

Tribunal Procedure Committee (TPC): Minutes: Wednesday 12 June 2019

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

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith (PBS)
Christine Martin (CM)
Donald Ferguson (DF)
Michael Reed (MJR)
Mark Loveday (ML)
Gabriella Bettiga (GB)
Vivian Dewsbury (VD)
Vijay Parkash (VP)
Will Ferguson (WF)

Guests

Paul Daly (PD)- (Head of Court Reform- MoJ)
Rachel Aaron (RA)- (MoJ Senior Lawyer, Government Legal Department)

Apologies

Jayam Dalal (JD)
Tim Fagg (TF)
Shane O'Reilly (SOR)
Paula Waldron (PW)

Minutes

1. Introductory matters

- 1.1. Apologies were received for JD, TF, SOR and PW. RA was attending the TPC meeting on behalf of SOR.
- 1.2. The draft minutes of the TPC meeting held on 09 May 2019 were approved subject to minor amendments.

Matters Arising

Detained Fast Track

- 1.3. PR notified attendees that the TPC's reply to the consultation on Detained Fast Track (DFT) had been published on 11 June 2019. ML said that he had spotted a number of typos on the published DFT reply and was concerned that perhaps an earlier draft had been published instead of the final version. MJR said that he would examine the online response to establish if the version posted on the TPC web page was the final version that had been signed off by the TPC.

Online Appointments

- 1.4. PR asked the TPC Secretary when the MoJ Public Appointment Team's recruitment process would begin for the vacant Lord Chancellor post within the TPC. The TPC Secretary responded that the recruitment process to fill the vacant Lord Chancellor's post would begin after the Summer recess, with the TPC Secretary to update members at the October TPC meeting.

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

- 1.5. PR said that he had received the views of all Chamber Presidents on the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 except for one, Mr Justice Holgate, President of the Lands Chamber. VD said she would write to Mr Justice Holgate to confirm his view/position.

AP/22/19: To write to Mr Justice Holgate to establish his view. – VD

TPC Action Log

- 1.6. The TPC action log had been updated.

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

- 2.1. PD attended the meeting by invitation and explained the latest position for the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 CAT (JAFS) to the TPC. The Act gives new or wider powers to jurisdictional procedure committees to provide for HMCTS staff to exercise specified judicial functions in the Courts and Tribunals. Relevant Committees will need to determine which judicial functions staff may or may not carry out in their jurisdiction. The Act received Royal Assent in December 2018 with a target date for implementation set by MoJ for April 2020.

3. Courts and Tribunals (Online Procedure) Bill 2019

- 3.1. PD explained that the Courts and Tribunals (Online Procedure) Bill 2019 follows a longstanding commitment from Government to digitise court and tribunal processes and findings from the Lord Briggs Report 2016. The Bill's intention is to ensure that online services are designed for the everyday user – by creating an Online Procedure Rule Committee (OPRC) to sit alongside existing Rule Committees, the Civil Procedure Rule Committee, the TPC, and the Family Procedure Rule Committee, to design rules to support online services ensuring consistency across each Rule Committee.
- 3.2. The Bill was introduced into the House of Lords in May 2019 and is currently in its second reading, with the committee stage expected to take place in June. PD said that he expected the Bill to receive Royal Assent at the end of the year.

- 3.3. PD said that the reforms following the implementation of the Bill would be gradual with no set timetable yet in place. It is likely that the first set of rules would concern low-value civil money claims in the Civil Courts, and that the OPRC would not be addressing tribunal rules for some time.
- 3.4. CM asked PD how the OPRC would fit with the current role of each Rule Committee as each committee already makes online rules. PD responded that the OPRC is there to ensure that there is a consistency across the Rule Committees and between each set of procedure rules. The intention of the OPRC is to build on the work set to take place across HMCTS such as the ongoing digitalisation reform programme. There may be areas within HMCTS in which Rule Committees have not yet identified appropriate online rules, with the OPRC to cover these areas.
- 3.5. MJR said that the TPC will soon consult on rule changes in the Immigration and Asylum Chambers with some of those amendments covering online proceedings. As such, when the OPRC comes into force will the TPC only review those rules which do not cover online proceedings and the OPRC then look at those which are online? MJR said that he was unsure how rule changes would work in such a situation and which Rule Committee would be responsible for making rules.
- 3.6. PR said that the establishment of an OPRC may have been appropriate at a time when the Government had intended to introduce a distinct Online Court. However, PR said he was uncertain as to why the Government had decided to proceed with introducing the OPRC even though plans for an Online Court had been dropped.
- 3.7. ML said that he was concerned with *Clause 3* of the OPRC Bill as a Minister may quash rules made by the TPC. ML said that it may be more appropriate to have a specialist IT member sit on Rule Committees to decide online procedure rules.
- 3.8. PD said that the process would be gradual in introducing Online Rules, with low-value civil money claims likely to be the first to be governed by online rules. PD said the focus of the OPRC was to ensure accessibility and ease in understanding the rules for litigants.
- 3.9. PR said that he was concerned about how the TPC and the OPRC would coordinate on rule amendments, bearing in mind that low-value civil money claims are much simpler than many types of proceedings in Tribunals.
- 3.10. DF referred to *Clause 4* of the OPRC Bill detailing the composition of the OPRC panel. DF said that no allowance had been made for a nomination from the Lord President of the Court of Session within the Bill and that assurances had to be given for proper consideration of the position of tribunals in Scotland, as with the TPC. DF asked PD why the Lord President had not been consulted on the Bill.
- 3.11. PD said that he had engaged with the Scottish government on the Bill.
- 3.12. MJR said he was unsure how the OPRC, composed of five members, would be able to manage the workload of making Online Rules across Civil, Family and the Tribunals.

- 3.13. PD said that the OPRC may in due course seek to expand its membership as the workload increases, although he recognised that under the Bill this would require secondary legislation.
- 3.14. ML asked members if they should formalise their concerns in a written response.
- 3.15. PR said that he would seek the views of the SPT prior to formulating any written response.
- 3.16. PR said that TPC members had considered the OPRC Bill and there were outstanding issues with the following requiring further clarification;
- The small size of the OPRC membership and whether the proposed complement would be able to manage the anticipated workload.
 - The lack of Tribunal experience on the Committee.
 - The seamless interchange between online and offline rules and how this affects ease of understanding for litigants.
 - The lack of Scottish representation given that the OPRC will be responsible for certain Scottish Court matters.

4. IAC Sub-group

- 4.1. CM referred to the note which was prepared by lawyers from the Upper Tribunal Immigration and Asylum Chamber (UTIAC) and sent to the TPC via Helen Chaytor, Head of Legal Operations at the Royal Courts of Justice. The note advises on Tribunal Procedure Rule changes in relation to CAT (JAFS). CM said that she was content with the suggestions on amendments to Rule 4 of the Upper Tribunal Procedure Rules.
- 4.2. The note also detailed other associated amendments to the Upper Tribunal Rules in respect of judicial review proceedings in the Upper Tribunal, including rule 29 (Acknowledgement of Service). PBS said that he did not see a problem with Rule 29 as presently drafted and that careful consideration should be given to any possible rule amendments including the suggestions from the UTIAC lawyers to amend the rules in relation to the current process for dealing with automatic strikeouts for non-payment of fees after the UT has granted JR permission.
- AP/23/19: To write to Helen Chaytor for more clarity on the proposals put forward by lawyers from the UTIAC for suggested rule amendments to the Upper Tribunal Rules– TPC Secretariat**
- 4.3. MJR said that he was pressing on with IAC reform proposals, and preparations were underway for the draft consultation.

5. HSW Sub-group

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

6. GTCL Sub-group

- 6.1. PBS said that he had considered suggestions from a member of the public on rule changes and will update TPC members at the following meeting in July.

AP/24/19: To look at suggestions on amendments to the Tribunal Procedure Rules – PBS

- 6.2. PBS said that Martin Rodger QC had been reviewing practice directions in relation to expert evidence and conditional fee agreements in the Lands Chamber of the Upper Tribunal.
- 6.3. PBS said that Alison McKenna had indicated that rule changes may be necessary in relation to strike outs for regulator cases heard in the General Regulatory Chamber (GRC).

AP/25/19: To look at suggestions from Alison McKenna on possible amendments to Tribunal Procedure Rules in the GRC – PBS/ML

7. Costs Sub-group

- 7.1. ML said that there were no urgent issues requiring the TPC's immediate attention.

8. Litigation Friends

- 8.1. MJR said that he was preparing a draft consultation proposing the introduction of a rule that sets out a Tribunal's power to appoint a Litigation Friend. MJR said that it would be a simple change and expected to draft a short rule for discussion by the TPC once the MoJ's policy had been clarified.

9. Overview Sub-group (OSG)

- 9.1. The TPC work programme has been updated and circulated as at 06 June 2019.

10. AOB

- 10.1. TPC members approved the Sub-group chart prepared by the TPC Secretariat.
- 10.2. ML asked the TPC Secretariat to circulate the most recent updated version of the tribunal procedure rules to the TPC Members.

AP/26/19: To circulate the tribunal procedure rules to the TPC – TPC Secretariat