



Bar Council response to the Tribunal Procedure Committee Consultation on potential further changes to the Employment Tribunal Procedure Rules 2024

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 potential further changes to the Employment Tribunal Procedure Rules 2024.¹

The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 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 the justice system and the rule of law
- 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 are 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.

¹ [Potential further changes to the Employment Tribunal Rules - GOV.UK](#)

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

We regard this change as largely cosmetic and note that Dispute Resolution Appointments (DRAs) are dealt with differently in different regions within the Employment Tribunal of England and Wales with some regions mandating them in cases of certain length for example.

We would note that experiences of DRAs are mixed. Some are successful. However, in other cases, they increase costs, and there are often problems arranging diaries around instructed representatives, which often requiring a new representative to be paid to get to grips with the case.

Furthermore, whilst attendance at a DRA is compulsory, the DRA itself is confidential. The extent to which a party can attend and not effectively participate or indeed attend and then leave appears to have no consequence.

Therefore, whilst the rule changes make some minor amendments, they do not address some of the key issues that arise from DRAs. More is needed to address Tribunal users' experience of how DRAs operate and create the right balance between certainty as between the regions and flexibility as to how the process will apply and operate within the context of the overriding objective.

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

In respect of Rule 13(1)(b) we consider this to be somewhat artificial in light of the tick box nature of the ET1. For example, is the ticking of a box at least 'some ground' so as to get over 'no ground' whereas previously, the mere ticking of a box with no particulars could not sensibly be responded to.

Our experience of how this Rule has been interpreted previously is mixed. We would suggest that the majority experience is that claim forms are rarely rejected, even when they are barely intelligible and that a broad approach to the question of what amounts to sufficient information has been taken. We would suggest that one reform would be to make the coding of claims on an ET1 form a matter for legal officers and Judges only. There is also support within the Bar for a redesign of the ET1 form to make it much easier for a litigant in person, of which there are many in the system, to navigate and to populate designated boxes within the information needed.

In respect of Rule 18(1), we would note that the reference to 'claim' appears to invoke traditional pleading principles but that greater clarity is needed.

In a hypothetical but not uncommon scenario, there might be a claim of unfair dismissal, sex discrimination and for unpaid wages. The response replies to the unfair dismissal claim and the sex discrimination claim but is silent on wages. The Respondent has not supplied the grounds on which it resists that claim. We suspect that the intention of the Rules is not for the

entire grounds to be rejected, and that Judges can proceed on that basis. However, without clarifying what is meant by 'claim' in this context, the additional wording has introduced an unhelpful ambiguity. We note the definition of claim in Rule 2(1) and suggest that does not resolve the potential ambiguity.

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

We disagree with this amendment. An employer's contract claim requires a formal response. We disagree with the TPC that there is little practical need. Such contract claims can be of significant value and also require the pleading of a defence. The need for the pleading of a defence may prompt an unrepresented party to seek assistance from a CAB or Law Centre, which is beneficial to all.

Any need for flexibility can be dealt with through the ET Rules of Procedure 2024 as currently drafted.

We would also note that this unnecessary escape clause would bring the Tribunal further away from the general principles of litigation and thus make it even more difficult to make the case that the contract jurisdiction should be increased beyond the £25,000 limit and that the Tribunal should be the place to hear high value employment disputes.

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

In principle, we agree that this is a sensible amendment. However, in practical terms, we note that the length of time it takes for the typical Tribunal to reply to correspondence means that this amendment works in theory but not in practice. The Tribunal sending out two items of correspondence instead of one in response to an application is unlikely to speed up the process.

We would suggest a presumption of sending a draft order through. This would mean that unrepresented parties would not need to do so and parties that are able to would, which would likely speed up the process. It could be as simple as stipulating, 'when making an application, a party may supply a draft of the order that they are seeking and legal representatives are encouraged to do so'.

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

Yes. This appears to be sensible and proportionate. It would reduce the administrative burden and would apply in limited circumstances. It may also assist in a party understanding that they should not continue with such correspondence.

Bar Council

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For further information please contact:

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