

**Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 08 June 2023**

Meeting (Hybrid) at 7 Rolls Building London

Present

Mrs Justice Joanna Smith (JS)
Christine Martin (CM)
Mark Loveday (ML)
Susan Humble (SH)
Donald Ferguson (DF)
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)
Mark Blundell (MB) (UT IAC- Liaison Judge)
Julian Phillips (JP) (FtT IAC- Liaison Judge)

Apologies

Philip Brook Smith (PBS)
Gabriella Bettiga (GB)

Minutes

1. Introductory matters

- 1.1 JS welcomed the attendees to the meeting and apologised for the delay in circulating the draft TPC May 2023 meeting minutes. JS confirmed that the document will be circulated following the meeting for consideration/sign-off.
- 1.2 JS informed the meeting that Cerys O'Keeffe has left the TPC secretariat team to work solely for the Ministry of Justice (MoJ) New Plan for Immigration team. The TPC wished her well in her new role.

TPC appointments

- 1.3 JS confirmed that the Lord Chancellor (LC) announced on 18 May 2023 the reappointment of PBS and SH as TPC members for a further 3-year term (from 4 July 2023 to 3 July 2026). This formal announcement has been published on Gov.UK.
- 1.4 The LCJ has approved MJR's reappointment for a three-year term from 22 May 2023 until 21 May 2026. JS anticipated that MJR will receive formal notification of his reappointment shortly. In the meantime, he is attending this meeting as a guest. Once

the letter has been received, VP will update the TPC membership segment on the TPC website page.

- 1.5 In respect of the Lord Chief Justice's appointment for the vacant non-legal member role, the Judicial Office (JO) is still progressing this appointment exercise. It was expected that an 'expression of interest' (EOI) exercise would be launched by JO before the next TPC meeting.
- 1.6 JS expressed the need for urgency in relation to the JO commencing the EOI exercise for the non-legal TPC member post. JS asked VP to contact JO to communicate her concern that the EOI exercise be commenced as soon as possible. It is undesirable for the TPC to be left without a member for a long period of time owing to delay in undertaking the EOI exercise – particularly when the TPC has such a substantial workload. VP agreed to update JS with any further developments.

AP/95/23: To clarify the status of the expression of interest exercise with judicial office and subsequently to update. - JS- VP

- 1.7 In respect of the TPC Employment Tribunal (ET) Appointments (LC appointment), MoJ Ministers have approved the appointment for the recruitment panel's recommended appointee. JS said the successful applicant could not be formally appointed to the TPC until the relevant provisions of the Judicial Review and Courts Act 2022 are implemented.
- 1.8 Once the appointment has been notified to the new appointee, he will be invited to attend the next TPC meeting scheduled on 06 July 2023 (in the capacity as a guest).
- 1.9 Regarding the TPC ET (LCJ appointment) post, no additional information has been received by JS from JO or the MOJ since their last update in relation to the timing for the sifting exercise, JS said that, in these circumstances, it is unlikely that the potential new member will be able to commence his/her TPC role until October 2023 at the earliest. This is obviously disappointing. JS will update the TPC in due course when she receives further information as to the sift exercise.

Matters Arising

- 1.10 The draft minutes from the 04 May 2023 TPC meeting will be approved out of committee by TPC Members via email.

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

- 1.11 JS referred to an update provided by MOJ policy official Robin Rimmer (RR) in relation to the transfer of responsibility for the making of the Procedure Rules in the ET and Employment Appeal Tribunal (EAT) to the TPC. The TPC requested further clarification from the ET President (England and Wales) in relation to the prioritisation of the forthcoming Rules to be transferred over by the TPC. The ET President submitted a response for the TPC's consideration.
- 1.12 JS added that RR had suggested that she meet with the ET Presidents in the near future to discuss further the prioritisation of Rules. However, JS observed that a meeting at this present time is premature, as the newly appointed TPC members (with the

appropriate ET knowledge/skills) have yet to commence their posts as TPC members, moreover the TPC will not be in a position to begin the ET related Rules work until the Autumn, when the transfer of rulemaking responsibility will take place. JS suggested meeting with the ET Presidents at a later date, once the newly appointed TPC members were bedded in. JS recommended that MJR and the two new designated ET Subgroup members also attend the meeting with the ET Presidents.

- 1.13 JS is pleased to announce that SS has agreed to replace MJR as the Chair of the Immigration and Asylum Chamber (IAC) Subgroup, subject to the approval of the full committee. The TPC supported JS's recommendation for SS as the new Chair of the IAC Subgroup. JS and the TPC members thanked MJR for his stellar work during the time he was the Chair of the IAC Subgroup.
- 1.14 MJR sought JS's views on when the handover of his responsibilities as the Chair of the IAC Subgroup to SS should commence. It was agreed that the transfer to SS will commence forthwith. MJR offered to complete and circulate a revised version of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 related draft consultation paper as his final act as IAC Subgroup Chair.
- 1.15 VP asked MJR for his views on whether three members will be sufficient for the proposed ET Subgroup to carry out their work proficiently. MJR suggested the likely need for an additional subgroup member. JS invited TPC members to register their interest should they wish to join the ET Subgroup. Individual TPC members will return to JS to register their potential interest should they wish to volunteer for the role. This matter will be revisited at the July TPC meeting.
- 1.16 There were no outstanding action points on the TPC Action Log that required the TPC's immediate attention.

2. Immigration & Asylum Chambers Subgroup (IACSG)

Illegal Migration Bill 2023

- 2.1 JS provided the TPC with a position update regarding the Home Office (HO) and MoJ's latest position on their intended legislative plans for progressing the Illegal Migration Bill 2023 (IMB). JS referred to an email exchange between herself and a senior MoJ policy official and provided an overview:
 - The IMB provides strict time limits for the consideration of an Upper Tribunal appeal in relation to suspensive claims and for these time limits to be set out in Tribunal Procedure Rules. The LC intends to implement the scheme in the IMB as soon as practicable after Royal Assent has been received (expected July 2023). The Government consider it will be necessary for the Tribunal Procedure Rules to be in place from the date of commencement. To enable this to happen an amendment to the IMB has been made to provide for the first set of Tribunal Procedure Rules to be made by the LC, rather than the TPC, after which the power to make rules will revert to the TPC.
- 2.2 JS explained that she had attempted to discuss this further with the MoJ senior policy official and had expected a meeting to take place in relation to future IMB plans, together with plans for the implementation of NABA, ahead of the TPC 08 June 2023 meeting.

Regrettably, no further interaction with MoJ occurred prior to the 08 June 2023. Accordingly, JS could not update the TPC further.

2.3 SOR confirmed that the amendment to the IMB relating to rulemaking has already been tabled by the Government for the Lords Committee stage on 25 May 2023.

New Plan for Immigration programme: Nationality and Borders Act 2022

2.4 JS referred to the position paper prepared by SS which was submitted to MoJ in response to the 'MoJ policy paper' on the related cost reform measures (second tranche rules) in relation to the Nationality and Borders Act 2022 (NABA). The IAC Subgroup expect to receive a MoJ response to the preliminary observation note prepared by SS in due course. Once the TPC have received the required information and further instruction from Government on its intended plans, they can consider what work is required to progress the second tranche NABA rules work. However, it is at present unclear whether this will be pursued by Government.

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

2.5 The TPC are preparing to consult in order to gain stakeholder views in relation to a HO proposal to amend rule 19(3D) of the Tribunal Procedure (First-tier Tribunal) (IAC) Rules 2014. HO is seeking a rule change to provide that where a person who has an outstanding administrative review (but has not brought appeal proceedings against the original decision) decides to withdraw their administrative review, the time limit for appealing re-starts. This rule change appears to be required to address a significant backlog in the system in respect of administrative reviews.

2.6 MJR prepared a first draft version of the consultation paper which was circulated ahead of the TPC 08 June 2023 meeting.

2.7 SS raised a substantive point regarding a 'time limits' matter in relation to the administrative reviews/appeals process and offered his insight in relation to the drafting for a proposed rule amendment. The TPC discussed the matter and agreed that the points raised by SS should be reflected in the consultation paper. As SS is now to take over as IAC Subgroup Chair, he agreed to make the relevant amendments to the draft consultation paper prepared by MJR with a view to addressing the points he had raised. The revised draft consultation paper will then need to be considered again at the next TPC meeting.

AP/96/23: To amend the draft consultation paper to reflect points raised and distribute the new draft to IAC subgroup. MJR & SS.

3 GTCL Subgroup

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

3.1 ML left the meeting as he had previously declared a conflict of interest to the attendees in respect to this matter.

3.1 JS provided an update to the TPC regarding the correspondence from the MoP and stated that she had replied to the individual on 04 May 2023. She had advised the MoP that the TPC would be investigating his query.

- 3.2 PBS is currently seeking information from the Tribunal Chamber Presidents as to how documents are provided by each respective chamber to parties who reside overseas and whether they perceive there to be any issue with this process. PBS has advised that he is still awaiting replies from some of the Tribunal Chamber Presidents.
- 3.3 JS confirmed that this matter will be deferred to the 06 July 2023 TPC meeting at which time she expected PBS to provide further information from Chamber Presidents. It would then be possible for the TPC to discuss whether, and if so what, further action needed to be taken to address the points raised by the MoP.

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

4. HSW Subgroup

Mental Health Tribunal Rule 35 proposed change

- 4.1 CM provided the TPC with an update in respect of the draft consultation paper regarding the proposed change to Rule 35 of the Health, Education and Social Care Chamber (HESC) Rules. The proposed rule change was requested by Judge Mark Sutherland Williams, the HESC Chamber President and Judge Sarah Johnston, the HESC Deputy President for the mental health jurisdiction. Rule 35 is concerned with the management of cases and, in particular, the types of cases which may be disposed of without a hearing.
- 4.2 SOR referred to a point he had communicated to the TPC out of committee, in respect of the panel composition for mental health cases and the present panel composition practice direction issued by the SPT. SOR suggested an amendment to the draft consultation paper to highlight that the SPT had consulted on this related matter in 2022. The TPC agreed that the point will be addressed in the draft consultation.
- 4.3 SS observed a 'safeguarding' procedural point in relation to the perceived mental capacity of the appellant. He suggested that a reference to the point raised be included within the consultation paper to avoid any confusion. Following a discussion, the TPC agreed to clarify this point and CM will proceed to make the relevant amendment to the draft consultation paper so as to clarify that the proposed Rule change only applies to patients who have capacity.
- 4.4 DF offered his insight working in the Scottish Tribunals Justice System in relation to safeguarding issues in the context of the MHT proposals. The TPC discussed the issue raised and subsequently decided to address the safeguarding related issues by amending the draft consultation paper to address the points raised in order to gain stakeholder perspectives on potential safeguarding related concerns. The HSW Subgroup will make the relevant amendments and circulate to the TPC ahead of the July TPC meeting.
- 4.5 RB observed that the Mental Health Amendment Bill 2023 has not yet gained Royal Assent and is currently in draft. She suggested that this fact be reflected in the draft consultation paper. RB also raised an additional safeguarding point in relation to the impact of possible changes on timing of 'references' once the Mental Health Amendment

Bill 2023 gains Royal Assent. The TPC discussed the point raised and agreed that the suggested amendments will be included in the revised draft consultation paper.

AP/97/23 To revisit draft consultation to include TPC's observations in relation to safeguarding, capacity and panel composition- CM/DF

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

4.6 The TPC discussed the issue of Victim Personal Statements (VPS), an issue that had been previously discussed at the May 2023 TPC meeting. The Government is seeking to add an entitlement to the Victims' Code of Practice ("the Code") to allow certain victims to submit a VPS to the Tribunal as part of the documents made available to the judicial panel hearing the case. The Tribunal would have the discretion to allow and hear a VPS from an individual before the Tribunal gave its decision. Following the TPC May meeting, CM met Judge Sutherland Williams and Judge Johnston to discuss 'the potential use of VPS in the Mental Health Tribunal' (MHT). The judges prepared a note for CM, detailing their views and also provided the administrative forms currently used by the MHT to notify victims.

4.7 CM summarised the judicial note in relation to the VPS topic and related information from the MoJ Victim and Witness Policy and Strategy Team (VWPST). The TPC discussed the matter and identified various serious concerns relating to the context and substance of the policy proposal. The TPC have yet to consider the amended 'Victims Code' as it has yet to be presented in a final document. The TPC discussed the VWPTS proposal for the TPC to commence rule related work ahead of considering the content of the new 'Code'. The TPC expressed concern as to the making of rules before considering the content of the Code, which is contrary to the TPC's usual procedure. The TPC is at presently wholly unclear what it is being asked to do and why new rules are required.

4.8 The TPC decided that it would need further clarification from the VWPST. JS asked VP to invite MoJ policy officials to the TPC 06 July meeting to discuss the matter further in order to gain clarity on Government expectations.

AP/98/23- To invite MoJ policy officials to the July TPC meeting - VP

Costs Sub-Group

5.1 ML provided an update on the matter of costs in the Property Chamber of the First-tier Tribunal and circulated a paper addressing Rule 13 of the Property Chamber Rules: Order for Costs, reimbursement in fees and interest of costs.

5.2 The TPC discussed an amendment to Rule 13 and agreed that the proposed amendment should be made.

6 Overview Subgroup

6.1 The TPC work programme has been updated and circulated as of 02 June 2023.

7. A.O.B

Tribunal Procedure (Immigration and Asylum Chamber) (Amendment No.2) Rules 2023

7.1 The TPC Subgroup Chairs confirmed to RB (subject to the TPC's agreement) the rule changes that they expected would be included in the next Autumn TPC Rules statutory instrument package.

Next Meeting: Thursday 06 July 2023