

Pro Bono Panel Meeting

9 September 2019, 2pm – 4pm

Simmons & Simmons

Minutes

Attendees: Paul Yates (Freshfields), Diane Sechi (Simmons & Simmons), Helen Rogers (Allen & Overy), Marion Edge (Herbert Smith Freehills), David Oldfield (Freshfields), Chloe O'Brien (Simmons & Simmons), Heidi Bancroft (Secretary to the AJC), Sally Hunt (JUSTICE).

Apologies: David Boyd (Clifford Chance)

1) Minutes of the last meeting

Paul Yates (PY) asked if there were any comments on the Minutes prior to them being published on the AJC website. It was agreed that HR who had not had sight of them until now, would get back to Heidi Bancroft (HB) with any comments.

2) Update on the AJC

Council Meeting

PY thought it important for those present to know that the wider agenda of the Council is on ombudsman and tribunals reform, in particular, a push for the ombudsman to be given their own initiative powers, instead of having to rely on receiving complaints regarding systemic problems. There was a discussion on whether there should be an option on the SSCS1 for claimants to indicate whether they would like for their case to be dealt with as a complaint and what information could be included in the narrative box.

Projects from other Panels

HB gave an update on the work of the other Panels:-

- a. Advice Sector Panel – they were proposing the production of a report which would illustrate the personal impact and cost to the State of poor first-instance decision-making by the DWP. This would be demonstrated through case studies and with the assistance of an economist. Discussions ensued around previous attempts to present similar projects by organisations such as New Economics Foundation, KPMG and Citizens Advice. It was agreed that an approach from the claimant's point of view would be more impactful in terms of the press and media, but the government may publicly dismiss it (not to say that it might still have weight behind closed doors).

The ongoing sticking point of funding and resources available to this Panel was discussed, and it was suggested that the Panel consider contacting Therium, who provided funding all year round.

- b. Academic Panel – the Panel had received funding from the Arts and Humanities Research Council to host four workshops. The first workshop was held in Manchester in June on the subject of mapping administrative justice in Wales. The second workshop was scheduled for 11 October, on ombudsman and tribunal familiarisation. The Panel would welcome ideas for further workshops.
- c. Ombudsman and Tribunals Familiarisation Working Group – a working group had been set up to discuss how ombudsman and tribunals could work better together and have a shared understanding through training, shadowing, sitting in on tribunal hearings etc. The workshop in October, in collaboration with the Academic Panel, would bring together tribunal judges and ombudsmen to start a conversation on how they could work better together.

3) Topic 1 – Stakeholder Engagement Survey

Diane Sechi (DS) reported to the Panel that she had received 680 responses to the survey, 390 of which were full responses, and that she and Dr Naomi Creutzfeldt, Co-Chair of Academic Panel have had several discussions regarding how to present the results. DS is in the process of producing her report but would welcome suggestions on how to deal with the narrative – the report generated some compelling and powerful statements from front line workers, and she would like to ask some respondents if they would be willing to put their names to those statements, as she believed it will add to the impact. A total of 8% of responses were from Citizens Advice, and it was useful to get their views. DS would send the draft report to the members of the Panel in the first instance; she would also consult with the Advice Sector Panel who have been very encouraging thus far. Various ideas were discussed around the best forums for presenting the report to gain maximum coverage.

Action: DS to circulate draft report to Panel members.

4) Topic 2 – Polluter Pays

PY reported back on the polluter pays proposal and said if this idea was seen as viable, he anticipated seeking legal advice from a barrister on whether the mechanism can be introduced without the need for primary legislation on the issue of fees. This, however, had been parked for the time being with the main focus being on running a dry pilot (without a financial incentive).

PY and HB had met with the principle judge of the Asylum Support Tribunal, Judge Gill Carter, who agreed in principle to pilot the tick box mechanism.

At the request of Gill Carter, PY has also been liaising with Asylum Support Appeals Project (ASAP) in relation to them providing examples of unlawful decision letters, particularly

around the issue of destitution. There had been some delays and it might be that PY would need to assist them in the collation of such letters. ME offered assistance with this. PY confirmed that he was looking to have this topic finalised and considered by the next Council meeting in January 2020.

PY added that a member of the Steering Group had suggested he also look at SEND Tribunals, and on that basis, Sir Ernest Ryder had recommended he contact Judge Meleri Tudur.

David Oldman (DO) ran through the research he had conducted on the SEND Tribunal:

- In terms of the legal framework, there was access to legal assistance via a legal aid helpline for those eligible;
- The success rate for appellants stood at 89%;
- 30% of cases were conceded before they reach the hearing stage;
- There was no mandatory reconsideration;
- Mediation was encouraged;
- David spoke to a couple of practitioners regarding the practical aspects of introducing a tick box for judges, and they believed it could work and some cases would sit within the ‘breach of material procedural rules’ box;
- Introducing the mechanism into this tribunal could be potentially impactful, if it would incentivise local authorities into taking action; and
- On their website, IPSEA (Independent Adviser of Special Education Advice) report that 40% (and in some local authority areas, 2%) of EHC (Education, Health and Care) plans are not produced within the statutory timeframe of 20 weeks.

PY was happy to proceed with trialing the exercise in both tribunals. Suggestions were put forward for firms/organisations who work in the area of SEND who could be contacted for further advice – Clifford Chance, Law Centre Network, Simpson Millar and IPSEA

Action: 1) PY to chase ASAP regarding example letters; 2) HB to approach Judge Meleri Tudur to request a meeting with PY to discuss the introduction of a pilot in the SEND tribunal.

5) Priorities Going Forward

PY referred back to the list of six topics that were mooted initially by the AJC. ‘Stage 1’ online tribunals remained unaddressed. Initial indications from Lord Briggs were that a system known as Case Builder would be used as Stage 1 by HMCTS. Case Builder was being utilized to provide decision trees to assist claimants in online money claims. He was trying to establish whether this would be rolled out elsewhere. He had been in contact with HMCTS and a meeting had been arranged (although postponed) to discuss this further. PY was still keen to be involved in independently reviewing these systems and for the panel to take part in user testing.

Action: PY to keep in touch with HMCTS regarding reviewing new systems.

6) Annual Report

HB confirmed that this will be released in mid-November. It had been discussed at the previous Pro Bono meeting and PY and DS have been asked to produce contributions for the Report by 30th September. The Report will be presented thematically, across the three areas of work undertaken by the separate Panels – first instance decision-making, tribunals modernisation and ombudsman reform. Members of the Panel agreed that they were happy with this approach and that the two Panel members report on the work of the Panel on their behalf.

Action: PY and DS to provide contributions to HB by 30 September 2019.

7) AOB/Membership

Members of the Panel were keen to open up the Panel to pro bono lawyers working throughout the UK, as opposed to just within London. Discussions ensued regarding possible individuals or firms.

Action: Panel members to provide suggestions to HB/SW.