EMPLOYMENT TRIBUNALS
England & Wales

45th MEETING OF NATIONAL USER GROUP

Minutes of the National User Group meeting
held via Cloud Video Platform (CVP) on 17 January 2022

1 Attendance

Judge Barry Clarke	President, Employment Tribunals (England & Wales)
Judge Shona Simon	President, Employment Tribunals (Scotland)
Judge Lorna Findlay	Regional Employment Judge (Midlands West)
Judge Sian Davies	Regional Employment Judge (Wales)
Judge Andrew Freer	Regional Employment Judge (London South)
Judge Joanna Wade	Regional Employment Judge (London Central)
Judge George Foxwell	Regional Employment Judge (South East)
Mark Lewis	HMCTS
Helen Nolan	HMCTS
Nicole Clarke	Acas
Tony Lowe	Acas
Richard Boyd	BEIS
Robin Rimmer	MoJ
Emily Handley	MoJ
Tim Sharp	TUC
Richard Fox	Employment Lawyers Association
Caspar Glyn QC	Employment Lawyers Association
Mohinderpal Sethi QC	Employment Law Bar Association
Shantha David	Law Society's Employment Law Committee
Philip Thornton	Lexis Nexis
Andrew Willis	Croner Group Limited
Daniel Barnett	Barrister
Michael Reed	Free Representation Unit
Andrew Lingard	Advocate
John Sprack	Law Works
James Potts	Peninsula
Laura Garner	Thomson Reuters
Sophie McGuinness	Thomson Reuters
Paman Singh	Law at Work
Simon Pender	Make UK

1.1 Apologies

No apologies were received.

2 Welcome & introductions

The President welcomed members to the 45th meeting of the Employment Tribunals (England & Wales) National User Group, held via the HMCTS Cloud Video Platform (CVP).

3 Agree minutes from last meeting

The minutes of the 44th meeting of the user group were agreed.

4 President's report

4.1 Covid-19 restrictions

The President started by noting the continued impact of the "Plan B" restrictions following the spread of the Omicron variant. Distancing measures remained in place in HMCTS venues, and previous guidance on wearing face coverings still applied. The Employment Tribunals remained, he hoped, "fleet of foot" and could now convert in-person hearings to video hearings swiftly and effectively, facilitated by increased reliance on electronic bundles provided via the Document Upload Centre. The two system Presidents would continue to monitor the situation and act in tandem wherever possible, recognising the possibility of further variants or regional outbreaks.

4.2 Ongoing lack of management information/transparency data

The President reported to national user group members that, regrettably, the "data silence" problem, that had begun in Spring 2021, continued.

Put simply, HMCTS remained unable to enumerate accurately the claims (both single claims and multiple claims) that the Employment Tribunals were receiving and disposing of. This, in turn, meant that the two system Presidents had not been provided with confirmation of the size of the outstanding ET caseload in Great Britain for nearly a year. They had been told that there were also doubts over the reliability of some of the data released publicly a few months ago and mentioned in the minutes of the last user group meeting. There was also no reliable management data being produced by HMCTS on a range of other matters, such as the number of sitting days achieved by the jurisdiction and the average time it was taking from receipt of a claim to a hearing.

The President made clear that this was a cause of immense frustration to the leadership judges of the Employment Tribunals. For obvious reasons, the lack of reliable data was significantly impairing operational and strategic decision-making.

By way of reminder, between March and May 2021, the case data of the Employment Tribunals had migrated from the old case management system ("Ethos") to a new case management system (Employment Case Management or "ECM"). The new system was developed from Core Case Data ("CCD"), the standard database platform used by HMCTS in several court and tribunal jurisdictions. More accurately, ECM acted as the interface between HMCTS administrative staff and the ET case data that was stored on the CCD platform.

The President had been assured by HMCTS that they were working hard to remedy the problem, so that reliable data could once again be produced and, where appropriate, published. Everyone involved knew the importance of this happening and the seriousness of the problem. Mark Lewis of HMCTS would speak about this later in the meeting.

4.3 Recruitment and training

The President announced at the last national user group meeting that, via the Judicial Appointments Commission (JAC) and with the support of MoJ and HMCTS, the Employment Tribunals in England and Wales had recently recruited the largest ever number of fee paid judges in one go. This represented an effort to tackle the backlog and create resilience for the future. In August and September 2021, about 150 fee paid Employment Judges were appointed and about 40 further judges were cross assigned to the Employment Tribunals in England and Wales from the various chambers of the First-tier Tribunal and from the Employment Tribunals in Scotland.

These judges were being inducted in a cycle of six courses between October 2021 and March 2022. That process was well underway. The President expressed his gratitude to the salaried judges involved in these courses as trainers and facilitators, as well as those who were acting as judicial mentors. Once the new judges had completed this course, they would be able to hear cases drawn from the so-called "short track" (chiefly money-based claims) and the "standard track" (chiefly unfair dismissal claims).

The President reported that, additionally, the fee paid judges recruited in 2020 – nearly 70 of them – had recently attended their second-stage induction course. This qualified them to hear cases drawn from the "open track" (chiefly discrimination and whistleblowing detriment), where they would sit alongside non-legal members. This would be help in reducing the backlog, much of which is drawn from the open track. The intention was for the 2021 cohort to attend their second-stage induction course in about a year's time. It was the President's expectation that the backlog of single claims would not reduce significantly until 2023, when all the new judges would be available to sit on open track cases. This, of course, was subject to an appropriate allocation of sitting days from HMCTS.

Another JAC exercise to recruit up to 50 FTE salaried Employment Judges in England and Wales was underway, having launched on 2 November 2021 and closed on 23 November 2021. An exercise to recruit a similar number of fee paid Employment Judges had launched on 5 October 2021 and closed on 19 October 2021.

4.4 Other resources

The President emphasised that these additional judges would only help to bring down the outstanding caseload of claims if accompanied by two things. First, there needed to be appropriate investment in HMCTS staff, who were able to deal with administrative tasks such as responding to correspondence from parties and listing cases for a hearing. Second, as already noted, the ET system needed to be allocated sufficient sitting days, so that the new judges could be fully utilised. The President said that he recognised that MoJ faced competing demands from other jurisdictions and that resources were finite, but reassured user group members that he and Judge Simon pressed for resources as best as they could.

The physical estate remained problematic in some parts of the country. The quality of the estate was especially poor in London Central (Victory House), London South (Montague Court) and Reading (Friar Street). The quantity of the estate (in terms of

the number of hearing rooms available) was especially poor in Cardiff. These were not isolated areas of concern, just examples.

4.5 Waiting times

The President updated members on waiting times across the ten Employment Tribunal regions in England and Wales. The picture was, as ever, a mixed one; this is because resources are not uniformly spread across the regions, whether in terms of judiciary, staff or the physical estate. There was evidence that the virtual region was mitigating some of these differences and that recently appointed salaried judges, especially in the South East of England, had begun to make a difference.

In broad terms, as at January 2022, the position was as follows:

- All regions could list shorter hearings of 1-2 days' duration in 2022. A few (North East, Midlands East, London Central, Wales, and parts of the South East) could even manage the first half of 2022.

- For longer hearings, however, the picture was much more varied. The shortest waiting times were in the North East, London Central and Wales, where such cases could generally still be listed and heard before the end of 2022. For other regions, including Midlands East, Midlands West, the South West and most parts of the South East, such cases were now generally being listed in the first half of 2023. The longest waiting times were in London South, London East and the North West, where 3-5 day hearing and 5-10 day hearings were mostly being listed in the second half of 2023. London South and the North West had now started listing cases lasting ten or more days in 2024. This was obviously a matter of great concern.

The President emphasised that this was an overall picture. There were always exceptions, such as cases that had involved numerous preliminary hearings, been postponed for good reason, or been subject to appeal. The President also repeated a point he had made on earlier occasions: 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.

4.6 Remote hearings – evaluation

The President reminded user group members that, in late 2020, HMCTS had published an evaluation of remote hearings across all jurisdictions. It was based on interviews with court staff, legal representatives, judges, and public/professional users, and took into account such external research of remote hearings that existed at that time. On 10 December 2021, HMCTS published an updated report.

The updated report is based on more comprehensive research on remote hearings during the Covid-19 pandemic, including surveys and interviews with a higher number and more representative group of users. The report is subject to a disclaimer that the views expressed are those of the authors and are not necessarily shared by HMCTS or representative of government policy. Those points aside, the President pointed out some of the findings:

- That those who attended Employment Tribunal hearings remotely were particularly likely to agree that communication with their lawyer was easy during the hearing (61% compared to 46% overall);

- That 65% of ET users (the highest of any jurisdiction) were particularly likely to feel breaks were sufficient during a video hearing;
- That remote users of ETs were more likely than average to have felt able to understand what was happening during the hearing. They had confidence in how the ET handled their case (75%), were able to express their views (73%) and felt confident that their views were considered (73%); and
- That those attending remote hearings in the ETs were more likely than those who attended remote hearings in the Crown/Magistrates' courts, family courts or civil courts to feel it was appropriately formal and official (88% compared to 71%, 76% and 80% respectively).

The President recognised that remote hearings had their pros and cons and that all jurisdictions had faced particular challenges. Nonetheless, he felt that the survey was a credit to the way that the judges and members of the Employment Tribunals had responded to the pandemic.

4.7 Remote hearings – trends

The President shared with user group members his own recent analysis of the use of video and telephone as platforms for the conduct of remote hearings. The types of hearing that came before the Employment Tribunals could broadly be split into the following categories. What follows was representative of the position in January 2022.

Preliminary hearings listed for case management purposes. These largely continue on a fully remote basis, in line with the situation before the pandemic. 90%+ are fully remote. Most regions conduct them chiefly by telephone, although two (Wales and London Central) make significant use of video. In-person hearings are occasionally used, for example to assist litigants in person in clarifying the issues in dispute. Video may be used increasingly in this type of work.

Public preliminary hearings. These are mostly hearings listed in public to determine a preliminary point, or a strike out application, or an application for interim relief. They are mostly fully remote (80%+). Most regions conduct them chiefly by video. Although the proportion varies slightly between regions, typically somewhere between 10% and 20% of such hearings are in-person or hybrid.

Judicial mediation. These have shifted almost exclusively to fully remote (95%+). The format used varies between regions. SW England, NE England, Midlands East and SE England chiefly use telephone. London East, London Central, London South, NW England, Wales and Midlands West chiefly use video. There was no evidence that conducting judicial mediations remotely (regardless of video/telephone format) had reduced the proportion of cases that were successfully mediated. The President had asked his ADR committee (chaired by Regional Employment Judge Findlay) to investigate whether there was any correlation between outcome and whether telephone or video was used. This would inform the future approach.

Short track cases. These are disputes for unpaid sums such as wages, holiday pay, notice pay and redundancy pay. They are commonly listed in several hearings lasting an hour or two arranged across a day. Judges sit without non-legal members in such cases. They are mostly fully remote across all of England and Wales (90%+), with only a small number proceeding in-person. Nearly all regions are conducting them chiefly by video. London East conducts two-thirds by telephone and one-third by video.

Standard track cases. These are complaints of unfair dismissal. They usually last one or two days. Judges mostly sit without non-legal members. The position here is a more

variable. London Central, London South and NW England are conducting them almost exclusively (95%+) by video. SW England, NE England, London East, Midlands West, SE England and Wales are conducting them mostly (80% to 90%) by video. Midlands East is undertaking the highest proportion of in-person standard track hearings (nearly half are either in-person or hybrid). Outside of Midlands East, hybrid hearings of standard track cases have been rare.

Open track cases. These are chiefly complaints about detriments for public interest disclosures and complaints about unlawful discrimination. Hearings extend over several days. Judges sit on such cases with two non-legal members. The position is again variable. Hybrid arrangements are more common in open track cases.

- For those open track cases with a hearing duration of 1-3 days, SW England, SE England, London East, London South, NE England, NW England and Wales are still conducting about 80% of them by video, with the remainder a mixture of in-person hearings and hybrid hearings. The highest number of in-person hearings are taking place in Midlands East (about 20% in person and 20% hybrid) and Midlands West (about 25% in person and 5% hybrid). London Central is an exception at the other end; it is almost exclusively (95%+) video-based for 1-3 day hearings.

- For those open track cases with a hearing duration of more than 3 days, where there are often greater features of evidential complexity, the picture is even more varied. In accordance with the 2021-22 road map, many regions were able to increase the proportion of in-person hearings but, as the road map itself noted, flexibility was essential so that video could be used to help bring down the backlog of cases. In SW England, London East, Midlands East and Midlands West, about 50% of such hearings are still fully remote, with the remainder having a mixture of in-person and hybrid arrangements. In NE England, SE England and London South, the figure for fully remote hearings is about 60%. In NW England, it is about 70%. In London Central and Wales, about 80% of such hearings are by video.

Miscellaneous. This is a catch-all category: hearings for remedy, applications for reconsiderations and the like. In most regions, these are held on video about 70-80% of the time. In NW England, London South and London Central, the figure is 95%+.

The President accepted that, insofar as there were regional differences, these were best explained by reference to the available physical estate; the preponderance of video hearings in certain regions generally correlated with the limited number of usable hearing rooms. The President said that he was alive to the risk that, by responding so well to these challenges, the Employment Tribunals might appear to be less in need of a physical estate. He said that he continued to argue for an improved physical estate, and did not wish to see the jurisdiction become, in effect, a victim of its own resilience.

4.8 Remote hearings – the next steps

The two system Presidents intend to issue a new "road map" for 2022-23 by the end of March 2022. However, it could be said already that video hearings were likely to continue in volume for some time. This was for two reasons. First, the continued impact of Covid restrictions placed constraints on use of the physical estate. Second, subject to having sufficient sitting days, video allowed the jurisdiction to operate larger numbers of hearings, including through the virtual region.

The President reminded user group members that CVP (full name – the HMCTS Cloud Video Platform) had only been a prototype for the final product intended as part of HMCTS reform, namely the Video Hearings (VH) service. As user group members are aware, this platform has been piloted in the SW England ET region since mid-2020. The ET judiciary was responsible for suggesting many of its enhancements. In broad terms, the intention is for the Employment Tribunals to migrate fully from CVP to VH during 2022. The timetable for that migration is under discussion.

4.9 The virtual region

The President reported that the virtual region, which had launched in April 2021, was now populated by about three-quarters of the fee paid judges – about 300 individuals. They were split into three panels according to the type of cases on which they could sit, and to respect the principle in the case of *Lawal v Northern Spirit*.

Although HMCTS is not yet collecting or auditing data from the virtual region, the President had been informed that, between April 2021 and December 2021, the virtual region found judges for 639 cases of variable length. But for the virtual region, these hearings would have been cancelled or postponed.

4.10 HMCTS Reform Programme

The President noted that, following the impact of the pandemic and the pivot to video hearings, he had hoped that 2022 would bring a period of calm and consolidation. However, if anything, the pace of change would be increasing. This is because the Employment Tribunals are now in the grip of the modernisation process known as the HMCTS Reform Programme.

The President said that there would be more information about HMCTS reform in the 2022-23 road map. He said that the timetable for reform was extremely ambitious, as HMCTS intends for the ET project to conclude by December 2022. The President said it was the responsibility of HMCTS to engage with the members of the national user group and stakeholders, and that they planned to do so.

5 Regional updates

Regional Employment Judge Sian Davies (Wales) spoke about the estate problems in Cardiff. It is very short on physical space, and has too few hearing rooms available for its use. For the time being, this has meant greater reliance on video than some other regions. The region was also short-staffed, having lost several experienced members of staff recently, although she was looking forward to a second legal officer starting in a few months. She asked users to bear with them. Finally, she referred to the right to give evidence in the Welsh language. She said that hearings in Welsh were currently taking place in person, because simultaneous translation was not working well on CVP. The President agreed that Cardiff ET had fewer hearing rooms per judge than any region in England, and that this was impairing its delivery of workplace justice.

Regional Employment Judge Andrew Freer (London South) referred to the recruitment of extra staff recently and the introduction of a rota system for answering telephone calls. He was pleased that correspondence was now being responded to more quickly, and hoped that users of Croydon ET had seen an improvement. He had recently introduced a new listing design, which he hoped would reduce waiting times. He said that the number of cases turned away for lack of a judge had reduced, a consequence of a better approach to listing and through use of the virtual region. He was pleased to say that Croydon now had three legal officers, who were making great strides in case

progression, looking at cases six weeks before their listed dates to check that they were ready for their hearing and, if not, what needed to be done. He said that he was experimenting with listing open track hearings at ET3 referral/rule 26 stage, so that parties would now receive notices of the full hearing at the same time as notice of the case management hearing. Full merits hearings would be timetabled so as to include specific time set aside for tribunal deliberations. He was keen to pursue other alternative methods of dispute resolution, including using the approach taken in the Midlands West region.

Regional Employment Judge Joanna Wade (London Central) agreed that correspondence response rates were improving. She said that, for reasons of Covid safety, windows remained open during in-person hearings at Victory House. As an unfortunate consequence, hearing rooms could be cold. The President encouraged members to listen to Judge Wade's recent podcast interview with user group member Daniel Barnett, as it demystified the role of a Regional Employment Judge.

Regional Employment Judge Lorna Findlay (Midlands West) thanked users for their continuing patience while efforts were being made to improve response times to correspondence. The new fee paid judges would be helpful in tackling the backlog. She said she was aware of user concerns about the time being taken to list case management hearings. She had encouraged all her fee paid judges to offer extra days to undertake such work. She had also encouraged the HMCTS listing team to consider making more use of the virtual region in order to reduce postponement levels. She said that the pilot of ADR hearings was going well and the evidence pointed to a significant reduction in contested hearings.

Regional Employment Judge George Foxwell (South East) attempted to give an oral update but, due to sound problems, could not do so. He sent his apologies in the chat panel.

6 Retirement of Judge Shona Simon

Members of the national user group in England and Wales may already have been informed via the Scottish national user group that Judge Shona Simon had recently announced her intention to retire as President of Employment Tribunals in Scotland. She would be retiring in June 2022 but taking a period of leave from the end of April 2022. The President paid warm tribute to her. He said he had known Judge Simon for over 25 years, having first collaborated with her when in practice on cases that went to the House of Lords and the CJEU. He was sad to be losing a close colleague. The two Employment Tribunal jurisdictions had been working together closely in all matters relating to HMCTS reform and the response to the pandemic. She would be greatly missed.

Judge Simon addressed the meeting. She said it had been a great pleasure to work closely with colleagues south of the border over many years and with successive Presidents in England and Wales. She noted that many users of the ET system operated on a cross-border basis, and that many employers did likewise, and that it would make no sense for them to face entirely different systems depending on which side of the border they were, especially during such challenging times as that presented by the pandemic. She also wanted to reassure user group members that both Presidents were working together closely on HMCTS reform so that, again, the reformed systems would look the same for those with cross-border operations.

Judge Simon agreed that the timescale for reform was very ambitious – she said the word favoured by HMCTS was "challenging" – and that it will take time to get it right.

She paid tribute to the user groups north and south of the border. She said that they were a brilliant community and had been very patient with the Employment Tribunals as they had sought to overcome the significant challenges they had faced over the last two years.

7 HMCTS update – Mark Lewis

Mark Lewis said the timescale of the HMCTS reform project was indeed tough for all concerned. They were in the middle of a design phase, they were still working on the online ET1 journey, and they were still working out how to invite a trial cadre into the system. He said that the reform team would start work on the ET3 at the end of January 2022, and that HMCTS would approach members of the national user group to get their input. He said that HMCTS were also working closely with Acas so that the two systems were properly integrated.

The intention was to launch the minimum viable product of ET reform in April 2022, probably in Leeds and Glasgow, starting with litigants in person who were bringing open track claims. The team would also be looking at the best way to integrate ET staff into centralised "Courts and Tribunals Service Centres", which were a cornerstone of reform for all jurisdictions. The aim was to standardise and digitise processes as much as possible. With the first release in April 2022, HMCTS would look to persuade the larger representative agencies to use the "MyHMCTS" portal to make applications or upload evidence, enabling a swifter flow of information between HMCTS and the users. HMCTS was also building a "Citizen User Interface" for use by unrepresented parties. He hoped that, in the next few weeks, users would be brought into workshops about how to improve systems in future.

On system performance, Mark said that he was as frustrated as the judiciary about delays in getting reliable data out of ECM. He apologised to members of the user group and reassured them that the performance teams and operational teams were doing a lot of work on creating proper reports, but this required a full and time-consuming "cleanse" of the migrated data. He was hoping that the data would be ready for public release by February 2022.

8 BEIS update – Richard Boyd

Richard Boyd reported on behalf of the Department for Business, Energy & Industrial Strategy. He said that work continued between BEIS, Acas, HMCTS and the Ministry of Justice as part of the joint ministerial taskforce; they were looking at how to address the challenges in the Employment Tribunal system. They were taking a "whole system" approach, from early conciliation through to the tribunal hearing. Richard said that there had been four useful meetings so far with stakeholders.

Richard said that the UK Government and Scottish Government were also continuing work on the "Order in Council" that will govern how Employment Tribunal functions are transferred to Scotland.

On the Law Commission report, Richard said that BEIS had provided its response to the bulk of recommendations last year. A response to the remaining recommendations still sat with the Government Equalities Office and the Ministry of Justice, in respect of the equalities and courts aspects of the report. He hoped that work was being finalised. He said BEIS would continue a conversation with the Law Commission as to how those responses would be published in due course.

Richard also discussed the Judicial Review and Courts Bill, which included provisions on Employment Tribunals. He informed the user group that it was progressing through Parliament with an expected Royal Assent in the summer. BEIS was continuing to work with colleagues at the Ministry of Justice to finalise details for how responsibility for the ET rules would transfer to the Tribunal Procedural Committee.

9 Acas update – Nicole Clarke

Nicole Clarke reported that, in terms of case receipts, 2021 had been fairly steady at around 1,800 EC notifications per week. There had been no noticeable peak as the furlough scheme was wound down.

She apologised that the Acas website did not contain the page on quarterly statistics she had promised on the last occasion, but that work continued to produce accessible information online.

Nicole also said that Acas was working to improve its website content, principally the information available for users ahead of submitting an EC notification form. The notification form itself was also undergoing a review with a view to improving its content.

Nicole mentioned the improved process for submitting an EC notification against more than one respondent, following the rule change in December 2021. She hoped this made matters easier for those representing large groups of claimants.

10 Questions/AOB

Caspar Glyn QC paid tribute to Judge Simon Shona, describing her as a champion of employment justice and a friend to the users. She would be missed.

Caspar said the first matter he wanted to raise was a resourcing issue. Justice delayed was justice denied and, at the moment, much of employment justice was subject to excessive and unacceptable delay. The appointment of new fee paid judges was welcome, but would MoJ/HMCTS commit to an appropriate increase in sitting days?

Mark Lewis replied that 35,000 sitting days had been allocated by MoJ to the Employment Tribunals for the 2021-22 financial year, with the ability to sit up to a total of 37,500 days, but he recognised that the new judges were not in place quickly enough to make full use of that allocation. He thought that, for 2022-23, the Employment Tribunals could probably sit 40,000 days at full capacity, and that such a high number was needed to bring down the backlog. Mark said that he had explained the needs of the Employment Tribunals to those responsible for the final allocation, and a decision was awaited.

Caspar asked whether the Employment Lawyers Association would be involved in the design of HMCTS reform, insofar as it affected Employment Tribunals. Mark said he was grateful for any assistance that professional users could provide. Caspar pointed out that ELA represented 7,000 members, and could feed in helpful information to HMCTS about what works and what does not work. Mark confirmed that he would be in touch with the ELA about development of the online ET3 in the reformed process.

Caspar said that the Employment Lawyers Association had not been properly consulted over the introduction of compulsory mediation. While he recognised that there was no requirement for consultation, he asked for engagement from the judiciary. The President replied that the ADR pilot had commenced in Birmingham, and that it

had first been discussed at the national user group meeting in May 2021, in terms of what it involved and the prospects for developing it. It had not yet appeared in the Presidential Guidance on ADR because it was still in a pilot stage and under review. However, he would bring in REJ Findlay, as his ADR lead, to discuss the next steps.

REJ Findlay explained that moves towards compulsory mediation were being considered increasingly across all of civil justice. She emphasised that this was not compulsory mediation in the sense of an imposed outcome; rather, it was an appointment with a judge, listed about six weeks after exchange of witness statements, and typically 3-4 months before the final hearing, to explore settlement options. The intervention was limited to complex cases that were listed for hearings lasting six days or more. She said she would be happy to discuss it further with ELA and others, and the President agreed to put them in touch for that purpose.

Caspar raised a matter concerning the Document Upload Centre. He said there was frustration that, in some tribunal offices (and he mentioned Watford, Manchester and London Central), a lot of effort had gone into uploading documents to the DUC – perhaps as many as ten lever-arch files – only for the parties to get an email one or two days prior to the hearing saying that the judge now wanted paper bundles, with the last-minute task usually being landed on a trainee solicitor. He said that this was difficult and burdensome. Could there be any consistency on this? The President said he thought there was consistency on this; he reminded user group members that his Presidential Guidance on remote and in-person hearings during the pandemic obliges parties to provide a paper bundle. This initially reflected concerns about infection risk, and the need for a period of quarantine, but the practice also pertained because many judges and members still preferred to use paper bundles, even for remote hearings. The President said that he personally preferred electronic bundles, but he recognised that not every judge or member did so and he had to bear their needs in mind. Those needs would be overlooked if the jurisdiction adopted exclusive use of electronic bundles. Also, HMCTS itself did not have the resources to print off bundles that had been uploaded electronically, especially of the size being discussed. The President accepted that 24 hours' notice was problematic but emphasised that his Presidential Guidance meant that a paper back-up would be needed and was, at the very least, prudent.

REJ Wade offered a contrary view. In London Central, she explained, most of the bundles did not arrive in paper form at London Central for a video hearing. She was happy with this. There was not the storage space for many bundles. It also suited the rapidly changing and shifting lists.

The President accepted that the time had perhaps come to reconsider the Presidential Guidance document in view of the lessons that had been learned during the pandemic. For example, those hearings passed to the virtual region would only ever use electronic bundles. He asked members of the national user group to let him have any comments on changes they might like to see to that Guidance by the end of February 2022, which he would then consider. Caspar said that ELA would convene a working party and send in observations within 2-3 weeks. The President said that would be much appreciated.

Mark Lewis raised a question. He said that the online ET1 form was used for 96% of claims, but the online ET3 form was used for only 12% of responses. Could the user group members explain why was there such a disparity in adoption of this particular digital channel? Caspar Glyn QC said it came down to deadlines: in most busy offices, solicitors worked against deadlines; an online service carried risk whereas a form completed offline and sent in by email would be certain of meeting the deadline. The

President suggested that the cause was an asymmetry in the ET rules, in that the Practice Direction supplementing rule 8(1) precludes submission of an ET1 form by email, whereas rule 16(1) does not permit such a Practice Direction to operate in respect of responses. His view was that email was used for ET3s in preference to the online service simply because it could be used. Indeed, as he had confirmed at the user group meeting in September 2021 in response to a question from Laura Garner, it was his view that an ET3 could, under the rules as drafted, be validly submitted by email. It may therefore need a rule change to encourage users to adopt the online service for the ET3 in the same numbers as those who use the online service for the ET1. He would take this away for consideration.

11 Date of next meeting

The President informed members that the next meeting would be held in late April or early May 2022, when he would hopefully have more information about the HMCTS reform process. Perhaps also the sitting day allocation for 2022-23 and transparency data for 2021-22 would be available by then. He hoped that the user group members would be approached by HMCTS in the meantime to contribute to the reform process.