

Tribunal Procedure Committee (TPC): Minutes: 12 December 2019

Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London

Present

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

Guests

Louis Kopieczek (LK)

Apologies

Mark Loveday (ML)
Jayam Dalal (JD)

Minutes (DRAFT)

1. Introductory Matters

- 1.1. The draft minutes of the TPC meeting held on 14 November 2019 were approved.

Matters Arising

- 1.2. PR said that the Public Appointments Team had advertised the vacant TPC Lord Chancellor's positions with the timetable for both sifting and interviews. PR asked members to inform any potential applicants of the vacancies.

Litigation Friends

- 1.3. PR said that he had been informed by TA that the Litigation Friends workshop had taken place and that TA would brief the TPC at the February 2020 meeting.
- 1.4. MJR said that the work on the Litigation Friend consultation will follow the outcome of the workshop and any resulting decision on this issue by Government.

Action Log

1.5. The TPC action log had been updated.

2. **IAC Sub-group**

2.1. There was discussion as to whether the TPC could proceed to issue a consultation paper on amendments to the rules to give effect to the IAC reform proposals.

2.2. It was noted that any action regarding Litigation Friends would potentially impact on the IAC rules. The TPC agreed that there would be two separate consultations, one for Litigation Friends, which concerned tribunals beyond the IAC, and the other on specific IAC proposals.

2.3. PR said that the TPC needed clarity on the measures the IAC proposals were looking to introduce. The TPC raised concerns regarding the complete removal of a paper-based system during the implementation of the reformed electronic system.

2.4. It was agreed that the TPC needed confirmation on the roll out of the on-line system from the IAC reform team and therefore would invite them to attend the next TPC meeting.

AP/54/19: To invite the IAC reform team to explain the process of the online system – TPC Secretariat

AP/55/19: To invite a Tribunal Case Worker (TCW) to demonstrate the online process – CM

AP/56/19: To find out whether the SPT is intending to create a new Practice Direction in relation to the IAC proposals - CU

3. **HSW Sub-group**

3.1. CM said that she had sent the draft Mental Health Consultation paper to Judge Johnston and that the consultation was ready to be published.

3.2. VP said that the rule changes resulting from the consultation could be laid at the earliest in May 2020.

3.3. The TPC considered the advice provided by SOR on *JL v Cherry Lane Primary School* [2019] UKUT 223 (AAC). It was decided to make the recommended change to rule 12(3)(a). Given the nature of the change, it was agreed that no consultation needed to be conducted by the TPC. PR said that he would inform Judge Ward that the TPC was taking the matter forward.

AP/57/19: To inform Judge Ward that the TPC will amend rule 12(3)(a) in response to his judgment in *JL* – PR

4. **GTCL Sub-group**

- 4.1. PBS said that he remains in correspondence with Judge Alison McKenna regarding the Food Standards Agency and that he would have a draft consultation ready by the February TPC meeting.
- 4.2. PBS said he had received comments from Judge Siobhan McGrath on the suggestions from a member of the public on amendments to the rules in the Property Chamber of the First-tier Tribunal and the Lands Chamber of the Upper Tribunal. PBS said that he would share the comments with Judge Martin Rodger QC and notify the TPC of his views.

5. **Confidentiality Sub-group**

- 5.1. PR said that he had asked the Civil Procedure Rule Committee about their position in light of the judgment from the Supreme Court in *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38 and asked them to keep the TPC informed of their progress.
- 5.2. TF said that making a rule on the questions of principle and practice raised by this case may not be welcome in view of the lack of applications by 3rd parties for documents.
- 5.3. PR said that he would ask the SPT for his views on this and would let members know the outcome at the February meeting.
- 5.4. MJR said that a practice direction may be the best way to deal with this.

AP/58/19: To ask the SPT for his views on the *Dring* case – PR

AP/59/19: To get an update from each Chamber of their view in light of the *Dring* case – CU

6. **Updates regarding the next Rules Statutory Instrument (SI)**

- 6.1. VP and SOR said that the next Rules SI would be laid in May.
- 6.2. Members agreed that the following minor amendments should be included in the May SI:
 - Deleting from the GRC Rules a reference to the Case Tribunals (England) Regulations 2008;
 - Making the amendment to rule 12(3)(a) of the Tribunal Procedure (First-tier Tribunal) Health and Social Care Chamber) Rules referred to at para 3.3 above;

- Deleting wording which will be made redundant by the commencement of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018;
- Deleting references to the Fast Track Rules, and;
- Updating references to the Immigration (European Economic Area) Regulations 2016.

Next Meeting: 12 February 2020