Tribunal Rules

Implementing part 1 of the Tribunals, Courts and Enforcement Act 2007

Response to the consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants

(12 July to 04 October 2018)

Reply from the Tribunal Procedure Committee

(March 2019)

Introduction

1. The Tribunal Procedure Committee ('TPC') is established under section 22 of, and Schedule 5 to, the Tribunal, Courts and Enforcement Act 2007 ('TCEA'), with the function of making procedural rules for the First-tier Tribunal and the Upper Tribunal. Information on the TPC can be found at: https://www.gov.uk/government/organisations/tribunal-procedure-committee

2. The TPC's remit includes the rules for the First-tier Tribunal (Immigration and Asylum Chamber) (the 'IAC') and the Upper Tribunal (Immigration and Asylum Chamber). These Chambers deal with appeals against Government decisions in immigration, asylum and nationality matters.

3. Under s. 22(4) of the TCEA, power to make Tribunal Procedure Rules is to be exercised with a view to securing that:

   (a) in proceedings before the First–tier Tribunal and Upper Tribunal, justice is done;

   (b) the tribunal system is accessible and fair;

   (c) proceedings before the First–tier Tribunal or Upper Tribunal are handled quickly and efficiently;

   (d) the rules are both simple and simply expressed; and

   (e) the rules where appropriate confer on members of the First–tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

4. In pursuing these aims the TPC seeks, among other things, to:

   (a) make the rules as simple and streamlined as possible;

   (b) avoid unnecessarily technical language;

   (c) enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and

   (d) adopt common rules across tribunals wherever possible.

5. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.

6. The current IAC and Upper Tribunal Rules can be found at: https://www.gov.uk/government/publications/immigration-and-asylum-chamber-tribunal-procedure-rules. Further information on the IAC can be found at: https://www.gov.uk/courts-tribunals/first-tier-tribunal-immigration-and-asylum.

Background to the consultation

7. The IAC and its corresponding Upper Tribunal Chamber were established with effect from February 2010. At that time, the existing Asylum and Immigration (Procedure) Rules 2005 ('AIT Rules') were ordered to have effect as Tribunal Procedure Rules for the IAC and only necessary amendments for the purpose of the transfer were made. The Tribunal Procedure (Upper Tribunal) Rules 2008 (the 'Upper Tribunal Rules'), which already applied to two other chambers of the Upper Tribunal, were amended so that they were also suitable for the new Immigration and Asylum Chamber of the Upper Tribunal.

8. In 2013, the TPC issued a consultation on revised rules for the IAC and Upper Tribunal. The proposed revised rules were to replace the AIT Rules with rules drafted by the TPC in line with its duties under the TCEA.

9. Following that consultation, new rules were introduced in 2014 (the 'Principal Rules'). The Principal Rules contained, in a schedule, provision for a "Detained Fast Track", in the form of Fast Track Rules. These applied to most, but not all, individuals appealing a decision by the Secretary of State for the Home Department ('SSHD') in relation to asylum who were in immigration detention. This reflected the previous rules, which had included some form of a Detained Fast Track since 2000. Although the Principal Rules made some changes to the details of the previous rules and altered some of the time limits involved, there was no substantive change in the procedural approach to these cases. It also reflected the accelerated process, similarly referred to as Detained Fast Track, that was applied to some detainees by the SSHD in relation to decisions prior to the appeal.

10. In summary, the Fast Track Rules applied much shorter deadlines than existed in the Principal Rules and limited the IAC's powers to adjourn cases or remove them from the Fast Track procedure.

11. In June 2015, the High Court, in ***R (Detention Action) v First-tier Tribunal (Immigration and Asylum Chamber), Upper Tribunal (Immigration and Asylum Chamber), Lord Chancellor & Secretary of State for the Home Department [2015] EWHC 1689 (Admin)*** found that the Fast Track Rules were unlawful. Mr Justice Nicol concluded that the Fast Track Rules were structurally unfair, because their abbreviated timetable and the restricted case management powers available to the judge created a serious procedural disadvantage that could be imposed by the respondent to an appeal.

12. This decision was upheld by the Court of Appeal in ***Lord Chancellor v Detention Action [2015] EWCA Civ 840***. The Court of Appeal agreed that the abbreviated timescales made a fair hearing impossible in a significant number of cases. The Court emphasised that speed and efficiency must not trump justice and fairness. Given this finding, the Court concluded that it was not necessary to decide whether the fact that an appellant was placed in the Fast Track as a result of decisions by the respondent to the appeal created any additional unfairness. An unfair process was unlawful, however it came about. The Court of Appeal did suggest, however, that if a fast track process was procedurally fair, how an appellant came to be in that system would not be relevant.

13. One of the key issues identified by the High Court, in concluding the Fast Track Rules were unlawful, was that they did not provide sufficient time for an appellant to prepare for the hearing of their appeal. At paragraph 22 of his judgment, Mr Justice Nicol summarised the evidence he received, noting that between the refusal of asylum and the substantive hearing of an appeal the appellant's representative would be involved in:

    (a) Checking whether the general detention criteria have been properly applied;
    (b) Making representations, where appropriate, that the appellant is unlawfully detained;
    (c) Applying for bail, which itself involves identifying sureties, taking instructions from them and checking their availability for any bail hearing, and finding a bail address;
    (d) Taking instructions from the appellant on the refusal letter. Restrictions on visits to detainees may mean this has to be done over more than one day;
    (e) Preparing the appellant's statement, checking it with the appellant and having it signed.
    (f) Arranging the translation of any necessary documents;
    (g) Arranging for any expert evidence, including identifying an appropriate expert, applying for an extension to the controlled legal representation certificate to fund this or any other additional expense, further representations to the legal aid authorities (if necessary in the event of initial refusal), arranging for the expert to attend the appeal hearing; and

(h) Making an application where appropriate for the appeal to be transferred out of the Fast Track appeal procedure, and considering the response to such an application from the SSHD.

14. In addition to this work, the representative (or a litigant in person) would need to prepare for the substantive hearing. This could include preparing to challenge the appropriateness of detention; making any application for postponement / transfer out of a fast track procedure; and dealing with questions of bail.

15. The Fast Track Rules were accordingly quashed. Since then, all immigration cases, including those involving detained parties, have been dealt with under the Principal Rules.

16. In October 2016, the Ministry of Justice ('MoJ') launched a consultation, ***Immigration and Asylum Appeals: Consultation on proposals to expedite appeals by immigration detainees***. The MoJ consultation recognised that responsibility for the rules rested with the TPC under the TCEA, but wished to gather evidence and stakeholder views in order to formulate a considered Government policy.

17. The Government's response to this consultation was issued in April 2017. The response sets out the Government's view that there is a need for specific rules in respect of appellants in detention. This is because, in the Government's view, only specific rules will achieve a guaranteed maximum timeframe for the determination of detained appeals. The Government believes that the appropriate timeframe to determine an appeal in the IAC, from the time it is lodged to the time to the time it is determined by the tribunal, should be 25 working days. Further the Government's view is that, if the TPC believes that 25 working days is too short, this timeframe should not exceed 28 working days.

18. In addition, the Government believes that the rules should require that the decision on whether the appellant has permission to appeal to the Upper Tribunal should take no longer than 20 working days. It suggests that this might be divided as follows: five working days to apply to the IAC for permission to appeal and five working days for the tribunal to allow or refuse the application. If refused, the appellant would then have a further five working days to renew the permission to appeal application to the Upper Tribunal, who would have five working days to allow or refuse it.

19. Copies of the MoJ consultation and response can be found at: https://consult.justice.gov.uk/digital-communications/expedited-immigration-appeals-detained-appellants/

20. It is important to note that the TPC is not bound by the Government's policy view in relation to rules although it is, of course, a view that the TPC will take carefully into account. Under the TCEA, responsibility for making procedural rules for the tribunals lies with the TPC, in accordance with its duties set out above.

Current operations under the Principal Rules

21. Since June 2015, all appeals involving appellants who are detained have been conducted under the Principal Rules. From October 2016, HMCTS has applied a centralised approach to prioritising these cases, known as Detained Immigration Appeals ('DIA'). This aims to expedite the listing and resolution of these cases. DIA applies to appeals lodged from Immigration Removal Centres in England and Wales. It therefore applies to Foreign National Offenders ('FNOs') held in such centres but not to FNOs held in prison. The DIA does not, at present, extend to the Upper Tribunal. The judiciary and HMCTS are, however, working towards a similar system of prioritisation there.

22. Information about the current timescales operating in DIAs is available in the ***Statistical Notice: Further breakdown of Immigration and Asylum Tribunals - Detained Immigration Appeals published as part of the***

Tribunals and gender recognition certificate statistics quarterly. The most recent date of this type was published on 14 March 2019. It covers the financial years 2016/17, 2017/18 and the first three quarters of 2018/19. It is available at: https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2018

23. In 2017/18, 1,203 appeals were received under DIA. In the first half of 2018/19, 323 appeals were received. A further 131 appeals were received in the third quarter of 2018/19. The reduction in the number of appeals arises from a reduction in the number of individuals being detained in an Immigration Removal Centre in this period.

24. In 2017/18 it took an average of 4.5 weeks following the receipt of an appeal for the first substantive hearing to commence in a DIA case. From receipt of an appeal it took, an average of 9.3 weeks for a final judgment, disposing of the case, to be issued by the IAC. Over the same period the average for all IAC cases, including both non-detained and detained appellants, was 50 weeks.

25. The difference between the time before the first substantive hearing and the time taken to dispose of the case reflects the fact that not all substantive hearings that begin will go on to resolve the case the same day. The hearing may need to be adjourned, may be converted into a case management hearing, may go part heard, or subsequent substantive hearings may be required (for example, if the tribunal orders that further evidence be produced by one of the parties).

26. In the most recent period for which data is available — the third quarter of 2018/19 — it took an average of 4.8 weeks following the receipt of an appeal to reach a substantive hearing in the IAC. It took an average of 21 weeks from receipt for a final judgment, disposing of the case, to be issued by the IAC.

27. This is a substantial increase from the 2017/18 timescales and the TPC has made enquiries with officials from the MoJ to explore the reason for this. Our understanding is that the most significant factor is a change in the way that HMCTS records details of these cases, in particular when a detained appellant is released.

28. For statistical purposes, cases are classified as DIA cases according to the flag they are assigned on HMCTS's case management system. When the DIA system was first introduced, the only relevant flag was the DIA flag. If an appellant was released the case would lose its DIA flag and would no longer be included in the statistics. More recently, HMCTS has used a RDA (Reclassified Detained Appeal) flag which is applied at the point a detained appellant is released. These RDA flagged cases remain within the DIA statistics, but are no longer expedited. The published statistics therefore now include all appeals that have, at some point, been part of the DIA process even if the case was not concluded within DIA.

29. In order to give a more representative view, statistics have also been produced by the MoJ that include information on cases that are disposed of in the First-Tier in the Harmondsworth and Yarl's Wood hearing centres, but exclude other DIA or RDA flagged cases. Only a small number of appeals where an appellant is released will be determined at Harmondsworth or Yarl's Wood (general where the appellant is released shortly before the hearing). This means that the Harmondsworth / Yarl's Wood figures more accurately reflect the current timescales in cases where the appellant remains detained. It should be noted, however, that not all cases where the appellant remains detained are suitable for expedited resolution. That will depend on the nature of the appeal and the circumstances of the appellant.

30. At the Harmondsworth / Yarl's Wood venues in 2017/18 it took an average 7.3 weeks from receipt of an appeal for DIA cases in these centres to be disposed of. In Q1 of 2018/19 the average was 9.5

weeks; in Q2 it was 10.9 weeks and in Q3 it was 11 weeks. The increase in the relevant cohort of cases is therefore significant, but much less dramatic than the overall numbers might suggest without an understanding of how the statistics are produced.

31. Following further enquires, the TPC's understanding is that this increase is due to two factors:

    (a) There has been a significant expansion in the scope of the DIA process and the use of the DIA flag. When the DIA process was initially implemented, it was applied only to a subset of detained cases and only those cases were flagged as DIA. In particular, the DIA process was not used in cases where appeals were certified as non-suspensive. This changed following the Supreme Court's decision in ***R (Kiarie) v SoS for the Home Department [2017] UKSC 42***. Since then the DIA process has included non-suspensive appeals and it would now be exceptional for any appellant at Harmondsworth or Yarl's Wood to fall outside the DIA statistics. The inclusion of a wider range of appeals has brought more complex cases within the scope of DIA. Comparing the average time scales in 2017/18 with those in 2018/19 is therefore not a like for like comparison. The more complex cases now included within the statistics often take more time to resolve. This has resulted in an increase in average timescales.
    (b) Over the time in which the DIA process has been operating, the way in which cases have been managed by the tribunal has changed. Initially, there was no pre-hearing review or case management review prior to the first substantive hearing. A paper pre-hearing review was introduced at Yarl's Wood in relation to appeals lodged from the 5th February 2018. It was then succeeded by a pilot program of oral case management hearings, for appeals lodged from 2nd July 2018. In relation to cases lodged from 3rd April 2018 Harmondsworth has operated a similar paper pre-hearing review. These changes aimed to reduce the number of adjournments at the substantive hearing stage. It appears that this reduction has been achieved, but the changes may have increased the average time it takes to reach a substantive hearing.

The Consultation process

32. In July 2018, in light of the Government's views as well as its own consideration of the High Court and Court of Appeal judgments, the TPC launched a consultation on the appropriate rules to govern cases within the IAC when an appellant is detained.

33. One important development between the Government response and the TPC's consultation should be noted. In its response, the Government expressed the view that this maximum time frame should cover all detained immigration appellants, including FNOs detained in prison. FNOs are individuals who are not British citizens, who were convicted of a criminal offence, remain detained and may be subject to deportation.

34. In March 2018, however, the TPC was informed that the Home Office and MoJ had agreed that, in the short term, it would not be operationally practical to include FNOs held in prison within any fast track rules. FNOs held in prison present a number of logistical challenges, particularly related to their attendance at hearings, since they are detained throughout the prison estate and must be brought to hearings held at various secure (often criminal) court buildings. Both the Home Office and MoJ expected these challenges to be overcome in the future, but were not able to commit to doing so in time for the launch of any fast track rules or by any particular date.

35. In these circumstances, the TPC concluded that it would not be appropriate to consult on a potential rule change that could not currently be implemented in practice. The consultation, therefore, related only to those held in Immigration Removal Centres. This meant that it included FNOs held in such centres, but not those held in prisons.

36. The consultation ran between 12 July 2018 and 4 October 2018. It received seven replies all from organisations with significant experience and expertise in this area: see Annex A. The TPC is grateful to everyone who replied for their assistance.

37. A number of replies presented arguments that went beyond the scope of the consultation and the scope of the TPC's role. A number of replies argued that many detentions are unnecessary or make it harder to resolve cases quickly. One said detention as a whole was unnecessary. Another respondent urged that, rather than pursuing a detained fast track system, the Government should introduce a statutory time limit on detention. Whatever the merits or demerits of these arguments, they are matters outside the TPC's province, which lies only in the formulation of tribunal rules. The TPC has accordingly not taken them into account.

The argument for detained fast track rules

38. The argument that there should be detained fast track rules is set out in detail within the Government's consultation and expanded upon in its reply to the consultation. Links to both documents are in para 18 above.

39. The argument in favour of detained fast track rules can, however, be summarised as follows.

40. First, that it is important to minimise the length of time that people spend in immigration detention. It is undesirable for anyone to be kept in detention for any longer than necessary. Reducing the length of detention reduces the impact on the individual detained. It also reduces the financial cost in detaining them.

41. In addition, that it is desirable to have greater certainty as to the likely length of time that an individual will be detained. Greater certainty allows the Home Office to manage the detention estate more effectively. Further, the Government is concerned that lack of certainty as to the length of detention may lead to detainees being released, creating the risk that they may abscond.

42. Secondly, that specific fast track rules setting out an accelerated process are the best mechanism for reducing the length of the tribunal process and therefore reducing the amount of time individuals spend in detention.

43. Thirdly, that with safeguards that ensure that appropriate cases are removed from any fast track system or have their time limits extended, an accelerated system will be a fair one.

The Responses

Question 1) Do you think there should be specific rules setting down time limits in cases where an appellant is detained in an Immigration Removal Centre that differ from those in the Principal Rules?

44. None of the replies to the consultation supported the introduction of specific rules setting out time limits which differed from those in the Principal Rules. A number of arguments were made against such rules, which are summarised below.

Fundamental importance of cases where individuals are detained

45. A number of the replies expressed the view that the appeals that might be subject to any detained fast track rules involved fundamental rights, such as the right not to be subjected to torture or to inhuman or degrading treatment or punishment and the right to respect for private and family life. The stakes for individuals in such cases were extremely high. It was therefore especially important that there be a fair process that ensured access to justice.

Adequacy of Principal Rules

46. All of the replies expressed the view that the Principal Rules were operating adequately and gave sufficient scope for the expedition of suitable cases.

Disproportionate impact on vulnerable detainees

47. A number of the replies argued that a detained fast track system was likely to have a disproportionate impact on vulnerable appellants and on those with protected characteristics — in particular women and those with disabilities. Several replies referred to the concerns expressed in Stephen Shaw's reports, *Review in the Welfare in Detention of Vulnerable Persons*, published in January 2016, and the subsequent *Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons*, published in 2018. Also, in this connection one reply referred to the Public-Sector Equality Duty.

Number of unsuitable cases / lack of screening process

48. A number of the replies argued against the Government proposal that any detained fast track should, initially, include all those held in detention; notwithstanding the intention that unsuitable cases would be removed as part of the case management process. They argued that effective screening before entry into any system was a necessity if the burden was on an appellant to demonstrate they should not be in fast track.

Inadequacy of time scales and inability to provide sufficient safeguards

49. All the replies argued that the proposed timescales were too short to deal with the majority of cases. They identified a number of factors, including the importance of the cases, the difficulties of obtaining evidence while in detention, the obstacles faced by those without legal representation, the need to make subject access requests to obtain documentation from the Home Office and the time needed to obtain medico-legal and other expert reports.

50. Most replies argued that the suggested safeguards could not or would not render an accelerated system fair. They argued that there would be insufficient time to make appropriate inquiries in order to persuade a judge that an appeal should be taken out of the detained fast track and that there would inevitably be pressure on judges to consider the detained fast track as the default position.

51. A number of replies argued that there was an inherent unfairness in requiring an appellant to present arguments that a case should be taken out of fast track to obtain further evidence, since this would tend to highlight evidential gaps in their case, weakening their substantive appeal.

Ineligibility and delay in accessing legal aid

52. A number of replies pointed to potential difficulties in accessing legal aid, within the time constraints that might be imposed by a fast track system. They noted that including non-asylum claims within any detained fast track would mean that significantly more cases in the fast track system would not be eligible for legal aid, unless granted Exceptional Case Funding.

53. This would mean that significantly more appellants than in the past would not have legal assistance in navigating any detained fast track. Respondents argued that access to early and thorough legal advice was crucial for the fairness of any accelerated process. They noted that the previous detained Fast Track Rules had been found to be unlawful notwithstanding that legal assistance was generally available.

54. Several replies argued that the system of Exceptional Case Funding would not operate sufficiently quickly to allow those within any detained fast track to access such funding. The Legal Aid Agency aims to process urgent applications within five working days, which represents a significant proportion of the proposed 25 or 28-day timeframe. However, these replies said that, in their experience, urgent applications often took significantly longer than the intended five days.

Disparate treatment of FNOs

55. Several replies argued that it was unfair to treat FNOs held in detention centres differently from those held within the prison estate. This disparity in treatment was unfair, because it would arise based on where individuals happened to be detained, rather than principled criteria relating to the nature of their case.

Risk of absconding

56. A number of replies argued that there was no evidence that introducing a detained fast track set of rules would reduce the incidence of absconding. They stated that the majority of appellants comply with their reporting requirements.

Question 2: How long is it reasonable to expect most appellants detained in an Immigration Removal Centre to be able to:

a) **Lodge a notice of appeal after receiving a decision?**
b) **Prepare for a hearing after lodging a notice of appeal?**
c) **Request permission to appeal after receiving a judgment?**
d) **Renew a request to appeal to the UT after permission is refused by the FTT?**

Question 3: How long is it reasonable to expect the respondent to be able to:

a) **Provide the relevant documents after receiving the notice of appeal?**
b) **Request permission to appeal after receiving a judgment?**
c) **Renew a request to appeal to the UT after permission is refused by the FTT?**

57. In general, replies to the consultation did not provide substantive views on this point, referring to their previously stated views on the undesirability of introducing fast track rules.

Question 4: Should the rules impose time limits on judges dealing with appeals where a party is detained? In particular, should the rules require that:

a) **Judges produce a decision within a specified timeframe; if so, what should that timeframe be?**
b) **IAC Judges produce a decision on an application for permission to appeal within a specified timeframe; if so what should that timeframe be?**
c) **Upper Tribunal Judges produce a decision on an application for permission to appeal within a specified timeframe; if so what should that timeframe be?**

58. Two replies expressed the view that time limits should not be imposed on judges. They argued that it was necessary to allow judges sufficient time to reach properly considered decisions and that abridging that time was likely to create injustice.

Question 5: If specific rules were made in relation to cases where an appellant is detained, should they also provide for a case management review in all cases? Should such a case management review involve a hearing?

59. Four replies argued that if specific rules were made in relation to cases where an appellant was detained, there should be an automatic case management hearing in all cases.

60. These replies argued that, given the importance of these appeal and the dangers of unfairness if unsuitable cases remained in an accelerated process, it was necessary to apply the heightened scrutiny of an oral hearing rather than a paper review.

61. Several replies expressed concern that a paper case management review would create particular issues for unrepresented appellants, especially if they were vulnerable. Several pointed to the danger that vulnerabilities such as metal health issues or learning disabilities might not be apparent on the papers.

Question 6: If specific rules were made in relation to cases where an appellant is detained, should the rules apply a different rule to adjournments than the Principal Rules? In particular, a) should the rules apply a different test when deciding whether a case should be adjourned; and b) should they require that the case be relisted within a particular timescale?

62. Two replies argued that the approach in the Principal Rules should apply to any cases where an appellant is detained.

Question 7: Should the time spent in detention outside the tribunal process affect any decision on potential fast track rules?

63. Two replies argued that the overall time that appellants spent in detention was relevant to decisions about potential fast track rules. They argued that a significant part of the justification for any fast track rules was that they would have the effect of substantially reducing the amount of time individuals spent in detention.

64. Understandably, neither of these replies was able to provide robust data on how long appellants spent in detention. Both, however, suggested that, in their experience, appellants spent a significant amount of time in detention before an appealable decision was made and after the appeal process concluded. No respondent was able to provide robust information about the length of time spent in detention. Anecdotal monitoring information suggested that, in general, individuals were detained for approximately three months before an appealable decision was made.

TPC Conclusion

65. Having considered carefully both the Government proposals and the responses to the consultation, the TPC has decided not to introduce specific rules in relation to cases where an appellant is detained.

66. The TPC agrees with the Government's policy objective to minimise the time individuals spend in detention. It is clear that nobody should be detained longer than necessary. It follows that appeals involving detained appellants should be resolved as quickly as possible, consistent with fairness, and that the procedural rules should enable this. These positions were also supported by those who responded to the consultation.

67. In order to ensure that such a system would deal with cases fairly, it would need to include rigorous procedural safeguards to ensure that unsuitable cases were not included within the fast track system. The importance of such safeguards must not be underestimated. As the replies to the consultation indicated, the cases involved are of the greatest importance to the individuals concerned and often of some difficulty or complexity. The TPC has no doubt that many appeals involving detained appellants would not be suitable for resolution within 28 working days and would therefore need to be

removed from any fast track system. This flows inevitably from the intention of initially applying any specific rules to all appeals involving detained appellants and from the practical challenges identified in the replies to the consultation summarised above.

68. The TPC did not accept the argument, put forward in a number of the replies to the consultation, that such safeguards were impossible to create. The safeguards in place under the previous Fast Track Rules were found not to be effective. But these severely limited the tribunal's powers to remove cases from the system and the rules were phrased in such a way that they created a default expectation that the case would remain in the Detained Fast Track.

69. The TPC considered that, if new fast track rules were to be introduced, there would need to be an early oral case management hearing for all cases where an appellant was in immigration detention. A key function of that case management hearings would be to decide whether the appeal should be heard under the Principal Rules or any fast track rules. The TPC concluded that such a system was capable of offering an adequate safeguard, by ensuring that unsuitable cases were not placed within any fast track system.

70. However, such hearings would absorb a substantial amount of judicial and administrative resource, which would then not be available to be used to resolve cases. It would delay the hearing of cases that were taken out of any fast track process, since any 'fast track' hearing that had been listed would need to be cancelled and a new hearing listed. There was a real prospect that a substantial proportion of detained cases that entered a 'detained fast track' would need to be removed from the system as unsuitable. There was also the danger of satellite litigation being created around the tribunal's case management decisions, causing further delay.

71. The need for robust safeguards also means that specific rules would not lead to any greater certainty in relation to how long an appeal would take to conclude. An inevitable consequence of such safeguards would be that many cases would be dealt with outside the fast track timescales, since the purpose of such safeguards would be to identify unsuitable cases and ensure they were dealt with differently. Specific rules would therefore create no greater certainty than the existing Principal Rules.

72. Both of these points must also be seen in the context of the current system of accelerating cases involving detained appellants under DIA. This development, achieved over the period since the Government launched its consultation, means that cases are already being resolved quickly. It should be noted that the average of 11 weeks it takes to resolve an appeal with a detained appellant is based on both those cases could be dealt with within an expedited process and those which would be excluded as unsuitable at the case management stage.

73. The speed at which these cases are being dealt with both limits the scope for further expedition and means that introducing a new case management stage is likely to delay the resolution of appeals in many cases.

74. All of this, the TPC concluded, meant that a set of specific rules would not lead to the results sought by the Government. If a set of rules were devised so as to operate fairly, they would not lead to the increased speed and certainty desired.

Keeping the Rules under review

75. The TPC wishes to thank those who contributed to the Consultation process. The TPC has benefited considerably from the responses.

76. The remit of the TPC is to keep rules under review.

Contact details

Please send any suggestions for further amendments to Rules to:

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Further copies of this Reply can be obtained from the Secretariat. The Consultation paper, this Reply and the Rules are available on the Secretariat's website:

http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm

Annex A – List of respondents to Consultation

Liberty
Bail for Immigration Detainees
Equality and Human Rights Commission
Medical Justice
Detention Action
Law Society
United Nations High Commissioner for Refugees