



**MINUTES OF THE EMPLOYMENT TRIBUNALS (SCOTLAND)
NATIONAL USER GROUP**

DATE OF MEETING: Wednesday 22 January 2020

<u>ATTENDEES</u>	
<u>Name</u>	<u>Organisation</u>
Sophie Airth	Brodies
Kathleen Bolt	Strathclyde University Law Clinic
Paul Brown	Anderson Strathern
Steven Connolly	Miller Samuel Hill Brown
Dawn Dickson	Eversheds Sutherland
Glynis Duffy	Peninsula
Kevin Duffy	Scottish Engineering
Laura Ewart	CLO - NHS
Raymond Farrell	Glasgow City Council
Gemma Herbertson	Pinsent Mason
Pauline Hughes	Just Employment Law
David Hutchison	Dallas McMillan
William Lane	Peninsula
Laura MacDonald	Jackson Boyd
Carlyn McCallum	Harper MacLeod
Ian MacLean	Ellis Whittam
Holly MacLean	Ellis Whittam
Moina McLaren	Perth & Kinross Council
Anne McFarlane	Glasgow City Council
Andrew McGinley	Burness Paull
Katie McKearron	Thomson Reuters
Laura McKenna	Morton Fraser
Erin McKirdy	Dentons
Steve McLaren	Kippen Campbell
Brian McLaughlin	Unionline
Eleanor Mannion	MacRoberts LLP
Lyndsey Miller	Scottish Engineering
Graham Mitchell	Clyde & Co
Eilidh Moncrief	DLA Piper
Qurra-Tulain Munir	Peninsula
Andrew Munro	Scottish Engineering
Kim Pattullo	Shoosmiths
Alan Philp	Mentor
Lorraine Royal	Mentor
Sarah Shiels	Balfour Manson
Katie Sloan	CMS Cameron McKenna LLP
Andrew McGinley	Burness Paul
Katie Wedderburn	MacRoberts

Also in Attendance

Judge Susan Walker, Vice-President of Employment Tribunals (Scotland)
Stephen Toal, Head of Operations (Scotland), HMCTS
Daniel Flury, Deputy Director of Tribunals, Scotland
Shona Ferguson, Acting Senior Operations Manager, ET (Scotland)
Derek Hutchison, Acting Delivery Manager, ET (Scotland)
Collette Cruz, Correspondence Team Leader, ET (Scotland)
Richard Boyd, Senior Policy Advisor, BEIS
Alan Hope, Acas
John Kelly, Acas
Tony Lowe, Acas
Ian Proctor, Acas
Helen Nolan, Jurisdictional Office Support Team (JOST)
Marie Mannering, JOST

Agenda item 1 – President’s update

The President, Judge Simon, welcomed users and began by making reference to the publication of a survey of ELA members in June 2019. The survey focused on the service they and their clients were receiving from ET s. The President thought it was important for users to be aware that the ELA survey did not cover Scotland at all. On reading it became clear that ELA had omitted Scottish offices, not least because in an appendix to the report there are comments from ELA members such as “What about Scotland” and “While I know that the Scottish ET system is separate we are beginning to experience some difficulties there.” The President queried the position with ELA who replied that the omission of Scotland was an oversight on their part. They were very apologetic.

The President went on to say that she was disappointed that the survey did not include Scottish offices because she would have welcomed feedback from users about the service in Scotland. In addition to that, the survey is now being used as evidence to support the proposition that ETs need additional administrative and judicial resources - anything that

supports that proposition is helpful but it is difficult to use it to make that case in a Scottish context, given the exclusion.

(Post meeting note: it is understood that ELA has recently surveyed its Scottish members.)

Users who have read the ELA survey will know many of the concerns raised were administrative in nature. The survey respondents complained of very long delays in answering phones (sometimes hours), failure to answer phones at all, very long delays in serving claims on respondents and dealing with correspondence, lengthy delays in listing cases with some cases being listed up to a year ahead, and hearings being put off or moved from one place to another at the last minute. It was clear many of the problems seemed to be concentrated in particular geographical areas.

The President surmised that if Scotland had been included it would not have necessarily have faced the same range and level of criticism as appears in the survey. For example, the President was unaware of people having to wait hours for phones to be answered in Scotland. Indeed, after discussion of the ELA survey at the ET Jurisdiction Board, Stephen Toal checked the speed of ET call response in the Glasgow HMCTS central call answering service and it was normally under a minute. Another example is in connection with vetting and registration of claims – the team in ET Glasgow has maintained the best performance level in Britain in connection with service of claims over considerable period with service currently taking just over 5 days.

The President went on to highlight some performance difficulties mentioned in the survey that she felt sure would have featured as issues in Scotland if Scottish offices had been included in the ELA survey. This

was particularly so over summer 2019. For example, over the summer months it was quite common for EJs to issue directions or orders which took quite a long time to be actioned by staff so that by the time they were actioned the timescales for compliance were not workable. It is important, however, to factor in the huge administrative problems created by the failure of the Ethos case management system. The number of staff hours lost this financial year

due to Ethos failure is high and Glasgow is the worst affected office in Britain. When the system comes back the work the staff have done between the failure and the last system back up will be lost and they have to redo it all. This has had an impact not just on workload management but also on staff morale. In order to try to reduce the impact staff in Glasgow worked a good deal of overtime at the weekends over the summer and into the autumn of 2019.

The good news however is that although the staff are still having to use Ethos it has been more stable over the winter. A new case management system is in the process of being developed, Daniel Flury will provide users with an update.

Judicial Resourcing

The President provided an update on judicial resource. With a rising caseload it had been hoped that we would be in a position to increase the number of cases being listed each day at least in Glasgow and Edinburgh and introduce evening sittings again but that has not proved possible due to Ethos related difficulties and some issues with judicial resource. Unfortunately, not all of the fee paid judges have been able to make themselves available at the level we had hoped. In addition, Employment Judge Jane Garvie retired at the end of September 2019.

Fortunately, with Daniel Flury's support, consent has been given for ET (Scotland) to recruit three new salaried EJs (FTE) and 10 new fee paid EJs. Applications are currently being sifted with interviews scheduled at end of February and into early March 2020. This additional resource should minimise cancellations due to lack of judicial resource and make it easier to reintroduce evening sittings, this being an initiative that had proved very popular with system users in the past. However, one of the frustrating things from the ET point of view is we still end up with judges available but no case to hear because of last minute settlements and the fact that quite often we are not told about these settlements until very, very late in the day if we are told at all. We may well have cancelled hearings thinking we are fully booked only to find that cases then settle. Users were asked that if they have settled a case the day before the hearing please can you telephone the listing team as soon as possible on 0141 2237132 (the Listing team leader is Denise Carroll). If users only e-mail the Glasgow ET box that may not be picked up for several hours. Users were asked not to rely on Acas telling the ET of the settlement in these short notice cases; this has been found to be problematic at times.

Member recruitment

The President gave an update on the recent recruitment exercise for non-legal members. There have been difficulties from time to time in finding members to sit, especially in Aberdeen and Inverness. The number of experienced members we had at the end of November 2019 was 114. That compares to just over 230 in 2009. Over the summer the Vice-President, Susan Walker was involved in a campaign to recruit new non legal members. We have appointed 39 new members across Scotland. They have been deployed as follows:

Employer: 13 – Edinburgh x 3, Aberdeen x 8 and Inverness x 2

Employee: 26 – Glasgow x 10, Edinburgh x 4, Dundee x 3, Aberdeen x 6 and Inverness x 3.

Request for Rule changes

Both Presidents, the VP and the REJs keep a close eye on how well the ET Rules of Procedure operate in practice. This is done against the

background of EAT and other higher court decisions which sometimes lead to the Rules being interpreted in unexpected ways. The case of *Brierley and others v Asda Stores* in which the EAT (upheld by the Court of Appeal) took a fairly restrictive view when it came to which claims it was possible to submit on the same claim form is a good example of this but there are others. The Presidents asked BEIS last January if it would be possible to bring forward secondary legislation amending the Rules in various ways but for a variety of reasons BEIS has not been able to take that forward yet.

The Presidents' sent their request again in August 2019 and are hopeful it may be possible to make progress with this.

Questions – there were no questions but Eleanor Mannion, Scottish ELA representative apologised on behalf of ELA for the omission of Scotland in the ELA survey.

Agenda Item 2 – HMCTS reform and implications for ET Scotland – Daniel Flury

Performance issues/ETHOS

Daniel provided an update on ET, He explained that ET has undertaken huge judicial recruitment exercises in E & W and has also recruited and were recruiting again in Scotland. He acknowledged that despite the

investment there is still a gap between ET receipts and disposal. Issues remain with long listing dates especially in E & W. Users should be under no illusion that there is immense pressure in ET.

The ETHOS Case Management system has been around since 2002. The system is now mostly incompatible with other software as ETHOS is so old. Effectively ETHOS is on life support, it now being acknowledged that it is a dysfunctional case management system. The situation with ETHOS is damaging teams in term of output and moral; staff are losing work regularly. Summer was torrid especially June/July. Glasgow is the worst affected office for ETHOS performance although the cause has not been found.

A new system, Core Case Database has been brought forward as part of HMCTS Reform. Glasgow is one of the pilot offices and has been heavily involved in user testing. Currently we are at the final hurdle of system testing. Work continues to construct the multiple case handling functionality.

National rollout is planned by the end of May 2020, at which point HMCTS will switch off and decommission ETHOS. Staff continue to test the system and provide lots of feedback – they say it is a better system which is more user friendly. Critical thing is that it will be stable. ET will have a new adaptable digital system at the heart of ET system.

HMCTS reform

Daniel set out the scope for Scotland, explaining that both Governments remain committed to devolution although timelines have slipped. There is a £1 billion investment from Treasury to modernise the Courts and Tribunal system, which HMCTS will pay back over 10 years by savings. HMCTS is committed to making savings of £250 million over 10 years.

HMCTS in 2012 inherited a huge number of staff/ buildings/ different agencies and legacy systems. There are 52 separate IT systems across HMCTS. Building quality and suitability varies with some good, poor and underused – estate will be consolidated which will make the estate more affordable and sustainable in the long term.

Savings will be made with fewer staff, fewer judges and fewer buildings.

An example of areas for improvement/saving; 80% of IAC Appeals currently received by fax – they are then photocopied, posted, and manually input. Going forward you will be able to submit on-line; digital, automatically accepted, digital file, automatic transfer to Home Office.

Fewer Judges – New process will be put in place through Practice Directions so that much more work is done by IAC parties at the beginning of an Appeal. A summary of the appeal and arguments to support it will be required early on. This will give the Home Office the opportunity to think about their position earlier in the life of the appeal. Tribunal case workers are able to work alongside Immigration Judges and the Caseworker is able to create a digital file. More and more appeals are being withdrawn under this new system early on in process, - 1 in 5 appeals being processed under the new system are withdrawn. Fewer hearings will be required so it is envisaged in the longer term fewer judges will be needed in IAC.

HMCTS reform in ET – replacement for ETHOS will be the building block, the receptacle for a claim. Elsewhere and in ET – user interfaces will be created so that Judges can access the system, they can make directions, make decisions, undertake a number of tasks to progress the case and interact with parties. There will be access for solicitors to log in

and set up an account. Daniel explained it would give us the opportunity for all parties to see all materials, potential for paperless hearings. These processes have already started in IAC and in a small pilot in ET London Central. Much time is currently spent producing papers, the expectation is under reform there will be savings to HMCTS and to parties.

Caseworkers in ET – has been under consideration for some time. There is now an outline proposal in place about how this might work in ET.

Next steps – consultation with users in February or March, dependant on Ministers.

Questions

Eleanor Mannion asked about the case worker role in terms of what had been said regarding staff/judiciary savings and how that squared off.

Daniel explained he was not sure of the impact on ET yet and there was no suggesting of losing judicial resource in the foreseeable future. The role of the case worker would create more rewarding, better paid work for highly skilled staff.

Brian McLaughlin asked about the type of work it was envisaged case workers would undertake and Daniel gave examples such as granting orders, applications for orders etc. The President clarified that there would be a great deal of judicial input into agreeing the type of work considered suitable for case workers and that users could be certain that the President would not agree to anything which would reduce the quality of justice delivered in Scotland. The President assured users that they would be updated regularly and have the opportunity to discuss matters further through the SNUG meetings.

Agenda Item 3 - Update from Department of Business, Energy and Industrial Strategy (BEIS)

Eleanor Mannion asked about the recent Government announcement on [Section 26 in the Withdrawal Agreement Act 2020](#), allowing for courts, in addition to the Supreme Court and the High Court of Justiciary of Scotland, to be able to depart from historic rulings of the CJEU. She asked if it was possible for BEIS to say something about the possible implications.

Richard Boyd (RB) explained that, as users may appreciate, this is an issue that has wider implications beyond employment law and therefore is not an area for which BEIS has direct responsibility.

BEIS have contacted relevant officials in other departments for clarification and will provide a full response as soon as possible once a response is received.

In terms of an update from BEIS colleagues RB indicated he wanted to mention the recent Queen's Speech announcement on the Employment Bill, as well as some of the wider work BEIS staff have been doing with colleagues in Acas, HM Courts & Tribunals Service and the ET Presidents to address the current challenges facing the ET system.

Employment Bill

As users may recall from previous updates, BEIS have already implemented several recommendations from the Taylor Review.

As announced in the Queens' Speech, BEIS will be bringing forward an Employment Rights Bill, timing to be confirmed.

Core Measures in the Employment Rights Bill include:

- Creating a new, single enforcement body, offering greater protections for workers;
- Ensuring that tips left for workers go to them in full;

- Introducing a new right for all workers to request a more predictable contract;
- Extending redundancy protections to prevent pregnancy and maternity discrimination;
- Allowing parents to take extended leave for neonatal care and
- Introducing an entitlement to one weeks leave for unpaid carers.

Further details on content and timing are still to be confirmed and BEIS will share more information when it can.

Labour Market Enforcement

- The Director of Labour Market Enforcement has made important progress working with enforcement bodies to improve state enforcement of employment rights and to set strategic direction in the enforcement landscape.
- Building on this work, BEIS are working on commitments to establish a single enforcement body for employment rights to better protect vulnerable workers and create a level playing-field for the majority of employers complying with the law.
- BEIS are also extending state enforcement to cover holiday pay for vulnerable workers and umbrella companies operating in the agency worker market.
- Many system users will have submitted your thoughts in response to last June's consultation, which closed in October. BEIS will publish a government response and next steps in due course.
- This will require primary legislation and be taken forward as part of the Employment Bill that was announced in the Queen's Speech.

On a related topic of enforcement, users may have seen a recent parliamentary question on the updated position for the unpaid ET awards penalty scheme. Since its introduction in April 2016, a total of £2,566,414.19 in previously unpaid awards has been secured for workers. £1,343,941.96 has been recovered as a result of only issuing a warning letter. A further £1,222,472.23 has been recovered as a result of issuing both a warning letter and a penalty notice. Full details can be found in the published answer.

Agenda Item 4 – Acas, Early Conciliation Notification and Case Management Project update

Alan Hope and John Kelly (new conciliation manager) provided an Acas update. Staff moves Scotland: Ian Proctor now Assistant Director, new Conciliation Manager, John Kelly.

Nationally - Sam Clarke, previously Area Director of Acas North West, now Director of Individual Dispute Resolution Services. Former Director of IDR Tony Cooper now Acas Chief Operating Officer.

In a rolling programme from April to June last year Acas decommissioned the 'Phoenix' database system transferring all live and recent dormant cases to a new Microsoft Dynamics based Case Management System. The 'agile' project to introduce Dynamics to Acas was based on the introduction of a MVP (minimum viable product or system) with work continuing to optimise aspects such as readability, navigation, document handling and the provision of management information. Additional funding from BEIS has been provided to continue system development. A new **EC Notification Form** was introduced in July of last year which is in two parts. Form one contains mandatory prescribed information which must be provided for a valid notification. Form two can be used to provide additional voluntary information, including details of the nature of the claim, to help conciliators hit the ground running. 70% of those submitting an EC notification are using both forms.

Currently at the Public Beta stage of testing, work continues to improve the form and maximise its effectiveness. Aim of EC notifications which are right first time, every time.

Service redesign - Pilot project in Leeds Office to trial different approaches to conciliation in terms of case holder/caseload model. A team based approach is being trialled in fast track cases to look at

different ways to organise, distribute and handle work and see how this impacts in areas such as conciliator availability, rate and speed of resolution.

In an effort to address increased case volumes currently training and recruiting new conciliators and hope to have approximately 70 new conciliators in post by the summer as well as additional staff engaged in case preparation.

Useful Contact details

Jenny Demir - President's Private Office:
Glasgow.President@justice.gov.uk

Sandra Muir - Vice President's Private Office:
Glasgow.Vice.President@justice.gov.uk

Stephen Toal, Head of Tribunal Operations (Scotland)
stephen.toal@justice.gov.uk

Pauline MacNeil, Senior Operations Manager
Pauline.macneil@justice.gov.uk

Shona Ferguson, Delivery Manager, ET Glasgow
shona.ferguson@justice.gov.uk