

**Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 04 July 2024**

Meeting (Hybrid) at 7 Rolls Building, London

Present

- Mrs Justice Joanna Smith (JS)
- Michael Reed (MJR)
- Stephen Smith (SS)
- David Franey (DF)
- Matt Jackson (MJ)
- Susan Humble (SH)
- Philip Brook Smith (PBS)
- Jeremy Rintoul (JR)
- Donald Ferguson (DWF)
- Gillian Fleming (GF)
- Julian Phillips (JP)
- Alasdair Wallace (AW)
- Razana Begum (RB)
- Joshua Gibson (JG)
- Amir Khandoker (AK)
- Hanna Polanszky (HP)

Guest

- Fiona Monk (FM)
- Gareth Wilson (GW)

Apologies

- Christine Martin (CM)
- Mark Loveday (ML)
- Gabriella Bettiga (GB)
- Angela Shields (AS)
- Mark Blundell (MB)
- Vijay Parkash (VP)

Minutes

1. Introductory matters

- 1.1. CM, ML, GB, AS, MB, and VP sent their apologies for not being able to attend the meeting.
- 1.2. FM attended the meeting in her capacity as the Senior President of Tribunals' (SPT) judicial representative in respect of the agenda topic item 'Written Reasons in the First-tier Tribunal (FtT)'.
- 1.3. JS and the other TPC members wished CM a swift recovery after CM's recent surgery.

Matters Arising

- 1.4. Further to JS' query at the last meeting as to whether JP wished to continue to attend future TPC meetings in his capacity as an immigration liaison judge to the TPC (given that at present there is no live workstream in relation to the making of new or amended rules in the Immigration and Asylum Chamber) JP informed the TPC that he remained happy to attend upcoming TPC meetings. JS welcomed JP's decision.
- 1.5. JS informed the TPC that, in light of the guidance for civil servants relating to their conduct during the pre-election period, the TPC Secretariat has not published any TPC-related documents in the period leading up to 04 July 2024.
- 1.6. The draft minutes from the 06 June 2024 meeting were approved by the TPC.

AP/53/24: To publish the 06 June 2024 TPC meeting minutes on the TPC website after the General Election on 04 July 2024 – TPC Secretariat.

2. Proposed rule changes on 'Written Reasons in the First-tier Tribunal (FtT)'

- 2.1. SS discussed the contents of the latest version of the draft 'Written Reasons' consultation paper with the other TPC members.
- 2.2. The TPC discussed specific segments of the consultation paper and considered whether certain paragraphs of the document needed to be redrafted before the document was published.
- 2.3. The TPC agreed that the consultation should run over a duration of 12 weeks.
- 2.4. SS asked the TPC Secretariat to email him with a summary of the possible amendments suggested by other TPC members during the meeting. The TPC Secretariat agreed to complete this action point after the meeting.
- 2.5. SS stated that he would finalise the changes suggested by other TPC members and said that he anticipated that the final approved 'Written Reasons' consultation paper would be ready for publication on the TPC website before the start of the summer recess in mid-July 2024.

AP/54/24: To provide SS with an amendments summary in relation to the 'Written Reasons' consultation document – TPC Secretariat.

AP/55/24: To consider/incorporate the amendments suggested by other TPC members in relation to the draft 'Written Reasons' consultation document – SS.

AP/56/24: To finalise the draft 'Written Reasons' consultation document so that it is ready to be published before the summer recess – SS.

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

- 3.1. JS provided a progress update about the consultation drafting exercise regarding the power to set aside a decision. The TPC consultation is due to close on 07 August 2024.
- 3.2. JS asked MJ to prepare a first version of a draft consultation response paper to be circulated in advance of the 03 October 2024 TPC meeting. MJ agreed to this request.

AP/57/24: To prepare a draft response paper to the consultation regarding the power to set aside a decision before the 03 October 2024 TPC meeting – MJ.

4. Employment Tribunals (ET) Subgroup

- 4.1. MJR provided an update regarding the status of the second tranche of proposals for ET rule changes. The first tranche consultation opened on 03 April 2024 and dealt with the rule changes needed to give effect to the transfer of rulemaking responsibility together with a small number of additional rules. That consultation closed on 26 June 2024. MJR informed the TPC of the progress that the ET subgroup had made in relation to the drafting of the new ET rules as part of their second tranche activities.
- 4.2. MJR discussed the detail of the drafting of the new ET rules with the TPC. This discussion included conversations about the proposed new rules in relation to the delegation of work to staff. The TPC also discussed the proposals for new additional rules that had been made in the consultation responses to the first consultation.
- 4.3. Members of the TPC suggested further amendments and/or modifications to MJR and to the ET Subgroup in relation to this rule drafting exercise. MJR agreed to incorporate these suggested changes into the next version of the draft consultation document.
- 4.4. The TPC discussed the topic of 'legal officers' in connection with their delegated judicial functions, including the level of judicial oversight given to legal officers to perform their role and/or to carry out functions of a judicial nature. After discussing this matter, JS asked JG to pass on the comments made by the TPC in relation to this matter to the SPT for his further consideration/comment. JG agreed to this request.
- 4.5. MJR was asked by the TPC to send the respondent summary spreadsheet prepared by the TPC Secretariat detailing the respondents' consultation responses to the recent first ET consultation to the SPT, the Tribunal Chamber Presidents, and the ET/Employment Appeal Tribunal (EAT) Presidents. MJR agreed to this request.

- 4.6. The TPC agreed that the ET subgroup would update the draft rules and cover the points/observations made by the respondents.
- 4.7. RB advised the TPC that she was aiming to have a final or close to final version of the ET rules ready for the 03 October TPC meeting but stated that this was dependent on how quickly Razana and the ET subgroup could get the draft rules ready for legal checks as well as how long that would then be needed to complete all the stages of the legal checks.

AP/58/24: To incorporate the amendments suggested by the other TPC members into the drafting of the new ET rules – MJR.

AP/59/24: To pass on the comments made by the TPC during the 04 July 2024 meeting in relation to the topic of 'legal officers' to the SPT – JG.

AP/60/24: To send the respondent summary spreadsheet detailing the replies regarding the closed TPC ET rules consultation to the SPT, the Tribunal Chamber Presidents, and the ET/EAT Presidents – MJR.

AP/61/24: To have a final or close to final version of the draft new ET rules by the 03 October 2024 TPC meeting – ET Subgroup.

5. GTCL Subgroup

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

6. Immigration and Asylum Chamber Subgroup

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

7. HSW Subgroup

Mental Health Tribunal Rule 35 Draft Consultation Response Document

- 7.1. DWF informed the TPC that the Mental Health Tribunal Rule 35 consultation response document that has been prepared by CM and the HSW subgroup is ready to be published in due course.

AP/62/24: To publish the Rule 35 consultation response document after the General Election on 04 July 2024 – TPC Secretariat.

Special Education Needs and Disability Tribunal (SEND) Draft Consultation Document

- 7.2. The TPC discussed the draft consultation paper updated by AS regarding the Special Educational Needs and Disability (SEND) proposed rule amendments

in connection with dealing with SEND appeals on the papers without the consent of both parties.

- 7.3. JS requested that TPC members email AS with their proposed amendments to the SEND draft consultation paper so as to enable AS to incorporate these proposals into the draft consultation paper which can then be published during the summer period.
- 7.4. The TPC agreed that the SEND consultation should run over a duration of 12 weeks.

AP/63/24: To send any suggested amendments regarding the draft SEND consultation paper to AS – TPC Members.

AP/64/24: To incorporate any suggested amendments made by the other members of the TPC regarding the draft SEND consultation paper – AS.

AP/65/24: To publish the SEND consultation paper when it is finalised – TPC Secretariat.

Judicial proposal paper to amend Social Entitlement Chamber Rule 22(9) – *HMRC v Arrbab*

- 7.5. The TPC discussed the judicial paper detailing the proposal to amend Rule 22 (9) of the Tribunal Procedure (FtT) (Social Entitlement Chamber) Rules 2008 (in respect of cases in which the notice of appeal is to be sent to the Tribunal) following judgment being handed down by the Court of Appeal in *HMRC v Arrbab [2024] EWCA Civ 16*.
- 7.6. This case considers whether or not a refusal to extend time to apply for a mandatory review of a decision of HM Revenue and Customs (HMRC) concerning working tax credits and child tax credits gives rise to a right of appeal to the Tribunal or whether the only right of redress in such circumstances is an application for judicial review. The TPC discussed the proposal and decided that this rule amendment could be approved without a TPC consultation being conducted, as it was a purely technical change.
- 7.7. JS informed the TPC that she will inform Judge Markus, the President of the Social Entitlement Chamber (FtT), that the rule amendment will be included in the next TPC Amendment Rules Statutory Instrument (SI) package scheduled for Autumn 2024.

AP/66/24: To inform Judge Markus of the TPC's decision in respect to the rule amendment proposal – JS.

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

- 8.1. The TPC discussed the approaching TPC Amendment (No.2) Rules Autumn 2024 exercise and the paper that had been prepared by RB detailing a number of minor drafting or technical corrections needed to some of the Chamber Rules.
- 8.2. The TPC were content with the suggested amendments made. RB summarised her legislative drafting timetable for the upcoming Autumn TPC amendment SI exercise and reiterated her deadlines for the Chairs of the relevant subgroups to return their drafting instructions for the Autumn TPC Amendment (No.2) SI.

9. Costs Subgroup

- 9.1. In ML's absence, DWF reported that there were no urgent issues that required the TPC's immediate attention.

10. Overview Subgroup

- 10.1. The TPC work programme has been updated as of 26 June 2024 and was circulated on 28 June 2024.

Next Meeting: Thursday 03 October 2024