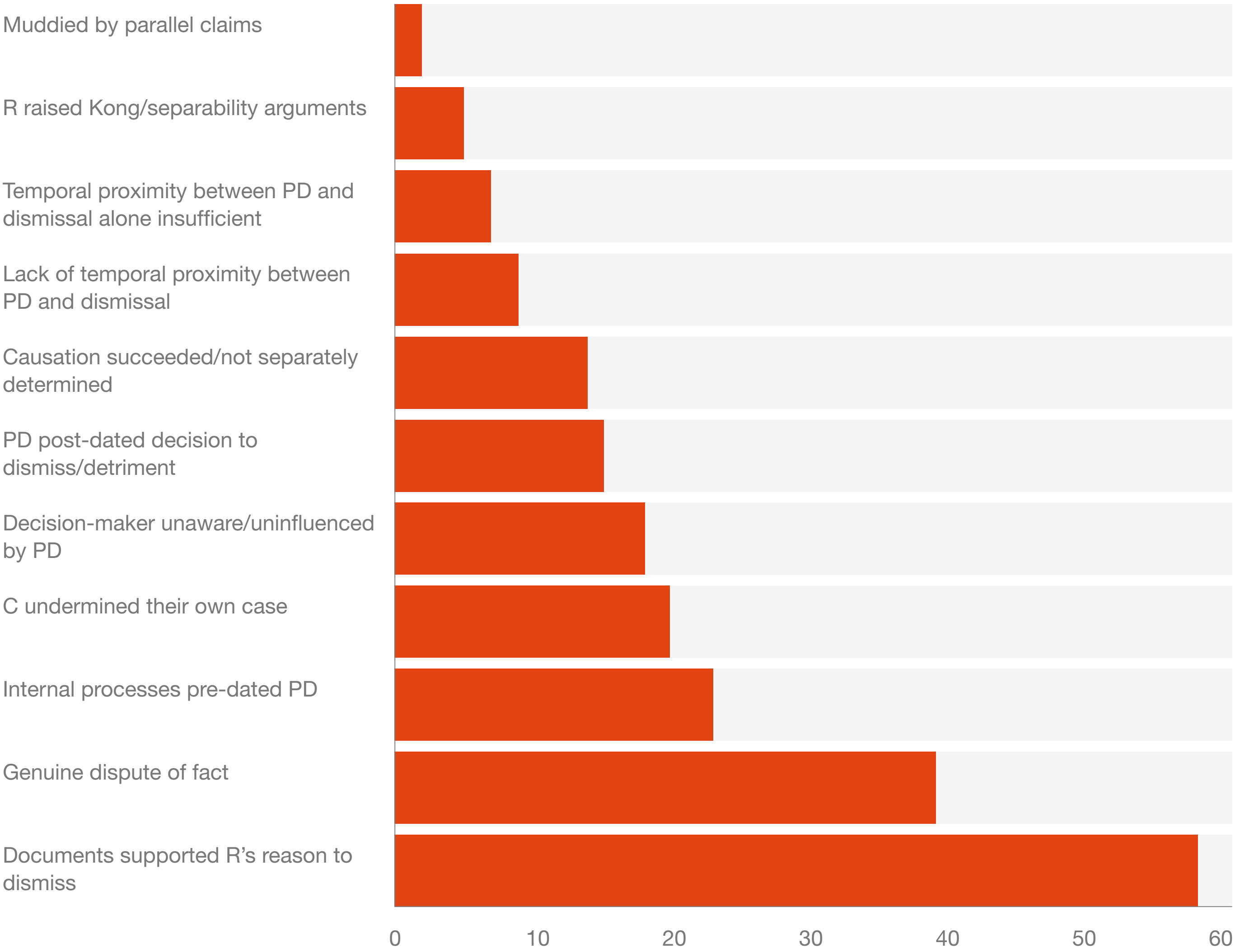


Analysis of causation

Figure 19 shows the most common determinations made by Employment Judges in relation to causation.[58] Save for one determination ("Causation succeeded / not separately determined"), each essentially explains why a claimant failed on causation, with more than one determination capable of applying in a given case.

[58] Source: The Reasoned 100.

Figure 19
Analysis of causation



Two observations are worth making.

First, there were two highly effective routes by which respondents could resist an application for Interim Relief. The first was to present documentary evidence in support of their reason to dismiss (the most common determination). This included investigation reports; performance improvement plans; and redundancy consultation papers. The second was to put forward a genuine alternative version of events that disputed the claimant's (the second most common).

This echoes the PGAIR's "Practical observations" in that: "*[i]f 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.*"[59]

It was here, though, that the lack of opportunity to test evidence by cross-examining witnesses[60] tended to work against claimants. As **Figure 19** and the PGAIR suggest, if a respondent could present just enough of an alternative case (on the basis of

[59]Para 39 of the PGAIR, recently endorsed by the EAT in *Duffy v BXTR3 Ltd T/A House of Gods* [2026] EAT 119, para 10.
[60]Figure 11.

documents or otherwise), this would invariably stymie a claimant's application, as Interim Relief hearings lack the infrastructure and appetite to resolve substantive disputes of fact. In such cases, the parties essentially reached a stalemate. And if no oral evidence was heard - as was almost always the case - the claimant was left without any means of further leveraging their case (or undermining the respondent's) to the point of showing that it was "likely" to succeed.

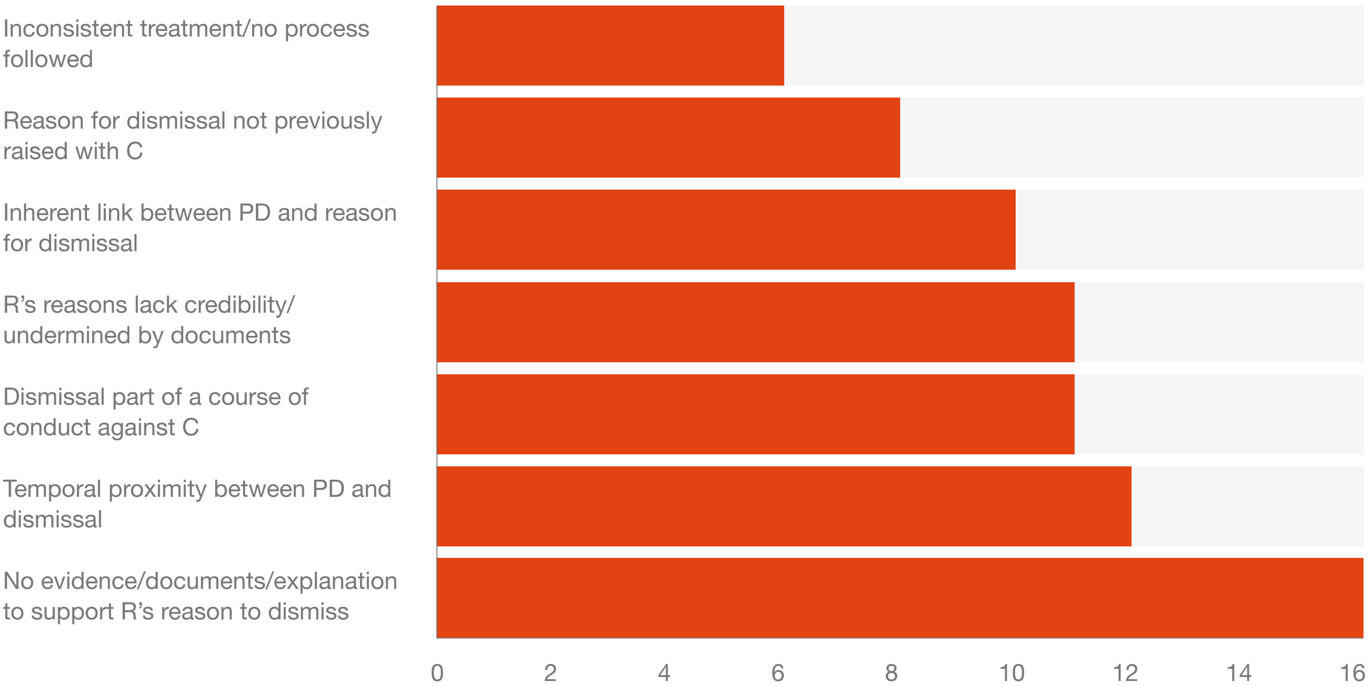
Second, **Figure 19** reveals how ill-equipped some claimants were to apply for Interim Relief. Claimants often sought Interim Relief notwithstanding that their claim under section 103A ERA 1996 had serious weaknesses. This included where a claimant (i) was already subject to the internal process that led to their dismissal prior to making a protected disclosure (the third most common determination); (ii) had inadvertently undermined their own case (the fourth most common); and (iii) made their protected disclosure after the decision to dismiss or otherwise subject them to detriment (the sixth most common).

This recalls the relatively low levels of claimant representation shown in **Figure 3**. In the examples above, a claimant in receipt of better (or, indeed, any) legal advice may well not have applied for Interim Relief at all. This would also appear to indicate that, notwithstanding (or perhaps because of) the perceived role of AI in the recent spike in applications,[61] Employment Tribunals continue to receive significant numbers with questionable merits.

Why causation succeeds

Staying with causation, **Figure 20** shows the most common determinations in relation to causation where claimants succeeded in obtaining Interim Relief, with more than one determination capable of applying in a given case.[62]

Figure 20
Analysis of causation (Success Cases)



[61] See n. 2 above.
[62] Source: The Success Cases (23).

There are three key findings here.

First, the most common reason why claimants succeeded on causation was because the respondent did not provide any evidence, documents or explanation to support their reason to dismiss. This reinforces the correlation, as shown in **Figure 6**, between successful applications and a respondent's non-attendance. It also provides the inverse to the point above in relation to causation generally: as much as respondents could frustrate a claimant's application by articulating an alternative case, those who did not could find themselves unable to resist it.

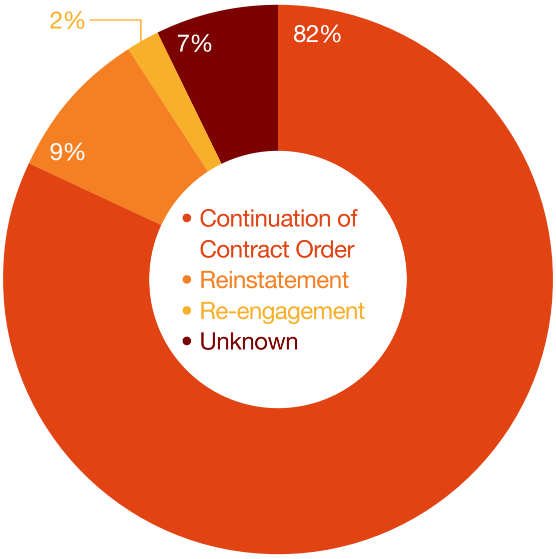
The second is that Employment Judges were often prepared to make inferences in relation to causation. If it appeared that a claimant was dismissed shortly after making a protected disclosure (the second most common determination); or as part of a course of conduct against them (the third most common); or where the purported reason for dismissal was not previously raised with them (the sixth most common), **Figure 20** suggests that Employment Judges would, in appropriate cases, read between the lines, thereby alleviating the evidential burden that may otherwise have fallen on claimants.

The third is that, where claimants succeeded, respondents often brought about their own downfall. **Figure 20** includes determinations where a respondent's reasons lacked credibility or were undermined by other documents (the fourth most common); and where they essentially revealed that the claimant was dismissed for making a protected disclosure (the fifth most common). In other words, Interim Relief applications were as much for respondents to lose as for claimants to win.

Remedy

Finally, **Figure 21** shows the remedies awarded to successful claimants.[63]

Figure 21
Remedy



By far, the most common remedy was an order for the continuation of the claimant's contract, which was awarded 82% of the time. It is perhaps unsurprising that this was so popular: a continuation of contract order does not require any material contact between the parties and, as such, is often appropriate where relations have soured beyond repair.

[63] Source: The Success Cases (44).

Section E: Conclusions

In light of these findings, what might a typical application for Interim Relief look like? More likely than not, the claimant is a male litigant-in-person who finds himself opposite a legally-represented respondent. Perhaps he claims that he was dismissed for disclosing his former employer's failure to comply with employment law or governance standards - notwithstanding that reliance on the former will probably undermine his case that he considered his concerns to be in the public interest. With limited time and documents at his disposal, this claimant may also struggle to communicate the content and implications of his disclosure(s).

If he does not fail at that stage, the odds are that he will trip up on causation. The respondent may argue that the claimant was dismissed because of his conduct or a breakdown in relations. In addition, there is a good chance that the respondent will produce documents - perhaps an investigation report - in support of that. This will almost certainly prove insurmountable for the claimant. Absent a more thorough examination of the facts, the Employment Judge will have no option other than to take the parties' competing cases at face value and refuse the application.

Viewed this way, and despite Underhill P's justification for a high threshold for success,[64] many claimants would seem to lack a fighting chance when applying for Interim Relief. Respondents can often resist applications with comparative ease; while the nature of the assessment undertaken by Employment Judges can create unequal demands on the parties in terms of documentary evidence. Added to that, many applications are seemingly pursued without the expert advice needed to traverse what is already difficult terrain. An uphill battle is one thing; an exercise in near-futility is quite another.

What, if anything, should be done about this? It was noted above that the bar to succeeding may have silently drifted upwards as the trade unionist yielded to the whistleblower as the most common type of claimant. This may justify revisiting the "likely" to succeed test.

But Interim Relief is anachronistic in other ways, too. The need for an "emergency hearing" to stave off industrial unrest belongs to a bygone era; and arguably has no application at all in the context of a putative whistleblower's dismissal. Likewise, the current backlogs in the Employment Tribunal mean that a successful claimant can now expect their remedy to last for years at their former employer's expense; whereas under the EPA 1975, it was surely envisaged to last for no more than a few months.[65] Backlogs can distort matters further by incentivising claimants to gamble on Interim Relief as a perceived shortcut to compensation or leverage in settlement negotiations.

All of which may call for a more fundamental rethink. If nothing else, Interim Relief could be more consciously tailored to the cause of action in respect of which it is now most commonly sought; and more sympathetic to the realities of the Employment Tribunal system within which it now operates. Addressing such issues may help reconfigure Interim Relief from the somewhat extreme and haphazard remedy that it has become, back to the more proportionate and vital remedy that it once was.

[64] See n. 24 above.
[65] See n. 13 above and the reference in Harvey to there being "some weeks before the complaint is heard".

Mishcon de Reya LLP
Africa House
70 Kingsway
London WC2B 6AH

T +44 20 3321 7000
F +44 20 7404 5982
E contactus@mishcon.com

mishcon.com

Mishcon de Reya
It's business. But it's personal.