



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

DATE OF MEETING: Wednesday 2nd October 2024

<u>ATTENDEES</u>	
<u>Name</u>	<u>Organisation</u>
Ana Brocklebank	Anderson Strathern
Katie Buchanan	Thomson Reuters
Elia Davidson	Brodies Solicitors
Ledia Doci	Jackson Boyd LLP
Lorrelle Doyle	Dentons
Raymond Farrell	Glasgow City Council
Kelly Anne Fraser	Citizen's Advice
Andrew Gibson	Morton Fraser MacRoberts
Fiona Gorry	Just Employment Law
Catherine Greig	Greig Employment Law
Catherine Howie	CMS LLP
David Hutchison	Dallas McMillan Solicitors
Matt Jackson	Cloisters
Taranveer Kaur	Legal Services Agency
Joel Kennedy	Burness Paull
William Lane	Worknet
Calum MacNeil, KC	Westwater Advocates
Anne McFarlane	Glasgow City Council
Holly McLean	MCM Solicitors
Charlotte McLeod	Equality and Human Rights Commission
Kim Miller	Harper MacLeod
Lindsey Miller	Scottish Engineering
Graham Mitchell	Clyde & Co
Amanda Puchalla	Union Line Scotland
Alan Philp	NatWest Mentor
Christopher Reeve	NHS
Becky Robertson	Glasgow City Council
Kirsty Robinson	Pinsent Masons
Louise Singh	Weightmans
Katie Sloan	Valla
Stuart Swan	Legal Services Agency
Michael Sweeney	Legal Services Agency
Roxana Tudosa	DLA Piper
Katie Wedderburn	Gunner Cooke
Laura Whyte	Shepherd & Wedderburn
Eilidh Wood	Burges Salmon LLP

Also, in Attendance

Judge Susan Walker KC, President of Employment Tribunals (Scotland)
Judge Frances Eccles, Vice President Employment Tribunals (Scotland)
Claire Storey, Senior Operations Manager ET (Glasgow)
Mark Lewis, Employment Tribunals Service Manager
Richard Boyd, Senior Policy Advisor, Department for Business and Trade
Nick Peel, Policy Advisor, MOJ.
Helen Nolan, HMCTS
Alan Hope, ACAS
Rachel McDonald, ACAS

Welcome and Introductions

The President, Judge Walker KC, welcomed users to the meeting via Microsoft Teams and introduced speakers from HMCTS, DBT, MOJ and ACAS.

Item 1 – President’s Update

People and places

The President confirmed that Jacqueline McCluskey and Eleanor Mannion have started as salaried employment judges and are based in Glasgow. Judge Walker welcomed Claire Storey, the new Senior Operations Manager with responsibility for Employment Tribunals in Scotland. Claire replaced Sandra Martin who has been promoted to a new role as Deputy Head of Tribunals for HMCTS in Scotland, this is a new post reporting to Stephen Toal, Head of Operations (Scotland).

Budget

Judge Walker said that 2024/2025 has been a challenging year in terms of budget with next year predicted to be even more so. The main judicial impact is a significant reduction in the number of fee paid judicial sitting days. Judge Walker’s understanding is that, despite their own significant challenges in respect of staffing, HMCTS are still managing to deal with ET correspondence in Scotland within a reasonable time. However, she invited users to raise any concerns they may have about the service being provided. Judge Walker explained that working practices from a judicial perspective are constantly reviewed to ensure that judicial resources are used effectively and proportionately and also, that they do not, inadvertently, work in a way that puts an unnecessary additional burden on staff.

Judge Walker noted that there was a period earlier in the year when some hearings had to be cancelled because budget limits meant there was no judge

available to hear them. These were mainly the first case management hearings in open track cases. To avoid this, the number of cases being listed was reduced, but that had the effect of pushing out the date that hearings were taking place. The Vice-President, Judge Eccles, has been working closely with the listing team and through their joint efforts, the listing of these hearings is back to about 8-10 weeks after the claim comes in.

With increased pressure on judicial resource, judges are encouraged to think carefully about the interventions they make by way of case management and whether these are proportionate. Judge Walker thinks that approach is having an impact on the time cases are taking to be determined with most cases getting to a final hearing within a reasonable period. Judges are encouraged to give judgments orally where time permits and if a written judgment is required, to ensure that the reasons are no longer than is necessary. Users will appreciate that time spent writing decisions is time that a judge cannot hear other cases, so they are trying to ensure efficiency, provided that does not affect the provision of justice.

Judge Walker reminded users that there is an ongoing pilot scheme which involves legal officers carrying out interventions in fast-track money claims (wages, redundancy, holiday pay etc) the President invited the Vice-President, Judge Eccles, to give an update on the pilot and about the approach to fast track cases in future.

Approach to Fast track claims.

Judge Eccles reported that the monetary claims pilot has gone well and that between 75 & 80% of claims in scope have been resolved without need for a hearing. Where they have gone to a hearing it has often been shorter as a result of legal officer interventions e.g. after parties have clarified issues in dispute in advance of the hearing. Judge Eccles explained that, at the start of the pilot, the number of claims in scope was limited because around three quarters of defended claims can involve complex issues and those claims were not considered suitable for legal officer intervention. So, to widen the scope, monetary claims that are part of unfair dismissal claims are now included in the pilot. That has been successful to the extent that monetary claims have been resolved and withdrawn or clarified in advance of the hearing resulting in shorter hearings.

Due to the success of the pilot and given the experience legal officers now have in interventions, Judge Eccles announced that it is planned to vary the

fast track procedure. Fast track claims will no longer be listed for a final hearing on receipt of the ET1. Instead, they will be treated the same as standard track claims to the extent that, if they are defended, they will be listed for a hearing on receipt of the ET3. This also gives legal officers more time to obtain information from the claimant in an undefended claim in order to prepare a Rule 21 judgement. Judge Eccles anticipates that hearings in undefended fast track claims will be the exception.

Reform

Judge Walker advised users that she expects the Practice Direction on the presentation of claims and responses to be issued shortly. The draft of the new joint Practice Direction has been approved by the Senior President of Tribunals and is currently with the Lord Chancellor. The main difference in the new practice direction is that, usually, it will no longer be possible to submit an ET3 by email. The only way to present an ET1 or ET3 digitally will be using the HMCTS portals. Judge Walker confirmed that there will still be the possibility of submitting a paper copy by post or by hand.

Judge Walker confirmed user concerns about the system going down for a period of time have been taken into account. A user had pointed out that for some claims there is no possibility of an extension of time and not everyone is able to deliver the claim by hand. So, included in the draft Practice Direction is a provision that, in exceptional circumstances (where the system is not functioning) users will be able to present an ET1 or an ET3 by email to a designated email address. However, there are conditions, it must be sent to that specific email address (not any of the general email addresses) and users would have to include a screenshot of the error message.

Judge Walker also confirmed that it is intended to give a short period of notice before a new Practice Direction is implemented. However, if an ET3 is presented by email after the Practice Direction comes into effect, then, except in the exceptional circumstances, it will be rejected.

The President noted that progress with removing email in other areas has been slow. However, the functionality to make applications using the portal for represented parties should be operational shortly. The end goal is to remove email as a method of correspondence with the Employment Tribunals.

Panel composition

Users who have seen the Senior President's response to the consultation on panel composition and his draft practice direction, will have seen that he was not persuaded by many of the arguments included in the responses. His view is that non-legal members should only be listed for Employment Tribunal hearings where that is necessary and that will usually be where their workplace experience will add significant value. The draft presidential guidance reflects that position. Users, judges and members were invited to comment on the draft guidance and those comments will be considered before the joint presidential guidance is issued.

Judge Walker summarised that the default position will be of Employment Judge sitting alone (EJSA) for preliminary hearings and decisions made without a hearing will be made by a judge alone. The most important change is that, for final hearings, including hearings to determine claims of discrimination or whistleblowing, a judge will have an open discretion to decide, taking account of the views of the parties, whether the hearing should be EJSA or full panel. Unlike now, there will be no types of cases that must be heard by a full panel. This is a really significant change for employment tribunals. The views of the parties will be an important consideration.

Judge Walker confirmed that the plan is that parties will be given an opportunity to provide their views on the ET1 and ET3 (with a specific question about that) and that the decision will usually be made at initial consideration. However, it is expected that this will be a reasoned position and the judge will take account of parties' views. It is not just a question of stating a preference. For open track cases, it will usually be decided at the first case management hearing once the judge has discussed it with the parties. There will be an extra question on the agenda.

These changes take effect from 29 October 2024. Cases are currently being listed on the existing provisions of the ETA 1996. Those listings will not be revisited and so the impact of the changes will probably not be felt till the start of next year.

Also on 29th October 2024, the changes to the rules of procedure that were introduced by statutory instrument in January 2024 will come into effect. The main changes are to replace "employment judge" with "the tribunal" wherever that appears, the rationale being that the composition of "the tribunal" for any purpose will be determined in accordance with the Senior President of Tribunal's Practice Direction and not by the Rules.

Rules

Still on the Rules of Procedure, Judge Walker said that responsibility for the ET rules has now passed to the Tribunal Procedure Committee (the TPC). This is an advisory non-departmental public body sponsored by the Ministry of Justice. It operates under the Tribunals Courts and Enforcement Act 2007 (s22) and already has responsibility for other reserved first tier tribunals and the Upper Tribunal, not yet the EAT although that is expected to happen.

The aims of the TPC are to make rules with a view to securing that justice is done, tribunals are accessible and fair, proceedings are handled quickly and efficiently, and rules are simple and clearly expressed. (new schedule A1 of the ETA 1996 sets this out and makes provision for what the rules should include)

The TPC has already started work on the ET rules. The first consultation was issued in April 2024 and closed at the end of June. This outlined the future work on the ET rules:

1. A proposal to remake the current ET rules of procedure. Judge Walker understands this is normal practice of the TPC when they take over responsibility for a jurisdiction. With the exception of the matters flagged in that consultation relating to legal officers and prescribed forms), this is largely an exercise to review the rules, remove any that are unnecessary or not in accordance with modern practice and potentially reword. The redrafted rules are still under consideration but one consequence, is it is likely that they will be renumbered meaning that some familiar rules will change number (such as rule 50 or rule 92) and that ET's standard documents, including practice directions and presidential guidance will need to be remade. Thereafter the proposal is to make more substantial changes in two tranches next year. Much of this comes from suggestions from the Presidents following consultation with judges.

Tranche 1

- This proposal is to rewrite rules 10, 12 and 13 (rejection of claims). An important proposal is that where a claim is rejected for technical reasons, corrected on reconsideration, it will be treated as accepted at the original date of presentation and not, as now, when the defect is corrected. This should save on the time bar hearings.
- Another proposal is to have, as mandatory information, the grounds of the claim and the grounds of the response.

- Signing of judgments and orders would be removed.

Tranche 2 has some more significant proposals;

- Redrafting of rule 21
- New rules on amendments
- Redrafting of the rules on strike out, unless orders and deposit orders.

Written reasons

A second TPC consultation is ongoing. This is not just about ET but proposes important changes in respect of written reasons for all tribunals. There are some common proposals and some jurisdiction specific. 2 key points for the ET:

- The proposal that in all tribunals, if an oral judgment is given, only the losing party could request written reasons.
- The second main thing, and specific to ET, is a proposed rule change that would allow judges to give short form reasons orally that are less formal than currently required. Currently rule 62(5) sets out what must be in reasons, and this is the same whether these are given in writing or orally. This suggestion came from both Presidents. Judge Walker explained that there are two motivations behind this proposal. One is efficient use of judicial resources. The presidents want to encourage judges to give judgments orally (in appropriate cases and where time permits) and think that they may be more likely to do so if they can give shorter, more informal reasons. These must be sufficient for the parties to know why they have won or lost but might not, for example, include a detailed description of the applicable law or lengthy findings in fact. There is a second motivation. As well as saving time, this gives an opportunity for the judge to explain in more colloquial terms to a litigant in person (LIP) the reason why they have won (or more importantly lost). That is important for access to justice, as Judge Walker suspects many LIPs do not really understand ET judgments, despite best efforts to use plain language and write as clearly and concisely as possible. There would still be a procedure to request full reasons afterwards and these would then be more detailed.

Both Presidents are very interested in the thoughts of users on this proposal so, Judge Walker encourage users to respond to the consultation.

Recording and transcription

Judge Walker said this is now well established in Scotland. However, one issue that may arise is that we use CVP – the video hearing platform, for recording. That video hearing contract is due to end. It is possible this may cause some issues when a different contractor takes over.

Fees

Judge Walker had no update on this. The policy paper prepared by the previous government was at quite an advanced stage, but we have not been advised what the view of the incoming labour government is on this matter.

ET Register

The Lord Chancellor maintains a register containing a copy of all judgments and written reasons issued by an Employment Tribunal. There are exceptions for some types of decision.

The obligation on the Lord Chancellor is simply to maintain a register, not necessarily online, and although it is implicit in the requirement to maintain the register that it should be open to the public, this obligation does not require the register to be indexed by Google or capable of data harvesting by machine learning tools. Both of these aspects of the online register have caused increasing concern over the last few years.

For the last couple of years, Judge Walker, and Judge Barry Clarke, President of Employment Tribunals (England and Wales) have been involved in discussions with officials about the future of the ET register. One possibility is to move the register to [The National Archives](#), where it can remain accessible under the Find Case Law (FCL) banner.

Unlike the existing online archive, the FCL service is not indexed by Google, and it is subject to more stringent conditions around data harvesting. Separate licensing arrangements allow the full archive to be analysed by academics and researchers, so some data harvesting would be permitted subject to appropriate constraints.

A smaller subset of judgments – the more interesting and important – are published, and thereby more readily available to the wider public.

This is what the presidents would like to achieve for ET, but no final decisions have been made yet and would be subject to the national archive

being able to accommodate the judgments. Judge Walker will keep users updated if there are any proposed changes.

Plain English

Concern has been raised by the Law Society employment law sub-committee about the correspondence issued by the tribunal and whether this is easily understood, especially by LIPs. They suggested that it would be useful for some research be carried out about this. Judge Walker has passed the suggestion about research to HMCTS. Judge Walker confirmed that steps are being taken to address a specific issue that was raised about making it clear when a letter is sent to a party for information only.

Judge Walker understands the difficulty of LIPs dealing with and understanding our correspondence. This is something continuously wrestled with, and she quite accepts that we do not always get this right. There is an inevitable tension between the tribunal acting in a legal process and complying with the requirements of the rules while also using simple language in correspondence.

Standard letters are regularly reviewed, and a full review will be undertaken soon, not least as a result of the work of the TPC and the likely introduction of a new set of rules. Clare Storey has suggested engaging with Human Voices for Justice who may be able to assist.

Judge Walker invited users to bring to our attention any specific correspondence that cause confusion or are otherwise unclear. These comments will be taken into account in the next review. It may also inform staff training. Please send anything to glasgowpresident@justice.gov.uk

However, Judge Walker stressed the need to manage expectations here. This has been a real issue during the reform process as the user insight team who review the information on the portals would suggest simplified wording that often had to be refused as it was misleading or incomplete. If there is a conflict, legal accuracy must prevail over simple language.

However, she is sure correspondence can be improved and thanks the committee for bringing this to her attention.

Conclusion

Despite the challenges, Judge Walker believes that the ET in Scotland is continuing to deal with cases effectively and in a reasonable time scale. She expressed gratitude to colleagues in HMCTS for supporting judiciary in this work. Legal officers continue to provide significant assistance to the judges, and we have been very fortunate with the calibre and experience of those appointed and that they have, with one exception, stayed in post since the original appointment. That has helped to consolidate the role and allowed us all to adjust to new ways of working. As ever, if users have concerns or suggestions about how to improve things, they should not hesitate to get in touch with the President, Judge Walker or Vice President, Judge Eccles (or with Clare Storey if the concern relates to the administration).

A Question from a user in advance of the meeting in relation to taking evidence abroad.

Q. Is it still expected that the current PD will be revoked (and replaced?), to align with the civil process in Scotland (where no consent is required)?

A. Judge Walker explained that this is just guidance and not a practice direction. It is still expected that the current joint Practice Guidance will be revoked and that the Employment Tribunals will align with the civil process north and south of the border. The ET in E&W are finalising their complex replacement guidance and Judge Walker hopes to revoke both at the same time. Judge Walker is awaiting consent from the LP's office to wording for her replacement PG.

At the moment, the ET in Scotland is essentially operating on that basis that no consent is required, and Judge Walker hopes this will be resolved reasonably soon.

Agenda Item 2 – ET (Scotland) update Claire Storey, Senior Operations Manager

Performance

Claire reported a slight increase in correspondence received in all offices over the last few months. She confirmed that all remote hearings are now via Cloud Video Platform (CVP) following the decommissioning of BT Meet Me in January 2024. Claire also reminded users that, due to an update in the technology supporting CVP, their organisations may need to take action to update firewall settings.

Claire noted that there has been no significant increase in the number of withdrawals and settlements received each month. There has been a 28% increase in ET1s received compared to the same period in 2023. This is predominantly due to multiple claims, while single claim receipts have remained steady. Successful judicial mediations have saved a significant number of hearing dates. Claire also reported that the live load of all types of claims including local authority equal pay claims has decreased.

Administrative Update.

Claire said that work is ongoing to increase stability within the administration team, this included running a fixed term appointment recruitment campaign in which a number of ET agency staff were successful. Workloads remain steady across all teams meaning that administrative targets including the 10-day correspondence target continue to be met in most cases.

Claire reported that staff are now confident in using the reformed processes. The number of telephone calls received remains steady, with an average waiting time of 22 seconds. Claire did note that the uptake on the webchat facility continues to remain low compared to usage in other jurisdictions.

Users can access ET webchat by clicking on the following link:
<https://www.claim-employment-tribunals.service.gov.uk/>

Looking Forward

Claire confirmed that staff training is ongoing and that the focus on reform continues as preparation and planning continues for the roll out of further reformed processes.

Agenda Item 4 – HMCTS Reform Update, Mark Lewis, Employment Tribunals Service Manager

Mark reported that there has been considerable engagement with the Employment Lawyers Association, and they have hosted a number of webinars, both GB wide and Scotland specific. He confirmed that there is likely to be one further GB wide webinar in November. Mark expects to issue a written Q & A response from those sessions in the coming weeks.

The national roll out of Reform products is complete and Reform is now live in all offices. There is some concern that applications received via the reform

process remains low and that may be because e mail is currently an acceptable way of communication.

The project formally closed on Friday 27th September 2024 and further enhancements, or new products will be managed by the jurisdictional support team and the in-house Digital and Technology service team.

Mark confirmed that the claimant representative journey is now live allowing representatives to submit an ET1 via MyHMCTS. It is also expected that claimants' representatives will be able to make digital applications from week commencing 7th October 2024.

The litigant in person respondent journey will be on the Citizen User Interface. This is expected to go live in early November, with the ability to make digital applications to follow a week or two later.

Next steps include Employer Contract claims. Internally, these are currently managed as 2 separate cases, but Mark is currently working with operational staff and judiciary to make this a more streamlined process. So, it is likely to be one case, managed by case flags. This should make it easier for users to interact digitally. Mark expects this to be released in December 2024.

Work on how to move multiples onto the reform system is continuing and, while it is hoped this will be early in 2025, there is no set date at present.

Mark reminded users that a number of You Tube videos are available on the HMCTS You Tube channels.

In response to a question from Lyndsay Miller, Mark confirmed that users experiencing technical difficulties should contact:

myhmctssupport@justice.gov.uk or,
ETreform@justice.gov.uk for other questions about reform.

In answer to a second question relating to the system crashing, Mark said that recently, users have been notified of planned downtime via user group distribution lists. However, Mark advised that if users experience problems with the MyHMCTS system, it is always useful if they provide screenshots or error messages so that the problem can be investigated.

Agenda item 5

Update from Department for Business and Trade

Richard Boyd, Senior Policy Advisor

Richard advised users that the directorate which deals with employment law, regulation and compliance has been renamed from labour markets to employment rights.

Richard advised that the government's 'Make Work Pay' agenda is one of the priorities of the government and includes an extensive array of changes to employment law, many of which will be considered throughout this parliamentary term. Some of the changes will be included in the forthcoming Employment Rights Bill, the full scope of that is still to be determined. Richard confirmed that once more is known about the bill, he will share that with users. The proposals within the 'Make Work Pay' programme have been created in consultation with different stakeholder groups from business and the trade union side, and that will continue throughout the process.

Richard went on to say that they are aware that there are some significant and legitimate concerns about the potential impact on the dispute resolution system so, they continue to work with ACAS, Employment Tribunals, Ministry of Justice and members of the judiciary to try to understand the potential impacts and how to best equip the dispute resolution system as a whole to manage potential changes and to explore ways to prevent claims coming in.

Richard invited users to contact him if they would like to provide feedback or if they have any queries.

Richard.boyd@businessandtrade.gov.uk

Agenda item 6

Ministry of Justice, Policy update

Nick Peel, Policy Advisor

Nick explained that the Tribunals Procedure Committee do not have the power to amend, revoke or repeal the current rules so they are remaking them in their entirety and making the amendment as mentioned by Judge Walker. This will mean that two Statutory Instruments (SI) need to be laid; one to revoke the old rules and one to bring in the new rules. Nick expects both SIs will be laid in early December and should be in force before the end of the year.

Agenda item 7

ACAS update – Alan Hope, Conciliation Manager.

Case receipts

Alan noted that there had been an 11% increase in Early Conciliation case receipts in the first 6 months of the operational year compared to the same period last year. There has been a similar rise, of approximately 12%, in ET1 cases. There is no indication of any slowdown.

Case outcomes

Early conciliation resolution rates stand at 38% for the first half of the year compared to 39% to October 2023, while the Employment Tribunal case resolution rate is approximately 79% compared to 77% last year.

Alan expressed concern about the impact of the rises in case numbers and waiting times for conciliators getting to cases. However, he noted that it is reassuring that resolution rates are broadly in line with the same period of the last operational year.

Other Developments

Allocations Queue

To illustrate the impact of the increased receipts Alan compared the allocations queue in October 2023 against the start of October 2024. In 2023, there were approximately 1000 cases to be allocated to a conciliator with a maximum waiting time of one week. At the start of October 2024 there were 3000 cases in the queue with a maximum waiting time of approximately 3 weeks.

In response, early conciliation support officers, conciliators and managers have been working overtime to clear the queue. The system of automated allocation has been adjusted and Alan indicated that the waiting time is starting to come down.

Staffing

Alan confirmed that additional conciliators have been brought in throughout spring and summer, and 31 new conciliators are due to start on 4th November 2024. It is also intended that, subject to funding, additional staff will be taken from a waiting list and there will be scheduled rolling recruitment in 2025 to address anticipated turnover and potential impacts from the Employment Bill.

ACAS are also trialling different approaches to dealing with certain categories of respondents. E.g. a trial is about to begin with public sector employers to establish whether efficiencies can be achieved within specialist teams dealing with public sector employers.

**The next meeting of the Scottish National User Group will be on
10th April 2025**

**The meeting will be held in the Glasgow Tribunal Centre with an
option to attend via Teams.**