



Response from the Faculty of Advocates

to the

Consultation on Changes to the procedure rules on the provision of written reasons for decisions

Proposal 4: Employment Tribunals (paragraphs 47 to 54)

Question (10): Do you agree with the introduction of short-form and full reasons in the Employment Tribunals?

There are no particularly strong objections to this in principle, although clarity over how subjective the issue of “success” is would be welcomed.

One reservation is where a successful party wishes to properly weigh up the prospects of making a costs/expenses application. In order to make a properly informed decision, that successful party may wish to have written reasons to allow them to consider the likelihood such an application would have of succeeding. The provision of written reasons would prevent such applications being made speculatively or without proper consideration of the judgment. This would save time and expense. It is recognised, however, that this would apply only to a small number of cases.

It is also felt there may be some unnecessary procedural difficulties created by reasons which are limited only to issues on which a party has been unsuccessful when there might be threshold issues before that which the other party wishes to cross appeal. For example, where an employee is successful on an employer having knowledge of their disability at a final hearing, but is unsuccessful on the substantive complaint of discrimination. In the event of an appeal by the employee on the substantive issue, the employer may wish to cross appeal but will be required to ask for reasons on the separate issue it wishes to cross appeal on.

Question (11): Should the time limit for requesting short form reasons be 7 or 14 days?

14 days

Question (12): Do you agree with the omission of rule 61(3) of the ET Rules?

Yes.