

Hybrid Meeting at the Rolls Building, London & via MS Teams

Present

(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)
Alasdair Wallace (AW)
Razana Begum (RB)
Shane O'Reilly (SoR)
Vijay Parkash (VP)

Guests

Sue Pitt (SP)

Apologies

Gabriella Bettiga (GB)
Liam Halewood (LH)

Minutes

1. Introductory matters

1.1 Apologies were received from: GB and LH.

Matters arising

TPC Appointments

1.2 The TPC discussed the current status for TPC membership appointments and whether any immediate remedial action was required by JS and the TPC Secretariat to maintain an effective and resourced committee to manage the TPC work programme. The attendees noted that TF's current term on the TPC was due to end on the 31 December 2021. JS asked SoR to investigate the steps needed to reappoint TF for a second term with the support of the TPC Secretariat as his current appointment was at the request of the Senior President of Tribunals (SPT).

1.3 The TPC agreed that it would be helpful if VP prepared and circulated an updated TPC membership table with information that included: the start and end dates for current terms and whether the member had been appointed by the Lord Chancellor, Lord Chief Justice, SPT or the Lord President of the Court of Session.

AP/57/21: To prepare and circulate a current TPC membership appointments table - TPC Secretariat

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

1.4 JS confirmed that the SPT had written to her on 02 December 2021 in relation to the CE-filing topic and the ongoing discussion via email between the TPC and the judicial working group (JWG).

1.5 The TPC discussed the issues raised by the SPT and the recent email exchange between the JWG and Mr Justice Roth (PR) (before he stepped down as the TPC Chair), including the issue of whether a consultation process was necessary. PR had asked the JWG to provide additional information to assist the TPC with their investigatory work to prepare a CE-filing consultation paper.

1.6 The TPC agreed that the consultation process:

- 1.6.1 was a vital element for understanding the views of those affected by a potential rule change; and
- 1.6.2 provided a means to allow the public, tribunal users and related stakeholders an opportunity to raise with the TPC any observations concerning a potential rule change
- 1.6.3 should therefore be undertaken once further information had been requested from UT Presidents.

AP/58/21: To request further information from the judicial working group in respect to CE-filing – JS

1.7 PBS and MJR agreed to lead on the exercise to prepare the draft consultation paper. The TPC agreed that it would be beneficial for PBS and MJR to prepare some questions for the UT Presidents to assist with the preparation of the consultation exercise. JS would aim to send these to the JWG before Christmas.

AP/59/21: To prepare a draft consultation paper on CE-filing – PBS and MJR

AP/60/21: To prepare draft questions to be sent to the UT Chamber Presidents – PBS and MJR

1.8 JS confirmed that she would inform the SPT of the outcome of the TPC's discussion relating to the SPT's letter on the subject of CE-filing. She further confirmed that she would inform the JWG (through UT Judge Jones) as to the TPC's views on the importance of a consultation exercise and the likely timetable leading up to the publication of a consultation paper. JS would also use this opportunity to seek the JWG's assistance by asking them to gather other evidence, data and any anecdotal information from tribunal users who had experience of the existing CE-filing administrative process.

1.9 The draft minutes of the TPC meeting held on 04 November 2021 were approved subject to minor amendments.

TPC Action Log

1.10 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 latest version of the draft consultation reply. The updated draft incorporated the feedback and agreed track changes previously discussed by the TPC at the November meeting.

2.2 The TPC discussed the additional points that MJR had highlighted for further analysis.. The TPC approved the draft consultation reply (subject to minor changes).

2.3 MJR confirmed that he would send the finalised version to the TPC Secretariat, who would then arrange publication on GOV.UK.

AP/61/21: To send the IACSG reform consultation reply to the TPC Secretariat for publication – MJR

Nationality and Borders Bill

2.4 JS confirmed that the legislative passage of the Nationality and Borders Bill ("the Bill") had started in the House of Commons and that further debates were due to be held in the House of Lords. First reading in the House of Lords was expected to take place on 06 & 07 December 2021.

Wasted Costs Orders

2.5 JS confirmed that Tom Pursglove MP (MoJ-Parliamentary Under Secretary of State) had replied to her (as the incoming TPC Chair) in relation to PR's letter to Lord Wolfson dated 19 October 2021 in respect of the TPC's procedural concerns over clauses 62 and 63 of the Bill.

2.6 PR had identified the practical challenge in requiring the TPC to specify conduct that is 'improper, unreasonable or negligent' and noted that this would necessitate a drafting approach that would be

contrary to the approach and style adopted by the TPC for many years in the drafting of rules for all tribunals (consistent with its obligations under section 22(4) TCEA 2007).

2.7 The letter from Tom Pursglove MP did not appear to appreciate the practical challenges identified by PR.

2.8 JS said that she would keep the SPT's Office informed as to any further developments. JS confirmed that she would reply to the Tom Pursglove MP and would further reflect on his offer to meet in person to discuss the 'costs order' provision.

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)

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

4.1 PBS provided an overview of the draft reply to the Rule 22 consultation (TWM). PBS confirmed that the GTCLSG was still considering other related issues that he would incorporate into the next draft to be discussed at the February meeting.

4.2 PBS confirmed that the GTCLSG expected that the draft rule changes (as consulted upon and following the Reply being published)) would be included in the upcoming Spring 2022 TPC amendment rules package.

AP/62/21: To circulate the updated version of the draft reply Rule 22 TWM consultation paper –PBS

Conservation Covenants

4.3 PBS confirmed that the 'Conservation Covenants' topic was a matter for the GTCLSG rather than the Costs Sub-group. He thanked ML for his assistance in respect of the potential creation of new rules relating to the 'Conservation Covenants' legislation being updated.

4.4 RB said that the lead policy official in the Department for Environment, Food and Rural Affairs (DEFRA) had confirmed that they intended to commence Part 7 (and Schedules 18-20) of the Environment Act 2021 on 30 September 2022. DEFRA expected this commencement date would allow sufficient time for the TPC, if necessary, to make changes to the current tribunal rules and to carry out a public consultation exercise, if required.

4.5 PBS confirmed that the GTCLSG intended to prepare a position paper that he would share with Judge Martin Rodger QC, UT Judge Cooke and RB seeking their comments in respect of the new draft rules.

5. Costs Sub-group

Leech Homes v Northumberland CC and compulsory acquisition claims: Costs in the Upper Tribunal (Lands Chamber)

5.1 ML provided an overview of his approach to preparing the draft consultation paper.

5.2 The TPC agreed, in principle, to sign off the draft consultation paper subject to the comments relayed by the TPC members. The TPC agreed that the consultation period would be 8 weeks.

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

5.3 ML said the member of the judicial working group had confirmed that there was no longer a need for the TPC to consider any implications with respect to 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 TPC noted this action as closed.

6. Confidentiality Sub-group

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

7. Tribunal Procedure (Amendment) Rules 2022 Exercise

7.1 RB said that the intended timing to lay the Tribunal Procedure (Amendment) Rules 2022 statutory instrument (the 'TPC Amm SI') was 16 March 2022. The SI was expected to come into force on 06 April 2022.

7.2 The intended rule changes to be included in the TPC Amm SI package are:

The Tribunal Procedure (Upper Tribunal) Rules 2009

- Amending Rule 13 to make explicit the deeming provisions as to when a document is received in judicial review proceedings
- Amending Rule 22 to confer a power on judges to certify applications on the papers for permission to appeal (PTA) to the Upper Tribunal (UT) (from the First-tier Tribunal (FtT)) as totally without merit. Consequently, applicants could not renew their application at an oral hearing.
- Amending Rule 24 to widen the terms of UT rule 24 to conform more closely with Civil Procedure Rule 52.13(2) and to accommodate applications for PTA.

First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014

- Amending Rules 19, 23 and 24 relating to the process of lodging an appeal / response and the introduction of the skeleton argument stage prior to a hearing in respect of digital online reform changes to Immigration and Asylum Chamber (IAC) administrative processes.
- Amending Rule 8 in relation to clarifying the scope of potential substitution of parties.
- Inserting a new Rule 12A to clarify the procedure for parties to proceedings to comply with duties in relation to providing their contact details.
- Amending Rule 33 to make explicit the FtT's power to refuse to admit a late application for permission to appeal.
- Amending Rule 1 and 4 to include provision for a case management appointment to be carried out by Tribunal staff authorised to carry out functions of a judicial nature pursuant to rule 3(2).
- Amending Rule 38 to require that details of material changes are only required where a bail application has been refused within 28 days of a previous refusal.

7.3 RB agreed to prepare a draft TPC Amm SI (as instructed by the relevant Chairs of the Sub-groups) and to send the draft TPC Amm SI to the TPC Subgroup Chairs for comment before an updated draft would be circulated to all TPC members to consider.

8. Overview Sub-group

TPC Work Programme

8.1 The TPC work programme had been updated and circulated on 23 November 2021. It was agreed that the TPC work programme should be updated to reflect the latest progress update for each entry.

AP/63/21: To amend the TPC Work programme to reflect the latest position for each entry - TPC Secretariat

9. AOB

Tribunal Procedure (Coronavirus) (Amendment) Rules 2020

9.1 ML asked whether there were any MoJ plans to extend the deadline for when the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 were due to expire. VP said he understood that some of the tribunal rules contained in the SI would be renewed in new SIs (citing the Police, Crime, Sentencing

and Courts Bill's powers) instead when the Coronavirus Act 2020 expires in February 2022. VP agreed to investigate the matter with the relevant MoJ policy lead and report back to the TPC.

AP/64/21: To check the expiry date for Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 - TPC Secretariat

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

9.2 ML sought an update with respect to the transfer of responsibility for making Employment Tribunal and Employment Appeals Tribunal procedure rules from the Department for Business, Energy, and Industrial Strategy to the TPC. VP said that he understood that the Judicial Review and Courts Bill 2022 was currently progressing through Parliament and that subject to the Bill receiving parliamentary approval, Royal Assent was due for Spring 2022. The transfer was likely to take effect two months after Royal Assent, so he estimated early/mid-summer 2022 as the likely implementation date for transfer. VP agreed to investigate the matter with the relevant MoJ policy lead and report back to the TPC.

AP/65/21: To check the position on the transfer of responsibility for the making of Procedure Rules in the Employment Tribunals and the Employment Appeal Tribunal to the TPC - TPC Secretariat

Next Meeting: Thursday 03 March 2022, 10.30am