

Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 02 May 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)
- Susan Humble (SH)
- Christine Martin (CM)
- Gabriella Bettiga (GB)
- Jeremy Rintoul (JR)
- Donald Ferguson (DWF)
- Angela Shields (AS)
- Mark Blundell (MB)
- Gareth Wilson (GW)
- Fiona Monk (FM)
- Alasdair Wallace (AW)
- Razana Begum (RB)
- Joshua Gibson (JG)
- Vijay Parkash (VP)
- Amir Khandoker (AK)

Apologies

- Gillian Fleming (GF)
- Philip Brook Smith (PBS)
- Julian Phillips (JP)
- Hanna Polanszky (HP)

Minutes

1. Introductory matters

- 1.1. GF, PBS, JP, and HP sent their apologies for not being able to attend the meeting.
- 1.2. FM was attending the meeting, on behalf of the Senior President of Tribunals (SPT), as the nominated liaison judge for the TPC “Written Reasons” subgroup.

TPC appointments/membership

- 1.3. JS announced that both GB and ML’s time as members of the TPC had been extended. GB’s term on the TPC will now extend to 02 May 2027. ML’s term on the TPC will now run until 02 October 2027.

Matters Arising

1.4. The draft minutes from the 11 April 2024 meeting were agreed by the TPC.

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

2.1. JS explained the background to the new proposal from the SPT for rule changes in relation to "Written Reasons in the First-tier Tribunal (FtT)", as set out in an updated paper. She explained that these rule changes were regarded as an important means of improving the effective and efficient operation of the tribunals system.

2.2. JS explained that the proposed rule changes are now bespoke for each jurisdiction, and do not affect the Upper Tribunal or Employment Appeal Tribunal (EAT) (the latter of which is not yet within the TPC's statutory function). The proposed rule changes apply only to the General Regulatory Chamber (GRC) (FtT), the Tax Chamber (FtT), and the Employment Tribunals.

2.3. The TPC discussed the updated paper in detail and suggested some modifications to the proposals that the Committee agreed would benefit the respective jurisdictions.

2.4. The TPC agreed to consult on the proposals and discussed the potential timetable and action plan leading to a consultation.

2.5. The TPC asked JG to provide (as soon as possible after the meeting) any analysis or studies that had been completed in relation to the proposals that might assist with preparing a consultation document. JG agreed to investigate whether there is any available statistical data or anecdotal information held by HM Courts and Tribunals Service (HMCTS) or Judicial Office (JO) supporting the proposals.

2.6. JS requested that the Written Reasons Subgroup reconvene for a meeting before the next scheduled TPC meeting on 06 June 2024. JS will chair the Subgroup. A Subgroup meeting would be arranged during the week commencing 20 May 2024.

2.7. MJR, MJ, and AS expressed their willingness to join the Written Reasons Subgroup to share their understanding and experience of the jurisdictions that were subject to the proposal.

2.8. JS indicated that a first version of a draft consultation paper would need to be prepared and circulated to the TPC prior to the June TPC meeting to facilitate a detailed discussion at the meeting. The aim is to have the consultation document signed off at the 04 July 2024 TPC meeting, or very shortly

thereafter, to enable a consultation exercise to be launched for 3 months over the summer.

- 2.9. JS asked SS to prepare the draft consultation paper and expressed her gratitude to him for the work that this would inevitably involve.

AP/26/24: To provide the TPC with any supporting statistical data in relation to the Written Reasons proposal for rule changes. – JG

AP/27/24: To organise a Written Reasons Subgroup meeting before the June TPC meeting. – TPC Secretariat

AP/28/24: To update the TPC Subgroups membership chart to reflect the new members of the Written Reasons Subgroup. – TPC Secretariat

AP/29/24: To prepare a draft Written Reasons consultation paper. – SS

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

- 3.1. JS and MJ have updated the draft consultation paper regarding the proposed rule changes on the power to set aside a decision (following the topic being discussed at the April meeting). JS thanked the TPC members who had contributed to the drafting exercise.

- 3.2. The TPC signed off the latest version of the consultation document. JS requested that the TPC Secretariat proceed to make the necessary arrangements for the approved consultation document to be published on the TPC webpage on GOV.UK. The consultation exercise will run for 12 weeks.

AP/31/24: To publish the consultation paper regarding the proposed rule changes on the power to set aside a decision on the TPC webpage on GOV.UK. – TPC Secretariat

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

- 4.1. The TPC discussed the Chamber Presidents' responses to the proposed rule changes relating to the EU Law (Revocation and Reform) Act 2023. The majority of the Chamber Presidents had indicated either that they did not consider a rule change to be necessary or that they would prefer to revisit the question of whether a rule change is necessary in due course. The TPC does not consider it desirable to make rule changes that are not considered necessary, particularly given that it is very likely that the issue will be capable of being addressed, as appropriate, through practice directions.

- 4.2. The TPC noted that the Presidents of the GRC (FtT) and the Employment Appeal Tribunal (EAT) have both expressed the view that a rule change would

be sensible in their jurisdictions but given that the EAT does not yet fall within the TPC's jurisdiction no action can be taken. The TPC discussed whether a rule change should be implemented only for the GRC but was ultimately of the view that it would be undesirable to make a rule change affecting only one chamber.

- 4.3. The TPC agreed that no rule changes were currently necessary but that this is an issue that might need to be revisited in due course.
- 4.4. JS will email the Chamber Presidents to inform them of the TPC's decision. AW agreed to inform his legal and policy counterparts in the Department for Business and Trade (DBT) who had initially asked the TPC to consider their proposal for a REUL rule change.

AP/32/24: To inform the Chamber Presidents and DBT about the TPC's decision in relation to the EU Law (Revocation and Reform) Act 2023. – JS and AW

5. Employment Tribunals Subgroup

- 5.1. MR said that the Employment Tribunals (ET) Subgroup is planning to meet on 08 May 2024 to discuss the 'second tranche' of ET Rules for April 2025, which will incorporate most of the substantive revisions sought by the ET Presidents.
- 5.2. MJR reported that there were no other urgent issues that required the TPC's immediate attention.

6. Immigration Asylum Chambers Subgroup

- 6.1. SS reported that there were no urgent issues that required the TPC's immediate attention.
- 6.2. VP said that the Ministry of Justice had laid the statutory instrument 'Tribunal Procedure (Upper Tribunal) (Immigration and Asylum Chamber) (Amendment) Rules 2024' on 01 May 2024.

7. GTCL Subgroup

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

- 7.1. The TPC discussed the updated paper from the Department for Levelling Up, Housing and Communities' (DLUHC) setting out a proposal for changes to tribunal procedure rules consequent upon the Renters Reform Bill 2023-24. ML informed the TPC that he had discussed the proposed changes to the Property Chamber Rules with Judge McGrath, the President of the Property Chamber (FtT).

- 7.2. ML summarised the new developments arising from the updated paper. RB commented that there is likely to be considerable lag between royal assent and proceedings under the new provisions being heard in the Tribunal. RB said that the Government commitment appears to be that implementation of the Act will be in two stages, with the provisions of Sections 13A (assured tenancies in social housing) and 13B (a notice proposing a rent increase notice) falling into the second phase.
- 7.3. JS asked RB to clarify this proposed legislative timeline with DLUHC and to also ask DLUHC when is the earliest that the Tribunal can expect to receive appeals in respect of matters under Sections 13A and 13B. RB agreed to report back to the TPC at the June TPC meeting.

AP/33/24: To clarify DLUHC's legislative and implementation timetables for the Renters (Reform) Bill. – RB.

8. HSW Subgroup

Mental Health Tribunal- Rule 35 proposed change

- 8.1. CM informed the TPC that the HSW Subgroup had met on 24 April 2024 to discuss the respondent replies to the proposed changes to the way that the Tribunal decides cases referred to the Tribunal pursuant to S.68 Mental Health Act 1983.
- 8.2. The HSW subgroup agreed in principle to recommend to the full Committee to make a change to Rule 35 as proposed in the recent consultation, subject to any observations from Judge Sutherland Williams, the President of the Health, Education and Social Care Chamber (FtT). CM said she was awaiting Judge Sutherland Williams' reply to her query.
- 8.3. The TPC agreed with the position paper that CM had circulated, which detailed the recommended approach in respect of preparing a response document.
- 8.4. CM stated that she will commence work to prepare a draft consultation response document in preparation for the 06 June 2024 TPC meeting.

AP/34/24: To prepare a draft consultation response document for the 06 June 2024 TPC meeting. – CM.

9. Costs Subgroup

- 9.1. ML raised the item 'Pro bono Costs: proposed amended Rules' appearing on Section 2 of the work programme, the matter had been previously discussed by the TPC in November 2022 following a paper prepared by ML on the issues raised in a note by the Access to Justice Foundation. The Foundation's note draws the attention of the TPC to s.194A(10) of the Legal Services Act 2007, which came into force on 28 June 2022. Section 194A enables the TPC

to make rules in connection with the new powers of tribunals to make 'pro bono' costs orders in favour of recognised charities.

- 9.2. At that time, the TPC agreed to pause making any rule changes to deal with 'pro bono' costs awards until the ET jurisdictions came over to the TPC. The TPC agreed to revisit this matter at the June meeting to ensure the matter was progressed together with the ET's Subgroup work to draft a 'pro bono' rule
- 9.3. ML reported that there were no other urgent issues that required the TPC's immediate attention.

10. TPC Amendment (No.2) Rules Autumn 2024 Exercise

- 10.1. The TPC discussed the rule changes that had been identified and agreed in principle previously by the Committee for inclusion in the Autumn 2024 TPC (Amendment No.2) SI package.
- 10.2. The TPC noted that the following rule changes were provisionally included:
 - Change Rule 30 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 by removing sub-paragraph (2) such that the default position is that hearings are to be held in public and the appellant does not have the right to require a private hearing; and
 - Renters (Reform) Bill 2023-24- changes to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

11. Overview Subgroup

- 11.1. The TPC work programme has been updated as of 18 April 2024 and was circulated on 26 April 2024.

12. AOB

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

- 12.1. JS updated the TPC on the outcome of the recent consultation exercise conducted by a multi-jurisdictional subgroup of the Civil Procedure Rules Committee (CPRC) in respect of the UK Supreme Court's judgment in '*Cape v Dring*' regarding access to court documents by non-parties.
- 12.2. JS said that there had been in excess of 40 responses and that it would take time to work through these. Her preliminary impression was that they raised a great many issues with the proposed changes to the Civil Procedure Rules.

The TPC noted that the CPRC are considering their next steps and that the TPC would revisit the matter in due course once there was more clarity as to the approach to be taken by the CPRC.

Digitisation of tribunals' workstreams- Online Rules Procedure Committee

12.3. JS informed the TPC that the Master of the Rolls and SPT are keen to identify an area of Tribunal work that would be suitable for digitisation, both in the pre-action space and in the context of tribunal proceedings. This is being driven by the Online Procedure Rules Committee which is leading the HMCTS digitisation reform programme.

12.4. JS asked TPC members to provide her with their views on areas of the tribunals system which might benefit from these proposed reforms.

AP/35/24: To send JS any suggestions regarding the digitalisation of tribunal chambers' workstreams. – TPC members.

Next Meeting: Thursday 06 June 2024