

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

Present

(Mr Justice) Peter Roth (PR)
(Mrs Justice) Joanna Smith (JS)
Philip Brook Smith (PBS)
Michael Reed (MJR)
Christine Martin (CM)
Donald Ferguson (DF)
Mark Loveday (ML)
Susan Humble (SH)
Tim Fagg (TF)
Beth Stuart-Cole (BSC)
Razana Begum (RB)
Alasdair Wallace (AW)
Shane O'Reilly (SoR)
Vijay Parkash (VP)
Liam Halewood (LH)

Guests

Sue Pitt (SP)

Apologies

Gabriella Bettiga (GB)

Minutes

1. Introductory matters

1.1 PR welcomed JS, his successor as the new Chair of the TPC. The attendees congratulated JS on her appointment. With JS's agreement, PR confirmed that he would chair the meeting.

1.2 Apologies were received from: GB

Matters arising

Online Rules Procedure Committee

1.3 PR provided an update on the Online Procedure Rules Committee (OPRC) measure that was included in the Judicial Review and Courts Bill (JRCB). PR confirmed that he had discussed the matter of the membership of the OPRC with the Senior President of Tribunals (SPT). The JRCB's provisions were presently being debated in Parliament.

TPC Subgroup Membership Chart

1.4 The membership of the GTCL Sub-group was amended to include SH. DF agreed to become a member of the Costs Sub-group.

Tribunal Procedure (Amendment No.2) Rules 2021

1.5 RB confirmed that the Tribunals Procedure (Amendment. No.2) Rules 2021 statutory instrument (SI) had been laid on 26 October 2021. The Rules make the following amendments:

- The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are amended to allow the Property Chamber of the First-tier Tribunal to award costs in cases brought under Part 4A of

Schedule 3A to the Communications Act 2003 ('the Electronic Communications Code'). Part 4A has been inserted to Schedule 3A to the Communications Act 2003 by the Telecommunications Infrastructure (Leasehold Property) Act 2021 ("TILPA"). TILPA also amends regulation 3 of the Electronic Communications Code (Jurisdictions) Regulations 2017 to allow functions conferred on the court by the Electronic Communications Code also to be exercised by the First-tier Tribunal in connection with Part 4A proceedings to England and Wales.

- An amendment to rule 10(4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 to insert a cross-reference to notice of a deemed withdrawal under rule 17(8) of those Rules. This would correct an omission "missed consequential" in the amending rules (the Tribunal Procedure (Amendment) Rules 2021 (S.I. 2021/322) identified by the Joint Committee on Statutory Instruments in its Second Report of Session 2021-22.

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

1.6 PR confirmed that he had written to the judicial working group (JWG) informing them that the TPC had revisited the matter at the October meeting and agreed that it was appropriate to hold a public consultation on the proposed rule amendment to enable mandating the use of electronic filing. He had used this opportunity to seek further information in respect of:

- The anticipated timescale for the introduction of mandatory use of CE-filing for the different tribunal chambers;
- What "specified user groups" had been targeted for the different provisions in the rules; and
- The benefits that the JWG believed would be achieved by making the use of CE-file mandatory in the rules (by contrast with a practice direction).

1.7 JS confirmed that she would progress this matter further with the JWG and the SPT's office.

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

TPC Action Log

1.9 The TPC action log had been updated.

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

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

2.1 MJR provided an overview of his revisions to the draft reply. The TPC discussed the points that MJR had highlighted for further analysis by the Committee before approving the draft reply.

2.2 MJR stated that he would update the draft (with the agreed changes) and send the final version to the TPC Secretariat, who would then make the necessary arrangements to publish the consultation reply on GOV.UK.

AP/51/21: To send the IACSG reform consultation reply to the TPC Secretariat for publication. – MJR

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

2.3 PR confirmed that he had written to the Parliamentary Under Secretary of State – Lord Wolfson of Tredegar QC in respect of clause 76 (formerly clause 63). The measure was included in the Nationality and Borders Bill 2021 ("the Bill"). As presently drafted, clause 76 requires the TPC to make rules requiring Immigration and Asylum Chambers (IAC) judges to consider costs orders when certain trigger events occur. The intent is that the rules would prescribe the conduct that would trigger the power to make costs orders. Triggers could include behaviours such as not complying with directions or introducing evidence late. The Government's objective is to strengthen sanctions for poor conduct and drive behavioural changes in immigration tribunal proceedings.

2.4 PR said he had raised the following concerns in his correspondence to the Minister asking for clause 76 to be reconsidered by the Ministry of Justice (MoJ):

- The clause requires the TPC to draft rules which specify types of conduct that should trigger the consideration of a costs order. This would involve a level of detail that is contrary to the approach and style usually adopted by the TPC, i.e., a statutory duty to make rules that are “both simple and simply expressed”.
- It was a very difficult task for the TPC to specify the types of conduct that should trigger consideration of a costs order. The TPC would struggle to set out categories of conduct in terms which are general enough to be applied as rules.

2.5 PR confirmed that he was still awaiting a reply. JS would take this matter forward in conjunction with the SPT’s office.

2.6 As MoJ policy officials working on the NPI, VP and LH stepped out of the meeting.

2.7 The TPC discussed the Bill and the related immigration and asylum measures of interest to the TPC.

2.8 NPI, VP and LH re-joined the meeting.

Single Joint Experts

2.9 MJR confirmed that the IACSG had received a preliminary note prepared by the MOJ detailing the provisional proposal on the required approval of expert evidence and the use of Single Joint Experts (SJE). The note was intended to give the IACSG members advanced sight of proposed changes to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008.

2.10 The TPC agreed that attendance by the MoJ policy lead at the February 2022 meeting would be useful in providing an update on the SJE policy work and to answer any subsequent questions from the TPC.

AP/52/21: To add the topic ‘Single Joint Experts as an agenda item to the February 2022 TPC Meeting agenda. To invite the MoJ policy lead for Single Joint Experts. –TPC Secretariat

3. HSW Sub-group

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

4. GTCL Sub-group (GTCLSG)

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

4.1 PBS summarised the latest version of the TPC consultation reply on Rule 24 (respondent notices). The TPC agreed to the GTCLSG’s proposed approach to the consultation reply.

4.2 The TPC Secretariat agreed to make the necessary arrangements to publish the consultation reply on GOV.UK

AP/53/21: To make the arrangements to publish the Rule 24 consultation reply on the TPC webpage on GOV.UK. –TPC Secretariat

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

4.3 PBS confirmed that he had commenced preparing a consultation reply and that he plans to share a preliminary draft paper with the GTCLSG members for their comment/input. The GTCLSG aims to have a first draft ready to be circulated to the TPC for consideration at the December meeting.

AP/54/21: 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 December TPC meeting agenda. –TPC Secretariat

5. Costs Sub-group

Institute for Fiscal Studies- Tax Law Review Committee report reviewing the Tax Chamber of the First-tier Tribunal

5.1 ML said that he had replied to the member of a JWG with respect to whether the TPC had considered 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). The report focused on how administrative and judicial performance shortages in the Tax Chamber (First-tier Tribunal) could be addressed and potentially improved for tribunal users by adopting their recommendations.

5.2 Due to existing work commitments the TPC agreed that they would consider this matter in early 2022. ML agreed to raise the matter with the Presidents of the Tax Chamber (First-tier Tribunal) and Tax and Chancery Chamber (Upper Tribunal) to establish their views.

6. Confidentiality Sub-group

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

7. Overview Sub-group

TPC Work Programme

7.1 The TPC work programme had been updated and circulated on 27 October 2021.

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

AP/55/21: To amend the TPC Work programme to reflect the latest position for each entry. - TPC Secretariat

8. AOB

Conservation Covenants

8.1 RB reported that she had been discussing the steps in respect of the sequencing and timing milestones to prepare proposed new rules relating to 'conservation covenants' with policy officials in the Department for Environment, Food and Rural Affairs (DEFRA).

8.2 DEFRA had confirmed that they intended to commence Part 7 (and Schedules 18-20) of the Environment Act 2021 on 30 September 2022 as they expected this would allow sufficient time for the TPC to make the necessary changes to the tribunal rules if appropriate and also to carry out a consultation exercise.

8.3 Due to time constraints ML and PBS asked if the 'conservation covenants topic' could be revisited and discussed at the December meeting.

AP/56/21: To add the topic 'conservation covenants' to the December TPC meeting agenda. - TPC Secretariat

Mr Justice Peter Roth (farewell)

8.4 JS and the TPC members thanked PR and wished him all the best for the future. PR said he had enjoyed his time as the TPC Chair, and that this role had given him great satisfaction. He thanked the TPC for their encouragement and past support.

Next Meeting: 02 December 2021, 10.30am