

Tribunal Procedure Committee: Minutes: Thursday 12 March 2020

Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square

Present

Mr Justice Peter Roth (PR)
Michael Reed (MJR)
Mark Loveday (ML)
Donald Ferguson (DF) (by phone)
Jayam Dalal (JD)
Shane O'Reilly (SoR)
Rebecca Lewis (RL)
Vijay Parkash (VP)
Adam Smith (AS)

Guest

Phillip Brook-Smith (PBS)

Apologies

Louis Kopieczek (LK)
Tim Fagg (TF)
Christine Martin (CM)
Gabriella Bettiga (GB)

Minutes

1. Preliminary matters

- 1.1. PR mentioned the Lord Chancellor's (LC) appointment process. There are two vacancies. The sift reduced the applicants to three. Two have been found 'appointable', and their names have been submitted to the LC. It is hoped that the appointments would be announced by the next scheduled meeting.
- 1.2. VP informed the TPC that Parliamentary Branch have confirmed the TPC SI laying date as 30 June 2020.
- 1.3. The draft minutes of the TPC meeting held on 12 February 2020 were amended and approved.

Matters Arising

- 1.4. RL as the representative of the SPT was briefed about the Court Reform presentation in respect of the First-tier Tribunal Immigration and Asylum Chamber that took place on 12 February. There was discussion of the issues raised in relation to Legal Aid.
- 1.5. VP said that he had spoken to the Legal Aid team, who were to host a workshop with HMCTS officials to look into these issues.

Action log

- 1.6. The TPC action log was updated.

2. IAC Sub-group

- 2.1. MJR has started work on the paper for the May 2020 meeting, following clarification from the IAC Reform team at the 12 February 2020 TPC meeting regarding the current position for the digital IAC online appeals system and how legal aid payments would be paid under the existing system and the new envisaged regime. There may be a minor amendment to the judicial review rules in the Upper Tribunal.
- 2.2. It was agreed that when the dual system would eventually be removed, a fresh TPC consultation will have to take place.

3. HSW Sub-group

- 3.1. The Mental Health Tribunal (MHT) consultation has gone out. 49 replies have been received already. The deadline is 7th April 2020, so the replies will be analysed by CM and HSW sub-group thereafter.
- 3.2. PR circulated an article raising concerns about the secrecy of MHT proceedings. The author raised concerns of Victims not attending hearings, or lacking the ability to give evidence. It highlighted cases where detained persons had been released and proceeded to cause serious harm to family members.
- 3.3. SoR said that the victims' policy team at the MOJ has looked at the issue of victim personal statements in the past year, and pointed to the risk that some of the contents of such a statement might be irrelevant to the question that the MHT was obliged to consider under the Mental Health Act 1983.
- 3.4. PBS stated he had read further on this subject. Chamber Presidents have been involved in the past in these issues, but having regard to the statutory tests, it was considered that inclusion of victims was not necessary. The author of the article is a member of the Victims' Panel; he has a substantial background in this area. We should go back to the Chamber President of the Health, Education and Social Care Chamber (HESC) of the First-tier Tribunal to further consider this point.
- 3.5. It was agreed that there are a lot of distinct points and suggested that the HSW sub-group should look at the article, contact the Chamber President and produce a report for the next meeting.
- 3.6. SoR explained that victims have a limited right to make representations about conditions to be attached to a conditional discharge. DF mentioned the difference in Scotland, where if the victims want to say something, then the hearing convenes to hear it without the patient being present. There will not always be a direct relevance for family/victim representations; however, it can be a factor in determining ongoing risk to specific people. The TPC agreed that this is an area that should be looked at.
- 3.7. DF stated that this is not in the rules and is instead set out in the Mental Health (Care and Treatment) (Scotland) Act 2003. There was originally no room for victim's views at all, but this progressed with guidance from the Scottish Government.

- 3.8. DF mentioned that the process is structured differently in Scotland, but less so for restricted patients. The statutory grounds should not be too different, however. A restricted patient has usually committed a serious crime. They go through a process towards conditional discharge in the community. Eventually, there can be an absolute discharge. In Scotland, if the index offence was, eg, homicide, then this process takes many years. The article makes points about twists and turns that are almost never seen in Scotland. The victims and victims' families have a right to be heard but this is regarded as sufficient by the author.
- 3.9. PBS mentioned that a statement regarding conditions can be heard by the tribunal, but this is disputed by the author.
- 3.10. DF mentioned that conditions imposed for release could include being excluded from entire areas. Victims would know to report to the police if the patient was in the area.

AP/04/20 - HSW subgroup to produce a report. HSW sub-group to initially draw up a list of questions to be directed to the Chamber President – CM & HSW Sub-group

AP/05/20 – To write and thank the author of the paper, and let him know that the TPC are considering his query – PR

AP/06/20 - Write to the Victims Commissioner for observations (After writing to HESC Chamber President) – HSW Sub-group

4. GTCL Sub-group

- 4.1. PBS introduced the draft consultation paper which members reviewed. Proposal regards amending GRC rule 17 to deal with what happens when a decision under challenge is withdrawn. The draft consultation provides possible amended wording to the rule and reasons therefor. SPT is firmly in favour of the rule change. It was agreed that TPC consultation will last for 12 weeks.
- 4.2. PBS mentioned the Electronic Communications Code. This relates to communications masts on property. This is currently resolved in UT Lands Chamber. It is thought that more straightforward cases could be transferred to the FtT. The proposal is to allow the UT to transfer cases down. An adjustment would be needed to the Property Chamber rules to allow costs to be awarded. It was noted that no point of principle appears to arise. The cases involve solicitors, counsel and sometimes silks, so there is an expectation that costs recovery will be available.

AP/07/20 – Research into potential for consultation on costs rule amendment - ML and PBS

- 4.3. MJR raised the potential of a more generic rule to allow the UT discretion on costs when transferring a case to the FtT, as opposed to only in the cases of the Electronic Communications Code. A wide rule might be more desirable because there are more movements between jurisdictions due to the nature of the disputes.

5. Costs Sub-group

- 5.1. Nothing to report.

6. Confidentiality Sub-group

- 6.1. To be discussed at May 2020 meeting.

7. Overview Sub-group

- 7.1. The TPC work programme was updated.

8. AOB

- 8.1. Regarding Coronavirus, PR had received a note regarding contingency plans to be made for tribunals if the COVID-19 crisis escalates. This covered issues such as staffing.
- 8.2. RL mentioned that Catherine Yallop has been looking into options for the Senior President of Tribunals (SPT) to issue a Practice Direction to be issued on an emergency basis i.e. discretion to use fewer tribunal members for a decision than normal. SPT may ask TPC to look at rules that could be amended to change ways of working in tribunals.
- 8.3. RL mentioned that the SPT might have to request the TPC to make amendments to the rules at short notice. Members discussed legislative procedure for emergency legislation.

Next Meeting: Thursday 08 April 2020