30 July 2024

Tribunal Procedure Committee

Consultation on possible changes to the procedure rules of all Chambers of the First-tier Tribunal, the Employment Tribunals (England and Wales) and the Employment Tribunals (Scotland) concerning the provision of written reasons for decisions and other case management measures

This consultation runs from 30 July to 22 October.

Details about how to respond are at paragraph 97.

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Please note that consultees are not obliged to address all questions and the TPC welcomes partial responses focussing on areas of particular concern to respondents.

THE TRIBUNAL PROCEDURE COMMITTEE

1. The Tribunal Procedure Committee ("the TPC") is the body that makes rules or procedure that govern practice and procedure in the First-tier Tribunal and the Upper Tribunal. Both are independent tribunals. The First-tier Tribunal is the first instance tribunal for most jurisdictions, while the Upper Tribunal is primarily responsible for appeals from the First-tier Tribunal. The Upper Tribunal also hears some judicial review applications that are transferred in from the High Court. The Employment Tribunals make decisions in legal disputes around employment law. The TPC has assumed statutory responsibility for making rules of procedure for the Employment Tribunals on 25 April 2024.

2. The TPC is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 ("the TCEA"), with the function of making Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal.

3. Under section 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. Further information on the TPC can be found at our website.

THE SENIOR PRESIDENT OF TRIBUNALS' PROPOSALS

Background

7. The TPC has been asked by the Senior President of Tribunals ("the SPT"), the Rt Hon. Sir Keith Lindblom, to consider amending the rules for each Chamber of the First-tier Tribunal and the Employment Tribunals concerning the extent to which each tribunal is obliged to provide written reasons for decisions disposing of proceedings. The SPT's proposals are jurisdiction-specific and vary for each tribunal. They focus primarily on cases where the tribunal has already informed the parties of its decision and provided a summary of the reasons for that decision at a hearing and address the circumstances under which an application may be made for those reasons to be additionally provided in writing.

8. The SPT has also asked the TPC to consider reducing the time in which an application for written reasons may be made to the tribunal in some jurisdictions.

9. The TPC understands that the proposals are intended to ensure that proceedings before the First-tier Tribunal and the Employment Tribunals are handled quickly and efficiently while ensuring that proceedings before the tribunal are accessible and fair, through the development of innovative methods of resolving disputes. See section 2(3) of the TCEA.

10. In summary, the SPT's proposals are:

    (a) Time for requesting written reasons in some chambers of the First-tier Tribunal: The time within which discretionary written reasons may be requested from the First-tier Tribunal by a party to the proceedings will be reduced, usually to 14 days, from the current time limit of 28 days or longer. The proposals do not apply to all types of case before all chambers of the First-tier Tribunal, and there will continue to be a discretion for time to be extended.

    (b) First-tier Tribunal (Tax Chamber), (General Regulatory Chamber): To make amendments providing bespoke, chamber-specific rules addressing when full or summary-form reasons are required or available, with (in the case of the General Regulatory Chamber) allocation to a "track" commensurate to the complexity of the proceedings. In the Tax Chamber, only a party with a right of appeal will be entitled to request full reasons.

    (c) Employment Tribunals (England and Wales, Scotland): The rules will distinguish between short-form and full written reasons. The right to request full written reasons will be restricted to the unsuccessful party, with judicial discretion to issue written reasons in other situations "in the interests of justice." Only full written reasons would be uploaded to the open register.

11. In this consultation paper, all references to proposals etc. are to the SPT's proposals, unless the contrary is stated.

Accompanying practice directions

12. The SPT's proposals have been formulated alongside a number of proposed practice directions which the SPT considers are required to work alongside the proposed rule changes. We have included the current draft text for each proposed direction, in the form provided to the TPC, at Annex 1. It is important to note, however, that the TPC has no statutory power to give practice directions. Parliament has conferred that power on the incumbent of the office of Senior President of Tribunals, the relevant Chamber President, or the Presidents of the Employment Tribunals, not the TPC. The TPC has not drafted the proposed draft practice directions and is therefore not consulting on the text of the proposed practice directions, which are solely a matter for the SPT or the relevant Chamber President. The TPC has included the details of the proposed practice directions to contextualise the SPT's proposals, and to demonstrate how it is presently envisaged by the SPT that his proposals would be complemented by any associated relevant practice directions.

13. The need for (and contents of) any associated practice direction would need to be kept under review by the person vested with the power to give such directions, whether the SPT or the relevant President. It follows that any draft practice direction included in this consultation paper is subject to changes that will be made outside the control of the TPC.

Earlier versions of the proposals

14. In Autumn 2023, the SPT asked the TPC to consider an earlier version of the proposed rule changes. Those proposals were initially discussed by the TPC at its meeting on 3 November 2023. At its meeting on 8 December 2023, the TPC decided not to pursue the proposals as then formulated, on the basis that there was "very little judicial support for the proposed changes and a considerable amount of opposition to the proposals" (see paragraph 2.3 of the minutes of the 8 December 2023 meeting). Instrumental in that decision was the then approach from the Chamber Presidents to the proposals as then formulated (see paragraph 2.4 of the 8 December 2023 minutes). The TPC indicated that it would be prepared to revisit the issue following further engagement with the Chamber Presidents (paragraph 2.5). Full details are set out in the minutes of the December 2023 meeting which are available online.

15. The SPT has subsequently reformulated the proposals in consultation with the Chamber Presidents and the Presidents of the Employment Tribunals and has presented a revised package of proposed rule changes, and accompanying practice directions (as to which, see Annex 1), which are intended to address the reasons previously given by the TPC for not taking the matter further. The proposals as presently formulated vary from jurisdiction to jurisdiction and, the TPC understands, have the support of the Chamber Presidents. That being so, the TPC considers that it is appropriate to consult on the reformulated proposals in order to consider whether to exercise its power to make rules of procedure, and if so, how.

16. The proposals are set out in this paper along with the TPC's preliminary views about the proposed rule changes, and the specific questions upon which the views of consultees are sought.

17. The consultation will run from **30 July to 22 October**.

The roles of the Senior President of Tribunals and the Tribunal Procedure Committee

18. While the SPT has a statutory representative on the Committee (see paragraph 20(a) of Schd. 5 to the TCEA; the Chair of the Committee is by convention the SPT's representative, currently Joanna Smith J), the TPC is independent from the SPT, and acts pursuant to its own statutory mandate and obligations. The TPC understands that the SPT has formulated the proposals outlined in this paper pursuant to his own statutory obligations, in particular those imposed by section 2(3) of the TCEA. The TPC is regularly invited to consider adopting rules by a range of organisations and individuals and is sometimes invited to do so by a judgment of a court or tribunal. The TPC therefore considers that it is appropriate to consult on the SPT's proposals, setting out its preliminary views in relation to the proposals as presently formulated, recalling both its independence and its own statutory obligations, as summarised above.

19. The TPC has made some minor drafting amendments to the proposals as originally formulated by the SPT.

Tribunals affected by this Consultation

20. This consultation affects the Employment Tribunals (England and Wales) and the Employment Tribunals (Scotland) and all chambers of the First-tier Tribunal except the Social Entitlement Chamber.

21. The rules of procedure affected by this consultation are:

    The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008

The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (but see paragraph 48 concerning potential amendments to these rules)

22. This consultation does not affect the Upper Tribunal's rules of procedure.

The proposals in detail

Proposal 1: time limits for requesting written reasons in some cases before the First-tier Tribunal

23. Some chambers of the First-tier Tribunal are required by their rules of procedure to provide written reasons only following the request of a party in certain types of cases. By contrast, in certain categories of case in some chambers, for example asylum or humanitarian protection appeals before the First-tier Tribunal (Immigration and Asylum Chamber), written reasons are always required (see rule 29(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014). This proposal addresses the time within which a party who is entitled to written reasons on request, but not automatically, may apply to the tribunal for written reasons. It does not apply to those cases where the tribunal is always obliged to provide written reasons.

24. The TPC understands that the SPT considers that the current time limits for a party to decide whether to request written reasons are too long. The proposal is that the time limit for a request for written reasons should, in general, be shortened to 14 days, subject to the exceptions summarised below.

25. The current time limits for requesting written reasons are as follows:

Chamber/Jurisdiction	Current time limits for requesting written reasons
Immigration and Asylum Chamber (in cases other than asylum or humanitarian protection cases)	28 days
Property Chamber (in rent cases)	One month
Social Entitlement Chamber (in criminal injuries compensation and social security and child support cases, not including Asylum Support)	One month
Tax Chamber	28 days
War Pensions and Armed Forces Compensation Chamber	42 days

26. The SPT has proposed that the following exceptions to a reduction to 14 days would apply:

(a) There would be no change in the Social Entitlement Chamber. Requests in this chamber are often said to be received outside the current one-month time limit, often resulting in extensions being requested and granted. Reducing the current

time limit may generate further judicial work through the need to consider applications for extensions of time.

(b) In the Immigration and Asylum Chamber, appellants who are outside the United Kingdom should continue to have a period of 28 days. Appellants who are abroad are currently given 28 days to lodge their appeal and 28 days in which to lodge a permission to appeal application against the First-tier Tribunal's decision. Appellants in-country are given 14 days. The SPT considers that maintaining the 28-day period for written reasons for appellants who are abroad will ensure consistency and avoid confusion. A 28-day period for an out-of-country appeal will allow instructions to be taken and a decision to be made on the pursuit of an appeal, frequently with the aid of an interpreter, from outside the United Kingdom. Appellants outside the United Kingdom usually do not attend the hearing either in person or remotely, so will have not had the benefit of seeing how the appeal progressed at the hearing, how well witnesses withstood cross-examination, the questions from the judge and final submissions. Accordingly, the SPT considers that the decision as to whether to request written reasons for appellants outside the United Kingdom should continue to benefit from the current 28-day period.

(c) In the War Pensions and Armed Forces Compensation Chamber, the limit should be reduced to 28 days. The high proportion of litigants who are vulnerable means that a 14-day limit would be too short.

27. The TPC understands that this proposal has been formulated on the basis that whether to make a request for written reasons is not a complicated decision and requires little effort. An overly-long period can add unnecessarily to the overall length of time taken to dispose of proceedings, and can require more judicial time.

Proposed draft rules

28. By way of indicative drafting, the Immigration and Asylum Chamber, rule 29 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 would be amended to read as follows:

"(4) Unless the Tribunal has already provided a written statement of reasons, a party may make a written application to the Tribunal for such statement following a decision which disposes of the proceedings.

(5) An application under paragraph (4) must be received–

(a) within 14 days, or

(b) where an appellant is outside the United Kingdom, within 28 days;

of the date on which the Tribunal sent or otherwise provided to the party a notice of decision relating to the decision which disposes of the proceedings."

Proposal 2: First-tier Tribunal (Tax Chamber) and the provision of reasons

29. The SPT has proposed changes to rule 35 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The current rule 35 is as follows:

"35.— Notice of decisions and reasons

(1) The Tribunal may give a decision orally at a hearing.

(2) The Tribunal must provide to each party within 28 days after making a decision (other than a decision under Part 4) which finally disposes of all issues in proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), or as soon as practicable thereafter, a decision notice which—

(a) states the Tribunals decision; and

(b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) Unless each party agrees that it is unnecessary, the decision notice must—

(a) include a summary of the findings of fact and reasons for the decision; or

(b) be accompanied by full written findings of fact and reasons for the decision.

(4) If the Tribunal provides no findings and reasons, or summary findings and reasons only, in or with the decision notice, a party to the proceedings may apply for full written findings and reasons and must do so before making an application for permission to appeal under rule 39 (application for permission to appeal).

(5) An application under paragraph (4) must be made in writing and be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application.

(6) The Tribunal must send a full written statement of findings and reasons to each party within 28 days after receiving an application for full written reasons made in accordance with paragraphs (4) and (5), or as soon as practicable thereafter."

30. These proposals are as follows:

(a) <u>Remove the obligation under rule 35(2) for the tribunal to provide a decision notice to the parties within 28 days after making a decision which finally disposes of all issues in the proceedings:</u> Pursuant to this proposal, rule 35(2) would still require the tribunal to provide a written notice of the decision "as soon as practicable" after making a decision in the proceedings, but would omit the requirement of 28 days (or as soon as practicable thereafter). The 28 day requirement is no longer considered to be necessary or appropriate, bearing in mind the complexity and length of some hearings in, and therefore decisions of, the Tax Chamber.

(b) <u>Dispense with the need for the consent of each party to give an unreasoned written decision where an oral decision, with reasons, has been provided at the hearing:</u> This proposal notes that the current rule 35 permits, in effect, three types of decision: a "*short*" decision (rule 35(4), "if the Tribunal provides no findings and reasons…"); a "*summary*" decision (rule 35(3)(a) and (4), "a summary of the findings of fact and reasons for the decision…"), and a "*full decision*" (rule 35(3)(b), "full written findings of fact and reasons for the decision…"). Presently, the consent of each party is required to issue a "short" (i.e. unreasoned) decision concerning the outcome, and judicial discretion as to the form of decision applies only to the decision whether to give a summary or full decision. It is proposed that, where an oral decision and reasons have been given at the hearing, it should not be necessary to obtain the consent of the parties in order to give a short (i.e. unreasoned) written decision. Provision will be made for the unsuccessful party to apply for a written decision with "full written findings of fact and reasons for the decision", outlined below.

(c) <u>Restrict the ability to apply for a full written decision to a party with a right of appeal/the unsuccessful party, with a power to provide a full written decision to another party where it is in the interests of justice to do so</u>: The TPC understands that this proposal is designed to strike a balance between the judicial resources required in the preparation of a full written decision, on the one hand, and the

need for the requestor to be provided with a full written decision, on the other. The premise of the proposal is that the successful party will not have the same need to obtain a full written decision as a party who has lost and needs to consider whether to apply for permission to appeal. The tribunal will still be able to provide full written reasons to a party without a right of appeal, or which was successful, where it considers it to be in the interests of justice to do so. See the proposed new rule 35(8).

(d) Reduce the time for requesting a written decision to 14 days: This proposal is covered, in respect of all affected First-tier Tribunal chambers, at paragraphs 23 to 28, above. The proposed amendment to rule 35(6) is consistent with those proposals.

31. The proposed amended rule 35 would therefore be as follows:

"35. Notice of decisions and reasons

(1) The Tribunal may give a decision orally at a hearing.

(2) The Tribunal must provide to each party as soon as practicable after making a decision (other than a decision under Part 4) which finally disposes of all issues in proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), a decision notice which –

(a) states the Tribunal's decision; and

(b) notifies the party of any right of appeal against the decision and the time within which, and the manner in which, the right of appeal may be exercised.

(3) The decision notice must include:

(a) a summary of the findings of fact and reasons for the decision; or

(b) full findings of fact and reasons for the decision.

(4) Unless the Tribunal considers that it would be contrary to the interests of justice, paragraph (3) does not apply in any case where the Tribunal has given reasons of the sort referred to in paragraph (3)(a) or (b) orally at a hearing.

(5) If the Tribunal provides no findings of fact and reasons, or summary findings of fact and reasons only, in or with the decision notice, a party may apply for full written findings and reasons and must do so before making an application for permission to appeal under rule 39 (application for permission to appeal).

(6) An application under paragraph (5) must be made to the Tribunal in writing and be sent or delivered to the Tribunal so that it is received within 14 days after the date that the Tribunal sent or otherwise provided the decision notice under paragraph (2) to the party making the application.

(7) Where an application under paragraph (5) is made by an unsuccessful party, the Tribunal–

(a) must send a written statement containing full findings of facts and reasons for the decision to each party as soon as reasonably practicable after receiving the application; and

(b) may limit the scope of the written statement containing full findings of facts and reasons to the extent that the unsuccessful party was unsuccessful.

(8) Where an application under paragraph (5) is made by –

(a) a party who was the successful party; or

(b) any other person;

the Tribunal may provide a written statement containing full findings of facts and reasons if the Tribunal considers that it is in the interests of justice to provide a written statement containing full findings of facts and reasons to that party or person.

(9) In this rule –

(a) 'unsuccessful party' means a party who has been unsuccessful in whole or in part; and

(b) 'successful party' is to be construed accordingly."

Proposal 3: General Regulatory Chamber tracks and reasons

The Standard Track and the Open Track

32. The General Regulatory Chamber ("GRC") has 15 jurisdictions and deals with matters of widely varying complexity. However, a significant majority of appeals in certain jurisdictions do not usually raise complex issues, when compared to other proceedings in the Chamber. The TPC understands that these proposals are to ensure that appropriate cases in the GRC are dealt with promptly and in a manner that is commensurate to the complexity of the issues in the case.

33. Central to this proposal is the introduction of a "track" system, achieved through amendments to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the GRC Rules"), similar to that already operating in the Tax Chamber, the Employment Tribunals, the County Court and the High Court. Pursuant to these proposals, simpler appeals will be allocated to the "Standard Track", whereas all other appeals would be allocated to the "Open Track".

34. The proposed rules will make provision for a practice direction or presidential guidance (see the draft at Annex 1) to identify those categories of appeals which are to be automatically allocated to the Standard Track, and those which are to be allocated to the Open Track. The TPC understands that the rationale behind the use of a practice direction or presidential guidance to determine the correct track allocation is to combine transparency with the flexibility required to accommodate new rights of appeal, as and when such additions are made to the GRC's jurisdiction.

35. The proposed amendments to the rules will also permit the tribunal to re-allocate a case from one track to another. This is to ensure that the tribunal has the flexibility necessary to guard against any potential unfairness otherwise caused by default allocation to a track which, in the circumstances of the case, is not suitable.

Written reasons in the Standard Track

36. Allied to the introduction of the Standard and Open tracks, the proposals make provision for written decisions in Standard Track cases to be in summary form, focussing on the principal issues. To that end, the proposals amend the GRC's general case management powers contained in rule 5(3) to make express provision for the tribunal to have the power to identify the "principal issues" in the proceedings (see the proposed new rule 5(3)(da), below). The significance of the "principal issues" being so identified lies in the proposed amendments to rule 38, concerning the GRC's obligations to issue written decisions and reasons.

37. It is proposed by the SPT that for Standard Track cases, the written reasons issued by the tribunal may focus only on the principal issues, as identified pursuant to the proposed new rule 5(3)(da). That contrasts with the present rule 38(2) which provides that "written reasons" must be provided for all decisions finally disposing of all issues in the proceedings, or of a preliminary issue dealt with following a direction under rule 5(3)(e). In practice, the TPC understands that at present rule 38(2) leads to the GRC providing full findings of fact and reasons in all cases.

38. The proposed amendments therefore permit one of two types of written reasons to be provided. A summary form of reasons, referred to in the proposed amendments as "conclusions on the principal issues in the proceedings", or a "written statement of reasons for the decision". The former would be a more limited document, focussing only on the principal issues, as identified under the new rule 5(3)(da). A "written statement of reasons for the decision" would more closely resemble a full judgment. A written statement of reasons for the decision will be required in all Open Track cases. In Standard Track cases, whether to issue "conclusions on the principal issues" or a full "written statement of reasons for the decision" will be at the discretion of the tribunal.

39. It is also proposed that where the tribunal has provided a decision notice in a "Standard Track" case that contains only notice of the decision and the conclusions on the principal issues in the proceedings, any party may apply for a written statement of reasons for the decision. An unsuccessful party who wishes to appeal must apply for a written statement of reasons for the decision, before making an application for permission to appeal.

40. An application for a written statement of reasons for the decision must be made in writing within 14 days of the date on which the tribunal sent the decision notice to the party. The tribunal must provide a written statement of reasons for the decision within 28 days of receipt of the application or as soon as practicable thereafter. This ensures a degree of latitude that recognises the possibility of administrative delays in passing on the application to the hearing judge, and the time necessary to draft and issue the written statement of reasons for the decision.

Proposed draft rules

41. It is proposed that rule 1(3) of the GRC Rules (citation, commencement, application and interpretation) would be amended to insert, in the appropriate places, the following definitions:

"'open track case' means a case allocated to the open track under rule 5B (allocation of cases to the standard or open track)."

"'standard track case' means a case allocated to the standard track under rule 5B (allocation of cases to the standard or open track)."

42. In rule 5, after paragraph (3)(d), insert:

"(da) identifying the principal issues in the proceedings;".

43. A new rule 5B would be inserted in the appropriate place:

"**5B – Allocation of cases to the standard track or the open track**

(1) When proceedings are started, the Tribunal must allocate the case to one of the categories in paragraph (2).

(2) The categories are –

(a) the standard track; or

(b) the open track.

(3) The Tribunal may give a direction re-allocating a case to a different category at any time under rule 6(1).

(4) This rule does not apply to a case to which rule 19(1A) (transfer of certain cases to the Upper Tribunal) applies."

44. Rule 38 in its current form provides:

38.— Decisions

(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(10) (prevention of disclosure or publication of documents and information), the Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 4) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)—

(a) a decision notice stating the Tribunals decision;

(b) written reasons for the decision; and

(c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply."

45. Rule 38 would be amended to read as follows:

"**38. – Decisions**

(1) The Tribunal may give a decision orally at the hearing.

(2) In an open track case, where the Tribunal has made a decision (other than a decision under Part 4) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), the Tribunal must within 28 days (or, if that is not possible, as soon as reasonably practicable), provide to each party –

(a) a decision notice stating the Tribunals decision;

(b) a written statement of reasons for the decision; and

(c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) In a standard track case, where the Tribunal has made a decision (other than a decision under Part 4) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e), the Tribunal must within 14 days (or, if that is not possible, as soon as reasonably practicable), provide to each party –

(a) a decision notice stating the Tribunal's decision;

(b) either:

(i) the Tribunal's conclusions on the principal issues in the proceedings; or

(ii) a written statement of reasons for the decision; and,

(c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(4) If the Tribunal provides its conclusions on the principal issues in the proceedings under paragraph (3)(b)(i), a party to the proceedings may apply for a written statement of reasons and must do so before making an application for permission to appeal under rule 42 (application for permission to appeal).

(5) An application under paragraph (4) must be made in writing and be received by the Tribunal within 14 days after the date that the Tribunal sent or provided the decision notice under paragraph (3) to the party making the application.

(6) Where the Tribunal receives an application under paragraph (4), it must send a written statement of reasons to each party within 28 days, or if that is not possible, as soon as reasonably practicable.

(7) The Tribunal may provide a written statement of reasons for any decision to which paragraph (2) or paragraph (3) does not apply.

(8) See rule 14(10) (prevention of disclosure or publication of documents and information) concerning what the Tribunal may not disclose."

46. Rule 42(2)(a), concerning applications for permission to appeal to the Upper Tribunal, will be amended to insert "statement of:

"(a) written statement of reasons for the decision…"

See Annex 1 for details of the proposed draft practice direction.

Proposal 4: Employment Tribunals

47. The Commencement Order that allowed the formal transfer of the Employment Tribunal rule-making powers from the Department of Business and Trade to the TPC was signed by the Minister on 24 April 2024 and came into force on 25 April 2024. In respect to the transfer of responsibility for the Employment Appeal Tribunal Rules to the TPC, we are awaiting a ministerial decision for when the timing of the transfer is to take place.

48. This aspect of the proposals concerns the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Regulations"). In this consultation, "ETs" means "Employment Tribunals". The TPC has recently consulted on remaking the ET Regulations in a new set of procedural rules but we anticipate that, other than minor updates and renumbering, the rules are likely to remain substantially the same. It is not expected that the outcome of that consultation will affect the SPT's proposals here. The consultation may be found online.

49. The ET Regulations distinguish between a judgment, which is a decision made at any stage of the proceedings that finally determines, or could determine, liability, remedy, costs and jurisdictional issues, and all other decisions, which are termed "case management orders". The ET rules are contained in Schedule 1 to the ET Regulations. Under paragraph (rule) 62(1) there is an absolute obligation to give reasons for a decision on any disputed issue, whether substantive or procedural. Under rule 62(4) the reasons given for any decision must be proportionate to the significance of the issue, and for decisions other than judgments may be "very short".

Reasons are always provided in writing if the decision is taken without a hearing. Rule 62(5) prescribes the requirements for a judgment; it must:

> "…identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues. Where the judgment includes a financial award the reasons shall identify, by means of a table or otherwise, how the amount to be paid has been calculated."

50. Where the decision is taken at a hearing, reasons can be given orally or reserved to be given in writing. Where reasons are given orally, the tribunal is obliged to inform the parties that they can request written reasons at the hearing, or within 14 days of the sending of the written record of the decision (a "judgment" or "order"). There is power to extend this time limit. The written reasons have to be signed by the judge.

51. The proposals to amend the ET rules are as follows:

(a) Where a judgment has been given orally (either as short-form or full reasons: see below) written reasons should be limited to a party who has been unsuccessful in the proceedings: This facet of the proposals has been formulated on the basis that only a party who was unsuccessful should be able to apply for written reasons, and even then only for that part in which they were unsuccessful. The intention is that the concept of "success" could relate to a particular complaint or cause of action or a point concerning remedy. For example, a party may succeed in a claim of unfair dismissal but receive no compensation.

(b) Pursuant to this proposal, a judge would be able to approve the preparation and release of full written reasons in circumstances in which there would otherwise be no entitlement under the amended rule, where it is in the interests of justice to do so.

(c) Short-form reasons and full reasons: It is proposed that the ET rules should permit a tribunal to give either "short-form" or "full" reasons. Prior to amendments made to the rules in 2004, an ET could choose to deliver reasons in summary form. See, for example, rule 10(4) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993 ("the 1993 Rules"), which drew a distinction between reasons in "summary form" and "extended form". The 1993 Rules required extended reasons in certain categories of claim, such as claims based on discrimination, to be the subject of extended reasons. The distinction between summary and extended reasons is therefore not new. The proposed return to that approach adopts different terminology, "short-form" and "full" reasons.

(d) Short-form reasons would not have to comply with rule 62(5). They would be directed solely to the parties, who will already be familiar with the case, the issues, and the legal framework. Short-form reasons could be crafted specifically with the parties in mind, especially where one party does not benefit from legal representation. It is expected that short-form reasons would be given orally at the conclusion of a contested hearing.

(e) Rule 62(5) would continue to apply to full reasons.

(f) The written record: It is also proposed to omit rule 61(3). This rule requires the written record of ET proceedings to be signed by the Employment Judge. The rationale for the removal of the rule is that it is no longer necessary in light of, or compatible with, digital working.

Proposed rule changes

52. The SPT has proposed that rules 62 and 67 are amended as follows:

“**62. – Reasons**

(1) The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural (including any decision on an application for reconsideration or for orders for costs, preparation time or wasted costs).

(2) The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short.

(3) In the case of a decision given in writing, the reasons shall also be given in writing.

(4) In the case of a decision announced at a hearing, the reasons may be given orally at the hearing or reserved to be given in writing later (which may, but need not, be as part of the written record of the decision).

(5) If reasons were given orally for a decision other than a judgment, written reasons will only be provided if they are applied for by a party at the hearing or if a party applies in writing within 14 days of the sending of the written record of the decision.

(6) In the case of a judgment given orally, a judge may give –

(a) short-form reasons, which must –

(i) provide a brief explanation of why the Tribunal has reached its decision in respect of each issue; and

(ii) state that the reasons being given are short-form reasons; or

(b) full reasons, which must identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues (and how any conflicts in evidence have been resolved), concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues. Where the judgment includes a financial award, the reasons shall explain how the amount to be paid has been calculated.

(7) Where an oral judgment has been given under paragraph (6) –

(a) where short-form reasons were given–

(i) an unsuccessful party may apply for a written record of the short-form reasons at the hearing or in writing within 7 days of being sent the written record of the decision; and

(ii) the written record of the short-form reasons must state that the unsuccessful party may request full written reasons within 14 days from the date the written record of the short-form reasons is sent to the party; and

(b) where full reasons were given, the unsuccessful party may apply for a written record of the full reasons at the hearing or in writing within 14 days of being sent the written record of the decision.

(8) A written record of short-form reasons or of full reasons provided to an unsuccessful party under paragraph (7) may be limited to the issues on which that party was unsuccessful, unless paragraph (12) applies.

(9) Where a judgment is reserved, full reasons must be given to all parties in writing.

(10) The Tribunal must also provide full reasons in writing if requested to do so by the Employment Appeal Tribunal or a superior court of record.

(11) In this rule –

(a) "unsuccessful party" means a party who has been unsuccessful in whole or in part; and

(b) "successful party" is to be construed accordingly.

(12) An Employment Judge may direct that full reasons may be provided in writing in circumstances when there would otherwise be no entitlement under this rule, if it is in the interests of justice to do so."

53. Rule 67 would be amended to read:

> "Subject to rules 50 and 94 (and with the exception of judgments for withdrawn claims under rule 52 and short-form reasons under rule 62), a copy shall be entered in the Register of any judgment and of any written reasons for a judgment."

54. The proposed rule 62(7)(a)(i) entitles a party to apply for a written record of short-form reasons either at the hearing or within seven days of the hearing. The TPC understands that a seven-day period has been proposed by the SPT because, upon receipt of the short-form reasons, a party may request full written reasons within a further 14 days, under rule 62(7)(a)(ii). Taken together, those time limits would permit full written reasons to be requested up to 21 days after the hearing. If rule 62(7)(a)(i) permitted a lengthier period, for example 14 days, the total time permitted to request full written reasons would be 28 days. The TPC understands that it is considered that a 28 day period to request full written reasons could be too long, and that it would be contrary to the overall objective of these proposals, namely to reduce delay and improve efficiency.

THE TPC'S PRELIMINARY VIEWS ON THE PROPOSALS

55. At a general level, the TPC considers that efficient use of judges is important. The available judicial resource is limited. A finite number of salaried and fee-paid judges are appointed. There is a limited budget available for fee-paid judges to sit. It is inevitable that judges engaged in one form of judicial work, such as writing reasons, are not available to carry out other forms of judicial work. If too much judicial time is spent producing written reasons where that is not necessary or desirable to deal with cases justly there will be delay in other cases. That would be inconsistent with the TPC's statutory duty to produce rules that allow the tribunals to operate quickly and efficiently. Ensuring that the tribunals operate efficiently and that cases are resolved promptly is also an important element of access to justice for all parties before the tribunals.

56. In many tribunals, substantial judicial time is used in writing reasons and the TPC believes that the overall scope for improved efficiency from these changes is likely to be significant. The objectives which lie behind the proposals are consistent with the TPC's statutory purposes. Provided the changes can be implemented in a manner that is sufficiently clear, and are drafted to avoid creating new inefficiencies, the TPC welcomes the proposals.

57. The TPC considers that it is significant that the Chamber Presidents of the First-tier Tribunal and the Presidents of the ETs support the proposals, which have been crafted by the SPT with the particular needs of each jurisdiction in mind. The TPC

understands that the Chamber Presidents' views are informed by their expertise in connection with their work, practice and procedure in their own chambers. That is a matter to which the TPC attaches considerable weight, and which, in principle, justifies adopting a jurisdiction-specific approach for each tribunal.

58. The TPC has a number of proposal-specific preliminary views, which we address in the context of each proposal below.

Proposal 1: Time limits for written reasons (paragraphs 23 to 28)

59. In the TPC's preliminary view, making these changes is likely to be appropriate. Whether to request written reasons is a relatively straightforward decision, and in the vast majority of cases, deciding whether to make such an application should not be problematic. Prompt requests for written reasons will enable judges to have a clearer picture of their judicial workload. Prompt requests also enable judges to prepare written reasons sooner after the hearing than may be the case at present, resulting in efficiencies and an overall better use of judicial time. Consequently, the reasons will be prepared with the benefit of the proceedings having taken place relatively recently, which in turn will take less time, lead to more focussed decision writing, and reduce the overall time within which the proceedings will be finally determined. In turn, that will contribute to the fairness and efficiency of the proceedings.

60. The TPC has considered whether the reduction in the time available to request a written statement of reasons will result in more appellants making a protective application in the reduced time available to do so, but has concluded that this is unlikely. A fourteen-day period should, in general, be a sufficient period within which to decide whether to make an application for a written statement of reasons. The TPC therefore does not expect the reduction in the time limit for making the application to result in more requests for reasons than at present.

61. In relation to the proposed 28-day limit for requests for written reasons by an out of country appellant in the Immigration and Asylum Chamber, the TPC notes that the FTTIAC rules of procedure already distinguish between appellants who are within, or outside, the United Kingdom. For example, rule 33(3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides that an application for permission to appeal to the Upper Tribunal must be made by an appellant outside the United Kingdom within 28 days after the party making the application was sent the written reasons for the decision. By contrast, an appellant who is within the United Kingdom must do so within 14 days: see rule 33(2). The SPT's proposed 14/28 day distinction is consistent with the approach already taken by the rules to out of country appellants.

62. The TPC also supports the remaining aspects of the proposals to shorten the period of time within which a tribunal is obliged to send the parties a notice of decision, for example in relation to rule 35(2) of the Tax Chamber rules.

63. The TPC notes that it may not only be the War Pension and Armed Forces Compensation Chamber in which a high number of litigants are vulnerable. The TPC would welcome the views of consultees as to whether other chambers of the First-tier Tribunal should benefit from the proposed 28-day period.

64. The TPC therefore invites the views of consultees on the following questions. Please indicate if your answer focusses on a particular chamber, or the proposals as a whole.

Question (1) (All chambers except Social Entitlement): Do you agree that the time limit for requesting discretionary written reasons should, in general, be reduced to 14 days?

Question (2) (All chambers except Social Entitlement): Do you agree with the proposed exceptions? Should there be any other exceptions for other classes of case, and if so why?

Question (3) (All chambers except Social Entitlement): Do you have any other observations about this proposal?

Proposal 2: First-tier Tribunal (Tax Chamber) and the provision of reasons ([paragraphs 29 to 31](#))

65. Sub-proposal: amendments to rule 35(2). The TPC's view is that it is not necessary for the rules to prescribe what would effectively be an indicative deadline for the provision of a decision notice. A tribunal will be subject to the "as soon as practicable" requirement in any event. In many cases, that point will come much earlier than the 28-day limit. The TPC notes that this proposed amendment is not in isolation and features as a part of a package of efficiency-based measures which should result in overall efficiencies, thereby enabling judges to provide written reasons at a much earlier stage. As such, the TPC agrees with this proposed amendment.

Question (4) (Tax Chamber): Do you agree that rule 35(2) of the Tax Chamber rules should be amended to remove the obligation to provide the notice of decision within 28 days?

66. Sub-proposal: dispense with the need for the consent of each party for the Tax Chamber to give an unreasoned written decision where an oral decision, with reasons, has been provided at the hearing. The TPC considers that, provided sufficient oral reasons have been given, and provided it is possible for an approved transcript to be issued to the parties (as to which, see below), this proposal is not problematic. The parties will know who succeeded, and why, along with the tribunal's key findings, pursuant to the reasons that were given orally. A judge will not be prohibited from giving further reasons in writing, and it will remain a matter of judicial discretion to decide whether to do so. It is unusual in many jurisdictions for a judge to be required to obtain the consent of the parties in these circumstances. An *extempore*, or oral, reasoned decision (i.e. judgment) obviates the need to give a reserved written decision (or judgment).

67. The TPC welcomes this proposal, provided it will be possible for the parties to obtain an approved transcript of any reasons given orally in lieu of a reserved decision.

Question (5) (Tax Chamber): Do you agree that the consent of the parties should not be required in the Tax Chamber for an unreasoned written decision to be given provided sufficient oral reasons have been provided?

68. Sub-proposal: restrict the ability to apply for a full written decision to the unsuccessful party, subject to a power to provide a full written decision to another party where it is in the interests of justice to do so. (Paras 30(c), 31, 51(a), 52)

69. The considerations relevant to this proposal are also relevant to the corresponding proposal in the Employment Tribunals concerning restricting the provision of written reasons to the unsuccessful party. The TPC's general observations therefore apply in relation to the ET proposals also.

70. The TPC repeats its general preliminary views outlined above: these proposals could result in considerable efficiency savings. In many cases, the unsuccessful party will have the strongest (if not the only) interest in obtaining full written reasons for the decision. Those reasons will assist that party to understand why it was the unsuccessful party. The reasons for the unsuccessful party's loss before the tribunal

will be the reasons that will concern the Upper Tribunal, and the relevant appellate court(s), upon any onward appeal. The successful party cannot appeal, and so has less of a need for full written reasons.

71. Against that background, the TPC has the following additional observations.

72. In *English v Emery Reimbold & Strick Ltd. (Practice Note)* [2002] EWCA Civ 605, Lord Philips MR held at paragraph 16:

> "…justice will not be done if it is not apparent to the parties why one has won and the other has lost".

See also the Practice Direction from the Senior President of Tribunals: *Reasons for decisions*, 4 June 2024.

73. On one view, these proposals are consistent with the above principle; both parties will have been present when oral reasons were given. The reasons why "one [party] has won and the other has lost" will have been provided to both (or all, as the case may be) parties at the hearing. All parties will therefore be in receipt of reasons for the tribunal's conclusion.

74. There are contrary views, however. The TPC is not aware of any other rules of procedure or authorities which distinguish between the entitlement of a "successful" and "unsuccessful" party to full reasons for the decision. The proposals are based on the footing that oral reasons given will not be given in the form of a full *extempore* judgment, for if that were the case there would be no need to make separate provision for the subsequent provision of written reasons in a form other than an approved transcript of the *extempore* judgment. Inherent in this proposal, therefore, is an assumption that a reserved written judgment will provide more detail, crafted with the benefit of time and (for example) a greater opportunity to cross-refer to the relevant documentation before the tribunal. While oral reasons given at the end of a hearing may well be "sufficient" when given in summary form at that stage, a reserved written decision may well, on any view, provide fuller reasons.

75. In turn, this raises questions – of both principle and practice – as to whether it is appropriate to restrict the entitlement to a full judgment to the "unsuccessful" party.

76. So far as the matters of principle are concerned, the TPC has a number of observations.

77. First, it could be said to introduce an asymmetrical access to justice. Restricting the parties' access to the full reasons for a judgment could be said to result in the parties having vastly differing experiences of their access to justice.

78. Secondly, this proposal assumes that a successful party before the First-tier Tribunal (or the Employment Tribunal) will or should be less concerned about the reasons for their success than the losing party. The TPC questions this assumption. For many parties, knowing the reasons for their success will be almost as important as the outcome of the case. Success before the tribunal could represent personal vindication following a lengthy and stressful process. This could apply as much to an institutional party as it does to an individual, where the decisions and credibility of individuals, whether private citizens, officials or employee representatives, have been called into question and subjected to judicial scrutiny.

79. Quite apart from a party's sense of procedural justice following their success before the tribunal, the legal basis upon which they succeeded may well be relevant for any number of reasons. For example, positive findings reached by the tribunal may be transferrable to other contexts, such as future engagement with the respondent

organisation or person, or in related judicial proceedings, either in the same jurisdiction or before another court or tribunal.

80. Thirdly, this proposal may offend the principle of open justice. In *Cape Intermediate Holdings v Dring (Asbestos Victims Support Groups Forum)* [2019] UKSC 38 at paragraph 22, Lady Hale PSC endorsed the judgment of Lord Woolf in *Barings plc v Coopers & Lybrand* [2000] 1 WLR 2353 at paragraph 43, where he said:

> "As a matter of basic principle the starting point should be that practices adopted by the courts and parties to ensure the efficient resolution of litigation should not be allowed to adversely affect the ability of the public to know what is happening in the course of the proceedings."

Lady Hale continued at paragraph 41, "The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state."

81. Pursuant to the principle of open justice, it is not only the parties to proceedings who may be entitled to obtain details about the case, including the judgment or reasons for the decision but, in some circumstances, the public as well. One of the reasons for this, said Lady Hale at paragraph 43 of *Cape v Dring*, is due to the importance of transparency:

> "…to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases."

82. It could be said that if *a party to the proceedings* is not entitled to reasons for the decision, it will be much harder for a member of the general public to obtain such reasons. In turn, an element of public scrutiny of the tribunal process and open justice generally may be lost.

83. The TPC is aware that a Transparency and Open Justice Board has recently been set up by the Lady Chief Justice with the remit of examining and seeking to modernise the judiciary's approach to open justice. Accordingly, the TPC wishes to make it clear that it intends to invite that Board to respond to this consultation with a view to ensuring consistency of approach across the judiciary and tribunals. Any comments that it wishes to make in relation to these proposals will of course be taken into account when the TPC ultimately considers whether to make the rules identified herein.

84. Fourthly, the TPC is not aware that the courts, where *extempore* judgments are far more common, are also subject to these constraints. Adopting changes of this nature may result in a greater divergence between the courts and the tribunals.

85. There may also be concerns that, as a matter of practice, it may be difficult to identify the "successful party". As is often said, rare is the litigant who succeeds on all matters. While the labels "successful" or "unsuccessful" may accurately apply to the overall outcome of the proceedings, in practice there will be some issues upon which a party has succeeded, and others upon which a party has not succeeded. Ostensible success may, properly understood, be only partial success, and *vice versa*. In most cases, however, the TPC does not expect this requirement to present difficulties.

86. What may be more challenging is providing written reasons to the unsuccessful party only to the extent that that party is unsuccessful. The task may become overly complicated where there is partial success on each side, to the extent that it is envisaged that different provision will be made to each party. Or the reasons that a party was not the successful party may be difficult to express other than in the

context of setting out other, interlinked findings on which the requesting party was successful. In such circumstances, it would be surprising if a judge did anything other than issue a full judgment.

87. The TPC also notes that this sub-proposal is subject to an overriding “interests of justice” test. The TPC invites the views of consultees as to whether an “interests of justice” test will provide a sufficient safety valve to address the matters set out below, without creating unnecessary satellite litigation.

Question (6) (Tax Chamber, GRC, ETs):

> **(a) Do you agree that full written reasons should be restricted to the unsuccessful party, where oral reasons have been given at a hearing?**
>
> **(b) Do you agree that such reasons should be limited to the issues upon which the party was unsuccessful?**
>
> **(c) Do you agree with the proposed definition of “unsuccessful party”?**

Question (7) (Tax Chamber, GRC, ETs):

> **(a) Do you agree that an “interests of justice” test will be sufficient to address any concerns raised by the TPC (and any other observations you may have)?**
>
> **(b) Are the proposals consistent with the principle of open justice or nonetheless desirable to achieve greater efficiencies in the system?**

Proposal 3: General Regulatory Chamber tracks and reasons (paragraphs 32 to 46)

88. The TPC welcomes the proposal to introduce tracks in the General Regulatory Chamber. This approach is well established in the Employment Tribunals and the civil courts. It allows proceedings to be managed in a manner that is proportionate and responsive to the issues in the proceedings. Pursuant to these proposals, a judge retains the discretion to allocate proceedings to the other track (that is, the standard or open track, or vice versa).

89. The TPC also welcomes the proposal for the tribunal focussing its reasons on the “principal issues”, as identified pursuant to the new rule 5(3)(da). Many tribunal decisions focus on the principal controversial issues, as identified in consultation with the parties in any event. The TPC considers that this approach finds support in a range of authorities, for example see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter* [2004] UKHL 33 at paragraph 36:

> “The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision.”

The TPC considers that, provided reasons are sufficient, they may focus on the principal issues, as identified by the tribunal. To the extent a rule of procedure will assist the GRC in dealing with cases in this manner, the TPC considers that it would be appropriate to adopt a rule on this basis. The TPC notes that the GRC retains the discretion to provide full reasons, namely a “written statement of reasons”, as a matter of judicial discretion.

Question (8) (GRC): Do you agree with the introduction of the “standard track” and the “open track” in proceedings before the General Regulatory Chamber?

Question (9) (GRC): Do you agree:

(a) that the rules should make provision for the GRC to identify the "principal issues" in standard track cases; and

(b) that reasons in a standard track case may focus on its conclusions on the principal issues in the proceedings?

Proposal 4: Employment Tribunals (paragraphs 47 to 54)

90. The TPC has addressed the first sub-proposal, concerning the restriction of full written reasons to the unsuccessful party, above. Questions (6) and (7) seek respondents' views on these issues in relation to the ETs as well as the Tax Chamber and the General Regulatory Chamber.

91. Sub-proposal: short-form and full reasons. The TPC considers that, provided short-form reasons are sufficient, this proposal will be beneficial.

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

92. The TPC seeks views as to whether the time limit for requesting written short-form reasons under rule 62(7)(a)(i) should be 7 or 14 days (see paragraph 54).

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

93. Signed written reasons (omission of rule 61(3)): The TPC agrees that it is not necessary to make provision for an Employment Judge to sign the written record of proceedings, for two reasons. There is no corresponding requirement in other tribunals. Given the increased reliance on electronic preparation and promulgation of decisions, it is not necessary for the rules to impose this requirement and it creates an administrative burden. Nothing in the proposed rule change would prevent the tribunal from providing a hard-copy decision to a party where necessary, for example as a reasonable adjustment.

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

Concluding remarks

94. The TPC welcomes views on all aspects of the proposals set out in this paper, whether expressly addressed by one of the consultation questions, or not. Consultees are not expected to address all questions.

Question (13) (all proposals): Do you have any other observations about any aspect of the proposals?

QUESTIONS FOR CONSULTATION

95. In summary, the TPC wishes to consult on the questions set out below. There is no expectation that all consultees will address all questions, especially in light of the breadth of this consultation (although the TPC would welcome such responses). The TPC welcomes all responses, including those focussing on particular areas of interest for individual consultees.

Proposal 1: time limits for requesting written reasons (paragraphs 23 to 28)

Question (1): Do you agree that the time limit for requesting discretionary written reasons should, in general, be reduced to 14 days?

Question (2): Do you agree with the proposed exceptions? Should there be any other exceptions for other classes of case, and if so why?

Question (3): Do you have any other observations about this proposal?

Proposal 2: decisions and reasons in the First-tier Tribunal (Tax Chamber) (paragraphs 29 to 31)

Question (4): Do you agree that rule 35(2) of the Tax Chamber rules should be amended to remove the obligation to provide the notice of decision within 28 days?

Question (5): Do you agree that the consent of the parties should not be required in the Tax Chamber for an unreasoned written decision to be given provided sufficient oral reasons have been provided?

Questions (6) and (7) apply in relation to the Tax Chamber (see paragraphs 29 to 31), the General Regulatory Chamber (see paragraphs 32 to 46) and the Employment Tribunals (see paragraphs 47 to 54).

You may focus your answers to a particular chamber, or alternatively address the questions in general terms.

The TPC's discussion of this proposals may be found at paragraphs 65 to 94.

Question (6): (a) Do you agree that full written reasons should be restricted to the unsuccessful party, where oral reasons have been given at a hearing?

(b) Do you agree that such reasons should be limited to the issues upon which the party was unsuccessful?

(c) Do you agree with the proposed definition of "unsuccessful party"?

Question (7): (a) Do you agree that an "interests of justice" test will be sufficient to address any concerns raised by the TPC (and any other observations you may have)?

(b) Are the proposals consistent with the principle of open justice or nonetheless desirable to achieve greater efficiencies in the system?

Proposal 3: General Regulatory Chamber tracks and reasons (paragraphs 32 to 46)

Question (8): Do you agree with the introduction of the "standard track" and the "open track" in proceedings before the General Regulatory Chamber?

Question (9): Do you agree:

(a) that the rules should make provision for the GRC to identify the "principal issues" in standard track cases; and

(b) that reasons in a standard track case may focus on its conclusions on the principal issues in the proceedings?

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?

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

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

All proposals

Question (13): Do you have any other observations about any aspect of the proposals?

Response

96. Please reply using the response questionnaire template.

97. Please send your response by 22 October to one of the following:

(a) Email: tpcsecretariat@justice.gov.uk

(b) Post: Tribunal Procedure Committee
Access to Justice Directorate
Policy, Communications and Analysis Group
Ministry of Justice
Post Point: Area 5.20
102 Petty France
London
SW1H 9AJ

98. Extra copies of this consultation document can be obtained using the above contact details or online.

ANNEX 1

Proposed practice directions

Please note that the TPC is not responsible for the preparation or making of these draft practice directions and is not consulting upon them. They have been included in this consultation paper to provide background context only and are subject to change.

The First-tier Tribunal (General Regulatory Chamber)

ALLOCATION OF CASES TO TRACKS IN THE GENERAL REGULATORY CHAMBER

1. This Practice Direction has been made by the Chamber President with the approval of the Senior President of Tribunals and Lord Chancellor to give guidance to the First-tier Tribunal (General Regulatory Chamber) ("the Tribunal") and to inform Tribunal users in relation to the allocation of cases under Rule X of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the 2009 Rules").

2. It applies to all cases in which the Tribunal receives a notice of appeal, application notice or notice of reference on, or after, [Y date].

3. Rule X of the 2009 Rules provides that when the Tribunal receives a notice of appeal, application notice or notice of reference, it must allocate the case to one of the Tracks set out in that Rule, namely the:

   a. Standard Track, or

   b. Open Track.

4. This Practice Direction sets out the practice of the Tribunal regarding the allocation of cases.

5. When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal will by default allocate the case to the Standard Track if it falls within the category of cases set out in the Schedule to this Practice Direction. The Chamber President may from time to time add categories of cases to the Schedule.

6. A case that is not allocated to the Standard Track, will be allocated to the Open Track.

7. Appeals remitted from the Upper Tribunal pursuant to section 12 of the Tribunals, Courts and Enforcement Act 2007, will be allocated to the Open Track.

8. The fact that a case has been allocated to a Track does not mean that it must remain allocated to that Track. The Tribunal may, either on the application of a party or on its own initiative, give a direction at any time re-allocating a case to a different Track. An application by a party for re-allocation of the case to a different Track should be made promptly, using Form GRC 5.

9. When considering the Track to which a case is to be allocated, the Tribunal will have regard to the overriding objective in rule 2 of the 2009 Rules. The Tribunal will take account of all the circumstances, including the extent to which the facts

are likely to be in issue, the likely complexity of any legal issues, whether there is likely to be a hearing and, if so, the likely length of any hearing, the level of any monetary penalty imposed by or as a consequence of the decision under appeal, and the frequency with which the Tribunal considers cases brought pursuant to the same appeal provisions.

Judge O'Connor
Chamber President

[Date]
SCHEDULE
Environment jurisdiction

An appeal brought pursuant to:
- Section 46D(1) of the Environment Protection Act 1990
- Regulation 30(2) of The Biodiversity Gain Site Register Regulations 2024
- Regulation 30(3) of The Biodiversity Gain Site Register Regulations 2024
- Regulation 30(4) of The Biodiversity Gain Site Register Regulations 2024

Food Safety jurisdiction

An appeal brought pursuant to:
- Section 37(1) of the Food Safety Act 1990 (as amended)
- Section 37(6) of the Food Safety Act 1990 (as amended)

Information Rights jurisdiction

An appeal brought pursuant to section 57 of the Freedom of Information Act 2000 ("FOIA"), where the issue(s) in the appeal is whether:
- the public authority holds the information in question.
- the public authority is in breach of a time limit specified in section 10 (time for compliance with request) of FOIA or any regulations made under that section.
- the information in question is exempt information by reason of section 22 (information intended for future publication) of FOIA.
- the cost of complying with the request for the information in question exceeds the appropriate limit within the meaning of section 12 (exemption where cost of compliance exceeds appropriate limit) of FOIA, or
- the public authority is entitled to rely on an absolute exemption, other than those provided by sections 40(2) and 41 of FOIA.
- applications made under section 166 of the Data Protection Act 2018

Licensing and Standards jurisdiction

An appeal brought pursuant to:
- Paragraph 5 of Schedule 1 to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme Etc.) Regulations 2019
- Paragraph 5 of Schedule 9 to the Consumer Rights Act 2015

Pension jurisdiction

A reference made under section 44 of the Pensions Act 2008

Transport jurisdiction

An appeal brought pursuant to section 131 of the Road Traffic Act 1988

The Employment Tribunals

1. Short-form reasons for judgments are intended to serve three purposes:

    1) They provide parties with a quicker decision than waiting for extended reasons.
    2) They increase access to justice by freeing a judge to deliver the reasons in a way that maximises the understanding of the parties.
    3) They will reduce the writing burden for judges, freeing them to do other work.

2. Short-form reasons should be brief but they should include an explanation that is sufficient for a party to understand in broad terms why they have won or lost in respect of each complaint.

3. It will be a matter for the judge to decide what to include in short-form reasons. Relevant factors will include (but are not restricted to) the type of case, whether any party is vulnerable and whether a party or parties have legal representation.

4. Judges should bear in mind that the only audience for short-form reasons is the parties (and any representatives) who have appeared before them and been present at the hearing. They will know the background to the case and be familiar with the issues.

5. It should not be necessary in short-form reasons to set out any of the procedural background that has led up to the hearing nor the parties' submissions. There will usually be no need to rehearse all the facts in detail although the judge may consider it appropriate to set out some key factual findings. The extent to which reference is made to any relevant law will depend on the case but should be kept to a minimum. If the parties are legally represented and the relevant law is not in dispute and has been set out in the parties' submissions, there is no need to rehearse that in the short-form reasons.

6. It is important that short-form reasons do not add an additional layer of work for judges. They should be short. It is recognised that the same amount of time for deliberation is required to arrive at a legally sound determination whether the reasons produced are short-form or full. Judges should bear in mind that an unsuccessful party may request full reasons.

7. If the judge considers that full reasons are required, they should usually elect to produce these rather than short-form reasons. That may be for a number of reasons. For example, it may be that the case is particularly complex, and the judge consider it is not possible to provide an effective summary. It may be that the case involves a novel point of law and is almost certain to be appealed. It may be that the judge considers that a tribunal at a further hearing will require full reasons.

8. Ultimately it is a matter for the judge to decide what form the reasons should take.