

May 2026

Tribunal Procedure Committee

Consultation on possible amendments to the costs/expenses rules in the First-tier Tribunal, Upper Tribunal and Employment Tribunals

Introduction

1. The Tribunal Procedure Committee (“TPC”) is the body that makes rules to govern practice and procedure in the First-tier Tribunal (“FtT”) and in the Upper Tribunal (“UT”). 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 FtT and the UT. The FtT and UT have UK-wide jurisdiction.
3. The Employment Tribunals fall outside the FtT and UT. Responsibility for their rules, however, was transferred to the TPC (and for national security rules, to the Lord Chancellor) by the Judicial Review and Courts Act 2022 from 25 April 2024. The Employment Tribunals cover two different territorial jurisdictions: England & Wales, and Scotland. Northern Ireland is a separate jurisdiction with its own procedural rules for which the TPC has no responsibility. More information about the Employment Tribunals is available at: <https://www.gov.uk/courts-tribunals/employment-tribunal>
4. Under section 22(4) of the TCEA, power to make Tribunal Procedure Rules in the FtT and UT 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.
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. Similar provision is made for the Employment Tribunals by sections 7 and 37QA of, and paragraph 1 of Schedule A1 to the Employment Tribunals Act 1996 (“ETA 1996”).
- 7. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
- 8. For the purposes of this consultation –
 - (a) “costs” should be read as including a reference to “expenses” in Scotland;
 - (b) references to a power to award interest on costs mean a power to award interest on costs incurred before the date of a decision notice or judgment awarding costs to a party in proceedings.

Proposals

- 9. The TPC is considering bringing forward rules relating to three separate areas concerning costs:
 - (a) whether to provide express power for the Immigration and Asylum Chamber of the FtT and the Employment Tribunals to make orders for payments on account of costs before they are assessed;
 - (b) whether to make rules explicitly authorising the FtT (excluding the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber) and the UT, where such power is not already explicitly provided by the Tribunal Procedure Rules to award interest on costs, and to apply a single approach to the power to award interest on costs across the relevant chambers;¹ and,
 - (c) whether to provide a short permissive rule for the FtT (excluding the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber), the UT and the Employment Tribunals to refer to the relevant parts of section 194A of the Legal Services Act 2007 (“LSA”). This would highlight the existing power to make payments in respect of pro bono representation under section 194A of the LSA. These are commonly described as “Pro Bono Costs Orders”.

Payments on account of costs and interest on costs

Legal background

¹ See the schedule to this consultation which sets out which rules are proposed to be amended.

10. Section 29(1) and (2) of the TCEA provide the FtT and UT with broad discretion to determine costs, and by whom and to what extent they must be paid. Section 29(3) makes clear those provisions have effect subject to Tribunal Procedure Rules, made under section 22 of the TCEA.
11. The position of the Government (which must approve any rules made by the TPC) is that there is no similar discretionary power given to the TPC in relation to the Employment Tribunals. There is a power for procedure rules to make provision for regulating matters relating to costs and expenses, at section 13(1) of the ETA 1996, and Part 13 of the Employment Tribunal Procedure Rules 2024 makes provision for the making of costs orders. However, the TPC's power under section 13(1) does not extend to making rules to allow awards for interest on costs. That power is held by the Government by virtue of section 14 of the ETA 1996. Therefore, the proposals in this consultation only apply to the Employment Tribunals insofar as they relate to payments on account of costs and Pro Bono Costs Orders.
12. The TPC understands that although the Government does not at this stage have a view, it is sympathetic to the idea that the same or a similar approach to awarding interest on costs should apply in the ET as with other tribunals. We have been told that the Government will consider the outcome of the consultation carefully to consider its approach for the ET.

Payment on account of costs

13. All chambers of the UT² have existing powers to order payment on account of costs, as do the following chambers of the FtT:³
 - General Regulatory Chamber
 - Health, Education and Social Care Chamber
 - Property Chamber
 - Tax Chamber

² See rule 10(10) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and rule 10(13) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

³ See rule 10(8) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, rule 10(9) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, rule 13(9) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and rule 10(7A) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

14. The Immigration and Asylum Chamber of the FtT, and the Employment Tribunals, have the power to award costs, but no express power to order payment on account of costs.

Interest on costs

15. Under section 27 of the TCEA, a judgment or order of the FtT or UT for the payment of money (including costs) can be enforced in the jurisdiction in which it is made. The enforcing court for England and Wales is the county court or the High Court. In Scotland it is the sheriff court. For Northern Ireland, a county court or the High Court in Northern Ireland. The relevant court in each constituent country has statutory provisions which provide for interest to be payable on unpaid sums once a judgment or order is made.

16. Only three chambers across the FtT and UT – the Property Chamber of the FtT, the Immigration and Asylum Chamber of the FtT, and the Lands Chamber of the UT – have existing explicit powers in rules to award interest on costs⁴.

17. While, arguably, the section 29 power (see paragraph 10 above) is sufficient to enable each chamber of the FtT or the UT to award interest on costs without the need for an explicit rule, it is the TPC's position that it would be most appropriate to put the matter beyond doubt by making express provision in rules that interest may be awarded on costs in all relevant chambers.

18. The TPC does not intend to make any equivalent rule for the Employment Tribunals, for the reasons discussed in paragraphs 11 and 12 above.

Tribunals with no costs powers

19. The general power to award costs is not available in the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber of the FtT as a result of those Chambers' procedure rules. The TPC intends to preserve this costs position. Accordingly, the proposals set out in this part of the consultation concerning interest do not apply to these chambers.

⁴ See rule 13(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 9(9A) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (in respect to England and Wales only), and rule 51A(1) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

Consultation and proposed approach

20. In December 2011, a report entitled “*Report of the Cost Review Group to the Senior President of Tribunals*”⁵ recommended that where the FtT and UT had costs shifting powers, they be given explicit powers to order payment on account of costs, and to award interest on costs:

“Payment on account

180. Under CPR 44.3(8), the court is able to order a payment on account where an order for costs has been made but assessment has not taken place. This is a power which is frequently exercised by a trial judge. There is no similar express power in the Tribunals, and we consider it doubtful that the Tribunals in fact have such a power. We recommend that the UT and the F-tT be given a power by the Rules to order payment on account of costs which they have ordered to be paid.

Interest

181. There is no power to make rules enabling the UT or the F-tT to award interest on costs. This seems to us to be anomalous. We recommend that the same power be conferred on the Tribunals to award interest on costs as subsists in the Courts, that is to say a power to award simple interest over such periods as the tribunal determines. This will require primary legislation.”

21. While the TPC does not agree that there is no existing power to award interest on costs, given the broad discretion under section 29(1) and (2) of the TCEA, some confusion has arisen among practitioners of the FtT and UT as to what the true position is, and the TPC is of the provisional view that it is better to put the matter beyond any doubt.
22. In addition, since these recommendations have only been partially implemented, there are inconsistencies in the current approach. For example, in relation to interest on costs, rule 9 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides for simple interest on costs being payable by paying parties in the same manner as costs recoverable in the county court. But rule 10(9) of the Tribunal Procedure (Upper Tribunal) Rules 2008 contains no such provision. This apparent inconsistency is particularly noticeable where there is an overlap of jurisdiction, such as for judicial reviews in immigration matters between the UT and the High Court, where interest on costs could in theory be awarded in

⁵ <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/costs-review-group-report-tribunals-dec-2011.pdf>

one but not the other. Such a scenario appears to have generated the particular enquiry which led to this consultation.

23. The TPC is unaware of any clear reason why the rules on payment on account of costs, and interest on costs, should not be consistent across those chambers which have costs powers, hence these proposals.
24. Prior to preparing this document, the TPC consulted with the Chamber Presidents to determine whether, where there is no explicit rule permitting the making of either of the orders in this section, there was nevertheless any established practice or view on whether the relevant tribunal had the power to make either order in this section (i.e. in reliance on section 29, or any other costs power or rule, alone). For those chambers of the FtT and UT which made costs orders, either routinely or more rarely, there was no consistent view on whether the existing rules provided power to make orders for payments on account of costs or for interest on costs.
25. The Presidents of the Employment Tribunals were similarly consulted but, as noted above, it is not considered that there is any power held by the TPC to award interest on costs.
26. Having considered the current position, and the TPC's aims to enable tribunals to continue to operate tried and tested procedures which have been shown to work well and adopt common rules across tribunals wherever possible, the TPC is proposing to amend and align the various rules as below.
27. The TPC does not intend to create any "new" costs awarding powers (beyond those relating to payments on account and interest on costs) or change the practice of when to make orders for costs. However, subject to consultees' views, it considers it desirable for rules to expressly provide that:
 - (a) upon a tribunal making an order for assessment/taxing of costs, it may order an amount to be paid on account before the costs are assessed/taxed; and
 - (b) when making a costs order, the tribunal (other than Employment Tribunals) may order that interest be payable on those costs awarded.
28. Within those chambers of the FtT and the UT which can make costs orders, there is sometimes differing jurisdiction as to the types of cases in which costs orders may be made. For example, in the Property Chamber of the FtT, the usual rule in Land Registration cases⁶ is that the losing party pays the winning party's costs.⁷ In the

⁶ See rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 – in broad terms these are cases where jurisdiction is conferred by the Land Registration Act 2002

⁷ See rule 13(1)(c) – the Property Chamber does not deal with cases in Scotland and so does not make "expenses" orders in the sense used in Scots Law.

majority of other cases, orders for costs are made only where there has been some form of unreasonable behaviour,⁸ or wasted costs.⁹

29. There are similar delineations for different types of case in the Tax Chamber of the FtT, the Lands Chamber of the UT and the Immigration and Asylum Chamber of the Upper Tribunal. As a result, it is not likely to be helpful to specify each specific amendment which is proposed, but where there is not already a rule providing for payments on account of costs, at the appropriate place in each set of rules, it is likely a rule similar to the following would be added:

“where the Tribunal orders that a party should pay costs (or in Scotland, expenses) and that there should be a detailed assessment¹⁰ of any part of the costs or expenses, it may order that party to pay a reasonable sum on account.”

And, in relation to interest on costs replacing all existing rules with the following (or similar):

“an order for costs may include interest from or until a certain date, including a date before the [judgment/decision is made]”

30. The precise wording may vary in each set of rules, however the intention in each case would be to give a permissive power for each chamber or tribunal to act in whatever way best does justice in each case. In the usual way for matters of costs, it would be for each chamber or tribunal to decide if, and when, to exercise either of these powers.

Questions on payments on account of costs and interest on costs

Question 1: Do you agree with:

1. the proposal to introduce rules in the Immigration and Asylum Chamber of the FtT and the Employment Tribunals, to make orders for payment on account of costs; and
2. To adopt a common approach to the drafting of those rules across all chambers of the FtT and UT (and, so far as possible, in the ET), to ensure consistency.

Pro Bono Costs Orders (“PBCO”)

Legal background

31. Section 194 of the LSA introduced a power for the civil courts in England and Wales to make a PBCO. This power may be exercised in accordance with CPR 46.7, which

⁸ See rule 13(1)(b).

⁹ See rule 13(1)(a).

permits courts to order the payment to a prescribed charity of a sum no greater than the costs which would have been awarded to conventionally represented litigants.

32. Section 194A of the LSA introduced a similar power for the FtT, UT, Employment Tribunals, the Employment Appeal Tribunal¹¹ and the Competition Appeal Tribunal. Section 194A(10) permits the TPC to make procedure rules for the FtT, UT and the Employment Tribunals including limiting the circumstances in which PBCOs may be made or specifying matters which a tribunal must take into account when deciding whether to make a PBCO and its terms.
33. Section 194A was inserted by section 48(2) of the Judicial Review and Courts Act 2022 (“JRCA”). Section 50(5) of the JRCA expressly extends section 48(2) to England and Wales, Scotland and Northern Ireland.

Proposed approach

PBCOs in chambers without costs powers

34. The TPC proposes to ensure that there is no ability to make PBCOs in those chambers of the FtT which otherwise have no power to make ‘normal’ orders for costs.¹² This is to ensure that PBCOs are not the only form of costs order in any particular chamber and to encourage consistency within the rules.

PBCOs in chamber with costs powers

35. The TPC also proposes to make clear on the face of all existing rules that provide for orders for costs that the tribunal does have a power under section 194C of the LSA to make a PBCO where it would otherwise have power to make an order for costs. This would be subject to the conditions in section 194A(5) and (7) of the LSA and any other limitations already in the rules (such as a requirement for unreasonable behaviour, or only applying in certain types of case).
36. Section 194A(6) of the LSA requires a tribunal to have regard to whether an order for costs would have been made if a person’s representation was not provided free of charge, as well as what order would have been made in those circumstances. Paragraph (10)(c) also permits the TPC to require other matters to which a tribunal must have regard when deciding whether to make an order and its terms. The TPC does not currently believe that there are any other matters that a chamber/tribunal should be *required* to take into account when deciding whether, and on what terms, to make a PBCO, but wishes to consult on whether there ought to be.

¹¹ The power to make rules for the EAT is still exercised by the Secretary of State. That power is to be transferred to the TPC on a date to be appointed (see sections 34(3) and 51(4) of the Judicial Review and Courts Act 2022). The power to make rules for the Employment Tribunals was transferred to the TPC on 24th April 2024 by the Judicial Review and Courts Act 2022 (Commencement No. 6) Regulations 2024, see regulation 2.

¹² Namely the Social Entitlement Chamber and War Pensions and Armed Forces Compensation Chamber

37. The TPC has also considered whether to make more prescriptive rules, which specify in each tribunal precisely when PBCOs can be made, on what terms and the procedure to follow. Having considered the position, the TPC is currently of the view that in order to make the rules as simple and streamlined as possible it is not necessary to do so.

38. The TPC is of the view that the requirement in section 194A(5) of the Legal Services Act 2007 (that a PBCO can only be made in circumstances where if the representation provided free of charge had in fact been charged for, a tribunal would have had the power to make an order for costs) already provides the necessary limit to avoid disparities between pro bono and non-pro bono cases where costs can otherwise be awarded. It appears to the TPC that it will be simpler for parties to understand the rules to simply reflect the existing limit on the power in primary legislation and maintain case type or other qualifications (such as unreasonable behaviour) already in the rules rather than constructing a special regime for each chamber/tribunal.

Questions about PBCOs

Question 2: Do you agree that PBCOs should continue to be available in the FtT, the UT and the ET but not in the Social Entitlement Chamber and War Pensions and Armed Forces Compensation Chamber of the FtT? If not, please say why.

Question 3: Are there any other matters which the tribunal should be *required* to have regard to by rules when making a PBCOs?

Question 4: Do you have any views about whether there should be:

(a) a short, permissive, rule referring to the relevant portions of section 194A of the Legal Services Act 2007, or

(b) a detailed PBCO regime created in each set of Procedure Rules (excluding the Social Entitlement Chamber and War Pension and Armed Forces Compensation Chamber Rules)?

Question for both areas of consultation

Question 5: Do you have any other comments?

How to Respond

Please reply using the response questionnaire template.

Please send your response by 29 July 2026 to one of the following:

Email: tpcsecretariat@justice.gov.uk

Post: Tribunal Procedure Committee
Access to Justice Directorate

Policy, Communications and Analysis Group
Ministry of Justice
Post Point: 5.71
102 Petty France
London
SW1H 9AJ

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>