

**Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 07 March 2024**

Meeting (Hybrid) at 7 Rolls Building, London

Present

- Mrs Justice Smith (JS)
- Michael Reed (MJR)
- Jeremy Rintoul (JR)
- Stephen Smith (SS)
- Mark Loveday (ML)
- David Franey (DF)
- Matt Jackson (MJ)
- Gillian Fleming (GF)
- Gabriella Bettiga (GB)
- Susan Humble (SH)
- Alasdair Wallace (AW)
- Vijay Parkash (VP)
- Hanna Polanszky (HP)
- Amir Khandoker (AK)
- Joshua Gibson (JG)

Apologies

- Philip Brook Smith (PBS)
- Christine Martin (CM)
- Donald Ferguson (DWF)
- Mark Blundell (MB)
- Razana Begum (RB)

Minutes

1. Introductory matters

- 1.1. CM, DWF, PBS, MB, and RB sent their apologies for not being able to attend the meeting.

TPC appointments/membership

- 1.2. JS informed the TPC that there have been no further developments in relation to the appointment of a new Tribunal member on the TPC to fill a vacant post. JS asked JG for his assistance to intervene on behalf of the Senior President of Tribunals (SPT) Office to obtain an update from the Judicial Office (JO) Holders Appointments team to expedite this appointment matter.

Matters Arising

- 1.3. The draft minutes from the 02 February 2024 meeting were agreed by the TPC.

- 1.4. The draft TPC guidance document prepared by the TPC Secretariat was approved by the TPC subject to a few minor amendments. JS said she hoped the guidance document would raise awareness in respect of the TPC's rule-making process/procedure, timescales and necessary actions that were involved to introduce new rule changes/amendments (following a proposal) to the existing Tribunal Rules. She expected the guidance document would be of interest to stakeholders including the tribunal judiciary, Crown officials, and tribunal users.

AP/06/24- To approach JO to obtain a position update in respect of the vacant tribunal member post- JG.

AP/07/24- To make the arrangements to publish the TPC guidance document on GOV.UK- TPC Secretariat.

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

- 2.1. The TPC discussed the draft consultation paper in respect of the SPT's proposal for potential rule changes to be made clarifying the circumstances in which the First-tier Tribunal (FtT) can set aside one of its own decisions where there has been a procedural irregularity. JS thanked MJ for preparing the document.
- 2.2. JS suggested amendments to the paper to MJ that he accepted. JS asked MJ to send a revised draft to SS, MJR, and herself in the first instance before circulating the updated draft to the other TPC members. The TPC would revisit this matter at the April meeting with the intention that the TPC will sign-off the consultation document.

AP/08/24- To amend the draft consultation paper with comments received from the TPC members- MJ.

3. Rule changes on 'Written Reasons' in the First-tier Tribunal

- 3.1. JS said she had met the SPT on 14 February 2024 to revisit/discuss the proposal for rule changes to modify the current working practices for reasoned judgments. She explained that the SPT had requested the TPC to prioritise this issue with a view to supporting the HMCTS 'One Justice' modernisation programme.
- 3.2. JS recapped the judicial feedback to the initial judicial proposal that had been discussed by the TPC at their December 2023 meeting. The SPT has since conducted a renewed engagement exercise with the Upper Tribunal (UT) and FtT Chamber Presidents, albeit that the exercise is not yet complete. The SPT is nevertheless optimistic that he will secure agreement to a modified set of rules changes designed to facilitate reform. JS explained that the SPT was considering preparing a Practice Direction to support these potential rule changes, if introduced. JS invited JG to add any additional relevant information.

- 3.3. JG informed the TPC that the rule change proposal had been modified. The proposed set of rule changes to be applied across the FtT is now more bespoke and tailored for each Chamber. This approach was designed to factor in the unique characteristics and subject matter of each FtT chamber jurisdiction. JG confirmed the UT chambers were out of scope and would not be affected if the proposed rule changes were introduced.
- 3.4. The TPC noted that the bespoke nature of the proposal and related access to justice considerations would likely require a substantial time/resource to be incurred by the TPC to prepare a consultation paper. The TPC agreed that it would be important to explain in the consultation document the Committee's change in stance from their earlier reported position. The TPC agreed it would also be important to document in the consultation paper the rationale for the consultation, namely that the senior judiciary had expressed support for the modified proposal. The TPC agreed to reactivate the Written Reasons Subgroup (chaired by JS) so as to deal with this issue.
- 3.5. JG asked JS if the TPC required any additional information/ assistance from the SPT's Office to assist with the drafting exercise to prepare a consultation paper. JS asked JG to prepare a position paper setting out the rationale for the proposed rule changes for each FtT chamber. JG agreed to provide a paper for the April meeting.

AP/09/24- To prepare and circulate a position paper on the 'Written Reasons' subject matter for the April TPC meeting- JG.

AP/10/24- To restore the Written Reasons Subgroup- JS/ TPC Secretariat.

4. 'Dring' and 'Cider of Sweden' cases (issue of access by third parties to documents in tribunal proceedings)

- 4.1. JS said the Civil Procedure Rules Committee (CPRC) Secretariat has established a multi-jurisdictional sub-committee to consider the UK Supreme Court judgment in *Cape v Dring* regarding access to court documents by non-parties. JS is a member of that committee.
- 4.2. In light of the judgments handed down in *Cape v Dring*, the TPC has previously considered whether the right to access tribunal documents upon the application of third parties should be subject to tribunal procedural rules. The TPC decided in mid-2023 (after having considered the advantages and disadvantages of a potential rule change) that there was no urgent need for a rule change at that time.
- 4.3. JS said that the CPRC subgroup had published a consultation on the proposed new civil procedure Rule 5.4C on 19 February 2024. A CPRC subgroup post-consultation report is expected to be prepared in the summer for publication. JS expressed the view that if the proposed new rule was brought into force, the TPC would need to consider rules changes designed to bring the Tribunals into line with the courts.

- 4.4. The TPC agreed to reinstate the Confidentiality Subgroup to address this issue in due course. ML agreed to deputise as the Chair whilst the post is vacant. DF agreed to join the Subgroup's membership.

AP/11/24- To update the TPC Subgroups Chart to include the Confidentiality Subgroup- TPC Secretariat.

5. Retained European Union (EU) Law (Revocation and Reform) Act 2023 – References relating to potential departures from Assimilated Caselaw

- 5.1. JS said the Department for Business and Trade (DBT) had prepared a position paper seeking the TPC's view on whether changes resulting from the Retained EU Law (Revocation and Reform) Act 2023 (REUL) were needed to the current set of Tribunal Procedure Rules. The paper includes proposals from the DBT as to the amendments to each set of tribunal rules which may be required to give effect to REUL. AW said that the DBT are aiming to introduce these rule changes by October 2024.
- 5.2. AW confirmed he was taking the lead initially on drafting the procedure for the senior courts receiving these REUL references, and then will develop a template for courts making the references which can be adapted for each tribunal chamber.
- 5.3. The TPC noted the DBT's recommendations but, after a full discussion, asked AW to consider whether a broad approach should be adopted for the nine sets of current Tribunal Chamber Rules. AW said he would discuss this suggested approach with his DBT legal counterparts.
- 5.4. JS asked AW to prepare a position paper detailing his legal analysis for the April meeting at which time the TPC would revisit this matter. AW agreed to this request. The TPC would then decide whether a public consultation would be needed to implement the REUL rule changes.

AP/12/24- To prepare a REUL analysis paper- AW.

6. Employment Tribunal/ Employment Appeal Tribunal Subgroup

- 6.1. JS reported that the MoJ Minister has agreed the 'transfer of responsibility' timetable for the Employment Tribunal (ET) procedure rules to the TPC. The transfer is expected to take place on or before 30 April 2024. The provisions relating to the Employment Appeal Tribunal (EAT) transfer of responsibility have not yet been brought into force. JS said she understood that the Government intends to bring the EAT provisions into force in due course.
- 6.2. MJR said the Subgroup had met on 21 February 2024. Subsequently he had circulated a revised draft of the consultation document. The TPC discussed the Subgroup's approach as set out in the draft document. The TPC also

discussed the drafting points flagged by RB, including panel composition, rule numbering and the term “service”.

- 6.3. MJR said that the Subgroup planned to meet again on 22 March 2024 at which time the intention would be for the Subgroup to agree a final (or close to final) version of the consultation paper. The document would then be circulated out of committee to the TPC for sign-off (or could be signed-off at the April meeting at the latest). He agreed to circulate an updated version of the draft paper to the TPC following the meeting. JS thanked MJR and the Subgroup members for their hard work to expedite this drafting exercise.

AP/13/24- To circulate a revised draft consultation paper to the TPC- MJR.

AP/14/24- To provide/ circulate a final version of the consultation paper (following the next scheduled ET/EAT Subgroup meeting)- MJR/TPC Secretariat.

7. Immigration Asylum Chambers Subgroup (IACSG)

New Plan for Immigration Programme

- 7.1. JS said the policy lead in the Ministry of Justice (MoJ) Illegal Migration team had contacted her on 21 February 2024 to seek her preliminary view as to the potential minimum timeframes for delivering rule changes pursuant to the Nationality, Asylum and Borders Act (NABA). Further, the Illegal Migration team wanted to discover whether the TPC would consider it necessary to consult again on the new rules needed to implement the NABA reforms that had been suspended by the Home Office (HO) in March 2023. JS reported that the official had confirmed that it was not envisaged that the HO or MoJ would be seeking any changes to the rules previously prepared by the TPC.
- 7.2. JS said she had replied to the official asking for the MoJ to prepare a briefing note for the March meeting. She had asked that the paper should set out the present situation, including whether it is anticipated that there will be any changes to the NABA reforms.
- 7.3. The TPC considered the paper which had been provided and agreed that the lapse of time since the last consultation exercise was a significant factor which might well warrant a new consultation. If the proposed rules changes are in the same form as previously, then the consultation period could perhaps be reduced from the usual duration of 12 weeks for public consultation exercises. However, that timescale will depend on the specific nature of the proposals or any new changes (and there is, as yet no clear information on this score).
- 7.4. The TPC agreed to respond to the MoJ on the issue of the proposed NABA rules and queries as follows:

- The TPC is likely to wish to conduct a new consultation in circumstances where the immigration legislative and political landscape has changed since the 2023 TPC consultation.
- A new consultation paper will need to factor in any new considerations including the impact of any other immigration-related legislation such as the Illegal Migration Act 2024 and the Rwanda Bill 2024.
- The TPC would prefer to revisit the matter once the government policy on NABA had been settled.

7.5. JS informed the TPC that she would communicate the TPC's agreed approach to the MoJ policy lead.

AP/15/24- To report the TPC's response in respect to the NABA reforms queries to the lead MoJ policy official- JS.

8. GTCL Subgroup

Renters (Reform) Bill 2023-24

- 8.1. In PBS' absence, JS asked ML to provide his preliminary view in respect of the Department for Levelling Up, Housing and Communities (DLUHC) proposal for rule changes resulting from the impending introduction of the Renters (Reform) Bill 2023/24.
- 8.2. ML said the Renters (Reform) Bill was introduced in the House of Commons on 17 May 2023 and was presently being debated in Parliament. The Bill's aim was to deliver the government's commitment of 'a fairer private rented sector' in delivering both security for tenants and fairness for landlords. Measures include abolishing Section 21 evictions, while giving landlords certainty they will be able to get their properties back using 37 new and more comprehensive possession grounds. These include where landlords wish to sell property or for repeated serious rent arrears as well as expanding grounds for possession to move close family members into a property. If a tenant breaches their tenancy agreement or damages the property, landlords will be able to give tenants as little as two weeks' notice to vacate the property.
- 8.3. ML said he was aware that the DLUHC policy officials had held discussions with Judge McGrath, the President of the Property Chamber (FtT) in respect of the Renters (Reform) Bill and the potential need for rule changes to accommodate any new appeals work directed to the Property Chamber resulting from the legislation. VP said that the DLUHC were aiming to update the presented paper after consulting Judge McGrath and that the DLUHC would send a revised paper for the April meeting.
- 8.4. ML agreed to consider the updated DLUHC paper when it is made available and accordingly, he would prepare a note (after discussing the matter with PBS and Judge McGrath), detailing their recommendation as to whether rule changes were necessary and, if appropriate, their view for a proposed draft rule change.

8.5. JS asked VP to report the TPC's response to DLUHC policy officials.

AP/16/24- To prepare a note in respect to the Renters (Reform) Bill- ML.

AP/17/24- To report the TPC's observations to DLUHC- VP.

9. HSW Subgroup

Open Justice' in Criminal Injuries Compensation cases

9.1. JS reported that CM had circulated a final version of the reply document proposing that Rule 30 be amended by deleting Rule 30(2). The TPC signed off the document. JS asked the TPC Secretariat to proceed to make the arrangements to publish the reply document on GOV.UK.

Mental Health Tribunal - Rule 35 proposed change

9.2. The TPC noted that the second hybrid consultation on potential changes to the HESC Rules closed on 13 February 2024. The consultation was in respect of proposed changes to the way that the Tribunal decides cases referred to the Tribunal pursuant to Section 68 of the Mental Health Act 1983.

9.3. The TPC Secretariat have received 16 responses. JS said that she expected CM to commence the work to prepare a consultation reply shortly.

AP/18/24- To make arrangements to publish the Criminal Injuries Compensation reply document on GOV.UK- TPC Secretariat.

10. Costs Subgroup

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

11. TPC Amendment Rules Spring 2024 Exercise

11.1. JS said that the Tribunal Procedure (Amendment) Rules 2024 statutory instrument (SI) is due to be laid before Parliament on 14 March 2024. JS thanked RB for her hard work in preparing the SI.

12. Overview Subgroup

12.1. The TPC work programme has been updated and has been circulated as of 12 February 2024.

13. AOB

13.1. JS confirmed that, due to the religious festival Eid-al-Fitr, RB, HP, and AK will not attend the TPC meeting scheduled for 11 April 2024.

Next Meeting: Thursday 11 April 2024