



**EMPLOYMENT TRIBUNALS
England & Wales**

32nd MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held at Victory House on 19th June 2017**

In attendance:

Judge Brian Doyle	President
Regional Employment Judge Swann	Midlands (East) region
Richard Boyd	BEIS
Marie Mannering	HMCTS
Omar Khalil	EEF
Emma Wilkinson	Citizens Advice
Matthew Percival	CBI
Jennifer Beckwith	CBI
Michael Newman	Discrimination Law Association
Bertrand Stern-Gillet	Peninsula Business Services
Hannah Reed	TUC
Roger Easy	Public Concern at Work
Michael Reed	Free Representation Unit
Philip Thornton	Lexis Nexis
Gareth Brahms	Employment Law Association
Andrew Jonathan	MoJ
Andrew Lingard	Pro Bono Unit
Noel Lambert	Acas
John Sprack	Law Works
Peter Kumar	Disability Law Association
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Laurie Anstis
Shona Simon
Dhriti Suresh Eapen
Nicole Clarke
Emily Gordon Walker
Kevin Westall
Sukvinder Phillips
Simon Carr

Item 1 Welcome & introductions

The President

The President welcomed members to the 32nd meeting of the Employment Tribunals National User Group (England & Wales).

Item 4 HMCTS Reform Programme Presentation

The President asked Regional Employment Judge Paul Swann to commence the NUG meeting with his presentation on the HMCTS Reform Programme which detailed the progress and planning involved.¹

The President commented that he thought that the NUG should consider the best possible way to bring in ideas over the next 3-4 years whilst the programme was being developed.

Paul Swann stated that since the onset of the programme in 2016 there were 3 particular areas of change: (1) estates; (2) IT and (3) staff. The result of the Reform Programme would be an up-to-speed system with a modern process and more accessible for litigants in person.

Paul Swann explained that this was a “judge-led” process within a more agile reform programme. The design and build approach across the board, with each stage being tried out individually, would ensure that it would work for everyone. It would not be like the Caseflow project that had been the ET’s earlier attempt at IT reform. The IT programme would be fit for purpose and this is why this approach was favoured.

Paul Swann went on to explain that the Judicial Engagement Groups (JEGs) consisted of Crime; Magistrates; Civil & Family; and Tribunals. The JEGs were the main driver of reform and met on a regular basis. The programme had been extended to 2022 in order to allow more time for what is an unprecedented and ambitious reform programme. The IT aspects of reform focused upon a system which would not be paper-based and which made the best use of IT, wi-fi, common platforms, etc. **Paul Swann** stated that this is a massive undertaking and will involve a large dedicated budget.

Paul Swann stated that the use of combined court/tribunal buildings had already been piloted in Nottingham. With utilisation under one roof and training across the board this would result in more flexibility. There would inevitably be more building closures, but the money from the sale of the buildings would go towards the Reform Programme.

Paul Swann notified members that consultation with external contractors had been undertaken for business architecture and design. The criminal courts would be first to receive wi-fi. The Digital Case System would be rolled out to all Crown Courts. The Common Platform would enable processes to be linked together and thus usable by CPS, solicitors, barristers, judiciary and others with the goal of making hearings as paperless as possible. At the Crown Court each court room would have multiple screens to enable evidence to be easily shared and viewed.

¹ See generally the *Inside HMCTS Blog* available at <https://insidehmcts.blog.gov.uk/>.

It was easy to see how this would begin to apply in the ET. 98% of ET claims are now presented on-line. Many, but not all, litigants in person would be able to engage with online processes to a degree.

Paul Swann gave an overview of the current pilots being tested. (See also the *Inside HMCTS Blog*). None were as yet directly affecting ETs. Electronic scheduling and listing would be enabled to timetable courts and tribunals across all jurisdictions and buildings. If cancellations occurred, an alternative available court could be found. Paul Swann confirmed that the JEG was to look at the potential use of case officers and legal officers next.

Noel Lambert said Acas was currently going through its own upgrading. He said that there was still a need for face-to-face communication as opposed to complete digitisation of its processes. There needed to be support for staff with a common purpose of working together.

Paul Swann suggested that more feedback on the use of Skype was needed. He said that more secure versions were available. He thought there had been greater discussion between Acas & HMCTS about how Acas would work within the Reform Programme once ET procedures had been reformed.

The President stated that members' feedback was crucial to ensure that all users had a stake in the development of ET reform. The President also indicated that the involvement of pro bono and voluntary advice services was crucial.

Hannah Reed said that the TUC had concerns about court closures, staffing and delays. The use of wi-fi in court and tribunal buildings was a good starting point, particularly in aid for settlements. Hannah expressed her concern that the online process put the non-represented party at a disadvantage and that it could result in an undermining of their case.

Paul Swann reported on the introduction of the eJudiciary system based on "the cloud" and the use of Office 365. This had proved a great success.

Item 2 Agree minutes of the meeting of 10th February 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 NUG members as to where we were regarding performance as measured by receipts, disposals and outstanding caseload. Greater detail is available in the MoJ quarterly statistics. See <https://www.gov.uk/government/collections/tribunals-statistics>.

Single claim receipts had been pretty constant. We have been receiving about 1200-1300 single claims per month. This has been fairly consistent with little variation. The variable is multiple claim receipts (for example, a spike in Working Time claims in September 2016 and March 2017).

In nearly every respect, monthly receipts outweigh monthly disposals. The outstanding caseload had been increasing in the last 12 months, but had begun to fall away gently in the last quarter. The Tribunal disposes of about 1100-1200 single claims per month. About 8000 single claims are outstanding (and about 180000 multiple claims, although these are usually claims that have been stayed for various good reasons).

Another measure of performance is the percentage of claims completed within 26 weeks of receipt. This has been as high as 68% in the year to date, but with a slight fall to 67% in the last 4 months. The target is 75%.

We aspire to dispose of single claims within 26 weeks (10 weeks for short track claims; 20 weeks for standard track claims; and 30 weeks for open track claims). The Tribunal is achieving 29 weeks (all claims), 16 weeks (short track), 27 weeks (standard track) and 26 weeks (open track). That represents the figures measured from receipt to hearing. The performance is better when the time to disposal without a hearing is measured: 24 weeks (all claims), 17 weeks (short track), 22 weeks (standard track) and 28 weeks (open track). 65% of all cases are disposed of within 26 weeks (88% short track, 76% standard track and 52% open track).

Finally, we aim to promulgate judgments within 28 calendar days of the hearing. The average number of working days for promulgation is currently 21 days (all cases), 16 days (short track), 18 days (standard track) and 26 days (open track).

The President notified the meeting that he was losing salaried judicial resource due to retirements occurring at a rate of about 5-6 judges annually. There were currently no recruitment exercises planned. The position was similar regarding fee-paid judges and non-legal members.

It was noted that the decision in the Unison challenge to the ET & EAT Fees Order was awaited.²

The President informed the meeting of the retirement at the end of July 2017 of Regional Employment Judge Christine Lee (Yorkshire & Humber region) and at the end of September 2017 of Regional Employment Judge David Reed (Newcastle region). The President paid tribute to both judges.

Both regions would merge from 1 October 2017 to form the North East region. It would continue to have hearing centres at North Shields (pending a transfer back to Newcastle), Middlesbrough, Leeds, Sheffield and Hull, with administrative centres at North Shields and Leeds, as at present. Regional Employment Judge Stuart Robertson would be the leadership judge for the region.

² See now *R (on the application of Unison) v The Lord Chancellor* [2017] UKSC 51 (26 July 2017) at <https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf>.

Employment Judge Olga Harper would be the Acting REJ for the South West region, following REJ Jonathan Parkin's transfer to the North West region. A case for a JAC appointment exercise had been made.

The President also reported that the ET at Huntington would relocate to Cambridge County Court in September 2017. Although Huntingdon and Bedford would no longer be dedicated ET hearing centres, the President and REJ Richard Byrne were alert to the need to ensure that ET justice remained accessible in that part of the South East region. That would be a matter for report at the relevant regional user group.

Sheffield ET had now relocated to the Sheffield Combined Court Centre.

The President reported an increase in the ET session day budget for 2017/18.

The President reported on two recruitment exercises for the First-tier Tribunal, General Regulatory Chamber and for generic (cross-chamber) judges in the First-tier Tribunal. He expected that some fee-paid EJs would be appointed as salaried FTT judges in that exercise and he hoped that they would be released to sit in the ET as EJs for up to 30 days per year.

The President had no news on when the Prisons & Courts Bill would be reintroduced in the new parliamentary session (but see below).

Item 6 ADR – President

The President addressed the experience of ADR in the ET to date. He noted that the new facility of judicial assessment (early neutral evaluation) had not yet taken off. He noted that many practitioners were still using the old case management agenda and were thus not prepared to consider the possible use of judicial assessment. The President would ensure that the agenda was placed online.³

The President was concerned that the introduction of a fee for judicial mediation had had a knock-on effect on the take-up of judicial mediation. JM data is not maintained by HMCTS and it is not part of the official MoJ dataset. It is kept by the ET judiciary. The President felt that sharing the JM data would assist the take-up of this form of ADR and he had agreement to do so. That data shows as follows (Year; Number of mediations; Success rate; and Net days saved):

	2009	247	62%	1000
	2010	423	65%	1484
	2011	525	70%	1420
	2012	576	70%	1579
£600 fee introduced	2013	473	67%	1195
	2014	318	69%	867
	2015	346	71%	1156
	2016	407	66%	1215
	2017 Year to date	123	70%	387

³ See <https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/>.

The 2017 figure, if annualised, would represent 369 JMs or 1161 net saved days.

The President informed members that Employment Judge Michael Ord (Cambridge ET) and Employment Judge Vincent Ryan (Liverpool ET) would succeed Employment Judge Alison Lewzey (London Central ET) as the lead judges on ADR when Judge Lewzey retired in the summer. The President paid tribute to the excellent work she had done on ADR since its very early days in the ET.

Item 7 HMCTS update

Marie Mannering did not have anything to report as most matters had been covered by the President in his report.

Item 8 BEIS update

Richard Boyd reported on new ministerial appointments and portfolios following the General Election.⁴

Andrew Jonathan (MoJ) confirmed the position on the Courts Bill. It may not be reintroduced as a Prisons & Courts Bill, but as a Courts Bill only.

Item 9 Acas update

Noel Lambert reported that the Acas statistics were due out in July 2017. He felt that they would not have changed much since the last figures. He thought that they would be similar.⁵

He referred to the need for conciliators to be more persuasive in the future and the need to move to more team-based conciliators so that work could be shared and covered. He would appreciate feedback from NUG members.

Item 10 Any other business

Michael Reed raised the issue of the promised publication of the Pension Loss Compensation Guidance. The President replied it would be finalised by the working party who had compiled a consultation based on the very rich feedback they had received. This would be actioned by Presidential Guidance, probably by late July 2017.⁶

Gareth Brahms reported a case in which the parties had to wait for 5 months for a judgment in draft. The President replied that the salaried Employment Judges were moving from one multi day hearing to the next without any respite. Judgment-writing time was often at a premium. If there were delays in

⁴ See the list of ministers and their portfolios in the Ministry of Justice and in the Department for Business, Energy & Industrial Strategy at <https://www.gov.uk/government/ministers>.

⁵ See Acas, *Annual Report 2016-17* available at <http://www.acas.org.uk/media/pdf/e/s/Acas-annual-report-2016-2017.pdf> and Acas, *Early Conciliation Update 11* available at <http://www.acas.org.uk/index.aspx?articleid=6018>.

⁶ See now: <https://www.judiciary.gov.uk/publications/compensation-for-loss-of-pension-rights-in-employment-tribunals/> and <https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/>.

receiving judgments, he asked that representatives take that up with the relevant REJ in the first instance and then with the President. We would take steps to ensure that the judge was given time to complete the judgment.

Item 11 Date of next meeting

The President suggested October 2017 for the next meeting. The members were in agreement. The President said that suggested dates would be circulated.

The next meeting is now set for 16 October 2017 at 2-4 pm at Victory House.