

**Tribunal Procedure Committee (TPC) Meeting Minutes  
Thursday 11 April 2024**

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

**Present**

- Mrs Justice Smith (JS)
- Michael Reed (MJR)
- Stephen Smith (SS)
- Mark Loveday (ML)
- David Franey (DF)
- Matt Jackson (MJ)
- Gillian Fleming (GF)
- Susan Humble (SH)
- Philip Brook Smith (PBS)
- Christine Martin (CM)
- Donald Ferguson (DWF)
- Angela Shields (AS)
- Mark Blundell (MB)
- Gareth Wilson (GW)
- Alasdair Wallace (AW)
- Joshua Gibson (JG)
- Vijay Parkash (VP)

**Apologies**

- Gabriella Bettiga (GB)
- Jeremy Rintoul (JR)
- Julian Phillips (JP)
- Razana Begum (RB)
- Hanna Polanszky (HP)
- Amir Khandoker (AK)

**Minutes**

**1. Introductory matters**

- 1.1. JR, GB, JP, RB, HP, and AK sent their apologies for not being able to attend the meeting. GW was attending the meeting on behalf of JP.

**TPC appointments/membership**

- 1.2. JS welcomed AS to her inaugural TPC meeting. AS has been appointed a TPC member by the Lady Chief Justice. Her term runs from 07 March 2024 to 06 March 2027.

**Matters Arising**

- 1.3. The draft minutes from the 07 March 2024 meeting were agreed by the TPC subject to minor amendments.

**The Tribunal Procedure (Amendment) Rules 2024**

- 1.4. JS reported that the Tribunal Procedure (Amendment) Rules 2024 statutory instrument (SI) was laid on 14 March 2024 and the SI came into force on 06 April 2024.

#### The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2024

- 1.5. JS reported that the Employment Tribunal (ET) rules SIs were laid before Parliament on 13 March 2024, and that they came into force on 06 April 2024.

#### TPC Guidance Document

- 1.6. JS said that the TPC guidance document has been published on the TPC webpage on GOV.UK. The TPC Secretariat team will periodically review and update the document to reflect any new developments in respect of the TPC's responsibilities and ongoing work programme. JS suggested that a reminder be added to the TPC Work Programme.

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

- 1.7. JS said she had agreed with the Senior President of Tribunals (SPT) that the 'Written Reasons' topic be deferred to the May meeting so as to give the Judicial Office (JO) additional time in which to prepare a comprehensive paper on proposed rule changes, which it is understood will affect only the First-tier Tribunal (FtT) Chambers.

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

- 2.1. The TPC discussed the latest version of the draft consultation paper for potential rule changes to be made clarifying the circumstances in which the FtT can set aside one of its own decisions where there has been a procedural irregularity. MJ said he had included some comment captions throughout the document detailing his thoughts on particular issues and sought the views of the TPC on the approach to be adopted, specifically in respect of the language used, plain English structure and the formulation of the consultation questions.
- 2.2. JS thanked MJ for updating the document. The TPC discussed the further drafting of the document and, in particular, whether, and if so how, to draw attention in the consultation paper to the potential adverse impacts of the proposed changes. JS agreed to take responsibility for updating the draft document to incorporate the necessary additions/amendments agreed by the TPC following its discussion.
- 2.3. JS asked TPC members to send to her any additional points they may have on the draft document, including any further typographical amendments. JS said she would then circulate a near to final version of the document to MJ for his consideration and any final revisions during week commencing 15 April 2024. The TPC will revisit this matter at the May meeting with the intention that the draft consultation document should be signed off at that meeting.
- 2.4. MJ asked the TPC Secretariat to add their postal contact details to the 'Contact us' segment of the consultation paper so as to provide an alternative means for potential respondents to respond to the consultation. The TPC

agreed that it was important to ensure that people without access to email had a means of responding.

**AP/19/24: To send any further comments/suggested track changes to Mrs Justice Smith- TPC Members.**

**AP/20/24: To add the postal address for the TPC Secretariat to the 'Contact us' segment of the consultation paper- TPC Secretariat.**

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

- 3.1. AW summarised his legal analysis in respect of the Retained EU Law (Revocation and Reform) Act 2023 (REUL) provision as detailed in his circulated note. The production of the Note followed a request from the TPC for AW to consider the potential for a modest rule change designed to give effect to the legislative changes encapsulated in the REUL.
- 3.2. AW said that the proposed rule changes appropriate for the implementation in the High Court and County Court of Section 6A of the EU (Withdrawal) Act 2018 (references on retained case law by lower courts or tribunals) might equally be appropriate in the Tribunals and he suggested that this might be achieved by adding a new paragraph into rule 6 of the Tribunal Procedure (FtT) (General Regulatory Chamber) Rules 2009. His Note identified the fact that there was an obvious question mark over whether any change was required at all, or whether the matter might be dealt with instead by appropriate guidance.
- 3.3. AW said he had received correspondence from JR (who was absent from the meeting) setting out his observations in respect of this REUL matter. JR had remarked that any procedural rules would need to be supplemented by Practice Directions. He agrees with AW that it may not in fact be necessary to make any rule changes. JR had suggested that it would be sensible to canvass the views of Tribunal, ET and EAT Presidents as to the need for rule changes and their views on dealing with the issue via Practice Directions. The TPC supported this suggestion for further judicial engagement in this REUL matter and also agreed that it would be useful to gain an understanding from the Chamber Presidents as to the likely number of references that they anticipated being made in their respective chambers.

**AP/21/24: To write to the Chamber Presidents seeking their views on the REUL matter in advance of the next meeting - JS**

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

- 4.1. JS said that the TPC consultation document on possible changes to the Employment Tribunal (ET) Rules had been published on GOV.UK on 03 April 2024. The consultation is due to run for 12 weeks and will close on 26 June 2024.

- 4.2. MR said the subgroup had scheduled a series of meetings in April, May and June to discuss the next tranche of ET Rules planned to be introduced in April 2025, incorporating most of the urgent substantive revisions sought by the ET Presidents.
- 4.3. JS thanked the ET/EAT subgroup members for their hard work in finalising the consultation paper with such alacrity.

## **5. Immigration Asylum Chambers Subgroup**

- 5.1. JS said VP had obtained a position update from the Ministry of Justice (MoJ) policy lead for the Illegal Migration team in respect of the Nationality, Asylum and Borders Act (NABA) reforms. The MoJ policy lead had asked VP to thank the TPC for considering their position paper at the March TPC meeting and for the subsequent email update from JS, which the MoJ has reflected in advice to Home Office Ministers. The Home Secretary is aware of the delivery timelines and need for certainty as expressed by the TPC. The MoJ and Home Office will come back to the Committee as and when the government departments have a further update or request on this.

## **6. GTCL Subgroup**

### Renters (Reform) Bill 2023-24- changes to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

- 6.1. PBS reported he had discussed the proposal from the Department for Levelling Up, Housing and Communities (DLUHC) for changes to tribunal procedure rules resulting from the Renters (Reform) Bill 2023/24 with Judge McGrath, the President of the Property Chamber of the First-tier Tribunal.
- 6.2. PBS said that DLUHC had proposed 5 changes that had been considered by the GTCL subgroup. The first change concerned Property Chamber Forms, which PBS said would not be considered by the TPC as this was not a matter that fell within the TPC's jurisdiction. This would be a matter for the Property Chamber and HMCTS to consider/take forward. The remaining four rule change proposals considered by the GTCL subgroup were:
  - Change 1- to broaden the definition of 'interested person' to enable a wider range of individuals to be involved in Tribunal proceedings where appropriate.
  - Change 2- to add: ""rent case" means a case brought or referred under Part IV (registration of rents under regulation tenancies) or Part V (rents under restricted contracts) of the Rent Act 1977, sections 13, 13A or 14 of the Housing Act 1988 or Schedule 10 to the Local Government and Housing Act 1989."
  - Change 3 – to change the definition of a "residential property case" to add reference to the Protection from Eviction Act 1977, the Housing Act 1988 (except rent cases), and the Renters Reform Act 2024.

- Change 4 – to make a consequential change following Changes 2 and 3 in respect of rule 13 (Orders for costs, reimbursement of fees and interest on costs).
- 6.3. PBS said that in respect of ‘change 1’ above, he had discussed this matter with Judge McGrath who had said that she did not consider the definition of “interested person” required to be widened at this present time. The judge had suggested it would be beneficial to have a review of the use of the term in the rules generally in due course. PBS said the GTCL subgroup supported her observations/view.
- 6.4. However, PBS said that Judge McGrath supported changes 2, 3 and 4 above. He confirmed that the GTCL subgroup were of the same mind. Following the GTCL subgroup’s recommendation, the TPC agreed to make the proposed rule changes.
- 6.5. The TPC agreed that a public consultation did not need to be conducted in respect of the proposed rule changes 2, 3 and 4. The TPC deemed these changes to be technical amendments resulting from future primary legislation being enacted. The TPC agreed that these rule changes should be included in an upcoming Autumn TPC Amendment Rules SI. In respect of change 1 above, PBS asked VP to liaise with DLUHC to seek further clarification as to who they consider may be named by a party as an “interested person”. The “interested person” issue would be revisited at the May meeting subject to DLUHC providing the requested information.

**AP/22/24: To ask DLUHC to consider the GTCL subgroup’s request in respect of “interested persons” and to prepare a paper for the May meeting. - TPC Secretariat.**

## **7. HSW Subgroup**

### **Special Educational Needs and Disability jurisdiction of the Health, Education and Social Care Chamber proposed rule amendments**

- 7.1. CW said that she had received a policy paper from the MoJ Administrative Justice Policy Team proposing amendments to the current Health, Education and Social Care (HESC) (FtT) procedure rules governing the FtT (Special Educational Needs and Disability), the “SEND jurisdiction”. In particular it is suggested that the requirement for the parties’ consent under 23 (1) (a) could be removed, thereby permitting more decisions to be made without an oral hearing. The policy intention behind the proposed rule change is to address judicial and administrative pressures occurring in recent years in respect of SEND appeals and, in particular, to reduce the time taken to dispose of SEND appeals against a local authority’s refusal to secure an EHC needs assessment (“refusal to assess cases”). The proposal is supported by senior HESC judges.
- 7.2. MoJ had suggested two options for the formulation of the amendments to the 2008 HESC Rules which it considers would meet the policy objective:

- Proposal 1: to remove the application of Rule 23(1)(a) of the HESC Rules for refusal to assess cases.
- Proposal 2: to remove the requirement for the respondent (i.e. the local authority) in refusal to assess cases to consent to a decision being made without a hearing (contained in Rule 23(1)(a) of the HESC Rules).

7.3. In the interests of justice and having regard to the background to the proposals as set out in the policy paper, the TPC supported in principle 'proposal 2', although it wished to consult on both proposals to obtain the views of stakeholders and interested parties. CM agreed to prepare a first draft of a consultation paper for the June meeting.

7.4. AS agreed to join the HSW subgroup's membership.

**AP/23/24: To prepare a first draft of a SEND consultation paper. - CM.**

Mental Health Tribunal Rule 35 proposed change

7.5. CM asked the TPC members whether they support the proposed rule change in light of the responses to the latest consultation. This steer would enable her to prepare a draft response paper stating the TPC's decision on potential changes to the HESC Rules regarding the way in which the Tribunal decides cases referred to the Tribunal pursuant to Section 68 of the Mental Health Act 1983.

7.6. The TPC noted that some of the respondents had indicated their concerns on the additional safeguarding measures designed to accommodate the needs of a vulnerable person that had been specified in the second hybrid consultation on the proposed change to Rule 35.

7.7. The TPC agreed that it needed a better understanding of the issues raised by the respondents to the consultation. The HSW subgroup should convene a meeting in April to discuss further the respondent replies. Following the subgroup meeting, CM would prepare a paper setting out the subgroup's views, observations or significant matters requiring further attention by the TPC. The paper will be discussed by the TPC at the May meeting.

**AP/24/24: Following a subgroup meeting, to prepare a position paper detailing a recommended approach in respect of preparing a Response document. – CM/HSW subgroup members.**

Open Justice' in Criminal Injuries Compensation cases

7.8. JS said that the TPC's reply to possible amendments to the Social Entitlement Chamber (FtT) Rules regarding proposed changes to rules concerning the circumstances in which hearings in Criminal Injuries Compensation Cases are held in public or in private was published on 25 March 2024.

**8. Costs Subgroup**

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

## **9. Overview Subgroup**

- 9.1. The TPC work programme has been updated and has been circulated as of 04 April 2024.

## **10. AOB**

### Consolidated versions of Tribunal Rules

- 10.1. PBS said he had identified an error in respect of Rule 4(1) of the consolidated Social Entitlement Chamber (FtT) Rules and asked what the position was for updating the applicable Tribunal Rules with the last SI changes, including the 'costs' rules change to the Property Chamber Rules.
- 10.2. VP said that he understood that this updating exercise had been de-prioritised by MoJ Legal for the time being due to limited legal resourcing issues and the competing priorities of MoJ Ministers. VP agreed to raise the matter with RB out of committee.

**AP/25/24: To check the progress position with RB for updating the consolidated Rules as a consequence of recent rule changes. - TPC Secretariat.**

**Next Meeting: Thursday 02 May 2024**