

Tribunal Procedure Committee (TPC) Meeting Minutes

Thursday 06 February 2025

Meeting (Hybrid) at 7 Rolls Building, London

Present

- Mrs Justice Joanna Smith (JS)
- Philip Brook Smith (PBS)
- Michael Reed (MJR)
- Stephen Smith (SS)
- Susan Humble (SH)
- Matt Jackson (MJ)
- Faridah Eden (FE)
- Gillian Fleming (GF)
- Angela Shields (AS)
- Mark Loveday (ML)
- Jeremy Rintoul (JR)
- David Franey (DF)
- Donald Ferguson (DWF)
- Razana Begum (RB)
- Shane O'Reilly (SOR)
- Vijay Parkash (VP)
- Amir Khandoker (AK)
- Hanna Polanszky (HP)

Guests

- Judge Sarah Johnston (SJ)
- Judge Ian Keates (IK)

Apologies

- Gabriella Bettiga (GB)
- Mark Blundell (MB)
- Julian Phillips (JP)

Minutes

1. Introductory matters

- 1.1. GB, MB, and JP sent their apologies for not being able to attend the meeting.
- 1.2. The TPC decided that, subject to some minor amendments, the 05 December 2024 TPC meeting minutes can be published on GOV.UK.
- 1.3. JS informed the TPC that Charlotte Hughes has been temporarily transferred to the Lady Chief Justice's office so SOR will be attending TPC meetings for the foreseeable future as the Senior President of Tribunals' representative to the TPC.

- 1.4. JS welcomed FE to her inaugural TPC meeting. FE has been appointed as a TPC member by the Lady Chief Justice at the request of the SPT (specialising in Health, Education and Social Care Chamber matters). Her term will run from 27 January 2025 to 26 January 2028.
- 1.5. JS informed the TPC that SS will be relinquishing his role as a TPC member due to being appointed as a Senior Circuit Judge (Designated Family Judge) in the Northeastern Circuit by the Lady Chief Justice. JS and the other TPC members congratulated SS on his new judicial appointment and JS thanked him for the excellent work he had done during his time on the TPC as the chair of the Immigration and Asylum and the 'Written Reasons' subgroups. The attendees wished him the best for his future work endeavours.
- 1.6. JS asked VP to liaise with the Judicial Office appointments team to initiate an 'expression of interest' (EOI) campaign to identify a replacement for SS. VP agreed to this request.
- 1.7. JS informed the attendees that DWF (in his capacity as the Lord President's appointment on the TPC) would not be seeking to renew his term on the TPC after his current term ends. He would cease to be a TPC member on 22 March 2025. As a result, the 06 March 2025 TPC meeting would be his final TPC meeting. JS advised the attendees that the Lord President of Scotland had appointed Judge Anne Scott as DWF's successor, with her appointment commencing with effect from 23 March 2025.
- 1.8. RB confirmed that the Tribunal Procedure (Amendment No.2) Rules 2024 Statutory Instrument (SI) had come into force on 27 December 2024. The Employment Tribunals Procedure Rules 2024 SI had come into force on 06 January 2025. JS thanked RB for her legal endeavours on achieving these legislative matters.

AP/01/25: To plan to publish the approved December 2024 TPC meeting minutes on GOV.UK. – TPC Secretariat

AP/02/25: To update the TPC subgroup membership chart to reflect recent changes in TPC appointments. – TPC Secretariat

AP/03/25: To liaise with the Judicial Office appointments team regarding launching an EOI campaign to recruit a new Tribunals member. – VP

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

- 2.1. JS referred to the decision of the TPC at its 05 December 2024 meeting to postpone any further discussion of the SPT's proposals for the 'Written Reasons' rule changes pending an update from the SPT as to his views on those proposals in light of responses to the consultation, including, in particular, the response of the Transparency and Open Justice Board. The

SPT's proposals for rule changes concerned limiting the right of successful parties (in tribunal proceedings for certain jurisdictions) to request written reasons. JS said the SPT had confirmed his intention to revisit this matter with certain Tribunal Chamber Presidents and the Transparency and Open Justice Board (TOJB).

- 2.2. JS updated the TPC regarding developments since the previous meeting. She said that SOR had written to her on 24 January 2025 to confirm that the SPT is no longer inviting the TPC to make all of the proposed rule changes as consulted upon by the TPC.
- 2.3. However, the SPT's view is that there are good principled arguments for some of the original proposals to be introduced and that these proposals should be further considered and, if appropriate, adopted by the TPC. These proposals include reducing most time limits for parties to the tribunal proceedings requesting discretionary 'written reasons' in certain jurisdictions of the First-tier Tribunal to a default position of 14 days. In addition, the SPT remains keen on the introduction of short-form reasons in the Employment Tribunals.
- 2.4. The TPC discussed the contents of the judicial paper and how these proposals for rule changes would impact the ongoing work being driven by the TOJB to promote transparency and open justice across the tribunals and wider justice system. The TPC concluded that a draft response document should be prepared to record the TPC's consideration of the SPT's proposals and of the consultation responses. However, the TPC noted that further engagement with the SPT's Office and the TOJB would be useful to avoid any misunderstanding.
- 2.5. JS suggested that the 'Written Reasons' subgroup be reconvened so that the subgroup could start the drafting exercise to prepare a first version of a draft response document. PBS agreed to chair the subgroup as SS' replacement.
- 2.6. PBS informed the TPC that he would aim to prepare/ circulate a first draft response document for the April 2025 TPC meeting.

AP/04/25: To prepare a draft response Written Reasons document. – PBS

3. HSW Subgroup

New Rule 35 (Health, Education and Social Care Chamber Procedure Rules 2008)

- 3.1. JS, supported by AS, summarised the background/ sequence of events, including the two TPC consultations to make a change to Rule 35 in the mental health jurisdiction of the Health, Education and Social Care Chamber (HESC) of the First-tier Tribunal (FtT) concerning the management of cases

and, in particular, the types of cases which may be disposed of without a hearing.

- 3.2. AS said that on 19 December 2024, an email was received by the TPC Secretary from SJ, the Deputy Chamber President responsible for the mental health jurisdiction (HESC). AS indicated that the rule amendment had accidentally altered the Tribunal's approach to cases involving community patients and an appeal heard on the papers. SJ, with the support of Judge Mark Sutherland Williams, the HESC Chamber President, had requested the TPC urgently to review the matter and to consider next steps regarding whether to make an amendment to Rule 35 to restore the default position for community patients (as existed prior to the December 2024 Amendment SI, which did not include this requirement).
- 3.3. JS said she had agreed for SJ and IK (an HESC judge) to attend the meeting online to assist the TPC with any questions that may transpire from the discussion. AS informed the TPC that she had prepared a briefing paper in relation to this Rule 35 matter for the meeting. AS summarised the contents of the briefing paper.
- 3.4. The TPC considered the contents of the briefing note and re-examined the previous consultation documents, the final report, and past TPC meetings minutes dealing with this issue. The TPC concluded that the SI inadvertently changed the position for community patients and that, as this was not intended by the TPC, it should be resolved at the earliest opportunity.
- 3.5. The TPC raised the question of whether there was anything inherently improper in it deciding to restore the rule to its previous iteration without further public consultation. The TPC recognised the risk of judicial review in adopting this approach, albeit also acknowledging the risk of judicial review if it failed to amend the error. It was the TPC's view that its decision to restore the rule to its previous iteration was in line with its statutory obligation in exercising its rule-making powers with a view to securing justice, accessibility and fairness.
- 3.6. JS advised the TPC that it will need to explain the change of Rule 35 to the public and interested stakeholders. JS asked for legal advice to be prepared on various issues including whether there were any reasons not to make the change to correct an inadvertent error and whether any issues may arise in connection with the need for the TPC to comply with the Public Sector Equality Duty in making its decision for the proposed rule amendment.

- 3.7. IK and SJ joined the meeting and IK informed the TPC of the ramifications of Rule 35 in its current format. They stated that the Rule for community patients has been in place for some years without any appeals or complaints. The TPC asked IK and SJ several questions before JS informed IK and SJ that the TPC wished to obtain legal advice regarding the proposed change to Rule 35 before AS replies back to them.
- 3.8. IK and SJ thanked the TPC for its time and then left the meeting.
- 3.9. JS reiterated the TPC's intention to enact the rule change in the next TPC Amendment Rules SI package. JS requested that VP ask IK and SJ to provide any available statistical data on the annual number of community patient cases received by the Tribunal and to provide a breakdown for: i) first reference (paper cases at 6 months), ii) reference at the three years stage and iii) the number of Section 68(7) Community Treatment Orders that had been revoked (and then back in the community). VP agreed to action this request.
- 3.10. JS asked RB and VP to try to collect the data about the number of paper hearings regarding community patients. RB and VP agreed to this request.

Special Educational Needs and Disability jurisdiction (HESC) - consultation on proposed rule amendments

- 3.11. AS summarised the respondents' replies received to the consultation on possible amendments to the HESC Rules 2008 to the TPC.
- 3.12. AS notified the TPC that 40 responses were received and she discussed those responses.
- 3.13. There then followed discussions between the TPC members. AS recommended that the TPC implemented proposal 1. The TPC agreed with AS' evaluation of the proposals.
- 3.14. AS agreed to draft a response document to reflect the TPC's view on the proposals. JS asked if AS could provide a first draft of the document to the TPC for the 06 March 2025 TPC meeting. AS agreed to this request.

AP/05/25: To seek advice regarding the change to Rule 35. – TPC members

AP/06/25: To reply to IK and SJ after the TPC has sought advice in relation to the change to Rule 35. – VP

AP/07/25: To request any available statistical data on paper cases regarding community patients from the HESC judges. – VP

AP/08/25: To try and collect the data about the number of paper hearings regarding community patients. – RB and VP

AP/09/25: To draft a response document to reflect the TPC's view on the proposal for the 06 March 2025 TPC meeting. – AS

4. Employment Tribunals Subgroup

Employment Tribunals Procedure (Draft) Rules 2025 (Tranche Two)

- 4.1. MJR informed the TPC that the subgroup had been faced with some challenging technical rule matters (Rules 12 to 14) as a consequence of an Employment Appeal Tribunal decision handed down on 20 January that required further consideration before they were able to finalise a draft consultation document in respect of the second tranche of proposed Employment Tribunals (ET) Rules.
- 4.2. MJR confirmed that he expected the subgroup to meet again to discuss any outstanding issues. He anticipated that a progress update would be available, at the earliest, at the 03 April 2025 TPC meeting.

Employment Tribunals Procedure Rules 2024- Correspondent query

- 4.3. JS informed the TPC that DF had received a query about the interpretation for new ET Rule 49 (privacy and restrictions on disclosure) which had replaced the old Rule 50.
- 4.4. DF summarised the issue and asked the TPC for its view on whether the Committee needed to provide a formal response to the query. The TPC determined that it did not need to comment on the correct interpretation of the rule as that was a matter for the Tribunal. The TPC agreed that DF could respond to the query in an individual capacity if he so wished.

Digitisation within the Employment Tribunals

- 4.5. JS informed the TPC that DF had prepared a briefing paper summarising the current position in the Employment Tribunals in Scotland and in England and Wales and to suggest areas where 'digitalisation' and online working of some practices and procedure in certain ET jurisdictions might be advanced even further as part of the work of the OPRC.
- 4.6. JS thanked DF for the briefing paper and informed the TPC that she had shared the briefing with the SPT and accordingly would share the document with the OPRC Secretariat.

AP/10/25: To provide an update to the TPC on the tranche two consultation exercise at the 03 April TPC meeting. – ET Subgroup

**AP/11/25: To share the ‘digitalisation’ briefing paper with the OPRC Secretariat.
– JS**

5. Immigration Asylum Chambers Subgroup

- 5.1. SS reported that there were no outstanding issues that required the TPC’s consideration.

6. GTCL Subgroup

General Regulatory Chamber Tribunal Procedure Rules: anonymity

- 6.1. PBS informed the TPC that the GTCL subgroup had received a request from a correspondent asking the TPC to consider making an amendment to Rule 14 of the General Regulatory Chamber Procedure Rules. Rule 14 specifies the procedure in respect of the prevention of disclosure or publication of documents and information in tribunal proceedings.
- 6.2. PBS informed the TPC that the subgroup had discussed this potential rule change and determined that a rule change was not justified as suggested by the correspondent. The other TPC members agreed with the subgroup’s decision.

Renters’ Right Bill 2025

- 6.3. PBS informed the TPC that the subgroup had received a paper from the Ministry of Housing, Communities and Local Government (MHCLG) about its proposal for some further technical rule changes to accommodate regulated tenancy (succession) cases in the Housing Act 1988 and ensure that they continue to be exempted from fees once other rule changes are in place (under which appeals against local authority enforcement action under the Housing Act 1988 will attract a fee).
- 6.4. PBS and ML informed the TPC that it was the subgroup’s preliminary view that rule changes would be needed to accommodate the housing legislation. PBS informed the TPC that the subgroup will provide its recommendations to the TPC once ML and PBS had discussed the rule change proposals with Judge McGrath, the President of the Property Chamber (FtT).

Provision of documents to other parties/ persons in tribunal proceedings

- 6.5. PBS informed the TPC that the subgroup had received responses from AS and DF regarding their experience of their respective chambers in the FtT to help the subgroup determine if a rule change is needed to correct the negative resource and timeliness implications/ impact on the Tribunals.
- 6.6. PBS informed the TPC that he still needs to analyse the impact of the rule change on all of the chambers. PBS stated to the TPC that he aimed to

provide a paper detailing the full details and analysis for the 06 March 2025 TPC meeting.

AP/12/25: To inform the correspondent the TPC's decision regarding his request for a proposed tribunal procedure rule change in respect to anonymity. – TPC Secretariat

AP/13/25: To approach/ seek the view of the Property Chamber President about MHCLG's proposal for rule changes in respect to succession cases (Renters Right Bill). – PBS and ML

AP/14/25: To analyse the impact of the rule change on all FtT chambers in relation to the provision of documents to other parties/ persons in tribunal proceedings. – PBS

7. Costs Subgroup

Interest on costs, payments on account of costs & pro-bono costs awards

7.1. ML updated the TPC in relation to a judicial consultation exercise targeting the Tribunal Chamber Presidents to establish their view on costs, cost-shifting powers and pro-bono costs; the deadline for the Chamber Presidents to return their replies was 13 February 2025. ML stated that the TPC Secretariat was co-ordinating the feedback exercise and would share a summary document with the TPC at the 06 March 2025 TPC meeting.

Costs in the Lands Chamber of the Upper Tribunal

7.2. ML stated that the subgroup needs to discuss the paper detailing the proposed rule changes in the Lands Chamber and that it will report back to the TPC in due course.

AP/15/25: To share the responses of the Chamber Presidents regarding their views on potential changes to Chambers which have cost-shifting powers at the 06 March 2025 TPC meeting. – ML

AP/16/25: To report back to the TPC about the paper detailing the rule changes in the Lands Chamber in due course. – Costs Subgroup

8. Transparency and Open Justice Board (TOJB)

8.1. JS informed the TPC that, after contacting the judicial offices of Scotland and Northern Ireland, the Lord President of Scotland is supportive of the proposed rule changes to the overriding objectives. JS informed the TPC that the TPC Secretariat had not yet received a reply from the Lady Chief Justice of Northern Ireland's Office.

8.2. JS notified the attendees that she had agreed a request to join the TOJB and represent the TPC on the Board.

- 8.3. JS informed the TPC that the Board had requested the TPC to prepare/ provide a response to its extant consultation on the “key objectives” before the consultation exercise closed on 28 February 2025.
- 8.4. JS asked the TPC members to contribute to the Board’s current consultation seeking the view of interested parties to its proposed objectives (to make sure that the objectives properly reflect what should be delivered by a modern justice system). DF, GF, SH, and SS agreed to send their view/ comments to JS, who will collate them to provide a response to the consultation on behalf of the TPC.
- 8.5. JS informed the TPC members that she would share the finalised version of the consultation response with them.

AP/17/25: To pass their comments on the consultation conducted by the TOJB to JS. – DF, GF, SH, and SS

AP/18/25: To send a finalised version of the consultation response document to the TPC members. – JS

9. Tribunal Procedure (Amendment) Rules 2025 SI Exercise

- 9.1. Following a request for clarification from RB on the drafting of a notification rule where the tribunal has exercised the power to set aside, the TPC confirmed that the notification rule should be drafted consistently with rule 38(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules which provides that “If the Tribunal sets aside a decision or part of a decision under this rule, the Tribunal must notify the parties in writing as soon as practicable”. RB confirmed she would include this rule and the amendment to Rule 35 of the HESC Rules in the draft SI she was preparing.
- 9.2. JS and the TPC discussed the ranking of rule changes that were detailed in the TPC work programme.
- 9.3. JS said she was aware that there was a limited legal resource to deal with the increasing number of proposals directed to the TPC where they require changes to the Tribunal Procedural Rules.
- 9.4. To assist RB, the TPC reviewed the work programme and reprioritised its workstreams according to a Red, Amber and Green (RAG) status reporting system.
- 9.5. JS informed the TPC that she was planning to have an introductory meeting with Catherine Gaskell, who succeeded Alasdair Wallace as the Deputy Director in the Judicial & Legal Services Policy team in the Ministry of Justice. JS said she would raise the matter regarding legal resourcing/ RB’s capacity to manage the workload resulting from the TPC work programme.

10. Overview Subgroup

- 10.1. The TPC work programme has been updated as of 27 January 2025 and was circulated on 31 January 2025.

Next Meeting: Thursday 06 March 2025