

Via Microsoft Teams

Present

(Mr Justice) Peter Roth (PR)
Jayam Dalal (JD)
Philip Brook Smith QC (PBS)
Christine Martin (CM)
Donald Ferguson (DF)
Mark Loveday (ML)
Susan Humble (SH)
Alasdair Wallace (AW)
Shane O'Reilly (SoR)
Vijay Parkash (VP)
Liam Halewood (LH)

Guests

Sue Pitt (SP)

Apologies

Tim Fagg (TF)
Gabriella Bettiga (GB)
Michael Reed (MJR)

Minutes

1. Introductory matters

1.1 Apologies were received from: GB, TF and MJR.

1.2 PR welcomed AW, the head of the Civil, Family, Courts and Tribunals team in MoJ Legal Advisers to his first TPC meeting. AW was covering the role of the legal adviser to the TPC for an interim period until a Government Legal Department lawyer was appointed. PR greeted SoR who was attending the meeting in his new capacity as the legal adviser to the Senior President of Tribunals (SPT) (following the departure of Rebecca Lewis and Catherine Yallop who have moved to new legal roles in the Chief Coroner's Office).

Matters arising

Lord Chancellor's appointments

1.3 PR informed the attendees that GB had been reappointed for a second term on the TPC. Her new term would commence on 2 May 2021.

Lord Chief Justice appointments

1.4 PR confirmed that the expression of interest competition exercise conducted by Judicial Office (JO) had closed on 19 March 2021. 7 applications had been received from tribunal judges and members. The sifting panel had invited 2 applicants for a formal interview following the exclusion of applicants that did not meet the set criteria, i.e a member of either the First-tier Tribunal (FtT) or Upper Tribunal (UT) who is not a judge. The interviews were expected to be held during late April 2021.

1.5 PR said that the Lord Chief Justice's private office were working with their counterparts in the SPT's office to extend MJR's appointment for an additional term.

1.6 The draft minutes of the TPC meeting held on 03 February 2021 were approved subject to minor amendments.

AP/07/21: To amend the 03 February 2021 TPC meeting minutes to reflect comments received from TPC Members. –TPC Secretariat

Litigation Friends

1.7 JD asked about the position for the ongoing policy exercise in respect to the 'Litigation Friends' topic. She enquired whether a policy replacement had been found to take this work forward following Tony Allman's retirement. SoR said that he was not aware who within the SPT's Office/MoJ had been selected to proceed with the Litigation Friends work. PR agreed to raise the matter with the SPT to safeguard the continuity of the policy work to its completion, given that the matter had been highlighted as a significant concern in a number of High Court cases with the presiding senior judiciary recommending in their judgments for the government to take remedial action.

TPC Action Log

1.8 The TPC action log had been updated.

2. Costs Sub-group

2.1 ML confirmed that there were no pressing new issues requiring the TPC's immediate attention.

3. 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

3.1 In MJR's absence, PR summarised the new revisions that MJR had made to the updated draft IACSG consultation paper (circulated on 06 April 2021). The updated draft incorporated the suggested changes by TPC members raised at the 04 February TPC meeting.

The three substantial changes, highlighted by MJR in the updated document were:

- Expanding the explanation of potential judicial involvement following a caseworker appointment;
- Presenting some further arguments in respect of deemed sending / receipt and
- Including a definition of 'business day' in the postal rule amendment proposal to the UT rules.

3.2 PR added that MJR had commented that the first two topics were the substantive changes that he wanted the TPC to consider and sign off at the meeting. The 'business day' definition was raised by PBS for the TPC to discuss and to determine whether it should be in the relevant rule itself or in the interpretation section. SoR highlighted that a definition of 'working day' already existed in the current IAC (FtT) procedure rules. The TPC agreed that references to 'business day' throughout the paper should be removed and replaced with 'working day'.

3.3 The TPC signed off the presented draft consultation paper, subject to agreed amendments and the correction of typos that PBS had identified.

3.4 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 on the TPC website page.

AP/08/21: To send the final recommended version of the draft IAC consultation paper to Michael Reed for his validation prior to the TPC Secretariat securing a grid-slot for publication. –TPC Secretariat

3.5 SP asked if the provision for 'working day' was consistent across all the various set of tribunal chamber rules. The attendees were unable to confirm if this was the case. PR suggested that it would be worthwhile to check the other tribunal chamber rules to make sure there was alignment in respect of the definition for 'working day'. PR asked AW if he could take this matter forward by performing a general review and, if needed, correct any anomalies.

AP/09/21: To review the current set of procedure rules to make sure there is a consistent approach for the definition of 'working day'. –AW

4. HSW Sub-group (HSWSG)

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

5. GTCL Sub-group (GTCLSG)

Judgments: *Devani v SSHD* [2020] & *SSE Generation limited v HMRC* [2021]

- 5.1 PBS provided an update to the GTCLSG's continuing work to prepare a draft consultation paper on the potential amendment of UT rule 24 in light of the Court of Appeal (CoA) judgments in *Devani* and *SSE Generation Ltd v HMRC*. The latest draft had an expanded section on the *SSE* case under a heading 'preliminary observations'.
- 5.2 PBS informed the attendees that he had contacted the UT Chamber Presidents and provided them with an updated draft. The updated draft detailed the different options to address the issues highlighted in the CoA judgments that may require amendments to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The UT Chamber Presidents and other designated senior UT judiciary had provided their comments/observations for the potential topics to be covered in the consultation, this included matters of jurisdiction as opposed to procedure, and Rule 7 of the UT Rules.
- 5.3 ML suggested that consideration should also be given in the draft consultation to any implications for the (UT) Lands Chamber and the current (UT) Land Chamber Rules resulting from the rule amendment proposal. ML agreed to contact the relevant (UT) Lands Chamber judges and share the draft consultation paper to obtain their view/comments.
- 5.4 PBS said he would discuss with AW indicative drafting as proposed to be included in the consultation paper for the different options. The TPC agreed for an eight weeks consultation period.
- 5.5 The TPC agreed that any further comments to the revised draft should be sent to PBS with a view for the TPC to signing off the consultation paper at the 06 May 2021 meeting.

AP/10/21: To send any further comments in respect of the draft consultation paper to PBS. – TPC Members

Oral renewal hearings in UT for permission to appeal in cases considered totally without merit

- 5.6 VP confirmed that it was no longer the MoJ policy intention to pursue the proposed streamlining work to remove the FtT permission to appeal (PTA) stage. In light of this, the TPC agreed they would revisit the judicial proposal for a rule amendment to Rule 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The proposed rule change would confer a power on judges to certify applications on the papers for PTA to the UT (from the FtT)) as totally without merit. It would mean applicants could not renew their application at an oral hearing.
- 5.7 PBS said the GTCLSG would consider what work was needed to progress this work and that he would consult the UT Chamber Presidents. The TPC agreed in principle that a public consultation would be held on the proposal to change Rule 22.

Telecommunication Infrastructure Act 2021

- PBS said that the Telecommunication Infrastructure Act 2021 had received royal assent on 15 March 2021. The main provisions were expected to come into force during mid-2021. The Act amended the Electronic Communications Code to make it easier for operators to provide faster broadband in large residential buildings. He expected that the GTCLSG would consider whether any changes to the present Property Chamber Rules would be necessary as a result of the provisions being enacted by Order pursuant to the Act.

6. Confidentiality Sub-group

Dring Case and access to documents

- 6.1 SoR reported that there were no new developments in respect to the work being led by the SPT's Office on the draft practice direction to deal with requests for access to recordings of hearings and requests from third parties for documents and recordings. The TPC agreed that this matter did not require its involvement to progress the matter.

7. Overview Sub-group (OSG)

TPC Work Programme

7.1 The TPC work programme had been updated and circulated on the 28 April 2021.

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

Section 1 of the TPC Work Programme

- Tidy up entry 1: (IAC Rules in the FtT and UT) to reflect the latest position for the column detailing comments/latest position in respect of the IAC consultation.
- Remove entry 2: (Costs in tribunals) and transfer to section 3 (Watching Brief).
- Remove entry 3: (Confidentiality) and transfer to section 3 (Watching Brief).
- Remove entry 4: (Rule changes in the General Regulatory Chamber (GRC) (FtT))
- Update entry 5: (Judgment: *Devani v SSHD*) to reflect comments from TPC members.
- Add new entry: Telecommunication Infrastructure Act 2021

AP/11/21: To amend the TPC Work programme to reflect comments received from TPC Members. - TPC Secretariat

8. AOB

8.1 As this was the last TPC meeting which JD attended before her term on the TPC ended on 30 April 2021, PR and PBS thanked her for her unwavering commitment, energy and valuable contribution during her three terms on the TPC. JD had played a vital role in ensuring that justice in tribunals was delivered and provided an important non-lawyer's perspective for the making and reviewing of rules. The members all wished JD well and continued good health for the future.

Next Meeting: 06 May 2021, 9.30am