SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

2022

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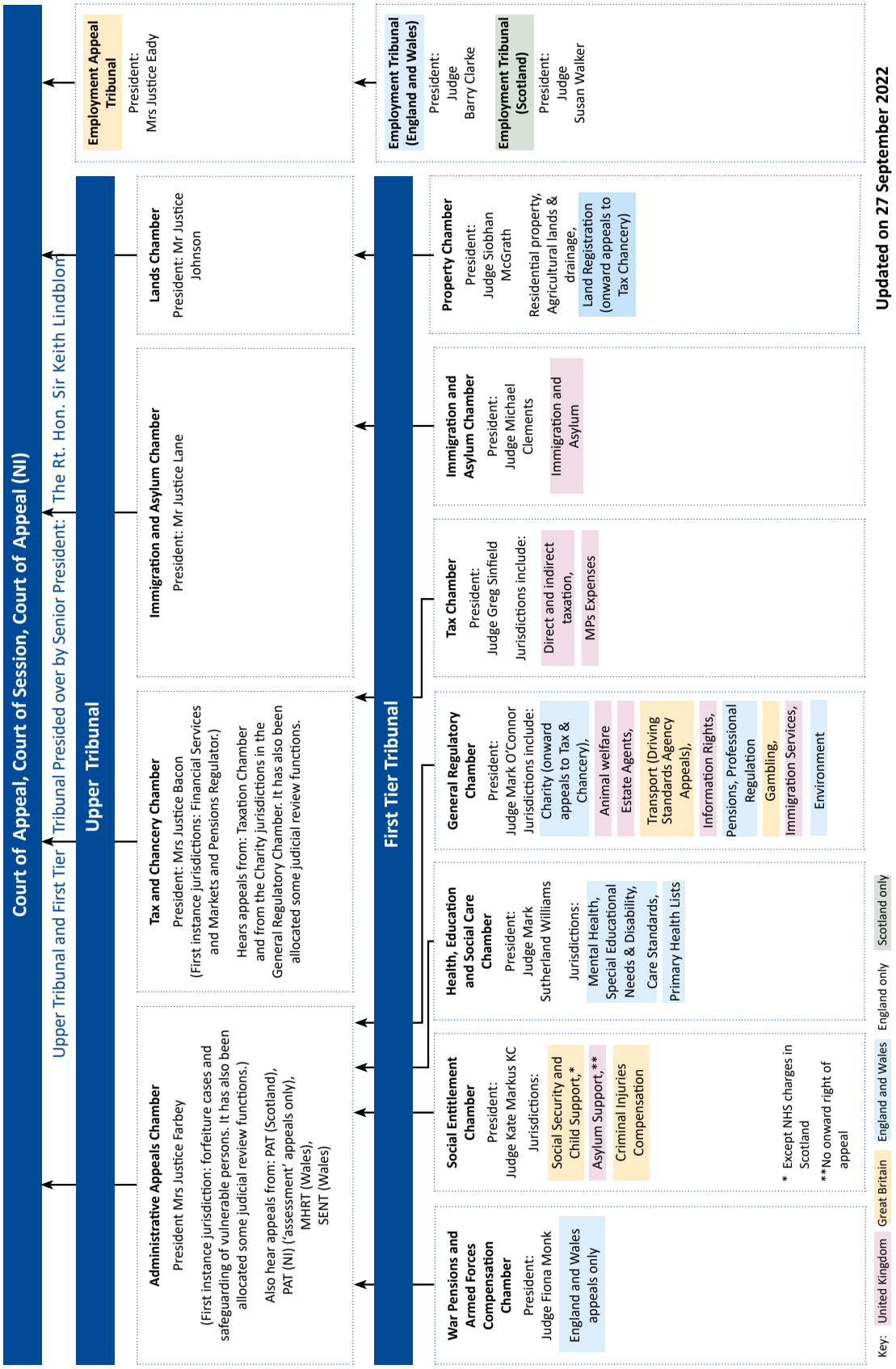

Foreword

By the Senior President of Tribunals
The Rt Hon Sir Keith Lindblom

It has been another busy and productive year for the tribunals. As the restrictions necessitated by Covid-19 have gradually eased, our attention has turned from dealing with the immediate impact of the pandemic to tackling the backlog of cases that has inevitably increased above pre-pandemic levels in several of the tribunal jurisdictions. Progress in modernising the tribunals has continued, bringing with it new systems and ways of working. The tribunals have also continued to adapt to new legislation, including powers to enable hearings to be observed remotely.

We have taken significant steps towards meeting the strategic objectives I set for my term as Senior President – ensuring efficient and effective access to justice, improving equality, diversity and inclusion, and promoting "One Judiciary". Through the Tribunals Action Group we are now identifying ways to make the work undertaken by judges and members in the tribunals more efficient and, I hope, more enjoyable, drawing on the wealth of good practice that already exists. The Diversity and Inclusion Taskforce has continued to drive forward the Judicial Diversity and Inclusion Strategy in the tribunals. This year's judicial diversity statistics show some sustained improvements. The measures set out in my joint statement with the Lord Chief Justice and the Lord Chancellor on the progress of "One Judiciary" will bring us closer to achieving a single judicial family.

I pay tribute to all tribunal judges and members, and the administrative teams who support them, for their contributions to the work and health of the tribunals this year and their tireless efforts in maintaining access to justice. There is still much to be done to manage the recovery of the tribunals after the pandemic but I am confident that we are emerging from that extremely testing period into more normal and predictable times. I hope that view is shared by all.

Efficient and effective access to justice

The effects of the Covid-19 pandemic continued to be felt throughout the year. But the emerging picture is encouraging, and steady progress is being made to bring down backlogs of work and reduce delay. The resilience and flexibility of the tribunals judiciary – both judges and members – has been invaluable in achieving this. I would like to mention in particular the introduction of the virtual region in the Employment Tribunal in England and Wales, led by Judge Barry Clarke. The virtual region is making a measurable impact on pressures in London and the South East and is providing a model of good practice for other jurisdictions in both the tribunals and the courts.

Within my statutory duties as Senior President is the promotion of innovative methods of resolving disputes. By finding ways to resolve legal problems before they reach the tribunals we can enable swifter access to justice for those who need to come to a tribunal for justice, and concentrate the expertise of tribunal judges and members on deciding those cases that truly require judicial determination. Making greater use of technology is essential. This year we saw the passage of the Judicial Review and Courts Act 2022, which will make possible the creation of online procedure rules and help to facilitate increased digital access to justice.

In May 2022 HMCTS confirmed the acquisition of a new tribunals building in the City of London. This will ensure that there is a modern and flexible space for tribunal hearings in the heart of the capital. We expect the new building to accommodate hearings in the Employment Tribunal, the War Pensions and Armed Forces Compensation chamber and the Social Security and Child Support jurisdiction. It should be open for use by the end of 2023.

Equality, diversity and inclusion

The Diversity and Inclusion Taskforce is leading the implementation of the Judicial Diversity Strategy in the tribunals. This year the taskforce has taken forward several initiatives on improving equality, diversity and inclusion, including work to support career development. It has also continued to facilitate the sharing of good practice, both within the tribunals and between the tribunals and the courts. In May 2022, its chair, Judge Kate Markus KC, represented the tribunals at the first face to face conference and training event for the Diversity and Community Relations Judges. I would like to thank her and all the members of the taskforce for supporting this important work.

The 2022 judicial diversity statistics show some progress. Since 2014, the proportion of women tribunal judges has increased from 43% to 52%, and the representation of tribunal judges from ethnic minority backgrounds has increased from 9% to 12%. Among non-legal members, 56% are women and 18% come from ethnic minority backgrounds. However, the 2022 diversity figures also show evidence of disparity in outcomes from judicial selection exercises for ethnic minority candidates relative to white candidates. Whatever the explanation for that disparity may be, there is clearly much work to be done, now and in the years ahead, to ensure that our judiciary fully reflects the society and communities it serves.

The judiciary has brought in external expertise to help identify and analyse the extent and nature of the challenges to inclusion, including a deeper exploration of bullying, harassment and discrimination. This complements work that is already underway across the judiciary, under the direction of judicial leaders, and aims to build a better understanding of these issues so that training and other initiatives delivered in 2022 and beyond can address any underlying causes.

"One Judiciary"

In July 2022 I made a joint statement with the Lord Chief Justice and the Lord Chancellor reaffirming our shared commitment to create "One Judiciary". This project is about bringing the courts and tribunals closer together and creating a single judicial family to which all judges, members, magistrates and coroners belong, whichever their jurisdiction and wherever they sit. The "One Judiciary" project will support increased opportunities for cross-deployment, and it will promote an inclusive and collegiate culture throughout the courts and tribunals, without sacrificing anything of the style and strength of tribunals justice.

The joint statement marked an important step forward in the project and confirmed our intention to bring the tribunals and courts together under a unified leadership structure, headed by the Lord Chief Justice in England and Wales. The proposals involve reform to the role of Senior President of Tribunals and the new role will have standing equivalent to a Head of Division. The Senior President will continue to provide leadership for the tribunals in England and Wales through delegated powers and continue to lead the reserved tribunals in Scotland and Northern Ireland under separate statutory powers until the point of full devolution.

I would like to thank the Tribunals Judicial Executive Board for lending their expertise and insight to the development of these proposals. I must also recognise the important role played by the Lord President and Lord Woolman in Scotland and the Lady Chief Justice in Northern Ireland in working with us to ensure that the interests of the reserved tribunals judiciary in those jurisdictions are properly protected in these reforms.

Modernisation

Progress to modernise the tribunals has continued. Judicial engagement with HMCTS has been invaluable in shaping the design and implementation of new services.

In the Immigration and Asylum Chamber (First-tier Tribunal) more than 25,000 appeals have now been received online. The "Work Allocation" tool is now in use and the development of a digital service for bail applications is under way. In the Social Security and Child Support jurisdiction, 97,000 users have registered to use the "Manage Your Appeal" service since it was launched in February 2020. Social Security and Child Support will be the first of the tribunals jurisdictions to test the integration of the "Scheduling and Listing" programme later in 2022. There has been progress in introducing a digital service in the Employment Tribunals, which is now in the early stages of implementation.

The development of a core service for some of the special tribunal jurisdictions has begun. I recognise that there has been disappointment for those jurisdictions who are experiencing a delay to the start of their reform journey, and the Tax and the General Regulatory chambers which now find themselves outside the current reform programme. I shall continue to work with HMCTS to achieve the best possible outcome and to ensure improvements are made to existing systems wherever that can be done.

In June 2022 I set up the Tribunals Action Group to look at ways of improving working practices in the tribunals and to help us to achieve the full potential of the HMCTS reform programme. The aim of this group is to make the job of judges and members in the tribunals not only more efficient but also more enjoyable. We have so far considered opportunities to strengthen and expand the use of legal officers, support greater use of oral decisions and build on best practice in the writing of decisions. I am grateful to all members of the group for contributing their time, expertise and wisdom to this initiative.

Appointments

In the last financial year, the Judicial Appointments Commission completed five competitions for tribunal judges and non-legal members. A further eight competitions are in progress and due to conclude shortly. A total of 735 tribunal appointments were made this year in nine jurisdictions. I welcome all of those judges and members to the tribunals judiciary.

There have been several changes in leadership. Mr Justice Choudhury stood down as President of the Employment Appeal Tribunal at the end of 2021, and Mr Justice Zacaroli as President of the Tax and Chancery Chamber of the Upper Tribunal in February 2022. Mr Justice Fancourt's term as President of the Lands Chamber of the Upper Tribunal concluded at the end of July 2022. I am grateful to them all for their service to the tribunals and in particular their committed leadership during the difficult period of the Covid-19 pandemic. Mr Justice Lane will shortly step down as President of the Immigration and Asylum Chamber of the Upper Tribunal, a post he has held since October 2017. I am grateful to him for his long and dedicated service.

Mrs Justice Eady was appointed President of the Employment Appeal Tribunal. She brings a wealth of experience to the role, having sat in that tribunal for a number of years as a Senior Circuit Judge, before her appointment to the High Court. Mrs Justice Bacon was appointed President of the Tax and Chancery Chamber of the Upper Tribunal. She has sat in the Chancery Division since 2020 and has considerable experience relevant to the tax jurisdiction. Mrs Justice Farbey agreed to extend her term as President of the Administrative Appeals Chamber of the Upper Tribunal for a further year until the end of 2022. I am grateful to her for continuing in that role.

Judge Susan Walker has been appointed President of the Employment Tribunals in Scotland having previously served as Vice-President. She has extensive experience including expertise in judicial training. Judge Mark O'Connor was appointed President of the First-tier Tribunal (General Regulatory Chamber), having ably led the chamber as Acting President since August 2020. I offer them my congratulations on their respective appointments.

More recently, Mr Justice Edwin Johnson has taken on the Presidency of the Lands Chamber (Upper Tribunal), and Mr Justice Dove has been appointed President of the Immigration and Asylum Chamber (Upper Tribunal) beginning in October 2022. They have considerable jurisdictional and leadership expertise. I congratulate them both on their appointments and welcome them to the tribunals leadership community.

Retirements

In July 2022, Judge Shona Simon retired as President of the Employment Tribunals in Scotland. She has served as President with great distinction for 13 years and for five years before that as Vice-President. She has made an immense contribution to the work and well-being of the tribunals, both north and south of the border, and she will be much missed. We wish her a long and happy retirement.

The Rt Hon Sir Keith Lindblom

Annex A Upper Tribunals

Administrative Appeals Chamber
President: Dame Judith Farbey

The jurisdictional landscape

The Upper Tribunal (Administrative Appeals Chamber) (UTAAC) decides cases in a wide 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 Social Entitlement Chamber of the First-tier Tribunal (F-tT) relating to benefits administered by the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC).

Many social security appeals concern either Employment and Support Allowance or the Personal Independence Payment. These cases have continued to provide a rich source of procedural and other fairness issues. However, the flow of appeals relating to universal credit is now gathering pace. In the past year there have been several appeals concerning the transition from tax credit to universal credit (*SK v HMRC and SSWP (UC)* [2022] UKUT 10 (AAC); *JL v Calderdale MBC and SSWP (UC)* [2022] UKUT 9 (AAC); and *HMRC v RS (TC)* [2021] UKUT 310 (AAC)).

UTAAC deals with appeals from most of the varied jurisdictions of the General Regulatory Chamber (GRC) of the F-tT. Of these, the information rights jurisdiction continues to be the most resource-intensive. This area of law provides fertile ground for complex cases relating to Freedom of Information Act (FOIA) practice and procedure which may be heard by three-judge panels. In *FCDO v Information Commissioner, Williams and Others (Sections 23 and 24)* [2022] 1 W.L.R. 1132 the panel held that public authorities may specify the national security exemptions in FOIA sections 23 and 24 in the alternative as a means of protecting from disclosure the involvement of a specific national security agency. In *Montague v Information Commissioner and DIT* [2022] UKUT 104 (AAC) another panel held that FOIA exemptions could not be aggregated and that the public interest for qualified exemptions had to be assessed as at the date of the public authority's initial decision (and not at the point of any internal review or later). Meanwhile the special panel of two judges and a specialist member in *Killock and Veale v Information Commissioner* [2021] UKUT 299 (AAC) provided authoritative guidance on the interpretation of sections 165 and 166 of

the Data Protection Act 2018 and the GDPR, which concern the Information Commissioner's complaints handling duties.

UTAAC also decides appeals from decisions of the F-tT in the Health, Education and Social Care Chamber (HESC).

In the field of mental health, the Upper Tribunal found that the Mental Health Review Tribunal for Wales erred in law when it decided that it lacked jurisdiction to determine a restricted patient's application when, as a result of the Court of Appeal's quashing of his sentence of imprisonment for public protection, his categorisation changed from being a section 47/49 patient to a section 37/41 patient.

Appeals from decisions of the Disclosure and Barring Service are one of UTAAC's two initial appeal jurisdictions, in which UTAAC deals with matters of fact as well as law. In this jurisdiction permission to appeal must be obtained from a single judge and, if it is, UTAAC judges sit with specialist members when hearing substantive appeals.

In *MG v Disclosure and Barring Service* [2022] UKUT 89 (AAC), the Upper Tribunal considered when risks identified in relation to a sexual offence against an adult could properly be said to be 'transferable' to regulated activity with children. Given that the Safeguarding Vulnerable Groups Act 2006 defines a child simply as a person under the age of 18, there is no requirement that the person in question must have any particular sexual interest in children, merely an unacceptable risk that they would be tempted to exploit the vulnerabilities of a person under the age of 18 should the opportunity arise (whether or not they were aware of their age).

UTAAC's other mixed fact and law jurisdiction relates to appeals from decisions taken by Traffic Commissioners. These are regulatory decisions concerning, in large measure, the issuing or otherwise of licences to goods vehicle and public service vehicle operators or, in the case of serious breaches of regulatory requirements, the revocation of such licences. The pool of UTAAC judges who deal with this type of work has been expanded in order to meet the caseload.

Wales

The AAC's jurisdiction includes appeals on points of law against decisions of the Education Tribunal for Wales (ETW) and the Mental Health Review Tribunal for Wales (MHRTW), both of which are devolved tribunals. The main development within the AAC's Welsh jurisdiction was the establishment in September 2021 of the Education Tribunal for Wales (formerly the SEN Tribunal for Wales) which carries a right of appeal to the AAC.

The AAC continues to apply its long-standing policy of hearing Welsh cases in Wales. Very few face to face hearings were conducted in Wales while Covid-19 restrictions were in place, but the AAC resumed regular sittings in Wales in the summer of 2021. Most hearings are held at Cardiff Civil Justice Centre, but the AAC sits at venues throughout Wales as necessary.

Scotland

Judge Wright has continued in the role of the lead judge for UTAAC in Scotland. Fee paid judges continued to undertake most of the work of the Chamber in Scotland.

Northern Ireland

UTAAC currently has jurisdiction in Northern Ireland to deal with appeals from the F-tT in relation to freedom of information and data protection, certain environmental matters, certain traffic matters, the regulation of estate agents, consumer credit providers, and appeals in vaccine damage cases. It also hears appeals from the Pensions Appeal Tribunal in assessment cases.

Two salaried judges sit in Northern Ireland. They combine their UTAAC functions with their roles as Chief Commissioner and Commissioner, respectively (the specialised members of the judiciary appointed to hear and determine appeals on points of law from Appeal Tribunals under the Social Security and Child Support (SSCS) legislation in Northern Ireland). A number of UTAAC judges hold appointments as Deputy Commissioners in Northern Ireland, to provide assistance with the principal workload or sitting on a Tribunal of Commissioners where an appeal involves a question of law of special difficulty.

Reform

CE-File is now fully operational in UTAAC, with users now being encouraged to file their documents electronically on the CE-filing system. We are most grateful to Emma Ranaweera (Operations Manager) and her team who led the project to migrate UTAAC's data from our old database to the new electronic Case Management System that runs in parallel with CE-File. This was achieved smoothly at the end of February 2022.

In October 2021, I established a pilot for requiring an electronic bundle for certain types of hearing in which we can be confident that the parties have the IT resources to meet our requirements. I am grateful to all users who have changed their ways of working so as to meet the objectives of the pilot. I am particularly grateful to those members of the chamber's Social Security User Group who shared their views on what was achievable within the precious resources of the publicly funded advice sector.

The pandemic forced us to be more flexible in the ways we deliver justice and we are keen to retain those adaptations which enhanced access to justice. While the past year has seen a return to face to face hearings being the norm, the chamber has continued to direct remote hearings whenever that is the format that best serves the overriding objective, as some parties face considerable challenges attending physical hearings.

Equality, diversity and inclusion

Following an expressions of interest exercise, I have established and currently chair the UTAAC Equality, Diversity and Inclusion Committee comprising Judges Church and Rowley, Deputy Judge Ovey and Specialist Member Rawsthorn. The Committee's purpose is to further the Judicial Diversity and Inclusion Strategy 2020-2025 within UTAAC. The Committee will oversee practical steps to enhance diversity and inclusion not only among its salaried and fee-paid judges, but also among its non-legal members.

People and places

There have been several retirements from the chamber this year. Upper Tribunal Judge Howard Levenson retired from salaried office on 3 January 2022. Judge Levenson was appointed as a Chairman in the Independent Tribunal Service in July 1986, a salaried Social Security and Child Support Commissioner in November 1997 and became a salaried Judge of the Upper Tribunal assigned to the AAC in November 2008. Upper Tribunal Judge Paula Gray retired

from salaried office on 8 March 2022. Judge Gray has become a Deputy Upper Tribunal Judge in the chamber and continues as President of the Gender Recognition Panel. Also, a former salaried judge in the Chamber, Deputy Upper Tribunal Judge Alan Gamble fully retired from judicial office in April 2022.

The following fee paid specialist members retired: Gareth Jones, Andrew Wetnall, Malcolm Clarke, Caroline Joffe, Mike Flynn, Jean Nelson, Michael Jones, Jennifer Cross, John Randall, David Wilkinson and Roger Creedon. I am also sorry to report that Lesley Milliken passed away in February 2022.

In June 2021 Registrar Viet Ly left the chamber to become a salaried judge in the First-tier Tribunal Social Entitlement Chamber.

The valuable contributions to the chamber's work of all those who have left the chamber this year will be greatly missed.

In terms of new appointments, on 21 February 2022 and 14 March 2022 Judges Zachary Citron and Moira Macmillan joined as salaried judges. Judge Citron joined us from the First-tier Tribunal Tax Chamber where he had been a Fee-paid Judge since January 2015. Judge Macmillan joined us from the General Regulatory Chamber, where she had been a salaried judge since January 2020. Prior to that, she was a salaried judge of the First-tier Social Entitlement Chamber.

Six new non-legal members were appointed to sit in Traffic/Transport on 4 January 2022: Sarah Booth, Martin Smith, Gary Roantree, Kerry Pepperell, Richard Fry and Phebe Mann.

In March 2022 Upper Tribunal Judge Rupert Jones and Deputy Upper Tribunal Judges Mark Sutherland Williams and William Hansen were authorised to sit in the High Court.

In December 2021 the Chamber bid a fond farewell to Elisabeth Portas, who left after 26 years of service and over 12 years as Head of the Chamber President's Office, and welcomed her replacement, Charlotte Halfweeg.

Finally, I would like to thank those members of the Bar and those solicitors who have offered legal services pro bono in some of the chamber's most complex cases. They have made a valuable contribution to our work.

Tax and Chancery Chamber
President: Dame Kelyn Bacon

After serving as the President of the Upper Tribunal, Tax and Chancery Chamber for over 3½ years, Sir Tony Zacaroli handed the baton to me in February this year. I am grateful for the warm welcome of both the judges of the Chamber and the administrative staff, who have all helped to enable a smooth transition.

Work in the Upper Tribunal, Tax and Chancery Chamber has gradually been returning to normal over the past year, with hearings resuming in person for most substantive appeals. Permission to appeal hearings are still mainly held remotely, using Teams or more recently the new VHS service. The continuation of remote hearings for these shorter applications is typically welcomed by the parties.

Following Brexit, the Tax and Chancery Chamber is the destination of appeals from decisions of the Trade Remedies Authority, as specified in the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019. At the time of writing, the first cases are being considered by the Trade Remedies Authority and the Chamber therefore awaits the first appeals under this route in due course.

Since the last annual report, two new High Court Judges have been appointed to the Chancery Division, Mr Justice Edwin Johnson and Mr Justice Leech, both of whom have been assigned to the Chamber. In addition to these, Upper Tribunal Judge Vimesh Mandalia has been cross-assigned to the Tax and Chancery Chamber from the Upper Tribunal, Immigration and Asylum Chamber, two existing deputy tribunal judges (Tracey Bowler and Nicholas Paines KC) have been cross-assigned to the Chamber, and three new deputy judges have been appointed to sit in the chamber (FTT Judge Anne Redston, Mark Baldwin and Vimal Tilakapala). The Chamber is delighted to benefit from the expertise of these new judges and we look forward to their contribution to the work of the Chamber.

On the staff side, Emma Ranaweera was appointed as the operations manager from February 2022, having been on a TRA contract since October 2020. Susan Brady and Hawa Kebe continue in post as delivery manager and team leader respectively, although Hawa will sadly be moving on shortly. There has unfortunately been a rather high turnover of clerking staff this year for various reasons. Our current longest-standing tribunal clerk is Andrew Upton, who

was joined in November 2021 by Nishat Tabassum. The remaining two clerk positions have been filled by agency staff on short-term contracts. It is hoped that in the next staff recruitment campaign the chamber will be able to recruit two full-time clerking staff to ensure continuity going forward.

Immigration and Asylum Chamber
President: Sir Peter Lane

The jurisdictional landscape

The changes wrought to the immigration jurisdiction by the United Kingdom's departure from the European Union (EU) mean that cases possessing a European element continue to be a particular focus of work, with the previous legislative framework continuing to be relevant for older appeals whilst the new post-departure regime assumes ever-greater significance. In *Geci (EEA Regs: transitional provisions; appeal rights)* [2021] UKUT 285 (IAC), the Tribunal gave a detailed exposition of the changed landscape. EU concepts such as "sham" marriages (otherwise known as marriages of convenience) and extended family members (durable relationships) received attention in *Saeed (Deception – knowledge – marriage of convenience)* [2022] UKUT 00018 (IAC) and *Singh (EEA; EFMs)* [2021] UKUT 319 (IAC) respectively.

The chamber has continued to be very active in its important and unique role as the giver of country guidance; a crucial component in ensuring consistent decision-making in protection claims and appeals. The countries which were the subject of comprehensive country guidance decisions in 2021/22 were Sri Lanka, Somalia and Ethiopia. In *XX (PJAK – sur place activities – Facebook) Iran CG* [2022] UKUT 00023 (IAC), the Tribunal gave country guidance on the consequences for a safe return of an Iranian national having posted anti-regime messages etc on *Facebook* whilst in the United Kingdom as an asylum seeker.

One of the effects of the pandemic has been to increase the use of technology which enables evidence and submissions to be given to a court or tribunal by video from a place, perhaps far distant from the courtroom. In *Agbabiaka (evidence from abroad; Nare guidance)* UKUT 286 (IAC), a Presidential panel considered the need for permission to be provided to the Foreign, Commonwealth and Development Office by a foreign state before evidence can be given to a tribunal sitting in the United Kingdom.

As well as those just mentioned, some indication of the breadth and depth of the chamber's reported cases can be seen from the UTIAC's Digest, set out in the Senior President's Annual Report.

In the past few years, we have referred in reported cases to the undesirability of "Cart" judicial review challenges of decisions of the Upper Tribunal to refuse permission to appeal from the First-tier Tribunal being seen as merely an untrammelled third or fourth opportunity to advance criticisms of that Tribunal's decision, which did not feature in the grounds presented to the Upper Tribunal. Any such concerns will, however, become irrelevant since section 2 of the Judicial Review and Courts Act 2022 will, in effect, abolish the "Cart" judicial review jurisdiction.

The Nationality and Borders Act 2022 (NBA 2022) received the Royal Assent on 28 April. This Act makes a number of significant changes to the law concerning international protection and to the appeals regime.

The First-tier Tribunal is to be given the function of deciding appeals against age assessment decisions in respect of persons from abroad who claim to be under 18. Currently, challenges to such decisions are brought by way of judicial review and are determined in the Upper Tribunal.

The NBA 2022 also provides that the Upper Tribunal will acquire a new appellate jurisdiction. Broadly speaking, there will be a right of appeal direct to the Upper Tribunal under new section 82A of the Nationality, Immigration and Asylum Act 2002 in certain cases where an individual makes a protection or human rights claim at a later stage in the process than the Secretary of State considers appropriate.

People and places

In 2021, we said goodbye to Upper Tribunal Judge Razia Kekic. Razia has been a stalwart of the immigration jurisdiction, both as a judge and, before that, as a practitioner. Her regular presence at Field House is much missed but we wish her all the best for a busy retirement, not least enjoying her status as grandparent.

Following the easing of Covid-19 restrictions, we have been able to resume sittings in Parliament House, Edinburgh and to re-establish the circuiting system in Manchester.

High Court judges are sitting in the Chamber again on a regular basis and we look forward to welcoming back judges of the Court of Session later in the year.

We welcomed Martine Muir as Head of the President's Office and, more recently, Laxmi Bhudia as assistant to the Principial Resident Judge and to the President.

Surrinder Singh and her administrative team continue to provide a first-rate service, in what are still somewhat difficult circumstances.

The range of activities undertaken by judicial colleagues, serving on committees and groups of various kinds, both within the chamber and more widely, is such that a great deal of this report would be taken up by naming and thanking them individually. I am extremely grateful to them all.

I must, however, pay specific tribute to my presiding judicial colleagues. Mark Ockelton, as Vice President, makes an enormous contribution to the chamber and to the wider immigration jurisdiction. Louis Kopieczek has continued to be a superb Principal Resident Judge, guiding us back towards post-Covid normality with a deft blend of compassion, insight and firmness, which commands the respect of his colleagues. Sue Pitt takes on the PRJ role with equal skill, during Louis's absence, whilst Judith Gleeson continues to be concerned for the chamber's deputy Judges, who are a vital resource and who have been suffering from the vagaries of the chamber's workload.

Our lawyers and caseworkers are a vital part of the chamber. We were delighted to welcome back Nadia Manzoor, following her 18 month secondment with the Law Commission.

Upper Tribunal Judge Melanie Plimmer has had another successful year as Judge in Charge of Training. Part of that success lies in her ability to encourage colleagues to get actively involved in delivering training, whether by giving presentations or acting as facilitators.

Reform

The main event of the year has been the adoption of CE Filing for our appeals and judicial reviews. This has involved a huge amount of work on the part of the administrative team at Field House. They coped magnificently. I am also grateful to my judicial colleagues, who have made useful suggestions as to how the system might be finessed to make it easier for a judge to navigate.

Diversity and inclusion

Last year, I mentioned that the Senior President of Tribunals had asked leadership judges to prepare plans to encourage judicial diversity. In the year that has followed, there has been a huge amount of activity on this front. In this regard, I am enormously grateful to Upper Tribunal Judge Gaenor Bruce, who has thrown herself into her lead role with vast energy and commitment.

The work has fallen into three areas. We have launched our Strategy to Promote Diversity and Inclusion in UTIAC. Our judges have supported and mentored prospective judges from within the profession. Meanwhile, Field House has continued its long tradition of outreach to pre-pupillage students, with two projects launched during 2021.

We began by drafting a strategy document, setting out how UTIAC aims to work towards and implement the goals set out in the Lord Chief Justice's Five Year Strategy on diversity and inclusion. Our working group comprised me and the Principal Resident Judge, Diversity Leads Upper Tribunal Judges Bruce and Melanie Plimmer, the Chair of our Welfare Committee, Upper Tribunal Judge Norton-Taylor, and our nominated Judicial Office Holder for Grievance, Reporting Wrongdoing and Whistleblowing, Upper Tribunal Judge Gleeson. Consultation with colleagues on the strategy was launched in June 2021, with the final draft being introduced at a training event held in February 2022. The Strategy is accompanied by an ever-evolving checklist of aims and tasks, which is regularly reviewed by Upper Tribunal Judge Bruce and me.

During the course of the year, UTIAC judges have seen the strategy implemented in several ways. Initiatives to improve inclusion and promote onward career progression have included the offer to all judges of one-on-one meetings with the President. The presiding judiciary now has a good view of colleagues' particular experience and interests. The PRJ has reviewed case allocation processes, ensuring there are appropriate opportunities to sit on panels (including with visiting High Court judges). Invitations for expressions of interest have been issued for a number of positions and roles within the Chamber, enabling judges who have not yet had the opportunity to do so to sit on the Reporting Committee and the Country Guidance Advisory Group; and to draft commentaries for case reports produced for judges by the Legal and Research Department.

Diversity and inclusion matters took centre stage during our training events, when colleagues were provided with a list of key contacts, policies and aims;

invited to contribute ideas; and encouraged to participate in implementing the Strategy.

The chamber's salaried judges have taken an active part in supporting and mentoring prospective judicial candidates from within the legal profession. As well as supporting individual candidates, our judges have worked with a variety of external organisations. These include the Inns of Court, the Law Society, CILEX, *Generation Success*, Access to the Bar and the Pre-Application Judicial Education Programme (PAJE). The intention is to provide training, mentoring and marshalling opportunities to candidates from diverse backgrounds. Moving forward, our deputies will have the opportunity to access one-to-one confidential career-progression mentoring from salaried colleagues.

Our offering has not, however, been limited to current lawyers. We have also spent much of the past year working with students who aspire to join the profession. A number of our judges have conducted outreach visits to schools, and we have played a key role in the establishment of *Advocates for Change*, a collaboration between the judiciary, Queen Mary (University of London) and Future Leaders, an organisation working to improve life chances for 6th formers in East London.

Going into 2022, there were over 200 young people from diverse backgrounds inducted into the programme and ready to marshal for judges at Field House and over 20 other hearing centres across London. Participants have had the opportunity to meet, and stay in contact with judges, and have benefitted not only from practical advice about how to go about entering the legal profession, but from wider discussions about the law, and why it might matter to them.

Feedback from students who have visited Field House in the past year has been extremely positive: *"I enjoyed every moment of my placement"*, *"this amazing opportunity was just outstanding"*, *"it was truly invaluable"* and *"it was a once in a lifetime experience"* are just a flavour (although one hopes the last comment will not prove correct).

Such is the success of the *Advocates for Change* programme that UTIAC judges who sit on circuit in Manchester are now working to roll out a similar project in the North West in the next academic year.

Running in parallel to the *Advocates for Change* programme, we have also established a relationship with Mansfield College, Oxford. Mansfield was selected because of its very diverse student body: 26.6% of its students identify

as black and minority ethnic, it has a high proportion of mature students and it was the first Oxford college to be recognised as a "college of sanctuary", with a number of scholarships being awarded to refugee and migrant students. It also has a longstanding emphasis on human rights law, as it is home to the Bonavero Institute of Human Rights. We have already hosted two Mansfield students as marshals, with more to come in the summer of 2022.

Lands Chamber
Chamber President: Sir Timothy Fancourt

The impact of the coronavirus pandemic on the work of the Lands Chamber has receded throughout the year. Reliable digital technology served the chamber and its users well during the pandemic and enabled us to continue to conduct hearings and resolve disputes without significant delays. With the benefit of experience forced on us by exceptional circumstances we have made permanent changes in some of our working practices while returning to others with a greater appreciation of their merits. Video appointments are now invariably the preferred option for routine case management hearings, and they remain available for other matters where there is a good reason to make use of them. Useful savings in cost and time have resulted for tribunal users without apparent adverse effects on the quality of the hearing or the outcome of the proceedings.

After May 2020, in the interests of public health, a number of large and complex hearings were conducted using remote digital technology, as well as a host of smaller cases, but during the year under review the necessity for these exceptional measures has diminished and the chamber's reliance on video technology to conduct substantive hearings has been scaled back. It is the firm view of the chamber's judiciary that a conventional in-person hearing provides a significantly better opportunity for participants in tribunal proceedings to present their case, especially where they do so without professional representation, for witnesses to engage fully in the process of giving evidence and for complex legal argument to be presented and debated. We do not intend to forego the real benefits of the conventional approach to in-person hearings except where the interests of justice are better served by all or part of a substantive hearing being conducted remotely.

A reliable and accessible digital platform is obviously a precondition for the conduct of any proceedings using remote technology. Where such resources are available, as they have been throughout the pandemic, they can make an important contribution to the flexible case management and proportionate

resolution of disputes, which is our constant aim. We await the next generation technology in the hope that it will be equally useful.

As anticipated in last year's report, CE-File, the digital case management system adopted by the Lands Chamber in 2020, was made accessible to all of our users from June 2021. CE-File is a database where Tribunal users can easily access all their cases, and a permitted method for sending and delivery of documents to the Tribunal. At present, the use of CE-File to commence new cases or file documents remains optional, but professional representatives have been encouraged to use it and there has been a welcome level of adoption in those jurisdictions where professional representation is the norm. Almost all new compensation and telecommunications references are now being filed using the digital platform and we will encourage parties bringing appeals from lower tribunals to do the same. We continue to accept documents filed by post, DX, fax, email or by hand.

Although the decision to replace paper files with a digital case management platform was unrelated to the pandemic, the new system made it possible for our staff and judiciary to work remotely and ensured that the business of the chamber continued to be administered effectively in difficult circumstances.

The total workload of the Lands Chamber increased by 12% in the year to April 2022, with 601 new cases being received. This represented a return approximately to the level of new work received in the year before the pandemic, but once again the total conceals significant variations in individual jurisdictions. Most notably, appeals from the Valuation Tribunals concerning business rates have not returned to former levels; although significantly up on last year, the number of rating appeals received in the last twelve months is only about half the number received in the year before the pandemic.

About one sixth of all receipts concerned rights of light (the Lands Chamber performs a largely administrative function in approving the entry of light obstruction notices) and were handled by the Registrar. The remainder of the new case load was split evenly between the Chamber's appellate and first instance jurisdictions (appeals from the Valuation Tribunal and the First-tier Tribunal (Property Chamber) in England and their equivalents in Wales; first instance references in compensation and telecommunications claims and applications for the discharge or modification of restrictive covenants).

Once again, a high proportion of applications for permission to appeal and appeals from the First-tier Tribunal (Property Chamber) concerned civil

financial penalties and rent repayment orders imposed on landlords for breaches of housing standards and licensing requirements. The new more punitive regime introduced by the Housing and Planning Act 2016 is now familiar to tenants and local housing authorities, who are increasingly making use of the significant remedies available against "rogue landlords". The application of the rent repayment regime to rent-to-rent arrangements remains to be finally settled by the Supreme Court, which has given permission to appeal in the case of *Rakusen v Jepsen ([2020] UKUT 298(LC))*. Meanwhile, a series of appeals from the Property Chamber has enabled light to be shone both on the basic operation of the regime and on the proper approach to the level of repayment orders. The absence from the statute of any guidance on how tribunals are to exercise their discretion when setting the amount of a repayment order has led to considerable uncertainty, and it is hoped that our decision in *Williams v Parmar ([2021] UKUT 244(LC))* and subsequent cases will lead to greater consistency and fewer appeals.

Only five appeals from the Valuation Tribunal were determined in the year under review. In *FC Brown Steel Equipment Ltd v Hopkins ([2022] UKUT51(LC))*, the Tribunal considered whether buildings on an industrial estate which were separated by an estate road but linked by a mechanised conveyor bridge spanning the road comprised one hereditament or two. If that appeal harkened back to an earlier industrial age, *Ricketts v Cyxtera Technology Uk Ltd ([2021]UK265(LC))* brought the Tribunal firmly into the twenty-first century and required it to determine whether "white space" in a data hall, not yet adapted to receive servers belonging to a particular customer, was capable of beneficial occupation and should be included in the rating list. Both cases illustrated how some of the most basic rules underpinning the modern rating system have their origins in judge-made principles established centuries ago.

The main focus of the Tribunal's compensation jurisdiction has been on Manchester and the North of England. In some ways the year has been relatively quiet, with only nine substantive decisions being published, but a number of these decisions concerned multiple references arising out of major public works schemes, including the Manchester Airport relief road and improvements to the M6 motorway in Lancashire. Compensation test cases often resolve issues of principle or establish valuation levels, which can then be applied to resolve numerous other claims along the route of a road or railway improvement scheme.

The regeneration of the centre of Salford gave rise to a claim for more than £11 million following the compulsory acquisition of a development site lying in the shadow of the Manchester Civil Justice Centre, in which the reference

was heard; the Tribunal valued the site at a more modest £6 million. The use of compulsory powers to assemble a site for the new Brentford Community Stadium in West London prompted another substantial compensation claim, this time for almost £20 million. The reference, *Pro Investments Ltd v London Borough of Hounslow ([2019]UKUT319(LC))*, is notable as probably the first occasion on which the Tribunal has determined an appeal against a certificate of appropriate alternative development before going on, at a subsequent hearing, to determine compensation. Once again, the Tribunal valued the land at a substantially lower figure than was claimed, though still awarding almost £11 million.

We are now in our fourth year of determining disputes under the new Electronic Communications Code introduced by the Digital Economy Act in December 2017. In the last year, 171 new references under the Code were received, representing more than a quarter of the Chamber's total case load. Despite this substantial body of new work, only six substantive decisions were handed down by the Tribunal in Code cases, compared to 13 in the previous twelve months. For the most part, the basic structure of the Code has already been mapped and the difficult issues of interpretation have been explained by the Tribunal in its earlier decisions. The most difficult of these have progressed to the Supreme Court where judgment is awaited in *CTIL v Compton Beauchamp* and *Arqiva v AP Wireless*.

Amongst the most significant of the Code cases which have been decided this year, *EE Ltd and H3G Ltd v Stephenson ([2022]UKUT180(LC))*, settled (for England) an important point concerning the renewal of Code rights on which there had previously been a divergence of views in Scotland.

The Code disputes which continue to arrive rarely raise any new issues of principle, and where that has been apparent, we have made increasing use of our power to transfer cases to the First-tier Tribunal (Property Chamber), which also has jurisdiction under the Code. Most new Code cases commenced in the Lands Chamber are eventually settled amicably but the statutory basis of valuation is so unattractive to site providers that there appears to be little incentive for them to cooperate until a relatively late stage. As a result, many more cases come to the Tribunal than ought strictly to be necessary, and we are very grateful to our colleagues in the Property Chamber for their willingness to share the unrewarding case management burden which these cases have come to represent.

We are also grateful to the parties in Code cases, and in particular to their professional advisers, with whose cooperation we have introduced a swift and streamlined approach to the administration of Code references. Legislation

to revise the structure of the Code is said to be in preparation and it is likely that, in future, the resolution of most disputes will be devolved to the Property Chamber, with the Lands Chamber limiting its first instance role to new points of principle and otherwise mainly acting in an appellate capacity.

Not all telecommunications cases fall within the jurisdiction of the Lands Chamber and there remains a residual body of litigation in the County Court concerning the renewal of leases of telecommunications sites under the Landlord and Tenant Act 1954. The Lands Chamber's judiciary have been willing to offer the Courts their expertise in these cases, to resolve issues of principle on the relationship between the new Code and the 1954 Act (particularly in relation to valuation). Our Judges are all entitled to sit in the County Court and with the assistance of our Chartered Surveyor Members (sitting as County Court assessors) and at the request of the County Court they have heard a number of landmark cases. This service has provided speedy and consistent decision-making and appears to have been well received, but as we have made clear to our users, it cannot provide an alternative to the Courts and is available in only a small selection of cases.

We have been fortunate once again in retaining almost all of our core administrative staff. It would not have been possible for the Lands Chamber to continue to function as efficiently as it has done over the last year had it not been for the dedication of our administrative staff, to whom, as ever, we are very grateful.

Annex B First-tier Tribunals

Social Entitlement Chamber
Chamber President: Judge Kate Markus KC

The Social Entitlement Chamber comprises three jurisdictions, Social Security and Child Support (SSCS), Criminal Injuries Compensation (CIC) and Asylum Support (AS). The jurisdictions of SSCS and CIC are Great Britain-wide and that of AS is UK-wide. SSCS is divided into seven regions, each led by a Regional Tribunal Judge. SSCS and AS are each led by a Principal Judge.

During the period since the last Annual Report, the Chamber has continued to adapt to considerable change. This includes the continuing effects of the Covid pandemic on the operation of the Chamber and significant developments in Reform as explained below. All of the judiciary, along with tribunal case workers and administrative staff, have continued to demonstrate resilience, flexibility and commitment and so ensured that we have been able to process cases and determine appeals in the interests of justice.

Social Security and Child Support

Jurisdictional landscape

I described, in last year's report, the way in which the tribunal had quickly and effectively adapted to conducting remote hearings in response to the Covid pandemic. Even when the second national lockdown ended in 2021, the requirements of social distancing and other government guidance meant that we continued in this mode until the autumn. Towards the end of the year, the tribunal started to list an increasing number of hearings face to face. In doing so, the needs and circumstances of the parties and the availability of suitable venues at which face to face hearings could be conducted safely were paramount considerations. The gradual resumption of face to face hearings was interrupted by the spread of the omicron variant during the winter of 2021/22, but all regions are now listing a large number of hearings face to face. However, there is a significant proportion of cases for which remote hearings remain the most suitable mode and we continue to list accordingly.

Remote hearings have increasingly been conducted by video (Cloud Video Platform, or CVP) although many are conducted by telephone, largely where

appellants do not have access to kit or internet connections sufficient to participate in a video hearing. CVP will continue to be available in April 2023 and, in the meantime, a new video service (VHS) has been in development. In SSCS, we have been piloting VHS in Scotland. There have been a number of problems experienced with VHS which have meant that it has not yet been rolled out across the chamber. The administration and judiciary in Scotland have worked hard with the VHS Project Team to identify and address these problems.

The reduction in receipts experienced at the outset of the pandemic continued into late 2021 but they have increased substantially since then. Further increases are predicted. The live load has also increased, although it remains far lower than it had been at the outset of the pandemic.

Reform

Much has been achieved in SSCS Reform over the last year. We already had a system whereby most of our appeals started digitally, either through the online appeal called 'submit your appeal' or through the bulk scanning process. The latter ensures that appellants (in SSCS we have a high proportion of vulnerable unrepresented appellants) are not digitally excluded: a paper appeal form or even a handwritten letter can be scanned in and the appeal then processed digitally.

The next big step was the introduction of digital bundles. After training the judiciary, including a series of 21 webinars, these were rolled out first in one region from 1 September 2021. Judicial office holders access bundles digitally in the case management system core case data (CCD) through the judicial case manager (JCM) tile on eJudiciary. A huge amount of paper, postage and transport costs have been saved as a result. The roll out would not have been possible without many hours of judicial input from the Reform and training leads in particular, and without the dedication of our salaried and fee-paid judiciary.

The end of October saw the release of digital decision notices for digital appeals. The judge generates a digital decision notice in JCM using a pre-populated template. The option to upload a bespoke template is retained for maximum flexibility. Digital decision notices bring increased accuracy and consistency whilst maintaining the requirement for case-specific summary reasons.

The Respondent to the appeal (usually Department for Work and Pensions (DWP)) can access cases digitally in CCD and this reduces delay.

Further releases during 2021 included Welsh translation, the ability for parties to upload audio and video evidence, and for hearing recordings to be stored on CCD.

However, it became apparent that a digital end to end process could not be delivered by the end of December 2021, as had been planned, and the SSCS Project was extended to November 2022. The delivery of Reform in SSCS is dependent on developments out of the control of this jurisdiction, including many of the 'common components'.

The next step will be the digitisation of benefit appeals against decisions by HM Revenue & Customs (HMRC), most commonly tax credits and child benefit. This has been held up by the access management component which will ensure that DWP cannot see HMRC appeals and vice versa.

There are three other significant steps in SSCS. One is to make the post hearing process digital so that any applications made once an appeal has been decided can be considered and dealt with digitally through JCM. This in turn is dependent on the work allocation common component. Work allocation will improve the way judicial office holders access the cases allocated to them to decide and the way interlocutory work is managed. The third step is the digitisation of the scheduling and listing process. SSCS are the lead tribunal for the roll out of List Assist which will automate some aspects of the allocating of sessions and listing of appeals.

Training

The 2021/22 training year has, once again, been extremely busy and successful. Building on the experience of moving to digital training last year, it was possible to re-introduce a full continuation training programme for all judicial office holders, which was well received, including face to face residential training for judges.

A more flexible approach was possible for some induction training as Covid-19 restrictions were gradually relaxed. Although 77 new disability qualified tribunal members and 25 new financially qualified tribunal members were inducted digitally, it was possible to split the induction of other tribunal members as the year progressed. This allowed 194 new medically qualified tribunal members and 19 new salaried judges to receive some jurisdictional training face to face. Although this brought some challenges, it served as a reminder of the

importance of face to face induction training, and the benefits that informal face to face learning opportunities provide.

Salaried judges and regional medical members attended face to face training in October 2021 for the first time since March 2019.

The jurisdiction is hugely indebted to its training committee, and others, who have contributed to this year's programme by preparing and delivering the highest quality training. The jurisdiction is also extremely grateful to colleagues in the Judicial College for their advice, support, patience and hard work.

Significant cases

It is now nine years since the first claims for universal credit (UC) and the SSCS tribunals are having to wrestle with novel issues thrown up by the way that the UC system has been designed and implemented, assisted by guidance from the Upper Tribunal and higher courts. An example of one such case is *Pantellerisco v SSWP* [2021] EWCA Civ 1454. This concerned the UC rule which set the threshold for earnings above which a person is exempted from the benefit cap. UC requires a *monthly* calculation of earnings, but the claimant here was paid on a four-weekly cycle rather than by calendar month. This meant that in 11 months of the year the level of her earnings was below the threshold for exemption from the benefit cap. Giving the lead decision, Lord Justice Underhill decided that the Secretary of State's reasons for using a monthly earnings-related threshold were "legitimate and cogent". In *SSWP v Johnson and others* [2020] EWCA Civ 778, there was a "quirk" of double payment of wages in some months due to the mechanics of bank payment dates which the court held could be solved essentially by "fine tuning". In contrast, *Pantellerisco* would require a "wholesale departure from a fundamental policy choice of precisely the kind with which the court should be slow to interfere".

Another complex area in relation to UC is the 'migration' of claimants from older benefits, known as 'legacy benefits', to UC. *R (TP and AR) v SSWP* [2022] EWHC 123 (Admin) concerned those receiving Severe Disability Premium (SDP) who migrated 'naturally' (i.e. due to change in their circumstances which 'triggers' a claim for UC). The claimants effectively lost this premium upon migration and challenged the lack of transitional protection against the effect of a sudden reduction in their benefit income. The High Court decided that the failure to compensate these claimants amounted to unlawful discrimination contrary to the European Convention of Human Rights.

Decisions on the question of the "right to reside" continue to have an impact on the work of SSCS tribunals albeit, post-Brexit, to a lesser extent. Following Brexit and the EU Withdrawal Agreement, the UK government has provided a temporary right to reside for EU nationals, known as 'pre-settled status'. The claimants in *Fratila v SSWP* [2021] UKSC 53 were Romanian nationals whose only right to reside was through their pre-settled status and they were refused UC due to amendments to the UC Regulations made in 2019 which excluded pre-settled status from giving rise to a right to reside in the UK. The Court of Appeal accepted that the exclusion of a right to reside in the 2019 regulations discriminated against them because of their nationality in breach of EU law. However, the Supreme Court upheld the Secretary of State's appeal against that decision following an earlier judgment of the European Court of Justice on similar facts (*CG v Department for Communities*, Case 709/20). *CG* had decided that the question of whether an EU national faces discrimination is to be assessed under article 24 of the Council Directive 2004/38/EC (the 'Residence Directive'). The claimants were only able to rely on the Directive to establish their claim for discrimination if they resided in the UK in accordance with that Directive and they could not do that because they did not have sufficient resources to avoid becoming an 'unreasonable burden' on the UK social security system.

Finally, although the 'transition period' for implementing the EU Withdrawal Agreement ended at the end of 2020, some cases still arise in the SSCS jurisdiction which were decided before that date and in those cases the judgments of the European Court of Justice must still be followed. The case in *VI v HMRC* (Case C-247/20) concerned whether entitlement to child tax credit and child benefit of a non-EU national who worked and paid tax in the UK and had a right to reside, derived from being the primary carer of her young son, an EU national. There were periods when the claimant and her son did not have comprehensive sickness insurance and the issue was whether this was required during those periods in order for her to have a right to reside. During those periods the claimant and her son had been affiliated to the UK's public sickness insurance system offered free of charge by the NHS. The Court decided that this met the requirement for comprehensive sickness insurance and, as the child's parent had worked and was subject to tax during the relevant periods, it would be disproportionate in these circumstances to deny the child and his parent a right of residence as they did not constitute an 'unreasonable burden' on the state's public finances.

Asylum Support (AST) (Principal Judge: Sehba Storey)

The jurisdictional landscape

During the pandemic, an amended timeframe was implemented for the receipt of evidence and determination of appeals. The AST has continued to operate with a slightly extended timeframe, as this has led to increased compliance with directions and more information from which to fairly determine appeals. The AST maintains contact with its users to evaluate the impact of the increased timeframe, with a view to considering a permanent change.

Whilst the AST returned to listing in person hearings as the default, we continue to make use of remote hearings where appropriate. This has greatly assisted access for appellants and their representatives, particularly for those who are based at a considerable distance from the hearing centre. This has included the use of CVP screens to enable hybrid hearings, resulting in a flexible approach to hearings which best serves the interests of justice. A new version of the Notice of Appeal form was approved and implemented this year, which provides more information for judges to determine the most appropriate form of hearing.

With effect from 1 August 2021, a determination by Scottish Ministers has provided for the payment of legal aid fees for representation before the AST for appellants based in Scotland. This has led to increased legal representation before the AST for appellants based in Scotland. Legal aid is not available for appellants based in England, Wales or Northern Ireland.

Significant cases

The is no statutory appeal to the Upper Tribunal from the AST and the only remedy is judicial review in the Administrative Court. Few decisions are challenged in the Administrative Court.

The previous report referred the decision in *AM* to the effect that there was a positive obligation on the Secretary of State to accommodate the appellant so as to protect him from the risks posed by Covid-19. The Secretary of State's application for judicial review was successful.

In *AS/22/01/43710* the Principal Judge held that, where an asylum claim has been implicitly withdrawn, the claim has not been rejected within the meaning of Section 4(2) of the Immigration and Asylum Act 1999. In these circumstances there was no entitlement to Section 4(2) support, but there may be an entitlement to support pursuant to Schedule 10 of the Immigration Act

2016. The Principal Judge gave guidance on the correct procedure required for an asylum claim to be implicitly withdrawn.

Training

After two years of delivering remote training, AST returned to in-person training events in November 2021. The annual training conference was innovative and exciting, with discussions on topics covering equality and inclusion, including race awareness and the menopause. Judges addressed the effects of the menopause on appellants, witnesses and judges and how to make reasonable adjustments so as to enable appellants to give their best evidence. Participants explored their relationship with race, as well as how race-related issues might affect black and ethnic minority appellants giving their evidence and judicial interaction with colleagues. The conference attracted much interest and was attended by representatives of the Judicial College and observers from other tribunals interested in adapting our programme for their use.

People and places

In September 2021, the AST was joined by Tribunal Judge Eileen Sproson as a full-time salaried judge. We said farewell this year to judges Richard Briden and Christine Dodgson. Their contribution to the work and collegiality at the AST is much appreciated and they will be missed.

Reform

The AST has engaged with the Special Tribunals Reform Project, which aims to deliver an end-to-end digital service in the ten smaller tribunals. However, it has recently been decided by HMCTS that at this stage the digital service will not be delivered in AST. AST continues to operate the changes introduced in response to the pandemic - appeals are lodged and communications with parties are by email, digital appeal files are created, case management is conducted remotely, and bundles are submitted electronically.

Criminal Injuries Compensation (CICT) (Acting Principal Judge – Ita Farrelly)

Jurisdictional landscape

Appeal receipts have largely returned to pre-pandemic levels and have increased between April 2021-April 2022. The Tribunal continues to operate nationally using the CVP telephone and video platform. A small number of cases are listed for face to face hearings, in accordance with victim requests and to achieve best evidence.

The live load has decreased but not significantly. The hearing clearance rate has decreased but not significantly. The number of disposals has increased, due to new processes in prehearing work and case management discussions. These processes have enabled an increase in decisions without a hearing. The introduction of regional salaried interlocutory leads and the development of Tribunal Case Worker (TCW) skills to enable them to handle a wider range of work has resulted in greater efficiency and disposals.

The jurisdiction continues to develop the use of Case Management Discussion to resolve appeals, where appropriate without the need for an oral hearing. TCWs also undertake these discussions and there is a triage system in place.

Training

Training events have recommenced. The CICT annual conference was held digitally in November 2021. The CICT will continue to facilitate both in-person training events and online events over the next 12 months.

The entire CICT Directions and Decision Notice templates, all Practice Directions, Practice Statements and Guidance and post hearing information provided to the parties have been reviewed and updated where appropriate.

The Glasgow Tribunal centre have worked tirelessly to support the new interlocutory procedures, post hearing procedures, the reorganisation of physical files into regional and date order and the increase in the number of venues that can support face to face hearings to limit victim travel. As a result of HMCTS and the Judiciary working together, the CICT now have six additional venues nationally supporting face to face case listing.

Reform

The CICT is the first of the smaller tribunals to benefit from digital reform. The product has been designed with administrative, judicial and stakeholder input. Scheduling and Listing remains an issue and will require a manual work around. It is hoped that a high level of cases can be fully digital (save for listing actions) and digital pro forma decision notices have been provided to the reform team.

The CICT has engaged with the Video Hearing Service pilot in Glasgow.

Diversity

The Diversity & Inclusion (D&I) lead for CICT is DTJ Angus. D&I is an agenda item in all training & advisory committee meetings and has a segment at every training event. The CICT quarterly newsletter features a D&I update. The jurisdiction has four Diversity and Community Relations Judges (DCRJs) and three are Focal Point Leads.

Legislative changes and significant cases

We await the Government's response to the proposed reform of the 2012 Criminal Injuries Compensation Scheme.

The number of applications for judicial review of the tribunal's decisions has been, and remains, relatively low.

The Upper Tribunal has given judgement in CICT cases concerning online grooming and fear of violence (*CICA v RC & RN*)([2022UKUT103(AAC)), FtT discretion to reduce award and insufficient findings of fact (*NSP v Stoke on Trent City Council*)([2022]UKUT86(AAC)), loss of earnings (*CM v FtT*)([2021] UKUT326)AAC)), adequate consideration of self-defence or defence of another (*JP v FtT*)([2022]UKUT49(AAC)), and the UK residency requirement (*MP v FtT*)([2022]UKUT91(AAC)).

The Supreme Court decision in *A and B v CICA (UKSC2019/0055)*, confirmed that excluding victims of human trafficking from compensation under the Criminal Injuries Compensation Scheme did not unjustifiably discriminate against them in breach of Article 14 taken with Article 4 of the European Convention on Human Rights.

People and places

DTJ Ita Farrelly took over from RTJ Adrian Rhead as Acting Principal Judge on the 1st November 2021.

There have been several fee paid judicial office holder retirements.

The Tribunal has recruited specialist lay members, medical members, financially qualified members and a salaried judge through expressions of interest exercises.

The Judiciary have responded to considerable change with resilience, support and flexibility, and tribute must be paid to HMCTS staff implementing new pre-hearing processes and post-hearing procedures.

Diversity and Inclusion in the Social Entitlement Chamber

Diversity and Inclusion (D&I) has permeated much of the work of the Social Entitlement Chamber (SEC) over the last 12 months and there has been great interest and enthusiasm from Judicial Office Holders (JOHs) about these important issues.

In June 2021, expressions of interest were sought from fee paid and salaried judges and specialist members to form a D&I Committee. The Committee was established in August 2021. Members bring a wide range of experience – professional and personal – in D&I matters and equally as important a strong commitment to making the Chamber and judiciary more inclusive and more reflective of the society we serve.

The Committee worked with the Chamber President to draw up a D&I Plan for the SEC which addresses each of the four core objectives of the Judicial D&I Strategy. This was published in November 2021 and will be reviewed annually. The Committee has an active work programme, informed by the Plan, and involves much communication between its members and the judiciary, the Judicial Office, the SPT's Diversity Taskforce, Diversity and Community Relations Judges, Focal Point Leads and Regional/Jurisdictional Leads.

Expressions of interest for D&I Leads were invited from salaried judges in each Region of the SSCS and CIC Tribunals and from fee paid judges in the Asylum Support Tribunal. In February 2022, eight Leads were appointed. Their role is to liaise with leadership judges and judicial office holders in their Region or jurisdiction; be a point of contact for enquiries about career progression,

reasonable adjustments and HR policies; assist with training; report to their regions and work with Focal Point Leads to address behaviour of concern.

The chamber's website has a new D&I tile with the content being updated regularly. D&I forms part of the training for all induction and refresher courses and it was the theme of the SSCS Salaried Judges' Conference this year.

Health, Education and Social Care Chamber
President: Judge Mark Sutherland Williams

The Health, Education and Social Care Chamber (HESC) is one of the largest constituent branches of the First-tier Tribunal and is an integral part of the overall justice system within the courts and tribunals of England and Wales. We deal with more than 40,000 appeals and applications, list over 50,000 judicial sitting days, and conduct some 18,000 hearings per year - serving thousands of appellants, vulnerable individuals and families annually.

The Chamber comprises four principal 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 team comprises two Deputy Chamber Presidents, Judge Meleri Tudur – who has primary responsibility for the SEND, Disability Discrimination, Care Standards and Primary Health Lists jurisdictions, and Judge Sarah Johnston - who has primary responsibility for the mental health jurisdiction, together with the Chief Medical Member, Dr Joan Rutherford, who has a leadership role for specialist medical members who sit in mental health.

Accessible justice

While emergence from the pandemic has been slower than we had anticipated, important lessons have been learned during the pandemic, changing the way in which this Chamber approaches its delivery to the services we provide and the way in which we work. The last two years have seen us pivot more towards technology, which in turn has led to us conducting the majority of our hearings remotely. As a result, we are now able to offer accessible justice in all our hearings by operating a video hearing service, together with some in-person hearings in court locations throughout England in SEND appeals, and

in England and Wales in Care Standards and Primary Health List cases. We also have the option of sitting in hospitals and in hospital trust premises in England in Mental Health cases. Many of our stakeholders have been open to these modern working practices and the positive gains made from the use of both video and flexible hybrid hearings to deliver justice.

With the resumption of the HMCTS Reform programme, it is anticipated that further changes to our ways of working will be introduced over the coming year, with the aspiration of building upon, and continuing to improve, the service provided to our users across our main jurisdictions.

One expression of our commitment to providing accessible justice and information is the launch of an **external web presence** hosted on the 'Judiciary.uk' site, which we hope will help provide an integrated view of our Chamber. We will be developing and adding content to the site over time.

Sitting alongside our commitment to providing accessible justice is our commitment to judicial outreach. We are proud of our extensive work in this area, which forms part of the Senior President of Tribunal's drive to increase diversity and inclusion within the judiciary and to provide those we serve with a window into the work of our chamber. In 2021-22, notwithstanding the restraints of the pandemic, HESC was able to host a variety of student visits and our judicial officeholders attended speaking engagements remotely (both in and outside the jurisdiction), together with organising a number of wider outreach events, including three judicial careers evenings conducted online that allowed over 200 professionals to find out more about the work of our chamber and the judiciary, helping demystify the application process and encouraging those from all eligible backgrounds to apply. We are committed to continuing this work in the years to come.

The jurisdictional landscape

The Mental Health jurisdiction

The Mental Health jurisdiction is currently still conducting all hearings remotely. The patient population is particularly vulnerable to Covid given that they are detained together, and research suggests that those suffering from a mental health diagnosis are significantly more at risk. Applications for face to face hearings are currently being considered on a case-by-case basis. Plans are underway to consider a return to face to face hearings at some point later this

year, Covid permitting, and if the patient/applicant indicates a preference for that form of hearing.

During the pandemic, the amended Procedure Rules enabled the Tribunal to consider cases that were referred to us on the written evidence. This was only done in cases where the legal representative applied for the reference to be disposed of without a hearing. The decision was made by a Judge sitting alone, with the discretion to order a full oral hearing if required. The ability for judges to sit alone made a significant contribution to the efficient working of the chamber and the delivery of justice at the height of the pandemic. It also lessened the distress to the patient in circumstances where they did not wish to attend or contest their detention. This form of amendment has a number of benefits, and the chamber is considering its long-term future, following consultation with stakeholders through the Senior President's Office.

Another change, introduced as a result of Covid, but which is likely to benefit both the administration of justice and our users, relates to the listing of section 2 hearings. In 2019, we asked the Tribunals Procedure Committee to change the Rules for listing section 2 hearings from 7 days to 10 working days. This was subsequently introduced as part of the Covid measures, and it is our intention to renew our application to the Tribunals Procedure Committee to make this a permanent change to the listing of section 2 cases.

Beyond the above, we have continued to examine those cases that are adjourned on multiple occasions and those which are, for whatever reason, not concluded within ten months. Our judicial case management policy has also been repurposed to enable our District Tribunal Judges to case manage the more complex cases in the jurisdiction.

The biggest potential forthcoming change to the Mental Health jurisdiction remains the recommendations of the Independent Mental Health Act Review led by Sir Simon Wessely.

A White Paper has been produced, a consultation undertaken, and it appears any remaining steps to finalise the new legislation are likely to take place this year, possibly before the start of the summer of 2022. The new Act has the potential of increasing the Mental Health jurisdictional workload considerably, as well as phasing in other changes to the way in which the tribunal operates. It is likely to add new types of cases to the jurisdiction, which may include 'objection to treatment' applications and the displacement of Nearest Relatives (who may become Nominated Persons under any new scheme). At the time of writing,

the final changes have not been confirmed, but judges in the jurisdiction have from time-to-time been involved in multiagency Mental Health Act Strategic Workforce planning and are usually consulted when advice is needed on the effect of the law, current practice and procedure, and the suggested impact of any possible future legislation.

The Mental Health workload

The workload in Mental Health continues to be steady. We hear about 17,500 cases a year from about 35,000 applications. Thanks to video hearings, there is no backlog from Covid, and we continue to keep up to date through using remote hearing technology. A new Video Hearing System ("VHs") is currently being piloted within HMCTS, and the Mental Health jurisdiction proposes to switch to this new capability once it is ready to launch.

A return to face to face hearings at hospitals and trusts is in the planning stage and will look to accommodate in-person arrangements where the patient wants that form of hearing or where there is another reason that the hearing must be face to face. The progress of Covid and the risk assessment for returning to face to face hearings is regularly reviewed by the Senior Management Team within the Health, Education and Social Care Chamber, and updates are shared with stakeholders at the regular Stakeholder meetings that take place, and with tribunal members through liaison with the Mental Health Tribunal Members Association (MHTMA).

Applications for face to face hearings have been relatively few to date, and about 35 have been granted due to the patient's individual needs. One of the considerations that presently has to be weighed before the grant of a face to face hearing is the approach of the NHS and the hospital to Covid risk, including whether the hospital can provide a room with sufficient space and ventilation to enable the hearing to proceed in a way that is conducive to the concerns and safety of the patient, other attendees and the panel.

Pre-hearing examinations (PHEs) are being undertaken in 60% of hearings, which is a return to pre-pandemic levels. PHEs are being done remotely and despite occasional technical issues, we can report that very few hearings (between 1-5%) have had to be adjourned solely because a PHE could not be carried out.

Data in the Care Quality Commission's report, published on 21st February 2022, serves to demonstrate that there has been little overall change in the Tribunal's discharge rate, notwithstanding the pandemic and remote hearings.

Meeting the needs of our users in Mental Health

The collaboration between the Mental Health jurisdiction, South London and Maudsley NHS Foundation Trust and the Royal College of Psychiatrists has led to a greater focus on reasonable adjustments for patients in remote hearings.

The Mental Health jurisdiction's administration now automatically grants a full hearing day listing for all virtual hearings for patients under 18 and those who require a language or British Sign Language interpreter. In addition, an application from the patient's legal representative and/or the patient's clinical team for a full day hearing for reasonable adjustments to be made, because for example, a patient with intellectual disabilities requires breaks to process information, will be considered by a District Tribunal Judge in the usual way, as would a request for a whole day because of complex evidence. Furthermore, for patients with intellectual disabilities, tribunal decisions can now be made available as easy read versions on request.

As part of our commitment to outreach, our liaison judge has also assisted the South London and Maudsley NHS Foundation Trust to produce a video on the user-experience for a typical mental health tribunal.

Internal Mental Health Tribunals processes and procedures in Mental Health

Each District Tribunal Judge (DTJ) within the jurisdiction has a liaison area or district, providing both pastoral support for local members and a contact point for local Trusts and professional users. Following a successful pilot in the North East, regional meetings arranged by DTJs for all members who work in their district have been rolled out nationally to help keep judicial officeholders abreast of changes in practice and procedure.

Remote appraisals of judicial office holders have continued, and this has enabled the jurisdiction not only to stay up to date with judicial appraisals, but to clear the backlog that arose when they were placed on hold at the beginning of the pandemic.

The Special Educational Needs and Disability jurisdiction

From 1 September 2021, the Special Educational Needs and Disability (SEND) jurisdiction was extended to include a power to make recommendations in respect of health and social care issues, following the conclusion of a government pilot called the National Trial. The volume of appeals registered under the National Trial far exceeded the original approximates and provided good material for analysis of the benefits of a "One Stop Shop". As the 2018 Regulations did not contain a "sunset clause", the extension has simply continued as part of this jurisdiction's business.

More generally, notwithstanding the significant gains made in workload management and the throughput of cases up to September 2021, the number of appeals and claims registered has continued apace and the total number of appeals and claims registered during the 2021-22 financial year has crossed the 10k mark. The total number was significantly higher than anticipated and called for further reflection on the methods the jurisdiction deploys in order to increase the throughput of cases to meet the demand. That exercise has led to the introduction of flexible timetables for appeals to ensure that those appeals which require a placement decision on a phase transfer for September 2022 are heard, as far as possible, before the end of the academic year in July.

Despite the huge increase in the number of listed hearings during 2020-21, the SEND jurisdiction has regrettably still had to revert to the postponement of some hearings due to a lack of judicial resources. Fortunately, the recruitment of both judges and specialist members continues, as does the induction training and mentoring of new recruits and further appointments are anticipated during 2022.

Further, to meet the increased demand, the HMCTS administration for the jurisdiction has continued to expand from Darlington to Bradford, Loughborough and Leicester, with additional teams dealing with the increased workload and offering technical support in video hearings.

In March 2022, the government published a Green Paper setting out its proposals for a further overhaul of the statutory framework underpinning the work of the SEND jurisdiction. Entitled "SEND Review – right support, right place, right time", the paper's consultation period for responses ran until the beginning of July 2022.

Meeting the needs of our users in SEND

The judiciary have worked on two research projects over the past year: the first as a collaboration between HMCTS and a research team from Oxford University, to produce a suite of short public information films to enable unrepresented parties to prepare for video hearings. Entitled, **"Supporting Online Justice"**, the project produced as its initial product a film bespoke to the First-tier SEND jurisdiction. It is accessed on YouTube, can be downloaded, saved and revisited as many times as the user wishes. The films were launched at an online event on 10 March 2022. There are five films in total, covering a range of tribunals and courts jurisdictions.

The second research project by the Nuffield Foundation is looking at **"Delivering administrative justice after the pandemic"**, considering the relative positions of tribunals and ombuds and will be completed by February 2023.

The jurisdiction continues to reflect on its working practices in an attempt to improve the service for our users, and the Judicial Alternative Dispute Resolution ('JADR') initiative launched in the summer of 2021 has proved to be both effective and popular as a result. The initial small pilot has been extended, with judges undertaking JADR hearings daily. The success rate in either resolving the appeal or narrowing the issues is consistently over 50%, presenting an early resolution for the users and, as importantly, an effective use of judicial time.

The SEND jurisdiction has identified additional untapped judicial capacity available for evening and weekend sittings and was able to offer that additional capacity to deal with the huge influx of phase transfer appeals which are to be heard over the summer of 2022. Although the jurisdiction will be able to deal with paper cases by undertaking evening work, weekends and August hearings to extend the hearing capacity, the offer of live video hearings at those times was rejected by our users in an online survey.

The Care Standards and Primary Health Lists jurisdictions

Appeal numbers in Care Standards have yet to return to the 2019–20 peak, but registered appeal numbers have been significantly higher this year to the previous year. It is a credit to our administration that they have succeeded in meeting all their Key Performance Indicators at 100% throughout the year.

There were no changes to the jurisdictional framework during 2021-22, but the new appeals arising from the implementation of changes to Welsh legislation have continued steadily and are now firmly embedded in the jurisdiction's work.

Work has remained stable in the Primary Health Lists jurisdiction with no significant changes to the jurisdictional landscape. Once again, the administration is to be commended for meeting all their Key Performance Indicators at 100% for the entire year.

We have also returned to some face to face hearings, although hearings are usually default listed to provide hybrid hearing capacity to cover every eventuality and avoid unnecessary adjournments and postponements.

Training in HESC

After the loosening of restrictions, HESC returned to face to face training in all our jurisdictions, including in the provision of induction training in Mental Health for over 100 new Specialist Members and over 60 new non-restricted Judges in September 2021 and February 2022. The SEND/CS/PHL jurisdictions returned to face to face training conferences in January 2022, with well received events.

We have also been able to return to our prospectus offer of a number of different continuation training choices in Mental Health starting in April 2022. This includes 19 different course options on topics ranging from judgecraft, effective communication, reasons writing, LGBTQ+ considerations, and specific updates on legal and medical matters. We are particularly looking forward to the return of our residential 2-day Core Course for a third of our members, which will enable us to meet informally, as well as learn together.

As part of our commitment to diversity awareness, we are also proud that HESC was able to complete training its 1000+ mental health members on the important topic of the experience of black and minority ethnic patients within the mental health system.

Diversity and outreach in HESC

The Health, Education and Social Care Chamber is committed to actively increasing the diversity of the judiciary to better reflect the communities we serve. We have been proactive in adopting the aims and objectives of the Judicial Diversity and Inclusion Strategy 2020 – 2025, which both the Senior President of Tribunals (SPT) and the Lord Chief Justice (LCJ) fully endorse and support.

To further the diversity and inclusion strategy, HESC formed in 2021 its own diversity committee with Judge Johnston, DCP, as the diversity lead in our chamber. Judge Johnston is also the Lead Judge for the Welfare of the Tribunals Judiciary and is part of a network of diversity leads in Tribunals who share information about strategies and initiatives in different chambers.

HESC also has three Diversity and Community Relations judges, Judge Jane McConnell, Judge Alex Durance and Judge Duncan Birrell, all of whom are dedicated to not only increasing diversity, but encouraging judicial outreach amongst students, schools, universities, and the professions. High on that agenda is looking to ensure a multicultural approach to all that we do and building upon the steps we have already taken to advance social mobility, black, Asian and minority ethnic representation within the judiciary, women, the LGBTQ+ community and other under-represented groups. One illustration of this is our commitment to have a representative of our Diversity and Inclusion committee at every leadership meeting we hold in HESC, in order to ensure that the diversity agenda is properly reflected in everything we do.

Notwithstanding the pandemic, the chamber has been able to arrange a catalogue of events in the past year as part of our outreach programme, including three evenings that provided an overview of legal careers, with a view to encouraging a range of representatives and other professionals to consider applying for judicial posts in the future, by sharing tips on the qualities that one requires to become a judicial office holder and providing a diverse range of personal experiences about how our judges progressed into the law and the judiciary.

We have devised our own set of objectives in this regard, and have completed a range of other outreach initiatives, including for Black History Month contributing to an event organised by the Criminal Justice Racial Networks Alliance (CJRNA), which was attended by over 250 individuals virtually and showcased the achievements of those from ethnic minority backgrounds and ongoing efforts in the area of diversity and inclusion. Other events where HESC played a part included Training for Senior Trainees in Psychiatry at the South London and Maudsley NHS Foundation Trust and 'Training on presenting evidence to the Mental Health Tribunal', to help specialist trainees give evidence independently.

Reform in HESC

The HMCTS Reform programme was reinstated in May 2021 and engagement with the project team through workshops was undertaken in the autumn of 2021. Testing of the bespoke HMCTS Video Hearing Service (VH) has started in all our main jurisdictions.

In addition, work is ongoing to introduce a new operating system to replace the current administrative software systems. This will offer greater accessibility and online functionality, together with a new listing tool for HMCTS administration. Development is ongoing, and changes to the underlying case management system are anticipated later this year.

Judge Tudur, Deputy Chamber President, is the Senior President's lead for Reform in Tribunals.

People and places

Nine new District Tribunal Judges were appointed to our Chamber in 2021, with Judge Lawrence Ford, Judge Simge Ozen, and Judge Safia Iman joining SEND and Judge Dionne Allen, Judge Jo Boylan-Kemp, Judge Elisabeth Bussey-Jones, Judge Lise Buckingham, Judge Kate Meredith-Jones and Judge James Newman joining the Mental Health team, together with Judge Jane Lom who transferred to SEND from the Social Entitlement Chamber to join the cadre of salaried judges in HESC that now totals 41 (28 for MH; 13 for SEND/CS/PHL). Those new to the jurisdiction underwent induction training and started their judicial careers working remotely but have quickly fitted into the running of our chamber and have proved very able to adapting and taking on new responsibilities when it is required of them.

One of the chamber's team of District Tribunal Judges retired this year. We bid a sad farewell to Judge Ian Dumont, who was with us for 22 years, 10 years fee paid and 12 salaried. He made a significant contribution to the practice and policy of the tribunal generally, and particularly in Mental Health where he worked hard for those fee paid members in his district, was a member of the judicial and administrative liaison group and was always willing to go the extra mile to ensure a hearing was able to go ahead, often travelling long distances. Judge Dumont had a keen sense of fairness and justice and was always thoughtful of those more vulnerable. He will be greatly missed as a District Tribunal Judge, but we are delighted to report that we will be able to retain his experience and expertise as a fee paid Judge.

In May, the SEND jurisdiction welcomed 70 new fee paid Specialist Members following a JAC exercise. Their induction training was delivered in the summer of 2021, through blended learning, self-study, video modules and remote small group work.

During 2021, the Mental Health jurisdiction welcomed 67 new fee paid Medical Members and 108 new fee paid Specialist Members following JAC competitions. The induction training for the medical members was delivered remotely in April 2021 but, by September 2021, we were able to provide induction training for specialist members face to face.

In November 2021, the Mental Health jurisdiction welcomed 67 new fee paid judges following a JAC competition. Their induction training was delivered at a 3-day residential course in February 2022 in Manchester.

The Mental Health jurisdiction will also shortly welcome nine new fee paid Restricted Patient judges following a Judicial Appointments Commission (JAC) competition; together with eight Recorders with substantial experience of sentencing and/or risk assessment, who were already sitting in HESC, and were recruited from an internal expressions of interest exercise. They will receive their induction training into this new role in July 2022.

Within the President's Office, we are sad to report the retirement in December 2021 of the President's longstanding Head of Office, Elisabeth Portas. Elisabeth served in that capacity from June 2009, and she was very much the beating heart of our Chamber. Elisabeth's contribution to HESC was too substantial to justly summarise it here, that would require a report in itself, but needless to say she will be sorely missed. We are delighted to announce her replacement, Charlotte Halfweeg, a former solicitor who joins us from the Immigration and Asylum Chamber, where she was a Tribunal Case Worker.

Other changes include 8 judges and 7 members who were authorised to sit in the Disability Discrimination jurisdiction (a subset of SEND) in December 2021; and 4 more salaried judges who have been cross ticketed to sit in both sides of our Chamber, SEND/CS/PHL and Mental Health, as we continue to embrace a One Chamber, One Judiciary approach.

Finally, Denise Leeson, Operations Manager for the Mental Health jurisdiction, was awarded an MBE in the Queen's Birthday Honours in June 2021 for her services to the Administration of Justice during Covid-19. We congratulate her on this very well-deserved recognition.

Conclusion

The last two years have proved that necessity is the mother of invention. The pandemic and its effects necessarily required profound changes to the day-to-day life and operation of Her Majesty's Courts and Tribunals in order to ensure the continued delivery of justice and the rule of law.

Following a period of frankly unimaginable challenges, we have learned a lot – including that not all change is for the worse, and that with a fair-wind substantive change can be introduced in a relatively short timeframe.

In HESC, we successfully moved from in-person to virtual hearings, a shift that led to a perhaps overdue re-evaluation of the way in which we work, with a new focus on keeping pace with the society and technology around us, and the requirements of our stakeholders in terms of convenience and ready-access in order to meet the expectations of a diverse set of users. Central to that is separating when face to face hearings are essential for the delivery of justice from those services and hearings where other means of contact can be just as effective, and lead to the same result, but often in less time. Key to this has been the willingness and adaptability of the judiciary and HMCTS personnel in HESC to try new things with a view to keeping what works well and discarding or looking to improve those changes that were less successful.

The Chamber President records his sincerest thanks to those around him who have helped champion accessible justice, together with the new and the innovative. Through their efforts, we have a chamber that is proactive, productive and constantly striving to improve. He is equally proud of the dedication of the 1400 judges and judicial office holders in HESC, together with the Senior Management Team, those in the Chamber President's Office, and our HMCTS staff and managers, who work hard to bring justice to the communities we serve every single sitting day. Together, we stand ready and prepared for the challenges of the present and the future.

War Pensions and Armed Forces Compensation Chamber Chamber President: Judge Fiona Monk

The work of the chamber

The chamber hears appeals from former or serving members of the Armed Forces who are seeking compensation for injury or illness which can be attributed to Service in some way. Our appellants are often vulnerable through mental or physical disability or are elderly. The last year has been marked by a sustained focus on recovery from the impact of the pandemic and the judicial and operational teams have worked extremely hard together which has resulted in a substantial reduction in our outstanding case load. As I reported last year, the Chamber's administrative support team moved to Arnhem House in Leicester at the end of 2020 and it is a testament to their hard work, despite the challenge of high staff turnover, that we have managed to see such significant improvement in our throughput of work.

Because of the pandemic our outstanding cases rose to an all-time high by the middle of 2020, but since then we have been, steadily, making inroads into that. We were fortunate to secure additional sitting days which meant we could maximise the convenience of video hearings and increase the number of panels sitting. We disposed of more cases than we had set out to do and our outstanding caseload at the end of the financial year was the lowest it has been since September 2019 and that downward trajectory continues. We remain focused on getting our oldest appeals listed and have increased our use of case management hearings to maintain momentum. Many of our appellants have already waited over a year for their appeal to be sent to the Tribunal by the Secretary of State so it is vital that we prioritise those for hearing.

We are astute to the fact that we can be over focussed on the performance statistics at the expense of remembering that each appellant has an appeal of great importance to them which we are entrusted to determine. By way of example here are details of just a few cases we have dealt with over the last year:

- a young black female soldier who alleged that bullying from her peers whilst serving significantly impacted upon her mental health. The Tribunal allowed her appeal finding that the PTSD which she subsequently developed was caused by her time in the Army.
- a Tribunal allowed an appeal from a solider who claimed that his coronary artery disease was in part caused by his exposure to a pesticide known as Agent Orange in the late 1960's whilst he was serving in Canada. They

found that the appellant had raised reasonable doubt that he had been in an area known to have been treated with a pesticide and there was also agreed evidence of an association with ischemic heart disease.

- an appeal brought by a female aviator, again, for PTSD caused by bullying and harassment whilst in the RAF. The Secretary of State had, eventually, conceded liability but had offset a large ex gratia payment it had made in her Employment Tribunal claim which had virtually extinguished her Armed Forces Compensation award. The Tribunal found that there was no legal basis on which the ex-gratia payment could be offset.

We continued to list the vast majority of hearings by video using CVP which has proved user friendly and popular with our appellants who appreciate not having to travel long distances and being able to participate from the comfort of home. We hope that that in this coming year there will be increased availability of actual hearing rooms which will mean that we can move to increased numbers of face to face hearings for those appellants who want them. A small, but not insignificant, number of our appellants wish to join their hearing by video from abroad either because they are deployed overseas or because they have left service and emigrated. Before the advent of video hearings, we would often hear these cases in the appellant's absence or there would be a lengthy delay waiting for them to return to the United Kingdom. The Upper Tribunal's decision in Agbabiaka necessitated adjournments of all these cases. And for a period, we lost the convenience that video hearings offered this particular group of appellants. We very much welcome the process that HMCTS has now put in place to facilitate seeking consent for an appellant to give evidence from abroad and are working to resume hearing the cases that were adjourned as soon as we can.

Any challenge to the Tribunal's decision at First Tier level is made to the Upper Tribunal (Administrative Appeals Chamber). We deal with in the region of 2500 appeals per year and only a very small percentage seek permission to appeal to the Upper Tribunal. In the last year the Upper Tribunal received fewer than 20 applications for permission to appeal and the majority of those dealt with were refused.

I once again pay tribute to all the judges and panel members in the chamber who have continued to respond magnificently to the challenges of the new ways of working and have continued to just get on with the job of doing justice.

People

The chamber now has 2 salaried judges and a salaried, part-time, Chief Medical Member, 31 fee-paid judges, 34 medical members, 25 service members and 2 Tribunal Case Workers. We were really pleased to welcome our new salaried Judge Bilal Siddique in September 2021. Bilal had a 23-year career in the Army as a lawyer and had also sat as a Deputy District Judge and Recorder so brought a wealth of legal experience, judicial skills and knowledge of Service life. He has been a great addition to our small salaried team and we were delighted to celebrate his appointment as a Deputy High Court Judge not long after he started with the chamber.

The chamber also benefits greatly from the hard work of our two tribunal case workers (TCW); Moshuda Ullah, who has been with us since 2018 is now a Senior TCW and splits her time with F-tT IAC, and Sharon Jarvie, who started with us in April 2021 and is based with the administrative team in Leicester. Together they make a real difference to casework progression and act as an invaluable bridge between the judiciary and the operational team.

I am also extremely fortunate to now have a permanent PA – Denicia Byer has been a fantastic addition to the Chamber Team since she joined us last year. We also have a dedicated appraisal administrator Nehal Bhimani as a further very welcome addition (see more about appraisals below).

We have added to both our fee paid judges and medical members in the past year. We were very lucky to have 6 new fee paid judges join us: Judges Rebecca Freshwater, Joanne Goff, George Keightley, Peter Krepski, Sarah Matthews and Claire Williams. They have all completed their induction training and have started sitting and have been warmly welcomed into the Chamber.

Together with our Chief Medical member, Dr Laleh Morgan, I ran an Expression Of Interest exercise for new medical members. We were particularly keen to try and increase diversity within the Chamber and so we were delighted at the level of interest as we attracted over 100 applications for only 8 vacancies. We were fortunate to be able to appoint new colleagues of extremely high calibre: Doctors Babak Arvin, Nicola Castle, Russell Foster, Lucy Elphinstone, Hadi Al-Hillawi, Nicholas Kosky, Nitesh Raithatha and Inderjit Singh. They too have completed their induction training and have already started contributing to the work of the chamber.

During this period, we said goodbye to several colleagues: Doctors Graeme Feggetter, Philip Bolton, Michael Frampton and Vincent Nathan, Service

members Clive Fletcher-Wood, Graham Messervy-Whiting and Keith Dear and Judges Liz May, Karen Booth and Claire Burns. They will all be greatly missed, and we thank each of them for their valuable contributions to the work of our chamber.

Training and appraisals

The chamber's training lead, Judge Surinder Capper and our Chief Medical Member Dr Laleh Morgan head an excellent training committee and they both coped remarkably well when at short notice we decided to convert our two-day face to face training into one day online in September 2021. We have yet to see any appeals arising out of Covid but had some excellent training on long Covid at that training day. We reorganised the second day of the training for February and were, at long last, able to meet face to face. It was really fantastic to be able to meet colleagues in person after so long only communicating via a screen. It meant that all our new colleagues got the opportunity to be properly welcomed into the chamber and the cohort of new service members who had joined us in early 2020 were finally able to meet colleagues they had been sitting with remotely for nearly 2 years.

The new edition of the Chamber's Bench Book was launched at the training. I am very grateful to Deputy Upper Tribunal Judge Mark Rowland, a retired judge of the Upper Tribunal (Administrative Appeals Chamber) with substantial experience in relation to the jurisdiction of the WPAFCC, who now sits for us as a fee-paid judge, for the huge amount of work he put into writing what is an invaluable guide for us all.

In the autumn of 2021, I launched a new Appraisal Scheme for the chamber based on the SPT's model scheme and on the principle of peer review. So, with the considerable assistance of our Chief Medical Member Dr Laleh Morgan, our scheme is designed to ensure Judges are appraised by Judges, Doctors by Doctors and Service Members by Service Members. After training for all our appraisers, including refresher training for some, we started the first appraisals in February 2022. We are extremely fortunate to have a very efficient appraisal administrator, Nehal Bhimani, who ensures that all the arrangements run smoothly. All those appraised also have the opportunity to have career development discussions.

Diversity and inclusion

Dr Laleh Morgan is the Diversity Lead for the chamber, and she and I both sit on the SPT's Diversity Taskforce. In addition, Judge Surinder Capper and

I are both Diversity and Community Relations Judges. Together we have set out a Diversity and Inclusion plan for the Chamber. One particular focus has been on what we can offer by way of mentoring and, amongst other things, the chamber has worked through the Migrant Leaders Charity with 3 students who are interested in careers in law/medicine. We have given them opportunities to observe hearings and learn about judicial/medical roles as well as providing one to one mentoring. We were delighted to hear that one of our mentees secured a place at medical school and another accepted an offer to study Law at a Russell Group University.

Reform

A major and long-standing issue is the fact that our appeals are not lodged directly with the Chamber but are instead sent by the appellant to Veterans' UK, an agency of the MoD. That is a wholly unsatisfactory process. I said last year that progress had been frustratingly slow but that I hoped to be able to report this year that, at last, Direct Lodgement had been achieved or was on course to be achieved in 2022. Sadly, I cannot report either but progress is, finally, now being made and we are in the process of proposing changes to our Procedural Rules which will enable the chamber to embark on some form of Direct Lodgement. I am grateful to the chamber's jurisdictional leads and the colleagues in MoJ Policy who are helping this work progress, and very much hope that in next year's report I will actually be able to say that we have achieved Direct Lodgement.

The chamber continues to work closely with its major stakeholders and the joint working with Veterans UK and the Royal British Legion, which was critical during the pandemic, has built some valuable foundations. I have also increased the frequency of our User Group meetings so that the Service Charities, Solicitors and other organisations which represent appellants have more regular opportunity for updates. There is also close and productive joint working with the chamber's two sister jurisdictions – the Pension Appeal Tribunals in Scotland and Northern Ireland. Our Advisory Steering Group which oversees the work of all 3 jurisdiction is a useful forum for ensuring consistency and dissemination of good practice between us.

At the time of writing, I am unable to provide any further detail of the plans for reforming the processes of the chamber. Despite huge amounts of work from both judiciary and operational staff on the Reform project and enthusiasm in the chamber for the very obvious benefits of updating and digitising our processes the chamber's reform plans have been put on hold and we have been

moved into Phase 2 of the Reform Project. We have yet to see what that will mean in practice for us as we wait to find out if additional funding can be secured. But I do have confidence that judges, members and the operational team will continue to work collaboratively and with dedication to achieve the best we can in continuing to offer access to justice to members of the Armed Forces Community.

Tax Chamber
Chamber President: Judge Greg Sinfield

Introduction

The effects of Covid on the country (and internationally) during the last two years have been significant. For the Tax Chamber, as for many others, the last year has been an unsettling and disruptive period as restrictions on social interaction were lifted then partially reimposed before being removed entirely and the United Kingdom began to "live with the virus". I wish to record my gratitude to the judges, members and all the staff of the Tax Chamber for their hard work during this time. In this report, I describe some of that work and the challenges, so far as they can be foreseen, that we face in the year ahead.

Our work

We expect that standard and complex category appeals will increasingly return to being face to face hearings as before save that we intend to make electronic bundles, in place of paper ones, the norm. In June 2021, I issued an updated version of the Tax Chamber guidance on PDF bundles which explained how parties could now lodge PDF files or other files that are larger than 36MB with the Tribunal using the HMCTS Document Upload Centre. This was a great improvement as it meant that parties no longer had to subdivide hearing bundles to allow them to be sent as attachments to emails.

In July 2021, the Tax Law Review Committee (TLRC) produced a report "The tax tribunals: the next 10 years" which identified various issues and made some recommendations in relation to the administration and performance of the FTT Tax Chamber and the UT Tax and Chancery Chamber. The issues and recommendations were wide ranging and serious. I considered that, in the main, the criticisms were fair and the suggested solutions were helpful contributions towards a process of improvement. I convened a working group of judges and members – The Way Ahead Working Group – to consider the recommendations. The working group made proposals for changes to our

practices and procedures to deal with the points made by the TLRC and other issues that the group identified. That is not the end of the process. Over the next few months, we will take steps to implement the proposals and we will continue to review how we perform in the months and years ahead.

One change already in place is that we are listing some default paper cases, all basic cases and simpler/shorter standard appeals as video hearings by default. Our experience during lockdown was that these types of cases are very well suited to the video hearing format, and most parties welcomed the opportunity to have their disputes adjudicated without the need to travel to a physical court carrying paperwork, and possibly incurring additional costs for travel time and fares. Of course, face to face hearings will still be available for those who cannot or do not wish to participate remotely but we expect that those who can do so will welcome the convenience and costs-saving. This change in listing practice led me to revisit the Tax Chamber Practice Direction on the allocation of cases to categories. The new Practice Direction is intended to align the categorisation of cases more closely with the new listing practice and make the criteria for allocating cases to categories under Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 clearer. The new Practice Direction was published on 12 May 2022.

We have seen an increase in applications for parties or witnesses to give evidence from abroad. The Upper Tribunal in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC) emphasised the need for an administrative tribunal in the United Kingdom to be satisfied that the country concerned has no objection to a person giving evidence in proceedings remotely by video or telephone from that country. In April 2022, I issued guidance on the procedure to be followed when a party in proceedings in the Tax Chamber wishes to rely on evidence given by video or telephone outside the United Kingdom.

Despite the challenges of the last year, the Tax Chamber has managed to cope with its caseload. This is due in part to a significant reduction in appeals and applications submitted in 2020-21 leading to fewer hearings than normal this year. Much of the reduction stemmed from fewer appealable decisions being issued by HMRC, again due to the Covid restrictions on working. Overall, the number of hearings was around 50% of historic levels.

We finished the year to 31 March 2022 with a considerably higher caseload than we had at the start. This is due entirely to appeals on the same issue or issues by many thousands of taxpayers submitted by a single representative. Although these appeals are administered as a group, it is clear that the demands on the

administrative and judicial resources of the Tax Chamber will be much greater in 2022-23 than they have been recently.

Digests of some of a small selection of the decisions of the chamber during the year are included in Annex D to the main report.

Our people

Although the effects of Covid will continue to be felt for some time to come, that is not the only explanation for delays. As I have stated in every report since my first in 2018, we do not have enough judges. This is shown by the frequency of emails from the Tax Chamber's administration to judges asking if they can sit on a case because the allocated judge can no longer sit or no one can be found for a case that must be heard. In particular, we do not have enough salaried judges, who do the majority of the box work and case management.

We are fortunate to have gained another salaried judge in the last year. Anne Fairpo, one of our fee-paid judges since 2015, became a salaried judge on 1 June 2021. Unfortunately, the gain has proved to be short-lived as another salaried judge, Peter Kempster, whose experience and sage advice date back to the beginning of the Tax Chamber in 2009, retired with effect from 31 August 2022.

The position in relation to the number of fee-paid judges is somewhat brighter. In November 2022, we were joined by six a new fee-paid judges in alphabetical order:

Charlotte Fallon

Malcolm Frost

Rachel Gauke

Jennifer Lee

Nathaniel Rudolf

Howard Watkinson

They were all sworn in by the Senior President of Tribunals at a ceremony in Taylor House which they all attended in person save for Nathaniel Rudolf who had Covid and became the first tax judge to be sworn in by video.

The new fee-paid judges more than compensate for the two fee-paid judges (Charles Hellier and Victoria Nicholl) who retired this year. Four non-legal members (Sheila Cheesman, Maryvonne Hands, Elizabeth Bridge and David Batten) 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.

One of our fee-paid judges, Zachary Citron, was appointed to be a Judge of the Upper Tribunal and assigned to the Administrative Appeals Chamber with effect from 21 February 2022. His is a full time appointment but we hope that he will be able to sit on tax cases occasionally in the year ahead.

At the time of writing this report, the Tax Chamber has 11 salaried judges, 49 fee-paid judges and 45 members, including one authorised presiding member which, as I have said, is not enough. We are determined to recruit more judges and we need to do so urgently. Unfortunately, the salaried judge recruitment exercise which was due to launch in mid-January 2022 was cancelled. The next salaried judge exercise is not due to start until October 2022 which means that we are unlikely to see any new salaried judges until the last quarter of 2023.

Last autumn, we launched a new initiative, developed by Judge Kim Sukul, called the Tax Chamber Judicial Recruitment Support Scheme. The aim of the scheme is to provide guidance on the judicial appointment application process and support potential candidates from the widest range of backgrounds. **A short article** on the scheme was featured in the Law Society's City Update. We also held an **online seminar** to promote the scheme and explain the role of a tax judge. The scheme has been well received and 21 eligible candidates have now joined, with the majority of candidates coming from groups that are currently under-represented in the judiciary.

We must also address the decline in the number of non-legal members in the Tax Chamber. Fortunately, the mandatory retirement age increased to 75 with effect from 1 April 2022 and I have been gladdened to learn that many of the current members wish to continue sitting into their seventies.

Recruitment and diversity are obviously inseparably intertwined and equally important. We therefore appointed Kim Sukul to lead and develop various other Diversity and Inclusion initiatives which are currently being implemented in the Tax Chamber. These include setting up a Diversity and Inclusion Steering Group to consider the Chamber's strategic objectives, targets and delivery plans, reviewing the Chamber's judicial mentoring arrangements with a view

to formalising on-going support for all judges, holding discussions and giving progress updates on Diversity and Inclusion issues at all regular judges and members Chamber meetings and arranging on-going Diversity and Inclusion training events and support for the Chamber.

Our premises

In last year's report I mentioned that we had created a much-needed large hearing room in Taylor House, London now being created by knocking two courts into one but that it was not yet fully operational. I am pleased to report that the new hearing room is now fully equipped with the necessary video facilities and we have already used it to hold several large fully in-person and hybrid hearings.

There have been no changes of note in our other locations in Birmingham, Edinburgh and Manchester.

Training and know-how

The need to maintain and develop the knowledge and skills of judges and non-legal members remains a priority. John Brooks, Jennifer Dean and Kim Sukul have been outstanding in their delivery of an effective (and engaging) training programme in new ways. The annual in-person Judges' Conferences due to be held in 2020 and 2021 were cancelled but the training team organised a successful two day virtual conference for judges and members in April 2022.

On 1 April 2022, John Brooks stood down as training lead, although he will continue to play a role in the training team, and Jennifer Dean took over as the new training lead. John has been part of the training team since 2017 and training lead since 2018. He has done a superb job in extraordinarily difficult circumstances. I am grateful to him for the leadership that he has shown in delivering the training over the last few years.

Jennifer hit the ground running and already organised a number of online ad hoc sessions throughout May and June 2022. She, along with the others, has already started to plan our first face to face annual training conference since before the first Covid lockdown which will take place in March 2023.

Administration

I would like to pay tribute to our Registrar, June Kennerley, the Tribunal Caseworkers and all the staff at our administrative service centre in Hagley Road, Birmingham for all their hard work in challenging conditions during the last year. In my last report, I mentioned the difficulties we experienced in recruiting and retaining staff at Hagley Road. There has been some success in recruitment in the last year but departures of staff mean that we are still under resourced. Inevitably, this has led to some unfortunate delays in processing correspondence and listing hearings at times. I hope that Hagley Road will be allowed to recruit more staff or, at least, will not be required to reduce its headcount in the year ahead.

Reform

It is with great regret that I must report that it has been decided by HMCTS that the Tax Chamber will no longer be part of the current Reform project. After two years of collaborating with developers to produce a fully digital end-to-end process to replace our outdated paper-based system, this is hugely frustrating for the judges, members and staff of the Tax Chamber and a disappointment for its users. However, we remain hopeful that it may be possible to provide digital case files in the Tax Chamber by building on existing non-Reform digital resources such as our online notice of appeal and closure notice application forms and GLiMR, our case management program. We will also look at solutions already identified in other Chambers to see if they can be adopted. For the moment, in the absence of digital case files, we continue print notices of appeal and other correspondence received electronically so they can be placed on a treasury tag in a paper file and stored on a shelf until needed when they are scanned into a PDF so they can be emailed.

Conclusion

Although the exclusion of the Tax Chamber from the Reform Project is a sad note on which to end this report, I remain optimistic about the year to come. I believe that the Way Ahead Group's proposals, our initiatives in the areas of recruitment and diversity, and the recent changes in the areas of allocation of cases to categories and listing will make the Tax Chamber more efficient and effective in dealing fairly and justly with matters that come before it. I am realistic enough to know that we will not achieve everything on our wish list but I look forward to reporting the positive developments and improvements in next year's report.

General Regulatory Chamber
Chamber President: Judge Mark O'Connor

Jurisdictional landscape

The judicial work of the Chamber is split into 15 jurisdictions: Charity, Community Right to Bid, Environment, Electronic Communications, Postal Services and Network Information Systems, Estate Agents, Exam Boards, Food Safety, Gambling, Immigration Services, Information Rights, Pensions, Professional Regulation, Transport, Welfare of Animals and Individual Electoral Regulation. The number of new appeals in each of the Chamber's jurisdictions, save for Transport, is now broadly comparable to pre-pandemic levels, and the Chamber's outstanding caseload is once again on an even keel.

Throughout the year there continued to be significant changes to the jurisdictional and procedural landscape of the Chamber. The Charities Act 2022 brought with it, amongst other things, new 'costs' powers for the Chamber in its Charity jurisdiction, the Environment jurisdiction received a number of new appeal rights, including in relation to the operation of the UK Emissions Trading Scheme. The implementation of provisions in the Ivory Act 2018 impacted on the Welfare of Animals jurisdiction and Food Safety has also seen additions to the breadth of its work. In the coming year, there is potential for legislation to bring further rights of appeal into the Chamber's Information Rights, Pensions, Environment, Electronic Communications, Postal Services and Network Information Systems, Welfare of Animals and Food Safety jurisdictions.

In last year's report from the Senior President of Tribunals, mention was made of the Upper Tribunal's decision in *Moss v Information Commissioner & Royal Borough of Kingston upon Thames* [2020] UKUT 174 (AAC), which concluded that the First-tier Tribunal had jurisdiction to enforce a substituted decision notice, by means of certifying a party's conduct as contempt to the High Court (or, subsequently, to the Upper Tribunal pursuant to a legislative amendment). Following the decision in *Moss*, the Chamber has determined numerous certification applications during the period covered by this report. Two such decisions resulted in a certification of contempt, one of which is now awaiting consideration by the High Court and one which is awaiting consideration by the Upper Tribunal (AAC).

There were many other notable decisions of the Chamber throughout the year. *Heathrow Airport Ltd v Information Commissioner* [2021] UKFTT 2020_0101 (GRC) addressed the issue of whether Heathrow Airport is subject to the

Environmental Information Regulations. In *Maya Forstater v Information Commissioner* [2022] UKFTT 2021_0129 (GRC), consideration was given, amongst other things, to whether the Judicial College is a public authority for the purposes of the Freedom of Information Act 2000. In *Heaney v BEIS and GDFC Assets Ltd* (The Energy Consumer Commission intervening) (NV/2020/0030), the Tribunal provided general guidance on the approach to be taken in appeals against sanctions imposed by the Secretary of State following a finding that a Green Deal Plan had been mis-sold to an energy consumer. In *Dr. Blacker v Charity Commission for England and Wales* (CA/2021/0026), Judge McKenna heard the Chamber's first appeal against a refusal by the Charity Commission to grant a waiver from automatic disqualification from acting as a charity trustee.

People and places

During the period covered by this report, there have been significant personnel changes within the chamber, most notably the retirement from salaried judicial office of the Chamber President, Judge Alison McKenna. To say that Alison had a long and distinguished judicial career would be something of an understatement. She was appointed as a Legal Member of the Mental Health Review Tribunal in 2002, President of the Charity Tribunal in 2008 and became the Principal Judge, First-tier Tribunal (Charity) in the General Regulatory Chamber in 2009. Alison was subsequently appointed as an Upper Tribunal Judge (Administrative Appeals) and (Tax and Chancery) in 2009 and Chamber President of the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) between 2014 and 2016. She was appointed President of the First-tier Tribunal (General Regulatory Chamber) in 2018 and authorised to sit as a judge of the High Court (Queen's Bench Division) in 2019. Alison also served as a Judicial Appointments Commissioner between 2012 and 2014. The good news story for the chamber is that Alison has returned in a fee-paid capacity, sitting across all 15 of the chamber's jurisdictions. I was appointed as the new Chamber President in April 2022, having previously undertaken the role of Acting Chamber President.

The Chamber also saw the departure of Judge Moira Macmillan, the chamber's Lead Environment Judge and its Training Judge. It was little surprise to see Moira offered, and accept, a judicial role in the Upper Tribunal (AAC). I have no doubt that her incredible intellect and thirst for knowledge will see her enjoy, and flourish, in her new chamber. Judge Lynn Griffin seamlessly took on the role of the chamber's Training judge, and I have absolute confidence that she

will sustain the incredibly high standards set by Moira, much as she has done throughout the year in her roles of Lead Information Rights judge and as the chamber's newly created role of Diversity and Inclusion lead.

Judges Chris Hughes OBE and Rob Good have also departed from the Chamber's judicial cohort in the period covered by this report. Chris joined the GRC on its formation, having previously sat on the Adjudication Panel for England. He has also sat in multiple other quasi-judicial roles throughout the UK and the EU, and his deep knowledge of every subject that I ever have had the pleasure to discuss with him, never ceased to amaze me. Rob Good was a salaried judge of the Social Entitlement Chamber, assigned to the GRC in 2017. He sat with distinction in both the Information Rights and Pension jurisdictions.

Rebecca Worth ("Becky") was also a significant departure from the chamber over the past year. Becky was both a Registrar with the GRC (since 2012) and a fee-paid judge of the Chamber (Charity and Transport jurisdictions). She was the founder of many of the Chamber's processes and the linchpin between the GRC administration and its judiciary. Her DNA is, and will always be, imprinted on the Chamber. She left the Chamber to take up appointment as a salaried District Judge (Civil) and I am confident that she will have a stellar judicial career. Alex Arnell joined the Registrar team early in 2022 and is already excelling under the expert tutelage of Sunny Bamawo, the Chamber's other Registrar. The judiciary and registrars of the Chamber were also capably assisted throughout the year by Laura Collins (Senior Tribunal Caseworker) and Farzana Haji (Tribunal Caseworker).

The chamber has seen the retirement of seven Tribunal Members from the Information Rights jurisdiction in the past year, who between them have approximately 135 years' experience in the chamber and its predecessors. Mike Jones and Jean Nelson both joined one of the GRC's predecessors – the Information Tribunal - in 1999, Jean coming from the world of Information Technology and Mike with experience in the TUC. Alison Lowton, a local government lawyer, transferred into GRC from the Local Government Standards in England Tribunal, having been originally appointed in April 2002. Dr Malcolm Clarke – a former President of the Football Supporters Association and a consultant on a BAFTA winning film - joined the Tribunal in 2003, followed shortly thereafter by John Randall CBE who, amongst the highlights of a very long and distinguished career, is a former Deputy General Secretary of the Civil Service Union and President of the National Union of Students. David Wilkinson and Roger Creedon CBE joined the Tribunal in 2006 - David

with Cabinet Office foundations, and Roger being a former Chief Executive of the Electoral Commission who, amongst many other things, has also sat on the General Medical Council, General Dental Council and Nursing and Midwifery Council. Each has contributed enormously to the development of Information Rights law and procedure, and to the Chamber as a whole. The highlight reel of significant cases in which one or more have played a part, is vast.

This year the chamber also had to bid farewell to Leslie Milliken, although not through retirement. Leslie, appointed to the Transport Tribunal in 1999 and a serving Upper Tribunal Member assigned to the GRC's Transport jurisdiction, passed away in February. Leslie was knowledgeable, conscientious and utterly dependable and both the GRC and the Upper Tribunal owe him a huge debt of gratitude.

There have also been some further additions to the GRC family in the past year. Judge Joe Neville joined the GRC in February 2022 from the Immigration and Asylum Chamber, where he was an Assistant Resident Judge. Since joining, Joe has quickly got to grips with the Chamber's multifarious jurisdictions and has also taken on the roles of Lead Environment judge and Appraisal lead for the chamber. In addition, Stephen Roper joined the Chamber as a fee-paid judge earlier this year, ticketed to the Information Rights jurisdiction, Martin Smith, Gary Roantree, Kerry Pepperel, Phebe Mann, Richard Fry and Sarah Booth have all recently been appointed as Members of the Upper Tribunal's Traffic jurisdiction assigned to the GRC's Transport jurisdiction, and Roger Catchpole and Andrew Fasey have also, recently, joined the Chamber as Tribunal Members, ticketed to the Environment jurisdiction.

In concluding this section of the report, I would like to express my personal gratitude to the administrative staff, case workers, registrars, the judicial support team in the President's Office, and the chamber's judiciary, for their hard work and dedication to the Chamber during these difficult times. The fact that the chamber is in such a strong position, despite the obstacles thrown at it over the past two years, is as a direct result of the collective efforts of every person connected to the chamber. I would like particularly to record my thanks to Rachel Dunn, who fulfilled her temporary role as the chamber's Delivery Manager with great aplomb, and Lara Mosely (the Chamber President's PA) who is an expert in every facet of the chamber's business and without whom my role in the chamber would have been exponentially more difficult.

Training and reform

The importance of the development of judges and members through training cannot be underestimated. Our biennial two-day training conference, held in February 2022 in Warwick, was attended by a significant proportion of the chamber's members and judges and was no exception to the high standard set by the training of previous years. In addition to specific jurisdictional training, we received wisdom from guest speakers on diversity and inclusion, the Equal Treatment Bench Book, wellbeing, and bias and judicial decision making, as well as interesting updates and training on the Video Hearing Service and Reform. All were excellent presentations and learning opportunities, but two guest speakers stole the show. Judge Alison McKenna provided a farewell presidential address to the chamber, which presented many insightful thoughts on how the chamber's ways of working could be improved to provide an enhanced service to stakeholders and even greater integration between those who sit and work in the chamber. Not to be outdone, Mr Justice Lane, a former President of the chamber, provided a breath-taking tour de force of jurisprudential analysis around the seemingly innocuous title: "What is an appeal?". I am immensely grateful to everyone who gave up their time on behalf of the chamber to be a part of this training event.

I finally turn to Reform. In last year's annual report, it was noted that *"the Chamber [was] anticipating with some relish the opportunities that HMCTS Reform [would] offer in the year ahead."* Whilst the chamber has embraced video hearings and is beginning its preparations to transition from the Cloud Video Platform to the Video Hearings Service, we have recently been informed by HMCTS that the wider Reform products – CCD and ListAssist, will not be made available to the chamber. Whilst this is disappointing news, it means that energy can now be put into making the most of the systems that the chamber currently operates.

Conclusion

The chamber has faced many challenges throughout the past year but has flourished as a consequence of the collaborative efforts of each member of the GRC family. We know that there are many challenges to come, and I look forward to reporting on how we dealt with these challenges in next year's report.

Immigration and Asylum Chamber
Chamber President: Judge Michael Clements

Jurisdictional landscape

The Immigration and Asylum Chamber (FtTIAC) is one of the largest of the seven chambers of the First-tier Tribunal. It currently deals with appeals against decisions of the Secretary of State or an Entry Clearance Officer, although this is likely to change with the advent of the new statutory right of appeal against age assessment decisions. These will extend not only to decisions made by an official of the Secretary of State "designated" to make them, but also to decisions made by a Local Authority.

There is a varied case load. Appeals come from persons seeking international protection in the United Kingdom (asylum or humanitarian protection) for a variety of reasons: those suffering war or conflict trauma; trafficking into prostitution or slave labour or at risk because of gender, religion or sexuality. Those convicted of offences in respect of whom a deportation order has been made may also appeal requiring a judge to determine whether the circumstances of the appellant, or their family members, outweigh the public interest in the offender's removal. Where there has been no criminality the judge will be required to decide whether the private and family life established by a person outweigh removal and should allow them to remain in the United Kingdom or be given leave to enter despite their inability to meet the requirements of the Immigration Rules. The judge will be required to conduct a balancing exercise between the interests of all those individuals set against the relevant public interest.

Appeals are also made against decisions made under the EEA Regulations and the EU Settlement Scheme. These require not only a judicial assessment of the overall proportionality of the decision under appeal but to determine whether a marriage is valid under the law of a third country, whether a marriage is genuine or whether one individual is genuinely financially dependent upon another. Although some had predicted the demise of such appeals following the EU Withdrawal Agreement, our experience has been instead that there has been a significant increase both in the volume of appeals, and their complexity.

Increasingly the Tribunal hears appeals pursuant to section 40A of the British Nationality Act 1981 against decisions to deprive individuals of their British citizenship, in cases that do not involve the national security, where the right of appeal lies to SIAC. These decisions are of two types; (i) deprivation when the

Secretary of State is satisfied the registration or naturalisation was obtained by means of deception (s40(3)), and, (ii) deprivation when the Secretary of State is satisfied that deprivation is conducive to the public good (s40(2)). The Tribunal is experiencing increasing numbers of both types of appeal. s40(3) cases have increased as a result of the guidance from the Supreme Court that the Secretary of State should cease to treat cases of registration and naturalisation that she believes have been obtained by means of deception as a nullity, and should instead make a deprivation decision so that the individual concerned might enjoy the statutory right of appeal, rather than being required to pursue judicial review proceedings. It is also plain that decisions made pursuant to s40(3) on the basis that it is conducive in the public interest to deprive an individual of their British citizenship have increased as a result of the implementation of the Government's Serious Organised Crime Strategy, and the commitment of the previous Home Secretary to Party Conference that serious criminals would be stripped of their citizenship, so that the individual criminal might lose the benefits of British citizenship, and the activities of organised crime networks might be disrupted.

We have also noted an increasing number of bail applications from those held in immigration detention. It is anticipated that the procedure for issuing those applications will be simplified as they are brought onto the online CCD system later this year. In the meantime, the Tribunal's focus remains on ensuring that such applications are heard as quickly as possible and in line with our Practice Direction.

Our caseload

The number of statutory appeals received and disposed of by FtTIAC is set out in the following table with those of the previous years for comparison. The pandemic has had a significant effect on our caseload over the past two years, as a result of the reduced numbers of decisions made by the Secretary of State carrying a right of appeal to the Tribunal. I anticipate sharp increase in the number of appeals during 2022/23 as the Secretary of State returns to pre-pandemic decision levels.

Year	Appeals received	Appeals disposed of
2018-19	44,000	59,000
2019-20	42,000	50,000
2020-21	26,000	20,000
2021-22	40,000	41,000

Reform

Reform has been a constituent part of the future plans of our chamber since March 2018. The FtTIAC Reform Team was the first to conceive and design an end-to-end online appeals process. The vast majority of online appeals have been commenced during the pandemic. This has been achieved by FtTIAC extending the service to include most appeals lodged in the UK where there is a representative and prescribing, by way of Directions (effective from 22 June 2020), that in certain categories appeals are brought in that form unless it is not reasonably practicable to do so. It had been anticipated that bail applications would be brought onto the digital platform before the end of the financial year, but the work is a little delayed. I thank all stakeholders for their support in enabling us to advance this digital process.

Appeals are case managed throughout by a team of Tribunal Caseworkers, now known as Legal Officers, with a view to maximising fairness to the parties and hopefully minimising the need for adjournments. Under the new process cases are not listed until they are ready to be heard. The process provides for greater focus on the key elements of the claim, the key issues that are actually in dispute between the parties and the reasons for that dispute. Before an appeal is listed the Secretary of State will also have thoroughly reviewed the merits of the appeal.

Great care has been taken to ensure that unrepresented appellants are not disadvantaged in their use of the CCD system, and unrepresented appellants are prompted by the system to provide the key details. This allows an effective review of the merits of their appeal by the Secretary of State.

The success of Reform can be measured in the number of appeals that are now compromised and thus withdrawn before final hearing.

The system depends heavily on our dedicated Legal Officers, and their leadership. It is not practical to name everyone, but Bernadette MacQueen, the Senior Legal Manager, does deserve special recognition for her unswerving cheerfulness and diligence and hard work.

As with every major project, this one has not been without its challenges. Thankfully technological problems have been limited and of brief duration, and for that I must thank Pavanpal Dady and his team. There have been may others who have made, and who continue to make, positive contributions to continually improve the service we provide.

Emergence from the pandemic

As we return to normality, or to a new normal, we find that increasing numbers of stakeholders express a wish for either an entirely remote hearing, or a hybrid hearing that allows one or more to attend court user to attend remotely. Face to face hearings are, in my view, the default position. I accept however that hybrid or fully remote hearings may suit some, and that for some vulnerable individuals a remote hearing may offer a better opportunity to give their best evidence. There will also be occasions when to make the best use of its limited resources the Tribunal will need to list hearings before a judge sitting remotely. This is the case in many other jurisdictions.

I have also been greatly impressed over the last twelve months by the flexibility displayed by both the Tribunal and its users in a collaborative approach to accommodate those who, for whatever reason, have found themselves able to work, but unable to travel. No doubt that will continue.

It is however very clear that not everyone is always able to access a remote hearing satisfactorily, and obvious dangers to the conduct of a fair hearing arise from that. Even if a hearing has safely begun by way of a remote hearing, the Tribunal will remain vigilant to ensure that it remains a fair hearing throughout.

In short, listing decisions will continue to be driven by the circumstances of the parties rather than their representatives, and they will remain judicial decisions.

New ways of working

As I write we have no firm date for the move from the CVP platform to the VHS platform because of the technical difficulties identified with the latter as a result of the Pilot of this system run by the Newport hearing centre. However, I am pleased to write that the chamber has been using Work Allocation since the beginning of July; early reports from the judiciary suggest the tech is working well, and I hope this sets the tone for successful deployment of Scheduling and Listing into the jurisdiction later in the reform programme.

Although progress continues to be made in this area, it is plain that further work is required to allow large volumes of digital documents to be handled and accessed with a similar ease to a paper file. Part of this requires the adoption of a sensible and commonly used document naming system. Another part requires all court users to adopt the use of pdf bundles of documents that are appropriately paginated, bookmarked and indexed. It can otherwise be an extremely

frustrating and time-consuming search for an individual digital document within an electronic folder.

As the technology available to us develops we will continue to explore how we can make better use of the judicial resources available, consistent with our primary obligation to deliver fair hearings.

In this respect the Tribunal continues to give close scrutiny to the management and hearing of applications for bail from those in immigration detention. As a result of the pandemic, hearings have routinely been dealt with remotely with the applicant joining from their detention centre or prison. Only occasionally have applications needed to be heard in the applicant's absence. This approach has eliminated the delay and administrative burden associated with arranging a detainee's physical production. It has shortened the lead time between application and hearing. Once bail applications are brought onto the CCD platform, I anticipate further time savings may be made.

We will continue to research the effects of video hearings upon outcomes and court users. I take the number of anecdotal reports of the effects of remote working upon the judiciary very seriously and further research in this area is clearly justified. I know that many are concerned about fatigue and eye strain but there may be wider issues to consider. There are clear benefits to using remote hearings "in appropriate cases", but I will remain vigilant in ensuring that these are properly identified.

Video evidence from overseas

Following the Upper Tribunal decision in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 286 (IAC) which amended the guidance previously given in *Nare (evidence by electronic means) Zimbabwe* [2011] UKUT 00443 (IAC), I issued my own Presidential Guidance Note 1 of 2022. Following consultation with Judicial Office and the Foreign and Commonwealth Development Office upon a streamlined process for ascertaining the stance adopted by an individual nation, and to avoid the need for individuals to pay fees to do so, I have now been able to offer revised guidance.

The obligation continues to rest upon the party proposing to adduce oral evidence from overseas by video or telephone link, to establish to the satisfaction of the First-tier Tribunal (IAC) that there is no legal or diplomatic barrier to their doing so. I recognise that some find this frustrating, but there are sound reasons for the cautious approach that must be taken. The issue is far more

complex than simply ascertaining that the technology permits a secure call to be made to an individual who can then satisfy a judge that they are who they claim to be, and that they are free from interference or prompting. Extension of the courtroom overseas raises both legal and diplomatic issues. Participation by an individual without the permission of the host nation can, in some countries, amount to the commission of a criminal offence. Many nations could be expected to take grave diplomatic offence if the United Kingdom were to unilaterally extend a courtroom into their territory. Moreover, in the context of a protection appeal, any request for permission of the host nation would need to be handled with the utmost care for fear that it would disclose the existence of the protection claim, or the identity of the individual seeking protection. Following the Withdrawal Agreement, the United Kingdom lost the benefit of the provisions of EC 1348/2000 which provided reciprocal arrangements between member states. It is also unlikely that hearings before the Tribunal fall within the definition of a "civil or commercial matter" thus no assistance can be gained from the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters. Even if it did, the UK has not accepted every country's Accession and not every country has confirmed the lack of domestic legal obstacles to using a video link for live evidence.

Nationality and Borders Act 2022

The Nationality and Borders Act 2022 will significantly affect the work of the Tribunal and judicial training is already planned. Of particular note is the prospect of a new statutory right of appeal against an age assessment decision. Currently these decisions are made by a Local Authority and they are only subject to judicial review proceedings which are generally transferred for hearing in the Upper Tribunal IAC. In future, age assessments will not only be made by a Local Authority but also by an official of the Secretary of State "designated" to make them. There will be a new statutory right of appeal to the First-tier Tribunal against the age assessment decisions of both. Only time will tell how large an increase there will be in the numbers of age assessment decisions made as a result of these changes.

We will also need to introduce new procedures for the new category of "Accelerated Detained Appeals" to ensure that appellants enjoy a fair hearing, whilst making provision for the accelerated process that will be expected of the Tribunal so that decisions may be promulgated within the anticipated 25 days from the lodgement of the appeal.

We look forward to the new ability to direct both parties to an appeal to appoint a single joint expert to advise upon a disputed issue. We anticipate that this will significantly assist our case management efforts to ensure that the range of issues actually in dispute within an appeal is narrowed before the final hearing, and to maximise the number of appeals that can be resolved by agreement and without the need for a hearing.

Other developments

It is essential that FtTIAC is an inclusive, diverse chamber which is underpinned by equality and respect. Diversity and inclusion benefit us all. They lead to better working practices, enhance collegiality and make for better overall decision making. As President, my commitment to these objectives is echoed in the **Judicial Diversity and Inclusion Strategy** and the SPT's vision for all Tribunals.

Our Diversity and Inclusion Committee will be integral to implementing Equality, Diversity and Inclusion initiatives within our chamber. It builds on and cements the principles within the work of our Tribunal. The committee is led by Resident Judge Juliet Grant-Hutchison with a consultative pool of judges. Like the SPT Diversity Taskforce, the committee will focus on the objectives identified in the Judicial Diversity and Inclusion Strategy. The initiatives put forward will be pragmatic, research-based and effective. The implementation of these will take hard work and time with all our judges working in collaboration. This will be an ongoing, long-term programme of commitment and engagement. During the pandemic FtTIAC judges have continued to rise to the challenge of new and different ways of working. We have shown ourselves to be dynamic and innovative such that I have every confidence that our Tribunal can achieve these objectives.

Despite the limitations imposed by the pandemic, judges continued to deliver a programme of judicial outreach, affirming FtTIAC's commitment to diversity, inclusion, social mobility, and the improvement of community relations. We continue to offer opportunities for students from schools, colleges of further education, and universities to discuss their work with judges and the realities of a judicial career. This is in addition to the mentoring offered to would-be judicial officeholders. Students have begun to visit our hearings once again, and our judges have returned to making visits to schools, colleges and universities: initiatives which are much in demand.

To assist judges, we have reviewed all our Practice Directions and Practice Statements to identify what consolidation can be effected. Key materials are accessible through the FtTIAC judicial website under the editorship of Judge Lindsay Connal, who has also assumed the editorial role for our monthly judicial newsletter, "Tribune".

Despite the difficulties resulting from the pandemic, FtTIAC has continued to increase and develop its international ties through engagement with the International Association of Refugee and Migration Judges, and the European Judicial Training Network. A number of our judges are members of the IARMJs Working Parties, with Julian Phillips, Mark Symes, and Kyrie James also acting as Rapporteurs for the Association's Detention, COI Expert Evidence and Social Media, and, Vulnerable Persons, Working Parties respectively.

Through our international ties we continue to contribute to the training of the judiciary within other jurisdictions, and to affirm the Rule of Law. Invitations to assist in specific training projects have been received from Cyprus, Bangladesh, and the Cayman Islands.

I extend my thanks to Resident Judge Julian Phillips, our judicial training lead, and his two deputy training judges, Anna-Rose Landes and Jonathan Holmes, for their perseverance to bring judicial training back to a face to face medium safely, notwithstanding the continuing practical difficulties posed by the pandemic. We have, as a result, been able to successfully deliver a full programme of both Residential and Continuing Training, together with two Induction Training courses for new salaried, and fee-paid, colleagues. As I write, planning is underway for the delivery of training to all our judges on the new Nationality and Borders Act and our Autumn programme of training.

People

There have been a significant number of retirements amongst the senior leadership of the Tribunal. Three Resident Judges, Frank Appleyard, Christine Martin, and David Zucker, together with three Designated Judges Graeme Peart, John McClure, and Edward Woodcraft have retired. Their departures have had a significant impact upon the management of the Tribunal already. Whilst a recruitment exercise is underway to seek replacements for the three Resident Judges, the Designated Judge posts will not be filled so, increasingly, I and my remaining Resident Judges, rely on our loyal Assistant Resident Judges to assist in the management of their hearing centres.

I have also indicated to the SPT that I intend to stand down as Chamber President this calendar year. It has been a privilege not only serving as a judge but also as President.

I wish to convey my personal thanks not only to my immediate team of Resident Judges, but also in particular to Jane Blakelock and Martine Muir (the presidential team at Field House), 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

My report would not be complete without acknowledgement that very little would have been achieved this year without the hard work and extraordinary dedication of our judges and administrative staff. In extremely difficult circumstances they have risen to the challenges we have faced with good humour and resolve. I am not only extremely grateful to them but proud of all those who have devoted so much of their imagination, effort and patience ensuring that our work has continued during the pandemic. Our decisions profoundly affect people's lives, and I have been impressed that the challenges we have faced have been met with the recognition that, if we were unable to make those decisions or had to delay them, the consequences would be extremely damaging to many.

Property Chamber
Chamber President: Judge Siobhan McGrath

Introduction

The Property Chamber is proud to provide expert case management and expert adjudication in an area of law and practice which is complex, challenging and so very important to the parties involved.

The year 2021-2022 was the second year of the Covid-19 Pandemic. In some ways it was more challenging than the first year. However, despite fatigue and the continued calls on reserves of resilience, we have managed our case load well. This is entirely due to the dedication shown by our staff and judiciary who continue to work in difficult circumstances with good humour and good grace.

This has been yet another dynamic period for the chamber which is preparing to receive numerous new jurisdictions over the coming 12 to 18 months, adding significantly to the 160 different case types that we deal with already.

The Property Chamber

The judges and members of the Property Chamber have expertise in Landlord and Tenant, Property and Housing law and practice. Specialist judges sit together with professional experts and lay members. Most of our work is party v party.

Our shared vision is to provide accessible and expert dispute resolution. Expert adjudication is not a narrow construct. We apply our knowledge of the law and understanding of practice within the sector to our decision-making. We have the advantage of access to expertise in housing conditions, housing management and valuation. We manage our cases smoothly from application to determination relying on the experience and judgement of our judiciary, our legal officers and our staff.

We do not regard our work as simply being transactional. Our vision and goal is to provide accessible and respected dispute resolution for all those who come before us with or without representation.

Our work 2021-2022

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 caseload of

about 11,000 applications, appeals and referrals each year. That figure masks the fact that many of our cases concern multiple parties and the true number is in fact significantly higher. Furthermore, unlike some jurisdictions, each application that proceeds will entail a full day's hearing. 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.

Residential property

Leasehold disputes

Leasehold disputes are the mainstay of the Residential Property division of the chamber. The disputes are broadly divided between leasehold management and leasehold enfranchisement. The leasehold management jurisdictions deal with the often thorny and contentious issues that arise in the relationship between landlords and lessees in respect of service charges, administration charges, the conduct of managing agents and the statutory Right to Manage. The jurisdiction to appoint a manager under the Landlord and Tenant Act 1987 is of particular difficulty. In January 2022, I issued a Practice Statement on the Tribunal's consideration of whom to appoint as a manager in these cases.

In the summer of 2020, the Law Commission published three reports: *Leasehold home ownership: buying your freehold or extending your lease*; *Reinvigorating commonhold: the alternative to leasehold ownership* and *Leasehold home ownership: exercising the right to manage*. Each report made ambitious proposals for the reform of leasehold law and recommendations for the expansion of the Tribunal's jurisdictions to deal with disputes. During 2021-22 we have been in discussion with the Department for Levelling Up, Housing and Communities about the implementation of those recommendations. In April 2022, the Leasehold Reform (Ground Rent) Act 2022 gained Royal Assent and will come into force at the end of June. The Act represents the first stage of the government's stated aim to make leasehold property ownership fairer and more affordable. In the Queen's speech in May 2022 it was intimated that there may be a third session Bill intended to take forward the second stage of leasehold reform and to re-invigorate Commonhold as an alternative form of tenure.

There have been a number of Supreme Court and Court of Appeal decisions relating to leasehold in the past year:

Firstport Property Service Ltd v Settlers Court RTM Company Ltd [2020] UKSC1; *Gell v 32 St John's Road (Eastbourne) Management Co Ltd*; *Marlborough Knightsbridge Management Ltd v Fivaz* [2021] EWCA Civ 989; *No 1 West India Quay (Residential) Ltd v East Tower Apartments Ltd* [2021] EWCA Civ 1119; *Eastern Pyramid Group Corporation SA v Spire House RTM Company Ltd* [2021] EWCA 1658; *Kensquare Ltd v Boakye* [2021] EWCA Civ 1725; *Termhouse (Clarendon Court) Management Ltd v Al-Bahaa* [2021] EWCA Civ 1881; *Cadogan Holdings v Alberti* [2022] EWCA Civ 499.

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, applications for Rent Repayment Orders (RROs) and appeals against the imposition of Financial Penalties imposed by local authorities for housing offences now represent the bulk of our housing standards work.

There have been numerous Upper Tribunal decisions relating to the 2016 Act which has proved to be contentious. There have been two Court of Appeal decisions: *Palmview Estate Ltd v Thurrock Council* [2021] EWCA Civ 1871 and the important decision in *Rakusen v Jepsen* [2020] UKUT298 (LC) on the imposition of Rent Repayment Orders on superior landlords. Permission has now been given for the case to go to the Supreme Court.

This year we have agreed with the President of the General Regulatory Chamber, and with the endorsement of the Senior President of Tribunals, that jurisdictions under the following legislation will be relocated in the Property Chamber: the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015; the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014; the Client Money Protection Schemes for Property Agents (Requirement

to Belong to a Scheme etc.) Regulations 2019; the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Building safety

The Building Safety Act was given Royal Assent on 28th April 2022. This is very significant legislation following the Grenfell Tower fire in June 2017. Following the fire, the Government commissioned an Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt. The objectives of the Act are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith by strengthening the whole regulatory system for building safety. The Act takes forward the Government's commitment to fundamental reform of the building safety system. This is to be achieved by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety. The Act contains six parts and eleven schedules. The Property Chamber will be conferred with numerous jurisdictions over the next 18 months. The first of these came into force on 28th June 2022 and make provisions for the following applications: Remediation Costs under qualifying leases; Remediation Orders and Remediation Contribution Orders.

Additionally, the Act will have a wider impact on service charge cases and the determination of contributions between landlords where costs cannot be passed on to leaseholders.

Telecommunications

In 2017, the Digital Economy Act introduced a new Electronic Communications Code which provides a set of rights designed to facilitate the installation and maintenance of electronic communications networks. Dispute resolution is conferred on both the Upper Tribunal (Lands) Chamber and on the FTT Property Chamber although any originating application must be made to the UTT. Since June 2021, the Upper Tribunal has transferred cases to the FTT for determination.

The Telecommunications Infrastructure (Leasehold Property) Act 2021 received Royal Assent in March 2021. We anticipate that the provisions, which amend the Communications Code, will be brought into effect soon after the summer 2022. When commenced, they will confer jurisdiction on the FTT to determine applications for access to leasehold premises in default of landlord consent.

Finally, the Product Security and Telecommunications Infrastructure (PSTI) Bill will introduce further jurisdictions for the FTT when it becomes law.

Market rents and fair rents

The origin of the Residential Property Division of the Chamber lies in the determination of fair and market rents. The Rent Assessment Panels were established in 1965 and we continue to decide fair rents under the Rent Act 1977. Since 1989, we have also decided market rents under the Housing Act 1988. In the Queen's speech in May 2022, an intention to take forward the Renters Reform Bill will seek to improve the quality of housing for private renters and it will also ban section 21 "no fault" evictions. If enacted, this is likely to have a significant impact on the number of market rent applications made to the Tribunal.

Park homes

In 2011, the jurisdiction to deal with claims under the Mobile Homes Act 1983 was transferred to the Tribunal from the County Court (with the exception of termination cases). In July 2021, the Mobiles Homes (requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations were brought into force. We have now started receiving appeals and applications under the new jurisdictions.

Land registration

In its response to the Law Commission Report: *Updating the Land Registration Act 2002*, the government accepted the Law Commission's proposals that the jurisdiction of the tribunal be extended to include an express statutory jurisdiction in cases that come before it to allow it firstly, to determine how an equity by estoppel should be satisfied; and secondly, to declare the extent of a beneficial interest.

When the proposal is enacted, it will be clear that the tribunal can determine more fully the issues between the parties in matters referred to it concerning equitable interests and saving the parties the expense and delay of making additional applications to the court.

The Government has also accepted the Law Commission's recommendations that the tribunal should be given an express statutory power to decide where a boundary lies in a referred determined boundary application and to direct the registrar as to where the determined boundary lies. This recommendation will

make it clear that the tribunal is not limited to deciding whether the boundary is or is not in the position shown on the application plan. The proposal will enable the tribunal to assist the parties by deciding where the boundary lies and giving appropriate directions to the registrar so that the line of the determined boundary is shown on the title plan.

Agricultural land and drainage

Following consultation with stakeholders, including the judiciary of the AL&D Division, the Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test)(England) Regulations 2021 were introduced. These regulations establish an updated suitability test criteria that must be considered by the Tribunal when determining whether a prospective tenant is a suitable person to succeed to a 1986 Act tenancy following the death or retirement of the tenant.

Access to justice

Judicial deployment

The jurisdiction to deal with Property cases is split between the courts and Tribunals and the parties have no choice but to engage in both types of proceeding. This increases the costs, causes additional delay, and in some cases, stress and frustration. Since 2017, the Tribunal has conducted a project called the "flexible deployment" project, where Property Chamber judges exercise both county court and Tribunal jurisdictions so that all issues can be decided in one place at one hearing. We are now working with the MR's nominees to resolve the inherent challenges in the application of two sets of procedural rules; the CPR and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules.

In the Residential Property Southern Region, the Tribunal provides assistance to local county courts by undertaking the administration and adjudication in county court housing and landlord and tenant cases. This is not an extension of the Tribunal jurisdiction. Instead, the Tribunal acts as an extension to the county court and offers expert judiciary to determine the cases. The scheme is working well.

Property portal and property network

There is broad recognition that seeking the resolution of Property disputes can be confusing. There are redress systems, ombudsmen, internal grievance and complaints procedures, courts and Tribunals. In the Property Chamber, we deal with multi-faceted disputes where the answer may not be that one side wins and the other side loses. It is more likely that one party will be found to be correct in some of its claims but not in others.

In our view, the best way to tackle this problem and enhance access to justice is to provide a single point of engagement for property dispute resolution: a "property portal" which would be supported by a network of property disputes resolution providers. To this end, we are working with policy colleagues and a group of interested parties who participate in a Housing and Property Redress Group chaired by Professor Christopher Hodges.[1] Part of the ambition of the group is to encourage culture change and the adoption of codes of conduct of behaviour in housing relationships and management. We are working with Professor Hodges and DLUHC on a model for dispute resolution in respect of the new proposals for Commonhold tenure.

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. During the pandemic we have continued with some mediations either by telephone or using Teams. Encouraged by the Civil Justice Council's paper on compulsory ADR in June 2021, and the MoJ's call for evidence on dispute resolution last Autumn, we are keen to increase the number of mediations that we can offer. To that end we have prepared a training schedule and intend to seek additional finance for in-house mediation training of judges, members and legal officers.

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.

1 Emeritus Professor of Justice Systems, University of Oxford; Supernumerary Fellow of Wolfson College, Oxford; Co-Founder, International Network for the Delivery of Regulation (INDR).

HMCTS reform

During the last 12 months we have been working with HMCTS to establish the requirements for a reformed IT system for the three Property Chamber Divisions. We were recently given the disappointing news that there is insufficient funding or capacity to take forward the reform proposals for the Chamber at this stage. We will now work with HMCTS colleagues to consider alternative plans to ensure that the Chamber has an appropriate and effective IT system.

Our main ambition is to preserve the capability afforded by our Case Management System in Residential Property but to improve it so that access to justice is enhanced. For Land Registration a completely new system is required. We would like applications and references 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.

Judges, Members, Registrars and Legal Officers

The Principal Judge for Agricultural Land & Drainage is Judge Nigel Thomas and the Principal Judge for Land Registration is Judge Michael Michell who is supported by two salaried judges. 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. Our decision making is also greatly enhanced by the input of our lay members.

In the Land Registration we also have two very experienced Lawyer Registrars. In Residential Property we have been happy to welcome a number of Legal Officers to our teams. They will exercise judicial case management powers and we are confident that they will enhance our effectiveness and assist in improving case management.

Appointments and retirements

During the last year we have been pleased to welcome a number of new valuer chairmen and valuer members and also a new cohort of fee-paid judges. As experts, all the new appointees will enhance our ability to give expert adjudication and they are very welcome.

There have been a number of retirements during the last 12 months. Some judges have moved on, often on appointment to other judicial posts and some of our members have changed career. I would just like to record my thanks for the dedication and contribution that both judges and members have made to the Chamber and to wish them well for the future.

Administration

As always, the success of the chamber owes a great deal to the dedication and work of our administrative staff. During the past two years, this has been demonstrated as never before. Throughout all difficulty, staff remain focused, adaptable and agile. They have embraced new ways of working and very simply have kept the show on the road. Although output was impacted by building closure, we have no backlog at all in some of our offices and are catching up quickly in others. They are owed a debt of thanks for all they have done. Some of our staff have retired or moved on to other posts. I would also like to thank them for their contribution to the Tribunal which has been outstanding.

Covid-19

The effect of the Covid-19 Pandemic is still being felt. We are proud of the way in which we have coped over the past two years. The question now is how we propose to go forward. Very simply we will retain the best of what we have achieved, and this will include offering a menu of options for hearings: consideration of cases on documents alone, telephone hearings, fully remote hearings and hybrid hearings; using PDF hearing bundles. Earlier this year I consulted staff, judges and members on their perception of the value of virtual hearings. On the basis of those responses, and together with the leadership judiciary and HMCTS colleagues, we will develop a strategy and guidance for parties on the mode of hearing.

Conclusion

It has been another very busy year. Despite the pandemic we have continued to develop and grow. There are exciting new initiatives for the coming year and beyond. We are getting closer to achieving our goal of providing proportionate access to justice in property disputes. To that end, we are forging closer contacts with the courts and other dispute providers. There are important policy developments in landlord and tenant, housing and property law which include an ambition to improve redress and we look forward to playing our part.

Finally, a big thank you again to my Chamber Support Officer, Tom Rouse, who as always, keeps the chamber running with good humour and astonishing resilience.

Annex C Employment

Employment Appeal Tribunal (EAT)
President: Dame Jennifer Eady

I was appointed as President of the Employment Appeal Tribunal (EAT) with effect from 1 February 2022, the term of office of my predecessor, the Honourable Mr Justice Choudhury, having come to an end on 31 December 2021.

During his three years as President, Mr Justice Choudhury faced what have undoubtedly been the most challenging times in the EAT's history. Having overseen the EAT's move from Fleetbank House to the Rolls Building (the EAT's first experience of being co-located with other courts and tribunals), Mr Justice Choudhury then had to steward the EAT through the coronavirus pandemic and through the introduction of the case management system and CE-File. I pay tribute to Mr Justice Choudhury's wisdom, calm determination, resolve and good humour during those most difficult of times and pass on the sincere thanks of all at the EAT for his service. We will, however, continue to welcome Choudhury J back to sit in the EAT as one of our valued cohort of visiting High Court Judges.

The work of the EAT

General

The Employment Appeal Tribunal is an independent tribunal which determines legal disputes relating to employment law throughout Great Britain; it is a superior court of record. Most of the work of the Employment Appeal Tribunal relates to appeals against decisions made by the Employment Tribunal; an appeal lies to the Employment Appeal Tribunal against a decision of the Employment Tribunal on any question of law, as provided by section 21 Employment Tribunals Act 1996. The Employment Appeal Tribunal also hears appeals and applications about decisions made by the certification officer and the Central Arbitration Committee. The Employment Appeal Tribunal has limited original jurisdiction, arising from the provisions of the Transnational Information and Consultation of Employees Regulations 1999, and the European Public Limited-Liability Regulations 2004.

The EAT sits principally in London and Edinburgh, and occasionally in Cardiff. In Northern Ireland, appeals lie direct to the NI Court of Appeal. The question of what devolution will mean for the EAT has yet to be resolved; at present, the EAT remains a reserved tribunal in Scotland.

Receipts

In 2013, the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, SI 2013/1893 (the Fees Order) came into force, which had the effect of substantially reducing the number of claims in the Employment Tribunals (ET) and appeals in the EAT. As is now well known, the Fees Order was revoked following the 2017 decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, in which it was held that the Fees Order was unlawful. Following *UNISON*, the number of claims and appeals began to rise steadily until the on-set of the coronavirus pandemic led to a short hiatus in ET hearings during the first lockdown. The number of new appeals has now returned to pre-pandemic levels even if it has not quite reached pre-Fees Order levels.

Procedural changes

The EAT's 2018 Practice Direction, and the EAT Rules 2003 proved to be out of step with the new regime of remote hearings ushered in by the coronavirus pandemic and the 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 amending the provisions of the 2018 Practice Direction was issued in June 2020. This updated the procedures so as to enable remote hearings to take place and clarified the rules on the recording of proceedings. The EAT is presently considering what further changes might be needed coming out of the pandemic and in the light of the introduction of CE-File.

Cases

Appeals to the EAT continue to raise a wide variety of issues, many of which have a social interest and impact beyond the realms of employment law. Thus in *Forstater v Centre for Global Development* [2021]EAT0105 20, [2022]ICR1 the EAT was charged with determining whether a belief that sex is immutable was a protected belief within the meaning of the Equality Act 2010; in *Johnson v*

Transcopco [2022]EAT6, [2022]ICR69, the question was whether a black cab driver became a worker when using a taxi-hailing app; and in *Ali v Heathrow Express* [2022]EAT54, the EAT had to consider whether a Muslim employee's reaction to the use of the words "*Allahu Akbar*" in a security exercise fell within the definition of harassment under the Equality Act 2010. In *Pitcher v University of Oxford* [2022] ICR338, the EAT gave guidance as to the approach of the appellate tribunal when determining appeals from decisions on the question of objective justification in discrimination cases. More generally, the EAT has seen an increasing number of appeals raising issues relating to scope of the open justice principle in employment tribunal proceedings (*TYU v ILA Spa Ltd*; *Guardian News and Media Ltd v Rozanov and ors* [2022] ICR287; *Millicom and ors v Clifford* [2022] EAT74) and has provided guidance to the correct approach to the striking out of a claim (*Cox v Adecco* [2021] ICR1307). Further details of these cases are provided in the annex to this report.

People and places

Registrar and staff

Notwithstanding the enormous pressures that continue to be experienced as a result of the coronavirus pandemic and the backlog that has caused, the efficient, effective and well-managed operation of the EAT has continued and I take this opportunity to thank all our staff for their hard work, commitment and professionalism: the EAT is very lucky to have them.

On top of the problems caused by the pandemic, the EAT staff took on the Herculean task of converting the EAT's wholly paper-based system to CMS and CE-File. It has not all been smooth sailing but the EAT teams, both in London and in Edinburgh, have shown enormous flexibility and determination and we are hopeful that we will see some improvements in the operation of CE-File in the near future, which should encourage more EAT users to digitally file their documents themselves.

More generally, the EAT Registrar, Nicola Daly, continues to show tremendous leadership in ensuring the delivery of a remarkably effective and reliable service to litigants in the EAT. We are delighted that she now has the support of Rob Newton as Senior Court Associate. Rob has been a very valued member of the EAT Court Associate team for many years and his experience in this more senior role will be invaluable. We are also grateful for the support of the EAT's delivery manager, Domingo Rodriguez, who leads an EAT team that works cohesively (and in often difficult circumstances) to provide a 'cradle to grave'

case management of appeals. The EAT is fortunate in that there are several members of staff with many years of dedicated service behind them but we have also welcomed new members of the team this year, who have taken to their roles quickly and effectively, helping to maintain the standard of service to which EAT litigants have become accustomed. We have, however, had to say goodbye to Martin Parker as listing manager (but congratulate him on his promotion) and to Kainat Jamil, from our typing team (who has moved on to pastures new). We also send our best wishes to Julian Birch, a very long-serving and valued member of the listing team, who is taking a career break.

Judges

The EAT has three permanent judges: the President, and two Senior Circuit Judges, HHJ Auerbach and HHJ Tayler.

Our High Court Judge cohort comprises Kerr J, Soole J, Lavender J, Choudhury J, Swift J, Cavanagh J, Griffiths J, Linden J, Stacey J, Bourne J, Ellenbogen J and Williams J. The EAT's other visiting judges comprise four Circuit Judges: HHJ Murray Shanks, HHJ Martyn Barklem and HHJ Katherine Tucker having been joined this year by HHJ Wayne Beard. We are also fortunate to be able to draw on the services of several Deputy High Court Judges (currently Gavin Mansfield KC, Mathew Gullick KC, John Bowers KC, Clive Sheldon KC, Jason Coppel KC and Michael Ford KC), one Upper Tribunal Judge (UTJ John Keith) and the President of Employment Tribunals (England and Wales), Judge Clarke.

As one of the few jurisdictions to straddle the border with Scotland, the EAT is also graced by the addition of two Judges of the Court of Session, with Lord Fairley now being joined by Lady Haldane.

The high calibre of all the Judges assigned to the EAT reflects the complexity and importance of the cases heard in this jurisdiction.

Lay members

The EAT has a long tradition of sitting with lay members with special knowledge or experience of industrial relations and, after a decline in lay member sittings following the reduction in appeals resulting from fees, we have seen a larger number of hearings involving lay members over the last two years.

Although the EAT greatly benefits from the long service of the majority of its lay members, retirements in recent years have inevitably reduced the pool. We were

therefore delighted to welcome 13 new lay members, appointed over the last year as a result of a Judicial Appointments Commission recruitment exercise.

Training & other matters

Training

HHJ Auerbach is the lead judge on training and put on an excellent online training event in June 2021 and organised the induction training for the new EAT lay members. This year's training for the judges and lay members of the EAT took place on 13 June 2022 and was held as an in-person event.

Pro bono legal advice schemes

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 successfully at the EAT (as they have for many years) with legal professionals giving their time freely to assist and represent litigants in person at renewed permission to appeal and preliminary hearings. We also benefit from the contribution of professional representatives appearing pro bono on full appeal hearings, generally acting through the Free Representation Unit or Advocate. This assistance is invaluable, both to the litigant in question, but also to the EAT itself, not least as it 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. There are regular meetings with the Presidents of the ETs in both England and Wales (Barry Clarke) and Scotland (Shona Simon). Shona Simon will be retiring this year and we wish her the very best for this new chapter of her life; she will be missed in the employment law community both north and south of the border.

A user group, chaired by Deshpal Panesar KC, meets the judges of the EAT twice yearly to discuss issues of concern.

Judges of the EAT also contribute to the training of employment judges and attend the Council of Employment Judges annual conference. We are also delighted to welcome employment judges who attend the EAT on a rota basis to observe proceedings.

Other external engagements include speeches at the Industrial Law Society, the Employment Law Bar Association and Employment Lawyers' Association and at judicial recruitment events in England and Scotland, as well as ad hoc events at various schools, colleges and community organisations. All EAT judges learn from these contacts, as they do from assisting visiting international judges on a regular basis.

Reform

The EAT, like other civil jurisdictions, is transforming from a largely paper-based jurisdiction to one where electronic filing of documents is the norm. We are seeking further changes to the CE-File system, introduced across Courts and Tribunals in England and Wales last year, to try to ensure it can more effectively address the specific requirements of the EAT and its users and thus enable us all to work more efficiently. We are also looking to see how we can improve the guidance to CE-File for users of the EAT.

Employment Tribunals (Scotland)
President: Judge Shona Simon

Introduction

This will be my final contribution, on behalf of Employment Tribunals (Scotland), to the Senior President's Annual Report given I will be retiring in the summer of 2022, after more than twelve years in the post of President.

Looking back, I am struck by the significant challenges the Employment Tribunals have faced in recent years, not least the impact of the imposition of fee-charging, particularly on access to employment justice, then dealing with the consequences of fee charging being removed overnight, and of course the many challenges we have had to deal with as a result of the Covid-19 pandemic. I certainly did not foresee when I became President that I would have to lead the tribunal over those particular mountains.

Equally, however, many of the issues facing the jurisdiction and the system users when I became President continue to exist, to a greater or lesser extent. The greatest of all is probably the level of unmet legal need which continues to have a very significant impact on our ability to deliver justice effectively and efficiently.

It is beyond argument that many aspects of employment law, particularly the law which applies in the areas of discrimination (including equal pay) and public

interest disclosure ('whistleblowing'), are extremely complex. You do not have to take my word for it – just take a look at some of the recent employment cases dealt with by the Supreme Court such as *Asda Stores Ltd v Brierley and Ors* [2021] UKSC 10, which in turn references the Scottish case of *Dumfries and Galloway Council v North* [2013] ICR 993. (Forgive me for mentioning that the decision of the Scottish Employment Tribunal in *North* was upheld by the Supreme Court!). In the *Asda* case there were 3 Q.C. s and 3 junior counsel arguing about how the principle of equal pay for work of equal value, which has been part of our law for 40 years, should work in practice. You might say in response these are equal pay cases and we know they are hard but I could give you many other examples outwith that field which have taxed the Supreme Court over the last year or so. How about *Uber BV and ors v Aslam and ors* [2021] UKSC 5 – who is a worker, for the purposes of British employment law, or *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8 in which another 3 Q.C. s and 3 juniors argued about whether care workers, who can sleep unless needed overnight, are still working when asleep for the purposes of the National Minimum Wage Regulations 1999? *Tomlinson-Blake*, as a minimum wage case, is the type of claim many would say is at the simpler end of the cases dealt with in the employment jurisdiction.

When you consider each of these cases, and I could have cited many others, it is not difficult to see why so many individuals, seeking to enforce their employment rights, but unable to afford to pay skilled legal advisers, struggle to access employment justice. While a limited form of legal aid is available for some employment cases in Scotland, increasingly we are told by unrepresented parties that they struggle to find solicitors who will act for them under the legal aid scheme. For some the battle becomes too hard and wearisome and so they give up.

Every day, Employment Judges spend a huge amount of time explaining complex legal concepts to unrepresented parties; they do a fantastic job, but the knowledge, skill and confidence gap they are trying to fill, without descending into the arena and acting as a representative, is simply huge. It is undoubtedly far greater now, because of the burgeoning of employment rights (most certainly a good thing in a civilised society) and the associated caselaw, than it was when I first became an Employment Judge more than twenty years ago. When I reflect on the range, quality and sheer sophistication of the skills Employment Judges must now deploy in order to manage and hear employment cases effectively, compared to the days when I was in practice myself, it is like comparing the

skills needed to prepare a Michelin starred dinner with those required to deliver a tolerably decent pizza!

It is a matter for government, not for me as a judge, to decide what, if anything, should be done in systemic policy terms, to try to enhance access to employment justice but I cannot leave this topic without commending the relatively small number of organisations who try to assist those who would otherwise be unrepresented. While the Employment Litigants in Person Scheme (ELIPS), run through the auspices of the Employment Lawyers Association, is a prime and commendable example in England and Wales frustratingly it does not operate (despite the best efforts of many and to my huge disappointment) in Scotland because of a problem with providing professional indemnity insurance for it under the Law Society of Scotland master policy.

In Scotland, and what bright lights they shine in what would otherwise be darkness for many, the rise of the University Law Clinic network has been particularly notable in recent years. They all do an excellent job but I hope I will be forgiven for mentioning in particular, given they are our most frequent law clinic visitors, the staff, volunteer solicitors and students who operate the Strathclyde University Law Clinic. They offer not just legal advice (employment queries are their most common type of enquiry by far) but representation, done by a team of two students per case, at the Employment Tribunal. This is in all types of cases, including complex discrimination. It is daunting enough as a qualified solicitor to undertake such work but for law students to do so, and it is invariably done to a high standard, is nothing short of remarkable. They have had a number of outstanding successes in recent years for individuals some of whom I have no doubt would have withdrawn their claim before it got to hearing had they been left to manage alone. I did not want to leave my post without publicly commending them for the invaluable work they do in improving access to employment justice in Scotland.

The jurisdictional landscape

Caseload and performance

Commonly in this report I give a summary of outstanding caseload, case throughput and other performance related data. However, reliable data of this kind has not been available for the past year, north or south of the border, due to data matching difficulties arising from the transfer of information in 2021 from Ethos, the previous administrative case management system, to ECM, the new (and thankfully otherwise more stable) system.

While not able to report on the figures, what I can say is that locally produced information suggests that in ET(S) we have not seen the spike in claims that was feared following the end of the 'furlough' scheme. Indeed, our live caseload was smaller (local figures suggest by around 7000) at the end of February 2022 than it was at the same time the previous year. Our throughput of cases has been considerable, with over 400 hearings listed per month, not least because we have been able to use virtual (video) as well as real hearing rooms to good effect.

There has also been a steep decline in the number of telephone enquiries being made to the ET(S) central enquiry line over the last year. While it is speculation, the most likely reason for this is that the administrative backlogs affecting correspondence and listing, which were significant over the course of 2020 and 2021, have been cleared which means that general progress chasing calls are no longer necessary. This improvement in administrative performance is a tribute to the staff of HMCTS, and those who lead them. However, attention is now quite rightly turning to improving the quality of support provided. The staff turnover level in ET(S) has been much higher over the past year than previously, with many highly experienced staff leaving. Although new staff have been recruited this turnover has resulted in a significant skill and knowledge deficit. The judiciary, in a spirit of cooperation, have been running training events for the staff to improve their level of knowledge about the ET Rules of Procedure and key employment law concepts they need to grasp to do their jobs effectively. In this they have been ably supported by the outstanding team of legal officers, of which there are currently five in Scotland with one post unfilled.

In my previous report I explained that legal officers, who can exercise a range of delegated judicial powers, were being appointed for the first time in ETs. I expressed the hope that they would make a significant contribution to the system. Even with my glass at its fullest I could not have foreseen just how successful their introduction would be and the resulting boost to judicial morale. They have quickly been assimilated into the ET world, straddling the divide between the administration and the judiciary, to excellent effect. I have yet to come across an Employment Judge who does not recognise the huge contribution they have made to the administration of justice in ETs. They have been readily accepted too by our system users with very few requests for their decisions to be considered afresh by a judge. In short, this development has been an unalloyed success.

Cross border working between the ETs continues to provide consistent direction and support

Last year I commented positively on the fact that while ETs (Scotland) and ETs (England and Wales) are two separate judicial entities there had been particularly close working between the two ET Presidents during the Covid – 19 pandemic. I explained the rationale for that approach, which still holds good as we try to cope with the continuing consequences of the pandemic and move forward to something that might eventually become the new normal. That cross border cooperation is exemplified in the Joint ET Roadmap 2022-23 in which we set out the default position with regard to the mode of hearing delivery for particular types of cases. It will be seen from this that on both sides of the border we expect to continue using video hearings in the future with that method of hearing delivery being the default position in our simpler cases ('short track'). All we mean by default is what you might generally expect, unless there are reasons pointing to the interests of justice being better served by the hearing being done in a different way. While the method of hearing delivery will always, ultimately, be a judicial decision, parties are encouraged to inform the tribunal of their views on the most appropriate method for the conduct of the hearing. In Scotland the default position for discrimination and public interest disclosure cases (open track) will be in-person: there is no doubt that there are many reasons, particularly in complex cases with several witnesses and much evidential dispute, as open track cases tend to be, why an in-person hearing will best serve the interests of justice. The fact that we now have equipment in all Scottish ET offices which allows a witness to give evidence by video, even if the hearing is otherwise being conducted in person (a 'hybrid' hearing), should make it easier for in person hearings to proceed even if one or more witnesses are unavailable to attend in person at short notice, for any reason.

Over the course of the last year Employment Tribunals have continued to make effective use of video to maximise the number of hearings that have been able to take place, despite the constraints imposed by the pandemic. That is supported by the findings of a report produced by HMCTS in December 2021 which evaluates the use of video hearings during the pandemic. The ET related findings make for interesting and heartening reading.

Our ability to conduct hearings successfully by video has also been enhanced by the roll out in Scotland of a Document Upload Facility (DUC) earlier this year, which makes it much easier for parties to provide the tribunal with electronic

productions (document bundles), which are regularly ordered by the tribunal for use in video hearings.

The increased use of video hearings has thrown up a number of interesting consequential issues which required to be addressed. These include whether there is a requirement to check there is no objection from a foreign state when a party wishes to lead oral evidence, by video, from a witness based in that state (short answer: 'yes') and, if so, how is that to be done? By way of further example, in what circumstances, if any, should parties or for that matter the public (including the press), have access to a recording made of a video hearing and/or a transcript of such a recording? (In person hearings are generally not recorded since there is no mechanism to do so.) There was little time to consider matters like this at the outset of the pandemic when video was being adopted at short notice but now that the dust is settling these are the types of judicial policy and legal issues to which we have been turning our attention.

HMCTS reform: ET project

Some years after the overall project commenced, the Employment Tribunal system is now the focus of attention as part of the wider HMCTS reform initiative. In the context of the Employment Tribunals, HMCTS reform aims to take paper-based processes and make them digital. Instead of sending and receiving letters and emails to and from ET offices, the plan is for parties and their representatives to access their case information through a portal designed for that purpose. In the case of legal representatives, the My HMCTS portal will be used while unrepresented parties will access through a Citizen User interface. There will be new ET1 and ET3 submission processes, designed to be simpler and easier to use than current forms.

If all goes to plan, parties who want to make an application to the tribunal (say for an order of some type) will be guided through answering a series of questions online which should produce a more focussed application than those often received currently, particularly from unrepresented parties.

The judiciary are heavily involved in assisting the team who are designing the new system. If a system can be designed that allows for digital files to be created, digital referrals to and responses from judges, digital applications from parties that provide more focussed information then that has the potential to make the system considerably more efficient, to the benefit of all those involved.

At time of writing the first stage of the reformed service has been rolled out into the Glasgow and Leeds Employment Tribunals, which have been identified by HMCTS as 'early adopter' offices. Initially only open track cases in which the claimant is unrepresented will be progressed through the new system with all other cases progressing as they do currently. By late 2022 HMCTS hopes that all cases, including multiple claims, will go through the reformed ET system.

There is no doubt that this timescale is very tight given the amount of work that still needs to be done; it remains to be seen whether the time and resources available will be sufficient to maximise the efficiency gains which could be realised by a fully functioning, relatively sophisticated digital case management system. There are undoubtedly many challenges ahead in the next year but what is not in short supply is judicial commitment to the project, given its potential to increase the efficiency of the ET system and thereby enhance access to, and the administration of, justice.

The ongoing work of ET(S)

Irrespective of the mode of hearing delivery, Employment Judges and non-legal members have been kept busy dealing with a wide range of interesting cases, some of which have attracted a good deal of public attention. By way of example, the case of *Malone v Chief Constable of the Police Service of Scotland* (no. 4112618/18), a sex discrimination and victimisation claim, heard by an Employment Tribunal over 10 days by video in August 2021, attracted a significant amount of media interest: the tribunal's decision has resulted in the Scottish Police Service commencing a formal internal enquiry into the operation of its firearms unit and to a range of questions being asked in the Scottish Parliament. The fact the hearing was conducted by video meant that a greater number of observers from the press and public could attend than could reasonably have been accommodated in the Edinburgh ET office.

A good deal of judicial thinking power has also been expended in dealing with a wide range of claims connected in one way or another to the pandemic, many raising health and safety issues, including claims arising out of refusal to obey employer instructions to wear a mask, refusing to be vaccinated and to use a lateral flow test. Undoubtedly pandemic related claims will continue to feature in the workload of ETs over the next year or two.

Despite the reduction of activity in the North Sea oil sector, Scottish EJs continue to be called upon to determine complex territorial jurisdiction questions. It's all in a day's work to have to grapple with the on/offshore

rota patterns of an employee who spent part of his working time on a static accommodation vessel, tethered to the UK sector of the Continental Shelf via a drilling installation and part of it tethered to the Norwegian sector of the Shelf, whilst employed by a company domiciled in Singapore and conducting most of its business from there (*Haughey v Prosafe Ltd* - No 4111228/2019).

As is so often the case in the employment field we are also gearing up for further statutory change. Section 34 of the Judicial Review and Courts Act 2022, when it is brought into force, will insert a new section 37QA into the Employment Tribunals Act 1996 which will pass responsibility for making ET procedure rules from the Department of Business, Energy and Industrial Strategy to the Tribunal Procedure Committee, while section 35 will provide that powers over ET composition may be passed to the SPT. Both of these changes have considerable constitutional implications for the ETs.

Devolution of functions

When I became the Scottish ET President more than twelve years ago my predecessor commented that my appointment would give me a year or two to get my feet under the table before devolution of functions. However, here we are twelve years later and it still has not happened. The most up to date estimate is that the earliest devolution of functions will occur in 2025.

Final note

I particularly wish EJ Robert Gall, who will retire in June after more than fourteen years as a salaried judge, a long and happy retirement.

Leading the judicial office holders of Employment Tribunals (Scotland) for the last twelve years has been a huge honour and privilege. I could not have asked for a more dedicated, talented and collegiate team.

For my part, I can retire knowing I have done the job to the best of my ability but also knowing that I could not have done it without the unswerving support and commitment to delivering employment justice of all the tribunal's judicial office holders, ably supported by the ET staff. I salute them and wish them all the very best, whatever challenges the future holds.

Employment Tribunals (England & Wales)
President: Judge Barry Clarke

The 2021-22 financial year has been a period of immense challenge for the Employment Tribunals in England and Wales. There are five challenges in particular that I would like to address. What follows is not an exhaustive list of all the hurdles we face, which are many and varied, but they give a reasonable description of the road recently travelled.

Five challenges

The first challenge is that we continue with a significant problem of excessive waiting times, especially in London and the South East of England. Such delays inevitably prompt complaints and time-consuming correspondence both for civil servants and leadership judges. There are many reasons for these delays: the increase in work after the abolition of ET fees in July 2017; the suspension of full merits hearings in the early months of the pandemic; and the fact that, for a long time, we had too few judges. Any reader of this report who wishes to know more about these delays, and how they affect different regional offices, can read the published minutes of the meetings of the national user group.

Secondly, we have witnessed a high turnover of staff in many of our regional offices, while remaining significantly understaffed in many locations. As President, I often receive correspondence from users who are concerned that, despite writing to the regional office handling their case, they have yet to receive a reply. While recognising the pressures under which our colleagues in HMCTS work, leadership judges press for high standards and effective training in the way that our corner of the justice system is administered. It is likely that, as part of HMCTS reform, much of the administrative support for the Employment Tribunals in England and Wales will in future be provided by staff centralised in a "Courts and Tribunals Service Centre" (or "CTSC"). This will be facilitated by increased automation and digitisation of administrative processes.

Thirdly, our physical estate in some regions is too small, too frail, or both. Just as this report goes to press, some good news has appeared on that front: the acquisition of 7 Newgate Street will, I hope, provide a modern home for the London Central ET regional office for many years to come. We will be co-located with other tribunal jurisdictions. Few will mourn Victory House; it has been a good servant of workplace justice over several decades but, in recent times, its problems had become insurmountable. It was forced to close for several months in early 2021 because of problems with the ventilation system. Until

the new building is ready in late 2023, we must endure two more summers and one more winter there. Many other regional offices face similar difficulties. To a degree, we can mitigate the worst effects of estate limitations by hearing cases on a fully remote basis. However, video hearings should not become the default solution to estate problems simply because they have been an effective solution to the pandemic. I do not want this jurisdiction to become a victim of its own resilience; we must not abandon our physical estate for a virtual one.

Fourthly, operational and strategic decision-making has been impaired by the absence of management information since Spring 2021. For the past financial year, the Employment Tribunals have had to cope without reliable, audited data on matters such as the length of time taken to serve claims, the number of claims received (known as "receipts"), the number of claims brought to an end at a hearing or otherwise through settlement, conciliation or withdrawal (known as "disposals"), the size of our outstanding caseload, the number of sitting days, and so on. Previously, leadership judges would receive all this information and more besides, broken down by reference to regional office, head of claim and other criteria, and a selection would be published by HMCTS under its transparency policy. The reason for this unfortunate period of data silence is the migration between March and May 2021 of ET case information from an antiquated server-based package used by HMCTS known as "Ethos" to a new cloud-based package called "Employment Case Management" or "ECM". ECM uses the same case data platform as the one underpinning many civil and tribunal jurisdictions, but we still await the type of rigorous data that previously informed resourcing decisions and facilitated effective oversight and governance. Some of the raw data we have seen allows us to infer that the expected significant increase in cases from the pandemic did not materialise; this no doubt testifies to the success of the government's furlough scheme in minimising job losses. But richer and more reliable data is badly needed before we can confidently restore effective operational and strategic planning, which is essential for bringing down the backlog of cases.

Fifth, the Employment Tribunals north and south of the border are now in the grip of the modernisation process known as HMCTS reform. That process began in other parts of the justice system in 2016, and it was always planned that we would feature in later years. The scope of that reform programme as it applies to our jurisdiction was more fully described in the **"road map"** for 2022-23 I published earlier this year with Judge Shona Simon, my counterpart in Scotland. We have been in a "sprint stage" of reform since about October 2021. While recognising the financial pressures facing HMCTS, the judiciary

is a demanding partner in this process. Several leadership judges from the Employment Tribunals, including both Presidents, contribute to the work of the various working groups and committees that are charged with delivering reform. HMCTS have stated publicly that reform must deliver savings, for which they are answerable to Ministers, and that aim must be respected; the judiciary's involvement, by contrast, is aimed at ensuring that access to justice is preserved and, ideally, enhanced by new ways of working. I have identified reform as one of five areas of challenge because it will demand flexibility, adaptability and patience from judges, non-legal members, staff and users alike. It also consumes a great deal of time; civil servants and designers pull apart and reassemble design ideas while the judiciary do the best they can to influence them. Reform must be embraced, because it is an opportunity to transform the ET system from a paper-based system to one that is truly digital. The shared vision is for a secure, cloud-based system whereby any user, whether professionally represented or not, can access their case, check on progress and make applications online. I am convinced that the reformed ET system is a prize worth chasing.

In summary, the last year saw activity on a scale that matched the first year of the pandemic. I say this to explain, rather than excuse, the system delays that users are encountering. For those individuals waiting longer than they would wish for answers to their correspondence, or for their hearings, I can only apologise. We are doing the best we can with the resources we have. Which brings me to my next point: I wish to pay tribute to the sterling efforts of the judiciary of the Employment Tribunals in rising so magnificently to the unprecedented challenges of the last two years. The Regional Employment Judges, the Employment Judges (both salaried and fee paid) and the non-legal members have displayed professionalism, resilience, patience and adaptability. I am hugely grateful to them, for it is their dedication that has kept the system of workplace justice going. I must also thank the HMCTS staff who have continued to support the system as best they can, despite the constraints described above. Of course, I must also thank the system users who have shown impressive forbearance in their dealings with us.

The virtual region

There are some positive developments I wish to mention. In last year's annual report, I discussed the launch in April 2021 of the "virtual region" in England and Wales. By way of reminder, the virtual region does not have the administrative apparatus of a typical ET region. It acts instead as an intermediary between those cases in need of a judge and those fee paid judges (regardless of

where they live or the physical region to which they are assigned) who can sit on those cases on a fully remote basis. It is a model of working that has been made possible by video. It is available to any of the ten geographic ET regions, but its strategic aim is to rebalance resources towards those regions most in need and where waiting times are longest.

As a new concept, it was important to move incrementally. At its launch, the virtual region was focused on those cases where judges could adjudicate without non-legal members. In September 2021, it was reconfigured so that judges could sit alongside non-legal members on whistleblowing and discrimination cases, the so-called "open track". This development was essential because such a significant part of our backlog is drawn from the open track, especially in London and the South East. To circumnavigate the 2003 judgment of the House of Lords in *Lawal v Northern Spirit* (by which fee paid judges cannot sit with non-legal members before whom they might appear as advocates), the 300 fee paid judges who populate the virtual region have been split into three panels. Only the judges in Panel A can sit with non-legal members; they are free to do so because they do not practise (or they no longer practise) in the Employment Tribunals or because they are retired salaried judges.

From the perspective of users, it matters not whether the judge hearing their case is assigned to the region handling it or has been drawn from the virtual region. I have received feedback from users who were frustrated at how often in-person hearings were transferred to video late in the day. While I understand that frustration, this approach to listing is done for good reason. The Employment Tribunals have always "over-listed", which maximises the prospects of a hearing taking place sooner; this is especially important for a high-volume, high-settlement jurisdiction. The traditional approach was that, where fewer cases settled than expected, or the tribunal office had difficulty locating a judge or a venue for the hearing, some cases would need to be cancelled and re-listed at a later date. Before the pandemic, the options were straightforward: a hearing in person, or a cancelled hearing. Now there is a third option: to shift the hearing to video, by use of the virtual region or otherwise. It may irritate a party to be told that their hearing is now taking place on video, especially if travel and accommodation arrangements have already been made, but the reality is that this is often the only way it can go ahead. The options are not between a video hearing and an in-person hearing; the options are between a video hearing and a cancelled hearing. Those users frustrated by last-minute conversion to video should bear in mind that, but for video technology and the virtual region, the hearing would probably have been postponed.

I am pleased to report that the virtual region has performed well. HMCTS are still trying to capture better data about its operation but they have confirmed to me that, between April and December 2021, it covered 639 hearings. Subject to the system having sufficient sitting days, the virtual region should thrive.

Legal officers

Another positive development has been the use by the Employment Tribunals of legal officers. The power to appoint and utilise legal officers has been on the statute books for over 20 years, but the relevant regulations were not brought into force until October 2020. After a process of recruitment and training, our first cohort of legal officers began work at the end of April 2021 and there have been two further recruitment exercises since then. All ET regions now have at least two legal officers and some of the largest ones have three or four. I hope that recruitment will continue.

Legal officers exercise delegated judicial powers to carry out some case management functions but, just as importantly, they get involved in what we call "case progression". This phrase may sound jargonistic but it is crucial to the efficient administration of justice. In practice, "case progression" requires legal officers to look at case files several weeks ahead of a listed hearing (we aim for six weeks) to check what needs to be done to ensure the matter is ready. Is a referral to a judge needed? Should any case management orders be issued? If orders have been issued, have the parties complied with them or is an extension of time required? Are any special arrangements needed for the hearing? If non-legal members are needed, have they been booked? This intervention sometimes prompts the parties to settle a bit earlier than they might otherwise have done.

Legal officers have become the principal agents of case progression in the Employment Tribunals, introducing many efficiencies. Within a year of them starting, we wonder how we ever managed without them.

Recruitment

In order to tackle our historic high backlog, and address years of under-recruitment, the Ministry of Justice supported the Employment Tribunals in recruiting nearly 200 new judges in the Autumn of 2021. About 150 of them were fee paid judges recruited via the Judicial Appointments Commission, while a further 45 or so were cross-assigned from various chambers of the First-tier Tribunal. They were inducted and trained through a series of courses running from October 2021 to March 2022 and have started sitting. I am grateful to

all those existing judges who have dedicated time to designing and facilitating these courses and to all those who have acted as mentors to the new recruits. In a year's time, our new colleagues will progress through the next part of their induction training, following which they can sit on open track cases. That is where they are most needed. Subject to a suitable allocation of sitting days, the work of bringing down the backlog can begin in earnest in 2023.

In the past year we also recruited 19 new salaried judges, most of whom were deployed across London and the South East to ease pressures in those locations. We are very glad to have them, but it is noteworthy that this is the second successive occasion on which we have been unable to fill all of our vacancies.

As matters stand, our jurisdiction comprises one President, ten Regional Employment Judges, about 140 salaried Employment Judges (although, taking accounting of fractional working, the figure reduces to about 120 whole-time equivalent), about 400 fee paid and cross-assigned judges, and about 900 non-legal members.

Business as usual

Throughout the year, business has continued as usual, with a range of cases at first instance adjudicating on workplace disputes. We have seen numerous cases concerning the employment rights of those working in the "gig" economy, similar litigation about the employment rights of sub-postmasters, continued litigation on both public sector pension rights and the civil service compensation scheme, collective redundancy litigation following the collapse of Carilion, and high-profile cases involving those alleging detriment for expressing gender critical beliefs. A large number of Covid-related (or furlough-related) cases have worked their way through the system and, where there have been appeals, some settled principles are starting to emerge.

The year ahead

Video hearings will continue to have their place. Even as we try to increase the number of in-person hearings in the Employment Tribunals, we continue to "clock up" well over 2,000 hours on the Cloud Video Platform each week. I am enormously proud of how this jurisdiction has adapted to video as a mechanism for keeping justice moving during the pandemic; as I said in last year's report, CVP has been our greatest ally in that endeavour. Our road map contains more details about how we plan to use video and telephone over the coming year, and our aspiration to reduce reliance on video in our more complex cases. We

anticipate moving from CVP to its intended replacement, the Video Hearings service or "VH", during the coming year. With the accompanying pressures of HMCTS reform and various other planned initiatives, it will be a year of continued rapid change.

I end with a tribute to my counterpart President of Employment Tribunals in Scotland, Judge Shona Simon, as she begins her retirement. I have known Shona professionally for over a quarter of a century. She has been a great friend and supporter over the last two years, when circumstances demanded ever closer working between the two ET jurisdictions. I am confident I will have the same close and productive relationship with her worthy successor, Judge Susan Walker.

Annex D Important Cases

Cases from Upper Tribunal Administrative Appeals Chamber

Citation	Parties	Jurisdiction	Commentary
[2022] 1 W.L.R. 1132	*Foreign, Commonwealth and Development Office ('FCDO') v Information Commissioner, W and others (Sections 23 and 24)*	Information Rights	A three judge panel of the Upper Tribunal determined that under the Freedom of Information Act 2000 (FOIA), a public authority responding to a FOIA request is entitled to rely on sections 23(1) and 24(1) of FOIA in the alternative, so as to protect the interests of national security by not specifying, in particular, whether or not the information requested relates to a section 23(3) national security body. In each of the three cases the FCDO replied that information within the scope of the request was held but that it would not be supplied because it was exempt either under section 23(1) (information supplied by, or relating to, bodies dealing with security matters) or section 24(1) (national security). Implicit in each refusal was an acknowledgment that the exemptions under sections 23(1) and 24(1) were mutually exclusive which the panel found was a lawful approach.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 299 (AAC)	*James Killock & Michael Veale v Information Commissioner ('IC') and EW v IC and EC (on behalf of C) v IC*	Information Rights	A two judge, one specialist member panel of the Upper Tribunal determined these three cases which raised an important question as to the scope of the First-tier Tribunal's (FTT) power to make orders against the Information Commissioner (the IC) to progress complaints made to her by data subjects. They concerned the proper interpretation of s. 165 of the Data Protection Act 2018 (DPA), which makes provision for complaints by data subjects, and of s. 166 which makes provision for the Tribunal to make orders to progress complaints. The Upper Tribunal determined that s.166 is a procedural, not a substantive, remedy which provides for a right of appeal to the Tribunal on process, where the Commissioner fails to address a complaint under s.165 in a procedurally proper fashion. It further concluded that the appropriateness of the investigative steps taken by the Commissioner is an objective matter which is within the jurisdiction of the Tribunal and is not something solely within the remit of the Commissioner to determine for herself.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 136 (AAC)	*AM v DBS, Royal College of Nursing & National Education Union*	Safeguarding Vulnerable Groups	A three judge panel of the Upper Tribunal considered whether, in circumstances where the Disclosure and Barring Service refused permission to undertake a review of a person's inclusion on the Adults' Barred List and/or the Children's Barred List, under paragraph 18 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006, the affected person has a right of appeal to the Upper Tribunal against that decision refusing permission. It determined that there is no right to appeal in such circumstances and refused to admit the application for permission to appeal.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 252 (AAC)	*KT and SH v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal determined that (1) In light of the decision of a three-judge panel in *RJ, CMcL and CS* [2017] UKUT 0105 (AAC), the First-tier Tribunal had erred in law in respect of both claimants in its consideration of whether each claimant can wash and bathe "safely", as required by regulation 4(2A)(a) of the Social Security (Personal Independence Payment) Regulations 2013 and as defined by regulation 4(4)(a). (2) There should not be room for different First-tier Tribunal panels to make different decisions as to whether there is a risk that cannot reasonably or sensibly be ignored, where the differences between the panels' decisions arise not from differences in claimants' needs but from different assessments of the same objective evidence of risk. In this case the appellants each needed to remove their hearing aids to take a shower and to take a bath. Each could not, without the aids, hear a typical fire alarm or smoke alarm while taking a bath or shower with the door closed.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 243 (AAC)	*JEC v SSWP (SF)*	Social Security	The Upper Tribunal dismissed this appeal which concerned the meaning of "funeral" under the Social Fund Maternity and Funeral Expenses (General) Regulations 2005. The appellant made a claim for funeral expenses under the 2005 Regulations. A religious service had been held in the UK to celebrate the life of the deceased (the appellant's late wife). The deceased's body was then transported to Zimbabwe for burial. Under regulation 7(9)(b) it is a condition (subject to certain exceptions which did not apply in this case) that the funeral must take place in the UK to qualify for a funeral expenses payment. Originally, "funeral" had been defined inthe 2005 Regulations as "a burial or cremation". That definition was revoked with effect from 2 April 2018. As at the date of the claim, there was no statutory definition of "funeral" in the regulations. The appellant argued that the service held in the UK was a "funeral" and should qualify for a funeral expenses payment.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 243 (AAC)	*JEC v SSWP (SF)*	Social Security	The Upper Tribunal determined that having arranged for his wife to be buried outside of the UK, the appellant was not eligible for a funeral expenses payment.
[2022] UKUT 29 (AAC)	*JT v Disclosure and Barring Service*	Safeguarding Vulnerable Groups	In this case the Disclosure and Barring Service (DBS) had written to the appellant saying it had decided not to include her in a barred list. DBS subsequently revisited her case and, having made certain findings of fact, decided to add her to the Adults' Barred List. The Upper Tribunal decided, having considered the law of legitimate expectation, that DBS was entitled to revisit the appellant's case but had made mistakes in its findings of fact and directed that DBS remove her from the Adults' Barred List.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 85(AAC)	*GM v Secretary of State for Work and Pensions (RP)*	Social Security	In this case the Upper Tribunal determined that the requirement for women whose husbands received a Category A retirement pension prior to April 2008 to make a claim for a Category B pension was not unlawful. The issue at the heart of this appeal was how the law treats two groups of women in terms of their access to Category B state retirement pensions. The Upper Tribunal rejected the claimant's argument that, following the European Court of Human Rights decision in *Thlimmenos v Greece*, there was a violation of Article 14 by failing to make an adjustment or an accommodation for women applying for a Category B pension by removing the obstacle of making a second application for benefit. It determined that the appellant had not been placed at a disadvantage by the application of the rule about which she complained and/or there was not relevant similarity of treatment.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 91 (AAC)	*MP v First-tier Tribunal and Criminal Injuries Compensation Authority*	Criminal Injuries	The Upper Tribunal refused an application for judicial review in this case by the applicant, who was ordinarily resident in a country outside Europe with which the UK has no relevant treaty. He had been unable to claim compensation following the murder of his son, who was ordinarily resident in the UK when he was killed. This was because such a claim is excluded by para 10 of the Criminal Injuries Compensation Scheme 2012, which requires an applicant for compensation to satisfy eligibility requirements based on ordinary residence in the UK or various other factors, none of which the applicant could meet. The Upper Tribunal determined that the differential treatment of the applicant which that represented was justified if the matter was to be approached on the basis solely of a requirement imposed on an applicant for compensation.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 64 (AAC)	*Food Standards Agency v (1) Euro Quality Lambs Ltd (2) John and David Perry t/a John Penny and Sons.*	General Regulatory	The Upper Tribunal allowed these appeals and set aside and remade the decisions of the First-tier Tribunal. It determined that the appointed inspectors were properly appointed under regulation 34 of the Welfare of Animals at the Time of Killing (England) Regulations 2015 and that the Food Standards Agency was the competent authority for the purposes of appointing the Official Veterinarians under regulation 34 for the purposes of issuing the Welfare Enforcement Notices which were the subject of the appeals.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 47 (AAC)	*ET v SSWP (UC)*	Social Security	This case concerned the risk assessment contained in paragraph 4(1) of Schedule 8 to the Universal Credit Regulations 2013 and its wording "there would be a substantial risk to the health of any person were the claimant found not to have limited capability for work". The Upper Tribunal determined that the First-tier Tribunal erred in law in the findings it made under paragraph 4(1), in that it (1) failed sufficiently to establish that another person would in fact be able to accompany the appellant on initial journeys to and from places of work in unfamiliar locations; and (2) wrongly excluded journeys to and from the Jobcentre and job interviews in unfamiliar locations. *MW v SSWP* [2015] UKUT 665 (AAC) considered but not followed.

Cases from Upper Tribunal Tax and Chancery Chamber

Citation	Parties	Jurisdiction	Commentary
[2021] UKSC 39	*Tinkler v HMRC*	Supreme Court	This decision brought much-needed clarity to the question of whether and when the doctrine of estoppel by convention applies in a tax context. Although well-established in relation to contractual dealings, this decision resolves its application to dealings between HM Revenue & Customs (HMRC) and a taxpayer. The Supreme Court considered the leading authorities, including in particular *Revenue and Customs Comrs v Benchdollar Ltd* [2009] EWHC 1310 (Ch), as well as numerous leading commentators on the law of estoppel. HMRC had issued a closure notice denying Mr Tinkler a substantial income tax loss which he had claimed. Having appealed, at a late stage Mr Tinkler sought to argue that the closure notice had not been validly issued because HMRC had mistakenly issued it under the wrong statutory provisions. HMRC argued that he was estopped by convention from raising that argument. The First Tier Tribunal (FtT) accepted that argument but the Upper Tribunal and Court of Appeal rejected it.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKSC 39	*Tinkler v HMRC*	Supreme Court	The Court determined that the following principles applied: (i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them. The "crossing of the line" between the parties may consist either of words or conduct from which the necessary sharing can properly be inferred. (ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it. (iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKSC 39	*Tinkler v HMRC*	Supreme Court	(iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties. (v) Some detriment must thereby have been suffered by the person alleging the estoppel or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position. The Supreme Court found that on the facts all of these elements were present, so Mr Tinkler was estopped by convention from running this ground of appeal in light of the prior dealings between him and HMRC. As Lord Burrows concluded, "Standing back from the detail, what Mr Tinkler and his advisers have done is to take at a late stage what can fairly be described, on the facts of this case, as a technical point (that the notice of enquiry was sent to the wrong address) even though that has not caused Mr Tinkler any prejudice.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKSC 39	*Tinkler v HMRC*	Supreme Court	It is entirely satisfactory that, by reference to estoppel by convention, the law has the means to avoid such a technical point succeeding". Going forward, taxpayers and HMRC must keep this issue in mind if they seek to resile from a position previously accepted and relied on by both parties.
[2021] UKSC 17	*HMRC v Tooth*	Supreme Court	The normal time limits applying to HMRC's powers to issue a tax assessment can be extended in certain defined situations, where HMRC "discover" that insufficient tax has been declared by the taxpayer. If HMRC can establish that a taxpayer has deliberately filed an inaccurate return, the normal time limit is extended to 20 years. These "discovery assessments" are often the subject of litigation. *Tooth* resolved two issues in relation to such assessments which are of great general importance. First, what if an HMRC officer "discovers" that tax has been underpaid but then delays in issuing a discovery assessment, perhaps for several years, but still within the extended statutory limit?

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKSC 17	(continued) *HMRC v Tooth*	(continued) Supreme Court	(continued) A case-law doctrine had developed in recent years to the effect that in such circumstances it was possible for the assessment to have lost its "essential newness" as a discovery, so the assessment could become "stale" and thereby invalid. This doctrine was highly controversial, with some experts (and even some tax judges) doubting its validity. In *Tooth*, the Supreme Court laid the concept of staleness to rest, concluding, from a comprehensive consideration of the legislation and authorities, that "there is no place for the idea that a discovery which qualifies as such should cease to do so by the passage of time". That notion was unsustainable on the language and would conflict with the statutory scheme. In a case of alleged delay, a taxpayer might seek an alternative remedy in judicial review, but that was not a remedy available in an appeal to the tax tribunal.

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKSC 17	(continued) *HMRC v Tooth*	(continued) Supreme Court	The second issue considered by the Supreme Court was what was mean by a "deliberate inaccuracy" in a tax return. The Court agreed with HMRC that it was sufficient for this purpose that a return contained a deliberate inaccuracy; it was not additionally necessary to show that the taxpayer intended that inaccuracy to give rise to the insufficiency of tax. However, it did not accept HMRC's argument that "deliberate" simply meant "intentional" rather than carelessly or by mistake. In order for an inaccuracy to be deliberate, "it would need to be shown that the maker of the statement intended to mislead HMRC as to the truth of the relevant statement or (perhaps) that he was reckless rather than merely careless or mistaken as to its inaccuracy."

Citation	Parties	Jurisdiction	Commentary
[2021] EWCA Civ 1370	*HMRC v Professional Game Match Officials Limited*	Court of Appeal	One of the most topical areas of law in recent years has been employment status. This appeal concerned whether part-time referees, who officiated in matches outside the Premier League, were employees for tax purposes. The arguments covered the various limbs of the classic test for employment status set out in *Ready Mixed Concrete* 2 QB 497. The Upper Tribunal held that the FTT had been right to conclude that the particular arrangements with the part-time referees lacked the necessary "mutuality of obligation" to be employment contracts. If it had been necessary to decide the point, it would have concluded that the FTT was wrong, however, to conclude that the necessary "control" did not exist for employment to exist. While some people might have thought it was all over, permission to appeal was granted and the Court of Appeal overturned the Upper Tribunal in relation to mutuality of obligation.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] EWCA Civ 1370	*HMRC v Professional Game Match Officials Limited*	Court of Appeal	The individual match contracts contained the necessary mutuality even though each side was free to withdraw from the contract before its performance. However, the Court of Appeal declined to decide the employment status of the referees, instead remitting the appeal to the FTT. This is only one of several important decisions currently being dealt with by the courts in relation to employment for tax purposes. This is a narrower concept than "worker" status for employment law purposes.
[2021] EWCA Civ 1180	*Ingenious Games LLP v HMRC*	Court of Appeal	What the Court of Appeal described as the "tax avoidance schemes which were marketed by Ingenious Media Group to wealthy individual taxpayers in the tax years 2002/03 to 2009/10" have generated civil and tax litigation on a massive scale. The hearing of the central tax appeal was the longest ever hearing before the Upper Tax Tribunal, resulting in a 160-page decision.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] EWCA Civ 1180	*Ingenious Games LLP v HMRC*	Court of Appeal	Various limited liability partnerships formed by Ingenious were involved in the production of films and video or computer games. High net worth individuals invested in the LLPs in the expectation that 100% of their investment would attract income tax relief. An essential element of that relief was that the LLPs were carrying on a trade for tax purposes with a view to profit. As to the question of whether the LLPs were carrying on a trade, the Court of Appeal upheld the FTT's decision (which had been reversed by the Upper Tribunal) that two of the three LLPs had been trading, but only to a very small extent, with the result that only 3–4% of the claimed tax losses were available.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] EWCA Civ 1180	*Ingenious Games LLP v HMRC*	Court of Appeal	The FTT had also found that the two LLPs were carrying on a trade "with a view to profit" as required by the legislation. The Upper Tribunal had reversed that decision. The Supreme Court held that this test was entirely subjective, although the objective likelihood of profits would often be relevant to testing whether there was a genuine subjective view to profit. On the facts, the Court held that the FTT had been entitled to conclude that the LLPs were carrying on their limited trades with a view to profit. On the figures, this represents something of a pyrrhic victory for Ingenious. By way of postscript, the trial of three groups of claims against the promotors of these schemes (and one intermediary, UBS) was set down to be heard over 14 weeks in the Chancery Division, starting in May 2022, but settled shortly before the trial was due to commence.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 150 (TCC)	*HMRC v Jason Wilkes*	Upper Tribunal (Tax & Chancery)	Like *Tooth*, this decision related to discovery assessments, but the context was quite different. Few tax charges have proved as controversial as the high income child benefit charge, which is a tax charge designed to claw back child benefit when the adjusted net income of the recipient or their partner exceeds a certain figure. Its rules are fiendishly complex, and the requirements to notify changes of circumstance to HMRC can cause confusion, particularly given that one partner's financial position can materially affect that of the other. Where HMRC issue a discovery assessment to recover tax, they may only do so if they discover "income which ought to have been assessed to income tax". While income tax is due when the high income child benefit charge applies, on the wording of the relevant legislation it was unclear whether the charge was itself "income".

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 150 (TCC)	*HMRC v Jason Wilkes*	Upper Tribunal (Tax & Chancery)	There had been various conflicting decisions of the FTT on the question, so it was important for the Upper Tribunal to fulfil one of its roles, which is to provide general guidance, where appropriate, on difficult issues of general application. Applying a purposive construction to the legislation, the Upper Tribunal concluded that the purpose of the provision permitting a discovery assessment was to provide an additional assessment mechanism where *income* which ought to have been assessed to income tax has not been assessed. That interpretation did not give rise to an absurd or unworkable result and it was not appropriate to correct the statutory wording as "an obvious drafting error". The Tribunal therefore decided that the discovery assessments issued to Mr Wilkes were invalid, because the charge was not itself "income" which had been taxed.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 150 (TCC)	*HMRC v Jason Wilkes*	Upper Tribunal (Tax & Chancery)	HMRC are appealing the decision to the Court of Appeal. That is scarcely surprising given the number of individuals potentially affected. More unusually, the Government has subsequently changed the law with retrospective effect (existing tax appeals being grandfathered) to reverse the Upper Tribunal's decision. Many of the cases heard by the Upper Tribunal relate to VAT and other direct taxes. This decision was unusual because it was not an appeal from a decision of the FTT but a transfer by the FTT to the Upper Tribunal of certain points to be determined as preliminary issues in an appeal by HSBC. The decision is relevant to several other banking groups with similar issues and significant amounts of VAT are at stake. The issues arose in the context of an appeal by HSBC against decisions by HMRC which removed various non-UK entities with UK branches from the HSBC VAT group.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 150 (TCC)	*HMRC v Jason Wilkes*	Upper Tribunal (Tax & Chancery)	Where entities are members of a VAT group, supplies between them are disregarded for VAT purposes. This is partly intended to provide administrative simplicity for entities which are closely connected because they are under common control.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 00041 (TCC)	*HSBC Electronic Data Processing (Guangdong) Ltd v HMRC*	Upper Tribunal (Tax & Chancery)	The UK VAT legislation allows bodies corporate to be VAT grouped if "each is established or has a fixed establishment in the United Kingdom" and they are under common control. The EU legislation which permits VAT grouping applies to "any persons established in the territory of that member State who, while legally independent, are closely bound to one another by financial, economic and organisational links". The first issue determined by the Upper Tribunal was how the concepts of "established" or having a "fixed establishment", which purport to implement the EU legislation, are to be interpreted. It did not accept HSBC's main contention that all that was necessary was that the required close links were forged in the UK. It decided that the interpretation of the concepts of being established or having a fixed establishment in the UK was to be informed by closely similar concepts found elsewhere in EU VAT law.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKUT 00041 (TCC)	*HSBC Electronic Data Processing (Guangdong) Ltd v HMRC*	Upper Tribunal (Tax & Chancery)	A fixed establishment was, broadly, one which was characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs and to provide the services which it supplied. The Tribunal also decided that even if the UK had not consulted the EU VAT Committee in relation to UK VAT grouping rules, that would not make the UK legislation *ultra vires*, and that the EU legislation permitted Member States to adopt measures when implementing a right to VAT grouping which prevented tax avoidance or evasion as broadly defined. HSBC's appeal will now return to be heard by the FTT against the backdrop of the Upper Tribunal's determinations on these issues.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 0162	*Forsyth v Financial Conduct Authority & Prudential Regulatory Authority*	Upper Tribunal (Tax and Chancery)	The Regulators sought to prohibit Mr Forsyth, the former Chief Executive of a small mutual insurance company, from working in the financial services industry on the grounds that he had acted without integrity and to impose on him a significant financial penalty. Specifically, it was alleged that Mr Forsyth had been diverting an excessive proportion of his own salary and bonus to his wife as compensation for minor administrative support and hospitality work in order to reduce his own tax liability and took steps to conceal that arrangement from his employer's Board and Remuneration Committee by, among other things, creating false minutes to demonstrate that the payments had been duly approved. The Tribunal found that the Regulators had not made out their case, finding that the Regulators had relied on unreliable information from a whistleblower without investigating the matter independently.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 0162	*Forsyth v Financial Conduct Authority & Prudential Regulatory Authority*	Upper Tribunal (Tax and Chancery)	The Tribunal found Mr Forsyth and his wife to be honest and reliable witnesses. The Tribunal was also heavily critical of the Regulators' approach to disclosure and made a series of recommendations as to how the Regulators may improve their procedures pursuant to the powers contained in s. 133 of the Financial Services and Markets Act 2000. The Tribunal found that the Regulators had failed to disclose important documents that had a bearing on whether the Regulators' action to impose a financial penalty was out of time observing that such failures threaten the integrity of the Tribunal process. The Regulators apologised to both the Tribunal and Mr Forsyth for these failings.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 0222 (TCC)	*Frensham v Financial Conduct Authority*	Upper Tribunal (Tax and Chancery)	This was an important case which laid down the approach to be followed by the financial services regulators when seeking to prohibit a person from working in the financial services industry on the grounds of non-financial misconduct which was not related to the individual's work. The Tribunal followed recent cases involving solicitors who were alleged to have brought the profession into disrepute in relation to matters arising out of their personal conduct rather than when acting as a solicitor. In this case, Mr Frensham had been convicted of attempting to meet a child following sexual grooming and was sentenced to 22 months' imprisonment, suspended for 18 months. The Authority determined that Mr Frensham was not a fit and proper person to perform any function in relation to any regulated activity because he lacked the necessary integrity and reputation. Mr Frensham referred the Authority's decision to the Tribunal.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 0222 (TCC)	*Frensham v Financial Conduct Authority*	Upper Tribunal (Tax and Chancery)	The Tribunal agreed that, since Mr Frensham had been convicted of a criminal offence concerning a child, his personal reputation had clearly been severely damaged. However, the Tribunal said that to justify regulatory action in circumstances where the relevant behaviour occurred in his private rather than professional life, Mr Frensham's actions must engage the standards of behaviour required of the individual concerned by the applicable regulatory provisions. In other words, in such circumstances a distinction has to be drawn between personal integrity and professional integrity, and the regulator must determine whether in all the circumstances, failings of personal integrity also amount to failings of professional integrity. The Tribunal considered that, in relation to the financial services regulatory framework, the starting point must be the Authority's statutory objectives, including the consumer protection objective and the integrity objective.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 0222 (TCC)	*Frensham v Financial Conduct Authority*	Upper Tribunal (Tax and Chancery)	Therefore, in deciding whether to make a prohibition order a key consideration is the severity of the risk which the individual poses to consumers and to confidence in the financial system, thus providing a direct link to the statutory objectives. In upholding the Authority's decision, the Tribunal was satisfied that it was reasonably open for the regulator to establish a link between Mr Frensham's offences and the integrity objective. The Tribunal did not consider that the Authority would have been able to make this decision based solely on the fact of Mr Frensham's conviction, but it was reasonably open to the regulator when taking into account the circumstances in which the offence came to be committed (including the fact that Mr Frensham was on bail for another suspected offence when he committed the offence) and Mr Frensham's failure to be open and cooperative with the regulator in a number of different respects.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 0222 (TCC)	*Frensham v Financial Conduct Authority*	Upper Tribunal (Tax and Chancery)	The Tribunal was critical of the Authority's attempt to link Mr Frensham's offence to his professional role on the basis of the nature of the offence alone to be "speculative and unconvincing" and that the Authority had made bare assertions without evidence to support them. The Tribunal suggested that it would have been helpful had the Authority's assertions been backed up by criminological or psychological evidence which could support the view that the serious offence Mr Frensham committed created a significant risk that he would likewise seek to exploit vulnerable clients (such as the elderly) who seek to rely on him.

Cases from Upper Tribunal Immigration and Asylum Chamber

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 203 (IAC), 10 August 2021	*Ainte (material deprivation – Art 3 – AM (Zimbabwe))*	Immigration and Asylum generally	*Said* [2016] EWCA Civ 442 is not to be read to exclude the possibility that Article 3 ECHR could be engaged by conditions of extreme material deprivation. Factors to be considered include the location where the harm arises, and whether it results from deliberate action or omission. In cases where the material deprivation is not intentionally caused the threshold is the modified *N* test set out in *AM (Zimbabwe)* [2020] UKSC 17. The question will be whether conditions are such that there is a real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectancy. The Qualification Directive continues to have direct effect following the UK withdrawal from the EU.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 232 (IAC), 23 August 2021	*MY (Suicide risk after Paposhvili)*	Immigration and Asylum generally	Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] – [31] of the Supreme Court's judgment in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] – [31] of *J v Secretary of State for the Home Department* [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362) apply.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 283 (IAC), 21 September 2021	*PS (cessation principles) Zimbabwe*	Immigration and Asylum generally	The Tribunal summarised the correct approach to cessation in Article 1(C) of the Refugee Convention, Article 11 of the Qualification Directive 2004/83 and paragraph 339A of the Immigration Rules. It is for the Secretary of State for the Home Department (SSHD) to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance (CG) case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 175 (IAC), 17 June 2021	*R (on the application of Matusha) v Secretary of State for the Home Department (revocation of ILR policy)*	Immigration and Asylum generally	When deciding whether leave was obtained by deception for the purpose of revocation of Indefinite Leave to Remain (ILR) under section 76(2)(a) of the Nationality, Immigration and Asylum Act 2002 the respondent's policy, Revocation of Indefinite Leave (Version 4.0) (19 October 2015), is sufficiently flexible to allow the Secretary of State to consider whether ILR granted on a discretionary basis was obtained by deception. There must be clear and justifiable evidence of deception and evidence to show that the deception was material to the grant of leave. Section 4.1 of the revocation policy contains a presumption that ILR 'would not normally be revoked' when the deception in question occurred more than five years ago. This part of the policy is framed in non-mandatory terms. Because it is a condition precedent to the exercise of the power under section 76(2)(a) that a person obtained leave by deception, the mere fact of a deception is not likely to be sufficient, taken alone, to depart from the presumption.

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKUT 175 (IAC), 17 June 2021	(continued) *R (on the application of Matusha) v Secretary of State for the Home Department (revocation of ILR policy)*	(continued) Immigration and Asylum generally	(continued) The Secretary of State retains discretion to depart from the presumption but should give adequate and rational reasons for doing so.
[2022] UKUT 00015 (IAC), 26 November 2021	*R (on the application of SGW) v Secretary of State for the Home Department (Biometrics – family reunion policy)*	Immigration and Asylum generally	The Secretary of State's current guidance on family reunion ("Family reunion: for refugees and those with humanitarian protection", version 5.0, published on 31 December 2020) fails to confirm the existence of any discretion as to the provision of biometric information when a person makes an application for entry clearance, save in respect of children under 5 years of age. To this extent, the guidance is unlawful.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 00016 (IAC), 17 November 2021	*YMKA and Ors ('westernisation') Iraq*	Immigration and Asylum generally	The Refugee Convention does not offer protection from social conservatism per se. There is no protected right to enjoy a socially liberal lifestyle. The Convention may however be engaged where: (a) a 'westernised' lifestyle reflects a protected characteristic such as political opinion or religious belief; or (b) where there is a real risk that the individual concerned would be unable to mask his westernisation, and where actors of persecution would therefore impute such protected characteristics to him.
[2021] UKUT 260 (IAC), 27 September 2021	*R (on the application of Akber) v Secretary of State for the Home Department (paragraph 353; Tribunal's role)*	Practice and Procedure	The Tribunal gives detailed guidance on paragraph 353 of the Immigration Rules, including by setting out the end-to-end process where it applies is as follows: Stage 1: The Applicant makes human rights or protection claim; Stage 2: That claim is refused by the Respondent, giving rise to a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002; Stage 3: The Applicant's appeal is unsuccessful; or the Applicant does not appeal or withdraws his appeal; or the refusal is certified under section 94 of the 2002 Act;

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 260 (IAC), 27 September 2021	*R (on the application of Akber) v Secretary of State for the Home Department (paragraph 353; Tribunal's role)*	Practice and Procedure	Stage 4: The Applicant makes second or subsequent submissions by way of written submissions or application ("the Further Submissions"); Stage 5: The Respondent considers whether to accept or reject the Further Submissions on their merits; Stage 6: If the Further Submissions are accepted on their merits, the Respondent grants leave/recognises Applicant's status; Stage 7: If the Further Submissions are rejected, the Respondent goes on to consider whether they nonetheless amount to a fresh protection or human rights claim; i.e. a categorisation decision is made; Stage 8: If the Respondent determines that the Further Submissions do not amount to a fresh claim, she rejects them as such. No refusal of a human rights or protection claim arises, within the meaning of section 82(1)(a) or (b) of the 2002 Act.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 260 (IAC), 27 September 2021	*R (on the application of Akber) v Secretary of State for the Home Department (paragraph 353; Tribunal's role)*	Practice and Procedure	If, however, she determines that they do amount to a fresh claim, then a "decision" has been made to refuse a "claim" for the purposes of Section 82 (1)(a) or (b) of the 2002 Act and a right of appeal arises against that decision. The Tribunal also provides guidance on the Role of the Tribunal in Judicial Review Challenges to paragraph 353 Decisions.
[2021] UKUT 321 (IAC), 16 September 2021	*R (on the application of Gornovskiy) v Secretary of State for the Home Department (Extradition and immigration powers)*	Practice and Procedure	In considering the period of leave to remain which is to be granted to a person (P) who is subject to the Restricted Leave regime, the Secretary of State is required to consider, amongst other matters, the forseeability of P's removal from the UK. In considering that question, the fact that P has been discharged from extradition proceedings under the Extradition Act 2003 does not, of itself, prevent the Secretary of State from removing P from the UK in the exercise of the powers conferred by the Immigration Acts.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 114 (IAC), 14 April 2021	*R (on the application of Lawal) v Secretary of State for the Home Department (death in detention; SoS's duties)*	Practice and Procedure	In considering the Strasbourg caselaw as to the extent of the Article 2 procedural duty to investigate a suspicious death (including a death that occurs whilst in immigration detention in the UK), it is important to bear in mind that the European Court of Human Rights (ECtHR) is concerned with the entirety of the process, beginning with the initial steps to secure evidence and ending with the actual investigation or trial. Although the investigation or trial must be conducted with the requisite degree of independence, given that in the context of a death in detention, the service providers and the Secretary of State's relevant officials at the detention centre will inevitably be the first on the scene, they clearly must take the initial steps to secure evidence. This is so, irrespective of the fact that, n order of likely appearance, the police, the Prisons and Probation Ombudsman's investigators and HM Coroner will also become actively involved.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKUT 114 (IAC), 14 April 2021	*R (on the application of Lawal) v Secretary of State for the Home Department (death in detention; SoS's duties)*	Practice and Procedure	Furthermore, it is important to acknowledge that the ECtHR has been at pains to state that the steps to be taken are "reasonable" ones. What is reasonable will depend, not only on the circumstances of the death but also the nature and purpose of the detention facility. The Detention Services Order 08/2014: Death in Immigration Detention (August 2020) fails adequately to address the vital function of detention centre staff in identifying those detainees who, because of physical proximity to the deceased or other known associations, are likely to have relevant information, whether or not they have chosen to come forward of their own accord. The current policy of the Secretary of State is, therefore, not compliant with Article 2 in its procedural form. The Secretary of State's present policy framework is also legally deficient.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 00037 (IAC), 15 November 2021	*SA (Removal destination; Iraq; undertakings) Iraq*	Practice and Procedure	'Removal' in s84 of the Nationality, Immigration and Asylum Act 2002 refers to enforced removal pursuant to directions issued by the Secretary of State and not to the possibility of an individual making a voluntary return to their country of origin or a part of that country. A person ("P") who would be at risk on an enforced return but who could safely make a voluntary return is not outside P's country on account of a well-founded fear of persecution. P is consequently not owed the obligation of non-refoulement in Article 33(1) of the Refugee Convention and cannot succeed on the ground of appeal in s84(1)(a). In considering the ground of appeal in s84(1)(c), however, a court or tribunal must only consider whether P's enforced removal would be unlawful under section 6 of the Human Rights Act 1998. P's ability to return voluntarily to a part of the country to which he will not be removed is irrelevant to that ground of appeal.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKUT 00037 (IAC), 15 November 2021	*SA (Removal destination; Iraq; undertakings) Iraq*	Practice and Procedure	An undertaking by the Secretary of State not to remove P until it would be safe to do so (when he has acceptable Civil Status documentation or until he can be forcibly removed to the IKR, for example) cannot be accepted by the tribunal because to do so would impermissibly delegate to the respondent the legal claim which is for that tribunal to determine. That claim must be assessed by considering the safety of the only available route of enforced return, which is via Baghdad International Airport.

Cases from Upper Tribunal Lands Chamber

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 126 (LC)	*Cole v National Grid Electricity Transmission plc*	Compensation	Hinkley Point C Connection Project - rights acquired over garden of house in rural location – existing pylons to be removed - new pylons and underground high voltage cables to be installed – whether property blighted – ss.150(1), 151(4)(c) and (g), Town and Country Planning Act 1990 – reference dismissed.
[2021] UKUT 0201 (LC)	*Pro Investments Ltd v London Borough of Hounslow*	Compensation	Redundant office building acquired for enabling development in connection with new Brentford FC Community Stadium - Compensation of £11.245m awarded.
[2021] UKUT 0269 (LC)	*Timec 1209 LLP v Salford City Council*	Compensation	Office building acquired as part of comprehensive redevelopment of Salford City Centre – rule 2 value in no scheme world – s.5 Land Compensation Act 1961 – Compensation determined at £5,597,500.
[2022] UKUT 51 (LC)	*FC Brown Steel Equipment Ltd v Hopkins (VO)*	Rating	The Tribunal determined that a factory and a warehouse separated by an estate road but connected by a substantial conveyor bridge comprised a single hereditament for the purpose of assessing liability for non-domestic rates.
[2021] UKUT 0265 (LC)	*Ricketts (VO) v Cyxtera Technology UK Ltd*	Rating	Extent of hereditament – whether "white space" in a data hall was capable of beneficial occupation and to be included in rating list.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 167 (LC)	*EE Ltd and Hutchison 3G UK Ltd v Stephenson*	Electronic Communications Code	Jurisdiction – termination and new agreement or modification of subsisting agreement – whether operator must plead site specific reason for new agreement – whether applicant can claim alternative relief not preceded by notice proposing change.
[2021] UKUT 244 (LC)	*Williams v Parmar*	Housing – rent repayment orders	Offence of managing unlicensed house in multiple occupation – amount of rent repayment orders – identification of relevant period specified in s.44(2) – approach to exercise of discretion on amount of Rent Repayment Order relating to the rent paid during the relevant period.
[2021] UKUT 252 (LC)	*Father's Field Developments Ltd v Namulas Pension Trustees Ltd*	Restrictive covenants – costs	Unsuccessful objector ordered to pay applicant's costs – unreasonable conduct of objector by pursuing manifestly hopeless legal argument.
[2022] UKUT 50 (LC)	*Global 100 Ltd v Jiminez*	Housing – rent repayment orders	Whether a redundant office building occupied by "property guardians" was a House in Multiple Occupation (HMO) – application of standard test – whether the guardians' occupation of the living accommodation constituted the only use of that accommodation.

Citation	Parties	Jurisdiction	Commentary
[2022] UKUT 047 (LC)	*Pinto v Welwyn Hatfield Borough Council*	Housing – financial penalty orders	What amounts to "sufficient evidence of the conduct to which the financial penalty relates" for the purposes of the six months' time limit for the giving of a notice of intent to impose a financial penalty.
[2021] UKUT 166 (LC)	*Suchorski v Norton*	Landlord and Tenant -Appointment of manager	Tribunal appointed manager discharged – manager's duty to account for funds received – consequences of manager's failure to account – manager ordered to repay funds received.
[2021] UKUT 125 (LC)	*Morris v Brookmans Park Roads Ltd*	Restrictive covenants	The Tribunal considered the weight to be given to "thin end of the wedge" arguments in applications to discharge or modify restrictive covenants.

Cases from First Tier Tax Chamber

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 459 (TC)	*Appellants in the Post Prudential Closure Notice Appeals Group Litigation v HMRC*		This appeal (which was related to the FII Group Test Claimants litigation) concerned the validity of statutory claims for the repayment of tax paid in accordance with UK legislation, as applied by the HMRC, on the grounds that the tax was imposed in breach of EU law. Eight test cases were selected from 129 closure notice applications and 177 appeals (with all others being stayed pending the outcome of this litigation) to resolve a series of 19 issues in relation to claims concerning tax on dividend income which related, almost exclusively, to holdings under 10% ("portfolio holdings") by investment funds. Although the Tribunal did not determine all of the issues in favour of the applicants/appellants, the overall effect of the decision was that their applications/appeals succeeded.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 0166 (TCC)	*Turkswood Limited v HMRC*	FTT (Tax Chamber)	The appeal related to £4.9 million of input VAT claimed as a repayment by the appellant and denied by HMRC. It was found that the appellant knew or should have known that its transactions (in relation to mobile phone airtime, mobile phones, other IT equipment and copper cathode) were connected to tax fraud by its suppliers and customers (including in Europe) and accordingly its appeal against the various assessments was dismissed.

Citation	Parties	Jurisdiction	Commentary
[2022] UKFTT 00076 (TC)	*Cider of Sweden Limited v HMRC, Ernst & Young LLP third party applicant*	FTT (Tax Chamber)	The third party had become aware of the appellant's appeal (which was still in its preliminary stages and had not been the subject of any judicial involvement) and applied to the Tribunal for copies of the pleadings to assist it in advising its clients in disputes involving the same subject matter. After exploring the case law on the open justice principle and its application in the Courts (where a general right of third party access to the pleadings exists), the Tribunal held that there was no such general right in the Tribunal and it would not advance the principle of open justice to allow access to the pleadings at such an early stage of the proceedings. Whilst the Tribunal had inherent jurisdiction to grant access, after balancing the respective interests of the parties it would decline to do so at this early stage of the proceedings.

Citation	Parties	Jurisdiction	Commentary
[2022] UKFTT 26 (TC)	*Jones Bros Ruthin (Civil Engineering) Co Ltd and Hotels Ltd v HMRC*	FTT (Tax)	The appeals were designated as Rule 18 lead cases. The appellant companies participated in arrangements called a Growth Securities Ownership Plan which concerned the implementation of a marketed scheme purporting to avoid Income Tax under PAYE and NICs using Contracts for Differences (CFDs) under which the employee made a (minimal) upfront payment to the employer for a CFD. Under that CFD, payments would be made by the employee to the employer if the employers' profits were less than a specified figure and payments would be made by the employer to the employee if the future profits of the business were above a certain level. HMRC made determinations under Regulation 80 of the Income Tax (Pay as You Earn) Regulations 2003 and under s8 of the Social Security (Transfer of Functions etc) Act 1999. HMRC argued that the scheme used what purported to be CFDs in order to give it the veneer of commerciality and contingency, however in reality it was no more than a disguised and artificially contrived method of remunerating participants with money that escaped both income tax and NICs.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKFTT 26 (TC)	*Jones Bros Ruthin (Civil Engineering) Co Ltd and Hotels Ltd v HMRC*	FTT (Tax)	The Tribunal heard evidence from representatives of the respective companies and two expert witnesses on whether the arrangements gave rise to a "contract for differences or a contract similar to a contract for differences" within s 420(1)(g) and (4) ITEPA and whether the arrangements gave rise to a "restricted security" or "a restricted interest in securities" for the purposes of Part 7 Chapter 2 ITEPA. The Tribunal dismissed the appeals in principle having found that there was no commercial objective to the Appellants' arrangements save for the tax-saving element. Although the arrangements were designed to have the characteristics of CFDs, the terms were carefully crafted to operate such that the likely outcome was that the employees received a cash bonus. Furthermore, in applying a purposive construction of the relevant provisions to the facts viewed realistically (per Lord Nicholls of Birkenhead in Barclays and the Supreme Court in Rangers) the arrangements were not CFDs and did not, therefore, represent employment related securities.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKFTT 26 (TC)	*Jones Bros Ruthin (Civil Engineering) Co Ltd and Hotels Ltd v HMRC*	FTT (Tax)	The substance of the payments under the contracts represented employment earnings and should be subjected to Income Tax and NICs accordingly.
[2021] UKFTT 321 (TC)	*Euromoney Institutional Investor Plc v HMRC*	FTT (Tax)	This application was for permission to appeal to the UT out of time made by the Appellant following the Respondent's permission to appeal application being granted in full. The Tribunal considered the Court of Appeal judgment in *HMRC v SSE Generation Limited* [2021] EWCA Civ 105 and found it was reasonable for the Appellant to determine whether it wanted to reverse a point decided against it in the FTT once the final position regarding HMRC's application for permission to appeal was established. The Appellant could not know before that time how far their appeal would enlarge the scope of the appeal, which is a matter that the FTT is required to consider, and the Tribunal did not consider it to be in the interests of fairness and justice, or consistent with the FTT's overriding objective, to restrict relevant arguments being considered by the UT in these circumstances. Permission to appeal out of time was therefore granted.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 237 (TC)	*McArthur & Bloxham v HM Revenue & Customs*	FTT (Tax)	These appeals were lead cases in relation to taxpayers who had claimed relief on gifts of shares to charity. They were heard over 7 days and involved novel submissions as to the legal basis on which the market value of the shares should be determined. There was highly technical expert evidence as to the appropriate method to be employed in valuing the shares. The decision contains a detailed analysis of the approach to share valuation and the expert evidence. Consideration was given to various methods of valuing company shares, including earnings-based methods and the use of comparable transactions. Consideration was also given to measures of liquidity of the shares and the extent to which it was appropriate to apply discounts to reflect lack of control and lack of marketability. The related cases which had been stayed behind the appeals were all subsequently settled on the basis of the valuations found by the tribunal.

Citation	Parties	Jurisdiction	Commentary
[2022] UKFTT 48 (TC)	*Basic Broadcasting Ltd v HM Revenue & Customs*	FTT (Tax)	This appeal was heard by Judge Mosedale over 7 days in November 2019. It was a high-profile case involving the personal service company of Adrian Chiles, a well-known broadcaster. The appeal concerned the application of what is known as IR 35 to contracts the appellant company had with ITV and the BBC for the supply of Mr Chiles' services as a broadcaster. It involved consideration of whether, if Mr Chiles had been contracted directly by ITV and the BBC, he would have been employed or self-employed. Unfortunately, Judge Mosedale contracted Covid early in the pandemic. The effects of long Covid meant that she has not been able to return to judicial duties and she was unable to write a decision. With the agreement of the parties, the Chamber President allocated the appeal to another salaried judge who sat with the existing member to hear further submissions over 2 days in November 2021. The parties and the tribunal worked collaboratively to ensure that the decision could be released without further delay.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKFTT 48 (TC)	*Basic Broadcasting Ltd v HM Revenue & Customs*	FTT (Tax)	The new panel had the benefit of transcripts of evidence from the first hearing and by agreement it was not necessary for the evidence to be re-heard. Based on the transcripts of evidence and further submissions from leading counsel on both sides the tribunal was able to determine the appeal expeditiously.
[2021] UKFTT 437 (TC)	*Quinn (London) Limited v HM Revenue & Customs*	FTT (Tax)	This case raised a fundamental point about the scope of the regime which allows small and medium sized enterprises to claim "enhanced research and development relief" in respect of "qualifying expenditure on in-house direct research and development". The relief is given as a deduction in computing a corporate taxpayer's profits of a sum equal to 130% of the qualifying expenditure. It was accepted that the taxpayer incurred relevant research and development expenditure in the course its trade of providing construction and refurbishment works to its clients.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 437 (TC)	*Quinn (London) Limited v HM Revenue & Customs*	FTT (Tax)	However, (a) relief is not available to the extent that the expenditure is otherwise met directly or indirectly by a person other than the taxpayer company, (b) HMRC argued that this provisions applies because the taxpayer in effect recouped the expenditure when it charged clients for its services, and (c) the taxpayer said expenditure is not "met" by its clients who, under entirely commercial arrangements simply pay a price for a product, the finished buildings works. The tribunal decided in the taxpayer's favour. It is understood that whilst the cases had not yet reached the tribunal there are many taxpayers who have been subject to similar decisions by HMRC. HMRC have not appealed.

Citation	Parties	Jurisdiction	Commentary
[2022] UKFTT 34 (TC)	*Haworth and Others v HM Revenue & Customs*	FTT (Tax)	These appeals, heard over two weeks, raise important points on the scope of a double tax treaty and the scope of the Court of Appeal's decision in *HM Revenue and Customs v Smallwood & Another* [2010] EWCA Civ 778, [2010] STC 2045. The question was whether the taxpayers had successfully avoided UK capital gains tax (CGT) on substantial gains arising on the sale of shares by trusts of which they were the settlors. The taxpayers put in place Mauritian trustees for a short period only, during which the shares were sold, and then replaced them with UK trustees solely so that they could claim that the gain was exempted from CGT otherwise due under a double tax treaty between the UK and Mauritius (and there is no CGT on such gains in Mauritius). In *Smallwood* the Court of Appeal upheld the Special Commissioners' decision in favour of HMRC that, on the facts of that case, this planning did not work.

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2022] UKFTT 34 (TC)	*Haworth and Others v HM Revenue & Customs*	FTT (Tax)	The issues were (a) where the trusts/trustees were resident for the purposes of the treaty which required consideration of whether the place of effective management was; the claimed exemption in the treaty applies only if the trustees/ trusts were resident in Mauritius at the relevant time. The tribunal heard extensive factual evidence relevant to this issue and representations on how the POEM test is to be applied in light of differing interpretations of the decision in *Smallwood*, and (b) whether, as HMRC argued, even if the trusts/trustees were resident in Mauritius the relevant provision in the treaty does not in fact provide an exemption from UK CGT; rather it preserves the right of the UK and Mauritius to tax the gains (albeit, in practice, there is no charge in Mauritius) in the hands of the two different sets of persons who, in HMRC's view, form the taxable entity under the laws of each country. This argument was not raised in *Smallwood*. The tribunal heard extensive expert evidence on Mauritius law and representations on how the treaty operates.

Citation	Parties	Jurisdiction	Commentary
(continued) [2022] UKFTT 34 (TC)	(continued) *Haworth and Others v HM Revenue & Customs*	(continued) FTT (Tax)	(continued) The tribunal decided issue (b) in favour of the taxpayer and issue (a) in favour of HMRC and the appeal was dismissed.
[2021] UKFTT 448 (TC)	*Lockheed Martin UK Ltd v HMRC*	FTT (Tax)	This case concerned the installation of an airborne surveillance and control system as a "role fit kit" to the Royal Navy's existing fleet of Merlin Mk2 helicopters - and whether this constituted a zero-rated "modification or conversion" of the helicopters. In reaching its decision that this was not a modification or conversion (and was therefore standard rated), the Tribunal had to consider whether it had discretion to reach a conclusion on a basis other than one put forward by the parties. The Tribunal held that the Tax Chamber is in a different position from civil courts, as tax appeals are not merely a contest between litigants, given the wider public interest in taxpayers paying the correct amount of tax (see the decision of the Supreme Court in *Tower MCashback* [2011] UKSC 19 at [15]). In consequence - providing procedural fairness is observed - the Tribunal is not precluded from considering possible legal characterisations not put forward by the parties.

Cases from Employment Appeal Tribunal

Citation	Parties	Jurisdiction	Commentary
[2021] EAT 0105 20; [2022] ICR 1	*Forstater v Centre for Global Development and ors*	EAT (Choudhury J, Mr C Edwards, Ms M V McArthur)	Discrimination – religion or belief – philosophical belief – section 10 Equality Act 2010. Claimant holding and expressing gender-critical belief that sex is determined at birth, is immutable, and is not to be conflated with gender identity. An employment tribunal had dismissed the claim on the preliminary point that the claimant's belief did not fall to be protected under the Equality Act as it did not meet the fifth criterion in *Grainger plc v Nicholson* [2010] ICR 360, as being not worthy of respect given the conflict with the rights of others. EAT held: allowing the claimant's appeal. A philosophical belief would only be excluded for failing to satisfy *Grainger* (v) if it was the kind of belief the expression of which would be akin to Nazism or totalitarianism and thereby liable to be excluded from protection under the European Convention of Human Rights by virtue of article 17 of the Convention.

Citation	Parties	Jurisdiction	Commentary
[2021] ICR 1307	*Cox v Adecco Group UK and Ireland and ors*	EAT (HHJ Tayler)	Practice and procedure – strike out – protected disclosure The employment tribunal had struck out the claimant's protected disclosure claim on the basis that he had no reasonable prospect of showing that his letter was a protected disclosure since it was self-serving and did not disclose matters in the public interest. EAT held: allowing the appeal. It was not possible to determine whether a claim had reasonable prospects of success if it was not properly understood. The issues had not been sufficiently defined and the tribunal had misdirected itself as to the test for determining whether the disclosure was, in reasonable belief of the claimant, in the public interest (the claimant's motivation for making the disclosure not being determinative).

Citation	Parties	Jurisdiction	Commentary
[2022] ICR 287	*TYU v ILA Spa Ltd*	EAT (Heather Williams KC, sitting as a Deputy High Court Judge)	Practice and procedure – open justice – redaction of name of third party referred to in employment tribunal judgment. The employment tribunal had refused to make an anonymity order in respect of an individual, who was neither a party nor witness, who was referred to in the employment tribunal's judgment as having been "suspected of dishonesty … referred to the police, and … employees had … been frightened by her behaviour". EAT held: allowing the appeal. Where a judgment was published containing adverse imputations about a named third party, capable of adversely impacting upon their enjoyment of article 8 ECHR rights, the engagement of article 8 would depend on the extent to which the judgment was potentially damaging to the third party's reputation; the fact that the information had already been referred to in open court was not determinative. The employment tribunal had erred in not carrying out the requisite fact-sensitive assessment in this case.

Citation	Parties	Jurisdiction	Commentary
[2022] ICR 338	*Pitcher v University of Oxford and anor; University of Oxford v Ewart*	EAT (Eady J, Mr D G Smith, Dr G Smith)	Discrimination – age – employer justified retirement age The university and its constituent colleges operated a retirement age of 67. In separate claims of direct age discrimination, one brought by Professor Pitcher and the other by Professor Ewart, different employment tribunals had accepted that there were legitimate aims for the retirement policy, to facilitate succession planning and for the promotion of equality and diversity. In the Pitcher cases, the tribunal had concluded that the policy was a proportionate means for the achievement of these aims. A different tribunal had, however, reached the opposite conclusion in the case brought by Professor Ewart. EAT held: dismissing the appeals in both cases. There had been material differences in the evidence adduced in the two cases and each tribunal had reached a permissible conclusion on the evidence before it. In any event, the nature of the assessment required in determining objective justification was such that it was possible for different tribunals to reach different conclusions when considering the same measure adopted by the same employer in respect of the same aims.

Citation	Parties	Jurisdiction	Commentary
(continued) [2022] ICR 338	(continued) *Pitcher v University of Oxford and anor; University of Oxford v Ewart*	(continued) EAT (Eady J, Mr D G Smith, Dr G Smith)	(continued) It was not the role of the appeal tribunal to strive to find a single answer; it was required to consider whether either tribunal had erred in law.

Citation	Parties	Jurisdiction	Commentary
[2022] EAT 6; [2022] ICR 691	*Johnson v Transopco UK Ltd*	EAT (HHJ Auerbach, Mr H Singh, Miss S M Wilson)	Employment status – worker – section 230(3) Employment Rights Act 1996 The claimant was a black-cab driver who had downloaded and used the "Mytaxi" app operated by the respondent. In considering claims brought by the claimant dependent upon his having been a worker of the respondent, the employment tribunal found the claimant was not a worker, because the respondent had been a client or customer of his taxi-driving business. EAT held: dismissing the appeal. The employment tribunal had not erred in its focus on the claimant's activities when he was not working for the respondent; it had reached a proper conclusion about the nature of his business activity and whether the jobs he did for the respondent formed part of the same business; it had equally reached a permissible conclusion as to the allocation of financial risk, control and integration and had given proper consideration to whether the claimant was, in reality, in a dependent or subordinate relationship with the respondent.

Citation	Parties	Jurisdiction	Commentary
[2022] EAT 12	*Guardian News and Media Ltd v Rozanov and ors*	EAT (HHJ Tayler)	Practice and procedure – open justice – provision of documents to third party. The employment tribunal had refused to order the provision of skeleton arguments, witness statements and other documents referred to in its decision to the Guardian. EAT held: allowing the appeal. The employment tribunal had erred when assessing the application of the open justice principle in this context, in focusing on the subject matter of the proceedings and not taking into account the wider "journalistic" reasons for the application, which fell within the principal purposes of the open justice principle as identified by Baroness Hale in *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38 SC.

Citation	Parties	Jurisdiction	Commentary
[2022] EAT 54	*Mr Anis Ali v Heathrow Express and anor*	EAT (HHJ Auerbach, Mr D Bleiman, Miss S M Wilson)	Harassment – section 26 Equality Act 2010 The claimant, who is a Muslim, complained that a security exercise which included a piece of paper with the words "Allahu Akbar" written in Arabic, constituted harassment relating to religion. The employment tribunal dismissed the claim on the basis that it was not reasonable, in all the circumstances, for the claimant to see this as having the necessary effect for the purposes of section 26 Equality Act. EAT held: dismissing the appeal. The employment tribunal had reached a permissible conclusion, in the particular circumstances of the case, that the claimant should reasonably have understood that, in using the phrase in issue, there was no association of Islam with terrorism.

Citation	Parties	Jurisdiction	Commentary
[2022] EAT 74	*Millicom Services UK Ltd and ors v Clifford*	EAT: Eady P	Practice and procedure – open justice – rule 50 Employment Tribunal Rules The employment tribunal had refused to make an order limiting disclosure of certain information because it found that there was no objective verification of the respondents' subjective concerns such as to demonstrate a risk to relevant rights under articles 3 and 5 European Convention on Human Rights and it did not consider that article 8 had been engaged or that the duty of confidentiality outweighed the public interest in the information in question. EAT held: allowing the appeal. Although the employment tribunal had reached permissible findings in relation to the evidence adduced relevant to articles 3 and 5 ECHR, it had failed to engage with the application made on the basis of the interests of justice and/or article 6 (in relation to which the subjective concerns of the respondents could be relevant) or to carry out the required balancing exercise under article 8 or to apply the correct test when considering the duty of confidence (guidance in *HRH the Prince of Wales v Associated Newspapers* [2008] CH 57 CA applied).