

Via Microsoft Teams

Present

(Mr Justice) Peter Roth (PR)
Philip Brook Smith QC (PBS)
Christine Martin (CM)
Donald Ferguson (DF)
Mark Loveday (ML)
Tim Fagg (TF)
Gabriella Bettiga (GB)
Susan Humble (SH)
Shane O'Reilly (SoR)
Rebecca Lewis (RL)
Vijay Parkash (VP)
Liam Halewood (LH)

Guests

Michael Reed (MJR)
Sue Pitt (SP)

Apologies

Jayam Dalal (JD)
Catherine Yallop (CY)

Minutes

1. Introductory matters

1.1 Apologies were received from: JD and CY.

1.2 PR welcomed SP and LH to their inaugural TPC meeting. SP was covering the role of the UT (IAC) Liaison Judge to the TPC on behalf of Judge Louis Kopieczek (while he was provisionally carrying out the role of the Acting Principal Resident Judge at Field House UT (IAC)). LH had joined the TPC Secretariat team.

1.3 MJR was attending the 04 February TPC meeting in the capacity as a guest, since his current term as a TPC member ended on 31 January 2021. PR thanked MJR for his co-operation in continuing to support the TPC in finalising the IACSG consultation on Tribunal Procedure Rules in relation to digital online reform changes to current Immigration and Asylum (IAC) administrative processes.

Matters arising

Senior President of Tribunal's (SPT) Office (changing advisory roles)

1.4 PR informed the attendees that RL and CL would be relinquishing their shared role as the SPT's representatives on the TPC as she and CY were changing their legal jobs in Judicial Office (JO). RL said that CY and her current job roles in the SPT's Office would be ending on 05 March 2021. They are both joining the Chief Coroner's Office to perform a similar legal advisory role.

1.5 PR announced that SoR would be leaving his role as the TPC Legal Adviser in March. By coincidence he is replacing RL and CY as the new Legal Adviser to the SPT. Therefore, SoR will continue to attend future TPC meetings, albeit in a different capacity. SoR said that the Government Legal Department is working to identify his replacement as the TPC Legal Adviser and that his colleague Alasdair Wallace would be attending future TPC meetings on an interim basis.

Lord Chief Justice appointments

1.6 PR stated that JD would not be seeking reappointment on the TPC following her present third term ending on 30 April 2021. JD was a Lord Chief Justice appointment on the TPC. The TPC Secretariat were discussing the matter with JO and had commissioned an expression of interest (EOI) competition

to identify her successor. It was expected that the EOI competition would be launched during mid-February and would run for two weeks.

Transfer of responsibility for the making of Procedure Rules in the Employment Tribunals and Employment Appeal Tribunal

1.7 PR provided an update on the Ministry of Justice's (MoJ) proposal to transfer responsibility for the making of procedural rules in the Employment Tribunals and Employment Appeal Tribunal. As previously reported at the 03 December 2020 TPC meeting, the MoJ was aiming to include the potential related TPC measures in a forthcoming MoJ sponsored Bill to be introduced in early 2021. PR said that he had been informed that the MoJ had been unable to include the potential TPC measures in the Bill. The MoJ was actively looking at alternative legislative bills to ensure the preparedness for the introduction of the TPC measures being delivered in the foreseeable future. TPC members would be kept informed of any new developments.

1.8 SoR reported that the MoJ's proposal to limit permission to appeal (PTA) applications in the First-tier Tribunal (FtT) was not being taken forward. As previously agreed, the TPC decided to revisit a recent judicial suggestion of conferring a new power on FtT judges to certify such PTA applications on the papers as being totally without merit, now that the MoJ had indicated their policy intention.

1.9 The draft minutes of the TPC meeting held on 03 December 2020 were approved subject to minor amendments.

AP/01/21: To amend the 03 December 2020 TPC meeting minutes to reflect comments received from TPC Members. –TPC Secretariat

TPC Action Log

1.10 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 new revisions that he had made to the latest version of the draft IACSG consultation paper and accompanying draft rules. Both papers incorporated the most recent IACSG's comments (following the topic being discussed at the 03 December 2020 TPC meeting).

2.2 After a full discussion the TPC signed off the presented draft consultation paper, subject to agreed amendments. MJR said he would re-organise the segment in respect to the potential UT rule changes.

2.3 PR asked the TPC members to send any closing comments to MJR and copy in the other IACSG members. PR thanked MJR and the IACSG for their hard work during the exercise to settle the IACSG consultation paper. It was agreed that the final version of the TPC consultation paper should ideally be published in February. The TPC Secretariat would make the necessary arrangements with No.10 and the MoJ Externals Communication team to secure a grid-slot to publish the consultation reply on the TPC website page.

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 had prepared a modified draft consultation paper on the topic of potentially amending UT rule 24 in light of the *Devani* judgment. The revised draft included a new section to factor in recent developments arising from another recent Court of Appeal (CoA) decision that had been handed down in respect to this matter. PBS explained that recent tax-related multi decision PTA cases also called into question the procedure as to the need for a respondent to seek and gain its own PTA, if it wished to challenge a decision (part of a decision) on which it had lost in the FtT.

4.2 PBS outlined his position note on the topic of the UT rule 24 consultation, which covered:

- the GTCLSG thinking of developing themes in respect to PTA and

- the possible implications of the CoA decision in *SSE Generation Limited v HMRC*.

4.3 PBS provided his observations on the significant issues raised in the *SSE* judgment handed down on the 01 February 2021, including the reference to Civil Procedure Rule 52.13 (ability to ask the appellate court for PTA in a 'respondent's notice') and the different regime for tribunals that included the FtT Rules, UT Rules and the Tribunal, Courts and Enforcement Act 2007.

4.4 PBS said he would continue to discuss the matter with the UT Chamber Presidents to ascertain their views. A range of issues should be covered as key topics for consideration in the UT rule 24 consultation. The TPC agreed that the UT rule 24 consultation topic should be revisited at the March or April TPC meeting, subject to PBS's capacity/ time constraints.

AP/02/21: To include the agenda item 'UT rule 24 consultation' for the March or April 2021 TPC meetings. – TPC Secretariat

5. Costs Sub-group

5.1 ML confirmed that there were no pressing new 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 practice directions (PD) to deal with requests for access to recordings of hearings and requests from third parties for documents and recordings was currently on hold due to another judicial project being prioritised by the SPT's Office. She was unable to provide a definite deadline/target date for the work to be completed by the SPT's Office but reassured the TPC that this work would be taken forward by her replacement.

7. Tribunal Procedure (Amendment) Rules 2021 Exercise

7.1 The TPC discussed the note prepared by SoR that summarised the rule amendments to be included in the upcoming Tribunal Procedure (Amendment) Rules 2021 statutory instrument (SI) package:

- The Tribunal Procedure (Upper Tribunal) Rules 2008 to be amended to delete some wording which was made redundant by the quashing of the detained fast track rules;
- The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 to be amended to enable the General Regulatory Chamber of the First-tier Tribunal to dispose an appeal administratively upon the decision under appeal being revoked/withdrawn by the respondent involved in the case, and;
- The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to be amended to allow the Property Chamber of the First-tier Tribunal to award costs in cases under Schedule 3A to the Communications Act 2003 'the Electronic Communications Code' that have been transferred to it from the Upper Tribunal, including costs that were incurred in the Upper Tribunal before the transfer.

7.2 ML suggested rewording draft rule 4 as presented. The drafting suggestion was accepted by the TPC. SoR would send a new draft of the Rules SI for the TPC's consideration and following any final legal checks the final checked version of the Rules would be circulated for signing by the TPC in the first week of March 2021.

7.3 The final approved Tribunal Procedure (Amendment) Rules 2021 statutory instrument was due to be laid in Parliament on 16 March 2021 March so as to come into force on 6 April 2021.

AP/03/21: Any comments to the draft Tribunal Procedure (Amendment) Rules 2021 statutory instrument to be sent to SoR. –TPC Members

8. Overview Sub-group (OSG)

TPC Work Programme

8.1 The TPC work programme had been updated and circulated as at 27 January 2021.

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

Section 1 of the TPC Work Programme

Remove entry 6: (Removing material from publication decisions which might otherwise be published, or removing 'detrimental material' from such decisions).

Watching Brief of the TPC Work Programme

- Transfer entry 3 ('Dring' case- implications in respect to access of tribunal paper/documents and recordings raised by Supreme Court) to Section 1 (TPC Work Programme).
- Update entry 4 (potential transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal) to reflect latest legislative position.

AP/04/21: To amend the TPC Work programme to reflect comments received from TPC Members. - TPC Secretariat

9. AOB

Litigation Friends

9.1 PR informed the TPC that Tony Allman (TA) would be retiring from the Civil Service on 11 February 2021. TA was the lead MoJ policy official tasked with considering the 'Litigation Friends' topic. He had prepared a policy paper that had been shared with the TPC to assist with any future TPC exercise to consider whether any, and if so, what rule changes may be necessary to address the appointment of 'Litigation Friends'.

9.2 PR said he would raise the matter of TA's impending retirement with the SPT to make sure the 'Litigation Friends' work was being taken forward by the appropriate department once the policy approach had been settled by MoJ.

Tony Allman's retirement

9.3 PR and the TPC members wanted to formally note their appreciations and thanks to TA for his help and time as the TPC Secretary and to wish him a satisfying and lengthy retirement.

01 April 2021 TPC meeting

9.4 PR asked the TPC members if they had any concerns if the April TPC meeting was rescheduled from the 01 April to 08 April. The TPC agreed to the new 08 April TPC meeting date.

AP/05/21: To reschedule the April 2021 TPC meeting date. - TPC Secretariat

Next Meeting: 08 April 2021, 9.30am