

**Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 03 October 2024**

Meeting (Hybrid) at 7 Rolls Building, London

Present

- Mrs Justice Joanna Smith (JS)
- Michael Reed (MJR)
- Stephen Smith (SS)
- Susan Humble (SH)
- David Franey (DF)
- Matt Jackson (MJ)
- Gillian Fleming (GF)
- Christine Martin (CM)
- Jeremy Rintoul (JR)
- Angela Shields (AS)
- Donald Ferguson (DWF)
- Gabriella Bettiga (GB)
- Mark Loveday (ML)
- Alasdair Wallace (AW)
- Razana Begum (RB)
- Charlotte Hughes (CH)
- Vijay Parkash (VP)
- Amir Khandoker (AK)

Apologies

- Philip Brook Smith (PBS)
- Mark Blundell (MB)
- Julian Phillips (JP)
- Hanna Polanszky (HP)

Minutes

1. Introductory matters

- 1.1. PBS, MB, JP, and HP sent their apologies for not being able to attend the meeting.
- 1.2. JS informed the TPC that Joshua Gibson (JG) had moved to another role in the Senior President of Tribunals' (SPT) office and would therefore no longer be attending TPC meetings. JS and the TPC wished JG the best in his new role.
- 1.3. JS stated that CH will temporarily take the place of JG as the SPT's representative to the TPC whilst a decision would be made to identify a permanent replacement for JG. JS welcomed CH to the TPC.
- 1.4. JS informed the TPC that CM will be resigning from her position as a TPC member following the meeting. JS and the TPC thanked CM for the work she

had done during her time on the TPC and wished her all the best for her future endeavours.

- 1.5. Following CM's resignation, JS asked AS to be the new chair for the HSW subgroup. AS agreed to this request.
- 1.6. JS asked VP to approach the judicial office holders team to start the recruitment process to identify/secure CM's replacement. VP agreed to this request.
- 1.7. The draft minutes from the 04 July 2024 TPC meeting were approved by the TPC.
- 1.8. JS informed the TPC that AW will retire from his senior legal adviser position in the Government Legal Department and therefore would no longer be attending TPC meetings following the 03 October 2024 meeting. JS and the TPC thanked AW for the work he had done during his time in the role and wished him all the best for his retirement.
- 1.9. In light of AW's retirement, JS asked AW to comment on the status of the legal resource going forward that would be allocated to work on the TPC's 'business as usual' rule changes and the Employment Tribunals (ET) Rules statutory instrument (SI). It was important for the TPC to manage their planned rule activities in the TPC work programme in conjunction with the available legal resource, factoring in the fact that other central government departments rely on the TPC to make rule changes in order to facilitate their own policy changes. AW said that a succession planning exercise was already underway to fill any legal vacancies and that he anticipated his replacement would be in post by the end of 2024. However, AW expected that the drafting work in relation to the ET Rules SI exercise would be adversely affected. AW said that he thought the exercise would be completed closer to April 2025 rather than the December 2024 target date that had been earlier reported, although he explained that there could be no guarantees.
- 1.10. JS thanked AW for providing this information and requested that AW write a letter to the ET Chamber Presidents which explained the situation regarding the status of legal resourcing in the MoJ. AW agreed to this request.
- 1.11. JS stated that she will also send a separate related letter to the ET Chamber Presidents informing them of the status of legal resourcing in the MoJ.
- 1.12. JS informed the TPC that VP had received a ministerial letter from Justin Madders MP, the Minister for Employment Rights, Competition and Markets in the Department of Business and Trade (DBT). JS informed the TPC that the letter stated that the DBT have decided to revoke commencement regulations such that section 6 of the Retained EU Law Act will no longer come into force as previously reported during October 2024. This previous report followed on from a policy paper received by the TPC in March 2024 from the DBT, which sought 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 by October 2024.

- 1.13. After discussing the revocation of section 6, JS informed the TPC that officials from the DBT will remain in touch with the TPC Secretariat to inform them of any possible future developments.

AP/67/24: To update the subgroup charts to reflect CM's resignation and the new role of AS as the chair of the HSW subgroup – TPC Secretariat.

AP/68/24: To engage with judicial office to commence a recruitment campaign to enlist a new TPC member – VP.

AP/69/24: To publish the 04 July 2024 TPC meeting minutes on GOV.UK – TPC Secretariat.

AP/70/24: To write a letter to the ET Chamber Presidents to inform them about the status of legal resources in the MoJ and the subsequent impact on the making of the new ET Rules and amendments – JS and AW.

2. Reflecting 'Open Justice' in the overriding objective in the Tribunals Rules

- 2.1. JS informed the TPC that she had received a letter from Mr Justice Nicklin on behalf of the Transparency and Open Justice Board (TOJB) in respect of 'open justice in the overriding objective in the Tribunals Rules'. The letter requested that the overriding objective as reflected in all the relevant tribunal rules be amended to include the requirement of "furthering open justice". JS informed the TPC that she had replied to Mr Justice Nicklin stating that she would discuss the topic at the TPC meeting. She also noted that she had reminded Mr Justice Nicklin that the recent 'written reasons' consultation document had invited comment from the TOJB but that, as yet, no response had been received.
- 2.2. The TPC discussed the proposed addition to the overriding objective by the TOJB. These discussions included querying whether the other rule committees, such as the Civil Rules Procedure Committee, have also received a similar request and, if so, what they intended to do. The TPC agreed that it was important to adopt a common approach. The TPC also discussed the possible reasons behind the additions and what effect the additions may have on the nine sets of chambers rules.
- 2.3. The TPC agreed that it would be important to understand what the other rule committees were planning to do in response to Mr Justice Nicklin's proposal. As a result, JS asked VP if he could communicate with the secretariats of the other rule committees to understand their stance on the additions. VP agreed to this request.
- 2.4. SH volunteered to create a spreadsheet focussing on the individual rules in individual chambers addressing privacy issues, open justice etc. so as to provide the committee with a clearer understanding as to how the principles

of open justice are already addressed in the respective rules. The chairs of the sub-groups agreed to feed into this exercise. SH informed the TPC that she would prepare the spreadsheet as soon as possible.

- 2.5. VP informed JS that he will inform PBS about Mr Justice Nicklin's proposal so that PBS can relay his views to SH.
- 2.6. JS informed the TPC that she will write back to Mr Justice Nicklin about his request and ask him about the objectives behind the proposal.

AP/71/24: To contact the secretariats of the other committees to understand their stances on the additions suggested by the TOJB – VP.

AP/72/24: To inform PBS about the TOJB's proposal so that PBS can relay his views to SH – VP.

AP/73/24: To pass on their views regarding the TOJB's proposal to SH – TPC subgroup chairs.

AP/74/24: To create a spreadsheet focusing on the relevant rules in the different chambers – SH.

AP/75/24: To contact Mr Justice Nicklin to ask him about the objectives of the proposed additions to the rules – JS.

3. TPC Consultations – proposal for a privacy statement and the potential to seek consent from responding parties

- 3.1. JS informed the TPC that the TPC Secretariat had received a query from the MoJ external communications team in July 2024 relating to whether respondents have consented to their names being published in TPC response consultation documents. JS also informed the TPC that the TPC Secretariat sought RB's legal advice on this matter, which included questions about whether respondent consent is explicitly required.
- 3.2. Following RB's legal advice on the matter, JS informed the TPC that she had asked the TPC Secretariat to remove all names from response documents and instead solely use the name of the organisation. JS asked the TPC if they believed a privacy statement or a paragraph seeking the respondent's consent for publication of their names should be included in future consultation documents.
- 3.3. The TPC considered the proposal and discussed the procedure in other rule committees and agreed that organisation names or the descriptor "a member of the public" should be adopted in a response document.

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

- 4.1. JS informed the TPC that the Secretariat had received three replies to its consultation on the power to set aside a decision where there has been a procedural irregularity and that MJ had drafted a response document.
- 4.2. The TPC discussed the replies received for the consultation and discussed MJ's draft consultation response document.
- 4.3. JS asked the TPC to send any suggested amendments to MJ so that he could finalise the draft consultation document before the 07 November 2024 TPC meeting. MJ and the TPC agreed to this request.

AP/76/24: To pass on their suggested amendments regarding the draft consultation response document to MJ – TPC members.

AP/77/24: To incorporate suggested amendments and finalise the draft consultation response document before the 07 November 2024 TPC meeting – MJ.

5. Immigration and Asylum Chamber Subgroup

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

6. Employment Tribunals (ET) Subgroup

- 6.1. MJR informed the TPC that there has been significant work completed by the ET subgroup on the draft ET rules and that the ET subgroup and RB have agreed to take the SI forward as a combined TPC/Lord Chancellor SI in order to include the national security rules.
- 6.2. MJR also informed the TPC that he is planning to prepare a draft consultation response document for the ET rules consultation following the end of the consultation period. MJR stated he aimed to circulate the first draft of the consultation response document to the ET subgroup during the week commencing 07 October 2024.
- 6.3. The TPC discussed the consultation replies and noted the comments made by the respondents.
- 6.4. The TPC discussed the legislative timetable for the ET Rules SI and the timing regarding when the rules should be laid before Parliament. The TPC had originally worked towards a laying date in November 2024 for the Employment Tribunals Procedure Rules 2024 SI and the Employment Tribunals (Procedure

Rules) (Consequential Amendments) Regulations 2024 SIs, but slippage had occurred as further legal checks were required to finalise the SI. The TPC decided that the coming into force date for the SIs should be deferred to 06 January 2025 so that it can come into force after the Christmas period for judicial and the public's convenience.

AP/78/24: To prepare a draft consultation response document in relation to the ET rules consultation and send the document to the other subgroup members – MJR.

7. GTCL Subgroup

7.1. JS reported on behalf of PBS that there were no urgent issues that required the TPC's immediate action.

8. HSW Subgroup

Social Care Chamber proposed rule amendments

8.1. JS thanked AS and the HSW subgroup members for their work to ensure that the consultation on possible amendments to the Tribunal Procedure (First-tier Tribunal) (Health Education and Social Care Chamber) Rules 2008 was published over the summer break and informed the TPC about the dates of the consultation.

Infected Blood Compensation Scheme Regulations 2024

8.2. JS informed the TPC that the HSW subgroup had considered whether amendments to the current Social Entitlement Chamber (SEC) Procedure Rules were needed due to the introduction of the Infected Blood Compensation Scheme Regulations 2024. The HSW subgroup had also consulted the SEC Chamber President.

8.3. The HSW subgroup and the SEC President had expressed agreement that a specific provision should be added to rule 22 (2). The TPC determined that an amendment would be beneficial.

8.4. JS stated that a short paper detailing the proposal should be drafted for the next meeting as the TPC decided that this technical amendment could be made without a consultation. RB stated that she is working on a short paper and that she will send it to the TPC members.

AP/79/24: To prepare a short paper detailing the proposal to change section 22(9)(a) of the SEC Procedure Rules and send it to the TPC members – RB.

9. Costs Subgroup

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

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

- 10.1. JS notified the TPC that the TPC Amendment (No.2) Rules Autumn 2024 Exercise had been drafted and that RB will add additional amendments and will circulate the draft SI to the TPC before sending it for further legal checks.
- 10.2. RB advised the TPC that it may need to sign the final SI out of committee to ensure that the SI is laid on 06 December 2024.

11. Overview Subgroup

- 11.1. The TPC work programme has been updated as of 26 September 2024 and was circulated on 27 September 2024.

Next Meeting: Thursday 07 November 2024