

Settling smarter, not later: the case for pre-action risk-pricing in employment disputes

With single Employment Tribunal claims now standing at a record 70,000, a 51% year-on-year rise and multi-day hearings routinely listed into 2028 and 2029, running a case to a full hearing has become a fundamentally different proposition for practitioners than it was even three years ago.

A matter opened today may not reach a tribunal room for two to three years, over which time witnesses leave the business, memories fade, and the fee-earner who took the initial instructions may have moved on to another firm entirely, leaving someone else to reconstruct the client relationship and the evidence from scratch.

Over that span, the case has to be actively managed rather than simply progressed: cost estimates need updating as the matter runs on, the client needs re-briefing on merits and exposure every time the tribunal's own backlog pushes the listing further out, and evidence has to be periodically refreshed re-checking witness availability, re-confirming document retention - to make sure a file that was strong at issue is still strong three years later. None of that work moves the case any closer to resolution; it mostly just keeps the file standing still for longer while the clock runs. That shift in case length, on its own, is pushing the practical centre of gravity in employment law back toward the pre-action phase - because it's often the only point left at which a firm can still resolve a matter in months rather than years.

Yet the primary statutory off-ramp remains underused. ACAS's own evaluations of Early Conciliation have historically shown that only around 13–15% of notifications end in a formal COT3 settlement, with the remainder either dropping away informally or proceeding to tribunal. For years, both sides treated Early Conciliation as an administrative tollgate - a perfunctory pause before formal litigation began.

That posture is now harder to justify. Since 1 December 2025, new regulations made under the wider Employment Rights Act 2025 reform programme have extended the statutory ACAS conciliation window from six to twelve weeks. In a listing environment already under sustained strain, this pre-action period is no longer an administrative formality - it is where most of the real work of resolving a dispute now has to happen.

Operating effectively in this landscape means shifting from courtroom advocacy to commercial risk-pricing. When cases can take years to reach a hearing, the advantage belongs to whichever party controls the economic narrative before formal proceedings begin:

- ▶ **Valuation as the negotiation anchor.** Tactical leverage belongs to whoever establishes a credible exposure model first. Parties entering conciliation with granular figures - benchmarking projected loss against middle-band Vento brackets and mounting legal defence costs - set the terms of settlement. Vague assertions invite defensive lowballing; a verified exposure figure forces senior stakeholders to engage.
- ▶ **Pre-action evidentiary asymmetry.** The old sequence - formal disclosure, then settlement talk - has largely collapsed. Claimants increasingly file Subject Access Requests under Article 15 UK GDPR alongside their EC notification, using the 30-day statutory response window to extract internal correspondence before an ET1 is even lodged. In response, sophisticated respondents are moving away from

reflexive silence, using targeted counter-disclosure such as contemporaneous investigation records to deflate weak claims early without showing their full hand.

The obstacle to early resolution is rarely legal obstinacy, it's an information gap at intake, and it's compounding. Untangling a chaotic claimant narrative and checking limitation dates to price a pre-action offer properly is billable work, but it's slow, manual work, at a time when the number of live matters a single fee-earner is expected to carry has climbed alongside the tribunal backlog itself. That's not a problem headcount alone fixes: hiring more fee-earners adds capacity, but it doesn't shorten the time any one of them needs to get from a messy intake to a defensible number, and every matter in the queue is still competing for the same senior sign-off before an offer can go out.

We believe solving domain-specific friction requires domain-led architecture. We are deliberately not presenting a finished, off-the-shelf product. Instead, we are establishing working collaborations with forward-thinking employment law firms to co-design and stress-test dedicated intelligence workflows from the ground up. If your firm wants a hand in shaping that, get in touch at [lexitrove.com](https://www.lexitrove.com).

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