



**EMPLOYMENT TRIBUNALS  
England & Wales**

**33rd MEETING OF NATIONAL USER GROUP**

**Minutes of the National User Group meeting  
held at Victory House on 16<sup>th</sup> October 2017**

**In attendance:**

Judge Brian Doyle	President, Employment Tribunals E&W
Shona Simon	President, Employment Tribunals Scotland
Simon Carr	Senior President's Office
Daniel Flury	HMCTS
Richard Boyd	BEIS
Sukvinder Phillips	MoJ
Omar Khalil	EEF
Matthew Bradbury	Citizens Advice
Michael Newman	Discrimination Law Association
Bertrand Stern-Gillet	Peninsula Business Services
Michael Reed	Free Representation Unit
Philip Thornton	Lexis Nexis
Gareth Brahms	Employment Law Association
John Sprack	Law Works
Andrew Lingard	Pro Bono Unit
Robert Cater	Peninsula Business Services
Peter Kumar	Disability Law Association
Charlotte Davies	Employment Law Bar Association
Elliot Mason	CBI
Nicole Clarke	Acas
Tony Lowe	Acas
Max Winthrop	Law Society Employment Law Committee
James Brown	Thomson Reuters
Vicky Rushton	Head of President's Office AIT
Jackie Hunsley-Wilson	HMCTS (minutes)

**Apologies:**

Emma Wilkinson	Citizens Advice
Jennifer Beckwith	CBI
Emily Gordon Walker	Employment Law Bar Association
Marie Mannering	HMCTS
Roger Easy	Public Concern at Work

## Item 1 Welcome & introductions

The President welcomed members to the 33rd meeting of the Employment Tribunals National User Group (England & Wales).

## Item 4 *Unison* Decision

The President introduced **Daniel Flury**, one of the HMCTS Transformation Directors, who was leading the HMCTS/MoJ working group on implementing the decision of the Supreme Court in *Unison* regarding ET and EAT fees. The working group had been charged with the planning to refund ET fees and to reinstate ET claims.

**Daniel Flury** explained that the effect of the *Unison* decision was to require the refund of all ET and EAT fees dating back to the introduction of fees in 2013. It was estimated that the total refund would be in the order of £32.5m. The refund would also include 0.5% interest and would apply to the ET and the EAT.

**Daniel Flury** informed members that 7,500 cases had been struck out due to non-payment of fees, of which 285 had already been accepted back into the system for judicial consideration. These were being treated as if they had not been struck out at all, but the claimants might need to complete a new ET1 form merely to reconstruct the details of the claim. HMCTS was working to write to claimants to ascertain how they wished to proceed in respect of reinstatement of their claims.

So far as the refund of fees was concerned, **Daniel Flury** confirmed that a pilot scheme would be launched very shortly. The details of the pilot scheme were subsequently published on 20 October 2017 at: <https://www.gov.uk/government/news/opening-stage-of-employment-tribunal-fee-refund-scheme-launched>.

Up to 1,000 people would be contacted individually and given the chance to complete applications before the full scheme would be opened in the coming weeks. Work was also being done with trade unions who have supported large multiple claims potentially involving hundreds of claimants. As well as being refunded their original fee, successful applicants to the scheme will also be paid interest of 0.5%, calculated from the date of the original payment up until the refund date. The opening phase of the refund scheme will last for around 4 weeks. Further details of the scheme, including details of how it can be accessed, will be made available when the scheme is rolled out fully.<sup>1</sup>

**Daniel Flury** explained that there would be a mandatory on-line form to be completed for claimants to give details of their Employment Tribunal case. Proof of payment would also be required. He also confirmed that the trade unions would be eligible for refunds if they had had to pay a fee on the claimant's behalf.

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<sup>1</sup> The full scheme opened on 15 November 2017: <https://www.gov.uk/government/news/applications-open-for-employment-tribunal-fee-refunds-as-scheme-rolls-out>. See <https://www.gov.uk/employment-tribunals/refund-tribunal-fees>.

Daniel was asked what would happen to historical claims not brought in the first place (for example, where the claimant could not afford the fee). He recognised this scenario would arise. It would be a judicial matter as to whether such a claim could proceed out of time. The claimant might still have to enter the early conciliation process.

**Item 2 Agree minutes of the meeting of 19<sup>th</sup> June 2017**

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 5 Employment Tribunals – President's report**

The President informed members that the last set of ET statistics had been published on 14 September 2017. See <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2017-and-2016-to-2017>.

The next official figures would be published on 14 December 2017.

The President highlighted three recent decisions of the Employment Appeal Tribunal: *Farmah* (on multiple claims); *Jones* (on witness orders); *Hassan* (on forward listing of hearings pre-ET3 stage). He discussed the effect that these decisions would have on ET practice and procedure.

The President informed members of the retirements of Regional Employment Judge Reed (Newcastle) and Regional Employment Judge Lee (Leeds). He paid tribute to these two long-serving judges. This had led to the merger of those two regions to form a new North East region.

As a result of that merger, the ET regions and their REJs are now as follows:

North East	REJ Stuart Robertson
North West	REJ Jonathan Parkin
Midlands West	Acting REJ Lorna Findlay <sup>2</sup>
Midlands East	REJ Paul Swann
South East	REJ Richard Byrne
South West	Acting REJ Olga Harper
London Central	REJ Elizabeth Potter
London East	REJ Carol Taylor
London South	REJ Peter Hildebrand
Wales	REJ Barry Clarke

The President confirmed that the Regional Employment Judge vacancy for the South West region would be advertised by the JAC in April 2018. The role was currently being filled by Employment Judge Olga Harper on an acting basis.

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<sup>2</sup> While REJ Fiona Monk is on secondment to the First-tier Tribunal, War Pensions & Armed Forces Compensation Chamber.

The President updated members about judicial resources. The effect of the *Unison* decision was yet to be fully felt, but the signs were that claims were beginning to return. Regions were reporting a doubling in new claims since the *Unison* decision, although it was not yet clear how far the *Farmah* decision (requiring single claims where a multiple claim might have been presented in the past) was influencing that increase.

The President was optimistic that a case for increased sitting days and/or additional judges could be made in due course once the trends were clearer. Additional sitting days could be provided relatively easily, although that would then depend upon fee-paid EJs being ready and willing to recommit to sitting in the ET. Some had been cross-assigned to the Asylum & Immigration Chamber and enjoyed that work; others had changed their professional priorities given the lack of sitting opportunities in the ET in the previous four years. Recruiting additional fee-paid or salaried judges was more problematic, even if a business case were to be accepted. A slot would have to be found in an already busy JAC programme. Even then the typical recruitment timescale was 12-18 months from launch to having judges selected, appointed, trained, inducted and in place to hear cases.

The President also referred to the fact that there had been a loss of about one third of non-legal members in the last four years.

The President reported that the Sheffield ET (Sheffield Combined Courts Centre at 50 West Bar) and the Cambridge ET (Cambridge County Court & Family Court at 197 East Road) were now in new premises. He had been to visit the Cambridge premises and was pleased with that move. He planned to visit Sheffield as soon as possible.

The Bristol ET had been displaced from the Bristol Civil Justice Centre because of a serious flood in that building at the end of June 2017. The ET had relocated its hearings to a number of venues, including the mock court rooms in the Law School at the University of the West of England and committee rooms at the Bristol City Hall. The ET was due to move back into the Bristol CJC in early to mid-November 2017.<sup>3</sup>

The President reported that he and the President in Scotland had issued joint Presidential Guidance uprating the Vento bands for injury to feelings compensation. See:

<https://www.judiciary.gov.uk/wp-content/uploads/2015/03/vento-bands-presidential-guidance-20170905.pdf>.

A document explaining how the Presidents had responded to the consultation exercise was also available at:

<https://www.judiciary.gov.uk/wp-content/uploads/2017/07/vento-consultation-response-20170904.pdf>.

Amended Presidential Guidance on Case Management would also be required after the *Unison* decision and would be issued in due course. An amended Practice Direction on presenting a tribunal claim, deleting

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<sup>3</sup> That has now been achieved.

references to fees, had been prepared and awaited the Lord Chancellor's approval.<sup>4</sup>

The President confirmed that the judicial complaints handling process was to change. The Judicial Conduct (Tribunals) Rules 2014 still applied. Complaints were handled by the relevant President rather than by the JCIO. In future, initially all complaints would come to the President's office to be sifted and then, if proceeding and if necessary, would be allocated to a Regional Employment Judge in a different region to ensure fairness and transparency.

#### **Item 6 HMCTS Update**

**Sukvinder Phillips** did not have anything additional to report that had not already been addressed above.

#### **Item 7 BEIS report**

**Richard Boyd** informed the group about the [Parental Bereavement \(Leave & Pay\) Private Members Bill](#). [Second Reading](#) was scheduled in Parliament for 20 October 2017. The Bill would enable employees in the event of a child bereavement, to have 2 weeks leave (and pay if qualifying conditions are met). **Richard Boyd** confirmed that the Government was supporting the Bill noting that it was a sensitive and complicated area.

#### **Item 8 Acas report**

**Nicole Clarke** reported on Acas developments. The spike effects produced by the *Farmah* decision were referred to. Nicole reported that Acas had been receiving c 350 ET1s per week. This had now increased to between c 300-700 per week.

**Nicole Clarke** also asked that if claims were to be reinstated and reconstructed post-*Unison* then Acas would need to be kept in the loop and have a duplicate set. Daniel Flury agreed this would be done. The President expected that a standard operating procedure would be needed to ensure this.

#### **Item 9 Any other business**

**Shona Simon** gave a devolution update. It was now expected that reserved tribunals would be devolved in two stages. The first stage would involve the Employment Tribunal, the Social Security & Child Support Tribunal and the Tax Tribunal by Spring 2020.

#### **Item 10 Date of next meeting**

The President suggested January 2018 for the next meeting. The members were in agreement.

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<sup>4</sup> See now: <https://www.judiciary.gov.uk/wp-content/uploads/2015/03/presidential-pd-presentation-of-claims-nov2017.pdf>.