



Courts and Tribunals Judiciary

EMPLOYMENT TRIBUNALS England & Wales

48th MEETING OF NATIONAL USER GROUP

Minutes of the National User Group meeting held via Microsoft Teams on 3 April 2023

Attendance:

Judge Barry Clarke	President, Employment Tribunals (England & Wales)
Judge Susan Walker	President, Employment Tribunals (Scotland)
Judge Andrew Freer	Regional Employment Judge (London Central)
Judge George Foxwell	Regional Employment Judge (South East)
Judge Alison Russell	Regional Employment Judge (London East)
Mark Lewis	HMCTS
Helen Nolan	HMCTS
Andrew Willis	Croner Group Limited
James Potts	Peninsula
Richard Boyd	BEIS
Robin Rimmer	MoJ
Emily Handley	MoJ
Andrew Lingard	Advocate
Emma Wilkinson	Free Representation Unit
John Sprack	LawWorks
Philip Thornton	Lexis Nexis
Alan Philp	Mentor Services
Sophie McGuinness	Thomson Reuters
Matthew Creagh	TUC
Richard Fox	Employment Lawyers Association

Apologies

Simon Pender	Make UK
Shantha David	Law Society's Employment Law Committee
Nicole Clark	Acas
Stewart Gee	Acas
Tony Lowe	Acas
Clare Armstrong	Equality & Human Rights Commission
Catrina Smith	Employment Lawyers Association
Felicia Epstein	Employment Lawyers Association
Caspar Glyn KC	Employment Lawyers Association
Marie Mannering	HMCTS
Laura Garner	Thomson Reuters

1. Welcome & Introductions

The President welcomed members to the 48th meeting of the Employment Tribunals (England & Wales) National User Group, via Teams.

2. Employment Tribunals system update – President

2.1 New location for NUG minutes

The President informed members that the minutes of the National User Group meetings dating back to 2017 had been uploaded onto the [judiciary.uk website](https://www.judiciary.uk) after being transferred from the gov.uk website.

2.2 HMCTS Reform

The President had hoped to report on HMCTS reform to members, but there had been a recalibration of the timing of reform. Mark Lewis would report on this in his update later in the meeting.

2.3 Performance

The President reminded members that HMCTS publishes [quarterly statistics](#). They once again include data about the Employment Tribunals. Members may recall that, following the transfer from one software database (Ethos) to another (ECM), a period of data silence emerged which inhibited effective management.

[The latest set of statistics was published on 9 March 2023](#). This set covers the quarter from October to December 2022. The President reminded members that some figures continue to be marked as provisional.

In the 2022 calendar year, the Employment Tribunals received 30,907 single receipts. This averages 600 per week. This is below the pre-pandemic average which was 750 per week, and far below the “pandemic peak”, in the last three months of 2020, when over 1,000 claims per week were received.

The most recently published statistics refer to an outstanding caseload of 45,000 single claims as of December 2022. The President said that he remains of the view that this figure overstates the current caseload as a consequence of moving from one software database to another. He estimates that the outstanding caseload is at least 10-15% lower.

The President confirmed that just over half of all single claims received are classed as “open track”, namely discrimination and whistleblowing detriment claims. These types of claims are more complex, usually require a longer hearing and take longer to come to hearing. The President believes that significantly more than half of the current backlog of single claims comprises those complex cases that take longer to resolve.

2.4 Waiting Times

The President reported that HMCTS still cannot produce timeliness data (that is, data about how long it is taking cases to come to a hearing). However, he continues to gather anecdotal data from the Regional Employment Judges and he confirmed, in broad terms, the following position:

- For shorter hearings of 1-2 days' length, all Employment Tribunal regions can list these cases in this calendar year. The shortest waiting times are in the North East region, which can list them in the first half of this year.
- For medium hearings of 3-5 days' length, the following regions can still list these cases in 2023: North East, London Central, Wales, South West and Midlands West. Most other regions are listing these cases in the first half of 2024. There are longer waiting times in the North West and South East regions, which are listing them in early 2025.
- For longer hearings of 6-10 days' length, the picture is variable. North East, South West, Midlands West, London Central and Wales can still list these in 2023. North West, Midlands East, London East, London South and parts of the South East are listing these claims in the second half of 2024. The longest waiting times were in the Reading and Watford venues of the South East, which are now listing these cases in early 2025.

The President explained that this was an overall picture and that cases were sometimes delayed for good reason, which may include a requirement for several preliminary hearings, postponement(s) in the interests of justice or remittal from the Employment Appeal Tribunal. Further, as lengthy hearings fall from the list due to settlement, it is sometimes possible to backfill by bringing forward cases.

The President hoped that waiting times in London and the South East would reduce with the appointment of new salaried judges.

2.5 Salaried Judge Recruitment

The President shared the news that, following the most recent recruitment campaign, he would welcome on board 29 new salaried Employment judges. 27 names had already been announced on the judiciary website [here](#).

The President explained that it had been hoped that this campaign would deliver 50 full-time equivalent salaried judges. Unfortunately, it had only delivered 25.1 FTE, resulting in a 50% vacancy rate.

The President acknowledged that he faced considerable difficulty recruiting into London and the South East. However, by using some remote working arrangements and split deployments, he had been able to deliver 19.7 FTE into London and the South East. All new judges had agreed to spend some time supporting work in London and the South East.

In addition, 40 new fee-paid judges had been recently appointed. The new overall totals were 160 salaried judges and 385 fee-paid judges.

There were also three ongoing recruitment campaigns:

- 1) The new Regional Employment Judges in the London East and London South regions should be announced in early summer 2023. The President thanked Judge Balogun, Judge Burgher and Judge Russell for acting up in the roles in the interim.
- 2) Another salaried Employment Judge campaign, which would close on 4 April 2023. The President expected the outcome of this campaign by December 2023.
- 3) A fee-paid Employment Judge campaign, which would also close on 4 April 2023. The outcome of this campaign is expected in May or June 2024.

The President confirmed that the salaried vacancies from this campaign would be carried into the next campaign, where the ET (E&W) would again aim to recruit 50 salaried judges into London and the South East. As the President has often said, these regions hold the bulk of the outstanding caseload, receive the most claims and also have the longest waiting times. The President was trying his best to get judges where they need to be.

2.6 Judicial Deployment

The President announced that Judge Susan Walker (President of the Employment Tribunals in Scotland), who had been appointed last summer, was now authorised to sit in the Employment Appeal Tribunal under the same provision as him ([section 22\(2A\) of the Employment Tribunals Act 1996](#)).

The President also announced that Employment Judge Holly Stout had been assigned to sit in the Employment Appeal Tribunal in her capacity as a Deputy Judge of the Upper Tribunal. The President hoped this demonstrated to Employment Judges the prospects of career development.

The President reminded members that both Senior Circuit Judges in the Employment Appeal Tribunal were former salaried Employment Judges in London Central and that most of the Circuit Judges and Deputy High Court Judges in the Employment Appeal Tribunal (and, indeed, the EAT President) had been fee-paid Employment Judges at a previous point in their judicial career.

Finally, the President confirmed that three Regional Employment Judges had been assigned to sit in the Upper Tribunal (Administrative Appeals Chamber). They are Judge Andrew Freer, Judge Lorna Findlay and Judge Sian Davies. This has been done by reference to [section 6\(1\)\(m\) of the Tribunals, Courts and Enforcement Act 2007](#).

2.7 Sitting Days

At the previous NUG meeting, the sitting day allocation for the 2022/2023 financial year had been confirmed as 31,600. This was a 10% reduction from the sitting day allocation during the pandemic. The Employment Tribunals had not been able to sit the 35,000 sitting day allocation during the pandemic nor the 31,600 figure for 2022/2023; this was partly because the newest cohort of fee-paid judges had not (at that time) completed the necessary training to hear open track cases, and partly because of HMCTS staff shortages.

In November 2022, HMCTS allocated the Employment Tribunals a further 2,000 sitting days. Only some regions had been able to use those days.

The President confirmed it would be a while before the allocation of sitting days for the 2023/2024 financial year was announced. It is still a matter for discussion between the Lord Chief Justice, the Senior President of Tribunals and the Lord Chancellor under the Concordat process.

The cohort of fee paid judges recruited in 2021 had recently completed the necessary training to deal with discrimination and whistleblowing claims, which increased the judicial ability to hear those claims.

2.8 Video Hearing Service

The President explained that throughout the pandemic HMCTS had been capturing data on the use of Cloud Video Platform (CVP). HMCTS has now stopped capturing this data and the last report was in February 2023.

At that point the Employment Tribunal remained the largest tribunal user of CVP, logging between 1,500 and 2,000 hours per week on CVP.

Time spent on the new Video Hearing Service (VHS) was not included in that data. VHS continues to be used to a small degree in the South West region. The President reminded members of the demonstration provided to them on VHS by Sue Bolton at the last meeting.

The President explained that VHS was not yet ready for national rollout, but the plan remained for it to succeed CVP at some point in the future.

2.9 Road Map – use of video

The President reminded members that he had produced a ‘road map’ during Covid alongside Judge Shona Simon (then President of Employment Tribunals in Scotland). It was first attached as an annex to a list of ‘Frequently Asked Questions’, and then as a stand-alone document for the 2021/2022 financial year and the 2022/2023 financial year.

The Presidents in England and Wales and Scotland had decided that it was not necessary to produce a further road map for the 2023/2024 period. The position mostly remains as set out in the most recent road map.

Most regions continue to list according with the default position set out in the road map. However, the President recognised the need to retain flexibility in many ET regions.

The President set out the following categories of hearing and their position regarding whether they defaulted to video or in person hearings:

(1) Preliminary hearings held in private for case management purposes. The default position for these types of hearings is telephone or video, which is likely to become the permanent position.

(2) Preliminary hearings held in public. The road map had distinguished between those Preliminary Hearings which deal with more straightforward issues such as time limits and those which require more detailed evidence, such as applications in relation to the application of TUPE, disability and employment status. The former would default to video while the latter, subject to estate resources, would see more in-person hearings. As for how things look today, the position is mixed. The region with the highest proportion of in-person hearings is Midlands East, where only 40% of public preliminary hearings were held by video. By contrast, London Central, London South and Wales are holding 90% of their public preliminary hearings by video. For most regions, the figure is 70-80%.

The President confirmed that the mode of a hearing always remained a judicial decision, and that judges were willing to consider changing the format where necessary in the interests of justice.

(3) Judicial mediations. The road map had been more nuanced about the position with judicial mediations. It stated that the Presidents would continue to monitor whether there was any impact on the outcome when holding these by video. The President explained that, early in the pandemic, there had been concern that a remote mediation was less likely to produce

a successful resolution of the case by agreement. In fact, that had not happened. There had been no discernible impact on the success rate by moving mediations away from in person and towards video or telephone. It is likely that all judicial mediations would, by default, take place remotely.

(4) **Final hearings.** The President explained the position in relation to the three tracks of hearings:

- **Short track claims** (unpaid wages, notice pay, holiday pay, redundancy pay). These hearings were now conducted mostly by video. The provision of CVP rooms meant that the ET's 'virtual estate' was now twice the size of its 'physical estate' (which comprises about 135 hearing rooms in buildings throughout England and Wales). This helped the ET to reduce the backlog of single claims. For these types of hearings, the lowest rate of video use was the North West (60%). The remainder of the country averaged 80-95% of these types of hearings by video.
- **Standard track claims** (unfair dismissal). The previous road map provided that, as the estate recovered and requirements for social distancing were removed, the Presidents wished for these types of hearings to return to in person hearings, particularly where there was a large amount of disputed evidence. The national position is mixed: Midlands East region has had the greatest success in returning to in person hearings, where only 30% of these cases take place by video, while the highest rate of video (90%+) is in the South West, London Central and London South regions. Where the backlog is greatest, these hearings are more likely to default to video to ensure maximum use of the Virtual Region.
- **Open track claims** (discrimination and whistleblowing detriment). The previous road map reflected a desire to see these claims, insofar as the estate could manage, return to in-person. The picture differed when considering the length of these open track hearings:
 - For hearings of 1-3 days' length, those locations using video the least were Newcastle, Midlands East, Wales and the South West (20-40%), while London Central and London South regions remained high (80-90%). The President reiterated that the use of video increased in the London regions was in part because of the need to use the Virtual Region.
 - For hearings of 4+ days' length, Wales listed only 5% of these cases by video, while Newcastle, the South West and Leeds were around 15%. The largest use was in London Central and South West (80-90%).

The President reminded members of how the Virtual Region works. It operates in one of two ways: the "base" model and the "bank" model. In the "base" model, the regions which make up London and the South East are allocated a number of sitting days via the Virtual Region, to list and use fee paid judges from across England and Wales sitting wholly remotely. In the "bank" model, regions make ad hoc requests for a judge to cover a case that would otherwise not have gone ahead. An email is sent to all Virtual Region judges with details, and judges then put themselves forward to sit.

Last year the Virtual Region sat 1,800 days and covered 2,100 cases.

2.10 Senior President's Consultation – Panel Composition

The President set out the background in relation to the consultation on the use of non-legal members in the Employment Tribunals. In December 2016 a consultation paper was produced by the Government entitled "[Reforming the Employment Tribunal system](#)". It contained a section which dealt with panel composition.

The Government's response to that consultation paper was published in February 2017, which explained its plans in respect of panel composition. The legislation designed to give expression to the Government's response was the Prison and Courts Bill, which was published in 2017; however, this fell when the general election was called in June 2017.

Since then, proposals in respect of panel composition have resurfaced with the first publication of the draft Judicial Review and Courts Bill, and the provision now found at clause 35. This amends the principle legislative provision of panel composition in the Employment Tribunals Act 1996. By this provision, responsibility for panel composition shifts to the Senior President of Tribunals.

The President confirmed that, as this was a matter of policy, he was not going to comment further save to encourage members of the national user group to respond to the consultation exercise.

2.11 Miscellaneous

The President confirmed he was not yet in a position to update members in relation to the recording and transcriptions of Employment Tribunal hearings. He said that both Presidents were still working on this topic.

Both Presidents had recently produced new guidance on the Vento bands, uprating various bands in line with RPI.

The President announced that the Employment Tribunals have a revamped web presence, with [dedicated pages within the wider judiciary.uk website](#).

Both Presidents had produced guidance on overseas witnesses and the arrangements that pertain depending on whether the foreign state permitted the giving of evidence. There is a list which records how a country has responded and it remains the intention for a copy to be published on the FCDO website in due course.

Lastly, the President updated that the responsibility for handling complaints of judicial misconduct in the Employment Tribunals would pass later in 2023 from the President and his delegates (the regional leadership judges) to the Judicial Conduct Investigations Office, which already had the power in respect of courts judges.

3. Updates from around GB

3.1 Judge Susan Walker – President of Employment Tribunals (Scotland)

Judge Walker provided a brief update on the position in Scotland, noting that the Employment Tribunals in Scotland also hold a separate user group meeting. The outstanding caseload in Scotland remains higher than previous years, but their disposals are currently exceeding receipts and therefore their outstanding caseload is reducing.

Mark Lewis will discuss HMCTS Reform further in his update, but Judge Walker explained that they have had nearly 400 cases which have gone through or are going through the reformed case management system, although users may not notice any practical difference.

Judge Walker confirmed that Scotland has not been as affected by estate issues as England and Wales, and so they have been in a better position to return to in-person hearings. Judge Walker reminded members in England and Wales of the likely need to attend in Scotland for any hearings listed for longer than one day; however, they are still using video where appropriate.

3.2 REJ George Foxwell – South East region

Judge Foxwell updated on two matters: training and the South East region.

With reference to training, Judge Foxwell introduced his role as Director of Training for the Employment Tribunals in England and Wales, with a dedicated committee of judges that support him. They are tasked with delivering training to approximately 550 employment judges, including the induction training for new fee paid judges which has been a monumental task over the past few years.

Judge Foxwell explained that in 2021, 150 new fee paid judges were recruited alongside a further 40 cross-assigned judges from the First-tier Tribunal, which resulted in 190 new judges to induct during lockdown.

This induction only provided the ticket for those judges to hear unfair dismissal and money claims, but not the full range of the jurisdiction. The second induction course began last Autumn and is now in its closing stages, and once completed those judges will be able to hear Equality Act and whistleblowing detriment claims and undertake the full range of case management hearings.

Judge Foxwell further explained there is a current programme underway to refresh the number of salaried judges who can hear equal pay claims, with the aim of ensuring the training produces the number of judges with the relevant experience that is needed.

In respect of the South East region, Judge Foxwell expressed regret that parts of this region experienced the longest waiting times. However he explained that there was a varied picture across the five sites which comprise this region. Judge Foxwell explained that there are now 5 salaried judges based in Reading, with a further 2 additional judges in the east (one in Cambridge and one in Bury St Edmunds). It is hoped that the current recruitment exercise will deliver further judicial resource into Watford. Judge Foxwell explained to members that some cases may need to be moved at short notice from Watford to other hearing venues at short notice, and that they will undertake a number of hearings by video.

3.3 REJ Freer – London Central region

Judge Freer shared that 8 new salaried employment judges are joining London Central along with 3 fee paid judges, which brings the overall figures to 23 salaried judges (17.7 FTE) and 43 fee paid judges.

As was explained by the President earlier, the waiting times for hearings to be listed varied depending on the length. Hearings between 1-5 days' length could be listed in July, hearings 5-9 days' length were listed in November and cases listed for longer than 10 days were being listed in January next year.

Judge Freer explained that it was hoped that waiting times would decrease once the new salaried judges had begun.

Likewise, Judge Freer explained that he had been working to improve a number of internal processes in London Central, including changes to internal filing arrangements, and that he was working hard to increase the number of functional hearing rooms.

Judge Freer is confident these changes will improve the internal working practices and should subsequently improve the user experience in London Central.

3.4 Acting REJ Alison Russell – London East region

Judge Russell confirmed that London East had welcomed 5 new salaried judges and 5 new fee paid judges from the recent competitions. London East will therefore begin listing more aggressively in the hopes of reducing waiting times. They have also introduced a new system for duty work to reduce delays in responding to user correspondence, although Judge Russell reminded members to contact the Employment Tribunal only where strictly necessary, to reduce the demands on administrative staff.

4. Mark Lewis – HMCTS

Mark Lewis explained that HMCTS had been waiting for an update in relation to timescales and funding for reform, known internally as the “reform reset”. They have now been informed that, for the Employment Tribunals, this means a further year of funding and moving the end of the project to March 2024.

Mark explained that the increase in time will allow for better testing and better implementation of the reformed products. The team had been working with the judiciary on priorities, including timings on the further expansion of reform (known as “national rollout”) to other offices.

The current reformed product is a limited release, comprising open track claims brought by litigants in person in “open track” cases. This began in Leeds and Glasgow and has since expanded to the Midlands East and South West regions as of December 2022.

Mark explained that the next releases are likely to affect members of the National User Group as they relate to online submission of the ET3 response form and the ability to make applications digitally (known as “case progression”). These features are currently due by mid-April but are heavily reliant on the technical teams to confirm the dates. Once the dates are agreed and the features have been released Mark, will arrange a webinar for the NUG to demonstrate them.

Richard Fox asked a question in relation to liaison with professional users of the Employment Tribunals and ensuring HMCTS provides them with relevant information in good time if they are required to change their practice. Mark confirmed that, as the next reform releases are likely to impact on professional users to a greater degree, they will ensure they host more events to share these updates.

5. Richard Boyd – BEIS

Richard referred to the increase in the limits order which would take effect on 6 April 2023.

He also referred to a review of the whistleblowing framework that had been commissioned. This was not a call for evidence but rather an opportunity to consider how the whistleblowing framework operated. It would gather views and evidence to inform future policy decisions.

Richard also reminded members of the draft code of practice on dismissal and reengagement (colloquially known as “Fire and Rehire”), the consultation on which closes on 18 April 2023.

6. Robin Rimmer – MoJ

Robin provided an update in relation to the online register of judgments. The Ministry of Justice’s Open Justice Team will shortly launch a call for evidence on transparency and access to justice, with a purpose to gather stakeholder views.

The call for evidence will cover a wide range of matters which cover listings, access to documents and evidence, the single justice procedure, public legal education, and access to data.

The President encouraged members to respond to the call for evidence when it is circulated.

Robin was asked for an update in relation to the transfer of rule-making responsibility to the Tribunal Procedure Committee. He said that more would be known in the coming months.

7. Tony Lowe – ACAS

Tony Lowe was unable to attend and provided this update separately:

Acas is in the process of compiling and sorting data ahead of the publication of this year's annual report. The following figures are therefore shared with the group on the proviso that they are provisional and may be subject to change.

In the operational year April 2022 to March 2023, Acas received a total of 101,575 early conciliation notifications, an increase on the figure for 2021-22, which stood at just short of 91,000. Acas managed to resolve 18% of the total volume of notifications by way of Cot3 settlement. The total number of cases resolved i.e., the percentage of Early Conciliation notifications which resulted in a conciliated settlement between the parties or other positive outcome equated to 33%.

Over one third of early conciliation notifications fell into the short track category, closely followed by open track and around a quarter were standard track. There were a number of notifications where the track could not be identified.

In terms of tribunal applications (ET1s), Acas received a total of 29,566, a slight decrease on the previous year's figure of 31,198. Of these, 55% were resolved by way of Cot3 agreement and including the number of tribunal cases where there were other positive outcomes, the %age of total resolutions was 77%.

Acas are looking to increase the number of conciliators; interviews have taken place for those on a waiting list from our last recruitment exercise and we are also advertising externally.

The Acas Smarter Resolution programme, which encompassed several workstreams looking at the early conciliation notification form, our content and automated allocation is drawing to a close. We hope to be able to share more details of the programme outcomes in due course.

8. Any other business

The next meeting will be held in November 2023. A meeting invite will be sent out shortly.