

Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 04 May 2023

Meeting (Hybrid) at 7 Rolls Buildings London

Present

Mrs Justice Joanna Smith (JS)
Philip Brook Smith (PBS)
Christine Martin (CM)
Mark Loveday (ML)
Susan Humble (SH)
Gabriella Bettiga (GB)
Timothy Fagg (TF)
Stephen Smith (SS)
Jeremy Rintoul (JKR)
Alasdair Wallace (AW)
Razana Begum (RB)
Shane O'Reilly (SOR)
Vijay Parkash (VP)
Hannah Polanszky (HP)

Guests

Michael Reed - (MJR)
Gareth Wilson (GW) - Assistant Resident Judge (FtT IAC)
Mark Blundell (MB) (UT IAC- Liaison Judge)
Robin Rimmer (RR) (MoJ Policy Adviser- item 3) via MS Teams

Apologies

Julian Phillips (JP)
Cerys O'Keeffe (COK)
Donald Ferguson (DF)

Minutes

1. Introductory matters

- 1.1 JS welcomed GW to the meeting and thanked him for attending on behalf of JP. GW was attending the meeting to assist with the Immigration and Asylum Chambers (IAC) topic to be discussed by the TPC under 'agenda item 2'.
- 1.2 MJR would be attending the meeting in the capacity as a 'guest' as his term on the TPC ended on 18 April 2023.

TPC Appointments

- 1.3 JS updated the TPC on the progress of the Lord Chancellor (LC) endorsement re-appointment exercise pertaining to SH and PBS, whose respective terms on the TPC are due to end on 03 July 2023. The Ministry of Justice (MoJ) Public Appointment Team (PAT) has confirmed that the Tribunals Minister is waiting for a response from the Commissioner for Public Appointments on both reappointments to finalise the reappointment procedure.

- 1.4 As regards to extending MJR's term, the policy advice regarding his reappointment was being considered by the LC. The Judicial Office (JO) is progressing this matter.
- 1.5 VP updated the TPC on the progress to appoint a Lord Chief Justice appointment for the vacant non-legal member TPC role. The JO is still progressing this matter and it was expected that an 'expression of interest' exercise would be launched shortly.

Matters Arising

- 1.6 The draft minutes from the 23 February 2023 TPC meeting and 02 March 2023 TPC meeting were provisionally agreed, subject to a few minor amendments.
- 1.7 JS informed attendees that the Tribunal Procedure (Amendment) Rules 2023 statutory instrument (SI) was laid on 16 March 2023. The SI had come into force on 06 April 2023.
- 1.8 The TPC Reply on 'Possible changes to the First-tier Tribunal (Immigration and Asylum Chamber) Rules and the Upper Tribunal Rules arising from Nationality and Borders Act 2022' was published on 12 April 2023 on GOV.UK.
- 1.9 There were no outstanding action points on the TPC Action Log that required the TPC's immediate attention.

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

New Plan for Immigration programme: Nationality and Borders Act 2022 - Overview

- 2.1 JS provided the TPC with a status update regarding the Home Office (HO) position on their intended plans for progressing the Nationality and Borders Act 2022 (NABA) reforms. She had exchanged email correspondence with an MoJ senior policy official regarding 'tranche one' provisions relating to: i) Expedited appeals in the Upper Tribunal (UT), ii) Accelerated Detained appeals, and 'tranche two reforms: i) Credibility provision and ii) new Costs provisions (that required the TPC's input to make potential new Rules).
- 2.2 JS confirmed that regarding 'tranche one' reforms the Government's work is still pending; however, confirmation for the implementation timeframes for the agreed rules changes to be introduced has not been formally communicated to her/the TPC. She understands that the MoJ and HO are working towards implementation of the first tranche of reforms around October 2023 pending final Ministerial decisions.
- 2.3 The MoJ has confirmed that reforms in respect to i) Age Assessment Appeals and ii) Joint Instruction of Experts (JIE) will no longer be actively pursued by Government and therefore these reforms no longer need to be included in a TPC Amendment Rules SI.

NABA- Second tranche

- 2.4 JS confirmed that regarding 'tranche two' reforms: new 'Costs provisions' is still expected to progress with the current stated ambition being that HO & MoJ would complete this work by October 2023, although this seems very unlikely. There is no certainty as to either this deadline or how it could be achieved. JS considers that this target implementation date will almost inevitably be pushed back to (at least) April 2024. On that basis, the TPC decided that there was no necessity to continue to focus/assign their resources on the second tranche reforms at this time.
- 2.5 In relation to the potential new 'Costs provisions' reform measures, all attendees noted that the TPC had been direct and clear in their request to the MoJ/HO for the reform

work to be finalised when the first tranche exercise was complete, so the TPC could begin working fully on the second tranche at pace. This is now impossible.

- 2.6 JS explained that she had attempted to discuss further with MoJ senior officials the progress in relation to the overall NABA reforms package with a view to understanding the government policy position. She intended to brief the TPC on the 04 May on the latest developments regarding policy plans and to use this information as a catalyst for succession planning the TPC's workload. Regrettably, no further interaction with MoJ occurred prior to the TPC meeting.
- 2.7 The TPC decided that, in the absence of any further instruction or confirmation on future NABA reforms implementation plans, the TPC cannot progress the rule making exercise in relation to NABA any further at this time.
- 2.8 SS referred to the 'MoJ policy paper' on the related cost reform measures and briefed the TPC on his preliminary views. Following a discussion on the matter, the TPC agreed that further information/clarification was still needed from the MoJ to progress any potential related Rules work. SS agreed to draft a note to MoJ Policy setting out the matters which the TPC consider will need to be addressed by MoJ/HO before the TPC is able to progress a future consultation exercise.

AP/88/23: To draft a note in response to the 'MoJ paper' on new Costs reform measures.
- SS

Illegal Migration Bill 2023

- 2.9 The TPC discussed the practical considerations of making rules for the Illegal Migration Bill 2023 (IMB), given the accelerated legislative timetable set by the Government to make the judicial changes. The IMB is currently expected to receive Royal Assent in July 2023 at the earliest and the ambition appears to be for the legislation to be implemented as soon as practicable after Royal Assent.
- 2.10 The TPC discussed the lack of sufficient clarity regarding the preparation of the new Rules required under clause 48 of the IMB, given the time constraints for new Rules to be in place from the date of commencement. The TPC discussed the legislative provision: time limits for the consideration of an appeal in relation to suspensive claims and for these time limits to be set out in Tribunal Procedure Rules.
- 2.11 Due to the time constraints imposed by the desire to bring these reforms into force as quickly as possible, the TPC discussed a spectrum of potential options for progressing the necessary Rule making exercise to a successful conclusion. The TPC observed that the expected accelerated timescale for implementation was unusually challenging as the TPC was required to follow certain procedures, including consultation to make the related rules, which could not sensibly be achieved in the time available. The timing of the proposed implementation (September 2023) was also extremely challenging as the TPC could not start work on drafting rules until after Royal Assent (assumed to be the end of July). The period available for work on the rules therefore fell in vacation when many members would be unavailable.
- 2.12 MJR confirmed his view that there would certainly be a need to consult on the rules for IMB due to the issues discussed (applying the usual TPC consultation requirements). The TPC agreed.

2.13 The TPC agreed that JS would email the relevant MoJ policy official to request further information and clarification on HO and MoJ expectations to facilitate efficient planning and preparation for the commencement of the IMB related rule work.

AP/89/23: to request clarification from MoJ Policy on the Government's plans/timetable to introduce the Illegal Migration Bill provisions. – JS

Immigration (Citizens' Rights Appeals) (European Union (EU) Exit) Regulations 2020

2.14 JS referred to a policy proposal paper submitted by the HO seeking the TPC's agreement to amend paragraph 3D of the Tribunal Procedure (First-tier Tribunal) (IAC) Rules 2014. The HO was seeking a rule amendment so that where a person who has an outstanding administrative review, and who has not brought appeal proceedings against the original decision, decides to withdraw their administrative review, the time limit for appealing re-starts.

2.15 MJR briefed the TPC on the matter and, following a discussion, the TPC agreed that contrary to the HO proposal, it would be necessary to consult on this proposed rule change, working on the provisional basis of a six-week consultation period. MJR agreed to prepare a draft consultation paper. The TPC will make a final decision on the duration of the consultation period once they have considered the first version of the consultation draft paper at the 08 June TPC meeting.

AP/90/23: To draft a first version of a draft consultation paper on the topic: Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 to be circulated by the 08 June meeting. - MJR

2.16 The TPC discussed a legal observation raised by RB related to the proposed policy paper. The TPC will return to the matter once they receive the draft consultation paper prepared by MJR.

2.17 VP will meet with the HO policy team leading on the EUSS policy and will communicate the TPCs decision as set out above.

2.18 MB referred to a previous proposal by the Upper Tribunal (UT) to amend Rule 22A of the Tribunal Procedure (Upper Tribunal) Rules 2008. The TPC had planned to address this as part of the second tranche costs related NABA consultation. As this endeavour is now on pause, MB suggested that the matter of Rule 22A could be included in the forthcoming consultation paper relating to Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (to be prepared by MJR).

2.19 The TPC agreed that the Rule 22A matter should be included in the forthcoming TPC draft consultation paper to seek the public/interested stakeholders' views.

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

3.1 RR provided a policy update on progress towards implementation of the Judicial Review and Courts Act 2022 in respect of the transfer of responsibility of the Employment Tribunal (ET) and the Employment Appeal Tribunal (EAT) procedure Rules to the TPC.

Recruitment for the new TPC members

3.2 A provision in the Judicial Review & Courts Act 2022, subject to commencement, provides the power to appoint two new committee members to the TPC. RR said that the recruitment process for both appointments is expected to conclude by the end of May 2023.

3.3 JS reported that she had not been consulted on the Lord Chief Justice (LCJ) appointment at any stage of the recruitment process despite being on the sift recruitment panel. RR explained that the appointment is being run by the Judicial Office (JO) but will make enquires in relation to the matter and update JS on the outcome of his enquiries.

AP/91/23: To clarify the status for the LCJ appointment with judicial office and to subsequently update JS. - RR

3.4 RR said confirmation on when the announcement of the appointments can be made is still awaiting further legal advice. Legal advice is also being sought on the status of the new members in the period prior to commencement of the relevant provisions of the Act. RR asked the TPC for their view on the possibility of the new members joining upcoming TPC meetings in the capacity as 'guest attendees' before they are formally appointed. The proposal was designed to ease the transition of the ET/EAT Rules and allow for bedding in time in advance of the statutory transfer.

3.5 JS confirmed that the TPC had already considered this issue and the TPC agreed that it would be useful for the new members to join as guests to raise their awareness of the TPC's work programme and to gain an understanding of the nature of the TPC's work. JS suggested that the new members may be able to participate at the 08 June meeting, if their appointments have been formally announced by the MoJ prior to that date.

Timeline for Rules transfer

3.6 RR sought the TPC's views on the timing of the rules transfer and he proposed that the most suitable date to commence the transfer would be September 2023, with an effective in force date of 1 October 2023 (subject to ministerial agreement). RR asked whether this timing would pose any issues for the TPC.

3.7 JS said that she cannot foresee any particular issues with the proposed commencement date, apart from the fact that expectations as to the TPC's capacity to begin the associated rulemaking may require careful management in light of the volume of work currently on the TPC's agenda.

3.8 A new ET Subgroup will be established and the TPC will need to consider the appropriate membership composition. It will be important for the TPC to have an understanding as to which of the proposed new rules to be considered by the ET Subgroup are regarded as urgent. Further discussions will need to take place with RR and the Department for Business and Trade (DBT) to determine the question of priorities.

Proposed Employment Tribunal Rules changes

3.9 The DBT have been working towards taking through a package of proposed urgent ET/EAT Rules changes. RR explained that if the DBT are unable to complete this exercise ahead of the transfer of the ET/EAT Rules to the TPC (as appears very likely), there will be a substantial package of proposed ET/EAT Rule amendments ready for the TPC to consider (at the point of transition). RR acknowledged that IMB workload is likely

to remain the higher priority for the TPC but would be grateful for the TPC's views on when they think they might be able to start considering these forthcoming rule changes.

- 3.10 JS rejected any suggestion that work would be done in advance of the transition on drafting the rules for the TPC but indicated that, if any Rules changes were deemed urgent, the TPC would welcome explanations clearly detailing the context of the urgency to assist the ET Subgroup in prioritising the forthcoming ET/EAT Rules workload.

AP/92/23: To provide the rationale/supporting arguments for deemed urgent ET/EAT rule changes to the TPC. - RR

- 3.11 RR confirmed that he will relay the TPC's request to the relevant ET Presidents and EAT President.
- 3.12 MJR said that, at an appropriate time in the future, the TPC may wish to reassess the current ET Rules with a view to bringing those rules into line with the other First-tier Tribunal Chamber Rules. This review exercise would ensure consistency. In respect of the EAT Rules, he considered that there was more urgency for the TPC to undertake a full review, as the EAT Rules have not been updated since 1993. In practice, the majority of modern EAT procedure is contained in their existing Practice Direction.

Employment Tribunals Subgroup

- 3.13 JS informed that TPC that it was her recommendation that MJR should head the TPC Employment Subgroup with the membership initially to comprise the two new recruited TPC members. This recommendation was accepted by the TPC.

Senior President of Tribunals' (SPT) consultation on ET and EAT panel composition

- 3.14 SOR provided an update (following the SPT's consultation on panel composition in the ETs and EAT which was shared with the TPC when it was published at the end of January 2023). The SPT consultation was issued in anticipation of powers being delegated to the SPT under section 35 of the Judicial Review and Courts Act 2022. The SPT has decided to defer considering the responses until such time as those powers have been delegated to him.

4. GTCL Subgroup

Correspondence from a member of the public: how documents are provided by the Tribunal to parties who reside overseas

- 4.1 ML left the meeting as he had declared a conflict of interest to the attendees in respect to this matter.
- 4.2 PBS said he was considering a query from a member of the public in respect of the current Property Chamber Procedure rules that had been brought to the GTCL Subgroup's attention by the TPC Secretariat. The individual had specifically asked the TPC to clarify the procedural steps that are to be followed by the Property Chamber (FtT) for dealing with delivery of originating proceeding documents to a party overseas. PBS added that he had discussed the matter with senior judiciary in the Property Chamber and Lands Chamber (UT). The TPC discussed generally the issues raised. PBS said he expected that the TPC will need to investigate the matter further before deciding on whether to take the issue forward. The GTCL Subgroup will consult with the

relevant Tribunal Chamber Presidents (including the ET/EAT Presidents) on the matter and report back to the TPC in due course.

4.3 PBS will lead on the enquiry stage and subsequently report back to the TPC at the 08 June TPC meeting.

AP/93/23: To consult the relevant Tribunal Chamber Presidents on this matter (including the ET & EAT Presidents) and to report back to the TPC at the 08 June TPC meeting. - PBS

4.4 ML returned to the meeting after the conclusion of the TPC's discussion on this matter.

Private Renters Reform Bill 2023

4.5 PBS said that the President of the Property Chamber (FtT) has been in contact with him and ML in relation to a Private Renters Reform Bill (PRRB). The Bill outlines plans to abolish Section 21 "no fault" evictions and for periodic tenancies to become standard.

4.6 PBS said the GTCL Subgroup would consider if there was a need for rule changes to accommodate this planned legislation as the PRRB provisions if introduced, would impact on the current work of the Property Chamber (FtT).

4.7 The Bill is sponsored by the Department for Levelling Up, Housing and Communities. Elements of the PRRB have been presented to Parliament. This matter will be revisited at the 08 June TPC meeting.

5. HSW Subgroup

Victim Personal Statements in the First-tier Tribunal (Mental Health)

5.1 CM summarised the issue as detailed in the policy paper prepared by MoJ Victim and Witness Policy and Strategy Team in respect to 'Victim Personal Statements' in the (Mental Health jurisdiction) of the Health, Education and Social Care Chamber (HESC-FtT).

5.2 The Government is seeking to add an entitlement to the 'Victims Code of Practice' which may necessitate potential rule changes.

5.3 SH observed that there is a suggestion in the policy paper that this is outside of the TPC's jurisdiction and is not a matter for us.

5.4 The TPC discussed the Victim Personal Statements proposal at length, and it was felt that it would be inappropriate for the committee to take this forward before the Code of Practice has been drafted and the public consultation concluded.

5.5 The TPC confirmed the likelihood that there would be a need to consult on the matter once they have received the draft Code of Practice which is expected to be implemented in April 2024.

AP/94/23: To seek the views of the HESC Chamber president and Deputy Chamber president in respect to Victims Personal Statements and potential rule changes to be made to The Tribunal Procedure (HESC) (FtT) Rules 2008. - CM

6. Costs Subgroup

- 6.1. ML informed the attendees that the Property Chamber (FtT) have requested an apparent error be rectified in Rule 13 of the Property Chamber Rules in relation to the Rent Act 1977, the legislation which introduced the category of protected tenancy in the law of England and Wales. ML agreed in principle to action a potential remedy to this issue in the upcoming TPC Amendment SI Rules exercise planned for Autumn 2023.
- 6.2. A draft paper is being prepared in relation to amending the Property Chamber Tribunal Rules. The draft paper will be initially circulated to the Cost Subgroup and will accordingly be brought forward to the 08 June TPC meeting for the TPC's attention.

7. Confidentiality Subgroup

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

- 7.1. TF reported that the Confidentiality Subgroup had met on 20 April 2023 to discuss the judicial feedback received from the Tribunal Chamber Presidents. The judiciary had completed and returned the questionnaire on the topic of disclosure of documents to 3rd parties and the costs implications, setting out their views/changed views.
- 7.2. The TPC discussed the matter and having considered the advantages and disadvantages of a potential rule change, did not feel that there is an urgent need for a Rule change at this present time.

8. Overview Subgroup

- 8.1. The TPC work programme had been updated and circulated on 12 April 2023.
- 8.2. It was agreed that the TPC work programme should be updated to amend/add/remove:

Section 1 of the TPC Work Programme

- Remove entry 3: HMCTS Courts & Tribunals Digital Reform.
- Remove entry 4: Direct Lodgement - First-tier Tribunal) War Pensions and Armed Forces Compensation Chamber.
- Add new entry: Changes to the Citizens Rights Appeals
- Add new entry: Correspondence from a member of the public: query in respect to how documents are provided by the Tribunal to parties who reside overseas

Section 2 of the TPC Work Programme

- Transfer entry 2: Rule 22A of the Tribunal Procedure (Upper Tribunal) Rules 2008 to section 1 of the TPC work programme.

Watching Brief

- Remove entry 2: Litigation Friends

9. AOB

Online Procedure Rules Committee

- 9.1. JS updated the TPC on the creation of the Online Procedure Rules Committee (OPRC) and the judicial preparatory meetings that she had attended during March and April 2023. The meetings had been chaired by the Master of the Rolls and key attendees at both meetings included the SPT, the President of the Family Division, senior judiciary and MoJ/HMCTS officials.

- 9.2. JS said that the purpose of these meetings has been to get the structure and processes right for the OPRC when introduced, i.e., three primary areas of focus: governance/rule making, data, and the technical side of the digital systems themselves. JS would report any further key developments to the TPC as necessary.

Tribunal Procedure (Amendment) Rules 2023 Statutory Instrument

- 9.3. JS reported that RB had made her aware that an amendment will need to be made to the Tribunal Procedure (Amendment) Rules 2023 SI to correct two minor omissions. RB said that the next opportunity for correction will be to include these in the upcoming TPC Amendment SI Rules exercise planned for Autumn 2023.

Timing of the June 2023 TPC meeting

- 9.4. JS confirmed that the June 2023 TPC meeting will take place on 08 June rather than the customary timing on the first Thursday of each calendar month.

Next Meetings: Thursday 08 June 2023