



**HM Courts
& Tribunals
Service**

**EMPLOYMENT TRIBUNALS
England & Wales**

41st MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held via Zoom on 30 June 2020**

In attendance:

Judge Barry Clarke	President, Employment Tribunals (E&W)
Judge Shona Simon	President, Employment Tribunals (Scotland)
Judge George Foxwell	Regional Employment Judge (SE England region)
Judge Sian Davies	Acting Regional Employment Judge (Wales)
Richard Boyd	BEIS
Tony Lowe	Acas
Daniel Flury	HMCTS (for item 7)
Tim Sharp	TUC
Richard Fox	Employment Lawyers Association
Paul McFarlane	Employment Lawyers Association
Diya Sen Gupta QC	Employment Law Bar Association
Leila Moran	Discrimination Law Association
Andrew Lingard	Bar Pro Bono Unit
Andrew Willis	Croner Group
John Sprack	Law Works
Laura Garner	Thomson Reuters
Max Winthrop	Law Society
Paman Singh	Law at Work
Holly Philipson-Boyd	Citizens Advice
Simon Pender	Make UK
Philip Thornton	LexisNexis
James Potts	Peninsula

Apologies

Matthew Creagh	TUC
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Item 1 Welcome & introductions

Judge Clarke welcomed members to the 41st meeting of the Employment Tribunals National User Group (England & Wales), taking place via Zoom, and his first as President of Employment Tribunals in England and Wales. He paid warm tribute to his predecessor, Judge Brian Doyle, who had retired on 8 May 2020. He described him as an impossible act to follow.

Item 2 Agree minutes from last meeting

The minutes were agreed.

Item 3 Action points

There were no outstanding action points from the 40th meeting of the National User Group on 22 April 2020, save that the President confirmed that he had provided members with a demonstration of the HMCTS Cloud Video Platform (“CVP”) immediately following the conclusion of that meeting.

Item 4 President’s report

The President explained that his report would cover business as usual and then a variety of matters relating to Covid-19. He said that this was an especially important user group meeting given that it was the main channel through which he could communicate with the system’s users during very challenging times and through which he could ensure transparency.

People

The President confirmed that today was the last day in service of Regional Employment Judge Jonathan Parkin in the NW England region. He paid tribute to Judge Parkin, noting that he had sat in several ET regions in England as a fee paid and salaried judge and that he had been an REJ in SW England as well as latterly in NW England. He would be greatly missed as a leadership colleague, although (like Judge Brian Doyle) he would be sitting in retirement as a fee paid judge.

With effect from tomorrow, the new REJ for the NW England region would be David Franey. This comes within two months of a new President, three further new REJs (for the London Central, London South and SE England regions) and a new acting REJ in Wales. This represented a major change in the judicial leadership team for the ET (E&W) in a short period of time.

Further, the last 18 months had seen 57 new salaried EJs start work (almost half of the present number), 287 new non-legal members take up office (about a third of the present number) and 67 new fee paid EJs receive their letters of appointment (also about a third of the present number). The jurisdiction was therefore undergoing significant changes in a short period.

Regrettably, the Covid-19 pandemic had resulted in the cancellation of the residential induction courses planned for the new fee paid EJs. These courses will instead be run remotely in the Autumn, with a slight delay in when they can start sitting.

The ET's judicial office holders in E&W now comprised one President, nine REJs, two acting REJs, about 130 salaried EJs, about 230 fee paid EJs and almost 1,000 non-legal members.

The President also reported that he had recently been appointed as a judge of the Employment Appeal Tribunal under Section 22(2A)(k) of the Employment Tribunals Act 1996 and that he would be sitting there periodically.

Recruitment

Two further competitions were underway, both with anticipated appointment dates in mid-2021 (but subject to possible pandemic-related delays):

- A competition launched on 5 May 2020 to recruit approximately 50 fee-paid EJs as part of a combined recruitment exercise for fee-paid judges for the ET (E&W), other chambers of the First-tier Tribunal and the District Bench (civil).
- A competition launched on 20 May 2020 to recruit 25 full-time equivalent salaried EJs, with most of the immediate vacancies arising in the SE England and London South regions.

Law Commission

The President turned to the publication on 27 April 2020 of the Law Commission's 212-page report on "Employment Law Hearing Structures". He directed the user group's member to the 23 recommendations which are helpfully brought together in a 32-page summary of the main report.

The President thanked the Law Commission for their hard work. He welcomed the report and the clarity that, if implemented, its recommendations would bring. Specifically, the recommendations would improve the ability of ETs to resolve employment disputes effectively and justly in one place.

Adoption of the report's recommendations was now a matter for Government. The President explained that the protocol between the Law Commission and the Government is that the relevant Minister will provide an interim response to the Commission as soon as possible (no later than six months after publication) and a final response as soon as possible (but within a year of publication).

The report is available here:

<https://www.lawcom.gov.uk/project/employment-law-hearing-structures/>

BEIS engagement exercise

The President explained that BEIS (the sponsoring department for the ET Rules of Procedure) was currently conducting an engagement exercise concerning the Law Commission's recommendations and additional proposed changes to the Rules. He understood this to be an engagement exercise rather than a full consultation exercise.

The President said that he would ask Richard Boyd from BEIS to explain more about this exercise later in the meeting and the extent to which the user group's members could contribute.

Ethos/ECM

The President explained that strenuous efforts continued by HMCTS to ensure that the rather antiquated case management software used by the ETs, Ethos, would be replaced by a modern system that was fully compatible with Windows 10 and which supported remote access by HMCTS staff and judiciary (and it was hoped, in the fullness of time, by users seeking an update on their case). The President said that the replacement system was being piloted in the Leeds regional office, with the aim of extending it to other regions later in the calendar year. He paid tribute to the HMCTS team developing the new system, called Employment Case Management (or "ECM").

The President acknowledged that HMCTS staff within the Employment Tribunal system were already very stretched by the challenges of the pandemic and several regions were still short-staffed. Nonetheless, while not wishing to place extra burdens on the staff, the development and implementation of ECM was crucial to ensure the system's operational resilience and it would ultimately help tackle the backlog of cases to which the pandemic was contributing.

Listing direction and road map

Turning to the pandemic, the President noted that the previous Friday had seen the expiry of the national "Listing Direction" which had operated between 23 March and 26 June 2020, and by which all in-person hearings (subject to a decision to the contrary by a judge) were converted to a telephone hearing for case management purposes. The President pointed out that, even during that period, there were some exceptional in-person hearings taking place, and most regions had started a small number of in-person hearings from Monday. With the expiry of that Direction, the question becomes: what next?

The President advised that the best source of public information about the direction being taken by the Employment Tribunals in England, Wales and Scotland was now the "road map" he had issued jointly with Judge Shona Simon (the President in Scotland) earlier in June, and which set out their shared vision for the use to be made of CVP. The President went through the road map

in detail. He said the model was familiar to employment lawyers as it was, in a sense, a “staged return to work”. Judge Simon agreed with the summary of the road map. The President reiterated the different recovery speeds of the ET regions in E&W: on the one hand, several regions had already managed multi-day full-panel hearings (some on CVP, and this week had seen a 13-day in-person hearing start at Southampton ET in a suitably distanced fashion); on the other hand, others were still some time away from in-person hearings.

The aspirational nature of the road map was important; it was explicitly subject to several provisos. These provisos included the ability of HMCTS to provide the administrative support necessary for remote, in-person and hybrid hearings; the availability of clean and risk-assessed premises where distancing could safely operate; dependable IT equipment; and so on.

The President reported that he and Judge Simon were largely on track with the proposed timetable for training salaried judges, fee paid judges and non-legal members in the use of CVP and the judgecraft aspects of conducting hearings remotely. This was greatly helped by the fact that the Judicial College had agreed to fund such training by paying a half-day fee to the fee paid judges and non-legal members for attending it. He expressed his gratitude to the Judicial College. Judge Simon agreed with that observation.

The President thanked the members of the user group, and the members of the user community at large, for their forbearance during the challenging period of the pandemic when the Listing Direction was in operation. He thanked the professional user community for its continuing efforts to make employment law accessible to the public during this period, and all the associated pro bono work, which did great credit to the legal profession and enhanced the rule of law. He singled out members of Cloisters chambers for a detailed toolkit they had made freely available on legal issues arising from the pandemic and returning to work, and also those individual solicitors and barristers in the Twitter community who had worked hard to obtain and then publicise guidance from Treasury officials on how aspects of the CJRS operated.

CVP

The 150 CVP rooms available to the ET across England, Wales and Scotland were being increasingly used. The previous week had seen 700 hours of use. This put the ET second only to the Health, Education and Social Care chamber of the First-tier Tribunal. Remote mediations were also a success story.

On a weekly basis, judges were “crash-testing” the CVP system and learning as they went along. The President paid tribute to the ET’s judges and members, who were sharing tips and experiences and contributing to working groups to ensure that CVP was used to the full extent of its functionality. He paid tribute to HMCTS, which had produced a detailed internal expert user guide. He also paid tribute to Regional Employment Judge Freer, who had led the training of the judges and members in using the new system, and Regional Employment

Judge Pirani, who was leading engagement efforts with the professional user community. He acknowledged the collaborative work that had taken place with the judges of the Employment Tribunals in Scotland; their joint response to the pandemic was stronger than it would have been if each jurisdiction had instead responded individually. It also meant that members of the user community, including those with cross-border operations, were treated consistently.

Caseload

The President turned to address the challenges of the rising caseload in more detail.

The President said that the impact of pressing pause on most in-person hearings at the end of March 2020 had been to inflate the outstanding caseload of so-called “singles” (that is, the single claims brought before the system which might contain numerous legal complaints, as opposed to those cases involving multiple claimants such as equal pay). As at the week ending 28 June 2020, there were 36,616 outstanding single cases in England, Wales and Scotland.

To put this in context, the President noted that the outstanding singles caseload had already been increasing following the abolition of ET fees in 2017: across England, Wales and Scotland, the figure had stood at about 10,000 single cases awaiting determination in March 2017, about 19,000 in March 2018 and about 27,000 in March 2019. The previous peak in the 2009/10 financial year, after the credit crisis, was about 36,000. That peak, therefore, had now been matched.

The pre-Covid baseline in early March 2020 was 30,687. As the figure was now 36,616, it could broadly be said that it was increasing by about 1% with each passing week. The President said that he expected the outstanding caseload of singles to surpass 40,000 by the late summer or early Autumn.

As new judges were not coming on stream for a while, he thought it likely that the figure would continue to rise significantly. This would pose huge challenges to the ability of the ET to deliver justice within a reasonable time, which deeply troubled him.

The President said that the system’s ability to reduce the rate by which the outstanding caseload of singles was inflating depended upon the extent to which (a) the physical estate could accommodate a return to in-person hearings in volume and (b) the system and its users would embrace video hearings in volume.

As for (a), the main difficulty was the greatly reduced estate available to the ET because of the need for social distancing. In broad terms, across the ET’s estate, about a third to a half of the space (including hearing rooms) was available for use. This was not because the other half to two-thirds was closed; it arose from the need to reduce the footfall into the building and allow business

to be conducted while people remained appropriately distanced. He described the hearing room itself as a relatively static environment where distancing could be monitored. The problems arose in the more dynamic parts of the building (waiting areas, lifts, staircases, conference rooms, toilet areas, security arches and the like), which is why overall footfall had to be reduced and the number of in-person hearings that could take place had correspondingly reduced. While discussing the estate, the President informed the members of the risk assessment tool which was available online (and which had previously been circulated to the user group's members). The tool was available at this link: <https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

As for (b), the President said that a mantra he had adopted since taking on the presidency was that technology had to be the servant of justice, not its master. His firm view remained that an in-person hearing was generally the best way to experience justice, especially for cases that involved disputed facts requiring questioning of witnesses; nevertheless, at the moment, video hearings were an important temporary solution and the only alternative to a delay in the resolution of the case that would be tantamount to a denial of justice. In respect of conducting video hearings in volume, he described CVP as the "only game in town".

Expected increase in receipts

The situation was made even more challenging by the expected increase in receipts that would follow the winding-down of the Coronavirus Job Retention Scheme.

The President explained that the final date by which workers could first be furloughed had now passed, but there were still workers being furloughed under the new flexible arrangements. The President's understanding was that, as at 21 June 2020, 9.2 million employees had been furloughed at a cost of around £23 billion (with further costs associated with 2.6 million self-employed workers). This was against an active working population in Great Britain of about 33 million people.

The President sincerely hoped that the CJRS had successfully minimised the effect of the pandemic on the economy, but it nevertheless seemed likely that the ET system would see an increase in claims as the scheme was withdrawn. He speculated that, in addition to pandemic-related claims in fields such as health and safety and whistleblowing, the ET would see an increase in unfair redundancy dismissal claims and many contested protective award claims. The President said that he understood from some professional users that the winding-down of the CJRS was leading some employers to take decisions on collective redundancies which the furloughing arrangements had allowed them to defer. These new claims would add to the rate of inflation of the outstanding caseload.

On the types of case generated by the pandemic, the President asked the user group's members to note that he and Judge Simon had added claims alleging detriment or dismissal on health and safety or protected disclosure grounds (under sections 43B(1)(d), 44, 47B, 100 and 103A of the Employment Rights Act 1996) to the FAQ sheet as priority claims that should, so far as possible, be triaged for early determination. This was because they both considered that it was in the public interest for tribunals to determine quickly the various legal issues arising from whether it was safe for people to return to work during the pandemic.

Judicial numbers

The President told the user group's members that a further challenge came from reduced judges and staff in the ET's offices. Judges, in common with other workers across Britain, had experienced the same vulnerabilities around health, the same need to shield loved ones and the same concerns about safe use of public transport. This meant it was difficult for ET regions to get through "duty work" in offices at the same pace. He paid tribute to how hard the judges had been working to conduct hearings remotely; they had been required to learn and adopt new ways of working at pace, including rapid familiarisation with video technology. This was why he had publicly described the pandemic not just as a disruptor, but as an accelerant.

Likewise, tribunal offices were coping as best they could with reduced HMCTS staff numbers; during the pandemic, the London Central region had suffered particularly badly (to the extent that, for most of the lockdown, its central inbox email traffic was being monitored and triaged by two of the salaried judges). It was one of several regions that, for many weeks, had little or no staff available to serve new ET1 claim forms as they were being received.

The President reported that, as a short-term measure, a successful business case had been submitted to the Lord Chancellor to enable all those turning 70 in this current financial year, and who therefore faced compulsory retirement from judicial office, to have their appointments extended for a further year. However, this would not be enough to deliver the significant extra firepower the ET system needed to address the rising backlog.

Regional variations

The President said he had been candid in his public engagement sessions in addressing the fact that the ET regions in E&W could not all move forward at the same speed. This was simply because the resources split across a regional model – and the ET in E&W had used a regional model for decades – were not uniformly distributed. The President and REJs were meeting twice weekly to share ideas about how to get as many cases heard as possible. This included strategic thinking on new ways of working. The President was keen to emphasise that this was not about good or bad performance of any region in particular; those regions that were struggling were in that position because they

lacked the resources they needed in terms of staff, judges and a physical estate. He said that he and the REJs were united in their determination to support those regions that were struggling.

The President told members he was concerned about the emergence of a “2022 narrative” among commentators in the professional user community. He said it could easily be inferred from the current salaried EJ competition (and specifically the fact that most of the 25 new FTE salaried EJs were intended for deployment in those regions) that it was the SE England and London South regions who were struggling the most. Indeed, the SE England region was the only ET region in E&W that was listing cases of more than 2-3 days’ duration for hearing in 2022. The London South region was doing so in mid to late 2021 and every other region in E&W was managing to do so, in most cases, in the first half of 2021. It was hoped that the arrival of new judges in those two regions would assist them while, in the meantime, efforts would be made to increase the volume of hearings done by CVP. One model being investigated in the meantime was whether judges and members in other regions could be used to support wholly remote hearings in the two regions desperately in need of judicial firepower. The President paid tribute to the phenomenal hard work of judges in those regions, and the HMCTS staff supporting them, doing the best they could with the resources they had.

The President gave the contrasting example of a multi-day CVP hearing he was hearing personally the following week. This was a Wales ET case, where the claimant had been dismissed at the end of October 2019, lost his internal appeal at the end of February 2020, brought a claim in March 2020 and which was being heard at the start of July 2020. This was, in many ways, more typical of the speed at which cases were being heard in other parts of E&W and, indeed, in Scotland. However, he realistically accepted this would deteriorate as the backlog grows.

The President said that he had taken the step of contacting a few of the user group’s members individually to ask if they could try to steer their constituent members away from criticisms of individual judges on social media, particularly on Twitter. His view, and which he was prepared to state publicly, was that it was not at all acceptable that parties with cases proceeding in the SE England region should wait until 2022 to have them decided. He greatly sympathised with the parties in those cases and with the representatives who must pass on disappointing news about timescales. Ultimately, it came down to resources. The President said he wished to defend his judges publicly and it was important for them to know that he “had their back”; it was demoralising enough for judges in some regions to tell parties of the wait they faced, without then having to face criticism online and in circumstances where they could not answer back. The same applied to HMCTS staff.

The President recognised that there was considerable and understandable frustration in the user community about the speed at which the Employment Tribunals in some regions were operating. But he considered that it was better

for users to address those concerns by pressing for more resources rather than criticising judges and staff.

Hardware/software

The President said that strenuous efforts were being undertaken to ensure that judicial office holders had available to them the hardware and software needed to conduct wholly and partly remote hearings, such as additional screens and PDF reading software (for navigating electronic bundles) and additional laptops in regional offices. He recognised the considerable financial constraints faced by HMCTS in sourcing such items. This was a particularly pressing concern for fee paid judges and non-legal members. Judge Simon agreed.

Questions for the President

Richard Fox asked a question about electronic bundles, where he thought there was confusion about whether individual judges preferred them. The President replied that there was a work in progress to produce a Practice Direction on remote hearings and an accompanying presidential guidance on the conduct of remote and in-person hearings during the pandemic. These documents had been held up by the need to obtain legal advice. The presidential guidance would deal with electronic bundles and numerous other matters associated with remote hearings (guidance had already been issued by Judge Simon in Scotland). The President said that such guidance needed to take account of the position of unrepresented parties who may not be used to electronic bundles or able to assemble them, and who may need to use paper or printed bundles. The President identified one advantage of electronic bundles as being that no infection risk arose from their transportation or use.

Paul McFarlane asked a question about the replacement system for Ethos. The President emphasised that HMCTS provided administration to the tribunals and had agreed that an effective case management software system was needed to replace Ethos. There had been an attempt several years ago to replace Ethos with Caseflow but that had not worked for various reasons. ECM was an adaptation of a software package called Core Case Data and it had the capacity to provide a good fix. It was, he said, still a work in a progress and it needed improvement, especially where the administration of large multiples was concerned. Judge Simon commented on the pilot for ECM in Scotland. She said that its functionality to handle single claims was considered very good by those staff who had used it. She agreed that the current difficulties arose from the handling of large multiples. She said that the HMCTS development team was investigating various “work arounds”.

Simon Pender said that his colleagues had observed that different judges took different approaches towards judicial mediation. He said that some were more proactive and would comment on the merits of cases, while others were less proactive and would simply pass messages between the parties without much commentary on it. Consequently, users did not know which style to expect. He

asked the President to promote a uniform approach. In answer, the President referred the user group's members to his predecessor's Presidential Guidance, issued on 22 January 2018, about alternative dispute resolution. The third appendix to that document explained the judicial mediation process. Paragraph 7 said this:

The judge will not make decisions for the parties, impose solutions, give advice or hear evidence. However, if requested and subject to mutual agreement, the judge may give an indication as to the strength of a particular point. The judge will help the parties to reach their own solution by managing the process in a fair and constructive manner, making sure that they understand what is going on and helping them to focus on areas of agreement and common interest.

The President said that this captured the approach that needed to be adopted. Judicial mediation in the ET was principally a facilitative process. However, following a request from one of the parties and with the consent of all, it could become an evaluative process. The judge conducting the mediation should not decide on his or her own, and without that mutual agreement, to turn it into an evaluative process. If that was not happening, the President said he was happy to draw the Presidential Guidance to the attention of colleagues.

There being no further questions, the president invited Richard Boyd of BEIS to give an oral report.

Item 5 BEIS report

Richard Boyd reported that Covid-19 had highlighted some of the areas where the ET Rules of Procedure might be amended to better support the holding of remote hearings. Additionally, there were other areas where it was thought the Rules could be improved or where measures such as the appointment of caseworkers could help meet these challenges. BEIS had been working with the Presidents and the Ministry of Justice on several proposals, some of which had been under consideration for some time, and well before the pandemic. The Minister had issued a letter to stakeholder organisations as part of an engagement exercise (not a full consultation exercise due to current constraints) about amendments to the ET Rules and gathering views on possible deployment of other judges into the Employment Tribunals. He agreed to re-send the letter to any member of the user group who had not yet seen it.

RB said that BEIS was aware of the Law Commission report and its extensive list of recommendations. BEIS was working with colleagues at the Ministry of Justice and the Government Equalities Office to see how best to respond to those recommendations. He said that the MoJ would be leading on that response on behalf of Government and BEIS would contribute to that response.

RB mentioned that colleagues in the Labour Markets team had been looking at employment rights for survivors of domestic abuse. He said that this was an

area which had received ministerial attention. It was hoped this review would ensure that survivors of domestic abuse got the support they needed in the workplace, whether that was through a network for reporting abuse or a source of emotional or other assistance. The call for evidence is open until 9 September 2020 at this link:

<https://www.gov.uk/government/consultations/support-in-the-workplace-for-victims-of-domestic-abuse-call-for-evidence>.

RB was aware there were significant issues raised by stakeholders around the operation of the CJRS. He said that he would be happy to take questions by email from the user group's members and liaise with his Treasury colleagues to provide clarification where he could.

RB asked members if they might share their experiences of dealing with administrators, especially in relation to the provision of consent around pursuing applications for protective awards. If they were encountering difficulties, it might give rise to a policy point he could take up with his insolvency colleagues. He said that he had been discussing this issue with the ET Presidents as well.

There were no questions for BEIS.

Item 6 Acas report

Tony Lowe confirmed that conciliation staff were working from home and remained available for contact. There were no major issues with the technology. They managed to provide most of their services remotely and effectively by platforms such as Skype, Teams and Zoom. TL informed members that Acas was working on getting its offices open in a safe way.

TL said that Acas had held a campaign to recruit more conciliators across all locations. The response rate from the latest campaign had been excellent. All being well, new conciliators would start in September 2020. They would join 22 early conciliation support officers who started in June 2020. They had been a little nervous about starting a new job at a time where offices were closed, and with significant restrictions in place, but it had been positive.

TL reported that there had not been any significant increases in the number of early conciliation notifications; they remained between expected levels. He said that Acas would be keeping a close eye on the volume of notification as the CJRS gradually winds down. From the start of this operational year Acas have had something like 18,000 new notifications up until the end of May.

There were no questions for Acas.

Item 7 HMCTS report

Daniel Flury joined the meeting to present the HMCTS report. The President wanted to put on record his gratitude to HMCTS for procuring the number of

CVP rooms for the ET, which offered the best and most innovative way to tackle the backlog to which the pandemic was contributing.

DF began by reporting on the staffing position within HMCTS. At the height of the Covid-19 pandemic, about 30% of all HMCTS staff had been absent from the workplace for a variety of reasons. This level had now fallen to about 10-15%, which was still significant. He said that the Employment Tribunals had been disproportionately affected by staff absences, primarily because the Ethos system was physically housed in a server and did not support remote working. This had a particularly profound effect on the ET's London regions. He said that, once ECM was in place, the Employment Tribunals would be more resilient because they would be able to support remote working. DF said he was very grateful to the patience that all users of the Employment Tribunals had shown over the last few months. He was acutely aware that some services (such as answering telephones, responding to correspondence and basic administrative tasks) were greatly impaired, especially in London. He hoped that the situation would improve over the next three months.

DF said that risk assessments had been conducted at all HMCTS buildings to ensure safety and that distancing arrangements had been put in place. Due to distancing, many locations had lost half of their hearing capacity. He thought that CVP and telephone hearings would cover some of that lost capacity.

DF explained that work was underway to predict how future claims to the Employment Tribunals would change as a result of the pandemic. The most recent information suggested that receipts had remained steady during the pandemic. HMCTS were expecting increased receipts as the CJRS was wound down in the Autumn. DF confirmed that he was working with both ET Presidents to maximise capacity, using the full range of policy, operational and legislative measures. There would still be a significant gap between demand and supply for at least another year, and until further recruitment delivered much-needed judicial capacity. Another option being examined was whether additional capacity could be delivered to the system through extending operating hours.

DF mentioned that CVP provided a mechanism for the audio recording of ET hearings and that increased recording would soon be taking place. The President interjected to say that ET hearings had not been routinely recorded in the past, but that having such recordings in future would assist leadership judges in determining judicial complaints (and, indeed, protect judges against vexatious complaints). DF said that a pilot for recording hearings was underway in Scotland and Wales, and work was being done to develop protocols on such matters as the storage and destruction of recordings. The President said that he was planning a Practice Direction on the point.

Questions for HMCTS

Richard Fox asked whether DF could comment on the Law Commission report from the perspective of HMCTS. DF said that HMCTS did not have a view on

the Law Commission's report and that employment law and ET policy was set by colleagues in BEIS.

Diya Sen Gupta QC asked DF whether, if ECM would not be up and running for three months, whether it might be fast-tracked to build operational resilience more quickly. DF replied that he was on the verge of starting the pilot in March 2020, but the opportunity had been lost; the disruption caused by the pandemic had meant the loss of the necessary staff. Time was needed to test the system and to refine it to prepare the ET's regional offices for the roll out. DF was hopeful that the London offices and Watford would be early recipients. Diya Sen Gupta QC also asked why, if the problem was a lack of staff to support the Employment Tribunals, HMCTS could not simply recruit more staff. DF said that there would be recruitment across the whole of HMCTS and not just for the ETs. However, recruitment campaigns were convoluted due to the social distancing guidelines. In due course, there would be recruitment of tribunal caseworkers too.

Paul McFarlane asked about building capacity. DF said the courts were affected too. Possible new buildings were being looked at, as a way of providing additional estate capacity, but this was at an early stage.

Item 8 Any other business

No AOB items were raised.

Item 9 Date of next meeting

The President suggested that the next meeting be held in the Autumn. A date would be suggested in due course.