

Tolling time – and a possible alternative

Prepared by

Malcolm Hutto

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Definitions

- For the purpose of this presentation, I take “tolling” to mean “stopping the clock” on counting the number of days to a deadline
- Thus:
 - Claimant C wishes to file an IRP
 - Assume clock starts on Day 0
 - Assumes C engages in another process (e.g. RFR, DIDP) and the rules say that time is “tolled” for the purposes of the IRP
 - When calculating whether C is within time to file, tolling means that when you count the number of days between Day 0 and date of filing you omit from that count any calendar days that elapse during the ‘tolled’ process(es)

Primary purpose of tolling

The main purpose of tolling is to prevent the unfairness to the Claimant of being unable to bring an IRP claim because time has run out while another process is active.

- Which is particularly marked as Claimant may have little influence over how long that other process takes to complete

NB: It is worth remembering that our purpose as the IOT is to create rules that *facilitate* Claimants bringing IRP claims in a timely fashion so disputes can be resolved, not to find ways to inhibit them.

Secondary benefits of tolling

2. Tolling encourages use of non-IRP processes by removing a negative incentive, namely that time might run out during that process.
 - This could in turn reduce number of IRPs (if disputes are resolved by other process) and reduce cost and scope of those that remain (by narrowing the issues in dispute; in particular, it is valuable to achieve agreement on facts, as then we avoid the need for the IRP to conduct fact-finding of its own).
3. Tolling reduces wasted work by removing incentive for Claimant to abandon the alternative process in mid-flow so as to file an IRP in time
4. Tolling removes the necessity to run multiple processes in parallel, which may be an undue strain on resources for some Claimants

Downsides of tolling

1. One of the core aims of the IRP is the timely resolution of disputes. The ultimate outcome of the IRP is delayed if we allow the parties to suspend its timing rules so as to conduct other processes.
2. Tolling allows either party to force a delay for its own sake, by initiating another process even when that is unnecessary or futile
3. Tolling removes any incentive for the Claimant to run multiple processes in parallel, which would save elapsed time if feasible

Compromise?

Is it possible that some alternative to tolling exists that would deliver the benefits of tolling, while avoiding its downsides?

Option: supplementary time instead of tolling

- Under this alternative:
 - Time in another process is NOT tolled; but
 - We offer¹ Claimant alternative deadline of a fixed period (e.g. 60 days) after the completion of alternative process (i.e. processes we would have otherwise considered eligible for tolling)
- By example:
 - Claimant C wishes to file an IRP
 - Assume clock starts on Day 0
 - After 60 days they file an RFR
 - The RFR takes 135 days to complete
 - C may file up to 60 days after RFR completes, despite being otherwise out of time
 - This compares with 135 days after RFR completes, if we toll the RFR

¹ NB: If process completes well before ordinary deadline for filing, Claimant still has until when deadline would ordinarily run out. We do not *penalise* the Claimant with a shorter deadline.





Checklist against interests previously mentioned

- Claimants would not lose opportunity to file due to another process
- Removes disincentive to use faster cheaper processes than IRP
- Avoids other processes being pre-maturely abandoned
- Avoids forcing Claimant to work on two processes at once
- Faster resolution
- Eliminates deliberate delay by gaming the timing
- Saves time

When would this option be appropriate?

- This alternative option might be considered fair if we believe Claimant ought to be preparing their IRP claim for filing in parallel with conducting the other process.
- Accordingly, this option might not be considered fair if we believe:
 1. Lack of foreknowledge of the outcome of that other process prevents or significantly inhibits Claimant from preparing their IRP claim in parallel; or
 2. Conducting two processes in parallel places an undue burden on Claimant

A possible assessment

Process	Issues	Compromise option works?	Outcome
RFR	No ongoing work for Claimant once initiated. Outcome is predictable (tends toward binary).		No tolling; supplementary time instead
Ombuds	Active engagement needed by Claimant.		?
DIDP	Whether to file IRP and contents of claim may depend entirely on contents of documents disclosed only at end of this process.		Tolling is required
CEP	Active engagement needed by Claimant; this negotiation is potentially as complex/time-consuming/effortful as making IRP submissions.		Tolling is required