

Tribunal Procedure Committee (TPC): Minutes: Thursday 09 May 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)
Michael Reed (MJR)
Timothy Fagg (TF)
Gabriella Bettiga (GB)
Shane O'Reilly (SOR)
Paula Waldron (PW)
Vijay Parkash (VP)
Will Ferguson (WF)

Guests

Judge Russell Campbell (RC) – item 3
Judge Mark Blundell (MB) – item 3
Natalie Mountain (NM) - (Head of IAC Jurisdictional Operational Support Team) – item 3
Julie McCallen (JM) - (Deputy Service Manager, IAC Reform Project) – item 3
Chukwuma Uju (CU) – (Deputy Private Secretary to the Senior President of Tribunals)

Apologies

Mark Loveday (ML)
Louis Kopieczek (LK)
Vivian Dewsbury (VD)
Tony Allman (TA)

Minutes

1. Introductory matters

- 1.1 Apologies were received from: ML, LK, VD and TA. CU was attending the TPC meeting on behalf of VD.
- 1.2 PR notified attendees that TA would be relinquishing his role as the Secretary to the TPC. His successor would be VP supported by WF.

Matters arising

Litigation Friends

- 1.3 PR informed attendees that TA's research on Litigation Friends was ongoing. TA will attend the June TPC meeting to update the TPC on his final recommendations and a planned meeting he was intending to schedule with the Minister in early June to discuss this recommendations on Litigation Friends.

- 1.4 MJR said that he had discussed with TA the drafting of rules regarding Litigation Friends and TPC members agreed MJR would lead on this in due course once policy recommendations have come through.

Administrative Justice Council (AJC) Polluter Pays Working Group

- 1.5 The Polluter Pays Working Group meeting held its inaugural meeting on the 25 April 2019, hosted by the AJC and attended by ML, as the TPC representative and MJR in his capacity as an AJC member. ML had provided a note in respect of the outcome of the meeting. MJR said that the 'polluter pays' mechanism proposed by the AJC was to incentivise better decision-making and to allow HMCTS to recoup the costs of 'unnecessary' appeals being dealt with by the tribunals. The proposal is still being fully developed by the AJC and the main challenges faced by the group are both political and legal. MJR explained that there may be a need to obtain government support to bring forward their proposals via legislative changes.

Lord Holmes Review

- 1.6 PR said that he had not received comments from the TPC members on Lord Holmes review that had been discussed at the April TPC meeting and asked members for their views.
- 1.7 JD stated that the TPC supported diversity in public appointments and that when the Judicial Office and Public Appointments Team makes public appointments in respect of TPC members, it is indeed mindful of the issues raised in Lord Holmes's letter. PR would indicate this in his response to the Cabinet Office.

AP/17/19: To write a response to Lord Holmes's letter and send to the Cabinet Office – PR

Tribunal Procedure Rules

- 1.8 PR raised the issue of amendments to Tribunal Procedure Rules that are posted on the government website (gov.uk) and available to the public. He had asked VD on behalf of the Senior President of Tribunals (SPT) Office at the April TPC meeting to investigate whom was best placed to take on this task. The TPC expressed their concerns on the issue and asked whom in MoJ or the Government Legal Department would now be responsible for updating and consolidating the various Tribunal Procedure Rules on the legislation website. PR and MJR stressed the it was vital that up to date Tribunal Procedure Rules are published in their current form online in order for people to access to them.
- 1.9 SOR confirmed that he will start preparing the consolidated rules once he returns from leave in late June.

AP/18/19: To prepare updated consolidated Tribunal Procedure Rules for publication on the various tribunal websites – SOR/ TPC Secretariat

- 1.10 The draft minutes of the TPC meeting held on 05 April 2019 were approved subject to minor amendments.

TPC Action Log

- 1.11 The TPC action log had been updated.
- 1.12 In relation to action point 10/19 'TPC Secretariat to contact the MoJ Public Appointments Team to commission and start the recruitment process', the TPC Secretary had discussed the recruitment issue with the Public Appointments team and would notify the TPC once the recruitment appointment process was underway.

2 Courts & Tribunals (Online Procedure) Bill- 2017-19

- 2.1 PR informed the TPC of the introduction of the Courts & Tribunal (Online Procedure) Bill 2017-19 (the 'Bill'), which is presently in its second reading in the House of Lords. The Bill seeks to create a committee to provide rules of court for online proceedings in civil and family Courts and Tribunals. Members expressed their concerns over the lack of notice given to them and the potential implications of different committees making rules that would apply in the same tribunals. The TPC was informed that the MoJ policy lead who would be attending the next TPC meeting in June to discuss the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 – see para 5.2 below – was also the policy lead on this Bill so he could explain the objectives of the Bill in more detail and be asked about any impact to the current statutory role of the TPC in making and amending Tribunal Procedure Rules.

3 IAC Sub-group

- 3.1 The Immigration and Asylum Chambers (IAC) Reform team from HMCTS accompanied by Judges RC and MB introduced themselves to the TPC members.
- 3.2 JM along with NM, RC and MB presented the proposals which HMCTS aim to introduce in the IAC by 2020. These changes would require amendments of the IAC Tribunal Procedure Rules and as such HMCTS are presenting their proposals to the TPC to obtain their views.
- 3.3 These changes look to introduce an online case management system. The intended goal of the system is to streamline hearings within the IAC, speeding up the process and obviating the need for paper case files. The appeal process would be frontloaded requiring both parties to provide information at a much earlier stage. Appellants would provide reasoned particulars and evidence earlier, enabling the respondent to undertake a meaningful review in all cases which should benefit appellants and reduce costs. These changes would require rule changes and as such are for the consideration of the TPC.
- 3.4 RC and MB summarised the proposed key rule changes that included:
- In Rule 19, so that detailed grounds of appeal are no longer required upon the lodging of an appeal;
 - Instead, a new Rule 24A is proposed, which requires the provision of an Appeal Skeleton Argument (and evidence in support of the ASA) within specified timescales; and
 - Rules 23 and 24, so as to require the respondent to undertake a meaningful review of the appeal in light of the ASA and the evidence supplied by the appellant in compliance with Rule 19.

3.5 RC said that minor changes are proposed to facilitate online appeals and to enable the structural reform including;

- Changes to Rule 1 to introduce various definitions;
- A change to Rule 3(3) to provide that automatically generated communications (such as notifications that an electronic document has been received online) should be treated as if it were from a member of staff;
- Minor changes to Rule 4 to enable meetings to be held for case management and other purposes. This change reflects the increased role of Tribunal Case Workers post-reform, and goes in hand with the SPT's decision to widen their powers;
- Minor changes to Rule 8 to enable the Tribunal to substitute the name of a party when proceedings are already under way;
- Changes to Rule 10 to address an issue which has arisen in relation to the Tribunal's ability to maintain contact with appellants, as do the changes in Rule 12 in relation to oversees appellants; and
- A change to Rule 11 to address the ambiguity in the use of midnight as a deadline, replacing it with 23.59 on the day in question.

3.6 The new technical system is currently being piloted for represented appellants in the HMCTS IAC hearing centres located in Taylor House, London and in Manchester within a small cohort of cases in the IAC. The first tranche of hearings is due to be heard in Taylor House with arrangements being made for cases to follow in Manchester.

3.7 PBS asked how HMCTS have managed the feedback process on the system from users involved in the pilot. JM responded that a number of stakeholders have been providing valuable feedback including legal representatives, Tribunal case workers, and respondents in their Courts and Tribunal Service Centre. Every fortnight the project team meet to discuss the project through a series of workshops and stakeholder engagement sessions.

3.8 GB asked what is the role of the Legal Aid Agency (LAA) within their proposals. RC responded that the LAA have been included throughout the proposals and are prepared.

3.9 RC described how the pilot has highlighted both the benefits and practical problems with the proposed system. The main issue is the technology falling behind with the Home Office struggling to prepare their digital bundles.

3.10 JD asked RC about the accessibility of the proposals for litigants in person whose first language was not English. RC said that translated pages would be available, everything will be signposted in multiple languages, and a litigant in person screen will be made available.

3.11 TF asked if there was any Judicial oversight up until the case is presented to the Judge. RC answered that every review by a Tribunal Case Worker (TCW) is subject to oversight by a Judge with a TCW duties comparable to a registrar in the County Court.

TF asked if a review by a TCW during the 14-day period affected timelines. RC said that there was no visible issue with this thus far.

3.12 GB asked what would happen if during the compliance check something was missing from the bundle: how will a TCW be able to pick it up? RC responded that this would be picked up by the appellant.

3.13 MR said that the fundamental problem is trying to introduce a mechanism to settle cases at earlier stages and obliging respondents to undertake a review. His view was that this can only be achieved through a change to Rule 24(a) (Response: other cases).

3.14 PR said that such a rule change will have to go out to public consultation and asked if HMCTS had considered this in their timeframe. HMCTS said that they had incorporated a consultation within their timescales.

3.15 PR said that the TPC will now take this forward and prepare the draft consultation.

AP/19/19: To take forward IAC reform proposals and prepare a draft consultation for the TPC meeting scheduled in July – IAC sub-group

3.16 PR said that the TPC Reply to the Detained Fast Track (DFT) consultation has not yet been published and expressed concern about the delay. PW said that she will make enquires with the MoJ External Communications team for the status in obtaining a grid slot date.

AP/20/19: To ascertain what is happening as regards to a grid slot for publication of the TPC Reply to the DFT consultation - PW

4 GTCL Sub-group (GTCL-SG)

4.1 PBS said that he had discussed with Judge Rodger QC the possibility of revising certain practice directions for the Lands Chamber (Upper Tribunal). PBS added that he had been given sight of correspondence between ML and Judge McKenna, the President of the General Regulatory Chamber (GRC) on the possibility of strike out grounds being revised in the GRC and will explore this further with Judge McKenna.

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

5.1 PR said that he had received the views from all Chamber Presidents on the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 except for two replies.

AP21/19: To obtain the outstanding judicial responses on the Courts and Tribunals Act 2018 – VD/ CU

5.2 The TPC Secretary said that the Policy lead from the MoJ will be attending the next meeting to discuss the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.

6 AOB

6.1 SOR informed members that he is going on leave and Rachel Aaron will replace him regarding TPC matters until his return.