

Tribunal Procedure Committee (TPC) Meeting Minutes
Thursday 05 December 2024

Meeting (Hybrid) at 7 Rolls Building, London

Present

- Mrs Justice Joanna Smith (JS)
- Stephen Smith (SS)
- Philip Brook Smith (PBS)
- Matt Jackson (MJ)
- Gillian Fleming (GF)
- Angela Shields (AS)
- Mark Loveday (ML)
- Gabriella Bettiga (GB)
- David Franey (DF)
- Donald Ferguson (DWF)
- Razana Begum (RB)
- Charlotte Hughes (CH)
- Vijay Parkash (VP)
- Amir Khandoker (AK)
- Hanna Polanszky (HP)

Apologies

- Michael Reed (MJR)
- Susan Humble (SH)
- Jeremy Rintoul (JR)
- Mark Blundell (MB)
- Julian Phillips (JP)

Minutes

1. Introductory matters

- 1.1. MJR, SH, JR, MB, and JP sent their apologies for not being able to attend the meeting.
- 1.2. The draft minutes from the 07 November 2024 TPC meeting were approved by the TPC.
- 1.3. JS informed the TPC that the TPC Procedure (Amendment No.2) Rules 2024 Statutory Instrument (SI) and the Employment Tribunal Procedure Rules 2024 SI were set to be laid on 06 December 2024. JS also informed the TPC that the TPC Procedure (Amendment No.2) Rules 2024 SI will come into force on 27 December 2024 whilst the Employment Tribunal Procedure Rules 2024 SI will come into force on 06 January 2025.
- 1.4. JS asked VP about when the 'possible amendments to the power to set aside a decision' consultation response paper was due to be published. VP informed

JS and the TPC that the response paper was due to be published on 06 December 2024 on GOV.UK.

- 1.5. JS informed the TPC that the judicial recruitment 'expression of interest' (EOI) exercise that had been launched by the Judicial Office (JO) on 25 October 2024 had closed on 15 November 2024. This EOI was launched to find a replacement for a First-tier Tribunal (FtT) judicial member of the TPC. JS informed the TPC that the JO had received one application. JS said she would update the TPC on this matter at the next scheduled TPC meeting on 06 February 2025.

AP/86/24: To publish the approved 07 November 2024 TPC meeting minutes on GOV.UK – TPC Secretariat.

AP/87/24: To make the necessary arrangements so that the possible amendments to the power to set aside a decision consultation response paper is published on 06 December 2024 on GOV.UK – TPC Secretariat.

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

- 2.1. JS asked CH for any updates from the Senior President of Tribunals (SPT) regarding any potential amendments to the proposal 'Written Reasons' rule changes following any new engagement with the Transparency and Open Justice Board (TOJB). CH informed the TPC that the SPT had no further updates regarding the proposed rule changes and suggested that the TPC further discuss these changes if they wished to do so.
- 2.2. Following this update, it was agreed that it would be premature for the TPC to discuss the proposed 'Written Reasons' rule changes until receipt of updated proposals from the SPT following his engagement with the TOJB and the Chamber Presidents.

3. Employment Tribunals (ET) Subgroup

- 3.1. DF provided an update to the TPC on behalf of MJR/ the ET subgroup and stated that the work on the next tranche of proposals for ET rule changes (that included the current and remade rules) was progressing well. DF said MJR had prepared a draft consultation document (with input from the subgroup) which detailed the potential rule amendments that had been agreed by the TPC at the 07 November 2024 meeting.
- 3.2. DF asked RB to review the final draft consultation paper, which would include the final drafting of the rule changes that were being proposed, in due course. Following RB's analysis, DF stated that the subgroup would review any queries before it sought the TPC's approval for final sign off.
- 3.3. The TPC agreed that the final consultation document should be published after the Employment Tribunal Procedure Rules 2024 SI came into force on 06 January 2025.

4. Immigration Asylum Chambers (IAC) Subgroup

- 4.1. SS reported that there were no outstanding issues that required the TPC's consideration.

5. GTCL Subgroup

- 5.1. PBS updated the TPC on a recent meeting between PBS, ML and Judge McGrath, the President of the Property Chamber of the FtT, at which potential rule changes in the Property Chamber required by reason of the Leasehold and Freehold Reform Act 2024 ("the Act") and the Renters Rights Bill ("the Bill") had been discussed. The Bill strengthens tenants' rights by, for example, removing no fault evictions and expanding tenants' rights to challenge rent increases.
- 5.2. The legislative reforms in respect of potential rule amendments are being driven by the Ministry of Housing, Communities and Local Government (MHCLG).

Renters Reform Bill

- 5.3. The TPC discussed a policy paper received from the MHCLG on potential rule changes to accommodate the Bill. PBS confirmed that in light of the meeting with Judge McGrath and subject to final checks, the GTCL subgroup was content in principle with the proposals made in the paper.
- 5.4. PBS informed the TPC that the MHCLG had offered to prepare a paper on a proposal for potential rule changes regarding regulated tenancy-succession cases under powers provided by amendments to Section 39 of the Housing Act 1988 by the Bill. The TPC agreed that this would be useful and PBS confirmed that he would contact the MHCLG to request a follow-up paper on succession cases.
- 5.5. PBS and RB discussed the legislative timetable regarding these proposed rule changes. RB reiterated TPC policy that the rule changes (as required by SI) should coincide, if possible, with the coming into force of the primary legislation conferring the relevant jurisdiction(s) and that the legislative timetable for the proposed rule changes to be considered/ made should not commence until after the Bill had received royal assent and the relevant provisions have come into force.
- 5.6. ML informed the TPC of Judge McGrath's views on the potential rule changes.

Leasehold and Freehold Reform Act 2024

- 5.7. PBS informed the TPC that both he and ML had discussed potential rule changes with Judge McGrath for the Act and that they were aware of the legislative timetable the MHCLG were working to introduce.

- 5.8. PBS volunteered to prepare a paper on the Act for the TPC. JS accepted and thanked PBS.
- 5.9. The Act introduces reforms to offer stronger protection to homeowners and leaseholders by, for example, making it easier and cheaper to purchase a freehold, extend a lease, and challenge service charges. The TPC discussed the potential rule changes needed to accommodate the Act and the effects they may have on the Property Chamber of the FtT and the Lands Chamber of the Upper Tribunal (UT) and determined that a consultation will likely be required for the proposed rule changes.
- 5.10. PBS volunteered to write the consultation paper on the proposed rule changes. JS accepted and thanked PBS.

Provision of documents to other parties/ persons in tribunal proceedings

- 5.11. PBS informed the attendees about a (re-made) UT (Lands Chamber) decision in '*Wyldecrest*', and '*Hyslop*' surrounding the FtT's ability to direct that a party itself provide documents to other parties/ persons. The issue had resourcing and potential delay issues in the Property Chamber (FtT) due to other parties/ persons, who may be very numerous.
- 5.12. In respect to Wyldecrest Parks (Management) Ltd's appeal against the FtT decision, the case was about pitch fee reviews on several park home sites. The UT (Lands Chamber) found the original tribunal had improperly omitted consideration of individual pitch impacts and upheld a perspective on fee modifications. Consequently, the case needed remittal to the Property Chamber of the FtT for renewed evaluation.
- 5.13. PBS stated to the TPC that the judgments in '*Wyldecrest*' and '*Hyslop*' appear to direct the FtT that:
- An initial application to the Tribunal may be directed to be 'served' by the applicant on the respondents/ other persons; but that
 - The direction itself (as with any other directions) cannot be the subject of a direction for service by a party on other parties/ persons; the Tribunal is required to do it; and
 - Decisions cannot be the subject of a direction for service by a party on other parties/ persons; the Tribunal is required to do it.
- 5.14. Following the re-made decision being handed down, His Majesty's Courts and Tribunals Service were planning, on behalf of the Property Chamber (FtT), to include the decision on the various decision databases. The re-making was to amend the decision to include a correct description of the procedure that was followed. The outcome remained the same as in the original version of the decision.
- 5.15. PBS requested the respective subgroup chairs to consider the current rules in the chambers/ jurisdictions for which they are responsible and return/

confirm to him the extent to which their respective chamber rules raise (potentially) similar issues.

5.16. PBS asked for this matter to be added as a new item on section one of the TPC Work Programme. The TPC Secretariat agreed to this request.

5.17. PBS informed the TPC that he had received a paper on a costs issue in the Lands Chamber of the UT from UT Judge Martin Rodger KC. PBS stated that he will review this paper and then prepare a position paper on the topic for the TPC for the 06 February 2025 TPC meeting.

AP/88/24: To add the topic 'Provision of documents to other parties/ persons in tribunal proceedings' to section one of the TPC Work Programme – TPC Secretariat.

AP/89/24: To contact the MHCLG to request a paper on 'succession cases' – PBS.

AP/90/24: To prepare a paper on the Leasehold and Freehold Reform Act 2024 for the TPC – PBS.

AP/91/24: To write a consultation paper on the proposed rule changes in relation to the Leasehold and Freehold Reform Act 2024 – PBS.

AP/92/24: To provide the GTCL subgroup with an explanation regarding the extent to which the new ET rules address the ability to direct that a party provide documents to another party – DF.

AP/93/24: To prepare a position paper on the Upper Tribunal Lands Chamber cost issue for the TPC – PBS.

6. HSW Subgroup

6.1. AS informed the TPC that the consultation on possible amendments to the Health, Education and Social Care Chamber Rules will close on 05 December 2024.

6.2. JS requested that the TPC Secretariat prepare a summary spreadsheet for AS/ the HSW subgroup which contains all the replies/ observations sent in response to the consultation. JS requested that AS use this spreadsheet to summarise the views expressed in the replies so that this information can be discussed at the 06 February 2025 TPC meeting. Both the TPC Secretariat and AS agreed to this request.

AP/94/24: To create a spreadsheet for AS which contains the replies sent in response to the consultation on possible amendments to the Health, Education and Social Care Chamber Rules – TPC Secretariat.

AP/95/24: To utilise the spreadsheet created by the TPC Secretariat to produce a summary of the responses to the consultation for the TPC – AS.

7. Costs Subgroup

- 7.1. The TPC discussed proposed rule changes in relation to costs to deal with inconsistencies that had been identified between the rules applicable in different chambers.
- 7.2. ML informed the TPC that, following the 07 November 2024 TPC meeting, the available historic information/ papers on the background to rule changes on costs made in the UT in 2012 and 2013 had been obtained. He observed, however, that it was impossible to identify from the relevant TPC minutes from that period why discrepancies as to the treatment of costs between different chambers had arisen.
- 7.3. ML stated that the Costs subgroup believed that all of the rules in cost-bearing jurisdictions need to be the same. ML also stated that he will continue to have discussions with the relevant Tribunal Chamber Presidents to ascertain whether they agree with this approach and therefore whether they agree with the need to amend the rules accordingly.
- 7.4. The TPC discussed the proposed rule changes and whether a change to primary legislation in respect of the Tribunals, Courts and Enforcement Act 2007 or a public consultation would be necessary before the proposed rule changes could be made.
- 7.5. JS asked RB to check previous legal documents on the topic to determine whether there is an existing note of legal advice (provided in 2012/2013) dealing with the question of whether the proposed rule change would require primary legislation. JS requested that RB prepare a note of legal advice on this subject (dealing, if necessary, with any previous legal advice provided to the TPC) and complete it for the 06 February 2025 TPC meeting. RB agreed to this request.
- 7.6. After discussing the proposed rule changes, the TPC determined that it was likely that a public consultation would be required. The TPC agreed that a final decision regarding whether a public consultation is necessary will be made when further information is made available at the 06 February 2025 TPC meeting.
- 7.7. The TPC agreed that comments given by the Chamber Presidents on how questions of interest and payments on account of costs/ expenses are currently dealt with in their respective chambers would be helpful for the drafting of the consultation document.
- 7.8. MJ offered to write the initial draft of the consultation paper on the proposed costs rule changes. ML accepted and thanked MJ for the offer.

AP/96/24: To continue to have discussions with the Tribunal Chamber Presidents in relation to the proposed cost rule changes – ML.

AP/97/24: To check previous legal documents to determine if there is a legal note of advice available on whether the proposed costs rule change would require primary legislation to be changed and if not, to write a legal note of advice on this matter – RB.

8. Overview Subgroup

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

9. AOB

- 9.1. The TPC discussed the suggested amendments to the overriding objective in all Tribunal rules proposed by the TOJB.
- 9.2. The TPC discussed the position of the other Rules Committees and JS indicated that it would be important to understand their latest position and their intended approach to the proposals. VP stated that he would contact the other Rules Committees.
- 9.3. CH stated that she had informed the TOJB that it will need to adapt some of its proposals for Northern Ireland and Scotland. The TPC Secretariat stated that it would write to the Lady Chief Justice of Northern Ireland on behalf of JS regarding this topic.
- 9.4. CH offered to provide the contact details of the Lady Chief Justice of Northern Ireland. JS accepted and thanked CH.
- 9.5. RB informed the TPC that currently only the proposed rule changes in relation to the power to set aside a decision will be made in the TPC Amendment Rules Spring 2025 exercise. MJ observed that there may be some changes to the proposed drafting for these rule changes.
- 9.6. JS said that she expected an update paper from the head of the Online Procedure Rules Committee (OPRC) for the TPC explaining the SI giving the OPRC powers to make rules. JS informed the TPC that the TPC Secretariat would circulate the paper to the TPC when it is made available.

AP/98/24: To contact the other Rules Committees to understand their latest position on the suggested amendments to the overriding objective in all Tribunal rules proposed by the TOJB – VP.

AP/99/24: To provide JS with the contact details of the Lady Chief Justice of Northern Ireland – CH.

AP/100/24: To write to the Lady Chief Justice of Northern Ireland in relation to the suggested amendments to the overriding objective in all Tribunal rules – TPC Secretariat.

AP/101/24: To circulate an updated paper from the OPRC to the TPC when it is available – TPC Secretariat.

Next Meeting: Thursday 06 February 2025