

Tribunal Procedure Committee (TPC): Minutes: Thursday 04 October 2018

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

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith (PBS)
Michael Reed (MJR)
Jane Shillaker (JS)
Jayam Dalal (JD)
Christine Martin (CM)
Gabriella Bettiga (GB)
Paula Waldron (PW)
Catherine Yallop (CY)
Tony Allman (TA)
Vijay Parkash (VP)

Guests

Shane O'Reilly (SOR) – (MoJ Legal Department)
Judge Mark Rowland (MR) – (Upper Tribunal Judge)
Judge Jeremy Bennett (JB) – (Regional SCS Tribunal Judge)
Elinor Howard (EH) – (Courts Reform Policy team- MoJ)
Helen Smith (HS) – (Services Manager- SCS Reform Project team- HMCTS) by telephone
Rebecca Walbank (RW) - (MoJ- Admin Justice Policy)
Elizabeth Mulligan (EM) - (MoJ- Admin Justice Policy)

Apologies

Donald Ferguson (DF)
Louis Kopieczek (LK)
Mary Carpenter (MC)

Minutes

1. Introductory matters

1.1 Apologies were received from: DF, LK and MC.

1.2 PR welcomed EM to the TPC meeting. PR advised that EM was attending the meeting as an observer. She would be providing policy support to PW for the Immigration and Asylum Chambers.

1.3 PR said that Joy Kabugu and Robert Richie (EU Exit Strategy team) has sent their apologies and would not be attending the TPC meeting. TA would be providing an update on their behalf for the Brexit and related "bumper SI" topics.

1.4 The draft minutes of the TPC meeting held on 25 July 2018 were approved subject to minor amendments.

TPC Action Log

1.5 The TPC action log had been updated.

1.6 In relation to AP/42/18, PR thanked SoR and MC for the guidance note on the main provisions under the Freedom of Information Act 2000 prepared for the TPC.

Matters arising

TPC Appointments

Lord Chief Justice appointments

1.7 PR said that the Judicial Office had sent an appointment letter on 03 October to Judge Mark Loveday confirming his position as a Lord Chief Justice appointment on the TPC. PR asked the TPC Secretariat to send the details for the upcoming TPC meetings in 2018 to Judge Mark Loveday.

1.8 PR confirmed that he had discussed with the Senior President of Tribunals (SPT) supplementing the TPC's complement by an additional TPC member by request of the SPT. The SPT had agreed with PR's recommendation to request the appointment of a new member who would be responsible for particular issues or subject areas under para 24 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. The TPC agreed that the new SPT appointment would cover the subject areas: Brexit, Litigation Friend and Court Reform.

AP/44/18: To send Judge Loveday the details of the upcoming TPC meetings. – TPC Secretariat

2. HSW Sub-group (HSWSG)

SSCS Reforms project- to consider possible changes to the procedure rules of the First-tier Tribunal (Social Entitlement Chamber)

2.1 PR welcomed MR, JB, EH and HS (by telephone) who were attending the meeting to discuss potential rule changes to the current Social Security and Child Support Tribunal (SSCS) Rules. The proposed rule changes were to support the electronic communication and transfer of documents between the Tribunal and parties, as part of their 'continuous-on-line resolution' (COR) ongoing pilot. This was the group's second attendance before the TPC following their appearance at the 07 March 2018 meeting.

2.2 MR and JB updated the TPC on the four streams: track your appeal (TYA), submit your appeal (SYA), evidence share and COR. MR provided an overview of the minor technical rule changes and shared his thinking on the more substantive rule changes as detailed in their updated position paper that had been presented to the TPC.

2.3 MR and JB answered questions from the TPC about the functionality of SYA and TYA for users that had signed up to use these services. In relation to the 'project's equality statement', JS asked JB and MR whether any consideration had been given to the religious beliefs of any individual when setting up the project. JB said that this issue had been considered by the project team as part of the pilot's scoping work.

2.4 JB said that workshops had taken place with admin and judiciary to take forward the 'private beta' stage of COR, with future activities concerning admin and judiciary being identified in readiness for planning the pilot and phased rollout from November/December 2018. The TPC asked how statistical information and evidence sharing between parties was recorded by HMCTS to assess and monitor the pilot's overall results. JB said that project team were working with the Department of Work and Pensions to consider the results of exit survey responses to the pilot approach.

2.5 MR and JB said that the SSCS Reform Project did not need the entire package of proposed rule change to be considered imminently by the TPC to support the ongoing pilot. MR and JB asked if the TPC might take forward changes on the more minor technical rule changes and return to the SSCS Project Team in the next few weeks with their views for how the TPC would proceed on the more substantive rule changes that had been suggested.

2.6 PR thanked MR, JB, EH and HS for their assistance with clarifying the raised issues for the four streams from the TPC. (MR, JB and EH left the TPC meeting. HS dialled out).

2.7 After full discussion and reference to the advice given by MR and JB, the TPC agreed that it would not make the proposed minor rule changes at the present time as the current SEC Rules did not appear to cause any issues with the running of the pilots. The TPC considered that a consistent approach for making rule changes in connection with the court reform plans for 'digitalisation' should be considered wherever

possible across all tribunal chambers instead of addressing one tribunal chamber at a time. The TPC agreed to keep the matter under review, having regard to the suggested substantive rule changes and would revisit the matter as the reform pilots in the SSCS and other tribunal chambers, such as the Immigration and Asylum Chamber, progressed.

2.8 The TPC agreed in principle that any proposals for rule changes in respect of 'digitalisation' reform would require a public consultation to establish the views of interested stakeholders.

AP/45/18: To report back the TPC's views for possible changes to the SEC Rules to the SSCS Project team. - PR

Mental Health Tribunal (MHT): Proposals for Rule changes

2.9 The TPC discussed the draft consultation response. It was agreed that in this instance it was appropriate to include a number of full quotations from the responses, although the TPC did not always take that approach. CM and RW noted drafting suggestions and formatting comments that were put forward.

2.10 CM agreed to amend the draft response and to send the revised draft response to PR for approval by week commencing 15 October. The TPC Secretariat would then arrange for the approved TPC response to be published.

2.11 PR said he would write to Judge Sycamore (Chamber President of the Health, Education and Social Care Chamber, Judge Johnston (Deputy Chamber President for the Mental Health Tribunal) and Dr Rutherford (Chief Medical Officer for the Mental Health Tribunal) advising them of the TPC position in advance of the publication of the TPC Response to the consultation.

2.12 PR and the TPC members thanked CM for all her effort and time devoted to drafting the response.

3. BREXIT

3.1 The TPC Secretary provided an update to the TPC regarding potential rule changes arising from Brexit statutory instruments (SI) that were being planned by the MoJ and other government departments prior to 29 March 2019 (Brexit day). The TPC Secretariat reported that so far the MOJ had received only two suggestions from other government departments for potential rule changes to be included in the 'bumper Rules SI' that was planned to be made by the Secretary of State for Justice.

3.2 The EU Exit Strategy team had advised that the proposed laying date for the 'bumper Rules SI' to implement 'no deal' Procedure Rules changes had moved from mid-December 2018 to the beginning of February 2019. The deferral in the laying date for the SI was aimed to assist government departments to better plan their 'no deal' SIs. The TPC Secretary said he would provide further updates at the future TPC meetings leading up to February 2019.

4. IAC Sub-group (IACSG)

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

4.1 MJR said that the Detained Fast Track Immigration consultation would be closing on 04 October 2018. The TPC Secretary confirmed that presently they had received no responses to the consultation. The TPC had granted the Law Society and United Nations High Commissioner for Refugees an extension to 11 October 2018 to provide their replies to the consultation.

4.2 MJR said that an IACSG meeting had been scheduled for 17 October 2018 to consider and discuss the replies to the consultation. He would prepare a position paper setting out the key issues and summarising any recommendations from the IACSG, which would then be discussed by the TPC at their scheduled meeting on 25 October 2018.

AP/46/18: To prepare a position paper outlining the IACSG recommendations for the DFT response for the TPC 25 October meeting. - MJR

5. GTCL Sub-group (GTCLSG)

Trade Remedies appeals right

5.1 PBS summarised the text contained in the different segments of the draft consultation paper: introduction, background to 'Trade remedies cases', the proposed appeals process, possible amendments of the UT Rules and consultation questions.

5.2 PBS said he had considered comments from the Department for International Trade (DIT) and the MoJ Legal Department in relation to the issues of 'confidentiality' and 'hardship applications'. He had also discussed the issues arising from trade remedies cases with Mr Justice Zacaroli, the new President of the Tax and Chancery Chamber (Upper Tribunal) to establish his views.

5.3 PBS noted drafting suggestions and formatting comments recommended by the TPC.

5.4 PBS said that the DIT had indicated to the MoJ that they would like rule changes to come into force before or on 29 March 2019.

5.5 The TPC Secretariat said to achieve this deadline the TPC consultation would need to be shorter than the usual 12 weeks. The TPC agreed that a shorter consultation was appropriate as the trade remedies subject matter was a specific technical area and it was anticipated that the consultees would have a certain amount of specialist knowledge. The TPC agreed that the consultation would run for eight weeks. Nonetheless, given the intervening Christmas/New Year break and the time required to draft and then lay an SI, the suggested deadline was extremely tight and may not be practicable. Since no such appeals would be brought for some time after Brexit, this did not appear to present a problem in practice.

5.6 The TPC Secretariat would aim to publish the consultation on the government website as soon as they were able to secure a grid slot from the MoJ External Communications team.

5.7 PR and the TPC members thanked PBS for his hard work and effort pulling together the consultation paper within a short period of time.

6. Costs Sub-group

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

6.1 JS said that Judge McGrath had set up a costs working group within the Property Chamber with representatives from the 5 residential property regions. It will keep the the Costs Sub-group informed of its progress.

6.2 JS said that there were no other significant issues to report to the TPC.

7. Tribunal Procedure (Amendment No.2) Rules 2018 Exercise

7.1 SOR said that the Tribunal Procedure (Amendment No. 2) Rules 2018 SI (Rules) had been signed by a majority of TPC members between 26 and 28 September 2018. It was anticipated that the Rules would be laid before Parliament on 09 October and that the SI would come into force on 30 October 2018.

7.2 The Rules make the following amendments:

- Amendment to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008. This corrects a drafting error in rule 23(2) of those Rules. The amendment clarifies that the time period for an appeal is calculated separately under sub-paragraphs (a) and (b), and the wording "no later than the latest of" should relate to sub-paragraph (a) only;
- Amendment to the Tribunal Procedure (Upper Tribunal) Rules 2008 that is consequential on change made by the Data Protection Act 2018 in respect of national security cases. This clarifies the definition of "respondent" in those Rules to explain that in the case of an application for permission to appeal other than an appeal against a tribunal decision, the respondent is the person who has made the decision that has been challenged;

- Amendment to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. This makes consequential changes to add relevant cross-references to national security certificate provisions in the Data Protection Act 2018 for the tribunal to handle appeals from decisions by the Information Commissioners in relation to data matters for the public. The amendments also provide a time limit for applications under s166(2) Data Protection Act 2018 (Orders for complaints); and
- Amendment to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 that is consequential on a change made by the Immigration Act 2016 in respect of applications for immigration bail from people being detained by the Home Office on immigration matters. The amendment deletes an obsolete cross-reference to rule 41(4) which is no longer in force.

8. Overview Sub-group (OSG)

TPC Work Programme

8.1 The TPC work programme has been updated and circulated as at 01 October 2018.

9. AOB

Litigation Friend

9.1 The TPC Secretary said he had arranged for a second MoJ run workshop on the 13 November 2018. The aim of the workshop was to revisit the findings of the initial workshop that was held on the 25 April 2018 for how a public funding mechanism for the appointment of a litigation friend in tribunal proceedings would be administratively operated. The TPC Secretary said he would update the workshop's findings to the TPC at their 06 December meeting.

Next Meeting: Thursday 25 October 2018