



**EMPLOYMENT TRIBUNALS
England & Wales**

44th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held via Cloud Video Platform (CVP) on 13 September 2021**

1 Attendance

Judge Barry Clarke	President, Employment Tribunals (England & Wales)
Judge Carol Taylor	Regional Employment Judge (London East)
Judge Sian Davies	Regional Employment Judge (Wales)
Judge Andrew Freer	Regional Employment Judge (London South)
Judge George Foxwell	Regional Employment Judge (South East)
Judge Joanna Wade	Regional Employment Judge (London Central)
Judge Susan Walker	Vice-President, Employment Tribunals (Scotland)
Mark Lewis	HMCTS
Marie Mannering	HMCTS
Nicole Clarke	Acas
Samantha Clark	Acas
Tony Lowe	Acas
Richard Boyd	BEIS
Robin Rimmer	MoJ
Kathryn Butterworth	MoJ
Emily Handley	MoJ
Katie Miller	CBI
Matthew Creagh	TUC
Richard Fox	Employment Lawyers Association
Felicia Epstein	Employment Lawyers Association
Mohinderpal Sethi QC	Employment Law Bar Association
Colin Davidson	Discrimination Law Association
Daniel Barnett	Barrister
Philip Thornton	LexisNexis UK
Michael Reed	Free Representation Unit
Andrew Lingard	Advocate
John Sprack	Law Works
Andrew Willis	Croner Group Limited
James Potts	Peninsula
Matthew Bradbury	Citizens Advice
Laura Garner	Thomson Reuters

1.1 Apologies

Judge Shona Simon	President, Employment Tribunals (Scotland)
Natalie Mountain	HMCTS
Stuart Gee	Acas
Shantha David	Law Society's Employment Law Committee
Paul McFarlane	Employment Lawyers Association
Caspar Glyn QC	Employment Lawyers Association
Paman Singh	Law at Work
Simon Pender	Make UK
Matthew Smith	Equality and Human Rights Commission
Alan Philp/Dilly Bansal	Mentor Services

2 Welcome & introductions

The President welcomed members to the 44th meeting of the Employment Tribunals (England & Wales) National User Group, held via the HMCTS Cloud Video Platform.

The President informed the members that, at the end of July 2021, Natalie Mountain had left the role of HMCTS Acting Deputy Director of Tribunals (and therefore service owner for Employment Tribunals). This was a role she had filled temporarily following the departure of Daniel Flury, the previous incumbent, in December 2020 to take a lead role in HMCTS/MoJ-wide recovery from the pandemic. Ms Mountain's permanent replacement was Tracy Parker-Priest. The President hoped to introduce Ms Parker-Priest at a future user group meeting. For the moment, the HMCTS update would come from Mark Lewis, the service manager for Employment Tribunals.

3 Agree minutes from last meeting

The minutes of the 43rd meeting of the user group were agreed.

4 President's report

4.1 New judges

The President said that he would deal in turn with newly appointed salaried Employment Judges, newly cross-assigned First-tier Tribunal judges and newly appointed fee paid Employment Judges, before discussing further recruitment efforts.

All 19 new salaried Employment Judges had now been publicly announced on the [judiciary website](#). They were Fiona McLaren, Emma Webster, Rachel Barker, Claire Sharp, Rachel Wedderspoon, Daniel Dyal, Sarah George, Juliette Nash, Gary Tobin, Kimbra Welch, Gary Self, David Faulkner, Jennifer Jones, Tim Smith, Kevin Palmer, Kirsty Ayre, Rebecca Eeley, Roger Tynan and David Maxwell. All had previously been fee paid Employment Judges. Several were working on a salaried part-time basis; collectively, they equated to 15.7 full-time equivalent posts. Regrettably, this was significantly below the 25 FTE vacancies that the selection exercise had aimed to fill. This was the second successive selection exercise for salaried Employment Judges where the numbers had fallen short. The President said that he was nonetheless delighted to welcome them to the salaried team.

The President said that he had been able to deploy about two-thirds of the new salaried judges to the London South ET region and the South East England ET region, where the need was greatest. Although nearly all of them had started their salaried

appointments, they would be formally inducted at a course at the end of September 2021. This would be the first in-person course in the Employment Tribunals in England and Wales since the start of the pandemic.

At the end of August 2021, over 40 judges of the First-tier Tribunal, most of whom were fee paid judges, plus three fee paid Employment Judges of the Employment Tribunals in Scotland, had received letters from the Senior President of Tribunals confirming that they were to be assigned temporarily to sit in the Employment Tribunals in England and Wales. This had been achieved using the judicial assistance provisions at Section 5D of the Employment Tribunals Act 1996 and the regulations made thereunder ([SI 2020/1003](#)) which had come into force for most purposes on 8 October 2020, and which had been discussed at the 42nd meeting of the user group in December 2020. The intention was for each of these cross-assigned judges to act as Employment Judges in England and Wales for 30 days a year, with many hopefully able to sit more. This would be additional to their sitting duties in respect of their substantive judicial appointment. The vast majority of them had significant employment law experience.

Furthermore, in early September 2021, Judicial Office had written to over 150 individuals, on behalf of the Lord Chancellor, offering them appointment as fee paid Employment Judges. Again, they would be expected to sit at least 30 days a year. The selection exercise had aimed to recruit 50 such judges, but it had greatly exceeded expectations in the number of appointable candidates that it had delivered and Judicial Office and HMCTS had agreed that the Employment Tribunals in England and Wales could take them all. The 2021 cohort would be the largest number of fee paid Employment Judges ever recruited in one go. They would provide a much-needed boost during challenging times.

The President confirmed that, as a result of these new measures (the cross-assignment of First-tier Tribunal judges and new fee paid Employment Judges), almost 200 new judges would be joining the Employment Tribunals in England and Wales over the coming months. The President said that he had deployed half of them to sit across London and the South East of England, which collectively held about 60% of the stock of outstanding single cases. Their arrival would double fee paid sitting capacity at a stroke. The President thanked colleagues in Judicial Office and HMCTS for helping to secure the increased numbers. It was fortunate indeed that the selection exercise had delivered such a “bumper crop”.

The Employment Tribunals in England and Wales would now have ten Regional Employment Judges, about 140 salaried Employment Judges (just over 120 FTE), about 400 fee paid Employment Judges (including those cross-assigned from other jurisdictions) and about 900 non-legal members.

The President explained that an extensive training programme had been devised to ensure that these new fee paid judges could be inducted swiftly. Each judge would attend one of six online induction courses operating between October 2021 and March 2022. An increased team of training judges had been assembled to support this effort. Most of the new judges would have begun sitting by Q4 of 2021/22, with the remainder following in Q1 of 2022/23. Upon completion of this first-stage induction course, the new judges would begin hearing claims drawn from the short track (mostly about unpaid wages, holiday pay, redundancy pay, notice pay and the like) and the standard track (unfair dismissal). The intention was that, in 12-18 months' time, they would move to the second stage of their induction, after which they would start hearing cases drawn from the open track (discrimination and whistleblowing detriment, sitting alongside non-legal members).

In 2020, the Employment Tribunals in England and Wales had recruited nearly 70 fee paid Employment Judges. The fee paid judges in the 2020 cohort were, in turn, about to commence the second stage of their induction training, to be held between September and November 2021. This meant that they would be able to hear discrimination and whistleblowing detriment claims by Q3/Q4 of 2021/22. The judges in the 2020 cohort had spent most of their time since being appointed hearing cases remotely, using CVP; the President said he hoped that they would sit on an increased number of in-person hearings in the coming months. The second stage of their induction training, to be held in person, was the first time that many of them would have met each other. The President said that he hoped that this would help to build their sense of collegiality.

The President thanked the existing Employment Judges and Regional Employment Judges who had responded quickly to the challenges of large-scale recruitment and who had been involved in designing and delivering all this training.

4.2 Further recruitment

The President stated that the next round of judicial recruitment to the Employment Tribunals in England and Wales would begin shortly. The Judicial Appointments Commission would launch a new selection exercise on 5 October 2021, with the aim of appointing 50 further fee paid Employment Judges (alongside recruiting fee paid judges for the chambers of the First-tier Tribunal). Then, on 2 November 2021, a further selection exercise would launch to recruit 50 FTE salaried Employment Judges. The President said that he anticipated vacancies in every ET region but again expected a majority of those appointed to be deployed across London and the South East.

The President said that he had written an article for the ELA Briefing, the journal of the Employment Lawyers Association, discussing the two selection exercises in the hope of encouraging a broad range of eligible applicants of all backgrounds, characteristics and personal circumstances. In addition, he would be supporting two “outreach” seminars/webinars over the coming weeks, one with the support of the Judicial Diversity Committee and the other to members of the Employment Lawyers Association and the Employment Law Bar Association.

[**Update:** the [ELA/ELBA webinar](#) and the [Judicial Diversity Committee seminar](#) are both now available to watch online. With kind permission of the Employment Lawyers Association, the [President's article has been published on the judiciary website](#). Further details about the fee paid Employment Judge exercise and the salaried Employment Judge exercise are available on the [website of the Judicial Appointments Commission](#).]

4.3 Legal Officers

The President informed members that he and his counterpart in Scotland, Judge Shona Simon, were pleased with the progress of the Legal Officers appointed earlier in 2021. He reminded those present that Legal Officers were civil servants, not members of the judiciary, although they exercised delegated judicial powers and were actively involved in what was known as “case progression”, i.e., getting cases ready for a hearing.

The first cohort of Legal Officers was about to complete a six-month induction process led by the judiciary and in which the two Presidents had been closely involved. The President considered that their new colleagues were already making a difference. The MoJ had supported a business case to appoint the next cohort of Legal Officers to the

Employment Tribunals north and south of the border. A recruitment campaign was underway to double their numbers to just over 30, with the hope that they would be able to start work in November 2021.

4.4 Estate

The President reminded user group members that HMCTS, not the judiciary, was responsible for the freehold and leasehold estate used by courts and tribunals. The problems with Victory House in London were well understood, as were accommodation difficulties in venues like Croydon and Cardiff.

All ET regional venues were currently open and operating in-person hearings, although some venues had more capacity than others. Safety measures were still being deployed, such as regular cleaning of touch points, mask wearing and safe distancing. The ongoing need for distancing meant that many hearing rooms were still not usable; indeed, many of them were still occupied by administrative staff. The result was that all regions were still using video hearings in significant numbers, across all work types, and this was unlikely to change any time soon.

It remained the case that the format of a hearing was a judicial decision, having regard to the interests of justice and the overriding objective.

In response to questions raised with him, the President accepted that it was possible that, with winter approaching, there may be a return of some restrictions on activity in HMCTS buildings; however, even if that were so, he did not see that it would further impair operational activity. The Employment Tribunals had shown themselves, in response to changing circumstances around the pandemic, to be adept at moving operations swiftly to a remote/video environment in order to maintain the delivery of workplace justice.

4.5 Virtual region

The President said the virtual region, which he had set up with HMCTS support in April 2021, had taken up much time and effort in terms of strategic thinking but that it was delivering material benefits. It had unlocked several hundred sitting days and many cases had been heard by this mechanism that would otherwise not have been heard.

The President reminded user group members that the virtual region was not an ET region as such (there was no virtual Regional Employment Judge, for example); it instead operated as a mechanism for taking cases that lacked a judge and locating an available judge in another part of the country who was able to adjudicate if the hearing took place on a fully remote basis. In all other regards the case would still be administered and clerked by the same physical ET region where the proceedings were ongoing. The virtual region did not always succeed in matching a case to a judge, for the simple reason that a judge was often not available to sit on a fully remote basis, but it was successfully reducing the number of cases that were being cancelled.

The President said that he understood the frustrations of users who were told in the notice of hearing that their case would proceed in person, and who had perhaps then made travel and accommodation arrangements for parties, witnesses and representatives, only to be told late in the day that the hearing had switched to a video platform. Why, he had been asked, had it not simply been listed by video in the first place? This had prompted complaints, especially in respect of multi-day discrimination cases. The President explained that there were several reasons for this approach.

First, he did not wish the Employment Tribunals to become a video jurisdiction; it was important that in-person hearings remained a common feature of the administration of workplace justice and not simply an aspirational gold standard. The [2021-22 road map](#) that he had issued with Judge Shona Simon stated that, even though video technology would continue to be used extensively, the intention was for most standard track cases, and nearly all open track cases, to be decided at in-person hearings. The Employment Tribunals needed to retain, and indeed expand, their physical estate. Nevertheless, as the road map made clear, video was essential to maintaining throughput of cases, especially in regions where the backlog was greatest or the estate especially frail.

Second, it has always been the case that many listing decisions are made at the last moment. 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. If 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 was a third option: to shift the hearing to video, by use of the virtual region or otherwise. Consequently, while it might be frustrating for the parties to be told that their hearing was now taking place on video, the reality was that this was the only way their hearing could go ahead. The options were not between a video hearing and an in-person hearing; the options were between a video hearing and a cancelled hearing. Those users understandably frustrated by last-minute conversion to video should bear in mind that, but for video technology, the hearing would probably have been postponed.

At the start of September 2021, the virtual region had opened for the first time to discrimination and whistleblowing detriment cases, whereby the judge would sit on a fully remote basis with two non-legal members. To ensure compliance with the principle established by the House of Lords in [Lawal v Northern Spirit](#), the President said that he had created panels within the virtual region. In summary, only those judges in Panel A would sit alongside non-legal members via the virtual region. They could do so because there was no prospect of them appearing as representatives before the Employment Tribunal, and therefore encountering non-legal members, in any physical ET region. This might be because they were retired from professional employment law practice, retired salaried Employment Judges, salaried judges in other court and tribunal jurisdictions, or academics, or because they did not practise at all in the field of employment law. They were, in other words, “*Lawal*-proof”. Those judges in Panel B were still in professional practice in employment law but they were able, through the virtual region, to sit alone, on a fully remote basis, on preliminary hearings on open track cases, such as those listed for case management purposes, where they would not encounter non-legal members. The judges in Panel C were limited to standard track and short track cases where, again, they would not encounter non-legal members; in most cases, this was simply because they had yet to proceed to the second stage of their induction training. In reality, Panel A judges would also sit on Panel B cases, and Panel A and B judges would also sit on Panel C cases.

The President explained that, throughout the week, many emails are distributed to judges in the virtual region identifying the uncovered cases and the panel from which the judge should be drawn, to maximise the efficiency of the ET system and to support its recovery. The early data was that hundreds of hearings were going ahead by this mechanism which would otherwise have been postponed.

4.6 Video hearings generally

The President said that the Employment Tribunals north and south of the border remain one of the largest jurisdictional users of CVP. Throughout the pandemic, cases of all types and complexity had taken place on CVP, including several multi-week hearings. The President paid tribute to the judges and non-legal members, as well as the tribunal's users, who were continuing to adapt to this way of working. As noted above, and subject to the provisos set out in the [2020-21 road map](#), the intention was steadily to increase the proportion of in-person hearings. Nonetheless the expectation was that the Employment Tribunals would, of necessity, continue to make extensive use of video.

The President had previously discussed the intended successor to CVP, the HMCTS Video Hearings service, at the 42nd meeting of the user group. This had been piloted in the ET's regional office in Bristol since July 2020, subject to oversight by Regional Employment Judge Pirani. Judge Pirani was providing regular feedback to the President, the Regional Employment Judges and the Senior President of Tribunals. The President said that he had asked Judge Pirani to list a hearing on VH before him the following month, so that he could experience it personally. Although CVP had been an "out of the box" solution to the pandemic, it was a prototype for the VH service that HMCTS intends should replace it.

The [HMCTS website](#) contains more information about the VH service. The President's view, informed by the experience of the pilot, is that the VH service is improving all the time but that it is not yet stable and reliable enough to justify extending the pilot to other ET regions. That position will be reviewed in the light of further software releases.

4.7 Transparency data

Regrettably, there was still no news on when HMCTS would be able to release transparency data for the Employment Tribunals. The President had reported at the 43rd meeting of the national user group in May 2021 that HMCTS has suspended publication of transparency data in March 2021 following the migration of its case management system from Ethos to ECM. HMCTS still publishes [monthly management information](#) but, since March 2021, it had been carrying a proviso referring to the ECM migration.

Members of the user group were informed in May that such data would be available by the end of June 2021. This was later extended to the end of September 2021. It is now likely to be extended again. Both Presidents of the Employment Tribunals have made clear that the data silence is highly undesirable, since it renders data-led operational and strategic decision-making impossible. They have been assured that their frustrations are shared by HMCTS and that every effort is being made to resort to pre-pandemic data transparency.

[**Update:** in October 2021, [HMCTS released data](#) on Employment Tribunal receipts for the period between March and August 2021. This suggested that receipts were below where they had been for the same period in 2020, when the labour market disruption caused by the pandemic was arguably at its highest, but comparable to the same period in 2019. However, data has not yet been released on ET "disposals" for the same period. As a result, the size of the outstanding load of single and multiple claims remains unknown, including how it is distributed between regions. Questions remain as to whether ECM is properly recording "disposed" cases.]

4.8 System performance and waiting times

The President reported that, despite the efforts described above, the Employment Tribunals continued to face historic challenges. All ET regions were experience lengthy delays, although waiting times were longest in the London South region, the South East England region and now the North West England region. All ET regions were short staffed, but staff shortages remained especially acute in London and the South East; this had been a contributing factor to lengthy delays in receiving responses (or receiving no responses at all) to telephone calls, emails and other correspondence. There was also a significant backlog of correspondence in the President's office resulting from pressure of work.

It was very much hoped that the arrival of new judges would relieve some of the pressures.

The President updated members on differential waiting times across the ten ET regions. He emphasised that these figures did not yet reflect the impact of new salaried and fee paid judges. In broad terms, as at September 2021:

- Most regions across England and Wales could list hearings of 1-2 days' duration in the first half of 2022. There were only two offices at the moment that were routinely listing such hearings in the second half of 2022; they were South East England (especially the Reading office) and London South.
- Most regions across England and Wales could list hearings of 3-5 days' duration in the second half of 2022. Some regions were listing such hearings in the early part of 2023; they were London East, London South and North West England.
- Most regions across England and Wales could also list hearings of 6-10 days' duration in the second half of 2022. However, London East was looking at the first half of 2023, while London South and North West England were looking at the second half of 2023.
- No region was yet routinely listing longer cases in 2024.

The President pointed out that, as lengthy hearings fell from the list due to settlement, it was often possible to backfill the list by bringing forward cases that had been listed at later dates. This was being actively pursued as a listing strategy in several regions. That said, the President recognised that waiting times in many parts of England were unacceptably long, and said that he continued to work hard alongside HMCTS to ensure that the system had the resources it needed.

4.9 Document Upload Centre

The President had updated members at the 43rd meeting of the national user group of the use of the Document Upload Centre ("DUC"). He said he would carry out a similar survey of the Regional Employment Judges after this meeting and update members via the user group minutes.

[**Update:** The DUC facility is now available in all ET regions, although use is more limited, due to lower user demand and staff training issues, at London Central, South West England and London East. It has just been introduced at London South. The DUC is up and running in all other regions, although still mainly used in cases where at least one of the parties is professionally represented.]

4.10 Regional updates

The Regional Employment Judges present at the meeting gave short updates applicable to their regions as follows:

- **Judge Foxwell** (South East England) said that longer waiting times in Reading, referred to earlier in the meeting, reflected insufficient judicial numbers in the past, but that they were now back up to strength with the appointment of Judge Eeley in Reading. He was also pleased with six other salaried judges joining in Watford, Cambridge and Bury St Edmunds. He was looking to encourage new ways of working by administrative colleagues, which was yielding encouraging progress.
- **Judge Freer** (London South) welcomed seven new salaried judges supporting the ET's work in Croydon. There were also more staff operating telephones than before, and more staff dedicated to email responses and duty work. He explained how he had changed certain listing practices with the hope of reducing the number of cases sent away and reducing waiting times for open track cases.
- **Judge Wade** (London Central) said that telephones were being answered and the backlog of email correspondence was being reduced, and so she believed that things were going in the right direction.
- **Judge Taylor** (London East) said her region had lost several fee paid judges to salaried roles in other ET regions following the recent selection exercise, and that it was going to take some time to recover strength. She considered that waiting times at London East were getting longer. She identified one cause of this as parties attending multi-day hearings with ever-longer witness statements which increased the risk of the case going part heard or, at least, insufficient time for the panel's deliberations.
- **Judge Davies** (Wales) asked users to bear with the ET as the Cardiff regional office had recently lost a lot of staff, including many with considerable experience. She said that she hoped the recently announced MoJ/HMCTS pay deal would improve staff retention rates.

Judge Walker, the Vice-President of the Employment Tribunals in Scotland, was present at the user group meeting as a guest. She commented that the HMCTS staff retention rate was a concern across all areas of Great Britain and this included Scotland. She endorsed Judge Davies's comments about the recent pay deal.

Returning to Judge Taylor's observation about the overrunning of long hearings, the President emphasised that a hearing of (say) five days was not five days that the parties had with the ET, finishing their submissions on the afternoon of the final day. It was five days that the ET had with the case, and so needed to incorporate the time the panel needed to read the relevant statements and documents as well as deliberating and (ideally) delivering a judgment. When a case goes part-heard, it can have a detrimental impact on other cases in the list, effectively bumping them to a later date. When deciding whether or not it is in the interests of justice for a case to go part-heard, the tribunal will weigh in the balance the impact on other parties who are waiting their turn in the queue.

4.11 Judicial Review and Courts Bill, and other matters

The President mentioned the [Judicial Review and Courts Bill](#) published in July 2021, which contained provisions relevant to the Employment Tribunals. He had noted some commentary from system users suggesting that the proposals had surprised them, so he thought it would be helpful to provide some context. He emphasised that, in so doing, he was not making any commentary on the Government's policy proposals, which were not a matter for the judiciary.

He explained that, to place the ET provisions in their proper context, it was necessary to go back to December 2016, when the Government published a consultation document entitled "[Reforming the Employment Tribunal System](#)". It included various proposals about reform. These included digitising the claims process (including online determination of claims), delegating routine tasks from judges to caseworkers, tailoring the composition of tribunal panels to the needs of the case, and transferring responsibility for the ET rules of procedure from BEIS and, via the MoJ, to the independent [Tribunal Procedure Committee](#). This committee was an advisory, non-departmental, public body. The [Government's response](#) to that consultation was published in February 2017. The legislation intended to give effect to these changes was the [Prisons and Courts Bill](#), also published in February 2017. However, this proposed legislation fell for lack of parliamentary time when the June 2017 general election was called.

The President noted that some of the provisions of the lost Prisons and Courts Bill had returned, as Parliamentary time had allowed, in the years since, as had some of the government's other reform proposals for the Employment Tribunals. This included judicial deployment provisions enacted through the [Courts and Tribunals \(Judiciary and Functions of Staff\) Act 2018](#) and the caseworker/Legal Officer provisions in [SI 2020/1003](#). With the publication of the Judicial Review and Courts Bill, the other proposals have resurfaced, and are cast in similar terms to the way they were in 2017. The Online Procedure Rules are dealt with at Chapter 2 of Part 2 and at Schedules 3-4. The transfer of the ET's rules of procedure to the Tribunal Procedure Committee and the issue of panel composition are dealt with in Chapter 3 of Part 2 and at Schedule 5.

The President also reminded user group members that the [Police, Crime, Sentencing and Courts Bill](#) was still in passage through Parliament, and that Part 12 and Schedule 19 of the Bill were applicable to Employment Tribunals.

5 Question re submission of ET3s by email – Laura Garner

The President discussed a question Laura Garner had raised with his office ahead of the user group meeting about the submission of ET3s by email in these terms:

My question is whether it is still possible to submit ET3s by email. For context, rule 85(1)(c) of the ET Rules says that documents other than a claim form may be submitted by "electronic communication". Rule 85(3) provides that the tribunal will "notify the parties following the presentation of the claim of the address of the tribunal office dealing with the case (including any fax or email or other electronic address) and all documents shall be delivered to either the postal or the electronic address so notified". However, neither of the guidance forms [T422](#) or [T423](#) explicitly refer to submission by email, and it has been drawn to our attention that the notification of claim letters sent by tribunals to respondents mention only that ET3s can be submitted by post or online. It would therefore be good to get clarification of the position.

The President confirmed that it would ultimately be for an Employment Tribunal or the EAT, upon hearing argument, to decide the proper meaning and effect of rule 85. That

said, he confirmed that it was his understanding that it was possible for respondents to submit ET3s by email. The President explained that HMCTS are responsible for the composition of the public information booklets, so he had asked them why they were written as they were. He reported to the user group that he had been told by HMCTS that they wished to “nudge” users towards the online mechanism for submission of prescribed forms, as this was aligned with their intention fully to digitise the claim and response process. The President had suggested to HMCTS that the documents be written to more accurately reflect the ET’s rules of procedure, but endorsed the suggestion that the online process was far more efficient for administrative purposes.

6 Question regarding search functionality of online judgments register

The President referred to a question that user group member Paman Singh had asked about the search functionality of the [online judgments register](#):

At present the search function is at best cumbersome. It does not allow for a practical or efficient search. I would propose that representations be made to BEIS to run an analysis or even perhaps a consultation on how the site can increase user friendliness and, as a by-product, access to justice, by making judgments easier to find. Some search parameters or filters could be added for example, so that a user can filter by categories of judgment ... Another common issue is not being able to conduct an advanced search, to further filter for the names of specific representatives, firms or judges.

Mark Lewis of HMCTS said that the online judgments register was “owned” by the Government Digital Service (GDS). He said he would pass on the request to see if such functionality could be introduced.

The President said that he and Judge Simon shared the view that the right balance had to be struck between the importance of the open justice principle and the legitimate privacy considerations of litigants and third parties named in judgments. They were aware of concerns that had been raised about the online judgments register, for example in relation to data harvesting, algorithmic discrimination and blacklisting, most recently expressed in an [article in Legal Studies](#) by Zoe Adams, Abi Adams-Prassl and Jeremias Adams-Prassl. He said that both Presidents would wish to keep a close eye on developments in respect of the judgments register.

7 HMCTS update – Mark Lewis

Mr Lewis referred to the pay deal for staff mentioned previously, which he said would hopefully make HMCTS more competitive with other government departments. He accepted that HMCTS had lost staff numbers and experience in the past few years and hoped that the pay offer would improve recruitment and retention.

As for transparency data, he confirmed that HMCTS were working towards the end of September 2021 for the amalgamation of data from the Ethos system with ECM data; the amalgamated data was needed for a complete picture. [See **update** above.]

Mr Lewis then addressed HMCTS reform. He said that HMCTS faced a very challenging timescale for Employment Tribunals reform, which was now in an active development phase lasting until January 2022, moving to a testing phase in February/March 2022, with a view to roll-out of multiple new components in the summer of 2022. He said that HMCTS was working alongside the leadership judiciary, stakeholders, users, administrators, legal officers, etc, all of whom were being asked for contributions. Such meetings were taking place weekly and often daily.

The President agreed that reform was taking up increasing amounts of judicial time, and said that it was important for HMCTS to set aside sufficient time for such contributions to be offered in a considered manner and for HMCTS to be responsive to concerns expressed by judiciary, users and stakeholders.

8 BEIS update – Richard Boyd

Richard Boyd said that BEIS and MoJ ministers had convened a joint ministerial taskforce to examine the challenges facing the Employment Tribunals system. He described it as a collaboration of officials involving not just BEIS and MoJ but also Acas and HMCTS, and with plans for “round table” events with stakeholders. He said that the taskforce would examine the whole life cycle of a workplace dispute to maximise the prospects of resolution before reaching the Employment Tribunals.

Mr Boyd reported that a statutory instrument would very shortly be laid before Parliament bringing forward outstanding changes from the previous SI from October 2020 ([SI 2020/1003](#)). The new SI would change the early conciliation rules to allow more than one respondent’s name to be included on a single EC notification form, and would amend rule 54 to clarify the provision of notice for preliminary hearings.

[**Update:** [SI 2021/1037](#) was laid before Parliament on 15 September 2021. The rule 54 change came into force on 6 October 2021 and the EC change will come into force on 1 December 2021.]

Mr Boyd said that he would welcome communications from any user group members about the types of cases or others trends they were observing during the pandemic.

Mr Boyd agreed with the President’s earlier summary of the provenance of ET-specific provisions in the Judicial Review and Courts Bill. He said that the proposals had been the subject of prior consultation and had not come out of the blue.

Michael Reed, a member of the national user group and the Tribunal Procedure Committee, said that the TPC had previously had nothing to do with Employment Tribunals. He recommended that users spend time on the [TPC website](#) to see the spread of its work and consultations. He observed that the work of TPC tends to results in steady evolutionary change – “fixing bugs” – which would improve the current mechanism by which any change to the ET rules required a separate SI. By contrast, he said, the TPC is more responsive.

Mr Boyd updated user group members on the Government’s response to the [Law Commission report on employment law hearing structures](#). He said BEIS had responded to the recommendations that affected them but that responses were awaited from MoJ and other Government departments. He understood that the responses would be published together rather than piecemeal.

9 Acas update – Sam Clark/Nicole Clarke

Sam Clark said that she wanted to remind user group members of the triggers that enable the EC process to work well and hopefully resolve some of the cases within the ET’s backlog. It was helpful for Acas to receive copies of ET correspondence with the parties as this acts as a prompt for Acas to contact the parties and see if the dispute is capable of resolution. She understood that the ET system’s administrative resources were low at present. Ms Clark also thanked judges who encouraged parties to engage

with Acas and encouraged this to happen more. The President said that judges regularly remind parties that Acas is available to help them settle their dispute.

Nicole Clarke then discussed the EC notifications received by Acas, which were remaining at around 1,800 per week. At present, there were no signs of an anticipated increase that might accompany the end of the Government's furlough scheme. She said that there remained large numbers of notifications concerning equal pay and worker status issues. Ms Clarke added that the [Acas website](#) had been redesigned and relaunched in recent months, and it now had a new area called "[service statistics](#)" where regular quarterly reports would appear. A key priority for Acas was trying to improve public understanding of their services.

10 Any other business

There was no other business.

11 Date of next meeting

The President informed members that the next meeting of the national user group would be held remotely in early 2022, when hopefully more would be known of the impact of HMCTS reform on Employment Tribunals.

[**Update:** the next meeting of the national user group will be at 3pm on **Monday 17 January 2022**. Joining details will be sent nearer the time.]