

Via Microsoft Teams

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith QC (PBS)
Michael Reed (MJR)
Jayam Dalal (JD)
Christine Martin (CM)
Donald Ferguson (DF)
Mark Loveday (ML)
Susan Humble (SH)
Shane O'Reilly (SoR)
Rebecca Lewis (RL)
Vijay Parkash (VP)
Rebecca Fowler (RF)

Apologies

Tim Fagg (TF)
Gabriella Bettiga (GB)
Catherine Yallop (CY)
Louis Kopieczek (LK)

Minutes

1. Introductory matters

1.1 Apologies were received from: TF, LK and CY.

1.2 The draft minutes of the TPC meeting held on 05 November 2020 were approved subject to minor amendments.

AP/73/20: To amend the 05 November 2020 TPC meeting minutes to reflect comments received from TPC Members. –TPC Secretariat

1.3 PR confirmed that the reply from the TPC on possible changes to the First-tier Tribunal (General Regulatory Chamber) Rules 2009 in connection with withdrawals of appeals was published on 24 November 2020.

1.4 PR informed the TPC that he had recently met with the Senior President of Tribunals (SPT). He had raised the matter of the judgment '*F v Responsible Body of School W*' (the topic had been discussed by the TPC in former meetings). The SPT agreed with the TPC's recommendation that the current (First-tier Tribunal) Special Educational Needs and Disability practice direction (PD) should be revised to better clarify to users the Tribunal's approach to admitting and 'registration' of disability discrimination claims.

1.5 PR said that he had also discussed with the SPT the MoJ's consideration of putting forward proposals to take away the FtT PTA stage, of which the TPC had been informed by SoR. SoR said that the proposal was still being considered and agreed to provide a further update at the next scheduled TPC meeting. The TPC agreed to wait and see what further developments transpired before reconsidering the suggestion of conferring a new power on judges of the First-tier Tribunal to certify applications on the papers for permission to appeal to the Upper Tribunal as being totally without merit.

AP/74/20: To provide an update about the MoJ streamlining proposal at the next scheduled TPC meeting. – SoR

1.6 MJR said he had seen that the MoJ had recently launched a public consultation proposing reforms to the present arrangements for obtaining PTA for second statutory appeals and judicial reviews from the UT to the Court of Appeal (CoA). VP summarised the CoA reform proposals as he had prepared the

consultation paper. VP would send a link to the TPC following the meeting that would direct them to the consultation page on GOV.UK.

TPC Action Log

1.7 The TPC action log had been updated.

2. Immigration & Asylum Chambers Sub-group (IACSG)

Consultation on Tribunal Procedure Rules (FtT (IAC) Rules 2014 & Upper Tribunal Rules 2008) in relation to digital online reform changes to current IAC administrative processes

2.1 MJR summarised the amendments that he had made to the draft IACSG consultation paper following the topic being discussed by the TPC at the 05 November TPC meeting (at which time the TPC had agreed the rule changes that would be consulted upon). The TPC agreed for a 12 weeks consultation period.

2.2 The TPC discussed the structure of the draft consultation paper and agreed that it would be helpful for the IACSG to seek LK's input/observations to the recent revisions.

2.3 The TPC agreed to convene in early January 2021 for a special TPC meeting to sign off the IACSG consultation paper. The TPC Secretary would canvass the TPC members for their availability during week commencing 04 January 2021 to identify a suitable meeting date agreeable to all attendees.

2.4 MJR would send a copy of the final draft consultation paper to the IAC Reform team members for their comments prior to the January TPC meeting.

AP/75/20: To arrange a TPC meeting during w/c 04 January 2021. –TPC Secretariat

Immigration Act 2020

2.5 SoR summarised his note detailing some consequential amendments that have been made to the (FtT) IAC and UT Rules by a Home Office statutory instrument, along with versions of the consolidated rules marked up with those amendments.

3. HSW Sub-group (HSWSG)

3.1 CM confirmed that there were no urgent issues requiring the TPC's immediate attention.

4. GTCL Sub-group (GTCLSG)

Judgment: *Devani v SSHD* [2020]

4.1 PBS said that the GTCLSG had prepared a first draft consultation paper that covered the issues in respect of the *Devani* judgment, including the practical operation of rule 24 of the Upper Tribunal Rules in the various UT chambers. He had canvassed the views of the UT Chamber Presidents and was awaiting their comments before revisiting the draft consultation paper. The TPC agreed to the GTCLSG's proposed approach to structure the draft paper.

Correspondence received

4.2 The TPC discussed questions received by the TPC Secretariat from a member of the public who was also a respondent to the GTCLSG consultation on withdrawal of appeals. The TPC agreed for a note to be prepared in reply to the issues raised in the correspondence.

5. Costs Sub-group

5.1 ML confirmed that there were no urgent issues requiring the TPC's immediate attention.

6. Confidentiality Sub-group

Dring Case and access to documents

6.1 RL reported that the work being led by the SPT's Office on the draft PDs to deal with requests for access to recordings of hearings and to deal with requests from third parties for documents and recordings was still ongoing.

6.2 PR asked RL to circulate the draft PDs to the TPC out of committee. The topic would be then discussed by the TPC at the planned January 2021 TPC meeting.

AP/76/20: To share the draft confidentiality practice directions with the TPC members out of committee. –RL

7. Overview Sub-group (OSG)

TPC Work Programme

7.1 The TPC work programme had been updated and circulated as at 25 November 2020.

7.2 It was agreed that the TPC work programme should be updated as follows to amend/remove:

Section 1 of the TPC Work Programme

- Remove entry 3: (Judgment: *F v Responsible Body of School W*).

Watching Brief of the TPC Work Programme

- Add potential transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal.

AP/77/20: To amend the TPC Work programme to reflect comments received from TPC Members. - TPC Secretariat

8. AOB

Employment Tribunals

The transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal

8.1 SoR reported that the legislative and policy work to transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal was still ongoing. A clause was expected to be added in a Policing, Violence, Justice and Sentencing Bill, to be introduced in January 2021.

8.2 PR asked SoR to provide a further progress update on the latest developments regarding the MoJ's plans to transfer of responsibility for the making of Procedure Rules to the TPC in the Employment Tribunals and Employment Appeal Tribunal at the next TPC meeting.

AP/78/20: To provide a progress update on the transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal. - SoR

Contempt in the face of a tribunal

8.3 RL said she had discussed with SoR and VP about sharing a legal note prepared by Nimali de Silva for the TPC in 2016 (in her capacity as the legal advisor to the TPC) on the jurisdictional basis for a tribunal to act on contempt in its face with the Judicial Working Group (JWG). The 'contempt' topic was being revisited by a JWG who were developing guidance on contempt in the face of the court (including tribunals).

8.4 RL asked the TPC for permission to share the note with the JWG. The TPC agreed for the legal advice to be shared with the JWG.

Next Meeting: TBC early January 2021, 9.30am