BIRMINGHAM LAW SOCIETY

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Response to the Tribunal Procedure Committee's Consultation on potential further changes to the Employment Tribunal Rules 2024.

May 2025

Response of the Employment Law Committee of the Birmingham Law Society to Consultation on potential further changes to the Employment Tribunal Rules.

This response has been prepared by the Employment Law Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Employment Law Committee whose members include specialists in employment law from all branches of the legal profession.

Response to consultation on potential further changes to the Employment Tribunal Rules

Question 1: Do you agree with the proposed changes to rule 4 and the proposed rule 52(1)(f)? If not, why not?

We agree that the proposed changes to rule 4 and the proposed rule 52(1)(f) will make the Tribunal's powers in relation to preliminary hearings for the purpose of dispute resolution clearer and therefore make the rules easier to understand.

However, there is a real risk that a party (more likely an unrepresented claimant) will make public statements about any positive evaluation of their case, including referring to it in witness statements or on social media.

Therefore, Rule 4(3) should make clear that any evaluation is confidential to the parties only and cannot be divulged to any third party or referred to in any public statement, including on social media, and is inadmissible in evidence and is non-binding on the Tribunal in the event of a final hearing.

Question 2: Do you agree with the proposed changes to rule 13(1)(b) and rule 18(1)? If not why, not?

We agree with the proposed changes to rule 13(1)(b) and rule 18(1). We agree that the formulation "cannot sensibly be responded to" is out of step with other procedural rules and lacks clarity. We agree that a requirement to provide "grounds for the claim" or "grounds on which the respondent resists the claim" are phrases which are in common use and widely understood.

However, in relation to rule 18(3), the requirement should be qualified with the words "**main** grounds on which the respondent resists the claim". The reason for the qualification is that many claim forms are drafted by litigants in person, and therefore not always clearly drafted. In such circumstances, it is easy to miss a ground of claim. It would be disproportionate if a claimant is able to apply to strike out on the basis of any such inadvertent default.

Question 3: Do you agree with the proposed amendment to rule 26? If not, why not?

We agree with the proposed amendment to rule 26. We agree that the proposal would be in accordance with the overriding objective of the Employment Tribunal Rules, particularly given

the high number of litigants in person (31% of claimants in 2023/24 had no representation recorded1).

Question 4: Do you agree with the proposed rule 30(4)? If not, why not?

We agree with the proposed rule 30(4). We are supportive of measures which may save judicial time. However, we fear that any saving in judicial time will be of limited benefit given the current landscape in the Employment Tribunal. We believe that more radical measures are required to address the backlog of tribunal cases in circumstances where:

there were 43,000 open single case tribunal claims in the last quarter of 2024 (up 31% compared to the same period in 2023/242); and

- the Government's own economic analysis suggests that suggests that the Employment Rights Bill could increase the volume of cases in the 'individual enforcement' system by around 15%3; and
- it takes 49 weeks on average for a Tribunal case to reach its first hearing4.

We invite the Government to increase the funding of both the Employment Tribunal Service and ACAS and to increase the number of fee paid and salaried Employment Judges.

Further, although the Tribunal has wide powers of case management, including making deposit orders and striking out hopeless claims and/or specific allegations, there is a reluctance from the judiciary in using those powers (possibly for fear of being appealed). This lack of pro-active case management exacerbates the backlog as unmeritorious allegations lead to longer hearings and listing delays, affecting all service users.

Question 5: Do you agree with the proposed change to rule 65? If not, why not?

Although there may be an administrative burden to publish multiple judgments for repeated re-consideration applications, there is a public interest to record and publicise such behaviour. We express caution that this proposed rule change appears to attempt to address vexatious conduct in the proceedings by a party. Perhaps a better approach, which would in no way compromise open justice, is to create more robust powers to deal with such vexatious conduct, and any such judgment would be publicly accessible to ensure open justice.

Birmingham Law Society Employment Law Committee

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[1] Tribunal Statistics Quarterly: April to June 2024 - GOV.UK
[2] Tribunal Statistics Quarterly: October to December 2024 - GOV.UK
[3] Employment Rights Bill economic analysis
[4] Employment Tribunals Service: 8 Feb 2023: Hansard Written Answers - TheyWorkForYou