Consultation on possible amendments to the costs/expenses rules in the First-tier Tribunal, Upper Tribunal and Employment Tribunals

July 2026

About us

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar

- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Tribunal Procedure Committee consultation on possible amendments to the costs/expenses rules in the First-tier Tribunal, Upper Tribunal and Employment Tribunals.[1]

<u>Questions on payments on account of costs and interest on costs</u>

Question 1

Do you agree with:

1. **the proposal to introduce rules in the Immigration and Asylum Chamber of the FtT and the Employment Tribunals, to make orders for payment on account of costs; and**
2. **To adopt a common approach to the drafting of those rules across all chambers of the FtT and UT (and, so far as possible, in the ET), to ensure consistency**

1. We are only able to respond to this question in respect of the Employment Tribunal rules. We are not able to respond in respect of the other tribunals.

2. In the Employment Tribunal: yes. Where the Employment Tribunal has made an order for costs to be assessed by detailed assessment, we consider that the Employment Tribunal should have the power to make an order for a payment on account. Detailed assessments can be made by the Employment Tribunal under ET Rule 76(1)(b)(i) applying the principles asset out in the Civil Procedure Rules 1998. Such assessments may require a separate hearing. Given the backlog in tribunal cases at the moment, that hearing may not be listed for many months, or even years. A payment on account would ensure that the party which is owed costs has at least a

References

[1] Consultation on possible amendments to the costs/expenses rules in the First-tier Tribunal, Upper Tribunal and Employment Tribunals

part-payment towards them while it waits for the detailed assessment to take place. The Employment Tribunal has jurisdiction to summarily assess costs in a sum not exceeding £20,000 – see ET Rule 76(1)(a). We consider that the Employment Tribunal's power to make an order for a payment on account should match this, so that a payment on account cannot exceed £20,000. We consider that it is important to highlight that the Employment Tribunal does not have enforcement powers: if a costs order is not paid it has to be enforced in the same way as a debt in the County Court. This means the party which should have received those costs has to incur the time and expense of enforcement proceedings in an entirely new jurisdiction. The ET also does not have a mechanism for paying costs into the Tribunal. By way of illustration, deposit orders have to be paid by cheque or postal order. These practical issues are beyond the scope of this consultation paper, but are worth highlighting because they limit the effectiveness of any amendments to the costs rules.

3. Yes. While different jurisdictions may necessitate different rules, consistency in the drafting of those rules would assist access to justice. These jurisdictions are frequently used by litigants in person. Plain, accessible language which is consistent across the tribunals would assist those litigants in particular. We consider that the powers of each Tribunal to award costs should be clear and explicit so that they can be easily understood by all parties.

<u>Questions about PBCOs</u>

Question 2

Do you agree that PBCOs should continue to be available in FtT, the UT and the ET but not in the Social Entitlement Chamber and War Pensions and Armed Forced Compensation Chamber of the FtT? If not, please say why.

4. We are only able to respond to this question in respect of the Employment Tribunal rules. We are not able to respond in respect of the other tribunals.

5. We agree that PBCOs should continue to be available in the Employment Tribunal.

Question 3

Are there any other matters which the tribunal should be *required* to have regard to by rules when making PBCOs?

6. We are only able to respond to this question in respect of the Employment Tribunal rules. We are not able to respond in respect of the other tribunals.

7. In the Employment Tribunal: no.

Question 4

Do you have any views about whether there should be:

(a) a short, permissive, rule referring to the relevant portions of section 194A of the Legal Services Act 2007, or

(b) a detailed PBCO regime created in each set of Procedure Rules (excluding the Social Entitlement Chamber and War Pension and Armed Forces Compensation Chamber Rules)?

Question 5

Question for both areas of consultation

Do you have any other comments?

We have one comment in respect of the Tax Chamber Rules.

As currently drafted, the costs rules for wasted costs/unreasonable conduct under Rule 10 are as follows (emphasis added):

> *(a) under section 29(4) of the 2007 Act (wasted costs)* ***<u>and costs incurred in applying for such costs</u>****;*
>
> *(b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;*

When first reading those rules, a party may assume that, in an unreasonable conduct case (i.e. within rule 10(1)(b)), it is not possible to claim the costs of the costs application. The reasoning would be the absence of the underlined words as found in (a). However, the general practice in the Tax Chamber has been to say that the right to costs of the application is implicit. We think it would be helpful for the underlined words to be repeated in (b) so as to put the matter beyond doubt.

Contact

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