



**EMPLOYMENT TRIBUNALS
England & Wales**

38th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held at Victory House on 19th June 2019**

In attendance:

Judge Brian Doyle	President, Employment Tribunals E&W
Richard Fox	Employment Lawyers Association
Philip Thornton	Lexis Nexis
James Brown	Thomson Reuters
Tim Sharp	TUC
Bob Matheson	Protect
John Sprack	Law Works
Richard Boyd	BEIS
Tony Lowe	Acas
Omar Khalil	Make Up
Michael Reed	The Free Representation Unit
Andrew Willis	Peninsula
Emma Wilkinson	Citizens Advice
Andrew Lingard	Advocate
Peter Kumar	Disability Law Association
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Shona Simon	ET Scotland
Matthew Creagh	TUC
Sukinder Philips	HMCTS
Marie Mannering	HMCTS
Nigel Egington	HMCTS
Matthew Smith	Equality Human Rights
Matthew Percival	CBI
James Potts	Peninsula
Simon Carr	Senior President's office
Rosemary Lloyd	Equality Human Rights Commission

Item 1 Welcome & introductions

The President welcomed members to the 38th meeting of the Employment Tribunals National User Group (England & Wales).

Item 2 Agree minutes of the meeting of 27th February 2019

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 went through his report:

Quarterly statistics

The latest tribunals quarterly statistics were published by the Ministry of Justice on 13 June 2019. They cover Q4 of 2018/19 (January to March 2019). They may be found here:

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>.

Single Employment Tribunal (ET) claims – receipts, disposals and caseload outstanding all increased, by 6%, 22% and 39% respectively, compared to a year ago. Mean age at disposal was 33 weeks, 6 weeks longer than in the comparable quarter 12 months earlier.

Multiple ET claims – receipts and caseload outstanding rose, 13% and 19% respectively, while disposals fell by 16%. Mean age at disposal fell from 202 weeks to 122 weeks.

For all claims, 26% of disposals in this quarter was via Acas conciliation, with 22% of claims withdrawn, 11% struck out and 11% successful at hearing.

The number of Employment Tribunal sittings rose by 12% following an earlier period of decline and stabilisation. Sittings by fee-paid Employment Judges rose by 69%.

From the launch of the ET fee refund scheme in October 2017 to 31 March 2019, there were 22,000 applications for refunds received and 21,700 refund payments made, with a total value of £17.3m. Between 1 January 2019 and 31 March 2019, 181 refund applications were received (down from 337 in Q3 2018/19) and 436 refund payments were made with a total value of £399,000. The large drop seen between Q2 and Q3 2018/19 follows the mailshot campaign which culminated in July 2018 and resulted in exceptionally high receipts initially, particularly in England & Wales.

A number of detailed tables and spreadsheets accompany the main quarterly report. These contain a wealth of information and data for users who wish to

break down the trends further. It is possible to measure the number of receipts and disposals by jurisdiction, as well as by the percentage of disposals by outcome and jurisdiction, going back to 2007/2008. The tables for Employment Tribunal receipts for 2012 to 2019 also show the monthly totals of receipts broken down by single and multiple cases, by jurisdiction and by region. There is also a further break down of ET fees refunds.

Performance

As the quarterly statistics demonstrate, it is no longer possible to argue that performance is being maintained despite (or because of) the return of the caseload to pre-fees levels. The latest statistics reflect the last quarter before new judicial resources began to come on stream, although the positive effects of that new resource will not begin to be felt or noticed before the second half of 2019/20 when all new judges are in place. Nevertheless, the new judicial resources and the sitting days allocation for 2019/20 in combination will be likely to be insufficient to keep on top of the increasing caseload while also disposing of the backlog of cases.

Judicial resources

As a result of the major recruitment exercise launched by the Judicial Appointments Commission (JAC) in July 2018 new salaried judges are taking up their appointments during the first half of 2019/20. Fourteen new salaried EJs were inducted and trained at the end of April 2019 and are now in post. A further 18 new salaried EJs will commence office in July 2019, with a further 26 starting in September 2019 – a total of 58 new salaried judges equivalent to 51.5 FTE. Unfortunately, there was a shortfall in recruitment of new judges in London and the South East. There is likely to be a need for a further recruitment exercise in 2020, although yet subject to approval.

The President notified the members that Omar Khalil had been successful in his application as salaried Employment Judge and would be taking up his role in September 2019.

A JAC exercise to recruit 50 new fee-paid Employment Judges is presently in train. This should result in these new judges being available to sit from the start of 2020/21. Altogether 23 of the existing fee-paid judges were successful in the salaried competition and their numbers have been generally depleted by retirements and other appointments since we last recruited fee-paid EJs in 2012/13.

A further exercise to recruit 300 new non-legal members in England & Wales (and 48 in Scotland) has just closed to applications. It is being run on a contracted-out basis by Manpower Group Solutions. The selection process will take place over the Summer 2019, with appointments and training taking effect in early 2020. An increasingly common cause for postponing ET hearings has been either the availability of a judge, but no members, or the availability of members, but no judge – once the over-listing of cases to take account of settlements and withdrawals has been factored in. By recruiting new fee-paid judges and new non-legal members it is hoped that flexibility can be reintroduced into the listing of cases and the allocation of judges and

members to particular cases, thus ensuring that the risk of hearings being postponed is minimised.

A JAC exercise to fill 4 existing or upcoming vacancies for ET leadership judges (Regional Employment Judges) will launch in August 2019. The existing vacancies are in London South and London Central following the retirements of Peter Hildebrand and Elizabeth Potter earlier this year. Employment Judges Philip Davies and Joanna Wade have been nominated as Acting REJs in the interim period. REJ vacancies will arise in the first half of 2020 in the South East and the North West.

Estates

Improvements to the ET estate in Cardiff have recently been effected. Plans are well advanced for the relocation of the Newcastle ET back to a city centre site from its current temporary residence in North Shields. Plans for the ET estate in London and in the South East are at very early stages, as lease events are anticipated, and further details will be shared with the National User Group when that is possible.

Ethos

Not many users will be aware that the programme that drives the ET's case management database, known as Ethos, is based upon an old version of Microsoft Excel that runs best on an even older version of the Windows OS. It has been creaking for some time and has been falling over regularly in recent years, causing lost work and slow working. It is to be replaced with a user-based and task-based system called Core Case Data (CCD), the essentials of which will be familiar if you have used any Government Digital Services, such as those provided by the DVLA and HMRC.

Accelerating our place in the HMCTS Reform timeline, CCD as a replacement for Ethos has been under development in Manchester ET and Glasgow ET since late last year, running in parallel to Ethos as part of the development. The first stage of switch over to CCD from Ethos in Manchester and Glasgow began last month, and there will be 5 further stages of development over Summer 2019 before the roll-out to all ET offices begins in October 2019 and running up to Christmas 2019.

Initially at least, it will be a direct replacement for Ethos, with the primary users being caseworkers. However, the longer term intention is that parties and their representatives will be able to interact with it (making applications for orders online and uploading documents). Later still it will be the vehicle for caseworkers referring correspondence to judges and judges giving instructions or making orders, facilitated by remote working. It will also be the obvious vehicle for receiving electronic witness statements and document bundles.

This is looking very promising. It seems that the incremental approach to, and in-house development of, CCD is working to produce a new case management database that will be a worthy replacement for Ethos. Timelines might prove to be optimistic, inevitably, but this is looking to be a positive news story for the ET.

It is worth mentioning in passing that London Central ET, led by EJ James Tayler, is undertaking an as yet limited pilot of working with electronic witness statements and hearing bundles. The President hopes to report further as the pilot develops.

Reform more generally

Users will already be familiar with the provisions of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. This is the latest statutory vehicle to assist the reform of courts and tribunals generally. It does not really touch directly on the ET place in the reform programme, except to enable or allow REJs to sit in the First-tier Tribunal and the Upper Tribunal, and the ET Presidents to sit in the Employment Appeal Tribunal and the Upper Tribunal. See <https://www.legislation.gov.uk/ukpga/2018/33/contents/enacted>.

The Courts and Tribunals (Online Procedure) Bill 2019 was first introduced in the House of Lords on 1 May 2019 and has recently concluded its Committee Stage on 10 June 2019. It is due for its Report Stage on 24 June 2019. It provides for online procedures in the courts and tribunals, including the ET. See <https://services.parliament.uk/Bills/2017-19/courtsandtribunalsonlineprocedure.html>.

We await details of a further Bill that will implement the recommendations of the Matthew Taylor Report and make detailed provisions for the reform of ET procedure and processes. The reform provisions of such a Bill will be necessary if the ET is to be enabled to delegate certain well-defined case management powers to caseworkers (with review and overview by the ET judiciary); for the ET's procedural rule-making authority to be transferred to the Tribunals Procedure Committee (if policy so requires and is agreed); and to facilitate the use of video hearings and online hearings in future.

A budget has been agreed for 2019/20 for the provision of audio-recording equipment in all ET hearing rooms and to be subject to a protocol for its use and for the provision of transcripts. A timeline for the roll-out of audio-recording has not yet been agreed.

Item 5 BEIS report

Richard Boyd reported on the following points:-

Good Work Plan

- Through the Good Work Plan, we have committed to legislate on a range of areas to enhance workers' rights.
- We are making good progress and will lay measures to implement the Good Work Plan in Parliament as soon as possible.
- Alongside publishing our Good Work Plan, we also launched a range of consultations to ensure that stakeholders had an opportunity to input on how we implement the Review.
- We have already made important steps in legislating to achieve these objectives.

- In December, BEIS laid secondary legislation implementing five of the recommendations Matthew Taylor made in his review of modern working practices.

Non-disclosure agreements

- The Government shares the concern that confidentiality clauses or non-disclosure agreements have been used to hide workplace harassment or intimidate victims into silence. This is clearly unacceptable.
- Non-disclosure agreements have a legitimate place in our body of law, and there are already several important legal protections in place around them.
- The Government recently consulted on proposals to tighten the laws around NDAs/ confidentiality clauses for workers, tackling the misuse of confidentiality clauses in situation of workplace harassment or discrimination. The consultation closed on 29 April.
- The consultation makes practical proposals to help put an end to the unethical use of these agreements and encourage good practice from employers and lawyers.
- The Government welcomes the WESC report on their inquiry into the misuse of NDAs and will be publishing a response to both the consultation and their report, with our final proposals, in due course.

Early conciliation

- We are in the early scoping stages and are keen for input from stakeholders (and practitioners of the service) on how well it is working currently and the impact it has had on ET claims and satisfaction with the justice.
- In terms of the scope of the PIR, the primary focus is to evaluate the following;
 - Whether the introduction of EC has reduced the claims going to ET
 - Whether claimants and respondents are satisfied with the service, and whether they have clarity and understand on the process and how it works
- Interested in any further thoughts about would be worth exploration as this will be useful to note for further work or may be areas to explore in more depth.
- Also, worth knowing how you would like BEIS/Acas to engage with you for views (individually with their organisations or in a more collective fashion).

Item 86 Acas report

Tony Lowe reported that the statistics as yet had not been signed off and updated the members on the following issues:-

Early Conciliation

Acas received a total of 132,711 notifications for the latest operational year which is an increase of around 23,000 on the previous year. Of these 3,800 were lodged by employers which is a slight reduction the previous year.

Taking into account group notifications, of which there were around 4000, if we add the total number of individuals within these groups to the total number of individual notifications, we arrive at a figure of over 158,000.

Unfair dismissal and Wages Act cases continue to be the dominant jurisdictions in 2018-2019.

Of the notifications received from employees, 69,000 proceeded to conciliation, so in effect 54% of employees decided to take up the offer to conciliate in the dispute they had with their employer. It's probably worth noting that we had received over 15,000 individual notifications in relation to the ongoing equal pay litigation in Scotland. In these cases, an early conciliation certificate was requested from the outset simply as a mechanism to further additional claims to the tribunal.

In total in the operational year we managed to settle 10% of EC claims, around 12,500, by Cot3 agreement and 27%, 34,000, went on to make a tribunal claim. A significant number therefore neither settled nor progressed to tribunal.

Employment Tribunal applications

For employment tribunal applications, Acas received just over 36,000 ET1s an increase of 10,500 on the previous year's figures.

Again, Unfair dismissal and Wages Act claims remained the dominant jurisdictions and we have noticed that there has been a 5% increase in the proportion of cases which include a Wages Act jurisdiction when compared to the previous reporting year.

Of the cases cleared, just under 15,000 cases were settled by Cot3 agreement, 51% and a further 5,000 cases were resolved informally (17%).

Update on Service redesign

Firstly, the new notification form is coming to the end of the private Beta phase, this phase has seen the new form being accessible live to a number of people who are making an EC notification to us. By the end of May we received nearly 4,000 notifications on the new form. Making the form available to a limited number of users has allowed us to get valuable feedback on the form and look at ways to improve it. From the end of June - middle of July we hope to be able to enter into a public beta phase which means that the new form will be available to anyone submitting a notification to Acas. We are in the process of seeking re-prescription of the EC form to take account of users' needs and their experience during private beta.

The new form not only captures the mandatory information required to make a notification, under the EC Rules of Procedure, it also asks if the prospective

claimant is interested in conciliation, and If they are, the claimant is now able to provide details about their dispute.

Anecdotally, we have discovered that some representatives are reluctant to supply details about the prospective claimant's case on the new form. This may be based on an assumption by the representative that the details of the dispute would need to be given to an Early Conciliation Support Officer (ECSO) over the phone. However, the reality is that if a representative did supply details directly on the new form the notification would go straight to a conciliator, obviating the need to set out those details in a telephone conversation with the ECSO.

In addition to the new form we have been rolling out a new case management system on an office by office basis and this should be finally completed by the end of June. The new system will have improved functionality for conciliators and the ability to manage caseloads better. One immediate consequence of the new system is that users will notice email from case@acas.org rather than a regionally based email address e.g.: London conciliators or Manchester conciliators.

Item 7 Any other business

No other business was raised.

Item 8 Date of next meeting

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