March 2025

Tribunal Procedure Committee

Consultation on possible changes to the Employment Tribunal Procedure Rules 2024

Introduction

1. The Tribunal Procedure Committee ("the TPC") is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. The TPC is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 ("the TCEA").

2. The Employment Tribunals fall outside the First-tier Tribunal and Upper Tribunal Chambers. Responsibility for their rules, however, was transferred to the TPC (and for national security rules, to the Lord Chancellor) by the Judicial Review and Courts Act 2022 from 25 April 2024.

3. Industrial Tribunals were created by the Industrial Training Act 1964. Their original jurisdiction was over appeals from the imposition of a levy by an industrial training board. The scope of their jurisdiction has increased significantly since then. The Employment Tribunals (as renamed in 1998) are now the main judicial forum for deciding disputes between workers and employers, including claims for unauthorised deductions of wages, unfair dismissal, discrimination, whistleblowing, redundancy and equal pay. Employment Tribunals also have jurisdiction over certain types of statutory appeal, such as appeals against health and safety improvement and prohibition notices. There are two different territorial jurisdictions: England & Wales, and Scotland. Northern Ireland is a separate jurisdiction with its own procedural rules for which the TPC has no responsibility.

4. More information about the Employment Tribunals is available at: https://www.gov.uk/courts-tribunals/employment-tribunal

5. Paragraph 1 of Schedule A1 to the Employment Tribunals Act 1996 requires that the TPC must exercise its power to make Procedure Rules for the Employment Tribunals with a view to securing–

    a. that justice is done in proceedings before the tribunal;

    b. that the tribunal system is accessible and fair;

    c. that proceedings are handled quickly and efficiently;

d. that Procedure Rules are both simple and simply expressed; and

e. that Procedure Rules, where appropriate, confer responsibility on members of the tribunal for ensuring that proceedings before the tribunal are handled quickly and efficiently.

6. When making rules, 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 where appropriate.

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

8. Further information on the TPC can be found at our website: https://www.gov.uk/government/organisations/tribunal-procedure-committee

Employment Tribunal Rules

9. In anticipation of the transfer of rule-making responsibility for the Employment Tribunals, the TPC launched a consultation on 3 April 2024 dealing with the re-making of the rules needed to give effect to the transfer, and a small number of additional urgent rule changes. That consultation closed on 26 June 2024. A response to the consultation was published by the TPC on 22 November 2024 and can be found here:

   https://www.gov.uk/government/consultations/possible-changes-to-the-employment-tribunal-rules

10. The rules were re-made by the TPC and the Lord Chancellor in a joint statutory instrument laid before Parliament on 6 December 2024. The Employment Tribunal Procedure Rules 2024[1] came into force on 6 January 2025 and can be found here:

    https://www.legislation.gov.uk/uksi/2024/1155/made

This consultation

11. This consultation deals with a number of potential further changes to the Employment Tribunal Procedure Rules 2024. In large part these are based on changes that had been requested by the Employment Tribunal Presidents, either

[1] S.I. 2024/1155

updating the rules to reflect more accurately current practice in the Employment Tribunals or allowing the Employment Tribunals to work more effectively.

12. In its previous consultation on possible changes to the Employment Tribunal Rules in April 2024, the TPC set out an outline of its intended future work in this area. This consultation broadly reflects that intended programme. One notable exception is that the TPC had expected to consult on possible amendments to rules 10-14, dealing with the information required to be provided on a claim form and the consequence of minor defects in claim forms. However, this consultation does not deal with these proposed changes, because the TPC concluded that they required further consideration. This, in part, arose because the TPC wished to give further thought to this area in light of the decision in *Abel Estate Agent Ltd v Reynolds [2025] EAT 6*[2]. The TPC expects to return to these rules in a future consultation.

Rule 4 – Dispute Resolution Appointments

13. Rule 4 places a general duty on Employment Tribunals to encourage dispute resolution. It reads as follows:

> **"The Tribunal must, wherever practicable and appropriate, seek to encourage the use by the parties of the services of ACAS, judicial or other mediation, or other means of resolving their disputes by agreement."**

14. Rule 52(1) describes a preliminary hearing as a hearing at which the Tribunal may do a number of things, including (rule 52(1)(e)) "explore the possibility of settlement or alternative dispute resolution (including judicial mediation)".

15. On 7 July 2023 the President of Employment Tribunals in England and Wales issued updated Presidential Guidance on Alternative Dispute Resolution[3]. It replaced previous guidance from January 2018. In addition to resolution using the services of ACAS, or judicial mediation, both of which are recognised by the current rule, the Presidential Guidance identifies two further forms of preliminary hearing, being a judicial assessment and a Dispute Resolution Appointment ("DRA"). There is no equivalent guidance applicable in Scotland.

16. Post-claim conciliation with ACAS and judicial mediation have always been voluntary, and the Tribunal has no power to require either side to engage in such action. That is also true of judicial assessment. A DRA, however, is different in that the Tribunal can require the parties to attend a preliminary hearing for those purposes, although it cannot compel parties to settle a case. The TPC is therefore considering recognising the practice of holding a preliminary hearing solely for the purpose of dispute resolution in rule 4.

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[2] https://assets.publishing.service.gov.uk/media/678e35e402801a21aa7acf5d/Abel_Estate_Agent_Ltd_and_Others_v_Elizabeth_Reynolds__2025__EAT_6.pdf

[3] https://www.judiciary.uk/wp-content/uploads/2013/08/PG-ADR-July-2023-final1.pdf

17. The TPC is considering an amendment so that the current rule 4 forms paragraph (1), and the following appears as a new rule 4(2) and 4(3):

"(2) The Tribunal may, on its own initiative or on the application of a party, direct parties to participate in a dispute resolution appointment.

(3) A dispute resolution appointment is a preliminary hearing held for the purposes of the Tribunal providing to the parties, based on the available material, an impartial evaluation of their respective prospects of success and possible outcomes in terms of remedy."

18. The TPC is also considering a corresponding amendment to rule 52 to add a new rule 52(1)(f) as follows:

"(f) conduct a dispute resolution appointment."

19. The TPC's preliminary view is that these changes will make the Tribunal's powers in relation to preliminary hearings for the purpose of dispute resolution clearer and therefore make the rules easier to understand.

Question 1: Do you agree with the proposed changes to rule 4 and the proposed rule 52(1)(f)? If not, why not?

Rules 13 and 18 – Grounds for Claim and Response

20. Although there is currently no express requirement in the Rules for the claim form to contain a statement of the grounds upon which the claim is brought, there is power under rule 13(1)(b) to reject a claim if it is in a form which cannot sensibly be responded to. That formulation was introduced in the 2013 version of the rules, replacing the requirement in rule 1(4)(e) of the 2004 rules for details of the claim to be provided.

21. The phrase "cannot sensibly be responded to" in rule 13(1)(b) was considered by the Court of Appeal in *Secretary of State for Business, Energy and Industrial Strategy v Parry and another [2018] ICR 1807*[4]. The attachment to form ET1 contained grounds of complaint from an unrelated case. The Court held that the claim form could still be sensibly responded to because it was an unfair dismissal case, the respondent knew that they had dismissed the claimant and re-employed her in a different role the next day, and knew that before presenting the claim she had asserted that it was not a genuine redundancy.

22. The TPC considers that the formulation "cannot sensibly be responded to" might now be viewed as out of step with other procedural rules, and lacking clarity. It is therefore proposed that it be replaced by a requirement to provide grounds for the claim, which is a phrase in common use and widely understood.

[4] https://www.bailii.org/ew/cases/EWCA/Civ/2018/672.html

23. For response forms there is no corresponding provision enabling the Tribunal to reject a response form which contains no grounds for defending the claim. All cases are considered by a judge under rule 27 when a response is filed. If the grounds for defending the claim are not apparent, the Tribunal can order that further information be provided.

24. Requiring a response form to provide some information about the basis on which a claim is resisted would enable judges to carry out the initial consideration of the case required by rule 27 more efficiently and would reduce the number of occasions upon which orders requiring additional information have to be made.

25. The TPC is therefore considering an amendment to insert words into both rule 13 and rule 18 to make clear that both a claim form and a response form must contain the grounds on which the claim is respectively brought or defended.

26. The amendment to rule 13(1)(b) would add to the basis on which a claim form must be rejected the following (addition underlined):

> **"(b) in a form which <u>contains no grounds for the claim,</u> or is otherwise an abuse of process,"**

27. The amendment to rule 18(1) would be to insert the words underlined below into rule 18(1) which deals with the rejection of a response form:

> **"18(1) The Tribunal must reject a response if –**
>
> **(a) It is not made on a response form;**
>
> **(b) It does not contain all of the following information –**
>
> **(i) the respondent's full name;**
>
> **(ii) the respondent's address;**
>
> **(iii) whether the respondent wishes to resist any part of the claim, <u>and, if so, the grounds on which the respondent resists the claim</u>."**

Question 2: Do you agree with the proposed changes to rule 13(1)(b) and rule 18(1)? If not why, not?

Rule 26 – Replying to an employer's contract claim

28. When a claimant presents a contract claim to the Employment Tribunal, the respondent is able to bring a contractual counterclaim, which rule 24 terms an "employer's contract claim". Rule 26 requires that a claimant who wishes to reply to an employer's contract claim must send their reply so that it is received by the

Tribunal within 28 days of the date that a copy of the response form was sent to the claimant.

29. If the Tribunal does not receive a reply within that deadline, rule 22 (which deals with the consequences of not responding to a claim within the time for a response) is applied with minor modifications to reflect the fact that it is, in this context, dealing with an employer's contract claim and the claimant's reply. As modified, rule 22 requires the Tribunal to decide whether it can properly make a determination on the contract claim on the available material and, if it can, to issue a judgment accordingly. If that is not possible it is required to hold a hearing, but the claimant is only permitted to participate to the extent permitted by the Tribunal. In practice, although rule 22 is not identical to the provisions in the Civil Procedure Rules which provide for default judgments, it operates in a similar way.

30. Sometimes employer's contract claims are overlooked by both parties and by the Employment Tribunal administration until a much later stage, on occasion only becoming apparent at the final hearing. This creates a number of practical issues. The claimant will often wish to contest the contract claim, but has not realised that in order to do so, they must send a reply to the Tribunal. If the claim has reached a hearing, the claimant will almost always be out of time to reply. This means they will need to make a successful application at the hearing to extend time.

31. This risks creating unfairness, particularly for litigants in person who often have not realised the potential consequences of not replying and have not had these highlighted by the Tribunal system until a very late stage. If the claimant does wish to reply, the Tribunal will need to spend time dealing with their application. If it is granted it will often require an adjournment of the hearing, either in order that the claimant's reply can be drafted, or more often because the time spent determining the application means that there is not enough time left to resolve the claims.

32. The TPC's preliminary view is that, in many cases, the nature of the counter claim means that there is little practical need for a reply from the claimant. Employer's contract claims are often straightforward and the claimant's position on the relevant issues is often clear from their original claim form. In these circumstances, the requirements of the rules here might be thought to be unnecessary, overly technical and likely to lead to delay.

33. The TPC is therefore considering amending rule 26 so that the provisions of rule 22 will only apply to the extent that the Tribunal considers it in the interests of justice. In practice, this would allow the Employment Tribunal to waive the consequences that would normally arise under rule 22 by reason of a claimant not providing a reply to an employer's contract claim, allowing the claimant to defend the contract claim absent such a reply where that is in the interests of justice.

34. The proposed amendment to rule 26 is the addition of a new sub-paragraph (2)(d) (underlined below) so that the rule would read as follows:

"26.—(1) A claimant who wishes to reply to an employer's contract claim must send their reply so that it is received by the Tribunal within 28 days of the date that a copy of the response form was sent to the claimant.

(2) If the Tribunal does not receive a reply by the end of the period specified in paragraph (1), rules 21 (applications for extension of time for presenting response) and 22 (effect of non-presentation or rejection of response, or case not contested) apply except that—

(a) references to a respondent or a response must be read as a reference to a claimant or a reply, respectively;

(b) references to a claimant must be read as a reference to a respondent;

(c) reference to rule 17(1) must be read as a reference to rule 26(1); and

(d) <u>Rule 22 may be disapplied to the extent that the Tribunal considers it is in the interests of justice to do so.</u>

(3) Where the Tribunal accepts the reply it must send a copy of the reply to all other parties."

Question 3: Do you agree with the proposed amendment to rule 26? If not, why not?

Rules 30 and 31 – Applications for Case Management Orders

35. The power to make case management orders appears in rule 30, which reads as follows:

"(1) Subject to rule 32(2) and (3) (postponements), the Tribunal may, on its own initiative or on the application of a party, make a case management order.

(2) The particular powers identified in these Rules do not restrict that general power.

(3) A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made."

36. Applications for case management orders are governed by rule 31, which reads as follows:

"(1) A party may apply for a case management order at a hearing or by sending a written application to the Tribunal.

(2) Where a party makes a written application under paragraph (1) they must notify the other parties that any objections to the application should be sent to the Tribunal as soon as possible.

(3) The Tribunal may deal with an application made under paragraph (1) in writing or order that it be dealt with at a preliminary hearing or final hearing."

37. Unlike the Civil Procedure Rules, there is no obligation on a party to provide a draft of the order they wish the Tribunal to make. In practice, the vast majority of case management orders are drafted by judges.

38. The TPC believes that, in some circumstances, it would be desirable for the parties to provide a draft order when making an application to the Tribunal. That approach can assist the Tribunal and the parties in a number of ways. The exercise of drafting an order can help the parties achieve clarity about the exact nature of the order sought. It can make it more likely that the parties will agree on the terms of the order to be made. In the right circumstances, an order drafted by the parties may improve the quality of the order made and can save significant judicial time.

39. The TPC recognises that providing a draft of an order will generally be easier for a professional representative than someone representing themselves. In some cases, such as a straightforward order for which a standard form draft already exists, it will be easier and more efficient for a judge to draft the order.

40. The TPC is therefore considering an additional rule 30(4) as follows:

"(4) The Tribunal may direct a party to supply a draft of a proposed case management order."

41. This would allow the Employment Tribunal to take a flexible approach to this issue. The TPC envisages that there are broadly four circumstances where the Employment Tribunal might direct a party to supply a draft order:

    a. As part of a case management order made at a case management hearing. It is common for judges to discuss with the parties any potential applications for orders at a case management hearing and for the subsequent written case management order to set out a timetable dealing with when certain applications can or will be made. The proposed rule would allow the Employment Tribunal to include in such orders a requirement that the party applying provide a draft of the order sought.

    b. Following an application for an order. It is common for the Employment Tribunal to make directions in response to an application, for example requiring the party making the application to clarify the application or

relevant facts or to provide supporting evidence. In appropriate cases the Employment Tribunal could respond to an application requiring that the party applying for an order provide a draft before a decision was made.

c. After a decision has been made in principle. This is likely to apply in more complex applications, where it may be possible for the Employment Tribunal to make a decision in principle (for example that a particular classification of documents be disclosed) and then to instruct a party to produce a draft order on the basis set out by the Employment Tribunal.

d. Through a Practice Direction. A Presidential Practice Direction could direct that, in certain categories of application, the party making the application should supply a draft order.

Question 4: Do you agree with the proposed rule 30(4)? If not, why not?

Publication of Reconsideration Decisions

42. Although the term reconsideration is often used in a non-technical sense, within the Employment Tribunal Procedure Rules it has a very specific meaning. The interpretation provisions of rule 2 provide that all decisions of an Employment Tribunal fall into one of two categories: judgments and case management orders.

43. Judgments are defined as follows in rule 2(1):

> "**"Judgment" means a decision, made at any stage of the proceedings other than a decision under rule 14 (reconsideration of rejection of claim) or 20 (reconsideration of rejection of response)), which finally determines—**
>
> **(i) A claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs);**
>
> **(ii) Any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);**
>
> **(iii) The imposition of a financial penalty under section 12A of the Employment Tribunals Act."**

44. Any order or decision which does not satisfy that definition falls into the second category, which is termed a "Case Management Order".

45. The distinction is important in two ways. The first is that under rule 65 judgments are placed on the online public register (save for judgments which merely dismiss a claim which has been withdrawn). Case Management Orders are not.

46. The second distinction is the means by which a decision can be varied or revoked. Case Management Orders are subject to the general power of case management in rule 30, which provides that a Case Management Order may vary, suspend or set aside an earlier Case Management Order where necessary in the interests of justice.

47. Judgments, however, are subject to the reconsideration procedure set out in rules 68-71. Rule 68 provides that a judgment may be reconsidered, either on the Tribunal's own initiative or on the application of a party, where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If revoked it may be taken again, with the Tribunal not required to come to the same conclusion.

48. The process appears in rule 70 as follows:

> **"(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).**
>
> **(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.**
>
> **(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.**
>
> **(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.**
>
> **(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application."**

49. The rules mean that a decision to reject a reconsideration application at the first stage (where it is found to have no reasonable prospect of success) is itself a judgment. That judgment is then susceptible to a further reconsideration application. If that reconsideration application is similarly refused, that is another judgment which can also be reconsidered and so on. Each of those reconsideration judgments in turn must be placed on the online register.

50. In the vast majority of cases, this does not create a practical problem because repeated applications to reconsider successive judgments are not made. There are, however, a small number of cases where a litigant does make several applications, advancing essentially the same challenge to the Tribunal's decision. This creates a significant number of judgments and a corresponding administrative burden in their successive promulgation and publication.

51. The TPC is therefore considering adding a further exception to rule 65 to exclude decisions made under rule 70(2) to refuse an application to reconsider on the basis that substantially the same application has already been made and refused.

52. This would reduce the administrative burden by removing the requirement on the Tribunal to publish these judgments but without affecting the rights of the parties to apply for a reconsideration.

53. The TPC has considered whether this change would undermine the principle of open justice. Its preliminary view is that it does not. The vast majority of reconsideration judgments would continue to be published. The only judgments affected by this rule change would be those where the same argument has previously been dismissed by the Tribunal and that dismissal, with reasons, has already been published on the register.

Question 5: Do you agree with the proposed change to rule 65? If not, why not?

Response

54. Please reply using the response questionnaire template.

55. Please send your response by **19 May 2025** to one of the following:

    a. Email: tpcsecretariat@justice.gov.uk

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

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