

Tribunal Procedure Committee (TPC): Minutes: Thursday 14 February 2019

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

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith (PBS)
Michael Reed (MJR)
Christine Martin (CM)
Donald Ferguson (DF)
Gabriella Bettiga (GB)
Mark Loveday (ML)
Timothy Fagg (TF)
Shane O'Reilly (SOR)
Catherine Yallop (CY)
Tony Allman (TA)
Vijay Parkash (VP)

Guests

Louis Kopieczek (LK) – (Liaison Judge- Upper Tribunal)
Vivian Dewsbury (VD) – (Assistant Private Secretary to the Senior President of Tribunals)

Apologies

Jayam Dalal (JD)
Jane Shillaker (JS)
Paula Waldron (PW)
Mary Carpenter (MC)

Minutes

1. Introductory matters

1.1 Apologies were received from: JD, JS, MC and PW. The TPC offered their congratulations and best wishes to MC who had recently got married.

1.2 PR welcomed TF and VD to their first TPC meeting. TF had been appointed to the TPC by the Lord Chief Justice at the request of the Senior President of Tribunals. VD was the Assistant Private Secretary to the Senior President of Tribunals (SPT).

1.3 PR said that Rebecca Lewis (RL) had returned from maternity leave (CY had been acting in the role of Legal Adviser to the SPT during the period of RL's maternity leave, and has since taken up the role of Private Secretary to the SPT). PR said that he had agreed with the SPT Office's recommendation for VD to replace RL/CY as the SPT representative and that she would be attending future TPC meetings.

Matters arising

TPC Appointments

1.4 PR said that he was pleased to report that DF had been reappointed to the TPC for a further 3 years as the Lord President's representative. His new term would run from 23 March 2019 until 22 March 2022.

1.5 In relation to MJR's appointment letter, the Judicial Appointments Team were still investigating the position with the Lord Chief Justice's Office. The TPC Secretariat agreed to keep MJR and PR informed of developments.

Courts/Tribunals Reforms and Brexit Sub-group

1.6 PR said that he would chair a new Courts/Tribunals Reforms and Brexit Sub-group. The Sub-group's remit would be to consider any proposals for rule changes resulting from the work being undertaken by HMCTS as part of their ongoing Courts & Tribunals Reform Programme. The Sub-group would also consider any potential rule changes related to Brexit issues that impacted on the existing tribunal chamber rules. TF, CM and ML agreed to be members.

Secure email accounts

1.7 The TPC Secretariat reported that the TPC members could continue to use their existing personal/work email accounts for the transmission of electronic correspondence related to TPC work. Alternatively, the TPC members could also use the secure CJSM or e-judiciary email accounts for receiving/communicating any electronic information.

1.8 The draft minutes of the TPC meeting held on 06 December 2018 were approved.

TPC Action Log

1.9 The TPC action log had been updated.

1.10 The TPC Secretariat reported that the advisory note in relation to the Public Service Equality Duty and the three Brexit statutory instruments (SIs) (the SIs which make amendments to the existing Tribunal Procedure Rules under the EU (Withdrawal) Act 2018) had been circulated to the TPC.

1.11 The TPC agreed for action point 57/18 to be carried over to the March 2019 TPC meeting. The action point was in relation to the MoJ Legal department providing an advisory note detailing the Brexit SIs that had been made by other government departments for tribunal rule amendments to be made under the EU (Withdrawal) Act 2018. PR asked the TPC Secretary to establish whether MoJ was expecting to see any further Brexit related SIs and to confirm the position at the March TPC meeting.

AP/01/19: To provide an advisory note detailing the Brexit SIs made by other government departments for tribunal rule amendments to be made under the EU (Withdrawal) Act 2018. – MC

AP/02/19: To establish whether MoJ was expecting to see any further Brexit SIs from other government departments – TPC Secretary

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 The TPC discussed the latest version of the draft Detained Fast Track (DFT) Rules consultation reply circulated by MJR.

2.2 MJR said that he had updated the draft reply with the detained immigration and asylum (DIA) statistical data for the reporting period: July 2018 to September 2018 ('most recent quarter') published by the Government on 13 December 2018. The statistical data included reference for figures for the immigration removal centres located at Harmondsworth and Yarl's Wood.

2.3 MJR reported that he had discussed these statistics with Aundrae Jordine (AJ) prior to the meeting. In particular MJR and AJ had discussed the likely reasons for the longer detained clearance times in recent quarters. Unfortunately, AJ had been unable to attend the meeting. The TPC raised a number of points that required further clarification. MJR agreed to discuss further with AJ and to produce a further draft before the next meeting.

2.4 The TPC agreed that the aim would be to finalise a response by early March.

AP/03/19: To discuss the published DIA statistics with HMCTS officials. – MJR/AJ

3. HSW Sub-group (HSWSG)

The review of the Mental Health Act 1983

3.1 PR said that the Government had published the 'Modernising the Mental Health Act' final report from the independent review on 06 December 2018.

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

4. GTCL Sub-group (GTCL-SG)

Trade Remedies appeal right

4.1 PBS said that the TPC consultation seeking the views as to potential changes to the Upper Tribunal Rules had ended on 14 December 2018. The TPC Secretariat has received two replies.

4.2 PBS explained the approach and the proposed structure that he had used to construct the draft consultation reply. He provided his observations for the proposed rule changes to the Upper Tribunal (UT) Rules for the following topics:

- Definitions (UT rule 1);
- Procedural steps and time limits (UT rules 23, 24, 26 and 26A);
- Costs (UT rule 10);
- Confidentiality of information (UT rule 14); and
- Hardship applications (UT rule 23).

4.3 The TPC approved the draft Trade Remedies reply subject to minor clarification by PBS on comments flagged up by the TPC. The final Trade Remedies consultation reply would be published after the Trade Remedies (Reconsideration and Appeals) Regulations 2019 had come into force. The Department for International Trade expected to lay the SI in Parliament on 06 April.

4.4 PBS provided a progress update for the GTCL-SG's recommended rule changes to be included in the next Tribunal Procedure (Amendment) Rules statutory instrument (SI) package. The potential rule changes covered the following legislative areas: the Bus Services Act 2017, Data Protection Act 2018-certification of offences, Local Land Charges and the Tenant Fees Act 2019.

4.5 PBS said that he had received the legal advice from MC in relation to whether section 202 of the Data Protection Act 2018 (the 'Act') created a power in the First-tier Tribunal (FtT) to certify to the Upper Tribunal an offence arising from a breach of an order made under section 166 of the Act. He said the matter was under discussion with the President of the General Regulatory Chamber (FtT).

4.6 PBS said he was considering the correspondence received from a member of the public in relation to suggestions for rule amendments in the Property Chamber in respect of the reimbursement of tribunal fees. In the absence of details about the case which gave rise to this concern, the TPC agreed that they should not presently consider the topic raised, still less across the Tribunal Chambers which levied fees. However, they would keep the correspondence on file, if any further evidence of difficulties across the relevant tribunal jurisdictions emerged.

5. Tribunal Procedure (Amendment) Rules 2019

5.1 SoR said that the Tribunal Procedure (Amendment) Rules 2019 SI was planned to be laid on 06 May in Parliament. PBS agreed to provide his instructions to MC and SoR on rule amendments by 18 February 2019.

5.2 PBS said that he would consult with the relevant Chamber Presidents, senior judges and other legal/ policy officials from the sponsoring government departments to establish their views regarding the proposed rule changes.

5.3 SoR said that MoJ Legal planned to circulate the draft SI to the TPC by late March for their consideration and comments.

6. Overview Sub-group (OSG)

6.1 The TPC work programme has been updated and circulated as at 06 February 2019.

AP/04/19: To amend the work programme to reflect comments received from TPC Members. – TPC Secretariat

7. Courts and Tribunals (Judiciary and Functions of Staff) Act 2018

7.1 The TPC discussed the paper in relation to the new powers enabled by the 'Courts and Tribunals (Judiciary and Functions of Staff) Act 2018' (the Act). The Act received Royal Assent on 20 December 2018. PR said that the policy work was being led by the MoJ Courts Reform Team and the paper had been circulated to the other Justice Rule Committees.

7.2 PR said that the paper explained the changes made by the Act and proposed next steps in terms of work needed on rules if the TPC considered and decided that rule changes were necessary/appropriate to implement the 'Functions of Staff' measures conferred by the Act.

7.3 The TPC discussed what scoping work would be required to progress this work. PR said that this topic should be added to the future work of the Courts Reform & Brexit Sub-group. He would write to the Tribunal Chamber Presidents to establish their views for any potential rule changes as a result of the Act coming into force.

7.4 PR asked CY if she could circulate to the TPC the existing practice statements that covered the topic of the 'delegation of functions' to registrars, caseworkers and authorised

staff covering the tribunal chambers. It was agreed that it would be appropriate to consider these before contacting the Chamber Presidents.

AP/05/19: To write to the Tribunal Chamber Presidents to canvass their views for any potential rule changes in relation to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. - PR

AP/06/19: To circulate the current practice directions/statements for the delegation of functions to authorized tribunal staff. – CY

7.5 PR asked SoR if MoJ legal could provide legal advice on the effect of the Act on the existing tribunal procedure rules. This action could be deferred until after the exercise to canvass the Chamber President's views had concluded.

8. AOB

Litigation Friends

8.1 The TPC Secretary reported that he was planning to submit advice to MoJ Ministers in early March. He would provide an update to the TPC at the March TPC meeting for how a public funding mechanism for the appointment of 'Litigation Friends' in tribunal proceedings would be administratively operated.

Future TPC meetings during 2019

8.2 PR informed the attendees that he was not available on 07 March and 04 April due to judicial work commitments and asked the attendees whether they had any concerns for switching the TPC meetings to 08 March and 05 April. As there were no objections, the TPC agreed that the TPC Secretariat would reschedule the March and April TPC meetings to the proposed new dates.

Next Meeting: Friday 08 March 2019