

**Tribunal Procedure Committee (TPC): Meeting Minutes:
Thursday 02 February 2023**

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)
Mark Loveday (ML)
Susan Humble (SH)
Gabriella Bettiga (GB)
Donald Ferguson (DF)
Stephen Smith (SS)
Jeremy Rintoul (JKR)
Alasdair Wallace (AW)
Razana Begum (RB)
Shane O'Reilly (SOR)
Vijay Parkash (VP)
Cerys O'Keeffe (COK)
Hanna Polanszky (HP)

Guest(s)

Julian Phillips (JP) - (FtT IAC- Resident Judge)

Apologies

Beth Stuart-Cole (BSC)
Timothy Fagg (TF)
Mark Blundell (MB) - (UT IAC- Liaison Judge)

Minutes

1. Introductory matters

1.1. JS welcomed HP to her first Tribunal Procedure Committee (TPC) meeting. HP is a Ministry of Justice (MoJ) policy advisor who has joined the TPC Secretariat.

TPC Appointments/Membership

1.2. JS was pleased to confirm that both SH and PBS have agreed in principle to extend their terms as TPC members, subject to approval of the re-appointment from the Lord Chancellor (LC) following a recommendation that would be made by the MoJ Public Appointment Team. JS hoped this reappointment exercise might be concluded as soon as the March 2023 TPC meeting. JS thanked both TPC members for their continued commitment to the TPC.

Matters Arising

1.3. The draft minutes of the TPC meeting held on 01 December 2022 were approved.

1.4. JS thanked MJR and the members of the Immigration and Asylum Chamber Sub-group (IACSG) for their dedicated work and swift actions to progress the possible changes to the First-tier Tribunal (Immigration and Asylum Chamber) Rules and the Upper Tribunal Rules arising from the Nationality and Borders Act 2022 ('NBA') consultation exercise (the 'IAC consultation').

- The IACSG have attended sub-group meetings. MJR said the IACSG were in a good position in respect to the exercise to prepare the draft reply and for the document being ready for publication by mid-March 2023. JS said the deadline would be achieved subject to the TPC coming to an agreement on the overarching issues that needed further deliberation in this meeting.

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

New Plan for Immigration programme and IAC consultation exercise

2.1. MJR explained the approach and the proposed structure that the IACSG had used to construct the draft consultation reply. He provided his observations for the proposed rule changes to the Rules on the following topics:

- Expedited appeals process in the Upper Tribunal (UT)
- Accelerated detained appeals

Expedited Appeals Question 1: Reform vs Traditional Approach?

2.2. MJR led a discussion regarding the use of a reform approach vs a traditionalist approach to expedited appeals, as detailed in Questions 1 to 5 in the consultation paper.

2.3. After an extensive discussion of each option the TPC agreed the approach for the rules relating to expedited and related appeals. The next draft will reflect the agreed approach.

Expedited Appeals Question 2: Time Frames?

2.4. MJR summarised the IACSG's approach used to address the 'timeframes' matter, as had been consulted on under Question 3. MJR summarised the respondents' views and supporting arguments on alternative timeframes. He asked the TPC for their views.

- The TPC discussed a range of ideas and how they might align with the views of the majority of the consultation respondents and the requirements of the NBA.
- MJR agreed to discuss this matter further at the next IACSG meeting and would discuss with Mr Justice Dove, Chamber President for the IAC (Upper Tribunal) to obtain his view whether the UT process should replicate the current approach adopted in the Immigration and Asylum Chamber of the First-tier Tribunal (F-tT).

The key issues requiring further judicial clarification would include how the present administrative and judicial resources would assist to meet the legislative objectives.

AP/80/23: Discuss the expedited appeals timeframe in the UT with Mr Justice Dove-MJR.

Accelerated Detained Appeals (ADA) Question: Suitability review

2.5. The TPC considered the form which the ADA suitability review should take and, in particular, to what extent and in what circumstances an oral hearing should be required.

- The focus of the discussion around this matter was how best to ensure justice was to be prioritised.
- The TPC agreed in principle the approach in respect of a suitability review, to be stated in the consultation Reply.

Age Assessment Appeals

2.6. JS told the TPC that her understanding from contacts at the MoJ was that the TPC were to continue progressing this exercise to make rules for 'age assessment appeals' as they had not been formally told by government that it was no longer a priority.

2.7. MJR mentioned the 'duty of candour' point raised by respondents to the IAC consultation. The TPC discussed whether this duty was necessary or even achievable in the new rules.

2.8. MJR mentioned the 'Interested Party Rule' which the majority of the consultation respondents had stated should be implemented.

Question 17 of the IAC Consultation Questionnaire Time Limit Query

2.9. MJR said 27(3)(c) of NBA imposes a requirement on rules for the Upper Tribunal that an application for permission to appeal must be resolved within 20 days. A respondent had queried the interpretation of section 27(3)(c) of NBA.

2.10. MJR asked RB if this provision means 20 days per tribunal (totalling 40 days) or 20 days in total. JS asked RB to investigate this matter and provide legal advice in respect of 27(3)(c) of NBA.

AP/81/23: Investigate what was meant by '20 Days' in section 27(3)(b) of NBA- RB

2.11. JS thanked everyone for their contributions to these discussions. MJR confirmed he would prepare another draft consultation Reply after the next IACSG meeting and circulate the document to the TPC for discussion at the next meeting.

- 2.12. JS confirmed that she can report to the SPT that the TPC was on track to meet the desired deadline to make these rules changes.

3. HSW Sub-group (HSWSG)

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

- 3.1. CM said a respondent to the TPC WPAFCC direct lodgement consultation had asked the TPC Secretariat whether the TPC had considered their observation about Rule 23(4) as regards which tribunal documents the Secretary of State must provide to the Tribunal when sending their response once direct lodgement is introduced.
- 3.2. The respondent had asked the TPC if rule 23(4)(c) should be revoked as they considered the Tribunal would already hold information such as the name and address of the appellants representative already in the original Notice of Appeal.
- 3.3. CM said the President of the WPAFCC had indicated the provision was necessary and for the rule to be retained as this was administratively more helpful to the tribunal and the judge. JS asked CM to prepare a response to the respondent. VP would share this advice with the respondent.

AP/82/23: To prepare a response detailing the reason for rule 23 (4) (c) to be retained - CM

Transitional arrangements

- 3.4. CM reported that the HMCTS administrative team have asked MoJ policy/ RB to include transitional arrangements for the Rules in the Tribunal Procedure (Amendment) Rules 2023 SI so that direct lodgement rules only apply to decisions made on or after 6th April 2023. Their request was to ensure they were better able to plan and manage the anticipated increased level of receipts once the direct lodgement process had been introduced in April 2023. CM confirmed that the Chamber President, Judge Fiona Monk, had been consulted and that she had indicated her support for this proposal to be considered by the TPC.
- 3.5. After a full discussion the TPC agreed to include a rule change for a transitional provision.

4. Costs Sub-group

Employment Tribunal

- 4.1. ML said that the Senior President of Tribunals (SPT) has published on 30 January 2023 a consultation about reform proposals in respect of the arrangements for panels relating to the Employment Tribunals and the Employment Appeal Tribunal (EAT) which will be conferred under section 35 of the Judicial Review and Courts Act 2022 (JRCA). The consultation is due to end on 27 March 2023.

- 4.2. Section 4 of Employment Tribunals Act 1986: the composition is a matter that is dealt with by the full tribunal. There are a variety of exceptions to this, and these can be extended by rules made by the Secretary of State (SoS).
- 4.3. ML's understanding is that, as such, the SPTs consultation can only be implemented by regulations by the Secretary of State (or the TPC if the rule changing responsibility for the ET and EAT has transferred to the TPC).
- 4.4. ML enquired if the MoJ had a list of potential rules changes the TPC expect to be taking on for the ET and EAT.
- 4.5. SOR pointed out the JRCA will create a new section 4 which splits out rule making and panel composition to include the role of the SPT.
- 4.6. JS explained that the TPC does not yet have a confirmed date in which the TPC will take over responsibility for the ET/EAT rule making work and confirmed that MoJ had started the appointment exercise to recruit 2 additional TPC posts and that she anticipated that the process would be concluded by April 2023.

Next Meeting: Thursday 23 February 2023, 10:30am