

Tribunal Procedure Committee (TPC): Meeting Minutes: Friday 08 October 2021

Hybrid Meeting at the Competition Appeal Tribunal; Salisbury Square House & via MS Teams

Present

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

Guests

Sue Pitt (SP)
Bill Dowse (BD)

Apologies

Philip Brook Smith (PBS)
Beth Stuart-Cole (BSC)
Alasdair Wallace (AW)

Minutes

1. Introductory matters

1.1 Apologies were received from: PBS, BSC and AW. PR welcomed BD, the head of the Administrative Justice Strategy team, Ministry of Justice (MoJ).

Matters arising

TPC Chair expression of interest (EOI) competition

1.2 PR confirmed that the EOI competition to recruit his replacement as 'Chair of the TPC' had closed on 30 September. PR envisaged that the Senior President of Tribunal's (SPT) Office will make a formal announcement of the SPT's nomination for the new TPC Chair by the end of October.

TPC Meetings from October 2021 onwards

1.3 As PR will be shortly relinquishing his role as TPC Chair, the TPC Secretariat will no longer have access to Salisbury Square House (the meeting venue that had been provided by PR). VP reported that the TPC Secretariat faced practical difficulties finding a new suitable meeting venue due to the larger meeting rooms located at Petty France (Ministry of Justice HQ) having a maximum capacity for 9 attendees (due to the current social distance restrictions). Therefore, the venue may not be appropriate to hold future TPC meetings until the social distance restrictions had been lifted by the Government.

1.4 The TPC noted the accommodation problem and discussed whether to adopt a hybrid (online and physical mixed attendance) approach for TPC meetings as a temporary solution. PR said that a final decision for future meeting arrangements would depend on the views of his successor.

1.5 The draft minutes of the TPC meeting held on 26 July 2021 were approved subject to minor amendments.

TPC Action Log

1.6 The TPC action log had been updated.

2. Tribunal Procedure (Upper Tribunal) Rules 2008, rule 13- CE-filing

2.1 PR confirmed he had informed the judicial working group (JWG) on the TPC's decision (made at the July meeting) to make a small amendment to rule 13(1) of the Upper Tribunal (UT) Rules i.e., to state that the electronic CE-filing process would be an alternative means by which documents may be provided.

2.2 The JWG responded expressing their regret that, in their view, the proposed rule change would not serve to provide for the mandatory introduction of CE-Filing that the JWG wished to achieve.

2.3 PR said that the JWG had indicated that they would be inviting the UT and EAT Chamber Presidents (in liaison with the SPT) to discuss the matter further with the TPC, if needed. He had told the JWG that the TPC were ready to have further discussion with the EAT and UT Chamber Presidents on this matter (although he confirmed to the attendees that he had not so far received any communications from them).

2.4 Following careful consideration of the JWG comments, the TPC agreed that a consultation would be appropriate to establish the views of interested stakeholders and parties potentially impacted by the proposed rule change sought by the JWG.

2.5 PR confirmed he would write to the JWG detailing the TPC's stance on this matter and, in addition, request further information/supplementary arguments for the purpose of developing the content of the TPC consultation. PR confirmed he would notify the SPT and establish whether he needed to discuss the matter with the EAT/UT Chamber Presidents.

AP/41/21: To advise the judicial working group on the approach the TPC would be taking with respect to the proposed CE-File rule change. - PR

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

Consultation on possible changes to the IAC Rules in relation to Tribunal Reform

3.1 MJR elaborated on his first draft response to the attendees. He confirmed that the 2 respondents who had provided replies had both been supportive of the proposed changes in the consultation.

3.2 MJR had encompassed comments in the draft response to highlight those passages which required the TPC's input during the planned discussion, specifically the approach to follow for the potential introduction of a deemed service provision. MJR explained that there were ongoing practical issues arising from the fact that the appeal deadlines were presently calculated from when relevant decisions were *sent* by the Home Office (HO), but the dates on the HO's letters (according to anecdotal criticism) were unreliable in practice so the date of sending was often unclear.

3.3 Following discussion, the TPC agreed on a final response. Once MJR had updated the draft (with the agreed changes subject to any final TPC comments) he would send the updated version to the TPC Secretariat, who would then make the necessary arrangements to publish the consultation response on GOV.UK.

AP/42/21: To send the IACSG reform consultation response to the TPC Secretariat for publication. – MJR

New Plan for Immigration programme (NPI): Nationality and Borders Bill 2021

3.4 The TPC noted that the Nationality and Borders Bill 2021 (“the Bill”) included clauses for ‘recouping wasted tribunal costs’, Costs Orders in the Immigration and Asylum Chambers and the introduction of an accelerated process for appeals made from detention. These provisions raised various concerns, both as to practical drafting and as to the principle of TPC deciding the detail of particular rules.

3.5 PR confirmed that he would discuss these clauses and their implications with the SPT and report back to the TPC.

4. HSW Sub-group

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 consultation on Rule 24 (respondent notices) ended on 13 July 2021. Due to time constraints and the absence of PBS, the TPC agreed to defer discussing the draft reply (that had been circulated to the TPC for their comments) until the November meeting.

AP/43/21: To add the topic ‘Rule 24 TPC consultation’ as an agenda item to the November TPC Meeting agenda. –TPC Secretariat

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

5.2 The consultation ended on 13 August 2021. Due to time constraints and the absence of PBS, the TPC agreed to defer discussing the topic until the November meeting.

AP/44/21: To add the topic ‘Oral renewal hearings in the UT for permission to appeal in cases considered totally without merit’ as an agenda item to the November TPC Meeting agenda. –TPC Secretariat

6. Costs Sub-group

Leech Homes v Northumberland CC: Costs in the Upper Tribunal (Lands Chamber)

6.1 ML summarised the position paper detailing his observations on the *Leech Homes* judgment in respect to whether any change in the current UT (Lands Chamber) rules in respect to the assessment of compensation cases was desirable.

6.2 The TPC accepted the Costs Sub-group’s recommendation that it was appropriate for the TPC to consult, and to seek views on a proposed revised rule 10.

6.3 ML agreed to prepare a draft consultation paper to be circulated for the December meeting.

AP/45/21: To prepare a draft consultation paper on possible rule changes to the UT Lands Chamber Rules in light of the ‘*Leech Homes*’ judgment for the December meeting. –ML

Judicial Costs Review Group recommendations

6.4 ML said the Costs Sub-group were in discussion with a member of a JWG that was considering the recommendations of a report entitled “*The tax tribunals: the next 10 years*” by the Tax Law Review Committee of the Institute of Fiscal Studies (IFS).

6.5 ML confirmed that he replied to the JWG stating that the Costs Sub-group would be willing to consider looking at the IFS report if the JWG confirmed that they endorsed the IFS recommendations.

6.6 The TPC agreed to revisit the topic at the November meeting.

AP/46/21: To add the topic 'Institute of Fiscal Studies proposed recommendations in the Tax Chamber (FtT) costs rules' to the November TPC meeting agenda. –TPC Secretariat

7. Confidentiality Sub-group

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

8. Online Rules Procedure Committee

8.1 The TPC had discussed the Online Procedure Rule Committee (OPRC) topic at the July meeting. PR confirmed that he attended a meeting with the SPT and the Master of the Rolls (MR) on 06 October. PR reported the following key points:

- The MR gave reassurance that the TPC would retain responsibility for the substance of the tribunal rules and its jurisdiction was not being curtailed by the introduction of the OPRC. The OPRC would be focused on general provisions to ensure a uniformity of approach across all the court and tribunal rules as regards the online platform and it was not expected to get involved in more detailed rules governing the different tribunals
- The MR with the support of the SPT suggested that there should be a common member of the TPC and OPRC, who would help to ensure effective liaison between the two committees The SPT noted that if necessary he could ask for the appointment of an additional member of the TPC for this purpose.

8.2 PR told the TPC that he personally felt reassured by the discussion and clarification of what was envisaged to be the interaction between the roles of the OPRC and the TPC.

9. Tribunal Procedure (Amendment No.2) Rules 2021

9.1 RB confirmed she had circulated to the TPC the draft statutory instrument (SI) and a word version of the amended TPC rules. The draft SI has been reviewed and approved by the Chairs of the IACSG, GTCLSG and Costs Sub-Group: PBS, MR and ML.

9.2 RB confirmed that the draft SI contained the following new rules:

1. Rule 2 amends a rule of the Tribunal Procedure (Upper Tribunal) Rules 2008. Rule 3 amends a rule of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 to allow for the electronic filing of documents.
2. Rule 4 amends a rule about costs in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. Rule 5 amends a rule about the withdrawal of cases in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

9.3 Following the earlier discussion on CE-Filing (agenda item 2), the TPC agreed to remove (1) from the draft TPC SI package.

9.4 RB agreed to make the amendment as instructed and to send the updated TPC SI to the TPC members for signing.

AP/47/21: To circulate the TPC Amendment SI to TPC members for signing. – RB/TPC Secretariat

10. Litigation Friends

10.1 GB confirmed that during her attendance at an Upper Tribunal (Immigration and Asylum Chamber) User Group, Mr Brian Dikoff, a legal organiser employed by Migrants Organise Ltd had asked for her assistance in providing an update on the TPC's plans on making a new rule to appoint a Litigation Friend (LF) in Tribunals.

10.2 PR said the TPC's reported standpoint on this matter was unchanged since it was last discussed at the June meeting, i.e., the TPC's position was to defer making new rules on this matter until the wider issues of funding and resourcing had been settled by the Government.

10.3 The TPC agreed that they should keep the position on LFs under review. If no further information comes from Government following the detailed review and proposals prepared by Tony Allman, this should be raised with the SPT in early 2022. GB agreed to update Mr Dikoff regarding the TPC's position on the LF topic but to also clarify that the TPC did not have a direct role in deciding the LF policy.

AP/48/21: To provide an update to Mr Brian Dikoff on the TPC's position on LF topic. – GB

11. Overview Sub-group

TPC Work Programme

11.1 The TPC work programme had been updated and circulated on 29 September 2021.

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

AP/49/21: To amend the TPC Work programme to reflect the latest position for each entry. - TPC Secretariat

12. AOB

TPC Subgroup Chart

12.1 PR asked the TPC Secretariat to amend the circulated TPC Subgroup Chart to remove a typo.

AP/50/21: To revise the TPC Subgroups Chart. - TPC Secretariat

Next Meeting: 04 November 2021, 10.30am