

**Online Meeting via MS Teams**

**Present**

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

**Guests**

Mark Blundell (MB)

**Apologies**

Mark Loveday (ML)  
Gabriella Bettiga (GB)  
Julian Phillips (JP)

**Minutes**

**1. Introductory matters**

1.1 Apologies were received from: GB, ML and JP. JS welcomed SS to his first TPC meeting. SS has joined the Committee as a Lord Chief Justice Appointment. His term started on 29 July 2022 and is due to end on 28 July 2025. SS agreed to join the IACSG's membership.

**TPC Appointment**

1.2 JS reported that in relation to securing an additional TPC member from the recent TPC recruitment competition that that she understood that the Lord Chancellor had been asked to formally respond to the Lord Chief Justice's request for his views about appointing a new TPC member and that she expected the appointment exercise to be finalised shortly.

1.3 JS apologised to SH (on behalf of the TPC Secretariat) for any inconvenience caused as a consequence for not receiving the TPC meeting papers in a timely manner due to being accidentally omitted from the distribution list.

**Consolidated Tribunal Rules on GOV.UK**

1.4 JS said that RB had produced and updated the following consolidated tribunal rules:

- The Tribunal Procedure (Upper Tribunal) Rules 2008
- The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
- The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008
- The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
- The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009
- The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008
- The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008

1.5 VP reported that the updated consolidated Tribunal Rules had been posted on GOV.UK. JS thanked RB for her hard work. RB confirmed that any further updates would be actioned after the forthcoming Tribunals Procedure (Amm No.2) Rules statutory instrument (SI) had come into force.

### Matters arising

1.6 The draft minutes of the TPC meeting held on 16 July 2022 were approved.

### TPC Action Log

1.7 The TPC action log had been updated.

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

### New Plan for Immigration programme

2.1 MJR reported that the IACSG had met on 07 September 2022 to progress the work to finalise a draft Immigration consultation paper. The IACSG had identified some issues requiring further clarification which required Home Office (HO) and Ministry of Justice (MoJ) consideration in relation to the areas: priority removal notices (PRN), accelerated detained appeals (ADA) and age assessment appeals (AAA). VP had forwarded questions prepared by the IACSG to the relevant HO and MoJ policy owning officials.

2.2 MJR said he had incorporated the obtained information in the revised draft of the consultation paper circulated to the TPC. He had inserted comments in the document to flag where he sought the TPC's input/view to the IACSG drafting approach.

### Priority Removal Notices (PRN)

2.3 In relation to the HO's forecast for issuing PRNs, MJR said that it was the IACSG's understanding that the HO would issue around 11,000 PRNs, leading to approximately 400 expedited appeals per annum being directed to the Upper Tribunal (UT). However the TPC has also been told by the HO that it was their intention to begin by issuing a low number of PRNs to observe the results. The HO had stated that if the proportion of late appeals was excessive then fewer PRNs would be issued in order that the number of expedited appeals will not significantly exceed the expectation of 400 expedited appeals per annum.

2.4 The TPC agreed that it would be worthwhile to confirm with the HO the timescales involved for each stage of the PRN administrative process, to clarify whether it was the HO's expectation that the number of expedited appeals would be capped at around 400 expedited appeals and whether this appraisal would change after the first year.

2.5 The TPC discussed the information provided by the HO on the cohort and volumes for PRNs. The TPC agreed that the TPC Secretariat would run the wording by the HO and ask whether what the TPC had said in the draft consultation paper accurately reflects their objectives.

**AP/56/22: To run the wording by the HO and ask the department to confirm whether what the TPC had said (in draft) accurately reflects their objectives. – TPC Secretariat**

### Accelerated detained appeals

2.6 The TPC discussed the interpretation of Section 27 (3)(c) of the Nationality and Borders Act 2022 (NBA) in relation to the TPC's statutory requirement to make rules. Section 27 deals with the time limit for applications for permission to appeal (PTA) in ADA.

2.7 The TPC discussed: i) whether section 27(3)(c) required that both the First-tier Tribunal (FtT) and the UT had finally resolved the question of PTA within 20 working days of the decision being appealed, ii) or whether that section requires that the FtT has 20 working days and then the UT has 20 working days from the FtT's decision on PTA or iii) whether it means something else.

2.8 The TPC commissioned RB to prepare legal advice on this matter further to receipt of specific questions to be prepared by MJR.

**AP/57/22: To prepare legal advice on permission to appeal- Accelerated detained appeals. – RB**

### Age Assessment appeals

2.9 MJR said that the IACSG had some outstanding issues requiring further clarification arising from the MoJ Age Assessment paper that had been circulated to the Sub-group on 14 April 2022 in relation to:

- (i) What cases were anticipated to arise where a local authority (LA) was not the respondent?
- (ii) Where the respondent was a LA, why had it been suggested that the HO should be able to be added as an interested party. Also, in practice, how would the HO identify appeals that they wished to be added to as an interested party, how would that potential interest be communicated to the LA / Tribunal and what form would their involvement take?
- (iii) The suggestion of either LAs or the HO being added as interested parties seems to be limited to appeals requesting interim relief. What is the thinking behind that?

2.10 The TPC discussed the IACSG's observations and following a full discussion commissioned RB to prepare legal advice on:

- (i) Whether a LA or the HO needs to be added as a party to the proceedings in order for the decision of the Tribunal to be legally binding on them? Is there a difference between the Tribunal's final decision on the appeal and any decision as to interim relief?
- (ii) Whether the fact that section 54(5) NBA cannot operate to bind a LA by an interim relief decision by the Tribunal is altered if the LA is made a party to the appeal

**AP/58/22: To prepare legal advice on Age Assessment appeals. – RB**

2.11 Following receipt of the legal advice, the IACSG would prepare a set of questions that would be forwarded by the TPC Secretariat to the relevant MoJ/HO policy leads to answer.

**3. HSW Sub-group**

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

3.1 CM reported that the TPC consultation was due to close at midnight on 22 September 2022.

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

3.2 CM said that 11 responses had been received. 9 responses indicated their opposition to the proposed rule change to extend the period within which the Tribunal is required to list proceedings made under section 66(1)(a) of the Mental Health Act 1983 from 7 days to 10 days after the date the Tribunal receives an application notice.

3.3 CM recapped to the attendees that it had been previously reported that the TPC would assess the situation for making the rule change in light of what occurred using the temporary Covid arrangements.

3.4 The TPC agreed to include the MHT rule changes as proposed taking into account the previous high number of positive responses from the earlier 2020 consultation to make the rule changes as consulted.

3.5 CM reaffirmed that she would be absent for the October and November TPC meetings as she would be abroad and asked a volunteer from the HSWG to undertake any redrafting work if needed. PBS and DF agreed to progress/finalise the consultation response during her absence.

Rule Changes in (First-tier Tribunal) Special Educational Needs and Disability (SEND)

3.6 CM reported that the exercise to prepare the SEND draft consultation paper was on hold as she was waiting for statistical data and anecdotal information from the senior HESC judiciary. She would revisit this work in November.

Rule Changes in (First-tier Tribunal) Mental Health jurisdiction (MHT)

3.7 CM reported that she had prepared a first version of a draft consultation paper on the potential rule change to extend the permission to decide cases that are referrals, not patient applications, on the papers from only community patients (those on Community Treatment Orders) to include hospital-based patients. Due to other work priorities the TPC agreed to revisit this matter in November.

**AP/59/22: To add the topics potential rule changes for 1) (FtT) Special Educational Needs and Disability' and 2) (FtT) Mental Health as agenda items for November 2022 TPC meeting. – TPC Secretariat**

#### **4. Tribunals Procedure (Amm No.2) Rules Exercise**

4.1 The TPC agreed to include the Authorised Costs Orders rules as proposed by PBS's paper in the SI. VP said they were aiming to lay the SI on 11 October 2022 although the laying date was yet to be confirmed from Parly Branch and therefore there was a risk of delay.

4.2 RB said the final version of the Tribunal Procedure (Amendment No.2) Rules 2022 statutory instrument ("the SI") would include Rules making the following amendments:

##### The Tribunal Procedure (FtT) (General Regulatory Chamber) Rules 2009 and the Tribunal Procedure (UT) Rules 2008

- Amends the GRC Rules and Upper Tribunal Rules to correct cross-referencing to reflect legislative changes and to introduce provisions for applications for authorised cost orders to be made under section 324A (power to authorise costs to be incurred in relation to proceedings) of the Charities Act 2011 to the First-tier Tribunal and the Upper Tribunal, respectively.
- Amends Rule 32 (decision with or without a hearing) of the GRC Rules to permit such proceedings to be disposed of without a hearing where appropriate.

##### The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

- Amends Rule 37(1) (time and place of hearings) to extend the period within which the Tribunal is required to list proceedings made under section 66(1)(a) of the Mental Health Act 1983 from 7 days to 10 days after the date the Tribunal receives an application notice.

##### The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

- Amends Rule 4(2) and (4) to include provision to allow the Tribunal to dispose of applications made under paragraph 27D of Part 4A (code rights in respect of land connected to leased premises: unresponsive occupiers) of Schedule 3A to the Communications Act 2003 to the Tribunal without a hearing after giving 14 days' notice.
- Amends Rule 13 (orders for costs, reimbursement of fees and interest on costs) to provide the Tribunal the power to make unreasonable cost orders as a default for all jurisdictions. The amendments preserve the existing position in relation to costs in proceedings under Part 5 of the Rent Act 1977 and Part 1 of the Housing Act 1988, by expressly exempting unreasonable cost orders from being awarded in such proceedings.

##### The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

- Inserting a new Part 6A which makes provisions for applications to be made to the Lands Chamber of the Upper Tribunal under sections 130 and 135 of the Environment Act 2021 for the discharge or modification of conservation covenants, or for declarations in respect of conservation covenants.

4.3 RB said she would aim to circulate a revised draft SI (following legal checks together with a Keeling Schedule showing the amendments in context) on 23 September 2022. She would be asking the TPC members to provide any comments by the 28 September 2022 and following any comments, she would email a final "for signing version" of the SI to members on the 29th September 2022.

#### **5. Overview Sub-group**

##### TPC Work Programme

5.1 The TPC work programme had been updated and circulated on 16 September 2022.

#### **6. AOB**

##### TPC November Meeting

6.1 CM asked if the November TPC meeting date could be pushed back from the 03 November to 10 November. This action would allow her to attend the November meeting. JS asked VP to canvass the TPC members to check whether they were content with the proposed change to the meeting date. If the majority of members were content with the change, then the meeting date would be changed as requested.

**AP/60/22: To ask the TPC members if they were content to reschedule the November TPC meeting. – TPC Secretariat**

**Next Meeting:** Thursday 06 October 2022