

Tribunal Procedure Committee (TPC): Online Meeting Minutes: Friday 07 May 2021

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)
Alasdair Wallace (AW)
Vijay Parkash (VP)
Liam Halewood (LH)

Guests

Sue Pitt (SP)
Michael Reed (MJR)

Apologies

Susan Humble (SH)
Shane O'Reilly (SoR)

Minutes

1. Introductory matters

1.1 Apologies were received from: SH and SoR.

Matters arising

Lord Chief Justice appointments

1.2 PR confirmed that the interviews for the expression of interest exercise conducted by Judicial Office (JO) had taken place on 30 April 2021. He hoped that the successful candidate would be able to attend the July meeting, if the required judicial/ministerial engagement had finished.

1.3 PR said that he had not received any new information from JO in respect of MJR's reappointment to the TPC for an additional term. He would contact SoR for an update on MJR's reappointment.

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

1.4 PR said that he had been informed by VP that the legislative measures to transfer rule-making powers for the Employment Tribunal and the Employment Appeal Tribunal to the TPC were due to be included in the upcoming Judicial Review Bill 2021.

1.5 VP said that he would keep the TPC updated with the Bill's progress during its forthcoming legislative passage in Parliament.

1.6 The draft minutes of the TPC meeting held on 08 April 2021 were approved subject to minor amendments.

**AP/12/21: To amend the 08 April 2021 TPC meeting minutes to reflect comments received from TPC Members.
-TPC Secretariat**

TPC Action Log

1.7 The TPC action log had been updated.

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

Possible changes to the Immigration and Asylum Rules in relation to tribunal reform

2.1 MJR informed the attendees that the TPC consultation on potential changes to the current Immigration and Asylum (IAC) Rules in relation to tribunal digital reform was launched on 21 April and was due to close on 14 July 2021.

2.2 MJR said that he had received an enquiry from the Home Office (HO), via VP in respect to whether there was a need to make a change to the current IAC Rules for the Tribunal to treat an appeal as withdrawn, following an appellant's death. The query had surfaced due to a recent First-tier Tribunal (FtT) IAC judgment in respect to a removed appellant who had died outside the UK while his out of country appeal was pending. The Tribunal had agreed with the HO's position that the appeal should not continue following the appellant's death. MJR said the IACSG would consider the matter and return to the TPC at the 03 June TPC meeting with a progress update.

AP/13/21: To add the topic 'application of rule 17 of the IAC rules (withdrawals)' to the 03 June TPC meeting agenda. –TPC Secretariat

Supreme Court case- G (Appellant) v G (Respondent)

2.3 CM informed the attendees about a recent Child Abduction return appeal case heard in the UK Supreme Court (SC)- *G (Appellant) v G (Respondent)* (case id: UKSC 2020/0191). The appeal concerned the relationship of the 1980 Hague Convention (HC) to asylum law. CM explained that the 1980 HC is an international agreement incorporated into UK law, which enables the prompt return of a wrongfully abducted child to his or her country of habitual residence. The issue in the case was whether *G (Appellant)* was protected from refoulement surrounding the forcible return of refugees or asylum seekers to a country where they are liable to be subjected to persecution, as a result of being listed as a dependant on her mother's asylum application.

2.4 The area of potential interest to the TPC was how the HC proceedings and the asylum claim should be coordinated in the Tribunal, as HC-related cases had shorter statutory time limits for their decisions to be promulgated/announced in comparison to asylum appeals. The hearing started in the Supreme Court on 25 January and concluded on 27 January 2021. The judgment had been published on 19 March 2021. The Supreme Court suggested that a Family Division judge should sit in any asylum appeal or asylum judicial review.

2.5 The TPC agreed to monitor the suggestion in respect to a change in judicial practice/process for the handling for future asylum claims where there is a linked HC case and agreed to add the topic: *G (Appellant) v G (Respondent)* to the 'Watching Brief' of the TPC Work Programme.

AP/14/21: To add the topic: 'G (Appellant) v G (Respondent)' to the TPC Work programme under 'Watching Brief'. –TPC Secretariat

New Plan for Immigration Programme

2.6 PR said he had received a meeting request from the Ministry of Justice (MoJ) policy team responsible for the 'New Plan for Immigration' (NPI) programme. The NPI programme comprises proposed reforms of the current immigration and asylum system. A consultation setting out the Government's intentions/arguments for making potential reforms had closed on 06 May 2021.

2.7 The TPC agreed that IACSG members would meet with MoJ officials and that MJR would report back to the TPC at the 03 June TPC meeting. MJR asked the TPC Secretariat to make the necessary arrangements to schedule a meeting during w/c 17 May 2021.

AP/15/21: To set up a meeting between IACSG members and MoJ officials during w/c 17 May 2021. –TPC Secretariat

3. Costs Sub-group

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

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 The TPC agreed to sign off the latest version of the draft GTCLSG consultation paper on the potential amendment of UT Rule 24 in light of the Court of Appeal judgments in *Devani v SSHD* and *SSE Generation Ltd v HMRC*. This was subject to a final legal check on the indicative drafting (as set out throughout the draft consultation paper), the inclusion of an index and some minor formatting changes, such as indenting the quotations. PBS thanked all who had contributed for their help. PR thanked PBS for his considerable effort to prepare the substantial consultation paper.

AP/16/21: To arrange for a publication date to post the TPC consultation paper on the TPC website on GOV.UK. – TPC Secretariat

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

5.2 PBS said that he had prepared a draft TPC consultation paper in respect to an amendment to Rule 22 to the Tribunal Procedure (Upper Tribunal) Rules 2008. The TPC would be seeking views on a proposal to confer a power on UT judges to certify applications on the papers for permission to appeal to the UT from the FtT as "totally without merit". A totally without merit certification would prevent applicants from renewing their application at an oral hearing. The proposed consultation would cover potential rule changes applicable to the Administrative Appeals and the Tax and Chancery Chambers of the Upper Tribunal.

5.3 ML enquired whether the current Lands Chamber Rules should also be considered as part of the set of UT Chamber Rules to be consulted under both paras 5.1 and 5.2 above. The issue was discussed by the TPC. It was agreed that ML would speak to the Lands Chamber Deputy President, but that the consultations should proceed in relation to the Tribunal Procedure (Upper Tribunal) Rules 2008 only.

Conservation Covenants

5.4 PBS said that he had received papers prepared by officials working in the Department for Environment, Food and Rural Affairs (Defra). Defra had requested the TPC to consider whether amendments were needed to the current Upper Tribunal (Lands Chamber) Rules in respect of 'Conservation Covenants'.

5.5 PBS explained that Defra had consulted in 2019 on their plans to introduce legislation for Conservation Covenants in England, allowing landowners to secure lasting conservation benefits. Defra had suggested that potential rule amendments were required to accommodate the forthcoming introduction of the Environment Bill 2021. The legislation would introduce a new Conservation Covenants framework and it is expected that the legislation will receive royal assent in late 2021.

5.6 The TPC discussed the potential rule amendments and considered whether a future TPC consultation should be conducted. PBS said that he had already approached (UT) Judge Martin Rodger QC, the Deputy President of the (UT) Lands Chamber, to seek his views/observations for the proposed rule amendments. PBS agreed to provide an update to the TPC at the 03 June meeting.

5.7 PR asked the TPC Secretariat to return to Defra to confirm the TPC's approach to progressing this work and whether Defra remained on track with their legislative timetable.

AP/17/21: To add the topic 'Conservation Covenants' to the TPC Work programme under 'Section 1 of the TPC Work programme'. –TPC Secretariat

AP/18/21: To provide an update to DEFRA policy and to ask them to confirm their legislative timetable. –TPC Secretariat

6. Confidentiality Sub-group

6.1 TF confirmed that there were no urgent issues requiring the TPC's immediate attention.

7. HMCTS Courts & Tribunals Digital Reform

7.1 PR said that the TPC Secretariat had received two papers from different but related judicial working groups in respect to digital reform proposals to modernise administrative processes in the Courts and Tribunals system.

Changes to UT procedure rules to accommodate the introduction of CE-File on a mandatory basis

7.2 PR said a paper has been prepared by a Working Group of HMCTS administrative staff and UT judges. The paper details the background and supporting arguments for the TPC to consider their proposals for potential changes to Rule 13 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and Rule 13 of the Upper Tribunal (Lands Chamber) Rules. The potential changes concern the sending and delivery of documents to the UT and parties to enable the use of the CE file system (an online IT case management system) that is used within certain UT chambers.

7.3 The TPC discussed the proposed changes to the UT Procedure Rules to assist the introduction of CE-File on a mandatory basis. The TPC agreed that it would be helpful for a member of the judicial working group to attend the next TPC meeting to provide further clarification. Their attendance would also assist with the TPC's determination whether a future public consultation would be needed.

AP/19/21: To invite a member of the Judicial Working Group to the TPC 03 June 2021 meeting. –TPC Secretariat

Proposal for a procedure for allowing solicitors to add/remove themselves from the record by digital means

7.4 PR said that a paper had been prepared by the Judicial Digital Steering Committee (JDSC) setting out a proposal for a digital notice of change of representation for proceedings conducted by electronic means.

7.5 The JDSC commented that the paper had been prepared following detailed work by the judicial working group with input from MoJ and HMCTS officials. The project has now reached a stage where consideration is needed as to what, if any, amendments may be required to Tribunal Procedural Rules to facilitate the proposed digital administrative change.

7.6 The TPC noted the information set out in the briefing paper. AW agreed to check whether amendments to the current set of Tribunal Procedure Rules were required.

AP/20/21: To check the various Tribunal Procedure Chamber Rules in respect to digital handling of appeals. – AW

8. Overview Sub-group

TPC Work Programme

8.1 The TPC work programme had been updated and circulated on 29 April 2021.

8.2 It was agreed that the TPC work programme should be updated to add:

Section 1 of the TPC Work Programme

- Add new entry: Rule 22 (Totally without merit- permission to apply applications).
- Add new entry: Conservation Covenants.
- Add new entry: HMCTS Courts & Tribunals Digital Reform.

Watching Brief of the TPC Work Programme

- Add new entry: New Plan for Immigration programme.

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

9. AOB

01 July TPC meeting

9.1 PR informed the TPC that the timing for the July meeting would need to be changed as he was now sitting on 01 July. PR suggested that the rescheduled meeting should take place after 14 July (at which time the TPC IAC reform consultation would have had closed). This would enable the TPC to have a preliminary discussion on this topic before the summer break. The TPC agreed to reschedule the July TPC meeting and that the secretariat would contact members as to their availability.

AP/22/21: To reschedule the July 2021 TPC meeting. - TPC Secretariat

Next Meeting: 03 June 2021, 9.30am