FEBRUARY 2026

TRIBUNAL PROCEDURE COMMITTEE

REPLY TO THE CONSULTATION ON POSSIBLE CHANGES TO THE PROCEDURE RULES OF ALL CHAMBERS OF THE FIRST-TIER TRIBUNAL, THE EMPLOYMENT TRIBUNAL AND THE EMPLOYMENT TRIBUNAL (SCOTLAND) CONCERNING THE PROVISION OF WRITTEN REASONS FOR DECISIONS AND OTHER CASE MANAGEMENT MEASURES

REPLY TO CONSULTATION

THE TRIBUNAL PROCEDURE COMMITTEE

1. The Tribunal Procedure Committee ("the TPC") is the body that makes rules of procedure that govern practice and procedure in the First-tier Tribunal and the Upper Tribunal, as well as the Employment Tribunals. All 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 and a small number of other first instance matters. The Employment Tribunals make decisions in legal disputes around employment law.

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. Schedule A1 to the Employment Tribunals Act 1996 makes similar provision in respect to Employment Tribunals.

5. 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.

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

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

THE CONSULTATION

8. A consultation ("the Consultation") took place between 30 July and 22 October 2024 seeking views on proposals to amend the procedure rules governing the First-tier Tribunal and the Employment Tribunals. A link to the relevant Rules is here.

9. The Consultation document is here.

BACKGROUND TO THE CONSULTATION

10. The TPC had been asked by the Senior President of Tribunals ("the SPT") to consider amending the rules relating to the written reasons provided when tribunals dispose of proceedings.

11. The SPT's proposals were intended to ensure that proceedings before the First-tier Tribunal and the Employment Tribunals were handled quickly and efficiently while ensuring that proceedings before the tribunals are accessible and fair, through the development of innovative methods of resolving disputes.

12. In summary, the SPT's proposals were:

a. Reducing the time for requesting written reasons in some chambers of the First-tier Tribunal: The time for requesting written reasons from the First-tier Tribunal by a party to the proceedings would be reduced in some Chambers, usually to 14 days, from the current time limit of 28 days or longer. The existing discretion to extend time would not be changed.

b. First-tier Tribunal (Tax Chamber) and (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 would be entitled to request full reasons.

c. Employment Tribunals (England and Wales, Scotland): The rules would distinguish between short-form and full written reasons. The right to request full written reasons would 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.

13. In the Consultation (and within this Reply), all references to proposals etc. are and were to the SPT's proposals, unless the contrary is stated.

ACCOMPANYING PRACTICE DIRECTIONS

14. The SPT's proposals had been formulated alongside a number of proposed practice directions intended to work alongside the proposed rule changes. The draft practice directions were annexed to the Consultation. It remains important to note, however, that the TPC is not responsible for these, or any other practice directions. That responsibility lies with the SPT, the relevant Chamber President and the Presidents of the Employment Tribunals. The TPC included the details of the proposed practice directions to contextualise the SPT's proposals and how the SPT expected his proposals to operate in practice.

EARLIER VERSIONS OF THE PROPOSALS

15. In Autumn 2023, the SPT had 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 "little judicial support for the proposed changes and a considerable amount of opposition to the proposals". Instrumental in that decision was the then approach from the Chamber Presidents to the proposals as formulated. The TPC indicated that it might revisit the issue following further engagement with the Chamber Presidents.

16. The SPT subsequently reformulated the proposals in consultation with the Chamber Presidents and presented a revised proposal. In part, the revised proposal aimed to address the reasons previously given by the TPC for not taking the matter further. The revised proposals were supported by the

relevant Chamber Presidents. The TPC therefore considered that it was 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.

THE ROLES OF THE SENIOR PRESIDENT OF TRIBUNALS AND THE TRIBUNAL PROCEDURE COMMITTEE

17. While the SPT has a statutory representative on the Committee (see para. 20(a) of Sch. 5 to the TCEA; the role is by convention held by the Chair of the Committee), the TPC is independent from the SPT, and acts pursuant to its own statutory mandate and obligations. The TPC understood that the SPT had formulated the proposals outlined in the Consultation 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 considered that it was appropriate to consult on the SPT's proposals, setting out its preliminary views in relation to the proposals as then formulated, recalling both its independence and its own statutory obligations, as summarised above.

18. Prior to the consultation the TPC had made some minor drafting amendments to the proposals as originally formulated by the SPT.

TRIBUNALS AFFECTED BY THE CONSULTATION

19. The Consultation affected all chambers of the First-tier Tribunal (except for the Social Entitlement Chamber), and the Employment Tribunals (England and Wales) and the Employment Tribunals (Scotland).

20. The rules of procedure affected by the 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 (although these have now been replaced with the Employment Tribunal Procedure Rules 2024)

21. The Consultation did 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

22. In some chambers of the First-tier Tribunal written reasons are only produced if they are requested by a party. In other chambers, in some cases, written reasons are always required (see, for example, asylum or humanitarian protection appeals in the Immigration and Asylum Chamber).

23. This proposal addressed 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. The proposal did not apply to those cases where the tribunal is always obliged to provide written reasons.

24. In his proposal the SPT suggested that the current time limits for a party to request written reasons are too long and should be shortened to 14 days, with some exceptions.

25. The current time limits for requesting written reasons in the First-tier Tribunal 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 time limit for requesting written reasons in the Employment Tribunal is already 14 days.

27. The SPT proposed that the following exceptions to a reduction to 14 days should apply:

    a. There would be no change in the Social Entitlement Chamber. Requests in this chamber are often received outside the current one-month time limit. In many cases extensions of time are granted. Reducing the current time limit might 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 considered that maintaining the 28-day period for written reasons for appellants who are abroad would ensure consistency and avoid confusion. A 28-day period for an out-of-country appeal would also 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 not have 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 considered 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.

28. The TPC understood that this proposal had 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.

PROPOSAL (2): FIRST-TIER TRIBUNAL (TAX CHAMBER) AND THE PROVISION OF REASONS

29. The SPT had 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 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) 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 were as follows:

a. 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: 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 was no longer considered to be necessary or appropriate, bearing in mind the complexity and length of many appeals in the Tax Chamber.

b. 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. This proposal noted 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, and judicial discretion as to the form of decision applies only to the decision whether to give a summary or full decision. It was proposed that, where an oral decision and reasons have been given at the hearing, it would not be necessary to obtain the consent of the parties in order to give a short (i.e. unreasoned) written decision. Provision would 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. Restrict the ability to apply for a full written decision to the party with a right of appeal/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. The TPC understood that this proposal was 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 was 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 would 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 FtT chambers, above. The proposed amendment to rule 35(6) is consistent with those proposals.

PROPOSAL (3): GENERAL REGULATORY CHAMBER TRACKS AND REASONS

THE STANDARD TRACK AND OPEN TRACK

31. The General Regulatory Chamber ("GRC") has a large number of jurisdictions and deals with matters of widely varying complexity. In many of its jurisdictions, however, the majority of cases are relatively straightforward, when compared with the more complex cases dealt with by the GRC.

32. The SPT's proposal sought to recognise this and 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, without absorbing judicial and other resources in a disproportionate manner.

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 County Court and the High Court. Simpler appeals would be allocated to the "Standard Track", whereas all other appeals would be allocated to the "Open Track".

34. The proposed rules would make provision for a practice direction or presidential guidance identifying those categories of appeals which were to be automatically allocated to the Standard Track, and those which were to be allocated to the Open Track. The TPC understood that the rationale behind the use of a practice direction or presidential guidance to determine the correct track allocation was 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 would also permit the tribunal to re-allocate a case from one track to another. This was 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 made provision for written decisions in Standard Track cases to be in summary form. To that end, the proposals amended 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 lay in the proposed amendments to rule 38, concerning the GRC's obligations to issue written decisions and reasons.

37. It was 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 understood 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 permitted 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 would 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" would be at the discretion of the tribunal.

39. It was 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 ensured 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.

PROPOSAL (4): EMPLOYMENT TRIBUNALS

41. The Commencement Order that allowed the formal transfer of the Employment Tribunals 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. The TPC anticipates that, in due course, responsibility for the Employment Appeal Tribunal rules will also transfer to the TPC.

42. Following that transfer of responsibility, the TPC (and the Lord Chancellor who was given responsibility for making rules in respect of proceedings with national security implications) produced new rules in order to give effect to the transfer. These were the Employment Tribunal Procedure Rules 2024 ("2024 ET Rules"), which now govern procedure in the Employment Tribunals.

43. The SPT's proposals were based on the previous procedural rules, found in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("2013 ET Rules". The 2024 ET Rules, however, did not make substantial changes and therefore the proposals applied equally to the situation under the new rules. This section of the reply refers to the 2013 Rules, since they were the basis on which the SPT made his proposals.

44. The 2013 ET Rules 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". Under 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."

45. 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 (rule 5). The written reasons have to be signed by the judge (rule 62(2)).

46. The proposals to amend the 2013 ET Rules were 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 had 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 to a person other than the successful party where it is in the interests of justice to do so.

(c) Short-form reasons and full reasons. It was proposed that the 2013 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 adopted 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 was 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 was 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 was that it is no longer necessary in light of, or compatible with, digital working.

THE TPC'S PRELIMINARY VIEWS ON THE PROPOSALS, AS EXPRESSED IN THE CONSULTATION

47. The TPC believes that efficient use of judges is important. The available judicial resource is limited. A limited 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 this will lead to delay in other cases.

48. Ensuring that the rules allow for the efficient use of judges is therefore an important part of 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.

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

50. The TPC considered that it was significant that the Chamber Presidents of the First-tier Tribunal and the Presidents of the ETs supported the proposals, which had been crafted by the SPT with the particular needs of each jurisdiction in mind. The views of the Chamber Presidents are informed by their expertise in connection with their work, practice and procedure in their own chambers. That was a matter to which the TPC attached considerable weight, and which, in principle, justified adopting a jurisdiction-specific approach for each tribunal.

51. The TPC had a number of proposal-specific observations, which were addressed in the Consultation in the context of each proposal below.

PROPOSAL (1): TIME LIMITS FOR WRITTEN REASONS

52. In the TPC's preliminary view, making these changes was 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 enable judges to have a clearer picture of their judicial workload. They also enable judges to begin preparing written reasons as soon as possible after a hearing, which is likely to take less time than if a request is delayed.

53. The TPC had considered whether the reduction in the time available to request a written statement of reasons would result in more appellants making a protective application in the reduced time available to do so, but concluded

this was 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 did not expect the reduction in the time limit for making the application to result in more requests for reasons than at present.

54. 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 observed 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 was consistent with the approach already taken by the rules to out of country appellants.

55. The TPC also supported 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.

56. The TPC noted 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 welcomed the views of consultees as to whether other chambers of the First-tier Tribunal should benefit from the proposed 28-day period.

57. The TPC therefore invited the views of consultees on the following questions:

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?

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 (1): THE RESPONSES

58. Of the respondents who addressed this question, six supported the proposal, while six opposed it. A number of respondents commented on the proposal in general terms, without either supporting or proposing it.

59. Respondents who disagreed with the proposal suggested that:

    a. 14 days was too short a period to make a decision, particularly for a litigant in person. Even where a party was represented, the need to take instructions or advice meant that 14 days was too short a period. A short time period also increased the difficulties that might arise where a litigant was on holiday or unwell. 28 days would therefore a more appropriate time.

    b. If the time provided was too short, it would lead to additional judicial work because of the need to consider extensions of time and satellite litigation around those decisions. That would lead to delay.

    c. A request for written reasons is a necessary step to lodging any appeal, which is often a complicated decision.

    d. There is no practical difference between receiving a request after 14 days or after 28 days since the judge will always have relevant notes and remember the case. Therefore there would be no gain in efficiency.

    e. Written Tribunal decisions are a vital part of the work of both the First-tier Tribunal and Upper Tribunal. This is because tribunal cases make a vital contribution to clarifying, and creating legal precedent, for the issues within their various remits. Written reasons for decisions are very important to developing the framework of Equality and Human Rights law and practice. Work around Equality and Human Rights would be severely hindered where written decisions are not supplied in relevant First-tier Tribunal or Upper Tribunal cases.

60. Some points made were specifically by reference to particular Chambers. In relation to the Tax Chamber:

    a. One way in which these proposals will increase ‘the asymmetry in justice’ is that the inequality of arms will become greater. HMRC is almost invariably one of the parties in the tax tribunal. It will have a representative every time an oral only decision is made. In a case where only partial written reasons are given, it will be aware of the full reasons. Any reduction in the number of written decisions and any reduction in the comprehensibility of written decisions will make life harder for appellants, and their advisers, in other cases where the same issues arise. Whereas HMRC will not be hampered in this way.

    b. Shortening the time to 14 days may disproportionately disadvantage unrepresented taxpayers, some of whom are vulnerable and should be treated in the same was as those in the Social Entitlement and War Pensions Chambers.

c. There are several instances in Tax Chamber Rules where certain actions need to be taken within 28 days of an earlier event. Reducing one (or more) of those deadlines produces inconsistency and complexity.

d. A 14-day deadline means that postal delays will be much more significant than with a 28-day deadline.

e. A distinction should be made between cases allocated to the complex category (and some allocated to standard) which will include cases of significance to many other taxpayers – and basic cases only likely to be relevant to the taxpayer concerned (for example, many penalty cases). 14 days will not be sufficient time in tax cases allocated to the complex category – and those cases in the standard category where the issues being considered have significance for other taxpayers. The 28-day time limit should be retained in these cases.

61. In the Immigration and Asylum Chamber ("IAC"):

a. Appellants in the IAC, whether in-country or overseas, should have at least 28 days to request written reasons. In all IAC proceedings, service of the First-tier Tribunal's written reasons triggers the time period within which an application for permission to appeal to the Upper Tribunal must be made. Shortening the timeframe for requesting written reasons would, therefore, reduce the overall period of time an appellant has to find legal representation and apply for permission to appeal. This would have significant impact on unrepresented, unsuccessful appellants. Considering the serious nature of the potential consequences a dismissal in the IAC could have for an unsuccessful appellant, including removal from the UK, family separation, and breaches of fundamental rights, it is crucial that an appellant is given sufficient opportunity to understand the reasoning of the First-tier Tribunal. This ensures they have a full and fair chance to appeal a decision that is so fundamental to their life. These factors are relevant when balancing the need to improve the efficiency of proceedings with ensuring they are fair and accessible.

b. Many non-asylum and humanitarian protection matters are out of scope of legal aid. This means that legal aid is only available if an appellant secures Exceptional Case Funding ("ECF"). The reality is that ECF does not provide an effective safety net for those in need of legal aid, because appellants may not be aware that it exists or a solicitor may not be willing to provide assistance that may not be remunerated. This increases the number of appellants in these cases that are not represented. Such appellants are likely to be disadvantaged because they may struggle to navigate the process for requesting an extension of time.

c. A shorter deadline may cause difficulties in situations where an appellant is represented, but that representative ceases acting and the appellant needs to find alternative representation.

d. 14-days is insufficient where an appellant must navigate the legal aid process and secure a representative, which will normally take more than 14 days.

Response of The Transparency and Open Justice Board ("TOJB")

62. The TOJB was concerned that the provision of written reasons raised issues of the importance of open justice.

63. The Board believes that there is an important wider context when considering the proposed rules changes. Presently, First-tier and Employment Tribunals are not Courts of record. As such, their proceedings are not routinely recorded (although we understand that, pursuant to a Presidential Practice Direction, Employment Tribunal hearings are recorded where the facility exists to do so and, in practice, the majority of hearings are now recorded). The absence of recording largely informs (and requires) the practice of provision of written reasons by such tribunals. That is a recognition of the importance of providing reasons for a decision. If hearings were recorded, as in the civil courts, a party or non-party could simply apply for a transcript in the usual way. The consultation focuses on a party's need for/right to the reasons. The immediate context for the consultation is an understandable desire to reduce the substantial resource burden that falls on Tribunals to provide written reasons.

64. The Board understands that the Senior President of Tribunals ("SPT") has maintained a consistent public stance calling for the proceedings of all tribunals to be recorded. His doing so is largely because of the substantial resource savings that would be made in freeing Tribunals from a requirement to provide separate written reasons where a decision has been given ex tempore (but not recorded). The Board endorses and supports the SPT's call for all proceedings of Tribunals to be recorded. The Board does so because of the clear and identifiable benefits to transparency and open justice. Recording of proceedings ensures that transcripts can be obtained of any proceedings held in open court and, particularly, transcripts of the decisions of a Tribunal.

65. The Board believes that, absent the routine recording of Tribunal proceedings, there will remain open justice concerns as to the provision of written reasons, and the need to recognise that the public, not just the parties, will often have a legitimate interest in having access to written reasons for a Tribunal's decision.

66. The Board considers that the starting point, for open justice, is that, if the parties are entitled to seek written reasons from a Tribunal, then generally so should non-parties.

67. The Board recognises that there are very significant resource implications arising from the provision of written reasons. Understandably, the TPC wishes to ensure that the Tribunals do not find themselves with an increase in the occasions where written reasons need to be provided. The Board's view is that this strongly reinforces the case for proceedings in Tribunals to be recorded. It may be that, hitherto, there has been insufficient recognition of the significant resource implications of not recording Tribunal proceedings (and,

by extension, the efficiencies that, consistent with the SPT's aims, would be generated by doing so)

68. *As part of its wider review of open justice and transparency in Courts and Tribunals, the Board anticipates that it will be necessary to focus particularly on whether the distinction between Courts of record and Courts not of record is, in a modern justice system, one that is sensible or justifiable (or indeed consistent with "One Judiciary"). Many of the issues that arise in the context of this consultation would disappear if the proceedings in the First-tier Tribunal and Employment Tribunals were routinely recorded.*

69. *Until any change to the status quo regarding recording of proceedings, the Board would encourage the TPC to look at the procedural rules that apply to Tribunals and ask whether the relevant Tribunal is making its decisions, and the reasons for them, sufficiently available to the public generally. If the relevant rules do not meet that objective, the Board would invite the TPC to consider whether there can be appropriate changes to the rules to meet that objective.*

70. *The remaining points are made by the Board (a) subject to this overarching submission that Tribunal proceedings should be recorded; and (b) on the assumption that the rules operate in a world where such recording is not (or not yet) introduced.*

71. *The Board would suggest that the principles of open justice should be acknowledged in respect of each of the proposals and an assessment made of whether the rules properly comply with them. Whilst the decision of a Tribunal, and the reasons for it, are of particular interest to the parties, as correctly identified and acknowledged in Paragraphs 80 and 81 of the Consultation, Tribunal decisions (and the reasons for them) should, consistent with the principles of open justice, generally and wherever practicable also be publicly available. By way of example, a Tribunal decision in an area of public controversy is likely to be of interest well beyond the immediate parties. Consistent with the principles of open justice the public need to be able to access the Tribunal's decision and the reasons for it.*

72. *If it were argued that the giving of reasons by the Tribunal in an (unrecorded) judgment or decision in public was sufficient for the purposes of open justice, the Board would offer three points in answer. First, the whole premise of rules requiring written reasons is a recognition that there is a need for such reasons where a transcript of the decision cannot be obtained. No doubt written reasons are needed for any challenge to the decision by way of appeal, but this is not the limit of the justification for written reasons. Parties are entitled to know why they have won/lost, irrespective of any avenue of appeal.*

73. *Second, and linked to this, while parties have a legitimate interest in knowing why they have won/lost, in many cases the public will also have a legitimate interest in understanding the reasons for the decision - as well as the general public interest in justice being seen to be done. These points underpin the core principle of open justice. It is not a full answer to this point to contend that*

members of the public (and members of the press, as their proxies) had the right to attend the hearing to hear the oral judgment as it was being delivered.

74. *Third, there are instances where the importance of a decision of a Court/Tribunal is not immediately appreciated. In the case of an (unrecorded) decision of a Tribunal, the result may become known, and this stimulates legitimate interest in the reasons for the decision. For example, Regulations require the Employment Tribunals to publish a judgment containing the outcome by way of a "bald" judgment but, if that judgment is unaccompanied by written reasons, the public will not know why the Tribunal decided as it did. Therefore, the public should have the right to apply for written reasons and prima facie be entitled to such reasons, unless to do so would be contrary to the interests of justice; and tribunal rules which do not provide for this are in tension with the requirements of open justice.*

75. *Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) rules 2014, following the proposed amendment, would enable only a party to make an application to the Tribunal for a statement of reasons. It would appear therefore that a non-party cannot make such an application. For the reasons explained, the Board would question whether such a position properly reflects, and gives effect to, the principles of open justice. We note that under the proposed changes to Rule 35 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, non-parties are given the right to make an application for full written findings and reasons (see 35(8)). The Consultation does not explain the difference in approach; though it presumably derives from the frequency of such decisions on taxation matters being applicable to others.*

THE TPC'S CONCLUSIONS

76. The TPC was not aware of significant difficulties arising in respect of the 14-day time limit for requesting written reasons in the Employment Tribunals. The TPC was unpersuaded that a like time-limit in the First-tier Tribunal with which the proposal was concerned would not also work satisfactorily.

77. As regards concerns expressed by respondents as to the need for time to seek advice or representation, the TPC considers the issue of whether or not to request written reasons to be simple and not requiring of legal advice or assistance. It is correct that a decision whether to pursue an appeal can be a complex decision. However, deciding whether to request reasons is not; it is easy to decide and easy to do. There is no need to have decided to seek to appeal, and no need to have taken advice on the merits of an appeal.

78. The TPC concluded that there was a practical difference between a request made within 14 days and one made within 28 days. It appeared obvious to the TPC that a judge's memory of a case will be better after 14 days than after 28 days, so producing written reasons should therefore be easier. The TPC would expect the quality of the written reasons to be enhanced, and in any event it is better for the tribunal to finish dealing with a case 2 weeks earlier than otherwise.

79. As regards the risk of the tribunal having to consider ‘many’ late applications, this was an aspect specifically considered by the TPC in relation to the Social Entitlement Chamber. It is not considered by the TPC that this will be a material risk for other chambers. Once parties are aware of the time limit of 14 days for making a simple request, there is no reason to suppose that a disproportionately large number of such parties will miss the deadline and have to apply for an extension. No evidence was advanced by any respondent to support that being the case.

80. The TPC did not accept that the fact that some taxpayers might be termed ‘vulnerable’ supported maintenance of the 28-day limit in the Tax Chamber. Vulnerable taxpayers do not generally need to seek advice before taking the simple step of requesting written reasons.

81. As regards different time limits for different actions within the Tax Chamber Rules, it is correct that some specify ‘within 28 days’; others specify different periods. The TPC saw no point of substance arising from this.

82. The TPC recognises the increased prevalence of methods of electronic communication. That appears to the TPC to reduce any potential impact of postal delays on its consideration.

83. It will be open (as it is now) for any party to apply for an extension of the relevant time limit.

84. The decisions of the First-tier Tribunal and Employment Tribunals (with which the proposals were concerned) do not establish precedents. The TPC does not accept that any general desirability of written reasons for decisions to become available bears upon the proposal to change the time limit to request them.

85. The TOJB responded to this Question, as it did to other Questions. In particular, the responses of the TOJB to the Consultation focussed on concerns with existing tribunal rules and the proposal of significant new rights for non-parties. The responses were, it may be said, less concerned with the specific changes proposed in the Consultation.

86. The TOJB argues that non-parties should have the right to be provided with either a transcript or written reasons; if so then the Rules of every chamber would have to be amended to provide for such right (including chambers of the First-tier Tribunal as regards which the Consultation proposed only minor changes, or none at all).

87. These points are acknowledged but extend wider than the proposals in the Consultation. The TPC will return to these points in due course. The TPC understands that the SPT is minded to issue practice directions requiring proceedings in the Firs-tier Tribunal, Upper Tribunal, ETs and EAT to be audio-recorded unless the tribunal directs otherwise. These practice directions would also grant any person the right to be provided with a transcript made from such recordings, subject to payment (and in the case of private hearings, subject also to permission from the tribunal).

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 (2): THE RESPONSES

88. Four respondents supported the proposed exceptions; four opposed them (primarily by suggesting that there should be additional exceptions or that the question of exceptions should be approached in a different way).

89. Those who argued against these proposals made the following points:

a. There should be exceptions for some tax cases.

b. Exceptions should be on a 'case by case basis as opposed to classes of case'.

c. If it is decided to reduce the time limit to 14 days, in terms of its impact on unrepresented and vulnerable taxpayers, it will also depend on how the Tribunal approaches late requests. Although there is a facility to make a late request, this requires unrepresented taxpayers to take additional steps and may not provide an adequate safeguard in all cases. Vulnerable taxpayers affected by a reduction to 14 days also need some explicit protection in the way late requests are handled, for example, guidance regarding late requests which makes reference to the taxpayer's personal circumstances (vulnerability, digital capability, etc.). Changing the time limit may also lead to an increase in late requests which require judicial time and resources to consider.

d. Consideration of exceptions should be more towards more complex cases, whether within the discretion of the Judiciary or based on the criterion for the classes of case. It is hoped that the TPC analyse the data of those requesting written reasons beyond 14 days to assess the extent to which complex cases should be exempt from the proposed changes and the terms in which they are exempt.

THE TPC'S CONCLUSIONS

90. The TPC was satisfied that the exceptions identified in the Consultation remained appropriate.

91. The TPC was unpersuaded by arguments advanced in favour of creating further exceptions. The TPC remained of the view that a decision to request reasons is easily made, and that does not vary across the complexity of a case. If an individual taxpayer is vulnerable and/or unrepresented, that does not justify creation of any exception. It was not argued that a high proportion of taxpayers litigating in the Tax Chamber are vulnerable. As to 'protection' in

relation to how late requests are handled, or guidance regarding late requests, those are not matters for the TPC, but for the Tax Chamber President.

QUESTION (3): (ALL CHAMBERS EXCEPT SOCIAL ENTITLEMENT) DO YOU HAVE ANY OTHER OBSERVATIONS ABOUT THIS PROPOSAL?

QUESTION (3): THE RESPONSES

92. 21 respondents offered no comment to this Question.

93. Of those who responded, comments included:

    a. A belief that options should instead be explored for reducing the cost of administering the justice system, such as digitising the making of applications. This would give more time for applicants to make requests for written decisions while also reducing the cost to the Tribunal of administering these requests.

    b. There appears to be no downside on litigants requesting full decisions. It is expected that the professional representatives of appellants would adopt a policy of making 'protective' requests. In particular HMRC was likely to do so and their views should be sought.

    c. There is concern that reducing the time limit from 28 days to 14 days, for particularly complex cases, may cause parties to request written reasons within the 14-day window out of panic. It may be unclear within the 14-day limit whether the party requires written reasons from a Tribunal or not, and therefore ensuring a degree of discretion allows sufficient review and advice to be given by instructed legal representatives to avoid this occurring. This could have the opposite effect of that desired by the TPC and lead to more requests for written reasons, rather than fewer requests.

THE TPC'S CONCLUSIONS

94. The TPC was grateful to these respondents for adding to the overall picture for consideration. It was not, however, persuaded that these arguments were sufficiently strong to alter the conclusions set out above.

95. Scope for reducing the cost of administering the justice system, such as digitising the making of applications, is recognised by the TPC. Digitising the making of applications is already under way (in some Chambers and in the Employment Tribunals) but such matters are not for the TPC. They are for HMCTS.

PROPOSAL (2) FIRST-TIER TRIBUNAL (TAX CHAMBER) AND THE PROVISION OF REASONS

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?

QUESTION (4) THE RESPONSES

96. Seven respondents supported this proposal. No respondent opposed it. The majority of respondents (21) offered no comment to this question.

97. The supportive comments primarily focused on a recognition that the 28-day time frame did not reflect the reality of work in this chamber and was not appropriate in many of the more complex cases.

THE TPC'S CONCLUSIONS

98. The TPC was satisfied that the proposal should be put into effect. It is consistent with rule 59 of the current ET Rules, which the TPC believes is working well in practice.

99. A tribunal will be subject to the 'as soon as practicable' requirement in any event. There is no need for a backstop date, as cases vary in complexity.

100. The TPC did not accept that any 'inequality of arms will become greater' by reason of the proposed change.

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?

QUESTION (5): THE RESPONSES

101. Three respondents supported this proposal; two opposed it. The remaining respondents did not comment on this question.

102. In addition to general indications that they supported the proposal, one respondent noted that this change would make it easier for a short decision to be provided in suitable cases. They argued that this was because it was often difficult for an unsuccessful party to engage with the issue at the end of the hearing they had just lost.

103. Of those resistant to the proposal, comments included:

    a. That an unreasoned written decision should only be permitted if an approved transcript was available. One respondent suggested that such a transcript should be available without charge, so that cost was a barrier to obtaining it.

b. That the proposal would lead to fewer decisions being published. They argued that this was problematic because, although First-tier decisions were not binding, they were often influential. A First0-tier decision might cause HMRC to change approach in the future, influence future and clarify issues for taxpayers in general.

c. In complex cases, consent should be required from both parties for an unreasoned decision. Otherwise, there is a risk that only HMRC will have access to decisions which had wider significance and would be useful to advisers and other taxpayers.

d. The lack of a reasoned written decision had the potential to create problems if HMRC later investigated the same business again on similar grounds. The taxpayer would not be able to point to the reasons they won in the FtT previously. A taxpayer might not have taken a note of the oral reasons or HMRC might dispute what had been said.

e. If oral reasons have been given at the hearing, it did not seem onerous to produce a summary decision, particularly with modern speech to text technology.

THE TPC'S CONCLUSIONS

104. The TPC continued to see this proposal as desirable. This was particularly the case given that the TPC, as detailed below, had concluded that rules should not restrict application for written reasons to the successful party. This meant that any party who had received an oral decision, with reasons, followed by an unreasoned written decision, but who wanted a written account of the Tribunal's reasoning, could obtain one.

105. The TPC understands that the SPT is minded to issue practice directions requiring proceedings to be audio-recorded unless the tribunal directs otherwise. These practice directions would also grant any person the right to be provided with a transcript made from such recordings, subject to payment (and in the case of private hearings, subject also to permission from the tribunal).

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 ABOVE (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?

QUESTIONS (6) AND (7): THE RESPONSES

106. Two respondents supported the proposal to restrict the right to obtain full written reasons to the unsuccessful party. Fifteen respondents opposed this proposal.

107. Four respondents supported the argument that, if the right to written reasons was to be restricted, an 'interests of justice' test would be sufficient to address the concerns outlined by the TPC. Thirteen argued that it would not be sufficient.

108. The balance of the respondents were strongly opposed to the proposal in Question 6(a), for a range of reasons. A common theme was that any party should have an absolute entitlement to request full written reasons regardless of the nature of the judgment: 'This proposed change flies in the face of the principle of open justice'. Given the resistance to the proposal in Question 6(a), the TPC does not review in this Reply the detailed comments in response to the remaining question relating to the proposal.

109. Very similar proposals were made in relation to the Employment Tribunals. To a significant extent the TPC considered these proposals together and therefore points made in relation to the Employment Tribunals are also dealt with here, rather than in a separate section.

110. Selected respondents argued:

a. Considering whether to apply for permission to appeal is not the only reason an "unsuccessful party" may need to obtain a full written decision and the assumption that a "successful party" will be less concerned about the reasons for the decision than an "unsuccessful party" is flawed. Given that both parties will have invested considerable time, effort and funding

into litigation, both parties are likely to have a desire to understand the reasons for a decision.

b. Positive findings of the Tax Chamber may be transferrable in other contexts including future engagement with the respondent organisation or person in related judicial proceedings. In order to present their case, it will be vital to understand the reasons for the decision (on both successful and unsuccessful issues).

c. This proposal would place HMRC at an advantage over taxpayers. In the context of the Tax Chamber, every dispute is between HMRC and one or more taxpayers. HMRC will attend every hearing in the Tax Chamber and will receive an oral decision and reasons for every hearing in the Tax Chamber. As a result, HMRC would be able to share oral reasons given at a hearing internally, building up knowledge of the Tax Chamber's analysis and reasoning on a range of tax issues, even if it does not seek to rely on a particular decision on which it only received oral reasons for the decision in the Tax Chamber. In contrast, most taxpayers will only attend hearings to which they are a party, where they will receive oral reasons on their specific issue. For example, a significant amount of case law relating to penalties involves individuals or small businesses where the quantum at stake is relatively low and therefore the matter is not appealed to higher Courts. In these cases, the insight of the Tax Chamber is critical in understanding the application of the law. Without the guidance of these cases, the taxpayer would be disadvantaged vis-a-vis HMRC, since the latter which will always have access to full reasons given orally at the Tax Chamber. We therefore consider that this proposal is potentially prejudicial to taxpayers.

d. Any party should have an absolute entitlement to request full written reasons regardless of the nature of the judgment. Natural justice requires both parties to know why they have won and lost. As a matter of principle one party should not be afforded access to “better” or “more complete” reasons.

e. The ETs were established as a relatively informal jurisdiction. There are designed to be accessible to litigants in person. If the “successful” party is not entitled to written reasons, represented parties would be at an advantage, because they have a legal representative to take a note.

f. There are all sorts of reasons that the “successful” party may have a real and practical need for written reasons:

g. ET judgments often play an important part in local industrial relations – and so affect more than simply the claimant who brings the claim. It is important to emphasize that this is frequently the cases where: (i) there is a single claimant who has not been designated as a “test” or “lead” claimant or in any sense formally representative and (ii) where the claim is to all intents and purposes treated as a “normal” case (rather than a case attracting any particular scrutiny). For example, in a recent case, one employee (backed by his trade union) brought a claim about a particular

allowance payable for working on one particular date in a year. The value of the claim was very small in monetary terms for the individual claimant involved and it was dealt with at a one-day hearing. But, both the employer and the trade union would likely (absent a very good reason) treat the ET's decision on this point as determinative for the workforce employed on common terms and conditions. The ET is a relatively quick and cheap method which is routinely used for resolving these sorts of local disputes. There may not be this sort of resolution without written reasons.

h. There are all sorts of reasons personal to individual claimants as to why it may be of value for those individuals to have access to written reasons (and indeed full written reasons). It is sometimes necessary for an ET e.g. in determining a claim for wrongful dismissal (breach of contract on the basis of failure to pay notice pay) to determine whether a claimant carried out particular misconduct alleged. If that individual has been accused of serious misconduct (and the ET determines on the balance of probabilities) that that individual did not commit that misconduct, the ET's full written reasons on this point may be of value for the purposes of: (a) personal vindication (b) any person to whom the claimant may wish to show these reasons (eg. a future employer or even simply colleagues who have been told about the allegations of misconduct) (c) any regulatory or disciplinary proceedings in relation to the alleged misconduct. Written reasons may be of particular value to a claimant if the case has attracted press or social media attention.

i. While first instance ET judgments are not binding on other ETs they can (in some contexts) be relied upon as persuasive. This is particularly the case in relation to the construction of national terms and conditions where large numbers of employees across the country are employed on the same terms and conditions.

j. There may be legitimate public interest in a case. It is not right that one party has an effective veto (in these circumstances) on whether there are written reasons which (a) assist with transparency in general and (b) which are necessarily published online. It is important to emphasize that there are many cases in the ET which touch on matters of real public interest eg. there are very many cases about whistleblowing in the NHS. It is not simply those cases generally recognized as "high profile" cases which may legitimately attract this sort of public interest.

k. There can be real value in having full written reasons if there are due to be further hearings (at first instance) in that piece of litigation, such as remedies hearings.

l. While we would agree that the stated aims of the SPT - to ensure proceedings are handled quickly and efficiently - are sensible, we are not aware of there being any investigation or statistical evidence provided demonstrating how much time would be saved by restricting the right to request to the unsuccessful party. Whilst we are unaware of any figures, we would anticipate that a successful party is far less likely to apply for

written reasons (for a number of reasons, including that they will not be appealing and that they have won). However, this does not mean that they should not have the option to do so without having to rely on an interest of justice application. If this proposal were pursued it may be helpful to provide further investigation into and clarity as to how much time is likely to be saved.

m. We would anticipate that when issuing an oral judgment, judges will still go through the same mental process of identifying the issues, determining the relevant facts, identifying the law and applying the law to the facts. While undoubtably additional time would be spent in documenting the process, where a successful party would like clarity as to why that decision was arrived at, we believe that this should be an option available to them. The tribunal process, like any litigation, can be extremely wearing for both sides, including the successful party. On one view, the parties have earned the right to have the decision fully explained, including a written document of this.

n. Decisions may have wider relevance and impact and the principles behind a decision may be relevant to the wider workforce. It may be highly relevant to a successful party to understand fully the rationale behind a decision, to enable it to assess its application in other circumstances, and to explain that to the wider workforce and its representatives.

o. I do see the logic of Question 6, but only if we assume that only the parties themselves have a legitimate interest in the matter. The world at large – HMRC, taxpayers, advisers and (in the case of DIY claims) private citizens – also need access to Tribunal decisions. And the idea of restricting the ability to ask for a full decision to the loser creates further problems.

p. If HMRC win, they are likely to want people to be aware of the fact, might want to cite the decision in their manuals, will probably want to cite it in future litigation. This would greatly restrict their ability to do so. On the safe assumption that taxpayers do not want their failures advertised, it seems that there would only be a published decision if they were considering an appeal, or if HMRC had lost in part, and chose at the time to ask for one. This would be a minority of cases. If the taxpayer wins, it seems only HMRC would be able to ask for a written decision unless, again, they were partly successful or considering an appeal. In some areas, admittedly, HMRC might well appeal, but in most they almost never do, both because the sums do not merit it and because they do not want to risk creating a precedent they see as unhelpful. The DIY scheme, mentioned above, is such an area. So it is reasonable to suppose that, often, HMRC would not ask, in the hope of winning similar cases in future.

q. It is not unusual for an appeal to be supported by other taxpayers in the same position, or for similar appeals to be stood behind a ‘leading’ case. I have certainly known 100 to be ‘stood behind’. None of this would seem to work if the resulting decision is not published. If, as is often the case, HMRC neither appeal nor accept a defeat, it seems there is every chance

that the 100 others would have no access to the decision, and would be obliged to press on to a hearing of their own. Any saving from the proposals would be immediately lost as a result.

r. It is not infrequently the case that a litigant has more than one concurrent dispute with HMRC or with another party to the proceedings. If there is a full decision, it is possible for these other disputes to be resolved because both parties know and understand the Tribunal's view. In the absence of a full decision, the other disputes are likely to run on and lead to further hearings.

s. Issuance and publication of judgments also ensures that the judicial system operates efficiently, because adverse decisions often deter others from bringing their own similar case. It thus serves to reduce the number of appeals brought to the Tribunal for determination.

t. A full decision in favour of HMRC can be circulated internally within the department and sent to other taxpayers, allowing HMRC Officers to conclude disputes in a consistent manner, again reducing the number of appeals. HMRC decision notices sent to taxpayers almost invariably refer to a number of previous Tribunal judgements in their favour, to provide support their conclusions.

u. The issuance and publication of full decisions allows other judges to see how an appeal has been decided. This is important because there are often a number of appeals by different parties on essentially similar or related issues – for instance, when HMRC changes its view on a technical point, or decides to target what it considers to be an abuse. Reading the decision of another judge who has decided a similar case saves judicial time and minimises the risk of different judges making incompatible decisions. It also means that in the rare cases of inconsistency, this can be identified and considered when dealing with permission to appeal.

v. Written reasons minimises the risk of different judges making incompatible decisions on similar issues. That is not in the interests of justice and risks further appeals to the Upper Tribunal, causing costs and delay for the parties themselves and extra cost for the Ministry of Justice.

w. A litigant who receives an oral decision explaining why they have won is delighted, but are rarely able to retain the detail as to why they have won. It is only when they receive the written reasons that they understand.

x. There is a risk that other tribunal users would be unaware of decisions, and so bring similar cases which is inefficient for all concerned and adds to the tribunal's caseload;

y. Without written reasons HMRC would be unable to deploy arguments found to have been successful in other disputes in order to dissuade others from taking appeals.

z. If HMRC was unsuccessful it could refrain from requesting written decisions so that its unsuccessful litigation was not published and it could

keep litigating answers, it did not like given that the tribunal's decisions have no precedential value. While that can and does occur now, there would be less pressure on HMRC if the cases they had lost were not published. Again, this has the potential to increase the tribunal's workload;

aa. Overall, if either party requires a decision, the restriction to allow only the loser to apply for a full written decision seems contrary to the principle of open justice and unlikely to produce either cost or time savings.

bb. The Transparency and Open Justice Board noted that it might be thought to be paradoxical that a non-party had an entitlement to be provided with more extensive reasons for a Tribunal decision than a 'successful' litigant (however that term is defined). It asked, rhetorically, why a successful litigant not be entitled to be provided with the same full written reasons to which a non-party would be entitled?

THE TPC'S CONCLUSIONS

111. The TPC received representations from the SPT in light of the Consultation responses. The SPT had decided not to pursue the proposed rule changes which would limit the rights of successful parties to request written reasons. The TPC noted this, but the decisions as to proposed rule changes were for the TPC, not the SPT.

112. The TPC is satisfied that this proposed change should not be made.

113. The TPC agreed with the proposition that as a matter of principle both parties (successful or unsuccessful, and however defined) should be entitled to request written reasons. The TPC also recognised the significant practical issues raised by the proposals, as described in the responses.

114. As a result of this decision, the draft rules provided in the Consultation will be redrafted to remove this element of the proposal, while implementing those proposals that the TPC concluded should proceed.

PROPOSAL (3): GENERAL REGULATORY CHAMBER TRACKS AND REASONS

115. The TPC had, in the Consultation, welcomed the proposal to introduce tracks in the General Regulatory Chamber. This approach was well established in the Tax Tribunal, 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).

116. The TPC had also welcomed 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 considered that this approach found 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 para. 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."

117. The TPC had considered 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 considered that it would be appropriate to adopt a rule on this basis. The TPC noted that the GRC retains the discretion to provide full reasons, namely a "written statement of reasons", as a matter of judicial discretion.

118. The Questions posed in the Consultation were as follows.

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?

QUESTIONS (8) AND (9): THE RESPONSES

119. No comments were received in relation to these proposals.

120. The TOJB had no comment on these specific proposals but stated:

> *We note that Rule 38, in its amended form, does not adopt a framework, similar to that which has been included in the proposed revised Rule 35 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, to enable non-parties to make an application for a written statement of reasons. Those who can make such an application are limited, by Rule 38(4), to the parties. The principles of open justice would require that, if a Tribunal's decision (and the reasons for it), given in open court, are not publicly available (for example by a transcript) then if a written statement of reasons can be obtained by the parties, it should be available to non-parties too.*

It is of critical importance, for open justice, that a Tribunal's decision, and the reasons for it, should be publicly available, unless the interests of justice require that the decision/reasons (or parts of them) must be withheld from the public.

THE TPC'S CONCLUSIONS

121. The TPC is satisfied that the proposal should proceed.

122. The TPC did conclude, however, that the rule should be drafted differently to the proposal, in order to ensure a) that the rule effectively achieved the aims of the proposal and b) was as clear and understandable as possible.

123. In order to achieve these aims, the TPC concluded that the best approach was for the rules to state that provision for the allocation to tracks be provided for by Practice Direction. This would allow the Chamber President to identify classes of cases that should be allocated to the standard track, with all other cases being allocated to the open track. This would produce a clear, bright-line rule that would be simple to understand and to apply in practice. It also avoids the need for any judicial decision to be made at the point that the appeal is received.

124. The TPC also concluded, however that the rules should contain a specific provision that the Tribunal has the power to reallocate any case to a different track at any time. This will allow the Tribunal to retain the necessary flexibility to deal with cases allocated by default to a track that was not suitable for that particular case. In practice, following discussion with the Chamber President, the TPC expects that there will be an opportunity for consideration of this issue at the point that both appeal and response have been received by the Tribunal. Most reallocations are therefore likely to take place at this stage. The power, however, is unrestricted and the tribunal will be able to reallocate a case at any time.

125. The points made by the TOJB have wide ramifications across the tribunal system that go beyond this consultation. They will therefore be addressed by the TPC in due course.

PROPOSAL (4): EMPLOYMENT TRIBUNALS

QUESTION (10): (EMPLOYMENT TRIBUNALS) DO YOU AGREE WITH THE INTRODUCTION OF SHORT-FORM AND FULL REASONS IN THE EMPLOYMENT TRIBUNALS?

QUESTION (10): THE RESPONSES

126. Five respondents supported these proposals; six opposed them.

127. Comments from respondents opposed to short-form reasons included:

a. *Rule 62(5) correctly captures what is required having regard to the rule of law, good judge craft, and access to justice. To add a requirement for Judges to distinguish between, and to draft, short-form and full written reasons would introduce unnecessary complexity and would likely lead to a duplication of work and additional delay. Parties dissatisfied with short-form reasons would likely go on to request full written reasons, adding to judicial workload and tribunal backlogs.*

b. *Requests for short form reasons followed by those for full reasons may also cause significant delay within proceedings, for example where there is a delay in both providing short form reasons, and then again in providing full written reasons. This could lead to an unnecessarily protracted process. If a party then decides to appeal, and an appeal succeeds and the case is remitted to be heard again, this could add to the overall delay in re-hearing the case. That would impact access to justice, as witnesses would then be called to give evidence again, possibly several years later.*

c. *The addition of further time limits in respect of short-form and full written reasons would add complexity and has the potential to increase confusion and lead to satellite litigation, particularly in respect of unrepresented litigants who form a large proportion of litigants in the Employment Tribunal. We consider that there are likely to be a significant proportion of out-of-time applications which will then need to be dealt with under Rule 5 of the ET Rules, again adding to judicial workload.*

d. *Providing written reasons for only part of a decision may lead to satellite issues and could be counter-productive where there are inter-related issues in any event. Issues within a case may be overlapping and factual findings in respect of one cause of action may be relevant to another cause of action, or matters (such as for example, findings on credibility of a witness) may be relevant to more than one cause of action.*

e. *It is important that both parties understand the reasons why they have won or lost. As reasons are already required to be proportionate, a rule curtailing them would impede access to justice. Short-form reasons in the manner proposed would be less likely to enable a party in receipt to understand whether legal or factual errors have been made. This is a key requirement in understanding whether there is any merit in an appeal. This would be particularly likely in a complex matter. A higher proportion of discrimination claims and those involving parties or witnesses with protected characteristics or vulnerabilities are complex. The proposed rule change therefore has the potential to be indirectly discriminatory.*

f. *The ability to seek legal advice may be affected. This is particularly so for unrepresented litigants who are less likely to have made a full record of proceedings themselves, and who may need or want to seek legal advice, for example on appealing a decision, or where the other party makes a costs application against them. In such circumstances it is important that a litigant in person can show a lawyer the full written reasons. Lawyers*

simply cannot advise their clients properly if they do not have the full written reasons.

g. *Both successful and unsuccessful parties need to be able to request full written reasons so that they can understand why the Judge or panel has made a particular decision. Full written reasons are not only necessary for appealing decisions. Parties may want full written reasons for a host of different reasons, such as:*

    i. *There may be a further hearing in the same case (for example where a substantive issue is dealt with as a preliminary matter prior to a final merits hearing) where the findings at the preliminary hearing have a bearing on the matters to be determined at the final hearing.*

    ii. *Respondents may want written reasons to inform their internal practices or to assist discussions with unions, or they may have an ongoing employment relationship with the claimant, and want written reasons to inform next steps.*

    iii. *Parties may want to apply for costs.*

    iv. *There may be litigation on the same matter in another forum and the written reasons may be required in order for parties to take legal advice (for example on merits of the other claim, abuse of process, or estoppel).*

    v. *A party may be faced with a similar claim (or potential claim) and need full written reasons to seek legal advice on the other claim.*

    vi. *Parties are less likely to feel satisfied with or to accept outcomes if they do not fully understand why they have won or lost. The ability to reflect and gain personal or institutional growth may be hampered, with the result that more proceedings come to the tribunal from Claimants and Respondents who have not learned the lessons of prior proceedings.*

h. *The proposed change introduces an "interests of justice" exception, where successful parties would be able to seek written reasons if a Judge determines that would be in the interests of justice. Judges can typically exercise a significant amount of discretion when applying this test. In practice, the method of appealing a decision under this part of the rules would lie by way of appeal to the EAT. Appealing a refusal by a Judge to grant a successful party written reasons would therefore be time consuming, disproportionate, and possibly very difficult given the judicial discretion inherent in the test.*

i. *Some parties seek written reasons tactically, knowing they will then be available to the public on the internet, save where reporting or publication restrictions are in place. However, that is a separate issue which is not considered in this consultation.*

j. *It is not known whether short form reasons would be published online, and this is likely to be a matter for the tribunal administrative team, rather than the TPC. There may be issues in respect of publishing short form reasons online.*

k. *The proposal is not likely to achieve the stated aims of increased efficiency and reduced delay. Rather, the proposal to be contrary to those aims.*

l. *The expediency that will be achieved in practice was questioned, given 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, and that judges are to bear in mind that that an unsuccessful party may request full reasons.*

m. *Caution was expressed against 'the plethora of problems that we are concerned will arise' for the appellate courts when a party who seeks to appeal an Employment Tribunal decision which was given with short-form or even solely oral reasons. If the party has not applied for/been entitled to full written reasons and there is a dispute of determined fact/law between the parties, getting to a resolution is likely to be difficult if all the appellate court has to work with are short-form reasons.*

128. As to those supportive, comments included:

a. *The current requirement for full reasons in every case is sometimes seen as acting as an obstacle to efficient administration of justice in a jurisdiction where the overriding objective includes "avoiding unnecessary formality".*

b. *Full written reasons take a very long time to produce and are often asked for by successful parties for training purposes (or other less desirable reasons) simply because they contain a "detailed analysis". This should be discouraged, to better use judicial resources. The option to use short form reasons proposed would greatly assist with this. In addition, it would also make the workloads between different judges from different courts/tribunals more equitable.*

c. *Short-form reasons should be restricted in the main to cases where parties are legally represented. Guidance should be issued to judges as to the limited circumstances where short-form reasons would be appropriate (e.g. in cases involving a small number of discrete issues, where the judge is satisfied (and can demonstrate) that an unrepresented party has demonstrated an understanding of the issues and legal framework relative to the matter.*

THE TPC'S CONCLUSIONS

129. The TPC, whilst recognising the arguments advanced against the introduction of short-form reasons, nonetheless saw utility in their introduction.

130. Many of the responses set out why, in certain circumstances, short-form reasons would not be appropriate. The TPC agrees that there will be many

situations where this will be true. This will include, for example, cases where there is significant public interest in the result or where a party has a disability that will make it more difficult for them to understand the result if full written reasons are not provided. There will also be many cases where, in practice, provision of short-form reasons is unlikely to provide any saving of judicial time. For example, it may be clear that full written reasons will be sought and therefore that the provision of short-form reasons will simply add an extra step into the process, creating extra work and delay.

131. This does not mean, however, that, in suitable cases, short-form reasons are not appropriate or will not create meaningful efficiencies.

132. The TPC also notes that, since the proposal to prevent a successful party requesting reasons will not be implemented, all parties will have a right to request full written reasons after short-form reasons are given. The TPC's view is that this means that the concerns expressed that either a) the option to provide short-form reasons will lead to satellite litigation or b) will prevent parties obtaining full reasons where they have good reasons to do so are no longer justified.

133. The TPC also considered that these provisions are likely to be, to a significant extent, self correcting. If, in practice, parties are not satisfied with short-form reasons (either in general or in particular categories of case or in particular circumstances) they will request full reasons. Judges, in turn, will recognise that short-form reasons in those cases do not, in practice, save time or reduce their workload. They are then likely to exercise their discretion to provide full reasons in those cases. Conversely, where parties are content with or prefer short-form reasons, judges are likely to use them more often.

134. The TPC does not agree that 'full reasons are always preferable'. Where a case is straightforward or turns on a limited number of points, short-form reasons are often likely to capture the essential reasoning of the Employment Tribunal, and many parties will see little or no benefit from being provided with longer reasons.

135. There are also benefits to parties in the option of short-form reasons. In particular, it means that Employment Tribunals are more likely to be able to provide an oral judgment at the end of a hearing, rather than reserve its decisions. Hearings are listed on the basis that the listing will provide sufficient time to both hear evidence and submissions and then for the Tribunal to deliberate and provide an oral judgment. In practice, however, it is common for the hearing to 'run out of time', leading to a reserved judgment. The possibility of short-form reasons will not prevent this, but it will mean that in some cases the Tribunal will have time to make a decision and give oral reasons, rather than reserving the decision. This is a substantial benefit to parties in that situation, because they will know the outcome of their case significantly earlier, rather than experiencing an anxious wait for the result.

136. Similarly, given the limitations on judicial resources, provision of written reasons cannot be judged in isolation. Even if it was, in any individual case, always desirable for full reasons to be produced (which the TPC does not

accept for the reasons given above), it would not follow that it was desirable for the rules to require that such reasons be produced in every case, because of the impact on judicial resource. The work of the Tribunal must be considered as a whole.

137. For these reasons the TPC conclusion that the option of short-form reasons was a desirable one. It was most unlikely to be a panacea and will probably be used in a minority of cases. But in suitable circumstances they offer benefits to both the Employment Tribunals and the parties.

138. In the process of drafting the rules, the TPC concluded that adopting the terminology of 'summary reasons' was preferable to 'short-form reasons'. The TPC believes that the term 'summary reasons' is simpler and easier to understand. That formulation also recognises that, depending on the nature of the case and the issues involved, summary reasons might be quite lengthy. Similarly, in appropriate cases, full reasons might be very short. The term 'short-form reasons' was therefore potentially misleading.

QUESTION (11) (EMPLOYMENT TRIBUNALS) SHOULD THE TIME LIMIT FOR REQUESTING SHORT-FORM REASONS BE 7 OR 14 DAYS?

139. The TPC also sought views as to whether the time limit for requesting written short-form reasons should be 7 or 14 days.

QUESTION (11): THE RESPONSES

140. Five respondents favoured a seven day time limit, while seven respondents favoured a fourteen day time limit.

141. Comments in favour of 14 days included:

a. *At paragraph 60 of the consultation, it is said that the TPC does not consider that a reduction in the time available to request a written statement of reasons will result in more appellants making a protective application for written reasons. We disagree with this, and consider it is very likely that parties will make protective applications for short form reasons at a hearing. This will add to judicial workload.*

b. *A 7-day time limit is likely to result in a higher number of parties (particularly litigants in person) requesting written reasons out of time. This may cause unfairness, particularly to unrepresented parties who may need additional time to consider their position or seek advice, or to those with other barriers to using the tribunal system, such as those with disabilities or those for whom English is a second language. This would likely lead to satellite litigation.*

c. *It is important that the rules relating to time limits are kept simple. If the time limit for both short form reasons and full reasons is 14 days, this will be less confusing for all parties.*

d. *Whilst acknowledging the aim of freeing up judicial and Tribunal resources, it is important that the rules do not work as a barrier to access to justice. Litigants in person may not be able to secure advice on the result of their case within 7 days, which may serve as that barrier.*

e. *A shorter period will more likely provoke requests as an abundance of caution.*

142. As regards support for 7 days:

a. *The current 14-day time limit for written reasons does not produce difficulties. If short form reasons are introduced then, as these are subject to the right to full reasons, the requesting party will potentially get up to 21 days for the request for full written reasons (an additional 7 days over the current provisions, effectively giving up to 21 days for a request). In exceptional cases the tribunal Rules provide for the current 14 day time limit to be extended by operation of Rule 5 and consequently the current time limits (and any new compound time limit if short form reasons are introduced) remains adequate.*

b. *A request for reasons may not be communicated to the judge by the administration for several days or weeks. This delay is compounded by a party's right to wait 14 days before requesting reasons.*

THE TPC'S CONCLUSIONS

143. The TPC is satisfied that a 14 day time limit is appropriate. Although requesting short-form reasons is not difficult to decide upon, and does not require legal advice, there is much to be said for adopting the same time limit (14 days) as proposed for requesting written reasons in the First-tier Tribunal generally (see above). The imposition of consistent time limits will aid efficiency in the tribunal service, to no material detriment to any party.

QUESTION (12): (EMPLOYMENT TRIBUNALS) DO YOU AGREE WITH THE OMISSION OF RULE 61(3) OF THE ET RULES?

QUESTION (12): THE RESPONSES

144. Ten respondents agreed that rule 61(3) should be omitted. Three disagreed.

145. Of those in favour of omission, comments included:

a. *There should however be some sort of seal/mark that shows the final version of the judgment that has been sent out that only the judge hearing the case can electronically apply. This need not be a signature but should show the correct handed down version.*

b. *It is important that any promulgation of the ET's decision is ratified by the Judge hearing the case. There are tools to enable this to be done in digital form, either by using digital signatures or the Judge approving the decision digitally in another way.*

c. *It is agreed that Rule 61(3) is unnecessary. Provided that there are systems in place that will ensure the Judgment is final (and not an uncorrected draft or similar), no physical signing is necessary. If this is not a requirement for a valid record in other jurisdictions such as where Orders are sealed, there is no obvious reason that the Employment Tribunal should be any different.*

146. Of those opposed, comments included that:

a. *The administration involved in adding a digital signature is not onerous. There are some benefits to the inclusion of the Employment Judge's signature. A signature will be seen by many as adding gravitas to the decision, which can be beneficial for both parties, but particularly for litigants in person, as it provides additional reassurance that the Judge has themselves agreed and signed off the decision.*

b. *The signature is appended electronically anyway. The respondent could not see what the issue was here.*

THE TPC'S CONCLUSIONS

147. This proposal was addressed by the TPC at the point that it made the Employment Tribunal Procedure Rules 2024. The TPC concluded that it was right to remove the requirement for the written record of Employment Tribunal decisions to be signed by an Employment Judge. That requirement was replaced with the requirement in rules 59 and 60 that the written record be 'approved by the presiding member'. This point is dealt with in more detail in paragraphs 15-17 of the TPC's Reply to Consultation on remaking and possible changes to the Employment Tribunal Rules.

CONCLUDING REMARKS

148. The TPC in the Consultation had welcomed views on all aspects of the proposals set out in the Consultation paper, whether expressly addressed by one of the consultation questions, or not. Consultees were not expected to answer all questions.

QUESTION (13) (ALL PROPOSALS): DO YOU HAVE ANY OTHER OBSERVATIONS ABOUT ANY ASPECT OF THE PROPOSALS?

QUESTION (13): THE RESPONSES

149. No comments were received from 11 respondents. There were substantial comments from other respondents. This reply does not address all of these comments in detail for the following reasons.

150. Many of the comments under this question elaborated on or sought to reinforce points relating to the previous questions. For ease of understanding, these points have been dealt with earlier in the reply.

151. A number of respondents commented on the drafting of proposed rules, in particular the rules restricting applications for written reasons to successful parties. Since those proposals are not being proceeded with this reply does not address those points. Other detailed drafting points have been considered by the TPC when drafting the revised rules.

152. A number of respondents commented on wider issues within the legal system or matters connected with it. The TPC's remit is only in relation to the procedural rules and so this reply does not deal with these points.

153. Two respondents proposed that the Employment Tribunals move to an approach to reasons that was closer to the practice in the civil courts, where a reasoned ex-tempore judgment stands as the final, reasoned decision of the court. A written transcript can then be produced as a record of the decision and its reasoning.

TPC CONCLUSION

154. The TPC agreed that the approach in the civil courts has a number of advantages, in particular that it limits the judicial resources expended on the production of detailed reasons. Nonetheless, the TPC concluded that it would be a dramatic departure from the Employment Tribunals' previous practice. That step had not been consulted on and was not, at this time, supported by either the SPT or the Presidents of the Employment Tribunals. The TPC therefore welcomed these suggestions as a contribution to the discussion of how reasons should be dealt with by the tribunals, but concluded that it would be inappropriate to pursue it at this time.

CONSULTATION AND KEEPING THE RULES UNDER REVIEW

155. The TPC is grateful to all those who read the Consultation and for all the replies received.

156. The remit of the TPC is to keep the Rules under review. Please send any suggestions for further amendments to the Rules to:

Email: tpcsecretariat@justice.gov.u

Post: Tribunal Procedure Committee

Civil, Family, Tribunals, and Administration of Justice Directorate

102 Petty France, Area 7th Floor, Westminster, London, SW1H 9AJ

Annex A

List of Respondents
The Institute of Chartered Accountants of Scotland
Baker & McKenzie LLP
The Bar Council
Council of Employment Judges
Employment Law Bar Association
Employment Lawyers Association
Faculty of Advocates
HMRC Solicitors Office & Legal Services
ICAEW Tax Faculty
Immigration Law Practitioners' Association
Chartered Institute of Taxation and Low-Income Tax Reform Group
The Law Society
Law Society of Scotland
Prospect Trade Union
The Tax Law Review Committee
The Transparency & Open Justice Board

The Vegan Society
WorkNest Law
The Chartered Institute of Legal Executives
8 individuals responded in a personal capacity