

Tribunal Procedure Committee (TPC): Minutes: Thursday 11 July 2019

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

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith (PBS)
Christine Martin (CM)
Michael Reed (MJR)
Mark Loveday (ML)
Tim Fagg (TF)
Chukwuma Uju (CU)
Shane O'Reilly (SOR)
Vijay Parkash (VP)
Will Ferguson (WF)

Guests

Louis Kopieczek (LK)

Apologies

Donald Ferguson (DF)
Gabriella Bettiga (GB)
Jayam Dalal (JD)
Paula Waldron (PW)

Minutes

1. Introductory Matters

- 1.1. Apologies were received for DF, GB, JD, and PW.
- 1.2. Vivian Dewsbury has moved to a new role and CU will be attending subsequent TPC meetings as the Senior President of Tribunal's representative.
- 1.3. The TPC consultation reply on the Trade Remedies Rules was published on 12 June 2019.
- 1.4. The outstanding TPC meeting minutes have all been published and are now on the TPC webpage on GOV.UK.
- 1.5. PR said that he had met with Dominic Lake who has replaced Richard Mason as the Deputy Director responsible for the TPC Secretariat.
- 1.6. The draft minutes of the TPC meeting held on 12 June 2019 were approved subject to minor amendments.

Matters Arising

Public Appointments

- 1.7. The TPC Secretary said that he had spoken to the MoJ Public Appointments Team (PAT) regarding recruitment for the vacant TPC post previously held by Jane Shillaker. The PAT have said that they would like to have the vacancy filled by February 2020. VP said that he was continuing to discuss this with the PAT and that he was looking to expedite the process in order to conclude the recruitment exercise by the end of December.

AP/28/19: To speak to the PAT and to negotiate a shorter timescale for the recruitment exercise – TPC Secretariat

Courts and Tribunals (Online Procedure) Bill 2019

- 1.8. PR said that he had spoken to the SPT regarding the Courts and Tribunals (Online Procedure) Bill 2019. PR said that amendments had been made to the Bill. Instead of the Online Procedure Rule Committee (OPRC) “consulting” the Lord Chief Justice (LCJ) the OPRC needed the “concurrency” of the LCJ.
- 1.9. The TPC Secretary said that he would inform members on the progress of the Bill at the next TPC meeting.

AP/29/19: To discuss the Online Procedure Bill at the October TPC meeting – TPC Secretariat

Action Log

- 1.10. The TPC action log had been updated.

2. IAC Sub-group

- 2.1. PR asked members of the IAC sub-group if they had considered Helen Chaytor’s note on proposals for IAC rule changes. The note addresses the problems caused by the use of the word ‘provided’ in rules 28A and 29(1). The note also includes reference to the decision of the President of the Immigration and Asylum Chamber (Upper Tribunal), Mr Justice Lane: *R (on the application of Sutharsan) v Secretary of State for the Home Department (UT rule 29(1): time limit)* [2019] UKUT 217 (IAC).
- 2.2. MJR said that it was not yet clear what needed to be done on time limits and that a public consultation would need to be conducted by the TPC to establish the views of interested stakeholders.
- 2.3. CM asked members if this consultation should be separate to the consultation on IAC reform proposals from HMCTS in relation to digitalisation.
- 2.4. MJR said that as long as both sets of proposals were clearly outlined it could be included in the same TPC consultation. MJR said that he would have a draft ready by the next TPC meeting in October and hoped to have a final version ready by the end of 2019.

- 2.5. LK said that Mr Justice Lane's decision set out the Chamber's view towards the proposed rule changes on the word 'provided'. However, the appropriate way to proceed would be for the TPC to make a rule reflecting the consultation response rather than leaving it up to judicial interpretation.
- 2.6. PBS said that it may be prudent to look at other Chamber Rules and their definition of the word 'provided'.

AP/30/19: To check the Tribunal Rules for each Chamber on how they define the word 'provided' – CU

- 2.7. ML asked if it were necessary to do anything at all.
- 2.8. MJR said that it was desirable for the rules to become clearer and that it was not the TPC's intention for these rules to be left to interpretation. Furthermore, clarity was not only needed for the judges but also the Tribunal's users.
- 2.9. CM said that although this was not mentioned in Helen Chaytor's paper, it may be worth considering First-tier Tribunal (FtT) rules on time extensions in proceedings.
- 2.10. It was agreed that the TPC should seek to remove the ambiguity in the word 'provided'. The TPC will prepare a consultation paper on this and include the points raised by CM.

AP/31/19: To inform Mr Justice Lane that the TPC is taking forward this consultation – TPC Secretariat

AP/32/19: To circulate the notice of decision of the *Sutharsan* case once it had been reported – LK

3. HSW Sub-group

- 3.1. CM referred to the paper prepared by Judge Johnston, the Deputy Chamber President of FtT, Health, Education, and Social Care Chamber (HESC), on proposals to amend Tribunal Procedure Rules in HESC. The paper makes 2 suggestions to amend Rule 11 and Rule 37:
- Rule 11: Refers to rules on the appointment of a representative. The concerns with this rule is that if a patient lacks capacity to appoint a legal representative but has asked, for example, a friend to represent him the Tribunal cannot appoint a legal representative. The second is that sometimes representatives who are chosen may be completely inappropriate and underqualified.
 - Rule 37: This rule provides that in proceedings under Section 2 of the Mental Health Act 1983, the hearing of a case must start within 7 days after the date on which the Tribunal received the application and in Section 2 proceedings the period of notice must be at least 3 working days. This limits the number of possible days for listing a hearing in Section 2 proceedings to 1 or 2 days.

- 3.2. CM said that as the proposals intend to amend the listing practice the TPC would need to consult on the proposals of Judge Johnston. The TPC did not expect a negative response to their consultation as Judge Johnston had already shared her proposals with the HSW judiciary at their last judicial conference.

AP/33/19: To prepare a draft consultation on amendments to Tribunal Rules in HESC – CM

- 3.3. ML asked if it were possible to retrieve some statistics on the postponements and adjournments resulting from Rule 37 and evidence of exploitation of the rule by legal representatives.

AP/34/19: To retrieve statistics from HMCTS on the number of postponements in HESC (FtT) – CM

- 3.4. PBS said it was important for the TPC to consider the anecdotal evidence cited in Judge Johnston's paper on exploitative practices and it may be necessary to ask her for more information.
- 3.5. HSWSG members agreed to have a draft prepared for the next TPC meeting and to share the dates for the next meeting with JD, DF, and GB.

AP/35/19: To send an email to JD, DF, and GB on tentative dates of the next TPC meetings – TPC Secretariat

4. GTCL Sub-group

- 4.1. PBS said that Judge Rodger QC is planning to look at revised Practice Directions about expert evidence and conditional fee agreements in the Lands Chamber of the UT. Judge Rodger QC has not yet decided on his approach and these issues may impact on the Property Chamber of the FtT which Judge Rodger QC will raise with Judge McGrath, the President of the Property Chamber.
- 4.2. PBS said that he had almost completed his GTCL paper on the matters raised by a correspondent with the TPC, including possible amendments to the Lands Chamber Rules regarding permission to appeal applications. He had sent a draft to the GTCL sub-group to consider and will take it forward in the TPC work programme.

AP/36/19: To discuss the GTCL paper at the next TPC meeting in October – PBS

- 4.3. PBS said that he and ML had discussed Judge McKenna's proposals for rule changes needed in relation to regulators withdrawing their decisions in the General Regulatory Chamber (FtT). PBS said that rule changes would be necessary but it may be that no consultation would be needed, and that he will progress the matter with Judge McKenna.

5. Costs Sub-group

5.1. ML said he had a handover with Jane Shillaker.

6. Litigation Friends

- 6.1. MJR said there was no fixed policy decision on Litigation Friends and the work cannot be finalised until then. MJR said that he envisaged drafting a simple rule change similar to that of Rule 21 of the Civil Procedure Rules.
- 6.2. PR asked if the TPC needed to consult on proposals to draft a rule, and if so should this wait until a policy decision had been taken by Ministers in MoJ.
- 6.3. MJR said that a public consultation was needed and he would start work on a draft consultation on a simple rule for the November 2019 TPC meeting. However, the TPC would like to know the MoJ policy and Ministerial position.

AP/37/19: To prepare a draft consultation on Litigation Friend proposals by the November TPC meeting – MJR

7. Tribunal Procedure (Amendment No.2) Rules 2019 Exercise

- 7.1. The TPC Secretary said that any rule changes would need to be flagged as the laying date for Tribunal Procedure Rule Statutory Instrument (SI) was scheduled for October/November 2019. The proposals for the IAC rule amendments would not be finalised by then. The TPC agreed that any rule amendments would be included in the TPC Amendment Rules SI for April 2020.
- 7.2. PBS said there may be scope to include the proposals on rule amendments in relation to the General Regulatory Chamber but this was dependent on time constraints.

8. AOB

- 8.1. The TPC Secretary informed attendees that he had circulated with the TPC the correspondence on the Lord Holmes Review between PR and the Cabinet Office.

Next Meeting: Thursday 17 October 2019