

FortyTwo Talks:
A Practical Guide to Interim Relief in the Employment Tribunal
Jason Braier & Catherine Urquhart

Jason Braier: Hello, and welcome to *FortyTwo Talks*, the podcast which takes a deep dive into the legal world, led by the experienced members of 42BR Barristers.

I'm Jason Braier, and I'm delighted to be joined by Cath Urquhart. We're both members of 42BR's Employment Team, and today we're going to be discussing Cath's new book '*A Practical Guide to Interim Relief in the Employment Tribunal*'.

Cath, first of all, hello.

Catherine Urquhart: Hello.

Great to be talking about interim relief, Jason.

Jason Braier: Absolutely, and a really explosive topic, and just first of all, well done on a really well-put-together book.

Catherine Urquhart: Thanks, that's really kind. It was a lot of work in a fairly short period of time because as I think we'll be discussing it's become a hot topic recently.

Jason Braier: Very much so, and it really does what it says on the tin, it's a really great read, it's incredibly accessible, and it's full of great tips as it takes the reader on the journey from what interim relief is all the way through to remedy.

Catherine Urquhart: Yes.

Jason Braier: And it contained a few surprises for me as well.

Catherine Urquhart: Okay, well, I expect we'll come to those in due course then.

Jason Braier: And just on the pushing the book, as I'm sure your publisher would want you to do, it's available now for pre-order and is out in all good bookshops?

Catherine Urquhart: Well, it's all good bookshops with a legal bent, I think, certainly Wildys should have it, it'll be on Amazon, and it'll probably best to get it through the Law Brief Publishing website because I think there'll be some discount codes floating around there, so that might be the best value place to find it.

Jason Braier: Oh, well, there you go, everyone likes a good discount.

I wanted to start with this question, the President's brought out guidance in June, in which they explain that interim relief has exploded from 20 a year across the country to about 20 a month in each regional office.

Catherine Urquhart: I know. It's extraordinary.

Jason Braier: And my math says that that's about a 13,000% increase.

Catherine Urquhart: I'm going to take your word for it because I can't do that sort of math, but it is a very, very large increase.

Jason Braier: And my question, my first question, is the chicken and egg one. What came first, the presidential guidance or the idea for writing this book?

Catherine Urquhart: Oh, well the idea for writing this book had already come about in that the presidential guidance, which came out in June this year, was during the course of my research, but it was around about April, I was doing a lot of interim relief cases, as I think

we all are here at 42BR, and I'd also written an article or two on our website about interim relief, and I've done that over the last couple of years, in fact.

And I have a feeling that the publishers at Law Brief Publishing saw that and got wind of the fact that interim relief is a very hot topic, particularly relating to whistleblowing and they called me up and we had a chat about how the book might work, I started work on it around April/May time, and of course, when the presidential guidance came out in June, I was absolutely delighted for personal reasons because it makes the whole thing even more topical.

And that presidential guidance is extremely useful, and by the way, it's in the back of the book as an appendix because everyone involved in an interim relief application should read it.

Jason Braier: Oh, absolutely, and it gives some clear messages, and we'll get on to some of those during the course of the chat.

Catherine Urquhart: Yes.

Jason Braier: I thought it might be helpful if you were to start with a 60-second summary of interim relief, and I don't know if it's cruel to apply just a minute rules of no repetition, deviation, or hesitation, but I'm not going to buzz in.

Catherine Urquhart: You're asking a lawyer not to deviate? Well...

Jason Braier: Well, I'm asking a lawyer to say something in 60 seconds as well which is impossible for us.

Catherine Urquhart: Asking for the impossible, but I'll do my best.

So interim relief is an emergency application, the closest thing in the employment tribunal to an injunction, and it's available to claimants

who say that they've been dismissed by their employer for a reason that, broadly speaking, you would say is related to public policy.

So, in most cases these days it's whistleblowing, they say they're a whistleblower, and that's in the public interest, and that's why they've been dismissed, but there's also a range of other less used ways to bringing an interim relief claim. Probably the second most common would be undertaking trade union activities in various guises, acting as a health and safety rep, and a few other frankly pretty obscure ones where there's very little case law.

But the claimant who says they've been unfairly dismissed for one of these reasons has seven days to put in an application for interim relief into the Employment Tribunal and if they succeed, as I'm sure we'll come on to talk about, the remedies are reinstatement or re-engagement by the employer until the final hearing, or the big prize, I suspect for many claimants, continuation of contract order, which means they get their salary paid until the final hearing of their claim and they never have to pay it back, and they don't have to go to work.

Jason Braier: 74 seconds there. Not too bad. I didn't stop you, but that, that was pretty impressive.

Catherine Urquhart: Oh Jason, okay thank you.

Jason Braier: That was pretty impressive. One of the clear messages of your book, as with the presidential guidance, is that interim relief applications are really hard to win.

Catherine Urquhart: Yes.

Jason Braier: And now I've never appeared in one where the claimant has succeeded.

Catherine Urquhart: No, me neither.

Jason Braier: You haven't?

Catherine Urquhart: No.

Jason Braier: No, that's fair enough, and the question I suppose then is why are they so hard to succeed in?

Catherine Urquhart: Yes, good point.

Well, the real answer to that I think, is in the legal test. The legal test for succeeding in interim relief is higher and harder to win than the legal test at the final hearing.

And just to briefly explain, at the interim relief hearing you have to persuade the judge that you are likely, at the final hearing, to win your dismissal claim by proving that you were dismissed for that unfair reason in terms of the public policy points I made. So, you've got to show at the interim relief hearing, say you're alleging whistleblowing, that at the final hearing you will succeed in showing you were a whistleblower and that was the reason for the dismissal.

And rather than the usual basis on which you might win your final hearing claim, that's balance of probabilities, 51% is what you need to get to, with the interim relief application, you need to get to a much higher likelihood of success.

The key case is *Taplin*, which is in the book and is the main authority really in all interim relief applications, you need a pretty good chance of success.

Jason Braier: And what on earth is a 'pretty good chance'? I mean, that's such a weird term.

Catherine Urquhart: Yes well, you're right, because in *Taplin*, they deliberately decided not to put a percentage figure on it, and a lot of

commentator's bandy around, "well, you need to get to 70 or 80% rather than the 51% to persuade a judge at the interim relief hearing that you're going to succeed at the final hearing."

Nobody's ever gone as far as putting a figure on it, but I don't think it's such a bad idea to think of it as being in the region of 70 to 80%. It's definitely a much higher test than at the final hearing, you've got to have some really cogent evidence to persuade the judge, and don't forget, you've only got about half an hour to make submissions in your interim relief application.

So, you've got to have a great, simple, ideally well-documented case that you can put in front of the judge and within a very short period of time persuade them to that high standard that you're onto a winner.

Jason Braier: I think the presidential guidance talks about something nearer to certainty than mere probability which I think they get from the *Sarfraz v Ministry of Justice* case.

Catherine Urquhart: Yes, I think that's where it's come from, yes.

Jason Braier: And I've always wondered what that actually means. Does it mean on a percentage basis you've got to get nearer to certainty, i.e. nearer to 100% than mere probability, which is 51% so again, with a bit of simple math, 75.5%?

Or does it mean that you've got to get nearer to certainty than mere probability is, a bit above the 51%?

Catherine Urquhart: I mean, I haven't construed those words in the detail that you're going into, Jason, but I would simply take it as meaning you've got to be much more persuasive at your interim relief application than even at your final hearing, and the legal test is much harder to surmount.

I don't think I can really go behind those words any further than that.

Jason Braier: And with them being so hard to win, what's the point in trying?

Catherine Urquhart: That's a very good question, and it often comes down to tactics.

As we know, the tribunals are terribly badly backlogged, I don't know about you, Jason, but I've got cases in my diary going into 2029, I even had one for 2030 recently.

Jason Braier: Yes.

Catherine Urquhart: It's absolutely bonkers and very frustrating for all parties, frankly, waiting two, three or even four years for a final hearing of your claim, of the claimant's claim. So, I suppose some claimants might take the view that, well this gets heard really quickly, interim relief applications are dealt with within a few weeks of being made, and if I win, then happy days, I've got a presumably some sort of financial resolution of my claim for the time being until we get to the final hearing. So that might be some of their thinking.

And tactically they might think, 'well, I'm going to put the respondent on notice straight away that they're in for a fight, and also I might be able to flush out some useful documents before we get to the formal disclosure stage'. That might be another reason that claimants want to have a go.

And I suppose thirdly, there's not really a downside to making an application if you have a proper argument that you were dismissed for, say, whistleblowing because it's extremely unusual to have an award of costs made against claimants in these situations, although it is possible for unreasonable behaviour, and I think there's one of the authorities in my book, is it *Stormsure*, where Mr. Justice Cavanagh

says, 'well, you know, don't really see why claimants wouldn't have a go at it because...'

Jason Braier: Yes, see that was the case where they tried to extend interim relief to discrimination cases.

Catherine Urquhart: Yes, indeed.

Jason Braier: Which would've exploded things far, far further than that.

Catherine Urquhart: Oh, my goodness me, well, it was quite interestingly, presciently in that case, I think it was Lord Justice Bean who said, 'well, if, if we allow this, it'll really expand interim relief, and it could really clog up the courts'. I'm slightly paraphrasing, and of course, that's exactly what's happened without the expansion into discrimination because I think AI is telling claimants a lot of the time that this is a great thing to do and no reason not to do it, and AI's sort of right about that and the presidential guidance refers to artificial intelligence as being one of the reasons that they think there's been a huge increase in claims.

Jason Braier: You say there are no downsides, is there any downside in terms of the way that the respondent employer seeks to treat a claimant?

Catherine Urquhart: Well, it's interesting because actually respondents, and I usually act for respondents, as I think you probably do, Jason...

Jason Braier: Yes.

Catherine Urquhart: ...respondents often say to me, actually, it doesn't promote settlement or help deal with this quickly at all because our backs are immediately put up by the fact that we have to

spend time and money within a very short period of time, these come along very quickly, to deal with this very important application because if we lose, we've got an awfully big bill to pay essentially, or a problem of reinstatement or re-engagement. So tactically, some claimants I think, think that it's going to be a way to promote settlement, and maybe it is in some cases, particularly if the respondent knows it's onto a sticky wicket. But I think often respondents just get very cross about it from the word go, and it might drive the parties further apart.

So tactically, I'm not sure it's always going to have the effect the claimant wants.

Jason Braier: There's also, isn't there, the possibility that a judge in determining whether or not there's a pretty good chance, makes some comments that are negative as to the prospects of success for the individual claimant that perhaps surprise them or put them on the back foot tactically in terms of trying to get a decent settlement over the course of time.

Catherine Urquhart: Yes well, and that might make a respondent think, 'oh, well, they didn't do so well there, did they? We're going to fight this to the hilt', and certainly if you lose your interim relief application, you can still go on to win at the final hearing, and likewise, if you win interim relief, you can go on to lose at the final hearing. So, one is not determinative of the other, although it might give some clues to the way things are going.

Jason Braier: Now, you touched on this slightly before, but let's say a claimant isn't put off by the low chances, they decide to go ahead with it, what's your advice to them on how to have the best chance of succeeding in this application?

Catherine Urquhart: Yes, great question, Jason, and I'd like to refer at this point to a report that Mishcon de Reya have put out about a week ago by a gentleman called Suresh Patel, who was at Mishcon's, he's now gone off to be a pupil barrister at a rival set.

Jason Braier: We shall not name them.

Catherine Urquhart: We shall not, I'm afraid, but well done Suresh, he's done a great piece of work with Mishcon's.

The forward's been provided by Sybille Rafael, the joint chief executive of *Protect* which is the whistleblowing charity, they're very much on board with the findings of this report, and it's interesting in a number of ways, and one of the things it's interesting in is, well, let me start from this point, it's done research which shows that only 7% of claimants' cases as interim relief succeed, it studied about 500 tribunal cases over the last six years or so, found that 7% of them succeeded.

Jason Braier: And I think 25% of those that succeed do so because the respondent doesn't turn up.

Catherine Urquhart: That's right, yes. I mean, so it was an easy win, that doesn't say anything about the merits of the case in that situation, so, word to the wise, if you're a respondent, just turn up, that's half the battle, turn up and make a fuss.

But yes, how do claimants best succeed?

So, the research from Mishcon's has got a few good pointers here. Well, one is that the respondent doesn't turn up or indeed provides poor or no evidence but also focusing on a few good points is a really good way to succeed.

Jason Braier: I think that there was a graph in there from memory as to the chances of success dependent on the number of disclosures

you rely upon and wasn't it the fewer disclosures the more likely you are to succeed because you're showing a clearer path between the protected disclosure and the dismissal?

Catherine Urquhart: Yes, that's absolutely right, and the presidential guidance echoes this. If you've got one or two really strong protected disclosures, that's going to be a lot easier for you to work with than half a dozen or more of the sort of vague, waffley ones where you say, 'Well, I sort of raised this, and it was all a bit...'

I mean, what comes clearly out of the Mishcon's research is that you need really clear documentary evidence of these disclosures. So quite often in litigation, protected disclosures have been made orally, and that's entirely legitimate, but to evidence that, it's going to be very difficult to evidence that in your half an hour of submissions only in front of the interim relief judge, that's a matter for the final hearing.

So really, if you're going to get anywhere with an interim relief application, you need to have your whistleblowing disclosure in an email somewhere or in a document so you can point to the judge and say 'look, here it is', and one of the cases that Mishcon's looked at, the judge said the best protected disclosures shouted out from the documents, it was really clear what they were.

And the next point to make is, I think I touched on it a minute ago, don't rely on a blizzard of, a flurry of, protected disclosures. If you're trying to establish in the short time of an interim relief hearing that you made 10, 20 disclosures, and they must be the reason for your dismissal, the judge is not going to have a chance to deal with all that.

Jason Braier: Not only not going to have a chance to deal with it, but how realistic is it that the individual that made the decision was thinking about all of these things, some of which may have been a

couple of years ago hidden in some random email, you know in some paragraph?

Catherine Urquhart: Exactly. You're going to have a real difficult argument on causation. And, and just a final thought, with a protected disclosure, you can't just say, 'I'm a whistleblower because I said this to Fred by the water cooler'. You've got to establish that you disclosed information, that it tended to show one of the seven matters in Section 43b(1), that you reasonably believed it to do that, that you reasonably believed it was in the public interest, that you made it to the appropriate personal body.

There are half a dozen tests before you even get to causation, 'that's the reason that I was dismissed'. Trying to get through that in the half an hour of submissions in the interim relief hearing is really difficult. So, you need to marshal your arguments very carefully.

Jason Braier: Now, looking at it from the other side, from the other party's perspective, unlike all other employment tribunal hearings at the moment, which have to be put off as far as possible into the future, after we've all retired, an interim relief application has to be heard as soon as practicable, subject only to the respondent getting seven days' notice at least of the hearing...

Catherine Urquhart: That's right.

Jason Braier: ...So, with such short prep time, what's your advice to respondents about what to really focus on?

Catherine Urquhart: Yes, that's another good question that respondents always have when I'm working with them on such a claim.

The key thing to remember is that the interim relief judge is deciding only this one issue - is it likely that at the final hearing, the claimant

will show they were dismissed for this unlawful reason, i.e typically the whistleblowing? That's the only thing they're deciding, they're not interested in discrimination claims or any other types of claim that might be on the way.

So, the respondent needs to focus on that issue. Let's say the respondent's case is, 'well, no, we dismissed them because they were hopeless at their jobs, it's a capability dismissal', or 'we dismissed them because of their conduct. You know, they had a fight in the canteen'. In those situations, there should be documents that the respondent can deploy to show those things, so a course of meetings and discussions, emails, disciplinaries, dismissal letter which one would hope would set out these clear reasons for the dismissal, and that's what the respondent needs to come up with.

Whether they do that in the form of a draft ET3, because usually these hearings happen before the ET3 is actually due, or a witness statement from the dismissing manager, doesn't matter too much so long as you've got a cogent narrative in documentary form that you can present to the judge and say, 'no, here's a hard stop. This was absolutely not whistleblowing. This is our evidence, and you're going to have to decide it at the final hearing. You can't make a decision here'. And the presidential guidance, very helpfully for respondents, says, 'well, if a respondent's got a cogent case like that, it's going to be really difficult for the claimant to succeed'.

Jason Braier: Yes, it's trying to discourage claimants from bringing these applications.

Catherine Urquhart: Well, my interpretation of the presidential guidance, although they don't say it, is that it's very discouraging to claimants because they're desperate to get down the number of these, many of them absolutely hopeless, claims that are clogging up the system.

Jason Braier: No, absolutely.

Let's have a look at the remedies. You mentioned them briefly before as reinstatement, re-engagement, and continuation of contract order.

Catherine Urquhart: That's right.

Jason Braier: Can you expand on that a little bit?

Catherine Urquhart: Yes, of course. Well, very brief history lesson. Interim relief came about in the '70s as a remedy for trade union disquiet and trade unions perhaps much stronger in the '70s arguably, and it was one out, all out if there was any problem on the shop floor and interim relief came in in about 1975 as a way of sort of assuaging the feelings and calming down the union dispute, and it was only available for trade union related claims at that point, and then in the late '90s, 1999, it expanded into whistleblowing, and that's where we are now.

So back in the '70s where we were really looking at trade union claims, reinstatement was often a very sensible remedy, get them back into the workplace just until the final hearing to avoid everyone being called out on strike. So, the formula for remedy is that if reinstatement is offered, that's it.

Jason Braier: When you say that's it, you mean if it's offered by the employer?

Catherine Urquhart: If it's offered by the employer at a, let's say the interim relief application succeeds, the employer says, 'okay, well, we'll have you back', that's it, there's no discretion. As I understand it, for the tribunal to turn around and say, 'well, no, let's have a think about that for a minute', as they might do in an ordinary unfair dismissal...

Jason Braier: Yes.

Catherine Urquhart: ...it says reinstate them first, if not, re-engage in another job on terms and conditions no less favourable than they had if they hadn't been dismissed.

Jason Braier: And for re-engagement, the claimant can seek to refuse that offer, and then there's a question as to whether or not that refusal is reasonable whatever reasonable means there.

Catherine Urquhart: Yes absolutely.

If they unreasonably refuse re-engagement, then the tribunal won't make any order. If they reasonably refuse re-engagement, the tribunal will go on to make the third type of order which is, as you say, continuation of contract order possibly a slight misnomer, which we might come to in a minute, but what that means, and I suspect this is sort of the holy grail for a lot of claimants, is that you get paid your salary, your normal regular salary, from the time of the dismissal up to the final hearing, which as we've discussed could be a couple of years down the line, and you do not attend work, so yes, happy days.

Jason Braier: It basically allows you to go on holiday for a couple of years while still getting your pay, that's the essence.

Catherine Urquhart: I mean, it's amazing, yes. It's an absolutely amazing thing for any claimant to get, being paid without having to go to work, free to take another job, although there may be reasons that that needs to come before the tribunal if you did, but no incentive to get another job either but it's just a very happy situation, I imagine, if you're in that position.

Jason Braier: No, indeed.

And we'll get onto that in a moment, you said until the final hearing. One of the things that surprised me in your book, because it's a case

that I wasn't aware of previously, was the case of *Zucker v Astrid Jewels*, where they say it goes beyond the final hearing.

Catherine Urquhart: Well yes, this surprised me when I read it as well, we're digging around and in case law *Zucker v Astrid Jewels* is a case from 1978, so again, we're back in the time when only trade union related cases were available for interim relief.

Jason Braier: And also, a time when employment tribunal hearings came up quickly.

Catherine Urquhart: Yes exactly, you didn't wait two or three years to get heard it was more like two or three months, I would've thought, and probably a slightly more claimant-friendly regime in terms of interim relief, because quite a lot of the cases I looked at from the '70s were very claimant-friendly, they would say, 'oh, well, you've missed a seven-day deadline, but never mind we'll sort of fix it this way'. And things that I suspect would not be decided in that way these days.

But *Zucker* is, yes, is quite extraordinary really, she gets interim relief in July of 1977, but in December, at the final hearing, she doesn't win her claim, and so of course the respondent stops paying her under the continuation of contract order, as you would expect, but she appeals the decision that she didn't win the overall hearing. The appeal's heard in July of '78, by which time she's got another job, and the judge decided that her interim relief should continue from that December final hearing date until she got that second job. So, it continues on beyond her failed unfair dismissal claim.

So, as I've said in my book, it's a very claimant-friendly decision, and it raises the question, how long can you spin it out as a badly intentioned claimant? I mean, let's say you're a claimant, you've got your interim relief, you get to the final hearing, you lose, you could put in, I can't see why you wouldn't put in at least to get sifted a poor appeal or

indeed any appeal. There's going to be a period of some weeks or months until it gets sifted.

Jason Braier: Well, I mean, that could be a period of a year. I mean, sift plus 310 is about 18 months at the moment.

Catherine Urquhart: Yes, ages.

Exactly, so if you're on the basis of *Zucker*, you can certainly argue that I should be entitled to the process of my claim hasn't finished, and so I should be entitled to be paid again under the CCO until the end of that period.

Jason Braier: And then if it's then remitted, if you succeed in the appeal it's remitted, you could be talking about 10 plus years of a CCO order at the moment.

Catherine Urquhart: I mean, well 10 would be going some, but I know some cases do go on and on and on. And I strongly suspect that *Zucker*, although it's good law, I've not seen anything really challenging it, fairly unusual circumstances, and I would be very surprised if a respondent didn't put in a very strong argument against that, that all the surrounding circumstances are very different to the days when *Zucker* was going through the tribunals because, of course, now we've got these very long delays, and I'm sure that a judge will be sympathetic to that point.

Jason Braier: Now talking about the very long delays, one thing you note in your book is that in the *Al-Qasimi v Robinson* case, Lord Justice Singh talked about the fact that neither reinstatement nor re-engagement really occur in practice. Now, I can understand that on an employment relationship level, having someone back that you've dismissed, you know, all the difficulties with that, but I'm kind of

wondering whether employers are missing a trick here. I'm not sure if this has ever come up, but does this work as a thought experiment?

A continuation of contract order, as we've just been discussing, might last for a number of years, could an employer agree to a reinstatement, which the employee then has to accept or there's no order at all?

Catherine Urquhart: That's right.

Jason Braier: And then find some new reason to dismiss outside of Section 128 and then dismiss and stop paying the claimant with the hope of them persuading a second employment judge not to grant any new interim relief application so that they don't have to keep on paying for all that time, they can put their own stop to it?

Catherine Urquhart: Well, it's a really interesting and slightly evil sort of thought about how you might try and get round the possibility of this continuation of contract order going on for years and years. I think any respondent going down that route would have to be very, very clear on their reasons for the second dismissal, because the first thing the judge is going to do is say, 'well, hang on here, you're just trying to get out of paying the CCO'. So, as you say, I'm not aware of that having happened in practice, I'd be delighted to hear about any case law that I've missed on this, because it's a very interesting scenario.

Jason Braier: I don't think there is any.

Catherine Urquhart: No, I mean, if you can't find anything, Jason, I'm confident that there isn't.

Jason Braier: Ah, well, that's very kind of you.

Catherine Urquhart: But I mean, it's a fascinating thought. How would it play out? It's going to be very fact-specific because it's such

an unusual suggestion, but yes, any respondent going down that route is going to need to be very careful about how they treat that employee who's been put back into the workforce.

Jason Braier: A couple more questions.

Catherine Urquhart: Yes.

Jason Braier: You spoke before about the fact that if someone gets a new, well, I think you said they don't have to mitigate or words to that effect, so they've got no requirement to look for a new job during that time, they can happily sit there watching Homes Under the Hammer and Countdown for years on end.

But if they do get a new job, what then?

Catherine Urquhart: Yes, if they get a new job, they should, I would say, although they're not compelled to by the statute, contact the tribunal about that, and indeed the respondent, if it finds this out, will want to contact the tribunal, it's called a 'Variation of Contract Order'. So, let's say the respondent finds out about it, they're going to write in and say, 'there's been a change of circumstances and it's not fair for us to continue paying. They're getting two salaries. They've obviously got a new job they're happy with'. So, you can apply to get out of the CCO at that point, and arguably the claimant should front that up as well and the claimant, if represented, their representative might feel they have a duty to the tribunal to front this up.

Jason Braier: Yes, I wonder if it would be unreasonable conduct to keep that secret for a long time.

Catherine Urquhart: I think that's a good argument because it's quite hard, well, it's really hard, it's not possible to get back payments made under CCO, there's no mechanism to recover it. I mean, it can be offset against any final awards you win at the final hearing, but of course, if

you don't win then there's no, again, there's no way for the respondent to get their hands on it again.

There is a case at first instance on this topic, which I mention in the book. It's called *Fleming v Abbey Metal Ltd*, but it's from the Glasgow Tribunal, so it's not binding on anyone, it's not an appeal authority, but here the claimant won interim relief and a CCO was ordered. The payment started in February, and then in March, claimant started a new job on a higher salary, so had these two income streams at the same time. In May, so two months later, the respondent successfully applied for the CCO to be revoked, and the tribunal decided that the new job was a relevant change of circumstance and revoked that.

Well, they backdated the revocation to March when the new job started, but there was no mechanism for the respondent to recover the £2,000 or so it had overpaid under the CCO between March and May. The only remedy for the respondent was to offset that against any further payments found due to the claimant at the final hearing.

So, we don't have appeal authority on that point, but certainly the statute provides for, and I think, you know, common sense tells you that you trot off to the tribunal as soon as possible if you find that they've got a second job.

Jason Braier: Now, there's a lot more that I could ask you, but I think that the answer to that is people just need to buy the book and see all the gems in there.

Catherine Urquhart: You're very kind, Jason, and absolutely right, of course.

Jason Braier: But I would like to ask you a last question, and that has to be for your predictions going forward, because we have an administratively unsustainable expansion of a form of application

which requires judicial urgency but without the judicial capacity to meet it, or at least to meet it without postponing every other PH and trial that we all have in our diaries, and where over 90% of the applications heard fail, what can be done to relieve that burden? Or some of that burden?

Catherine Urquhart: That is, again, Jason, a very good question, and I suspect the Tribunal Presidents and Tribunal Judges are pretty much tearing their hair out about this increase in interim relief applications because, let's be honest, the way to get rid of almost all of them is to change the law so that you cannot apply for interim relief if you claim you're a whistleblower.

Well, that's going to go down very badly, not least with the charity *Protect* I mentioned earlier, and of course, it's a huge denial of access to justice, and there's absolutely no suggestion anybody's thinking of doing that, but that would simply get rid of 97% of cases at the moment.

So apart from that dramatic and highly inappropriate suggestion, what else can be done?

Well, public education, trying to get claimants to understand how hard it is, I guess that's what the presidential guidance and hopefully to some extent my book are trying to do.

Jason Braier: Sure.

Catherine Urquhart: I suppose the other access to justice issue is around fees. Should you impose a fee in order to bring such an application?

Fees are very unpopular, and the Supreme Court ruled them out, what, a dozen or so years ago. So, I don't see fees being reintroduced just for this type of application would fly. Overall reform of

whistleblowing law is something that the charity *Protect* are interested in, that's not a short-term fix either. So, there's a real problem in knowing how to fix this, unfortunately.

It has spiralled out of control from 40-50 years ago when it was a very limited trade union-related remedy to being almost the default position for every claimant now to pop in a claim, no matter how meritorious or otherwise.

As you say, it clogs up the system in that these claims have to be heard very quickly, other claims get pushed back. I suppose the only practical remedy at the moment is for judges to start putting awards of costs in much more frequently if the application for interim relief has really been poor, but even that may not deter claimants because that happens after the process. They have the chance to argue against costs, so they might not see that as a deterrent at all, and presumably, each claimant thinks they've got a great case when they go into an interim relief hearing.

So, I have to say, I'm kind of out of ideas to what the immediate fix would be. I don't know if you've got any.

Jason Braier: No, I don't really. I think we'll leave that to the Presidents to try to work out

Catherine Urquhart: Yes, I'm very glad it's not my problem to solve, but I have to say, it is a problem for the tribunal, which is creaking under the weight of this huge increase in cases.

Jason Braier: No, absolutely. Well, thank you very much for that, Cath.

Just to remind everyone, the book is called '*A Practical Guide to Interim Relief in the Employment Tribunal*'. It makes the perfect birthday or early Christmas present, or a present just to say to someone that you're thinking of them.

Catherine Urquhart: Absolutely.

Jason Braier: Thank you for tuning in to *FortyTwo Talks*, we hope you enjoyed the podcast.

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Bye from me.

Catherine Urquhart: And goodbye from me, and thanks for listening.