



EMPLOYMENT TRIBUNALS England & Wales

31st MEETING OF NATIONAL USER GROUP

Minutes of the National User Group meeting
held at Victory House on 10th February 2017

In attendance:

Judge Brian Doyle	President, Employment Tribunals E&W
Judge Susan Walker	Vice-President, Employment Tribunals Scotland
Simon Carr	Senior President of Tribunals Office
Carol Wheeler	BEIS
Harriet Andrews	BEIS
Gillian Brooks	HMCTS
Tom Matley	HMCTS
Bill Dowse	Ministry of Justice
Omar Khalil	EEF
Emma Wilkinson	Citizens Advice
Tom Barrett	CBI
Michael Newman	Discrimination Law Association
Bertrand Stern-Gillet	Peninsula Business Services
Matthew Creagh	TUC
Alex Smith	Public Concern at Work
Mike Reed	Free Representation Unit
Philip Thornton	Lexis Nexis
Gareth Brahms	Employment Lawyers Association
Paul McFarlane	Employment Lawyers Association
Jonathan Bell	Equality & Human Rights Commission
Dhriti Suresh Eapen	Pro Bono Unit
Nicole Clarke	Acas
Peter Kumar	Disability Law Association
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Sukvinder Phillips
Laurie Anstis
Lindsey Woods
John Sprack
Sarah Watson
Cathy Gallagher
Richard Boyd

Item 1 Welcome & introductions

The President welcomed members to the 31st meeting of the Employment Tribunals National User Group (England & Wales). Introductions were made due to there being some new attendees.

Item 2 Minutes of the meeting of 25th October 2016

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 President's report

The President reported that there was a steady receipt of claims which had flat-lined in the last couple of years. Performance had also been noted to be consistent. The average time for disposal of cases at hearing had improved from 38 weeks to 26 weeks. The President asked members to check with their constituents on any ways that this performance could be improved. The President notified members that due to limited resources the Tribunal now made relatively little use of fee-paid judges, but relied largely on salaried judges to carry the caseload.

The President updated members regarding the HMCTS Reform Programme currently underway within HMCTS. It was a 6 year programme which would be phased in at different stages. **Tom Mosley** (HMCTS) handed out an update paper to all members detailing the "HMCTS Modernisation Programme" and emphasised that the paper was not for general circulation. He pointed out there were 3 stages to the modernisation programme and that the Employment Tribunals were in the 3rd stage.

The President notified members that the second "Judicial Attitudes Survey" (2016) had just been published (the first had covered 2014). The results showed a worsening of judicial morale, with particular concerns about judicial pensions and working conditions. The survey pointed to a worrying number of judges who wanted to leave or retire early. The survey had been completed by all judges across all courts and tribunals jurisdictions. Results for the employment judiciary were reported separately within the analysis. See: <https://www.judiciary.gov.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>.

Item 5 HMCTS update

Gillian Brooks (HMCTS) reported on the new online database of Employment Tribunal decisions. See: <https://www.gov.uk/employmenttribunal-decisions>. Some of the initial documents that populated the system were duplicates of judgments which were also held at Bury. However, all judgments and reasons given from now onwards would be available and searchable online. Currently there are no plans to move the judgments held at Bury online but Gillian Brooks sought views from members as to whether they thought

this would be appropriate at a later time. The general view was that a move of the older judgments on-line would be appropriate.

The on-line ET1 form was then the subject of discussion. Users reported that claimants often failed to save or print a copy of their uploaded ET1 form or the attachments. If a hard copy was then required it is necessary to contact the local ET office to provide a copy by post.

Gareth Brahms (ELA) reminded members of the user group of the position under the Civil Procedural Rules in respect of claim forms.

Michael Reed (FRU) expressed concerned about what he perceived as deterioration in the administrative support for the Employment Tribunals. He noted that telephones were sometimes not being answered and that documents were often mislaid. Gillian Brooks encouraged all members to raise any such problems with the office concerned.

Item 6 Fees

Bill Dowse (Ministry of Justice) reported on the outcome of the internal review of Employment Tribunal fees. The review report had been published the previous week. See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587649/Review-of-introduction-of-fees-in-employment-tribunals.pdf.

There was a wide-ranging discussion of the report, its findings and its conclusions. Particular emphasis was placed upon the proposals for reforming Help with Fees (previously known as remission) and the Lord Chancellor's power to remit fees in exceptional circumstances. In respect of the latter power, it was reported that from July to December 2016 there had been 45 applications for exceptional remission, of which 30 were granted (in Scotland, there had been 2 applications and 1 had been granted). Judge Simon queried whether the exceptional remission power should be highlighted better.

Many members of the National User Group expressed their disappointment with the outcome of the internal review. Particular concern was raised about the fact that there was no proposal to reduce fees – merely to lower the threshold for remission. The President said that he found it discouraging that the many sources of good quality evidence submitted to the internal review and to the House of Commons Select Committee on Justice did not appear to have been taken on board. **Bill Dowse** said that the evidence had been considered by Ministers.

Bill Dowse informed members that the consultation on proposed changes to fees and remission would close on 14 March 2017 and that the Government's response would be published before the summer recess.

Item 7 President of Employment Tribunals (Scotland) report

Judge Shona Simon confirmed that there was nothing further to report concerning devolution in Scotland. The Scottish Government had not yet responded to the consultation process.

Item 8 BEIS update

Harriet Andrews (BEIS) said that 77 responses had been received from various users and stakeholders to the consultation on the proposed Prisons and Courts Bill. Ministers were considering these and the legislation was not yet finalised. Clauses to address the consultation on ET reform would be included by amendment at the Committee stage of the Bill. The First Reading of the Bill would be at the end of February 2017. See: <http://services.parliament.uk/bills/2016-17/prisonsandcourts.html>.¹

Harriet Andrews reported on the Review of Employment Practices in the Modern Economy being conducted by Matthew Taylor. See: <https://www.gov.uk/government/groups/employment-practices-in-the-modern-economy> and see also modernemploymentreview@BEIS.gov.gsi.uk.

See also the earlier Employment Status Review: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585383/employment-status-review-2015.pdf.

Harriet Andrews also drew attention to the Government's response to the Women and Equalities Committee report on pregnancy and maternity discrimination. See: <https://www.gov.uk/government/publications/pregnancy-and-maternity-discrimination-response-to-the-select-committee-report>.

Item 9 Acas update

Nicole Clark (Acas) reported that as at the end of December 2016 Acas had received 66,000 notifications from individuals and 3,600 from employers under the early conciliation scheme.

The resolution rate on COT3 has been 19%, but Acas also reports 74% inclusive of settlements and withdrawals. Some members found this composite statistic unhelpful and expressed the view that the outcomes of the early conciliation process should be expressed more precisely and accurately.

Item 10 Any other business

Two matters of any other business were raised by **Paul MacFarlane** on behalf of ELA.

The first point concerned last minute postponements, sometimes the evening before, in particular in respect of multi-day cases. ELA had noted that this was becoming an increasing occurrence. The President explained that the Tribunal listing teams apply a listing ratio that takes account of available judicial resources and the trends in settlements and withdrawals. This was not an exact science, but usually resulted in lists that accommodated remaining cases to available judges. However, inevitably, there would be occasions when this did not work to usual expectations and this was particularly difficult now that the large majority of hearings post-fees are multi-day cases. In the past, if more cases stood up for hearing than there were available salaried

¹ Since the National User Group met in February 2017 a General Election has been called for 8 June 2017. As a result of the dissolution of Parliament the Prisons and Courts Bill has not proceeded. It is hoped that it will be reintroduced in due course.

judges to hear them, fee-paid judges could be called in at the last minute. However, the budget for fee-paid sittings days has been drastically reduced in the last two years. This was something that was a regular concern at REJ business meetings and at the ET Jurisdictional Board.

Michael Reed (FRU) queried whether the cases in which this was happening were being tracked and whether this had been noticed locally. The President said that the REJs and the Listing Managers monitored this on a regular basis.

The second point raised by ELA concerned the pilot scheme currently being run at London Central. That scheme forward-lists cases for a preliminary hearing and a final hearing at an early stage on receipt of the ET1 and at service of the ET3. ELA voiced concerns about how this policy compressed the time available for the preparation and management of often quite complex cases.

The President explained the thinking behind the pilot, which was to ensure that a case management hearing was listed as early as possible and that a final hearing was pencilled into the list well in advance. This gave the parties the greatest opportunity to have their cases heard within 26 weeks. The parties were always free to make an application to the Tribunal for a longer timetable or a later hearing or for hearing lengths to be adjusted. The President encouraged ELA to put its concerns in writing to the President and to the Regional Employment Judge at London Central, especially by reference to particular examples.

Item 11 Date of next meeting

The President confirmed that once an available date for the next meeting could be found it would be reported to members. *Since then members have been notified that the next meeting will be on 2 June 2017 at 2.00 pm. However, the President is considering whether that should be postponed until after the General Election.*