SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

2020

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Introduction

By the Senior President of Tribunals, The Rt Hon Sir Ernest Ryder

This is the sixth report that I have delivered to the Lord Chancellor as Senior President of Tribunals (SPT) and it is my last. The SPT is a fixed term office and my tenure as the head of jurisdiction of the reserved tribunals' jurisdictions in the UK will shortly come to an end. It has been the most enjoyable leadership role I have had, not least because the judges and panel members in the Tribunals are a strong college of judicial office holders dedicated to the needs of their users and experts in their own disciplines. Their understanding of the needs of others combined with the integrity and professional public service ethic that underpins an independent judiciary has developed into a unique style of judgecraft. We are flexible, informal, innovative, informed (that is, responsive to specialist empirical materials and commentary) and, above all, effective. We pride ourselves on the quality of our collaboration with policy and operational colleagues in the Ministry of Justice (MoJ), other Government Departments and Her Majesty's Courts and Tribunals Service (HMCTS) to achieve the best quality outcomes that we can while at the same time remaining fearlessly independent of the agencies whose decisions come to us on appeal. Our performance, sometimes in difficult circumstances like the present emergency, has been some of the best ever recorded. We remained open for business. Our diversity continues to improve to be more representative of the communities we serve and we are proud of that. Trust, respect and confidence in the rule of law is derived from these attributes and is a tangible response to the civic responsibilities that my judges perform. I could not have asked for more from my colleagues and I leave them in the sure knowledge that the quality of the leadership they display will pay dividends in the justice system in years to come.

The United Kingdom Tribunals occupy a curious hinterland alongside the long established courts judiciaries in each geographic jurisdiction of the UK. We have excellent relationships with each of them but we are their much younger cousins and sometimes struggle to make our managed approach to justice as specialist decision makers understood. Given the quality of what we do and its relevance to our users, who are often unrepresented, it has been my aim over the last five years to enhance an understanding of tribunals' justice by bringing the judiciaries closer together. I am very grateful to the Lord President of the Court of Session in Scotland, the Lord Chief Justice of Northern Ireland and the Lord Chief Justice of England and Wales for the opportunities to do that and for their cooperation and understanding over the years. I am also very grateful to Ministers in the UK and devolved Governments and their administrations for their support.

Five years ago, I began with a plan to achieve three important understandings of what we do: 'one judiciary, one system and better outcomes'. As judges we share the same approach to constitutional, statutory and ethical principles of our colleagues in the courts while undertaking a unique additional role as substitute decision makers where we set aside the decisions of the agencies under appeal

and re-make them on the merits. That is not second-class justice, far from it, and our mantra has been 'a judge is a judge and our panel members are judicial office holders'. They are entitled to the same status as their colleagues and I am pleased to report that the independent reviews that will make recommendations about that are now in place. I am very grateful to Sir Keith Lindblom, my Vice-President, each of the chamber and tribunal presidents under the leadership of HHJ Phillip Sycamore, my deputy Vice-President, the non-legal members under the careful guidance of Gillian Fleming, and the judicial association representatives on the Forum of Tribunal Associations, ably led by Judge Lorna Collopy, for their hard work and attention to detail in this process.

During the last five years we have striven to identify what it is that makes each tribunal's process work well. Our 'judicial ways of working' project has previously been reported upon. It was conducted as a major exercise in engagement and communication and it identified that there is no 'one size fits all'. Just one example will suffice. In the General Regulatory Chamber of the First-tier Tribunal there are 80 different jurisdictions, primarily on appeal from regulators or about the environment, with 16 very different appeal routes and methods of adjudication inconsistently described in various statutes and statutory instruments. We have been astute to work together as a leadership team with advice from specialist experts in administrative law in the Administrative Justice Council (AJC) and the independent Tribunals Procedure Committee to find what works and match our technology to that process. Research projects of this kind in partnership with the academy pay real dividends and I hope they will be continued. Likewise, the work of the Tribunals Procedure Committee under the chairmanship of Sir Peter Roth has been an invaluable, independent and knowledgeable source of procedural expertise. The objective has been to find better systems and that has involved detailed work with colleagues to ensure we all benefit from the reform projects and opportunities that are in hand.

We have pursued the concept of a 'managed service' within which we measure what we do and strive to get the best outcomes for our users. Aside from academic collaboration which has flourished through the AJC and for which I am very grateful, we have enhanced our collaboration with HMCTS and MoJ to ensure that our individual jurisdiction boards and support teams analyse work forecasts, user needs and supply and demand levers to try and obtain swift access to justice. This is never easy and rarely completely successful but the introduction of high quality forecasting tools, recruitment and deployment models and flexible assignment opportunities has assisted us to cope with the significant peaks and troughs in workflows that we experience, not always with much notice. Further, the managed approach allows leadership judges to control how much of what type of work is allocated to each different judicial office holder. Sometimes it is important to identify the chemical engineer, doctor or valuer whose expertise is needed for a case and at other times, the salaried or fee paid specialists in education, tax, immigration or mental health need to have a balanced selection of cases. In any event, workload management is fundamental to judicial morale and is a large part of what my leadership judges do.

The morale and quality of decisions made by our judicial office holders are intrinsically linked to the quality of the leadership that they have and we expend a great deal of effort on making our leadership college as good as it can be. Leadership training is now mandatory in the tribunals, it is foreshadowed in induction training and we offer it to those who think they might be interested in the future. Although it is not a feature of the SPT's role, I have had the additional benefit of being the course director for leadership and management development in the Judicial College throughout my time in office. I have also been given the opportunity to share good practice with the Judicial Institute in Scotland and the European Judicial Training Network. I shall be sorry to relinquish that role. The specialist educational advisors and the tutors from both courts and tribunals judiciaries have been innovative and inclusive. They have re-written and present an excellent series of courses and I give them my thanks and best wishes for the future.

The modernisation of courts and tribunals, colloquially known as the reform programme, has dominated our daily lives since the agreements in 2014 and 2015 between Mr Michael Gove MP, then Lord Chancellor and Secretary of State for Justice, Lord Thomas of Cwmgiedd, then Lord Chief Justice of England and Wales and myself. It is worth remembering that those agreements were designed to avoid what would otherwise have been a process of managed decline. In order to obtain the benefit of funding, we needed to implement innovation and change. As I have reported throughout the exercise, the tribunals have been at the forefront of that process and will continue to be so. There is no 'plan B' to safeguard the rule of law. The justice system needs curating by quality leadership, excellence in individual decision making and strong administrative support, each in their own way fashioned to be able to respond to the needs of this century rather than the 19th. It has involved intensive engagement with tribunal judges across the First-tier and Upper Tribunals and employment judges in the Employment Tribunals and the Employment Appeal Tribunal and also a great deal of hard work by project judges seconded from their jurisdictions to work with the design and implementation teams.

I have previously reported on the detail of our modernisation plans. These inevitably develop. The future will involve the use of electronic core case data (our own case management and process recording software), scheduling and listing software that has now been purchased and is being developed for use in each of the crime, civil, family and tribunals jurisdictions and work allocation software for all First-tier Tribunals and Employment Tribunals. The extension of CE-file from the Court of Appeal and High Court in England and Wales to the Employment Appeal Tribunal and the Upper Tribunals is happening in parallel and there has recently been real progress in the plan to design a bridge between the core case data and CE-file systems. As these different software engines are put in place, tribunal by tribunal, we can demonstrate the work we have done on the development of new 'end to end' digital procedures like those recently introduced in Immigration and Asylum and Social Security and Child Support. We will also be able to bolt-on remote hearing methods that have been extensively trialled during the emergency and which open the door to more innovative adjudication techniques such as judicial mediation, the triage of issues by case officers and judges leading to early neutral evaluation and recorded remote hearings with public access. We have also trialled hardware. There are new computers for salaried judges and all in one computers that facilitate hearings with three panel members in an informal setting. We are also seeing the installation of presentation equipment for the display of complex materials in both formal and informal hearings. One of the unexpected consequences of the emergency has been the immediate provision of recording for all contested tribunal hearings. This has long been an aspiration, frequently dashed by the complexity of the detail and, no doubt, its expense. It became an essential requirement of open justice when conducting remote hearings. Working in collaboration with operational colleagues in HMCTS, this is now a reality, providing much needed support for judges and users alike.

The tribunals will now experience a period of consolidation as these projects are implemented and to some extent customised to ensure that their functions match the needs of our users. There will be aspects that are close to adversarial party-party courts jurisdictions, those that are unique to investigative problem solving and many that are in between. All will be provided for. A process of evaluation will also follow from which we will learn more about remote hearing techniques and our more vulnerable users than we ever knew before.

We have taken steps to concentrate and focus our decision making in reform on those judges who have developed an expertise in change management and leadership. They represent us on programme boards and engagement groups and they are astute to ensure that their leadership colleagues are consulted and involved. I cannot thank them enough for what they have done. In the tribunals we have concentrated them together in a Judicial Engagement Group and a plenary Change Network so that project changes share information with their leadership colleagues and the judicial associations. The power of engagement and communication should not be under estimated. We have planned for it and constantly communicate what we do through representatives and champions across our judiciary. Equally, we listen hard to the feedback we receive. I am particularly pleased that my strategic judges who represent tribunals on HMCTS Programme Boards and project teams are experienced in successful change. They have been innovative, clear, careful and decisive. We could not have done without them. The reform team and the communications team of the Judicial Office have been involved in every step we have taken and we have integrated their advice into our work on a daily basis. I am very grateful to Clare Farren and Judith Seaborne for their leadership and support.

The national emergency of COVID-19 has provided a backdrop for my last six months in office. The response of the tribunals was to ensure that by leadership of the tribunals justice system we could keep the tribunals open providing urgent decision making for our most vulnerable users. We designed a suite of emergency legislative provisions, rule changes, practice directions and guidance to facilitate that aim. Overnight we changed from paper-based face-to-face hearings to remote hearings by audio and video means using new technology and a host of innovative workarounds provided by judges and staff alike. A four-phase recovery plan was published using administrative instructions to explain what we wanted to happen. The first phase was urgent priority work initially undertaken by salaried judges alone to design new systems, test IT and provide a responsive system outside of our buildings i.e. largely from home. The second phase was to consolidate those practices and extend our emergency working practices by using some limited fee paid judges and members and by designing wholly new administrative support arrangements with HMCTS officers working from home using remote laptops. The third phase, which is now in development, is to design systems to deal with the relaxation of lockdown, the extension of remote working to the more complex tribunal panel hearings and longer contested cases and the return to some limited face to face hearings in buildings that are assessed to be safe. In particular, the concurrent listing of remote hearings and the return to face-to-face hearings will help clear the limited backlogs that we have, save in Employment and Immigration and Asylum. In those two volume jurisdictions, which have peculiarly adversarial and different procedural protections, novel pilot procedural innovations will be required. They will be trialled and assessed with the hope and expectation that they will lead to long term access to justice improvements that are effective. The fourth and final phase of recovery is yet to come. We are preparing for it. It will involve a new mixed methods approach to each of our jurisdictions, learning from our experiences during the emergency and from existing tribunal practices that have stood the test of time. From first principles, we will design a new tribunals justice system. None of this would have been possible without a high degree of collaboration with HMCTS officers and the HMCTS Board. I am very grateful to Tim Parker, Susan Acland-Hood, Kevin Sadler, Richard Goodman, Andrew Baigent and Daniel Flury for the time they have devoted to the delivery of tribunals justice.

In parallel with reform and recovery planning we have maintained change programmes that have longer histories. The tribunals estate was historically managed separately from the courts and, unlike the courts, is primarily leasehold and not purpose built. Over the last three years we have developed a comprehensive survey of what we have and a strategy to deal with its use and replacement. Increasingly, we are working from combined estate with the courts, sharing facilities including IT and hearing rooms. We have entered into service level agreements so that our peripatetic hearings can access the quality accommodation that users and judges need for both one-off cases and regular sittings. The information rights jurisdiction of the General Regulatory Chamber is an example of the former and the regular sittings of the Upper Tribunal out of London are an example of the latter. As some major buildings come due for replacement, the opportunity arises to re-focus what we do in them and where they are located. In Central London the concentration of estates issues remains a challenge. We continue to plan for a Central London Tribunals building and I am pleased to report that good progress is being made in securing suitable premises. Having a headquarters of substance in the City of London will be a mark of the seriousness with which tribunals justice is taken by our colleagues across Whitehall and the City. I am very grateful to Judge Siobhan McGrath who is President of the Property Tribunal for the lead she has given to these projects.

In the world of training and development, the Judicial College of England and Wales and the Judicial Institute of Scotland have provided high quality education for tribunals judges since the creation of the unified tribunals. It is only recently, however, that we managed to achieve parity with our courts colleagues in the provision of support, for which we are grateful. The tribunals, in the intervening time since their creation, have developed an enviable reputation as trainers. Our lead judges devote a considerable period of time every year to deliver that training and we are very grateful to the college and to the institute for the support they provide. Our training leads are a very important part of our leadership team who work closely with their appraisal and HR colleagues to deliver a quality service to our judicial office holders, salaried and fee paid. I am very grateful to Judge Christa Christensen, our Director of Training, who has carried forward some very important initiatives to guarantee the quality of our training provision.

As I leave the stage, further devolution of reserved tribunals jurisdictions remains an important feature of our discussions as does the assimilation of tribunals and courts judiciaries so that unnecessary differences between them can be eradicated, opening up the door to more extensive flexible deployment and assignment between jurisdictions. I am delighted to announce that the Lord Chancellor agreed a new flexible deployment and assignment policy which permits identical opportunities to be created for courts and tribunals judges in each other's jurisdictions in England and Wales. This will go a long way to creating the opportunities that I believe are important for the future of 'one judiciary'. The strategy group that was formed by the Lord Chief Justice of England and Wales and myself to look at barriers to joint working will be assisted by this development and by the independent evidence to the Senior Salaries Review Body which we commissioned from the consultants, Accenture. Devolution has been greatly assisted by the collaborative attitude of the Government Ministers concerned and their administrations. I expect this aspect of the future in each of the geographic jurisdictions to come to a successful conclusion in the next three years. I am particularly grateful to Lady Anne Smith, President of Scottish Tribunals, for her wise counsel, firm leadership and clear advice to us all on these important issues. She has been ably supported by Sir Wyn Williams, President of Welsh Tribunals and Dr Kenneth Mullen, Senior Commissioner in Northern Ireland.

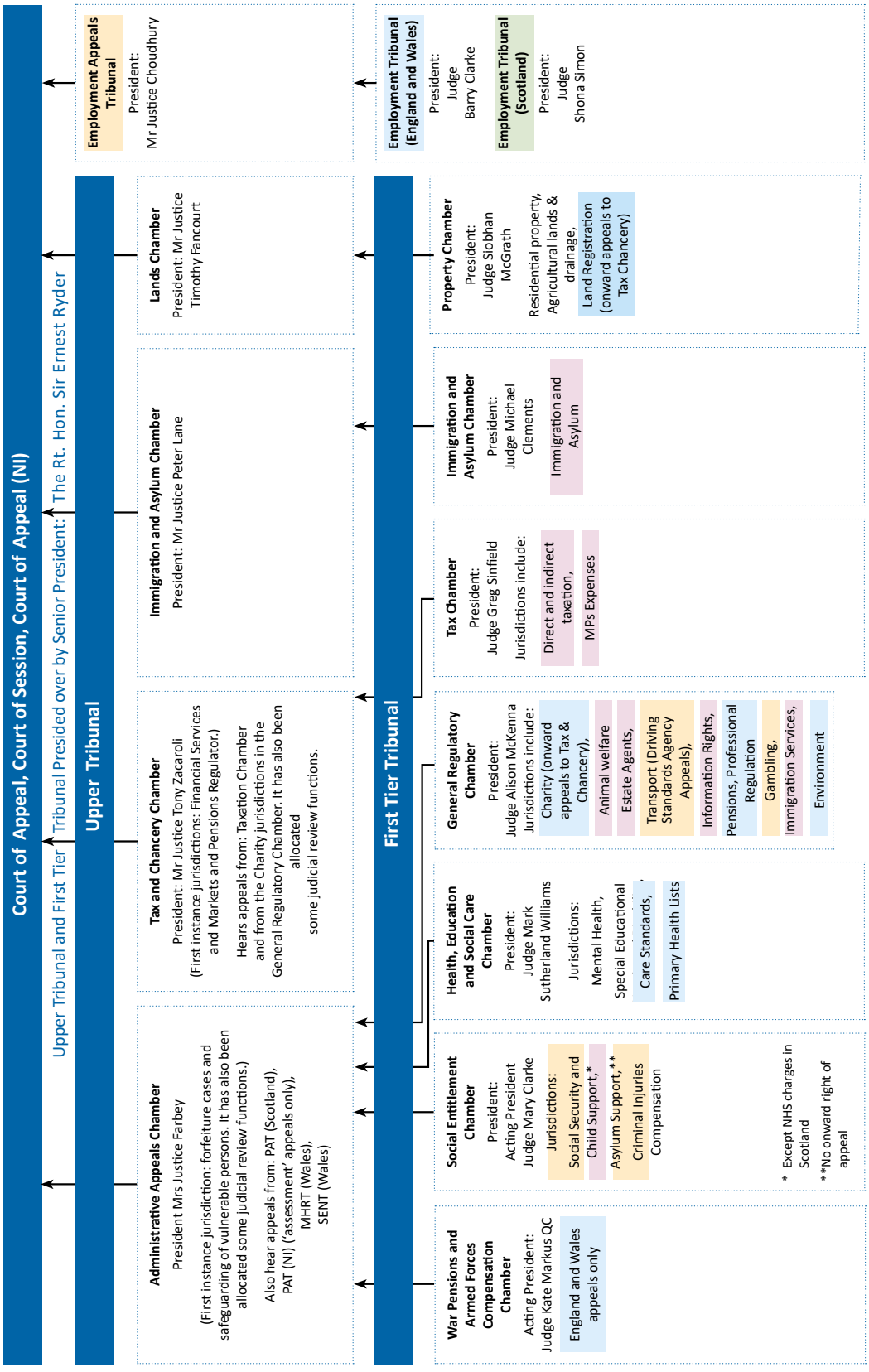
Finally, the future of the tribunals is in the hands of those we recruit. We have recently seen improvements to our diversity profile that make tribunals judicial office holders (both judges and non-legal members) representative of the communities they serve. Our recruitment is informed by the outreach we undertake and the talent pool of different people we identify. Our recent success in recruiting from non-traditional judicial backgrounds and from the academy, central and local Government agencies and in-house lawyers has been notable. That was achieved by changing our recruitment policies to find diverse talent and by a highly successful relationship with the independent Judicial Appointments Commission. In addition, we have developed our talent in-house with better succession planning and career development including the use of appraisal mechanisms so that we have talent to spare and have the first examples in modern history of courts and tribunals officers becoming our judges. We are proud of them and wish them great success in the future. I am very grateful to MoJ policy officers for their support to us in these endeavors and in particular to Annabel Burns for the strength and quality of the advice we have received.

During the last year there have inevitably been departures and retirements of the great and good. We have been fortunate to have them with us and we wish them well in the future. They include Craig Robb, my Private Secretary, who has moved to be a deputy director in HMCTS, Brian Walker, my clerk, Phillip Sycamore, my deputy Vice-President and the President of the Health, Education and Social Care Chamber, John Aitken, the President of the Social Entitlement Chamber, Brian Doyle, the President of the Employment Tribunals (England and Wales) and my Judicial Assistant, Daniel Taylor. In their place we have welcomed Jo Keatley as my Private Secretary, Mark Sutherland Williams as the President of the Health, Education and Social Care Chamber and Barry Clarke as the President of the Employment Tribunals in England and Wales. I am also very grateful to Mary Clarke who is the Acting President of Social Entitlement Chamber, Sehba Storey who has been the Acting President of the War Pensions and Armed Forces Compensation Chamber and Kate Markus QC who succeeded her as Acting President of this chamber.

Retirement allows for some reflection. Forgive me that self-indulgence. In my case it is how lucky I have been. I have had a team second to none and I leave with a final thank you to them: Jo, Simon, Rebecca, Cathy, Philip, Chukwuma, Charlotte and Sean.

The Rt Hon Sir Ernest Ryder
Senior President of Tribunals

Tribunals' Structure Chart



Annex A

Upper Tribunal

Administrative Appeals Chamber

President: Dame Judith Farbey

The jurisdictional landscape

The Upper Tribunal (Administrative Appeals Chamber) (UTAAC) decides cases in a range of areas of public and administrative law. The greatest volume of cases this year remained appeals on points of law from decisions of the First-tier Tribunal (Social Entitlement Chamber) relating to benefits from the Department for Work and Pensions and HM Revenue and Customs.

Many social security appeals concern employment and support allowance and personal independence payment. These cases have continued to provide a rich source of procedural fairness issues. *CB v Secretary of State for Work and Pensions* [2020] UKUT 15 (AAC) concerned the proper approach to a request from an appellant for an all-female panel. *TM v Secretary of State for Work and Pensions* [2019] UKUT 204 (AAC) addressed a tribunal's duty to correct unfairness caused by the inadequacy of the Secretary of State's response to the appeal. *IR v Secretary of State for Work and Pensions* (PIP) [2019] UKUT 374 (AAC) analysed what is required to establish a mandatory requirement to attend a medical assessment.

The question of rights of residence under European Union law continues to provide a steady stream of appeals. In *KH v Bury MBC and Secretary of State for Work and Pensions* [2020] UKUT 50 (AAC) the Tribunal held that the "genuine chance of being engaged" test was contrary to EU law when it came to those seeking to establish retained worker status

There is a relatively small but steady flow of universal credit appeals. In *Secretary of State for Work and Pensions v AJ* [2020] UKSC 48 the Upper Tribunal addressed the effect of imprisonment on entitlement to universal credit.

The Chamber is handling a number of appeals raising issues arising out of the Supreme Court's decision in *Re McLaughlin* [2018] UKSC 38, which held that Northern Ireland legislation which precluded entitlement to widowed parent's allowance by a surviving unmarried partner of the deceased was incompatible with Article 14 read with Article 8 of the European Convention on Human Rights. In *NA v Secretary of State for Work and Pensions* [2019] UKUT 144 (AAC) the Tribunal held that the surviving partner of a religious marriage recognised in Pakistan, but not recognised in England and Wales, was entitled to a bereavement payment and widowed parent's allowance.

Last year's report mentioned that UTAAC gave its first "leap-frog" certificate for an appeal to the Supreme Court under section 14A of the Tribunals Courts and Enforcement Act 2007. That appeal has now been determined in *RR v Secretary of State for Work and Pensions* [2019] UKSC 52. The Supreme Court held that the Court of Appeal in *Secretary of State for Work and Pensions v Carmichael*

and Sefton Council [2018] EWCA Civ 548 had wrongly decided that the Upper Tribunal had no authority in statutory appeals to afford claimants a remedy for the unlawful discrimination previously found by the Supreme Court in *R (Carmichael and Rourke) (formerly known as MA and others) v Secretary of State for Work and Pensions* [2016] UKSC 58. Thus, the original decision of the Upper Tribunal in *Secretary of State for Work and Pensions v Carmichael* [2017] UKUT 174 (AAC), that the claimant's housing benefit was to be calculated without making a deduction for under-occupancy because that would be a clear breach of his Convention rights, was ultimately upheld. A substantial number of under-occupancy cases had been stayed pending this appeal. The stays have been lifted.

In *WC v HMRC* [2019] UKUT 289 (AAC) the Upper Tribunal held that, under EU Regulations, child benefit could be paid to the claimant when she and her family moved to Spain. Spain has a benefit equivalent to child benefit, but as the claimant had not applied for or been awarded it in the relevant period, there was no question of having to apply any rules as to priority of payment between member states.

The UTAAC deals with appeals from most of the varied jurisdictions of the General Regulatory Chamber, with the most numerous (and the most resource intensive) being in the arena of information rights. A three-judge panel comprising a High Court judge and two judges of the UTAAC examined the duty of the First-tier Tribunal to give closed reasons where the required standard of reasons cannot be met in open proceedings. In doing so, the Upper Tribunal gave guidance as to the duty of tribunals to address the principal issues raised in closed proceedings even where those issues were subsequently agreed by those privy to the closed proceedings (*Davies v Information Commissioner and the Cabinet Office* [2019] UKUT 185; [2020] AACR 2).

A number of procedural issues under the Freedom of Information Act 2000 have important ramifications for tribunals and parties. For example, in *E.ON UK plc v Information Commissioner and Fish Legal* [2019] UKUT 132 the Upper Tribunal held that the First-tier Tribunal was correct to decide that the Information Commissioner had no jurisdiction to determine whether the requested information was held until she had decided the prior question of whether the body concerned was a public authority in circumstances where that body disputed it was a public authority. The Upper Tribunal has also confirmed that the public interest weighing exercise for a qualifying exemption should be carried out as at the date that the public authority finally refused the request *(Maurizi v Information Commissioner and the CPS (interested party the FCO)* [2019] UKUT 262 (AAC).

In *Our Vault Ltd v Information Commissioner* [2019] UKUT 369 (AAC) the Upper Tribunal confirmed that the First-tier Tribunal was not required to stay proceedings on grounds of alleged procedural error by the Information Commissioner in imposing a monetary penalty notice. The tribunal stood in the shoes of the Commissioner and could determine all alleged errors by the Commissioner. Moreover, any prior unfairness had been corrected in the course of the First-Tier Tribunal proceedings. In imposing the penalty (£70,000) the tribunal had been entitled to take into account the profits generated by the appellant or the financial value of its activities, even though it was not itself profit-making.

In *Vesco v Information Commissioner and Government Legal Department* [2019] UKUT 247 (AAC) the Upper Tribunal gave guidance on the applicable tests under regulation 12 of the Environmental Information Regulations 2004 when a public authority refuses to disclose information on the basis that the request for information is manifestly unreasonable.

There is an increasingly wide range of jurisdictions being given to UTAAC in other regulatory areas. *Natural England v Warren* [2019] UKUT 300 (AAC) concerned shooting rights on environmentally sensitive land. The case raised a number of important legal issues including the duty of the First-tier Tribunal to act consistently with the EU precautionary principle, and the interpretation and application of domestic legislation protecting sensitive habitats. The decision is now the highest authority on the relevant issues. *G Crawford Management Services v LB Tower Hamlets* [2019] UKUT 139 (AAC) concerned penalties on letting and property management agents and is the highest authority on what is meant by "in the course of a business" for these purposes. The Upper Tribunal has also determined the only appeal to date in relation to slaughterhouses.

In the field of mental health, in *SB v South London and Maudsley NHS Foundation Trust* [2020] UKUT 33 (AAC) the Upper Tribunal considered the procedure by which a challenge could be made to a decision by the First-tier Tribunal to appoint a legal representative for a patient who was considered to lack capacity.

Judges of the UTAAC decide judicial reviews of the First-tier Tribunal in criminal injuries compensation appeals. Current issues include a pending Supreme Court case on the treatment of claimants who have a criminal record.

Disclosure and Barring Service appeals are one of the two initial appeal jurisdictions exercised by the Chamber. UTAAC judges sit with specialist lay members. The number of applications in this jurisdiction has increased over the last 14 months.

UTAAC's other first instance jurisdiction relates to Traffic Commissioner decisions and traffic appeals, with sittings (normally with a judge and two expert members) in all the capital cities. Decisions include authoritative and comprehensive statements of law in relation to "Ad Blue" cases.

Wales

In October 2019, the Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd, published "Justice in Wales for the People of Wales". The report recommends that the Law Commission "should consider and recommend a coherent system of appeals" from Welsh tribunals. The scope of the Law Commission's review extends to appeal processes and so its recommendations may have an impact on the jurisdiction of the UTAAC. Its report is expected later this year.

The Additional Learning Needs and Education (Wales) Act 2018 will be brought into force from September 2020. A three-year transitional period is planned. The Act re-names the Special Educational Needs Tribunal (SEN) for Wales the Education Tribunal for Wales and introduces 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.

Appeals to UTAAC from those devolved tribunals within its jurisdiction continue to be rare. In the reporting year, the Chamber dealt with three challenges to decisions of the SEN Tribunal for Wales and two cases involving the Mental Health Review Tribunal for Wales. The vast majority of hearings in Wales involve challenges to decisions of the First-tier Tribunal rather than to decisions of Welsh tribunals.

The Chamber sits regularly in Wales, normally at Cardiff Civil Justice Centre.

Scotland

Judge Markus QC has taken over from Judge Poole QC as lead judge for UTAAC in Scotland, supported by Judge Wright as deputy lead. Fee-paid judges continue to carry out much of the work of the Chamber in Scotland.

The transfer to the Scottish Tribunals of appeals concerning devolved benefits has continued although this has not yet had a significant impact of the work of UTAAC. The work of UTAAC in Scotland is in due course to transfer into the Scottish system, but it is not clear when this will take place.

Northern Ireland

UTAAC 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.

Two salaried judges sit in Northern Ireland. They combine their UTAAC functions with their roles as Chief Commissioner and Commissioner respectively. Five UTAAC Judges serve as Deputy Social Security and Child Support Commissioners in Northern Ireland and provide assistance with the principal workload or sitting on a Tribunal of Commissioners where an appeal involves a question of law of special difficulty.

In *PA v Department for Communities* ([2019] NI Com 29) a Tribunal of Commissioners considered a claim that the procedures of the Department for Communities (DfC) in assessing limited capability for work were discriminatory against people with mental health problems and unlawful. The Tribunal decided that the decision of the Court of Appeal in England and Wales in *MM & DM* on a similar point did not apply in the circumstances of the case and in any event the NI disability discrimination law did not mirror the GB Equality Act provisions relied upon in that case.

Department for Communities v PMcC [2019] NICom 11 decided that "cannot prepare and cook food" in descriptor 1(f) in Part 2 of the Schedule to the Personal Independence Payment Regulations (Northern Ireland) 2016 means cannot prepare food or cannot cook food. In *MP v Department for Communities* [2019] NICom 55, the Chief Commissioner appraised the medical assessment process in respect to certain social security benefits, including PIP, conducted by the external provider contracted by the DfC.

People and places

Judge Anna Poole QC was appointed as Senator of the College of Justice in Scotland in January 2020. She joined UTAAC as a salaried Judge in 2018, based in Edinburgh. We are delighted at Judge Poole's promotion but will miss her as a colleague and salaried Judge of the Chamber.

Laura Dunlop QC remains a fee-paid judge following her appointment in late 2019 as President of the Mental Health Tribunal for Scotland.

The Chamber bid farewell to two fee-paid specialist members, Dr Henry Fitzhugh and Michael Farmer, who both retired in 2019.

The Registrar based in Scotland, Orla Davey, left in December to become a salaried judge of the First-tier Tribunal (SEC). The Edinburgh work has been supported by the UTAAC's existing Registrars since then. A new Registrar is expected to join the team shortly.

We are grateful to the Senior Registrar, Simon Cockain, and the team of Registrars and the administrative staff in the UTAAC offices in London and Edinburgh for the valuable contribution they make to the work of the Chamber.

Tax and Chancery Chamber

President: Sir Antony Zacaroli

Jurisdictional Landscape

In last year's report, it was noted that the most significant potential jurisdictional changes in relation to the tax chamber related to Brexit, and these were set out. These remain to be implemented once the United Kingdom leaves the European Union (currently contemplated to be at the end of 2020). There have been no further jurisdictional developments to report this year.

Judges

There have been no changes to the complement of judges this year, and there continue to be four full-time salaried judges in the tribunal: Judge Tim Herrington; Judge Jonathan Richards, Judge Swami Raghavan and Judge Tom Scott. The president of the First-tier Tribunal Tax Chamber (Judge Greg Sinfield) also continues to sit on a number of Upper Tribunal cases.

The annual tax judges' conference was due to be held at Walton Hall in Warwickshire, in March 2020, but was cancelled due to Covid-19. A number of the courses that were to have been presented at that conference are to be presented remotely, with many thanks to the presenters.

Administrative Staff

There have been a number of departures from the administrative staff this year, but we welcomed a number of valuable replacements: John Booth, Andy Upton and Margaret Oyabambi. They, together with Martine Levy and Dan Leeves mean that we have a complement of five staff, together with delivery manager Martine Muir.

The refurbishment of the 5th floor of the Rolls Building was completed in the autumn of 2019 and the staff were then able to move back in from their temporary accommodation in Fox Court. I would again like to pay tribute to the fortitude and positive attitude of the whole team in identifying and dealing with the challenges that the temporary move presented.

Work undertaken

The bulk of the work of the chamber continues to be tax appeals. Those of particular interest (including onward appeals to the Court of Appeal and Supreme Court) are mentioned in the annex of cases decided during the year.

Last year, I reported on the tribunal's decision in the first substantive decided case on the power of the Pensions Regulator to make a Financial Support Directive, in *Granada UK Rental and Retail Ltd v Pensions Regulator.* This year, the Court of Appeal upheld the Tribunal's decision.

Immigration and Asylum Chamber

President: Sir Peter Lane

The effect on the Immigration and Asylum Chamber (UTIAC) of the Covid-19 pandemic, which began in late March 2020, will be addressed elsewhere. Over the previous 12 months, there have been a number of positive developments in the Chamber, which will continue to serve us in good stead in the situation in which the country currently finds itself.

The first development was the arrival during the summer of 2019 of nine new salaried judges, following the Judicial Appointments Commission (JAC) selection exercise about which I wrote last year. They are Mark Blundell, John Keith, Vinesh Mandalia, Hugo Norton-Taylor, David Pickup, Declan O'Callaghan, Rebecca Owens, Daniel Sheridan and Stephen Smith. They have already made a huge contribution to the work of the Chamber, thanks to their aptitude and enthusiasm. Indeed, it is hard to remember life without them.

Last year, I described the work of UTIAC's Lawyers. This continues to grow in significance. Lydia Watton has joined the team and quickly established her position. The Lawyers are now supported by two caseworkers, Zeenat Jiwani and Robyn Keegan.

The position regarding workload has been transformed since my last report. Not only have we benefited from the new salaried cadre, but there has been a reduction in the number of appeals and judicial reviews made to UTIAC. The reduction in appeal work from the First-tier Tribunal has meant there have been fewer opportunities for deputy UTIAC judges to sit. We recently saw the appointment of 17 deputies, as a result of the JAC competition, which was planned well before the downturn in work. I am very grateful to the deputies for their understanding during this time. Not only must we be ready, when things change; the Chamber needs to ensure that there is a new generation of judges ready to take over from the previous one.

Speaking of generational change, we recently bid farewell to Ken Craig who, after an illustrious career at the chancery bar, has been a judge in the UTIAC (and its predecessor) since 2004. We shall very much miss Ken, not only for his knowledge and judgement but for his great sense of collegiality. It is a matter of much regret to us all that we were unable to say "goodbye and thank you" to Ken at the retirement dinner which Lesley Smith had arranged for late March. I very much hope that there will be an opportunity to do so, at some point, without needing to have recourse to "virtual" means.

In summer 2020, Bernard Dawson will also be retiring. Both the Chamber as a whole and I personally owe Bernard a huge debt. He was Principal Resident Judge during a time of significant

challenges. When I became President in October 2017, Bernard kindly agreed to continue in this role for six months, thereby saving me from many a potential mishap. For the past two years, Bernard has sat in Scotland and NE England; as well as Field House, where he has continued to demonstrate his aptitude for producing country guidance decisions. Given his wide interests and energy, I am sure Bernard's retirement will be an extremely active one.

Mark O'Connor, UTIAC's Principal Resident Judge, continues to be indispensable. Enjoying the full confidence of both judicial and administrative colleagues, he copes calmly and skilfully with the daily myriad challenges inherent in running the largest of the Chambers of the Upper Tribunal. We were delighted when, last year, Mark was appointed a deputy High Court judge.

UTIAC has continued to benefit from the tours of duty undertaken by Queen's Bench High Court judges and judges of the Court of Session. The resulting cross-pollination of knowledge and experience is important.

As foreshadowed in last year's report, we have held a number of UTIAC hearings in Parliament House, Edinburgh. Most recently, I sat there with Lord Matthews; the first occasion on which a judge of the Court of Session has sat in UTIAC in Scotland. I am very grateful to him and to the Lord President for making this possible.

Melanie Plimmer's first year as UTIAC's judge in charge of training has been enormously successful. She has forged a good working relationship with the Judicial College and introduced a number of new training ideas, most recently at the annual training for salaried judges in February 2020. She is currently developing innovative "virtual" training for the recently-appointed deputies. She too was appointed as a deputy High Court judge last year.

Judicial colleagues continue to be active in many other ways, which not only support and enhance the core function of deciding cases but also serve other socially important functions. Jeremy Rintoul has led on the production of new guidance for judges and users on permission to appeal, as well as contributing judicial oversight to IT projects that directly affect the Chamber. Judith Gleeson exercises delegated functions of the Senior President of Tribunals in respect of international matters and IT. She is also the UTIAC judge with special responsibility for deputies. We are very much in her debt. John Keith has addressed schools on the work of a judge and, together with Melissa Canavan, is developing a short video on the subject, designed for young people. Colleagues continue to be active in the international training of judges.

UTIAC enjoys a close relationship with the Administrative Court. In March 2020, Mr Justice Supperstone retired, having led that Court with distinction during my time as President. We look forward to an equally productive relationship with his successor, Mr Justice Swift.

Throughout my time as President, I have been exceptionally fortunate to enjoy the support and advice of UTIAC's Vice President, Mark Ockelton. It is not possible to overstate his contribution to the Chamber, or to the jurisprudence of the immigration jurisdiction in general.

The following schedule, compiled up to early March 2020, gives an indication of the Chamber's work in shaping that jurisprudence.

Lands Chamber

President: Sir Timothy Fancourt

Midway through the year under report, I took over from Sir David Holgate as President of the Lands Chamber. My previous impression, as an occasional practitioner and later a judicial observer of the Chamber's work, was swiftly confirmed by what I found. The Lands Chamber is an extremely professional and well-run tribunal, under the day-to-day control and leadership of its Deputy President, Judge Rodger QC; it is focused on high-quality decision-making in its specialist areas of practice; and it has the considerable advantage of expert and conscientious judges and members and a dedicated and professional Registrar and staff. I consider that the new jurisdictions that the Lands Chamber has recently acquired (of which more below) have come its way as a result of its established reputation for efficient decision-making and expertise in land disputes. It is therefore a privilege to be able to join and lead such a successful operation.

The Lands Chamber's operational efficiency has been challenged this year in ways that could not have been predicted. First, in the summer of 2019, Sir David suffered an horrendous injury to his leg in a domestic accident, which put him out of operation for months. The Lands Chamber carried on its work regardless and decisions in all cases in which Sir David was involved before his injury have been published, thanks to his dedication and the hard work of his colleagues. Happily, he is making considerable progress in his recovery and back at work leading the Planning Court, and his former colleagues and I wish him all the very best for the future. His means of departure should not be taken as establishing any precedent. The second challenge was of course the Covid-19 pandemic, of which more later.

It is appropriate to say a few more words about Sir David's particular contribution to the Lands Chamber. Before his appointment to the High Court bench, he had been a leading practitioner in the fields of rating and compensation and during his Presidency the Chamber benefitted greatly from his experience. He provided invaluable guidance to its judiciary when they were determining cases in these core jurisdictions, and made a substantial contribution of his own to the development and understanding of the law in both fields. There are few areas of the law more encrusted with antique learning than the law of rating, and there are few better equipped than Sir David to penetrate those layers and discern the true shape of the structure beneath. His clarification of the law relating to material changes of circumstances in *Merlin Entertainment Group v Cox* was followed this year by an equally comprehensive analysis of fundamental principles of valuation in *Hughes v Exeter City Council* which will undoubtedly be cited in future in a far wider range of cases than its niche subject matter (the valuation of museums housed in historic buildings). Indeed, it has recently been cited by the Chamber as authoritative in Interoute Vtesse v Gidman (VO), a case about the rateable value of a long-distance fibreoptic network. Sir David also demonstrated the benefit to a specialist Chamber of being led by a Judge with experience in fields outside its own expertise, especially in public law. A good example of this cross fertilisation was *Hussain v London Borough of Waltham Forest* in which he provided important guidance on the licensing regime for landlords of private residential property and its interaction with the Rehabilitation of Offenders Act 1974. I know that the Judges and Members of the Chamber would wish their appreciation of Sir David's leadership to feature prominently in any review of the last 12 months.

Last year's annual report noted the acquisition by the Chamber of new jurisdictions in land registration and telecommunications. I will say more about these shortly, but it is something of a relief to be able to record that no further additions have been made to our repertoire this year. We have instead experienced further timely strengthening of our judicial resources by the recruitment of Diane Martin MRICS, the first woman to become a Surveyor Member of either the Chamber or its predecessor, the Lands Tribunal. Diane's arrival is doubly welcome as she not only brings substantial experience of both telecommunications and valuation methodology from her previous practice and academic career, but her joining restores the Chamber to its full complement of Surveyor Members after a gap of two years. During that hiatus between the retirement of Paul Francis FRICS and the recruitment of Diane as his successor, a very substantial burden of work has fallen on the shoulders of the Chamber's two continuing Members, Andrew Trott FRICS and Peter McCrea FRICS. I am immensely grateful to them for their unstinting efforts to ensure that the work of the Chamber continued in spate for the whole of that period.

The recruitment of a surveyor of the calibre required to fill a full time judicial office has not proved easy. There are many in the profession equipped by experience and aptitude to undertake important valuations, but relatively few with the additional skills, judgment and attraction to public service needed to make a credible candidate for a post carrying such substantial responsibilities. We had the assistance of the Judicial Appointments Commission (JAC) in the two recent selection exercises, and it has found us not one but two outstanding candidates, as Mark Higgin FRICS will join us in November 2020. We are grateful to the JAC, and also to all the senior surveyors who were willing to offer their services by applying for appointment.

The Chamber's compensation work this year has seen the steady continuance of what, in time, is likely to become a substantial flow of work arising out of the compulsory acquisition of land for the recently confirmed HS2 project. 29 new references have been commenced in the last 12 months, for the most part concentrated along the route of the proposed new line through Staffordshire, on its approaches to the project's Birmingham terminus at Curzon Street, and around Euston Station. A number of significant HS2 references have been determined, while others have been resolved at the doors of the Chamber. Of particular note was the Chamber's determination of preliminary issues in SoS for Transport v Curzon Park Ltd in which it was required to consider what assumptions should be made about the manner in which adjoining sites, all taken for the construction of the new Curzon Street Station in Birmingham, could have been developed had it not been for the HS2 project. The development potential of a site is often the critical determinant of its value for compensation purposes and the statutory assumptions which must be made in determining that potential have been the subject of considerable amendment, much of which remains untested. HS2 is likely to provide the anvil on which the meaning of these amendments is hammered out.

A notable feature of the Chamber's compensation decisions this year has been the relative frequency with which it has been required to place itself in the position of a local planning authority asked to grant a certificate of appropriate alternative development, identifying the development for which permission would have been granted but for the compulsory acquisition of land for public works. Appeals against the decisions of local planning authorities in such cases were once determined by the Planning Inspectorate but since 2012 these have been directed to the Chamber and their frequency has begun to increase. Of 12 appeals determined by the Chamber under this new jurisdiction since 2012, half have been heard within the year covered by this report. A significant example is *PRO Investments Ltd v London Borough of Hounslow*, in which the Chamber was required to consider the

planning potential of a substantial site in West London had it not been required for enabling work associated with the new Brentford FC football stadium.

The Chamber's compensation jurisdiction has not been entirely monopolised by planning appeals and HS2 this year. A more conventional railway building project, the Thameslink scheme, gave rise to a dispute over the compensation payable to the proprietors of a waste transfer, skip hire and recycling business, whose site in Bermondsey was compulsorily acquired. *Welcocks Skips Ltd v Network Rail Infrastructure Ltd* was played out over a six-day hearing involving leading counsel and numerous witnesses and resulted in an award of compensation in excess of £8 million.

Reference has already been made to some of this year's important rating appeals. Other significant rating cases have required the Chamber to work through the consequences of the Supreme Court's decisions in *Woolway v Mazars* regarding the treatment of contiguous hereditaments and *Newbigin v Monk* concerning the treatment of premises incapable of beneficial occupation because of refurbishment projects. In *Jackson (VO) v Canary Wharf Ltd* the practical application of the law as explained by the Supreme Court in Monk was debated for the first time in the context of a modern office building, while in *Roberts (VO) v Backhouse Jones Ltd*, the Chamber was required to interpret the legislation designed to amend the law to reinstate the approach taken before the Supreme Court pointed out the legal error involved in *Mazars*).

The Chamber's attention has also been directed towards the consequences for the ratable value of football stadiums of the unhappy experience of repeated relegation down the leagues in *Wigan Football Company Ltd v Cox (VO)* and the equally baleful consequences for the bingo industry of the fact, found by the Chamber in *Buzz Group Ltd v Salmon (VO)*, that bingo is not as popular as it once was. Disappointingly for the judiciary concerned, the parties agreed that the Chamber's understanding of the issues would not be assisted in either case by a site visit. In *Wigan* the Chamber held that the relegation of the football club from the Premier League to the Championship, and later to League One, did not constitute a material change of circumstances so as to trigger a revaluation of its stadium for the purposes of business rates. The Chamber reiterated the important principles that rates are not a tax on profits and do not vary with the success of the occupier's business. The Chamber nevertheless noted that when the rating list was compiled stadiums were valued taking into account ability to pay, and that that valuation method generated difficulties for football clubs on relegation.

Equestrian sport also featured in this year's rating canon when the Chamber was required to consider in *Corkish (VO) v Bigwood* whether the stables and other world class facilities adjoining the private residence of an Olympic competitor were domestic or non-domestic property. Issues of rateability again featured in *Ricketts (VO) v London Borough of Southwark* when the practice of housing "property guardians" in office building awaiting demolition came under scrutiny. Each of these appeals illustrates the novel contexts in which the Chamber is often required to apply well established principles of rating law. It will be interesting to see what new issues arise as a result of Covid-19 legislation and the practical consequences and impact of the lockdown.

In last year's annual report, we referred to the significance of the Chamber's new jurisdiction in telecommunications. 68 references under the new Electronic Communications Code were received this year, each of which has been managed by a specific Judge or Member. These have included a significant number of claims arising out of proposals to demolish buildings that already host apparatus, almost all of which have been resolved by agreement without the need for a substantive

hearing. References concerning proposed new sites have been commenced relatively infrequently, and those which have often been in response to the loss, or anticipated loss, of an existing site as a result of redevelopment. The Chamber has not yet had to deal with any significant volume of work related to the expansion of the existing mobile communications networks, which is a little surprising.

The Chamber has continued to express its disquiet at the cost of resolving disputes under the new Code. There is, as yet, no evidence that parties on either side of the industry or their advisers are taking effective steps to bring their disputes before the Chamber at proportionate expense. Unnecessarily elaborate pleadings, over-engineered witness statements addressing irrelevant topics, and unfocussed expert evidence straying too often into expositions of the law, have all been encountered with unacceptable frequency. The Chamber expects parties to be well prepared and points of principle to be hard-fought, but unless effective measures are taken by the parties to keep costs within rational limits, effective measures will be taken by the Chamber. The Chamber signaled its intent in *CTIL v Central St Giles*, in which the aggregate costs incurred by three parties in a short hearing about rooftop access exceeded £100,000 but the Chamber limited the sums recoverable by the successful parties to £5,000 each.

In *EE Limited and Hutchison 3G Ltd v Chichester* the Chamber rejected a landowner's ingenious defence to the imposition of a Code agreement based on their suggested need to demolish the operator's existing mast in order to replace it with one of their own. The Chamber gave guidance on the assimilation of aspects of the new Code with some of the familiar principles established under the Landlord and Tenant Act 1954. In another significant decision, in *CTIL v Ashloch* the Chamber determined that it did not have jurisdiction to impose Code rights over land in favour of an operator which was already in occupation of the same land under a tenancy being continued under the 1954 Act. The boundaries between the Code and the 1954 Act are gradually being mapped out, and to accelerate that exploration arrangements have been made with County Courts in London and Birmingham to bring suitable cases forward for early determination by Judges of the Chamber, sitting additionally in their capacity as judges of the County Court.

It has been a busy year in the Chamber's other important jurisdictions. Unusually the diet of applications to modify or release restrictive covenants has featured three important cases involving leasehold restrictions. Most applications concern freehold land, but the Chamber's jurisdiction extends additionally to leasehold covenants. In *Shaviram Normandy v Basingstoke & Deane BC* the Chamber granted an application to modify a covenant which otherwise restricted the use of a substantial office building to 'office premises' on the basis that the restriction did not secure any substantial benefit to the local authority owner of the freehold or to the wider community. The modification permitted the conversion of the building to residential use. In *Edgware Road (2015) Ltd v Church Commissioners* a similar application, this time for a modification of covenants to permit the use of an office building as a hotel was refused, with the Chamber giving greater weight to the ability of the freehold owner to manage the building as part of its larger estate. Finally, in this trio of leasehold cases, in *Berkeley Sq Investments Ltd v Berkeley Sq Holdings* the Chamber determined that covenants in a long lease of business premises in Berkeley Square should be modified to permit use of the premises as a private members club.

The Chamber's role as the destination for appeals from the First-tier Tribunal, Property Chamber has continued to provide a significant case load. Leasehold enfranchisement and other residential property appeals have been relatively steady this year, but real growth has occurred in appeals

concerning housing standards and the recently introduced "rogue landlord" jurisdiction which allows local authorities to impose substantial civil penalties as an alternative to prosecution for housing offences. Property tribunals have not previously been much troubled with questions usually encountered in the criminal courts, but the new jurisdiction requires that they should be. In a series of appeals the Chamber has given guidance on a range of important issues, including the burden and standard of proof, the rehabilitation of offenders, and the imposition of appropriate penalties. Notable among these was *Sutton v Norwich City Council* in which civil penalties totalling almost £600,000 were reduced by the Chamber to £175,000 following the making by a local housing authority of an order prohibiting the use of a poorly converted office building as residential accommodation.

At the end of the year under report, the Covid-19 pandemic provided significant challenges to the continuity of the Chamber's work. A separate report on how the Chamber envisages emerging from the lockdown and its associated restrictions can be found elsewhere. So far, a combination of remote hearings and determinations on paper without a hearing, whichever was favoured by the parties and considered appropriate by the Chamber, has enabled it to deal with all listed cases. The only exception has been where the parties and the Chamber have agreed that an adjournment was appropriate, and those cases are being re-listed to be heard in the autumn.

Despite the current difficulties and uncertainty, the Lands Chamber is in a stronger and better place than it was only two years ago, after the retirement of Paul Francis FRICS as a salaried Member. Paul has now been replaced by Diane Martin, with another expert Surveyor Member joining us soon. In addition, the ranks of the Chamber's judges were swelled last year by the appointment of Judge Elizabeth Cooke, who brings with her particular expertise in property law, as a former Law Commissioner and principal judge of the Land Registration section of the Property Chamber of the First-tier Tribunal and a current editor of Megarry & Wade's *The Law of Real Property* and Deputy High Court Judge.

We look forward to a challenging but fulfilling year ahead.

Annex B

First-tier Tribunal

Social Entitlement Chamber

Acting President: Judge Mary Clarke

The Social Entitlement Chamber comprises three jurisdictions, namely Asylum Support, Criminal Injuries Compensation (CIC) and Social Security and Child Support (SSCS). The Principal Judge of Asylum Support is Sehba Storey; in CIC the Acting Principal Judge is Adrian Rhead. 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.

This year has seen a very big change in the Social Entitlement Chamber. The Chamber President, Judge John Aitken retired as Chamber president on 10 May 2020. For the present, Acting Chamber President, Mary Clarke, has been appointed to lead the Chamber until such time as a new Chamber President is appointed. John Aitken has laid down the ground work to take the chamber into its first stages of the reform process. He has enthusiastically embraced news ways of working and sought to make best use of the technology that is available. He has set in place a solid foundation for the chamber to build upon as it moves forward.

Social Security and Child Support

Jurisdictional Landscape

In the period October to December 2019 SSCS receipts, disposals and caseload outstanding decreased (by three per cent, 12 per cent and 19 per cent respectively). A 23 per cent and 95 per cent rise in Personal Independence Payment (PIP) and Universal Credit (UC) appeals respectively, was offset by a 68 per cent fall in Employment Support Allowance (ESA) receipts. ESA drove the majority of the decrease in disposals.[1]

There were 97,000 SSCS cases outstanding at the end of December 2019, down 19 per cent compared to the same period in 2018. This continues the fall that began in Q4 2018/19 (when comparing to the same quarter in the previous year), however caseload outstanding has increased by 2%, since the previous quarter. Since Q4 2017/18, caseload outstanding had been gradually decreasing (from a peak of 125,000), reversing the consistent rising trend seen since Q4 2015/16.[2]

The SSCS jurisdiction has seen a number of changes. During the course of the year, and four Regional Tribunal Judges have retired in Scotland, Wales and South West, London and North-East Region. Each regional tribunal judge contributed their own skills and expertise not only to the smooth running of their region but also to the overall development of the jurisdiction.

1 Published 12 March 2020 Tribunal Statistics Quarterly, October to December 2019 (Provisional) Including statistics on the Gender Recognition Certificate applied for and granted by HMCTS Gender Recognition Panel.

2 Ibid.

Over the course of the year, the SSCS jurisdiction has been pleased to welcome four new regional tribunal judges and 35 new salaried judges who have taken up appointments throughout all the regions. All the new appointments are settling well into their new roles and responsibilities. This is leading to fewer cancellations of sessions throughout all regions.

Further key appointments of regional tribunal judges are anticipated in the forthcoming year in addition to the Judicial Appointments Commission (JAC) exercises that are currently running to recruit additional fee paid judicial office holders in all tribunal roles.

Reform

The reform project team has continued to make advances throughout the year. Appeals that are lodged online can now progress on the Core Case Data System through pre-hearing case management with judges having access to the papers and the history of the appeal online. Currently judges and caseworkers can issue directions online through the Courts and Tribunals Service Centre. The longer-term aim is to make the service digital throughout the life of an appeal and work has begun enable this whilst also making provision for those appellants who are unable to engage digitally so that parties receive the best possible service and one that is best tailored to their individual needs.

Training

Training in the jurisdiction has continued apace with members of the training committee exploring new and innovative ways of delivering training. Trainers have made use of new technologies that are available as well as directing delegates to cross-jurisdictional training. As well as induction training for new judicial office holders, a range of refresher training has been provided for judges, medical member and disability members. Some training has been designed to meet the needs across all disciplines but other training has been specifically designed to meet the needs of one specific group of judicial office holders.

Unfortunately, due to the Covid-19 health crisis the annual conference had to be postponed to a later date.

All the training activities and the effective dissemination of information and updates relies on a small group of training and information leads. The jurisdiction is indebted to them for the hard work that they put in to the preparation and delivery of new material.

Significant Cases

The jurisdiction with which the Social Entitlement Chamber is concerned has continued to develop rapidly over the past year, with a number of important cases coming out of the Higher Courts with issues of human rights and European Community law commonplace. So, for example, caselaw relevant to the resolution of appeals in relation to (PIP) saw several influential decisions in both the Court of Appeal and Supreme Court and keeping abreast of these changes is an important aspect of the day-to-day life of the Tribunal's many judges and members. The annex to the Senior President's Annual Report contains a useful list of relevant Upper Tribunal decisions but highlighted below are some of the judgements coming out of the appeal courts which we have had to grapple with on a day-to-day basis.

The Tribunal has jurisdiction over appeals from decisions of the Secretary of State for Work and Pensions in relation to claims to Universal Credit, entitlement to which can involve complex issues of law and fact. Many claimants have, over the course of the past year, migrated from the older "legacy benefits" on to Universal Credit and some have had a reduction of income as a result. *R (on the application of TP, AR & SXC) v Secretary of State for Work and Pensions* [2020] EWCA Civ 37, concerned a human rights challenge to the legality of the universal credit transitional provisions. Both AR and TP had suffered the loss of their Severe Disability Premium, and had therefore suffered a financial loss, as a result of "naturally migrating" (i.e. those who move across due to a change in circumstances or some other "trigger" event) to Universal Credit in circumstances where a person subject to "managed migration" (i.e. those who are moved from a "legacy benefit" to universal credit by action of the Secretary of State) would not lose income. The result was that they were treated less favourably and the difference in treatment amounted to a breach of their human rights contrary to Article 14 of the European Convention on Human Rights.

Despite its introduction some seven years ago, regulation B13 of the *Housing Benefit Regulations 2006*, otherwise colloquially known as the "bedroom tax", continues to be the subject of higher judicial scrutiny with decisions in the Court of Appeal, Supreme Court and the European Court of Human Rights impacting on the work of the Tribunal. In Secretary of *State for Work and Pensions v (1) Hockley (2) Nuneaton and Bedworth Borough Council* [2019] EWCA Civ 1080, the Court of Appeal told us that, in deciding the categories of person occupying a dwelling under regulation B13, no reference need be made to the actual individual or class of individual who may occupy a bedroom, meaning that we should interpret the meaning of a bedroom as a room capable of being used as such "by any of the listed categories [in regulation B13] and not a room capable of being used as a 'bedroom' by the particular claimant", thus overturning the interpretation of the word "bedroom" given by the Upper Tribunal.

Staying with regulation B13, *RR v Secretary of State for Work and Pensions* [2019] UKSC 52, is a very important decision of the Supreme Court confirming that the Tribunal is empowered under the authority of section 6 of the Human Rights Act 2008. There had been a long running series of cases running in parallel in both the courts, arising out of judicial review proceedings, and the tribunals, arising out of statutory appeals. The judicial review proceedings resulted in the striking down as unlawful certain aspects of regulation B13 and the question for the Supreme Court concerned the powers of the Tribunal itself, in statutory appeals, to disapply subordinate legislation which was shown to be incompatible with the Human Rights Act ('HRA'). The Supreme Court confirmed that there "is nothing unconstitutional about a…tribunal disapplying a provision of subordinate legislation which would otherwise result in their acting incompatibly with a Convention right, where this is necessary in order to comply with the HRA."

A recurring theme over the past few years in this section of the Annual Report is the continuing expansion of the law relating to PIP and the past year has again seen a number of important developments in both the Upper Tribunal and the Supreme Court. A decision of particular note is Secretary of *State for Work and Pensions v MM* [2019] UKSC 34 in which the Supreme Court had to consider the way in which "social support", which appears in one of the PIP activities, ought properly to be interpreted with a number of divergent decisions in the lower courts. Accordingly, the Supreme Court told us that "Social support" in the context of "engaging with other people face to face" (activity 9 of the PIP activities) requires a "greater degree of disability" than a claimant who might otherwise be able to engage with prompting. Descriptor 9c (in which social support

is relevant) requires that prompting, which would otherwise come within descriptor 9b (and thus receive lower points), constitutes social support only if it is provided by a person "trained or experienced in assisting people to engage in social situations". However, social support is not limited to those occasions when a claimant is actively engaging in face to face contact but can be provided beforehand so as to enable that person to effectively engage in face to face contact.

Finally, the right to reside also continued to make a significant impact in the day-to-day work of the Tribunal over the course of the past year with guidance on the interpretation of the rules on freedom of movement coming from the Supreme Court and the European Court of Justice. In *Secretary of State of Work and Pensions v Gubeladze* [2019] UKSC 31, the Supreme Court had to consider the question as to whether a Latvian national, subject to the Worker Registration Scheme (WRS), living in the UK, is entitled to receive state pension credit under regulation 5(2) of the *Immigration (European Economic Area) Regulations 2006*, which implements article 17(1)(a) of Directive 2004/38/EC (known as the 'Citizens' Directive'), as a "worker or self-employed person who has ceased activity". In 2009 the Government decided to extend the WRS by a further two years from 01 May 2009 to 31 April 2011. Mrs Gubeladze's claim to pension credit, in October 2012, was refused by the Secretary of State on the basis that her "continuous three years' residence" in the UK (a condition of entitlement) was not "legal" residence in the sense of a right to reside under the Citizens' Directive as she had not registered her employment under the terms of the extended WRS. The First-tier Tribunal declined jurisdiction but Mrs Gubeladze's appeal to the Upper Tribunal was successful on two grounds. First, that the Secretary of State was wrong to interpret "three years' continuous residence" as requiring "legal" residence, "actual" residence was sufficient; and second, the decision to extend the WRS in 2009 was disproportionate and therefore unlawful. Following the Secretary of State's unsuccessful appeal to the Court of Appeal, the Supreme Court rejected the onward appeal holding, firstly, that the decision to extend the WRS was open to a challenge on the grounds of proportionality and that it was indeed unlawful under EU law; and secondly, that the concept of residence under the Citizens' Directive is "factual" as opposed to "legal" residence and that, accordingly, Mrs Gubeladze had been "resident" for the purposes of the Directive for the requisite three years.

Criminal Injuries Compensation

Jurisdictional landscape

CIC is a relatively small jurisdiction receiving appeals from the Criminal Injuries Compensation Authority in respect of claims for compensation by victims of crimes of violence. There are four iterations of the Scheme, 1996,2001,2008 and 2012.

Receipts of appeals have generally been in line with predicted profile. However, the live case load of the tribunal has continued to fall and waiting times have improved. This success has been the result of a flexible approach to the listing of appeals and a focus on older cases, particularly those under the pre-2012 Schemes. The use of case management hearings conducted by telephone continues to be an effective way of resolving appeals or where appropriate ensuring that they are ready for a final hearing.

Reform

In late 2019 CIC became part of the Special Tribunals Reform Project and a number of workshops and meetings were held as part of the Discovery phase. This included very useful engagements with tribunal users and stakeholders. The Discovery phase is now complete.

Training

CIC held a summer training conferences focusing on the assessment of mental injury under the Scheme and making best use of evidence. The Annual Conference was addressed by the newly appointed Victims Commissioner, Dame Vera Baird who spoke about the issue of obtaining evidence in appeals involving sexual violence.

Legislative changes and significant cases

The outcome of the Governments' Review of the 2012 Scheme is still awaited. However, on the 13th June 2019 the 2012 Scheme was amended by statutory instrument to give effect to the commitment to reverse the "same roof rule". This provision prevented pre-October 1979 victims of crimes of violence from receiving compensation if at the time of the offence they lived together as a member of the same family as the perpetrator. It effectively prevented many victims of historic domestic violence and child abuse from receiving compensation. The amendment enables victims who were previously refused compensation on the "same roof rule" to make a new application.

The Court of Appeal decision in A and B v CICA and Anor [2018] EWCA Civ. 1535 appeared to have settled all remaining issues in relation to the treatment of unspent convictions but on the 6 November 2019 permission to appeal was granted to the Supreme Court in relation to possible discrimination in cases of human trafficking, European Convention on Human Rights Article 4,14.

Asylum Support

Jurisdictional Landscape

Our report this year once again demonstrates the volatility of the Tribunal's appeal numbers and the necessary flexibility of response by the judiciary and administrative staff.

At the start of the reporting period, U.K. Visas and Immigration (UKVI), introduced a new initiative to speed up decision-making by largely ceasing their previous practice of seeking clarification or missing documentation from support applicants before the issue of decisions to refuse support. Applicants were therefore only advised that crucial information was missing from their support application when they received a refusal of support letter from UKVI – at which point their only remedy was to appeal. This led to a sudden and unprecedented increase in intake. Appeal numbers are not yet available for the whole period covered by this report but they have continued to rise exponentially. A comparison of the six months ending February 2020 with the same period in 2018/19, shows that our appeal intake has risen by over 100 per cent.

Section 95 (as opposed to Section 4) support appeals now represent well over half the intake, which reflects an increased UKVI emphasis on comparing assets and income declared in visa applications with that declared in support applications. The increase in appeal numbers is matched by a growth in

the length of hearings, since the majority of these now include the taking of detailed oral evidence, the consideration of newly produced material that might previously have formed an enquiry response and finely balanced findings on credibility. Paper determinations now account for only five per cent of appeals.

Notwithstanding the radical increase in appeal numbers, the committed response of our salaried and fee-paid judges and administration has kept our adjournment rate down to just over two per cent. The demand for and availability offered by fee-paid judges has at times outstripped our court space and we have responded with flexibility in listing times, including early starts, lunchtime listing and borrowing courts from other jurisdictions.

Appeals related to the repealed Section 4(1) of the *Immigration and Asylum Act 1999* (as amended) are now rare. However, the absence of this form of support has given rise to some interesting scenarios in which appellants are shown to be neither asylum seekers nor failed asylum seekers, but may struggle to bring themselves within the more limited provisions for support from the Secretary of State provided by Schedule 10, paragraph 9 of the *Immigration Act 2016*, which fall outside of this Tribunal's jurisdiction.

Judges have also considered other, technically complex, appeals in which the provision of support hinges on the appellant's immigration status, including the availability of access to mainstream benefits for persons who unusually enjoy both Indefinite Leave to Remain and asylum-seeking status at the same time and the position of persons seeking bail addresses to make a bail application or in response to a grant of bail in principle by an Immigration Judge.

Judicial Review

There is no statutory right of appeal against asylum support decisions and the only remedy is judicial review. During the period of this report there were three new applications for permission to seek judicial review of asylum support decisions. This represents only 0.17 per cent of all determined appeals. The consistently low numbers of review applications are strong evidence that judges are making sound decisions backed by cogent reasoning.

People and places

Throughout the reporting period Principal Judge, Sehba Storey continued in the role of Acting Chamber President of the First-tier Tribunal, War Pensions and Armed Forces Compensation Chamber. This limited her capacity for hands-on involvement in the work of the Asylum support jurisdiction, which was managed in her absence by Judge Gill Carter, Deputy Principal Judge, assisted by Judge Verity Smith.

Asylum Support has lost four salaried judges over the years and they have not been replaced. In the last generic competition, we had hoped to be assigned three salaried judges but received one judge at 70 per cent and a second at 40 per cent. We therefore remain seriously understaffed at a time when our work has increased at unprecedented levels. We hope that Asylum Support will have better luck in the 2020 recruitment exercise.

We are pleased to welcome Martin Penrose and Richard Wilkin to Asylum Support as part-time salaried judges. Judge Penrose brings with him many years of experience as a fee-paid judge in this

jurisdiction and expedited training in interlocutory work has meant that he could promptly provide much needed assistance to his two other salaried colleagues. Judge Wilkin joined the Tribunal on 2 March 2020 and we hope to benefit from his case-management and hearing experience in the Coroners' Court.

We have responded to the demand for greater numbers of experienced fee-paid judges by welcoming, from expressions of interest, Judge Shazadi Beg, who has a background in Immigration and Social Security and Judge Christine Dodgson, whose primary jurisdiction is Criminal Injuries Compensation. They have been provided with bespoke training, the design and delivery of which has been greatly assisted by the input of Fiona Ripley and Sanjay Lal, our two Training Officers (first appointed in 2018).

The increase in Tribunal hearings and attendant administrative casework and ushering duties will result in above projection returns and the Tribunal's Acting Operations Manager has requested a significant increase in administrative staff numbers for the next financial year. The benefits of working in a multi-jurisdictional base have been that it has been possible to ease at least some of the pressure on the administration by temporarily borrowing staff from other jurisdictions.

Reform

Notwithstanding our volume of work, Tribunal judges, staff and stakeholders have all engaged enthusiastically in the Reform Programme. Following the detailed 'discovery' phase of the programme in which considerable numbers of interviews and observations were undertaken by the Reform Project user researchers, a lively 'future state' meeting took place on 28 February 2020.

The meeting was informed by the views of judges; administration staff and senior managers; Home Office Presenting Officers and senior managers; stakeholder representatives from voluntary organisations such as the British Red Cross and a representative from the Asylum Support Appeals Project.

We now look forward to the next ('Alpha') stage of the programme, for which a timetable has not yet been set. At this stage prototype systems will be tested, adapted to the needs of Asylum Support and hopefully integrated into our processes to improve efficiency and service delivery. We are particularly keen to explore the Core Case Data system, with a view to increasing accessibility to appeal bundles and evidence for judges, staff, parties and representatives and to producing automatically templated correspondence and improving file tracking. We would also welcome an improved availability returns system for judges and aspire to a more locally responsive service via a widely available video hearing system.

Unfortunately, our experience to date has been one of less than optimal benefit from technological advances. None of the video systems explored to date have been adequately able to address the difficulties of our interpreter-dependant, litigants in person, who will rarely have access to computers, tablets or smart phones. They may possess additional vulnerable characteristics because they are carers of small children, disabled or the elderly for whom travel to our premises in East London presents logistical difficulties. For these appellants the current demand for video-linked hearings greatly outstrips the resources available. It is popular with users because the service is free, does not require appellants to have their own equipment, connectivity or involve any setting up. And of course, the Home Office pay for travel to the local video court.

Video hearings currently take place at a court local to an appellant but we are dependent on the goodwill of those courts to extend their facilities to us. When the system works, it works well. When the use of facilities is unavailable, it causes delay in listing hearings.

For appellants living in Belfast who request an oral hearing of their appeal, a video hearing is the only option available.

Chamber Judicial Office Holders by Jurisdiction

Social Security and Child Support	
Regional Judges	6
Salaried Tribunal Judges	122
Salaried Medical Members	9
Fee-paid Legally Qualified	683
Fee-paid Medically Qualified	763
Fee-paid Disability Qualified	526
Fee-paid Financially Qualified	17
Total	**2130**

Criminal Injuries Compensation	
Fee paid judge	59
Fee paid medical member	29
Fee paid member	14
Total	**102**

Asylum Support	
Salaried Judge	59
Fee paid judge	29
Total	**14**
Total Chamber Headcount	**102**

Health Education and Social Care Chamber

President: His Honour Judge Phillip Sycamore

The Chamber comprises four jurisdictions. Mental Health which covers the whole of England; Special Educational Needs and Disability (SEND), 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. In addition to the President, the Chamber's senior judicial leadership comprises two Deputy Chamber Presidents, Judge Meleri Tudur who has responsibility for the SEND, Care Standards and Primary Health Lists jurisdictions and Judge Sarah Johnston who has responsibility for the mental health jurisdiction. Additionally, Chief Medical Member Dr Joan Rutherford has a leadership role for the specialist medical members who sit in the Mental Health jurisdiction.

The Jurisdictional Landscape

In SEND, following the launch of the National Trial (NT), a time limited, two-year government pilot extending the jurisdiction of the Tribunal to include power to make recommendations in respect of health and social care issues in 2018, it has continued, going from strength to strength, with the numbers of eligible appeals registered far exceeding all expectations. By the end of March 2020, about 1700 appeals had been registered by the jurisdiction, and in December 2019, the Department for Education extended the lifetime of the NT to the end of August 2020. A draft interim report was published in January 2020 setting out the evaluation research team's findings so far, with the final recommendations expected in May 2020 although they are likely to be delayed further due to the impact of the Covid-19 pandemic.

The jurisdiction's caseload has continued to rise with the number of appeals registered increasing by approximately 20 per cent for the year 2019-20. It has been some time since an appeal was made to the Court of Appeal in respect of a SEND decision. In *Nottinghamshire v SF and GD* [2020] EWCA Civ 226, the Court of Appeal upheld the decision of the First-tier Tribunal and Upper Tribunal on the interpretation of "necessary" in s37 of the *Children and Families Act 2014* in the context of an appeal against a decision not to make and maintain an Education, Health and Care Plan.

The number of disability discrimination in school's claims has remained stable with a slight increase in the numbers of claims proceeding to hearing.

In the Care Standards jurisdiction, the appeal numbers have remained relatively high with no sign of appeal numbers slowing down. The vast majority of appeals are against the decisions of the Care Quality Commission, Ofsted and the Secretary of State for Education. New rights of appeal have been added to the jurisdiction recently and the first appeals under the *Regulation and Inspection of Social Care (Wales) Act 2016* heard. It is anticipated that these appeals will increase significantly in the next few years as mandatory registration requirements are imposed by the Welsh Government. New appeal rights have also arisen following implementation of the *Higher Education and Research Act 2017.*

In the Mental Health jurisdiction, applications have remained stable over the last year. By the end of March, the jurisdiction had received over 33,000 cases which resulted in approximately 20,500 oral hearings. In the last Senior President's annual report, the jurisdiction reported it was piloting paper cases for some community patients. This pilot has gone well and a number of cases are now dealt

with on paper with the patient's consent as business as usual. The jurisdiction received approximately 100 applications for review of decisions with some 18 set aside. The jurisdiction has introduced a supportive programme for judges for writing decisions which has been well received.

At the Chamber's request, the Tribunal Procedure Committee launched a public consultation to consider changes to the time to hold a hearing under Section 2 of the Mental Health Act from seven to ten days. Section 2 applications make up about 33 per cent of the jurisdiction's work, hearings need to be held extremely quickly which is a constant challenge. The extension would help ensure that stakeholders will be able to be more certain of the hearing date and it is hoped fewer postponement applications should be received which is important particularly for patients for whom a Tribunal can be a stressful time. The consultation ran from 11 February 2020 to 7 April 2020 and we look forward to the results being published in due course.

Training

Throughout the Chamber, training of all judicial office holders is innovative and well received. In the SEND jurisdiction a structured induction programme has been developed to support the increasing numbers of salaried and fee-paid judicial office holders joining the jurisdiction. This includes an e-learning package, supported observations and sitting, a mentoring programme, and, where needed, an introduction to Judge-craft and Judicial skills. From 2020, Care Standards and Primary Health Lists training will be increased to two days a year rather than the existing one day.

The mental health jurisdiction was delighted that Professor Dinesh Bhugra, Emeritus Professor of Mental Health and Cultural Diversity at the Institute of Psychiatry, Psychology and Neuroscience at King's College London has been involved in training of mental health judicial office holders about psychiatry across cultures. Joanna Dean from MIND has also given a talk to mental health judicial office holders about the service user experience of mental health services.

Processes in mental health are continually refined to ensure stakeholders are given the best possible justice for example, communications were reviewed with victims of those who are detained pursuant to criminal court orders to ensure the jurisdictions duties under statute are being fulfilled.

People and places

Chamber President His Honour Judge Phillip Sycamore retired from salaried office on 31 March 2020. Judge Sycamore had been President of the Health, Education and Social Care Chamber since its creation in November 2008 as well as being Deputy Vice-President of Tribunals.

Following a Judicial Appointments Commission competition, Judge Mark Sutherland Williams was appointed as Chamber President, and he took up office on 1 April 2020.

In August 2019 the Chamber was delighted that Judge Meleri Tudur was successful in securing a Section 9(1) appointment to sit as a Deputy High Court Judge.

Judge Melanie Lewis retired in October 2019 after a period of almost ten years as a salaried judge in the Chamber. Whilst wishing her well in her retirement, we are pleased that her considerable experience and expertise in three jurisdictions have been retained in a fee-paid judge capacity.

Following a Judicial Appointments Commission competition, the Chamber was pleased to welcome nine new salaried judges to its complement. The following judges took up their new appointments from November 2019 to May 2020: Judge Faridah Eden, Judge Gareth Brandon, Judge Fiona Henderson, Judge Asha Misir, Judge Scott Trueman, Judge Katharine Lawrence, Judge Shelley Brownlee, Judge Graeme Downs and Judge Sean Bradley. At the same time, an expressions of interest exercise was run across all First-tier Chambers for existing salaried judges to be assigned to a different Chamber. Judge Belinda Cheney was successful in her request to be moved from the Social Entitlement Chamber to the Health, Education and Social Care Chamber which she took up in January 2020.

As part of a rolling programme of judicial recruitment, the Chamber was pleased to welcome eighty-three new fee-paid judges at the start of 2019 who were successful in a Judicial Appointments Commission competition. Twenty-one judges were authorised to sit in SEND and sixty-two judges were authorised to sit in Mental Health. A further fifty-seven new fee-paid judges will be joining the Chamber later this year following the most recent fee-paid First-tier Tribunal judge recruitment competition, twenty-two to sit in SEND and thirty-five to sit in mental health. The Chamber is also facing an exciting year in terms of fee-paid recruitment with significant numbers of new members being recruited in both SEND and mental health this year as well as the regular recruitment for mental health medical members. The Care Standards jurisdiction is recruiting specialist members jointly with the Upper Tribunal Administrative Appeals Chamber through a Judicial Appointments Commission competition.

Susan Harrison Judge Tudur's Personal Assistant retired in March 2020 after ten years of working in the Chamber.

Reform

SEND formally became part of the HM Courts and Tribunals Service (HMCTS) Reform programme in November 2019, when work commenced on analysing the digital needs of the tribunal for its future operation. The outbreak of the Covid-19 pandemic, however, accelerated the need for remote working to ensure that the work of the tribunal continued uninterrupted. The ground work undertaken on the trialling of video hearings and digital working allowed SEND/ Care Standards and Primary Health Lists to be launched as the first fully digital and video hearing-enabled jurisdictions across the First-tier Tribunals on the 23 March 2020. None of the hearings in the jurisdictions were postponed or cancelled and the work continues at pace. Unexpectedly, the Tribunal regained some of the ground lost with the postponement of hearings, by relisting previously postponed cases. Initial feedback has been positive and it is likely that video hearings will remain part of the Tribunal's approach to dealing efficiently and effectively with appeals in the future.

For the Mental Health jurisdiction, considerable planning had taken place to enable video hearings start to be heard in hospitals this year. Stakeholders were involved in the planning and both welcomed and assisted trials. It was envisaged the Reform programme would provide the technology to hold more video hearings in the future but the changes introduced following the spread of Covid-19 overtook events. The jurisdiction introduced virtual and telephone hearings following the emergency legislative and rule changes and with the flexible help and cooperation of judicial office holders and HMCTS administrative staff, hearings have managed to continue.

War Pensions and Armed Forces Compensation Chamber

Acting President: Upper Tribunal Judge Kate Markus QC

The Jurisdictional Landscape

Over the years since the War Pensions and Armed Forces Compensation Chamber (WPAFCC) was created in 2008, it has been suggested by some that the Chamber was either too small to function independently as a single jurisdiction and/or could function without its own President. When legislative amendment permitted one person to preside over more than one Chamber of the First-tier Tribunal, the prospect that the WPAFCC may lose its Chamber President became a real possibility. One of the consequences of this uncertainty was that the Chamber has not had a permanent Chamber President since 2016, although it has enjoyed exemplary leadership by a series of Acting Chamber Presidents. The status of the Chamber was one of several reforms under consideration by Sir Keith Lindblom, Vice-President of the Unified Tribunals, as part of his review of the First-tier Tribunals. In October 2019, he concluded that, "the unique and distinct jurisdictions of each of the chambers ought to be maintained in the present structure as it has evolved" but left open the prospect of further consideration at a later stage.

In March 2020 the Senior President, Sir Ernest Ryder announced to the full membership of the Chamber, his decision to retain not only the War Pensions Chamber as an independent body but also to appoint a permanent Chamber President. His comments are warmly welcomed.

The work of the Chamber

The statistics for the period covered by this report are available only up to and including February 2020 as a result of the disruption caused by the Covid-19 pandemic. Appeals to the Chamber have remained steady with annual receipts in 2018/19 at 2549 and 2019 to February 2020 at 2541. The adjournment rate is 21 per cent and, whilst this is relatively high, it has decreased from 24 per cent in the previous year when particular issues with representation caused a number of adjournments. Increased and more robust forward planning with the Royal British Legion, who represent the majority of appellants, has assisted to ensure that appellants are able to attend court prepared for hearings and appropriately supported. In addition, listing appeals has also been aided by Veterans UK's increased participation by telephone.

The Chamber has taken effective steps to reduce the need for postponement of hearings. Due to the specific nature of the appellant population, including that some are still in service and may often be deployed and that many suffer ill health or are elderly or vulnerable, a number are unable to attend oral hearings. The Chamber has adopted a more proactive approach than previously to ensure participation, by tailoring directions to the needs of appellants and increasing the use of telephone hearings. There remain issues with the ability of the Chamber to secure the use of more local and appropriately accessible venues across England and Wales and this is also reflected in requests to postpone by Appellants and their representatives. Nonetheless, the rate of postponements has decreased from 11 percent in 2018/19 to 4 percent in 2019/20.

People

Judge Sehba Storey took on the role as Acting Chamber President of the WPAFCC in September 2018 and led the Chamber since then until 4 March 2020 after which I took on the role. I am grateful to Judge Storey for the leadership and training she provided for the Chamber in addition to her other varied duties. Judge Storey remains a judge of the WPAFCC along with her other judicial and leadership roles in tribunals. Judge Storey was instrumental in supporting the appointment of a permanent Chamber President and, at the time of writing, a Judicial Appointments Commission (JAC) competition for a permanent Chamber President was expected to open in May.

Regional Tribunal Judge Hugh Howard agreed to act as Senior Judge for the WPAFCC from February, to support me by overseeing the day-to-day management of the Chamber, until a permanent Chamber President is appointed. Shortly after our appointments, Judge Howard and I became heavily involved in responding and adapting to the crisis caused by Covid-19. This is covered in more detail in the supplement.

Judge Surinder Capper, together with Moshuda Ullah, Tribunal Case Worker, ensures that appeal papers are scrutinised and files made ready for hearing. Judge Capper has continued to sit throughout England and Wales.

We were very pleased to welcome Richard Wilkin as a salaried judge, in February 2020. He works two days a week for this Chamber and three days in the Asylum Support jurisdiction in the Social Entitlement Chamber. We are also fortunate that Mark Rowland, a retired judge of the Upper Tribunal (Administrative Appeals Chamber) with a wealth of experience in relation to the jurisdiction of the WPAFCC, was appointed as a fee-paid judge in February.

The Chamber has added to its ranks three new medical members (Philip Bolton, Mair Bourne and David Jenkins) and 14 new service members (Nicholas Borbone, Robert Daisley, Keith Dear, Hugh Evans, Philip Floyd, Celia Harvey, Robert Jones, John Lea, Christopher Martin, Antony Morris, Jonathan Moss, Charlotte Peattie, Paul Stockdale, Francis Whiting). The newly appointed members were energetic and enthusiastic participants in a two-day training event at Fox Court in January 2020. They had commenced an induction process which was interrupted by the Covid-19 emergency and those who have not completed the process will do so as soon as that can be arranged.

Some salaried judges of the Social Entitlement Chamber have provided substantial assistance with a wide range of work of this Chamber. Judges Gerald Newman and Jacqueline Guest remain available to undertake interlocutory work and to sit. We recognise that Judge Verity Jones may not be able to do so due to her recent appointment as a Regional Judge. Judge Manjit Gill is no longer able to sit in this Chamber due to pressure of work in the Social Entitlement Chamber. Judges Jacqueline Finlay and Elizabeth May have retired as salaried judges but we are delighted that they will continue to sit in a fee-paid capacity. The expertise of all these judges, and their willingness to help (sometimes at short notice), has been invaluable.

During this period, we said goodbye to two of our longest serving service members, Joanna Finlay and Peter Steele. We thank them for their contribution to the work of the Chamber.

Places

Fox Court continues as our main administrative centre. We continue to use a variety of courts and tribunal centres across England and Wales, in addition to Fox Court, and are able in the main to respond proactively and effectively to the needs of vulnerable and/or aged appellants by listing as close to their homes as possible. We have also used some Crown Courts to hold hearings, however these are not all suitable in terms of accessibility and layout of the allocated courts.

Training

Judge Surinder Capper leads on training and works with the active and enthusiastic training committee which has provided a two-day residential event and also a one- day event for all panel members. Panel members have benefited from a range of topics including new digital ways of working and an insight into modern day service life, together with the usual medical and legal topics.

Reform

In principle it has been agreed that the process of direct lodgement of appeals to the Chamber will be implemented. Direct Lodgement has been on the HM Courts and Tribunal Service (HMCTS) Reform Agenda for some time and is being taken forward in conjunction with Administrative Justice Policy directorate in the Ministry of Justice.

In December 2019 a Working Group was established to progress this work and terms of reference were agreed for the design and implementation of direct lodgement to the Chamber. The Working Group is made up of representatives of HMCTS, Armed Forces Service Charities, the Ministry of Justice, the Ministry of Defence, and Courts and Tribunals judiciary. It also established sub-groups to focus on specific areas of direct lodgement implementation such as the operational impacts, resource (judicial and administrative) requirements, and policy and legislative considerations. Further meetings are planned to support this work, to provide a route map for direct lodgement and also to ensure consistency of process with other existing or planned direct lodgement schemes in the UK.

The Working Group will also look at future processes post-implementation such as the enhanced use of video hearings, the use and filing of electronic bundles and other IT supportive mechanisms.

WPAFCC staff and judges have also attended a series of meetings with members of the Tribunals Reform Project. One meeting included a representative of Veterans UK and a representative from the Royal British Legion who regularly appeared at hearings. The input of the latter was found to be very valuable in understanding the process from the appellants' point of view and this engagement and involvement of stakeholders will form a critical part of the work that the Group will be undertaking.

Mapping exercises will begin in earnest in mid-June of this year and detailed scoping of the consequences and impacts of direct lodgement, together with detailed analysis and projected outcomes.

This will take time but the Working Group aims to implement direct lodgement before the end of 2021.

Tax Chamber

President: Judge Greg Sinfield

Introduction

In normal times, the purpose of this report is to summarise what has happened in the Tax Chamber in the last 12 months, highlighting any new developments and looking to the future. These are not normal times. As I write this report in late April 2020, many – perhaps most – of the changes that occurred over the course of the last year have faded into insignificance, overshadowed by the events of the last six weeks. In that brief time, the impact of the Covid-19 coronavirus has changed life for everyone in the United Kingdom in ways that were previously unimaginable, bringing uncertainty, difficulty and tragedy to the lives of many. In the Tax Chamber, we have had to make fundamental changes to existing procedures and learn new ways of working in a very short time to ensure that the work of the Chamber can continue to the greatest extent possible. It has been extraordinarily difficult at times and I record my gratitude and admiration for the hard work and determination of the judges, members and administrative staff of the Tax Chamber in these unprecedented times.

Jurisdictional Landscape and Legislative Changes

The Tax Chamber hears appeals at first instance against decisions relating to all taxes (save for certain devolved taxes) and duties made by HM Revenue and Customs (HMRC). We also hear appeals against refusals to restore goods seized by either HMRC 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 taxes, the Tax Chamber's jurisdiction extends throughout the UK.

There were several legislative changes, as there are every year in the field of tax, but they had no immediate impact on the work of the Chamber. We continued to monitor developments in the UK's slow progress towards leaving the European Union and tried to divine what that might mean for the Tax Chamber. Given the inherent time lag in the HMRC review processes (and the hope that they will operate a 'light touch' in first few months), we are unlikely to see any impact from Brexit on appeals received for six months to a year after the end of the transition period.

In February 2020, we had discussions with HMRC about an expected increase in applications to the Tribunal for approval of third-party information notices under Schedule 36 Finance Act 2008. The increase arose as a result of the growth in information provided by HMRC to foreign tax authorities under the Organisation for Economic Cooperation and Development's Common Reporting Standard ("OECD CRS") for the automatic exchange of information. HMRC had already seen an increase in requests by other tax authorities for financial and other information from UK institutions about assets held by their nationals in the UK. If HMRC's calculations were correct then just dealing with the applications would require 184 half-day hearings which could not be managed without some additional judicial resource.

In March 2020, however, the Tax Chamber adopted new ways of working in response to the developing Covid-19 situation. On 18 March, I gave instructions that all face to face hearings listed up to the end of August were to be cancelled. Until further notice, all re-listed and new proceedings were to be dealt with remotely wherever possible by a judge sitting alone after a paper determination or hearing by telephone or video. At the same time, I advised all judges (salaried and fee-paid) that they should work remotely by using their laptops or personal computers to the greatest extent possible.

On 23 March, I issued a Practice Statement in relation to the categorisation of cases which expanded the Default Paper cases category, provisionally for six months, to include appeals against penalties of up to £20,000 rather than the previous limit of £2,000.

A general stay was issued on 24 March which stayed all current proceedings in the Tax Chamber for 28 days until 21 April and extended any time limits in those proceedings by 28 days. The stay and extension of time did not affect any directions issued by the Tribunal after 24 March 2020. This stay was subsequently extended for certain proceedings (see paragraph 11 below).

From 6 April, the Tax Chamber's administrative staff in Birmingham was reduced to a core team working on a rota to manage current workload as far as possible and within social distancing guidelines. All other staff who were able to do so worked remotely. Inevitably, these arrangements had an impact on the ability of the office to deal with correspondence and proceedings. Appellants were advised to submit notices of appeal online at *https://www.gov.uk/tax-tribunal/appeal-to-tribunal* or by email, where possible. Except where the online appeal service is used, the parties were told to expect delays in receiving any acknowledgement of receipt of an appeal from the Tribunal.

A number of cases (57 paper determinations and 40 telephone or video hearings for April and May) remained in the list where the parties had already agreed to a video or telephone hearing or where the matter was to be determined on the papers. These cases could only proceed if the judges and the parties could access the hearing papers and bundles. Unfortunately, HMRC confirmed that they were not able to provide paper bundles to the Tribunal or the parties during the pandemic because their offices were closed to staff and the public. HMRC expected that they would be able to prepare electronic bundles working remotely (further details below).

It became clear that changes to the Tax Chamber's rules were required to permit the maximum use of paper determinations and remote hearings during the COVID-19 pandemic. With effect from Friday 10 April, the Tax Chamber's Procedure Rules were amended to:

1. allow decisions to be made on the papers without the parties' consent when urgent and it is not reasonably practicable for there to be a hearing;

2. provide that hearings can be held in private if occurring remotely and it is not reasonably practicable for the hearing to be accessed in a court or tribunal building and/or by a media representative remotely; and

3. stipulate that hearings held in private for these reasons (above) or that were only deemed public by virtue of a media reprensentative being able to access the proceedings remotely are recorded, if practicable.

On 21 April, I released a further general stay in relation to proceedings that had been received by the Tribunal before 24 March and allocated to the standard or complex category before 21 April. Those proceedings were further stayed until 30 June. The directions did not, however, further extend the time limit for appealing any decision in relation to the relevant standard or complex cases.

Our Work

The number of appeals received and disposed of by the Tax Chamber during the period covered by this report are set out in the following table, together with those of the previous year for comparison.

Year	Appeals received	Appeals disposed of after hearing	Appeals disposed of without hearing	Total appeals disposed of
2019-20	9,454	1,942	5,591	7,533
2018-19	8,905	2,342	9,064	11,406
2017-18	9,430	3,009	7,179	10,188

We received appeals in two large groups with over 1000 appeals in each during 2019-20. Without those group appeals, the intake of new appeals would have been lower than expected. Disposals were also lower than in recent years. This was because, in the earlier years, we had large numbers of stayed appeals in relation to which the stays were lifted and the appeals were either resolved or heard. That did not happen to the same extent in 2019-20.

Digests of some of the most important decisions of the Chamber during the year are included in the Annex to the main report.

Our People

At the time of writing this report, the Tax Chamber has ten salaried judges, 50 fee-paid judges and 57 members, including one authorised presiding member. Our complement of ten salaried judges includes our two most recent recruits: Kim Sukul and Geraint Williams who both joined us from HM Revenue and Customs Solicitor's Office.

I am also pleased to report a number of appointments from among our fee-paid judges during the last year. Tracey Bowler is now a Deputy Upper Tribunal Judge in the Immigration and Asylum Chamber. Asif Malek has been appointed a District Judge (Civil) based in Manchester. Nicholas Aleksander was authorised under Section 9(1) of the Senior Courts Act 1981 to sit as a judge of the High Court with effect from August 2019. Ashley Greenbank and Robin Vos were both appointed Deputy High Court Judges under section 9(4) of the Senior Courts Act 1981 with effect from November 2019 for a single fixed four-year term.

During the year, we lost two of our fee-paid judges: one judge (Geraint Jones QC) retired at the end of 2019 and, sadly, another (Jennifer Trigger) died in January 2020 after a short and sudden illness. Jenny Trigger, having originally been appointed in 1986, had been a fee-paid judge in the Tax Chamber since it came into existence in 2009, sitting mainly in north west England and north

Wales. She is survived by her husband, Judge Ian Trigger who sat at Liverpool Crown Court until his retirement. Six non-legal members (Peter Davies, Paul Adams, Nicholas Dee, Mary Ainsworth, Janet Wilkins and Bill Haarer) also retired in the period covered by this report. These judges and members all brought a lifetime of knowledge and experience to the Tax Chamber for which we are very grateful, and their absence will be keenly felt.

In the next two years, i.e. by April 2022, four fee-paid judges and 14 non-legal members are due to retire. As I noted in last year's report, our need for more judges, both fee-paid and salaried, is clear and growing. I reported previously that we had worked with the HM Courts and Tribunals Service (HMCTS) Head of Demand and Judicial Modelling on a tool to forecast sitting days and, thus, number of judges/members required to deal with the volume of appeals received. That modelling tool is still being refined but it has, to date, consistently showed that we do not have enough judges to satisfy the need for sitting days. The assumptions on which the model is based have been questioned, changed and tested but, although the numbers vary, the conclusion is always that we need more judges. That model does not take account of an anticipated significant increase in applications under Schedule 36 of the *Finance Act 2008* applications caused by exchange of data between the UK and other countries under the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standards (CRS).

Recent events, which are still unfolding as I write this report, show that we do not just need more judges but, in particular, more salaried judges. The contribution of our fee-paid judges in helping the Tax Chamber to continue to deal with cases by alternative means such as paper determinations and hearing by telephone and video cannot be understated. During this difficult period, however, the salaried judges have played an essential part because they have been available for more time, are better equipped (e.g. with official laptops and IT support) and have more experience of the administration and practice of the Tax Chamber than the fee-paid judiciary.

Without the salaried judiciary providing guidance and leadership to the administrative staff and fee-paid judges, the Tax Chamber simply could not function. It is, however, a common experience of all the salaried judges that the need to mitigate the immediate impact of the Covid-19 crisis left little or no time for the routine business of hearing cases and writing decisions which is surely the primary function of a judge. If the Tax Chamber had more salaried judges, then it would be better able to minimise the delays and cancellations cause by the current crisis.

In order to address the lack of judicial resource, we are currently looking to recruit four new salaried judges to the Tax Chamber in the current generic First-tier Tribunal recruitment competition. In next year's annual report, I hope to be able to announce the appointment of new salaried judges.

We must also address the decline in the number of non-legal members in the Tax Chamber. Many of the current members were appointed when the Tax Chamber was established in 2009 (although some pre-date that) and are of a similar age. It is unsurprising then that a large number are approaching the statutory compulsory retirement age together. At the moment, we have (just about) enough members to meet our sitting requirements but that is changing rapidly. During the next 12 months, we will review our expected workload and need for members in the years ahead and plan our recruitment accordingly.

Our Premises

There have been no significant changes in our main premises at Taylor House in Rosebery Avenue in the past year apart from a welcome improvement in the air conditioning. Unfortunately, the planned work to create a very large hearing room by knocking two courts into one has been held up by the need to obtain permission from the landlord. Obviously, the current Covid-19 restrictions make starting such work impossible. It is hoped that when restrictions are eased, the landlord's permission can be obtained and work begun as soon as possible. The creation of a large court is even more important in the time of Covid-19 because it will enable the Tax Chamber to hold face to face hearings in cases with several participants while practising safe social distancing.

There have been no changes to premises or judicial moves in our other permanent locations in Birmingham and Manchester.

Video Hearings

The Tax Chamber continued to participate in a pilot of fully video hearings which was discussed in last year's report. After a pause for the HMCTS video hearings team to re-evaluate the technology and, as it turned out, adopt a new video platform, we resumed sitting on fully video hearings during the year. The new system was more robust than the previous one but was restricted to only four participants plus the judge (although this will rise to eight from 4 May 2020). The pilot only involved basic appeals against penalties where the appellant consented and had the necessary IT equipment. The initial pilot hearings were very promising.

With the advent of Covid-19 and the restrictions on movement and public gatherings, the fully video hearings pilot became our preferred means of conducting remote hearings. Instead of judges sitting in an adapted court room in London, the judge and all parties took part from their homes. In addition to the pilot video platform, we also used the Kinly Cloud Video Platform where there were more than four participants in addition to the judge. The learning curve for all concerned has been steep but not as difficult as some feared initially.

An integral part of the video hearings during the period of the Covid-19 restrictions is the production and use of electronic hearing bundles. The Tax Chamber worked with HMRC to agree the form and functionality of the electronic bundles as well as ways of delivering what can sometimes be very large files by email or data exchange. As with video hearings, the development and use of e-bundles has been accelerated by the necessity of finding a means of producing and presenting evidence remotely. While the format and functionality of the e-bundles have proved satisfactory, the use of such bundles has highlighted the need for the Tribunal panel and the parties to have access to two screens to enable them to see other participants by video and look at the documents bundle simultaneously.

We consider that Covid-19 has been a dramatic proof of concept for video hearings and e-bundles from which there is no going back although, of course, there will still be many cases that require a face to face hearing.

Training and Know-how

The continual development of judges and non-legal members of the Tribunal through training conferences and circulation of regular updates remains a priority. John Brooks and Jennifer Dean, now with Kim Sukul, are responsible for devising and delivering the Tax Chamber's training programme.

The training conference for non-legal members was, as in the last few years, held as a single event for all members in London in October 2019. Topics discussed at this conference included updates on the important developments affecting the Tribunal since the previous conference and case study discussions in small groups to consider practical and realistic issues (including equal treatment matters) which they may encounter in practice when sitting.

In December 2019, an induction course was held at Taylor House to introduce our new salaried judges, Kim Sukul and Geraint Williams, to the work and practices of the Tax Chamber. Not long after, Kim joined the training team, bringing with her valuable experience of training litigators in HMRC's Solicitor's Office.

The annual Judges' Conference was due to take place at Walton Hall in Warwickshire on 17 - 19 March 2020. Unfortunately, it became clear only the week before that the conference would have to be postponed, perhaps indefinitely in physical form, because of the impact of Covid-19. However, the training team have adapted the conference programme into weekly interactive web-based seminars whereby both salaried and fee-paid judges will give presentations, which incorporate group discussions, and case studies are being planned which will be facilitated in online group sessions. The first trial presentation has already taken place and the weekly programme will commence on 4 May 2020. The training team are also considering the use of digital seminars for the members' training due to take place in London later this year. This would follow the same approach of interactive online presentations and case studies as the Judges' Conference. Of course, virtual conferences cannot be a complete substitute for the "real" conference: online meetings can never reproduce the social interaction between judges and the informal sharing of experiences which occur outside the formal sessions and are so essential in building a collegiate spirit and maintaining morale.

In addition to the training events described above, Jonathan Cannan produces a regular update which not only provides a helpful summary of tax cases in the Tax Chamber, Upper Tribunal and Courts over the period but also includes other relevant material such as decisions on non-tax related matters which could have a bearing on our work. As IT becomes increasingly important to our new ways of working, Kevin Poole, who is a member of an IT liaison group of Tribunal judges, provides u with information and suggestions about new technology, software and ways of working.

Administration

In my last report, I drew attention to the fact that we were suffering difficulties in recruitment and retention of staff at our administrative service centre in Hagley Road, Birmingham. They continue to be challenging. I am pleased to say that the situation has improved slightly but remains problematic.

During the year there have been two exercises to recruit tribunal caseworkers (TCWs) who carry out, 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. We have seen

some good candidates but the "success rate" in recruiting good people who stay the course has been very limited.

Conclusion

I ended last year's report by speculating that there would be many unforeseen challenges in the year ahead. When I wrote those words, I had no idea that we would have to face so many and such great changes as we have experienced in a relatively short time as a result of Covid-19. This year, I foresee that we will continue to be tested, personally and professionally, as we adapt to a new way of living and working for some time to come, perhaps forever. I conclude this report, however, with the same sense of confidence in the future of the Tax Chamber that I had last year. In the last six weeks, I have seen the judges, members and staff of the Tax Chamber meet the challenges of this year with remarkable resilience and resourcefulness. I know that they will continue to do so in the months and years ahead. Notwithstanding everything that has happened and the challenges that lie ahead, I conclude with the same words that I used to end last year's report: I look forward to reporting on how the Tax Chamber has met those challenges in next year's report.

General Regulatory Chamber

President: Judge Alison McKenna

Jurisdictional Landscape

The workload of the General Regulatory Chamber (GRC) continues to rise, particularly in the Transport and Information Rights jurisdictions.

This year we have determined our first appeals under:

- *Section 146 Data Protection Act 2018 ('Assessment Notices')*
- *The Greenhouse Gas Emissions Trading Scheme Regulations 2012*
- *The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012*

After a busy year of applications for case progression orders under s.166 Data Protection Act 2018, we have started to receive valuable jurisprudential guidance from the Upper Tribunal (Administrative Appeals Chamber) as to the nature of this novel legislative provision. See for example *Leighton V Information Commissioner (No 2)* *https://www.gov.uk/administrative-appeals-tribunal-decisions/leighton-v-the-information-commissioner-no-2-2020-ukut-23-aac*.

We continue to prepare for approximately 150 new appeals a year in the Environment jurisdiction. Some, but not all, of these have been created consequent upon the United Kingdom's exit from the European Union. We have assigned some of our existing judges and appointed six new fee-paid judges for this work. We will shortly be recruiting more environmental specialists as non-legal members.

People and Places

We were delighted to welcome our second salaried Judge into the Chamber this year. Judge Moira MacMillan was assigned to us from the Social Entitlement Chamber on a full-time basis from January 2020, having previously divided her time between the two Chambers. She is already making a significant contribution to the work of the Chamber.

We have also been joined by a second legally-qualified Registrar, Mr Sunny Bamawo. He job-shares the role with Registrar Worth, working for us two days a week and spending the rest of his time as a Magistrates' Court Clerk. We are very fortunate to have two excellent Registrars in the Chamber, to whom a wide range of judicial functions are delegated. Both of our Registrars also hold part-time judicial appointments, which brings valuable experience to the Chamber.

A number of Court judges were assigned to the Chamber for a limited period this financial year. We worked with Judicial College to design e-training modules for them in all types of Transport cases and for hearing appeals against Financial Penalty in Professional Regulation and Pensions cases. They enjoyed experiencing these new types of work and we were very grateful for their hard work. We hope to have more assignments of Court judges to the Chamber in the future.

We have said goodbye to a number of our GRC fee-paid judges and members on their retirements this year. We wish Carole Park, Henry Fitzhugh, Andrew Bartlett, Mark Hinchliffe, Michael Farmer, Sue Ward, Peter Wulwik well in their retirements and thank them for their valuable contributions to the Chamber's work. We have recruited ten new Information Rights specialist non-legal members through a Judicial Appointments Commission and look forward to working with them.

We held our first Chamber-wide residential training event in February, focussing on the commonalities between the work of our different regulators and the similar rights of appeal they generate. We valued the opportunity to learn from each other.

We have completed one year of sittings arranged in accordance with a Service Level Agreement with HM Courts & Tribunals Service (HMCTS). As a peripatetic Chamber, this important document gives us a guaranteed allocation of hearing rooms across the country and a process for booking them.

Reform

The HMCTS Reform Programme offers many opportunities to GRC, but as we have some 20-different work-streams and different litigation cultures in each jurisdiction, it is impossible to adopt a "one size fits all" approach.

We are working with HMCTS to identify a suite of different tools from its Reform Programme, from which we can select the most suitable for each regulatory jurisdiction.

Immigration and Asylum Chamber

President: Judge Michael Clements

The Jurisdictional Landscape

The Immigration and Asylum Chamber (FtTIAC) is the second largest of the seven Chambers of the First-tier Tribunal. Appeals are usually considered by a judge sitting alone against decisions of the Home Secretary or Entry Clearance Officers about entry to, entitlement to stay in, and removal from, the United Kingdom.

The work of the Chamber is largely human rights based. The varied case load includes hearing appeals from persons seeking international protection in the United Kingdom (asylum or humanitarian protection), including those who have suffered war or conflict trauma; been trafficked into prostitution or slave labour; been at risk because of gender, religion or sexuality; and appeals from those convicted of serious offences in respect of whom the Secretary of State has decided to make a deportation order and where the tribunal must determine whether the appellant's other circumstances outweigh the public interest in removal.

In other cases, the Tribunal may be required to decide whether a person should lose their British nationality because of their conduct; whether a family member should be allowed to come to the United Kingdom to enjoy family life. A balancing exercise is frequently required and the Tribunal must establish where the public interest lies (including determining issues such as whether a marriage is genuine; whether EEA Regulations apply and whether there are public security reasons sufficient to justify the removal of an individual from the United Kingdom).

The jurisdiction of the FtTIAC also extends to issues of citizenship, and whether bail should be granted to persons held in immigration detention.

Caseload

The number of appeals received and disposed of by the FtTIAC during the period covered by this report are set out in the following table, together with those of the previous year for comparison.

Year	Appeals received	Appeals disposed of
2018-19	43,355	59,407
2019-20	41, 895	49,813

Reform

Reform has been a constituent part of the future plans of our Chamber for over two years. The FtTIAC Reform Team became the first to conceive and then design an end-to-end online appeals process, which takes us well beyond the more piecemeal approach of updating only discrete areas of existing practices.

An appeal once started online now follows a coherent path. It will be case managed throughout by a Tribunal Caseworker (TCW) with a view to minimising adjournments and maximising fairness to the parties. Under the new process, cases are not listed until they are ready to be heard, thus minimising the need for adjournments.

Reform also introduces the Appeal Skelton Argument (ASA). This anticipates that a represented appellant will provide a document split into three distinct parts: a summary of the factual matrix upon which the appellant relies and seeks to prove, a schedule of issues in the form of questions and a commentary on the appellant's case, by reference to case law and evidence uploaded onto the system. Thereafter, and within prescribed time limits, the Secretary of State is required to meaningfully engage with that case. Early signs bode well for the future. Since the launch at the end of January 2019 the number of decisions withdrawn by the Secretary of State in favour of a grant of leave has remained about 17 per cent. This tends to suggest that in the past some appellants may not have been making sufficiently clear to the Secretary of State, either in their grounds or in their production of evidence, why it was that the decision was said to be wrong.

Online appeals are now capable of being received and processed at all hearing centres. The first appeals to be piloted have been international protection appeals (as at mid-April the pilot had received 412 such appeals with 66 hearings having been conducted).

Pilot Practice Directions have been carefully drafted to ensure that unrepresented appellants are not disadvantaged in their use of the system; the represented appellant's ASA is dispensed with in favour of a series of questions that are designed to take the appellant to a similar stage as the represented appellant, thereby enabling a meaningful review by the Secretary of State to take place.

A considerable amount of peripheral work has been done by the FtTIAC Reform Team to bring this project to life. The changes in the way of working required by reform mean that the *Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014* need to be revisited. Ultimately it will be a matter for the Tribunal Procedure Committee (TPC) what amendments to the existing rules are brought into being, but I am grateful to all those who were involved in drafting changes for the TPC's consideration as well as for the representations made.

Still further and because of the very significant part that TCWs will play in reform within this jurisdiction, a comprehensive review has taken place of the ways in which TCWs conduct themselves in the tasks delegated to them. A number of judges have been working very closely with our TCWs to train them to meet the skills required. A Code of Conduct together with guidance for TCWs is currently being considered. I also welcome the contribution that the newly appointed Senior TCWs will bring to reform.

This project is not without its challenges. Although the FtTIAC has been working closely, another team has been responsible for the Expert User Interface, which is the platform through which all

reform projects from all jurisdictions will operate. There will inevitably be problems as these two systems come together, but I am confident that the challenges will be met.

Of greater concern has been the impact of reform on the way Legal Aid payments are made in England, Wales and Northern Ireland. I am acutely aware that the requirement to draft an ASA under the current Legal Aid contract means that in cases where the Secretary of State withdraws her decision there is a risk that some legal representatives may be under compensated. That is because of the focus under the current public funding arrangements on the hearing date. I want to express my gratitude to all those representatives and other stakeholders who have borne with us and provided valuable feedback as we seek to provide a remedy to this particular challenge.

By September 2020 it is intended that all appeal types will be capable of being brought online. I am pleased to report that so far, the FtTIAC reform team have managed to keep to every target date that they have set themselves in order to deliver the finished product on time.

We continue to make steady and encouraging process, and our Chamber owes a great deal of gratitude to Resident Judge David Zucker and his dedicated reform team for driving through the necessary changes to make the digital reform of our processes and the front loading of case management in our appeals a reality.

As this report goes to press, sweeping new developments have taken place as a result of the Covid-19 outbreak. This has led to an acceleration of the implementation of reform process, the better to facilitate remote working as the FtTIAC manages the conditions we now find ourselves having to adapt. I have prepared a short supplement to this review setting out how we have responded to the challenge.

Other developments

In addition to its work on reform, the FtTIAC continues to pilot new initiatives while looking to improve the working environment for our users and judicial office holders alike. Such initiatives have included the introduction of new practice directions, including two conferring extended powers on TCWs; producing new user guidance for litigants in person and children as litigants; additional provision for vulnerable users, including those with disability; training over 140 new salaried and fee-paid judges; extending methods of communication between our various centres through our monthly newsletter and the introduction of the FtTIAC's national website, hosted through e-judiciary, which has seen over 800 judicial office holders access the site and make over 16,000 visits since its launch.

In terms of developments in the law, we have heard and decided appeals under section 94B of the *Nationality, Immigration and Asylum Act 2002* where the First-tier Tribunal is required to address the questions set out in *AJ (s 94B: Kiarie and Byndloss questions) Nigeria* [2018] UKUT 00115 (IAC). We have also offered additional training to our leadership judges in relation to permission to appeal applications and the use of rule 35 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum) Rules for obvious errors of law, to avoid cases proceeding to the Upper Tribunal where costs and time can otherwise be saved by an early set aside through consultation with the parties. We have also offered further training on the appointment of litigation friends following the decision in *R (on the application of JS and Others) v Secretary of State for the Home Department (litigation friend – child)* [2019] UKUT 00064 (IAC) and *AM (Afghanistan) v. Secretary of State for the Home Department* (2017) EWCA Civ all 1123.

Elsewhere, I congratulate our judges who continue to champion judicial outreach, affirming my Chamber's commitment to diversity, social mobility, the development of judicial careers and improving community relations. Individual judges have visited a number of schools, colleges of further education and universities, in addition to hosting would-be judicial officeholders under the mentoring scheme for applicants who are interested in the work of our Chamber. We have also looked to increase awareness of the work of the FtTIAC through engagement with the media (BBC Radio's 'Law in Action'), professional associations, Tribunal User Groups and the like. Some of our hearing centres are frequent hosts to visits by students, academics and judicial colleagues from overseas, which encourages greater understanding of our work and of the rule of law generally.

I am also pleased to see our Chamber increasing and developing international ties by engaging with the European Asylum Support Office in Malta and assisting with the training of the judiciary in other jurisdictions. I extend my warmest thanks to Resident Judge Julian Phillips, our judicial training lead, and his two deputy training judges, Anna-Rose Landes and Jonathan Holmes, for all they do to deliver first-rate training to our growing cohort of judges and TCWs. Beyond the above, while EU-exit has now been achieved by way of the withdrawal agreement and the 2018 and 2020 Acts, some uncertainty remains as to what the implications will be, if any, for the FtTIAC in terms of workload. That is likely to become clearer later this year as the appeal rights provided for in the EU Settlement Scheme begin to generate new cases for the Tribunal.

As alluded to above, this report is being signed off during what is undoubtedly the biggest challenge of not only my presidency, but also to the effective working of the judiciary as a whole, the Covid-19 pandemic. Decisions are being made rapidly to respond to changing news stories and ensure the safety of our judges and our users. I thank my leadership team for their continued efforts and support in this regard and wish my entire Chamber, their families and loved ones, the very best as we tackle this unprecedented turn of events.

People

It is not often in any jurisdiction that an individual becomes a Resident Judge of one hearing centre let alone four and yet over his long career Donald Conway served as the Resident Judge in North Shields, Manchester, Hatton Cross and finally in Glasgow. Donald, who also served as a Judge of the Upper Tribunal, retired at the end of October 2019 and his considered style and self-deprecating good humour will be sorely missed within our Chamber. He leaves with our warmest best wishes for the future.

While we have lost a number of judges, both salaried and fee-paid to retirement and in some cases to appointment to other jurisdictions this year. Two deserve special mention. Designated Judge John Manuell acted as deputy training judge for a number of years and a whole generation of our judges owes him a debt of gratitude for his loyal and dedicated service in that role to our jurisdiction. Equally, our collective thanks go to Designated Judge John Macdonald who retired this year having spent nearly 50 years at the forefront of Scottish justice and over 20 years within the IAC.

We were particularly pleased to congratulate Resident Judge Mark Sutherland Williams on his elevation to the presidency of the Health, Education and Social Care Chamber and send with him our best wishes as he begins the next chapter of his career.

This report would not be complete without acknowledging that little of what has been achieved this year would have been possible without the hard work and dedication of our judges and our administrative staff, or the support and cooperation of our various stakeholders, including our partners in the other Chambers and the Upper Tribunal (IAC) so ably led by Sir Peter Lane.

I wish to convey my personal thanks to not only my immediate team of Resident Judges, but also the presidential team at Field House, in particular Jane Blakelock and Rob Theodosio, together with Natalie Mountain and her team, for their continued hard work and support, not only to me personally, but also the Tribunal. My thanks also go to the administrative team in the Senior President's office for its helpful and unstinting support.

Conclusion

Finally, I have been reflecting on the work of Sir Ernest Ryder, Senior President of Tribunals, who has worked tirelessly on behalf of not only this jurisdiction, but also the wider tribunals family over the last five years. My leadership judges and I warmly welcomed Sir Ernest's 'Modernising Tribunals' report and his Innovation Plan, together with Sir Keith Lindblom's review of tribunals and the recommendations set out therein.

All of this will now form part of Sir Ernest's legacy as this year marks the end of his tenure in that role and on behalf of myself and my Chamber, I wish to publicly thank him for his leadership, friendship and dedication to our cause and relay to him our very best wishes for the future.

Property Chamber

President: Judge Siobhan McGrath

The Property Chamber has expertise in Landlord and Tenant, Property and Housing law. Specialist judges together with professional expert and lay members hear and decide about 11,000 cases each year. Most of our work is *party v party*.

During 2019-2020 we have worked hard to take forward our priority which is to provide better access to justice. Firstly, we are engaged in the HM Courts and Tribunals Service (HMCTS) Reform programme which is designed to improve and modernise our processes and procedures; secondly, we continue to develop our scheme for judicial deployment; thirdly, we have started work to establish a "Property Portal" and "Property Network" to provide a single point of access to dispute resolution and redress for a wide range of users.

Our Work

The Property Chamber has three divisions: Residential Property, Land Registration and Agricultural Land and Drainage. Altogether the Chamber has jurisdiction in 160 separate types of case and has an annual case-load of about 11,000. For Residential Property, applications are received in leasehold enfranchisement, leasehold management, park homes, rents and local authority housing standards cases. In Land Registration references are received in adverse possession, boundary and beneficial interests disputes and applications in network access cases. In the Agricultural Land and Drainage division, most applications relate to succession and drainage issues.

Leasehold

Leasehold cases are the mainstay of our work. During the past year significant work has been done by the Ministry for Housing, Communities and Local Government (MHCLG) and by the Law Commission in considering reforms to leasehold law. Three Law Commission consultation papers were published during 2019: Leasehold home ownership: buying your freehold or extending your lease[3]; *Leasehold home ownership: exercising the right to manage*[4] and Reinvigorating commonhold: the alternative to leasehold ownership[5] Each of the reports sought views on proposals for the extension of the Property Chamber jurisdictions. In January 2020, the Law Commission published the first part of its report on Enfranchisement reform.[6] The remaining reports are expected to be published during the summer of 2020.

Proposals for change and developments in leasehold law are summarised in a clear and comprehensive House of Commons briefing paper: Leasehold and commonhold reform.[7] In 2019, MHCLG published their response on implementing leasehold reform indicating an intention to take steps to prevent the sale of leasehold houses and to ban excessive ground rents. Additionally, in their report: *Protecting Consumers in the Letting and Managing Agent market*, MHCLG have indicated their intention to introduce regulation and a Regulator for managers.

The impact of the Grenfell Tower fire in June 2017 on leaseholders has been significant. The Residential Property Division of the Chamber received applications for the determination of the liability of lessees to pay for the costs of recladding and other fire safety measures in high rise buildings. Additionally, it continues to deal with applications for the dispensation of consultation requirements under section 20 of the Landlord and Tenant Act 1985, where urgent works to deal with fire safety are required. In two cases the Tribunal has dealt with applications by London Local Authorities seeking the determination affecting all of the residential lessees within their area (about 2,500 individual leaseholders in each case)

Finally, last Autumn, MHCLG published its consultation *Building and Safer Future* which sought views on a new duty holder regime to improve safety and minimise the risk of fire in high rise buildings. Proposals for enforcement and sanctions may include new rights of appeal to the Tribunal.

There have been two Court of Appeal decisions on leasehold this year: *Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate & Anr* [2019] EWCA CIV 1848 and *Avon Ground Rents Ltd v (1) Rosemary Cowley & Ord (2) Metropolitan Housing Trust (3) Advance (4) May Hampstead Partnership* (2019) [2019] EWCA Civ 1827

3 Consultation paper 238

4 Consultation paper 243

5 Consultation paper 241

6 Report on options to reduce the price payable; No.387

7 HC briefing paper number 8047, 30th May 2019

Housing Act 2004 and Housing and Planning Act 2016

In 2006 the *Housing Act 2004* introduced a new regime for local authorities to deal with housing conditions through the application of the Housing Health and Safety Rating System (HHSRS) and in the imposition of national standards for Houses in Multiple Occupation. Although not directly related to the Tribunal's work, in March 2019, the *Homes (Fitness for Human Habitation) Act 2018* came into force which interestingly adopts the HHSRS standards to measure the condition of private rented sector properties.

Under the 2016 Act, the number of applications for Rent Repayment Orders (RROs) and appeals against the imposition of Financial Penalties by local authorities for housing offences are now increasing across all of the Residential Property regions. Four recent decisions of the Upper Tribunal (Lands Chamber) have provided guidance on the approach which tribunals should take when dealing with appeals against financial penalties imposed by local housing authorities under section 249A of the *Housing Act 2004*[8]. Those decisions were given in the following cases: *London Borough of Waltham Forest v Younis*[9]; *London Borough of Waltham Forest v Marshall & Another*[10]; *IR Management Services Ltd v Salford City Council*[11]; *Sutton & Another v Norwich City Council*[12]. Although the first three cases were appeals, Sutton v Norwich was transferred to the Upper Tribunal for a hearing at first instance – not least because of the value of the multiple financial penalties which had been imposed on Mr Sutton and on a company where he was a director (which totalled £236,000 in each case). The Upper Tribunal reduced the amount of those penalties to £99,000 and £75,000 respectively.

During the last 12 months the Tribunal has also made a number of "Banning Orders" under the 2016 Act. These are orders which prevent a landlord or a managing agent from operating in the private rented sector for a number of years and are penal in nature.

Tenant Fees Act 2019

In June 2019, the *Tenant Fees Act 2019* came into force. The legislation is designed to tackle "prohibited payments" associated with securing or renewing a tenancy and imposed by either a landlord or an estate agent. Where prohibited payments are charged local authorities may impose financial penalties which can be appealed to the Tribunal. Additionally, tenants are able to apply directly to the Tribunal for repayment of prohibited fees.

8 Inserted by section 126 and Schedule 9 of the Housing and Planning Act 2016 (and in force from 6 April 2017).

9 [2019] UKUT 0362 (LC).

10 [2020] UKUT 0035 (LC).

11 [2020] UKUT 0081 (LC).

12 [2020] UKUT 0090 (LC).

Land Registration

In 2018, the Law Commission recommended that on any reference under section 60(3) of the *Land Registration Act 2002*, the Tribunal should have an express statutory power to determine where a boundary lays. Additionally, it was recommended that 2002 Act should be amended to expressly confer on the Tribunal the power to determine how an equity by estoppel should be satisfied, and to declare the extent of a beneficial interest. The changes have not yet been made and the need for the latter reform is highlighted by two recent Upper Tribunal cases: *Hallman v Harkins* [2019] UKUT 245 (LC) and *Patrick v Thornham Parish Council et al* [2020] UKUT 36 (LC) which put it beyond doubt that the Tribunal lacks jurisdiction to decide the issue. As a result, the Tribunal is compelled to send such cases to the county court for determination. In order to avoid additional expense and delay for the parties, the Tribunal has taken the practical step of offering judicial mediation as an alternative which seems to be very acceptable to the parties.

Access to Justice

Judicial Deployment

The jurisdiction to deal with landlord and tenant, property and housing disputes is split between the courts and the Tribunal. In consequence litigants may be required to start two sets of proceedings, or to attend separate hearings in order to achieve a final resolution of their case. In the flexible deployment project, Property Chamber judges exercise both county court and Tribunal jurisdictions so that all issues can be decided in one place at one hearing. With the support of the Civil Justice Council (CJC), the project started in earnest about two years ago and has been largely successful. About 500 hundred cases have been conducted in this way. Informal feedback from parties is positive. The opportunity to have all matters in contention dealt with in one place at the same hearing has been welcomed. It saves time, money and reduces stress. This is of particular benefit to litigants in person. In January 2020, the CJC gave its endorsement to a Ministry of Justice proposal to make a "Property Listing Direction". This is intended to simplify the transfer of issues from the county court to the Tribunal for determination. At the same time, it is proposed that the five Property Chamber regional offices should be designated additionally as county court offices.

Housing Courts

In November 2018, MHCLG issued a call for evidence on considering the case for a Housing Court. The call for evidence closed on 22nd January 2019 and an analysis of the responses is awaited. It is interesting to note that following MHCLG's consultation: *A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants*, it was decided that legislation would be brought forward to abolish section 21 of the Housing Act 1988 and this was announced as the *Renters Reform Bill* in the Queen's speech in December 2019.

Against this background MHCLG has established a Redress Reform Working Group to consider the opportunities for rationalisation in the determination of housing disputes which will include the proposed the Housing Complaints Resolution Service as a single point of access for all dispute resolution schemes in housing.

Justice

In March 2020, JUSTICE issued its report *Solving Housing Disputes*. The report is in two parts making the case first, for a future model of dispute resolution, the "Housing Dispute Service" (HDS) and secondly, irrespective of whether the HDS is introduced, for essential reforms to the current system.

The HDS is an ambitious project providing a new and distinct model for housing dispute resolution. The broad intention is that HDS should replace the Property Chamber and County Court (at District Judge level) as institutions. If taken forward the proposal will be piloted in one or two areas for several years then if appropriates, rolled out more generally.

Many of the reforms proposed in the report are welcomed and include: access to early legal help; a single point of entry for all types of housing dispute; assisted online services; flexible deployment of physical hearing venues; alternative dispute resolution to be embedded pre-action and cross ticketed specialist housing judges who can sit for both court and tribunal jurisdictions.

I will be working with JUSTICE over the coming months to explore ways implementing reform.

Property Portal and Property Network

The idea of a Portal is to create a single point of entry for all property disputes, which will be supported by a Property Network of dispute resolution providers. Those with a dispute will simply lodge their appeal, their application or their complaint in one place either electronically or on paper. Following triage parties directed to the most appropriate dispute resolution provider. The importance of the "network" is that after that initial triage and signposting it will be possible at any stage to move the dispute between different dispute resolution provider without difficulty and as required.

The concept of pathways to dispute resolution is examined in detail in Professor Chris Hodges' book: *Delivering Dispute Resolution*[13] which is supportive of a Property Portal. Plans to start to take the concept forward are now underway and we are in discussion with both the Housing and Property Ombudsman.

HMCTS Reform

In January 2020, the Property Chamber commenced a "Discovery Phase" for the reform of its processes and procedures. Our main ambition is to preserve the capability afforded by our Case Management System but to improve it so that access to justice is enhanced. We would like applications to be made to the Tribunal on-line whilst preserving the choice for users to make paper applications. It should also be possible for documents, evidence and submissions to be lodged electronically. We seek to embed mediation and early neutral evaluation into our process. We would like to offer remote video and telephone hearings. We think it is essential that files and cases can be transferred easily between courts and tribunals and the Upper Tribunal. Our processes should be simple and intuitive.

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Since the Discovery Phase it has become apparent that it may not be possible to provide bespoke reform to each First-tier Tribunal Chamber. Despite this, we believe that important changes and improvements can be made by the application of common component developments available more widely in the court and tribunal service.

Mediation Pro-bono advice and assistance

Judicial mediation is offered in both Residential Property and Land Registration divisions and is very successful. 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. 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, we have established a working relationship with a number of law schools and universities who offer advice and, in some cases representation to parties.

Judges and Members and Registrars

I am 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 Michael Michell. Each of the Residential Property areas has a Regional Judge and one or more Deputy Regional Judges and a Regional Surveyor. 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, architecture, environmental health and in agricultural matters. The Land Registration Division has three salaried judges. Both the Residential Property, Agricultural Land and Drainage jurisdictions also have a cohort of lay members.

Appointments to the Chamber

During the last year we have been pleased to welcome the following:

In Land Registration Michael Michell was appointed to the post of Principal Judge. Alexander Bastin (London) and Diana Barlow (Midlands) are both new salaried judges for Land Registration although Diana is also appointed as a Deputy Regional Judge for Residential Property in Birmingham.

In Residential Property we have four new Deputy Regional Judges: Nicki Carr and Andrew Sheftel in London, Jonathan Dobson in Southern and David Wyatt in Eastern. Finally, Bill Gater has been appointed as Regional Surveyor for Southern. I am also pleased to say that we have a good number of new valuer members, chairmen and professionals.

Retirements

There have been a number of retirements this year and I would just like to mention Angus Andrew who retired as a Deputy Regional Judge in London and Donald Agnew who retired as a Deputy Regional Judge in Southern. We will miss both Angus and Donald who were key members of our salaried teams. However, it is not really farewell as both will continue to sit as fee-paid judges for the time being.

Administration

As always, the success of the Chamber owes a great deal to the dedication and work of our administrative staff. In Residential Property each admin officer has their own case load and sees cases through from cradle to grave. Much of our work is dealt with on a Case Management System (CMS) which was developed in co-operation of with staff. The staff achieve challenging performance indicators with skill and in collaboration with judges with whom they are co-located. The system works efficiently and well.

Covid-19

The effect of the Covid-19 Pandemic was sudden and far reaching. In order to continue working staff have been provided with laptops to enable them to carry out some work from home. In Residential Property we have a Case Management System (CMS) which provides a workflow, and is an electronic storage facility for documentation. The salaried judiciary have been given access to CMS which means that we can maintain and progress case management. Although Land Registration does not have the advantage of being on CMS, staff, registrars and judiciary have devised a very creative system to enable case management to continue. All face to face hearings and mediations were initially postponed until the end of May. For suitable cases and CMCs remote hearings are being arranged. This includes both telephone and video hearings.

We are proud of what has been achieved so far. Our success is due to the work of the staff, the salaried judiciary and the registrars. We are optimistic that we will devise a very good system and that some developments will enhance our working practices going forward. At some stage we will start to move back to more traditional ways of working. This will be phased and gradual.

Conclusion

It has been a very busy year. We are poised to move to new and improved ways of working. Ironically, the challenges posed by Covid-19 have facilitated a transition from some of our old practices to new and more accessible dispute resolution in a very short period of time. Our aim is to continue to provide excellence in adjudication in this very important area of law.

Finally, I would like to thank my Chamber Support Officer, Tom Rouse who works tirelessly for the Chamber and also tolerates a demanding President.

Annex C
Employment

Employment Appeal Tribunal

President: Sir Akhlaq Choudhury

I was appointed to be President of the Employment Appeal Tribunal (EAT) on 1 January 2019, taking over from Mrs Justice Simler DBE, now Lady Justice Simler. The period covered by this report (April 2019 to April 2020) commenced with a major change for the EAT, as it moved premises to the Rolls Building, and ended with the dramatic challenges thrown up by the Coronavirus pandemic. Throughout this time, the EAT has continued to function smoothly, thanks to the dedication and hard work of its staff and the flexibility shown by its judges.

The Jurisdictional Landscape

General

The 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 United Kingdom. It sits principally in London and Edinburgh, and very occasionally in Cardiff. In Northern Ireland, appeals lie direct to the Northern Ireland Court of Appeal. The question of what devolution means for the EAT in Scotland has still not been resolved. In the meantime, the EAT remains a reserved tribunal in Scotland.

Receipts

As is now well known, the fees for bringing appeals to the EAT were abolished following the 2017 decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51. The number of claims and appeals has been steadily rising ever since, although it has not quite reached the level it was at before fees were introduced in 2014.

In the period from April 2019 to February 2020, new appeal receipts were 10 per cent greater than for the previous year. The ET (England & Wales) and ET (Scotland) continue to see steady increases in their receipts and some of these will, of course, filter through to the EAT in due course.

Procedural and Rule Changes

The changes introduced by the 2018 Practice Direction, in particular the additional time given to Respondents to lodge an Answer to a Notice of Appeal (from 14 to 28 days), have worked well. However, the 2018 Practice Direction, and the EAT Rules 2003, both proved to be out of step with the new regime of remote hearings ushered in by the Coronavirus Pandemic. The EAT Rules were amended by the enactment of the *Employment Appeal Tribunal (Coronavirus)(Amendment) Rules 2020/415*. These provided a firm legal foundation for conducting video hearings, although it was

considered that the EAT did have the power, implicitly, to conduct such hearings in any event. A new Practice Direction that amends the provisions of the 2018 practice direction in relation to hearings was also issued on 12th June 2020.

Cases

The EAT continues to deal with appeals on a wide variety of issues effecting all aspects of employment rights, many of which reflect key societal issues. In *Basfar v Wong* UKEAT/0223/19, Soole J held that a Saudi diplomat was entitled to rely on the *Diplomatic Privileges Act 1964* to resist a claim by a domestic servant claiming wrongful dismissal, failure to pay national minimum wage and breach of the *Working Time Regulations 1998* in circumstances alleged to amount to modern slavery. *Basfar v Wong* was the first case in which permission was granted by the EAT to appeal directly to the Supreme Court, thereby 'leapfrogging' the Court of Appeal. In *Page v Lord Chancellor & Lord Chief Justice UKEAT/0304/18*, the ET had rejected a claim of victimisation brought by a magistrate who had objected on religious grounds to children being adopted by same-sex couples and was ultimately removed from office following a BBC interview about the matter. In dismissing the magistrate's appeal, the EAT (Choudhury P) held that the dismissal was because of the statements made during interview demonstrating a lack of impartiality, and not because the magistrate had done any protected act.

People and places

Registrar and Staff

The efficient, effective and well managed operation of the EAT has continued throughout 2019 - 2020, despite significant pressures as a result of the increase in receipts, the changes to the working environment and the recent pandemic. The Registrar, Nicola Daly, continues to show tremendous leadership in ensuring the delivery of a remarkably effective and reliable service to litigants in the EAT. She is supported by a dedicated and efficient team of staff, headed by the EAT's delivery manager, Domingo Rodrigues, all of whom continue to work cohesively (and in often difficult circumstances) in providing 'cradle to grave' case management of appeals. There have been several departures of long-serving staff. These include Anne Lai (Listing Manager), Sani Choudhury (Listing Manager) and Mark Harrington (Complaints and Admin), The EAT is grateful to them for their many years of service and wishes them the best for the future. New staff members, in listing and general operations, have taken to their roles quickly and effectively, helping to maintain the standard of service to which litigants have become accustomed.

Judges

The EAT has three permanent judges: the President, and two Senior Circuit Judges. It also has a pool of visiting judges that includes ten High Court Judges (Soole J, Lavender J, Kerr J, Laing J, Lewis J, Swift J, Eady J, Cavanagh J, Griffiths J and Linden J), four Circuit Judges (HHJ Murray Shanks, HHJ Martyn Barklem, HHJ Mary Stacey and HHJ Katherine Tucker), four Deputy High Court Judges and one Upper Tribunal Judge. This year the EAT welcomed three former stars of the Employment Law Bar to its ranks. Cavanagh J, Griffiths J and Linden J were all appointed to the High Court Bench in 2019/20 and almost immediately granted authorisation to sit in the EAT. Lord Summers continues as the lead judge in the EAT in Scotland and is now supported by Lord Arthurson, a former Employment Judge sitting in the Scottish ET. We were also delighted to appoint

the EAT's first Upper Tribunal Judge (UTJ) as a temporary additional judge of the EAT. UTJ John Keith practiced for many years as a Solicitor in Employment Law and other areas before becoming a judge of the Upper Tribunal Immigration and Asylum Chamber. I am also pleased to report that Judge Barry Clarke, recently appointed as the President of the Employment Tribunals in England and Wales, has now been appointed as judge of the EAT. The high calibre of all these new Judges reflects the complexity and importance of the cases heard by the EAT.

HHJ Jennifer Eady QC was, until her elevation to the High Court Bench in October 2019, one of the EAT's two Senior Circuit Judges, alongside HHJ Simon Auerbach. Mrs Justice Eady, as she is now known, was appointed to the EAT in December 2013 after a stellar career as a leading Employment Law silk. During her six-year tenure, Eady J determined a wide range of leading and influential cases. She determined some of the earliest Early Conciliation appeals, offering an explanation of the essential purpose of the scheme (a 'structured opportunity' to explore settlement) in *Science Warehouse Ltd v Mills 2016* IRLR 96. Eady J's time at the EAT also saw a growth in cases involving new working arrangements, pushing the boundaries of worker status, most notably Uber BV v Aslam and ors 2018 ICR 97. That decision was upheld by the majority in the Court of Appeal and is shortly to be heard by the Supreme Court. Appeals in religion and belief cases have increased in recent years, and Eady J determined the landmark case of *Pemberton v Inwood* [2017] IRLR 211 (brought by the first Church of England vicar to enter into a same sex marriage), which was the first appellate consideration of the 'religious employment' exception under the Equality Act 2010.

As well as tackling some of the toughest appeals, Eady J introduced an annual training event for EAT Judges, helped draft the 2015 Practice Statement and the 2018 Practice Direction and assisted greatly in overseeing the EAT's move to new premises in early 2019. The EAT is sorry to lose such an able and dedicated Judge, but is delighted that she will continue to sit in the EAT from time to time as a visiting High Court Judge.

The selection exercise for Eady J's replacement has been completed and an announcement about the successful candidate is expected shortly.

Lay Members

The EAT has a long tradition of sitting with lay members with special knowledge or experience of industrial relations. However, for various reasons, including the decline in cases heard in the ET with lay members and the introduction of fees, the number of lay member sittings reached an all-time low in late 2017 and into early 2018 with only a handful of sittings in that period. Discussions took place at lay member and judicial level to understand the reasons for this, and steps were introduced to increase lay member sittings where appropriate. We are glad to report that those steps have borne fruit in that there was an almost five-fold increase in lay member sittings in the 12 months to April 2019 as compared to the previous year, and a further five per cent increase in the period to February 2020. Our pool of lay members has been depleted, primarily through retirement, and has not been replenished for many years. The recruitment exercise for new panel members, conducted by the Judicial Appointments Commission (JAC), is expected to commence later this year.

Other matters

Training

HHJ Auerbach took over from HHJ Eady QC as the lead judge on training. Last year, HHJ Auerbach took us through the Good Work Plan – the Government's Response to the Taylor Review. Next followed Rebecca Hilsenrath, Chief Executive of the Equalities and Human Rights Commission (EHRC), who discussed the EHRC's perspective on appeals in discrimination cases. Professor Virginia Mantouvalou (University College London) delivered an interesting presentation on a highly topical issue in the workplace – Discipline and Dismissal for Social Media Activity. Finally, we welcomed back Professor Tom Fahy (King's College London) to talk to us again about persistent and querulant litigants. Staff case managers also attended this session as they have to deal most directly with the abuse and threatening behaviour that some querulant litigants can display. HHJ Auerbach had planned an excellent training day for 2020 with contributions from, amongst others, the City Mental Health Alliance on mental health awareness training. Unfortunately, that session had to be postponed due to the pandemic but it is hoped that an online version of the training day will be made available before long.

Pro Bono assistance

Pro bono legal advice schemes, the Employment Law Appeal Advice Scheme (ELASS) in London and Scottish Employment Law Appeal Legal Assistance Scheme (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 permission to appeal hearings and full appeal hearings. Their assistance is invaluable, both to the litigant in question, but also to the EAT itself and enables appeals to be dealt with more speedily and effectively than would otherwise be the case.

External engagement

The EAT continues to maintain contact with a wide range of judicial and legal organisations. Close cooperation between the ETs and the EAT, in particular, on matters of common concern is vital in ensuring consistency and fairness in these tiers of the employment law justice system. There are regular meetings with the Presidents of the ETs in both England (Barry Clarke) and Scotland (Shona Simon). The Former ET England President Brian Doyle has recently retired in May 2019. I would like to pay tribute to the tremendous work Brian has done for the ETs, the Tribunal system more widely and Employment Law generally. His insight, wisdom and grace under pressure in dealing with difficult issues are highly valued by all who have dealings with him. The EAT wishes Brian all the very best for the future. I look forward to continuing to work with President Simon and President Clarke.

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. This year the EAT assisted senior judiciary of a South American jurisdiction as it sought guidance on introducing a compulsory mediation stage before litigation is commenced.

Other external engagements include speeches at the Industrial Law Society, judicial recruitment events in England and Scotland, the Council of Employment Judges, Employment Judge training events and at various schools, colleges and community organisations. I have also held two webinars organised by the Employment Lawyers Association and the Employment Law Bar Association, and participated in a podcast on self-represented litigants.

Premises

After eight years at Fleetbank House, the EAT moved, on 29 April 2019, to the newly refurbished fifth floor of the Rolls Building, Fetter Lane London. Whilst the EAT has lost a considerable amount of space and its dedicated courts by moving, it has fully adapted to its new environment and is continuing to provide an efficient service. I am particularly grateful to all staff at the EAT for their cooperation, adaptability and resilience during this difficult and turbulent period of change.

Reform – CE File

The EAT, like other civil jurisdictions, is transforming from a largely paper-based jurisdiction to one where electronic filing of documents is the norm. The CE-File system being introduced across Courts and Tribunals in England & Wales is currently being tailored for the EAT's specific requirements, and is expected to be fully implemented by the end of 2020.

Coronavirus Pandemic

The extraordinary events from late February 2020 onwards necessitated fundamental and rapid changes to the EAT's practices. The initial lockdown announcement led to a number of postponements, as in-person hearings in court were no longer possible whilst adhering to social-distancing and stay-at-home requirements. The EAT quickly introduced remote hearings using internet-based conferencing platforms such as Skype for Business. The EAT was able to conduct its very first fully remote hearing, with the Judge (Cavanagh J) and all parties participating remotely, on 25 March 2020, which was just the second day of the lockdown. Since then, the EAT has been able to conduct over half of its regular caseload remotely, and is looking to increase that proportion over the next few weeks as more staff become available to manage matters from the Rolls Building. Remote hearings are not possible in all cases, but those cases postponed as a result will be given priority in re-listing once in-person hearings become possible again. I am grateful once again to all the staff of the EAT for their remarkable resilience, adaptability and industry during this period of unprecedented adversity. I am also grateful to the judges of the EAT for their flexibility and the speed with which they took to virtual hearings. It is thanks to the staff and judges of the EAT that I am confident that the EAT is in as strong a position as ever, as it prepares to deal with the next phase of the current crisis.

Employment Tribunals in Scotland

President: Judge Shona Simon

Introduction

This report is being written during the Covid-19 pandemic; it would be easy in those circumstances to write only about the implications of that for the work of Employment Tribunals (ETs) in Scotland, not least because the consequences of the pandemic for the way in which ETs can go about their business have been momentous and the amount of judicial time spent in trying to ensure that a service continues to be provided to those seeking to access employment justice has been considerable.

However, to do that would be to overlook many of the interesting developments and challenges with which the ET system has been engaged over the last year, which would, in turn, result in the sterling efforts of various judicial office-holders and HM Courts and Tribunals Service (HMCTS) staff being overlooked. Whatever the implications of the pandemic that would not be desirable nor would it present an accurate picture of the work of the jurisdiction. Accordingly, in this report I will focus, in the main, on the work of ET (Scotland) up to the point of the Covid-19 'lock-down'.

I am aware that in his contribution to this annual report my counterpart in England and Wales, Judge Doyle, has provided a useful summary of many of the interesting reported employment cases over the last year and of the statutory developments in the field. Given that employment law is a reserved matter, and the applicable law is therefore largely the same north and south of the border, I shall simply associate myself with those lists rather than repeat them here.

The jurisdictional landscape

Case receipts and overall caseload

Judge Doyle has set out information about the number of cases received across Great Britain as a whole. When one turns the spotlight on Scotland specifically, Ministry of Justice (MoJ) published statistics show that for the calendar year to end of December 2019 we received 4,778 single claims and 10,237 claims which formed part of multiple (group) claims. Of course, claims can often include more than one type of complaint (for example, unfair dismissal and sex discrimination); the total number of jurisdictional complaints received within these claims was 25,459. When one compares this with the number of claims received in the calendar year to the end of December 2018 we can see that the latest figures mark a reduction in the number of claims received compared to the previous year. Single claims received in 2018 were 5,544 and the overall number of jurisdictional complaints in that year was 29,828. Multiple claims are notoriously unpredictable and difficult to use as an indicator of general workplace trends, focused as they tend to be on mass disputes; in 2018 we received a particularly high number of those in Scotland (20,678), most of them concerning equal pay and holiday pay disputes. The level of claim receipts in 2018 was significantly higher than that in 2017, the year ET fees were abolished. What the 2019 figures may be suggesting is that, subject to the vagaries of multiple claims, the steep rise in receipts has now levelled off in Scotland. Of course, that is only part of the story. One also has to take into account the overall caseload, which remains at a much higher level than pre-fee abolition. In broad terms the outstanding case load of single claims in Scotland, as at the end of December 2019, was just over three times higher than it was in March

2017, prior to the abolition of fees, while the outstanding multiples case load was around 25 per cent higher in the same timeframe.

Tribunal performance

The performance of the tribunal has been adversely affected over the past year by significant problems experienced with Ethos – the ET case management system. While these difficulties have had an impact across Great Britain, the Glasgow ET office, which receives and processes all Scottish claims, appears to have been adversely impacted to a greater degree than any other location in Britain. By way of example, in the week straddling the end of August/beginning of September 2019 the Ethos system was not available for 24 hours that working week. While that week might have been the nadir of the situation there were many other weeks, particularly over the summer period, when a large number of hours were lost. Generally, when the system becomes available again it starts out from a point earlier than when it went down. That inevitably means that a good deal of work done by HMCTS staff is 'lost', which in turn can lead to confusion and impact on morale. There are three positive points however that can be made:

1. Internal administrative statistics show that performance on key HMCTS performance measures (such as time to serve claims on respondents and time to completion of case from presentation) is only slightly below target in Scotland and has held up well despite the Ethos problems;

2. A new case management system is being built, based on the Core Case Database that has been developed as part of the HMCTS reform project and is working well elsewhere;

3. Performance of the Ethos system seems to have stabilised somewhat over the Winter of 2019 and into Spring 2020.

On the judicial front, we have managed to continue to issue around 70 per cent of judgments within 28 days of the end of the hearing but, unusually for Scotland, there have been a small number of occasions when hearings have had to be postponed at short notice due to an inability to provide a judge. Fortunately, steps are being taken to resolve that particular issue (see below).

Initiatives to manage caseload

When the ET caseload was previously high (prior to the introduction of ET fees) we introduced sittings on two evenings per week in Glasgow to accommodate short cases (e.g. unpaid wages), thereby taking some of them out of the day lists so we could accommodate additional longer cases. This was done in consultation with the Scottish ET National User Group and was an extremely successful initiative. It was run on a purely voluntary basis (no one was ever required to attend a hearing in the evening if it did not suit them, and the judges and staff involved all volunteered to take part because it suited them), and was aimed at unrepresented parties. Many of those parties commented favourably on the fact that they could attend their hearing without having to take time off from their job or at a time when it was easier for them to get someone in the family to look after their children. Over time some representatives (mostly solicitors) asked if they could be included in the initiative as it would suit their work patterns and this was arranged at their request. Evening sittings came to an end, following the introduction of ET fees, as we did not have the caseload to sustain them.

Following discussion at the Scottish ET National User Group we announced our intention to reintroduce evening sittings on exactly the same basis as previously, except starting out on one evening per week, with effect from the beginning of April 2020. Unfortunately, this initiative has had to be put on hold as a result of the Covid-19 pandemic but we intend to progress it once we are in a position to do so.

Judicial mediation continues to be a valuable alternative to judicial determination in the ET. We trained additional judicial mediators around two years ago and all have had the opportunity to develop their skills since then. It is an option which is particularly valued by parties who would otherwise face lengthy hearings and continues to save a large amount of judicial hearing days, with a success rate currently of just over 70 per cent. When one considers that these are cases in which ACAS will almost certainly have already attempted to assist parties to reach a conciliated settlement this is a resolution rate of which the judicial mediators in Scotland can be proud.

In order to help progress our cases as expeditiously as possible we have also taken steps to increase the number of hearing rooms at our disposal and the number of judges and non-legal members available. (see People and Place below).

ET practice matters

As Judge Doyle has also mentioned, the outcome of the Consultation carried out by the Law Commission (England and Wales) on 'Employment Law Hearing Structures' is eagerly awaited. Scotland, of course, has its own Law Commission, which considers matters of Scots law. It might be thought that, in these circumstances, the outcome of this consultation would be of no interest to ET (Scotland). However, nothing could be further from the truth. While ETs in Scotland tend to follow Scottish civil procedure where appropriate, employment law is a matter reserved to the UK Government and a single set of ET Rules of Procedure apply across Britain. Many of the ideas that formed part of the consultation paper, if taken forward in the future, will impact on the law that is applied by ETs in Scotland.

Those who are aware of the intricacies of the organisational arrangements for the support of ETs north and south of the border will know that the Employment Tribunals Regulations and Rules of Procedure are still within the policy control of the Department of Business, Energy and Industrial Strategy (BEIS). As is often the case with Rules of Procedure, they can be interpreted by tribunals and courts in unforeseen ways over time. Seven years after the coming into force of the current ET Rules there are a number of rule related issues that might usefully be addressed in order to support the effectiveness and efficiency of ETs; while there will have been a lot of other matters that have required to be addressed by BEIS policy officials in the last year or two (not least some of the implications of the United Kingdom's departure from the European Union), it is understood that work is now being done by officials to prepare a consultation document that will seek views on a variety of rule related matters. That will hopefully present an opportunity for all those interested in how ETs operate to contribute to their further development.

People and Places

In 2018, I reported on the fact that we had recruited new salaried and fee-paid Employment Judges. In the past year those judges have received additional training which has equipped them to sit in discrimination cases, thereby increasing their usefulness from a judicial resource perspective. However, many of our fee-paid Employment Judges have found it difficult, through no fault of their own, to offer the sitting day availability they (and I) might have hoped, due to the fact that they have been busy in their own practices following the abolition of fees. Employment Judges Iain Atack and Mark Mellish, to whom I offer my grateful thanks for all they have contributed over the years, have also retired. In addition, Jane Garvie, one of our longest serving salaried Employment Judges, retired in the last year, having made a very significant contribution to the work of the tribunals over many years and I offer my heartfelt thanks to her. This combination of circumstances has left us short of Employment Judges on occasion over the last year.

In these circumstances I am delighted to report that we have been able to run another recruitment exercise for both salaried and fee paid Employment Judges at the start of this year and I am even more delighted to report that we managed to fill all the posts available with experienced employment lawyers who I have no doubt will prove to be of great assistance in ensuring we can progress cases effectively and expeditiously. The salaried appointments are Employment Judge David Hoey (started in April 2020), Employment Judge Michelle Sutherland (due to start in June) and Employment Judges Amanda Jones and Peter O'Donnell (due to start in July). When these new appointments all take effect, this will bring our salaried cohort to 23 individuals (20.8 Full time equivalent) including the Vice-President and my own post.

The Lord President has also indicated an intention to appoint 13 new fee-paid Employment Judges but their names have not yet been released into the public domain. It had been hoped that our new fee-paid colleagues would undergo their induction training in June 2020 but we have had to delay this for a few months due to the consequences of the Covid-19 pandemic. However, we are greatly looking forward to them joining our judicial team. When they do this will increase our fee-paid cohort to 29.

Our non-legal members continue to play an important part in the work of the tribunals. Last year I reported that a recruitment campaign was underway to recruit both employer and employee members. Again, I am pleased to report that the available posts (26 employee and 13 employer) were filled, and at the time of writing we have 150 non-legal members.

Last year I noted that the Glasgow operating base of Employment Tribunals would move from Eagle Building to the Glasgow Tribunals Centre. That move was scheduled to take place at the end of July but it is difficult to be certain at the time of writing about whether the move may be slightly delayed due to the impact of the Covid-19 pandemic. The Employment Judges and members based in Glasgow are greatly looking forward to the move so it is to be hoped that if there is a delay it will only be of short duration. That move will increase the number of ET hearing rooms available on a daily basis which will be of assistance in ensuring that we continue to progress cases as expeditiously as possible.

Our Inverness operating base was due to move to the brand-new Inverness Justice Centre which opened in March 2020. That move has been slightly delayed as a result of the pandemic but it is hoped that the move will take place in May or early June 2020.

Devolution of Functions

It is now clear that devolution of the functions of ET (Scotland) is unlikely to occur before 2023 at the earliest. Work has continued on the part of both the UK and Scottish Governments to produce a draft Order in Council dealing with the transfer of employment, tax and social entitlement related functions. It is understood that the Scottish Government may undertake a formal consultation exercise with system users once the draft Order is published. The implications of the Covid-19 pandemic for the timing of devolution are not yet known.

Conclusion

While I have touched on the implications of the Covid-19 pandemic in passing, it is difficult at this point to know what it will mean for the work of ETs in the coming year. It is certainly eminently foreseeable that the pandemic will lead to a significant rise in the workload of the tribunals, given the impact it is having on the world of work. It has already had a major impact on the extent to which ETs are able to deliver the service they normally offer and on the way in which the services we can offer are being delivered. Every day, in navigating this unchartered territory, I am left sometimes near speechless and always proud at the manner in which the Scottish HMCTS staff, and the Employment Judges whom I have the honour to lead, have risen to the challenges they face. That is a topic for another day…

Employment Tribunals (England & Wales)

President: Judge Brian Doyle

The jurisdictional landscape

Caseload

The latest Employment Tribunal (ET) statistics were published by the Ministry of Justice on 12 March 2020. See: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877060/Tribunal_and_GRC_statistics_Q3_201920.pdf.*

Single ET claims continued to rise. Receipts, disposals and caseload outstanding all increased by 25 per cent, 19 per cent and 28 per cent respectively compared to a year ago. The trend in multiple claims remained volatile. Multiple ET receipts and caseload outstanding increased by 86 per cent and 10 per cent respectively, while disposals decreased by eight per cent.

From the launch of the ET fee refund scheme to 31 December 2019 there were 22,000 applications for refunds received and 22,000 refund payments made, with a total value of £18.0m.

Judicial resources

A total of 58 new salaried Employment Judges (51.5 Full time equivalent (FTE)) were appointed in 2019. Their deployment followed an innovative induction and training programme supported by a mentoring scheme. The new judges will undergo further cross-jurisdictional training in 2020. We were unable to fill all the declared vacancies in London and the South East. There will be further targeted recruitment in 2020.

At the end of April 2020 appointments of 72 new fee-paid Employment Judges were in progress. Because of the Covid-19 pandemic their induction and training has been postponed until later in the year. They will then be available to sit.

New non-legal members (284) were appointed in late 2019. They underwent their induction and training in the first quarter of 2020 and were available to sit at the start of 2020/21.

Reform

The Employment Tribunal (England & Wales) (ET(E&W)) has been actively involved in the HM Courts & Tribunal Service (HMCTS) Reform programme since 2015. The co-lead judge, Regional Employment Judge Paul Swann, has represented the ET in the Tribunals Judicial Engagement Group; Case Officer Working Group; Video Hearing Group; Listing and Scheduling Working Group; Audio Recordings Project; Screens and Digitalisation Working Group and Project; and Hearing Capacity Optimisation Project.

The ET (E&W) has subsequently taken its place in the reform timeline in November 2019. Regional Employment Judge Rohan Pirani is the co-lead judge for ET-specific reform. The "discovery" phase of the ET reform project has now been completed. The next stage will involve collaboration with the Department for Business, Energy and Industrial Strategy, the Ministry of Justice, HMCTS and the Advisory, Conciliation and Arbitration Service (ACAS) in the implementation of reform and liaison with key stakeholders, users and professional groups. Important issues for resolution include responsibility for procedural rules, the role of legal officers, audio-recording of hearings, online management of cases and digitalisation of case files and evidence bundles.

Other matters

The ET in both England & Wales and Scotland is working hard to replace its legacy case management database ("Ethos"). Performance in the ET generally has suffered, not just because of the return in volume of its caseload, but also because Ethos is based on dated software that does not run well on the latest Windows operating software. The implementation of plans to replace Ethos with the new Electronic Case Management (ECM) database (derived from the building blocks of Core Case Data, a tried and tested system used in other jurisdictions) is well advanced, although not without some issues that need to be resolved satisfactorily before roll-out can be commenced.

The return of claims in volume after the abolition of ET fees – together with Ethos problems, telephony issues and the need to restore judicial and administrative resources – have contributed to a less than satisfactory performance. This was the subject of justifiable criticism in a survey of members of the Employment Lawyers Association, to which the two ET Presidents and the HMCTS Deputy Director responsible for Tribunals gave a candid and constructive response. We can be reasonably confident that next year's report will be able to record an improving performance and service to users (although subject to the challenges of the Covid-19 pandemic).

During 2019/20 the Law Commission in England & Wales has been examining Employment Law Hearing Structures, including the allocation of jurisdiction between the employment tribunals and the courts in the employment field, and the, often outdated, arbitrary limits on the tribunal's jurisdiction. A consultation paper with provisional recommendations was published in September 2018 and the consultation closed on 31 January 2020; recommendations are expected during 2020. See: *https://www.lawcom.gov.uk/project/employment-law-hearing-structures/*.

Presidential Guidance on Vulnerable Parties and Witnesses was issued in April 2020.

Legislation

There was no primary legislation directly relevant to the ET's jurisdiction during 2019/20. In due course, the ET may be called upon to consider the effects of the legislation passed to implement the United Kingdom's withdrawal from the European Union (EU) and the continuing relevance of EU legislation and case law.

Secondary legislation of note includes: *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2019; Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019; Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019; Agricultural Wages (Wales) Order 2019; Employment Rights (Amendment) (EU Exit) Regulations 2019; Employment Rights (Amendment) (EU Exit) (No 2) Regulations 2019; Agency Workers (Amendment) Regulations 2019; Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019; Employment Rights (Miscellaneous Amendments) Regulations 2019; and Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019.*

Case law

This selection of cases is taken from those that commenced in the employment tribunal and considered by the higher appellate courts and the Court of Justice of the European Union (CJEU). I am grateful to the editor of the *Industrial Relations Law Reports* for the selection on which I draw.

Although the rules of evidence are not strictly applied in ET cases generally, in hard fought and valuable proceedings employment judges have to be on their game when it comes to ruling on evidential challenges. In *Curless v Shell International Ltd* [2019] EWCA Civ 1710 the Court of Appeal explores the application of the iniquity principle in the context of the admissibility of emails in ET proceedings to which legal advice privilege might otherwise have attached.

The right to rest breaks under the Working Time Regulations was considered by the Court of Appeal in *Network Rail Infrastructure Ltd v Crawford* [2019] EWCA Civ 269. It is not necessary for an equivalent period of compensatory rest to amount to an uninterrupted period of 20 minutes. Whether the rest afforded was equivalent is a matter for the informed judgment of the specialist employment tribunal.

In *BMC Software Ltd v Shaikh* [2019] EWCA Civ 267 the Court of Appeal rules that, while the Employment Appeal Tribunal (EAT) can require an ET to state its reasons for a judgment under appeal at the sift stage or at a preliminary hearing (the Burns/Barke procedure), it cannot do so as part of its final disposal of the appeal.

An equal pay claim is a claim for arrears of pay, permitting an employee to make a claim for an unpaid debt against the National Insurance Fund in the context of insolvency, ruled the Court of Appeal in *Graysons Restaurants Ltd v Jones* [2019] EWCA Civ 725.

Important guidance on the application of rule 50 and the Sexual Offences (Amendment) Act 1992 when restricted reporting orders are sought in connection with allegations of sexual offences made in claims before an employment tribunal is provided by the EAT in *A and B v X and Times Newspapers Ltd* [2019] IRLR 620.

It is not unlawful sex discrimination for employers to pay men on shared parental leave less than women on statutory maternity leave: *Capital Customer Management Ltd v Ali; Chief Constable of Leicestershire Police v Hextall* [2019] EWCA Civ 900 (Court of Appeal).

In *Kuteh v Dartford & Gravesham NHS Trust* [2019] EWCA Civ 716 the central issue was whether a Christian nurse was unfairly dismissed for alleged gross misconduct in initiating religious discussions with patients despite reassuring management that she would not do so. Was her conduct protected by article 9, European Convention on Human Rights (ECHR)? The Court of Appeal held that it was not, drawing a distinction between the manifestation of a religious belief and the inappropriate promotion of that belief.

The Court of Appeal decision in *FCO v Bamieh* [2019] EWCA Civ 803 is an unusual illustration of whether the employment tribunal had extraterritorial jurisdiction in an international law context of two co-workers seconded to the EULEX mission in Kosovo and where the claim by one co-worker against the other derived from the whistleblowing provisions of the *Employment Rights Act 1996*. It did not.

How should an employment tribunal accommodate the needs of a disabled person participating in its proceedings? Helpful guidance on this difficult issue is beginning to emerge from the higher courts, not least in the Court of Appeal decisions in *J v K* [2019] EWCA Civ 5 and *Anderson v Turning Point Eespro Ltd* [2019] EWCA Civ 815.

East of England Ambulance Service NHS Trust v Flowers [2019] EWCA Civ 947 explores whether voluntary overtime should be accounted for in the calculation of holiday pay against the background of a collective agreement (the NHS Agenda for Change). The effect of the collective agreement was to ensure a contractual entitlement to holiday pay based on voluntary overtime. The Court of Appeal also grapples with counter-intuitive language on voluntary overtime in the CJEU decision in Hein.

Section 145B of the *Trade Union & Labour Relations (Consolidation) Act 1992* is an example of an area of the ET's jurisdiction that spills over into collective labour law. It is concerned with "inducements relating to collective bargaining". The Court of Appeal overrules both the ET and the EAT in their interpretation of the section in *Kostal UK Ltd v Dunkley* [2019] EWCA Civ 1009.

The Court of Appeal confirms that the recast definition of direct discrimination in the Equality Act 2010 has the effect that a disability discrimination claim can be brought by a claimant who is perceived to be disabled even though she is not: *Chief Constable of Norfolk v Coffey* [2019] EWCA Civ 1061.

In a case originating in an unfair dismissal claim in the ET arising from a complaint of harassment the European Court of Human Rights (ECrtHR) considers the application of article 8 ECHR privacy rights to evidential material relating to the employee's mobile phone, email and WhatsApp messages provided to the employer by the police: *Garamukanwa v UK* [2019] IRLR 853.

On the first occasion that the Court of Appeal has considered regulation 5(1) of the Agency Workers Regulations, it holds that the Regulations do not entitle agency workers to work the same number of contractual hours as a comparator: *Kocur v Angard Staffing Solutions Ltd* [2019] EWCA Civ 1185.

The defence of statutory illegality in relation to employment contractual claims, and where reliance was placed by the employer on the *Immigration, Asylum and Nationality Act 2006*, was considered by the Court of Appeal in *Okedina v Chikale* [2019] EWCA Civ 1393.

In *McNeil v HMRC* [2019] EWCA Civ 1112 the Court of Appeal reviews how the principles of indirect discrimination apply in equal pay claims. The appeal is of particular interest because of how the court addresses the arguments based upon statistical analysis that were presented to it.

In *L v Q Ltd* [2019] EWCA Civ 1417 the Court of Appeal rules that the ET has no power in its procedural rules (apart from national security cases) to prohibit the online publication of a judgment.

The Court of Appeal in *Harpur Trust v Brazel* [2019] EWCA Civ 1402 decides that there is no basis for calculating holiday pay on a pro rata basis for a part-time worker who worked part of the year.

The putative status of judges as workers under employment rights legislation is explored by the Supreme Court in *Gilham v Ministry of Justice* [2019] UKSC 44.

The difficulty of establishing a philosophical belief as a protected characteristic under the *Equality Act 2010* (here belief in the statutory and moral right to copyright) is illustrated in *Gray v Mulberry Company (Design) Ltd* [2019] EWCA Civ 1720.

In an unfair dismissal claim where there is both an invented reason and a hidden reason for dismissal, it is the hidden reason that falls to be tested says the Supreme Court: *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55.

The latest guidance on the application of disciplinary procedures in the workplace is provided by the Court of Appeal in *Sattar v Citibank NA* [2019] EWCA Civ 2000.

In whistleblowing claims the test of whether a disclosure was made "in the public interest" is a two-stage test which must not be elided. The claimant must (a) believe at the time that he was making it that the disclosure was in the public interest and (b) that belief must be reasonable: *Ibrahim v HCA International Ltd* [2019] EWCA Civ 2007.

A claimant in a whistleblowing case must be able to show that they have suffered a detriment in the employment field and not, for example, as a resident vis-à-vis a council's powers as a local authority rather than as an employer: *Tiplady v City of Bradford* [2019] EWCA Civ 2180.

When does time limitation start to run in the judicial pensions litigation? From the date of retirement when a pension might otherwise fall due to be paid, rules the Supreme Court in *Miller v Ministry of Justice* [2019] UKSC 60.

People and places

As at 11 May 2020 the ET (E&W) comprised the President, nine Regional Employment Judges, two Acting Regional Employment Judges, 134 salaried Employment Judges, 159 fee-paid Employment Judges and 989 non-legal members.

The President (Judge Brian Doyle) retired on 8 May 2020. Judge Barry Clarke became President on 11 May 2020.

That created a vacancy for a Regional Employment Judge in Wales, which will be filled during 2020/21. Employment Judge Siân Davies has been nominated as Acting Regional Employment Judge on a temporary basis.

Regional Employment Judge Elizabeth Potter (London Central) and Regional Employment Judge Richard Byrne (South East) retired in June 2019 and February 2020 respectively. Regional Employment Judge Jonathan Parkin (North West region) retired on 30 June 2020.

The Judicial Appointments Commission (JAC) ran an exercise to appoint to those vacancies during 2019/20. Four new Regional Employment Judges were appointed in the London Central, London South, South East and North-West regions. They are Joanna Wade, Andy Freer, George Foxwell (all from 1 May 2020) and David Franey (from 1 July 2020).

The President is grateful to Employment Judges Philip Davies and Alastair Smail who were Acting Regional Employment Judges in the London South and South-East regions during 2019/20.

The following salaried or fee-paid Employment Judges have been appointed as follows: Edward Legard (Assistant Judge Advocate General); John Keith (Upper Tribunal); Christian Sweeney (Circuit Judge); Jennifer Bartlett (First-tier Tribunal); Michael Ford QC (Deputy High Court Judge). The following ET judges were additionally appointed as Recorders: Richard Adkinson, Wayne Beard, Barry Clarke, John Crosfill and Sean Jones QC.

The following salaried Employment Judges retired during 2019/20: Carol Porter, Merry Cocks, Andrew Buchanan, Sally Gilbert, Stephen Keevash, Victoria Wallis and John Sherratt.

The following fee-paid Employment Judges retired or resigned during 2019/20: Toby Starr, Richard Hemmings, John Trayler, Jenny Mulvaney and Paul Stewart.

In addition, 26 non-legal members retired, resigned or died in service during 2019/20.

The ET in the North East returned to new multi-jurisdictional premises in the Newcastle Civic Centre on 2 March 2020 after its temporary relocation to North Shields since 2015.

Annex D
Cross Border Issues

Northern Ireland

Dr Kenneth Mullan, Chief Social Security and Child Support Commissioner

Restoration of the Northern Ireland Assembly and Executive

The Northern Ireland Assembly and Executive were restored on 11 January 2020 consequent on the main political parties backing a new agreement.[14] The new Minister of Justice is Naomi Long of the Alliance Party.[15] These developments renew the prospect of further progress towards substantive tribunal reform in Northern Ireland.

Reserved tribunal jurisdictions

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.

Visit of the Chamber President (Administrative Appeals Chamber) to Northern Ireland

The Chamber President (CP) of the Administrative Appeals Chamber (AAC) of the Upper Tribunal visited Northern Ireland on 21 June 2019. She had a meeting with the two salaried judges of the AAC with discussions centring on the Government response to the SSRB's Major Review, judicial pensions, salaried part-time working and further integration of NI UT (AAC) judges with the main AAC judicial complement in the Rolls Building.

The CP was given a tour of the tribunal facilities which are available for both the local devolved tribunals and the reserved tribunals with jurisdictions which extend to Northern Ireland. She was given a demonstration of the 'For the Record' software utilised by the court and tribunal judiciary for digital recording and playback of hearings.

The CP visited the premises of the largest devolved tribunal in Northern Ireland, the Appeal Tribunals for Northern Ireland, which have an equivalence in the Social Entitlement Chamber of the First-tier Tribunal. The CP was shown the newly refurbished premises for this devolved tribunal and had a meeting with the tribunal President, Mr John Duffy. Discussions centred on the advantages and disadvantages of devolution, relationships with the equivalent GB jurisdiction and opportunities for cross-jurisdictional sharing or resources including access to judicial training and e-judiciary. The CP also met the Head of the Tribunal Hearing Centre, which is the administrative support centre for the devolved tribunals in Northern Ireland and those reserved First-tier and Upper

14 *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf*
15 *http://aims.niassembly.gov.uk/mlas/details.aspx?&aff=14132&per=137&c=2*

Tribunal Chambers with jurisdictions which extend to Northern Ireland. Discussions centred on the arrangements for the provision of administrative support to the reserved jurisdictions and the requirement to consider revisions to the present service level agreement.

First-tier Tribunal Asylum and Immigration Chamber

We are pleased to welcome a new salaried Judge of the Chamber to Northern Ireland.

Review Tribunal

The *Mental Capacity (Northern Ireland) Act 2016*[16] came into force[17] on 2 December 2019. Section 274 of the Act renames the former Mental Health Review Tribunal (MHRT) as the Review Tribunal. The new Review Tribunal takes over all of the powers of the MHRT and the 2016 Act augments those powers. The Northern Ireland Judicial Appointments Commission (NIJAC) has been very active in the recruitment of new fee-paid members of the Review Tribunal across a number of categories. A comprehensive training programme has been devised and is being delivered. First appeals were heard in February/March 2020.

The Historical Institutional Abuse (Northern Ireland) Act 2019

This Act[18] passed through all of its legislative stages in the final hours of the last Parliament. It provides the legal framework for delivering two of the recommendations contained in the Report of the Historical Institutional Abuse Inquiry[19] - establishing a Historical Institutional Abuse Redress Board ("the Redress Board") to administer a publicly funded compensation scheme and the creation of a statutory Commissioner for Survivors of Institutional Childhood Abuse ("the Commissioner").

Part 1 of the Act establishes the Historical Institutional Abuse Redress Board. The President of the Board is Mr Justice Colton. Section 8 of the Act makes provision for the establishment of a Panel which will determine claims for compensation. The Panel will be made up of one judicial and two non-judicial members. Section 16 provides for a right of appeal against determinations of the Panel.

This compensation scheme has a high media profile in Northern Ireland and the expectation is that the new appeal mechanism will be established by mid-2020. Considerable resource has been allocated to the jurisdiction.

16 *http://www.legislation.gov.uk/nia/2016/18/contents*

17 *http://www.legislation.gov.uk/nisr/2019/163/introduction/made* This Order makes provision for an appointed day of 1 October 2016 but this was changed by administrative decision to 2 December 2019

18 *http://www.legislation.gov.uk/ukpga/2019/31/contents/enacted*

19 *https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters*

Victims Payments Scheme

Under the provisions of the *Northern Ireland (Executive Formation etc.) Act 2019*[20], the UK Government has committed to bringing forward legislation providing for a scheme of payments to those living with injuries sustained in Troubles-related incidents by 31 January 2020 and will make arrangements for that legislation to have effect by 31 May 2020. A Consultation Scheme[21] was launched on 22 October 2019 and ended on 26 November 2019. Paragraph 68 of the Consultation Document proposes that if applicants are not content with the outcome of the decision about their application for a scheme payment, they would have the opportunity to request an internal reconsideration and, if not satisfied with the outcome of this reconsideration process, an ability to appeal to an 'independent body other than the Courts' within 12 months of being notified of the outcome of this process. Once again, this compensation scheme has a high media profile in Northern Ireland and it is anticipated that the appeal mechanisms will be in place by the summer/autumn of 2020 thereby creating the need for increased resource.

The *Victims' Payments Regulations 2020*[22] were made on 31 January 2020. This instrument establishes a Scheme for payments to be made to those permanently disabled as a consequence of injury caused by a Troubles-related incident. The instrument makes provisions for who will be entitled to payments and for how much, for decisions and appeals, and creates a new body to operate the Scheme.

The scheme's main objective is to provide those entitled to payments with acknowledgement of the acute harm that they have suffered; as a result of the payments, the Scheme will also provide a measure of financial support, which may help to improve their quality of life and provide greater security around their financial future.

The scheme will make payments in respect of disablement attributable to injury in a Troubles-related incident. It will include both physical and psychological injuries. Disablement will be assessed by appropriately qualified health care professionals by comparing the effect of a relevant injury on an individual's ability to undertake day-to-day activities with that of a health person of the same age and gender not living with the same injury. Payments will be backdated to the date of the Stormont House Agreement (December 2014) for the first three years of the scheme's running, and the scheme will be open for applications for five years from the date its creation is advertised in the Belfast Gazette.

Applicants will have to prove that they were injured in a Troubles-related incident, or in its immediate aftermath. A Troubles-related incident is defined in the enabling Act as "an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there." The scheme will have date parameters of 1 January 1966 - 12 April 2010 (the latter being the date policing and justice were devolved to the Northern Ireland Executive), and the Board will have discretion to include incidents outside of that period if they consider that not to do so would undermine the purpose of the scheme. Anyone injured in an incident in the United Kingdom will be eligible to apply.

20 *http://www.legislation.gov.uk/ukpga/2019/22/enacted*

21 *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841467/VP_consultation__FINAL_.pdf*

22 *http://www.legislation.gov.uk/uksi/2020/103/contents/made*

The instrument establishes a Victims' Payments Board (the Board) to manage the Scheme. The Board will be independent of Government, but with administrative functions handled by a Northern Ireland Department. The Board will be responsible for determining applications, both whether someone is entitled and how much they are entitled to. The Board and its staff will operate within clear guiding principles so that the scheme remains victim-centred in approach, fair, proportionate and transparent, in order to meet the needs of victims and survivors effectively.

The instrument sets out the criteria for applicants to be entitled to receive payments, including conditions around the causation of injury and the degree of disablement threshold. Regulation 6(1) provides that an individual with a conviction (whether spent or not) and that conviction was in respect of conduct which caused, wholly or in part, a particular Troubles-related incident, is not entitled to a victims' payment in respect of that incident.

The instrument sets out that applications will be determined by a panel on behalf of the Board, with the assessment of the extent which an applicant has been permanently disabled assessed by a health care professional.

The instrument also sets out the process for making an application, how applicants will be notified and measures to ensure sensitive personal data is handled appropriately. It provides for the ability to appeal against determinations and assessments, for reassessment where a person's condition worsens and allows for determinations to be reviewed by the Board.

Scotland

Sir Brian Langstaff

Last year I reported that progress towards the intended devolution of currently reserved tribunals to Scotland had been almost imperceptible. Things have not changed much. There has been some advance, but it has not been characterised by urgency. It is perhaps understandable that this should be the case, given the public health challenges which the UK and its constituent parts have faced.

The, albeit limited, progress, has been encouraging such as it is. Though an Order in Council to effect the transfer has not yet been finalised, consideration of a revised version is at quite an advanced stage. Uncertainty remains as to funding for the costs of transition planning and implementation; and proposals for the terms and conditions which will apply to members of the judiciary of the currently reserved tribunals on and after devolution have yet to be put forward. These "ts and cs" will be designed to honour a commitment that those judges may transfer to service in the devolved tribunals without detriment to their current terms and conditions. Once the proposals have been received the Judicial Working Group will meet to consider them further, and advise the Senior President of Tribunals appropriately.

It seems likely that once those three matters are resolved, implementation of the change-over will require a preparation period of at least two years: it thus looks increasingly unlikely that devolution of the reserved tribunals will occur before the end of 2022, if by then.

One matter which appears to be gathering consensus is the need for continued cross-border co-operation after devolution, especially in relation to those fields where the statutory regime is common across the whole of Great Britain. It is recognised that each jurisdiction, separate though it

will be following devolution, has much to gain from collaborative and co-operative discussion with the other

I look forward to reporting some further progress next year.

Wales

Judge Libby Arfon-Jones

It is remarkable the way the administrative justice and tribunal landscape in Wales has developed in the last decade.

A notable and welcome development was the appointment of Sir Wyn Williams as Senior President of Welsh tribunals. His report outlines the headline news in terms of Lord Thomas's Commission on Justice in Wales which published its Report in October 2019 and the Law Commission's future focus on Welsh tribunals. It would be otiose to repeat that information in my report.

It is an exciting time for all cross-border issues, including Welsh matters.

I am grateful that this report affords me the opportunity to pay tribute to Sir Ernest Ryder's understanding of and sensitivity to devolution issues in the United Kingdom as a whole and, from my perspective, his commitment to Wales in particular.

Annex E

Important Cases

Upper Tribunal

Administrative Appeals Chamber

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 110 (AAC)	*London Borough of Newham v Samson Estates Ltd*	Lettings Agency	The Upper Tribunal decided that a residential leasehold property manager must belong to a redress scheme that specifically covers the relevant activity in compliance with the requirements of *The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014*.
[2019] UKUT 114 (AAC)	*JW v Her Majesty's Revenue & Customs*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had erred in law in finding that the business of the "self-employed" appellant as defined in the *Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002* was not carried out on a commercial basis as a trade, profession or occupation because it was unprofitable applying a test of "genuine and effective". There was also a subsidiary issue as to the circumstances in which the Upper Tribunal will hear an appeal against a decision of the First-tier Tribunal in a case challenging a decision under Section 16 of the *Tax Credits Act 2002* when a Section 18 decision has subsequently been issued.
[2019] UKUT 118 (AAC)	*SA v Secretary of State for Work and Pensions (ESA)*	Social Security	The Upper Tribunal considered regulations 23 and 24 of the *Employment and Support Allowance Regulations 2008* and the meaning of "good cause" in respect of failure to attend a medical examination. It decided that regulation 24 which requires that the claimant's "state of health at the relevant time" be considered means the time at which the claimant was required to attend and submit to the medical examination. The requirement to consider the claimant's "state of health" relates to the degree of the claimant's health problems at that time. Regulation 24(c) requires the decision maker or tribunal to consider *"the nature of any disability the claimant has"*. This could include, in relation to a condition that does not affect the claimant all the time, the pattern of the claimant's symptoms so does not preclude an approach looking beyond the day of the appointment.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 135 (AAC)	*JS v Secretary of State for Work and Pensions (IS)*	Social Security	The Upper Tribunal decided that "Saint-Prix" retention of worker status in respect of "right to reside" may extend to other situations where a claimant has needed temporarily to cease working. It also considered the correct approach to proportionality and "lacuna filling" after Mirga. The circumstances of this case were whether the appellant had a right to reside at the time he made his claim for income support in March 2011 and whether his personal circumstances in March 2011, having given up his employment in February 2011 to care for his very young (and in one case seriously disabled) children because they otherwise would be 'taken into care', conferred on him a right to reside under EU law.
[2019] UKUT 139 (AAC)	*G Crawford Management Services Ltd v London Borough of Tower Hamlets*	Lettings Agency	The Upper Tribunal decided that the appellant company was in breach of the requirements of *The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014*. The appellant company was established to minimise liability for tax and national insurance purposes. As a matter of law, if any of the activities of the appellant was done "in the course of a business", then there was a duty to belong to a redress scheme. The fact that there was (and was only ever intended to be) only one client or customer did not prevent the activities being done "in the course of a business".
[2019] UKUT 144 (AAC)	*NA v Secretary of State for Work and Pensions (BB)*	Social Security	The Upper Tribunal decided that the surviving partner of a religious marriage recognised in Pakistan, but not recognised in England and Wales, was entitled to a bereavement payment and widowed parent's allowance. The State's refusal to provide the appellant with a bereavement payment is contrary to Article 14 of the *European Convention on Human Rights* read in conjunction with Article 1 of the First Protocol and the difference in treatment was not objectively justified and proportionate as per *Re McLaughlin* [2018] UKSC 48. For the purposes of entitlement to both bereavement payment and widowed parent's allowance, the relevant secondary legislation *(the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 (SI 1975/561))* can be read down under section 3 of the *Human Rights Act 1998* so as to be Convention-compliant.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 149 (AAC)	*EA v Secretary of State for Work and Pensions and SA (CS)*	Social Security	The Upper Tribunal considered shared care under Regulation 46 of the *Child Support Maintenance Calculation Regulations 2012* and whether shared care should be determined on the basis of provisions for contact in a court order, even though the specified overnight contact had not been happening. It decided that although the tribunal must consider the terms of the court order, it is not obliged to determine shared care in accordance with its terms.
[2019] UKUT 151 (AAC)	*AR v Secretary of State for Work and Pensions, Her Majesty's Revenue and Customs and LR (No.2)*	Social Security	The Upper Tribunal considered the meaning of "latest available tax year" and whether regulations 4 and 36 of the *Child Support Maintenance Calculation Regulations 2012* were in conflict. The non-resident parent was subject to PAYE real time information procedures but also required to lodge P11D and self-assessment return (SAR). There was no change to tax liability following such lodgement. It decided the key point is that regulation 36 is the primary provision in defining what is meant by the "Her Majesty's Revenue and Customs figure"; regulation 4 is merely a subsidiary definition provision. It follows that regulation 4(1) must be read in such a way that it is consistent with the purpose of regulation 36(1), namely the focus on all sources of income charged to tax for the same "latest available tax year".
[2019] UKUT 154 (AAC)	*KF v Secretary of State for Defence (WP)*	Armed Forces	The Upper Tribunal decided that the tribunal should apply its own consideration of the admissibility of expert evidence in the particular circumstances of the case before it, given the general rule in relation to the admission of evidence.
[2019] UKUT 172 (AAC)	*JS v South London and Maudsley NHS Foundation Trust and the Secretary of State for Justice*	Mental Health	The Upper Tribunal provided guidance and explained the structured approach to be followed by a tribunal when considering whether to allow a party to reinstate their case. The appellant in this case was a patient liable to be detained under the *Mental Health Act 1983*. He applied to the First-tier Tribunal for this liability to be discharged and then withdrew that application. It also explains why Hospital Trusts are correctly respondents on appeals by mental patients to the Upper Tribunal.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 179 (AAC)	*JB v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal decided two procedural issues in an appeal against the refusal of a Personal Independence Payment ("PIP") claim. Firstly, the extent of the Registrar's powers in the First-tier Tribunal when determining which papers should be included in the appeal bundle before the First-tier Tribunal and secondly the admissibility of an audio recording of a consultation with an Health Care Professional made covertly by the appellant and whether it should have been admitted by the First-tier Tribunal. The Upper Tribunal decided that in this case the Registrar had exceeded her powers and that the First-Tier Tribunal had been wrong to avoid the issue regarding the covert recording and transcript in its decision.
[2019] UKUT 185 (AAC)	*Davies v 1. The Information Commissioner; 2. The Cabinet Office (GIA)*	Information Rights	The Upper Tribunal considered Section 36 of the *Freedom of Information Act*, the standard of reasons required for a decision as to the reasonableness of the qualified person's opinion and the duty of a tribunal to give closed reasons where the required standard of reasons cannot be met in open. It gave guidance as to the duty of tribunals to address the principal issues raised in closed proceedings even where the issues were subsequently agreed by those privy to the closed proceedings. The Upper Tribunal remade the decision in this case, finding that the qualified person's opinion was not reasonable and, in any event, the public interest favoured disclosure.
[2019] UKUT 199 (AAC)	*GC v Secretary of State for Work and Pensions & AE (CSM)*	Social Security	The Upper Tribunal decided that the appellant's liability for Child Support in respect of one son should be recalculated to take into account his liability to support his other son who lived in Denmark, under an informal arrangement made without a court order. The Upper Tribunal considered the operation of regulation 52 and regulation 48 of the *Child Support Maintenance Calculation Regulations 2012* and decided that there was a clear policy intent to encourage parents to come to mutually agreed effective arrangements outside the statutory scheme.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 203 (AAC)	*JB v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had erred by failing to adequately enquire into and through failing to make any findings about the claimant's ability to follow the route of an unfamiliar journey without another person, even if it can be assumed that the entirety of any such journey could be undertaken by driving. It follows that even where the bulk of the journey may be accomplished by driving there must be at least small parts of it, which will have to be accomplished by other means.
[2019] UKUT 207 (AAC)	*RT v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had failed to consider how to facilitate the giving of evidence by a vulnerable adult as required by the Practice Statement; *First Tier and Upper Tribunal – Child, Vulnerable Adult and Sensitive Witnesses*. Such consideration must be undertaken consciously and it is good practice for the tribunal to note in the record of proceedings that this has occurred, and failing that, at the least, any written statement of reasons must refer to the fact that the tribunal considered how to facilitate the giving of evidence by the claimant and explain what the tribunal had decided giving a brief explanation.
[2019] UKUT 220 (AAC)	*LG v Secretary of State for Work and Pensions (ESA)*	Social Security	The Upper Tribunal decided, on an appeal about Income Related Employment and Support Allowance (ESA (IR)), that some payments from a trust should have been taken into account rather than others in determining whether the claimant met the financial conditions for ESA (IR).
[2019] UKUT 223 (AAC)	*JL v Governing Body of Cherry Lane Primary School (SEN)*	SEND	The Upper Tribunal decided that Rule 12(3)(a) of the Health, Education and Social Care Rules cannot be relied on to extend the six-month time limit for making a claim under the *Equality Act 2010*. In this case the First-tier Tribunal erred in law in its approach to the 2010 Act's provisions by allowing an application for an extension of time to be considered.
[2019] UKUT 240 (AAC)	*Derbyshire County Council v Moore*	SEND	The Upper Tribunal decided that there was no absolute requirement for all Education and Healthcare Plans to specify a particular school or other institution in section 1 even where section 61 of *Children and Families Act 2014* applies ("education otherwise than in school") and that *M & M v West Sussex County Council* (SEN) [2018] 347 (AAC) was incorrectly decided on that point.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 243 (AAC)	*Nottinghamshire County Council v SF and GD*	SEND	The Upper Tribunal decided that the First-tier Tribunal had not erred in its construction of section 37 of *Children and Families Act 2014* and in particular its approach to whether an Education, Health and Care plan ("EHC") plan is necessary for a six-year-old with diagnoses of Autism Spectrum Disorder, Developmental Coordination Disorder and hypermobility, who attended a maintained mainstream school.
[2019] UKUT 247 (AAC)	*Vesco v (1) Information Commissioner and (2) Government Legal Department*	Information Rights	The Upper Tribunal considered an appeal concerning a request for environmental information within the *Environmental Information Regulations 2004* ("EIRs") which implement obligations under EU Council Directive 2003/4/EC which in turn falls to be interpreted in accordance with the Aarhus Convention. It decided that the First-tier Tribunal erred in law by failing to apply all applicable tests under Regulation 12 of the EIRs.
[2019] UKUT 259 (AAC)	*Proprietor of Ashdown House School v (1) JKL (2) MNP*	SEND	The Upper Tribunal decided that the school had discriminated against a child on the basis of his disability under section 15 of the *Equality Act 2010* and ordered that it withdraw its exclusion of him and reinstate him with support and extra tuition for lost learning as well as an apology.
[2019] UKUT 269 (AAC)	*Sygulska v (1) The Information Commissioner (2) The Ministry of Defence*	Information Rights	The Upper Tribunal decided that the First-tier Tribunal had not erred in law in deciding that disclosure of Second World War service records would be unfair under section 40 of the *Freedom of Information Act* (FOIA) and that condition 6(1) of Schedule 2 of the *Data Protection Act 1998* (DPA) was not satisfied. In the absence of proof of death such as a death certificate or equivalent document, the Ministry of Defence was entitled to ask for and receive a declaration of death from the relevant legal authorities before disclosing a serviceman's record unless 116 years had passed since his date of birth.
[2019] UKUT 270 (AAC)	*PA v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had erred in law in respect of daily living activity 2 (taking nutrition) in the *Social Security (Personal Independence Payment) ("PIP") Regulations 2013*. It had made insufficient findings of fact to support its decision that the claimant didn't require prompting to take nutrition, it misunderstood the proper meaning of "take nutrition", it failed to consider regulation 4(2A) of the PIP Regulations in sufficient detail and the reasons for its decision were inadequate.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 284 (AAC)	*CM v Secretary of State for Work and Pensions (ESA)*	Social Security	The Upper Tribunal decided that *EI v Secretary of State for Work and Pensions (ESA)* [2016] UKUT 397 (AAC) was wrongly decided on two points. The first concerned the powers of the First-tier Tribunal on an appeal from a decision made by the Secretary of State under Regulation 30 of the *Employment and Support Allowance ("ESA") Regulations 2008* on a second or repeat claim. The second concerned the wording in Regulation 30(1) "to be treated as having limited capability for work until such time as it is determined whether or not the claimant has limited capability for work".
[2019] UKUT 289 (AAC)	*WC v Commissioners for Her Majesty's Revenue and Customs*	Social Security	The Upper Tribunal decided that child benefit can be exported under Article 7 of Regulation (EC) 883/2004 and the priority rules for overlapping family benefits in Article 68 of that Regulation do not apply when the claimant is receiving benefit in only one State.
[2019] UKUT 300 (AAC)	*Natural England v Warren (MISC)*	MISC	The Upper Tribunal decided in respect of a Site of Special Scientific Interest ("SSSI") that the First-tier Tribunal was not bound by the requirements of Regulation 63 of the *Conservation of Habitats and Species Regulations 2017* and thereby Article 6(3) of Directive 92/43 in terms of assessing the implications of a plan or project on a special area of conservation or a special protection area. The tribunal was not a competent authority on which the Regulations imposed such obligations. However, it was bound to apply the principles governing the competent authority's assessment, including the precautionary principle.
[2019] UKUT 314 (AAC)	*BB v Secretary of State for Work and Pensions and CB (CSM)*	Social Security	The Upper Tribunal decided that in considering a claim for child support under the third child maintenance scheme established by the *Child Support Act 1991* and as amended by the *Child Maintenance and Other Payments Act 2008*, a redundancy payment was not to be treated as part of a non-resident parent's current income for the purpose of assessing his child support liability.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 320 (AAC)	*DA v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had applied the correct test and reached the inevitable conclusion that a bottle and sterilised water used to wash after going to the toilet was not an "aid" in respect of the definition of "aid or appliance" in the *Social Security (Personal Independence Payment) Regulations 2013* because the claimant had no impaired function relating to the activity of cleaning herself, and because the process was a preventative therapy rather than something which made it easier or possible for her to clean herself. It also stressed the importance of identifying the "impaired function" in order to apply that definition properly.
[2019] UKUT 323 (AAC)	*SLL v (1) Priory Health Care and (2) Secretary of State for Justice*	Mental Health	The Upper Tribunal set out the proper test for deciding whether the discharge of a restricted patient should be absolute or conditional where at least one of the section 72(1)(b) of the *Mental Health Act 1983* criteria is not met as well as the factors that the Tribunal must consider when assessing whether it is "appropriate" for the patient to continue to be liable to recall to hospital for further treatment.
[2019] UKUT 361 (AAC)	*AM v Secretary of State for Work and Pensions and City and County of Swansea Council*	Social Security	The Upper Tribunal decided that there was no "secondary" or contingent right to reside under European Union law as the primary carer of an under school age child where that child's right to reside is based on his being the family member of the other parent, who has a right to reside, but where the child's primary carer is not a family member of that other parent. It further decided that there was no right of residence arising as an extended family member when there was no residence document in place. The Upper Tribunal also decided that there is no power for the Upper Tribunal to award costs on an appeal from the Social Entitlement Chamber of the First-tier Tribunal.
[2019] UKUT 374 (AAC)	*IR v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal allowed the claimant's appeal and decided that as a general rule the Secretary of State should have produced the letter arranging the assessment interview with a Health Care Professional so that the First-tier Tribunal could be satisfied that attendance was a requirement and failure to attend would have consequences. In this particular case the Upper Tribunal was not persuaded that the letter from Atos imposed a mandatory legal requirement to attend.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 410 (AAC)	*AB v Her Majesty's Revenue and Customs (TC)*	Social Security	The Upper Tribunal decided the First-tier Tribunal's decision, in a tax credits case, that the person who was the contact point for the children's school, GP and dentist was ultimately determinative as the person who had the "main responsibility" was an error of law. It directed the new tribunal to follow the approach set out by Judge Jacobs in paragraph 38 of *PG v Commissioners of Her Majesty's Revenue and Customs and NG (TC)* [2016] UKUT 216 (AAC).
[2019] UKUT 415 (AAC)	*SW v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal decided that a reconvened hearing in the First-tier Tribunal must be before exactly the same panel or a completely different one.
[2020] UKUT 22 (AAC)	*TK v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal considered the *Social Security (Personal Independence Payment) Regulations 2013* and decided that activity 3 can apply where a person needs assistance because of the nature of the tasks involved in therapy rather than because of a physical or mental impairment in performing the tasks. It considered the meaning and application of "limited by a person's physical or mental condition" in section 78 *Welfare Reform Act 2012*. Furthermore activity 2 can apply where, due to lack of appetite, a person needs prompting to eat a sufficient quantity of food.
[2020] UKUT 28 (AAC)	*BN v (1) Liverpool City Council (2) Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal decided that the First-tier Tribunal had erred in law and the claimant is entitled to housing benefit to cover the payments by way of service charge on the property which her late father occupied as his home. It decided that the tenancy of the property is a shared ownership tenancy granted by a housing association and is within the exception in paragraph 12(2)(a) of the *Housing Benefit Regulations 2006* to the prohibition on payment of a rent allowance in respect of periodical payments made under a long tenancy.
[2020] UKUT 48 (AAC)	*Secretary of State for Work and Pensions v AJ (UC)*	Social Security	The Upper Tribunal considered this appeal by the Secretary of State in a universal credit case where the claimant had been sentenced to a term of imprisonment. It decided that a claim to universal credit made on release fell within regulation 22 of the *Universal Credit (Temporary Provisions) Regulations 2014* so that the Limited Capability for Work Related Activity element of the award ran from three months after the date of claim and the effect of imprisonment on entitlement to income support was suspensory.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 50 (AAC)	*KH v Bury MBC and Secretary of State for Work and Pensions (HB)*	Social Security	The Upper Tribunal decided that the "genuine chance of being engaged" test under regulation 6(2)(b)(ii) of the *Immigration (EEA) Regs 2006* is contrary to European Union law in respect of those with retained worker status under Article 7(3)(b) of *Directive 2004/38/EC* and considered whether European Union law differs in this context between mere workseekers and those seeking to retain worker status by jobseeking. It also decided that the appeal was not correctly a referral case under section 9(5) b) of the *Tribunals, Courts and Enforcement Act 2007*.
[2020] UKUT 53 (AAC)	*AH v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal decided that an insured person under *Regulation (EC) 883/2004* is not necessarily someone who has rights by virtue of insurance or contributions. Article 21 applies to those persons and members of their family even if the benefits in question are not ones that the claimant is claiming in their own right and not by virtue of being a member of the family. An insured person who is pursuing employment has priority over one who is not. It further decided that this result is consistent with freedom of movement and is not inconsistent with EU law. In this the Upper Tribunal rejected the argument that the child's best interests could override Article 21 or be used to interpret it.
[2020] UKUT 59 (AAC)	*PPE v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal considered the requirement in respect of employment and support allowance to attend a medical examination under Regulation 23(2) of the *Employment and Support Allowance Regulations 2008* and the meaning of "fails … to attend", whether "failure" can occur in the absence of a legal obligation to attend and whether the standard Medical Services appointment letter imposes a legal obligation to attend. The Tribunal also considered whether the First-tier Tribunal can properly dismiss an appeal against a decision treating a claimant as not having limited capability for work under regulation 23 of the *Employment and Support Allowance Regulations 2008* without evidence of the terms of the appointment letter.
[2020] UKUT 65 (AAC)	*MZ v Commissioners for Her Majesty's Revenue and Customs*	Social Security	The Upper Tribunal considered family benefits where the father had not claimed child benefit and the mother and daughter had never lived in the United Kingdom. The mother did not qualify for family benefits in Poland on account of her income. She did not qualify for child benefit either under domestic law read alone or in conjunction with EU law. The Upper Tribunal explained the scope of EU family law provisions.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 66 (AAC)	*DD v Her Majesty's Revenue and Customs & Secretary of State for Work and Pensions (CB)*	Social Security	The Upper Tribunal considered the adequacy of the HM Revenue and Customs' (HMRC) guidance on how to apply the "genuine chance of being engaged in employment" test in relation to a jobseeker's right to reside for the purposes of entitlement to child benefit. The Upper Tribunal found that the wrong version of regulation 6 of the *Immigration (European Economic Area) Regulations 2006* had been applied both by HMRC in its appeal response to the First-tier Tribunal and by the First-tier Tribunal in its decision.

Tax and Chancery Chamber

Citation	Parties	Jurisdiction	Commentary
[2020] UKSC 15	*Zipvit Ltd v HMRC*	Supreme Court	This case concerned the question whether a trader (Zipvit) was entitled to credit for input VAT on supplies the Royal Mail made to it of postal services. The difficulty arose because at the time the supplies were made, all parties proceeded on the basis of a mistaken belief that the supplies were exempt from VAT. They were encouraged in that view by Her Majesty's Revenue and Customs (HMRC) published practice. Therefore, the Royal Mail did not issue VAT invoices to Zipvit or otherwise make an express charge of a "VAT element". Similarly, the Royal Mail did not account to HMRC for output VAT. Two important questions of principle arose. The first was whether, in the above circumstances, any VAT was "due or paid" by Zipvit, a necessary precondition to the claiming of credit for input tax. The second was whether the fact that Zipvit could not produce VAT invoices issued by the Royal Mail precluded it from claiming input tax credit. Both issues have implications well beyond the circumstances of these particular appeals and with somewhere between £500m and £1bn of input tax credit in issue (taking into account appeals that were stayed pending the determination of *Zipvit*), the Supreme Court decided to refer both questions to the Court of Justice of the European Union (CJEU).

Citation	Parties	Jurisdiction	Commentary
[2019] UKSC 43	*Routier and another v HMRC*	Supreme Court	In this appeal, the Supreme Court considered whether the Bailiwick of Jersey is a "third country" for the purposes of directly applicable provisions of EU law dealing with the free movement of capital. This question arose because, when Mrs Beryl Coulter died in October 2007, she left her residuary estate on charitable trusts constituted by Jersey law, whose trustees were domiciled in Jersey. Domestic UK law set out in the Inheritance Tax Act 1984, confers a relief from inheritance tax where property is given to charity. However, the House of Lords gave that exemption a "judicial gloss" in the case of *Dreyfus Inc v HMRC* to the effect that the relief only applies where the charity concerned is constituted under the laws of part of the United Kingdom. Since Jersey is not part of the United Kingdom, this domestic law exemption was therefore not available. However, the charity's trustees argued that Jersey was nevertheless a "third country" for the purposes of the provisions of Article 56 of the *Treaty on the Functioning of the European Union ("Article 56")* that precluded restrictions on the free movement of capital between the UK and "third countries". Moreover, they argued that the restriction on free movement of capital that consisted of denying charities constituted under Jersey law the benefit of exemption from inheritance tax was not justifiable. HMRC argued that the gift to the charity was a transaction wholly internal to a single member state (the UK) and thus outside the scope of the protection conferred by Article 56. The Supreme Court decided that the question whether a country is a "third country" is context-specific and will depend on whether, under the relevant Treaty of Accession, the relevant provisions of EU law apply to that territory. Here the relevant Treaty of Accession provided that provisions of EU law would not apply generally in Jersey. Accordingly, Jersey was to be regarded as a "third country". The Supreme Court went on to conclude that the restriction on free movement of capital was not justified. That in turn meant that, because Article 56 was directly applicable, it was should be applied in priority to domestic UK law with the result that the gift to the charity was exempt from inheritance tax.

Citation	Parties	Jurisdiction	Commentary
[2019] UKSC 24	*Hancock and another v HMRC*	Supreme Court	The Supreme Court continued the judicial pattern of rejecting the arguments of taxpayers seeking to avoid tax based on a literal interpretation of the statutory provisions. A "qualifying corporate bond" (QCB) is a bond which is exempt from capital gains tax. The taxpayer faced a large capital gain on a share disposal and implemented a scheme intended to eliminate the gain by a series of transactions which entailed exchanging the shares for non-QCBs, converting some of the non-QCBs into QCBs, and then converting all the bonds into QCBs. He argued that the legislative provisions applied such that the gain on the initial share disposal which had been deferred effectively fell out of charge to tax. The Supreme Court held that there were "powerful literal arguments" in favour of the taxpayer's interpretation. However, the result it produced would be "inexplicable in terms of the policy expressed in those provisions". The Parliamentary intention—which in this case could be found in the provisions themselves—showed that the taxpayer's construction could not have been intended. Quoting what the Court described as the mixed but vivid metaphor of Lewison LJ in the Court of Appeal, "the potential gain…was frozen on conversion and did not disappear in a puff of smoke".
[2019] UKSC 12	*HMRC v Lehman Brothers International (Europe) Ltd*	Supreme Court	As the Supreme Court observed, an obligation to deduct income tax from certain payments of interest dates back to the inception of that tax in the Napoleonic Wars. The obligation arises under current law in respect of "yearly interest". The issue before the Court was whether interest payments on debts arising during the course of the administration of a company were yearly interest. A surplus in an administration is rare enough; in this case, the surplus was so huge that the amount of interest was £5 billion. The Court reviewed the various conflicting authorities, and concluded that the duration period of the interest is determined by the duration period of the administration. Put simply, if the administration period lasts a year or more, statutory interest will be yearly interest, and income tax must be deducted when it is paid. The Court saw this test as consistent with interest representing payment by time for the use of money, and saw no need for any underlying "investment" to exist. The intentions of the payer and payee were not relevant because the duration period would be known once the interest fell to be paid.

Citation	Parties	Jurisdiction	Commentary
[2019] EWCA Civ 51	*R (on the application of Jimenez) v First – tier Tribunal and HMRC*	Court of Appeal	HMRC has statutory powers to issue an "information notice" to a taxpayer requiring information and documents reasonably required for the purpose of checking his UK tax position. Mr Jimenez had been a UK resident for several years but was resident in Dubai when HMRC served such notices on him. The High Court quashed the notices on judicial review as being an extra-territorial breach of international law. The Court of Appeal disagreed. While there was a general presumption as a matter of international law against a statute having an extra-territorial reach, it all depended on the language of the statute and its purpose. Here, the issue of the information notice did not result in the UK breaching international law by exercising an enforcement jurisdiction within the territory of another sovereign state; a failure to comply with the notice would lead only to civil and not criminal penalties, and there was a sufficient connection between Mr Jimenez and the UK to mean that HMRC were not acting *ultra vires*. In such circumstances, as long as the person to whom the notice was issued was or could be a UK taxpayer, the statutory code and its purpose indicated that a notice could validly be issued by HMRC to a person who was not UK resident at the time of issue.
[2019] EWCA Civ 826	*HMRC v Tooth*	Court of Appeal	The normal time limits within which HMRC must issue a tax assessment are extended significantly where HMRC "discover" that an assessment to tax was insufficient, and the insufficiency has been brought about by the taxpayer or his agent acting carelessly or deliberately. In this case, the Court held that on the facts HMRC had not established the burden on them to show that they had made a "discovery" of an insufficiency, because that test required that it must "newly appear" to the relevant HMRC officer that there was an insufficiency. The discovery assessments HMRC had issued were therefore invalid. The Court appears to have approved the principle, said to originate in *Charlton* [2012] UKUT 770, that when HMRC make a discovery, if they do not act to issue an assessment within a reasonable period, it is possible that the discovery may have become "stale" and the assessment therefore invalid. The Court controversially opined obiter that behaviour may be "deliberate" for the purposes of the discovery rules even though there is no intention to mislead HMRC, and (by a majority) that an error in part of a tax return may be deliberate within the discovery rules even though the return as a whole may explain the relevant insufficiency. Permission to appeal to the Supreme Court has been granted.

Citation	Parties	Jurisdiction	Commentary
[2019] EWCA Civ 1643	*R (oao Aozora GMAC Investment Limited) v HMRC*	Court of Appeal	Some time ago HMRC decided to make their internal manuals publicly available. Taxpayers and their advisers routinely consult these manuals to ascertain HMRC's likely practice in areas that are complicated and difficult. In this case, the Court of Appeal considered an application for judicial review founded on the principle of "legitimate expectation" when HMRC sought to resile from a statement set out in their published manuals. The statement in question concerned the operation of highly technical legislation set out in the UK provisions conferring "double taxation relief" in respect of tax payable overseas. The Court of Appeal agreed with the High Court that HMRC's manuals made a representation that was "clear, unambiguous and devoid of relevant qualification" with the result that a necessary precondition to a claim for judicial review on the basis of a legitimate expectation was present. However, the Court of Appeal emphasised that the duty of HMRC is to collect tax and not to forgive it. Therefore, a high degree of unfairness must be present before HMRC will be held to the terms of a representation that would result in them collecting less tax than is lawfully due. In such circumstances, judicial review would not be granted unless HMRC's conduct in resiling from their guidance was "so unfair as to amount to an abuse of power". The Court of Appeal rejected the submission that, once a clear and unambiguous representation was identified, the burden shifted to HMRC to show a good reason why they should be permitted to resile from it. In applying this approach, the Court of Appeal decided that it was appropriate to consider the extent to which the taxpayer had relied to its detriment on the HMRC guidance, while accepting that the presence or absence of detrimental reliance would not necessarily be conclusive in all cases. Applying to the facts of the case, the Court of Appeal concluded that the degree of unfairness involved in HMRC resiling from their guidance was low. That was because the statement in question simply set out HMRC's opinion as to the effect of the law and the taxpayer had engaged specialist advisers who were at no great disadvantage compared to HMRC in coming to their own view of the law.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 29 (TCC)	*X Ltd and others v HMRC*	Upper Tribunal (Tax and Chancery)	HMRC has power to issue notices to taxpayers and third parties requiring them to provide information and documents which HMRC considers relevant to the taxpayer's tax position. This decision concerned two points arising in relation to those powers. (1) Taxpayers can apply to the tax tribunal for a "closure notice" requiring HMRC to bring to an end its enquiries into a particular tax year. In this case, the taxpayers applied for closure notices, but HMRC applied to the First-tier Tribunal (F-tT) for approval to issue information notices to certain third parties in respect of the taxpayers for the same tax years. The Upper Tribunal upheld the decision of the F-tT that the hearing to determine the application for closure notices should be postponed until the F-tT had heard the application for approval of the information notices. There was no set priority when considering the two competing applications, and in this case the F-tT was entitled to conclude that the information notices would be an important factor in determining the closure notice applications. (2) Where the taxpayer does not agree to the issue of a third-party notice, HMRC must apply to the F-tT for approval of its issue. The statute says that such an application "may be made without notice" i.e. ex parte. In practice, HMRC applications will be made without notice. The appellants wished to attend the hearing of the application before the F-tT and to make submissions. The question was whether the F-tT had power to direct an inter partes hearing of such an application. In the absence of any direct binding authority, the Upper Tribunal was guided by the comments of the Court of Appeal in *Derrin Brothers* [2016] EWCA Civ 15 on the purpose and effect of the relevant statutory code (and the comments in *Morgan Grenfell* [2001] EWCA Civ 329 on predecessor legislation). It concluded that the F-tT had no such power, the legislation providing for a closed system of judicial monitoring. The F-tT did, however, have power to direct that the *ex parte* hearing be in public, but it would be rare for that to be appropriate.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 404 (TCC)	*News Corp UK and Ireland Limited v HMRC*	Upper Tribunal (Tax and Chancery)	This case concerns the question whether supplies of digital versions of newspapers are zero-rated for VAT purposes in the same way as supplies of printed newspapers. The Upper Tribunal's conclusion on this issue necessitated a detailed analysis of the "always speaking" doctrine of statutory construction. The *Finance Act 1972* provided for supplies of "newspapers" to be zero-rated with successive consolidating statutes retaining essentially the same statutory language. All parties were agreed that digital newspapers could not have been specifically within Parliament's contemplation when the *Finance Act 1972* was enacted and that since zero-rating represented an exception to the general principle that supplies of goods and services should be standard rated, the scope of the term "newspapers" fell to be construed restrictively. The First-tier Tribunal had concluded that, since the term "newspapers" fell to be construed restrictively, the "always speaking" doctrine of statutory construction was not engaged with the result that supplies of digital newspapers did not benefit from zero-rating. (Separately the First-tier Tribunal concluded that zero-rating applied only to supplies of goods and that since a supply of a digital newspaper was a supply of services, zero-rating was not available in any event.) Reversing this conclusion, the Upper Tribunal decided that zero-rating could extend to supplies of services such as those in issue and that the "always speaking" doctrine was engaged. In order to decide whether digital newspapers benefit from zero-rating it is necessary to identify the legislative purpose for which supplies of "newspapers" are zero-rated. Having done so, it was necessary to consider whether digital newspapers share the essential characteristics of a "newspaper" and whether zero-rating of digital newspapers would accord with Parliament's legislative purpose. The purpose for zero-rating newspapers was to promote literacy, the dissemination of knowledge and democratic accountability. Given the First-tier Tribunal's findings of fact, digital newspapers shared the material characteristics of their physical counterparts so that a zero-rating of digital newspapers would be entirely in accordance with Parliament's purpose.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 326 (TCC)	*Christa Ackroyd Media Ltd v HMRC*	Upper Tribunal (Tax and Chancery)	Much controversy and publicity has been generated by the so-called IR35 legislation. This applies where an individual provides services through a personal service company and the relationship would have been one of employer and employee if those services had been provided directly. In that situation, the IR35 rules make the personal service company liable for income tax and national insurance contributions on the income generated. There have been several cases before the FTT over the last couple of years involving television and radio presenters, reaching different results. This was the first such case to be heard by the Upper Tribunal. It concerned Christa Ackroyd, presenter of Look North on the BBC between 2001 and 2013. The Tribunal applied the classic test of employment status laid down in *Ready Mixed Concrete* [1968] 2 QB 497. The only issue in the appeal was whether the BBC had sufficient "control" over Ms Ackroyd in the performance of her services. The most important question, said the Tribunal, is not whether control is in fact exercised day-to-day, but who has the ultimate right of control. Although the contract contained no such explicit right, the Tribunal held that the correct test was to consider the overall context and arrangements to determine whether, as matter of construction, such a right lay with the BBC. It was concluded that it did, with the result that Ms Ackroyd's company lost its appeal.
[2019] UKUT 260 (TCC)	*Whittalls Wines Ltd v HMRC*	Upper Tribunal (Tax and Chancery)	One of the functions of the Upper Tribunal is to provide general guidance on points of importance where that may be of wider relevance. In this case, the Tribunal set out the principles to be applied where permission is sought from the Upper Tribunal to add further grounds of appeal to an existing permission to appeal. A two-stage approach should be adopted. First, does the ground raise an arguable error of law in the appealed decision? Second, should the Tribunal use its discretion to allow the additional ground? At the second stage, in addition to considering the overriding objective of dealing with cases fairly and justly, the Tribunal endorsed the approach set out recently by the Court of Appeal in *Notting Hill Finance* [2019] EWCA Civ 1337. The Court in that case referred to the well-known decision of *Pittalis v Grant*, which establishes that if a point was not taken before the tribunal which heard the evidence, and evidence could have been adduced which "by any possibility" would have prevented the new point from succeeding, it cannot be taken afterwards. Even where the new ground is a "pure point of law", the Tribunal retains a discretion not to admit it.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 226 (TCC)	*Ingenious Games LLP v HMRC*	Upper Tribunal (Tax and Chancery)	This case involved a complicated series of transactions entered into by an LLP designed, as the taxpayers maintained, as part of a trade of the exploitation of films (and video games) or, as HMRC maintained, as part of an avoidance scheme designed to generate artificial tax losses. Ultimately the essential questions were whether the LLP was carrying on a trade and, if it was, whether that trade was being conducted on a commercial basis and with a view to the realisation of profit. The First-tier Tribunal had held that the LLP was, at least to an extent carrying on a trade, but the Upper Tribunal disagreed, holding that none of the LLP's activities were "trading" in nature. That strictly made it unnecessary for the Upper Tribunal to consider the question whether any trade was carried on a "commercial basis and with a view to the realisation of profit". However, the Upper Tribunal considered this issue as well and gave general guidance on how the "view to the realisation of profit" test should be approached. Its conclusion was that this test was ultimately subjective and depended on an analysis of the intentions of the persons who acted as the LLP's guiding minds. The outcome, therefore, was that investors in the LLP were entitled to no tax relief at all.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 131 (TCC)	*Barry Edwards v HMC*	Upper Tribunal (Tax and Chancery)	Schedule 55 of the *Finance Act 2009* ("Schedule 55") sets out a system of penalties charged on taxpayers who fail to file returns on time. The first penalty is fixed at £100 and is chargeable as soon as a return is late. The penalties gradually increase in severity and, once a return is three months late, HMRC are permitted (provided they give the necessary notice) to charge daily penalties. Importantly for these proceedings, the penalties are not linked to the amount of tax that is unpaid. A taxpayer who fails to file on time a tax return that has been validly required is subject to a penalty even if that return shows no tax as due, or claims a repayment of tax from HMRC. In this appeal, the taxpayer was significantly late in filing his returns for three consecutive tax years. HMRC charged him late filing penalties totalling £3,880 even though none of his returns showed any such tax as due. The taxpayer argued that the penalties, despite being fixed by statute, were disproportionate. In a decision with implications for the entire system of late filing penalties, the Upper Tribunal concluded that the relevant question was whether the averred disproportionality of the penalties was a "special circumstance" (within the meaning of Schedule 55) that justified a reduction of those penalties. A tribunal could only interfere with HMRC's refusal to reduce penalties on the basis of "special circumstances" if that decision was flawed in the sense used in judicial review proceedings. Having examined the overall scheme of the penalty regime in Schedule 55, the Upper Tribunal concluded that it was a proportionate response that pursued the legitimate aim of encouraging timely submission of returns required by law. The amount of penalties that can be charged for late filing has an upper limit. In those circumstances, it follows that the fact that a particular taxpayer has no tax to pay is not a "special circumstance" that HMRC are obliged to take into account in deciding whether to reduce the penalties that are charged.

Financial Services Cases

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 0209 (TCC)	*Dominic Chappell v Pensions Regulator*	Upper Tribunal (Tax and Chancery)	The Upper Tribunal considered the approach to be taken to applications for reinstatement following breach of an unless order. Mr Chappell had failed to provide a list of documents and a properly particularised Reply to The Pensions Regulator's Statement of Case in breach of an unless order. The Upper Tribunal considered the proper approach to such applications and held that the 3-stage approach in *Denton and others v TH White Limited* [2014] 1 WLR 3926 should be followed, implicitly endorsed by the Supreme Court in *BPP Holdings Limited v HMRC* [2017] 1 WLR 2945. In applying Denton, the Upper Tribunal considered whether the strength or weakness of a party's case was a relevant factor when considering whether to grant an application for reinstatement. In *Pierhead Purchasing Ltd v HMRC* [2014] UKUT 0321 Proudman J sitting in the Upper Tribunal had said that the merits of a proposed appeal is one factor to consider in a reinstatement application, to the extent that the merits could be conveniently and proportionately ascertained. However, that decision was made prior to the Supreme Court decision in *Global Torch Ltd v Apex Global Management Limited* [2014] 1 WLR 4495 where Lord Neuburger said that the strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues. The Upper Tribunal in *Dominic Chappell* therefore held that the approach to the merits in applications to reinstate set out in Pierhead Purchasing Ltd is no longer to be followed and therefore the merits of the case should only be considered where a party has a case whose strength would entitle him to strike out the other party's case on the grounds that it had no reasonable prospect of succeeding.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 0115 (TCC)	*Linear Investments Limited v FCA*	Upper Tribunal (Tax and Chancery)	This was the first decision by the Upper Tribunal under a process introduced by the Financial Conduct Authority (FCA) which allows firms or individuals under investigation to enter into an agreement by which they agree certain elements of the case but refer the matters which are not agreed to the Upper Tribunal. The FCA sought to impose a financial penalty of £409,300 on Linear on the grounds that it had failed to take reasonable care to organise and control its affairs responsibly and effectively to ensure potential instances of market abuse could be detected and reported. Linear agreed the matters of fact and liability set out in the FCA's Decision Notice, however it disputed the financial penalty and referred that matter to the Upper Tribunal. The Upper Tribunal recognised that, despite the pain caused by the size of the penalty, given Linear's financial resources and level of profits, Linear's lack of effective monitoring measures was a serious matter and the FCA's penalty was therefore appropriate.

Citation	Parties	Jurisdiction	Commentary
[2019] EWCA Civ 1032	*Granada UK and others v Pensions Regulator*	Court of Appeal	This was the first substantive decided case on the power of The Pensions Regulator to make a Financial Support Direction ("FSD") requiring companies to provide financial support to address a deficit in a pension scheme of an affiliated company. The power to do so arises where, subject to certain jurisdictional requirements being met, if it is reasonable to do so. In upholding the FSD, the Upper Tribunal decided several issues of general importance for the FSD regime. For example, it decided that FSDs could be imposed by reference to actions taken before the Pensions Act 2004 (which gave the Pensions Regulator power to make FSDs) came into force and dismissed arguments that this construction breached the presumption against retrospective legislation. The Upper Tribunal also dismissed arguments that FSDs could only be issued in cases of "moral hazard" – i.e. where there would otherwise be a risk of employers manipulating their affairs so that liability for pension scheme deficits would fall on the Pension Protection Fund. The Court of Appeal upheld the decision of the Upper Tribunal on all points. In doing so, it made some general comments about the jurisdiction of the Court of Appeal to interfere with the Upper Tribunal's assessment of reasonableness. It observed that the question of whether something is reasonable not in general is not a question of law and therefore may only be interfered with on the basis stated by Lord Radcliffe in *Edwards v Bairstow* [1956] AC 14, that is where no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. Permission to appeal to the Supreme Court has been refused.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 0227	*Andrew Tinney v FCA*	Upper Tribunal (Tax and Chancery)	Mr Tinney was challenging a decision of the Financial Conduct Authority (FCA) to prohibit him from working in the financial services industry on the grounds that he lacked integrity. The FCA alleged that Mr Tinney deliberately (alternatively, recklessly) made false or misleading statements and omitted material information about a document concerning the culture of Barclays Wealth Americas ('BWA'), a branch of Barclays Wealth Management based in New York on two separate occasions. The Upper Tribunal found that Mr Tinney had not misled either the FCA or a US regulator as to the contents of the report but did find that he had made a misleading statement to his professional regulator (the Institute of Chartered Accountants). The Tribunal held that in the circumstances the appropriate sanction was a public censure and rejected the FCA's submission that any breach of the obligation to act with integrity by senior manager merited a prohibition order. The Tribunal reasoned that in the absence of any risk to consumers or the market, and imposition of a prohibition would be disproportionate in the circumstances and referred the matter back to the FCA for consideration. The Upper Tribunal observed that a lack of integrity does not necessarily equate to dishonesty and while a person who act dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. After reconsideration in the light of the Upper Tribunal's decision, the FCA decided not to impose a prohibition.

Immigration and Asylum Chamber

Case	Subject	Commentary
Imran (Section 117C(5); children, unduly harsh) [2020] UKUT 83 (IAC), 11 February 2020	Children	To bring a case within Exception 2 in s.117C(5) of the *Nationality, Immigration and Asylum Act 2002*, the 'unduly harsh' test will not be satisfied, in a case where a child has two parents, by either or both of the following, without more: (i) evidence of the particular importance of one parent in the lives of the children; and (ii) evidence of the emotional dependence of the children on that parent and of the emotional harm that would be likely to flow from separation. Consideration as to what constitutes 'without more' is a fact sensitive assessment.
Patel (British citizen child – deportation) [2020] UKUT 45 (IAC), 29 January 2020	Children	In its application to a "qualifying child" within the meaning of section 117D of the *Nationality, Immigration and Asylum Act 2002*, section 117C (5) imposes the same two requirements as are specified in paragraph 399(a)(ii) of the Immigration Rules; namely, that it would be unduly harsh for the child to leave the United Kingdom and for the child to remain. In both section 117C (5) and paragraph 399(a)(ii), what judicial decision-makers are being required to assess is a hypothetical question – whether going or staying 'would' be unduly harsh. They are not being asked to undertake a predictive factual analysis as to whether such a child would in fact go or stay.
SD (British citizen children – entry clearance) Sri Lanka [2020] UKUT 43 (IAC), 23 January 2020	Children	British citizenship is a relevant factor when assessing the best interests of the child. British citizenship includes the opportunities for children to live in the UK, receive free education, have full access to healthcare and welfare provision and participate in the life of their local community as they grow up. There is no equivalent to s.117B (6) of the *Nationality, Immigration and Asylum Act 2002* in any provision of law or policy relating to entry clearance applicants. In assessing whether refusal to grant a parent entry clearance to join a partner has unjustifiably harsh consequences, the fact that such a parent has a child living with him or her who has British citizenship is a relevant factor. However, the weight to be accorded to such a factor will depend heavily on the particular circumstances and is not necessarily a powerful factor.
BF (Tirana – gay men) Albania CG [2019] UKUT 0093 (IAC), 26 March 2019	Country Guidance	Particular care must be exercised when assessing the risk of violence and the lack of sufficiency of protection for openly gay men whose home area is outside Tirana, given the evidence of openly gay men from outside Tirana encountering violence as a result of their sexuality. Such cases will turn on the particular evidence presented. Turning to the position in Tirana, in general, an openly gay man, by virtue of that fact alone, would not have an objectively well-founded fear of serious harm or persecution on return to Tirana.

Case	Subject	Commentary
PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC), 20 February 2020	Country Guidance	This country guidance applies to protection claims from Iranians who claim to have converted from Islam to Christianity. Insofar as they relate to non-ethnic Christians, this decision replaces the country guidance decisions in *FS and Others (Iran – Christian Converts) Iran CG* [2004] UKIAT 00303 and *SZ and JM (Christians – FS confirmed) Iran CG* [2008] UKAIT 00082 which are no longer to be followed. Decision makers should begin by determining whether the claimant has demonstrated that it is reasonably likely that he or she is a Christian. If that burden is discharged further specified considerations apply. In cases where the claimant is found to be insincere in his or her claimed conversion, there is not a real risk of persecution 'in-country'. There being no reason for such an individual to associate himself with Christians, there is not a real risk that he would come to the adverse attention of the Iranian authorities. Decision-makers must nevertheless consider the possible risks arising at the 'pinch point' of arrival.
SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), 20 December 2019	Country Guidance	This new Country Guidance determination on Iraq considers several issues including the risk of indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive; documentation and feasibility of return; civil status identity documentation; internal relocation within GOI-Controlled Iraq; and returns to the Iraqi Kurdish Region. This decision replaces all existing country guidance on Iraq.
MS (s.117C(6): "very compelling circumstances") Philippines [2019] UKUT 00122 (IAC), 4 March 2019	Deportation	In determining pursuant to section 117C(6) of the Nationality, Immigration and Asylum Act 2002 whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2 in subsections (4) and (5), such as to outweigh the public interest in the deportation of a foreign criminal, a court or tribunal must take into account, together with any other relevant public interest considerations, the seriousness of the particular offence of which the foreign criminal was convicted; not merely whether the foreign criminal was or was not sentenced to imprisonment of more than 4 years.
RA (s.117C: "unduly harsh"; offence: seriousness) Iraq [2019] UKUT 00123 (IAC), 4 March 2019	Deportation	In *KO (Nigeria) & Others v Secretary of State for the Home Department* [2018] UKSC 53, the approval by the Supreme Court of the test of "unduly harsh" in section 117C(5) of the Nationality, Immigration and Asylum Act 2002, formulated by the Upper Tribunal in *MK (Sierra Leone) v Secretary of State for the Home Department* [2015] UKUT 223 (IAC), does not mean that the test includes the way in which the Upper Tribunal applied its formulation to the facts of the case before it. The way in which a court or tribunal should approach section 117C remains as set out in the judgment of Jackson *LJ in NA (Pakistan) & Another v Secretary of State* [2016] EWCA Civ 662. Determining the seriousness of the particular offence will normally be by reference to the length of sentence imposed and what the sentencing judge had to say about seriousness and mitigation; but the ultimate decision is for the court or tribunal deciding the deportation case.

Case	Subject	Commentary
Banger (EEA: EFM – Right of Appeal) [2019] UKUT 00194 (IAC), 10 April 2019	European Union	The Immigration (European Economic Area) Regulations 2016 ('the 2016 Regs') specifically excluded a right of appeal for Extended Family Members ('EFMs'). The 2016 Regs have been amended pursuant to the Immigration (European Economic Area Nationals) (EU Exit) Regulations 2019, with effect from 29 March 2019, so as to provide EFMs with a right of appeal. This does not have retrospective effect. It is open to those EFMs against whom a decision was made under the 2016 Regs but before 29 March 2019 to request a new decision from the Secretary of State in order to generate a right of appeal.
Rehman (EEA Regulations 2016 – specified evidence) [2019] UKUT 195 (IAC), 10 April 2019	European Union	The principles outlined in *Barnett and Others (EEA Regulations; rights and documentation)* [2012] UKUT 142 are equally applicable to The Immigration (European Economic Area) Regulations 2016. Section 1 of Schedule 2 to these regulations provides that the sole ground of appeal is that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom. The provisions contained in regulations 21 and 42 must be interpreted in the light of European Union law. In some cases, this might involve ignoring the requirement for specified evidence altogether if a document is not in fact required to establish a right of residence.
ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan [2019] UKUT 281 (IAC), 31 July 2019	European Union	The requirement to have transferred the centre of one's life to the host member state is not a requirement of EU law, nor is it endorsed by the CJEU. Where an EU national of one state ("the home member state") has exercised the right of freedom of movement to take up work or self-employment in another EU state ("the host state"), his or her family members have a derivative right to enter the member state if the exercise of Treaty rights in the host state was "genuine" in the sense that it was real, substantive, or effective. It is for an appellant to show that there had been a genuine exercise of Treaty rights. The question of whether family life was established and/or strengthened, and whether there has been a genuine exercise of Treaty rights requires a qualitative assessment which will be fact-specific. If it is alleged that the stay in the host member state was such that reg. 9 (4) applies, the burden is on the Secretary of State to show that there was an abuse of rights.
Rana (s. 85A; Educational Loans Scheme) [2019] UKUT 00396 (IAC), 15 November 2019	Evidence	There was nothing in s 85A of the 2002 Act preventing the Secretary of State from adducing evidence. The requirement to show that a loan was "part of an Academic or Educational Loan Scheme" for the purposes of paragraph 1B(d)(7) of Appendix C is not met merely by showing that the loan was for educational purposes. Such a scheme will have some element of government or official involvement, will be of advantage to students in comparison with ordinary commercial loans, and will be concerned with the loans as a group as well as individually.

Case	Subject	Commentary
SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC), 22 November 2019	Evidence	The fact that a judicial fact-finder decides to treat an appellant or witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal. By applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence. The Guidance makes it plain that it is for the judicial fact-finder to determine the relationship between the vulnerability and the evidence that is adduced.
AAR & AA (Non-Arab Darfuris – return) Sudan [2019] UKUT 282 (IAC), 7 August 2019	Immigration and Asylum generally	The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in *AA (non-Arab Darfuris - relocation) Sudan CG* [2009] UKAIT 56 and *MM (Darfuris) Sudan CG* [2015] UKUT 10 (IAC) requires revision. Those cases should still be followed.
AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 00397 (IAC), 18 November 2019	Immigration and Asylum generally	In a case where some individual asserts that his removal from the Returning State would violate his Article 3 European Convention on Human Rights (ECHR) rights because of the consequences to his health, the obligation on the authorities of a Returning State dealing with a health case is primarily one of examining the fears of an applicant as to what will occur following return and assessing the evidence. In order to fulfil its obligations, a Returning State must provide "appropriate procedures" to allow that examination and assessment to be carried out. In the UK, that is met in the first place by an examination of the case by the Secretary of State and then by an examination on appeal by the Tribunal and an assessment of the evidence before it.
Buci (Part 5A: "partner") [2020] UKUT 87 (IAC), 27 February 2020	Immigration and Asylum generally	The word "partner" is not defined in Part 5A of the *Nationality, Immigration and Asylum Act 2002*. The definition of "partner" in GEN 1.2 of Appendix FM to the Immigration Rules does not govern the way in which "partner" is to be interpreted in Part 5A. A person who satisfies the definition in GEN 1.2 should, as a general matter, be regarded as being a partner for the purposes of Part 5A, Where, however, a person does not fall within that definition, the judge will need to undertake a broad evaluative assessment of the relationship.
DC (trafficking: protection/ human rights appeals) Albania [2019] UKUT 351 (IAC), 3 September 2019	Immigration and Asylum generally	In a protection appeal, which concerns alleged trafficking within the scope of the Council of Europe Convention on Action against Trafficking in Human Beings the "reasonable grounds" or "conclusive grounds" decision of the Competent Authority (CA) will be part of the evidence that the tribunal will have to assess in reaching its decision on that appeal, giving the CA's decision, such weight as is due, bearing in mind that the standard of proof applied by the CA in a "conclusive grounds" decision was the balance of probabilities.

Case	Subject	Commentary
De Souza (Good Friday Agreement: nationality) [2019] UKUT 355 (IAC), 14 October 2019	Immigration and Asylum generally	The *Belfast (or Good Friday) Agreement* did not amend the law of British citizenship, as contained in the *British Nationality Act 1981.*
KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC), 11 December 2019	Immigration and Asylum generally	In applications for entry clearance, the starting and significant point is the Article 8 rights of the sponsor or others in the UK. A fact sensitive analysis is essential. There is no blanket prohibition on the relatives of refugees other than a spouse and/or child. As was made clear in *Agyarko* [2017] UKSC 11 the purpose of the Immigration Rules is to enable decision makers to understand and apply the appropriate weight to be given to the public interest. That the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor. It is *Mathieson v Secretary of State for Work and Pensions* [2011] UKSC 4 rather than *AT and AHI v Entry Clearance Officer Abu Dhabi* [2016] UKUT 227 (IAC) which should guide the Tribunal in relation to the role of international treaties which have not been incorporated into domestic law.
MB (Internal relocation – burden of proof) Albania [2019] UKUT 392 (IAC), 30 July 2019	Immigration and Asylum generally	The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. A holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in *SSHD v SC (Jamaica)* [2017] EWCA Civ 2112, at paragraphs [40] and [41].
R (on the application of JW and Others) v Secretary of State for the Home Department (Tier 1 Investor; control; investments) [2019] UKUT 00393 (IAC), 21 October 2019	Immigration and Asylum generally	The meaning of 'control' in paragraph 245ED(e) and in Appendix A (specifically in Table 8B and 9B) of the Immigration Rules is to be interpreted in accordance with its natural and ordinary meaning, namely that a person has the authority to manage and/or direct the use of the money, asset or investment (depending on the context). It includes not just a question of legal or beneficial ownership but includes an element of choice of use. The money must be under a person's control at the point of investment.
R (on the application of MBT) v Secretary of State for the Home Department (restricted leave; ILR; disability discrimination) [2019] UKUT 414 (IAC), 16 December 2019	Immigration and Asylum generally	A decision of the Secretary of State not to grant indefinite leave to remain to a person subject to the restricted leave policy ("the RL policy") does not normally engage Article 8 of the *European Convention on Human Rights*. However, Article 8 may be engaged by a decision to refuse to grant indefinite leave to remain where, for example, the poor state of an individual's mental and physical health is such that regular, repeated grants of restricted leave are capable of having a distinct and acute impact on the health of the individual concerned. Once Article 8 is engaged by a decision to refuse indefinite leave to remain under the RL policy, the import of Article 8 will be inherently fact-specific. The views of the Secretary of State attract weight, given her institutional competence on matters relating to the public interest and the United Kingdom's reputation as a guardian of the international rule of law.

Case	Subject	Commentary
R (on the application of Mujahid) v First-tier Tribunal (Immigration and Asylum Chamber) and the Secretary of State for the Home Department (refusal of human rights claim) [2020] UKUT 85 (IAC), 25 February 2020	Immigration and Asylum generally	A person (C) in the United Kingdom who makes a human rights claim is asserting that C (or someone connected with C) has, for whatever reason, a right recognised by the European Convention on Human Rights (ECHR), which is of such a kind that removing C from, or requiring C to leave, would be a violation of that right. The refusal of a human rights claim under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 involves the Secretary of State taking the stance that she is not obliged by section 6 of the *Human Rights Act 1998* to respond to the claim by granting C leave. Accordingly, the Secretary of State does not decide to refuse a human rights claim when, in response to it, she grants C limited leave by reference to C's family life with a particular family member, even though C had sought indefinite leave by reference to long residence in the United Kingdom.
SB (refugee revocation; IDP camps) Somalia [2019] UKUT 358 (IAC), 1 November 2019	Immigration and Asylum generally	In *Secretary of State for the Home Department v MS (Somalia)* [2019] EWCA Civ 1345, the Court of Appeal has authoritatively decided that refugee status can be revoked on the basis that the refugee now has the ability to relocate internally within the country of their nationality or former habitual residence. The conclusion of the Court of Appeal in Secretary of State for the Home Department v Said [2016] EWCA Civ 442 was that the country guidance in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) did not include any finding that a person who finds themselves in an IDP camp is thereby likely to face Article 3 ECHR harm (having regard to the high threshold established by *D v United Kingdom* (1997) 24 EHRR 43 and *N v United Kingdom* (2008) 47 EHRR 39). There is nothing in the country guidance in *AA and Others (conflict; humanitarian crisis; returnees; FGM) Somalia* [2011] UKUT 00445 (IAC) that requires a different view to be taken of the position of such a person. It will be an error of law for a judge to refuse to follow the Court of Appeal's conclusion on this issue.
Sahebi (Para 352(iii): meaning of "existed") [2019] UKUT 00394 (IAC), 12 November 2019	Immigration and Asylum generally	On its true construction, para 352A(iii) of the Immigration Rules is satisfied by showing nothing more than the formal existence of a marriage or civil partnership as at the time of the refugee's departure from his/her country of former habitual residence. In contrast to less formal relationships, there is no requirement to show that the relationship had the qualitative character of it having subsisted at the time of the refugee's departure.
MSU (S.104(4b) notices) Bangladesh [2019] UKUT 412 (IAC), 20 December 2019	Immigration and Asylum generally	Where section 104(4A) applies to an appeal, neither the First-tier Tribunal nor the Upper Tribunal has any jurisdiction unless and until a notice is given in accordance with section 104(4B). If such a notice is given, it has the effect of retrospectively causing the appeal to have been pending throughout, and validating any act by either Tribunal that was done without jurisdiction for the reason in (1) above. As the matter stands at present, there are no 'relevant practice directions' governing the section 104(4B) notice in either Tribunal. The Upper Tribunal has power to extend time for a section 104(4B) notice. Despite the provisions of Upper Tribunal rule 17A (4), such a power can be derived from s.25 of the *Tribunals, Courts and Enforcement Act 2007*.

Case	Subject	Commentary
Abbasi (rule 43; para 322(5): accountants' evidence) [2020] UKUT 27 (IAC), 8 January 2020	Practice and Procedure	The Upper Tribunal can apply rule 43 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* of its own motion. The use of fraud before the Upper Tribunal constitutes an abuse of process such as to amount to a "procedural irregularity" for the purposes of rule 43(2)(d). In a case involving a decision under paragraph 322(5) of the immigration rules, where an individual relies upon an accountant's letter admitting fault in the submission of incorrect tax returns to Her Majesty's Revenue and Customs, the First-tier or Upper Tribunal is unlikely to place any material weight on that letter if the accountant does not attend the hearing to give evidence, by reference to a Statement of Truth, that explains in detail the circumstances in which the error came to be made; the basis and nature of any compensation; and whether the firm's insurers and/or any relevant regulatory body have been informed. This is particularly so where the letter is clearly perfunctory in nature.
Ahmed (rule 17; PTA; Family Court materials) [2019] UKUT 357 (IAC), 16 October 2019	Practice and Procedure	Where P is the respondent to the Secretary of State's appeal in the Upper Tribunal against the decision of the First-tier Tribunal to allow P's appeal, P cannot give notice under rule 17 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* so as to withdraw his appeal, since P has no appeal in the Upper Tribunal. In such a situation, the giving of notice under rule 17 to withdraw P's case will, if the Upper Tribunal gives consent, have the effect of leaving the Secretary of State's appeal to the Upper Tribunal unopposed and therefore may well lead to a reasoned decision from the Upper Tribunal, setting aside the decision of the First-tier Tribunal.
Anwar (rule 17(1): withdrawal of appeal) [2019] UKUT 00125 (IAC), 5 March 2019	Practice and Procedure	Under rule 17(1) of the *Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014*, the decision whether to withdraw an appeal is for the appellant. That decision does not require judicial approval, in order for it to be effective. If an issue arises as to whether a withdrawal was, in fact, the appellant's decision (i.e. whether it was valid), it is for a judge of the First-tier Tribunal to decide it; as to which, the reasons for withdrawal may assist. If an issue arises as to whether or not an appellant's notice of withdrawal was legally valid, the Tribunal should exercise its case management powers so as to decide the matter. If the judge's decision is a substantive decision, as opposed to a "procedure, ancillary or preliminary decision" within the meaning of article 3(n) of the *Appeals (Excluded Decisions) Order 2009*, the decision will be appealable to the Upper Tribunal.
Aziz (NIAA 2002 s 104(4A): abandonment) [2020] UKUT 84 (IAC), 14 February 2020	Practice and Procedure	Where a person brings an appeal under section 82(1) of the *Nationality, Immigration and Asylum Act 2002* and is then given leave to remain in the United Kingdom, the effect of section 104(4A) is to cause the appeal to be treated as abandoned (subject to section 104(4B)), whether or not the appeal was pending on the date of the grant of leave.

Case	Subject	Commentary
Bano (procedural fairness, withdrawal of representatives) [2019] UKUT 416 (IAC), 25 September 2019	Practice and Procedure	Fairness means fairness to both sides: it does not mean favouring the appellant at the expense of the respondent. Tribunals must ensure appellants have a fair hearing, but they should not be intimidated by unjustified withdrawal of representatives. Unless unfairness has resulted in there being no proper consideration of their case at all, appellants who allege procedural unfairness may find it difficult to have a decision set aside, without showing that they may have suffered prejudice through inability to present a better case.
Bhavsar (late application for PTA: procedure) [2019] UKUT 00196 (IAC), 12 April 2019	Practice and Procedure	There is nothing in the *Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014* that prevents the First-tier Tribunal from refusing to admit an application for permission to appeal to the Upper Tribunal, where the application is made outside the relevant time limit and the First-tier Tribunal does not extend time. The appropriate course, in the case of such an application, is for the First-tier Tribunal to refuse to admit it. This will mean that any subsequent application to the Upper Tribunal in the case for permission to appeal to that Tribunal will be subject to rule 21(7) of the *Tribunal Procedure (Upper Tribunal) Rules 2008*, whereby the Upper Tribunal must only admit the application made to it (whether or not that application was in time) if the Upper Tribunal considers it is in the interests of justice for it to do so
Birch (Precariousness and mistake; new matters) [2020] UKUT 86 (IAC), 26 February 2020	Practice and Procedure	The observations about a person's misapprehension, found in paragraph [53] of *Agyarko* are, despite their context in a discussion of precariousness, capable of being applicable also to a person who has no leave. The prohibition on considering new matters in s 85 of the 2002 Act does not apply to proceedings in the Upper Tribunal.
CJ (international video-link hearing: data protection) Jamaica [2019] UKUT 00126(IAC), 12 March 2019	Practice and Procedure	The arrangements made to enable the appellant to give evidence in his human rights appeal by video link between the British High Commission in Kingston, Jamaica and the Tribunal's hearing centre in the United Kingdom did not involve the transfer of data to a third country, for the purposes of the *General Data Protection Regulation ((EU) 2016/679)*. Even if that were not the case, the transfer was lawful under the derogation in Article 49(1)(e) of the Regulation (transfer necessary for establishment, exercise or defence of legal claims).
Das (paragraph 276B - s3C - application validity) [2019] UKUT 354 (IAC), 8 October 2019	Practice and Procedure	The validity of an application for leave to remain is to be determined with reference to the law in force at the time that it is made or purportedly made. An application which was invalid according to the law in force at the relevant time cannot be rendered valid by a subsequent change in the law. There must be adherence to proper standards of appellate advocacy in the Upper Tribunal. In the absence of a formal and timeous application to vary the grounds, professional advocates must expect to be confined to the grounds upon which permission was granted. When permission to appeal to the Upper Tribunal is granted following a successful application to the Administrative Court under CPR 54.7A ('a Cart JR'), permission is granted by reference to the grounds to the Upper Tribunal.

Case	Subject	Commentary
Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197 (IAC), 7 June 2019	Practice and Procedure	In reaching a decision whether to grant permission to appeal to the Upper Tribunal on a point that has not been raised by the parties but which a judge considering such an application for permission considers is arguably a Robinson obvious point or other point falling within para 3 of the head-note in *AZ (error of law: jurisdiction; PTA practice) Iran* [2018] UKUT 00245 (IAC), the evidence necessary to establish the point in question must be apparent from the grounds of appeal to the Upper Tribunal (whether or not the appellant is represented at the time) and/or the decision of the judge who decided the appeal and/or the documents on file. The permission judge should not make any assumptions that such evidence was before the judge who decided the appeal. Furthermore, if permission is granted on a ground that has not been raised by the parties, it is good practice and a useful aid in the exercise of self-restraint for the permission judge to indicate which aspect of head-note 3 of AZ applies.
Ejiogu (Cart cases) [2019] UKUT 00395 (IAC), 13 November 2019	Practice and Procedure	An addition to the grounds of appeal requires the permission of the Upper Tribunal. That is so even if the case has been granted permission following a *Cart* Judicial Review under CPR 54.7A. In deciding whether to grant permission to rely upon additional grounds, the Tribunal will follow the same procedure as in relation to any other procedural default, in particular considering the length of the delay (beginning with the date on which time for appeal to the Upper Tribunal expired).
Isufaj (PTA decisions/ reasons; EEA reg. 37 appeals) [2019] UKUT 00283 (IAC), 12 August 2019	Practice and Procedure	Judges deciding applications for permission to appeal should ensure that, as a general matter, there is no apparent contradiction between the decision on the application and what is said in the "reasons for decision" section of the document that records the decision and the reasons for it. As was said in *Safi and others (permission to appeal decisions)* [2018] UKUT 388 (IAC), a decision on a permission application must be capable of being understood by the Tribunal's administrative staff, the parties and by the court or tribunal to which the appeal lies. In the event of such an apparent contradiction or other uncertainty, the parties can expect the Upper Tribunal to treat the decision as the crucial element.

Case	Subject	Commentary
MA (Cart JR: effect on UT processes) Pakistan [2019] UKUT 353 (IAC), 3 October 2019	Practice and Procedure	Where the decision of the Upper Tribunal to refuse permission to appeal against the decision of the First-tier Tribunal is quashed by the High Court, following the grant of permission in a *"Cart"* judicial review under CPR 54.7A, the Upper Tribunal's ability to grant permission to appeal without a hearing depends upon the Upper Tribunal being able to understand, from the High Court's grant of permission in the judicial review, what led the Court to conclude that the requirements of CPR 54.7A(7) were satisfied. If the Upper Tribunal lists an application for permission to appeal for an oral hearing, following the quashing of a refusal to grant such permission, the appellant will need to ensure that the Upper Tribunal and the respondent have all the relevant materials in connection with the *"Cart"* judicial review, which may bear on the issue of whether permission to appeal should now be granted.
MS (British citizenship; EEA appeals) Belgium [2019] UKUT 356 (IAC), 15 October 2019	Practice and Procedure	If, on appeal, an issue arises as to whether the removal of a person (P) from the United Kingdom would be unlawful because P is a British citizen, the tribunal deciding the appeal must make a finding on P's citizenship. The fact that P might, in the past, have had a good case to be registered as a British citizen has no material bearing on the striking of the proportionality balance under Article 8(2) of the ECHR. The key factor is not whether P had a good chance of becoming a British citizen, on application, at some previous time but is, rather, the nature and extent of P's life in the United Kingdom.
Niaz (NIAA 2002 s. 104: pending appeal) [2019] UKUT 00399 (IAC), 25 November 2019	Practice and Procedure	Section 104(2) of the *Nationality, Immigration and Asylum Act 2002* contains an exhaustive list of the circumstances in which an appeal under section 82(1) is not finally determined. Although section 104(2) is describing situations in which an appeal is not to be regarded as finally determined, the corollary is that, where none of the situations described in sub-paragraphs (a) to (c) apply (and the appeal has not lapsed or been withdrawn or abandoned), the appeal in question must be treated as having been finally determined. An appeal which has ceased to be pending within the meaning of section 104 becomes pending again if the Upper Tribunal's decision refusing permission to appeal from the First-tier Tribunal is quashed on judicial review.
Nimo (appeals: duty of disclosure) [2020] UKUT 88 (IAC), 27 February 2020	Practice and Procedure	In an immigration appeal, the Secretary of State's duty of disclosure is not knowingly to mislead: *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 0059, citing *R v SSHD ex parte Kerrouche No 1* [1997] Imm AR 610. The Upper Tribunal was wrong to hold in *Miah (interviewer's comments; disclosure; fairness)* [2014] UKUT 515 that, in every appeal involving an alleged marriage of convenience, the interviewer's comments in the Secretary of State's form ICD.4605 must be disclosed to the appellant and the Tribunal. No such general requirement is imposed by the respondent's duty of disclosure or by rule 24 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

Case	Subject	Commentary
OK (PTA; alternative findings) Ukraine [2020] UKUT 44 (IAC), 27 January 2020	Practice and Procedure	Permission should not be granted on the grounds as pleaded if there is, quite apart from the grounds, a reason why the appeal would fail.
R (on the application of Bajracharya) v Secretary of State for the Home Department (para. 34 – variation – validity) [2019] UKUT 417 (IAC), 20 November 2019	Practice and Procedure	Paragraph 34 [A-F] of the Immigration Rules is to be construed by the application of the ordinary principles of statutory construction, which start from the natural meaning of the words in their context. Paragraph 34 requires applicants to make an application for leave to remain in accordance with the provisions of 34. If a second application is submitted when the first application is outstanding, the second application will be treated as a variation of the first application [34BB(2)]. If the variation does not comply with the requirements in paragraph 34 "the variation will be invalid and will not be considered" (paragraph 34E). Invalidity does not extend to the original application.
R (on the application of Ellis) v Secretary of State for the Home Department (discretionary leave policy; supplementary reasons) [2020] UKUT 82 (IAC), 5 February 2020	Practice and Procedure	Extra-statutory immigration policies should be interpreted in accordance with the objective meaning that a reasonable and literate person would ascribe to them. The Home Office discretionary leave policy should not be read as saying that, once it is decided that an individual continues to qualify for further leave on the same basis as before, he must automatically be granted indefinite leave to remain after 6 years' continuous discretionary leave unless at the date of decision he falls within the restricted leave policy. The word 'normally' is used advisedly, so as to maintain the maximum possible discretion. Where a policy governs what is to happen in the normal case, it remains open to the decision-maker to take a different course in a particular case, provided he or she takes account of the policy and has reason for considering the case to be abnormal.
R (on the application of Hoxha and Others) v Secretary of State for the Home Department (representatives: professional duties) [2019] UKUT 00124 (IAC), 4 March 2019	Practice and Procedure	Office of the Immigration Services Commissioner (OISC) organisations are only able to carry out judicial review case management with counsel authorised to conduct litigation if the organisations are both level 3 registered and have special authorisation to do this work. It is a commonplace of working in the difficult area of immigration and asylum judicial review, that practitioners are faced with clients who are distressed at the prospect of being removed from the United Kingdom. This does not absolve such a professional from the need to stand firm and act only as authorised by the statutory scheme. Where a medical expert report is relied upon by a legal representative, the representative has a duty to check the report for accuracy. Failure to carry out properly professional duties may result in the Upper Tribunal referring the legal representative/ organisation to the relevant regulatory body.

Case	Subject	Commentary
R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines) [2019] UKUT 411 (IAC), 16 December 2019	Practice and Procedure	The fact that an appeal was decided pursuant to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 does not mean that the weight to be attached to the decision necessarily falls to be materially reduced, when applying the Guidelines in *Devaseelan v Secretary of State for the Home Department* [2002] UKAIT 702. Under those Guidelines, the first judicial decision is "the starting point" for the subsequent judicial fact-finder. The "starting point" principle is not a legal straitjacket. It permits subsequent judicial fact-finders to depart from the earlier judicial decision on a principled and properly-reasoned basis.
R (on the application of Sutharsan) v Secretary of State for the Home Department (UT rule 29(1): time limit) [2019] UKUT 217 (IAC), 1 July 2019	Practice and Procedure	The 21-day time limit in rule 29(1) of the *Tribunal Procedure (Upper Tribunal) Rules 2008* for filing an acknowledgment of service in immigration judicial review proceedings begins to run on the day after the person concerned is provided with a copy of the application for judicial review, not on the day it was sent. A copy that is sent by post will be deemed to have been provided on the second business day after it was posted, unless the contrary is proved.
Smith (appealable decisions; PTA requirements; anonymity) [2019] UKUT 216 (IAC), 28 June 2019	Practice and Procedure	A decision by the First-tier Tribunal not to decide a ground of appeal constitutes a "decision" for the purposes of s.11(1) of the *Tribunals, Courts and Enforcement Act 2007*. It may therefore be appealed to the Upper Tribunal. If an appellant's appeal before the First-tier Tribunal succeeds on some grounds and fails on other grounds, the appellant will not be required to apply for permission to appeal to the Upper Tribunal in respect of any ground on which he or she failed, so long as a determination of that ground in the appellant's favour would not have conferred on the appellant any material (ie tangible) benefit, compared with the benefit flowing from the ground or grounds on which the appellant was successful in the First-tier Tribunal.
TS (interpreters) Eritrea [2019] UKUT 352 (IAC), 4 September 2019	Practice and Procedure	An appellate tribunal will usually be slow to overturn a judge's decision on the basis of alleged errors in, or other problems with, interpretation at the hearing before that judge *(Perera v Secretary of State for the Home Department* [2004] EWCA Civ 1002). Weight will be given to the judge's own assessment of whether the interpreter and the appellant or witness understood each other. Where an issue regarding interpretation arises at the hearing, the matter should be raised with the judge at the hearing so that it can be addressed there and then. Even if the representatives do not do so, the judge should act on his or her own initiative, if satisfied that an issue concerning interpretation needs to be addressed.

Social Entitlement Chamber cases reported in the Upper Tribunal

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 446 (AAC)	*MM v Secretary of State for Work and Pensions (ESA)*	Social security	The Upper Tribunal warned First-tier Tribunals against concluding that claimants do not suffer from the loss of function that they describe on the basis that they are not being correctly treated for the condition(s) that cause that loss of function.
[2019] UKUT 55 (AAC)	*Secretary of State for Work and Pensions v SO (DLA)*	Social security	The appellant in this case was a Dutch national who had been awarded invalidity benefit in Holland. The Upper Tribunal decided that, when he came to live in the UK, he was not entitled to the care component of Disability Living Allowance (DLA) because the Dutch invalidity benefit was a pension which made Holland the 'competent state' (i.e. responsible for paying benefits) even though he was resident in the UK. If the competent state for the care component is not the UK the claimant may still be entitled to the mobility component under the domestic rules.
[2019] UKUT 83 (AAC)	*JG v Secretary of State for Work and Pensions (CA)*	Social security	The Upper Tribunal decided that the state responsible for paying benefit (the 'competent state') is the state of residence of the claimant under Regulation (EC) 1408/71 and 883/2004 even in a case where the person being cared for is entitled to Attendance Allowance or Disability Living Allowance.
[2019] UKUT 84 (AAC)	*Secretary of State for Work and Pensions v MC (DLA)*	Social security	In this decision the Upper Tribunal found that, as the claimant had moved residence and was now employed in another Member State, Article 22 of Regulation (EC) 1408/71 did not apply to allow him to export his award of Disability Living Allowance because he had taken up employment in a new state and the Secretary of State had not authorised the move.
[2019] UKUT 85 (AAC); [2019] AACR 22	*KR v Secretary of State for Work and Pensions (DLA)*	Social security	In this case the Upper Tribunal decided that a claimant can export an award of Disability Living Allowance care component (i.e. continue to be entitled to payment of the benefit from the UK when moving to another EU country), relying on Article 7 or 21 of Regulation (EC) 883/2004.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 86 (AAC)	*Secretary of State for Work and Pensions v TG (DLA)*	Social security	The Upper Tribunal judge decided that Regulation (EC) 883/2004 applied to the claimant because his claim for Disability Living Allowance (DLA) had been made after 1.5.10 when that Regulation came into force. Although the appellant had previously been employed in the UK and was insured to obtain a retirement pension in due course he was not "pursuing an activity as an employed or self-employed person". He was habitually resident now in Cyprus so Cyprus was the state responsible for paying benefits (the 'competent state') and he could not therefore receive DLA from the UK.
[2019] UKUT 87 (AAC)	*GK v Secretary of State for Work and Pensions (CA)*	Social security	The Attendance Allowance (AA) recipient moved to Cyprus and invited the claimant to join her to care for her. He claimed Carer's Allowance from Cyprus. The Upper Tribunal decided that under Article 11 (3)(e) of Regulation (EC) 883/2004 it was Cyprus as the state of residence which determined that Cyprus and not the UK was the competent state for the claimant even though it was the UK which was the competent state for the AA recipient. Note: this decision is under appeal to Court of Appeal.
[2019] UKUT 113 (AAC)	*UA v Her Majesty's Revenue Service (TC)*	Social security	The Upper Tribunal explained in its decision that it is important for tribunals to assess evidence and to make appropriate findings within the relevant cultural context, in this case to take account of the pressure the claimant felt that Islamic culture placed on her to have a successful marriage and the shame associated with separation from a spouse.
[2019] UKUT 114 (AAC); [2019] AACR 23	*JW v Her Majesty's Revenue and Customs (TC)*	Social security	The Upper Tribunal considered the relevance of profitability and "genuine and effective" work as tests for the commercial basis of self-employment for Working Tax Credit.
[2019] UKUT 118 (AAC)	*SA v Secretary of State for Work and Pensions (ESA)*	Social security	The Upper Tribunal decided that, in the absence of any express obligation in the regulations 23 and 24 of the *Employment and Support Allowance 2008*, it was not reasonable to infer "a general obligation on claimants to engage in a significant degree of forward planning" in order to attend a medical examination.
[2019] UKUT 135 (AAC); [2019] AACR 24 (AAC)	*JS v Secretary of State for Work and Pensions (IS)*	Social security	The Upper Tribunal considered how far the Court of Justice judgment in *St Prix* on the retention of worker status in right to reside cases may extend to other situations where the claimant has ceased work temporarily.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 144 (AAC)	*NA v Secretary of State for Work and Pensions (BB)*	Social security	The Upper Tribunal found that the refusal of the claim for bereavement benefit and widowed parent's allowance to the surviving widow of overseas religious marriage was unlawful discrimination contrary to the *European Convention on Human Rights*. The claimant was in an analogous situation to a widow in a recognised lawful marriage under UK law.
[2019] UKUT 149 (AAC)	*EA v Secretary of State for Work and Pensions and SA (CS)*	Social security	The Upper Tribunal decided that, although the tribunal must consider the terms of a court order, it is not obliged under Regulation 46 of the *Child Support Maintenance Calculation Regulations 2012* to determine shared care in accordance with those terms where the overnight contact specified in the court order is not in reality being adhered to.
[2019] UKUT 151 (AAC); [2019] AACR 25	*AR v Secretary of State for Work and Pensions, HM Revenue and Customs and LR (No.2)*	Social security	This was an Upper Tribunal child support decision which tackled the interpretation and application of regulations 4 and 36 of the *Child Support Maintenance Calculation Regulations 2012*; in particular the meaning of the "latest available tax year" in the context of the provision of information by HMRC on the non-resident parent's income.
[2019] UKUT 192 (AAC)	*ODS v Secretary of State for Work and Pensions (UC)*	Social security	The Upper Tribunal decided that the legal effect of the judgment of the European Court of Justice in *Lounes* is that dependent EEA family members of dual nationals can derive a right of residence where the dual national has exercised free movement rights in the host Member State prior to acquiring the citizenship of that State.
[2019] UKUT 204 (AAC)	*TM v Secretary of State for Work and Pensions (PIP)*	Social security	The Secretary of State's response, as well as failing to include the PIP activities and descriptors, as required, referred to draft legislation that was not in the same terms that the tribunal was required to apply. This failure had the potential to cause unfairness because it denied the claimant information that he needed to prepare his case properly. The Tribunal breached its duty to act fairly towards the claimant in failing to take steps to rectify the inadequacies in the Secretary of States' response.
[2019] UKUT 207 (AAC)	*RT v Secretary of State for Work and Pensions (PIP)*	Social security	The Upper Tribunal discussed the obligations of the First-tier Tribunal in appeals involving vulnerable adults and provides practical guidance as to when omitting to follow the *Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses* is likely to amount to a material error of law.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 250 (AAC)	*Secretary of State for Work and Pensions v NZ (ESA)*	Social security	In this final decision on the case, the Upper Tribunal decided that factual, not legal, residence is what is required by Article 17(1)(b) of Directive 2004/38. This meant that the right of permanent residence in the host Member State shall be enjoyed by 'A8 nationals' before the completion of a continuous period of five years residence by workers or self-employed persons who have resided continuously there for more than two years and stop working due to permanent incapacity to work.
[2019] UKUT 284 (AAC)	*CM v Secretary of State for Work and Pensions (ESA)*	Social security	The Upper Tribunal dealt with two issues here: the powers of First-tier Tribunal on an appeal from a Secretary of State decision under regulation 30 on a second or repeat ESA claim; and the legal effect of words in regulation 30(1) "until such time as it is determined".
[2019] UKUT 294 (AAC)	*MB v Secretary of State for Work and Pensions (SPC)*	Social security	There was a conflict between the first Tribunal's decision and the statement of reasons as to the amount of the overpayment. This decision was subsequently set aside by a second Tribunal as incoherent and fundamentally flawed. The Upper Tribunal decided that this set aside decision was properly made under the Tribunal Procedure Rules, even though the District Tribunal Judge did not refer to the legal power(s) under which he was acting.
[2019] UKUT 314 (AAC)	*BB v Secretary of State for Work and Pensions and CB (CSM)*	Social security	This Upper Tribunal decision explored the relevant tax law on the treatment of redundancy payments, the definition of earned income and the definition of historic and current income for both employed and self- employed people in child support law.
[2019] UKUT 321 (AAC)	*EB v Secretary of State for Work and Pensions and CW*	Social security	The Upper Tribunal's decision here involved the treatment of income where there is a change, where there is income from both employment and self-employment and where the tribunal may have to choose between using historic and current income.
[2019] UKUT 329 (AAC)	*SMcD v Secretary of State for Work and Pensions and LT (CSM)*	Social security	The Upper Tribunal found that there had been procedural unfairness where the Financially Qualified Member's analysis of the father's income was shared by the tribunal at the hearing but with no prior warning or adjournment opportunity for the father to study the figures. Such disclosure by the tribunal should be made with sufficient time for the parties to consider it.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 408 (AAC)	*KB v Secretary of State for Work and Pensions (UC)*	Social security	The Upper Tribunal decided that the claimant in this case did not have 'good reason' for failing to apply for a job where she had previously agreed with her work coach that she would apply for it but subsequently decided not to do so because she believed it was pointless but without consulting with her work coach as to why she believed that to be the case.
[2020] UKUT 10 (AAC)	*ES (and his appointee CS) v Secretary of State for Work and Pensions (DLA)*	Social security	In this case the child's language delay meant it was much more difficult to understand what was troubling him and it made soothing him to sleep much more protracted than was typical for a child of his age. The Upper Tribunal decided that the First-tier Tribunal was wrong to attempt to trace a link between the child's difficulty in getting back to sleep with a physical or mental cause. Its focus should have been on the "attention required in connection with the bodily function of communication" and not of sleeping.
[2020] UKUT 22 (AAC)	*TK v Secretary of State for Work and Pensions (PIP)*	Social security	The Upper Tribunal found that Personal Independence Payment (PIP) Activity 3 ("managing therapy") includes the assistance with therapy which the claimant requires because the nature of the activity itself calls for it, not just because of a physical or mental impairment in performing the tasks required in managing therapy.
[2020] UKUT 50 (AAC)	*KH v Bury Metropolitan Borough Council and Secretary of Work and Pensions*	Social security	This decision by the Upper Tribunal considered the "genuine chance of being engaged" test under reg. 6(2)(b)(ii) of the Immigration (EEA) Regs 2006 and concluded that this test did not need to be met by those who retained their worker status having been made involuntary unemployed after having been employed for more than one year. The test is about ability and availability to re-enter the labour market "within a reasonable period of time" rather than the prospect of in fact being employed.
[2020] UKUT 59 (AAC)	*PPE v Secretary of State for Work and Pensions (ESA)*	Social security	The Upper Tribunal explained in this decision what is required in order to impose a legal obligation on a claimant to attend a medical examination.

Employment Appeal Tribunal

Citation	Parties	Jurisdiction	Commentary
UKEAT/0304/18	*Richard Page v Lord Chancellor and Lord Chief Justice*	EAT	The claimant was a magistrate who objected on religious grounds to children being adopted by same-sex couples and was ultimately removed from office following a BBC interview. Choudhury P and members upheld the employment tribunal's rejection of his claims arising from his removal from office, in particular (a) rejecting his victimization claim because the statement to the BBC relied on did not involve any allegation of breach of the *Equality Act 2010* by the Respondents or was not the cause of his removal and (b) rejecting his case under Art 10 of the European Convention on Human Rights because that Art was not engaged on the facts or because his removal from the magistracy was in any event a proportionate limitation on his to right to freedom of expression.
UKEAT/0247/18 [2020] IRLR 4	*Bessong v Pennine Care NHS Foundation Trust*	EAT	Since the repeal of ss 40(2)(4) of the *Equality Act 2010* by the Enterprise and Regulatory Reform Act 2013, there is no express provision in the 2010 Act to the effect that an employer's failure to prevent racial harassment by third parties would itself amount to harassment under the 2010 Act unless the employer's failure was itself related to the protected characteristic of race. Choudhury P decided that neither the Race Directive (2000/43/EC) nor the Charter of Fundamental Rights of the EU required a different interpretation of s 26(1) of the 2010 Act, which on its face requires the employer's conduct (ie failure to prevent harassment) to be related to race.
UKEAT/0007/19	*Watson v Hemingway Design Ltd (in liquidation) and others*	EAT	Kerr J decided that the employment tribunal had jurisdiction to determine a claim under the Third Parties (Rights against Insurers) Act 2010 against an insolvent employer's insurer in a case where the underlying claims against the employer arose under the *Employment Rights Act 1998* and the *Equality Act 2010*.

Citation	Parties	Jurisdiction	Commentary
UKEAT/0236/18	*Sophia Walker v Wallem Shipmanagement Ltd*	EAT	Kerr J and members decided that on its proper construction regulation 4 of the *Equality Act (Work on Ships and Hovercraft) Regulations 2011* excluded a claim of sex discrimination under the *Equality Act 2010* by a woman applying in UK to a recruitment agency operating here for work on a foreign registered vessel, notwithstanding that the agency admitted direct discrimination in refusing to consider a female applicant for the job. The Tribunal considered that it was doubtful that the regulation in question conforms to the Equal Treatment Directive and recommended that the Secretary of State revisit the scope of the Regulations
UKEAT/0223/19	*Basfar v Wong*	EAT	Soole J decided that a Saudi diplomat was entitled to rely on the *Diplomatic Privileges Act 1964* to resist a claim by a domestic servant claiming wrongful dismissal, failure to pay national minimum wage and breach of the Working Time Regulations 1998 in circumstances alleged to amount to modern slavery. Although the Court of Appeal's decision in Reyes v Al-Maliki [2015] ICR 289 on the ambit of the "commercial activity" exclusion to the privilege was not binding authority because the Supreme Court's had decided the case on other grounds [2017] ICR 1417, it was nevertheless highly persuasive and, combined with the observations of Lords Sumption and Neuberger in the Supreme Court, represented the true legal position.
UKEAT/0234/19	*HMRC v Middlesborough Football and Athletic Company (1986) Ltd*	EAT	HHJ Auerbach decided that reductions from certain employees' weekly pay made by Middlesbrough football club in respect of season tickets provided to them counted as "deductions" in calculating their pay for the purposes of the *National Minimum Wage Regulations 2015* and that the club was therefore in breach of the Regulations, and in particular that for the purposes of regulation 12, the reductions could not be classified as "payments" by the employees, were for the "use and benefit" of the club and were not made under a relevant contractual provision under regulation 12(2)(a).

First-tier Tribunal

Tax Chamber

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 262 (TC), [2019] SFTD 1231	*Hannover Leasing Wachstumwerte Europa Beteiligungsgesellschaft mbH and Hannover Leasing Wachstumwerte Europa VI GMBH and CO KG v HMRC*	Tax – stamp duty land tax	This was only the second decision of the Tribunals and courts on the application of the stamp duty land tax (SDLT) anti-avoidance provisions in Section 75A FA 2003. Unlike the only previous decision on s75A (that of the Supreme Court in the "Project Blue" litigation), this case concerned the acquisition of a property in circumstances where there was no tax avoidance motive. The facts concern the purchase of a UK property by a German fund for £139m. The property was held through a "layered" structure that had to be partially dismantled prior to the sale for commercial reasons. The purchaser acquired the units in the holding entity (a Guernsey unit trust), which gave rise to a saving of SDLT. The issue was whether the steps taken before and after the unit sale meant that the transaction was caught by s75A. The First-tier Tribunal held that s75A applies where steps are commercially interdependent and there is a tax saving, even if there is no tax avoidance motive in obtaining that saving. The decision was not appealed.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 354 (TC)	*Cheshire Centre for Independent Living v HMRC*	Tax – VAT	The Tribunal considered the exemption from VAT for welfare services. Disabled persons who wish to remain in their own homes and live independently often require services provided by a carer, who visits the disabled person and assists them with everyday tasks. Disabled persons may be eligible for financial assistance from their local authorities to assist them in the costs of their identified care and support needs. Often, the local authority will meet this obligation by making a direct payment to the disabled person or their representative, which enables the disabled person to take control of and pay for their own care and support services. This requires the disabled person to act as the employer of the carer, which entails legal and administrative payroll requirements - such as calculating wages, deducting PAYE and NICs, registration and filing with HMRC, auto enrolment for pension contributions and redundancy, sick and holiday payment calculations. The taxpayer appellant was a charity which provided a range of support services for disabled people, their families and carers; one such service was a payroll service where, for a fee, the charity took care of all those payroll responsibilities of the disabled person. HMRC considered that the charity should charge VAT on that fee; the charity argued that the fee was exempt from VAT. The Tribunal decided that use of the payroll service (which was permitted and encouraged in Government guidance to local and health authorities) was not an end in itself (as would be similar services to commercial business employers) but instead a means for better enjoying the services of the carer, which is part of the services required by the disabled individual's professionally designed care and support plan. Therefore, the payroll service constituted a "supply of services closely linked to welfare work" and the fee should not attract VAT.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 410 (TC)	*Baillie Gifford & Co v HMRC*	Tax – VAT	Baillie Gifford ('BG') is a Scottish partnership in asset management and investment which made supplies to its subsidiaries with monthly output VAT amounting to £250,000 (£3 million per annum) that was irrecoverable by the group. In November 2013, BG applied to form a VAT group with its three wholly-owned subsidiary companies on the basis that a Scottish partnership is a separate legal entity under Scots law. Its application was refused by HMRC for the reason that a Scottish partnership failed to meet the statutory eligibility criterion of being a 'body corporate' as provided by the UK VAT Grouping legislation under s 43A of the Value Added Tax Act 1994, (since amended by FA 2019). BG appealed and applied to stay its appeal behind the CJEU judgment in *Larentina + Minerva* (C-108/14) [2015] STC 2101. The appeal was allowed upon a purposive construction of s 43 VATA in conformity with the EU principle of fiscal neutrality. The decision sets out the principles, the limits, and the approach when a court or a tribunal is called upon to perform conforming interpretation. HMRC did not appeal.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 412 (TC)	*First Choice Recruitment Ltd v HMRC*	Tax - costs	This decision is unusual, as it awards costs against HMRC for their unreasonable conduct under Rule 10(1)(b) of the *Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009*. The appeal concerned the construction industry sub-contractors' scheme. Was the failure by the appellant to deduct tax from payments due to an error made in good faith? HMRC's statement of case made allegations of fraud, and in particular that (a) the directors of the Appellant were knowing participants in the fraud, and (b) emails between various named individuals suggested that the Appellant was aware that there was fraud taking place. The documents subsequently exchanged between the parties did not include any such emails, and the only emails included within HMRC's evidence confirmed that the Appellant was not aware of the status of the payee. The appeal was set down for hearing on 20 August 2018. On 16 August 2018, HMRC withdrew from the Appeal. The Tribunal held that HMRC's conduct in alleging fraud in their Statement of Case, and particularising that conduct by reference to non-existent emails, was egregious, and that it is unacceptable for a public authority to make allegations of fraud where they have no credible evidence upon which to make even a prime facie case. The Tribunal held that the conduct of HMRC was such as to justify the award of costs against them. The Tribunal noted the requirements of the SRA's Code of Conduct, and that if this dispute were conducted by a solicitor, there would have been issues of serious professional misconduct. The Tribunal found that it was particularly concerning that HMRC had submitted that their conduct was entirely reasonable - and that (impliedly) they would not do anything differently in future.
[2019] UKFTT 469 (TC) [2019] UKFTT 750 (TC) [2020] UKFTT 0127 (TC)	*Hyman and Hyman v HMRC* *Goodfellow and Goodfellow v HMRC* *Myles-Till v HMRC*	Tax – stamp duty land tax	These three appeals were all brought by buyers of residential properties in the countryside, and concerned whether adjoining land (such as a meadow, paddock or barn) acquired with their properties were part of the "grounds" of the residential property (as, if they were not part of the "grounds", they were subject to a lower rate of stamp duty land tax). All three Tribunals decided, on the facts of each case, that the adjoining land was part of the "grounds" of the residential property. The appeals were dismissed.

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[2019] UKFTT 514 (TC)	*Skin Rich Ltd v HMRC*	Tax – VAT	This appeal concerned whether Botox treatments (as well as other dermal fillers) and nail fungus treatments provided by a clinic constituted the provision of medical care for the purpose of the exemption from VAT. The appeal was dismissed, as the evidence did not support that the Botox and other injectables were a medical treatment to protect, maintain or restore health (it being accepted by both parties that purely cosmetic treatments were standard rated). The nail fungus treatments did not benefit from exemption as the treatment was not provided by a registered medical professional.
[2019] UKFTT 522 (TC)	*Urenco UK Limited v HM Revenue & Customs*	Tax - Corporation tax - capital allowances	A claim for capital allowances for significant expenditure on the construction of a large infrastructure project comprising a tails management facility at a nuclear site. The disputed claim for relief involved expenditure of £192 million out of a total project cost of £1 billion. The decision dealt with identification of the relevant assets, consideration of whether the assets functioned as plant, whether any of the expenditure was on the provision of a building and if so whether any of the expenditure was saved for relief by List C section 23 *Capital Allowances Act 2001*. The appeal was dismissed and permission has been granted to appeal to the Upper Tribunal.
[2019] UKFTT 583 [2020] UKFTT 109	*Paya Limited and others v HMRC* *Red, White and Green Limited v HMRC*	Tax – income tax	These cases concerned whether personal services companies owned by three BBC news presenters (in Paya) and Eamon Holmes (in RWG) were subject to tax under the IR35 legislation on income received for the provision of the relevant presenter's services to the BBC (in Paya) and ITV (in RWG) as though the income was employment income. The tribunal decided that IR35 applied in each case. Two of the BBC presenters have appealed to the Upper Tribunal (RWG is still in time to apply for permission to appeal). There are a number of cases stayed pending the outcome of the appeals in Paya. Both decisions attracted media attention.

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([2019] FTT 0588 (TCC)	*Inmarsat Global Ltd v HMRC*	Tax - Corporation tax - capital allowances	This case a dispute about the availability of capital allowances on expenditure of approximately $300,000,000 incurred on the launch of six leased navigational satellites. The satellites had actually been commissioned and launched by the International Maritime Satellite Organization, which had finance leased them through various bank syndicates. Its business had been transferred to Inmarsat Global Limited and the dispute was mainly about the impact of certain complex deeming provisions under the CAA code applying to transfers of businesses, and its interaction with the leasing provisions in CAA.
[2019] UKFTT 0650 (TC)	*Charnley and Hodgkinson as executors of the estate of Thomas Gill (deceased) v HMRC*	Tax – inheritance tax	This appeal concerned agricultural property relief and business property relief in relation to the assets forming part of the estate. The appeal considered the nexus between the farmhouse and land, the meaning of "agricultural purposes" under the relevant legislation and whether the business wholly or mainly consisted of holding investments.
[2019] UKFTT 678 (TC)	*RSR Sports Limited v*	Tax – VAT	The Tribunal considered whether the provision of school holiday camps by the appellant in question fell within the exemption for "services …closely linked to the protection of children and young persons" in Article 132(1)(h) of Council Directive 2006/112/EEC and the equivalent exemption for "welfare services" in the UK legislation. The Tribunal considered whether the fact that the children in question were actively engaged in sports while they were at the camps meant that the predominant element of the service supplied by the appellant to the children's parents was not childcare but rather the provision of activities. It held that, on the facts of that case, where the service had been described by the appellant as a cost-effective, reliable form of childcare and the activities which it was offering did not involve highly-advanced coaching by staff with the appropriate level of skill and qualifications to do that but rather simply the supervision of the activities by inexpert lowly-paid staff, the predominant element of the supply was childcare. It was not appropriate to limit the scope of the exemption to purely passive forms of childcare, particularly in an age where parents were being advised to encourage their children to be more active. The significance of the decision is that it is likely to lead to an extension of the exemption to a wider range of holiday childcare, which will be welcomed by parents.

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[2019] UKFTT 717 (TC)	*Lord and Lady Lloyd Webber v Revenue and Customs Commissioners*	Tax - capital gains tax	Lord and Lady Lloyd-Webber entered into contracts to acquire land in Barbados on which holiday villas were to be built. Due to the collapse of the contractor, the construction did not proceed although approximately £8m had been paid in accordance with the contracts. The Lloyd-Webbers disposed of their rights under the contract. It was accepted that they had acquired an asset, the rights under the contract and that they suffered a commercial loss in that they had spent considerable sums and it was unlikely that the villas would in fact be built. The issue between the parties was whether the amounts paid under the contracts were paid to acquire/enhance the contractual rights and allowable as a deduction for capital gains tax purposes. The Tribunal allowed the Lloyd-Webber's appeal as, although they entered into the contracts with the intention of ultimately acquiring completed villas, the payments they made under them were for the acquisition of contractual rights, the only asset they actually acquired.
[2019] UKFTT 736 (TC)	*Romima Limited v HM Revenue & Customs*	Tax – VAT	An appeal concerning the VAT treatment of vouchers issued to customers by lap dancing clubs for use in the clubs. There were various issues including: 1) Whether the consideration paid by customers was exempt as security for money. 2) Whether the vouchers were face value vouchers, and if so whether they were multipurpose vouchers such that liability to account for VAT arose only on the consideration in excess of the face value of the vouchers. 3) Whether a fee charged by clubs to dancers on redemption of vouchers was consideration for a supply of taxable services by the clubs to dancers. 4) Whether a fee charged to employees of the clubs on redemption of vouchers was consideration for a supply of taxable services by clubs to employees. The appeals on issues (1) to (3) were dismissed and on issue (4) were allowed.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 0732 (TC)	*Albert House and others v HMRC*	Tax – stamp duty land tax	Albert House was one party in an SDLT avoidance scheme, with the other party being the purchaser of a property. Albert House wrote to the Tribunal and HMRC notifying the withdrawal of its appeal. However, HMRC objected to the withdrawal because it wanted both parties to the scheme to be joint appellants in a hearing.
[2019] UKFTT 744	*Root 2 Tax Limited v HMRC*	Tax – income tax	This case concerned whether payments the appellant made to its sole directors/employees (and shareholders) under contracts designed to be spread betting contracts, as HMRC argued, were taxable as earnings from an employment or, as the appellant argued, were tax free winnings from gambling. The tribunal decided that the sums were earnings from an employment on the basis of a "Ramsay" purposive approach to the legislation (referencing, in particular, *RFC 2012 Plc (formerly The Rangers Football Club Plc) v Advocate General for Scotland (Scotland)* [2017] UKSC 45). The appellant had been held to be the promoter of the arrangements of the kind it entered into for the purposes of the legislation relating to the disclosure of tax avoidance scheme in an earlier decision of the First-tier Tribunal (Colin Bishopp) (and the appellant did not succeed in judicial review proceedings brought in respect of that decision). There are many other appeals in the tribunal stayed pending the final outcome of this appeal, it appears brought by the many users to whom the appellant promoted the structure.

Citation	Parties	Jurisdiction	Commentary
[2019] SFTD 853	*Warshaw v Revenue and Customs Commissioners*	Tax – capital gains tax	The taxpayer held preference shares in a company which gave a right to a fixed cumulative preferential dividend ('the preference dividend') at 10%. There were no other rights to share in the profits. If there were insufficient reserves to pay the dividends in respect of the shares in a particular year, payment was deferred to a subsequent year. Therefore, the rate at which the dividend would be paid (10%) would be calculated on an increased amount. The sole issue between the parties is whether these preference shares were 'ordinary share capital' and in particular whether they had a right to dividends at a fixed rate. If these preference shares were 'ordinary share capital', the taxpayer would have held over 5% of the 'ordinary share capital' of the company making it his 'personal company' and been entitled to entrepreneur's relief on the disposal of the shares but this would not have been the case if the preference shares were not 'ordinary share capital', as he would have held 3.5% of the company's 'ordinary share capital' The Tribunal, allowing the appeal, held that it was necessary to take into account both the percentage element and the amount to which it was applied to identify the rate of the dividend. Accordingly, if, at the time the preference shares were issued the articles of association provided that only one of those, the percentage element, was fixed and the amount to which that percentage was to be applied might vary, those shares could not be regarded as having a right to a dividend at a fixed rate and were therefore 'ordinary share capital'.
[2020] UKFTT 2 (TC)	*Benjamin Smith v HMRC*	Tax – income tax	The appellant had opted into "paperless" filing, so that HMRC no longer sent him documents by post. Instead, they were placed on his online account with HMRC. Each time a new document was added to that account, HMRC sent the appellant an email. The appellant received the emails on his mobile phone, but because of the small screen size, could not read the whole of the text without scrolling down. He did not scroll down. He assumed that the emails were spam and never checked his online account. As a result, he did not file his tax return by the statutory deadline and received penalties totalling £1,300.

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[2020] UKFTT 3 (TC)	*Winfield v Welsh Revenue Authority*	Tax - Welsh Land Transaction Tax - penalty	This was the first appeal against a decision of the Welsh Revenue Authority to come before the Tribunal. The appeal, which was dismissed, concerned a penalty, in the sum of £300, for the failure to file a land transaction tax return within six months of a "notifiable transaction". In accordance with the *Government of Wales Act 2006* (as amended by the *Wales Act 2014*), 1 April 2018 land transaction tax and landfill disposal tax became the first specifically Welsh taxes to come into effect for over 800 years. They replaced stamp duty land tax ("SDLT") and landfill tax which continue to apply in England but no longer in Wales. The collection and management of these devolved taxes is the responsibility of the Welsh Revenue Authority established under s 2 of the Tax Collection and Management (Wales) Act 2016. Appeals against these devolved taxes are to the Tax Chamber of the First-tier Tribunal.
[2020] UKFTT 53 (TC)	*Shelford & Ors v HMRC*	Tax – inheritance tax	This decision concerns IHT "home loan schemes", which were a popular mechanism for the avoidance of inheritance tax on the lifetime gift of an individual's home (whilst allowing the taxpayer to continue to live in it).
[2020] UKFTT 121 (TC)	*Northern Gas Networks v HMRC*	Tax – corporation tax	The Tribunal considered whether expenditure incurred by a regional gas company in replacing (or lining) iron pipes with new polyethylene pipes could qualify for land remediation relief on the basis that the risk of damage to persons or property from a gas explosion arising as a result of the presence of gas in the existing iron pipes at the time of acquisition of the land within which the pipes were located meant that the land was contaminated when it was acquired. It was held that, although the statutory definitions meant that, technically, the land in question was contaminated at the time of its acquisition, the relevant expenditure was not "on" or "in relation to" the land but rather "on" or "in relation to" the pipes and therefore did not qualify for the relief. Furthermore, even if the expenditure had been "on" or "in relation to" the land, the contamination in question had been caused by the claimant's predecessor in title (in that it had transferred the land to the claimant with gas already in the pipes) and, as the predecessor in title was connected with the claimant, the claim would have failed for that reason alone. The significance of this decision is that all of the regional gas companies within the UK are likely to be in a similar position and therefore the decision is of wide-ranging significance within that sector of the UK economy.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 150 (TC)	*RPS Health In Business Limited and another v HMRC*	Tax – VAT	RPS is one of the UK's biggest providers of occupational health services, and this was the first case to consider whether occupational health services are subject to VAT. The Tribunal found that they are exempt.
[2020] UKFTT 0*** (TC)	*Fiander and Brower v HMRC*	Tax – stamp duty land tax	The appellant had bought a residential property consisting of a main house and an "annex" with its own living quarters and kitchen. A short corridor connected the main house and the annex. The case was about whether main house and annex were each suitable for use a "single dwelling" – in which case, a lower of amount of stamp duty land tax was owed on the purchase. The Tribunal found that untrammelled access between the main house and the annex meant that neither was suitable for use as a "single" dwelling, and the appeal was dismissed.
[2019] UKFTT 262 (TC), [2019] SFTD 1231	*Hannover Leasing Wachstumwerte Europa Beteiligungsgesellschaft mbH and Hannover Leasing Wachstumwerte Europa VI GMBH and CO KG v HMRC*	Tax – stamp duty land tax	This was only the second decision of the Tribunals and courts on the application of the stamp duty land tax (SDLT) anti-avoidance provisions in Section 75A FA 2003. Unlike the only previous decision on s75A (that of the Supreme Court in the "Project Blue" litigation), this case concerned the acquisition of a property in circumstances where there was no tax avoidance motive. The facts concern the purchase of a UK property by a German fund for £139m. The property was held through a "layered" structure that had to be partially dismantled prior to the sale for commercial reasons. The purchaser acquired the units in the holding entity (a Guernsey unit trust), which gave rise to a saving of SDLT. The issue was whether the steps taken before and after the unit sale meant that the transaction was caught by s75A. The First-tier Tribunal held that s75A applies where steps are commercially interdependent and there is a tax saving, even if there is no tax avoidance motive in obtaining that saving. The decision was not appealed.

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[2019] UKFTT 354 (TC)	*Cheshire Centre for Independent Living v HMRC*	Tax – VAT	The Tribunal considered the exemption from VAT for welfare services. Disabled persons who wish to remain in their own homes and live independently often require services provided by a carer, who visits the disabled person and assists them with everyday tasks. Disabled persons may be eligible for financial assistance from their local authorities to assist them in the costs of their identified care and support needs. Often, the local authority will meet this obligation by making a direct payment to the disabled person or their representative, which enables the disabled person to take control of and pay for their own care and support services. This requires the disabled person to act as the employer of the carer, which entails legal and administrative payroll requirements - such as calculating wages, deducting PAYE and NICs, registration and filing with HMRC, auto enrolment for pension contributions and redundancy, sick and holiday payment calculations. The taxpayer appellant was a charity which provided a range of support services for disabled people, their families and carers; one such service was a payroll service where, for a fee, the charity took care of all those payroll responsibilities of the disabled person. HMRC considered that the charity should charge VAT on that fee; the charity argued that the fee was exempt from VAT. The Tribunal decided that use of the payroll service (which was permitted and encouraged in Government guidance to local and health authorities) was not an end in itself (as would be similar services to commercial business employers) but instead a means for better enjoying the services of the carer, which is part of the services required by the disabled individual's professionally designed care and support plan. Therefore, the payroll service constituted a "supply of services closely linked to welfare work" and the fee should not attract VAT.

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[2019] UKFTT 410 (TC)	*Baillie Gifford & Co v HMRC*	Tax – VAT	Baillie Gifford ('BG') is a Scottish partnership in asset management and investment which made supplies to its subsidiaries with monthly output VAT amounting to £250,000 (£3 million per annum) that was irrecoverable by the group. In November 2013, BG applied to form a VAT group with its three wholly-owned subsidiary companies on the basis that a Scottish partnership is a separate legal entity under Scots law. Its application was refused by HMRC for the reason that a Scottish partnership failed to meet the statutory eligibility criterion of being a 'body corporate' as provided by the UK VAT Grouping legislation under s 43A of the Value Added Tax Act 1994, (since amended by FA 2019). BG appealed and applied to stay its appeal behind the CJEU judgment in Larentina + Minerva (C-108/14) [2015] STC 2101. The appeal was allowed upon a purposive construction of s 43 VATA in conformity with the EU principle of fiscal neutrality. The decision sets out the principles, the limits, and the approach when a court or a tribunal is called upon to perform conforming interpretation. HMRC did not appeal.

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[2019] UKFTT 469 (TC) [2019] UKFTT 750 (TC) [2020] UKFTT 0127 (TC)	*Hyman and Hyman v HMRC* *Goodfellow and Goodfellow v HMRC* *Myles-Till v HMRC*	Tax – stamp duty land tax	These three appeals were all brought by buyers of residential properties in the countryside, and concerned whether adjoining land (such as a meadow, paddock or barn) acquired with their properties were part of the "grounds" of the residential property (as, if they were not part of the "grounds", they were subject to a lower rate of stamp duty land tax). All three Tribunals decided, on the facts of each case, that the adjoining land was part of the "grounds" of the residential property. The appeals were dismissed.

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[2020] UKFTT 2 (TC)	*Benjamin Smith v HMRC*	Tax – income tax	The appellant had opted into "paperless" filing, so that HMRC no longer sent him documents by post. Instead, they were placed on his online account with HMRC. Each time a new document was added to that account, HMRC sent the appellant an email. The appellant received the emails on his mobile phone, but because of the small screen size, could not read the whole of the text without scrolling down. He did not scroll down. He assumed that the emails were spam and never checked his online account. As a result, he did not file his tax return by the statutory deadline and received penalties totalling £1,300.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 3 (TC)	*Winfield v Welsh Revenue Authority*	Tax - Welsh Land Transaction Tax - penalty	This was the first appeal against a decision of the Welsh Revenue Authority to come before the Tribunal. The appeal, which was dismissed, concerned a penalty, in the sum of £300, for the failure to file a land transaction tax return within six months of a "notifiable transaction", In accordance with the Government of Wales Act 2006 (as amended by the Wales Act 2014), 1 April 2018 land transaction tax and landfill disposal tax became the first specifically Welsh taxes to come into effect for over 800 years. They replaced stamp duty land tax ("SDLT") and landfill tax which continue to apply in England but no longer in Wales. The collection and management of these devolved taxes is the responsibility of the Welsh Revenue Authority established under s 2 of the *Tax Collection and Management (Wales) Act 2016*. Appeals against these devolved taxes are to the Tax Chamber of the First-tier Tribunal.
[2020] UKFTT 53 (TC)	*Shelford & Ors v HMRC*	Tax – inheritance tax	This decision concerns IHT "home loan schemes", which were a popular mechanism for the avoidance of inheritance tax on the lifetime gift of an individual's home (whilst allowing the taxpayer to continue to live in it).

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 121 (TC)	*Northern Gas Networks v HMRC*	Tax – corporation tax	The Tribunal considered whether expenditure incurred by a regional gas company in replacing (or lining) iron pipes with new polyethylene pipes could qualify for land remediation relief on the basis that the risk of damage to persons or property from a gas explosion arising as a result of the presence of gas in the existing iron pipes at the time of acquisition of the land within which the pipes were located meant that the land was contaminated when it was acquired. It was held that, although the statutory definitions meant that, technically, the land in question was contaminated at the time of its acquisition, the relevant expenditure was not "on" or "in relation to" the land but rather "on" or "in relation to" the pipes and therefore did not qualify for the relief. Furthermore, even if the expenditure had been "on" or "in relation to" the land, the contamination in question had been caused by the claimant's predecessor in title (in that it had transferred the land to the claimant with gas already in the pipes) and, as the predecessor in title was connected with the claimant, the claim would have failed for that reason alone. The significance of this decision is that all of the regional gas companies within the UK are likely to be in a similar position and therefore the decision is of wide-ranging significance within that sector of the UK economy.
[2020] UKFTT 150 (TC)	*RPS Health In Business Limited and another v HMRC*	Tax – VAT	RPS is one of the UK's biggest providers of occupational health services, and this was the first case to consider whether occupational health services are subject to VAT. The Tribunal found that they are exempt.
[2020] UKFTT 0*** (TC)	*Fiander and Brower v HMRC*	Tax – stamp duty land tax	The appellant had bought a residential property consisting of a main house and an "annex" with its own living quarters and kitchen. A short corridor connected the main house and the annex. The case was about whether main house and annex were each suitable for use a "single dwelling" – in which case, a lower of amount of stamp duty land tax was owed on the purchase. The Tribunal found that untrammelled access between the main house and the annex meant that neither was suitable for use as a "single" dwelling, and the appeal was dismissed.

Social Entitlement Chamber (Criminal Injuries Compensation)

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 15 (AAC)	R (CICA) v Ft T	Criminal Injuries Compensation	UTJ Rowland reviewed the authorities as to whether an injury is directly attributable for a crime of violence. The Tribunal also commented that whilst a tribunal was not bound to accept an expect medical report it may consider the evidence to be compelling in the absence of any other medical evidence, but it must still give reasons. It doubted that the tribunal was required to record a dissenting view.
[2019] CSOH 79	Lord Advocate v F-t T (SEC)	Criminal Injuries Compensation	The Outer House of the Court of Session decided that nasal bones were not part of the skull and accordingly as a matter of statutory interpretation a fracture to nasal bones was not a fracture of the skull. Giving judgement Lord Brailsford gave guidance on rule 2(2)(d) of the *First-tier Tribunal (SEC) Procedure Rules 2008*. The use of the special expertise of a tribunal member is intended to assist the tribunal in reaching a view on the evidence, including matters of technical difficulty or complexity within their expertise. It is not to provide evidence.
[2019] UKUT 322 (AAC)	T D v Ft T and CICA	Criminal Injuries Compensation	UTJ Markus QC quashed an interlocutory decision striking out the appellant's appeal. The Judge highlighted errors in HMCTS administration and emphasised the importance of providing a complete and accurate appeal bundle. This error was compounded by misadvising the appellant about his right to apply for reinstatement.