

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

Present

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

Guests

Sue Pitt (SP)

Apologies

Philip Brook Smith (PBS)
Gabriella Bettiga (GB)
Mark Loveday (ML)
Julian Phillips (JP)
Mark Blundell (MB)

Minutes

1. Introductory matters

1.1 Apologies were received from: PBS, GB, ML, MB and JP.

Matters arising

1.2 The draft minutes of the TPC meeting held on 07 April 2022 were approved subject to minor amendments.

TPC Action Log

1.3 The TPC action log had been updated.

TPC 'Conflict of Interests' policy

1.4 JS thanked the TPC members for their feedback on her amended policy note on the 'conflict of interests' topic (following the issue being discussed by the TPC at the March and April 2022 meetings). The attendees confirmed they had no further comments on the latest version circulated. The TPC approved the text which would be made publicly available on the TPC webpage.

AP/23/22: To arrange the publication of the 'Conflict of Interest' policy on the TPC webpage of GOV.UK. – TPC Secretariat

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

Nationality and Borders Bill 2022

2.1 JS confirmed that the Nationality and Borders Act 2022 (NBA) had successfully concluded its passage through Parliament. The legislation had received Royal Assent on 28 April 2022.

New Plan for Immigration programme

2.2 MJR confirmed that on the 27 April 2022 the IACSG had met with officials from the Ministry of Justice (MoJ) New Plan for Immigration (NPI) policy team. The purpose of the meeting was to discuss the pre-planning and timetable for implementing new or amended rules.

- 2.3 MJR summarised the key issues of interest to the TPC discussed at the IACSG meeting. MJR explained that the IACSG had requested a steer on the prioritisation of measures within the NBA. MoJ confirmed that a prioritisation exercise was underway and that the details of the ministerial steer would be shared with the IACSG, once available. The IACSG had conveyed to the MoJ officials present that although the TPC is independent and sets its own work programme, the IACSG would be mindful of those NBA measures deemed most important by MoJ when considering which rule changes are to be prioritised.
- 2.4 MJR also shared observations on the actions that would need to be taken to draft a TPC consultation paper. To launch a summer 2022 consultation exercise, the TPC would need to sign-off a consultation paper by the July meeting. The IACSG's preliminary view (relayed to the MoJ at the meeting) was that it would be extremely challenging for the IACSG to prepare a document that included the necessary rationale, relevant supporting data and the proposed draft rule changes for the NBA measures (that would be accordingly endorsed by the TPC for a 12 week consultation before the summer break). Nevertheless, pending a steer on prioritisation, the IACSG has decided to start preparing a draft consultation on: i) Accelerated Detained Appeals (ADA), ii) Expedited Appeal Procedure in Upper Tribunal (EJP) and iii) Judge's written credibility findings.
- 2.5 MJR stated that the MoJ Legal Department had offered their support to assist the IACSG by providing draft rules for each NBA measure. MoJ Policy had agreed to provide information requested by the IACSG by mid-May 2022, addressing how the HMCTS reform programme and core case data (HMCTS IT platform) would impact on and interact with the management of ADA and EJP appeals within the Immigration and Asylum Chambers (IAC). MoJ Policy will also provide details on the availability of legal aid support for appellants, the anticipated number of appeals and the rationale/methodology that underpins the expected appeal receipt volumes. MJR said that the MoJ had understood that without receiving this information/data promptly, the consultation on potential rule changes could be delayed, which would then impact on the deliverability of new and amended rules before April 2023.
- 2.6 MJR said that the IACSG had agreed to meet again (together with MoJ officials) before the scheduled 09 June 2022 meeting (probably in the w/c 23 May 2022). The IACSG would update the TPC at the 09 June 2022 meeting as to whether the IACSG were on track to have a draft consultation paper signed off at the 14 July 2022 meeting or shortly thereafter (out of committee) by the TPC. He also confirmed that MoJ officials may be invited to the 09 June 2022 meeting for their policy input and to answer any remaining questions.

Age Assessment appeals

- 2.7 MJR said that the NPI Policy team had provided a policy paper on 'Age Assessment' appeals (AAA). JS queried the appropriateness of the question posed in the paper by the MoJ to the TPC, namely whether the TPC agreed that the AAA would fall within the remit of the IAC. The TPC noted that this request for their input was not within their statutory remit. MJR said that this matter would obviously need to be settled prior to the commencement of the Rule making process.
- 2.8 SOR said it was his understanding that the Senior President of Tribunals and the President of the (IAC-First-tier Tribunal (FtT)) had approved the designation of AAA to the IAC (FtT). JS asked the TPC Secretariat to clarify this matter with the policy lead.

AP/24/22: To seek clarification from the MoJ policy lead in respect to seeking the TPC's view for chamber designation for Age Assessment appeals. – TPC Secretariat

- 2.9 JS asked the TPC Secretariat to update the TPC Sub-group Chart to reflect the fact that the IACSG membership currently included the new liaison judges from the IAC (UT & FtT) Chambers. JP as the IAC (FtT) nominated judicial representative and MB as the nominated judicial representative for the IAC (UT).

AP/25/22: To update the TPC Sub-group chart with recent changes in membership. – TPC Secretariat

3. GTCL Sub-group (GTCLSG)

Charities Act 2022

- 3.1 JS said that the legislative changes to be introduced for 'authorised cost orders' (pursuant to Section 36 of the Charities Act 2022) would require amendments to the current tribunal procedure rules.

3.2 With PBS absent, the TPC agreed that the 'Charities Act 2022' topic would be considered at the 09 June 2022 meeting.

AP/26/22: To add the 'Charities Act 2022' topic as an agenda item for the 09 June 2022 meeting. – TPC Secretariat

Conservation Covenants

3.3 JS reported that the GTCLSG would be recommending that it would not be necessary for the TPC to hold a public consultation on the 'conservation covenants' matter as this was strictly a technical rule change needed because of a legislative change.

3.4 With PBS absent, the TPC agreed that the 'Conservation Covenants' topic would be considered at the 09 June 2022 meeting.

AP/27/22: To add the 'Conservation Covenants' topic as an agenda item for the 09 June 2022 TPC meeting. – TPC Secretariat

4. HSW Sub-group

Direct Lodgement – (First-tier Tribunal) War Pensions and Armed Forces Compensation Chamber

4.1 CM reported that she (the HSWSG) had received a policy paper requesting the TPC to consider potential changes to the War Pensions and Armed Forces Compensation Chamber (WPAFCC-FtT) Rules to accommodate the introduction of 'direct lodgement'. The paper had been prepared by a working group of policy and administrative staff within the Administrative Justice Strategy Team MoJ, HMCTS and Judge Fiona Monk, the President of the War Pension and Armed Forces Compensation Chamber (WPAFCC). The proposal to introduce the 'direct lodgement' process would be in line with all the other Chambers in the FtT, in that, in the first instance, appellants lodge their appeals directly with the Tribunal.

4.2 CM said that the proposal was sensible and that it would likely be uncontroversial. She recommended that the proposal to introduce a 'direct lodgement' process in the WPAFCC justified a TPC consultation. The TPC agreed with this assessment.

4.3 CM asked the TPC Secretariat to return to the lead MoJ policy official and request suggested draft Rules. CM remarked that she understood a similar 'direct lodgement' procedure had been recently introduced in the Pensions Appeal Tribunal, Scotland. The Tribunal hears appeals from ex-servicemen or women who have had their claims for a war pension rejected by the Secretary of State for Defence. Its jurisdiction covered Scotland, and was independent from the Veterans Agency. CM recommended that MoJ policy may want to consider the Rules introduced in Scotland as they might assist as a model/template to follow for potential Rules changes here. VP confirmed that he had already contacted the MoJ policy lead with a view to obtaining indicative draft rules to be included in the draft consultation paper.

4.4 CM confirmed that she would begin work to prepare a draft consultation document for the TPC's consideration at the 09 June 2022 meeting.

AP/28/22: To ask the MoJ policy lead for 'suggested draft Rules' in respect of 'direct lodgement' for provision to the HSWSG. – TPC Secretariat

AP/29/22: To add the entry 'Direct lodgement in WPAFCC' topic in Section 1 of the TPC Work Programme. – TPC Secretariat

5. Costs Sub-group

5.1 JS confirmed that there were no urgent issues requiring the TPC's immediate attention.

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

6.1 PBS had circulated a first version of a draft consultation paper and related annexes. The papers explored how CE-filing-working was currently performing in the Courts and his observations on how the Civil Procedure Rules Committee's Practice Direction's on the 'CE-filing service' that had been issued to assist legal professionals/citizens better to understand the online procedure for sending files, paying fees and tracking cases in the High Court and the Upper Tribunals was working in practice.

6.2 In the absence of PBS, the TPC agreed that the 'CE-filing' topic be deferred for further consideration/discussion to the 09 June 2022 meeting.

AP/30/22: To add the 'CE-filing' topic as an agenda item for the 09 June TPC meeting. – TPC Secretariat

6.3 JS asked the TPC members to provide their comments directly to PBS on the draft CE-filing consultation paper, particularly in circumstances where the TPC had hoped to be in a position to finalise the consultation paper as soon as possible. JS said that she expected this would be possible at the next meeting.

AP/31/22: To provide their comments to the draft CE-filing consultation paper to PBS. – TPC members

7. Overview Sub-group

TPC Work Programme

7.1 The TPC work programme had been updated and circulated on 29 April 2022.

AP/32/22: To amend the TPC Work Programme to reflect comments received from TPC Members. – TPC Secretariat

8. AOB

Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 & Coronavirus Act extension

8.1 JS confirmed that the TPC supported extending the expiry date for the statutory instrument in respect of i) The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 and ii) the Tribunal Procedure (Amendment) Rules 2020.

8.2 With respect to the time limit rule for Mental Health, Section 2 cases, the TPC had already consulted in 2020 on this matter and had decided to delay making a decision on a permanent change so that the effects of the temporary change could be monitored, and the results assessed.

8.3 AW provided further context to the TPC in relation to latest developments:

- Rule changes in respect of Mental Health, Section 2 cases, paper-based decisions and private hearings would expire on 25 September 2022 (the same day as section 55 and Schedule 25 of the Coronavirus Act 2020);
- The Police, Crime, Sentencing and Courts Act 2022 had received Royal Assent. The provisions provided a broader and more flexible scheme for remote observation of proceedings to take over from the Coronavirus Act provisions. That scheme extends to all courts and tribunals other than the Supreme Court and devolved courts and tribunals, and allows, in principle, for the ability to direct transmission of proceedings which are not wholly video or wholly audio. It is, however, dependent for its operation on regulations (made by the Lord Chancellor with the concurrence of the Lord Chief Justice and Senior President of Tribunals) as the ability to direct transmission was only available in proceedings specified in such regulations.
- RB confirmed that if the TPC wanted to preserve these rules the MoJ would need to make appropriate provision in a rule-amending statutory instrument (coming into force before 25 September 2022).

8.4 The TPC agreed that permanent rule changes would likely require the TPC to hold a public consultation and, in the circumstances, the TPC would welcome the views of all Chamber Presidents as to whether either or both of the rules identified above should be preserved on a longer-term basis beyond 25 September.

8.5 JS said she would contact the Chamber Presidents to establish their views as to whether they considered the rules for paper-based decisions and private hearings should be preserved beyond 25 September 2022. The TPC agreed that they would welcome the views of the President of the Health, Education and Social Care Chamber (FtT) on whether the temporary rule change to extend time limits for Mental Health, Section 2 cases should be implemented as a permanent measure.

AP/33/22: To establish the views of the Chamber Presidents in respect to the expiry date for the temporary amendments to the rules for every chamber made by the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 and the Tribunal Procedure (Amendment) Rules 2020. – JS

Online Procedure Rules Committee

8.6 JS said that the clauses to create the Online Procedure Rule Committee (OPRC) were included in the Judicial Review and Courts Act 2022. The legislation received Royal Assent on 28 April 2022, and she understood that the MoJ was working towards the OPRC being operational in 2023.

8.7 JS confirmed that the MoJ was still considering issues in respect of the OPRC membership composition and that they were working on the public appointments process for appointment of the non-judicial members, which MoJ anticipated could take several months to complete. MoJ was working closely with HMCTS and Judicial Office (JO) to identify potential proceedings to include in an initial programme of work for the OPRC. Once this programme was agreed by Ministers, MoJ would begin drafting the affirmative SI to give the OPRC the power to make Online Procedure Rules in those areas. JS confirmed that the MoJ and JO intended to engage the TPC on this once the MoJ had a clear proposal. JS had already attended a couple of meetings with the Master of the Rolls, the Senior President of Tribunals and the President of the Family Division at which the plans for the OPRC had been discussed.

07 July 2022 TPC meeting

8.8 JS suggested that the scheduled meeting on 07 July 2022 should be moved to 14 July 2022 to give additional time to the IACSG to finalise the consultation paper as the meeting will be the final face to face opportunity to discuss/sign off the document before the summer break. The TPC agreed to the suggested rescheduling of the July meeting. JS asked the TPC Secretariat to canvass the views of the absent TPC members as to whether they would be available on the proposed new meeting date before sending out a revised meeting invitation.

AP/34/22: To obtain the views of the TPC Members as to whether they are available on the revised date of 14 July 2022. – TPC Secretariat

September 2022 TPC meeting

8.9 The TPC agreed to convene an online meeting on 22 September 2022, which would primarily focus on the IACSG's work and delivery plan for potential new and amended Rules resulting from the NBA. The meeting would run from 5pm to 7pm.

AP/35/22: To send a meeting invitation for 22 September 2022 to the TPC members. – TPC Secretariat

Next Meeting: Thursday 09 June 2022, 10.30am