SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

2018

Contents

Introduction

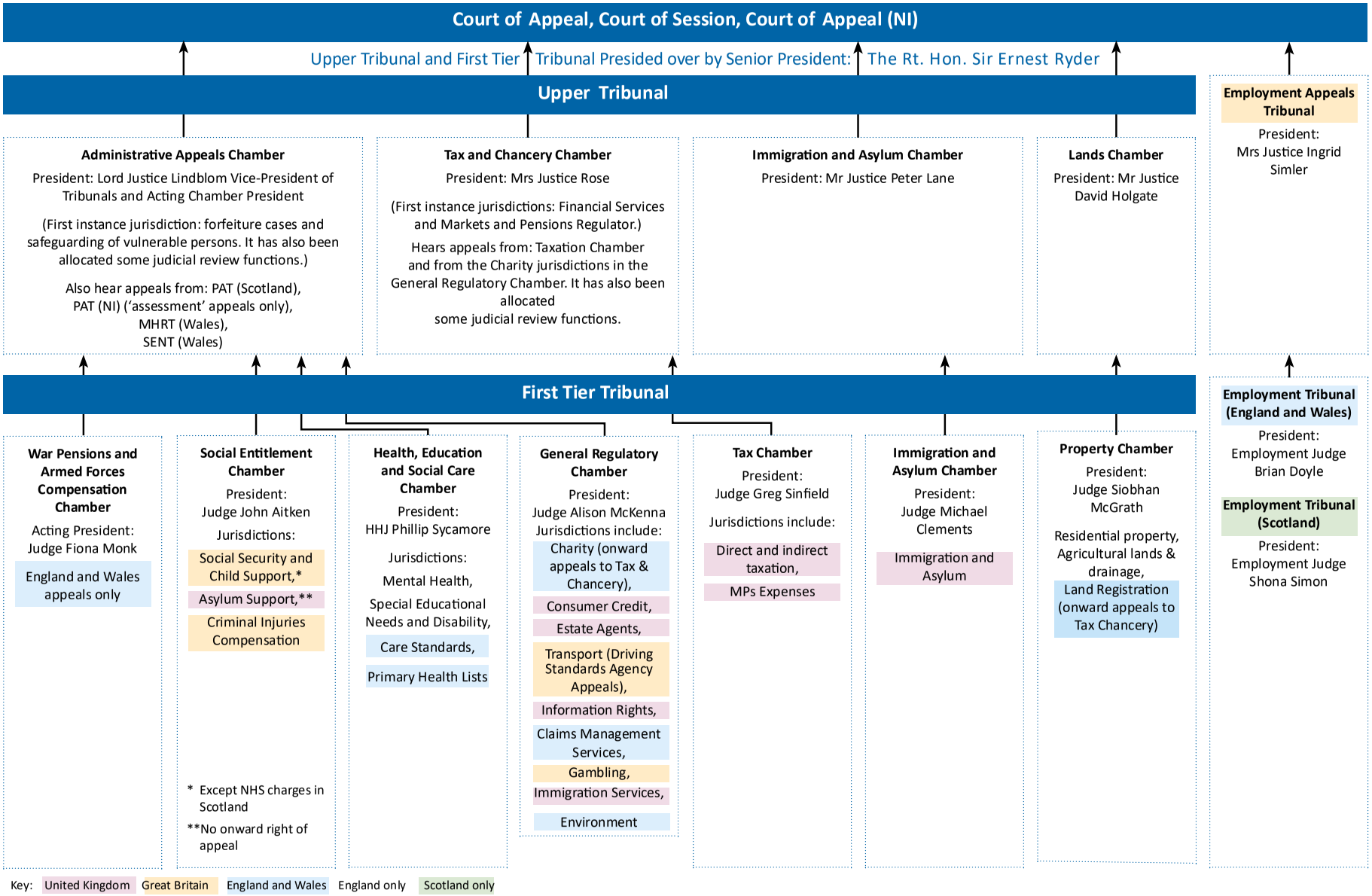
By the Senior President of Tribunals, Sir Ernest Ryder

This year's Report represents a departure from the convention of having one Senior President's Annual Report. There will be two reports; this report contains the detailed material provided by each of the chambers and tribunals which deals with the many and varied aspects of 'business as usual' as it affects the unified tribunals and the employment tribunals. In July there will be a second report which focuses on the modernisation of the tribunals.

The tribunals judiciary alongside the courts judiciary in England and Wales are engaged in a significant programme of change. By 2022 many of our working practices and processes will have been transformed. Every tribunal judge and panel member has been asked to contribute to that programme and has received materials to assist in the process which are known as Judicial Ways of Working - 2022. The materials were drafted with the assistance of a Tribunals Change Network which includes the chamber and tribunal presidents, the judicial associations, those judges involved in each of the projects and the Tribunals Judicial Engagement Group which advises the reform teams. I am visiting every part of the United Kingdom to talk with tribunals judges and panel members about the Programme and will then return to the Tribunals Change Network to seek their advice. I intend to provide tribunals judges and panel members and the public with the plans for the future as those plans develop.

A full report to the Lord Chancellor and Secretary of State will follow in July. It will include material about the Programme, the advice I have received and our future plans. The report will also contain material on other important issues including the estate, workload, Scottish devolution, the implications of Brexit, welfare, diversity and training.

Sir Ernest Ryder
Senior President of Tribunals


Court of Appeal, Court of Session, Court of Appeal (NI)
Upper Tribunal and First Tier Tribunal Presided over by Senior President: The Rt. Hon. Sir Ernest Ryder
Upper Tribunal
Administrative Appeals Chamber
President: Lord Justice Lindblom Vice-President of Tribunals and Acting Chamber President
(First instance jurisdiction: forfeiture cases and safeguarding of vulnerable persons. It has also been allocated some judicial review functions.)
Also hear appeals from: PAT (Scotland), PAT (NI) ('assessment' appeals only), MHRT (Wales), SENT (Wales)
Tax and Chancery Chamber
President: Mrs Justice Rose
(First instance jurisdictions: Financial Services and Markets and Pensions Regulator.)
Hears appeals from: Taxation Chamber and from the Charity jurisdictions in the General Regulatory Chamber. It has also been allocated some judicial review functions.
Immigration and Asylum Chamber
President: Mr Justice Peter Lane
Lands Chamber
President: Mr Justice David Holgate
Employment Appeals Tribunal
President: Mrs Justice Ingrid Simler
First Tier Tribunal
War Pensions and Armed Forces Compensation Chamber
Acting President: Judge Fiona Monk
England and Wales appeals only
Social Entitlement Chamber
President: Judge John Aitken
Jurisdictions:
Social Security and Child Support,*
Asylum Support,**
Criminal Injuries Compensation
* Except NHS charges in Scotland
**No onward right of appeal
Health, Education and Social Care Chamber
President: HHJ Phillip Sycamore
Jurisdictions:
Mental Health,
Special Educational Needs and Disability,
Care Standards,
Primary Health Lists
General Regulatory Chamber
President: Judge Alison McKenna
Jurisdictions include:
Charity (onward appeals to Tax & Chancery),
Consumer Credit,
Estate Agents,
Transport (Driving Standards Agency Appeals),
Information Rights,
Claims Management Services,
Gambling,
Immigration Services,
Environment
Tax Chamber
President: Judge Greg Sinfield
Jurisdictions include:
Direct and indirect taxation,
MPs Expenses
Immigration and Asylum Chamber
President: Judge Michael Clements
Immigration and Asylum
Property Chamber
President: Judge Siobhan McGrath
Residential property, Agricultural lands & drainage,
Land Registration (onward appeals to Tax Chancery)
Employment Tribunal (England and Wales)
President: Employment Judge Brian Doyle
Employment Tribunal (Scotland)
President: Employment Judge Shona Simon
Key: United Kingdom Great Britain England and Wales England only Scotland only

Annex A

Upper Tribunal

Administrative Appeals Chamber

President: Sir William Charles

The jurisdictional landscape

The number of cases received by the Administrative Appeals Chamber has remained fairly constant over the last three years, with social security cases brought by way of appeals from the Social Entitlement Chamber of the First-tier Tribunal continuing to predominate.

Changes in legislation usually give rise to a number of test cases and three of the six three-judge panel decisions on social security during 2017 involved the construction of subordinate legislation made under the Welfare Reform Act 2012. In the first, there was a challenge to the validity of the scheme for transferring claimants of disability living allowance to personal independence payment *(TW v Secretary of State for Work and Pensions (PIP)* [2017] UKUT 25 (AAC)) and the second was concerned with the relationship between an ability to carry out an activity safely and a need for supervision for the purposes of personal independence payment *(RJ v Secretary of State for Work and Pensions (PIP)* [2017] UKUT 105 (AAC); [2017] AACR 32). In *R.(CJ) v Secretary of State for Work and Pensions* [2017] UKUT 324 (AAC); [2018] AACR 5, a case where judicial review proceedings transferred from the High Court were heard at the same time as a statutory appeal from the First-tier Tribunal, the Upper Tribunal considered the scheme of "mandatory reconsideration" and held that a refusal by the Secretary of State of an extension of time for applying for the revision of a decision did not preclude an appeal against the decision. Two of the three-judge panel cases were concerned with reductions of housing benefit for under-occupancy. In *Secretary of State for Work and Pensions v Carmichael (PIP)* [2017] UKUT 174 (AAC), the Upper Tribunal rejected an argument that it had no power to provide a remedy in a case in which the Supreme Court *(R.(Carmichael and Rourke) (formerly known as MA and others) v Secretary of State for Work and Pensions* [2016] UKSC 58) had held that the relevant provision of the Housing Benefit Regulations 2006 was incompatible with the European Convention on Human Rights. In *Nuneaton and Bedworth BC v RH (HB)* [2017] UKUT 471 (AAC), it was held that the number of bedrooms available in the property had to be calculated by reference to the characteristics of the people living there. The sixth three-judge panel case was concerned with the application of the cumbersome procedure for determining entitlement to tax credits, which is initially awarded as a weekly benefit with a final decision being made on an annual basis. It was held that a final decision made under section 18 of the Tax Credits Act 2002 requires any outstanding appeal to the First-tier Tribunal against an initial decision made under section 16 to be struck out *(LS v Commissioners for Her Majesty's Revenue and Customs (TC)* [2017] UKUT 227 (AAC); [2018] AACR 2).

Appeals from decisions of three-judge panels made in earlier years have resulted in a large number of cases being stayed, but the Secretary of State has taken different approaches. Pending the decisions in *R. (Reilly) v Secretary of State for Work and Pensions* [2013] UKSC 68 and *R. (Reilly (No.2)) v Secretary of State for Work and Pensions* [2016] EWCA Civ 413 and a possible appeal from the latter decision, he suspended awards of jobseeker's allowance so that some 500 other cases before the Upper Tribunal needed to be stayed – in some cases for several years – although most of them were ultimately withdrawn. However, having decided to appeal against *MH v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 531 (AAC), he decided not to suspend payments or seek a stay in similar cases and so no further backlog built up and the cases that had been stayed pending the Upper Tribunal's decision could be decided consistently with that decision.

The introduction of universal credit under the 2012 Act is proceeding at a very much slower rate than the introduction of personal independence payment. However, a few more universal credit cases reached the Upper Tribunal this year, the claimant commitment being considered in *RR v Secretary of State for Work and Pensions (UC)* [2017] UKUT 459 (AAC) and responsibility for a child being considered in *MC v Secretary of State for Work and Pensions (UC)* [2018] UKUT 44 (AAC).

Procedural issues continue to loom large. A challenge to the practice in the Upper Tribunal of anonymising social security and child support decisions (without, generally, imposing reporting restrictions) was considered in *Adams v Secretary of State for Work and Pensions (CSM)* [2017] UKUT 9 (AAC); [2017] AACR 28, resulting in a modification to the practice so that the position is now explained more fully to litigants. In two cases concerned with procedure, decisions of the Immigration and Asylum Chamber, or the Court of Appeal hearing an appeal from that Chamber, have been decisive. The approach taken to late applications for permission to appeal in immigration and asylum cases was applied to social security cases in *JP v Secretary of State for Work and Pensions* [2017] UKUT 149 (AAC), albeit with modifications in the light of the different context. The position of persons appointed by the Secretary of State to act on behalf of claimants has been considered in *DB v Secretary of State for Work and Pensions (SPC)* [2018] UKUT 46 (AAC) and *RH v Secretary of State for Work and Pensions (DLA)* [2018] UKUT 48 (AAC), in the latter of which it was held that the fact that there was an appointee did not preclude a claimant from bringing an appeal independently and that, following *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, a litigation friend could be appointed if necessary.

Another area of jurisprudence shared with the Immigration and Asylum Chamber is that concerned with rights of residence under European Union law, which continues to provide a steady stream of appeals. Cases concerning the operation of Regulation (EC) 883/2004 on the co-ordination of social security systems and its predecessor, Regulation (EEC) 1408/71, also continue to arise. The Court of Justice of the European Union has now given its decision on Regulation 1408/71 in *Secretary of State for Work and Pensions v Tolley* (Case C-430/15) EU:C:2017:74 and the Supreme Court has consequently dismissed the appeal against the three-judge panel of the Upper Tribunal in that case. The implications of the CJEU's ruling are being worked out and the outstanding issues that it did not cover, including its relevance if any to Regulation 883/2004, are now being considered by the Upper Tribunal. The other significant recent development has been the decision of the Court of Appeal in *Secretary of State for Work and Pensions v Filecca* [2017] EWCA Civ 1907, confirming the Upper Tribunal's decision as to the approach to be taken where there is a difference of views between member States as to which is the competent State for the purposes of Regulation 883/2004.

Appeals from the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal have enabled the Upper Tribunal to give further guidance in relation to the provisions of the Armed Forces Compensation Scheme, particularly as to the meaning of "downgrading" and the scope of the term "hazardous environment".

The majority of appeals to this Chamber from the Health, Education and Social Care Chamber of the First-tier Tribunal concern special educational needs. In that field, the coming into force of the Children and Families Act 2014 has given rise to a number of cases in which the scope of the new provisions has been explored. As regards mental health cases, the major issue over the last year has been the application of the Mental Capacity Act 2005 in the First-tier Tribunal and its power (if any) to deal with a patient's Convention right under Article 5. In *Djaba v West London Mental Health Trust* [2017] EWCA Civ 436 and *Secretary of State for Justice v MM* [2017] EWCA Civ 194, the Court of Appeal has resolved the conflict of view in the Upper Tribunal's decisions.

Information rights cases have predominated among appeals from the General Regulatory Chamber of the First-tier Tribunal. The Chamber's information rights jurisdiction forms a relatively small proportion of its overall workload, although the cases can be very resource intensive in terms of judicial time. Litigation under the Freedom of Information Act 2000 covers the whole gamut from high level national security issues to more mundane 'parish pump' disputes. The Chamber's evolving jurisprudence provides authoritative guidance on the application of the Act both substantively and procedurally. Thus in *Cabinet Office v Information Commissioner* [2018] UKUT 67 (AAC) a three-judge panel held that the reasonableness of a qualified person's opinion for the purpose of section 36 was to be judged substantively (not solely procedurally) and the FTT cannot remit a case to the Information Commissioner for a fresh decision if it allows an appeal. In *Cruelty Free International v Information Commissioner* [2017] UKUT 318 (AAC), it was held that there was nothing in the language of section 12 to indicate that estimations of the costs of compliance with the Act involved anything other than calculating how long it would take to respond and attributing the cost of that time (so that inefficient or even unlawful record-keeping by the public authority was irrelevant).

This Chamber also hears suitable cases to be fast-tracked by way of a discretionary transfer from the First-tier Tribunal to the Upper Tribunal without a hearing at the lower level. This facility has been illustrated by two appeals in the information rights jurisdiction involving matters of high constitutional principle. First, the 2000 Act provision for a 'neither confirm nor deny' response was examined in *Savic v Information Commissioner* [2016] UKUT 535 (AAC); [2017] AACR 26, an appeal concerning a request to the Cabinet Office for records of the decision to commence military action in Kosovo in 1999, including any Cabinet minutes and inter-departmental correspondence. More recently, *Corderoy v Information Commissioner* [2017] UKUT 495 (AAC) considered a request for disclosure of the Attorney General's advice on drone strikes that killed two British citizens in Syria. The Upper Tribunal's decision analysed exemptions under section.23 (security bodies), section.35(1)(c) (Law Officers' advice) and section.42 (legal professional privilege) of the 2000 Act.

By way of contrast, there have also been appeals from the General Regulatory Chamber regarding a stop notice imposed under the Environmental Civil Sanctions (England) Order 2010, a penalty imposed on a letting agent under the Consumer Rights Act 2015 and a decision to list a public house as an asset of community value under the Localism Act 2011.

Scotland

As in the last report, the position remains that there are no salaried Upper Tribunal Judges based wholly in Scotland. In October 2017 Judge Knowles QC appointed to the High Court in England and Wales and Judge Markus QC took over as lead judge for Scotland where she sits regularly. The AAC in Edinburgh remains heavily dependent on fee paid judges. Dr Mullan, Chief Social Security Commissioner in Northern Ireland, has provided valuable assistance. Lady Carmichael remains available to sit in the AAC from time to time to hear more complex appeals and during the period of this report presided on a three-judge panel. We are grateful to the Lord President for continuing to provide us with valuable assistance from the Court of Session.

The Scottish case load increased during 2016/17 compared to the previous year but has remained relatively steady in recent months. Further increases are forecast. It is challenging to keep on top of the workload within the existing limited judicial resources. At the time of writing the outcome of the 2017 JAC competition is awaited.

During 2017 it was announced that it was expected that the reserved tribunals (including the AAC) would transfer into the devolved Scottish Tribunals system by April 2020. It is not clear whether that timescale will be adhered to. The Scottish Government is presently consulting on the creation of chambers of the First-tier Tribunal and Upper Tribunal, within the framework of the Tribunals (Scotland) Act 2014, to deal with appeals relating to the Scottish social security system.

Wales

Sir Wyn Williams, a retired High Court judge in England and Wales, was appointed as the first President of Welsh Tribunals (PWT) in December 2017. The PWT is responsible for the training, guidance and welfare of members of the devolved Welsh tribunals. The PWT also has power to give directions on practice and procedure of Welsh tribunals.

The Additional Learning Needs and Education (Wales) Act received Royal Assent in January 2018. When in force, the Act will re-name the SEN Tribunal for Wales the Education Tribunal for Wales and replace statements of SEN with individual development plans (available to young people as well as children). The Act provides for a right of appeal on a point of law to the Upper Tribunal against decisions of the Education Tribunal for Wales.

Upper Tribunal Judge Mitchell continues to be based in Cardiff Civil Justice Centre for approximately one week every month.

Northern Ireland

The UT (AAC) currently has jurisdiction in Northern Ireland to deal with appeals from the First-tier Tribunal in relation to freedom of information and data protection, certain environmental matters, certain transport matters, the regulation of estate agents, consumer credit providers and immigration service providers, and appeals in Vaccine Damage cases. It also hears appeals from the Pensions Appeal Tribunal for Northern Ireland in assessment cases. There is a small but significant on-going caseload in freedom of information and data protection, transport and war pension assessment cases.

Two salaried judges sit in Northern Ireland. They combine their UT (AAC) functions with their roles as Chief Commissioner and Commissioner respectively.

Judge Mullan has accepted a nomination from the SPT to join the Tribunals Judicial Executive Board as the judge responsible for co-ordinating any issues pertaining to the reserved UK tribunal jurisdictions in NI.

Interesting cases

In AEKM-v-Department for Communities (JSA), ([2017] AACR 39), Commissioner Stockman considered the meaning of the phrase in regulation 85A(2)(a) of the Jobseeker's Allowance Regulations (NI) 1996, the proper approach to the application of the test in regulation 85A(2)(a) and determined that regulation 85A(2)(a) was not contrary to EU law if applied in a broad way.

In FMcC v Department for Communities (SPC), ([2017] AACR 22), Commissioner Stockman determined that paragraph 12(1) of Schedule 2 to the State Pension Credit Regulations (NI) 2003 had two limbs; the first permitted the costs of a loan to be met for a period when a loan had been used for one of the three qualifying purposes; the second permitted the costs of a loan to be met for a period when the loan was prospectively to be used for one of the three qualifying purposes. The second, prospective, limb was subject to the requirement that the loan was used for a qualifying purpose within the time criteria. On a linguistic and purposive construction, there was no warrant for applying the time criteria to the first limb where the loan had already been used for a qualifying purpose.

In RGS v Department for Social Development (ESA), ([2017] AACR 13) a Tribunal of Commissioners decided that, in the particular circumstances of the case, by the determination of his appeal without an oral hearing, the tribunal had breached the appellant's right to a fair hearing under Article 6(1) ECHR. In addition, and following CIB/5227/1999, regardless of the position under Article 6(1) ECHR, the appellant had a right to an oral hearing as a matter of natural justice. The decision of the tribunal was given in circumstances which were procedurally unfair.

People and places

There have been several staff changes in the UTAAC offices in Edinburgh and London over the past year. In November 2017 the delivery manager for the AAC Scotland office, Pamela McMullen moved to another role. Martin McCann is the new delivery manager. Edinburgh also welcomed a new Registrar, Orla Davey who took up the post February 2017 following the retirement of Christopher Smith in December 2016.

In the London office in the Rolls Building, Emma Ranaweera returned as the delivery manager for England and Wales in May 2017 following Rob Theodosio's departure to a new role. London also welcomed a new Registrar, Althia Kerr who joined the AAC in September 2017.

Deputy Upper Tribunal Judges Godfrey Cole, Elisabeth Jupp and Robin White retired from judicial office in March, April and June 2017 respectively. In June 2017 UT Judge Charles Turnbull retired from salaried office.

In October 2017 UT Judge Gwynneth Knowles QC was appointed to be a judge of the High Court in England and Wales sitting in the Family Division.

In June 2018 UT Judge Andrew Lloyd-Davies retires from salaried office. He will continue to sit as a Deputy Upper Tribunal Judge following his retirement.

At the time of writing, the Chamber was pleased to welcome 5 new salaried Upper Tribunal Judges and 6 new fee-paid Deputy Upper Tribunal Judges following a Judicial Appointments Commission recruitment campaign which was launched in July 2017.

The new Salaried Judges are (in order of date of appointment), Richard Poynter, Phyllis Ramshaw, Anna Poole QC, Tom Church and Mark West. The new fee paid Deputy UT Judges were all appointed on 15 March 2018 and are Laura Dunlop, William Hansen, Rupert Jones, Shakil Najib, Fiona Scolding QC and Alice Sims.

Mr Justice Charles retired from salaried office in February 2018 which included his role as President of this Chamber. Sir William had been President of the Administrative Appeals Chamber since April 2012. His contribution has been outstanding and he will be greatly missed.

Lord Justice Lindblom, the inaugural Vice-President of the Unified Tribunals is also appointed as Acting Chamber President for the Upper Tribunal's Administrative Appeals Chamber and we are delighted to welcome him back to the Upper Tribunal.

Tax and Chancery Chamber

President: Mrs Justice (Vivien) Rose

The past year has seen a steady continuation of the work of the Upper Tribunal (Tax and Chancery Chamber) with no major developments in our jurisdictions.

Judiciary

Judge Colin Bishopp retired from the Upper Tribunal and as President of the First-tier (Tax Chamber) in October 2017. A number of very enjoyable events were organised to honour Judge Bishopp's outstanding contribution to tax law and to the tribunal service, including an excellent dinner held at Gray's Inn. Following a Judicial Appointments Commission selection exercise, I was delighted that Judge Greg Sinfield was appointed as the new President. At time of writing there is selection exercise being conducted to find two new salaried UT TCC judges, to reflect the fact that Judge Sinfield expects to spend more time sitting in the First-tier than in the Upper Tribunal.

Two judges recently appointed to the Chancery Division (Mr Justice Antony Zacaroli and Mr Justice Timothy Fancourt) have been assigned to the Chamber. We were saddened by the death of Kenneth Mure QC in early 2017 and by the retirement of Gordon Reid QC in May 2017, both fee paid judges of the Upper Tribunal sitting in Edinburgh. A selection exercise for two new fee-paid judges to sit in Edinburgh is currently underway. At the start of 2017, additional Court of Session Outer House judges were assigned to the UT TCC so that the judges now so assigned are Lord Bannatyne, Lord Tyre, Lord Doherty, Lady Wolffe and Lord Ericht. On the elevation of The Hon Lord Justice

Deeny to the Court of Appeal in Northern Ireland, I am pleased to record that the Lord Chief Justice of Northern Ireland has assigned the Hon Mr Justice Horner to the Chamber to hear appeals arising in Northern Ireland. Nick Douch, one of the original financial services members who sat on the Tribunal and its predecessor from 2001 retired in April 2017 and I thank him for his service.

We continue to prioritise the training of judges and non-legal members of the Chamber by way of training events and the circulation of comprehensive quarterly updates written by Judge Jonathan Richards and Judge John Brooks. In March 2017, we held our annual two-day residential conference for all Upper Tribunal and First-tier Tribunal tax judges at Walton Hall. This was attended by almost all judges, some members and administrative staff as well as guest speakers (some 68 persons). Some of the salaried and fee-paid judges gave lectures on a variety of topics, including accelerated payment notices, follower notices and the Tribunal's jurisdiction on related penalties; Article 6 of ECHR and its relevance in Tribunal proceedings; the impact of Brexit on the Chamber; and a useful talk on computer security for judges. A major (and popular) part of the training conference was the four case study exercises, which are undertaken in small groups. This year the case studies considered security for PAYE and NICs; the VAT treatment of supplies of goods and credit under a hire purchase agreement; hardship applications; and dealing with vulnerable appellants and applications to adjourn. We were also fortunate to have Sir Edward Troup, the then Executive Chair and First Permanent Secretary of HMRC, to deliver an after-dinner speech which was both informative and entertaining. Many thanks for all the hard work of Judge Sinfield and Judge Jonathan Richards that goes in to making this such an enjoyable and worthwhile event.

Tax Appeals

The bulk of the Chamber's work continues to comprise tax appeals. There have been some important decisions during the period covered by this report at Court of Appeal and Supreme Court level as well as in the Upper Tribunal. In *BPP Holdings Ltd v HMRC* [2017] UKSC 55 the Supreme Court upheld the decision of the First-tier Tribunal Judge, Judge Mosedale to bar HMRC from taking part in the proceedings because of its unexplained failure to comply with the Tribunal's order to provide information. The differences of view in the lower courts had focused on whether the tougher stance of the courts in considering relief from sanctions, discussed in the *Denton and Mitchell* line of cases, should be applied by analogy in tribunals even though the overriding objective set out in the tribunal rules had not been amended in the same way as the overriding objective in the CPR. The Supreme Court approved the guidance given by Judge Sinfield in *Macarthy & Stone* and by Ryder LJ in the Court of Appeal in BPP that although the CPR do not apply to tribunals, there was no justification for a different approach in tribunals to compliance with directions, rules and orders: "In a nutshell, the cases on time-limits and sanctions in the CPR do not apply directly, but the Tribunals should generally follow a similar approach." MTIC schemes and the application of the Kittel test have continued to generate important decisions. In *HMRC v Citibank NA and E Buyer UK* the Court of Appeal confirmed that a dishonest state of mind is not a necessary ingredient in establishing the first limb of the Kittel test, namely that the taxpayer knew that the transaction was part of a fraud. In that case and in *HMRC v Infinity Distribution Ltd (in Administration)* the Court of Appeal considered the principles for the appropriate pleading of such cases and for the disclosure of documents. The remuneration of football players was considered by the Supreme Court in the *Rangers Football Club* case and by the UT in *HMRC v Tottenham Hotspur*: see case digests.

Land Registration

Ten land registration appeal decisions have been handed down during this period so far, and several of them have turned on interesting points of land law or more general principle. In *Port of London Authority v Paul Mendoza* [2017] UKUT 0146 (TCC) Judge Cooke heard an appeal from a decision of the Land Registration Division that the mooring of a boat on the River Thames amounted to adverse possession of an area of the river bed. Judge Cooke allowed the appeal. She had to consider two conflicting decisions of the High Court as to whether adverse possession can be obtained of an area of the river bed where the water is subject to public rights of navigation. She held that it can, but that in this case adverse possession had not been taken simply by mooring the boat. In *Welford v Graham* [2017] UKUT 0297 (TCC) Morgan J had to consider a point that had not been fully argued at first instance, namely whether in an application for registration of a prescriptive easement the applicant has to prove that he made use of the access without permission, or whether the applicant's evidence of use raised a presumption of use as of right which it was for the respondent to rebut. He held that the latter is the correct approach and therefore allowed the appeal. *Rashid v Rashid* [2017] UKUT 0332 (TCC) is a development of the application of the principle that a registered proprietor cannot be in adverse possession of land: see the case digest. *Cheerupmate2 Ltd v Franco de Luca Calce* [2017] UKUT 0377 (TCC) was a decision of interest to landlord and tenant lawyers on section 166 and 167 of the Commonhold and Leasehold Reform Act 2002.

Following discussions with the President and Deputy President of the Upper Tribunal (Lands Chamber) (Holgate J and Judge Martin Rodger QC) and with the Principal Judge of the First-tier Tribunal, Property Chamber (Land Registration) (Judge Cooke) and the President of the First Tier Property Chamber (Judge McGrath) the decision was taken with the concurrence of the Senior President to change the route of appeal for land registration cases decided in the Property Chamber so that they are heard by the Lands Chamber of the Upper Tribunal rather than by the Tax and Chancery Chamber.

The Tribunal Procedure Committee published a consultation document in August 2017 seeking views on the procedures that should be applied in the Lands Chamber. One difference in the rules is that the TCC rules give an appellant an automatic right to an oral hearing for a renewed application for permission if permission is refused on the papers. Under the Lands Chamber rules, there is no such automatic right but the Chamber has power to direct an oral hearing for permission if it considers it appropriate to do so.

The second main difference is that the TCC has a general jurisdiction to award costs whereas the Lands Chamber has no costs jurisdiction in appeals from the Property Chamber except in the case of unreasonable conduct or under the wasted costs jurisdiction. The Committee published its report on the consultation in December 2017 and concluded that the existing Lands Chamber rules in respect of permission to appeal should apply without modification to appeals in land registration cases. As regards costs, the Committee concluded that there should be an amendment to the costs rules to allow the Lands Chamber to make an order for costs in land registration cases in the same way as has been possible hitherto in the TCC. At time of writing, the necessary statutory instrument to amend the route of appeal and to amend the Lands Chamber rules is being prepared.

Financial Services

There have been only a few new references this year, four references being made of decisions of the Financial Conduct Authority (FCA) and four references of decisions of The Pensions Regulator. However, a number of significant references are currently pending. In particular, the Tribunal has recently heard a case in which it has been asked for the first time to consider the behaviour of a trader who is alleged to have been involved in manipulating LIBOR submissions. FCA is seeking to prohibit the trader from working in the industry on the grounds of a lack of integrity on the basis that the trader made improper requests for LIBOR submissions to benefit his trading positions, knowing that such conduct was improper. The trader denies that he acted improperly or knew that he was doing so and says he was encouraged to do what he did by senior management. Previous cases alleging improper behaviour on the part of traders in relation to LIBOR submissions have been dealt with by criminal prosecutions for conspiracy to defraud, but no criminal prosecution was brought in this case. There is another reference pending involving a high profile market participant which has been stayed pending the determination of criminal proceedings against the trader for the same behaviour.

A number of other pending references have been withdrawn following the Supreme Court's judgment in *FCA v Macris* [2017] UKSC 19. This was the first time a decision of the Upper Tribunal involving the interpretation of a provision of the Financial Services and Markets Act 2000 ("FSMA") has been considered by the Supreme Court. In that case, overruling by a majority of 3 to 2 both the Upper Tribunal and the Court of Appeal, the Supreme Court considered the scope of s 393 FSMA which permits a person (the "third party") who has been identified in a statutory notice imposing a sanction on another person to make a reference to the Tribunal himself if statements in the statutory notice are prejudicial to him. The Supreme Court applied a very narrow test to whether a person had been "identified" for the purposes of s 393 holding that the statute requires express identification by name, or alternatively by a "synonym" which can only refer to one individual. In February 2018 the Chamber heard a two-week reference of a decision of The Pensions Regulator to issue a financial support direction under section 43 of the Pensions Act 2004 against companies in the ITV plc group in respect of an insufficiently resourced pension scheme set up in 2003 for a joint venture which combined the television rental business of the Granada and Thorn groups. The issues raised included challenges to the jurisdiction to issue a direction including whether the test of "association" in section 43(6) was satisfied and whether the application of the provisions to events which occurred before the Pensions Act came into force amounted to the impermissible retrospective application of the legislation. The targets of the direction also challenged the reasonableness of the decision to impose the direction. Judgment is awaited. Both that case and the *Charles Palmer* case (see digest) demonstrate that the participation of lay members with relevant experience of the financial services or pensions industry to sit alongside the judges is extremely invaluable in cases like this where an assessment had to be made as to the appropriate standards of competence and decision making.

Charity Appeals

We have determined only one appeal in the Charity jurisdiction during the period covered by this Report. This was *Razzaq and Malik v Charity Commission* [2016] UKUT 546 (TCC) which concerned an application for joinder by members of a charity who had not been parties to the proceedings in the First-tier Tribunal. Their appeal was allowed on a point of law and remitted to the First-tier Tribunal to make a fresh decision. Their subsequent application for permission to appeal against the refusal of joinder was refused.

Administration of the Chamber

David Weight retired from the staff of UTTC in December 2017. He has been a mainstay of the smooth running of the Chamber's administration and will be much missed. We have been fortunate to recruit two excellent new members of staff, Martine Levy and Cindy Palanyandi. They have been well trained by the existing team and have already made a valuable contribution to the Chamber. In April 2017 we also welcomed Rashik Halai back from his career break. Our Delivery Manager Sharon Sober has announced that she is moving to another department. She has worked very hard with Keeley Martin our Operations Manager to tighten up the processes used by the Tribunal and we are very sorry to see her go.

As part of the continuing work to improve speed of disposal of appeals in the Chamber, a change was made to listing arrangements to bring them into line with listing practice in the Business & Property Courts. This involved a move from fixed date appeals to floating date appeals in cases where the panel hearing the appeal includes a High Court Judge. The new practice, introduced as a pilot scheme from 1 May 2017, was to provide a window to match counsel's availability dates within a six-month period. The parties are informed of the window and the date for the start of the hearing is fixed the day before the window starts. I wrote to the Members of the Tax Users Committee explaining the change. The new arrangements have proceeded without any difficulty and have therefore been made permanent. It is hoped that the greater flexibility provided to Chancery Listing will continue to enable cases to be listed more quickly for the benefit of all Tribunal users.

Immigration and Asylum Chamber

President: Mr Justice (Peter) Lane

I became President of the Upper Tribunal Immigration and Asylum Chamber (UTIAC) on 2 October 2017, when I also became a High Court judge in the Queen's Bench Division.

For the previous four years, UTIAC had been led by Mr Justice Bernard McCloskey of the High Court of Northern Ireland. His legacy is a profound one. Bernard possesses a remarkable energy, which it will be impossible to emulate. His capacity for hearing and deciding cases was vast. He leaves behind a large body of case law on almost every aspect of the jurisdiction. Bernard's expertise in public law meant that he was able to see immigration as a part of that wider system and to bring to bear principles derived from its other parts. One particular interest was in matters procedural. Coming from a background where procedural requirements are expected to be followed, he lost no time in making it apparent that laxity would not be tolerated in UTIAC. This is because procedural

rules are there to serve the interests of justice. Bernard was also quick to master the intricacies of the often-labyrinthine immigration rules. A significant number of his decisions involved a clear-sighted and rigorous approach to their interpretation.

Bernard has returned to Northern Ireland, as the judge in charge of its Queen's Bench. I wish him well and thank him for his personal kindness.

Since April 2017, UTIAC has seen a significant rise in work coming to it from the First-tier Tribunal, Immigration and Asylum Chamber (FTTIAC). Against this background, several initiatives are underway to ensure the best possible use is made of our limited judicial resources. There is a pressing need for more salaried Upper Tribunal judges and a JAC competition for these is due to launch soon.

This upturn in work is confined to UTIAC's appellate jurisdiction. Immigration judicial review applications are not currently showing a similar rise. As always in the jurisdiction, however, it would be rash to conclude that this situation is likely be maintained.

Particularly in the light of what I have said about workload, UTIAC continues to be grateful for the vital support given by the President of the Queen's Bench Division and by the Lord President, who respectively ensure that Queen's Bench and Court of Session judges are available to sit in UTIAC. As I know from my own experience as a UTIAC judge, sitting with such a colleague can enrich a UTIAC judge's court craft; whilst a period of intensive exposure to the latest issues arising in immigration appeals and judicial review enables the Queen's Bench/Court of Session judge to keep up to date in this fast-changing area of work and therefore assists when that judge is hearing out-of-hours applications for urgent relief in the immigration field, or when he or she is deciding an immigration judicial review which lies with the High Court or Court of Session.

Last year's report detailed a number of judicial retirements from the Chamber. Further retirements loom. UTJ (Peter) King has agreed to sit for a while beyond his recently-celebrated significant birthday. UTJ (Andrew) Jordan retires in April but has kindly agreed to give us his valuable services thereafter in a fee-paid capacity. Both have provided UTIAC and its predecessors with sterling service over many years.

In January, we bade farewell to UTJ (Paul) Southern, following his appointment as a circuit judge. HHJ Southern is now sitting at Snaresbrook Crown Court. Paul made a huge contribution to UTIAC, both as its Principal Resident Judge and in developing the jurisdiction's jurisprudence. We wish him well.

As I write, UTIAC's current Principal Resident Judge, Bernard Dawson, is about to step down from that role. I have been most fortunate to have had Bernard at my side for the first 6 months of my term. His knowledge and support have been invaluable and I have been able to see at close hand just how demanding and important is the work of the PRJ.

Bernard Dawson has, in turn, enjoyed the support of his two deputies, UTJ (Judith) Gleeson and UTJ (Mark) O'Connor, for whose work I am also grateful. Judith undertakes wider international and information technology duties on behalf of the Senior President of Tribunals, whilst Mark is to be a key figure in the development of a common IT system, which will cover both the RCJ (and its regional offices) and the Chambers of the Upper Tribunal. This system will be an important element of the Reform Programme, to which UTIAC is committed.

Work is ongoing on two projects, which I announced in October 2017. UTIAC's judicial review work outside London requires the participation of courts colleagues. I am pleased to say that we shall soon be in the position to introduce a circuit-system in Manchester, whereby a UTIAC salaried judge will be able to work with those courts colleagues to ensure a more systematic and efficient approach than has hitherto been the case. Integral to the new system will be the ability to hear UTIAC appeals in the Manchester Civil Justice Centre. My thanks in this regard go to the Senior President, Dove J and Kerr J, to Jason Latham and Daniel Flury of HMCTS and to UTIAC's Vice-President Mark Ockelton.

Mark Ockelton and I are now exploring the opportunities to effect similar changes in other regional centres. Mark's work in the regions is being expanded, compared with the position under my predecessor, and despite his other extensive duties as Vice President.

The second project involves making more and better use of UTIAC's excellent cadre of lawyers. Following a shadowing scheme in December 2017, proposals are being developed for the lawyers to undertake delegated judicial functions in UTIAC's appellate jurisdiction, in addition to immigration judicial review. In an era of financial stringency, it is vital that each element of our work is done by the persons best able to undertake it, having regard to all relevant factors, including cost.

The Chamber continues to enjoy the support of a loyal administrative team at Field House, until recently led by Michael Nuna. In January, Michael left to undertake an important Reform-related project. Michael's role is now being filled by Surrinder Singh, who has replaced him for the duration of the project.

The Head of Office of both of the Immigration and Asylum Chambers continues to be Vicky Rushton, who has been assiduous in ensuring I have been brought up to speed on everything of relevance.

UTIAC's salaried and fee-paid judges continue to enhance the Chamber's reputation by their participation in the international training of judges. Colleagues are active in the European Judicial Training Network and the European Asylum Support Office. Getting the balance right between these activities – prestigious though they are – and maintaining the timely throughput of UTIAC's own work can be challenging, particularly at present, when judicial resources are under pressure.

The duties of a UTIAC judge are heavy enough at the best of times but can be intense when the workload increases and judicial resources remain static or diminish. I am, therefore, enormously grateful to my colleagues for their willingness to step in at short notice at times of sickness or other unforeseen events, despite the personal inconvenience involved in changing their judicial itinerary at the last minute.

UTJ (David) Allen continues to organise and deliver excellent judicial training for the Chamber. His most recent success was the 2-day course run in February 2018, which benefited from the active participation of all the delegates. Instead of merely being a series of lectures, the event included teams of colleagues choosing a case of note and then advocating for it in plenary session. UTJ (Helen) Rimington is to be thanked for her work on this aspect of the event. I left the venue, reinforced in my belief that the Chamber is extremely fortunate in its judicial personnel.

UTIAC is also very well-served by the Legal and Research Unit, led by Rebeccah Sheen. The Unit has assembled the following Schedule of Leading Reported Cases, which gives an indication of the nature of the work done in the Chamber in 2017.

Lands Chamber

President: Mr Justice David Holgate

The special strength of the Lands Chamber, which it inherited from its statutory predecessor, the Lands Tribunal, is the central role played by its Surveyor Members. They are in a unique position as non-lawyers holding full time judicial office in a superior court of record. They bring to the Tribunal experience and skills which its Judges do not possess, and without which the Tribunal could not perform its vital function of resolving complex valuation disputes and providing guidance to inferior tribunals on valuation principle and practice. The Surveyor members participate fully in the work of the Tribunal, usually hearing and deciding cases alone and sometimes as part of a panel. In almost three quarters of the cases heard by Members in the Tribunal's compensation, rating and restrictive covenant jurisdictions, the Tribunal is comprised of a Member sitting alone, without the involvement of a Judge. As well as resolving valuation issues, the decisions of Members sitting alone have made important contributions to the development of the law, as their decisions progress from the Tribunal to the Court of Appeal and the Supreme Court.

It is therefore appropriate to begin this review of the last fifteen months in the Lands Chamber by noting the retirement in February this year of the longest serving of our three Surveyor Members, Paul Francis FRICS. Having first been appointed as a Surveyor Member of the Lands Tribunal in August 1998, and after becoming a Member of the Upper Tribunal on the creation of the Lands Chamber in 2010, Paul has spent almost twenty years on the bench resolving property valuation disputes of all descriptions. Amongst his most significant decisions in the field of compulsory purchase compensation were *Ryde International v London Regional Transport* in 2003, which clarified the law relating to compensation for holding costs and loss of development profits, and *Spirerose Ltd v TfL* in 2007, which highlighted important defects in the rules concerning the assumed planning status of land. In 2006 he sat on perhaps the most valuable case since the establishment of the Lands Tribunal in 1948, *Earl Cadogan v Sportelli*, which standardised the deferment rate to be used in the enfranchisement of flats and houses throughout England and Wales. More recently his cases included *Newbold v The Coal Authority*, which concerned Wentworth Woodhouse, the largest private house in England, as well as decisions concerning the valuation for business rates and compensation of more modest classes of property, such as schools, GP surgeries, waste transfer stations and innumerable shops, offices and private houses. Paul has made a huge contribution to the work of the Tribunal and we wish him well in his retirement.

Little in the life of many chartered surveyors prepares them for becoming a member for judicial office. It is not currently possible to offer opportunities for part-time sitting which might enable potential candidates to gain judicial experience and encourage future applications. We are seeking to find ways to address this. There have been other departures this year. Two of our most experienced members of staff, Sunil Bhudia and Mo Chowdhury, have left our listing section to take up more senior roles elsewhere. We are very grateful to them both for their many years of dedicated service to the Tribunal and its users.

In the period under review 57% of the Tribunal's substantive decisions (cases leading to a final decision published on the Tribunal's public database) were in appeals from the First-tier Tribunal (Property Chamber). These included, for the first time, an appeal under the Agricultural Holdings Act 1986, *Kingsbridge Pension Fund Trust v Downs*. The case is significant for an additional reason as it provides a rare example of the Tribunal using its power to award costs against a party who has

conducted proceedings in an unreasonable manner. The power to make such orders is used very sparingly, but it is available as an important weapon to combat abuse of the Tribunal's procedures. In an appellate jurisdiction in which costs-shifting does not ordinarily apply, it provides a remedy in exceptional cases for parties who might otherwise find their financial resources exhausted, and their access to justice impeded, by the unmeritorious tactical manoeuvring of a determined opponent.

The route of appeal in cases under the Agricultural Holdings legislation (which typically concern statutory rights of succession to agricultural tenancies) was formerly to the High Court. Their re-allocation to the Upper Tribunal is one example of the trend towards concentrating specialist property dispute resolution in the specialist property tribunals of both the First and the Upper tiers.

The same trend is evident in the assignment to the Upper Tribunal of all disputes in England and Wales arising under the new Electronic Communications Code, inserted as Schedule 3A of the Communications Act 2003, by Part 2 of the Digital Economy Act 2017. The Code sets out the basis on which electronic communications operators may exercise rights to deploy and maintain their electronic communications apparatus on, over and under land. Disputes under the predecessor of the new Code were dealt with almost exclusively in the County Court, but on the recommendation of the Law Commission the jurisdiction has now come to the Upper Tribunal where it is assigned to the Lands Chamber. The Code is likely to give rise to complex issues of valuation for which the Tribunal is the ideal forum. In recognition of the vital importance of telecommunications to the economy, the Code lays down a mandatory requirement for the resolution of certain disputes within challenging time limits. When such disputes come to the Tribunal the parties involved will be required to act quickly, and we have published a Practice Note to alert them to how they may expect the Tribunal to manage these cases: *https://www.judiciary.gov.uk/wp-content/uploads/2018/01/practice-note-electronic-communications-code-jan2018.pdf*

Another example of the Tribunal's expanding jurisdiction is the impending allocation to it of appeals from the First-tier Tribunal (Property Chamber) in matters concerning land registration. These appeals were formerly to the High Court, but with the creation of the Property Chamber in 2013 they were first assigned to the Tax and Chancery Chamber of the Upper Tribunal. It is now felt that the Lands Chamber is their more natural destination, and it is anticipated that the necessary arrangements to complete their reallocation will be in place by May 2018. Thereafter new appeals in land registration cases will be directed to the Lands Chamber (those which have already been commenced in the Tax and Chancery Chamber will be completed there). Those professional users who are regularly involved in land registration appeals will find some alterations in procedure as a result of the change from the generic Upper Tribunal Procedure Rules used in the Tax and Chancery Chamber to the Lands Chamber's own rules (the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010). In particular, there will no longer be a right to an oral hearing at which an application for permission to appeal which has been refused by the Tribunal may be renewed. However, in cases where it is thought likely to be helpful, the Tribunal may make greater use of its existing power to direct that an application for permission to appeal be dealt with at an oral hearing, rather than on paper.

In the area of leasehold enfranchisement valuation there have been notable examples of high value appeals this year: in *Portman Estate Nominees v Jamieson* the price payable on the enfranchisement of a Central London mews house was increased on appeal by more than £1m. But the Tribunal has found it necessary during the same period to grant permission to appeal in a number of cases of relatively

modest value where it has considered that there has been a departure from established valuation principles. Enfranchisement valuations are often complex and depend to a high degree on experience of local market conditions. Nevertheless, it is an important part of the Tribunal's role to provide guidance on issues of valuation principle, and to ensure that substantially the same approach is taken in different parts of the country.

A number of important issues of principle have been addressed in appeals from the Property Chamber this year, sometimes highlighting significant weaknesses in schemes of statutory protection for residential tenants and leaseholders. In *Westmark (Lettings) v Peddle* the Tribunal decided that, where services are provided by a superior landlord and the cost billed as a service charge down a chain of interests to the ultimate paying party, the 18 month time limit on demands for residential service charges imposed by section 20B(1), Landlord and Tenant Act 1985 is repeated at each level of the chain. In *JLK v Ezekwe* an increasingly common form of student accommodation, in which individual bedsitting rooms are demised on long leases together with the right to the shared use of kitchens, lounges and other communal living space, was found to be entirely outside the scope of the statutory restrictions on service charges provided by the 1985 Act.

Two decisions of practical importance in the field of tribunal procedure also arose in appeals from the Property Chamber. In *Hyslop v CHG Residents Co Ltd* the Tribunal determined that it was not open to a tribunal to direct that copies of its substantive decision be distributed by one party to the other parties, and that it must distribute them itself (potentially a substantial and expensive undertaking, as some leasehold cases can involve thousands of parties). In *Coates v Marathon Estates* the Tribunal concluded that it could not use the powers of the High Court conferred on it by section 25, Tribunals, Courts and Enforcement Act 2007, to enforce a final order of the First-tier Tribunal requiring computer programmes and records to be handed over to a tribunal-appointed manager, and that the proper route of enforcement was through the County Court.

In *BPP Holdings v HMRC [2017] 1 WLR 2945* the Supreme Court explained that tribunals were entitled to adopt the same approach as the civil courts to compliance with their rules and procedural directions. Against that background the Tribunal has given important guidance this year on the need for compliance with procedural requirements in proceedings concerning business rates in the Valuation Tribunal for England (VTE). Appeals from the VTE comprised 15% of the Tribunal's substantive decisions in the period of this review. The VTE itself has a very substantial case load which requires careful management, with more that 250,000 appeals against business rates assessments outstanding in April 2017. In *Simpson's Malt v Jones* the Tribunal decided a group of appeals concerning the consequences of non-compliance with the VTE's practice statements and directions, and emphasised the importance of compliance by all parties. The Tribunal also took the opportunity to restate the limited scope of appeals against VTE decisions on matters of case management. In *Hammerson v Gowlett* the Tribunal made the same points concerning its own rules and directions, which must be complied with in rating appeals as in any other type of proceedings.

The Tribunal has also determined a number of important rating cases this year. *Hughes v York Museums and Gallery Trust* concerned the proper approach to the valuation of historic buildings used as museums and their associated shops and cafes, and is likely to affect the rating of over 700 museums. Of even wider significance was the Tribunal's decision in *Sainsbury's Supermarkets v Sykes* which considered the rateability of the sites of automated teller machines operated by banks in supermarkets, convenience stores and petrol filling stations, of which there are said to be almost 70,000. Both decisions highlighted the uncertainty which can exist when principles of rating law, still based largely on Victorian or Edwardian precedents, are applied to modern technology and business practices.

The Tribunal's jurisdiction in the determination of compensation for compulsory purchase or injurious affection as a result of public works has accounted for 14% of decisions in the period of this review. With all references dealing with compensation for land acquired for the 2012 London Olympics now having been determined, the Crossrail project has been the main source of larger claims, including an award of £1.5m following the extinguishment of a fast food franchise in *SME (Hammersmith) v Transport for London*. A number of smaller claims arose out of projects for the regeneration of inner city housing estates. A glimpse of the Tribunal's future was provided by *Harding v Secretary of State for Transport*, the first reference to be determined in connection with the HS2 project.

The Tribunal continues to deal with compensation under the planning legislation. *Huddlestone v Bassetlaw DC* dealt with the scope of the exclusion of compensation for losses caused by the prohibition in a stop notice of an activity involving a breach of planning control.

Under section 1(5) of the Lands Tribunal Act 1949 parties may agree to ask the Tribunal to determine a dispute as an arbitrator, for example the price payable for land bought by agreement where compulsory purchase powers would otherwise have been used. The hearing of such references and the Tribunal's decisions are private, as with arbitrations in general. But where the matter is of general public interest, the parties may agree to the Tribunal publishing its decision (with any necessary redactions), as has happened recently in *Re Section 14(5)(d) of the Land Compensation Act 1961*, dealing with the scope of the highway scheme disregard for determining what planning permissions should be assumed in the assessment of compensation.

Annex B

First-tier Tribunal

Social Entitlement Chamber

President: Judge John Aitken

The Social Entitlement Chamber comprises three jurisdictions, namely Asylum Support (AS), Criminal Injuries Compensation (CIC) and Social Security and Child Support (SSCS). The Principal Judge of Asylum Support and Criminal Injuries Compensation is Sehba Storey. SSCS is managed by seven Regional Tribunal Judges led by the Chamber President. The jurisdiction of Asylum Support is UK-wide. SSCS and CIC are Great Britain-wide.

Social Security and Child Support

Jurisdictional Landscape

Appeals against decisions of the Department for Work and Pensions have increased rapidly this year although figures are not yet available for the complete period.

In the year to the end of March 2016 we saw our intake rise to 157,000. The trend in recent years saw receipts reach a peak of 507,000 in 2012-13 followed by a sharp decrease to 112,000 in 2014-15. The trend is now upwards and provisional figures indicate much larger increases over 2017.

The rapid rise in appeal numbers has outstripped our ability to recruit and train sufficient numbers of panel members to keep pace. The overall numbers are not disproportionate in an historic context, being about those experienced in 2009, but the volatile nature of the numbers of appeals and the preponderance of appeals involving three-person panels has caused difficulties with matching judicial resources to workload. We have recently undertaken a number of large scale recruitment exercises. Wherever possible we have sought to use the flexible nature of the Chamber Structure to seek assignment of other judicial resources. In September 2017 we recruited 62 Disability Qualified Members from the Employment Tribunal who have now been hearing cases for several months. The process was streamlined and the quality of applicants very high.

We are presently engaged in a competition via the Judicial Appointments Commission to recruit up to 150 further disability qualified members by open competition, the results of which will be known by the summer. We recently concluded recruitment of 250 medical members who are undergoing training and initial observations and will commence sitting soon.

A number of salaried Judges were recruited in open competition, 17 have already been appointed and it is hoped that another 10 will soon join them significantly strengthening our salaried team. A streamlined internal assignment process has commenced to recruit fee paid Judges in tandem with an open competition, and it is hoped that around 200 fee paid Judges will be recruited in this way. In total within 12 months around 700 new judicial office holders will sit in the jurisdiction. They are required because of rapid rise in appeal numbers has outstripped our ability to list cases as quickly as we would have liked.

Since the last publication three new benefit schemes have begun operating, two relating the childcare allowances and the third is a Bereavement Support Payment scheme, which replaces Bereavement Allowance, Widowed Parents Allowance and Bereavement Payment for people whose husband or wife died on or after 6 April 2017.

The rapid inflow of judicial office holders has meant that the training team have worked very hard with the Judicial College to bring everyone up to speed with the law and procedure and ready for hearings.

A number of initiatives have been undertaken to ensure work progresses as rapidly as possible including listing more Personal Independence Appeals into each session which commenced at Bexleyheath and following that successful introduction has been expanded elsewhere in the London region and to the Midlands. In the North East closer case management of cases ready to list has allowed many cases to be dealt with in advance of a hearing.

Reform

The reform project team continue to make advances in the electronic submission of appeals, which recently went live and was immediately put into use by the public. Work to give the ability to track appeals on line for appellants to help reduce anxiety is undergoing public trials and a major piece of work to ensure secure timely exchange of electronic documentation with the Department for Work and Pensions to improve efficiency is advancing. The results of this work is gradually becoming a part of the service we offer after extensive testing and validation. Our aim however is to provide a service not only improved by better use of digital working, but one that provides fair hearings in the most appropriate way for all users, and a long-awaited pilot into online resolution will commence in the summer. The aim is to provide a voluntary system used by appellants because it is more attuned to their needs.

Significant Cases

Over the past year the domestic and European courts have considered a number of significant cases affecting the jurisdiction of the Tribunal. It is not possible to set them all out in this annual review but some which I pick out for mention are detailed below but in no particular order of importance.

Personal independence payment, replacing disability living allowance for work-age claimants, is a cash benefit payable to those with a disability who score a sufficient number of points from a list of activities and descriptors set out in a schedule to the Social Security (Personal Independence Payment) Regulations 2013. In response to the decision of the Upper Tribunal in *MH v Secretary of State for Work and Pensions* [2016] UKUT 531 (AAC) the Government sought to limit the scope of three of the mobility descriptors to circumstances where the inability to perform the activity was for reasons "other than psychological distress" i.e. reversing the effect of the Upper Tribunal decision and

limiting these descriptors to those claimants with a disability arising out of a physical as opposed to psychological disorder. Those amendments were quashed by the High Court in *RF v Secretary of State for Work and Pensions* and *(1) MIND and (2) Equality and Human Rights Commission* [2017] EWHC 3375 (Admin), the Court finding that the regulations were "blatantly discriminatory against those with mental health impairments and which cannot be objectively justified."

Remaining with personal independence payment, the way in which decisions of the Scottish Court of Sessions can affect the work of the Tribunal in the rest of the UK is demonstrated by two recent decisions of that Court. In assessing entitlement to personal independence payment, a different level of points might be awarded dependent upon whether a claimant requires "prompting" in order to successfully complete the activity of "engagement with other people face to face" or whether they need "social support". The latter resulting in more points. In answering the question whether prompting or social support must be contemporaneous with the face to face engagement the Court held that it did not, giving an example of a claimant who, because of successful psychological intervention in the past, might now be able to engage face to face to an acceptable standard. That would potentially, at least, meet the criteria. The Court also considered what the actual difference between prompting and social support was, given that the two activities might involve considerable overlap. It held that as social support required to be provided by "a person trained or experienced in assisting people to engage in social situations" the distinction came out of the point that there had to be some necessity for the intervention being provided by such a trained or experienced person and not merely because it was provided by such a person: "a thing which constitutes prompting may also constitute social support if, to render it effective or to increase its effectiveness, it requires to be delivered by someone trained or experienced in assisting people to engage in social situations."

The second Scottish decision considered the meaning of "bedroom" in regulation B13 of the Housing Benefit Regulations 2006, which restricts entitlement to housing benefit in circumstances where the claimant has more bedrooms than they might otherwise need (colloquially known as the "bedroom tax"). In *Secretary of State for Work and Pensions v (1) The City of Glasgow (2) IB* [2017] CSIH 35 the Court decided that a determination as to whether a room is a bedroom for the purposes of regulation B13 should focus on the property when vacant rather than how it is actually used whilst occupied from time to time, holding that choices made by family members as to who should occupy bedrooms or how rooms should be used had little relevance.

A table of further cases is included in the annex to the report.

Criminal Injuries Compensation

Jurisdictional Landscape

Following an increase in receipts in the period up to June 2017, intake has now evened out and is currently running only slightly higher than our forecasts for 2017-2018. Although our disposals are under profile the percentage of cases dealt with within 36 weeks has averaged higher than 70% over the three months to January 2018, and over the past year we have worked the reduce the percentage of cases over 36 weeks with the figure for January around 40%. For the coming year we will continue to focus on managing our resources to reduce the number of older cases, meet our overall targets and reduce the live load.

People

This year we bade farewell to the following members who retired, Professor J Summerfield, Ms E Norton, Mr K Kirkwood, Ms P Wilcox, Miss J Burns, Ms B Connell and Prof M Mildred, and Mr P Maddox, and Ms R Vasmer who resigned, we wish them well and thank them for the considerable contribution they have made to their communities.

We said goodbye to David Saunders as he takes up his new role as a Circuit Judge, and we are pleased to note that Darryl Allen is appointed as a Deputy High Court Judge.

We offer a special thank you to Mark Mildred, our legal, advisor for all his work which has been a considerable contribution to the work of the Tribunal.

Asylum Support

Legislative Change

We reported last year that the Immigration Act 2016 had received royal assent and would make major changes to the support system for current and failed asylum seekers and in some cases restrict access to the appeal process. Any immediate changes have largely been put on hold due to other parliamentary priorities.

There is one exception – on 15th February 2018, the Home Secretary's power to provide support under Section 4(1) of the Immigration and Asylum Act 1999 (as amended) was abolished and replaced with the power to provide support under Paragraph 9 of Schedule 10 to the Immigration Act 2016. Decisions made under this new provision do not carry a right of appeal to the Tribunal. However, the impact is at present limited, since persons already supported under Section 4(1) remain on that support and retain their right of appeal when it is discontinued. To date, the Tribunal has received only a small number of appeals where our focus has been on the correct interpretation of transitional provisions. We have, however, been alerted that the Home Office has commenced implementation of the new provisions, initially on a small scale designed to test its processes. In consequence, our intake of discontinuance appeals could rapidly increase by up to one hundred appeals per month, creating considerable demands on our depleted judiciary and limited resources.

Jurisdictional Landscape

During 2017, the Home Office began to undertake detailed investigations into complex cases, involving persons who had been supported for many years. In keeping with its usual rigorous processes, caseworkers began to examine the availability of assets both at home and abroad, to claimants pleading destitution. This invariably involved an analysis and exploration of large quantities of financial evidence of employment, earnings, savings and ownership of more tangible assets. For claimants seeking Section 95 support, many cases involved allegations of fraud arising from concealment of financial resources often supported by information declared on visa applications at ports of entry. The complexity of such cases, the quantity of documentation involved and the increased time taken to produce written judgments has created listing challenges for the Tribunal. This is because the Procedure Rules require judgments to be produced in every appeal within three days of an oral hearing and on the same day in paper appeals – a target with which the Tribunal complies in over 97% of cases.

Other notable appeals concerned reviews of longstanding medical conditions involving consideration of extensive medical evidence and the persistent failure of some unsuccessful asylum seekers to take any reasonable steps to return to their country of nationality. Repeated appeals on such issues are not in frequent as there is no bar on the number of applications for support or appeals that may be made by any one person.

Judicial Review

There is no right of appeal from the First-tier Tribunal to the Upper Tribunal in asylum support appeals and the only remedy is an application to the Administrative Court for judicial review. The absence of Legal Aid, the scarcity of readily available specialist advice for those wishing to challenge asylum support decisions, as well as the quality of asylum support decision-making, all contribute to a very small number of cases proceeding to the Administrative Court. Since October 2016, five asylum support decisions were challenged by appellants' in the Administrative Court. Of these, three claims were quickly settled by consent following the grant of permission and resulted in the Home Secretary agreeing to provide support. The remaining two claims were remitted to the Tribunal for hearing de novo.

It is noteworthy that of the sixty applications for judicial review issued since 2009, not one application progressed to a substantive hearing. Once the claimants obtained permission to proceed, the matters were quickly settled by consent with either the grant of support by the Home Secretary or remittal of the appeal to the Tribunal for fresh determination. All sixty applications were appellant lead. The last occasion on which an asylum support decision was challenged by the Home Secretary was in 2006 (R (on the application of the SSHD) v CASA [2006] EHC 1248 (Admin)). Whilst it is gratifying to know that the Home Secretary has confidence in our judgments, the absence of judicial oversight by senior judiciary does little to develop our jurisprudence and effectively deprives asylum support judiciary of the benefits of critical analysis by higher judicial authority.

In 2016 – 2017, two applications were remitted by the Administrative Court to be heard de novo by the Tribunal. These remittals would normally be heard by the Principal Judge sitting alone. Historically, the Principal Judge's judgments following remittal have never been the subject of judicial challenge by either party to the appeal and, in the absence of guidance from higher Courts, they are treated as persuasive authority. However, in an effort to lend greater weight to these judgments, the Chamber President sat with the Principal Judge for the first time on AS/17/01/36372 in January 2018.

People and Places

At our largest, this jurisdiction had seven salaried judges and 26 fee-paid judges. Over the years, these numbers have depleted to three salaried, three ticketed and sixteen fee–paid judges. Unlike many other jurisdictions, we have not benefited from a JAC recruitment exercise (or a ticketing/assignment exercise) since 2005. This year, we have lost two experienced judges - David Saunders to the Circuit Bench and Joanna Swaney to the Immigration and Asylum Chamber. Whilst we congratulate them and delight in their success, their achievements are keenly felt losses for this Tribunal given our small judicial base, particularly at salaried level. Even with the dedicated support of our sixteen fee-paid judges, carrying such losses over an extended period is likely to jeopardise our capacity to determine appeals with the speed envisaged by our Procedure Rules.

Asylum support Judges continue to sit exclusively at the East London venue at Anchorage House. In the last quarter, approximately six per cent of our oral hearings were conducted by video link, at the request of the appellant. The Tribunal have also offered video observation of hearings to Home Office caseworkers as part of their training. We continue to receive considerably more request for video hearings than we can satisfy and the number appears to be increasing. Hearing centres across the United Kingdom appear unaware of these jurisdictions' procedures and the need to list hearings at the latest on day nine following receipt of an appeal. Thus, even if video hearings are restricted to those whose medical condition or family circumstances prohibit travel to London, it is inevitable that the lack of video conference facilities frequently creates an unacceptable level of delay in listing hearings. As the provision of better facilities across Courts and Tribunals increases throughout the UK, we look forward to greater cooperation and a sharing of facilities.

The Tribunal's engagement with stakeholders remains a source of positive suggestion and feedback for continuous improvement. User Group meetings continue to be held twice yearly, and always have over 20 attendees from a wide range of organisations.

Health Education and Social Care Chamber

President: His Honour Judge Phillip Sycamore

The Jurisdictional Landscape

The Chamber comprises four jurisdictions. Mental Health which covers the whole of England; Special Educational Needs and Disability, which also covers the whole of England; Care Standards, which covers the whole of England and Wales, and Primary Health Lists which also covers the whole of England and Wales.

This has been another very busy year for the Chamber across all four jurisdictions.

Mental Health jurisdiction

The use of the Mental Health Act to compulsorily detain and treat patients continues to increase, with obvious workload implications for the jurisdiction. Mental Health cases encompass a vast range of different situations; from (for example) teenagers with anorexia, to people from all walks of life with severe or bipolar depression, personality disorder or schizophrenia, to persons convicted of grave crimes and then transferred to psychiatric hospital from prison.

The jurisdiction faces particular problems in relation to patients coming into hospital at the admission stage. There has been a noticeable increase of the use of section 2 of the Act. Some of these new patients are unknown to Mental Health services and so the unclear mental health landscape needs to be fully assessed under section 2. There are, however, other patients with whom mental health services may be very familiar who may have been previously detained under the Act within the last 12 months or so and could well be coming back into hospital with a difficult and detailed mental health background. These instances can create difficulties for legal representatives, the treating team and the tribunal as cases have to be listed at short notice and often such written evidence as there is will only provided to the legal representative and the tribunal panel members a very short time

before the hearing begins. This does raise the question as to whether such well known patients should routinely be detained under the (section 2) 28 day assessment provisions of the Act rather than going immediately to the (section3) treatment provisions for which the rules do not require the same urgent listing of cases.

In the Queen's speech of June 2017 the government announced that it intended to reform mental health legislation. The tribunal's judiciary have already met members of the independent review of the Mental Health Act 1993 under the chairmanship of Professor Sir Simon Wessely and we look forward to continuing to contribute to the review so far as it will impact upon the work of the tribunal.

In March 2018 the Tribunals Procedure Committee launched a consultation on proposed Rule changes which included dispensing with the pre-hearing examination and extending the categories of cases which can be dealt with on the papers rather than by an oral hearing.

Elsewhere in the jurisdiction, in addition to the regular and ongoing judicial training programme for all judicial office holders who sit in the jurisdiction, an e-learning module was produced from simulation training which aims to assist trainees in psychiatry to give evidence to mental health tribunals. I am grateful for the work carried out by a small cadre of judicial office holders in the jurisdiction in conjunction with South West London and St George's Mental Health NHS Trust. This work is also applicable for trainees in psychiatry from nursing, occupational therapy and social work backgrounds.

Special Educational Needs and Disability (SEND) jurisdiction

The workload in First-tier Tribunal SEND jurisdiction has continued to rise with a consistent stream of appeals registered. Published data up to the end of September 2017 indicates a rise of about 27% in the number of appeals registered. Thirty-six per cent of appeals were concluded by a decision; an increase of 8% on the previous year. The increased numbers of hearings indicates a reduction in the number of settlements and cancellations. The combination of the increased numbers of appeals registered and fewer withdrawals and cancellations have increased the pressures on administration and judiciary.

Following the conclusion of the Recommendations Pilot in September 2016, where the SEND Tribunal's jurisdiction was extended in 17 local authority areas to cover both social care and health issues in the context of Education, Health and Care Plans, the joint report presented to Parliament in March 2017 recommended a further national trial of the extension of the SEND Tribunal's jurisdiction to include recommendations in health and social care issues for a period of two years. The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 were laid on the 20 December 2017 and came into force on the 3 April 2018.

The introduction of the National Trial has required a wholesale review of the SEND jurisdiction's forms and guidance documents and new guidance regarding the compilation of hearing bundles is to be issued requiring better construction of hearing bundles to enable easier navigation by the parties and judicial office holders alike.

The Tribunal will also embark on a digital bundles pilot, which will allow judicial office holders the opportunity to test the use of portable screens and digital bundles in live hearings. The pilot is initially planned for the jurisdiction's only dedicated hearing rooms which are located in the Thomas More Building in the Royal Courts of Justice. The pilot will provide an excellent opportunity to trial new ways of working within the Tribunal.

The sustained increase in the number of appeals registered led to further judicial recruitment expressions of interest exercises in the autumn of 2017 and spring 2018. Additional fee paid judges have been assigned from across all First-tier Chambers into the jurisdiction. A further expressions of interest exercise will be conducted to assign members with a health and social care specialism to sit on National Trial appeals.

Disability Discrimination

The number of disability discrimination in schools claims registered by the Tribunal fell slightly during the 2016-17 year by 1% to September 2017. Fifty- seven per cent were concluded by a hearing.

An expressions of interest exercise within the Chamber was used to supplement the specialist panel and additional judges and specialist members were authorised in 2017.

Primary Health Lists (PHL) jurisdiction

The jurisdiction hears appeals against the decisions of the NHS National Commissioning Board involving the listing of doctors, dentists and pharmacists as service providers. The transitional changes are now well established as are the consolidated Performers Regulations for Doctors and Pharmacists.

The number of appeals registered in the jurisdiction remains low; the workload has been steady throughout the period.

An annual user group meeting will be held in Manchester in May 2018 to consider any jurisdictional issues and share information.

Care Standards jurisdiction

The jurisdiction covers a range of regulatory appeals in the care industry, including registration, suspension and cancellation decisions by the Care Quality Commission, Ofsted and Welsh Ministers.

The number of appeals registered in 2016-17 has demonstrated a substantial increase in the Tribunal's work year on year. As a result, an expressions of interest exercise was conducted in Chamber to recruit additional fee paid judges and specialist members into the jurisdiction, with a further exercise planned for 2018.

The Tribunal heard its first appeal under section 129(1) of the Education and Skills Act 2008 and Regulation 7 of the Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 in March 2017. The appeal was made against a direction made by the Secretary of State for Education prohibiting the appellant from taking part in the management of an independent school in England, including free schools and Academies. The Tribunal dismissed the appeal and confirmed the Secretary of State's direction after a ten-day hearing.

The implementation of the Higher Education and Research Act 2017 has brought new rights of appeal to the Tribunal from the 1 April 2018. These are rights of appeal against decisions made by the Office for Students to remove an institution from its register, or the date from which removal is to occur, a decision to vary or revoke an authorisation given to a provider or the date specified as the date on which a variation or revocation takes effect. Further rights of appeal will come into force under the Act in 2019.

People, Places & Recruitment

Over the summer in 2017, the Chamber moved to its permanent rooms in the Royal Courts of Justice and now has a dedicated and self-contained office for salaried and fee paid judges and the London based President's support staff in the main RCJ block. Our three permanent SEND hearings rooms are now all located on the same floor in the Thomas More Building.

Lesley Moss one of the Registrars for SEND and based in Darlington, was promoted to Legal Team Manager for Cleveland with effect from 4th December 2017 and sadly for us, gave up her role as a Registrar. The remaining team of five now share the Registrar responsibilities.

The administrative support team in Darlington which supports the SEND/CS and PHL work, were supplemented by an additional five members of staff in response to the sustained increase in appeals.

The Chamber continues to recruit judicial office holders using the increased flexible and cross deployment methods available. The Chamber's judicial resources are monitored by the senior judiciary on a regular basis in collaboration with senior administration managers. Judges and members are recruited using internal and external exercises and cross ticketing where appropriate. Existing judges and members are also retained where it is in the public interest to do so.

Judicial recruitment rightly and necessarily takes a considerable amount of time and resources in terms of bidding, planning and executing. The work doesn't stop once an office holder is recruited with associated training, mentoring and administrative matters to arrange which the Chamber provides from its resources.

As referred to at various points in this HESC section, this year the Chamber has run a number of internal expressions of interest exercises and cross ticketing exercises recruiting some 140 Judicial Office holders for both SEND and Mental Health, one of which was for a number of Circuit Judges to be authorised to come to the Chamber from their various courts to give a minimum of 20 sitting days a year to preside over the mental health jurisdiction's restricted and non-restricted hearings.

Three jurisdiction specific exercises were also launched by the Judicial Appointments Commission (JAC); one for fee paid judges who are Recorders to sit in the mental health jurisdiction, one for medical members to sit in the mental health jurisdiction and one for a new Deputy Chamber President also for the mental health jurisdiction. The JAC has also run two judge exercises one for salaried judges and one for fee paid judges, which the Chamber submitted bids for.

A further two salaried tribunal judges have also been authorised to deal with restricted work in the mental health jurisdiction, which means that all the Chamber's salaried mental health judges can now preside over the mental health jurisdiction's most serious forensic cases.

A gradual increase was approved by the Chamber in the numbers of colleagues designated as members of our Child and Adolescent Mental Health Services panel. These cases, involving young people often placed a considerable distance away from home, demand particular judicial skills and sensitivity.

Tribunal Judge John Burrow retired from salaried office in October 2017. John was appointed a salaried judge in 2009 as one of the first tranche of salaried judges in this part of the Chamber (SEND/CS and PHL). We are pleased that Judge Burrow has returned to sit as a fee-paid judge following his retirement from salaried office.

Deputy Chamber President for the mental health jurisdiction Judge Mark Hinchliffe will retire from salaried office on 31 May 2018. Mark was appointed as the first FtT HESC Deputy Chamber President for the mental health jurisdiction in October 2009 and has worked tirelessly and with unquestionable commitment to improve and modernise the jurisdiction. I am again very pleased to retain Mark's skill and experience as he will also to sit as a fee paid judge following his retirement from salaried office.

War Pensions and Armed Forces Compensation Chamber

Acting Chamber President: Judge Fiona Monk

People

We are a small Chamber and so individuals are very important and personnel changes make a big difference. Last year's report covered the period up to November 2016, at which point Mr Justice Charles had very recently taken up the position of Chamber President and I had been assigned as the Senior Resident Judge. As this report covers the period from then until March 2018 it is book-ended by a further change in the leadership arrangements as Mr Justice Charles has just retired as Chamber President. I have been appointed as Acting Chamber President with effect from 19th February 2018 for the remainder of my assignment to the Chamber.

There have been other significant changes in personnel during the last 16 months, most notably Judge Clare Horrocks, the Chamber's longest servicing salaried judge and Principal Judge retired in August 2017. Fortunately, for the Chamber she continues sitting for us as a fee paid judge and also remains involved in training. We are very pleased not to have lost her considerable skills and experience.

In the 6-month period before a new salaried judge was appointed we had the benefit of one of our experienced assigned SEC colleagues, Judge Elizabeth May, being 'loaned' to us for an additional 2 days a week to help provide cover. We had the benefit of her practical experience and wisdom which really assisted in dealing with the large volume of interlocutory work. And then in January 2018, following the first generic salaried recruitment for First Tier Tribunal Judges, we were really pleased to welcome Judge Surinder Capper as the Chamber's new salaried Judge. She brings with her a wealth of experience from Mental Health (HESC) and the Social Entitlement Chamber and it is very good to have her with us.

We are also part of the recently launched recruitment for First-Tier Tribunal fee paid Judges and should have some new fee-paid resource in post by early 2019. Concurrent with that exercise an EOI is also being run. The valuable input we have had from colleagues from the Social Entitlement Chamber in previous assignments demonstrates the value of these exercises both in relation to career progression for colleagues and the benefits for small chambers in having input from those who have experience from other jurisdictions.

Unfortunately, the long-awaited recruitment for Service Members (a category of specialist member unique to the War Pensions jurisdiction) has, at the time of writing, been further delayed. Our service members bring their particular experience and insight from having served in the Armed Force to the Tribunal panel (which also consists of a Judge and Medical member), but resource is particularly stretched. Currently, we have only 18 Service members in the Chamber and are relying on extensions of service to maintain sitting levels. We are heavily reliant on the dedication of those service members as we require them to sit frequently, often travelling long distances to do so. and it is very much to be hoped that we will be able to increase their cohort soon.

We have been more successful in increasing numbers of medical members by an EOI from SEC as reported last year but the challenges of matching busy doctors to often remote sittings remains an issue. We were pleased to welcome Dr Laleh Morgan as our Senior Medical Member to replace Dr Jane Rayner in 2017.

Another long -awaited addition to the team is a Tribunal Case Worker. I had hoped that one would have been in position now assisting with the heavy interlocutory work-load but, for various reasons it now looks as though the successful candidate will not be able to start until the middle of May. In the meantime, we still have the benefit of assigned Social Entitlement Judges who undertake some of our duty work and we are pleased to have their continued assistance. All this undoubtedly demonstrates the benefit of sharing resources and working co-operatively across all the Tribunals and I am very grateful to all the other Presidents for the support they have provided to me and the Chamber.

Places

Following a period of some uncertainty it has been confirmed that the administration and main offices for the Chamber will remain at Fox Court in London, which is very welcome news. We hold hearings in London and at seven other HMCTS venues around the country as well as some less frequently, used smaller venues. That presents challenges in securing those venues in good time for us to organise our lists and many of our venues are increasingly under pressure as the estate is consolidated. We need to be certain that any alternative venues offered to us meet our specific requirements for our users many of whom are frail or vulnerable.

Joint working

The judicial and administrative teams work very closely together in we have undertaken a number of joint initiatives to improve performance and address particular process issues. Most significantly we have reviewed and changed our listing processes which is beginning to be reflected in reduced waiting times for cases. There is also increased communication and contact with both the Ministry of Defence through the Veterans' Agency which deal with all the appeals which come to us and the organisations which represent the interests of our appellants. Our User Group is an effective way of communicating about the change Reform might bring and the Advisory Steering Group provides another important forum. It comprises representatives from our sister jurisdictions in Northern Ireland and Scotland as well as from the broader services charities and is tasked with ensuring consistency and sharing of best practice. By way of example in January 2018 Scotland was the first jurisdiction to introduce direct lodgement of appeals. We are keen to learn from their experience when the time comes to implement that in England and Wales.

Jurisdictional Landscape

Since the last report the Quinquennial review of the Armed Forces Compensation Scheme has reported and various recommendations affecting levels of compensation and the tariff scheme descriptors are being considered.

One of the most significant decisions of in the WPAFC jurisdiction Tribunal in recent years came out just before Christmas 2016. It concerned the appeals of those in the Services claiming compensation for the alleged effects of Ionising Radiation from the Christmas Island atomic tests. As previously reported it is one of the longest and largest cases ever heard in WPAFCC having been remitted from the Upper Tribunal (Abdale and others v Secretary of State of Defence (War Pensions) [2014] UKUT 0477 (AAC)). The panel which comprised Sir Nicholas Blake, sitting in the First Tier; our then, Senior Medical Member Dr Jane Rayner and one of our most experienced service members, Isabel McCord, produced a thorough and comprehensive judgment. The determination ran to over 200 pages and dismissed the appeals in relation to all 12 of the lead appellants save for the claim for Mr Abdale in relation to one claimed condition.

The Judgement was published on the Judicial intranet and can be found here: *https://www.judiciary.gov.uk/judgments/leonard-abdale-and-others-v-secretary-of-state-for-the-defence/*

We had around 30 cases which were stayed pending the outcome of the lead cases. Since then we have been working to bring those stayed cases on for hearing, many of the appellants have died and the appeals are being pursued by widows or family members. Some have been withdrawn but the majority wish to proceed to hearing.

The future

The last 16 months have been a period of consolidation for the Chamber and without the leadership of Sir William Charles and the hardworking commitment of the judges, members and staff we would not have been able to achieve the improvements in performance and service to our users. We continue to look to ways to improve that service so that we can meet the challenges of increased workload which is forecast.

Information about Justice First Tribunal shadowing scheme

With encouragement from the Senior President of Tribunals Chris Ward Upper Tribunal Judge (Administrative Appeals Chamber) and Fiona Monk (Acting Chamber President of First Tier Tribunal of War Pensions and Armed Forces Compensation Chamber) with the kind support of colleagues from across a range of Tribunals are developing shadowing programme. Aimed at helping to produce a new generation of representatives and potentially registrars and judges from lawyers with keen interest in social welfare law who have followed the Justice First programme. The Justice First Fellowship is an innovative scheme launched by the Legal Education Foundation in 2014. The TLEF covers the full cost for trainee solicitors entering into training contracts in the social welfare law sector following significant funding cuts. It provides them with additional training in areas such as fundraising, business planning and communication. There are currently 51 Fellow solicitors and barristers working in 40 organisations over the UK of which 18 are now qualified lawyers. Many come from significantly disadvantaged backgrounds or from minority ethnic groups and their personal stories and achievements are frequently inspiring.

With the Senior President of Tribunals' agreement, a pilot scheme was launched; four of the fellows applied for and were given the opportunity to shadow in various Tribunals, both Upper Tribunal, First- tier Tribunal and Employment Tribunal depending on their areas of interest. The intention is to provide something more than just an opportunity to observe a hearing but to give a more in depth understanding of how each Tribunal works. Depending on the success of this initial pilot it is hoped to roll out more widely in the future.

Immigration and Asylum Chamber

President: Judge Michael Clements

Reform is now underway. New salaried judges have been appointed. Fee-paid judges have continued to see a steady stream of sittings and, given the current profiles, the pending appointment of our salaried judges and recruitment of our fee-paid judges, it is likely that demands on our hard- working fee-paid judges to sit up to their limit will continue. I am happy to report that every fee-paid judge has now an ejudiciary address making communication and working practices generally more efficient.

Last year, Mungo Deans, the Resident Judge at Glasgow retired after 21-years service. To him and our other recently retired judges I wish them a long and healthy retirement.

After a judicial competition we welcome the new Resident Judges: Russell Campbell based at Taylor House and Mark Sutherland Williams based at Hatton Cross. Frank Appleyard, who was acting Resident Judge for the North-East of England, has now been appointed as the Resident Judge for Birmingham. Julian Phillips, who had responsibility for both Birmingham and Newport, is now at Newport. Donald Conway has moved to Glasgow and David Zucker is based at Bradford with overall responsibility for the North-East. In fact, the only Resident Judge not to have moved is Christine Martin as she continues to be based at Manchester. These changes I am sure will re-energise this already positive, progressive and forward-thinking jurisdiction as we embrace the changes which we face in the increasingly digital environment in which we will all be working.

This year I set out for the Senior President my vision for the Immigration and Asylum Chamber in the digital world. In that context we are working together with administration to bring about the introduction of "paperless" appeals whilst continuing to press ahead with the working towards the extempore decisions being the norm. Many of our forms have been re-drafted with a view to reforming timetables and bringing about efficiencies in this jurisdiction. I am sure all the stakeholders will wish to work with us proactively in assisting the Tribunal in delivering an efficient service.

Earlier this year I sat with Bernard McCloskey, who was then President of the Upper Tribunal (IAC), and we have now given guidance with respect to wasted cost orders and cost unreasonably incurred. New forms and Notices have been developed and I expect them to be put into common usage shortly. It is hoped that the cumulative effects of these steps will be to create better discipline within the jurisdiction with fewer adjournments and postponements.

Additionally, I have been travelling around the country to see for myself the work that we have been piloting. There have been a number which are presently being evaluated. At Taylor House we developed a process of virtual or video hearings. The judiciary were impressed with the improvements in technology including clear visibility of those present at the hearing, perfect synchronisation of audio and visual streams and good "naming conventions". It was clear to all who were speaking. Appellants' solicitors are able to gain access to the hearing using their own computers rather than being required to use dedicated machines. The judge was able to conduct a mock hearing, again successfully. It is considered that the entire case management list could be dealt with using this new technology with no need for the parties to come to the hearing centre. In Manchester we piloted extended hours hearing of afternoon courts. From a judicial perspective on the whole it was seen as a success however there are still a few issues to resolve. As the local Presenting Officers Unit could not provide Presenting Officers for the afternoons they attended by video-link. Unlike the virtual hearings pilot there were problems with sound quality. At Taylor House and Manchester we also conducted a proof of concept in relation to hearing cases and giving extempore decisions. It is intended that we will progress this with a pilot at other hearing centres in due course. At Newport the Home Office have started to issue "minded to refuse" letters. This allows applicants to provide further documentation to enable the Home Office to further consider the application. At Birmingham and Newport we are piloting digital production of the Home Office bundles.

Following the case of Kiarie and Byndloss (on the application of) [2017 UKSC42] the Tribunal has been working together with other users to ensure that those removed from the jurisdiction before their appeal is finally heard will not be unfairly disadvantaged. The guidance in the case of AM (Afghanistan) v SSHD and Lord Chancellor [2017] EWCA Civ 1123 has caused us to look again as to how we identify vulnerable persons before their substantive hearings.

Last year I reported that there had not been a competition for salaried or fee-paid judges in this jurisdiction for some years. The existing 57 salaried judges have become significantly depleted by attrition but we were fortunate to have the support of many judges from the Employment Tribunal and Social Entitlement Chamber most of whom have renewed their assignments to this Chamber. Nevertheless, they were not sufficient to meet the increasing demands on the ever reducing number of judges. Last year I oversaw a salaried competition and am pleased to be able to report that we have appointed 36 judges who are to be divided between ourselves and the Social Entitlement Chamber. They will be based around the country. However, at the time of writing this report we still have a shortage of judges and as a result it has been agreed that we can take from the reserve list of the

salaried competition further salaried judiciary. A fee-paid competition has launched for judges to be appointed across the jurisdiction of the First-tier Tribunal which will hopefully provide further judicial resources. We are reviewing with the JAC the need for further competitions in 2018/19.

As part of the reform programme Chamber Presidents, along with Regional Liaison Judges, have been appointed to work alongside their counterparts in the Courts. We have also been working with the organisation "Justice" under the Chairmanship of Sir Ross Cranston. A report is being prepared with suggestions of how we might improve the work we do. We are always pleased to take good advice from wherever it may come. Julian Phillips, who is the FtTIAC Training Judge, has also been proactive in his involvement with many of our European colleagues in working towards a uniform approach to international protection under a qualification directive. A number of our judges have also trained at international conferences and it is of note that judges from the United Kingdom are in demand to lead and train on these international training and conference events. In addition, David Zucker and Julian Phillips, in their own time and at their own expense, visited leadership judges in the Royal Courts in Haarlam in the Netherlands. As a result, His Honour Judge Michael Van Der Valk, the leadership judge in Haarlam and Her Honour Judge Esther De Rooij, a member of the Board of the Family Court in Amsterdam, accepted an invitation to come to talk of our leadership judges in the United Kingdom as to the Dutch solution for the problems facing us in our role as leaders. They also talked about the organisation "Rechters Voor Rechters" a human organisation that protects the independence of the judiciary around the world. Also over the last year we have received visits from judicial colleagues abroad notably from member states of the European Union including France, Germany, Slovenia, Portugal, Bulgaria and Japan. Opportunities to discuss ways of working in other countries are invaluable.

Whilst on the subject of training I would like to thank all those judges who have worked so hard to prepare, deliver and facilitate at training events. We continue to work in an area of extraordinarily complex law with the various Immigration Acts in need of consolidation but in the meantime, I am in debt to those who take on this work and to Julian Phillips and his deputy John Manuell, the Training and Deputy Training Judges.

Around the country Tribunal Case Workers are being deployed. Early indications are that I have every reason to be optimistic as to the proactive and important role that they will be taking on in the Tribunal subject of course to the overall guidance and authority of judges.

I was pleased to be able to attend, with the Senior President of Tribunals, Sir Ernest Ryder, John Aitken, President of the Social Entitlement Chamber and other notables the opening of the 4th floor of Priory Court, Birmingham. This brings together Civil, Family and Tribunals into one building. The 4th floor has been completely refurbished providing an excellent working environment. The 4th floor is shared with our colleagues in the SEC and has twelve hearing rooms. A number of judges and administration will miss Sheldon Court where we were formerly based. Also at the end of 2017 we moved out of Bennett House, Stoke. Judges from Stoke have relocated either to Manchester, Birmingham, Nottingham or Taylor House, London. As President I would like to extend my thanks to all judges and administration who worked at Sheldon Court and Bennett House over the years and came together to facilitate the move to new venues.

For many years we have been assisted in keeping up to date with the law by the regular updates produced by John Nicholson. These updates became, for many, our first port of call if there was a point of law requiring clarification. John retired last year and his dedication and hard work will be missed. Anna-Rose Landes has now taken on his role.

I am sad to report that, in the last 12 months, FtTIAC Judge Milligan Baldwin passed away and I extend my sympathies to her family.

As President of FtTIAC I have been greatly assisted by the support of my Resident Judges. As a leadership and management group we have collectively worked and implemented a number of pilots and digital reform. I have also been greatly assisted by the support and from time to time constructive criticism of the Council of Immigration Judges. I work closely with the Council with which, whenever possible, I share information and exchange ideas. I pay particular tribute to the immediate past President of the CIJ, Judge Christopher Buckwell, who has been an invaluable conduit for the varied and sometimes very emphatic views of individual judges and Judge Timothy Thorne who has taken over that role and with whom I now look forward to working.

I would also like to record my thanks to all the salaried and fee-paid judges of this Tribunal who have to cope with a fast pace of change not only in working practices as Reform increasingly takes effect but also in the changes of the law. They continue to hear some of the most complex appeals which are quite rightly open to public scrutiny.

My thanks should also go to Jason Latham of HMCTS who greatly assisted during the past year in obtaining financial resources for FtTIAC. Jason has now moved on to pastures new and we shall miss him. We wish him the best in his new endeavours. Daniel Flury has taken over from Jason and we have already seen his decisive manner and I look forward to continuing to work with him and Olwen Kershaw. I am also grateful to all the judiciary and administration as we have worked together and the constructive and amicable approach each has developed with the other over our increasingly heavier workloads.

I continue to work closely with Sir Ernest Ryder as the Senior President of Tribunals and my thanks go to him and his administration. In particular Craig Robb and Rebecca Lewis are always unfailingly courteous and helpful. Sir Ernest's continued enthusiasm, knowledge and interest in the myriad area of this Tribunal and also Tribunals across the board continue to be impressive. I am pleased to be able to work closely with him in this challenging area of law and HMCTS Reform. I would also wish to express my thanks to the Presidential Team at Field House, in particular to Vicky Rushton and Jane Blakelock for their hard work and loyalty not only to me but the Tribunal.

Brexit is coming although we are still not informed fully as to what this will mean or the implications for the FtTIAC in terms of workload. We will, however, be ready to meet the exciting challenges that the next year will undoubtedly bring forward.

Tax Chamber

President: Judge Greg Sinfield

This is my first Annual Report since taking over as President of the Tax Chamber following the retirement of my predecessor, Judge Colin Bishopp, on 10 October 2017 when he reached the statutory retirement age. I should like to take the opportunity to pay tribute to Colin for his contribution to the tax appeals system over twenty-seven years. He became a part-time Chairman of the Value Added Tax Tribunal in 1990 and then a salaried Chairman of the VAT and Duties Tribunals and a Special Commissioner of Income Tax in in 2001. In 2009, with the reform of the tribunals system, Colin became a Judge of the Upper Tribunal Tax and Chancery Chamber. Two years later, Colin was appointed the second President of the Tax Chamber of the First-tier Tribunal in succession to Sir Stephen Oliver QC. Throughout his time as a judge, Colin sat on many of the leading – some properly described as ground-breaking – cases in both the Tax Chamber and the Upper Tribunal. I speak on behalf of the whole Chamber, when I say that we are enormously grateful to Colin for his wisdom and leadership.

The Tax Chamber hears appeals against decisions relating to all taxes (save for certain devolved Scottish taxes) and duties made by HM Revenue and Customs. We also hear appeals against refusals to restore goods seized by either HM Revenue and Customs or Border Force and against some decisions made by the National Crime Agency (exercising general revenue functions where income or gains are suspected to have arisen as a result of criminal conduct). The Chamber has jurisdiction to hear appeals against decisions of the Compliance Officer for the Independent Parliamentary Standards Authority relating to claims for expenses by Members of Parliament. Subject to appeals relating to the devolved Scottish taxes, the Tax Chamber's jurisdiction extends throughout the UK.

During the period covered by this report, there have not been any significant jurisdictional or procedural changes that affect the Tax Chamber's work. Digests of important decisions in or arising from the work done by the Chamber are included in annex to the main report.

We had expected the introduction of fees at the beginning of 2017 but, following a review of the fees policy throughout tribunals, it was announced that the proposed introduction of fees in the Tax Chamber would not now go ahead. However, there has been a lasting benefit from the proposal to introduce fees in the form of the development and introduction of an on-line system for starting appeals in the Tax Chamber. This went live on 15 June 2017. It is much more user-friendly for appellants, especially the unrepresented ones, than the paper form. The different taxes and duties have different statutory requirements for bringing appeals in the Tax Chamber. The online form ensures that appellants are directed to complete only those sections of the notice of appeal that are relevant to their appeal and that a notice of appeal cannot be submitted until it is complete. The online version is a real aid to the administrative staff as fewer notices of appeal need to be returned as incomplete. There do not appear to have been any significant problems, but it has already been tweaked in response to comments.

In March 2018, the Tax Chamber begins piloting the use of video hearings. To start, these will normally be selected "basic category" appeals (typically against late-filing or late-payment penalties, which are run on a relatively informal basis and last one to two hours) although may include more complex appeals where the appellant would otherwise be unable to attend the hearing. The video hearings team at HMCTS have been working closely with the judiciary and administrators to

develop a process for confirming that the hearings are suitable to be conducted by video. The parties do not need any special equipment, beyond a laptop equipped with a camera and good internet access. The parties attend by accessing a secure website. The judge accesses the website from a courtroom equipped with video screens in Taylor House and members of the public can attend such hearings as at present. The video hearings will take place one day a week fortnightly over a two-month period. An independent academic study will help evaluate the pilot and the results will inform the further development of the video hearing project in the Tax Chamber and more widely.

The Scottish tax tribunals, with a First-tier and Upper Tribunal, were established by the Revenue Scotland and Tax Powers Act 2014 to hear appeals initially relating to purely Scottish taxes. Full devolution under which the Scottish tax appeals will hear all Scottish cases is due to take place in April 2020. It remains to be seen whether it will be possible for Scottish judges and members to sit in other parts of the UK and vice versa, and whether, as I hope, we can share training.

As well as Judge Colin Bishopp, three of the Chamber's fee-paid judges retired during the period covered by this report. Judges John Clark, Gordon Reid QC and John Walters QC all brought a lifetime of tax knowledge and experience to the Tax Chamber for which we are very grateful and their absence will be keenly felt. In addition, we have lost the use of another fee-paid judge who changed employment and is no longer able to sit in the Tax Chamber (for the time being at least). Following these losses, we have 55 judges who sit in the Chamber of whom 10 are salaried. I consider that we do not have enough judges in the salaried and fee-paid categories to carry out the work of the Chamber and the position is likely to worsen unless we recruit some more. We last held a recruitment exercise for new judges in 2014 with the new judges being appointed early the following year. Since then we have lost 14 judges, including those referred to above. Since I became Chamber President last October, there have been two months when we have had to cancel significant numbers of hearings because judges could not be found. Current recruitment for appointment in the Upper Tribunal (Tax and Chancery Chamber) and an Expressions of Interest exercise for assignment to other Chambers on a fee-paid basis threaten to deplete our judicial resources still further. During the course of the year, I intend to seek permission for a specific Judicial Appointments Commission exercise to recruit specialist tax judges.

During the year, 11 non-legal members also retired leaving us with just 73 of whom 14 are due to retire by the end of 2019. As our policy on when we list a non-legal member to sit with a judge has evolved to meet the Chamber's changing case-load, we have, until now, managed to find sufficient resources notwithstanding the reduced number of members. I now feel that we need to look again at whether we have enough non-legal members for our expected workload in the years ahead. I will return to the topic of recruitment in future annual reports.

We are grateful that there have been no re-locations or significant re-organisations of the administrative support staff at the processing centre in Hagley Road. The departure of staff (often for other Government departments that can offer better terms) and difficulties in finding suitable replacements makes maintaining standards of service challenging. The managerial team led by Helen Dickens and Liz Hipkiss have worked hard to fill the gaps and the situation is now much better than it was in the period of the last report. We are benefiting in particular from our new tribunal caseworkers, or TCWs, who are able to undertake in accordance with delegated authority and under the supervision of our highly experienced Registrar, June Kennerley, some work which would otherwise have to be undertaken by judges. As the TCWs gain in experience, they are able to take

on a wider range of delegated tasks which we hope will reduce the need to refer physical files (we still do not have electronic files) to judges which should allow us to deal with case management and interlocutory matters more quickly. We had originally recruited four TCWs but one left during the year and so we are now in the process of recruiting another. I am very grateful to everyone at Hagley Road for their hard work in difficult circumstances.

In June 2017, the London-based judges of the Tax Chamber moved to Taylor House in Rosebery Avenue. We have 10 dedicated modern courtrooms which vary in style from the traditional courtroom set up, the largest of which can accommodate 22 persons, to the less formal "turn up and talk" arrangement where the parties sit round a table with the judge at one end. These are much better for our users (and judges) than the dark formality of the basement courts in the Royal Courts of Justice. At Taylor House, the judges' chambers are all on a single floor which we share with colleagues in the Immigration and Asylum Chamber who have made us very welcome. The new chambers are a great improvement on our former accommodation as they have plenty of natural light and judges no longer have to share rooms. There have been no judicial moves in our other permanent locations in Birmingham and Manchester.

We continue to prioritise the training of judges and non-legal members of the Tax Chamber by way of training events and the circulation of updates. During the year we provided the following training. In March 2017, as in previous years, some 65 people, including the Upper Tribunal and First-tier Tribunal judges (both salaried and fee-paid) attended the annual two-day residential Tax Judges' Conference at Walton Hall in Warwickshire. Lectures were given by the salaried and fee-paid judges on a variety of substantive and procedural topics. These included accelerated payment notices and the jurisdiction of the Tribunal on related penalties, an update on bias and recusal with reference to recent cases, the meaning of "deliberate" in relation to penalties, computer security, the relevance of Article 6 ECHR to Tribunal proceedings, applications for permission to appeal, strike out applications, updates on direct and indirect tax legislation and cases and Brexit and its implication to the Tribunal. Judge Colin Bishopp in his last conference as President of the Tax Chamber provided an update on the HMCTS Reform Programme. Case study exercises, an important part of the conference, undertaken initially by small syndicate groups feeding back their conclusions in a plenary session, this year considered security for PAYE and NIC, the application of the decision of the CJEU in Stock '94 on the VAT treatment of supplies of goods and credit under a hire purchase agreement and hardship applications and adjournments in cases involving vulnerable litigants in person. There were also talks from external speakers, Sir Stephen Oliver QC, former President of the Tax Chamber, explained the work of the tax advice charities *Tax Aid, Bridge the Gap and Tax Help for Older People*; there was also an after-dinner address from Edward Troup then HMRC's Executive Chair and Permanent Secretary.

In addition to the Judges' Conference, an annual training event was held for the non-legal members of the Tribunal. In a change from previous years, a single event was held for all members (rather than separate events in Edinburgh, Manchester and London) at the Ministry of Justice in Petty France on 5 October 2017. The single event was very popular with the members who valued the chance to meet colleagues from other parts of the country whom they rarely saw. Lectures were given by the salaried judges on dishonesty in civil evasion appeals, practical skills in note taking, key company law and bankruptcy concepts relevant to tax appeals and updates on recent direct tax and indirect tax cases. There were also case study exercises in small groups which considered bias and recusals and questioning a witness. We are also indebted to the President of the Employment Tribunal, Judge Brian Doyle, for his practical tips from the Employment Tribunal on diversity and equality issues.

I am very grateful to Judge Jonathan Richards and Judge John Brooks for programming and organising these training events as well as ensuring that judges and members receive regular updates on the latest developments throughout the year.

This report shows that there are several challenges in the year ahead both foreseen and unforeseen (and I have not even mentioned Brexit yet as it is too early to say what that actually means for the Tax Chamber save an inevitable increase in workload). I look forward to reporting on how we dealt with the challenges in next year's report.

General Regulatory Chamber

President: Judge Alison McKenna

Jurisdictional Landscape

The overall number of appeals to the Chamber has increased this year, with receipts over 1300 and noticeably higher volume in the Transport jurisdiction. The Information Rights and Pensions jurisdictions, together with Transport, continue to provide the largest volumes of cases.

Our newer jurisdictions such as Professional Regulation and Community Right to Bid also provide a steady work-stream, and these are starting to generate decisions from the Upper Tribunal and higher Courts. This provides important guidance on the developing practice and procedure in these regulatory areas. We have started to ensure that key First-tier decisions in the lower-volume jurisdictions are reported on BAILII, so that we can easily refer parties to them.

The Chamber has determined a significant number of appeals in the Environment jurisdiction this year, generated by the 4-yearly service of notices concerning Nitrate Vulnerable Zones. We are grateful for the input of our specialist Hydrologist members to these cases.

New appeal rights in Charity cases have been created this year following the enactment of the Charities (Protection and Social Investment) Act 2016. We have also acquired some completely novel jurisdictions, for example under The Environmental Protection (Microbeads) (England) Regulations 2017 and appeals against financial penalties imposed by the Office of the Registrar of Consultant Lobbyists. These jurisdictions have yet to generate any appeals.

People and Places

The Chamber (both judicial office holders and the administrative team) was delighted to hear in October 2017 of the elevation of Mr Justice Lane (as he now is) to the High Court. Peter has continued in the statutory role of Chamber President pending a new Chamber President appointment, but in the meantime delegated his statutory powers to me, as Principal Judge. I have been ably assisted in that role by Judges Murray Shanks, David Hunter QC, Jacqueline Findlay, Kenneth Mullen, and Jonathan Holbrook, whom Peter asked to act as our lead judges for particular jurisdictions in my absence. I am grateful for their support.

We assigned 7 new Judges to the Information Rights and Pensions jurisdictions in 2017, through an expressions of interest exercise aimed at existing First-tier Tribunal Judges. We were delighted to attract a strong field and have now trained and inducted the successful applicants. The JAC will be running a competition for new non-legal members for the Chamber in 2018/19. We continue to value the contributions made by our existing members.

The Chamber's salaried judiciary and administrative team operates successfully from a number of different locations across the country, and the Chamber deploys its judicial office holders (most of whom are fee-paid) peripatetically. Our ability to work in this way is enhanced by technological improvements (such as our new jurisdictionally-based e-judiciary groups), but often hampered by difficulties in securing hearing rooms and clerks and with the problematic functioning of some video-conferencing facilities. We are well-placed to take advantage of the Reform Programme's virtual hearing rooms in due course, although there will always be many cases in the Chamber where an oral hearing will be required.

I would like particularly to record my thanks (and those of Peter Lane) to the Chamber's administrative team for their diligent hard work during a challenging period of judicial personnel changes. In particular, Lara Moseley (whose support as the Chamber President's PA I have found invaluable) and the Chamber's Registrar Rebecca Worth, who now exercises an even wider range of delegated powers with continued efficiency. Rebecca is now supported by Geeta Bhatti, our new Tribunal Caseworker, and we look forward to working with her in the Chamber's expanded use of delegated judicial functions.

Property Chamber

President: Judge Siobhan McGrath

The Chamber in context

The Property Chamber Tribunals provide accessible and proportionate dispute resolution in an important area of law. Homes and property provide fundamental security in society. Over the past eighteen months there has been a heightening of awareness of problems within the sector: pressures caused by a scarcity of homes to rent or to buy are highlighted on almost a weekly basis in the press and in Parliament; the deficiencies in residential leasehold tenure are under consideration by the Law Commission in its 13th Programme of Law Reform; the abolition of ground rents has been announced by the Government in response to unfair practices by some developers; building control, housing standards and the cost of repairs are under consideration following the Grenfell Tower fire last summer; measures to tackle "Rogue Landlords" are being brought into effect and reinforced. All of these matters are directly relevant to Property Chamber work.

Property dispute resolution is changing across the United Kingdom. In December 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) was established with a view to dealing with the vast majority of private rented sector disputes and challenges to letting agencies. In Wales there is now compulsory registration and licensing schemes for private sector landlord and managers with appeals to the Welsh Residential Property Tribunal. The Rent Homes (Wales) Act 2015 will completely overhaul security of tenure largely based on the Law Commission recommendations in

2007. In England, Sajid Javid (Secretary of State for the Ministry of Housing, Communities and Local Government) announced an intention to consult with the judiciary on establishing a Housing Court. A project board has been established to consider the scope and purpose of such a consultation.

Our Work

Altogether the Chamber deals with some 140 separate landlord and tenant, housing and property jurisdictions. For Residential Property, applications include leasehold enfranchisement and leasehold management cases. However, we also receive a steady stream of applications in park homes challenges and in rents cases. Notable cases during the past year include the Court of Appeal decision in *Mundy v The Trustees of the Sloane Stanley Estate* [2018] EWCA where it seems in enfranchisement cases that the concept of "hedonic regression" has been laid to rest. In *London Borough of Hounslow v Waaler* [2017] EWCA Civ 25, the Court of Appeal addressed the important issue of whether different considerations came into the assessment of reasonableness in different factual situations including the undertaking by a landlord of improvements rather than repairs. In *Elim Court RTM Company Ltd v Avon Freeholds* [2017] EWCA Civ 89 the technicalities of the Right to Manage system under the Commonhold and Leasehold Reform Act 2002 were considered, Lord Justice Lewison observing that "It is a melancholy fact that whenever Parliament lays down a detailed procedure for exercising a statutory right, people get the procedure wrong."

In Land Registration the main work relates to adverse possession, boundary disputes, beneficial interests and fraud. When the Chamber was formed in 2013, it was decided that appeals from the Division should go to the Tax and Chancery Chamber. Following consultation it has been agreed that there should be a change and appeals will instead go to the Lands Chamber, where they logically belong, and in line with the other Property Chamber divisions. The change will take effect in April or May 2018 once the requisite Statutory Instrument has taken effect.

In Agricultural Land and Drainage the majority of applications relate to succession to tenancies and drainage issues. In *The Kingsbridge Pension Fund Trust v Downs* [2017] UKUT 0237, Mr Justice Holgate decided that the livelihood condition for succession on retirement need only be satisfied for the seven year period prior to the tenant's retirement notice. Additionally he deprecated the conduct of parties in delaying proceedings and engaging in wholly inappropriate "wars of attrition."

The regime for local authorities to deal with housing conditions and Houses in Multiple Occupation in their areas which was introduced under the Housing Act 2004 has been enhanced by the Housing and Planning Act 2016. In the last twelve months provisions for the imposition of financial penalties for housing offences and applications for Rent Repayment Orders have been introduced with appropriate appeals and applications to the Tribunal. In April 2018 further measures will be brought into force enabling local authorities to apply to the Tribunal for Banning Orders against landlords and managers. The definition of licensable HMO is also to be extended to include all properties occupied by five or more persons in two or more households.

Judicial Deployment

The jurisdictions of the Tribunal often overlap with those of the county court. In consequence, litigants find that in order to achieve a final resolution of a property dispute, they are obliged to make applications to both the court and to the Tribunal and to have separate determinations from each. This is clearly inefficient and unnecessarily expensive. Amendments to the County Courts Act

1983 mean that FtT judges are also judges of the county court. Following the publication in May 2016 of a Civil Justice Council report on property disputes in the courts and Tribunals, the Chamber has conducted a pilot where judges sit concurrently as county court judges and Tribunal judges. We have conducted over 100 cases in this way and the scheme is successful and popular. Issues have included service charge matters where we have decided rent and set-off issues (including disrepair); enfranchisement disputes where we have decided notice validity and dispensation in missing landlord cases as well as valuation; park homes cases where we have decided termination issues as well as section 4 agreement disputes and the list continues. The benefit to the parties is clear, there is one hearing instead of two and the risk of judicial inconsistency is removed. The benefit to the Tribunal and HMCTS is also obvious. It costs less to have one hearing. There are savings on premises, judiciary and staff. We plan now to reflect on the cases that have been decided and to consider whether the system can become mainstream. We will seek to work with the Civil Procedure Rules committee to see if the scheme can become incorporated in CPR as a useful case management tool.

Separately and with the consensus of a number of county courts, we are piloting adjudication in undefended business tenancy cases. It is considered that the Tribunal's ability to make expert determinations in this area law will be beneficial. We will evaluate its impact over a number of months.

Mediation

Judicial mediation is offered in both Residential Property and Land Registration and is very successful. Mediation is a sensible way to resolve property disputes where the parties often have a continuing relationship. This year we devised and delivered a mediation training course for Residential Property judges and members. This will not give full mediation accreditation but candidates will be entitled to mediate for the Tribunal itself. This is the first step in increasing the number of mediations that can be offered by the Chamber. It also raises awareness and understanding of alternative dispute resolution with the Tribunal.

Pro-bono advice and assistance

In common with other Tribunals, many of our users are unrepresented. This is a particular challenge in an area of law that can be complex and technical. For leasehold and mobile homes cases, the Residential Property division of the Chamber is greatly assisted by LEASE which as a government funded advice organisation is able to provide assistance to Tribunal users. Additionally, over a number of years, Residential Property has established a working relationship with the College of Law and BPP law schools whose students have been able to provide advice and some representation to Tribunal users.

Judges and Members and Registrars

I am both Chamber President and Principal Judge for the Residential Property division. The Principal Judge for Agricultural Land & Drainage is Judge Nigel Thomas and the Principal Judge for Land Registration is Judge Lizzie Cooke.

Residential Property has thirteen salaried judges and five salaried valuers. Land Registration has four salaried judges. Each of the Residential Property areas has a Regional Judge and one or more deputies. Otherwise the work of the Chamber is carried out by fee paid judges and members (about 300 in total). The membership includes those with expertise in valuation, housing conditions and in

agricultural matters. Both the Residential Property, Agricultural Land and Drainage jurisdictions also have a cohort of lay members.

Veronica Barran and Jane Dowell who were both Deputy Regional Judges in the London retired during the last year. I would like to thank them for their work in the Tribunal and to wish them well in retirement.

We welcome three new Deputy Regional Judges: Sonya O'Sullivan, Mark Martynski and Amran Vance all of whom are based in London. We also welcome three new Deputy Regional Valuers: Niall Walsh (Northern), Helen Bowers (London) and Vernon Ward (Midlands). They join the Tribunal at an exciting time.

In September this year the Registrars in the Land Registration Division, were given delegated powers to make a number of judicial case management decisions. This has been a very successful development with only one referral to a judge in the first six months.

The Chamber has made a bid for a number of fee-paid judges from the generic JAC competition and also in the FTT expressions of interest exercise. We will also consider ticketing within the chamber to allow judges to sit in additional jurisdictions.

Training and Information

The Chamber Training Committee is chaired by our training director, David Brown who will retire later this year. I would like to pay tribute to David's work for the Chamber and previously for the Residential Property Tribunal Service. Over the past fifteen years he has worked with myself and the Tribunals' Training Committees to establish training of the highest standard. The training courses are popular with judges and members. This is demonstrated both in formal evaluation and informally in conversation and emails from delegates to training events. David has brought an innovative approach to training, for example in the format of our CPD courses which are very much admired and in the opportunities presented by e-learning.

As a Chamber we regard training as a cornerstone to success. We have experienced a great deal of change both in our jurisdictions and in our structures but throughout all of this David has ensured that training was consistently organised and delivered.

This year regular annual training conferences have taken place for Land Registration and for each of the Residential Property Regions. We have also delivered three sessions of our very successful CPD4 course where PowerPoint is not used nor are lectures given. As noted above we have conducted our first in-house mediation training. For the new jurisdictions under the 2016 Act we gave face to face training to the judges and developed an e-learning course for other members which, when completed, attracted a day's training fee in payment.

Both Land Registration and Residential Property produce monthly information bulletins where summaries of cases, legislation and articles are provided to judges and members. For seven years the RP bulletin was written by Jane Dowell until her retirement. Jane's work was greatly appreciated and the very high standard of the information provided was relied upon by judges and members in dealing with our complex jurisdiction. Sonya O'Sullivan and Amran Vance have now taken up joint editorship.

IT

The Residential Property division has developed and uses a bespoke case management system. Each application that is received (about 10,000 per year) is scanned onto the system and allocated a case number. The details of the case are entered onto the system (eg names addresses, contact details etc.) and letters and communications from the Tribunal are automatically populated. When entering a new case, the CMS holds information about each of our jurisdictions (about 120 in total) and the essential information required from an applicant. Staff therefore check each application for completeness.

The CMS has a number of work streams which direct staff from stage to stage in the life of a case. The system is interactive. At the beginning of each day the member of staff is provided with a "to do" list which they prioritise as appropriate. Documents received from the parties (apart from hearing bundles) are scanned onto the system and retained electronically. I would like to see the CMS system rolled out to the other divisions of the Chamber. It is a sophisticated and effective case management tool.

Administration

The Property Chamber is located in five regional offices including London. Staff are co-located with the salaried judiciary which enhances dialogue in case management. Staff in the Residential Property and Agricultural Land and Drainage jurisdictions have responsibility for each case from receipt until the issue of the decision or other disposal. The staff are trained in the outline law of each jurisdiction. They are very familiar with all aspects of process and procedure. They are interested and engaged in the work and keen to see the proper resolution of cases. As a result, there are very few administrative errors. For Residential Property the ambitious PIs have been met in about 80% of our cases. Complex cases (often equivalent to county court fast and multi-track cases) reach a hearing or paper determination within 20 weeks. More straightforward cases are determined within 10 weeks. About a third of RP cases are dealt with on consideration of documents alone and without a hearing. We believe that in the complex jurisdictions dealt with by the Chamber, the model of staffing should be preserved and that staff should continue to occupy the same offices as the judiciary. Over the next year we hope to agree the delegation of minor judicial decisions to our Band D officers under the supervision of their Band C managers and the regional judicial teams.

Conclusion

Although the Chamber is less than five years old we have made good progress in bringing together diverse jurisdictions. We believe that we provide a high standard of adjudication and administration in challenging areas of the law. We plan to continue to consolidate and improve as a Chamber and to work with HMCTS to take good advantage of reform initiatives.

Annex C
Employment

Employment Appeal Tribunal

President: Mrs Justice Simler DBE

The jurisdictional landscape

The Employment Appeal Tribunal ("EAT") has jurisdiction to hear appeals on points of law arising from decisions of Employment Tribunals ("ETs") in a diverse range of disputes relating to employment across the UK. It sits principally in London and Edinburgh, but sat in Cardiff in 2017 and in March 2018, where (unlike London and Edinburgh) there is no dedicated court room or administrative resource in place because the volume of appeals originating in Wales is now so small that separate premises there cannot be justified. In Northern Ireland appeals lie direct to the NI Court of Appeal, and again, the volume of appeals is now so small that a specialist appellate tribunal is regarded as unnecessary. Resolution of the question of what devolution means for the EAT in Scotland has still not been reached though primary legislation and orders in council are now on the horizon. In the meantime the EAT remains a reserved tribunal in Scotland.

2017 saw an historic decision by the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51 As is well known, until the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, SI 2013/1893 ("the Fees Order") came into force, claimants could pursue proceedings in the ET and appeal to the EAT without paying fees. The stated aims of the Fees Order were to transfer part of the cost burden of the tribunals from taxpayers to users of their services, to deter unmeritorious claims, and to encourage earlier settlement. UNISON challenged the making of the Fees Order as unlawful because the prescribed fees interfere unjustifiably with the right of access to justice, frustrated the operation of Parliamentary legislation granting employment rights, and discriminated unlawfully, but failed at all stages below the Supreme Court. The Supreme Court unanimously allowed the appeal (Lord Reed giving the lead judgment), holding that the Fees Order is unlawful under both domestic and EU law and had that effect as soon as it was made so had to be quashed. The SC held that the constitutional right of access to the courts is inherent in the rule of law.

Tribunals are more than merely the providers of a service which is only of value to those who bring claims before them. As a matter of domestic law, the Fees Order is unlawful if there is a real risk that persons will effectively be prevented from having access to justice, or if the degree of intrusion into access to justice is greater than is justified by the purposes of the Fees Order. Here, the ET and EAT fees bore no direct relation to the amount sought and acted as a deterrent to claims for modest amounts or non-monetary remedies (which form the majority of ET claims). Recoverability of costs on success did not alter this as access to justice is not restricted to the ability to bring successful claims. Fees must be affordable not in a theoretical sense, but in the sense that they can reasonably be afforded. Where households on low to middle incomes can only afford fees by forgoing an acceptable standard of living, the fees cannot be regarded as affordable. Even where fees are affordable, they prevent access

to justice where they render it futile or irrational to bring a claim, for example where in claims for modest or no financial awards no sensible claimant will bring a claim unless he can be virtually certain he will succeed, that the award will include recovery of fees, and that the award will be satisfied in full. The Fees Order also contravened the EU law guarantee of an effective remedy before a tribunal by imposing disproportionate limitations on the enforcement of EU employment rights.

The UNISON decision has seen an immediate 64% overall increase in new claims brought in employment tribunals, and a significant increase in the number of new appeals in the EAT. There is a resource issue in coping with these increases. So far as the EAT is concerned, the reduction in the number of new appeals since the Fees Order led to staff and judicial resource losses over the four-year period, with people not being replaced as they left. This is now being addressed on an urgent basis.

Following the quashing of the Fees Order, the Ministry of Justice established a fee refund scheme and as at 31 December 2017, 3337 refund payments had been made with a total value of just under £2.8m.

Substantively, cases heard by the EAT remain varied across the full employment and equality jurisdiction. Significantly, in *Ministry of Justice v McCloud and Sargeant and others v London Fire and Emergency Planning Authority and others* the EAT considered a finding of unlawful age discrimination in transitional arrangements for pension schemes in the former but not the latter. In *McCloud*, the claimants (all judges) were entitled to pensions under the Judicial Pension Scheme (JPS). The less generous NJPS introduced in 2015, following the Hutton Report on Public Sector pensions, led to transitional arrangements being put in place, whereby judges born before April 1957 and in the JPS before April 2012 would remain entitled to full benefits; those born between April 1957 and September 1960 would receive tapered benefits; and those born after September 1960 would receive no tapering and would transfer to NJPS as of 1 April 2015. The ET concluded that the claimants were disproportionately and unjustifiably treated less favourably on the grounds of age than older judges. Although the EAT held that the ET had misdirected itself in concluding that there was no legitimate aim for the transitional provisions, its separate conclusion that these were not a proportionate means of achieving a legitimate aim was not in error and open to it in the evidence so that the appeal was dismissed.

In *Sargeant*, the ET held that the aims in enacting the transitional protections, namely to protect those closest to pension age from the effects of pension reform, taking account of the greater legitimate expectation that those closer to retirement would have that their pension entitlements would not change significantly when they were close to retirement, and to have a tapering arrangement to avoid a cliff edge, and achieve consistency across the public sector, were legitimate and proportionate. The EAT allowed the appeal in *Sargeant* because the approach adopted to objective justification was wrong: whereas EU law has stressed the margin of appreciation to be afforded when assessing proportionality of policy decisions taken by member states and governments, domestic law has required ETs to adopt a higher level of scrutiny by balancing the interests of the parties and considering whether there are alternative less discriminatory means of achieving the legitimate aim in question. The EAT held that a synthesis of the two approaches must be applied (following Lady Hale in *Seldon*). On this basis, while the ET was entitled to have regard to the fact that government was implementing social policy in relation to pension changes, and to the fact that questions of consistency of application are significant, it did not grapple with the issue posed by the claimants, namely that comparing the two groups, the differential between the two was said to be catastrophic and unfair for the unprotected group. The ET regarded that as a consequence of the reforms

themselves, when the case was that the significant differential resulted from the differential application of transitional arrangements. The ET did not make up its own mind on that or apply the requisite careful scrutiny to whether the means adopted met the objective and whether there were other less discriminatory measures that would have done so. Since there was not a single, inevitable answer to this question, the matter was remitted to the ET.

People and places

The efficient, effective and well managed operation of the EAT has continued throughout 2017, despite some significant change in our team. In July 2017 we said goodbye to our Registrar, Julia Johnson, after 25 years' dedicated service. Her departure was the end of an era, and she will be much missed for her energy, wit and warmth, both by those working at the EAT and by our myriad of users. We have been fortunate in recruiting a new Registrar, Nicola Daly, who has hit the ground running since September 2017. She previously worked as a legal advisor in the Magistrates Court and was a commercial solicitor before that. With her leadership the EAT staff continue to work cohesively in providing cradle to grave case management of appeals and a remarkably effective and reliable service to litigants in the EAT.

The EAT's judicial resource comprises a pool of High Court judges authorised to sit in the EAT. This year we have welcomed Soole J, Lavender J and Choudhury J. Lady Wise continues to sit at the EAT in Scotland. HHJ Jennifer Eady QC remains our only resident Senior Circuit Judge though we hope to recruit an additional resident SCJ later in the year. We bade a fond farewell to HHJ John Hand QC and HHJ Clark both of whom retired in 2017. Irreplaceable as they both are, we welcomed (in part exchange) HHJs Mary Stacey, Martyn Barklem and Katherine Tucker to the team of visiting circuit judges. All three have started to sit on a regular basis.

Lay members continue to sit on appeals in which their practical experience of the workplace is considered likely to assist its resolution. The number of lay member sittings has reduced significantly, and discussions have taken place at lay member and judicial level to understand the reasons for this and to take steps to address how they can be used more often and effectively on appropriate appeals. Our lay member pool has not been replenished for some time, and we are building a business case for much needed recruitment to this pool.

Training of judges and lay members is organised by HHJ Eady QC. Our training day in February 2018 was no exception to the high standard set by the training she has organised in previous years. We were addressed by Matthew Taylor whose review of Employment Practices in the Modern Economy considered the implications of new forms of work driven by digital platforms and made recommendations to government about the regulatory framework surrounding employment and employment status. He was followed by Professor Alan Bogg who spoke about employment status after the Supreme Court's judgment in UNISON and how that judgment should inform the interpretation of protective employment statutes. Finally, we had an illuminating presentation from Bean LJ, Chair of the Law Commission, about its forthcoming project on Employment Law Hearing Structures. Following the Civil Courts Structure Review, which noted the "awkward area" of shared and exclusive jurisdiction in the fields of discrimination and employment law, which has generated boundary issues between the courts and the Employment Tribunal System with ETs and the EAT sitting "uncomfortably stranded between the Civil Courts and the main Tribunal Service". He explained that the project will seek to resolve problems caused by this allocation of jurisdiction, as

well as investigating the outdated and in some respects arbitrary limits on the Employment Tribunal's jurisdiction in the employment field, but only by means short of major restructuring.

Pro bono legal advice schemes, ELAAS in London and SEALAS in Scotland, continue to operate (as they have for many years) successfully at the EAT with legal professionals giving their time freely to assist and represent litigants in person at renewed application to appeal hearings and full appeal hearings. Their assistance is invaluable, both to the litigant in question, but also to the Appeal Tribunal itself and enables appeals to be dealt with more speedily and effectively than would otherwise be the case.

The EAT continues to maintain contact with a wide range of judicial and legal organisations. There are regular meetings with the Presidents of the ETs in both England (Brian Doyle) and Scotland (Shona Simon). A user group meets the judges of the EAT twice yearly to discuss issues of concern. Judges of the EAT meet regularly and contribute to the training of employment judges and employment judges who are interested to do so attend the EAT on a rota basis to observe proceedings. All EAT judges learn from these contacts, as they do from assisting visiting international judges on a regular basis.

Employment Tribunal (England and Wales)

President: Employment Judge Brian Doyle

The jurisdictional landscape

Fees

My previous contributions to the Annual Report have usually led with the effects that the introduction of fees in 2013 had had upon the Employment Tribunal (ET) workload. An updated overview of the issue may be found in Doug Pyper, Feargal McGuiness and Jennifer Brown, *Employment Tribunal Fees* (House of Commons Library, Briefing Paper No. 7081, updated 18 December 2017).

On 26 July 2017 the Supreme Court declared the ET and EAT Fees Order 2013 to be an unlawful interference with the common law right to access to justice: *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51. It declared the Order to be void ab initio and quashed it. The leading judgment of Lord Reed repays careful reading.

Her Majesty's Courts and Tribunals Service (HMCTS) immediately stopped charging all ET fees. The online service for presentation of claims was taken offline for 6 days while it was disconnected from the system for electronic collection of fees and so as to remove all references to fees in the ET's public-facing information. Presentation of claims by email to ET offices was permitted during this short hiatus only and sanctioned by a Practice Direction (see below).

The ET began to receive various claims and applications (for example, for reimbursement of fees and reinstatement of claims) in reliance on *Unison*. The Presidents stayed these claims and applications for a short period in order to avoid the ET judiciary inappropriately and inconsistently taking decisions or providing advice on matters that would almost inevitably be administrative rather than judicial and

in respect of which there was doubt about our procedural or substantive powers. This also allowed HMCTS a reasonable time to clarify its position and to put in place machinery for handling the practical consequences of the abolition of fees.

On 15 November 2017 HMCTS commenced a refund scheme to reimburse those who had paid ET fees. The estimated cost of the refunds, including 0.5% interest, is £33m. HMCTS also began to contact claimants, whose claims had been rejected or struck out for a fees-related reason, in order to "reinstate" those claims (arguably, these are claims where the rejection or strike out is a nullity and so the claims are simply being revived rather than reinstated). Both responses to the quashing of the ET Fees Order are administrative rather than judicial – although, once a claim has been reinstated, judicial actions and decisions in relation to it are necessary.

It is not yet clear how many historic or legacy claims, other than those being reinstated, will be brought out of time in reliance on an argument that they were deterred or affected by fees in some way at the original time. Such claims will have to seek an extension of time, which will be decided judicially in accordance with well-established legal principles.

Since the Supreme Court judgment single claims have increased by about 90 per cent compared with the comparable period when fees were in force. The latest official statistics were published by the Ministry of Justice on 14 December 2017 and 8 March 2018. They cover Q3 of 2017 (which only extended to two full months after the abolition of fees) and Q4 of 2017. They paint a picture of the sustained recovery of the ET caseload.

Other matters

The Presidents of the Employment Tribunals in England & Wales and in Scotland issued joint *Presidential Guidance on Employment Tribunals: Principles for Compensating Pensions Loss* on 10 August 2017. I am very grateful to the working group of Employment Judges whose labours have resulted in such an impressive piece of work. I also thank the various consultees who strengthened and improved the Principles and whose contributions were made pro bono.

The Presidents also issued joint Presidential Guidance on *Employment Tribunal awards for injury* to feelings and psychiatric injury following the Court of Appeal's decision in *De Souza v Vinci Construction (UK)* Ltd [2017] EWCA Civ 879. That Guidance, issued on 5 September 2017 and applying to claims presented on or after 11 September 2017, updates the so-called Vento Bands and takes account of *Simmons v Castle* [2012] EWCA Civ 1039 and 1288. The intention is to uprate the Vento Bands on an annual basis in future.

The Presidents also issued joint Presidential Guidance on *Making a Statutory Appeal* (11 September 2017).

Taking account of the abolition of ET fees, I also issued new or revised Presidential Guidance in England & Wales on *Alternative Dispute Resolution* (covering both judicial assessments and judicial mediation) and on *General Case Management*, and revised Practice Directions on *Addresses for Serving Documents in Special Cases and on Presentation of Claims*. A revised standard *Agenda for Case Management* was also issued (including a Welsh language version that takes account of potential Welsh devolution issues that might arise in ET litigation in Wales).

The HMCTS Reform Programme has not yet touched upon the ET in direct terms and is not likely to do so before 2020. The ET judiciary are actively involved in various local leadership groups and judicial engagement groups planning and implementing reform in the Civil, Family and Tribunals jurisdictions.

In its 13th Programme of Law Reform launched on 14 December 2017 the Law Commission is to examine "Employment law hearing structures". The project will seek to resolve problems caused by the allocation of shared and exclusive employment and discrimination law jurisdiction between the ET, the EAT and the civil courts (the so-called "boundaries" issue as identified by the Briggs Review and referred to in last year's Annual Report). It will also investigate the outdated and in some respects arbitrary limits on the ET's jurisdiction in the employment field.

The new edition of the Equal Treatment Bench Book was published on 28 February 2018. It is the product of a working group chaired by Employment Judge Tamara Lewis, with various contributions by other members of the ET and EAT judiciary.

The ELIPS scheme operated at London Central and Cardiff ETs received Highly Commended at the 2017 Law Society Awards in the Excellence in Pro Bono category. This is but one example of pro bono activity on which the ET gratefully relies.

Legislation and case law

The pace of legislative change in the ET's jurisdiction has slowed almost to a standstill. There was no significant primary legislation relevant to the ET during the period under report, except perhaps the Trade Union (Wales) Act 2017. The rate of change effected by statutory instruments is at walking pace. Of particular significance are: the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017; the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017; the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017; the Employment Rights (Increase of Limits) Order 2017; and the Employment Rights (Increase of Limits) Order 2018.

Developments in case law are of much greater significance. It is worth remarking that, at a time when the ET caseload was at its lowest in recent years, ET decisions were the subject of appeals before the Supreme Court on no fewer than nine occasions in the 17 months covered by this report (not including the *Unison* decision already referred to). They exemplify the difficult legal issues that are daily decided by Employment Judges and Employment Tribunals in England & Wales (as in Scotland and Northern Ireland too). In this report I shall limit my survey of reported cases that serve as examples of the nature and extent of work done by the ET to those Supreme Court cases.

In *Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice* [2017] UKSC 27 (5 April 2017) the Supreme Court has resolved important questions on how the test for indirect discrimination is to be applied in ET proceedings.

In *O'Brien v Ministry of Justice* [2017] UKSC 46 (12 July 2017), part of the long-running litigation about the employment and pension rights of fee-paid and part-time judges, the question of what periods of service are to be taken into account in calculating entitlement to an occupational pension has been referred to the Court of Justice of the European Union (CJEU). The question for the CJEU is whether periods of service prior to the deadline for transposing the relevant EU Directive should be taken into account when calculating the amount of the retirement pension of a part-time worker, if they would be taken into account when calculating the pension of a comparable full-time worker?

Walker v Innospec Ltd [2017] UKSC 47 (12 July 2017) concerned the right of a male employee to expect that in the event of his death his occupational pension scheme would make provision for his male civil partner, later husband. The pension scheme refused to confirm his expectation because his service predated the date that civil partnerships were introduced. It argued that any discriminatory treatment was permitted under paragraph 18 of Schedule 9 to the Equality Act 2010. This provides that it is lawful to discriminate against an employee who is in a civil partnership or same-sex marriage by preventing or restricting them from having access to a benefit, facility or service the right to which accrued before 5 December 2005 or which is payable in respect of periods of service before that date. Upholding the original ET decision in favour of the claimant, the Court declared that the relevant statutory provision was incompatible with EU law and must be disapplied.

Reyes v Al-Malki [2017] UKSC 61 (18 October 2017) concerned a respondent employer who was a foreign diplomat based in London. The Supreme Court held that on the facts the ET's jurisdiction was not defeated by the respondent's diplomatic immunity.

In a second related appeal the issue was whether foreign governments were entitled to claim state immunity under the State Immunity Act 1978 in ET proceedings brought by foreign nationals employed to work at embassies in London. The ET had dismissed the claims. The EAT then held that the relevant provisions of the 1978 Act were incompatible with article 47 of the EU Charter of Fundamental Rights and Freedoms, which reflects the right in EU law to a remedy before a tribunal. The Court of Appeal had affirmed the judgment of the EAT, declaring those provisions to be incompatible with the right to access a court under article 6 of the European Convention on Human Rights. The Supreme Court agreed that so far as the claims were based on EU law they were not barred by the 1978 Act. See *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Secretary of State for Foreign and Commonwealth Affairs and Libya v Janah* [2017] UKSC 62 (18 October 2017).

P v Commissioner of Police of the Metropolis [2017] UKSC 65 (25 October 2017) concerned the directly effective right of police officers under EU law to have the principle of equal treatment applied to them. The question raised was whether the enforcement of that right by means of proceedings in the ET was barred by the principle of judicial immunity where the allegedly discriminatory conduct was that of persons conducting a misconduct hearing. The Court held that it was not.

Michalak v General Medical Council [2017] UKSC 71 (1 November 2017) concerned section 120(7) of the Equality Act 2010. The Court decided that the availability of judicial review proceedings did not exclude the jurisdiction of the ET in respect of claims against qualification bodies.

The Court was concerned in *HM Inspector of Health & Safety v Chevron North Sea Ltd* [2018] UKSC 7 (8 February 2018) with how an ET might approach an appeal against a health and safety prohibition notice. Could the ET take account of subsequently discovered material not available to the inspector at the time of the issue of the notice? The Court ruled that it could.

Reilly v Sandwell MBC [2018] UKSC 16 (14 March 2018) is noteworthy for what it did not decide. The Court appeared to regret a missed opportunity to review the long-standing leading authority on unfair dismissal law that has not previously been considered at this level: *British Homes Stores Ltd v Burchell* decided by the EAT in 1978.

People and places

Regional Employment Judge Christine Lee retired on 31 July 2017 and Regional Employment Judge David Reed retired on 30 September 2017.

This afforded an opportunity to combine the Newcastle region and the Yorkshire & Humber region to form the new North East region. Regional Employment Judge Stuart Robertson transferred from the North West region to lead this newly merged region. In turn, Regional Employment Judge Jonathan Parkin transferred from the South West region to lead the North West region. Employment Judge Olga Harper has been the Acting Regional Employment Judge in the South West region in the interim period. It is expected that a new Regional Employment Judge will be appointed in the South West region later in 2018.

Regional Employment Judge Fiona Monk continued to be seconded to the First-tier Tribunal (War Pensions & Armed Forces Compensation Chamber), initially as the Senior Resident Judge, and from 19 February 2018 as Acting Chamber President.

The following salaried Employment Judges retired during the period of this report: Val Adamson, Peter Britton, David Burton, Vivienne Gay, Jeremy Hargrove, Martin Hall-Smith, Jessica Hill, John Hunter, Alison Lewzey, David Moore, Derek Reed, Geoff Solomons and Michael Southam.

Two salaried Employment Judges were appointed as Circuit Judges during this period: HHJ Jonathan Ferris and HHJ Simon Auerbach.

The following fee-paid Employment Judges were appointed to salaried judicial positions: John Keith (First-tier Tribunal), Sean O'Brien (First-tier Tribunal), Clare Harrington (First-tier Tribunal), Christian Sweeney (District Judge) and Mark Whitcombe (Employment Judge in Scotland).

The following fee-paid Employment Judges, some of whom are former salaried judges sitting in retirement, ceased sitting in the last year: Neeta Amin, Sarah Campling, John Hepworth, Brian Morron, Lydia Seymour and Maureen Singleton.

A number of Employment Judges continue to sit in other jurisdictions with mutual benefit, including the First-tier Tribunal, the County Court, the Crown Court and the Central Arbitration Committee.

A total of 137 non-legal members retired or ceased sitting during the relevant period. Their contribution is an important part of the ET's work. I trust that they will forgive me if I do not list them by name.

As at 31 March 2018 the ET in England & Wales comprised one President, 8 Regional Employment Judges, 2 Acting Regional Employment Judges, one further Regional Employment Judge on secondment, 101 salaried Employment Judges (89.1 full-time equivalent), 186 fee-paid Employment Judges and 750 non-legal members. The Lord Chancellor has agreed that the ranks of salaried Employment Judges may be replenished in a forthcoming Judicial Appointments Commission exercise. It is also hoped that the occasion will arise to recruit new fee-paid judges and non-legal members in the not too distant future.

The Tribunal has settled into new premises at Cambridge (in lieu of Huntingdon), Cardiff, North Shields and Sheffield. It also returned to the Bristol Civil Justice in November 2017 after a flood at the end of June 2017 caused the building to be temporarily out of commission. The Bristol ET sat in various *ad hoc* hearing centres during this period, including the University of the West of England and City Hall.

Employment Tribunal (Scotland)

President: Employment Judge Shona Simon

The Jurisdictional Landscape

One thing that can be said for my job is that it is very rarely dull – this year, I can promise you, it has not been dull for one second! The same can be said for the area of law which is at the core of the work of this jurisdiction. Hardly a week has gone by without media attention being focussed on issues where employment law, and the work of Employment Tribunals, lies at their very heart. Equal pay for equal work (think BBC correspondents/presenters and large retail sector employers like Tesco) – it is for an Employment Tribunal to decide whether the jobs compared are, in fact, equal. Harassment at work (think of the film industry and others beside) – rights are vindicated before the Employment Tribunal. Rights of those who work in the gig and platform economy (think Uber drivers and others) – it is for the Employment Tribunal to decide the legal status of those performing work for someone else.

Abolition of ET fees

If anyone has any lingering doubts about the importance of the work carried out in this jurisdiction they need only read the judgment of the Supreme Court in **R (on the application of Unison) v The Lord Chancellor** [2017] UKSC 51 to dispel them:

> "When Parliament passes laws creating employment rights…it does so not merely in order to confer benefits on individual employees, but because it has decided that it is in the public interest that those rights should be given effect….the possibility of claims being brought by employees whose rights are infringed must exist, if employment relationships are to be based on respect for those rights. Equally, although it is often desirable that claims arising out of alleged breaches of employment rights should be resolved by negotiation or mediation, those procedures can only work fairly and properly if they are backed up by the knowledge on both sides that a fair and just system of adjudication will be available if they fail. Otherwise, the party in the stronger bargaining position will always prevail. It is thus the claims which are brought before an ET which enable legislation to have the deterrent and other effects which Parliament intended, provide authoritative guidance as to its meaning and application, and underpin alternative methods of dispute resolution."

Here, in a beautifully crafted nutshell, is both the rationale for the existence of Employment Tribunals and an explanation of why the work they do is of such importance to the proper functioning of the economy.

The focus of the judicial review challenge brought by Unison was, of course, the fee charging system introduced in Employment Tribunals on 29 July 2013. Almost four years to the day thereafter the Supreme Court held the fee regime was unlawful on the basis that it severely restricted access to justice. As might be imagined, the practical ramifications of this decision, both for HMCTS and the ET judiciary are considerable and are still being worked through. For example, since the fees were held to be unlawful from the outset this means sums paid require to be reimbursed, which is more difficult to organise than it might first appear for a range of reasons (including the fact that in some instances Employment Tribunals subsequently ordered respondents to repay to claimants the fees they had originally paid to pursue their claims, leaving the respondent as the party who was actually out of pocket). A lot of hard work went on in HMCTS over the summer of 2017 to set up a fee reimbursement scheme and to contact those thought to be due a refund. Processing of applications for refunds is ongoing and in Scottish cases is being undertaken by staff in the Glasgow ET office.

Following the judgment speculation was rife in a number of quarters about the possibility that Employment Tribunals would be faced with a deluge of claims from individuals who had decided not to make a claim at some point in the relevant four-year period for a reason connected to the fact that a fee was payable (referred to by some as "historical" claims). In fact, hardly any claims of this type have been presented in Scotland.

Over the four-year period a number of claims were rejected by the tribunal administration in Scotland, under Rule 11 of the ET Rules, for failure to pay the fee on presentation of the claim. A smaller number were dismissed by the administration under rule 40 for non-payment of the hearing fee. Since the fee charging was unlawful these rejections/dismissals were also unlawful so all those affected (just over 700 individuals in Scotland) have been contacted by HMCTS to ask whether they wish their claim to be "reinstated". At the time of writing only a small percentage of those contacted in Scotland have decided they wish to proceed with their claim, although responses to the letter issued by HMCTS are still being received. In some instances, the events in question took place several years ago so there may be a variety of reasons why claimants do not wish to pursue matters now. From a judicial perspective one of the matters which may fall to be considered, in some reinstated cases, are pleas on the part of respondents that it is not longer possible to have a fair hearing given the passage of time and its implications for the availability of witnesses, relevant documents and the like. Assessments of this kind will require to be made on a case by case basis.

Case receipts following fee abolition

While there has been no "deluge" (indeed it would be hard to describe the numbers received as anything more than a trickle) of 'historical' claims there has been a sharp rise in the number of new claims being presented following the abolition of fees. 1,068 single claims were received in the period from August to December 2017. That compares to 615 for the period from August to December 2016 inclusive. So far as multiple claims are concerned (it must be borne in mind that they are notoriously volatile), the number received in the period from August 2017 to December 2017 was 4,531. This compares to 1,076 for the same period in 2016. (There were particularly large numbers of multiple claims in August and November 2017).

A great deal of excellent work has been done by staff in the HMCTS analytical team since fees were abolished to try to predict the scale of the likely rise in caseload and the implications of that for administrative and judicial resourcing – all of the emerging information is being fed into the financial planning which takes place in connection with budget allocation.

Following the introduction of fees, the number of claims made in connection with non-payment of wages showed a particularly marked decline. The median award for claims of this type is £500 – in considering the sharp decline Lord Reed considered that "no sensible person will pursue a claim worth £500" if they have to pay fees of £390 (which was the sum charged) unless success was guaranteed and there was also certainty that the sum awarded would in fact be paid, with fees also being reimbursed. Since no such guarantees could be given, it is unsurprising that claims of this type virtually disappeared from the ET system. However, early indications suggest that claims of this type are now being made again in considerable numbers: in the period from August to December 2016 451 claims categorised as unauthorised deduction from wages were received in Scotland. That contrasts with 1787 such claims over the same period in 2017. Further information is available at: *https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2017*.

Previously in Scotland, when we had a significant number of such claims (so called "short track" cases), which sometimes only take one or two hours to hear, Employment Tribunals sat in Glasgow on two evenings per week. This allowed a number of short track cases to be dealt with very quickly, while at the same time freeing up most of the day time hearing slots for longer cases. It was a popular initiative because it was done on a voluntary basis – the focus was on unrepresented parties who were offered the opportunity to have their case heard in the evening rather than being forced to do so. Many of those who were in employment were glad of the chance because it meant they did not need to take time off work. Similarly, the judges who heard the cases volunteered to sit in the evening. Given the recent rise in receipts active consideration is being given to whether evening sittings should be reintroduced. Similarly, in light of the rising caseload, I am discussing with the administration in Scotland bringing back into use some of the ET hearing rooms in Glasgow, which were decommissioned following the introduction of fees.

Snapshot of cases and ET practice matters

While a great deal of attention has been focussed on the abolition of fees and its consequences, the normal work of the tribunal also has to go on. That it has can readily be seen by perusal of the ET judgment register which is available online (*https://www.gov.uk/employment-tribunal-decisions?page=19&tribunal_decision_country%5B%5D=scotland*), albeit the register is not yet working as effectively as one might wish. This is not least because rule 52 dismissal following withdrawal judgments require to be put on the register (there are large number of those, occasioning considerable administrative work), despite the fact the information they convey adds little to the sum of human knowledge. It is to be hoped that a solution may be found to this particular problem (an amendment to rule 67 would be required) sometime soon.

By way of example of the kind of cases being dealt with by the tribunal, **McBride v The Scottish Police Authority** (Case No S/114070/07), which I referred to in my report last year in connection with the decision of the Supreme Court ([2016] IRLR 633) on the proper application of the law regarding reinstatement, has been back before the Employment Tribunal. The respondent refused to reinstate the claimant, found to have been unfairly dismissed in 2007, as ordered so a remedy hearing was therefore required. The tribunal concluded that the respondent had not been able to show that it was not practicable to reinstate the claimant and went on to award compensation of £415,227 to Ms McBride. The sum awarded serves as a reminder that it is not only in discrimination cases that the Employment Tribunal is able to and does award significant sums of money.

Another Scottish case recently considered by the Supreme Court is that of **HM Inspector of Health and Safety v Chevron North Sea Ltd** [2018] UKSC 7; it serves as a reminder that the jurisdiction of Employment Tribunals extends into the field of health and safety. An Employment Tribunal sitting in Aberdeen, where a number of important cases have been heard involving the North Sea oil industry, was asked by Chevron to revoke a prohibition notice issued by an inspector under s.22 of the Health and Safety at Work etc. Act 1974. The notice prohibited the company from using a helideck on an oil rig due to the fact that the stairs and other parts were corroded, it being considered there was a risk that a worker could fall through it and suffer injury. The principle means of reaching the rig was by helicopter. After the notice had been served Chevron obtained an independent expert report, which concluded that the relevant parts of the helideck met the British safety standards and therefore there was no risk of personnel falling through it. The issue for the tribunal in the appeal against the notice by Chevron was whether the tribunal could take account of information which had become available after the notice was served or whether, in deciding whether to revoke or amend the notice, it was restricted to considering only the information available, or which reasonably ought to have been available, to the inspector at the time of service. The Supreme Court upheld the decision of the Employment Tribunal which was to the effect that it was entitled to take account of the new information which had become available after the notice was served when reaching a decision on whether to revoke or vary the prohibition notice. In so concluding the Supreme Court agreed with the decision of the Inner House of the Court of Session, rather than a conflicting decision of the Court of Appeal – a good example of the role the Supreme Court plays in ensuring consistency in the application of reserved law on a cross border basis.

People and Places

In light of the rising caseload referred to above, and the fact that two of the salaried Employment Judges based in Glasgow have retired in the course of the last year, it is fortuitous indeed that, prior to the abolition of ET fees, consent had been given to recruit both salaried and fee paid Employment Judges: we were short of judicial resources even before the Supreme Court decision. I am extremely grateful for the support received from senior HMCTS staff in connection with securing this additional resource and also to staff in the Lord President's Private Office who supported the recruitment exercise. Above all, though, it is to my own secretary, Jenny Demir, that I must express a huge debt of gratitude for everything she did, well beyond the call of duty, to ensure the smooth running of the recruitment process. That process was well underway by July 2017 but the rise in caseload thereafter led to consent being granted to recruit a greater number of fee paid judges than had been agreed originally. Interviews took place in October 2017 and I am delighted to report that four (three full time equivalent posts) salaried and thirteen fee paid Employment Judges were appointed following that competition, with most taking up office early in January 2018. Three of the salaried judges are hard at work already. Another will join us in May. Of course, new judges need to be trained and supported as they set out on their judicial careers – I am immensely grateful to the Vice-President, Susan Walker, and several of the other experienced judges for all the work they put in to developing and delivering an excellent induction training package for our new colleagues. Their appointment has been a real morale boost for the judges who were already in post, not just because the new judges are able to help with the rising workload but also because the experienced judges appreciate how important it is to get new judicial blood into the system and take pleasure in being able to assist new judges to develop their judicial skills. The enthusiasm and commitment the new judges have shown in getting to grips with their judicial role bodes well for the future of the Employment Tribunal system in Scotland. I am now turning my attention to look at the issue of whether we have a sufficient number of ET members to service the growing workload.

Plans are well advanced for a new Glasgow Tribunals Centre, which will house both the devolved and reserved tribunals operating in that city. However, while the building is scheduled to commence operating in March 2018 the current expectation is that Employment Tribunals will not move to the new location (which is close to the current operating base) until early 2020.

Devolution of Functions

As was indicated in my last report, it is expected that the devolution of the functions of Employment Tribunals (Scotland) will not occur before Spring 2020 at the earliest. There are no other developments to report on this particular issue.

Conclusion

The small part of the universe occupied by Employment Tribunals (Scotland) has certainly undergone a seismic shift since this time last year. We are in particularly good heart, buoyed by the recognition of the importance of the work we do in the Supreme Court decision and the pleasure to be derived from supporting new colleagues as they embark on their judicial careers. As ever my profound thanks go to the Employment Judges and non-legal members of the tribunal – their commitment and dedication to the task of providing an excellent judicial service to those who appear before the tribunal remains second to none.

Annex D

Cross Border Issues

Northern Ireland

Dr Kenneth Mullan
Chief Social Security Commissioner
Upper Tribunal Judge

There have been no further developments with tribunal reform in Northern Ireland. At the time of writing talks to enable the restoration of the devolved Northern Ireland Assembly have failed with the consequence that routine devolved Departmental matters, including proposals for the introduction of tribunal reform, remain on hold.

The Northern Ireland dimension for those First-tier and Upper Tribunal jurisdictions which extend to Northern Ireland has been described in the other relevant sections of the Senior President's Report.

Scotland

Sir Brian Langstaff

Last year I reported on the background to the move of those Tribunals which are known as "reserved" Tribunals, which operate in both the jurisdictions of Scotland and of England and Wales, so that in future their functions in Scotland are exercised by Tribunals under Scottish control: in a word, "devolution" of tribunals.

The Scottish Government ("SG") and Westminster Government ("UKG") have welcomed the comments of the judiciary, who are likely to be affected by the timing, nature and structure of the changes which devolution brings. In consequence a Judicial Working Group (JWG) was set up under the joint chairmanship of Lady Smith of the Inner House of the Court of Session, who is President of Scottish Tribunals, and myself. Initially, its membership was fairly small because it was anticipated that the tribunals would transfer one by one, with employment going first. It has now become apparent that the transfers from UKG to SG control should take place in not more than two tranches, unlikely to begin before 2020, and perhaps not even then, and accordingly the membership of the JWG has been expanded to reflect the other jurisdictions likely to be most immediately affected.

During the past year, little has happened. The reserved tribunals continue to operate as before. SG has agreed that any transfer of office-holders from public service within the general jurisdiction of UKG to service within the general jurisdiction of SG should occur with no detriment to their existing terms and conditions, but it is as yet not clear what aspects this will cover, and what precisely it will mean in practice. There appears to be common ground that some means should be found for entrenching the tenure of those who have been recognised as judges in UK practice, despite provisions in the Tribunals (Scotland) Act 2014 which do not give "legal members" of Scottish tribunals the same secure tenure as is conferred on tribunal judges appointed under the reserved

system. There appears also to be an acceptance that there is no principled objection to those who have hitherto been known as tribunal judges in Scotland continuing to be accorded that status after devolution. There is as yet no confirmation how precisely this will be recognised effectively.

Despite the common intention of UKG on the one hand and SG on the other to effect the necessary changes of administrative control and judicial leadership, there has as yet been no concluded draft of the necessary Order in Council to achieve this; the task is a complex one and it may also be that the financial consequences of the intended devolution have first to be resolved. The consequent delay there has been in taking any positive steps towards the intended transfer is regrettable; and one result is that there is little to report as progress on the position which I reported on last year. Discussions continue as to whether (as the Smith Commission and the Scotland Act 2016 both envisage), and if so how, cross-border judicial co-operation in the interests of consistency should best be achieved whilst recognising the principle that both UKG and SG have the control that the devolution agreement anticipated.

On a more personal note, I shall be retired from full-time service as a judge of the High Court of England and Wales on 30thApril this year, but the Senior President has invited me, and I have agreed, to continue to serve as co-chair of the JWG, in order to see through to the end that which Lady Smith and my colleagues on the JWG have started. I am more than happy to do so.

I am, however, sorry not to have more concrete news to report.

Wales

Judge Libby Arfon-Jones

It has yet again been a significant year for tribunals in Wales, with continuing challenges alongside meaningful opportunities and progress.

The main good news story was the passing of the Wales Act 2017. This Act, inter alia, provided for the appointment of a Senior President of Welsh Tribunals. Sir Wyn Williams was sworn in as such by the Lord Chief Justice in Cardiff in December 2017.

For the judiciary of the devolved tribunals in Wales, this provided them with a figurehead and champion, all the more welcome for being so overdue!

The primary law making powers conferred on the Welsh Assembly under Part 4 of the GOWA 2006, has seen an increase in the divergence between English and Welsh law. Devolution has made accessibility to and clarity of the law a significant challenge. The Law Commission of England and Wales published its Report "The Form and Accessibility of the Law Applicable in Wales" in June 2016. The Counsel General sent the Welsh Government's (WG) final response thereto on 19 July 2017, in which the WG agreed, in principle, with the vast majority of the Commission's recommendations. The WG "agreed that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is necessary to ensure that the laws of Wales are easily accessible". Easier said than done! This will be a Herculean task.

A pilot project focussing on "consolidation, codification and better publication" is currently underway.

Legislation relating to areas such as education, housing, health and planning could be codified, enhancing ease of access, helpful to the judiciary, practitioners and the public. The divergence of laws between England and Wales impacts the tribunals in Wales to a larger or lesser extent; lesser on the reserved tribunals, generally speaking.

The Law Commission's commitment to tribunal reform in pre-devolution Wales is to be welcomed.

The Welsh Government (WG) has agreed to provide reports on Welsh secondary legislation as well as primary legislation and to maintain liaison with the training leads to assist with the compilation of their regular bulletins and assessments on training. The e-letter on Welsh legal matters is published three times per annum. This is crucial as the law of England and the law of Wales continues to diverge apace.

The Lord Chancellor(LC) is to approve the addition of a Welsh judge to the Rules Committee. The CPRC is still waiting the LC's formal acceptance of a submission to approve the necessary statutory instrument to expand the committee's membership to include a Welsh judge. The announcement of that individual's name is imminent.

The Ministry of Justice (MOJ) and WG have reached agreement on the transfer of rule making power in respect of devolved tribunals to Welsh Ministers. Although agreement in principle has been agreed, the exact implementation mechanism is still under discussion.

The Justice in Wales Group is in the process of working with the WG to set up an Experts Advisory Group. Its terms of reference, objectives and membership are in hand.

Training in specific areas where English black letter law differs from Welsh law, such as housing, is being provided in February/March 2018. E-Bulletins on Welsh law are soon to be published in both English and Welsh. A recent seminar organised by the Judicial College on Housing Law in Wales was a great success.

The Commission on Justice in Wales, under the chairmanship of Lord Thomas of Cwm Giedd, has as its terms of reference:

"To review the operation of the justice system in Wales and set a long-term vision for the future with a view to:

Promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation."

The membership of the Committee includes Sir Wyn Williams, Senior President for Welsh Tribunals.

The Commission has published a Consultation document consisting of 14 questions, many of which are political in nature.

Under the leadership of Sir Wyn Williams, there is a new meaningful focus on cross-ticketing of tribunal judges across Welsh tribunals and eventually across jurisdictions in England and Wales as well as on implementing appropriate procedures for dealing with judicial complaints. This will build on the vast amount of preparatory work undertaken by the Wales Tribunal Unit (WTU).

An important development in legal Wales during 2017 has been the report of the Wales Strategy Group, chaired by the Hon Mr Justice Clive Lewis, now the Senior Presider in Wales. The report made several recommendations. Whilst many of these recommendations related to the Courts sitting in Wales there were recommendations which impacted on justice generally in Wales to include Tribunal operations.

The first recommendation was that there be appointed a person to collate existing Welsh law, that is primary legislation made by the Assembly and secondary legislation made by Welsh ministers to establish a possible means by which future primary and secondary legislation could be included within a database. Important was that that person could also analyse the information. The challenge here is the funding issue as to whether that person be paid by HMCTS, the Welsh Government or the Judicial Office. Watch this space!

Annex E

Important Cases

Senior President's Annual Report 2018
Reported Cases
Administrative Appeals Chamber

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 9 (AAC)	*Adams v Secretary of State for Work and Pensions (CSM)*	Child support	The UT's practice of anonymising decisions would continue on the basis that it was explained to all the parties to the appeal that, subject to further order by the UT, the practice of anonymising decisions would only be applied if no party objected to it, and (i) that its effects were that: (a) non-parties who obtained decisions either directly or indirectly from the UT would do so in an anonymised form, and (b) if someone asked the UT for the identity of the anonymised persons the parties would be notified and given an opportunity to object, (ii) that the UT's practice did not prevent publication by a party or anyone else of the identities of the individuals involved in the case, and accordingly (iii) if a party wanted an injunctive order they should ask for one.
[2017] UKUT 25 (AAC)	*TW v Secretary of State for Work and Pensions (PIP)*	Social security	The Personal Independence Payment (Transitional Provisions) Regulations 2013 (SI 2013/387) were not ultra vires or discriminatory under Human Rights law between those claimants transferring from DLA to PIP and new PIP claimants.
[2017] UKUT 105 (AAC)	*RJ v Secretary of State for Work and Pensions (PIP)*	Social security	"Safely" in regulation 4(4) and "safety" in the definition of "supervision" in the Social Security (Personal Independence Payment) Regulations 2013 should be construed consistently. In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. The same approach applies to the assessment of a need for supervision

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 129 (AAC)	*EP v Secretary of State for Defence (AFCS)*	Armed Forces compensation	The concept of "downgraded" in article 2(1) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 does not simply focus on whether a person has been downgraded but more specifically on the result of the downgrading, namely whether a person did, as a matter of fact, undertake a reduced range of duties. Additionally, downgrading could not be determined by reference to the duties which a person might be called upon to undertake but which are not part of the ordinary duties of their role.
[2017] UKUT 141 (AAC)	*Royal Borough of Kensington & Chelsea v GG (SEN)*	Special educational needs	This decision provides guidance on the application of the EHC provisions of Part 3 of the Children & Families Act 2014 to young persons, in particular those whose cases have a higher education dimension. A course of study is not a form of higher education simply because it is provided by or under arrangement with an institution within the higher education sector. In order to be higher education, the course must be of a type mentioned in Schedule 6 to the Education Reform Act 1998.
[2017] UKUT 145 (AAC)	*GE v Secretary of State for Work and Pensions (ESA)*	Social security	This case concerns employment and support allowance, a benefit not available to claimants who do not have a right to reside in the UK. The UT held that the claimant's residence for an initial period of 3 months and as a jobseeker counts towards the subsequent acquisition of a permanent right of residence under domestic UK law. Further, the right to reside test must be applied down to the date of the decision; not only at the date of claim.
[2017] UKUT 148 (AAC)	*Forager Ltd v Natural England*	Environmental Protection	A stop notice under the Regulatory Enforcement and Sanctions Act 2008 must specify the steps to be taken. However, failure to do so does not render the notice a nullity, but remediably invalid, because the First-tier Tribunal (unlike the regulator) has the power to amend the notice so as to increase the work to be done by the person to whom the notice is directed

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 149 (AAC)	*JP v Secretary of State for Work and Pensions (CA)*	Social security	The UT refused to admit a late application for permission to appeal. The approach in *R (Onowu) v First-tier Tribunal (Immigration and Asylum Chamber)* [2016] UKUT 185 (IAC) was applied with modifications.
[2017] UKUT 151 (AAC)	*WL v Leicester City Council (HB)*	Social security	The FTT erred in law by failing to consider regulation 12(1)(d) of the Housing Benefit Regulations 2006 which has the effect that payments by way of mense profits qualify for housing benefit.
[2017] UKUT 172 (AAC)	*MG v Cambridgeshire County Council (SEN)*	Special educational needs	Cost orders under rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal) (HESC Chamber) Rules 2008 can be made in favour of a legally aided party, but only exceptionally and in the most obvious cases.
[2017] UKUT 174 (AAC)	*Secretary of State for Work and Pensions v Carmichael (HB)*	Social security	The claimant and his wife were unable to share the same bedroom owing to wife's disability needs; The FTT should have directed local authority to calculate the claimant's housing benefit entitlement without making a deduction of 14% for under occupancy under regulation B13 of the Housing Benefit Regulations 2006 so as to avoid an unlawful breach of their ECHR art 14 rights, following *R (Carmichael and Rourke) (formerly MA and others) v SSWP* [2016] UKSC 58.
[2017] UKUT 206 (AAC)	*R. (Criminal Injuries Compensation Authority) v FtT (CIC)*	Criminal injuries compensation	Claims under the Criminal Injuries Compensation Act 1995 are made in respect of injuries, not the events leading to them, and therefore psychiatric injury caused by different assailants gives rise to a single claim. A descriptor which was expressed in terms of the circumstances in which an injury occurred can be applied as often as the terms of the descriptor are satisfied, but a descriptor expressed in terms of the nature or severity of an injury can be applied only once for any one injury.
[2017] UKUT 227 (AAC)	*ME v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	On an appeal under s.16 Tax Credits Act 2002, which allows an initial award of tax credits to be amended, the FTT stands in the shoes of the decision-maker and has power to amend the initial decision if it considers the decision-maker had "reasonable grounds for believing" it was wrong.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 229 (AAC)	*Cabinet Office v Information Commissioner*	Information rights	The FTT, hearing an appeal in public, was entitled to vary a direction made under rule 14(6) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 by including references to the closed material in its reasons. It did not require the consent of the public authority proffering the closed material to do so.
[2017] UKUT 250 (AAC)	*London Borough of Hillingdon v SS (SEN)*	Special educational needs	The ability of a local authority or the FTT to specify a school or institution under s.40(2) of the Children and Families Act 2014 is not restricted to those listed in s38(3).
[2017] UKUT 257 (AAC)	*LS v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	An appeal against a decision under s.16 of the Tax Credits Act 2002 lapses when a decision under s.18 has been made. The proper course is for the FTT is to strike out the proceedings under rule 8 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.
[2017] UKUT 273 (AAC)	*East Sussex County Council v KS (SEN)*	Special educational needs	Even if the NHS commissioning body has declined to commission medical or nursing provision for a child, the local authority has no power to pay for such provision as part of a package with education provision.
[2017] UKUT 286 (AAC)	*SM v Secretary of State for Defence (AFCS)*	Armed Forces compensation	The claimant slipped on the icy entrance steps while going into the building where he worked and was injured. He claimed compensation under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (SI 2011/517). The UT, disagreeing with the Secretary of State and FTT, held that the injury was caused by service as the claimant was participating in pursuance of a service obligation in an activity in a hazardous environment.
[2017] UKUT 324 (AAC)	*R.(CJ) v Secretary of State for Work and Pensions*	Social security	Partnership profits from a tax deferral scheme are "income" for the purposes of child support. "Closing the case" is not a concept recognised in child support legislation and could refer to one or more of at least three different legal processes.
[2017] UKUT 329 (AAC)	*SP v Commissioners for Her Majesty's Revenue and Customs (No.2) (TC)*	Social security	The UT may set aside the decision of the FTT and substitute its own decision as to the amount of a penalty in a tax credits case even in the absence of error of law.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 334 (AAC)	*JF v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	The decision provides guidance on the new definition of "self-employed" for working tax credit. The principle in R(FIS) 6/85 still applies. Non-charged out hours essential for business may need to be considered and the importance of being realistic about small sole traders and their audit trails is expressed.
[2017] UKUT 343 (AAC)	*VO v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	In the light of the standard of some of the HMRC responses to appeals before the FTT and the fact that many appellants are unrepresented, the FTT judiciary must be alert to the need to interrogate HMRC written responses with a combination of studied scepticism and searching.
[2017] UKUT 348 (AAC)	*JMcG v Devon Partnership NHS Trust*	Mental health	The FTT has no jurisdiction to defer a patient's discharge beyond the date of the order authorising the patient's detention pursuant to section 72(3) of the MHA 1983 as the necessary underpinning of the order for detention would be lacking in that situation
[2017] UKUT 349 (AAC)	*London Borough of Camden v Foxtons*	Regulation of letting agents	The use of the word "administration" on its own does not comply with the requirement in section 83 of the Consumer Rights Act 2015 to publicise details of its fees but the word can be used if accompanied by an adequate description of what it includes. There is a separate breach in respect of each branch of the company and/or its website which does not comply. To state that a fee "can cover" a service also implies that it might not cover a service and this is in breach. In setting a penalty, it is proper to take account of any change in circumstances between the issue of the notice of intent and the final notice and credit can be given for an unsuccessful attempt to come into compliance.
[2017] UKUT 355 (AAC)	*GK v Essex County Council (SEN)*	Special educational needs	Sections 316 and 316A of the Education Act 1996 did not preclude the FTT from relying on a concession made by an experienced specialist advocate, albeit not a lawyer, that if satisfied that educating a child in a particular named school would be incompatible with the provision of efficient education for other children, it need not consider specifying merely the same type of school in Part 4 of the statement of special educational needs.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 358 (AAC)	*Secretary of State for Work and Pensions v KJ (PIP)*	Social security	The wording of activity 1 in Part 2 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 sets up a notional simple meal test so that in preparing food, the particular dietary requirements of the claimant are not relevant to their ability to prepare and cook a simple meal.
[2017] UKUT 361 (AAC)	*AS v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	Regulation 13 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, which refers to British social security benefits, had to be read as including a reference to a Dutch invalidity benefit so as not to deprive the claimant of a social advantage contrary to EU law.
[2017] UKUT 380 (AAC)	*FM v Secretary of State for Work and Pensions (DLA)*	Social security	The amended past presence test for disability living allowance is not discriminatory, in breach of the public sector equality duty or in breach of the duty to consider the best interests of children as a primary consideration.
[2017] UKUT 381 (AAC)	*AMS v Secretary of State for Work and Pensions (SPC)*	Social security	In an interim decision, *AMS v SSWP (SPC)* [2017] UKUT 48 (AAC), the UT held that C-140/12 *Brey* remained good law, notwithstanding more recent decisions of the Court of Justice of the European Union on freedom of movement. Nonetheless, the claim by the elderly claimant, who had links with the United Kingdom and wished to live near her some of her children, represented an "unreasonable burden" on the social assistance system of the United Kingdom, with the consequence that, even when *Brey* was applied, she lacked a right to reside in the UK.
[2017] UKUT 401 (AAC)	*MH v Rotherham Metropolitan borough Council (HB)*	Social security	Where a claimant was made redundant and received a redundancy payment, but was then re-employed by the same employer on terms that he repaid his redundancy payment by way of monthly deductions from his wages, the amount of such repayments did not form part of his income and earnings for the purposes of calculating housing benefit entitlement.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 420 (AAC)	*JA-K v Secretary of State for Work and Pensions (DLA)*	Social security	The UT in the exercise of its statutory appellate jurisdiction cannot rule on whether the Equality Act 2010 has been breached. Nor did regulations introducing a severe visual impairment route of entitlement to the higher rate of the mobility component of disability living allowance that did not apply to those aged 65 or over when the regulations came into force give rise to age discrimination contrary to article 14 of the ECHR.
[2017] UKUT 424 (AAC)	*MH v Secretary of State for Work and Pensions (PIP)*	Social security	Suspension of the mobility component of personl independence payment for long-term in-patients of hospitals or similar institutions does not constitute unlawful discrimination.
[2017] UKUT 440 (AAC)	*LO v Secretary of State for Work and Pensions (IS)*	Social security	An EU national mother of two very young UK national children, separated from her UK national unmarried partner, was precluded by order of the Family Court from taking the children out of the UK and thus from returning to her state of nationality, but she nonetheless did not have a right of residence in the UK.
[2017]UKUT 459 (AAC)	*RR v Secretary of State for Work and Pensions (UC)*	Social security	Searching for work for fewer than 35 hours in a week is not necessarily in breach of a claimant commitment "normally" to search for 35 hours a week. Regard had to be had to the claimant's history of work searches.

Citation	Parties	Jurisdiction	Commentary
[2017]UKUT 464 (AAC)	*Secretary of State for Work and Pensions v DC (JSA)*	Social security	These appeals by the claimant were against 26-week sanctions imposed for failures to participate in the Employment, Skills and Enterprise Scheme. In the first case, the Secretary of State failed to comply with a direction to provide a copy of the appointment letter. The UT held that the FTT had not drawn an adverse inference and had been entitled simply to find that there was no evidence that the information in the letter was clear enough for it to be effective. In the second case, the Secretary of State had failed to provide documentary evidence that the provided who had issued an appointment letter had been authorised to do so. The UT held that authorisation to exercise the statutory power did not have to be in writing and that the FTT had failed to provide adequate reasons for finding that the provider had not in fact been authorised, given that it was acting as though authorised and the Secretary of State had said that it was authorised.
[2017]UKUT 471 (AAC)	*Nuneaton & Bedworth Borough Council v RH (HB)*	Social security	Under regulation B13 of the Housing Benefit Regulations 2006 a claimant is entitled not just to a room that can be used as a bedroom, but to a room for a person with the characteristics of the applicable head in paragraph (5).
[2017]UKUT 481 (AAC)	*Secretary of State for Work and Pensions v RD (II)*	Social security	The FTT did not err in law in finding the claimant to be entitled to reduced earnings allowance on the ground that he was permanently incapable of following his regular occupation or employment of an equivalent standard, notwithstanding that he had continued to work in his regular employment for 22 years since being awarded disablement benefit in respect of occupational deafness. While a claimant cannot argue that it is unreasonable for him to work in his regular occupation while actually doing so, once he has left it he can argue that it would be unreasonable to return to that occupation due to the risk of further hearing loss.

Citation	Parties	Jurisdiction	Commentary
[2017]UKUT 485 (AAC)	*Secretary of State for Work and Pensions v LM (ESA)*	Social security	In the context of investigating the work history of an EU national whose vulnerabilities resulting from poor mental health limited the evidence directly available, the UT, in remaking its decision, obtained detailed evidence from HMRC as to how the contributions and credits record provided by DWP through the NIRS should be read. The record and the findings on that evidence form appendices to the decision.
[2017]UKUT 495 (AAC)	*Corderoy v Information Commissioner*	Information rights	The absolute exemption conferred by section 23(1) of the Freedom of Information Act 2000 as regards security bodies did not apply to a request for disaggregated information about the legal advice given by the Attorney General concerning a drone strike against Britons in Syria but the qualified exemption conferred by sections 35(1)(c) and 42 as regards Law Officers' advice and legal professional privilege did apply and the balance of the public interest was against disclosure.
[2018] UKUT 2 (AAC)	*JM v Secretary of State for Work and Pensions (HRP)*	Social security	A UK claimant in receipt of Dutch family benefits from 1982 to 1984 while her husband was posted abroad qualified for UK state pension in 2002 at age 60 and for Dutch state pension in 2007, The Dutch pension took into account her child-raising from 1982-1984 but her UK pension did not. The UT held that the fact that she did not receive any 'credit' in terms of her pension entitlement in respect of the child-raising years from 1982 to 1984 until 2007 (as opposed to 2002) was a function of the different state retirement ages operating in the social security regimes in the Netherlands and the UK respectively and was not contrary to EU law.
[2018] UKUT 12 (AAC)	*PW v Commissioners for Her Majesty's Revenue and Customs (TC)*	Social security	Once the disability element of WTC has been awarded under Case A, B. E or F, it continues in payment on an indefinite basis until the claimant either ceases to be entitled to WTC or ceases to have a disability which puts her or him at a disadvantage in getting a job.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 15 (AAC)	*Admiral Taverns Limited v Cheshire West and Chester Council*	Assets of community value	The right of appeal to the FTT is unrestricted and the FTT stands in the shoes of the local authority and must form its own view of the merits of the case. The FTT was wrong to express itself as though there were a presumption about the social benefits of pubs but it did not err in law because it did not rely on any such presumption and clearly considered the specific evidence and facts of this particular case in reaching its decision.
[2018] UKUT 16 (AAC)	*YM v Secretary of State for Work and Pensions (PIP)*	Social security	Where the conditions on which a previous award of a different benefit was made were similar to the conditions for an award of another benefit, a decision by the FTT that is apparently inconsistent with the previous award should be explained.
[2018] UKUT 25 (AAC)	*Secretary of State for Work and Pensions v CT (IS)*	Social security	The extent of beneficial interests in a family home and also in some "quasi-family homes" must be determined in accordance with the principles set out by the Supreme Court in *Jones v Kernott* [2011] UKSC 53. One consequence of this is that there is no presumption that the property is held on a resulting trust for the parties in proportion to their respective financial contributions to the cost of acquisition. However, circumstances remain in which a resulting trust approach is permissible, even in a domestic context. The FTT was entitled to find that a resulting trust arose in this case, where the property was not a family home but a buy-to-let investment property and the "couple" had only cohabited for "about a week" after the property had been acquired.
[2018] UKUT 44 (AAC)	*MC v Secretary of State for Work and Pensions (UC)*	Social security	A child who stayed with her godparent (near to college) but also stayed alternate weekends with her father was "normally living with" both of them and, since he had the main responsibility for her, her father was "responsible" for her for the purposes of entitlement to the child element of Universal Credit.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 46 (AAC)	*DB (as executor of the estate of OE) v Secretary of State for Work and Pensions (SPC)*	Social security	Continued entitlement to the additional amount for severe disability, within state pension credit, for a resident of a publicly-funded care home is determined by reference to the date on which the person ceased to be in receipt of Attendance Allowance which may not always be the date falling 28 days after the claimant became resident in the care home.
[2018] UKUT 48 (AAC)	*RH v Secretary of State for Work and Pensions (DLA)*	Social security	A claimant in respect of whom a person has been appointed to act under reg.33 of the Social Security (Claims and Payments) Regulations 1987 may bring an appeal independently. Further if the claimant lacks litigation capacity, a litigation friend may be appointed if it is necessary to do so to avoid unfairness. On the other hand, a finding that a claimant does have capacity does not result in the appointment being quashed. The appointee will be a party to the appeal. Accordingly, it may not be necessary to decide whether or not the claimant has capacity.
[2018] UKUT XX (AAC)	*Cabinet Office v Information Commissioner*	Information rights	**To be added**

Tax and Chancery Chamber

Citation	Parties	Jurisdiction	Commentary
[2017] UKSC 70	*Littlewoods Ltd v HMRC*	UK Supreme Court	The Supreme Court allowed HMRC's appeal against an order that they pay compound interest on money refunded to the taxpayer for overpayment of VAT. Littlewoods submitted claims for repayment of VAT which it had overpaid between 1973 and 2004 because of a misunderstanding of the law. The claims were made under sections 78 and 80 of the VATA 1994. HMRC repaid £205 million together with interest calculated on a simple basis totalling £268 million. Littlewoods claimed additional interest calculated on a compound basis over 40 years, totalling £1.25 billion. The European Court of Justice on a reference at an earlier stage of the proceedings held that the liability to pay compound interest was a matter for national law. The first instance judge upheld by the Court of Appeal, held that only compound interest could satisfy Littlewood's rights under EU law and that the domestic provisions excluding a claim to compound interest had to be disapplied. The Supreme Court held that there was nothing in the case law of the CJEU which required the payment of more than simple interest if the national legal order treats that as reasonable redress for the unavailability of the money and no issue of equivalence arises. Consistently with a widespread practice among member states of the EU, the United Kingdom has treated the award of simple interest as an appropriate remedy for being kept out of money over time, whether the claimant is HMRC when a taxpayer fails to pay his tax in a timely manner, or the claimant is the taxpayer when tax has been unduly levied.

Citation	Parties	Jurisdiction	Commentary
[2017] UKSC 74	*R (oao De Silva and another) v HMRC*	UK Supreme Court	The issue was whether HMRC were entitled to open an enquiry into claims for relief from income tax that the taxpayers had made in their tax return forms with the result that HMRC amended the tax returns to deny full relief of whether the statutory period for such an enquiry under Schedule 1A to the Taxes Management Act 1970 had expired. The case concerned tax avoidance schemes aimed at accruing trading losses to set against income of the same or earlier years. The Supreme Court upheld the decision of the UT TCC that HMRC's amendment of the individual tax returns was lawful.

Citation	Parties	Jurisdiction	Commentary
[2016] EWCA Civ 1014	*HMRC v Infinity Distribution Ltd (in Administration)*	Court of Appeal	This case concerned the evidence relied on by HMRC in appeals challenging HMRC's refusal to allow deductions of VAT or zero rating on the grounds that the alleged supply of mobile phones was not supported by a valid VAT invoice because the invoices purported to evidence supply which could not have in fact occurred or on the grounds that no export had in fact taken place. The evidence to which objection was taken was one witness statement which sought to prove criminal convictions of various named individuals for conspiracy and cheating and part of a second witness statement which asserted that the taxpayer was guilty of or knew of fraud and dishonesty in connection with the relevant transactions and asserted fraud by other persons in the supply chain. The Court of Appeal stated that the FtT, like a civil court, will usually treat the question whether proffered evidence is relevant as a cardinal factor in deciding whether it should be admitted or excluded. The admission of evidence which is irrelevant is as detrimental to the economical and proportionate conduct of tribunal proceedings as it is in relation to court proceedings. Nonetheless, where irrelevant material is mixed up with relevant material, it may frequently be disproportionate to spend time before a final hearing disentangling the two, if the admission of the irrelevant alongside the relevant material causes no unfairness or inconvenience calling. for active case management. The Court held that the first statement was manifestly irrelevant but that the part of the second statement was relevant, given that the taxpayer had not applied to strike out HMRC's case on the grounds that no knowledge of fraud had been alleged.

Citation	Parties	Jurisdiction	Commentary
[2017] UTUT 0181 (TCC)	*HMRC v Elbrook Cash and Carry*	Upper Tribunal (TCC)	This was a rare instance of an appeal to the Upper Tribunal of a hardship decision where the FTT decided that the requirement on the taxpayer to pay or deposit the amount of VAT in dispute would cause the taxpayer to suffer hardship. The UT held that it had jurisdiction relying on the Court of Appeal decision in ToTel [2013] that the removal of the right of appeal was ultra vires. The UT held that ordinarily the possibility of an appellant obtaining access to a new source of borrowing should not be regarded as a resource that is immediately or readily available for this purpose. That is not to exclude such borrowing from being taken into account in particular circumstances, for example where it is shown that arrangements for such finance are at such a stage where it has become readily available. But the mere fact that other sources of finance might be explored, or that an appellant might have equity in a property or other security to support possible borrowing, will not of itself render such borrowing capacity as a resource which is either immediately or readily available. It also confirmed that the test for financial hardship is an "all or nothing" one. The only question is whether payment or deposit of the whole of the disputed tax would cause financial hardship. It is of no relevance that payment of some lesser amount might be capable of being achieved without hardship. The UT held that there was no error of law identified in the FTT's decision.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 137 (TCC)	*Coal Staff Superannuation Scheme Trustees Ltd v HMRC*	Upper Tribunal (TCC)	The UT TCC dismissed an application for an immediate reference for a preliminary ruling to the CJEU before the hearing of an appeal against the FTT decision. The application for a reference followed the service by the United Kingdom Government of notice under Article 50(2) of the TFEU of the UK's intention to withdraw from the EU. A core policy of the UK Government was to remove the jurisdiction of the CJEU to give preliminary rulings in UK cases. The UT rejected the submission that a purposive approach to the interpretation of Article 267 TFEU meant that the UT was now effectively the court of last resort because if a reference was delayed until the UT had ruled on the case, there may be insufficient time for the CJEU to opine on any reference before exit day. The UT held it therefore had a discretion whether to make a reference and exercised that discretion against making a reference.
[2017] UKSC 45	*RFC 2012 plc (in liquidation) (Formerly The Rangers Football Club plc) v Advocate General for Scotland*	UK Supreme Court	The Supreme Court considered a scheme whereby employers paid remuneration to their employees through an employees' remuneration trust in the hope that this would avoid liability to income tax. The Court surveyed the previous case law on the proper approach to interpreting taxing statutes. The Court held unanimously that the relevant point was not whether any part of the transaction entered into was a sham but whether the relevant statutory provisions were intended to apply to the transaction, having interpreted the provisions purposively and then analysing the facts in the light of those statutory provisions. The Court held that there was no requirement that the employee should receive or be entitled to receive the remuneration for their work directly in order for that reward to amount to a taxable emolument. Rather the charge to tax on employment income extends to money that the employee is entitled to have paid as his or her remuneration whether it is paid to the employee or a third party.

Citation	Parties	Jurisdiction	Commentary
[2017] EWCA Civ 1416	*HMRC v Citibank NA and E Buyer UK*	Court of Appeal	The CoA considered the two limbs of *'the Kittel test'* namely that a trader will not be able reclaim input VAT if (i) he knew or (ii) he should have known that the transaction in which he was involved was connected with a scheme for the fraudulent evasion of VAT. It was accepted that it is possible for a case of actual knowledge within the first limb not to involve a taxpayer being regarded as dishonest – he may or may not have a dishonest state of mind. HMRC can, of course, allege that a taxpayer has acted dishonestly and fraudulently in relation to the transactions to which it was a party. But they do not need to do so in order to deny that taxpayer the right to reclaim input tax under the Kittel test because that test is concerned with knowledge not dishonesty. It is not relevant to determine whether the conduct alleged by HMRC might amount to dishonesty or fraud by the taxpayer, unless dishonesty or fraud is expressly alleged by HMRC against the taxpayer. If it is, then that dishonesty or fraud must be pleaded, particularised and proved in the same way as it would have to be in civil proceedings in the High Court. Even if it is not, it is important that properly informative particulars of the allegation of both actual and constructive knowledge are given. The appeals were allowed as was HMRC's appeal against the disclosure order.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 476 (TCC)	*HMRC v Martyn Prefect*	UT TCC	The Tribunal considered whether a lorry driver whose cargo included excise goods on which duty had not been paid but who was innocent of any involvement in or knowledge of the criminal enterprise was holding the goods for the purpose of the provisions imposing liability for excise duty. The Tribunal held that it was not fair, reasonable or proportionate to impose evaded excise duty on HGV drivers who are found in possession on the goods at the point that the evasion is discovered if they are not aware that tax has been evaded and it could not be said that they should have been aware. The Tribunal declined to rule on who bears the burden of proof because the FTT had made clear findings of fact that the appellant lacked both actual and constructive knowledge of the tax evasion. The appellant could still be subject to a penalty even if he was not liable for the unpaid excise duty and the FTT had been in error in automatically discharging the penalty. However, they held that the appellant had demonstrated a reasonable excuse for his act, namely his innocence, and they remade the decision to the same effect.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 340 (TCC)	*Denley v HMRC*		This case concerned the seizure of a large quantity of hand rolling tobacco in the Coquelles Control Zone on the French side of the Channel Tunnel, the refusal to restore the tobacco and the imposition of a penalty. It was thought that the case would resolve 'the Coquelles point' namely whether the bilateral arrangement between Britain and France designating the Coquelles Control Zone as containing an excise point treated as being in the United Kingdom is compatible with Article 33 of the Excise Directive which requires the excise point where the goods are held for a commercial purpose to be in a different Member State from the state in which the goods have been released for consumption. HMRC argued that one must interpret the expression "another Member State" in article 33 as including an area in which another Member State has been empowered to give effect to the Excise Directive. However HMRC also argued that the Coquelles point was only relevant to the legality of the seizure of the tobacco and this had not been challenged by the taxpayer. The UT held that the tobacco must be treated as having been "duly condemned" and reliance on the Coquelles point was inconsistent with that assumption. The UT dismissed the other grounds of appeal.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 453	*HMRC v Tottenham Hotspur Limited*	UT TCC	The UT considered whether certain lump sum payments made to two football players contracted to Tottenham Hotspur in connection with the early termination of their contracts were taxable as earnings from their employment and subject to national insurance contributions. Their contracts provided for early termination only by mutual agreement. The UT upheld the decision of the FTT that the lump sum payments were not earnings. The UT held that the true distinction drawn in the case law is between cases where the entire contract of employment is abrogated in exchange for the termination payment, and cases where the payment is made in pursuance of a pre-existing obligation to make such a payment arising under a contract of employment. It is counter-intuitive to say that a payment agreed to terminate an employment contract absolutely is an emolument "from an employment". Although the background to the payment may be the employment contract, the payment itself is not from the employment, but rather in consideration of the termination of the employment. It is different if the payment is an agreed payment in lieu of notice paid in pursuance of an express term. This case fell squarely within the first category.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 14 (TCC)	*Malachy Higgins v HMRC*	UT TCC	The taxpayer had been sentenced to imprisonment for unlawfully dumping waste at his landfill site. The Crown Court made a confiscation order against him under POCA in the sum of £400,000. The NCA took over the income tax and other functions from HMRC for the period 1996 – 2004 in respect of the taxpayer and determined that an additional sum of over £160,000 was owing to HMRC for income tax and penalties in respect of the taxpayer's earnings from allowing hauliers to dump waste illegally at his landfill site. It was not clear how that figure had been arrived at and facts and circumstances outlined by the Court of Appeal in deciding an appeal against the confiscation order and the FTT in its decision on the tax assessment were inconsistent and contradictory. The issue before the UT was whether the compensation order sum represented his gross receipts so that any income tax payable on it had been discharged when the taxpayer paid the full amount. The Tribunal held that the onus on a taxpayer who is appealing a 'best judgment' tax assessment is on him to prove that the assessment was wrong. The taxpayer here had not produced any credible evidence as to his actual turnover or his taxable profits from the business. Any risk of double recovery should have been dealt with when the confiscation order was enforced. The appeal therefore failed.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 0332 (TCC)	*Rashid v Rashid*	Upper Tribunal TCC	The respondent, who was the applicant for rectification of the land register had been the owner of the disputed property until 1982. Whilst the respondent was abroad, the appellant's father had forged transfer documents purporting to transfer title in the property from the respondent to himself. Later in 1989 the father gifted the Property to the appellant and he was registered as proprietor in 1990. The judge in the FTT described the transfer as "collusive". The respondent applied for rectification of the register. The judge found that the transfer had been forged and that the registration of the appellant's father was therefore a mistake for the purposes of Schedule 4 to the LRA 2002. The registration of the appellant was also therefore a mistake for the purposes of that Schedule. The judge found that the appellant was the registered proprietor in possession of the Property. However, a registered proprietor who has caused or substantially contributed to the mistake by fraud or lack of proper care (as the judge found the appellant had done) does not have the protection normally accorded to a registered proprietor, and the register will be rectified unless there are exceptional circumstances that would justify not altering the register. The appellant argued that there were exceptional circumstances that would justify not altering the register, namely that he was in adverse possession and that the respondent's title had been barred. The judge accepted the general point that adverse possession is not ruled out by a squatter's wrongful or even criminal behaviour. However, she held that the respondent cannot take possession of the Property until the register is rectified in his favour. To say that meanwhile the registered proprietor is in the position of a squatter, holding a precarious estate derived from his possession is inconsistent with the provisions of the statute. He is the registered proprietor with the statutory title; it is nonsense to regard him as having an additional title by possession.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 0313 (TCC)	*Charles Palmer v FCA*	Upper Tribunal TCC	The UT considered a challenge to the FCA's decision to prohibit Mr Palmer from exercising any senior management role on the grounds of a lack of competence and capability in the manner in which he had acted as Chief Executive of a large firm of independent financial advisers. It is comparatively rare for the FCA to seek to prohibit individuals from working in the industry purely on the grounds of competence and capability. In this case the FCA contended that Mr Palmer had not learned lessons from disciplinary action that had been taken against him before for failing to ensure that the firms of which he was the Chief Executive had adequate systems and controls in place to ensure fair treatment for the firm's customers. They alleged he had repeated the same mistakes. The Tribunal's jurisdiction over such matters is a supervisory rather than full merits jurisdiction, which means that it can make findings of fact and law and then must consider whether in all the circumstances the decision was one that was reasonably open to the FCA. It must then either dismiss the reference or remit it to the FCA for reconsideration. The Tribunal made findings that Mr Palmer had demonstrated a lack of competence and capability over a long period and that he had not learnt sufficient lessons from his previous disciplinary proceedings. However, the Tribunal did not accept all the factors that led the FCA to conclude that a prohibition order was appropriate. It therefore considered whether the FCA had taken into account irrelevant factors in deciding whether to impose a prohibition order so that it would be appropriate to remit the decision to the FCA for further consideration. However, the Tribunal found that the seriousness of the failings identified would lead inevitably to the FCA reaching the same decision were that course to be followed and accordingly it dismissed the reference.

Lands Chamber

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 398 (LC)	*Hyslop v 38/41 CHG Residents Co Ltd*	Tribunal procedure; landlord and tenant	Whether under the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 the FTT may direct the applicant to provide notice of the proceedings to each respondent (it may); whether FTT may comply with its own obligation to provide a decision notice and written reasons to each party by directing one party to distribute documents to other parties (it may not).
[2018] UKUT 0031 (LC)	*Coates v Marathon Estates Ltd*	Tribunal procedure; tribunal appointed manager	Whether Upper Tribunal has power under s.25, Tribunals, Courts and Enforcement Act 2007 to enforce substantive decisions of FTT (no); whether FTT has power to attach a penal notice to its own order as prelude to enforcement by application in the County Court (yes).
[2017] UKUT 277 (LC)	*JLK Ltd v Ezekwe*	Tribunal jurisdiction; student housing; service charges	Whether the statutory restrictions on residential service charges in ss. 18-30, Landlord and Tenant Act 1985 apply to student accommodation comprising demised bedsits with shared use of lounges, kitchens and dining space, so giving FTT jurisdiction to rule on reasonableness of service charges (no).
[2018] UKUT 24 (LC)	*Vyse v Wyldecrest Parks (Management) Ltd*	Park homes; pitch fee review	Effect of increase in local authority licence fee for protected site on presumption that annual increase in pitch fees for park home occupiers to increase by no more than RPI.
[2018] UKUT 0030 (LC)	*Wyldecrest Parks (Management) Ltd v Santer*	Park homes; jurisdiction	Whether FTT has jurisdiction under s.4, Mobile Homes Act 1983 to determine whether there has been a breach of the Water Resale Order 2006 (it does).
[2017] UKUT 242 (LC)	*Crown Estate Commissioners v Whitehall Court London Ltd*	Leasehold enfranchisement	Whether "no-Act" assumption under Schedule 13, Leasehold Reform Housing and Urban Development Act 1993 restricted to the flat subject to enfranchisement or requiring assumption of "no-Act building".
[2017] UKUT 0233 (LC)	*JGS Properties Ltd v King*	Leasehold enfranchisement	Whether starting point for determining deferment rate to be used for valuation of houses in the West Midlands on enfranchisement different from Sportelli deferment rate applied in Prime Central London.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 0469 (LC)	*Hammerson UK Properties plc v Gowlett (VO)*	Non-domestic rating	The Tribunal explained the approach it would take in future to compliance with procedural rules and case management directions, including repeated requests for extensions of time for compliance, in the light of the decisions of the Supreme Court in *BPP v HMRC* [2017] 1 WLR 2339 and the Court of Appeal in *Denton v White* [2014] 1 WLR 3926.
[2017] UKUT 0460 (LC)	*Simpsons Malt Ltd and others v Jones (VO)*	Non-domestic rating	The Tribunal considered a group of five appeals against decisions of the Valuation Tribunal for England striking out appeals for non-compliance with procedural directions and practice statements. The Tribunal gave guidance on the proper approach to compliance with case management requirements in the light of the decisions of the Supreme Court in *BPP v HMRC* and the Court of Appeal in *Denton v White*, and on the approach to be taken by the Upper Tribunal in appeals from case management decisions of the VTE.
[2017] UKUT 0390 (LC)	*Wilkinson (VO) v Edmundson Electrical Ltd*	Non-domestic rating	Whether chipboard decking, supported by timber joists resting on non-rateable Dexion racking, and steel staircases giving access to the decking, were rateable as part of a warehouse hereditament.
[2017] UKUT 0200 (LC)	*Hughes (VO) v York Museums Trust*	Non-domestic rating	Whether purpose built museums and galleries and historic buildings used as museums should be valued on a profits basis or a notional "contractors" basis. Whether shops and cafes in museum buildings should be treated as part of a single museum hereditament or entered in the rating list as separate hereditaments in their own right. Whether commercial trading subsidiary of museum trust should be treated as in occupation of shops and cafes.
[2017] UKUT 0138 (LC)	*Sainsbury's Supermarkets Ltd and others v Sykes (VO)*	Non-domestic rating	Whether the sites of automated teller machines operated by banks in supermarkets, convenience stores and petrol filling stations should be entered separately from host premises in non-domestic rating list. Whether bank or host in occupation of the sites for the purpose of liability to rating.
[2017] UKUT 0133 (LC)	*Celsa Steel (UK) Ltd v Webb*	Non-domestic rating	The Tribunal determined the rateable value of the Tremorfa Steelworks in Cardiff having regard to the state of the world steel market.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 0062	*Re section 14(5)(d), Land Compensation Act 1961*	Compensation	The Tribunal considered the meaning and effect of the highway scheme disregard applied when determining what planning permission should be assumed when assessing compensation for compulsory acquisition.
[2017] UKUT 0238 (LC)	*Huddlestone v Bassetlaw District Council*	Compensation	The Tribunal ruled on the scope of the exclusion of compensation for losses caused by the prohibition in a stop notice of an activity involving a breach of planning control.
[2017] UKUT 0091 (LC)	*SME Hammersmith v Transport for London*	Compensation	The Tribunal awarded compensation of £1.5m for the extinguishment of the business of a leasehold franchise restaurant as a result of the Crossrail project.
[2017] UKUT 0135 (LC)	*Harding and Clements v Secretary of State for Transport*	Compensation	The first compensation case to arise out of the HS2 project. The Tribunal determined as a preliminary issue whether two rural properties separated by a lane should be treated as a single hereditament for the purpose of assessing whether they were blighted by safeguarding directions given to secure the proposed route of HS2.
[2017] UKUT 0240 (LC)	*James Hall & Company (Property) Ltd v Maughan*	Restrictive covenants	The Tribunal considered and allowed an application for the modification of a restrictive covenant to enable a pub on a housing estate in County Durham to be used as a convenience store.
[2017] UKUT 0430 (LC)	*Pendennis Shipyard (Holdings) Ltd v A&P Falmouth Ltd*	Restrictive covenants	The Tribunal considered and allowed an application for the modification of restrictive covenants binding premises at Falmouth docks imposed to protect a commercial boat building business from competition.
[2017] UKUT 0451 (LC)	*Re Bater's Application*	Restrictive covenants	The Tribunal refused the application of an original covenantor for the release or modification of a restrictive covenant recently imposed for the purpose of sharing development value, and left the parties to reach a commercial bargain as they had originally intended.

Immigration and Asylum Chamber

Case	Subject	Commentary
JA (child – risk of persecution) Nigeria [2016] UKUT 00560 (IAC), 24 November 2016	Children	A child can be at risk of persecutory harm contrary to the UN Convention on the Rights of the Child in circumstances where a comparably placed adult would not be at such a risk.
Kaur (children's best interests / public interest interface) [2017] UKUT 00014 (IAC), 10 January 2017	Children	The seventh of the principles in the *Zoumbas* code does not preclude an outcome whereby the best interests of a child must yield to the public interest. This approach has not been altered by Part 5A of the Nationality, Immigration and Asylum Act 2002.
R (on the application of ZM and SK) v The London Borough of Croydon (Dental age assessment) [2016] UKUT 00559 (IAC), 11 November 2016	Children	Considerable circumspection must always be deployed in responding to a claim that statistical evidence tends to prove a fact about an individual.
BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC), 23 January 2017	Country Guidance	The Upper Tribunal gave wide guidance about the risk on return to Baghdad. It found that the level of general violence in Baghdad city remained significant, but the current evidence does not justify departing from the conclusion of the Tribunal in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC).
VB and Another (draft evaders and prison conditions) Ukraine CG [2017] UKUT 00079 (IAC), 6 March 2017	Country Guidance	It was not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings for that act, although if a draft-evader faced prosecution proceedings, the Criminal Code of Ukraine did provide for a prison sentence for such an offence. It would be a matter for any Tribunal to consider, in the light of developing evidence, whether there were aggravating matters which might lead to imposition of an immediate custodial sentence. There was a real risk that the conditions of detention and imprisonment in Ukraine would subject a person returned to be detained or imprisoned to a breach of Article 3 ECHR.
ZMM (Article 15(c)) Libya CG [2017] UKUT 00263 (IAC), 28 June 2017	Country Guidance	The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person.
R (on the application of AM (a child by his litigation friend OA and OA)) v Secretary of State for the Home Department (Dublin – Unaccompanied Children – Procedural Safeguards) [2017] UKUT 00262 (IAC), 5 June 2017	Dublin Regulation	Regulation 604/13/EU (the Dublin Regulation) occupies the field to which it applies and operates as a measure of supreme EU law therein.

Case	Subject	Commentary
R (on the application of RM) v Secretary of State for the Home Department (Dublin; Article 27(1); procedure) [2017] UKUT 00260 (IAC), 11 May 2017	Dublin Regulation	The scope of a challenge to a transfer decision brought, pursuant to art. 27 of Regulation 604/13 (Dublin III), on the basis that the decision infringes the second subparagraph of art. 19(2) of Dublin III is limited to 'traditional' public law grounds.
R (on the application of SA & AA) v Secretary of State for the Home Department (Dublin – Article 8 ECHR – interim relief) IJR [2016] UKUT 00507 (IAC), 12 October 2016	Dublin Regulation	By virtue of the decision of the Court of Appeal in *ZAT & Ors* the duty to admit a person to the United Kingdom under Article 8 ECHR without adherence to the initial procedural requirements of the Dublin Regulation requires an especially compelling case.
R (on the application of Salah Ali Eisa) v Secretary of State for the Home Department (Dublin; Articles 27 and 17) [2017] UKUT 00261 (IAC), 24 May 2017	Dublin Regulation	Judicial review is a remedy of sufficient flexibility to comply with Article 27(1) of Regulation 604/2013 (Dublin III).
Arranz (EEA Regulations – deportation – test) [2017] UKUT 00294 (IAC), 22 August 2017	European Union	The Upper Tribunal held that the burden of proving that a person represented a genuine, present and sufficiently threat affecting one of the fundamental interests of society under Regulation 21(5)(c) of the EEA Regulations rested on the Secretary of State. The standard of proof was the balance of probabilities. Membership of an organisation proscribed under the laws of a foreign country did not without more satisfy the aforementioned test. The *"Bouchereau"* exception was no longer good law.
Banger (Unmarried Partner of British National) [2017] UKUT 00125 (IAC), 30 March 2017	European Union	The Upper Tribunal referred to the CJEU the question as to whether the principles contained in the decision in *Surinder Singh* (Case C-370/90) operate so as to require a Member State to issue or, alternatively, facilitate the provision of a residence authorisation to the non-Union unmarried partner of a EU citizen who, having exercised his Treaty right of freedom of movement to work in a second Member State, returns with such partner to the Member State of his nationality.
Capparelli (EEA Nationals – British Nationality) [2017] UKUT 00162 (IAC), 20 January 2017	European Union	An EEA national exercising Treaty rights in the United Kingdom is not "settled" within the compass of section 1(1) of the British Nationality Act 1981 since such person's lawful residence is conditional upon remaining economically active.
R (on the application of Aydogdu) v Secretary of State for the Home Department (Ankara Agreement – family members – settlement) [2017] UKUT 00167 (IAC), 20 March 2017	European Union	The settlement of migrant Turkish nationals and their family members does not fall within the scope of the "stand-still clause" in Article 41(1) of the Ankara Agreement (ECAA) Additional Protocol as it is not necessary for the exercise of freedom of establishment under Article 13.

Case	Subject	Commentary
R (on the application of Gabor) v Secretary of State for the Home Department (Reg 29AA: interpretation) [2017] UKUT 00287 (IAC), 25 October 2016	European Union	An application for Temporary Admission pursuant to reg 29AA of the Immigration (EEA) Regulations 2006 must be granted unless the applicant's appearance may cause serious troubles to public policy or public security. Proportionality is not the test, and the cost of facilitating the applicant's appearance is not a relevant consideration.
R (on the application of Said Aitjilal) v Secretary of State for the Home Department (EEA Regulations – deportation – reassessment – regulation 24(5)) [2016] UKUT 00563 (IAC), 9 December 2016	European Union	Neither a decision to make a deportation order nor a notice of intention to make a deportation order triggers the two year period specified in regulation 24(5) of the EEA Regulations. The two year period begins upon the making of the deportation order itself.
TM (EEA nationals – meaning; NI practitioners) Zimbabwe [2017] UKUT 00165 (IAC), 14 March 2017	European Union	Schedule 1, paragraph 1 (d) of the Immigration (European Economic Area) (Amendment) Regulations 2012 amended the definition of EEA national to exclude those who are also British Citizens, but that change was subject to the transitional provisions set out in Schedule 3 of those regulations.
CS and Others (Proof of Foreign Law) India [2017] UKUT 00199 (IAC), 2 May 2017	Evidence	The content of any material foreign law is a question of fact normally determined on the basis of expert evidence.
Lama (video recorded evidence – weight – Art 8 ECHR) [2017] UKUT 00016 (IAC), 13 January 2017	Evidence	Video recorded evidence from witnesses is admissible in the Upper Tribunal. Its weight will vary according to the context. Alertness among practitioners and parties to the Upper Tribunal's standard pre-hearing Directions and compliance therewith are crucial.
R (on the application of Agha) v Secretary of State for the Home Department (False document) [2017] UKUT 00121 (IAC), 21 February 2017	Evidence	For a document to be a false document under the Immigration Rules there must have been an element of dishonesty in its creation and if this is not immediately obvious in a case of an inaccurate document then that element must be engaged with in any refusal.
R (on the application of Nawaz) v Secretary of State for the Home Department (ETS: review standard/evidential basis) [2017] UKUT 00288 (IAC), 20 June 2017	Evidence	Deception in ETS cases is not a question of precedent fact, except in particular circumstances, for example those in *Abbas* [2017] EWHC 78 (Admin). The standard of review is on ordinary judicial review principles, requiring fair consideration, bearing in mind both the potentially serious effects of deception findings in general, and the requirements of effective administration.
R (on the application of SS) v Secretary of State for the Home Department ("self-serving" statements) [2017] UKUT 00164 (IAC), 13 March 2017	Evidence	The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation.

Case	Subject	Commentary
VT (Article 22 Procedures Directive – confidentiality) Sri Lanka [2017] UKUT 00368 (IAC), 19 July 2017	Evidence	There was no general duty of inquiry upon the examiner to authenticate documents produced in support of a protection claim. There may be exceptional situations when a document could be authenticated by a simple process of inquiry which would conclusively resolve the authenticity and reliability of a document. If it was considered necessary to make an inquiry in the country of origin, the country of asylum must obtain the applicant's written consent. Disclosure of confidential information without consent was only justified in limited and exceptional circumstances.
Ahmed and Others (deprivation of citizenship) [2017] UKUT 00118 (IAC), 10 February 2017	Immigration and Asylum generally	While the two fold duties enshrined in section 55 of the Borders, Citizenship and Immigration Act 2009 are imposed on the Secretary of State, the onus of making representations and providing relevant evidence relating to a child's best interests rests on the appropriate parental figure.
Chin and Another (former BOC/Malaysian national – deportation) [2017] UKUT 00015 (IAC), 11 January 2017	Immigration and Asylum generally	The deportation of a former Malaysian national and former BOC is liable to be deemed unlawful where relevant Government Policies relating to inter-state arrangements with Malaysia have not been taken into account or given effect.
Neshanthan (cancellation or revocation of ILR) [2017] UKUT 00077 (IAC), 17 January 2017	Immigration and Asylum generally	Article 13 of the Immigration (Leave to enter and Remain) Order 2000/1161 (the "2000 Order") applies to holders of indefinite leave to remain ("ILR") who travel to a country or territory outside the common travel area so that their ILR does not lapse but continues if Article 13(2)-(4) are satisfied.
PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC), 6 February 2017	Immigration and Asylum generally	A Tamil female single head of household residing in the former conflict zone of Northern and North Eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary State agents.
Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 00196 (IAC), 20 April 2017	Immigration and Asylum generally	The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40 of the British Nationality Act 1981.
R (on the application of Anjum) v Entry Clearance Officer, Islamabad (entrepreneur – business expansion – fairness generally) [2017] UKUT 00406 (IAC), 16 August 2017	Immigration and Asylum generally	A proposal by a Tier 1 Entrepreneur applicant who operated an existing business to use part of the prescribed minimum finance of £200,000 to purchase a second business for the purpose of developing and expanding the existing enterprise was compatible with paragraph 245 of the Immigration Rules. Moreover, an immigration interview may be unfair, thereby rendering the resulting decision unlawful, where inflexible structural adherence to prepared questions excluded the spontaneity necessary to repeat or clarify obscure questions and/or to probe or elucidate answers given.

Case	Subject	Commentary
R (on the application of H) v Secretary of State for the Home Department (application of AA (Iraq CG)) [2017] UKUT 00119 (IAC), 14 February 2017	Immigration and Asylum generally	A proper reading of the Upper Tribunal's decision in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC) reveals the importance of making findings of fact regarding P's circumstances, in order properly to apply the country guidance in that case.
R (on the application of Islam and Pathan) v Secretary of State for the Home Department (Tier 2 licence – revocation – consequences) [2017] UKUT 00369 (IAC), 17 August 2017	Immigration and Asylum generally	Unlike the situation for Tier 4 applicants, a person whose sponsor's Tier 2 licence was revoked for non-compliance with the Immigration Rules was not entitled to challenge a decision not to provide him/her with a period of 60 days in which to secure an alternative sponsor. *Patel* [2011] UKUT 211 (IAC) distinguished.
R (on the application of RN) v Secretary of State for the Home Department (paragraph 245AAA) [2017] UKUT 00076 (IAC), 12 January 2017	Immigration and Asylum generally	On a proper construction of paragraph 245AAA(a)(i) of HC 395, an absence from the United Kingdom for a period of more than 180 days in one of the relevant 12 month periods will entail a failure to satisfy the requirements of paragraph 245CD.
Smith (paragraph 391(a) – revocation of deportation order) [2017] UKUT 00166 (IAC), 17 March 2017	Immigration and Asylum generally	In cases involving convictions for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, the Secretary of State's policy, as expressed in paragraph 391(a) of the Immigration Rules, is that the public interest does not require continuation of a deportation order after a period of ten years has elapsed.
RLP (BAH revisited – expeditious justice) Jamaica [2017] UKUT 00330 (IAC), 11 April 2017	Immigration and Asylum generally	The decision in *BAH (EO – Turkey – Liability to Deport)* [2012] UKUT 00196 (IAC) had long been overtaken by the significant statutory and policy developments and reforms effected by the Immigration Act 2014 and the corresponding amendments of the Immigration Rules, coupled with *YM (Uganda)* [2014] EWCA Civ 1292 at [36] - [39]. In cases where the public interest favouring deportation of an immigrant was potent and pressing, even egregious and unjustified delay on the part of the Secretary of State in the underlying decision making process was unlikely to tip the balance in the immigrant's favour in the proportionality exercise under Article 8(2) ECHR.
Sleiman (deprivation of citizenship; conduct) [2017] UKUT 00367 (IAC), 19 July 2017	Immigration and Asylum generally	In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.
Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 00013 (IAC), 9 January 2017	Immigration and Asylum generally	Where the case of a foreign national who is not an offender does not satisfy the requirements of the Article 8 ECHR regime of the Immigration Rules, the test to be applied is that of compelling circumstances.

Case	Subject	Commentary
Adam (Rule 45: authoritative decisions) [2017] UKUT 00370 (IAC), 25 August 2017	Practice and Procedure	A decision with the status of "authoritative" within the meaning of section 107 of the 2002 Act was to be regarded as "binding" within the meaning of rule 45 of the Upper Tribunal Rules.
Awuah and Others (Wasted Costs Orders – HOPOs – Tribunal Powers) [2017] UKFTT 00555 (IAC), 13 July 2017	Practice and Procedure	The First-tier Tribunal was not empowered to make a Wasted Costs Order against a Home Office Presenting Officer. The relationship of Secretary of State and HOPO was governed by the *Carltona* principle.
Elayi (fair hearing – appearance) [2016] UKUT 00508 (IAC), 15 November 2016	Practice and Procedure	Justice must not only be done but must manifestly be seen to be done.
R (on the application of AO & AM) v Secretary of State for the Home Department (stay of proceedings – principles) [2017] UKUT 00168 (IAC), 28 March 2017	Practice and Procedure	The Upper Tribunal has the same power as the High Court to stay proceedings.
R (on the application of Ayache) v Secretary of State for the Home Department (paragraph 353 and s94B relationship) [2017] UKUT 00122 (IAC), 8 March 2017	Practice and Procedure	Although paragraph 353 does not refer in terms to certification, a decision certified pursuant to s 94b is plainly a decision on a "human rights claim" albeit a claim regarding temporary removal as opposed to removal for a more lengthy period if a statutory appeal is unsuccessful.
R (on the application of AM and others) v Secretary of State for the Home Department (liberty to apply – scope – discharging mandatory orders) [2017] UKUT 00372 (IAC), 8 September 2017	Practice and Procedure	Section 25 (2) (c) of TCEA 2007 invested the Upper Tribunal with the same powers as the High Court in matters of liberty to apply. The mechanism of liberty to apply could be invoked for the purpose of pursuing a declaratory order that the Tribunal's principal order in judicial review proceedings had not been satisfied, particularly where the latter was a mandatory order. In evaluating the scope of liberty to apply in any given case the Tribunal would seek to give effect to the overriding objective. A mandatory order may be discharged where it had served its main purpose and its perpetuation would advance no discernible end.
R (on the application of Al-Anizy) v Secretary of State for the Home Department (undocumented Bidoons – Home Office policy) [2017] UKUT 00197 (IAC), 25 April 2017	Practice and Procedure	The Home Office family reunification policy embraces a series of flexible possibilities for proof of identity. In any case where withdrawal or a consent order is proposed judicial scrutiny and adjudication are required.

Case	Subject	Commentary
R (on the application of FT) v Secretary of State for the Home Department ("rolling review"; challenging leave granted) [2017] UKUT 00331 (IAC), 30 June 2017	Practice and Procedure	The intrinsic undesirability of and the strong general presumption against allowing a "rolling review" in judicial review proceedings whereby the Upper Tribunal admitted material evidence that had not been considered by the primary decision maker were important factors in considering an application to amend grounds to challenge a supplementary or new decision. However, the decision whether to allow amendments of the grounds of challenge was a case management decision taking account of all relevant considerations.
R (on the application of MMK) v Secretary of State for the Home Department (consent orders – legal effect – enforcement) [2017] UKUT 00198 (IAC), 5 May 2017	Practice and Procedure	The commonly used forms of consent order do not expose either party to possible contempt action or other sanction. The remedy for non – compliance with a consent order will normally be the initiation of a fresh judicial review claim
R (on the application of Majera) v Secretary of State for the Home Department (bail conditions: law and practice) [2017] UKUT 00163 (IAC), 13 March 2017	Practice and Procedure	A defect in framing the primary condition of bail granted by the First-tier Tribunal under paragraph 22 of Schedule 2 to the Immigration Act 1971 does not render the grant of bail void.
R (on the application of Mohibullah) v Secretary of State for the Home Department (TOEIC – ETS – judicial review principles) [2016] UKUT 00561 (IAC), 23 December 2016	Practice and Procedure	Where there is a multiplicity of decision making mechanisms, some generating a right of appeal and others not, there is a public law duty on the decision maker to be aware of the options and to take same into account when opting for a particular mechanism.
R (on the application of Munyua) v Secretary of State for the Home Department (Parties' responsibility to agree costs) [2017] UKUT 00078 (IAC), 13 February 2017	Practice and Procedure	Where judicial review proceedings are resolved by settlement, the parties are responsible for doing all they can to agree costs, both as to liability and amount, rather than leaving this to the decision of the Tribunal, which is likely to carry its own penalty.
R (on the application of Mustafa) v Secretary of State for the Home Department (2000 Order – notification of representation) [2017] UKUT 00407 (IAC), 25 August 2017	Practice and Procedure	The effect of Article 8ZA of the Immigration (Leave to Enter and Remain) Order 2000 (SI No. 2000/1161), considered in tandem with the Home Office published policy, was that where the Home Office received notification that an applicant had instructed a representative or had a new representative and the specified requirements were satisfied, the notification must be accepted and the Home Office internal records must be updated accordingly. Conversely, where the notification was rejected for non-compliance with any of the specified requirements, both the applicant and the representative must be informed.

Case	Subject	Commentary
R (on the application of Saha and Another) v Secretary of State for the Home Department (Secretary of State's duty of candour) [2017] UKUT 00017 (IAC), 13 January 2017	Practice and Procedure	It is impossible to overstate the importance of the duty of candour in judicial review proceedings. Any failings by the Executive in this respect threaten the guarantees upon which judicial review is founded and are inimical to the rule of law.
R (on the application of Zia and Hossan) v Secretary of State for the Home Department (Strike out – Reinstatement refused – Appeal) [2017] UKUT 00123 (IAC), 8 March 2017	Practice and Procedure	A decision of the Upper Tribunal refusing to exercise its power to reinstate a judicial review claim which has been struck out may be the subject of an application for permission to appeal to the Court of Appeal.
SF and others (Guidance, post–2014 Act) Albania [2017] UKUT 00120 (IAC), 16 February 2017	Practice and Procedure	Even in the absence of a "not in accordance with the law" ground of appeal, the Tribunal ought to take the Secretary of State's guidance into account if it points clearly to a particular outcome in the instant case.
Saimon (Cart Review: "pending") [2017] UKUT 00371 (IAC), 25 August 2017	Practice and Procedure	An appeal in respect of which a *Cart* judicial review had quashed a refusal of permission to appeal was again "pending" within the meaning of section 104(2)(a) of the 2002 Act.
Shabir Ahmed and others (sanctions for non – compliance) [2016] UKUT 00562 (IAC), 1 December 2016	Practice and Procedure	Persistent and egregious non-compliance with Upper Tribunal orders, directions and rules will attract appropriate sanctions.
Sivapatham (Appearance of Bias) [2017] UKUT 00293 (IAC), 7 July 2017	Practice and Procedure	Indications of a closed judicial mind, a pre-determined outcome, engaged the appearance of bias principle and were likely to render a hearing unfair. Provisional or preliminary judicial views were permissible, provided that an open mind is maintained. An appellant did not require the permission of the tribunal to give evidence. This did not prevent the application of fair and sensible case management and, further, was subject to the doctrine of misuse of the tribunal's process.
TPN (FtT appeals – withdrawal) Vietnam [2017] UKUT 00295 (IAC), 21 July 2017	Practice and Procedure	The public law character of appeals to the First tier Tribunal was reflected in the regulatory requirement governing the withdrawal of appeals that any proposed withdrawal of an appeal must contain the reasons for the course mooted and must be judicially scrutinised, per rule 17 of the First tier Tribunal Rules and rule 17 of the Upper Tribunal Rules.
Uddin (2000 Order – notice to file) [2017] UKUT 00408 (IAC), 11 September 2017	Practice and Procedure	Where the Secretary of State relied on a curtailment notice as having been deemed to have been given by being placed "on file' in accordance with article 8ZA(4) of the Immigration (Leave to Enter and Remain) Order 2000 (as amended), it was for the Secretary of State to establish that that article applied. The Immigration (Leave to Enter and Remain) Order 2000 allows for the sending of a curtailment notice to an overseas address.

Case	Subject	Commentary
VA (Solicitor's non-compliance: counsel's duties) Sri Lanka [2017] UKUT 00012 (IAC), 5 January 2017	Practice and Procedure	Counsel's duty is owed to the client. It does not extend to defending non-compliant instructing solicitors. It is for non-compliant instructing solicitors to defend themselves by proactively arranging their attendance before the tribunal in appropriate circumstances.
ZEI and others (Decision withdrawn – FtT Rule 17 – considerations) Palestine [2017] UKUT 00292 (IAC), 8 May 2017	Practice and Procedure	Rule 17 of the First tier Tribunal Rules clearly envisaged that in general the appeal was to be treated as withdrawn. It would continue only if a good reason was identified for allowing it to proceed despite being an appeal against a decision that would not have effect in any event. The appellant needed the opportunity to advance a case why he considered an appeal should not be treated as withdrawn, and the SSHD needed the opportunity to respond. The Tribunal had no power to require the Secretary of State to give (or even to have) a good reason for her decision.

Senior President's Annual Report 2018

Upper Tribunal reported cases arising in the Social Entitlement Chamber (Social Security and Child Support)

Citation	Parties	Jurisdiction	Commentary
[2016] UKUT 323 (AAC) Reported as [2017] AACR 2	*ML v Secretary of State for Work and Pensions (DLA)*	SSCS	The claimant, who had autism and learning disabilities, had lived for some two years in a residential care home partly funded by the NHS. The Upper Tribunal (UT) held that: 1. the statutory requirement under regulation 9 of the DLA Regulations was met for any period where the claimant was resident in a care home and the costs of any qualifying services were publicly funded, and it was not necessary under the legislation for all three qualifying services to be provided to him; 2. the statutory definition of "care home" in section 72(9) required the provision of accommodation and personal care (or nursing care) but was silent as to the quality of the personal care provided. It was concerned with the nature or function of the establishment not the services actually provided to any particular individual. Regulation 9 applied if the claimant was in an establishment which had the characteristics of a care home; 3. (obiter – i.e. not essential to the decision) it was the statutory responsibility of the Care Quality Commission (CQC) to assess the quality of care in residential care homes and to correct inadequate provision. Where the CQC had judged that those standards were met, there was no proper basis for the DWP or tribunals to intervene, as the CQC was the independent and expert body set up to make such judgments; 4. Regulation 9 was a proportionate means of avoiding duplication of state provision to meet the care needs of disabled people: the judgment of the Supreme Court in Mathieson distinguished. Where the system operated as it should, the care needs of disabled people in residential homes would be met. The system recognised that there will be failings and had processes in place to remedy them. As the state was paying for care in the residential home, it was entitled to adopt a position whereby deficiencies were remedied, rather than paying extra to substitute for inadequate care. In the light of the above, regulation 9 was compatible with Article 14 of the European Convention on Human Rights and the claimant did not suffer discrimination contrary to Article 14.

Citation	Parties	Jurisdiction	Commentary
[2016] NICom	*AEKM v Department for Communities (JSA)*	SSCS	This case concerned the three-month "living in test" for habitual residence in Jobseeker's Allowance (JSA), the factors to be considered in deciding whether a claimant meets the test and the compatibility of that test with EU law. The UT allowed the appeal, holding that: 1. the meaning of "living in" was not defined in regulation 85A(2) of the Jobseeker's Allowance Regulations (NI) 1996 and an element of ambiguity arose in applying it. Although the amending legislation was targeted at new migrants, persons who were not the target could nevertheless fall within its scope; 2. in addressing the position of persons resident in the Common Travel Area (CTA) who were returning after a temporary absence, existing case law on the habitual residence test, such as CIS/4474/2003, continues to have relevance. A decision maker will need to decide firstly whether the claimant has ever lived in the CTA. If so, and they are returning from a temporary absence the question arises as to whether he/she has ever ceased living in the CTA and has recommenced living there on return; 3. a range of factors which continue to link the claimant to the CTA whilst absent must be considered to determine whether he/she has ceased living in the CTA, and in particular whether that is where he or she has a home; 4. under EU law (following *Collins v Secretary of State for Work and Pensions (C-138/02)*, it is legitimate to link entitlement to JSA to a genuine connection with the labour market of the host Member State and, whilst a residence is appropriate for that purpose, it must not exceed what is necessary for the national authorities be satisfied the person is genuinely seeking work; 5. whereas a three-month residence test which precluded consideration of other representative factors may be disproportionate and contrary to EU law (following *Prete* (C-367/11)), the three-month test here was not simply a presence test, as a range of factors must be considered to determine whether someone is living in the CTA. Therefore, regulation 85A(2)(a) was not contrary to EU law if applied in a broad way.

Citation	Parties	Jurisdiction	Commentary
[2016] UKUT 529 (AAC) Reported as [2017] AACR 25	*SK v Secretary of State for Work and Pensions (AA)*	SSCS	This decision dealt with the scope of rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008, which is limited to matters of procedure and the UT's handling of the claimant's application. It did not encompass judicial errors. The Upper Tribunal held that rule 43 does not apply to procedural irregularities in First-tier Tribunals and does not allow challenges to the Upper Tribunal's decision or reasoning.
[2016] UKUT 538 (AAC) Reported as [2017] AACR 19	*DS v Secretary of State for Work and Pensions (PIP)*	SSCS	The Upper Tribunal held that: 1. The "registered medical practitioner" (who sits on certain First-tier Social Security Tribunals in accordance with the Senior President of Tribunals' Practice Statement) is defined as "a fully registered person within the meaning of the Medical Act 1983 whether or not they hold a licence to practise under that Act", and therefore it was a relevant qualification for appointment to a tribunal whether the person had a licence to practise, provided that they were fully registered; 2. A tribunal considering an appeal against a supersession decision must identify a ground of supersession under the legislation, a factual basis for the superseding decision and the date from which that decision was effective. In doing so all grounds of supersession could apply in so far as the conditions they contain are made out, without any artificial rules to try to make them mutually exclusive.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 69 (AAC) Reported as [2017] AACR 23	*AR v Secretary of State for Work and Pensions*	SSCS	The Upper Tribunal held that: 1. HMRC had the details of the father's income for the latest available tax year when it received the request from the Child Maintenance Service (CMS) and should have provided that information. The First-tier Tribunal had not been "bound" to accept the figures mistakenly supplied by HMRC; 2. Where a person received a sum of money on account of expenses which could be drawn on as they arose then this would be income charged to tax within the meaning of regulation 36 of the Child Support Maintenance Calculation Regulations 2012, and the figure the CMS would use to calculate maintenance would include this sum. However, the father had incurred expenses for which he had not been reimbursed, and therefore had not actually received any income or any sort of benefit in kind, and in these situations the expenses would not be "income on which the non-resident parent [i.e. the father] was charged to tax" within regulation 36. This interpretation was consistent with the policy intention of the legislation and the principles established in previous case law.
[2017] UKUT 104 (AAC) Reported as [2017] AACR 31	*AS v Secretary of State for Work and Pensions (PIP)*	SSCS	Assistance to self-catheterise by itself is not therapy for the purposes of PIP Daily Living Activity 3 ("managing therapy or monitoring a health condition"). Daily Living Activity 5 ("managing toilet needs or incontinence") represented an attempt to calibrate toilet needs and problems resulting from incontinence in terms of severity, and that intention might be undermined if some situations which were specifically provided for in activity 5 were also held to fall within the more general provisions of activity 3.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 9 (AAC) Reported as [2017] AACR 28	*Adams v Secretary of State for Work and Pensions and Green (CSM)*	SSCS	The effect of this decision was that the UT's usual practice of anonymising the names of the parties in its decisions would continue on the basis that it was explained to all the parties to the appeal that, subject to a further order by the UT, the practice of anonymising decisions would only be applied if no party objected to it, and its effects were that: (a) non-parties who obtained decisions either directly or indirectly from the UT would do so in an anonymised form, and (b) if someone asked the UT for the identity of the anonymised persons the parties would be notified and given an opportunity to object. The UT's practice did not prevent publication by a party or anyone else of the identities of the individuals involved in the case, and accordingly if a party wanted an order to be made to prevent publication they should ask for one.
[2017] UKUT 105 (AAC) Reported as [2017] AACR 32	*RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ (PIP)*	SSCS	The principal issue before the Three-judge Panel of the Upper Tribunal was the interpretation of the word "safely" as defined in regulation 4(4), and of the word "safety" in the phrase "for the purpose of ensuring [the claimant's] safety" in the definition of supervision in Part 1 of Schedule 1 of the Social Security (Personal Independence Payment) Regulations 2013. The UT allowed the appeals, finding that: 1. the meaning of "safety" was to be approached consistently with "safely" in regulation 4(4)(a); 2. an assessment under paragraph 4(2A)(a) of the PIP Regulations that an activity cannot be carried out safely did not require that the occurrence of harm was "more likely than not". A tribunal must consider whether there was a real possibility that could not be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. Both the likelihood of the harm occurring and the severity of the consequences were relevant; 3. if, for the majority of days, a claimant was unable to carry out an activity safely or required supervision to do so, then the relevant descriptor applied. That may be so even though the harmful event or the event which triggered the risk actually occurred on less than 50 per cent of the day; 4. the same approach applied to the assessment of a need for supervision.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 145 (AAC) Reported as [2017] AACR 34	*GE v Secretary of State for Work and Pensions (ESA)*	SSCS	The two main issues in this appeal were whether, at the date of her claim, the claimant was a former worker who had retained that status and whether she had acquired a right of permanent residence in the UK before the date of the Secretary of State's decision. The UT held that: 1. whether a claimant satisfied the right to reside test was assessed down to the date of the decision, so that if the claimant did not have a relevant right of residence at the date of claim but acquired one before the date of the decision, then the test was satisfied from the date the right was acquired; 2. although a right of residence as a jobseeker did not count towards the continuous five-year period of legal residence required to attain a permanent right of residence under EU law, it did count as residence "in accordance with" Immigration (European Economic Area) Regulations 2006 and could therefore, as a matter of domestic law only, give rise to a permanent right of residence under regulation 15(1)(a); 3. as the words "in accordance with these Regulations" were to be given their natural meaning, even though the right of residence for an initial period of three months did not support an entitlement to benefit during those three months, it did count towards the subsequent acquisition of a permanent right or residence under regulation 15(1)(a) because it was "in accordance with" regulation 13 of the 2006 Regulations.

Other UT decisions

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 257 (AAC)	LS and RS v Commissioners for Her Majesty's Revenue and Customs (TC)	SSCS	The Three-Judge Panel of the UT decided: "As soon as the Commissioners for Her Majesty's Revenue and Customs have made a decision under section 18 of the Tax Credits Act 2002 for a tax year, any decision made under section 16 for that tax year ceases retrospectively to have any operative effect, any appeal that has been brought against that section 16 decision therefore lapses, the First-tier Tribunal ceases to have jurisdiction in relation to that appeal and that tribunal must strike out the proceedings."
[2017] UKUT 174 (AAC)	Secretary of State for Work and Pensions v Carmichael and Sefton BC (HB)	SSCS	The UT examined, in the context of the "under-occupancy charge" or "bedroom tax", the powers of the First-tier Tribunal where secondary legislation results in an undisputed breach of rights under the European Convention on Human Rights. The Secretary of State was granted permission to appeal the Court of Appeal in relation to the specific jurisdiction point raised. Pending the outcome of this appeal, the Upper Tribunal has suspended the effect of this decision and local authorities have been advised to take no action on any outstanding "under-occupancy charge" appeal in the meantime.
[2017] UKUT 324 (AAC)	R (CJ) and SG v Secretary of State for Work and Pensions	SSCS	The Three-Judge Panel of the Upper Tribunal held that a claimant has a statutory right of appeal to the First-tier Tribunal where the Secretary of State refuses to extend time to admit a late application for mandatory reconsideration.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 471 (AAC)	Nuneaton and Bedworth Borough Council v RH and Secretary of State for Work and Pensions	SSCS	The Three-Judge Panel held that, under regulation B13 of the Housing Benefit Regulations 2006 (relating to the "under-occupancy" charge), a claimant is not just entitled to a room that could be used as a bedroom but a room for a person with the characteristics of the applicable head in paragraph (5). A room should be classified with reference to the actual occupants or class of occupants. For example, in this case, If each of the available bedrooms is too small to accommodate two children they are entitled to their own bedrooms.

Court judgments

Citation	Parties	Jurisdiction	Commentary
[2017] CSIH 4	*Slezak v Secretary of State for Work and Pensions*	SSCS	The claimant was a 16 year old Polish national who had resided in the UK with her mother who was also Polish and a jobseeker (i.e. a "qualified person"). The claimant was attending an educational course in the UK immediately before her mother ceased to be a qualified person on leaving the UK. When the mother returned to Poland, and the claimant remained in the UK, the claimant fell within the definition of a "family member who has retained the right of residence" under reg. 10(1) and (3) of the Immigration (European Economic Area) Regulations 2006 (the "I(EEA) Regs"). It followed that the claimant had the extended right of residence provided for by regulation 14(3) of the I(EEA) Regs. It was not correct for the Upper Tribunal to exclude a person in the claimant's circumstances from habitual residence by reason of regulation 21AA of the I(EEA) Regulations and thence from entitlement to income support under that regulation as, properly construed, reg. 21AA(3)(b) relates to a jobseeker present in the UK, not (as in this case) to a family member of someone who has ceased to be a jobseeker within the UK.
Case C-430/15 CJEU	*Secretary of State for Work and Pensions v Tolley*	SSCS	The European Court of Justice (CJEU) ruled that DLA care component is "exportable" (i.e. UK citizens who move to another EU Member state may be entitled to receive that benefit) in cases where the claimant has previously been insured in the UK but is no longer being employed.

Citation	Parties	Jurisdiction	Commentary
[2016] CSIH 84 Reported as [2017] AACR 10	*DK v Secretary of State for Work and Pensions*	SSCS	The issue in this case was whether appellant had been overpaid income support (IS) of over £45,000 which was recoverable from her because she had been living together with a man (GO) as his wife. The appellant's ground of appeal was that she and GO were not living together as husband and wife during the period in question; both the appellant and GO asserted that they did not have a sexual relationship and that GO was homosexual, and it was contended that this precluded any finding that they were living together as husband and wife. *Held*, dismissing the claimant's appeal, that: 1. a tribunal must address the applicable legal test on the basis of the whole of the evidence, but in doing so it was not necessary that it should provide a detailed analysis of the evidence divided into discrete components; nor was it necessary that the tribunal should explain what evidence it accepted or rejected in relation to each of those components and the relevance or otherwise of each of them; 2. a tribunal must address the fundamental issue, such as whether a couple are living together as husband and wife, and must give some explanation, albeit briefly, as to why it has reached a particular conclusion on that issue. Nothing in Crake indicates that that conclusion was required to be based on anything other than an assessment of the evidence as a totality; 3. sexuality may be an important factor in deciding whether a couple are living together as husband and wife, but it could not of itself be determinative. It was merely one factor, which must be assessed by the tribunal along with all other relevant factors, and, on the authorities, it was not an essential component of living together as husband and wife. The proper approach involved focusing on whether the parties were living together as husband and wife, without giving undue weight to any individual factor that may be relevant to that issue. A single factor, such as sexuality or the existence or otherwise of a sexual relationship, was a factor to be taken into account, but no more than that: *PP v Basildon District Council (HB) [2013] UKUT 505 (AAC)*; 4. the First-tier Tribunal (FtT) had been entitled to conclude, on the basis of the whole of the evidence, that the appellant and the man were living together as a couple. The UT correctly decided that the F-tT's decision did not involve any error of law and that there was no basis on which it could have interfered with it.

Citation	Parties	Jurisdiction	Commentary
[2016] UKSC 58 Reported as [2017] AACR 9	*R (MA and others) v the Secretary of State for Work and Pensions*	SSCS	The claimants, all social sector tenants, had their eligible rent for housing benefit purposes reduced under regulation B13 of the Housing Benefit Regulations 2006 (determination of maximum rent by reference to the number of bedrooms in the dwelling) because they were treated as under-occupying their homes. In the appeals in first and second cases, the claimants claimed that they had accommodation needs greater than those recognised by the Regulations by reason of their, or a family member's, disabilities. In the third case, the claimant, who lived with her son, was at risk of serious violence from a former partner and claimed to have a greater accommodation need because the three-bedroom flat in which she had lived for many years had been adapted to provide a high level of security under a sanctuary scheme (although that did not involve using the third bedroom). *Held*, allowing the appeal by one claimant in the first case and (by a majority) the appeal by the Secretary of State in the third case and dismissing the other appeals and (by a majority) the cross-appeal (in the third case), that: 1. there was no reasonable justification for regulation B13 failing to recognise a medical need for an additional bedroom for adults who could not share a bedroom because of their disabilities, when it did so for children, and for children requiring an overnight carer, when it did so for adults; 2. however, it was not unreasonable for the other claims to be considered on an individual basis under the discretionary housing payment scheme; 3. the Court of Appeal had been entitled to find that the Secretary of State had complied with the public sector equality duty under section 149 of the Equality Act 2010, having properly considered the potential impact of the proposed legislation on individuals with disabilities and having addressed the question of gender discrimination and, in any event as regards the third case, there was no automatic correlation between being in a sanctuary scheme and having a need for an extra bedroom.

Citation	Parties	Jurisdiction	Commentary
[2017] EWHC 1446 (Admin)	*R (on the application of DA and others) v Secretary of State for Work and Pensions*	SSCS	The High Court held that the revised welfare benefit cap, which required a parent to work at least 16 hours per week in order to avoid the imposition of the cap, was discriminatory and unlawful in relation to lone parents with children under the age of two. The Secretary of State's appeal against this judgment was heard by the Court of Appeal on 25.10.17 and given a reserved judgment.
[2017] CSIH 35	*Secretary of State for Work and Pensions v (1) The City of Glasgow (2) (IB)*	SSCS	Following the approach of the Three-Judge Panel in *SSWP v Nelson and Fife Council [2014] UKUT 525 (AAC)*, the Court found that the assessment to determine whether a room is a bedroom for the purposes of regulation B13 of the Housing Benefit Regulations 2006 should focus on the property when vacant rather than how it is actually being used from time to time. The decision about the classification of the room is to be determined objectively according to relevant factors such as size, layout and specification. The classification cannot be changed except by structural alterations made with the landlord's approval which have the result of changing the classification of the property having regard to the potential use in a vacant state. The re-designation of a bedroom to a living room in this case was not a relevant factor. The occupants may choose or need to be advised to use the property in a way which best suits their needs, but that is not relevant to the issue of what is a bedroom for the purposes of the Regulations.
[2017] CSIH 57	*Secretary of State for Work and Pensions v MMcK*	SSCS	The Court of Session defined the meaning of "prompting" and "social support" in PIP Daily Living Activity 9.
[2017] EWCA Civ 1751	*Secretary of State for Work and Pensions v Gubeladze*	SSCS	The Court of Appeal upheld the decision of the UT in *TG v SSWP [2015] UKUT 50 (AAC)* - that the two-year extension (introduced from 30.4.11) of the accession period required for nationals of eight countries who joined the EU in 2004 (known as 'A8' nationals) to register under the Worker Registration Scheme - was disproportionate and incompatible with EU law. The Secretary of State has applied to the Supreme Court for permission to appeal.

Citation	Parties	Jurisdiction	Commentary
Case C-165/15, CJEU	*Lounes v Secretary of State for the Home Department*	SSCS	The CJEU held: "… in a situation in which a Union citizen (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38. The third-country national is however eligible for a derived right of residence under Article 21(1) [Treaty on the Functioning of the European Union], on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national."
[2017] UKSC 73	*R (on the application of HC) v Secretary of State for Work and Pensions*	SSCS	The Court held that "*Zambrano* carers", that is, non-EU citizens with primary responsibility for the care of an EU citizen child, are not entitled to social assistance on the same basis as EU citizens lawfully resident here. ("Social assistance" means income-related benefits, child benefit, child tax credit and housing assistance).
[2016] NICA 53	*Application by Siobhan McLaughlin for Judicial Review*	SSCS	The Northern Ireland Court of Appeal allowed the Department for Social Development's appeal against the judgment of the High Court in *[2016] NIQB 11* and dismissed Ms McLaughlin's application for judicial review. The Court found that the refusal of widowed parent's allowance to a woman who was not married to her deceased partner did not amount to unjustifiable discrimination on the basis of marital status contrary to Article 8 read with Article 14 of the European Convention on Human Rights (ECHR), or contrary to Article 14 in conjunction with Protocol 1, Article 1 ECHR.

Citation	Parties	Jurisdiction	Commentary
[2017] EWHC 3375 (Admin)	*RF v Secretary of State for Work and Pensions and (1) MIND and (2) Equality and Human Rights Commission*	SSCS	The High Court agreed with the UT decision in *MH v SSWP [2016] UKUT 531* that a claimant under PIP Mobility 1 descriptor c, d or f was not disqualified if his or her inability was caused by psychological distress. The amendments to descriptors c, d and f made by paragraph 2(4) of the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 which took effect from 16.3.17 were "blatantly discriminatory against those with mental health impairments" and could not be objectively justified. The Court granted the claimant permission for judicial review and quashed paragraph 2(4) of the 2017 Regulations with the effect that the law as stated in *MH* applies as if it had always been in force (i.e., as those descriptors had never been amended) in relation to PIP Mobility 1c, 1d and 1f.
Case C-422/16, CJEU	*Gusa v Minister for Social Protection*	SSCS	The European Court of Justice found that Article 7(3)(b) of EC Directive 2004/38 ("the Citizenship Directive") must be interpreted as meaning that the claimant who was a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in another Member State for approximately four years, and having worked as a self-employed person in that Member State for more than one year, has ceased that self-employed activity because of a duly recorded absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.

Upper Tribunal reported cases arising in the Health, Education and Social Care Chamber

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 0066 (AAC)	*PI v West London MH NHS Trust*	Mental Health	The issue in this appeal was how the tribunal should react if, during the course of a tribunal hearing, it appeared, or was claimed, that the patient no longer had capacity to appoint or instruct their solicitor. Law Society Guidance suggests that if a client loses capacity to give instructions then, generally, the old retainer will lapse and a new arrangement between solicitor and client will need to be entered into, where the solicitor's duties are different. It was therefore in order for the patient's representative to advise the panel that the client no longer had capacity and that, therefore, the patient no longer had a representative. Then, for the sake of continuity, it was proper for the solicitor to request a fresh appointment under the procedure rules. The panel would then decide whether to make an appointment – which it could do there and then in order to allow the case to proceed. If the panel doubted the loss of capacity, it could immediately seek evidence from the Responsible Authority's witnesses. In deciding whether or not the patient had lost capacity to appoint or instruct a solicitor then (as with all judicial decisions) the panel should give its reasons.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 387 (AAC)	*DL-H v West London MH Trust & SoSJ*	Mental Health	The patient argued that he was not manifesting signs of mental disorder but of religious belief. In his support, he had the evidence of his present and former hospital chaplains that his beliefs were within the range of those considered normal in the Pentecostal Church, although his present chaplain said that he 'struggled' with the patient's belief that he (the patient) was John the Baptist. The Upper Tribunal held that the First-tier Tribunal (Mental Health) was entitled to take account of and should then grapple with evidence from all experts called before it, including in this case medical and religious evidence. Panel members are also entitled to use their own expertise in their assessment of the evidence, including evidence from the professional witnesses, provided parties are given a chance to make submissions, and the panel clearly explains its decision. But the tribunal would, in effect, abdicate its function if it were to rely on so-called expert evidence that, upon analysis, it did not consider to be correct.

Citation	Parties	Jurisdiction	Commentary
[2017] EWCA Civ 194	*SoSJ v MM*	Mental Health	The Court of Appeal held that the Mental Health Act 1983 does not provide a power for the tribunal to impose conditions on a conditional discharge that amount to an objective deprivation of liberty. Parliament has not given such a power to the tribunal and, even if it could be inferred, there would be no clear or sufficient process or safeguards. The power would be unconstrained, without criteria, time limits or analogous protections. The difference in protection between a restricted patient's annual right of tribunal review while detained in hospital, and the time limit for applications to the tribunal by a restricted patient on a conditional discharge, is stark. In the latter case the time limit is two years (although the SoS could always make a referral). In summary, it cannot be said that it was Parliament's intention to authorise detention outside hospital when a patient is conditionally discharged. Nor does the patient's consent provide a way forward. The court agreed that consent to continuing deprivation of liberty cannot confer jurisdiction on a tribunal. Even if the question of consent were to be hypothetically relevant, the patient cannot consent in any irrevocable way. He cannot be taken to have waived or have had his right to withdraw his consent removed. What if the patient changed his or her mind? According to the Court of Appeal, there is no scope for consent in a case such as this. The likely consequence of this ruling is that some patients who might otherwise be able to step down from hospital and begin their journey towards rehabilitation cannot now be discharged until they are sufficiently well to move directly into the community with sufficient freedom under a conditional discharge to avoid being caught by the Cheshire West definition. However, if the impossibility of imposing a regime of this sort causes practical difficulty such as bed-block or some patients never able to move on, then it is for Parliament to resolve by amending the Act. On the other hand, if a patient lacks capacity, the tribunal can defer a direction for a conditional discharge to allow time for the accommodation provider to obtain a DoLS authorisation or a Court of Protection order.

Citation	Parties	Jurisdiction	Commentary
[2017] EWCA Civ 194	*Welsh Ministers v PJ*	Mental Health	In contrast to MM (above) the power of the patient's doctor to attach Community Treatment Order ("CTO") conditions amounting to a deprivation of liberty is part of the statutory framework. The aim is to achieve the patient's integration into the community in the least restrictive way, whilst taking all appropriate steps to protect the public. The patient's doctor may decide, therefore, that the first step-down from hospital for a CTO patient must involve continuous supervision in a care home with no unescorted leave. The Act does not provide for the intervention of the tribunal to regulate any such CTO conditions made by the patient's doctor. In particular, there is no power for a tribunal to examine the legality of, cancel or revise the CTO the conditions imposed by the doctor - nor should the tribunal be drawn into any consideration of the proportionality of any alleged interference with Article 5 or other ECHR rights.

Tax Chamber

Citation	Parties	Jurisdiction	Commentary
[2017] UKSC 55	*BPP Holdings Ltd v HMRC*	SC	The Supreme Court dismissed HMRC's appeal agreeing with the Court of Appeal that the although the CPR does not apply directly to tribunals, in general a similar approach should be followed when applying the overriding objective to deal with cases "fairly and justly". The Supreme Court approved the guidance given by the Upper Tribunal in *McCarthy & Stone* that the Tribunal should not adopt a more relaxed, approach to compliance with rules, directions and orders than applied in the courts that are subject to the CPR. The same view was expressed by the Senior President in *BPP* in the Court of Appeal, who added that "[i]t should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's". The fact HMRC was discharging a public duty in this case did not justify the application of a special rule or approach.
[2017] UKUT 0181 (TCC)	*HMRC v Elbrook Cash and Carry Ltd*	UT (Tax & Chancery)	In one of the few decisions on the question of "hardship" in indirect tax appeals (where unless there is hardship the tax must paid before an appeal can be made) the Upper Tribunal undertook a detailed examination of the law in this area and the criteria that the Tribunal should follow when determining if payment of the tax in dispute would cause "hardship"
[2017] UKUT 137 (TCC)	*Coal Staff Superannuation Scheme Trustees Ltd v Revenue and Customs*	UT (Tax & Chancery)	In this case the Upper Tribunal considered the principles to be applied in deciding whether to refer matters to the CJEU during "Brexit" negotiation.

Citation	Parties	Jurisdiction	Commentary
[2017] UKFTT 0404 (TC)	*D R Sudall v HMRC*	FTT (TC)	The Tribunal concluded that in the case of a penalty for the late filing of a self-assessment tax return, the "reasonable excuse" must always be present on the deadline for filing. The Tribunal acknowledged that this interpretation had the potential to produce harsh results. For example, a taxpayer who had no reasonable excuse for not filing a return might, 3 months after it was due, be taken ill and spend the next month in hospital and be completely incapable of filing a return. In that case, daily penalties would be due and the defence of reasonable excuse would not assist. However, the Tribunal pointed out that it would still be open to HMRC to mitigate the penalties on the grounds that there were "special circumstances".
[2017] UKFTT 0175 (TC)	*Nijjar v HMRC*	FTT (TC)	The Tribunal considered its jurisdiction in relation to accelerated payment notice (APN) penalties and concluded that it had no jurisdiction to consider, in a penalty appeal, whether Conditions A to C necessary for the APN to be issued had been met. The Tribunal in that case said that, if a taxpayer thought that conditions A to C were not met (and so the APN had been wrongly issued), the taxpayer should exercise its statutory right to make representations to HMRC and, if not satisfied with HMRC's response, apply for judicial review. Differently constituted tribunals in *Graham Pitcher v HMRC* and in *Goldenstate Limited v HMRC* have expressed agreement with that view. However, the Tribunal in *Balvinder Rai v HMRC* did consider whether Conditions A to C were met.

Citation	Parties	Jurisdiction	Commentary
[2017] 567 (TC)	*Stephen Jones v HMRC*	FTT (TC)	The taxpayer was bankrupt. He sought to appeal (in his own name) against assessments that HMRC had made. HMRC applied to strike out the appeal on the grounds that only the trustees in bankruptcy had the requisite standing to bring it. The trustees in bankruptcy had not made that appeal. However, they had not taken active steps to stop it being made although they had made it clear that the taxpayer had no authority to represent them. In correspondence, with the Tribunal, they were initially somewhat equivocal as to whether they consented to the appeal being made, but ultimately clarified that they would not themselves be pursuing the appeal and that they would consent to it being struck out. The Tribunal concluded, following an analysis of applicable insolvency law, that the only people with any standing to bring the appeal were the trustees in bankruptcy. In those circumstances, the appeal would be struck out.
[2017] EWCA Civ 1416	*HMRC v Citibank NA and E Buyer UK Ltd*	CA (Civ)	The Court of Appeal held held that an allegation that a taxpayer knew that its transactions were part of an orchestrated scheme to defraud HMRC did not require HMRC to plead and particularise, and therefore prove, an allegation of dishonesty reversing the decision of the Upper Tribunal. It held that "… HMRC is entitled to stop short of alleging dishonesty and content itself with pleading, particularising and proving first limb Kittel knowledge [ie that the taxpayer "knew" of the connection to fraud]. If there was an order requiring HMRC to plead dishonesty, on the basis it alleges actual knowledge of participation in a fraud, it would have the effect of significantly and unnecessarily raising the bar, in terms of what it must prove to deny the respondents' claims and the cogency of the evidence called. If, however, HMRC do expressly allege dishonesty, they will be required to comply with the normal rules of pleading and disclosure applicable to such cases. In future, it might be helpful in these cases for HMRC to say expressly in their Statements of Case whether or not they set out to prove the dishonesty of the appellant taxpayer.

Citation	Parties	Jurisdiction	Commentary
[2017] UKUT 246 (TCC)	*SRN Horizon Limited v HMRC*	UT (TCC)	The UT allowed an appeal against a decision of the FTT where an application for reinstatement was made the day after the appellant's solicitors had withdrawn an appeal in error. The FTT had refused the reinstatement application which it considered it to be "without merit" on the papers. The UT held that, having formed the initial view that the reinstatement should be refused, the FTT should have asked the appellant if it was content for the application to be determined on the papers on the basis of written submissions and if it was not should have offered a hearing. The failure to do so was a procedural error and the appeal would be allowed and the application remitted to the FTT to be determined by a different judge.
[2017] UKUT 340 (TCC)	*Denley v HMRC*	UT (TCC)	This case raised, for the first time, the "Coquelles issue" ie whether an excise point for UK duty arises in the Coquelles Control Zone in relation to goods released in France or are they held in "another member state". However, relying on the effect of the deeming provisions of para 5 of schedule 3 to Customs and Excise Management Act 1979 (as explained in *HMRC v Jones & Jones* [2011] EWCA Civ 824 and *HMRC v Race* [2014] UKUT 331 (TCC)), the UT held that the Coquelles issue could not be taken by Mr Denley.
[2017] UKUT 305 (TCC)	*CM Utilities Ltd v HMRC*	UT (TCC)	The Upper Tribunal reversed the decision of the FTT that the withdrawal by an appellant was the end of an appeal and that in such circumstances the Tribunal did not have the power to accede to HMRC's request to increase determinations.
[2017] UKFTT 696 (TC)	*HMRC v Root2Tax Ltd & Root3Tax Ltd (in liquidation)*	FTT (TC)	HMRC were successful in obtaining an order that certain arrangements, described as the "Alchemy scheme", were notifiable for the purposes of Part 7 FA 2004, the Disclosure of Tax Avoidance Schemes (DOTAS) provisions and would have succeeded in their alternative application for an order that the arrangements were to be treated as notifiable if that had not been the case.

Citation	Parties	Jurisdiction	Commentary
[2017] UKFTT 729 (TC)	*Big Bad Wolff Ltd v HMRC*	FTT (TC)	In a test case the Tribunal held that an actor (Robert Glenister) who provided his services through a personal service company was liable to pay primary and secondary Class 1 NICs
[2018] EWCA Civ 45	*Vaines v HMRC*	CA (Civ)	A solicitor who had borrowed money from a limited liability partnership to settle prospective litigation deriving from his membership of a previous partnership, was not entitled to deduct the payment from his share of the LLP's profits. The payment was not an expense incurred wholly and exclusively for the purposes of the LLP's trade or profession conducted by its members.
[2018] EWCA Civ 31	*Shiner and Another v HMRC*	CA (Civ)	The First-tier Tribunal had been entitled to strike out a taxpayer's appeal as an abuse of process where it was based on a challenge to the retrospective effect of the Finance Act 2008 s.58, which had already been determined in judicial review proceedings before the Court of Appeal. The words of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 r.8(3)(c) were wide enough to encompass striking out an appeal as an abuse of process.
[2018] EWCA Civ 46	*Euro Wines (C&C) Ltd v HMRC*	CA (Civ)	The Court of Appeal held that where a penalty was imposed on a person in possession of goods on which it was alleged that excise duty had not been paid, the reverse burden of proof in the Customs and Excise Management Act 1979 s.154(2) was compatible with ECHR art.6(2).