

# **First-tier and Upper Tribunal Rules**

Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007

## **Response to consultations on rules**

(May 2008 – November 2008)

## **Response from the Tribunal Procedure Committee**

June 2009

## **Foreword by the Right Honourable Lord Justice Patrick Elias**

The Tribunal Procedure Committee is charged with formulating procedural rules for tribunals which have become, or are becoming, part of the new structure created by the Tribunals Courts and Enforcement Act 2007. The members of the Committee have between them a broad and diverse knowledge of the practical operation of the Tribunal system.

The Committee has been guided by the following principles: to make the rules as simple and streamlined as possible; to avoid unnecessarily technical language; to enable tribunals to continue operate tried and tested procedures which have been shown to work well; and to adopt common rules across tribunals wherever possible, so that rules specific to a chamber or a tribunal are permitted only where there is a clear and demonstrated need for them.

Inevitably experience will demonstrate difficulties with the operation of the rules, or gaps in their coverage. However, the Committee's remit is to keep rules under review, and periodic amendments can be made to try to ensure that the rules work as smoothly and fairly as possible.

Consultation is a fundamental part of the rule making process. Those involved in the day to day work of particular tribunals are often best placed to assess the potential impact of rule changes. We have benefited considerably from the responses to our consultations; they have helped eradicate errors, identify problems in the initial drafts, and suggested improvements. The Committee is extremely grateful to all who have taken the trouble to respond to the consultation documents. Even where proposed amendments have not been adopted, they have frequently generated important debates in the Committee which have helped sharpen the drafting process.

## **Contents**

Introduction	4
Background	5
The Respondents	8
General reply	8
Replies on specific issues	9
Keeping the Rules under Review & Contact Details	18
Annex A – List of respondents HESC/SEC	19
Annex B - List of respondents Tax	21
Annex C - Membership of the Tribunal Procedure Committee	22

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## Introduction

1. This document is the post-consultation report for the two consultations that led to:
  - The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685),
  - The Tribunal Procedure (First-tier Tribunal) (War Pensions and War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686),
  - The Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698),
  - The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699),
  - The Tribunal Procedure (First-tier) (Tax Chamber) Rules 2009 (S.I. 2009/273), and
  - The Tribunal Procedure (Amendment) Rules 2009 (S.I. 2009/274).

## **Background**

2. On 19 May 2008, following a consultation on the implementation of Part 1 of the Tribunals, Courts and Enforcement Act 2007, the Government announced its proposal to seek Parliamentary approval for the creation of the First-tier Tribunal and the Upper Tribunal and the transfer to those tribunals of the functions of nine existing tribunals on 3 November 2008. It was also proposed to create two chambers in the First-tier Tribunal (the Social Entitlement Chamber and the Health, Education and Social Care Chamber) and one chamber in the Upper Tribunal (the Administrative Appeals Chamber).

3. Other chambers of the First-tier Tribunal and the Upper Tribunal would follow in 2009. In particular, a Tax Chamber of the First-tier Tribunal and a Finance and Tax Chamber of the Upper Tribunal would be created on 1 April 2009.

4. The 2007 Act provides, in section 22 and Schedule 5, for a Tribunal Procedure Committee. This Committee, chaired by Mr Justice Elias (as he then was), was established on 19 May 2008 with the function of making and amending Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal.

### The first consultation

5. The initial task of the Committee was to create rules for the chambers being created on 3 November 2008 to replace the existing rules of tribunals being abolished.

6. Some members of the Committee had earlier worked with Ministry of Justice lawyers to create drafts in readiness for public consultation. The consultation period began at the end of May. This included two stakeholder workshops hosted by the TCE Act Implementation Team.

7. The draft rules for the Social Entitlement Chamber were published on the Tribunals Service website on 28 May followed by the draft rules for the Health, Education and Social Care Chamber on 30 May and the draft rules for the Upper Tribunal on 1 June. The link to this website was sent to over 250 key stakeholders, organisations, individuals and the respondents to previous consultations. The draft rules also appeared on the judicial website and were sent to representatives of all the Tribunals that would be affected by the new procedures.

8. The intention was to create, as far as possible, a single set of rules for each chamber that could apply to all jurisdictions within the chamber, replacing the existing diverse sets of tribunal rules. It was intended that the new rules should be simple, flexible and easy to understand. It was not intended radically to overhaul current processes; instead, the rules would draw heavily upon existing tried and tested processes and were designed to allow best current practices to be

maintained. The rules set out an overriding objective to deal with cases fairly and justly and in a consistent manner across all jurisdictions. Inevitably, given the different jurisdictions, there was sometimes the need for jurisdiction-specific provisions, but the aim was to keep these to the minimum.

9. There were no specific questions in this consultation. We were keen to receive opinions on the rules as a whole as well as on any individual rules. We did, however, invite comments on the following areas in particular:

- Whether a combined application for appeal or review was desirable
- Whether significant rules had been omitted.
- Whether any more jurisdiction-specific rules were required
- Whether different time limits were required.

10. The consultation period closed on 11 July 2008. The responses were collated and discussed by the Committee and second drafts of the rules were compiled in August 2008 taking these into account. These second drafts were similarly made available on the website and the link sent to all respondents and stakeholder organisations. The responses to this further consultation were also collated and discussed.

11. At a very late stage, the Government proposed that there should be a separate War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal to replace the Pensions Appeal Tribunal (England and Wales) whose functions had originally been destined for transfer to the Social Entitlement Chamber. This resulted in a separate set of draft rules being produced, following exactly the draft rules for the Social Entitlement Chamber insofar as they applied to war pension and armed forces compensation cases, save that two time limits that had been reduced from six week to one month, to encourage expedition and for conformity with other jurisdictions (and without any adverse comment), reverted to six weeks which was the same as in Pension Appeal Tribunals in Scotland and Northern Ireland.

12. On 8 October 2008 final drafts of the rules were produced for signature by members of the Committee. The rules were allowed by a Minister acting on behalf of the Lord Chancellor and were made on 9 October, were laid before Parliament on 15 October and came into effect on 3 November 2008.

13. These Rules were –

- The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685);
- The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (SI 2008/2686);

- The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698);
- The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699).

#### The second consultation

14. The modernisation of the tax appeals system has been a distinct strand within the overarching TCE Act implementation. The functions of four separate tax appeal tribunals have been transferred to one single Tax Chamber in the First-tier Tribunal, with a right of appeal with permission to the Finance and Tax Chamber of the Upper Tribunal.

15. A Ministry of Justice team was set up to reform tax appeals. The team has worked closely with a Stakeholder Group who did much of the preparatory work on the rules for the new First-tier Tax Chamber. Dr Nuala Brice, who chaired a Rules sub group of the Stakeholder Group, was also appointed to the Tribunal Procedure Committee.

16. The Committee consulted for 12 weeks from August to November 2008 on draft rules for the Tax Chamber of the First-tier Tribunal and on how the existing Upper Tribunal rules should be amended to make these appropriate for tax, it having been decided that it was not necessary to have separate sets of Rules for each Chamber in the Upper Tribunal. A key question was whether the rules as drafted were suitable for the vast variety of tax matters, which ranged from the low cost and relatively straight-forward, to complex matters involving several millions.

17. The consultation period closed on 12 November 2009. The responses were collated and discussed by the Committee. A subgroup of the Committee met representatives of the Stakeholder Group to discuss specific Stakeholder Group concerns at the end of November. A member of the Committee also attended the main Stakeholder Group meeting in January 2009.

18. On 5 February 2009, final drafts were produced, for signature by members of the Committee. The rules were laid before Parliament on 15 February 2009. They came into effect on 1 April 2009.

19. The Rules were –

- The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273);
- The Tribunal Procedure (Amendment) Rules 2009 (SI 2009/274)

## **The Respondents**

### The first consultation

20. A total of 145 responses to the initial consultation were received, by email and post. A list of the respondents can be found at Annex A. These were split as follows:

- 54 Responses were concerned with the Rules for the Social Entitlement Chamber, with a further 15 Responses concerned with the Rules for what became the War Pensions and Armed Forces Compensation Chamber..
- 79 Responses were concerned with the Rules for the Health, Education and Social care Chamber.
- 12 Responses were concerned with the Rules for the Upper Tribunal.

### The second consultation

21. A total of 21 responses to the consultation on the rules for the Tax Chamber were received. A list of the respondents is set out in Annex B.

22. Of these 21 responses, 14 also commented on how the Upper Tribunal Rules should be amended to make these appropriate for tax cases.

## **General reply**

23. The responses were analysed for possible new approaches to combining procedures, evidence of impact of the proposed rules and levels of support among particular groups.

24. A large number of the responses expressed support for unified sets of rules for each chamber, but others expressed their concern that valuable practices developed in particular jurisdictions would be lost. The Committee's approach has been to recognise that jurisdictions have been brought together in chambers precisely because they have common features and that, generally, those common features suggest that common procedures are appropriate. Accordingly, where procedural rules differed in the past, the Committee has generally adopted what seems to be the best of those rules unless it has been persuaded that there is a clearly identifiable reason for a jurisdiction-specific rule. One particular area where it was convinced of the need for jurisdiction-specific rules was for proceedings in mental health cases, where the process needed to be very different from that appropriate to other cases in the same Chamber and is now dealt with in a

separate part of the Rules for that chamber. In other areas, there are instances in which the Committee has retained a jurisdiction-specific rule where it has not been convinced that it is really required but where it has felt more consultation is necessary if there is to be a change in practice.

25. The Committee has adopted an open style in the Tribunal Procedure Rules to allow tribunals as much flexibility as possible. The consequence is that former rules that were more prescriptive have not been reproduced. Nonetheless, the tribunal will often be able to adopt the same procedures within the new rules and will be able to issue directions (including standard directions) for that purpose. Several issues raised in the responses were, in our view, matters of detail that could more appropriately be dealt with through such directions, or through Practice Directions issued by the Senior President of Tribunals or Chambers Presidents under section 23 of the Tribunals, Courts and Enforcement Act 2007, than through rules.

26. There were also a number of responses that raised issues such as the constitution of the tribunals that do not fall within the scope of Tribunal Procedure Rules even though they may have fallen within the scope of procedural rules in the past. Such issues are now matters for the Lord Chancellor who has the power to make orders under the Act (see paragraph 15 of Schedule 4).

27. The Committee received a large number of helpful technical and drafting comments, many of which have been adopted.

28. Most of the comments were, however, on policy issues and our response to these is set out below.

## **Replies on specific issues**

29. We consider the responses on specific issues under headings that follow the general structure of the various sets of Rules:

- Part 1: Introduction
- Part 2: General Powers and Provisions
- Part 3: Proceedings before the Tribunal
- Part 4: Correcting, setting aside, reviewing and appealing Tribunal decisions

## **Part 1 Introduction**

### **Arbitration and alternative dispute resolution**

30. Issue: Is a reference to arbitration and alternative dispute resolution necessary or appropriate?

Argument: Some respondents considered that alternative dispute resolution was not appropriate to Citizen v. State cases of the type to which the rules would apply. There was also a questioning of the appropriateness of alternative dispute resolution in relation to tax appeals.

Decision: The Committee agreed that alternative dispute resolution would not be practical or appropriate in many cases before the First-tier Tribunal and the Upper Tribunal but it did not accept that such ways of resolving disputes could never be appropriate. The rules do not require the establishment of such processes but only require attention to be drawn to any that exists. This serves a useful purpose in reminding those charged with administering tribunals to keep under consideration the question whether there is scope for alternative methods of resolving disputes, particularly in cases involving complicated disputes of fact.

## **Part 2 General Powers and provisions**

### **Delegation to staff**

31. Issue: Whether delegation of judicial tasks was contrary to principle and, if not, what tasks should be appropriately delegated to staff

Argument: Some respondents considered that judicial functions should never be delegated.

Decision: The delegation of judicial functions has long been a feature in some tribunals and is also permitted in the courts, where costs officers exercise such functions. Such functions may include dealing with applications to change the hearing date, or permitting applications out of time. Provided that a person affected by a decision of a member of staff is permitted to ask for the decision to be reconsidered by a judge, as the rules do provide, we see no objection in principle to judicial functions being delegated.

Argument: Some respondents argued that the nature of the functions that may be delegated and the qualifications of staff to whom they should be delegated ought to be apparent on the face of the rules.

Decision: The Committee considered that there were a number of judicial functions that could in principle be delegated to appropriately qualified staff and that the precise extent of delegation of functions in respect of any particular jurisdiction should be left in the hands of the judiciary. Thus the rules provide for the delegation of any judicial function but only if the Senior President of Tribunals gives his approval.

## **Case Management Powers**

32. Issues: Whether the powers are all necessary and whether a power to suspend the decision of a Justice of the Peace in a case where an appeal lies to a tribunal against that decision was desirable.

Argument: Concern was expressed that the case management process could be confusing for unrepresented appellants, and could give rise to additional costs.

Decision: The Committee does not share this concern. On the contrary, these powers are provided so that, in an appropriate case, they can be used to focus the case, minimise delay, reduce expensive and inconvenient last minute cancellations, and improve co-operation between parties. In most cases the exercise of the powers will not require an additional hearing. Standard directions can be developed and we would expect applications generally to be dealt with on paper or by way of a telephone conference. The rules also provide for directions to be issued without prior notice to the parties but the parties are then given the power to apply for the direction to be varied or revoked. We consider this to be a proportionate approach to directions that will in most cases be uncontroversial. We agree that there will be many cases in which it will be unnecessary to use the powers at all but believe that it would be a mistake, and would make the rules more complicated, if we were to limit the cases in which some or all of the powers could be used. The rules do not impose any obligation to make use of the powers in any particular case.

Argument: Concern was expressed about the proposed power to suspend a decision of a Justice of the Peace while an appeal against the decision was pending, both on the ground that such a power would be *ultra vires* and on grounds of practicality.

Decision: In view of the relative infrequency of such decisions by Justices of the Peace and the significance of the proposed change, the Committee decided that it would be desirable for there to be further consultation on this issue and accordingly the proposed subparagraph was deleted.

## **Strike Out of a Party's case**

33. Issue: Whether the tribunal should be able to strike out cases that have no chance of success and whether there should be an insertion of a time limit for requests for reinstatement.

Argument: It was suggested that in relation to cases then within the jurisdiction of the Care Standards Tribunal, the First-tier Tribunal should have the power to strike out a case on the ground that it had no prospects of success because, even if there were an oral hearing of such an application, it would be much shorter than some substantive hearings. It was also suggested that a time limit for requests for reinstatement should be added.

Decision: The Committee agreed but considered that this power should be applied to all types of case except mental health cases, although it might be less used in other jurisdictions. In very clear and obvious cases the need for an oral hearing could be avoided altogether. The Committee agreed that a time limit for requests for reinstatement should be added because delay could be prejudicial to the other parties.

34. Issue: Whether it was fair that rule 8 as drafted provided for the appellant to have their case struck out in certain rare instances, whilst the equivalent sanction for the respondent (who would normally be Her Majesty's Revenue and Customs (HMRC) in tax cases) is to be barred from the proceedings.

Argument. This issue of "strike out" was of particular concern to tax appeals stakeholders, with over half raising serious concerns about it. They were concerned that the parties were not being treated equally, and in such instances the respondent's case should also be "struck out", so that the appeal would be upheld.

Decision. The Committee considered that there was a distinction to be drawn between an appellant and a respondent because, whereas the striking out of an appeal leaves the decision that was being challenged in place, it would not always be clear what decision should be given where a response was struck out. It would not necessarily be appropriate to rule in favour of the taxpayer, whatever the merits of his appeal, simply because of a failure to respond. However, they agreed an amendment to the draft rules for the Tax Chamber to allow the First-tier Tribunal summarily to determine issues against the respondent where the respondent has been barred. The Upper Tribunal Rules were amended to achieve the same effect.

### **Orders for costs**

35. Issue: Whether the power to award costs should be limited.

Argument: Some concern was expressed that a power to award costs would deter appellants with meritorious cases.

Decision: The Committee took the view that no radically new power to award costs should be introduced. However, it took the view that that the same costs regime would be applied to special educational needs cases as to care standards cases, there being no good reason for the minor differences between the regimes. It was also decided that the costs regime in the Upper Tribunal on an appeal from a lower tribunal should, as a general rule, be the same as in the lower tribunal and that the care standards regime would also be applied to appeals to the Upper Tribunal under the Safeguarding Vulnerable Groups Act 2006.

The Committee noted that stakeholders wanted different costs rules to apply in relation to tax. It was accepted that, in the Tax Chamber of the First-tier Tribunal, it should be possible for the Tribunal to make an award of the costs if one of the parties has behaved 'unreasonably' and it also accepted that there should be a broad discretion as to costs where a case

had been categorized as Complex, subject to a taxpayer being entitled to opt out of that regime. In the Upper Tribunal, the Committee was persuaded to accept the stakeholders' view that there should be a broad discretion as to costs in all tax cases.

The Committee noted that Lord Justice Jackson is carrying out a review of costs in the courts in England and Wales and it will consider such a review in respect of tribunals.

### **Evidence and submissions**

36. **Issues:** Whether, in special educational needs and disability in education cases, there should be a limit on the number of witnesses in special educational needs cases, any special provision for late evidence, any provision for compulsory assessment of a child and any provision for assessment of proposed provision for a child.

**Argument:** A number of respondents suggested that it would be disadvantageous to appellants to allow an unlimited number of witnesses to be called by a respondent and that the approach applied in the Special Educational Needs and Disability Tribunal, restricting the number of witnesses in all cases, should be retained.

**Decision:** The Committee was firmly of the mind that the Rules should not arbitrarily limit the number of witnesses and that to do so could work against the interests of justice. Indeed a blanket rule could be inconsistent with Article 6 of the ECHR. The Tribunal will be able to use the powers in the Rules to ensure that witnesses are not called where evidence does not need to be given orally or adds nothing to other evidence that is provided. It may well be that the current practice will remain the norm. However, it would be wrong for the Rules to prevent a party from calling relevant and necessary evidence.

**Argument:** Some respondents were greatly concerned that insufficient provisions were made in the draft rules for the submission of late evidence, particularly in the light of the fact that expert evidence can often be unavoidably delayed.

**Decision:** The Committee considered that there was no need for a special rule. The general case management powers, which include a broad power to extend time, are sufficient to enable justice to be done in each case.

**Argument:** Some respondents were concerned that requiring a parent to make a child available for assessment could in many cases be inappropriate for children who may have already been assessed many times. This could be a deterrent for some parents accessing the appeal system.

**Decision:** The Committee considered that the power was necessary in those cases where there had not previously been an adequate independent assessment. Tribunals have been concerned that they have been left in a

position where there is only evidence from the applicant's own expert and they are in difficulty assessing its reliability. The Committee was satisfied that it is not justifiable for applicants to seek to manipulate the Tribunal by deliberately refusing to cooperate in providing an independent assessment. If there is good reason why it would not be in the interests of the child to require this, no doubt the Tribunal will not order it.

Argument: It was suggested that the rules place an obligation on local authorities to allow a parent's expert witness to assess the appropriateness of proposed provision for a child.

Decision: Even-handedness required that this suggestion be accepted. The Tribunal has the power to require a school to allow a professional instructed by a parent into the school to assess the child's functioning in a school environment.

### **Expenses**

37. Issue: There were various queries regarding what expenses should be paid and to whom.

Argument: The current practices in relation to expenses were inconsistent as between one tribunal and another and even as between one part of a tribunal's jurisdiction and another.

Decision: The Committee is slightly surprised that the question as to what expenses, as well as the question whether any expenses at all should be paid, apparently falls within the Committee's remit (see paragraph 10(4) of Schedule 5 to the 2007 Act). The present schemes are plainly unsatisfactory but there was insufficient time to devise new ones, particularly since they would affect the public purse, and the decision was taken merely to replicate the previous statutory provisions for the time being, on the basis that parties would at least expect that current practice would continue.

## **Part 3 Proceedings before the Tribunal**

### **Commencing proceedings**

38. Issue: Whether appeals should be sent to the decision-maker in some cases or only to the Tribunal and, if so, whether the tribunal should be informed immediately that the appeal has been lodged.

Argument: A number of respondents were concerned that appeals sent to the decision-maker in social security cases and war pensions and armed forces compensation cases can result in the hearing of the appeal being unreasonably delayed.

Decision: In principle the Committee sees the force of the argument that appeals should be in the hands of the Tribunal rather than the decision maker. However, it recognised that there were powerful counter-arguments. In particular, there are wide powers of review in these

jurisdictions and where that power is exercised in favour of the appellant, this may be a speedier remedy and the appeal will lapse. Furthermore, current staffing arrangements are such that at least in the short term, the decision maker is better placed to deal with the administration involved. This may be a matter to which the Committee will wish to return in the future.

### **Lapsing of appeals**

39. **Issue:** Whether appeals should lapse upon revision or review leading to a change in the decision without the appellant withdrawing the case.

**Argument:** It was considered potentially unfair that appeals should automatically lapse when a decision is revised or varied on review because the new decision may not achieve everything that the appellant was seeking.

**Decision:** in social security and child support cases, an appeal lapses upon a revision favourable to the appellant by virtue of provisions in primary legislation. The rules had to reflect that. The Committee decided that, in war pensions and armed forces compensation, an appeal should not lapse on review until the claimant had had the opportunity of making a further submission.

### **Responses and Replies - 42 Day Time Limit**

40. **Issue:** Whether, there should be a time limit for the response in social entitlement cases (other than asylum support cases, for which there is a time limit) and war pensions and armed forces compensation cases.

**Argument:** The Department for Work and Pensions (DWP) and HMRC were strongly against the inclusion of the proposed 42-day time limit, on the ground that it was unworkable within current staffing and funding arrangements. They felt that it would be a significant programme of work to undertake in order to refer appeals to the tribunal more quickly than they do.

**Decision:** The Committee decided after very careful consideration not to include the 42-day time limit for respondents in the Social Entitlement Chamber Rules. This was subject to the Tribunals Service and relevant Government departments undertaking a programme of work to achieve workable time limits within a reasonable period. Constructive discussions are taking place to achieve that objective. The Committee considers this to be a very important matter which is being actively kept under review.

### **Tax appeals: the allocation of cases to categories**

41. **Issue:** Whether the four “tracks” that cases would be allocated to in the new system was an accurate description of what the system was intended to achieve.

**Argument:** The Committee had some concerns, which were also expressed by five respondents that the system of “tracks”, along which cases would

go, was overly complex. A number of respondents argued that the system could be simplified down to two or three “tracks, while the Committee queried what the impact of shoe-horning cases into particular “tracks” was.

Decision: The Committee decided that the expression “tracks” was misleading, and the concept the rules were trying to get across was that cases would be categorised according to their complexity.

The rules set out four categories, which are default paper, basic, standard and complex.

- Default paper appeals require a statement of case within 42 days from the respondent, 30 days for the appellants reply and then would be considered on the papers unless either of the parties or the Tribunal itself determines there should be a hearing.
- Basic appeals will normally be listed for hearing straightaway.
- Standard appeals require a statement of case within 60 days and the parties having another 42 days to exchange a list of documents and the tribunal issuing any other directions as appropriate.
- Complex cases follow the same procedure as a standard case.

These different procedures promote low-cost and speedy resolution of disputes where this is desirable, with more intensive case management targeted at those cases where it is necessary. The distinct categorisation of complex cases is necessary because a different costs regime may apply and there is the possibility of the case being transferred to the Upper Tribunal.

### **Transfer of tax cases to the Upper Tribunal**

42. Issue: whether the Tribunal should have the power to transfer a case to the Finance and Tax Chamber of the Upper Tribunal, regardless of the wishes of the parties.

Argument: A number of respondents expressed concern that no appellant be forced into a costs regime against their will if the costs regime in the Upper Tribunal were similar to that in the High Court.

Decision: The Committee agreed that cases should only be transferred with the agreement of the parties and the Chamber Presidents.

## **Part 4: Correcting, setting aside, reviewing and appealing Tribunal decisions**

### **Application for permission to appeal or review**

43. Issues: Whether there should be a combined procedure for permission to appeal and review and whether the proposed time limits were appropriate

Argument: A number of respondents were concerned that the proposed combined procedure could be confusing, time consuming and expensive.

Decision: The Committee does not share these concerns. On the contrary, the intention of this combined procedure is to make the process simpler, rather than more complicated. For most cases, the power of the First-tier Tribunal to review its decisions is restricted to points of law and combining it with the application for permission to appeal, which is also limited to points of law, means that a review may be used as a speedier alternative to an appeal. It is expected that the Tribunal will use its powers so as to prevent consideration of a review lengthening proceedings unduly. However, the relevant rules have been simplified and made clearer.

Argument: DWP argued that the 13-month absolute time limit for applying for permission to appeal from the First-tier Tribunal in social security and child support cases should be retained.

Decision: The Committee saw no reason arbitrarily to limit the tribunal's power to extend time in that way. It recognised that it would very seldom be appropriate to extend time after such a delay but considered that injustice could be caused in an exceptional case if the power did not exist.

Argument: Both DWP and the Child Poverty Action Group argued that the 3-month time limit for applying for permission to appeal from the Upper Tribunal in social security and child support cases should be retained because it is at that stage that both parties in such cases commonly first seek legal advice.

Decision: The Committee accepted that suggestion and applied it also to war pensions and armed forces compensation cases.

## **Keeping the Rules under review**

44. The Tribunal Procedure Committee wishes to thank all those who contributed to this consultation process.

45. The Committee will monitor the operation of the Rules and will make amendments as and when it appears necessary. Any suggestions for amendments should be sent to the Tribunal Procedure Committee Secretariat at the address below.

## **Contact details**

46. Further copies of this report and the rules can be obtained by contacting the Tribunal Procedure Committee Secretariat at the address below:

**TPC Secretariat  
2.39 Tower  
102 Petty France  
London  
SW1H 9AJ**

**Email: [tpcsecretariat@justice.gsi.gov.uk](mailto:tpcsecretariat@justice.gsi.gov.uk)**

This report and the Rules are also available on the website:

[www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm](http://www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm)

## Annex A

### List of respondents HESC/SEC

<b>Organisation / Position</b>
Administrative Justice and Tribunals Council
Afasic
Appeal Service
Appeal Service - Association of District Chairmen
Appeals Service - District Chairman, Reading
Asylum Support Appeals Project, Legal Advisor
Autism In Mind
Council Benefits Service - Bristol City
Cheadle Royal Hospital
Child Poverty Action Group
Child Support Agency
Children & Young People's Services
Citizen's Advice Bureau
Commission for Social Care Inspection
Consultant Chartered Psychologist, FUED
Criminal Injuries Compensation Appeals Panel, Senior Operations Manager
Department for Children, Schools and Family
Department for Work and Pensions
Durham County Council's Welfare Right's Service
Dyslexia Association of Bexley, Bromley, Greenwich & Lewisham
East Region Consultation Response
East Sussex Children's Services, Head of SEN
Fisher Meredith
Hampshire County Council, Special Educational Needs Manager
NHS Hampshire Partnership, Mental Health Act Officer
Hardwicke Building Barristers Education Team
Her Majesty's Revenue and Customs
Immigration Law Practitioners Association
Independent panel for Special Educational Advice
Independent Special Educational Needs Advisor
Institute of Chartered Accountants
Integrated Services Surrey County Council
Jobcentre Plus
Kent County Council
Kids First, Merton Mencap
Kirklees Benefits Advice Service
Leicester City Council Benefits
Leicester City Council Welfare Rights Service
Leicester City Council, Training, Development and Appeals

Levenes Solicitors, Head of the Education Department,
Lewisham Citizen's Advice Bureau
London and Home Counties Regional Conference Secretary
London Borough of Haringey
London Social Security and Child Support Commissioners
Kent County Council - Partnership with Parents
Manchester Advice Appeals Team
Mental Health Act Commission
Mental Health Review Tribunal
NHS Trust - Mersey Care
MH Law Manager, Camden & Islington NHS Foundation Trust
Mills & Reeve Solicitors, Legal Executive, Healthcare Department,
National Association of Welfare Rights Advisers
NHS, 5 Boroughs Partnership, Chief Executive
North Ayrshire Council Welfare Rights Service
North Warwickshire Dyslexia Association
North Wilts Citizen's Advice Bureau
Oxfordshire Learning Difficulty NHS Trust
Partner, Irwin Mitchell
Partner, Ridouts LLP
Pension Appeals Tribunal
Pension Service Appeals Team, Newcastle
President of the Appeals Tribunal, Northern Ireland
Preston Carer's Allowance Appeals,
Publisher of a guide to Special Educational Needs and Schools
Regional Chairman, Birmingham Tribunal Service
Revenues and Benefits (Benefits), Burnley
Royal College of Psychiatrists
Solicitor, Bretherton Law
Solicitor, Marston Harbottle
Solicitor, Pickup and Jarvis
Solicitor, Radcliffes Le Brasseur Law
Solicitor, Thompsons
SOS Special Education Needs
South Gloucestershire Council - Head of Special Educational Needs
Special Education Consortium
Special Educational Need – Legal Team
Stockport Council Benefits Services
Stockton Welfare Rights
Swansea Social Inclusion unit
The Commissioners Office
The General Council of the Bar
The National Autistic Society
The National Deaf Children's Society
The Royal National Institute for Deaf People
The Special Educational Needs and Disability Tribunal
Welfare Rights Supervisor, Stephen D Brine Solicitors
Welfare Rights
Welsh Care Standards

## Annex B

### List of Respondents to the consultation on Tax Rules

<b>Organisation / Position</b>
Salaried Chairmen of VAT & Duties Tribunals and Special Commissioners
HMRC
Association of Clerks to General Commissioners
National Association of General Commissioners
Low Incomes Tax Reform Group
Tax Faculty of the Institute of Chartered Accountants
Institute of Indirect Taxation
British Bankers Association
Administrative Justice and Tribunals Council
Revenue Bar Association
McGrigors
Deloitte & Touche
KPMG
General Commissioner/VAT & Duties Member
Rabjohns
Senior VAT Consultation
Law Society
Association of Accounting Technicians
Faculty of Advocates

## Annex C

## **Membership of the Tribunal Procedure Committee**

*(as at March 2009)*

Lord Justice Patrick Elias (Chair)

Lord Newton of Braintree

Douglas May QC

Mark Rowland

Nick Warren

Philip Brook Smith QC

Carolyn Kirby

Michael James Reed

Lesley Clare

Dr Nuala Brice