

Tribunal Procedure Committee (TPC): Minutes: 14 November 2019

7 Rolls Buildings, Fetter Lane, Holborn, London EC4A 1NL

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith (PBS)
Christine Martin (CM)
Gabriella Bettiga (GB)
Jayam Dalal (JD)
Donald Ferguson (DF)
Michael Reed (MJR)
Tim Fagg (TF)
Shane O'Reilly (SOR)
Chukwuma Uju (CU)
Vijay Parkash (VP)
Will Ferguson (WF)

Guests

Louis Kopieczek (LK)

Apologies

Mark Loveday (ML)

Minutes (DRAFT)

1. Introductory Matters

- 1.1. The draft minutes of the TPC meeting held on 17 October 2019 were approved.

Matters Arising

General Election

- 1.2. PR said that due to the General Election taking place no consultations could be published until after the election, and that it was unlikely that they would be published until January 2020.
- 1.3. PR said that the General Election had also delayed the Public Appointments recruitment process. Both Jane Shillaker's and PBS's post have been advertised. PBS said that he is willing to reapply to the position.

Litigation Friends

- 1.4. PR said that he had spoken to Tony Allman regarding Litigation Friends. The date for the Litigation Friend workshop had yet to be set. Tony Allman would provide an update to TPC members once the workshop had taken place.

Action Log

- 1.5. The TPC action log had been updated.

2. IAC Sub-group

- 2.1. CM said that she had taken the draft consultation document to the IAC Reform team in HMCTS and discussed the issue of autogenerated responses.
- 2.2. MJR said that that autogenerated responses already exist and these are no different. It was agreed that there was no need to include this in the consultation.
- 2.3. CM said that the IAC pilot had been extended to Tribunal hearing centres located in Bradford and Newport. Tribunal Case Workers (TCW) could now be involved, as the Senior President of Tribunals (SPT) had issued a Practice Direction allowing them to carry out case management appointments and withdrawals.
- 2.4. MJR said that the proposals are intended to allow TCW's to conduct meetings between parties. There is a clear demarcation between hearings which Judges can hold and meetings which a TCW can host. MJR said that he would be concerned if the TPC were proposing to give TCWs powers with a more extensive review, but any action carried out by a TCW is subject to appeal to a judge.
- 2.5. PR said that the draft should explain this and make clear that the rules will not enlarge the powers of the TCW and will make a distinction of meeting that is held before a judge or TCW.
- 2.6. It was agreed that the published consultation will include a draft of the proposed rule.
- 2.7. PR said that we should aim to have a further draft of the Consultation ready for the December TPC meeting scheduled on the 12 December 2019 and asked if the document could be circulated in advance of the meeting.

3. HSW Sub-group

- 3.1. TPC members had received an updated draft consultation paper from CM on timescales for hearings under section 2 of the Mental Health Act 1983.
- 3.2. It was agreed that the final consultation paper should include a reference to the Public-Sector Equality Duty.

AP/46/19: To insert a reference in the Public Sector Equality Duty in the MHA Consultation paper – TPC Secretariat

- 3.3. CM said that she would send the revised paper to Judge Johnston, the Deputy Chamber President of the Health, Education and Social Care Chamber of the First-tier Tribunal, to examine.

AP/47/19: To send the MHA Consultation paper to Judge Johnston – CM

- 3.4. PR referred to the decision by Judge Ward on the case of '*JL v Governing Body of Cherry Lane Primary School*'.
- 3.5. PBS said that the issue raised in the note by Judge Ward is a result of the drafting of rule 12(3)(a). SOR was asked to review the matter and provide legal advice to the TPC members at the next meeting.

AP/48/19: To review rule 12(3)(a) and provide an update at the next TPC meeting – SOR

- 3.6. PR said that he would write to thank Judge Ward and inform him that the TPC was taking forward the issues he raised in his note.

AP/49/19: To write to Judge Ward and inform him the TPC is taking the matter forward – PR

4. **GTCL Sub-group**

- 4.1. PBS said that he had set out in the paper the necessary rule changes required to address the issues raised by Judge McKenna on regulatory decisions being revoked by the decision-maker while under appeal. PBS said that he suggested an amendment to rule 17 of the General Regulatory Chamber and the TPC should have a public consultation on the proposed changes.

AP/50/19: To prepare a draft consultation paper for the next TPC meeting – PBS

- 4.2. PBS presented a paper addressing a number of suggestions from a member of the public on amendments to rules in the Property Chamber and the Upper Tribunal (Lands Chamber).

- 4.3. It was agreed that it was appropriate to share the paper with Judge Siobhan McGrath, the Property Chamber President, and Judge Martin Rodger QC, Deputy Chamber President of the Lands Chamber, and seek their views, before sending it to the individual concerned.

AP/51/19: To seek the views of Siobhan McGrath and Martin Rodger QC on amendments to rules in the Property and Lands Chamber – PBS

5. **AOB**

- 5.1. PR referred to a paper prepared by Rebecca Lewis, Legal Advisor to the SPT, drawing attention to the comments of the Supreme Court in *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38 at [51]
- 5.2. It was agreed to set up a sub-group to consider this issue. TF would chair the sub-group, PBS, and JD would both be members and ML would be asked if he was willing to join. TF asked the secretariat to provide him with the material assembled on the question of public access to tribunal documents by the former Confidentiality Sub-group. It was also important to find out what steps the CPR Committee was taking in response to the judgment.
- 5.3. TF said that he would provide an update paper in the New Year once he had reviewed the note provided by Rebecca Lewis.

AP/52/19: To provide TF and the Sub-group with relevant papers on public access to documents prepared by or for the former Confidentiality Sub-group - TPC Secretariat

AP/53/19: To ascertain what is being done in this regard by the CPR Committee – PR

Next Meeting: Thursday 12 December 2019