

February 2026

Tribunal Procedure Committee

Consultation on possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of appeals under the Online Safety Act 2023

Introduction

1. The Tribunal Procedure Committee (“TPC”) is the body that makes rules to govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. It is an independent Non-Departmental Public Body, sponsored by the Ministry of Justice. Information on the TPC can be found at: www.gov.uk/government/organisations/tribunal-procedure-committee
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. Section 22(4) of the TCEA requires that the TPC’s rule-making powers 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 the proceedings before the tribunal are handled quickly and efficiently.
4. The TPC seeks, among other things, to:
 - (a) make the rules as simple and streamlined as possible;
 - (b) avoid unnecessarily technical language;
 - (c) enable Tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - (d) adopt common rules across Tribunals wherever possible.
5. The TPC also has due regard to the public-sector equality duty contained in section 149 of the Equality Act 2010 when making rules.

New rights of appeal created by the Online Safety Act 2023

6. The Online Safety Act 2023 provides for a new regulatory framework with the general purpose of making the use of internet services safer for individuals in the United Kingdom. Regulatory decisions will be taken by Ofcom.

7. Section 167 of the Act provides that the “**provider of a service**” (meaning an internet user to user service¹ or search service) to which the following decisions taken by Ofcom relate may appeal against the decision to the Upper Tribunal:
- (a) A decision to include a regulated user-to-user service in the part of the register referred to in section 95(2)(a) of the Act (Category 1 services);
 - (b) A decision not to remove a regulated user-to-user service from that part of the register;
 - (c) A decision to include a regulated search service or a combined service in the part of the register referred to in section 95(2)(b) (Category 2A services);
 - (d) A decision not to remove a regulated search service or a combined service from that part of the register;
 - (e) A decision to include a regulated user-to-user service in the part of the register referred to in section 95(2)(c) (Category 2B services); and
 - (f) A decision not to remove a regulated user-to-user service from that part of the register.
8. Section 168 of the Act provides that an appeal may be brought by “**any person with a sufficient interest**” to the Upper Tribunal against Ofcom’s decision to give to a person:
- (a) A notice under section 121(1) of the Act (notices to deal with terrorism content and Child Sexual Exploitation and Abuse (“CSEA”) content, known as ‘technology notices’ – these are a kind of notice which Ofcom can issue against providers of regulated services which requires them to use, or develop or source, certain types of technology for dealing with terrorism and CSEA content);
 - (b) A confirmation decision under section 132 of the Act (this is a decision finding a person – such as provider of a regulated service - has failed to comply with a regulatory obligation; it may impose requirements for the provider to take steps to remedy the contravention and/or comply with a regulatory obligation and/or impose a financial penalty); or
 - (c) A penalty notice under sections 139, 140(5) or 141(6) of the Act (these are decisions to impose a financial penalty for (i) failure to comply with steps set out in a confirmation decision; (ii) failure to comply with requirements set out in a technology notice; (iii) failure to pay fees).
9. The expectation from Ofcom is that appeals under the Online Safety Act will be heard by the Administrative Appeals Chamber of the Upper Tribunal. Accordingly the references to the Upper Tribunal Rules below are to the Tribunal Procedure

¹ A user to user service means a service that allows users to post content online or interact with each other, including social media services, consumer file cloud storage and sharing sites, video-sharing platforms, online forums, dating services, and online instant messaging services.

(Upper Tribunal) Rules 2008.² Section 168(3) provides that anyone who is not the recipient of Ofcom’s notice or decision will need to seek permission to appeal to the Upper Tribunal before bringing an appeal.

Proposals

10. The TPC received a proposal from Ofcom and the Department for Science, Innovation and Technology to amend the Upper Tribunal Rules in two respects: (1) to include a time limit for seeking permission to appeal under section 168 and (2) to change the default position on costs.

A link to the Upper Tribunal Procedure Rules is [here](#).

Permission to appeal

11. Rule 21(3) of the existing Upper Tribunal Procedure Rules deals with time limits for applications for permission to appeal. The current rule 21(3) states:

“(3) An application for permission to appeal must be made in writing and received by the Upper Tribunal no later than—

(a) in the case of an application under section 4 of the Safeguarding Vulnerable Groups Act 2006, 3 months after the date on which written notice of the decision being challenged was sent to the appellant;

(aa) in an asylum case or an immigration case where the appellant is in the United Kingdom at the time that the application is made, 14 days after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to the appellant; or

(ab) [...]

(b) otherwise, a month after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal, to the appellant.”

12. Ofcom has suggested a one month time limit from the date of Ofcom publishing details of the relevant decision for applications for permission to appeal under section 168(3). The reasons Ofcom gives are:

(a) Ofcom will only issue a confirmation decision, penalty notice or notice under section.121 to the provider of the relevant service in question, but will also publish details of the relevant decision, among other things in order to enable other affected persons to exercise their potential right to appeal under s.168 (i.e. where they have a sufficient interest to seek permission to appeal). It is therefore proposed that the time limit for persons with sufficient interest to apply for permission to appeal should be

² The Lands Chamber of the Upper Tribunal has its own procedural rules, the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

linked to the date of publication by Ofcom of details of the decision in question.

- (b) The proposed one month time limit is aligned with the time limit that applies to most applications for permission to appeal to be decided under Rule 21(3)(b).

The TPC provisionally takes a different view because rule 21(3) also deals with applications directly to the Upper Tribunal under the Safeguarding Vulnerable Groups Act 2006. These applications are not appeals from other Tribunals. Our provisional view is that these applications are similar in nature to applications under the Online Safety Act. Applicants under the Safeguarding Vulnerable Groups Act are given 3 months to make an application. The TPC does not currently have enough information to conclude which individuals or organisations (apart from service providers) would have a sufficient interest to appeal under the Online Safety Act and hence whether there are particular reasons why a shorter period for similar applications should be chosen. In the absence of any information, the TPC takes the provisional view that the time limits should be the same as for other, similar, applications which are not an appeal from another Tribunal.

Questions

Question 1: Do you agree with the proposal to introduce a three month time limit for applications for permission to appeal by interested persons who are not the recipient of an Ofcom notice?

Question 2: If you do not agree with a three month time limit, what time limits should apply?

Costs

13. Rule 10 of the existing Upper Tribunal Procedure Rules deals with costs. Rule 10(3) deals with cases heard in the Upper Tribunal which are not an appeal from another Tribunal). The current rule 10(3) states:

“(3) In other proceedings, the Upper Tribunal may not make an order in respect of costs or expenses except—

(a) in judicial review proceedings;

(b) [...]

(c) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;

(d) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings;

(e) if, in a financial services case or a wholesale energy case, the Upper Tribunal considers that the decision in respect of which the reference was made was unreasonable; or

(f) if, in a financial sanctions case, the Upper Tribunal considers that the decision to impose or uphold a monetary penalty in respect of which the appeal was made was unreasonable.”

14. The effect of this rule as it stands would be that the Upper Tribunal could only award costs in cases where there had been unreasonable conduct in proceedings.
15. Ofcom has made a proposal that the successful party in any appeal should be able to recover its costs. Ofcom suggests that the Upper Tribunal could have a general discretion to award costs, exercised in accordance with the overriding objective in rule 2. Alternatively, the Procedure Rules could specify factors to be taken into account including all the circumstances, the conduct of all parties and whether the party has succeeded on part of its case.
16. Ofcom’s reasoning in most of the appeals subject to Rule 10(3) involve individual appellants appealing against decisions that directly affect their civil rights. However, this is not the position of appellants under the Online Safety Act who will typically be businesses (sometimes, large global businesses). The impact of Rule 10(3) as currently drafted is that in the vast majority of cases, even where Ofcom is successful in defending an appeal, it would be unable to recover its costs. Given the likely complexity and evidence heavy nature of these appeals, these costs could be considerable and therefore an inability to recover them could place an unwarranted financial burden on Ofcom, which would ultimately be at the expense of its regulatory work in the public interest.
17. Ofcom says that as the online safety regulator, it has been required by Parliament to establish and maintain the register of categorised services, and secure compliance by regulated services with their duties under the Act, including by exercising its enforcement and s.121 notice powers. These regulatory activities will be funded by fees levied on providers of regulated services. If the change to the costs position is not made, Ofcom would in the vast majority of cases be unable to recover its costs even if successful in defending its decisions in the public interest, and these amounts could not be used for the purpose of funding other regulatory activities in the public interest. This risks having a potential chilling effect on Ofcom’s incentives to take certain regulatory decisions that it otherwise may have taken in the public interest due to the threat of having to divert financial resources to defending potentially unmeritorious appeals, and generally with no prospect of recovering its own costs of doing so.
18. Ofcom considers the position to be more akin to Judicial Review Proceedings in which orders for costs can be made where there is no unreasonable conduct. Ofcom draws attention to the judgment of the Court of Appeal in *BT v Ofcom* [2018] EWCA Civ 2542, where Sir Geoffrey Vos, Chancellor of the High Court delivering the judgment of the Court, stated that: “if Ofcom has acted purely in its regulatory capacity in prosecuting or resisting a claim before the [Competition Appeal Tribunal] and its actions are reasonable and in the public interest, it is

hard to see why one would start with a predisposition to award costs against it, even if it were unsuccessful”.

19. The TPC’s provisional view is that it is appropriate to displace the usual rule about costs in Tribunals. The TPC does not however currently agree that the Procedure Rules should specify factors to be taken into account. The TPC provisionally considers that the Upper Tribunal should be able to develop its own practice and process for deciding costs applications in Online Safety Act cases.

Questions

Question 3: Do you agree with the proposal in Online Safety Act cases to displace the usual rule that costs can only be made in the event of unreasonable conduct?

Question 4: If you agree, do you think the Upper Tribunal should be given a general discretion to decide when costs should be awarded without being required to take into account particular matters? If not, what factors should the Upper Tribunal take into account when deciding what costs orders to make?

Question 5: *Do you have any other comments?*

Response

20. Please reply using the response questionnaire template.

29. Please send your response by **21 May 2026** to one of the following:

- a. Email: tpcsecretariat@justice.gov.uk
- b. Post: Tribunal Procedure Committee
Administration of Justice Directorate
Policy, Communications and Analysis Group
Ministry of Justice
Post Point: Area 7.55
102, Petty France
London
SW1H 9AJ

30. Extra copies of this consultation document can be obtained using the above contact details or online at: <http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee/ts-committee-open-consultations>