

# Tribunal media rules rethink required

## Why should employers suffer as a result of unrestricted reporting of employment tribunals?

The threat of sensationalised media coverage of tribunal claims leaves many employers with little option than to settle a claim to escape the damage to its reputation, and that of its executives, despite often having a solid case for the defence. It also does nothing to encourage deserving employees to come forward and bring a claim.

### Limited coverage

And the fact that the press typically only provides very limited coverage to tribunal decisions also adds to the problem.

This is especially true of high-profile cases involving several days of evidence when often many weeks, if not months, will have passed before judgment is finally passed. The trouble is that, by this time and irrespective of the final outcome, what is left hanging in the air is the sense that the accusations which have been made were true – however unbalanced



Howard Hymanson  
Partner,  
BDO LLP

the reports in the media may have been.

While occasionally the employee may feel the overwhelming urge to put their side of the story into the public domain, even before proceedings have commenced – as in the case of Metropolitan Police commissioner Tariq Ghaffur – this is not the norm, and most cases only appear as a result of reporting from a tribunal hearing.

### Long-term damage

From the employer's perspective, to see your accuser publicly humiliated in the press is an understandable urge, and it is therefore tempting to provide the waiting court reporter with an advanced copy of arguments

or witness statements to help ensure that press coverage is favourable.

However, it makes no commercial sense to encourage a character assassination of the employee in the press as this type of publicity can backfire spectacularly. And the employer is likely to be left to pick up the expensive tab for the loss of career earnings if the employee's accusations are upheld.

This is because when it comes to the award of compensation, the employee's ability to secure future employment is a key factor. The tribunal cannot ignore the severely diminished employment prospects that will result from any adverse press coverage that has taken place as a result of the proceedings.

Tribunal procedures provide only limited circumstances where restrictions can be placed on reporting. And the requirement for hearings to take place in public reflects the important principle of open justice in a democratic society.

The power to restrict reporting is principally only available in cases involving allegations of sexual misconduct – typically sexual harassment – to avoid deterring women who have potential claims for sexual harassment

from bringing a claim for fear of the damaging publicity that may ensue.

Once a restrictive reporting order is in place, the media is not allowed to report the case in such a way that would lead the public to identify anyone making, or affected by, the allegations. Deliberate breach is a criminal offence.

### Serious allegation

Yet surely both the employer and the employee in a case should be able to apply to have such an order granted – at least for a limited period – where it is known that a serious allegation is to be made during proceedings and which, given the nature of press reporting, could fundamentally damage their reputation?

It can no longer be in the public interest that the normal rights of the press to communicate information to the public should remain unrestricted in such circumstances.

It is clearly time to look again at the rules governing restricted reporting orders.

### KEY POINTS

- Restrictive reporting orders are, in principle at least, only available in cases involving allegations of sexual misconduct – typically, sexual harassment.
- Journalists are free to report lurid accusations, which could be damaging to the reputation of both the employer and employee, even before either party has had the opportunity to have the veracity of the allegation tested.

Legal Q&A: revised dispute resolution procedures  
 → [personneltoday.com/45313/article](http://personneltoday.com/45313/article)

Does HR exist only to keep employers out of tribunals?  
 → [personneltoday.com/39497/article](http://personneltoday.com/39497/article)