

## **Tribunal Procedure Committee (TPC): Minutes: Wednesday 06 June 2018**

Competition Appeal Tribunal, Victoria House,  
Bloomsbury Place, London WC1A 2EB

### **Present**

(Mr Justice) Peter Roth (PR)  
Michael Reed (MJR)  
Jane Shillaker (JS)  
Jayam Dalal (JD)  
Donald Ferguson (DF)  
Christine Martin (CM)  
Gabriella Bettiga (GB)  
Mary Carpenter (MC)  
Catherine Yallop (CY)  
Paula Waldron (PW)  
Tony Allman (TA)  
Vijay Parkash (VP)

### **Guests**

Louis Kopieczek (LK) (Upper Tribunal Liaison Judge)- item 2  
Shane O'Reilly (SoR) (Government Legal Department)

### **Apologies**

Philip Brook Smith (PBS)

## **Minutes**

### **1. Introductory matters**

1.1 Apologies were received from: PBS (and MR for delayed arrival).

1.2 PR welcomed GB and CY to their first TPC meeting. GB had recently been appointed by the Lord Chancellor to the TPC. PR said that CY was attending the TPC meeting as she was covering the role of the Senior President of Tribunals (SPT) legal advisor while Rebecca Lewis was away on maternity leave.

1.3 The draft minutes of the TPC meeting held on the 02 May 2018 were approved subject to minor amendments.

#### **TPC Action Log**

1.4 The TPC action log had been updated. In relation to AP/2/18 (To invite Rob Casey as a guest to the July TPC meeting) the Secretariat advised the attendees that Rob Casey was unavailable to attend the July TPC meeting as he would be away on leave at that time. The TPC agreed that he would be invited to a TPC meeting scheduled after the summer recess.

**AP/28/18: To invite Rob Casey to a future TPC meeting after the summer recess. –TPC Secretariat**

**AP/29/18: To amend the TPC draft May 2018 minutes and the TPC Action Log to reflect comments received from TPC Members. –TPC Secretariat**

### **Matters arising**

#### **TPC Appointments**

##### **Lord Chief Justice (LCJ) appointments**

1.5 PR said that arrangements were being made for the interviews for the 3 applicants that been short listed for the vacant TPC position. PR would be chairing the interviewing panel with Richard Mason and an independent panel member nominated by the Judicial Office. PR asked the Secretariat to confirm with Judicial Office the timing for the interviews subject to the panel members availability.

**AP/30/18: To agree with Judicial Office the timing for the interviews- TPC Secretariat**

1.6 Since CY's non-working day falls on a Wednesday. PR asked the attendees if they had any issues for switching the TPC meeting to an alternative week day (as the remaining TPC meeting dates for 2018 had been scheduled to fall on the first Wednesday of the month). As there were no objections, the TPC agreed that the TPC Secretariat would amend the meeting timetable in the autumn for the TPC meetings to fall on a Thursday.

**AP/31/18: To reschedule TPC meetings that fall after the summer and send out new meeting invitations to the TPC and guests. - TPC Secretariat**

#### Courts Reforms- digitalisation

1.7 In relation to AP/20/18 (To advise the Courts Reform Policy team to attend the TPC June 2018 meeting and to provide a briefing paper), the Courts Reform Policy team (CRPT) had advised the TPC Secretariat that HMCTS needed additional time in relation to presenting the detail of their proposals for rule changes to the TPC. The CRPT had asked if a potential slot at the scheduled TPC meeting on the 25 July 2018 would be available to enable HMCTS and MoJ representatives to attend the meeting to discuss their proposal for possible rule changes.

1.8 Since the agenda for the July meeting was quite heavy, the TPC agreed that the First-tier Tribunal (Social Security and Childcare Support) (SSCS) proposal for possible rule changes should be discussed at an additional meeting to be held in the week commencing 17 September 2018. The TPC Secretariat would request the CRPT to provide an updated position paper detailing their arguments for potential rule changes which could be circulated before the meeting.

**AP/32/18: To advise the CRPT that the TPC have agreed to add the SSCS proposed rule changes topic to the TPC September 2018 meeting agenda. - TPC Secretariat**

**AP/33/18: To check availability of TPC members during w/c 17 September. To send a meeting invitation to TPC members - TPC Secretariat**

## **2. IAC Sub-group (IACSG)**

### Consultation on Tribunal Procedure Rules (FtT (IAC) Rules 2014 & Upper Tribunal Rules 2008) in relation to detained appellants

2.1 PR circulated a ministerial letter (dated 08 May 2018) that he had received from Lucy Frazer QC MP in relation to the TPC's consultation on new detained fast track rules.

2.2 MJR summarised the revisions he had made to the text in the latest version of the draft consultation paper (circulated on the 01 June 2018) following comments and suggested changes received from the TPC following the topic being discussed at the TPC May meeting.

2.3 The TPC agreed that the TPC DFT immigration consultation should be published following the release of the quarterly Tribunals statistics that would be made public by the government on the 14 June 2018. This would allow MJR to update the relevant paragraphs in the consultation paper with the newest detained immigration and asylum (DIA) statistics on detained appellants for the period: January to March 2018.

2.4 The TPC discussed the logistical arrangements following the conclusion of the 12-week consultation, assuming that the TPC consultation ended during mid-September 2018. The TPC agreed that the responses and an analysis prepared by the TPC Secretariat would be sent to MJR and the IACSG to consider in the first instance. An IACSG meeting would be held in September to discuss the responses. MJR agreed to prepare a paper setting out the key issues for discussion. The TPC could then consider and address the issue at its October meeting.

## **3. HSW Sub-group**

### Mental Health Tribunal (MHT) Proposals for Reform

3.1 The TPC public consultation was due to end on the 14 June 2018. To date, the TPC Secretariat has received 64 replies to this consultation.

3.2 PR advised the attendees that the Secretariat had received a second Freedom of Information (FOI) request regarding the recent TPC consultation for procedural reform to the MHT.

3.3 CM thanked the MoJ Policy attendees for the update paper that had been circulated to the HSWSG and TPC detailing parliamentary interest in the TPC consultation on changes to the Mental Health Tribunal and a summary of the 3 parliamentary questions received to date.

3.4 CM said that the HSWSG would convene a meeting during July to consider the replies after the TPC consultation closed on the 14 June.

3.5 MoJ Policy asked CM whether she would be prepared to meet with the Mental Health Act Review Team evaluating the Mental Health Act 1983 to discuss the TPC consultation. CM said that she was willing to attend a meeting with the review team as they were considering the existing powers and procedures of MHTs and that the objectives of the TPC consultation overlapped with the purpose of the review, i.e., how the legislation is used and how practice can improve in the MHT.

#### **4. GTCL Sub-group**

4.1 The Secretariat reported that there had been engagement between PBS, the Department for International Trade (DIT) and the President of the Upper Tribunal (Tax and Chancery Chamber) regarding potential rule changes in relation to definition of 'trade remedies appeals' and 'confidentiality rings'. The DIT were also keen to establish whether the TPC would conduct a public consultation for any potential rule changes.

4.2 In the absence of PBS, it was agreed that the matter should be deferred until the TPC July meeting at which time DIT should have settled their policy and provided a draft SI.

4.3 There were no other urgent issues requiring the TPC's immediate attention.

#### **5. Costs Sub-group**

##### TPC consultation- Possible changes to costs in leasehold cases and residential property cases

5.1 JS said that PBS had circulated a final version of the TPC response but with the caveat that there were still some outstanding formatting changes required that were presently being actioned by the Secretariat.

5.2 JS agreed to write to the President of the Property Chamber (First-tier Tribunal) to:

- Confirm the TPC's position that they would welcome the issue of guidance by the Property Chamber on awards of costs, reflecting the *Willow Court* judgment, which could then be published on the tribunal website;
- Acknowledge her assistance for the Property Chamber agreeing to gather feedback and evidence from tribunal users as to the impact of that guidance; and
- Advise her that after an appropriate period (about 1 year) the TPC would wish to consider that information/data to determine whether the evidence provides support for capping costs.

**AP/34/18: To write to the Chamber President of the Property Chamber informing her that the TPC response has been published and TPC next steps. – JS**

#### **6. Litigation Friends**

6.1 The TPC Secretary said that following the workshop held on the 25 April he had been working to produce process maps for: the definition of a 'Litigation Friend', the potential role of the Official Solicitor in proceedings, pressure points, financial considerations and the role of legal professionals.

6.2 The TPC Secretary said he anticipated that the exercise to finalise the process maps should be completed by September and that he would at that time produce a submission to the Minister with recommendations. PR asked the TPC Secretary to provide a further progress update at the TPC September meeting.

**AP/35/18: To provide an update for the Litigation Friends topic for the TPC September meeting. –TPC Secretary**

## **7. BREXIT**

7.1 The TPC Secretary provided an update regarding potential rule changes arising from Brexit SIs that were being planned by the MoJ and other government departments prior to 29 March 2019 (Brexit day) in relation to: the effects of the Withdrawal Bill, the possibility of 'Litigation Gaps' and the future use of Judicial Review.

7.2 The TPC Secretary confirmed that he had started a scoping exercise to determine how many SIs from other departments would involve the TPC considering potential rule changes. PR asked the TPC Secretary if there was any further news on the MoJ plan for consequential amendments to tribunal procedure rules (following the letter sent by Richard Mason on 'EU Exit Secondary Legislation' to PR- dated 21 March 2018). The TPC Secretary said the policy details were still being developed although the current thinking was that a single combined SI would be made by the Secretary of State (SoS) for the necessary rules changes required by other government departments covering criminal, family, civil and tribunals. The aim was for the SoS to consult with the relevant Rule Committees on proposed Brexit-related rule changes in the autumn. PR asked the TPC Secretary to clarify the position at the TPC September meeting.

7.3 The TPC agreed to create a new Brexit Sub-group to consider the future arrangements for Brexit-related rule changes. The Brexit Sub-group would be chaired by PR.

**AP/36/18: To prepare a report for the BREXIT topic for the TPC September 2018 meeting. – TPC Secretary**

## **8. Overview Sub-group (OSG)**

### TPC Work Programme

8.1 The TPC work programme has been updated and circulated as at 31 May 2018.

8.2 It was agreed that the TPC work programme should be updated as follows to amend/remove:

### Section 1- Tribunal Procedures Rules work plan

- To add a new entry 'Brexit-related tribunal rule changes', in relation to Brexit-related rule changes.

8.3 To obtain the latest legislative position for:

### Section 2 – Non-legislative/'watching brief'- programme of work

- Entry 8 (Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018)
- Entry 9 (Road Haulage permits and Trailer registration scheme appeals right)
- Entry 10 (Tobacco Products Manufacturing Machinery appeals right)
- Entry 11 (Common Marketing Standards Regulations appeals right)

**AP/37/18: To amend the TPC Work programme to reflect comments received from TPC Members. - TPC Secretariat**

## **9. AOB**

### Publishing TPC meeting minutes on GOV.UK.

9.1 The TPC Secretariat asked in light of the recent FOI requests in relation to the recent TPC consultation on MHT reforms if the TPC would have any issues for the TPC meeting minutes to be published on the government website. The TPC Secretary advised that the Family and Civil Rule Procedure Committees published their meeting minutes. The TPC agreed to publish the TPC meeting minutes from June 2018 onwards.

**Next Meeting: Wednesday 25 July 2018**