

Via Microsoft Teams

Present

(Mr Justice) Peter Roth (PR)
Michael Reed (MJR)
Christine Martin (CM)
Donald Ferguson (DF)
Mark Loveday (ML)
Tim Fagg (TF)
Gabriella Bettiga (GB)
Alasdair Wallace (AW)
Razana Begum (RB)
Shane O'Reilly (SoR)
Vijay Parkash (VP)
Liam Halewood (LH)

Guests

Sue Pitt (SP)
Rupert Jones (RJ) (agenda item 2)
Frances Mascoll (FM) (agenda item 2)

Apologies

Philip Brook Smith QC (PBS)
Susan Humble (SH)

Minutes

1. Introductory matters

1.1 Apologies were received from: PBS and SH.

1.2 PR welcomed RB who had been appointed as the new legal advisor to the TPC. AW said he would continue to support RB for the upcoming TPC meeting in July.

Matters arising

Lord Chief Justice appointments

1.3 PR confirmed that MJR had been reappointed for a two-year term to the TPC with effect from 19 April 2021.

1.4 PR announced that Dr Elizabeth Stuart-Cole had been appointed as the Tribunal Member to the TPC. Her three-year term commenced on 28 May 2021.

Litigation Friends

1.5 PR reported that he had discussed with the Senior President of Tribunals the making of new tribunal rules for the appointment of 'litigation friends' in the First-tier Tribunal (FtT) and the Upper Tribunal (UT).

1.6 The SPT shared the TPC's view to defer making new rules on this matter until the policy approach and the model for public funding has been settled by Ministry of Justice (MoJ) for a prospective administrative procedure for the appointment of Litigation Friends.

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

**AP/23/21: To amend the 08 May 2021 TPC meeting minutes to reflect comments received from TPC Members.
-TPC Secretariat**

TPC Action Log

1.8 The TPC action log had been updated.

1.9 In respect to AP17/21, ML reported he was planning to discuss the 'Conservation Covenants' topic with the relevant senior judiciary in the (UT) Lands Chamber to establish their views for any potential rule changes for this new work and further input by the TPC.

AP/24/21: To add the topic 'Conservation Covenants' as an agenda item for the July meeting. –TPC Secretariat

2. HMCTS Courts & Tribunals Digital Reform

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

2.1 RJ and FM had been invited to the meeting following their working group request for the TPC to consider proposals for potential changes to Rule 13 of the Tribunal Procedure (UT) Rules 2008 and Rule 13 of the Upper Tribunal (Lands Chamber) Rules in respect to the online CE file system. A paper prepared by the working group detailing the arguments for the potential rule changes had been discussed by the TPC at the May meeting.

2.2 RJ thanked the TPC for providing the opportunity to explain the working group's position and elaborated upon the basis for rule changes in respect to the sending and delivery of documents to the UT by parties using the CE file system. RJ clarified the administrative process that would be put in place for tribunal users without online access to use this new online procedure in the UT chambers and the implementation timescales. After answering several questions from the TPC, RJ and FM left the meeting.

2.3 Following careful consideration, the TPC was unpersuaded that the proposed rule changes were appropriate. However, the TPC saw value in clarifying the use of the CE file system in the two sets of UT Rules.

2.4 The TPC agreed to review the need for further rule changes in relation to the CE file system after a period of one year had lapsed. The TPC agreed this a sufficient period to enable the working group to gather any additional data/evidence to support their case if they wished to return this matter for further reconsideration by the TPC.

AP/25/21: To write to (UT) Judge Rupert Jones to confirm the TPC's agreed position in respect to the request for UT rule changes. –PR

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

2.5 The TPC agreed to reschedule the discussion of the topic until the July meeting. This would enable AW to prepare a legal note considering whether amendments to the current set of tribunal procedure rules would be required to permit a procedure for allowing solicitors to add/remove themselves from the record by digital means.

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

New Plan for Immigration programme

3.1 MJR said the IACSG had taken part in an online meeting on 18 May with MoJ officials from the New Plan for Immigration (NPI) policy team. MoJ officials had provided an update to the IACSG on the various NPI policy strands that may require the TPC's future input for any changes to the current IAC Rules.

3.2 The IACSG members agreed to hold a follow-on meeting with MoJ officials after the NPI government response had been published. MJR said that seeing a published response would enable the IACSG to consider the government approach for the eight strands (briefly set out in the paper that had been presented to the IACSG that may require the TPC's upcoming input for potential rule changes). There would be clarification of the government's plan with regards to which NPI strands would be taken forward by primary legislation, secondary legislation, a mixture of both or by piloting means.

Application of rule 17 of the IAC rules (withdrawals)

3.3 MJR said his briefing paper summarised the background and case chronology that had led to the Home Office (HO) asking the TPC (by way of VP) to consider whether amendments are required to

Rule 17 of the (FtT) IAC Rules in respect to the application for withdrawals for the reasons pointed out by the HO.

3.4 As some of the IACSG members required more time to consider and provide their initial observations to the merits of the HO request, the TPC agreed to defer discussing this topic until the July meeting.

AP/26/21: To add the topic ‘application of rule 17 of the IAC rules (withdrawals)’ to the July TPC meeting agenda. –TPC Secretariat

4. Costs Sub-group

4.1 ML confirmed that there were no urgent issues requiring the TPC’s immediate attention.

5. HSW Sub-group (HSWSG)

5.1 CM confirmed that there were no urgent issues requiring the TPC’s immediate attention.

6. GTCL Sub-group (GTCLSG)

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

6.1 The TPC consultation paper on Rule 24 was launched on 18 May. The period of consultation was due to end on 13 July 2021.

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

6.2 PBS had circulated a revised draft TPC consultation paper in respect to an amendment to Rule 22 to the Tribunal Procedure (UT) Rules 2008.

6.3 PBS had confirmed that the draft now included the correct quotation of ‘Rule 22’ and the reference to the proposed removal of the *Cart* JR jurisdiction (emphasising that the decision whether to remove that jurisdiction is a matter for Government, not for the TPC). PBS confirmed that the relevant UT Chamber Presidents had indicated their approval for the draft paper.

6.4 The TPC agreed that the draft did not require any further changes and instructed the TPC Secretariat to make the necessary arrangements to post the consultation paper on GOV.UK.

Conservation Covenants

6.5 ML confirmed that he was planning to discuss with (UT) Judge Martin Rodger QC the matter for potential rule amendments in respect of ‘Conservation Covenants’: see para 1.9 above. The planned meeting would also provide the opportunity to establish the judge’s view whether a future TPC consultation on this matter was required. He anticipated that the discussion would take place before the July meeting. If so, ML would update the TPC at the next meeting about what was discussed/agreed.

7. Confidentiality Sub-group

7.1 TF confirmed that there were no urgent issues requiring the TPC’s immediate attention.

8. Overview Sub-group

TPC Work Programme

8.1 The TPC work programme had been updated and circulated on 24 May 2021.

8.2 It was agreed that the TPC work programme should be updated to reflect the latest progress update for each entry.

AP/27/21: To amend the TPC Work programme to reflect the latest position for each entry. - TPC Secretariat

9. AOB

Tribunal Procedure (Coronavirus) Rules 2020

9.1 ML enquired what the legal status was in respect to the Tribunal Procedure (Coronavirus) Rules 2020 statutory instrument and whether any further action was needed to be taken by the TPC. The TPC understood that the temporary amendments to the current set of Tribunal Procedure Rules made in April 2020, were due to expire on the same day as section 55(b) of the Coronavirus Act 2020. However, there had been no communication in respect to the timing for when the provisions of the Act would lapse.

9.2 The TPC asked AW and RB to clarify the issue with the assistance of SoR. The TPC would revisit and discuss the matter at the July meeting.

AP/28/21: To add the agenda item 'Tribunal Procedure (Coronavirus) Rules 2020 SI' to the July meeting agenda. - TPC Secretariat

Perjury

9.3 VP said that he had received correspondence from a member of the public who had asked the TPC to clarify the application of the Perjury Act 1911 within tribunal proceedings. The TPC discussed the matter and asked RB to prepare advice on the perjury topic and how the law in respect to perjury applied in tribunals.

AP/29/21: To prepare a note on 'perjury' for the July TPC meeting. - Razana Begum

TPC Chair

9.4 PR announced that he had informed the SPT of his intention to relinquish his role as the TPC Chair. He expected the July meeting to be his final formal involvement as the TPC Chair although he would continue this role until the SPT nominated his successor. PR said he had enjoyed his time performing this role, which had given him great satisfaction. PR thanked the TPC members and those involved in the TPC work for their encouragement and support during his tenure.

Next Meeting: 26 July 2021, 10.30am