

## **Tribunal Procedure Committee (TPC): Minutes: Friday 05 April 2019**

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

### **Present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Christine Martin (CM)  
Jayam Dalal (JD)  
Donald Ferguson (DF)  
Mark Loveday (ML)  
Mary Carpenter (MC)  
Shane O'Reilly (SOR)  
Vivian Dewsbury (VD)  
Tony Allman (TA)  
Vijay Parkash (VP)  
Will Ferguson (WF)

### **Guests**

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

### **Apologies**

Michael Reed (MJR)  
Gabriella Bettiga (GB)  
Timothy Fagg (TF)  
Louis Kopieczek (LK)  
Paula Waldron (PW)

## **Minutes**

### **1. Introductory matters**

1.1 Apologies were received from: MJR, GB, TF, LK and PW.

1.2 PR welcomed WF to the TPC meeting. PR advised that WF would be providing administrative support to the TPC Secretariat.

### **Matters arising**

#### **TPC Appointments**

1.3 PR informed the attendees that Jane Shillaker (JS) had written to express her regret that she would be tendering her resignation to the TPC for personal reasons. PR said he had thanked JS for her help and valuable contribution during her tenure on the TPC.

1.4 Considering JS's resignation, PR asked the TPC members for their views for whether there was an immediate need to fill her vacancy or if the TPC were content to proceed with the present complement of TPC members for a short period until the Lord Chancellor's appointment was filled. The TPC discussed the expected workload according to the available TPC resources leading up until the end of 2019 and agreed due to their busy forecasted work programme that it would be prudent to fill the vacant Lord Chancellor's appointment. PR asked the TPC Secretariat to make the MoJ Public

Appointments Team aware of the TPC's decision to fill the vacancy and to commence the necessary arrangements for a recruitment campaign.

**AP/10/19: To contact the MoJ Public Appointments Team to commission and start the recruitment process. – TPC Secretariat**

1.5 ML agreed to replace JS in the role as the Chair of the Costs Sub-group.

1.6 The draft minutes of the TPC meeting held on 08 March 2019 were approved subject to minor amendments.

TPC Action Log

1.7 The TPC action log had been updated.

1.8 In relation to action point 05/19, '*PR 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.*' VD said that the SPT's office was contacting Chamber Presidents to gather together all relevant practice directions, which would be forwarded to PR, who would then take this forward: see para 6.1 below.

**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 TPC reply to the Detained Fast Track (DFT) consultation had been formally signed-off. The final reply included a reference to the public-sector equality duty contained in section 149 of the Equality Act (paragraph 5). PR thanked AJ for his assistance to clarify the accuracy of the detained immigration and asylum data that had been included as part of the pertinent narrative in the DFT reply.

2.2 PR informed the attendees that the TPC Secretariat were seeking to secure a grid-slot from the MoJ External Communications team for the reply to be published on the TPC webpage on GOV.UK.

2.3 PR said that the Immigration and Asylum Chamber (IAC) Reform team had requested an agenda slot at the 09 May TPC meeting to discuss their plans for IAC reform, and the new or amended rules they consider may be necessary. The HMCTS officials would be accompanied by IAC judges who had been involved in developing the project's objectives and would be able to assist with any questions from the TPC in respect of any proposed rule changes. The IAC Reform team would be providing a position paper to the TPC prior to the TPC meeting.

2.4 The TPC agreed for the IAC reform agenda item to be added to May's TPC meeting agenda. PR asked the TPC Secretariat to send the position paper to MJR, GB and LK for their consideration/initial views in advance of the topic being discussed by the TPC.

**AP/11/19: To advise the IAC Reform Policy team to attend the TPC 09 May 2019 meeting. – TPC Secretariat**

2.5 The TPC had previously considered that it would be desirable for any agreed rule changes in respect of the Tribunals Reform programme to be introduced if appropriate, at the same time throughout all the tribunal chambers. This practice would ensure consistency for tribunal users. However, the TPC appreciated this may not be always possible or

feasible. The TPC agreed that they would consider proposed rule changes in isolation for a specific chamber if tribunal reforms were progressing in advance of other chambers according to the tribunals reform programme's timetable.

### **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 incorporated the received feedback from the senior judiciary and interested stakeholders that had been asked for their observations in respect of the proposed rule changes to be included in the Tribunal Procedure (Amendment) Rules statutory instrument (SI). He said further to his last update at the 05 April TPC meeting that the final SI now included transitional arrangements in the trade remedies provisions for the Upper Tribunal Rules.

4.2 PBS said that the President of the General Regulatory Chamber (GRC) had brought to his attention that a new GRC jurisdictional board had been formed and that at their opening meeting the topic of new environmental appeal rights it was understood introduced by government departments in respect of Brexit had been discussed.

4.3 PBS said that as part of his ongoing work studying Brexit related legislation that he had already considered several EU Exit related SIs. He had not identified any potential rule amendments for any SIs that required further consideration by the TPC.

### **5. Tribunal (Amendment) Rules 2019**

5.1 MC said the Tribunal Procedure (Amendment) Rules statutory instrument (SI) was still on track to be laid on the 07 May.

5.2 MC said that due to legislative protocol, the Department for International Trade were required to make their Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 before the MoJ Minister signed the Tribunals Rules SI.

5.3 MoJ Legal and the TPC Secretariat would be circulating the Tribunals Rules SI to the TPC on the 12 April and for the exercise for obtaining the TPC members signatures to be completed by the 19 April.

5.4 The TPC discussed the accessibility of tribunals procedure rules that were posted on the government website (gov.uk) and available to the public. The TPC Secretariat confirmed that the National Archives, who were responsible for updating the legislation website no longer performed the function for updating and consolidating the Tribunal's procedure rules (following the conclusion of the biannual Tribunal amendment rule exercises).

5.5 The TPC were concerned that many Tribunal users, especially 'litigants in person', would have considerable difficulty in working out what were the up to date rules governing their case, having regard to various amendments to the rules made from time to time. This obstacle could disadvantage private individuals involved in Tribunal proceedings.

5.6 MC said that she had previously assisted the HMCTS administrative teams in the GRC and IAC by producing unofficial consolidated versions of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. These unofficial consolidated versions of the chamber rules were subsequently posted on gov.uk. by HMCTS.

5.7 MC said the solution would be have for each Tribunal Chamber to have an unofficial consolidated version of the rules that would be updated accordingly when any rule amendments were introduced for that particular chamber however a decision would be required for whom would be responsible to carrying out this task as there was a resource implication.

5.8 PR asked VD if she could establish the Senior President of Tribunals' view regarding this issue and report back his observations at the May TPC meeting.

**AP/12/19: To establish the Senior President of Tribunals view regarding the public accessibility of up to date tribunals procedure rules. – VD**

**AP/13/19: To add the topic 'Consolidated Tribunal Rules' for the TPC May meeting agenda. – TPC Secretariat**

## **6. Courts and Tribunals (Judiciary and Functions of Staff) Act 2018**

6.1 VD said that the SPT Office would be shortly canvassing the Chamber Presidents' views about the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.

6.2 PR said the TPC would revisit this topic after the TPC had the opportunity to consider the comments received back from the Chamber Presidents.

**AP/14/19: To invite the CT(JAS) Act policy official to attend the TPC June meeting. – TPC Secretariat**

## **7. Litigation Friends**

7.1 The TPC Secretary said that he had discussed the topic of 'Litigation Friends' with several Tribunal judges who had a keen interest in the matter being taken forward. Their observations would be included in a paper he planned to submit to Ministers in late May.

7.2 The paper would set out the options and recommendations to look at the present ex-gratia funding mechanism with a view to the creation of a more defined funding mechanism and resolution of the situation where no Litigation Friend can be identified because of there is no one willing and able to undertake the role.

7.3 The TPC Secretary was also working with analysts to establish likely costs for each option and planned to discuss the topic with MJR to obtain his views for any potential rule changes for the appointment of a Litigation Friend. The TPC Secretary said he would provide a further progress update at the TPC May meeting.

**AP/15/19: To add the topic 'Litigation Friends' for the TPC May meeting agenda. – TPC Secretariat**

## **8. AJC Polluter Working Group**

8.1 PR said that the SPT Office had requested the topic 'Administrative Justice Council (AJC) Polluter Working Group' to be discussed by the TPC. The AJC were in the process of developing a proposal for 'polluter pays', whereby government departments who make incorrect decisions that are appealed at the Tribunal would be required to reimburse HMCTS if the judge finds that the case should not have had to be brought before the relevant Tribunal. The AJC were setting up a working group and had requested a TPC member to be included in the membership.

8.2 ML agreed to volunteer to join the AJC Polluter Working group.

## **9. Lord Holmes Review**

9.1 PR said he had received a letter from the Justice Secretary about the launch of the Lord Holmes Review exploring why so few disabled people apply for public appointments and fewer still make it through to appointment. The Justice Secretary had also written to the Chairs of the Family, Civil and Criminal Rule Committees about the matter.

9.2 The TPC discussed the deliverability of Holmes' recommendations that had been published in his final report. PR asked the TPC members to send any comments on the deliverability of Lord Holmes' recommendations and what they should contain to him, which he would encompass in his reply to the Cabinet Office, the government department who would be formulating a Government response.

**AP/16/19: To send comments to Mr Justice Roth on the deliverability of Lord Holmes' recommendations. – TPC Members**

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

10.1 The TPC work programme has been updated and circulated as at 28 March 2019.

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

### Watching Brief

- Remove entries: 1, 2, 3, and 7.
- Amend entry 4 (Devolution) to update the timing from April 2020 to April 2022 in respect of the likely timetable for the first tranche of devolution of tribunals planned for transfer from HMCTS to the Scottish Tribunal Service.

## **11. AOB**

11.1 The TPC passed on their best wishes to MC who was leaving her role as legal advisor to the TPC to go on maternity leave. SOR would be covering the role as legal advisor to the TPC.

**Next Meeting: Thursday 09 May 2019**