



**HM Courts
& Tribunals
Service**



**Courts and
Tribunals Judiciary**

**EMPLOYMENT TRIBUNALS
England & Wales**

47th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held via Microsoft Teams on 12 September 2022**

1 Attendance:

Name	Organisation
Judge Barry Clarke	President, Employment Tribunals (England & Wales)
Judge Carol Taylor	Regional Employment Judge (London East)
Judge Andrew Freer	Regional Employment Judge (London South)
Judge Sian Davies	Regional Employment Judge (Wales)
Judge Joanna Wade	Regional Employment Judge (London Central)
Judge Lorna Findlay	Regional Employment Judge (Midlands West)
Marie Mannering	HMCTS
Nicole Clarke	Acas
Stewart Gee	Acas
Grant Cockburn	Acas
Robin Rimmer	MoJ
Philip Thornton	Lexis Nexis
Catrina Smith	Employment Lawyers Association
Felicia Epstein	Employment Lawyers Association
Mohinderpal Sethi KC	Employment Law Bar Association
Shantha David	Law Society's Employment Law Committee
Tracey Moss	Citizens Advice
Paman Singh	Law at Work
Andrew Willis	Croner Group Limited
Andrew Lingard	Advocate
Gemma Grant	Discrimination Law Association
Emma Wilkinson	Free Representation Unit
Laura Garner	Thomson Reuters
Simon Pender	Make UK
Matthew Creagh	TUC
Mark Alaszewski	Equality and Human Rights Commission

1.1 Apologies

Apologies were received from Judge Susan Walker (President of Employment Tribunals, Scotland), James Potts (Peninsula), John Sprack (LawWorks), Richard

Boyd (BEIS), Clare Armstrong (Equality Human Rights Commission), Mark Lewis and Helen Nolan (HMCTS), Daniel Barnett (Barrister), Paul McFarlane (Employment Lawyers Association), and Tim Sharpe (TUC).

2 Welcome & introductions

The President welcomed members to the 47th meeting of the Employment Tribunals (England & Wales) National User Group, held via Teams.

3 President's report

3.1 State funeral

The President confirmed that, following the announcement of the death of Her Late Majesty Queen Elizabeth II, all court and tribunal hearing centres will close on Monday 19 September 2022 as a mark of respect for the state funeral. Exceptions will operate for urgent cases of a type that are not heard by Employment Tribunals.

Consequently, all Employment Tribunal hearings listed for a day or less on 19 September will be postponed and relisted as soon as practicable. Hearings listed for two days or longer starting that day will now commence on Tuesday 20 September.

Efforts will be made, in appropriate cases, to give the tribunal reading time in the previous week. Hearings for cases listed over multiple days which are already underway will not take place on Monday 19 September. The cooperation of the parties in seeking to conclude hearings within any reduced time allocation that may apply will be appreciated.

3.2 Appointments

The President notified members of two new leadership judges in the Employment Tribunals. Judge Susan Walker had been announced as the [new President of Employment Tribunals in Scotland](#), succeeding Judge Shona Simon. The new Vice-President in Scotland was Judge Frances Eccles, succeeding Judge Walker.

3.3 Recruitment

The President informed the members of the national user group of the current position in respect of recruiting new salaried and fee paid Employment Judges. Business cases in respect of these selection exercises had been submitted about a year ago. Selection days had taken place and JAC recommendations were awaited. The President was hoping to receive names and make deployment decisions by the end of the calendar year. It remained the case that most salaried vacancies were in London and the South East, where waiting times are longest. It may be possible to announce names of new salaried judges at the next user group meeting.

3.4 Estate

The President reported that, in several locations where the Employment Tribunals sit and hear cases, there are longstanding concerns about the quality of the ET estate and/or the number of rooms available for use. Victory House, the home of London Central Employment Tribunal, has especially struggled of late.

Some good news came recently in the form of [confirmation by HMCTS](#) that it had acquired a building on Newgate Street (near the Old Bailey) that would become a

long-term home in London for several tribunal jurisdictions, including the Employment Tribunals and the Social Security Tribunal. It is hoped the building will be operational by the end of the 2023/24 financial year.

The President said that, while it was for HMCTS to decide how to configure and use the buildings that they own or lease, the judiciary seek to have their collective voice heard through their presence on the relevant project board. He expressed his thanks to the HMCTS estate team who had worked very hard in securing the new premises.

3.5 Training

The President confirmed that the large “class of 2021” (about 150 new fee paid judges and about 40 cross assigned judges) were now going through the second phase of their induction training. Following this, they would be able to hear discrimination and whistleblowing cases.

This was important to the efforts of the Employment Tribunals to bring down the backlog and reduce waiting times, since a large part of the outstanding caseload consisted of so-called “open track” cases.

3.6 Sitting days

In the absence of Mark Lewis of HMCTS, the President announced that the [sitting day allocation](#) for the Employment Tribunals in 2022/23 had finally been settled during the summer of 2023. The Employment Tribunals north and south of the border had been allocated 31,600 sitting days. This was a 10% reduction on the number of sitting days allocated on the 2021/2022 financial year.

Post-meeting update: an additional 2,000 sitting days were confirmed in December 2022, as part of [an announcement that also applied to immigration cases](#).

3.7 Current caseload

On 8 September 2022, HMCTS published statistics as part of their [quarterly publication cycle](#). The statistics covered the quarter from April to June 2022. Statistical reports published since June 2021 had been accompanied by a caveat about the lack of data concerning Employment Tribunals, arising from the transition from one case management software system (Ethos) to another (ECM).

The latest data release concerned receipts, disposals and outstanding caseload, and there was increasing confidence on the part of HMCTS as to their accuracy. However, other data was still not available, such as breakdowns of case types and national/regional waiting times. Subject to caveats around accuracy, the statistics appeared to show that:

- There was no significant influx of claims following the ending of furlough arrangements.
- Receipts of single claims appeared to have reverted to their pre-pandemic “steady state” of about 600-700 claims a week (having peaked at over 1,000 a week, about six months into the pandemic).
- The outstanding singles caseload was at about 43,000, but there was particular concern about the accuracy of this figure – there is uncertainty about whether files are being “closed down” (or “disposed”) properly on ECM.

- The outstanding multiples caseload was at about 5,300 (measured as the number of cases) or about 443,000 (measured as the number of claimants within those cases).

3.8 Waiting times

The President said that, because HMCTS could not currently produce data on waiting times, he relied on anecdotal information from the Regional Employment Judges. The position appeared to be as follows:

- In a few ET regions in England and Wales, he would expect a 1-2 day case to be heard with four months: Midlands East and North East were examples. In most other regions, however, such a case would have to wait until the first half of 2023.
- The waiting times extend as the duration of the listed case increases. A 3-5 day case would be heard more quickly in Wales, Midlands West, Midlands East and North East. The longest waiting times for such hearings were in the Reading and Watford offices of the South East region, and in London South and North West.
- That geographical variation is also reflected in 6-10 day cases. Some regions could accommodate such cases in the second half of 2023, but a 2024 listing was more likely in Reading, Watford, London South, London East and the North West.

These regional variations exist chiefly due to the imbalance of judicial resources, although this is mitigated to a degree by the efforts of the virtual region. This was successfully dealing with hundreds of cases on a fully remote basis that would otherwise have been postponed.

3.9 Recording and transcriptions

The President thanked the members of the national user group for their input into the draft practice direction and guidance documents on the recording of ET hearings and obtaining transcriptions of those hearings. There had also been consultation with HMCTS, BEIS, the Council of Employment Judges, the judges of the EAT and others. These responses gave rise to a number of policy issues that the two Presidents would need to reflect upon and discuss in further detail. An update would be provided in due course.

3.10 Video hearings

The President informed the members of the national user group that very significant use was still being made of video hearings, principally the Cloud Video Platform. There remained significant regional variation due to differences in the available estate and differences in the level of use being made of the virtual region as an “overflow” resource. But, nationally, the Employment Tribunals were still pending about 1,500-1,600 hours a week on CVP. This compared to about 2,500-3,000 hours at the height of the pandemic.

3.11 REJ retirements

The President announced that two longstanding Regional Employment Judges would be retiring in the coming weeks.

First, [Judge Carol Taylor](#) would be retiring as the Regional Employment Judge for the London East region with effect from 24 September 2022. Judge Taylor had qualified as a solicitor in the mid-1980s, spending much of her early career with Hammersmith & Fulham Law Centre, dealing with a whole range of matters: not just employment law, but also welfare rights, immigration and nationality law, and landlord and tenant law. She was appointed as a fee paid Employment Judge in 1992 and she became a salaried judge in 1996. She was promoted to become a Regional Employment Judge in 2011, leading two regions in turn: the (then) Southampton region and subsequently, for many years, London East. As one of the first black, female judges in Britain, she had been an excellent role model for others. She was also the longest-serving salaried judge in the Employment Tribunals. Judge Taylor had been appointed to sit in retirement, and would be assigned to the London South region where users might still occasionally encounter her for about 30 days a year.

Second, [Judge Joanna Wade](#) would be retiring as the Regional Employment Judge for the London Central region with effect from 1 October 2022. Judge Wade had made an enormous contribution to workplace justice, initially as a leading solicitor and a founder of a ground-breaking law firm and then as a judge. It was her work as the legal officer to the charity Maternity Alliance that led to her being awarded an MBE. She was appointed as a fee paid Employment Judge in 1998 and she became a salaried judge in 2009. Judge Wade was promoted to the position of Regional Employment Judge in London Central, just as the pandemic began to have an impact. It was the good fortune of the Employment Tribunal system, if perhaps her misfortune, that she bore the mantle of leadership during a public health emergency, exacerbated by the poor state of Victory House. It was a great pity that Joanna would not be around to lead the move to the new tribunals building at Newgate Street. Like Judge Taylor, she had been appointed to sit in retirement, and would also be assigned to the London South region.

Several members of the national user group present stated their thanks to Judge Taylor and Judge Wade. They both returned the expression of gratitude, especially for the patience of users with regard to the exceptionally challenging period during and since the pandemic.

The President informed members about the arrangements that would follow. Regional Employment Judge Andrew Freer, who had spent nearly two decades working in the London South region, would be transferring to London Central as its new REJ. This would mean that there would be REJ vacancies in London South and London East. A JAC selection exercise would commence in November 2022 with the intention of filling the vacancies by no later than July 2023. In the meantime, Employment Judge Adenike Balogun would be acting REJ in London South and Employment Judges Alison Russell and Benjamin Burgher would job share the acting REJ role in London East.

4 Regional updates

The President turned the meeting over to the Regional Employment Judges in attendance, so that they could give updates about regional performance.

Regional Employment Judge Taylor spoke about difficulties in listing cases in London East because the salaried judges were engaged on so many lengthy hearings, which made it difficult to backfill the list with shorter cases. She commented on the adverse impact of staff turnover.

Regional Employment Judge Foxwell, of the South East region, explained the duties of his new role as national director of training. He spoke about the shortage of salaried judges, especially in Watford, and the impact on long waiting times, for which he apologised.

Regional Employment Judge Findlay, Midlands West, spoke about the positive impact of the pilot of ADR hearings, which continued to save many sitting days, but also the problems of severe shortages of staff.

Regional Employment Judge Davies, Wales, discussed new venues that were being used more often, included the Civil Justice Centre at Swansea and Columbus House in Newport. She also discussed staff shortages and said that 60% of staff were temporary or agency workers, which made it difficult to conduct “business as usual” matters such as listing.

Regional Employment Judge Wade said that the picture at London Central was mixed. On the one hand, waiting times were shorter than elsewhere in London. On the other hand, Victory House was still not functioning effectively as a building due to poor air circulation, meaning that there was still heavy reliance on video. She wished Judge Freer well as the London Central REJ.

5 Questions for judiciary

Felicia Epstein asked if there was more information on the Document Upload Centre. The President said that the DUC remained an interim solution, initially designed to address the difficulty in quarantining paper bundles, but which has become an effective way to make electronic bundles available for use. Its future was uncertain, and would depend in part upon how the reformed systems would accommodate electronic bundles.

6 HMCTS update

The President said that the HMCTS update would focus chiefly on progress in respect of the reform programme. By way of background, he reminded the meeting that HMCTS reform was a project across all courts and tribunals to modernise and digitise the justice system. The current proposal was that reform would be fully rolled out in the Employment Tribunals by the spring of 2023. He introduced Marie Mannering, who was deputising for Mark Lewis.

Marie thanked the President and the leadership judges for their input into reform meetings, which was considered useful and helpful. She described the early releases of the reform model that had been rolled out to Glasgow and Leeds. She described the next stages of the release, including the different portals to be used by represented and unrepresented users. Further releases would include case progression activities whereby external users would interact with the tribunal in order to make applications. She said that a great deal of work had been done in liaising with Acas.

7 BEIS update

Richard Boyd was unable to attend the meeting but had provided the President with a written report to read to members as follows:

He stated that the ET taskforce continued to work across government and would update the new Ministers, when they were announced.

In respect of the Law Commission report, he stated:

- The Law Commission had now published the Government's responses to the Employment Law Hearing Structures review, which included the [BEIS response](#) in June 2021 and a joint response from [the MoJ and the Government Equalities Office](#) in June 2022. The Law Commission had also produced a helpful [overview of the main points](#).
- When reading the Government responses, it was important to bear in mind the context in which they were written, including a time of significant challenge during the pandemic.
- BEIS was keen to hear from users and practitioners as to which of the recommendations remained relevant to the employment law landscape and should be prioritised.
- BEIS would continue to work with the Law Commission to discuss their ideas.

In respect of the online register of judgments, he stated:

- BEIS had been working with colleagues in MoJ and HMCTS to consider feedback from users and constituency correspondence on the current register.
- BEIS was aware that there was a balance to be struck between the principle of open justice and the right to privacy, and that there were concerns about whether, in its current form, the register met that challenge.
- BEIS was keen to hear about user experiences of the register, how it was used, and its impact on those represented by the members of the national user group.

In respect of holiday pay, he stated:

- The Supreme Court held in *Harpur Trust v. Brazel* [\[2022\] UKSC 21](#) that that the Court of Appeal had correctly interpreted the Working Time Regulations 1998 and that holiday entitlement for part-year workers should be calculated using the "Calendar Week Method". BEIS refers to this in [guidance on gov.uk](#) as the 52-week holiday pay reference period.
- The Supreme Court's judgment also held that holiday entitlement for part-year workers should not be pro rated so that it is proportionate to the amount of work they perform across the year. BEIS guidance on gov.uk reflects this and explains how holiday pay should be calculated for part-year workers.
- BEIS was aware of the issue about calculating holiday entitlement for part-year workers.
- BEIS understands the issue that part-year workers will continue to receive a higher holiday entitlement and holiday pay in respect to the proportion of the year that they work for, in comparison to full-time workers.
- BEIS will be considering this issue in more detail and the impact of this judgment on the current holiday pay legislation.

8 Acas update

Nicole Clarke reported that Acas was in a "steady state". Acas was receiving about 2,000 notifications a week; there were a few peaks and troughs, but it seemed to stay at about that number. Recent industrial unrest had meant that Acas has been busy in other areas. Acas continued to do a lot of work on website content, including signposting and advisory videos.

Another area Acas had been working on was a new prescribed form in relation to early conciliation notification. Grant Cockburn of Acas gave a presentation demonstrating to members of the national user group the main changes to the form.

9 Any other business

The President said the next meeting would be in the Spring 2023, by which time more would be known about the direction of HMCTS reform.