

August 2026

Tribunal Procedure Committee

Reply to 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 (“the TPC”) is the body that makes Rules that govern practice and procedure in the First-tier Tribunal and in the Upper Tribunal. The TPC is established under section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007 (“the TCEA”).
2. In addition to the First-tier and Upper Tribunal rules, responsibility for making procedural rules in the Employment Tribunals was transferred to the TPC from 25th April 2024 by the Judicial Review and Courts Act 2022 and the Judicial Review and Courts Act 2022 (Commencement No. 6) Regulations 2024.
3. Further information on the TPC can be found at:
<https://www.gov.uk/government/organisations/tribunal-procedure-committee>
4. When making rules, the TPC seeks, among other things, to:
 - a. make the rules as simple and streamlined as possible;
 - b. avoid unnecessarily technical language;
 - c. enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - d. adopt common rules across tribunals where appropriate.
5. The TPC also has due regard to the public sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
6. Further information on the TPC can be found at our website:
<https://www.gov.uk/government/organisations/tribunal-procedure-committee>

The consultation

7. The TPC launched a consultation on proposed amendments to the Upper Tribunal Procedure Rules to support the new rights of appeal created by the

Online Safety Act 2023, which ran between 26 February 2026 and 21 May 2026. That consultation can be found here:

[Possible amendments to the Tribunal Procedure \(Upper Tribunal\) Rules 2008 in respect of appeals under the Online Safety Act 2023 - GOV.UK](#)

Response to the consultation

8. There were 5 respondents to the consultation, set out in annex A. Three organisations responded and two individuals responded. The TPC wishes to thank all of those who contributed to the consultation process.
9. The questions raised in the consultation are listed below, with a summary of the responses, followed by the TPC's conclusions.

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?

10. Ofcom had suggested a one-month time limit. The TPC's provisional position was that the time limit should be three months.
11. All three of the organisations supported a three-month time limit for applications for permission to appeal. One respondent said that the decision to appeal was complex and often involved multiple stakeholders. Another respondent said that third parties such as civil society organisations may require additional time to assess regulatory decisions, gather evidence and secure funding. This respondent emphasised the need for time to be extended in appropriate cases. A further respondent pointed to the practical difficulties it had experienced in bringing judicial review proceedings against Regulations made under the Online Safety Act and urged the TPC to "adopt the most socially beneficial position it can."
12. The individuals also supported a three-month time limit. They referred to the time it may take for an Ofcom decision to become widely known and to the need for third parties to obtain legal advice and assess whether they have a sufficient interest to bring an appeal. One individual queried whether a longer period might be needed in certain cases.

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

13. As noted above, some respondents to the consultation thought that more time might be needed in certain cases.

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?

14. Ofcom had proposed that the successful party in any appeal should be able to recover its costs. The TPC's provisional view was that the usual rule on costs should be displaced and that the Upper Tribunal should be able to develop its

own practice and process for deciding costs applications in Online Safety Act cases

15. All of the organisational respondents to the consultation disagreed with the proposal to displace the usual rule on costs. One respondent said that most regulated services are operated by small businesses or charities and referred to the judicial review brought by Wikimedia. This respondent was concerned about access to justice, including a chilling effect by exposure to costs for both small and large organisations, and about a risk of politicisation of Ofcom's role. This respondent also said that Ofcom's work is already funded through an industry levy and the industry would need to cover Ofcom's costs, in any event, if it lost a case.
16. Another respondent was also concerned about access to justice and a chilling effect on legitimate challenges. That respondent considered that it was an incorrect assumption that challenges would be brought by large, well-resourced technology companies and raised concerns about the impact on innovation of increased legal risk. A further respondent referred to the costs it had incurred in its judicial review and the need for these costs to be met through charitable donations.
17. One individual did not oppose a costs shifting rule but expressed caution about the chilling effect on public interest challenges and said safeguards would be needed. The other individual was strongly opposed to costs shifting for the same reason. He referred to Ofcom being a public regulator whose costs are funded through a levy. He was concerned about the chilling effect. He thought the case of [*BT v Ofcom* \[2018\] EWCA Civ 2542](#) was of limited relevance because it dealt with costs against Ofcom and not costs against those appealing Ofcom's decisions.

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?

18. One respondent organisation did not support costs shifting but said that if it were to be implemented the Upper Tribunal should be required to take into account financial resources, the public interest nature of the case, whether there are novel or complex issues, the conduct of the parties and the potential chilling effect of a costs order.
19. The individual respondent who was opposed to costs shifting also said that if it were to be implemented, there should be a list of considerations for the Upper Tribunal. In addition to the factors identified by the respondent organisation, said the individual respondent also considered that the Upper Tribunal should take into account Article 10 of the ECHR and who the appellant is. The individual respondent supported a provision that a civil society organisation or individual who brings an appeal in good faith on a matter of public interest would not be liable for Ofcom's costs simply by reason of being unsuccessful.

20. The individual respondent who supported costs shifting identified similar factors to the other respondents.

Question 5: Do you have any other comments?

21. The individual respondents expressed concern about the wide nature of Ofcom's powers under the Online Safety Act and the impact on civil liberties.

The TPC's conclusions

Time limit for permission to appeal

22. In light of the consultation responses, the TPC has decided to maintain its provisional view that there should be a three-month time limit for applications for permission to appeal by third parties. The TPC does not consider that any additional provision is needed for more complex cases because the Upper Tribunal already has power to extend time under its general case management powers in rule 5.

Costs

23. Having considered the consultation responses and reviewed Ofcom's powers to levy fees under Part 6 of the Online Safety Act, the TPC has changed its position on the Upper Tribunal's power to award costs. The TPC notes that Ofcom has the ability to cover litigation costs by levying fees on the providers of regulated services. Therefore, there is no reason to depart from the usual rule for costs in Tribunals, which is that costs should only be awarded where there has been unreasonable conduct.

Consultation and keeping the Rules under review

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

25. 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.uk

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
TechUK
Computer and Communications Industry Association
Wikimedia Foundation
2 individuals responded in a personal capacity