



**EMPLOYMENT TRIBUNALS
England & Wales**

39th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held at Victory House on 12th November 2019**

In attendance:

Judge Brian Doyle	President, Employment Tribunals (E&W)
Richard Boyd	BEIS
Nigel Edgington	HMCTS
Simon Pender	Make UK
Stephanie McKeon	Citizens Advice
Nick Denys	Law Society
James Potts	Peninsula
Bob Matheson	Protect
Michael Reed	Free Representation Unit
Paul McFarlane	Employment Lawyers Association
Matthew Smith	Equality & Human Rights Commission
Tony Lowe	Acas
Laura Garner	Thomson Reuters
Richard Pitkethly	Law Works
Tim Sharp	TUC
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Shona Simon	President, Employment Tribunals (Scotland)
Matthew Creagh	TUC
Sukinder Philips	HMCTS
Max Winthrop	Law Society
John Sprack	Law Works
Matthew Bradbury	Citizens Advice

Item 1 Welcome & introductions

The President welcomed members to the 39th meeting of the Employment Tribunals National User Group (England & Wales).

Item 2 Agree minutes of the meetings of 19th June 2019 and 26th September 2019

The minutes of the previous meeting of 19th June 2019 and the extraordinary meeting of 26th September 2019 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 various matters.

Quarterly statistics

The latest edition of the quarterly statistics provided by the Ministry of Justice were published on 12 September 2019. They are available at: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2019>. They cover the quarterly period April to June 2019.

The ET remains one of the three largest tribunals (SSCS, IAC and ET) which together make up 79% of all tribunal receipts (of that 79%, the ET receipts are 27%, that is one-third of the receipts of those three tribunals). The tribunal system as a whole (not the ET alone) has 602,000 cases outstanding at the end of June 2019, which is a 3% increase compare to the previous year. It is largely driven by a 12% increase in ET caseload outstanding (which makes up over two-thirds of all HMCTS outstanding caseload). That increase follows the abolition of ET fees in July 2017.

That leads naturally to a consideration of progress in the refund of ET fees. Since the introduction of the ET fee refund scheme, a total of 22,100 applications for refunds have been received and 22,000 payments have been made, with a total value of £17,589,000 as at 30 June 2019. In the quarter under report, 62% (86 applications) related to cases brought in England & Wales, down from 73% in the previous quarter. 310 refund payments were made totalling £265,000 – of which 79% (250) related to England and 2% (6) related to Wales; and 96% (300) related to single claims and 3% (10) related to multiple claims. The effect of the large mailshot campaign that culminated in July 2018, and which resulted in exceptionally high applications for refunds in previous quarters, has now played out.

Returning to caseload generally, in the quarter April to June 2019, single claim receipts and outstanding caseload both increased by 14% and 19% respectively, while disposals decreased by 3%. Mean age at disposal was 33 weeks, 5 weeks more that in the same quarter in 2018. Multiple cases caseload rose by 11%, while receipts and disposals fell by 57% and 38% respectively. Mean age at disposal rose from 133 weeks to 140 weeks.

Since ET fees were abolished single claims have been steadily increasing quarter on quarter. 25% of disposals were Acas conciliated settlements, 22%

were withdrawn, 13% were struck out (not at a hearing) and 9% were successful at hearing.

The quarterly statistics purport to record the degree of ET representation. The President sounded a warning note about these statistics because they were likely to be based upon what claimants reported in their ET1s rather than whether representation continued thereafter and to the final hearing. Nevertheless, what is recorded is that nearly two-thirds (64%) of claimants were represented by a lawyer, down from 74% 12 months earlier. In contrast, 21% of claimants had no representation recorded, up from 17% in the previous year.

In 2018/19 there were 660 claims that received compensation for unfair dismissal (up 23% compared to 2017/18). The maximum award was £948,000 and the average (mean) award was £14,000. The rise in claims receiving compensation awards reverses a long-term downward trend since 2010/11. There were 110 discrimination cases where compensation was awarded in 2018/19. The maximum amount was £416,000 (for a disability discrimination claim).

Costs awards made in 2018/19 amounted to 51 awards in favour of claimants and 158 awards in favour of respondents. The largest costs award was £329,386 (which must have been an exceptional case, perhaps in a multiple claim). More informatively, the median costs award was £2,400 and the mean costs award was £6,729.

The President said that the expected publication date of the next performance statistics would be 12 December 2019.

In discussion, users commented that the statistic for the number of claimants represented in ET proceedings was questionable. The President agreed and pointed to the data on representation in the periodic Survey of Employment Tribunal Applications (SETA) as being more indicative.¹ The President expressed the view that new case management software being introduced into the ET might be able to capture more accurately the levels of representation.

Recruitment

The President explained the position in respect of the recruitment of new judges and members.

The first exercise concerned non-legal members. This was in its final stages and awaiting the Lord Chancellor signing off the recommendations for appointment. The President said the ET (E&W) sought to recruit 300 new members and that the indications were that we would get close to that figure.

¹ The latest in the series of SETA publications appeared in June 2014. See: <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2013>.

The training of the new members would take place in January and February 2020, with the members starting to sit from March 2020 onwards.

The President confirmed that all 58 new salaried Employment Judges were now in post. They had undergone training and induction. Some had been sitting for some months and the remaining recruits would begin to sit imminently. He hoped that the positive effects of these new judges would be felt soon.

The third exercise concerned the recruitment of fee-paid Employment Judges. The President said that the selection days had been completed. The ET (E&W) was seeking to appoint 50 fee-paid judges. Recommendations would be made by the Judicial Appointments Commission by the end of the year, with appointments being confirmed in the first quarter of 2020. Training and induction would then follow, with the objective of having the new judges available to sit in the first quarter of the new financial year 2020/21.

A further campaign to fill 4 Regional Employment Judge vacancies had just launched. These had all come about from existing or forthcoming retirements at Croydon (London South region), London Central, Watford (South East region) and Manchester (North West region). Decisions would be made by the end of March 2020. The President explained that there were at present Acting REJs at London South and London Central, and that an Acting REJ would be needed in the South East region at the end of January 2020.

The President informed the members that he would be retiring in May 2020. He said that the role of President was not a fixed term role, but that he was retiring having reached the age of 65 and with 20 years salaried judicial service. Selection of candidates to fill his post would take place in December 2019 and it was hoped that the identity of his successor would be known during February 2020.

The President confirmed that a business case had been presented for additional salaried EJs and fee-paid EJs to be appointed. This would ensure that further recruitment and development of judicial resources were not neglected. The recruitment of new judges had not occurred for at least 5-6 years and for non-legal members the recruitment gap had been much longer than that.

Resources

The President explained that having enough judges and members to sit was only part of the equation. The ET also needed to have a sufficient budget of sitting days in order to be able to address new receipts and to make inroads into the caseload backlog. In the 2019/20 financial year the President felt that the sitting day budget was insufficient to be able to do both things. The increase in salaried sitting days was very welcome, but he felt that the ET was short of fee-paid sitting days, compounded by a reduction in the number of fee-paid EJs able to offer 30 days or more per year.

The other part of the performance equation was having sufficient hearing rooms and in the right locations into which to list the hearing of cases. Despite continuing changes in the HMCTS estate, the President informed the meeting

that he was broadly satisfied with the ET's present accommodation and that it had access to other hearing rooms elsewhere in courts and tribunals premises. Problems could arise in those regions which had centralised hearing centres in major cities or towns, but also large and remote rural areas.

During the recent flooding of the Manchester ET building, court rooms elsewhere in the city had been used at short notice and without loss of hearings.

The President recognised that a major concern for users and practitioners was the late postponement of cases, either for lack of a judge or for want of a hearing room (other than the application made by parties to postpone for the usual reasons). He explained the principles for the listing of cases and how cancellations could arise.

The ET sought to list as many hearings as possible to available judges and to available hearing rooms. That was done on the probability that as many as 80% of cases will fall away before a final hearing. This is because of settlements, withdrawals, strike outs and party-induced postponements. That allowed listing officers to over-list, perhaps in a ratio of as much as 4:1 (4 hearings to every 1 hearing that might stand up). To take a different approach would be of no advantage to users or to the Tribunal, because cases might have to be listed further into the future and there was a greater risk of hearing rooms remaining empty or judges having insufficient work to do.

Reform

The President informed users that the ET was now entering the timeline for the HMCTS Reform Programme. This began with a "discovery" process designed to identify how the system currently worked and how it might work in the future under reform.

The President said that an important part of what was proposed was the introduction of legal officers who could undertake some of the routine management of cases and relieve judges of duty work, thus freeing them to undertake hearings. How this would work was not yet agreed, but the statutory powers to enable the appointment of legal officers could be found in the Employment Tribunals Act 1996 section 4(6B)-(6D). Even if agreed, he did not anticipate that legal officers could be recruited and trained so as to be in post before 2021. Consideration would need to be given to the qualifications of would-be legal officers, what powers would be delegated to them and how their decisions would be overseen and reviewed by judges.

The President updated the members on the intention to provide audio-recording equipment in all Employment Tribunal hearing rooms. A budget for the equipment had been secured, but making this proposal operational was taking a little longer than intended because it was important to get the right recording equipment and to have in place a protocol for its use. A transcript of the hearing would be available subject to the agreed protocol.

Digitalisation

The President explained that a major plank of ET reform would be the digitalisation of the ET files and process. The reduction of paper would improve performance. Currently, each day scores of paper case files are moved around ET buildings and locating files when needed could be time-consuming.

Those leading on ET reform were very conscious of the need to ensure open justice and accessible justice. Those who did not have access to computers or who were not comfortable using technology should not thereby be disadvantaged.

As to video-conferencing and tele-conferencing, the President informed the members that the Tax Tribunal had been piloting the conduct of hearing by these means. The President did not anticipate that ET hearings would be conducted by such methods as a matter of routine. Conferencing in this way might be beneficial for case management hearings or for shorter hearings involving parties in remote locations or for taking selected witness evidence (especially from abroad). He was confident that once the technology was in place and could be shown to work, what it might be used for and how would become clearer.

The President said that users and stakeholders would be kept informed about all matters concerned with reform.

Item 5 HMCTS report

Nigel Edgington (Head of Employment Jurisdiction Support Team, HMCTS) reported on the replacement to Ethos, the ET's electronic case management database. There had been outages of the system throughout the summer. This had prompted the acceleration of plans to replace Ethos with a new system based on Core Case Data (CCD) and to be known as Employment Case Management (ECM).

The replacement had more capacity, ability and stability. The pilot for single claims had gone well, but problems had arisen with multiple claims, which had slowed the new system down. Currently multiples were still being accessed by the Ethos system only. In the meantime, the complete roll-out of ECM, intended to be finished before Christmas, had been temporarily suspended until the problems could be solved. It was hoped that the new system would be fully up and running by February 2020. Nigel informed the members that he was having a meeting the following day to discuss these issues. The new system had the ability to be built upon and to take it further as a Common Platform for users, caseworkers and judges.

ACTION POINT – Stakeholders will be informed when Ethos is finally turned off/totally decommissioned and the new system up and running.

Item 6 BEIS report

Due to the General Election period Richard Boyd was unable to discuss any reports with members until after the General Election on 12th December 2019.

Item 7 Acas report

Tony Lowe reported on 1st quarter April to September 2019. 70,000 early conciliations were received. 16,000 (22%) settled by COT3 and 30% resolved informally. There were 17,412 ET claims which resulted in 9,000 early conciliation cases being settled. Analysts were now using different software so the statistics were being limited at the moment.

Tony Lowe updated the members on their digital project. Acas's old database system, Phoenix, had been decommissioned and their new system, Dynamics, was up and running with all the migrated information stored on it.

There was a new notification beta form in two parts consisting of mandatory information (prescribed information) and additional voluntary information (nature of claim). 70% of notifications were received from people using forms 1 and 2. The new system enabled the information to be passed onto the conciliator more quickly. Tony was still conscious that work had to be done, but it was a good start. It was felt that in the longer term there was a better opportunity to capture information than previously. They could now record how many contacts the conciliator had made with the parties involved and the date the case resolved.

Tony notified the members that a new National Director, Samantha Clark, would be starting by the end of the month.

Users pointed out that there was still a problem with claimants presenting the wrong certificate numbers at ET1 stage. Tony Lowe responded that the procedural rules needed to have more discretion for claimants to disclose all Acas certificate numbers.

Item 8 Any other business

No other business was raised.

Item 9 Date of next meeting

The President suggested the next meeting be in late February 2020 on a date to be arranged.