



**EMPLOYMENT TRIBUNALS
England & Wales**

40th MEETING OF NATIONAL USER GROUP

**Minutes of the National User Group meeting
held via Skye for Business on 22 April 2020**

In attendance:

Judge Brian Doyle	President, Employment Tribunals (E&W)
Richard Boyd	BEIS
Nigel Edgington	HMCTS
Shona Simon	President, Employment Tribunals (Scotland)
Andrew Willis	Croner Group Limited
Barry Clarke	Regional Employment Judge (Wales)
Diya Sen Gupta QC	Employment Law Bar Association
James Potts	Peninsula Business Services
John Sprack	Law Works
Tracey Moss	Citizens Advice
Laura Garner	Thomson Reuters
Marie Mannering	HMCTS
Max Winthrop	The Law Society Employment Law Committee
Nicole Clarke	Acas
Paman Singh	Law at Work
Paul McFarlane	Employment Lawyers Association
Richard Fox	Employment Lawyers Association
Simon Pender	Make UK
Philip Thornton	Lexis Nexis
Tony Lowe	Acas

Item 1 Welcome & introductions

The President welcomed members to the 40th meeting of the Employment Tribunals National User Group (England & Wales). The President apologised that it had been necessary to cancel at short notice the meeting that had been due to take place on 12 March 2020.

Item 4 Employment Tribunals – President’s report

The President informed members that there was no fixed agenda due to the meeting being an emergency meeting of the NUG. It was an opportunity for members to ask questions generally concerning the extraordinary times

everyone found themselves in, the ET not least, or raise any points of concern.

The President said he would update the members in two parts – business as usual and Covid-19 related. The President would then take questions from the floor and see if BEIS, Acas or HMCTS needed to report anything to the members.

The President introduced REJ Barry Clarke, attending his first meeting of the ET NUG, and informed the members that Judge Clarke would be the new President in E&W from 11 May 2020. The President reassured the members that he was leaving the Employment Tribunals for England & Wales in very safe hands with Judge Clarke. Judge Clarke expressed his gratitude to Judge Doyle and thanked him for his outstanding service as President.

The President confirmed that there had been judicial announcements concerning four new Regional Employment Judges. From 1 May 2020 for London Central region the Regional Employment Judge would be Employment Judge Joanna Wade MBE; for the South East region Employment Judge George Foxwell; for the London South region Employment Judge Andy Freer; and from the 1 July 2020, following the intended retirement of REJ Jonathan Parkin, in the North West region Employment Judge David Franey.

The President has nominated an Acting Regional Employment Judge in Wales from 1 May 2020 anticipating Judge Clarke's new role. This would be Employment Judge Sian Davies. Permission had been given to fill the vacancy of the REJ in Wales and the President anticipated that the JAC selection exercise would launch in the Autumn 2020. The President confirmed that there were no further retirements of leadership judges on the horizon.

The President confirmed that the appointment of 58 new salaried judges from 2019 were all now in place and working. The President had received confirmation of permission to recruit a further 25 FTE salaried judges this summer, but the timeline for the exercise was not yet agreed. The President hoped that that competition would deal with the shortfall that was suffered in recruiting to London and the South East in the 2019 exercise. He felt that it showed the commitment of the Ministry of Justice and HMCTS to the Employment Tribunal to have another salaried judge competition so quickly.

The President informed the members that 72 individuals would shortly receive offers of appointment as fee-paid Employment Judges. Acceptance of those offers would then be awaited. Unfortunately, due to the present climate, we were unable to undertake face-to-face training with these new fee-paid Employment Judges. The President said that he and REJ Clarke would prefer face-to-face training and so for the moment training had been postponed until later in the year (it was hoped). The President said that the longer the pandemic lockdown continued then it would be necessary to rethink the planned training. The ET was a jurisdiction that was quite advanced in being able to deliver judicial training remotely; for example, the new Regional Employment Judges had just undertaken their one day of induction training via Microsoft Teams.

The President reported to the members that the ET had also received permission for a further recruitment exercise for another 50 fee-paid Employment Judges in 2021.

The President informed the members that approximately 280 new non-legal members had been recruited in England & Wales. These members had already undergone their training and were ready to sit. Their ability to sit swiftly had been interrupted by the pandemic.

The President outlined that the new sitting day budget for the new financial year had just commenced. It was considerably better than last year's budget. This would allow the ET to deal with new receipts for this financial year and enable the ET to make an in-road into the backlog of cases. The President highlighted that this was the analysis before the pandemic.

The President updated the meeting on the latest audited position regarding the refund of ET fees up to the end of December 2019. He said that this had equalled 22,000 applications for refunds received and made. An overall total of £18m had been refunded. The President pointed out that this had fallen short of the estimated figure of £30-32m, but that HMCTS and MoJ had done as much as they could to encourage applications for refunds.

MoJ had published the latest performance figures on 12 March 2020 for the period up to 31 December 2019. Single claims were up 25%, disposals up by 19% and the outstanding caseload was up by 28%. The President said that the next published performance figures would be in June 2020, which would detail the figures for the period up to the end of March 2020. The average age at which cases were disposed was 36 weeks, which showed that it was taking 6 weeks longer than a year ago, reflecting both the resources position and an increase in receipts.

The President then turned to the multiple caseloads. These figures were more volatile, reflecting the labour market/economy as a whole. These figures were for the last quarter up to December 2019. The number of multiple cases were up 86%, disposals were down 8%, the outstanding cases were up 10% and the average age of a multiple case was 149 weeks, which was up by 18 weeks. Many of these multiple cases were stayed while they awaited appeals or negotiations or references to Europe. The President explained that multiples were a law unto themselves and that singles were a more accurate record of the health of the Employment Tribunals.

The President notified the members that new Presidential Guidance on vulnerable parties and witnesses had been published.

The Employment Tribunal had also issued four key documents on how the ET would be acting initially during the Coronavirus pandemic and until the end of June 2020. These were Directions by both Presidents issued in amended form on 24 March 2020 postponing hearings until the end of June 2020 and replacing them with telephone Case Management hearings. The President explained that the Presidential Guidance issued on 18 March 2019 went into more detail. The intention was to promote the hearing of cases by remote means via electronic communication and that both these documents needed to be read together.

On 3 April 2020 Judge Barry Clarke had led, with input from both Presidents, in producing the third document, which concerned “frequently asked questions”. This set out in more detail the Presidents’ directions and guidance. This had been well received.

Finally, the fourth document (issued on 15 April 2020) was entitled “Help for Users”. This detailed the plan for where the Employment Tribunal was going and how, including coming out of the current pandemic in due course.

It is hoped to be able to increase the number of remote hearings. Currently they were on an *ad hoc* basis rather than a fully settled basis. The Employment Tribunal in E&W and Scotland had been allocated approximately 150 virtual hearing room licences, shortly to be distributed, and which will become the preferred ET video conferencing platform. It is called CVP, which stands for “Cloud Video Platform”. The platform is a joint venture between the technology company Kinly and MoJ/HMCTS. It will also be the preferred video conferencing platform for many other court and tribunal jurisdictions.

The President confirmed to members that it was a more secure teleconferencing platform than other similar platforms and would be adaptable to the Employment Tribunal’s specifications and needs. It gave judges greater control over observers and participants in the hearing. Pilot schemes had been run in Cardiff, Glasgow and Nottingham and the platform would be rolled out progressively in the coming weeks. Although there were other options (e.g. Skype for Business, Microsoft Teams and Zoom), the preferred option was CVP because it did not require those participating to have any software loaded onto their computer. It is solely web-based/cloud-based. The President said members of the NUG would be able to view a demonstration after the meeting, led by REJ Clarke.

The President noted that a review trigger on whether to relax the terms of the Presidents’ Direction would take place next week.

Richard Fox asked if there was an overall vision for moving forward in line with commercial litigation or probate? It was noted that parties preferred in-person hearings. The President explained that having hearings conducted remotely/virtually was likely to be the preferred method of conducting hearings while restrictions on in-person hearings continued. It was noted that remote hearings were good for shorter hearings/preliminary hearings and final hearings of, say, 1-3 days, but remote hearings were more demanding upon those who participate in them. The President’s opinion was that remote hearings lasting 5, 10 or 15 days was difficult to envisage at present.

Paul McFarlane asked if the number of sitting days available were better? The President replied that the ET had more than enough days to provide fee-paid judges with at least 30 days per head (taking the pandemic out of the equation and taking into account the additional fee-paid judges who would be available later in the financial year).

In due course there would need to be a policy decision as to whether the sitting days budget would be sufficient to clear the backlog that would arise due to the pandemic.

Max Winthrop asked about the application of the time limit for presenting claims, which was pre-pandemic and based on a test of reasonable practicability or a just and equitable test. The President replied that he anticipated that Employment Judges would be applying the time limit in light of whatever statutory test for an extended time limit applied in these extraordinary circumstances. An alternative would be to amend time limits through amending legislation. The President stressed that this was not for the judiciary. It was a policy matter for ministers and Parliament.

Richard Fox asked whether there was any planned training for practitioners in respect of the virtual hearings. The President said that it would not fall to the ET or HMCTS to provide such training (although demonstrating how CVP worked might be possible). He anticipated that any such training would be provided by others. He drew attention to guidance that was already available within the profession.

Paul McFarlane requested that the demonstration of CVP to NUG members happen as soon as possible. It was noted that the ET regions would have the appropriate licences for CVP shortly. The first stage would be an invitation to a CVP meeting. CVP works well with Google Chrome, Safari and the latest version of Microsoft Edge, but not so well with Explorer and Firefox browsers.

REJ Barry Clarke said he would send an e-mail after the meeting to enable members who were available to have a demonstration there and then. REJ Clarke confirmed guidance would be issued in due course.

The President of Employment Tribunals in Scotland, Judge Shona Simon, confirmed that, the day before, a CVP hearing had taken place in Edinburgh and involved two English leading counsel and expert evidence. Judge Simon confirmed the hearing went extremely well. The representatives and parties had held a short test set up by the tribunal administration.

Richard Fox asked why all cases had been pulled out of the list and converted to telephone hearings? The President replied that the intention was that a telephone case management would be required to decide with the parties how best to proceed with the hearing, taking all factors into account. Active case management was required to decide by what method the listed hearing could be conducted when relisted.

Richard Boyd felt that CVP had more security. Zoom was open to “bombing”. HMCTS and MoJ were not keen to promote Zoom. Skype for Business and Microsoft Teams were preferred to Zoom. Once CVP was up and running it provided better security, control and management for a judicial process.

The President confirmed to Tracey Moss that notification of an online hearing “out of the blue” would not happen. Such a remote hearing would need to be set up via the telephone case management hearing. Account would also need to be taken of constraints on parties or representatives or witnesses concerning matters such as furloughing, shielding and self-isolation.

HMCTS report

Nigel Edgington (Head of Employment Jurisdiction Support Team, HMCTS) reported on the replacement of Ethos, the ET's current and increasingly aged electronic case management database. The replacement is "ECM" (Employment Case Management); it is based on the "Core Case Data" system used in other jurisdictions. As yet, the replacement had not taken place; the difficulties previously reported with handling multiple cases had not been resolved. A process to produce a solution had been put forward, but this had not progressed because of the pandemic. A project board meeting had been arranged concurrently with the present NUG meeting.

The President said that the reason the last NUG meeting had been cancelled at short notice was due to the Presidents having to attend an urgent workshop concerning ways of making ECM work better.

BEIS report

Richard Boyd referred to an upcoming consultation on changes to Acas early conciliation and ET procedural rules. He invited NUG members to let him know what potential changes would be required in the formal consultation. The aim was for disputes to be resolved in the fastest way possible.

Richard Fox asked Richard Boyd about the Coronavirus Job Retention Scheme and differences between the present and earlier versions of the scheme. Richard asked whether users could be provided with help. There were important changes which might not be picked up by everybody. It could have helped the user experience if there had been telegraphing of what had changed and what was due to be announced. Richard Boyd explained that, as the Government is made up of different departments, one of the challenges is making sure all are joined up to help the user. He would take that comment back and pursue.

Acas report

Tony Lowe said that Acas had closed their offices and mobilised staff by remote working from home. Their digital and technical team made that possible. He reported that all staff were well, technology relatively stable and staff conciliating as before. There had been increased calls to the helpline concerning Covid-19. Advice had been given to employees and employers concerning iterations of the furlough scheme.

Tony Lowe reported that Acas was receiving between 2,000 and 2,500 applications per week. He said that they had been struggling with paper notifications for early conciliation as all offices were closed and delivery of post was not being accepted. This had created a problem with claimants' representatives who needed to notify a large number of claimants because they usually go by the hard copy route of completing the form and attaching a schedule showing all claimants. Acas have encouraged them to ring up so they can discuss the options with them. Tony Lowe asked the stakeholders to pass that message on.

Other matters

Richard Fox paid tribute to Brian Doyle's contribution as President. Diya Sen Gupta QC and other members agreed.

The President thanked all those present. The next meeting would be arranged in due course by the new President, Judge Clarke.