



Tribunal Procedure Committee: Consultation on possible changes to the Employment Tribunal Rules

A response by
The Chartered Institute of Legal Executives
(CILEX)

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Introduction

- 0.1. CILEX would like to take the opportunity to respond to the TPC's consultation on the possible changes to the employment tribunal rules. CILEX represents a significant number of employment practitioners in the legal sector, both defending and pursuing employment claims in the Employment Tribunal. As part of this consultation response, CILEX surveyed members working in employment law, to capture sufficient evidential data and member experiences.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.3. CILEX represents over 17,500 members of which 77% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBT and 6% have a disability. Additionally, in terms of social mobility, 77% of CILEX members attended a state-run or state-funded school and 41% have an undergraduate university degree (of which 63% of those members were the first to attend university).

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

- 1.1. CILEX agrees in principle with the proposed changes to rule 4 and proposed rule 52(1)(f). CILEX believes the changes are reasonable, noting the positive outcomes outlined in the consultation. However, CILEX does have practical concerns following implementation of the rules.
- 1.2. CILEX members had divided opinions as to whether the costs and time spent will increase for parties due to the proposed changes to both rule 4 and rule 52(1)(f). One member noted specifically that *'In some cases, the additional step that may be required of a Dispute Resolution Hearing will increase the time and costs if settlement is not reached. However, in some cases, a settlement will be reached at an earlier stage than under the current rules and accordingly save time and costs. The impact overall, is that it is likely to be more towards saving time and costs for the parties overall, even though in some instances there will be an increase'*.
- 1.3. CILEX members have also noted from experience, that public bodies are less inclined to participate in Judicial Mediation. CILEX understands that this is not an experience exclusive to CILEX members, noting that there is a general understanding that public bodies 'should be seen to regulate, not negotiate or capitulate'¹.

¹ Blackstone Chambers, 'Mediation in the public sector: challenges and opportunities', [Mediation in the public sector: challenges and opportunities](#).

- 1.4. CILEX notes that whilst the changes concerning dispute resolution hearings may encourage early settlement of cases in some instances, this may not be the case overall.
- 1.5. CILEX is concerned that Litigants in Person (LiPs) will not be adequately supported or educated under the proposed rules. CILEX notes that only 59% of Claimants were legally represented in the Employment Tribunals in the period of 2023/24², and understand that LiPs are less likely to be aware of the benefits and meaning of a Dispute Resolution Hearing or Judicial Mediation without the assistance of a legal professional. Therefore, previous arguments in favour of ADR, such as the threat of costs penalties³, is not as effective as other areas of litigation where there is a smaller proportion of LiPs
- 1.6. Additionally, CILEX members noted that where there is a lack of understanding and mediation or dispute resolution hearings are perceived to not be in their 'favour', LiPs are still likely to proceed to a final hearing irrespective of what the Employment Judge says. This can often stem from '*standing on a matter of personal or moral significance can feel empowering*'⁴ for those representing themselves or have been a victim of being treated unfairly by their employer. Due to this, often the negotiation leverage is significantly reduced and therefore, it is often difficult to achieve early settlement, regardless of ADR.
- 1.7. CILEX is concerned that without adequate signposting and educational materials, these proposals could create an influx in disproportionate costs and time incurred, which CILEX understands to be the opposite outcome as intended. CILEX proposes that improving the ACAS early conciliation process could be a positive starting point to address this.

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

- 2.1. CILEX supports the proposed changes to rule 13(1)(b) and 18(1) in respect of grounds for claim and response. Notably, CILEX members do not believe that their workload will change following implementation of the proposed rules, and that there will be no adverse impact on either party bringing and/or defending claims in the Employment Tribunals.
- 2.2. CILEX members noted that this proposal will improve the current system significantly. CILEX believes that the changes will be beneficial in filtering meritorious and unmeritorious claims more efficiently, in turn reducing the time between issue and settlement of claims.

² Wright Hassall, 'ACAS and Employment Tribunal statistics UK; workplace disputes in the UK', [Employment Tribunal statistics UK; workplace disputes in the UK](#).

³ M Ahmed 'Implied compulsory mediation' (2012) 31(2) CJK 151 and N Andrews *The Three Paths of Justice* (Springer, 2018) pp 265–288

⁴ Madigan Lewis LLP, 'The pitfalls of litigating on principle alone', [The Pitfalls of Litigating on Principle Alone](#).

- 2.3. However, CILEX believes that there is insufficient guidance for LiPs. One member noted that the phrase ‘grounds of claim’ and its meaning are not helpful to LiPs. CILEX believes that comprehensive and available resources should be provided to those who are engaging in litigation without legal representation to avoid confusion and potential administrative burdens rectifying incorrectly completed claim forms.

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

- 3.1. CILEX supports the work of the TPC in simplifying the rules where it is deemed to be unnecessary, overly technical and lead to delays. 75% of members agreed with the proposed amendment to rule 26, noting that this amendment will promote fairness and reduce pressures on parties and their legal representatives to respond to such claims.
- 3.2. CILEX members however were divided in whether this proposed amendment will relieve pressures on the Employment Tribunals in dealing with Employer’s Contract Claims. CILEX overall believes that this proposed amendment is reasonable and will be a welcome change.

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

- 4.1. CILEX agrees with the proposed rule 30(4) in relation to directing parties to supply a draft of a proposed case management order. Whilst CILEX members accept that their workload will increase somewhat with the changes, members believe that this is manageable. Additionally, when asking members how easily they believe that precedent case management orders can be implemented into their firm’s case management systems, 75% agreed that this could be done ‘somewhat easily’.
- 4.2. However, when asking members how these changes will impact parties bringing and defending claims, 80% of members believed that the overall costs and time spent will increase. One member noted that whilst Tribunal time will reduce, the parties will incur greater costs and time. CILEX is concerned that the additional costs and time spent increase could perversely effect access to justice and the operation of employers. CILEX understands that employers are already *‘keenly aware of the time-consuming nature and burgeoning cost of dealing with employment claims’* and have been *‘prompted to look at how to reduce the strain on their operations’*⁵. CILEX believes that it is imperative to ensure that access to justice is both affordable for the Claimant, and without risk of employers reaching financial collapse.
- 4.3. One member also noted that where Respondents are more often legally represented in comparison to Claimants, it is most likely to be the case that the Respondent must prepare any case management order. CILEX is concerned that there is a risk that the Claimant may be at a disadvantage, or proceedings could unnecessarily be prolonged due to disagreement of the contents of an order. CILEX

⁵ Legal Futures, ‘Can data solve the growing employment claims conundrum?’, [Can data solve the growing employment claims conundrum? - Legal Futures](#)

notes that without adequate legal representation, there remains risk of exploitation and vulnerability for LiPs. CILEX recommends that where case management orders are drafted and there is an inequality of arms, a neutral, free legal advisor via the Employment Tribunal should be offered as an optional service to the LiP for the sole purpose to review the contents of the case management orders before agreement.

- 4.4.** CILEX understands that if the advisers were to operate on a pro-bono basis, there is an opportunity to claim costs back from the losing party, as seen in other civil proceedings⁶. This can be funded back into providing advice as outlined above.

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

- 5.1.** CILEX concurs that futile reconsideration applications are a very rare occurrence but agree with the proposed amendments to rule 65. Several members agreed that it *'is absolutely right to close the loophole'* to preserve the administrative resources of the Employment Tribunals.

6. Conclusion

- 6.1.** CILEX agrees with the proposals of the TPC in amending the Employment Tribunal Rules. CILEX believes that these changes and additions are reasonable and will produce favourable outcomes for both clients and legal representatives. CILEX however hopes that the TPC consider how to inform and support litigants in person during the implementation of these changes.

⁶ Thomson Reuters, 'Recovering pro bono costs', [Recovering pro bono costs | Dispute Resolution blog](#).