

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

Hybrid Meeting at 7 Rolls Buildings and 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)
Timothy Fagg (TF)
Alasdair Wallace (AW)
Razana Begum (RB)
Shane O'Reilly (SOR)
Vijay Parkash (VP)
Cerys O'Keeffe (COK)
Hannah Polanszky (HP)

Guest(s)

Julian Phillips (JP) - (FtT IAC- Liaison Judge)
Mark Blundell (MB) - (UT IAC- Liaison Judge)
Marcus Da Costa (MDC) – MoJ Legal Advisers

Apologies

Beth Stuart-Cole (BSC)

Minutes

1. Introductory matters

TPC Appointment

- 1.1. JS announced the unfortunate news that BSC has tendered her resignation from the TPC due to an ongoing medical condition. She expected Judicial Office would shortly be launching an expression of interest recruitment exercise to identify her replacement. As a lay member/non-legal member providing advice to the TPC, BSC is a Lord Chief Justice (LCJ) appointment. JS asked the TPC members to approach/canvass any colleagues/people who they consider might be appropriate to take on this role and to contact her with any recommendations they might have. JS thanked BSC for her service and contributions to the TPC.
- 1.2. The Lord Chancellor's (LC) re-appointment exercise of PBS and SH is still in progress. VP reported the process is currently under way and there had been an exchange of correspondence between the LCJ and LC to progress the exercise to its conclusion.
- 1.3. JS was very pleased to confirm that MJR has agreed in principle to serve for another term on the TPC and understands that the formal request for his re-appointment is in hand.

Matters Arising

- 1.4. The draft minutes from the 02 February 2023 TPC meeting were provisionally agreed and JS asked for any further comments to be sent to COK.

- 1.5. There will be condensed minutes from the emergency TPC meeting held on 23 February 2023 which will be circulated by COK in due course to the TPC for sign-off. JS asked for any comments on these to be forwarded to COK.
- 1.6. VP confirmed there is nothing to report from the Action Log as all actions have been completed.

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

New Plan for Immigration programme (NPI): Nationality and Borders Act 2022 (NBA)

- 2.1. JS explained that due to uncertainties over whether the NBA measures will now be implemented in April 2023 by the Home Office (HO) (about which she had become aware only very shortly before the start of the meeting) it would not be possible to sign-off the Tribunal Procedure (Immigration and Asylum Chamber) Amendment Rules 2023 Statutory Instrument (SI) at this meeting, as had originally been anticipated.
- 2.2. The TPC agreed to finalise the draft SI and consultation reply so that they are ready to be signed if it becomes possible to do so.
 - RB explained the final backstop deadline for TPC signatures would be 08 March 2023 to meet the desired 06 April 2023 coming into force date for the SI.
- 2.3. JS acknowledged the immense efforts that went into drafting the SI and the connected consultation reply by the IACSG, wider TPC, RB and the TPC secretariat.
- 2.4. MJR expressed his concerns that, constitutionally, the TPC undertook this rule-making exercise because they were required to by an Act of Parliament (NBA). If the Statute is not in force, then there is no requirement in primary legislation for the TPC to make rules in any particular form and no reason to make the rules that had been consulted upon.
- 2.5. SS observed that the TPC does not have sufficient clarity in respect of the status of the NBA from the HO and the Ministry of Justice (MoJ). The TPC needs urgent confirmation from the government as to whether the policy position on immigration has changed and, in particular, whether NBA is ever going to be implemented (or if it is going to be delayed, indefinitely or otherwise). The TPC agreed with these sentiments.
- 2.6. JS confirmed that she will be emailing David Parkin ((MoJ policy official): being Deputy Director in Access to Justice, Courts, Tribunals and Transparency division) asking for further clarification from him and the HO on this matter. JS expressed her disappointment that the TPC had not been kept informed as to the government's plans, in circumstances where it had been devoting considerable time and energy to expediting the preparation of rules specifically at the request of government officials. This had been a complex and time-consuming task which had necessitated considerable extra work by members of the TPC. JS expressed the view that the work of the TPC required continuing goodwill on the part of its members and that recent events had the potential to undermine that goodwill. JS emphasised to members that she would be making this clear to David Parkin in her email.
 - The TPC will not be signing off the SI unless and until it receives confirmation that NBA will be brought into force as planned in April 2023.

New Plan for Immigration programme (NPI): Nationality and Borders Act 2022 (NBA Consultation Response)

- 2.7. The TPC agreed that it was necessary to publish the IAC consultation reply document in an appropriate form given the time spent drafting it and its potential to be useful in the future. Furthermore, the TPC considered that it was important for respondents to the consultation

(who took the time to prepare and send over their formal responses) to see how these had been addressed by the TPC.

- 2.8. The TPC agreed to include a policy paper provided by the MoJ as a documented response to the public consultation, for the sake of transparency, because it was used to inform decision making.
- 2.9. The TPC noted the general approach to late submissions of consultation responses, namely that out of time responses will be taken into account if possible and at the TPC's discretion. However, it was acknowledged that this is not always possible due to time pressures faced by the TPC.
- 2.10. The TPC worked through the draft consultation reply question by question to ensure each member was satisfied with the answers as drafted. Minor adjustments were made to the document but there were no substantive issues to discuss further, and the document was agreed to be in final form, subject to any amendments that might be required once further clarification on the future of N-BA had been received.

Second Tranche Consultation exercise

- 2.11. SS confirmed that he would pause his work relating to this exercise whilst waiting for clarity regarding the implementation of the first tranche of NBA work.
- 2.12. MB identified the importance of the proposed abolition of Rule 22a of the Upper Tribunal (UT) Rules. The TPC agreed to pause this matter for now, but to ensure it remains on the work programme in order to revisit the work at the appropriate time.

Changes to the Citizens' Rights Appeals Query

- 2.13. HO officials contacted the TPC on 13 March 2023 regarding proposed changes to the First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014 including amending paragraph 6(4) of Part 2 to Schedule 4 of the Citizens' Rights Appeals Regulations and allowing appeal rights for those people who applied before 31 January 2020. It was suggested that these could be made without the need for consultation.
- 2.14. JS confirmed that in some limited cases, rules changes have occurred in the past without the need for the proposed changes to go out to consultation. However, in her view, this would only ever be appropriate for in general minor, technical rules changes.
 - In this case it is a substantive issue and therefore the matter should be referred to the TPC to be properly considered, drafted, and consulted on.
 - These potential rules changes will be added to the TPC work programme once the HO officials have provided the TPC with an explanatory paper.

AP/84/23: Inform HO officials that they will need formally to approach the TPC for changes to citizens' rights appeals. - VP

3. Transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal to the TPC

- 3.1. The TPC received a policy paper on 23 February 2023 from MoJ official Robin Rimmer updating them on the transfer of responsibility for the making of Procedure Rules in the Employment Tribunal and Employment Appeal Tribunal to the TPC.
- 3.2. JS confirmed that she will be interviewing potential candidates for the additional TPC memberships facilitated by this transfer of responsibilities.

4. Costs Sub-group

4.1. ML provided an update that the FtT have requested that an error be rectified in Rule 13 of the Property Chamber Rules in relation to the Rent Act 1977. ML agreed in principle to action a remedy to this in the coming autumn TPC Amendment SI.

AP/85/23: Brief TPC on this matter at the May 2023 TPC meeting. - ML

5. Confidentiality Sub-group

Third party access to documents in tribunal proceedings (*Dring & Cider of Sweden*)

5.1. TF informed the TPC that a questionnaire had been circulated to the Tribunal Chamber Presidents relating to this matter and that 14 responses to the questionnaire had been received.

- A position paper outlining these responses was circulated to the TPC.
- This item will be added to the agenda for the May 2023 TPC meeting for further discussion.

AP/86/23: Draft a paper expanding on the above topic. - TF, PBS, ML

6. TPC Amendment Rules SI Spring 2023 Exercise

6.1. RB asked the TPC members in attendance to sign The Tribunal Procedure (Amendment) Rules 2023 SI.

7. Overview Sub-group

7.1. The TPC work programme has been updated.

8. AOB

Future Meeting Dates

8.1. The TPC agreed that due to the availability of the TPC members and the fact that there had been two TPC meetings held in close proximity on 23 February and the 02 March, there will be no meeting in April 2023. The next meeting will be on 4 May 2023.

8.2. The June 2023 TPC meeting will take place on 08 June as opposed to the first Thursday of the month.

8.3. JS confirmed that (subject to any unforeseen events) there would be no TPC meeting scheduled in August or September 2023 (as is the usual practice during the summer vacation).

AP/87/23: Circulate the dates for the TPC meetings in 2023/2024 and send meeting invites on MS Teams to the TPC/attendees. -TPC Secretariat

Next Meeting: Thursday 04 May 2023