

## **Tribunal Procedure Committee (TPC): Minutes: 17 October 2019**

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

### **Present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS) - by phone  
Christine Martin (CM)  
Donald Ferguson (DF)  
Michael Reed (MJR)  
Mark Loveday (ML)  
Tim Fagg (TF)  
Shane O'Reilly (SOR)  
Paul Daly (PD)  
Vijay Parkash (VP)  
Will Ferguson (WF)

### **Guests**

Louis Kopieczek (LK)

### **Apologies**

Gabriella Bettiga (GB)  
Chukwuma Uju (CU)  
Paula Waldron (PW)  
Jayam Dalal (JD)

## **Minutes (DRAFT)**

### **1. Introductory Matters**

- 1.1. Apologies were received for CU, GB and JD.
- 1.2. PD has now replaced PW as the head of Administrative Justice Team within the Ministry of Justice.
- 1.3. VP said that he had taken over from PW as the lead for Immigration Policy.

### **Matters Arising**

#### **Public Appointments**

- 1.4. PR asked if the recruitment for the position of a new member for the TPC would be completed by December.
- 1.5. VP said that the appointment of the new Lord Chancellor (LC) resulted in the Public Appointments Team (PAT) having to restart the submission process

leading to a slight delay. VP said the PAT anticipated to have the new member in post by the end of February. VP explained that it was protocol for the LC to approve the submission from the PAT during the recruitment process.

- 1.6. PR said that it was fortunate that the increased workload arising from Brexit hadn't yet materialised. However, PBS's term as a LC appointment is coming to an end. PR said that he is concerned if two vacancies had to be filled at the same time.

### Courts and Tribunals (Online Procedure) Bill 2019

- 1.7. PD said that the Courts and Tribunals (Online Procedure) Bill 2019 had fallen away when Parliament was prorogued. It was not introduced in the Queen's Speech but it may be reinstated as a Private Member's Bill. PD said that he would provide an update on any further developments to members.
- 1.8. ML asked if the Bill would be scrutinised by the Bill Committees if introduced as a Private Member's Bill.
- 1.9. PD said that the Bill would likely come under more scrutiny if introduced as a Private Member's Bill. If the Bill has petitions against it, it is considered by an Opposed Bill Committee. If a Bill has no petitions against it, it is considered by an Unopposed Bill Committee.

### Action Log

- 1.10. The TPC action log had been updated.

## 2. IAC Sub-group

- 2.1. MJR apologised for the delay in circulating the draft consultation on Immigration and Asylum Chamber (IAC) reform proposals.
- 2.2. CM said that she would review the draft consultation with the IAC Reform Team in HMCTS to ensure that it accurately reflected what was taking place. Once they had reviewed it, CM said she would circulate it with members of the TPC.
- 2.3. There was discussion about what precisely was encompassed by the concept of "*automatically generated communications*". PR said that it was necessary to clarify what auto-generated response the ICA Reform Team was looking at in order to consider whether a rule was appropriate or necessary.

**AP/38/19: To discuss the issue of auto-generated responses with the IAC Reform Team – CM**

- 2.4. There was discussion of the extent to which the rule proposals on Immigration reform could be applied to the reforms being sought by the Social Entitlement Chamber (SEC) Reform Team. MJR said that the changes were completely different to those being sought by the SEC Reform Team and CM observed that although the proposed Immigration rule changes may inform the SEC Reform Team the logic behind the consultation is very different.
- 2.5. It was agreed that the TPC Secretariat would inform the SEC Reform Team that they were progressing with agile rule changes and learning from the process.
- 2.6. VP said that he would ask the SEC Reform Team for an updated paper on their proposed changes.

**AP/39/19: To notify the SEC Reform Team of the TPC's consultation and to ask them for an updated policy paper – TPC Secretariat**

- 2.7. LK said that this could be the opportunity for the TPC to consult on other proposed IAC changes such as the harmonisation of the rules between the FtT IAC and UT on late applications and permission to appeal applications.
- 2.8. MJR said that he would liaise with LK regarding Mr Justice Lane's decision and CM would circulate the draft consultation document with the HMCTS Reform Team.
- 2.9. LK said that the TPC had discussed this previously and that it was unlikely that rule changes were necessary. LK said that he would review the draft paper, liaise with Mr Justice Lane and notify the IAC sub-group as to whether it was considered that the decision should lead to a rule change.
- 2.10. MJR said that there was a minor issue on the definition of the term midnight as one of the rule changes suggested replacing 12.00AM with 23.59 to avoid ambiguity and to provide clarity for Tribunal users submitting papers to the Tribunal. MJR asked the TPC members if any action was necessary.
- 2.11. The TPC asked SOR to check if there was a definition for Midnight in the Interpretation Act 1978.

**AP/40/19: To check if a definition was contained in their Interpretation Act 1978 – SOR**

**3. HSW Sub-group**

- 3.1. CM said that she had circulated the draft consultation on timescales for hearings under section 2 of the Mental Health Act 1983 to members of the HSW Sub-group. She had discussed the consultation with Judge Johnston, the Deputy Chamber President of HESC, and removed the rule proposal on appointment of a representative as this was not needed. CM did not expect the consultation to be controversial.

- 3.2. After discussion, it was agreed that the proposed time-limit for the holding of a hearing should be drafted as 10 calendar days rather than 7 working days, and that the statistics in the draft were not very informative or necessary and so should be removed.
- 3.3. CM said that she would incorporate the amendments agreed upon by the TPC and send it to the TPC Secretariat to format.

**AP/41/19: To circulate the amended HESC consultation with members of the HSW Sub-group – TPC Secretariat**

#### 4. Costs Sub-group

- 4.1. ML said that there were no urgent issues which needed to be discussed.

#### 5. Litigation Friends

- 5.1. CM said that she had sent MJR a paper on Litigation Friends which goes into detail of the process used to appoint Litigation Friends within the Civil Procedure Rules.
- 5.2. MJR said that he was intending to continue drafting a short simple rule possibly accompanied by a practice direction which could be included in the consultation.
- 5.3. There was discussion as to whether any rule change would be applied to all Chambers within the First-tier and Upper Tribunal. However, it appeared that the scale of the problem varies from Chamber to Chamber. DF said that the issue was most severe within the Immigration Chambers.
- 5.4. MJR said that he would draft on the basis that the rule change was only applicable to the IAC. However, if the TPC is to examine the process of appointing a Litigation Friend, this would have to be included in a separate consultation.
- 5.5. SOR said that it would be appropriate to wait until a policy decision had taken place before deciding on the process of appointment, especially as the Official Solicitor is mentioned in the Civil Procedure Rules.
- 5.6. It was agreed to invite Tony Allman to the next TPC meeting to discuss the policy position and to add Litigation Friends to the agenda for discussion at the December TPC meeting.

**AP/42/19: To invite Tony Allman to the next TPC meeting in November – TPC Secretariat**

**AP/43/19: To add the topic 'Litigation Friend as an agenda item for the December TPC meeting – TPC Secretariat**

## 6. **GTCL Sub-group**

- 6.1. The agenda items for the GTCL Sub-group will be discussed at the 14 November meeting due to technical difficulties in contacting PBS.

## 7. **AOB**

- 7.1. PR asked the TPC Secretariat about an issue HMRC have raised with regards to devolution in Scotland.

**AP/44/19: To ask for an update from HMRC on their proposals and circulate a paper with the TPC – TPC Secretariat**

- 7.2. The TPC Secretariat said that they had been emailed by a Registrar on a decision in the case of *Logan v Governing Body of Cherry Lane Primary School*. The Judge who heard the case in the Special Educational, Needs and Disability jurisdiction of HESC has requested the decision to be referred to the TPC for them to consider.

- 7.3. SOR summarised the case and proposed a change to rule 12(3)(a) of the Tribunal Procedure (First-tier Tribunal) (HESC) Rules 2008 to address the issues raised by the judge.

- 7.4. The TPC agreed to discuss this matter at the November TPC meeting.

**AP/45/19: To revisit the issue raised by the Registrar at the November TPC meeting – TPC Secretariat**

**Next Meeting:** Thursday 14 November 2019, in the Rolls Building