

Tribunal Procedure Committee (TPC): Telephone Meeting Minutes: Friday 27 March 2020 @ 4.30pm

(By Teleconference)

Present

(Mr Justice) Peter Roth (PR)
Michael Reed (MJR)
Donald Ferguson (DF)
Tim Fagg (TF)
Christine Martin (CM)
Jayam Dalal (JD)
Mark Loveday (ML)
Shane O'Reilly (SoR)
Rebecca Lewis (RL)
Vijay Parkash (VP)

Guest

Philip Brook Smith, QC (PBS)

Apologies

Gabriella Bettiga (GB)
Catherine Yallop (CY)

Minutes

- 1.1 PR thanked the TPC members for agreeing to participate in a third teleconference following the 24 March and 26 March teleconferences. The objective of this teleconference was to discuss the latest draft of the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 statutory instrument (SI) that was circulated by SoR (after the 26 March TPC teleconference). The aim was to agree the final text/wording for the SI to enable SoR to commence the mandatory legal checks before the SI was laid before Parliament.
- 1.2 PR said he had been informed by the Senior President of Tribunals (SPT) that a proposed Practice Direction (PD) setting out the contingency arrangements for remote hearings in the First-Tier Tribunal (FtT) and the Upper Tribunal (UT) (applied to all jurisdictions) to deal with the immediate impact of the Covid-19 pandemic was not going to be introduced since the TPC SI was expected now to be laid before Parliament imminently. The SPT's PD had been planned as a temporary measure depending on the timeline for the new TPC rules coming into force.
- 1.3 PR said that following the 26 March telephone meeting, the SPT's office had obtained the tribunal Chamber Presidents' views in respect of the draft Rules. Several of the Chamber Presidents had enquired about further clarification or a definition of a 'media representative' and whether the term was similar to the term used in the PD 51Y covering 'Video or Audio Hearings during Coronavirus Pandemic' issued by the Master of the Rolls on 25 March 2020. PR said that he believed that the SPT and the President of the Queen's Bench Division were considering the issue of guidance for how the term should be interpreted.

- 1.4 The TPC considered that to attempt a definition of the term 'media representative' in the rules would be very difficult. It adhered to its previous view that, subject to any forthcoming guidance, this should be left to the judgement of the individual tribunal.
- 1.5 The TPC agreed the wording/text for the new rule amendment in respect of private hearings, i.e., to allow the FtT and UT to direct a remote hearing to take place privately, if it is not practicable for that hearing to be broadcasted to the public in a Court or Tribunal building. If a hearing does take privately, it will be recorded and any person may access that recording afterwards.
- 1.6 As for the comments received from the Chamber Presidents in respect to how the proposed new rules and SPT PD would work in practice, by modifying the current administrative process to accommodate remote hearings held in private, that was not a matter for the TPC as it did not concern the rules themselves. The TPC agreed that the SPT's office and HMCTS were best placed to progress any technical matters to ensure the necessary hardware and software was available for the recording of private hearings.
- 1.7 The TPC discussed whether the word 'urgent' or 'necessary' should be included in the rule as a condition for the FtT/UT's power to make a decision on the papers without the parties' consent. The TPC noted that the term 'urgent' had been consistently used in papers from the SPT's office and it was used in the direction letter sent by the Lord Chancellor (LC), so that this was the appropriate term.
- 1.8 PR asked SoR whether the SI should make reference to the TPC being directed by the LC. SoR said that this would be included in the explanatory note that would accompany the SI.
- 1.9 JD asked VP if the TPC webpage could be updated to include the SI and an explanation why the TPC had made the SI during the COVID-19 crisis. VP said he would discuss the matter with his manager and the MoJ Web Team.

AP/16/20: – To provide an explanation for the TPC webpage that details the background for the TPC making the TPC Coronavirus SI - VP.

- 1.10 SoR said he expected to circulate the SI following legal checks on 31 May 2020.
- 1.11 PR thanked the TPC members and SoR for their time and efforts to finalise the SI during the crisis.