

Tribunal Procedure Committee (TPC): Meeting Minutes: Thursday 09 June 2022

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

Present

(Mrs Justice) Joanna Smith (JS)
Michael Reed (MJR)
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)

Guests

Julian Phillips (JP)
Mark Blundell (MB)

Apologies

Philip Brook Smith (PBS)
Donald Ferguson (DF)
Gabriella Bettiga (GB)
Mark Loveday (ML)
Sue Pitt (SP)
Liam Halewood (LH)

Minutes

1. Introductory matters

1.1 Apologies were received from: PBS, DF, GB, ML, SP and LH. JS welcomed JP and MB and thanked them for agreeing to join the IACSG membership.

Matters arising

1.2 The draft minutes of the TPC meeting held on 05 May 2022 were approved.

TPC Action Log

1.3 The TPC action log had been updated.

TPC 14 July meeting

1.4 JS thanked the attendees for agreeing to bring forward the start time for the scheduled 14 July 2022 TPC meeting from 10.30am to 9.30am. The request by JS to change the time was to accommodate her responsibility for interim applications on 14 July 2022, as the designated judge in the Chancery Division. It is possible that she will not be available for the entirety of the meeting.

The transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal

1.5 JS provided an update on the transfer of responsibility for the making of procedure rules in the Employment Tribunal and Employment Appeal Tribunal to the TPC. The key legislative and policy developments of interest were:

- The Judicial Review and Courts Act received Royal Assent on 28 April 2022.
- Presently the Ministry of Justice (MoJ) policy officials were working to implement the provisions to transfer the Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) rule making powers from the Department for Business, Energy and Industrial Strategy for the ET and the Lord Chancellor to the TPC for the EAT. MoJ intended to commence these provisions once the two new members had been appointed to the TPC.

- The TPC recruitment process for the two additional members had started. The MoJ expected the TPC recruitment campaign to be launched in June or in July 2022 at the latest. MoJ expect the transfer of powers to take place between Autumn 2022 and early 2023.

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

New Plan for Immigration programme

- 2.1 MJR confirmed that the IACSG held a meeting on the 26 May 2022 with officials from the MoJ New Plan for Immigration (NPI) policy team and the Home Office (HO). The IACSG had discussed the set of draft rules prepared by MoJ lawyers for the NPI measures: Accelerated Detained Appeals, Expedited Judicial Process & Age Assessment Appeals.
- 2.2 MJR said the NPI lead policy official had provided the IACSG with a ministerial steer on the NPI policy strands that the MOJ would like the TPC to prioritise, if possible.
- 2.3 JS made clear that notwithstanding the desire on the part of the MOJ for a swift process, it is extremely important to ensure a full and proper consultation (based on a consultation document prepared by the IACSG and approved by the full TPC following proper consideration) and thereafter to prepare rules which meet the required objectives of the TPC in so far as is possible. If this means that the MOJ's planned timescales cannot be met, then so be it. JS confirmed that the SPT is wholly supportive of this approach.
- 2.4 The prioritisation order for NPI measures communicated was:
1. Expedited Judicial Process (EJP)
 2. Accelerated Detained Appeals (ADA)
 3. Age Assessment Appeals (AAA)
- 2.5 MJR said that the MoJ had confirmed that although there was no definitive deadline for the other reform measures, MoJ officials had suggested that they be ranked in the following order of priority:
- Single Joint Experts
 - Judicial duty on credibility
 - Costs Orders
 - Fixed Recoverable Costs
- 2.6 MJR remarked that the MoJ had reported that they had no reservations whatsoever in the TPC adopting an approach in progressing work on less time-consuming rule changes (for example, credibility workstream) alongside measures deemed a ministerial priority. However, MoJ would prefer that this does not occur if it is at the expense of delivering a priority rule change or if this impacts upon the timescale for delivering said rule changes for the target date of April 2023.
- 2.7 MJR said that following the IACSG meeting on 26 May 2022, the delay in the provision of information by the NPI team had hindered the progress of preparatory work on the draft consultation document which it had been intended would be available for the 09 June 2022 TPC meeting.
- 2.8 The TPC reviewed the provisional timetable for the planned IACSG consultation exercise. The TPC agreed for the IACSG/MJR to aim towards a target date of 14 July 2022 to circulate a first draft of the consultation paper to the Committee. An updated draft would then be discussed at the online meeting scheduled for 22 September 2022. That meeting had been arranged specifically with a view to discussing the NPI measures and to considering progress on the draft consultation document.
- 2.9 MJR said he would aim to share with the IACSG a first draft of the consultation document ahead of the IACSG meeting on 17 June 2022. He envisaged the meeting would be split into two parts. The opening segment (prior to a full discussion between the IACSG and the NPI team) would be for the IACSG to discuss and refine the first draft consultation paper. Once refined, this would be circulated for the 14 July 2022 TPC meeting.
- 2.10 Following discussion, the TPC agreed that it was realistic and possible to consult on the following NPI measures at the same time:

1. Expedited Judicial Process (EJP)
2. Accelerated Detained Appeals (ADA)
3. Age Assessment Appeals (AAA)
4. Single Joint Experts
5. Judicial duty on credibility

- 2.11 The TPC agreed that the remaining measures (namely Costs Orders and Fixed Recoverable Costs) would need to be deferred to a second tranche TPC consultation exercise, likely to be launched in mid-2023.
- 2.12 JS relayed to the TPC Secretary that she would be available to discuss the TPC's position in relation to the revised consultation timetable with NPI officials if needed, prior to the next scheduled IACSG meeting. The TPC agreed that it was important to manage Government expectations as to the timing of delivery of new rules necessitated by the Nationality and Borders Act 2022.
- 2.13 MJR remarked that in relation to the EJP measure, Mr Justice Lane, the President of the Immigration and Asylum Chamber of the Upper Tribunal (IAC-UT), had raised an administrative concern to the IACSG. This concerned whether the annual forecast of 400 appeals provided by the HO was in fact an accurate and reliable basis on which to plan the distribution of his judicial resources. The IAC (UT) Chamber President had also queried the methodology used by the HO to calculate this estimate and had further questions on the cohort of cases to be directed to the IAC (UT). MJR confirmed that this issue would be further probed by the IACSG with MoJ and HO officials at the scheduled meeting on 17 June 2022.

3. GTCL Sub-group (GTCLSG)

Charities Act 2022

- 3.1 With PBS absent, the TPC agreed that the 'Charities Act 2022' topic would be revisited at the 14 July 2022 TPC meeting to enable PBS to provide his assessment on the likely amendments to the current tribunal procedure.

AP/36/22: To add the 'Charities Act 2022' topic as an agenda item for the 14 July 2022 TPC meeting. – TPC Secretariat

Conservation Covenants

- 3.2 With PBS absent, JS asked RB to obtain a position update from PBS on the GTCLSG's work to formulate the draft rules needed for the 'Conservation Covenant' provisions. RB said that the Department for Environment, Food and Rural Affairs were commencing the 'Conservation Covenant' provisions on 30 September 2022.

- 3.3 The TPC agreed that the 'Conservation Covenants' topic would be revisited at the 14 July 2022 meeting.

AP/37/22: To seek a position update from PBS on potential rule changes resulting from the 'Conservation Covenant' provisions. – Razana Begum

AP/38/22: To add the 'Conservation Covenants' topic as an agenda item for the 14 July 2022 meeting. – TPC Secretariat

4. HSW Sub-group

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

- 4.1 JS thanked CM for her hard work in preparing a first version of a draft consultation paper on potential rule changes to the War Pension and Armed Forces Compensation Chamber (WPAFCC) Rules to accommodate the introduction of Direct Lodgement. JS confirmed that she had already provided her comments and she also used the opportunity to acknowledge PBS's contribution in providing his observations to CM.
- 4.2 CM said the draft consultation paper circulated incorporated indicative drafting provided by MoJ Policy for modifications to the current Rule 23 and Rule 24 to accommodate direct lodgement. She had also received feedback to the drafting proposals from Judge Fiona Monk, the WPAFCC Chamber President.

4.3 The TPC discussed the issues in the draft document that had been highlighted by CM for the TPC's input in relation to:

- Rule 5 (Case Management Powers)
- Rule 6 (Procedure for applying for and giving directions)
- Rule 23 (Response and replies)
- Rule 24 (Medical examinations and commissioning of medical evidence etc)

4.4 The TPC signed off the presented draft consultation paper, subject to agreed amendments. CM agreed to circulate a final version to the TPC when available, for their information.

4.5 The TPC agreed that a public consultation would run for 12 weeks.

Consultation on possible amendments to the Tribunal Procedure (First-tier Tribunal) (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 regarding proposed changes to the way that the First-tier Tribunal lists hearings in relation to applications by patients detained under section 2 of the Mental Health Act 1983

4.6 JS confirmed that Judge Sutherland-Williams, the President of the Health, Education and Social Care Chamber (First-tier Tribunal (FtT)) had indicated he would like to have a permanent rule for hearing 'Section 2' cases under the Mental Health Act 1983. He would be seeking a change to the timescale within which the Mental Health Tribunal must list Section 2 cases for hearing.

4.7 JS thanked CM for preparing a draft consultation paper. JS confirmed that she had already provided her comments to CM (in addition to PBS providing his feedback).

4.8 The TPC signed off the presented draft consultation paper, subject to agreed amendments. The TPC agreed that a public consultation would run for 8 weeks.

5. CE-Filing

5.1 JS said that PBS had circulated a revised version of the draft consultation paper that was very close to a final version to be signed off by the TPC. She remarked that the key new additions from the previously circulated draft paper were:

- The Civil Procedure Rules Practice Direction (now attached as Annex F).
- A new passage (paragraph 35ff) on a 'twin track' working process following an observation specifically raised by the Upper Tribunal (Administrative Appeals) Chamber.

5.2 The TPC signed off the presented draft consultation paper (subject to final typos etc.). JS asked the TPC members to provide any final typos directly to PBS by Monday 13 June 2022. The TPC agreed that a public consultation would run for 8 weeks.

AP/39/22: To provide their comments to the CE-filing consultation paper to PBS. – TPC Members

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

6.1 JS recapped to the attendees that the TPC rule changes were due to expire on 25 September 2022, in relation to:

- Covid amendment- timeframe for hearing Section 2 cases under the Mental Health Act 1983;
- Paper based hearings and private hearings; and
- Recordings

6.2 JS said that further to her correspondence with the Tribunal Chamber Presidents, some Chamber Presidents had provided their views in response to the question whether they wished "to seek an extension to the expiry date for the SI in respect to i) *The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020* and ii) *the Tribunal Procedure (Amendment) Rules 2020*".

6.3 The consensus from the Chamber Presidents that had replied to date was that they did not wish to seek such an extension to the rule for paper-based hearings and private hearings. As reported Judge Sutherland-Williams has indicated his support to retaining all 3 of the powers.

6.4 JS said that Judge Sutherland Williams had offered to come and speak to the TPC in relation to the paper-based hearings and private hearings provisions if the Committee felt that would be beneficial. CM agreed to discuss the matter with Judge Sutherland Williams ahead of the 14 July TPC meeting.

AP/40/22: To discuss with Judge Sutherland Williams his proposals for rule changes. – CM

6.5 The TPC agreed to defer a decision on the approach to be taken until it had received the outstanding judicial replies. JS asked SoR if he could urgently chase up the relevant Chamber Presidents to prompt their response to her enquiry.

AP/41/22: To raise the extension of the temporary measures implemented during the Pandemic/ rule changes topic with the Tribunal Chamber Presidents. – SoR

7. Overview Sub-group

TPC Work Programme

7.1 The TPC work programme had been updated and circulated on 01 June 2022.

8. AOB

First-tier Tax Tribunal's procedure rules

8.1 JS said that she had received a decision from Judge Poole in relation to his proposal for changes to tribunal procedural rules in respect of costs in the Tax Chamber (FtT). The matter had been directed to ML for his consideration. JS asked VP if he would contact ML to request him to prepare a position paper on this matter for the 14 July 2022 TPC meeting.

AP/42/22: To ask ML to prepare a position paper on the judicial proposal for a rule change to costs in the Tax Chamber (FtT). – TPC Secretariat

Next Meeting: Thursday 14 July 2022, 9.30am