

Tribunal Procedure Committee (TPC): Minutes: Friday 08 March 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)
Jane Shillaker (JS)
Mary Carpenter (MC)
Shane O'Reilly (SOR)
Vivian Dewsbury (VD)
Vijay Parkash (VP)

Guests

Aundrae Jordine (AJ) – (HMCTS-IAC JOST)

Apologies

Jayam Dalal (JD)
Louis Kopieczek (LK)
Paula Waldron (PW)
Tony Allman (TA)
Will Ferguson (WF)

Minutes

1. Introductory matters

1.1 Apologies were received from: JD, LK, PW, TA and WF.

Matters arising

TPC Appointments

1.2 PR confirmed that the Judicial Office had located an electronic version of MJR's appointment letter. The appointment letter had been signed by the Lord Chief Justice in May 2018 but had not been sent to MJR. The Judicial Office had asked the TPC Secretariat to pass on their apologies to MJR.

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

1.3 PR advised the attendees that the Senior President of Tribunals (SPT) Office had circulated to the TPC the current SPT practice statements in relation to the arrangements being adopted by the different tribunal chambers for HMCTS staff exercising a range of judicial functions. The TPC had delegated this power to the SPT, who currently exercised the power to assign functions to tribunal staff via Practice Statements.

1.4 PR said that he would write to the Tribunal Chamber Presidents to establish their views about the requirements for the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (CT(JFS) Act) in relation to the qualifications that tribunal staff must have to exercise functions. VD said the SPT Office would co-ordinate the exercise and provide a summary of the replies to the TPC.

1.5 CM said that she understood that the Immigration and Asylum Chamber (IAC-FtT) employed tribunal caseworkers in IAC hearing centres. VD agreed to investigate whether there was a current practice statement for IAC caseworkers in the IAC Chambers.

1.6 PR asked the TPC Secretariat to add the CT(JFS) Act topic to the meeting agenda for the 05 April TPC meeting.

AP/07/19: To add the topic 'Courts and Tribunals (Judiciary and Functions of Staff) Act 2018' to the April TPC meeting agenda. – TPC Secretariat

1.7 The draft minutes of the TPC meeting held on 14 February 2019 were approved subject to minor amendments.

TPC Action Log

1.8 The TPC action log had been updated.

1.9 The TPC Secretariat reported that the MoJ Legal advisory note in relation to the CT(JFS) Act had been circulated to the TPC. The TPC thanked SOR for drafting the note.

1.10 In relation to action point 01/19, 'for the MoJ Legal department to provide 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'. The TPC Secretariat confirmed that they would circulate the note after the meeting's conclusion.

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 said he had circulated a revised draft reply that incorporated the recent comments received from the TPC.

2.2 AJ provided further clarification to the TPC in relation to the likely reasons for the longer clearance times for detained immigration and asylum (DIA) cases in the statistical information that had been published in recent quarters during 2018 and 2019.

2.3 AJ said that the DIA cases were classified on a flag basis on the ARIA (HMCTS's IT case management system). If an appellant was released, the ARIA system would remove the DIA flag and the appellant would not be included in the published DIA statistics. ARIA had been modified to include a 'reclassified detained appeal' (RDA) flag that would adjust the appellant's detained status if they were released. The recent published DIA statistics included all immigration appeals that had been part of the DIA process even if the case was not expedited by HMCTS or concluded within the DIA system.

2.4 MJR said he would update the draft reply with the agreed changes discussed at the TPC meeting along with the latest DIA statistics that were due to be released by the government on the 14 March.

2.5 The TPC agreed that the aim would be for MJR to finalise the DFT reply by 22 March.

AP/08/19: To circulate a revised DFT reply to the TPC. – MJR

3. HSW Sub-group (HSWSG)

3.1 CM said that there were no urgent issues requiring the TPC's immediate attention.

4. GTCL Sub-group (GTCL-SG)

4.1 PBS said he had been discussing his drafting instructions with MoJ Legal, the judiciary and interested stakeholders for the proposed rule changes to be included in the Tribunal Procedure (Amendment) Rules statutory instrument (SI). The SI will cover the following topics: Local Land Charges, the Bus Services Act 2017, Data Protection Act 2018 (certification of offences), continuing the Tenant Fees Act 2019 and the Trade Remedies appeals.

4.2 PBS said that in relation to rules changes required for the Trade Remedies appeal right, the Department for International Trade (DIT) had advised that the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 SI and the Trade Remedies (Increase in Imports Causing Serious Injury to UK Producers) (EU Exit) Regulations 2019 SI had been laid before Parliament on the 04 March. DIT expect to lay the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 SI before Parliament in early April.

4.3 PR asked PBS whether consideration had been given to include transitional arrangements in the trade remedies provisions for the Upper Tribunal Rules in relation to the Trade Remedies Authority (TRA) being the proposed respondent as the TRA could only be established once the Trade Bill 2017-19 had received royal assent (expected in May 2019). PBS said he would discuss the drafting approach further with MC, SOR and DIT Legal on settling the drafting for the rule change if deemed required.

5. Costs Subgroup

5.1 JS said that there were no urgent issues requiring the TPC's immediate attention.

6. Tribunal Procedure (Amendment) Rules 2019

6.1 MC said that the MoJ had received approval from the Parliamentary Business and Legislation Committee to lay the Tribunal Procedure (Amendment) Rules 2019 SI in Parliament on 6 May.

6.2 MC said that MoJ Legal planned to circulate the draft SI to the TPC, the relevant senior judiciary and interested stakeholders during week commencing 25 March, following the relevant internal legal checks being completed. MoJ Legal aimed to circulate the final SI to the TPC for their signature by 12 April.

7. Brexit (Update)

7.1 MC provided a summary of the 5 EU Exit SIs amending Tribunal Rules. The update included the REACH appeal right, Geographical Indications appeal right and the amendments in respect of immigration that were to be made under the power to make consequential amendments under the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

8. Litigation Friends

8.1 PR said the TPC Secretary was planning to submit advice to MoJ Ministers in mid-March. The TPC Secretary would provide an update to the TPC at the 05 April TPC meeting.

8.2 PR thanked SOR for his circulated case note on the judgment in *R(JS) v SSHD [2019] UKUT 64 (IAC)* in relation to litigation friends. PR asked the TPC Secretariat to add the 'litigation friends' topic to the meeting agenda for the 05 April TPC meeting.

AP/09/19: To add the topic 'Litigation Friends' to the April TPC meeting agenda. – TPC Secretariat

9. Overview Sub-group (OSG)

9.1 The TPC work programme has been updated and circulated as at 01 March 2019.

10. AOB

Courts/Tribunals Reforms and Brexit Sub-group

10.1 PR said that a meeting date for the Courts/Tribunals Reforms and Brexit Sub-group would be agreed at the 09 May TPC meeting. It was agreed that GB would become a member of the Sub-group.

Next Meeting: Friday 05 April 2019