

**Tribunal Procedure Committee (TPC) Meeting Minutes  
Friday 02 February 2024**

**Meeting (Hybrid) at 7 Rolls Building, London**

**Present**

- Mrs Justice Smith (JS)
- Philip Brook Smith (PBS)
- Michael Reed (MJR)
- Christine Martin (CM)
- Jeremy Rintoul (JR)
- Stephen Smith (SS)
- Donald Ferguson (DWF)
- Mark Loveday (ML)
- David Franey (DF)
- Matt Jackson (MJ)
- Gillian Fleming (GF)
- Razana Begum (RB)
- Vijay Parkash (VP)
- Hanna Polanszky (HP)
- Amir Khandoker (AK)
- Joshua Gibson (JG)
- Cari Jones (CJ)

**Guests**

- Mark Blundell (MB)
- Julian Phillips (JP)

**Apologies**

- Gabriella Bettiga (GB)
- Susan Humble (SH)
- Alasdair Wallace (AW)

**Minutes**

**1. Introductory matters**

- 1.1. JS welcomed JG and CJ to their inaugural TPC meeting. JG and CJ are Deputy Private Secretaries to the Senior President of Tribunals (SPT). They will be attending future meetings in their capacities as liaison officials to the SPT.
- 1.2. AW, GB, and SH sent their apologies for not being able to attend the meeting.

**Matters Arising**

- 1.3. The draft minutes from the 08 December 2023 meeting were agreed by the TPC subject to some minor amendments.

## TPC appointments/membership

- 1.4. JS stated that the Judicial Office (JO) had received one application for the vacant First-tier Tribunal (FtT) member post. JS said that at the conclusion of the selection process, the applicant had been judged successful by the panel. The formal consultation process to appoint the candidate is nearing completion. JS expects to provide further details of the appointment to the TPC at the March meeting.

## “Written Reasons” in the First-tier Tribunal

- 1.5. JS informed the TPC about a meeting she had recently attended with the SPT at which she had explained the TPC’s current view that it would not be sensible to consult on the proposal for a rule change related to working practices for reasoned judgments. This view had been arrived at following a judicial consultation exercise. The replies had indicated that the proposal was not supported by the majority of Tribunal Chamber Presidents. JS informed the TPC that the SPT had acknowledged that the decision not to go out to wider consultation was inevitable in light of the responses received from Chamber Presidents.
- 1.6. CJ stated that the SPT is having further discussions with the Chamber Presidents to clarify the points they raised and that the JO will bring a revised proposal to the TPC’s attention again in due course.

## **2. Tribunal Procedure Rules – the power to set aside a decision where there has been a procedural irregularity**

- 2.1. JS informed the TPC that the Chamber Presidents universally approved the rule change, which gives the tribunal the power to set aside a judicial decision where there has been a procedural irregularity. Due to the unanimous judicial approval, JS asked for the views of the committee as to whether a public consultation on the proposed rule change was necessary.
- 2.2. After a full discussion, the TPC decided that a public consultation was necessary to ensure that interested stakeholders had the opportunity to respond to the proposal for a new rule to clarify the circumstances in which the FtT can set aside one of its own decisions where there has been a procedural irregularity.
- 2.3. MJ agreed to prepare a draft consultation paper for the subsequent March meeting. The TPC agreed that the consultation period should run for 12 weeks.

**AP/01/24- To prepare a draft consultation paper for the March TPC meeting- MJ.**

### **3. The Ministry of Justice (MOJ) Legal Resources – future Employment Tribunal & Employment Appeal Tribunal Rules drafting work**

- 3.1. JS said that she had been updated by VP as to his understanding of the latest position in relation to the Employment Tribunal (ET) and Employment Appeal Tribunal (EAT) rules transfer, namely that advice is going to the MoJ Ministers in mid-February 2024. The latest thinking is that the transfer in relation to the ET rules may happen first, with the EAT rules transfer to follow, although with the caveat that this is all subject to ministerial approval.
- 3.2. JS informed the TPC that AW had written to her about a potential legal resourcing issue, but that the possible risk of delay to the ET/EAT rules implementation timetable had now been resolved because the pressing nature of getting these ET rules through as soon as possible had been appreciated. The necessary legal resource had been secured to give effect to the transfer under the Judicial Review and Courts Act (JCRA) of responsibility for the ET/EAT Rules to the TPC.
- 3.3. JS said MoJ Legal will need to lay statutory instruments (SI) in late 2024 and in 2025. The SI package will comprise of commencement regulations (for the relevant provisions of the JCRA), regulations revoking the existing ET and EAT rules/procedure regulations and regulations making consequential changes, and ultimately, the new ET & EAT Procedure Rules. The legal exercise would require careful sequencing and will be split into distinct tranches to ensure a smooth transfer from the old ET/EAT rules regime to the new regime for each set of new TPC Rules.
- 3.4. The TPC discussed this new proposal and agreed that it would be beneficial to split the transfer in this way whilst factoring in the legal resourcing issue as reported by AW.
- 3.5. JS asked VP to express the TPC's concern that they would not be able to finalise the consultation document at the March meeting due to the continuing lack of clarity regarding the ET rules transfer date. MJR said that because of the tight timescales involved in meeting key milestones in preparing and publishing the consultation, a failure to provide formal clarity would likely have a knock-on effect on the implementation timing of the SI, endangering the planned date of October 2024 for it to come into force. A hold-up by the MoJ in providing clarity to the TPC over the course of the next few weeks will therefore lead to further delays in bringing about the ET and EAT rules that are deemed urgent by the ET Presidents.
- 3.6. VP said he would communicate the TPC's observations to the relevant MoJ policy officials. He added that he understood a meeting was scheduled for 29 February 2024 between officials and the Minister to discuss the ET rules transfer.

#### **4. Employment Tribunal/ Employment Appeal Tribunal Subgroup**

- 4.1. MJR provided an update on the ET/EAT subgroup's recent work. The subgroup met on 12 January 2024 to discuss the preliminary work to prepare a draft consultation paper in respect to the first set of ET rules to be made by the TPC after the formal transfer of ET rule-making powers.
- 4.2. The subgroup had discussed the rule changes in relation to the process and changes that will be required as part of the transfer, including proposed amendments to the powers of legal officers and the prioritised changes that have been requested by the ET Presidents. Also discussed were the potential changes to the EAT rules and how best to proceed with the drafting exercise.
- 4.3. MJR informed the TPC that the government has launched, on 29 January 2024, a consultation on introducing fees in the ET and the EAT. He has had discussions with RB about this matter. The subgroup would acknowledge this policy intention in the consultation paper, although the TPC acknowledged that they had no control over fees policy proposed by the government.
- 4.4. JS asked the TPC members to provide any comments in respect to the draft consultation document to MJR by 21 February 2024.
- 4.5. JS asked CJ to inform the SPT about the discussions that have taken place during the meeting.

**AP/02/24- To provide any comments/ suggested track changes to MJR in respect to the draft consultation paper- TPC Members.**

#### **5. Immigration and Asylum Chambers Subgroup (IACSG)**

- 5.1. JS said that VP had provided her with a position update given by the MoJ New Plan for Immigration Team regarding the Home Office's plans for progressing the provisions (delivery or operational timetable) resulting from the Nationality and Borders Act 2022 and the Illegal Migration Act 2023. The position was unchanged from the previously reported update in December 2023, i.e., no further forward.
- 5.2. SS reported that there were no urgent issues that required the TPC's immediate attention.

#### **6. GTCL Subgroup**

- 6.1. PBS thanked RB for preparing the circulated version of the draft TPC (Amendment) SI. The draft SI had been updated following an email exchange in respect to the drafting instructions provided by PBS. The draft SI included rule changes that would be going into the rule package to be included in the Spring TPC (Amendment) SI.
- 6.2. ML said he and PBS were planning to meet with Judge McGrath, the President of the Property Chamber (FtT), in mid-February to discuss possible changes

to tribunal procedure rules resulting from new or amended legislation that impacts on the present Property Chamber Tribunal procedure.

- 6.3. ML said a topic to be discussed was the Department for Levelling Up, Housing and Communities (DLUHC) proposal that there should be an amendment to the Building Safety Act 2022 to include specific powers for the Tribunal to vary Remediation and Remediation Contribution Orders under Sections 123 and 124 of the Building Safety Act 2023. The proposed measures would be included in the Leasehold & Freehold Reform Bill 2023-24 currently before Parliament.
- 6.4. ML said he understood that the DLUHC had sought a TPC and judicial view in response to their parliamentary counsel observation that an alternative approach to amending the legislation would be to ask the TPC to amend the existing Property Chamber procedural rules.
- 6.5. VP said it was his view that, in the first instance, the matter should be considered by the relevant policy officials in the MoJ and DLUHC, with legal input from government lawyers if needed. JS asked VP to pass on this matter to the relevant MoJ tribunal policy official in order for them to lead on this work and accordingly to contact the appropriate DLUHC Policy officials to progress this issue. JS also asked VP to report his endeavours to the TPC at the March meeting.

**AP/03/24- To provide an update at March meeting in respect to the Leasehold & Freehold Reform Bill- VP.**

**7. HSW Subgroup**

Open Justice in Criminal Injuries Compensation cases

- 7.1. CM said that the TPC consultation closed on 12 December 2023. 2 replies had been received.
- 7.2. CM provided an overview of the first version of the draft consultation reply that she had prepared and circulated. The TPC discussed the draft response document. JS asked the TPC members to provide any further comments to CM by 09 February 2024.

**AP/04/24- To provide any comments/ suggested track changes to CM in respect to the draft response document- TPC Members.**

Mental Health Tribunal (MHT) Rule 35 proposed change

- 7.3. CM said she had received correspondence from an individual in respect to a query about the process to submit views outside the TPC consultation process for the MHT Rule 35 proposed change. VP said that as the consultation closes on the 10 February, there are no procedural reasons why the individual cannot contribute to the TPC consultation, with their view, if they choose to submit

one. Any received responses before the consultation closing date will be considered by the TPC in the usual manner.

- 7.4. JS asked the TPC secretariat to prepare a draft guidance document for her consideration. The purpose of the guidance document would be to provide clarity to individuals, including the judiciary, who may be unclear as to the way in which they should respond to TPC consultations.

**AP/05/24- To prepare a guidance document on the TPC consultation process and other related helpful topics- TPC Secretariat.**

- 7.5. CM said she would be absent for the next scheduled meeting on 07 March. In her absence, PBS agreed to assist with any queries in respect to the MHT drafting consultation exercise.

**8. Costs Subgroup**

- 8.1. ML reported that there were no urgent issues that required the TPC's immediate attention.

**9. TPC Amendment Rules Spring 2024 Exercise**

- 9.1. RB confirmed the draft TPC Amendment SI and the related keeling schedule had been circulated to the TPC members. She had requested that the TPC members return any comments to her by 09 February 2024. RB said that she would circulate a final version of the SI to the TPC for their signature prior to the March meeting.
- 9.2. RB said that the intended date to lay the SI is 14 March 2024. The SI is expected to come into force on 06 April 2024.

**10. Overview Subgroup**

- 10.1. The TPC work programme has been updated and has been circulated as of 16 January 2024. It was agreed that the TPC work programme should be updated to reflect the latest progress update for each entry.

**11. AOB**

- 11.1. JS informed the TPC that a judicial commitment in the Chancery Division on 07 March 2024 may prevent her chairing the next scheduled TPC meeting on the same date. At the request of JS, MJR agreed to chair the March meeting if JS is unable to attend.
- 11.2. Due to the religious festival Eid-al-Fitr, RB, HP, and AK will not attend the TPC meeting scheduled on 11 April 2024. RB has organised cover so that there will still be a legal advisor at the meeting.

**Next Meeting: Thursday 07 March 2024**