

## **Tribunal Procedure Committee (TPC): Minutes: Wednesday 25 July 2018**

Competition Appeal Tribunal, Victoria House,  
Bloomsbury Place, London WC1A 2EB

### **Present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS) (by telephone)  
Michael Reed (MJR)  
Jane Shillaker (JS)  
Jayam Dalal (JD)  
Donald Ferguson (DF)  
Christine Martin (CM)  
Gabriella Bettiga (GB)  
Mary Carpenter (MC)  
Paula Waldron (PW)  
Vijay Parkash (VP)

### **Guests**

Louis Kopieczek (LK)  
Kevin Sadler (KS)- item 2 (Deputy Chief Executive-HMCTS)  
Rebecca Walbank (RW) - (MoJ- Admin Justice Policy)

### **Apologies**

Tony Allman (TA)  
Catherine Yallop (CY)

## **Minutes**

### **1. Introductory matters**

1.1 Apologies were received from: TA and CY.

1.2 PR welcomed RW to the TPC meeting. PR advised that RW was attending the meeting as an observer. She is the MOJ policy lead for the Mental Health Tribunal and the Social Entitlement Chamber and was providing policy support to Christine Martin.

1.3 PR said that KS would be arriving around midday to attend the meeting for agenda item 4, in relation to assisting the TPC with any questions regarding the TPC's recent public consultation exercise in relation to proposals to amend the Rules of the Mental Health Tribunal.

1.4 The draft minutes of the TPC meeting held on the 06 June 2018 were approved subject to minor amendments. PR reminded the TPC that their meeting minutes would be published on the government website from June 2018 onwards.

### **TPC Action Log**

1.5 The TPC action log had been updated.

### **Matters arising**

### **TPC Appointments**

#### **Lord Chief Justice (LCJ) appointments**

1.6 PR said that Judicial Office (JO) had advised the TPC Secretariat that they were waiting for the Lord Chief Justice (LCJ) to formally sign off the appointment letter for the assessment panel's preferred recommendation for an appointable candidate for the TPC (following the JO consulting the Lord Chancellor (LC)). This was likely to happen after the 25 July when the LCJ returned from leave.

1.7 PR referred to the expected increase in the volume of work that the TPC would be facing leading up to mid-2019, including the consideration of new tribunal rules as part of the Court and Tribunals Reform

Programme for ongoing SSCS pilots and as regards the impact of Brexit-related legislation on existing tribunal rules. In light of this, he had asked the TPC Secretariat to provide information on the options for obtaining an additional member for the TPC.

1.8 PR said that to raise the specified quota for appointments that could be made by either the LC, LCJ or the Lord President of the Court of Session would require changes to the primary legislation (as set out in Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007). The alternative approach would be to ask the SPT to request the appointment of an additional TPC member for particular issues or subject areas under para 24 of Schedule 5, since the SPT was permitted to request four such appointments and only one had been made (MJR).

1.9 PR asked the Committee for their views. The TPC agreed with PR's recommendation to supplement the TPC's membership by seeking an appointment by request of the SPT as that would be much quicker and not dependent on statutory change.

**AP/38/18: To discuss the TPC membership in relation to appointment options with the SPT - PR**

## **2. IAC Sub-group (IACSG)**

Consultation on Tribunal Procedure Rules (FtT (IAC) Rules 2014 & Upper Tribunal Rules 2008) in relation to detained appellants

2.1 PR said that the Detained Fast Track Immigration consultation had been launched on the 12 July 2018 and would close on the 04 October 2018.

2.2 MJR said he would arrange an IACSG meeting during mid-October 2018 to consider and discuss the replies to the public consultation. He would prepare a position paper setting out the key issues for further discussion and summarise any recommendations agreed by the IACSG, which would then be discussed by the TPC at their scheduled meeting on the 25 October 2018.

**AP/39/18: To prepare a DFT consultation position paper for the 25 October 2018 TPC meeting - MJR**

## **3. GTCL Sub-group (GTCLSG)**

Trade Remedies appeals right

3.1 PBS said that the Department for International Trade (DIT) had circulated a draft statutory instrument (SI) titled "the Trade Remedies (Reconsideration and Appeals) Regulations". These Regulations were part of a SI package covering the new Trade Remedies regime and are due to be made under the forthcoming Taxation (Cross-Border Trade) Act, which was currently in the form of a Bill before Parliament. PBS anticipated several rule changes would be required to the Upper Tribunal (UT) Rules because of these Regulations. It was anticipated by DIT that appeals won't start coming through the tribunal system until well after Brexit day, i.e., 29 March 2019.

3.2 PBS said that he had discussed with Mrs Justice Rose the potential changes that may be required to the UT Rules in relation to: the definition of 'trade remedies appeals', 'confidentiality rings', provision for Cost Orders, hardship applications, time limits, and whether the TPC would be conducting a public consultation about any such changes.

3.3 Since Mrs Justice Rose had now left her role as the President of the Tax and Chancery Chamber (UT), PBS would be discussing these points further with her successor, Mr Justice Zacaroli. PBS added that in respect of Mrs Justice Rose's concern regarding the composition of the panel for trade remedies appeals so as possibly to include an economist, that fell outside the TPC's statutory remit and was accordingly a matter to be taken forward by the MoJ with Mr Justice Zacaroli.

3.4 PBS said that he would reply with his observations/comments to the DIT on their draft SI. He added that he would clarify any outstanding issues with the DIT for potential rules changes ahead of the next scheduled TPC meeting, at which time he would also provide the GTCLSG's recommendation whether the TPC should commence a public consultation on any such potential changes to the UT Rules.

#### **4. HSW Sub-group (HSWSG)**

##### Mental Health Tribunal (MHT): Proposals for Rule changes

4.1 The TPC public consultation had considered 1) abolishing Pre-Hearing Examinations and 2) enabling judges to make more decisions on the papers without an oral hearing. CM said that the consultation had ended on the 14 June 2018. The TPC Secretariat received approximately 200 replies. A HSWSG meeting had been held on the 18 July to consider the replies, and a schedule of the replies prepared by the TPC Secretariat had been circulated to members of the TPC.

4.2 CM said that she had attended a meeting on 19 July 2018 with the independent team conducting the review of the Mental Health Act 1983. The purpose of the Review is to consider how practice could be improved in the MHT for service users and professionals. The attendees included Professor Sir Simon Wessely (review Chair) and Alex Keene (review legal advisor) and government officials.

4.3 PR said that the TPC Secretariat had replied to the second Freedom of Information request regarding the recent TPC consultation for procedural reform to the MHT.

4.4 CM thanked the MoJ Policy attendees for the update paper that had been circulated to the HSWSG and TPC. The paper detailed the Parliamentary interest in the TPC consultation and also provided a summary.

4.5 KS joined the meeting as a guest and answered questions from the TPC members in relation to the two proposed changes to MHT rules. PR thanked KS for his assistance in clarifying the issues. (KS left the TPC meeting).

4.6 The TPC noted that the consultees were overwhelmingly opposed to the rule changes. After full discussion and reference to the reasons given in various consultation responses, the TPC agreed that it would not be appropriate to make either of the proposed rule changes.

4.7 CM said that she would start preparing a draft response. The plan was to have a draft which the TPC would consider at their next scheduled meeting, with the aim for the TPC to publish its response in the autumn.

**AP/40/18: To prepare a draft response for the 04 October TPC meeting. - CM**

#### **5. Costs Sub-group**

##### TPC consultation- Possible changes to costs in leasehold cases and residential property cases

5.1 JS said she had written to Judge McGrath, (the President of the Property Chamber of the First-tier Tribunal (FtT)) to inform her that the TPC's reply to the consultation had been published on the government website.

5.2 JS had also communicated the TPC's request for the issue of guidance on *Willow Court* by the Property Chamber (FtT), for the Property Chamber (FtT) to provide evidence-based feedback as to the impact of that guidance to the Costs Sub-group. The TPC would consider the gathered information/data to review whether there was sufficient justification for capping costs. In response, Judge McGrath had confirmed that she planned to give guidance on the *Willow Court* case; she would also be nominating one or more of the judges from the Property Chamber (FtT) to monitor costs applications and generally to take the issue forward.

#### **6. Tribunal Procedure (Amendment No.2) Rules 2018 Exercise**

6.1 MC said that the Tribunal Procedure (Amendment No. 2) Rules 2018, were due to be laid in early October 2018 (subject to Parliamentary Business and Legislation Committee approval). The proposed SI made various minor corrections to tribunal procedure rules, most notably consequential amendments to the General Regulatory Chamber and Upper Tribunal Rules to update references in the current Rules as regards new provisions in the General Data Protection Regulations and the Data Protection Act 2018 for the tribunal to handle appeals from decisions by the Information Commissioners in relation to data matters. There was also a correction of an out of date cross reference in the Immigration and Asylum Chamber rules.

## **7. BREXIT**

7.1 The TPC Secretariat advised that the MOJ was still planning a single bumper SI to be made by the Secretary of State (SoS) for Justice for each of the criminal, family, tribunal and civil justice systems for England and Wales, giving effect to drafting instructions for suggested rule changes from other government departments. The intention was for the SoS to engage with the TPC on the proposed tribunal rule changes in October 2018.

7.2 The TPC Secretariat confirmed that an official from the EU Exit Strategy team would be attending the next scheduled TPC meeting to explain the process and to give an overview of likely legislative areas that would necessitate rule amendments that required the TPC's attention.

**AP/41/18: To provide an update paper on Brexit for the 04 October TPC meeting. – TPC Secretariat**

## **8. Overview Sub-group (OSG)**

### TPC Work Programme

8.1 The TPC work programme has been updated and circulated as at 19 July 2018.

8.2 It was agreed that the TPC work programme should be updated as follows to amend/remove:

### Section 1- Tribunal Procedure Rules work plan

- Entry 1 (IAC Rules in the FtT and UT)- to reflect comments received from TPC Members.
- Entry 2 (Costs in tribunals)- to reflect comments received from TPC Members.
- Entry 4 (Proposals to amend the Rules if the Mental Health Tribunal)- to reflect comments received from TPC Members.

8.3 It was agreed that section 2 should be updated as follows to amend/remove:

### Section 2 – Non-legislative/'watching brief'- programme of work

- Entry 10 (Road Haulage permits and Trailer registration scheme appeals right)- remove entry from the TPC Work Programme.
- Entry 11 (Tobacco Products Manufacturing Machinery appeals right)- remove entry from the TPC Work Programme.
- Entry 12 (Common Marketing Standards Regulations appeals right)- remove entry from the TPC Work Programme.
- Entry 13 (Confidentiality)- move entry to section 3- '*Watching Brief*'.

**AP/42/18: To amend the TPC Work programme to reflect comments received from TPC Members. - TPC Secretariat**

8.4 DF provided an update in relation to 'Devolution' (entry 4 -Watching Brief). He said that there had been a delay for the first tranche of devolution of tribunals (Employment Tribunal, Social Security and Child Support and Tax and appellate functions) that had been planned for transfer from the MoJ to Scottish Government in April 2020. The delay was due to the time being taken to develop the Order in Council which would give effect to the transfer. DF said he would provide the TPC with a further update once a new timetable had been agreed between the MoJ and Scottish Government.

## **9. AOB**

9.1 MC said that following recent Freedom of Information (FOI) requests concerning the TPC, the Government Legal Department (GLD) would provide the TPC with a guidance note to raise their awareness about the main provisions under the FOI Act 2000 (FOIA). She added that the guidance note would cover topics such as: legislative overview, what information is covered by the FOIA, the process to make a FOI request and what were the exemption categories under FOIA.

**AP/43/18: To provide a guidance note on the FOIA topic for the 04 October TPC meeting. – GLD**

**Next Meeting: Thursday 04 October 2018**