

August 2026

Tribunal Procedure Committee

Reply to consultation on possible amendments to the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of applications for judicial review

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 (“**FtT**”) and the Upper Tribunal (“**UT**”). Since April 2024, the TPC has also been responsible for making rules for the Employment Tribunal.
3. Section 22(4) of the TCEA requires that the TPC’s rule-making powers be exercised with a view to securing that:
 - (1) in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done;
 - (2) the tribunal system is accessible and fair;
 - (3) proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently;
 - (4) the rules are both simple and simply expressed; and

- (5) the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring the proceedings before the tribunals are handled quickly and efficiently.
4. The TPC seeks, among other things, to:
 - (1) make the rules as simple and streamlined as possible;
 - (2) avoid unnecessarily technical language;
 - (3) enable Tribunals to continue to operate tried and tested procedures which have been shown to work well; and
 - (4) 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.

The consultation

6. The TPC ran a consultation between 20 March 2026 and 12 June 2026 on possible changes to the Tribunal Procedure (Upper Tribunal) Rules 2008 (“**UTR**”) in respect of applications for judicial review. The consultation paper can be found here: [Possible amendments to the Tribunal Procedure \(Upper Tribunal\) Rules 2008 in respect of applications for judicial review - GOV.UK](#)
7. The TPC sought views on the following three proposals:
 - (1) Whether to introduce a provision in the UTR mirroring rule 54.8A of the Civil Procedure Rules (“**CPR**”), to make express provision for an applicant to provide a reply to an acknowledgment of service;
 - (2) Whether to amend rule 40(1A) of the UTR such that a decision disposing of immigration judicial review proceedings can be handed down remotely as opposed to solely at a hearing; and
 - (3) Whether to amend rule 28A of the UTR to align it with CPR 54.7, such that the copy of the claim form served on the respondent or interested party must be sealed.

8. The questions asked in the consultation were as follows:

- (1) Do you agree that the rules governing the conduct of judicial review proceedings in the Upper Tribunal should reflect those which govern the conduct of judicial review proceedings in the Administrative Court?
- (2) Do you agree that provision should be made in the Tribunal Procedure (Upper Tribunal) Rules 2008 for an applicant to reply to an Acknowledgement of Service?
- (3) If so [in relation to Question 2], do you agree that provision should be made in the way suggested in this consultation paper?
- (4) Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to remove the requirement that a decision which finally disposes of immigration judicial reviewing proceedings must be given at a hearing?
- (5) If so [in relation to Question 4], do you agree that rules 40 and 44 should be amended in the way suggested in this consultation paper?
- (6) Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to require an applicant for judicial review to provide a sealed copy of any application for judicial review to a respondent or interested party?
- (7) If so [in relation to Question 6], do you agree that the change should be effected by amending rule 28A in the manner suggested in this consultation paper?
- (8) Do you have any other observations about these proposals?

Response to the consultation and conclusions

9. There were four respondents to the consultation, details of whom are provided in the Annex A. The TPC thanks all of those who provided responses.

10. A summary of the consultation, the responses, and the TPC's conclusions are set out below.

Question 1: Do you agree that the rules governing the conduct of judicial review proceedings in the Upper Tribunal should reflect those which govern the conduct of judicial review proceedings in the Administrative Court?

11. All four respondents generally supported this proposition. One respondent commented that a divergence in the rules between the UT and the Administrative Court might encourage a view that the quality of review and of the procedural protections in the UT are inferior to that in the Administrative Court.
12. Another respondent, whilst noting that it will generally be helpful for the rules governing the conduct of judicial review proceedings in the UT to reflect as much as possible the rules applied in the Administrative Court, commented that there may be circumstances in which full alignment between the practice of the UT and the Administrative Court may be inappropriate. The TPC is in full agreement with that position, and it is for that reason (as this respondent noted themselves) that the TPC's proposals in relation to the proposed rule 44(4BA), set out at paragraph [27] of the consultation paper, differs from the equivalent rule in the Administrative Court.
13. A further respondent agreed with the proposition, and suggested that the TPC should look to create a power in the UT to award interests on costs orders. The respondent pointed out that rule 10(9)(a) of the UTR provides only that, upon application for a detailed assessment of costs in the High Court or the Costs Office of the Supreme Court, the CPR is to apply. There is no provision in the CPR which makes provision about interest on costs. The power of the higher courts to award interest on judgments instead comes from s 17 of the Judgments Act 1838 (which the UTR costs provisions make no reference to). Not only does that create an inconsistency with the practice of the Administrative Court, but it is also inconsistent with the procedure in the FtT (Immigration and Asylum Chamber) ("**FtT (IAC)**"). Under the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, r.9(9)(a), a party may apply to the County Court for a detailed assessment of costs to which section 74 of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 expressly apply.
14. The TPC is grateful to this respondent for pointing out this inconsistency. As it is, the issue falls within an extant consultation into possible amendments to

costs regimes within the Tribunals, closing on 29 July 2026. The TPC, therefore, believes that it would be inappropriate to take any further action on this suggestion in response to this particular consultation paper.

Question 2: Do you agree that provision should be made in the Tribunal Procedure (Upper Tribunal) Rules 2008 for an applicant to reply to an Acknowledgement of Service?

15. Three respondents answered this question, two of whom agreed fully with the proposal.

16. The remaining respondent did not object to the proposal in principle, but –

(a) expressed concern that urgent cases might be prejudiced by the suggested requirement for replies to be filed within 7 days of an acknowledgment of service being provided;

(b) asked the TPC to consider making provision for a respondent to provide a response to a reply, in view of the possibility of novel points being raised in a reply; and

(c) noted that allowing an applicant to file a reply may well lead to delay and an increase in costs.

17. The TPC notes that if points (a) and (c) are right, then any provision for a response to a reply would only further increase the likelihood of novel points, in any event impermissible, being raised. Making provision for a response to a reply would also create delay and increase the costs incurred by the parties. There is also no express provision in the CPR providing for a respondent to provide a response to a reply, and the TPC does not consider there to be a good reason justifying divergence, in this context, in UT and Administrative Court practice. The TPC's conclusion is that no provision should be made in the UTR for a respondent to make a response to a reply.

18. The TPC accepts that some parties may incorrectly perceive the reply stage as an opportunity to raise fresh arguments, with a concomitant impact on costs and delay, but does not accept that this is a reason to abandon or amend the proposal. The UT is undoubtedly cognisant of the need to maintain procedural rigour in judicial review and can properly be expected to reject new arguments which an applicant seeks to introduce (without permission) in a reply. The problem is just as likely to be an issue in the Administrative Court,

but the ability to file a response is nonetheless recognised as a useful step in that context. For the reasons set out in the consultation paper the TPC remains of the view that it would be equally useful in the UT, and would remove the procedural uncertainty which is presently encountered by an applicant who wishes to reply to an acknowledgment of service.

19. The TPC also does not consider that the proposal would unduly prejudice cases subject to expedition. The proposed seven day timetable is a default which can be extended or shortened pursuant to UTR, r.5(3)(a). The Rules therefore provide for adequate flexibility in such cases.

20. In light of the general agreement with the proposal, and the TPC's conclusions on the concerns which were raised, the TPC concludes that it would be appropriate to proceed with this proposal.

Question 3: If so [in relation to Question 2], do you agree that provision should be made in the way suggested in this consultation paper?

21. Three respondents answered this question. Two were in unqualified agreement, whilst the third, the same respondent who raised concerns in relation to Question 2, reiterated their points previously made. For the reasons given in paragraphs [17]-[19] of this response, the TPC acknowledges those concerns but takes a different view.

22. In light of the TPC's conclusions in relation to Question 2, the TPC intends to proceed with the proposal.

Question 4: Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to remove the requirement that a decision which finally disposes of immigration judicial reviewing proceedings must be given at a hearing?

23. Three respondents answered this question. Two were in unqualified agreement, whilst a third, although they agreed with the proposal, noted that remote distribution runs a risk of emails being missed and delayed receipt (particularly in respect of litigants in person who are not required to sign up to the UT's e-filing system).

24. The TPC is grateful to this respondent for highlighting some potential risks, but considers that these are matters better dealt with by way of judicial

discretion rather than in the rules themselves. As remote hand down would be discretionary, the particular risks posed to litigants in person will be considered when a judge decides whether a remote hand down will or will not be appropriate (for instance, in cases where a litigant in person does not have access to an email address then a remote hand down will obviously not be appropriate).

25. Given that all respondents agreed with, or raised only minor concerns in respect of, this proposal, the TPC intends to proceed with this proposal

Question 5: If so [in relation to Question 4], do you agree that rules 40 and 44 should be amended in the way suggested in this consultation paper?

26. Three respondents answered this question, two of whom were in unqualified agreement with the proposal. The remaining respondent suggested that the proposed rule 44(4BA) should be revised as follows (with changes in **bold**):

(4BA) Where a decision that disposes of immigration judicial review proceedings is given in writing, a party may apply for permission to appeal by making a written application which must be received by the Upper Tribunal, **and served on all other parties**, no later than twelve working days after the Upper Tribunal sent its written decision to the party making the application.

27. The TPC recognises that the proposal for the application to be served on all other parties would mirror the requirement in CPR 52.12(3), by which an appellant's notice must be served on a respondent(s). The TPC also recognises that the suggested amendment would ensure that a respondent is on notice of an application for permission to appeal, thereby removing the burden on a respondent(s) to take steps to find out whether an appeal has been lodged, which in turn consumes the resources of the UT in having to notify, upon request, those respondents.

28. The TPC has considered this proposal and, although it has the advantage of aligning the procedure more closely with that in the courts, has concluded that it would lead to an unjustifiable inconsistency with the procedure in statutory appeals.

29. In respect of statutory appeals from the First-tier Tribunal to the Upper Tribunal and from the Upper Tribunal to the Court of Appeal, there is no requirement that an application for permission to appeal is served on the opposing party. Whilst it would be possible for the TPC to adopt different approaches in judicial review and statutory appeals, it considers there to be no proper justification for doing so. With that in mind, the TPC considers that to create a requirement for service on the respondent(s) in only one context would be create an unjustified inconsistency in the rules and would therefore be contrary to the TPC's objectives.

30. The TPC will therefore not, at this stage, take forward the suggested amendment to the proposal, and intends to proceed in accordance with the initial consultation document

Question 6: Do you agree that the Tribunal Procedure (Upper Tribunal) Rules 2008 should be amended so as to require an applicant for judicial review to provide a sealed copy of any application for judicial review to a respondent?

31. Two respondents answered this question, both of whom were in unqualified agreement with the proposal. For the reasons given in the consultation paper, the TPC will take forward this proposal.

Question 7: If so [in relation to Question 6], do you agree that the change should be effected by amending rule 28A in the manner suggested in this consultation paper?

32. Two respondents answered this question, both of whom were in unqualified agreement with the proposal. For the reasons given in the consultation paper, the TPC will take forward this proposal.

Question 8: Do you have any other observations about these proposals?

33. Two respondents answered this question, one of whom simply replied 'No', whilst the other reiterated their proposals in relation to costs (covered in response to Question 1). As noted above, the TPC does not believe that it would be appropriate to make changes to the rules in relation to costs without a specific consultation, but will consider whether to launch such a consultation exercise in the future.

Overall conclusion

34. The TPC is satisfied, in light of the consultation responses, that it should take forward the proposals set out in the consultation paper.

35. The TPC is already consulting on possible amendments to the costs/expenses rules in the First-tier, Upper and Employment Tribunals. That consultation, closing on 29 July 2026, includes possible amendments to the costs provisions in the UTR to make clear that the UT can award interest on costs.

Consultation and keeping the rules under review

36. The remit of the TPC is to keep the rules under review.

37. Please send any suggestions for further amendments to the rules to:

Email: tpcsecretariat@justice.gov.uk

Post:

Tribunal Procedure Committee

Civil, Family, Tribunals & Administration of Justice Directorate

Ministry of Justice

Post Point: Area 7C.55

102 Petty France

London

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Annex A

List of Respondents

1. Government Legal Department
2. A self-employed barrister specialising in immigration law
3. A specialist costs lawyer
4. A self-employed barrister specialising in immigration law