



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

DATE OF MEETING: Tuesday 26th March 2024

<u>ATTENDEES</u>	
<u>Name</u>	<u>Organisation</u>
Kathleen Bolt	Strathclyde University
Katie Buchanan	Thomson Reuters
Olivia Brown	Brodies Solicitors
Rhidian Davies	NHS Scotland
Dawn Dickson	Anderson Strathern
Claire Fowler	Harper MacLeod
Kelly Anne Fraser	Citizen's Advice
Fiona Gorry	Just Employment Law
Catherine Greig	Greig Employment Law
David Hutchison	Dallas McMillan Solicitors
Aileen Irvine	Scotland police
Matt Jackson	Cloisters
Madeleine Joseph	Burness Paull
Callum MacNeill KC	Westwater Advocates?
Laura MacDonald	Shepperd & Wedderburn
Alan McCormick	Jackson Boyd Solicitors
Ennis McCreadie	DLA Piper
Steve McLaren	Kippen Campbell LP
Carrie McLean	TLT, Solicitors
Ross Milvenan	Just Employment Law
Amanda Puchalla	Union Line Scotland
Alan Philp	NatWest Mentor
Sarah Shiels	Balfour Mansons, Solicitors
Katie Sloan	Valla
Stuart Swan	LSA
Euan Watts	CMS CMNO
Katie Wedderburn	Gunner Cooke
Laura Whyte	Shepperd & Wedderburn
Eilidh Wood	Burges Salmon LLP
Laura Wood	Pinsent Masons

Also, in Attendance

Judge Susan Walker, President of Employment Tribunals (Scotland)
Judge Frances Eccles, Vice President Employment Tribunals (Scotland)
Stephen Toal, Head of Operations (Scotland)
Sandra Martin, Senior Operations Manager ET (Glasgow)
Mark Lewis, Employment Tribunals Service Manager
Richard Boyd, Senior Policy Advisor, BEIS
Shenel Mushtaq, Policy Advisor, MOJ.
Helen Nolan, HMCTS
Alan Hope, ACAS
Scott Mackell, ACAS

Welcome and Introductions

The President, Judge Walker, welcomed users to the meeting and introduced the above-named.

Judge Walker advised that, after seeking user group views on the format of future meetings, it has been decided that one meeting each year will be via Microsoft Teams and the other will be in person with an option to join on Teams.

Agenda Item 1 – President’s Update

Changes to the Judicial Team

Judge Walker advised users that Employment Judge Ian McPherson was retiring with effect from 31st March 2024. Three experienced fee-paid judges have been appointed as salaried judges. They are Employment Judge Lesley Murphy who was appointed from 1st March 2024, Employment Judge Jacqueline McCluskey will take up post on 1st April 2024 and Employment Judge Eleanor Mannion will start on 1st September 2024.

Judge Walker advised that there are no other recruitment exercises planned at present.

Taking Evidence from Abroad

A bespoke process was developed and set out in joint Presidential Guidance for Scotland and England & Wales after the decision of the Upper Tribunal *Agbakiaka*. This was for HMCTS to approach the Foreign Commonwealth & Development Office (FCDO) on a party’s behalf, FCDO would seek consent, without a fee, from the relevant country in which the witness was based. This approach was developed from the process in administrative tribunals.

Judge Walker advised users that the FCDO have changed their approach in relation to Party V Party tribunals like Employment Tribunals and have decided that party/party tribunals should be treated the same as the courts. This change means that the process in Scotland will be different to that in England & Wales.

ET (Scotland) will follow the Scottish Courts process. Judge Walker confirmed that the Lord President takes the view that no consent is required if evidence from abroad is being taken by video on a consensual basis. The President, Judge Walker, will be revoking the existing Presidential Guidance on this matter for Scotland.

Until the Presidential Guidance has been revoked, users dealing with this issue, should discuss with the judge. However, Judge Walker's expectation is that the judge will permit evidence without the need for consent (assuming there are no other issues).

Recording and Transcription

The Practice Direction and accompanying residential Guidance were issued on 20 November 2023. In Scotland, all video and telephone hearings have been recorded since 2020. In person hearings in Glasgow have also been recorded for a number of years. Judge Walker confirmed that all hearings in all offices are now being recorded and equipment is available to allow recording when the tribunals are sitting outside the usual hearing venues. However, Judge Walker also advised that recording is not guaranteed and that a hearing would not be delayed because recording equipment is not working.

There is a process to request a transcript at cost or, in exceptional circumstances, at public expense. That is in the nature of a reasonable adjustment rather than an assessment of means. However, there have been some issues when we have discovered that a particular part of a hearing has not recorded.

Fees

The President noted that the MOJ consultation on the reintroduction of fees closed on 25th March 2024. The proposal is the introduction of a flat fee of £55 to bring a claim to the Employment Tribunal (ET) and, to the Employment Appeal Tribunal (EAT) for each appeal. For multiple claims to the ET, the proposal is that the fee of £55 would be split between the

claimants. For the EAT, a fee of £55 would be charged for each decision, judgment, or order that is appealed. There would be no hearing fee as there was under the previous regime.

Some claims in relation to the National Insurance Fund will be exempt from fees - redundancy payments s170 and other monetary payments when the respondent is insolvent (where claim so far as it is made against the Secretary of State) s188 and some pensions contributions.

It is proposal includes a remission process as before – called ‘Help with Fees’. The intention is that fee charging and help with fees will be dealt with centrally rather than by local ET staff as they were before.

Judge Walker understands the intention is to retain the expenses provision in rule 76(4) where the Tribunal can make an order where a party pays a fee, and the claim is decided in whole or in part in favour of that party.

Devolution of the functions of the ET in Scotland into the First Tier Tribunal for Scotland

The current position remains that the Scottish government is waiting for a draft Order in Council from Westminster. At present there is no working date for the transfer of functions to take place.

Legal officers

Judge Walker said that Legal officers continue to provide significant assistance to judges. Users were notified in October about a pilot scheme where the LOs would intervene in some of the simple money claims to clarify what was in dispute and seek to ensure parties had the right information for any hearing. Judge Walker confirmed that the pilot is being extended to other types of claims where there is a money claim. So, if there is an unfair dismissal claim and a claim for holiday pay, a LO may try to resolve the holiday pay aspect. The number of cases involved are small, but the results have been promising.

Reform

The President confirmed that this has now been expanded to all case types where the claimant is a litigant in person and the respondent is represented and expects this will be extended to all case types shortly.

The President said that there is a significant burden on administrative staff as they get used to new processes and advised that users may find it takes a little longer than usual to get a reply to correspondence.

Rules changes

MoJ are working on planned rule changes to facilitate digital working.

Panel composition

The President confirmed that a practice direction from the Senior President of Tribunals is awaited.

Practical matters

At the user group meeting in November, the President advised that a plan to trial, extending the period for the first CMPH, in Glasgow reform cases, to 2 hours and conducting them on CVP. That was because these cases (at that time) involved a litigant in person with a discrimination or whistleblowing case and it was felt a longer period was needed to really progress the case. The President confirmed that the trial was successful and will be rolled out, in April, to Edinburgh cases next.

All case management preliminary hearings have moved to CVP, in part because the contract that HMCTS had with BT for telephone conference hearings was not renewed. However, CVP does have a telephone option if a party cannot join by video and this is set out in the hearing notice.

The President confirmed that the continued aim is to get these types of cases to a final hearing reasonably quickly and trying to avoid multiple case management hearings. The President said that judges are working really hard at the first hearing to ensure that the claims are properly specified and the issues identified, rather than ask a Litigant in Person to set out complex claims in writing, as that is rarely constructive. Cases are also being listed for a final hearing at that first case management hearing unless there is some very good reason not to. So, it is important users have details of witness availability.

Requests from judges

The President also passed on requests from judges for users to provide agendas, as these really help at that first case management hearing.

Judges also asked that users make productions double sided to reduce the size of paper bundles.

In conclusion

Judge Walker said that, despite the constant changes that are being implemented, the ET in Scotland is continuing to deal with cases effectively and in a reasonable time scale. However, she appreciates that there are exceptions. Judge Walker said that while she cannot interfere with judicial decisions, if users do experience difficulties with the system, they should let us know and we will investigate.

Agenda Item 2 – ET (Scotland) update

Sandra Martin, Senior Operations Manager

Performance

Sandra confirmed that strong service levels have been maintained since the last meeting. She noted that ET1 receipts have been stable over the last 6 months with a very slight increase over the past couple of months however, that has not caused concerns in the administrative ability to handle the caseload. As a result, there has been a significant decrease in the volume of case-related correspondence received across all offices.

There has been a steady increase of in-person hearings, getting back to pre-covid levels. There has also been an increase in the number of CVP hearings taking place, but this has been as a result of the decommissioning of BT Meet Me, with case management hearings now taking place via CVP.

There has not been any significant change to the numbers of withdrawals, settlements and postponement requests received. Reasons for postponement requests are tracked along with key information such as whether date listing letters had been issued in those cases.

There has been a decrease in the number of telephone calls received via the customer contact centre and as a result the average waiting time continues to improve.

Successful judicial mediations continue to save significant numbers of hearing days.

A significant success over the last few months has been the administration of settlements/withdrawals in a large number of local authority equal pay cases. The team managed this process much quicker than anticipated.

Administrative Update

Staffing levels are currently stable.

Workloads remain steady and administrative targets such as the 10 day correspondence response target are met in most cases.

Staff are continuing to build on both confidence and experience around the reformed processes.

To date, approximately 1000 claims have progressed via the reformed service.

The uptake on the recently launched webchat facility remains low with an average of ten chats per month.

Looking Forward

We continue to prepare and plan for the roll out of further reformed processes. This links into on to ongoing staff training/development to ensure all have the necessary skills and confidence levels to deal with the reformed processes.

Agenda Item 4 – HMCTS Reform Update

Mark Lewis

Mark confirmed that the CitizenUI portal, originally only available to litigants in person submitting open track claims, is now open to all types of claims.

The MyHMCTS portal for representatives of respondents is now open to all professional users as well as to solicitors. MyHMCTS allows users to manage cases online, to submit ET3 response forms and to make digital applications. Users can now also submit hearing bundles.

Mark encouraged users to use MyHMCTS and to feedback so that the reform team can improve it. There have been recent webinars with the Employment Lawyers' Association and further events are planned for Scotland and the Southwest. The ELA has shared the webinars with their members. HMCTS has also produced interactive videos demonstrating the use of MyHMCTS which have been uploaded onto YouTube and can be found in the links below:

How to Register and find your ET case on MyHMCTS:

<https://www.youtube.com/watch?v=GP1RL4VYS8A>

How to submit an ET3 on MyHMCTS:

<https://www.youtube.com/watch?v=dkhfo6Sb4yg>

How to submit an application using MyHMCTS:

<https://www.youtube.com/watch?v=g7ntUsToEb8>

Next Steps

The ET1 journey for professional users is anticipated to be available by early May. Once that has been opened up it will be the only route to submit an ET1. The Citizen User Interface (CitizenUI) for unrepresented respondents is currently being built and once released will mean that all users of the Employment Tribunal will be able to use the online portals. We do not yet have a release date for this product, but we will keep users informed. The next big product to be built and released is multiples. Mark is hopeful that will be released by the summer.

Agenda item 5

Update from Department for Business and Trade

Richard Boyd, Senior Policy Advisor

Richard advised that The Employment Rights (Increase of Limits) Order 2024 comes into force on 6th April 2024. The order can be found at <https://www.legislation.gov.uk/uksi/2024/213/contents/made>

Richard confirmed that statutory instruments have been laid to amend The Employment Tribunal (Constitution and Rules of Procedure). The changes include flexibility to response dates where a claim form has been sent to the wrong address and changes to facilitate digital procedures. Details can be found at <https://www.legislation.gov.uk/uksi/2024/366/contents/made>

The President, Judge Walker, added that there is a rule change that allows for a Practice Direction to be issued in line with digital ways of working. It is anticipated that the rule change will mean that responses will have to be submitted in line with a Practice direction in the same way that claims are.

In response to a user question in relation to the Employment Tribunal Penalty Scheme, Richard said that while the scheme continues to run, the naming scheme is still under consideration.

Agenda item 6
Ministry of Justice, Policy update
Shenel Mushtaq, Policy Advisor

On Devolution, Shenel confirmed that progress remains slow. Whilst Ministry of Justice is coordinating the work, they are dependent on input from other government departments to progress it and resourcing has been difficult with competing priorities across government.

Shenel confirmed that, under the Judicial Review and Courts Act, powers over Employment Tribunal panel composition transferred to the Senior President of Tribunals (SPT) on 27th January 2024. However, the SPTs proposals on panel composition have not yet been released.

Another aspect of the Judicial Review and Courts Act will see the transfer of Employment Tribunal and Employment Appeal Tribunal rule making powers from the Department of Business and Trade (ET Rules) and the Ministry of Justice (EAT Rules) to the Tribunal Procedure Committee (TPC). Shenel provided updates on three key areas:

- i) The transfer required two new appointments to the TPC and these were finalised in November 2023.
- ii) It was agreed to make the 3 ET rule changes referred to by Judge Walker and Richard Boyd prior to the transfer. These rule changes are expected to come into force on 6th April 2024.
- iii) It is anticipated that the transfer of ET Rules making powers will then be on or before 30th April 2024. However, the transfer for EAT rules has been delayed to a date to be determined.

Agenda item 7
ACAS update – Scott Mackell, Conciliation Manager.
Case receipts

Scott noted a decrease in early conciliation receipts in the year to date - (April 23 -February 2024) compared with the same period in 2022/2023. In contrast, there has been an increase in the number of ET receipts. There is no clear indication of why that is happening.

Case outcomes

Both Early conciliation and ET conciliation resolution rates have increased by 2% in the current operational year.

Other Developments

User Interface – following a number of developments to the early conciliation notification form last year, work has been continuing on the save and return process to ensure that it is helpful to users who may have visual, hearing or thinking and understanding issues with the form.

Employment Tribunal- ACAS Interface – Glasgow is one of four offices around the UK piloting the Application Programming Interface (API). There is current capacity to receive ET1s and ET3s electronically, this will be developed to allow correspondence and judgments to be received the same way. At present, ET1, ET3s and other correspondence are sent by the tribunal to ACAS as PDF documents which then need to be input manually. API will see documents on the ACAS record within 10 minutes. Scott said that the first go live of the testing phase is expected to begin in the summer. This phase will see electronically received documents compared to manually received documents until they are confident to move on to full automation. If testing is successful, the second go live date of the fully automated API will be in Autumn/Winter this year.

Scott anticipates that the automated process will save considerable time and release staff for conciliation much quicker.

Staffing – Scott confirmed that a third conciliation manager has been appointed in Glasgow. Nationally, he expects around twenty conciliators to be appointed in April 2024. He also said that recruitment has become almost a rolling process in order to pre-empt staff losses and maintain staff numbers.

The next meeting of the Scottish National User Group will be Via Microsoft Teams on Wednesday 2nd October 2024 at 11am: