



**EMPLOYMENT TRIBUNALS
England & Wales**

37th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held at Victory House on 27 February 2019**

In attendance:

Judge Brian Doyle	President, Employment Tribunals E&W
Shona Simon	President, Employment Tribunals Scotland
Sukvinder Phillips	HMCTS
Omar Khalil	EEF
Matthew Bradbury	Citizens Advice
Andrew Willis	Croner Group Limited
James Potts	Peninsula Business Services
Richard Boyd	BEIS
Glenda Peck	BEIS
Jo Chimes	Citizens Advice
Bob Matheson	Protect
Andrew Pepper-Parsons	Protect
Nina Taeger	Acas
Philip Thornton	Lexis Nexis
Juliet Carp	Employment Lawyers Association
Andrew Lingard	Advocate (previously known as Pro Bono Unit)
Simon Carr	Senior President of Tribunals Office
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Matthew Smith	Equality Human Rights Commission
Rosemary Lloyd	Equality Human Rights Commission
Marie Mannering	HMCTS
John Sprack	Law Works
Michael Reed	The Free Representation Unit
Tony Lowe	Acas
Noel Lambert	Acas
Max Winthrop	The Law Society
Emma Wilkinson	Citizens Advice
Peter Kumar	Discrimination Law Association

Item 1 Welcome & introductions

The President welcomed members to the 37th meeting of the Employment Tribunals National User Group (England & Wales).

Item 2 Agree minutes of the meeting of 28th September 2018

The minutes of the previous meeting were approved and accepted.

Item 3 Action points and matters arising

Any matters arising and action points are dealt with in the President's report below.

Item 4 Employment Tribunals – President's report

The President reported on a meeting he had had with Matthew Smith of the Equality & Human Rights Commission. The President is considering the preparation of Presidential Guidance concerning case management and hearing management for disabled and vulnerable parties and witnesses. It was noted that there was already considerable guidance in the Equal Treatment Bench Book, and other sources but the President thought these could usefully be brought together in easily accessible Presidential Guidance. The President would consult the President of Employment Tribunals for Scotland in the process.

The President gave an update as to the recruitment for salaried judges. The judicial appointments timetable was being adhered to. The successful candidates had been made offers and were now in the process of confirming their assignment and deployment. The take-up of appointments would be staged throughout 2019, with the first group of new judges starting in April 2019, with a second group in July 2019 and a final group in September 2019. A total of 59 offers of appointment had been made, but taking into account salaried part-time working, the final outcome was likely to fall slightly short of the 54 full-time equivalent (FTE) for which permission to recruit had been given.

The President informed the members that he was anticipating a significant loss of fee-paid EJs due to retirements and those who had been successful in obtaining a salaried post in the current recruitment exercise. It was hoped that the JAC would launch a recruitment exercise in March 2019 for fee-paid judges across the Employment Tribunal (E&W) and the First-tier Tribunal. The ET's share in that exercise was hoped to be 50 new fee-paid EJs, who would be trained and in place for the start of 2019/20.

The President referred to the last non-legal member's recruitment campaign which took place some 10 years ago. There had been a considerable loss of NLMs since then. A recruitment exercise had been agreed and this was in the process of being out-sourced. The target to recruit was 300 new members for England & Wales and 40 new members for Scotland. It was hoped that the new members would be selected and appointed by the end of Summer 2019 and available to sit by the end of 2019.

The President informed the members that there would be Regional Employment Judge vacancies in 4 regions over the next 12 months due to forthcoming retirements. It was hoped that the JAC would accommodate a promotion selection exercise in its programme to launch in August 2019.

The President reported on the latest publicly available data relating to the refund of ET fees. To the end of September 2018, in round terms, there had been 21,500 applications, resulting in 20,000 refunds totalling £15.825m. In Q3 of 2018 that represented 6,900 applications, 7,600 refunds and £5.1823m. The next publication of data would be in March 2019. HMCTS had made considerable efforts to raise the profile of the ET Fees Refund Scheme and to facilitate repayments.

In terms of caseload following the abolition of ET fees, the volume of claims had almost returned to pre-fees levels. Between Q3 2017 and Q3 2018 there had been a 31% increase in single claims; a 57% increase in disposals; a 77% increase in outstanding caseload; and single claims were taking on average 28 weeks to disposal. The more volatile multiple claims represented a 37% decrease in receipts; a 31% decrease in disposals; a 30% increase in outstanding caseload; and 106 weeks average to disposal. This all represented a slight drop off in performance. About 65-67% of cases were completed within 26 weeks.

The President referred the members back to the previous NUG minutes of September 2018 for the links showing detailed information on the statistics.

The President addressed the need for audio-recording of ET hearings. Resources had been found to enable this to be achieved and both the Employment Tribunal and the First-tier Tribunal would benefit from the acquisition of recording equipment in hearing rooms. It was planned to be a gradual rollout from April 2019 to March 2020. Currently there was a pilot in Exeter being held in Social Security & Child Support hearings, which had been successful. Testing of equipment would be required. A nationally agreed protocol would cover the practice of recording hearings and the provision of transcripts. If a party were to ask for a transcript, as in the courts it would be on the payment of a fee. The President said that audio-recording would be welcome for a number of reasons: reducing the need for the judges to take verbatim notes; providing parties with a transcript of the hearing; improving the conduct of hearings generally; providing some discouragement for litigants or witnesses to misconduct themselves in hearings; and giving leadership judges the means to check complaints about how a judge allegedly behaved in a hearing (and thereby perhaps discouraging unmeritorious complaints).

Suki Phillips (HMCTS) confirmed that the protocol would be the subject of consultation.

The President confirmed his hope that a replacement for the ET's aged case management database (Ethos) should be up and running by 2020. Based on a system called Core Case Data, this would eventually be an end to end electronic process that would allow all users and judges to interact with caseworkers during the lifecycle of a case. The President hoped that this would mean not only online presentation of claims and responses, as was possible already, but applications and case management responses could be

dealt with online, with referrals to judges and actions on their directions being dealt with electronically, and eventually the possibility for witness statements and documents bundles being dealt with digitally. The new system was being developed and tested in the Manchester ET and the Glasgow ET.

Members raised questions about the IT outage experienced by HMCTS in recent weeks. The President referred members to the publicly available explanations for what had happened as issued by the relevant Minister and by HMCTS. There had been little effect on ET work. The IT issues for ETs were almost entirely problems caused by the need to replace Ethos.

Item 5 HMCTS Update

Suki Philips (HMCTS) reported on measures to ensure that there were no duplicate claims for refund of ET fees, especially in cases where the respondent had paid the fee as part of a settlement with the claimant. This ensured in those circumstances that the respondent would receive the fee back and not the claimant.

Suki also contributed to the President's report on Ethos and update members on improvements being made to the administrative resource supporting ET activity.

Item 6 BEIS report

Richard Boyd (BEIS) reported on the Good Work Plan in connection with the Taylor view of modern working practices. 51 representations had been received. Secondary legislation was about to be debated in Parliament. Reference was made to the ET guidance for users being in plain English. A simplified text for employers and employees could be accessed via an ET link on the BEIS website. Other aspects covered were holiday pay rights, extended holiday pay, technical guidance for calculating holiday pay, Employment Law, deposit orders, preparation and wasted costs.

Item 7 BEIS overview of unpaid award penalty scheme

Glenda Peck (BEIS) was visiting all tribunal offices reporting on the unpaid award penalty scheme. 244 valid claims had been received in the first year and 319 in the following year. So far this year there had been 670 valid claims. This had resulted in recovery of over £1M in unpaid ET awards. It was noted that in the judgment letter a paragraph would be inserted referring to them being associated with the County Court, not Tribunals or Acas.

As to the issuing of warning letters, these would be issued within 28 days of non-payment and a fine by the Government also included. Large awards would be fined up to £5,000 for non-payment of award. It was agreed that this was an incentive to pay. This is a free scheme and penalties obtained would go to the Government. It was thought that compliance was better than an enforcement.

Item 8 Acas report

Nina Taeger informed the members that Noel Lambert was retiring that week. The President ask for his appreciation of all Noel's work to be passed to him.

The new Acas case management system was being piloted in Leeds in March 2019. Every 3 weeks a new part of the system was being checked to ensure that it could be rolled out to all conciliators by the end of June 2019.

There had been testing of the new system with conciliators. Notification forms had been completed from interviewing claimants. Volunteers had eye-tracking noted when looking at various parts of the screen and then asked how easy/difficult it was to access the information they wanted.

There had been 2,500 applications a week for the 3rd quarter - 95,000 employees, 98,000 employers, 3,000 multiples, 23,500 claims of which 75% were resolved. Going to Employment Tribunals from April to December was 26,000 cases.

Item 9 Any other business

No other business was raised.

Item 10 Date of next meeting

The President suggested the next meeting be in June 2019 on a date to be arranged.