

Tribunal Procedure Committee (TPC): Minutes: Thursday 06 December 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)
Donald Ferguson (DF)
Gabriella Bettiga (GB)
Mary Carpenter (MC)
Paula Waldron (PW)
Catherine Yallop (CY)
Tony Allman (TA)
Vijay Parkash (VP)

Guests

Louis Kopieczek (LK) – (Liaison Judge- Upper Tribunal)
Elizabeth Mulligan (EM) – (MoJ - Admin Justice Policy)
Aundrae Jordine (AJ) – (HMCTS - Jurisdictional Support Team [Immigration and Asylum Tribunals])

Apologies

Christine Martin (CM)
Mark Loveday (ML)

Minutes

1. Introductory matters

1.1 Apologies were received from: CM and ML.

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

AP/54/18: To amend 25 October TPC Meeting Minutes to reflect comments received from TPC Members. –TPC Secretariat

Matters arising

Appointment of an additional TPC member by request of the Senior President of Tribunals

1.3 PR said that the judicial recruitment exercise to appoint an additional TPC member by request of the Senior President of Tribunal was running to plan. He expected the appointment process to be finalised by the end of December. It was expected that the appointed TPC member's first appearance would be at the next scheduled TPC meeting in February 2019.

1.4 PR said that the Judicial Appointments Team (JAT) were investigating the position for MR's appointment letter with the Lord Chief Justice's (LCJ) Office. The TPC Secretariat had

requested the JAT to establish with the LCJ Office whether an appointment letter had been prepared and dispatched. The TPC Secretariat agreed to keep MR and PR informed of developments.

Secure email accounts

1.5 PBS asked the TPC Secretariat to confirm whether TPC members should continue to use their existing personal/work email accounts or whether they should be using secure email for the transmission of electronic correspondence related to TPC work. The TPC Secretariat confirmed that secure email accounts had been created for TPC members who did not have existing secure work email accounts and that these secure email accounts had been used in the past for communicating classified information electronically to the TPC.

1.6 The TPC Secretariat agreed to establish what the IT security policy guidelines were in relation to justice rule committees using electronic messaging and to report back their findings/observations to the TPC.

AP/55/18: To clarify the protocol for personal email accounts used by rule committees. –TPC Secretariat

TPC Action Log

1.7 The TPC action log had been updated.

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 MJR thanked LK and the TPC Members for their comments on the draft DFT Rules consultation response that had been circulated prior to the TPC meeting. MJR said that he would update the draft response with the detained immigration and asylum (DIA) statistical data for the reporting period July 2018 to September 2018. The latest tribunal statistical information that included DFT data was expected to be published by the Government on 13 December 2018.

2.2 MJR agreed to amend the draft TPC consultation reply and recirculate to the TPC for any further comments during week commencing 10 December. The aim would be for the TPC consultation reply to be posted on the TPC website by mid-December 2018 (subject to a governmental grid slot being obtained for publication).

AP/56/18: To amend the draft DFT consultation reply to reflect comments received from TPC Members. - MJR

3. HSW Sub-group (HSWSG)

The review of the Mental Health Act 1983

3.1 PR said that the Government was planning to publish their final report for the independent review of the Mental Health Act 1983 on 06 December 2018.

3.2 PW said that she anticipated the recommendations would include widening the powers of the Mental Health Tribunal (MHT) and that the TPC could be asked in the future to consider potential rule changes to the MHT resulting from any recommendations detailed in the report.

3.3 PW said that MoJ officials were currently working with the review team to understand the impacts of the review's proposals and that she would update the TPC at a future meeting.

3.4 There were no other urgent issues requiring the TPC's immediate attention.

4. GTCL Sub-group (GTCLSG)

Trade Remedies appeal right

4.1 PBS said that the TPC consultation seeking the views as to potential changes to the Upper Tribunal Rules was due to end on 14 December 2018. Presently the TPC Secretariat has not received any replies to the consultation.

4.2 PBS provided an update on the new appeal rights that may require potential rule changes in the next Tribunal Procedure (Amendment) Rules SI package.

Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018

4.3 PBS said that there had been a delay by the Department for Environment, Food and Rural Affairs (DEFRA) to lay their statutory instrument, the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018. It was expected that DEFRA would lay the SI on 03 December 2018 (DEFRA had earlier indicated 30 November as the laying date for their regulations).

General Data Protection Regulation - Data Protection Act 2018 - consequential amendments

4.4. PBS said he had been discussing with the President of the General Regulatory Chamber, whether section 202 of the Data Protection Act (DPA) 2018 created a power in the First-tier Tribunal to certify to the Upper Tribunal an offence of breach of an order made under section 166 of the DPA 2018. They had agreed to ask Government Legal Department (GLD) for a legal opinion to clarify the matter. The GLD were still considering the issue.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

4.5 PBS said that a member of the public had written to the TPC Secretariat with a proposal suggesting potential rule changes to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The matter was under consideration by the TPC Secretariat.

International Road Transport Permits (EU Exit) Regulations - Time Limits

4.6 PBS said that he had informed the Admin Justice Policy team about a drafting error in the International Road Transport Permits (EU Exit) Regulations, sponsored by the Department for Transport (DFT). DFT had inserted 'time limits' in their regulations.

4.7 The TPC Secretariat confirmed that the Admin Justice Policy team had discussed the matter with their DFT policy counterparts. DFT had agreed to amend this error in a future statutory instrument which was expected to be laid in February 2019 by keeping 'silent' on the point.

Bus Services Act 2017

4.8 PBS said he had been discussing the provisions in the Bus Services Act 2017 with Upper Tribunal judges and whether there was a requirement for a rule amendment to deal with an appeal to the Upper Tribunal from a decision of a traffic commissioner.

4.9 PBS said that he would provide MC with his indicative drafting instructions for agreed rule changes that would be included in the Tribunal Procedure (Amendment) Rules 2019.

5. Costs Sub-group

5.1 There were no urgent issues requiring the TPC's immediate attention.

6. Brexit- Bumper Secondary Legislation

6.1 MC advised that MoJ Legal had stopped their work to produce Tribunal Procedure Rules (Amendment) (EU Exit) Regulations 2019. The TPC had been previously informed that the planned tribunals statutory instrument (SI) was due to be included in an EU Exit regulations package that covered rule changes across the justice system.

6.2 MC said that the MoJ was intending to make potential rule changes arising from Brexit for the new appeals rights: REACH and Geographical Indicators that were being sponsored by DEFRA. Unfortunately, the issue that DEFRA has identified to be included in the planned SI to implement rule amendments was not possible for a Minister to make (i.e. sign). The SI would have referred to another SI that has not yet been made and there was a general rule against making legislation which cross-refers to legislation that does not exist at that point in time. DEFRA will now be incorporating the content of the planned SI into other planned SIs instead.

6.3 MC said that the other 3 SIs covering the criminal, civil and family parts of the justice system were still on course. These SIs were expected to be laid in January 2019.

6.4 MC said that the Home Office and other government departments had notified the MoJ Legal Team about their plans for rule amendments using the powers under the European Union (Withdrawal) Act 2018 to enable Secretaries of State (not specifically the Lord Chancellor) to make rules to correct deficiencies in retained EU law.

AP/57/18: To provide a position paper detailing other government departments' proposals for tribunal rule amendments to be made under the EU (Withdrawal) Act 2018. - MC

7. Overview Sub-group (OSG)

TPC Work Programme

7.1 The TPC work programme has been updated and circulated as at 29 October 2018.

7.2 It was agreed that the Tribunal Procedure Rules work plan should be updated to remove the following entry:

- Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018.

AP/58/18: To amend the work programme to reflect comments received from TPC Members. – TPC Secretariat

8. AOB

Immigration and Asylum Chambers (IAC) Reform Project

8.1 PR said that officials from the IAC Reform Project team had contacted the TPC Secretariat to request attending a future TPC meeting to discuss their plans for reform of the Immigration and Asylum chambers, and their suggestions for new or amended rules to introduce reforms.

8.2 The TPC Secretariat had asked the IAC Reform team to provide a position paper detailing the background and the points for discussion they would like to discuss with the TPC about potential changes to the rules to be considered.

8.3 The TPC agreed that any enquires for reform proposals would be directed to a proposed new TPC sub-group that would be created to look at wider court reform. Once a Chair had been appointed the sub-group could agree the process for how the TPC would like to engage with HMCTS when considering new proposals for rule changes resulting from pilots that impact on existing rules covering the tribunal chambers.

Public Sector Equality Duty

8.4 The TPC discussed the Public Sector Equality Duty (PSED) that requires public bodies, listed in section 149 of the Equalities Act 2010 ('the Act') including the TPC, to have due regard to conduct prohibited by the Act when carrying out their activities, such as the need to eliminate discrimination, advance equality of opportunity and foster good relations.

8.5 PR asked MC to provide a guidance note for the TPC to raise their awareness about how the PSED applied to the TPC carrying out their public functions under the Act.

AP/59/18: To provide an advice note on the Public-Sector Equality Duty. –MC

Future TPC meetings during 2019

8.6 PR informed the attendees that he was now available on 07 February and asked the attendees whether they would like to revert from the scheduled 14 February to 07 February. The TPC agreed to schedule the next TPC meeting on 07 February 2019.

Next Meeting: Thursday 07 February 2019