EMPLOYMENT TRIBUNALS
England & Wales

27th MEETING OF NATIONAL USER GROUP

Minutes of the National User Group meeting held at Victory House on 7th October 2015

In attendance:

Judge Brian Doyle	President, Employment Tribunals (E&W)
Judge Shona Simon	President, Employment Tribunals (Scot)
Gillian Brooks	HMCTS
Bill Dowse	Ministry of Justice
Hannah Reed	TUC
Michael Reed	Free Representation Unit
Emma Wilkinson	Citizens Advice
Debra Macleod	BIS
Robert Cater	Peninsula Business Services
Omar Khalil	Engineering Employer's Federation (EEF)
Noel Lambert	Acas
Lorraine Turnell	Public Concern at Work
Andrew Parsons	Public Concern at Work
Naomi Lumsdaine	Equality & Human Rights Commission
Bronwyn McKenna	Employment Lawyers Association
Emily Gordon-Walker	ELBA
Simon Carr	Senior President of Tribunals Office
Jackie Hunsley-Wilson	HMCTS (minutes)

Apologies:

Cathy James	Public Concern at Work
Sabrina Sullivan	Discrimination Law Association
John Sprack	Law Works
Fionnuala Horrocks-Burns	CBI
Rosemary Lloyd	Equality & Human Rights Commission
Sarah Slaughter	Bar Pro Bono Unit

Item 1 Welcome & Introductions

The President welcomed members to the 27th meeting of the Employment Tribunal National User Group (England & Wales). Due to some new attendees, introductions were made.

Item 2 Minutes of the meeting of 3rd June 2015

The minutes of the previous meeting were approved and accepted.

Item 3 Action Points Arising

No action points had been raised at the previous meeting.

Item 4 ET Fees Review

Bill Dowse (BD) reported that since the end of the General Election and the appointment of a new Justice Secretary at the beginning of June a project team had been assigned to undertake an internal review of Employment Tribunal fees and remission. Its terms of reference had been published. **BD** confirmed that the internal review team had received a number of submissions and reports containing useful information. At present the internal review report was with the relevant Minister. It was not possible to share the contents of the report at present or to predict how the Minister would proceed. Although there was no fixed timetable, it was hoped that the Minister's position would be known by the end of the year.

In response to questions, **BD** replied that the internal review had not been hampered by the lack of an invitation for evidence from the public. Submissions had been made to the review in any case and much, if not all, of the evidence was already in the public domain. When the results of the review are published this would set out the background to the conduct of the review, its findings, any changes to be implemented and what wider consultation would then take place.

HR suggested that the review should publish not just its conclusions, but also the data on which they were based, in order for there to be an open and transparent process. **HR** also asked if MoJ would consider abolishing or reducing the fees? **HR** highlighted the point that if someone had just been made redundant or had savings, that affected whether they would qualify for remission of fees. **BD** replied that he doubted whether fees would be abolished, but that changes to remission might be possible, but without departing from a common scheme for remission of fees generally.

Item 5 President's report

The President confirmed that he and the Regional Employment Judges had made a submission to the internal review of fees and also to the House of Commons Select Committee on Justice inquiry into court and tribunal fees. This latter evidence would be published. The submission argued for the recalibration of fees and a raising of the threshold for remission.

The President updated National User Group members on the HMCTS Reform programme. Treasury investment in the programme would be directed to reform of the courts' and tribunals' estate, IT and procedure. During the

summer, consultation on rationalisation of the estate had been published and remained open to consultation and submissions by 8th October 2015.

As a result of the estates consultation, it was likely that a small number of ET premises would be affected.

The Newcastle ET had moved from central Newcastle to North Shields. It was intended that this was a temporary relocation and that it would return to central Newcastle in 2-3 years as part of an estates solution for civil, family and tribunal work in the city.

The planned moved of the Bristol ET into the Bristol Civil Justice Centre was currently behind the original timetable. It was hoped that this would move ahead in early 2016.

Changes affecting the Nottingham ET and the Leicester ET had already taken place earlier this year.

Sheffield ET was likely to relocate to the Sheffield Combined Court Centre, while Hull ET would also relocate elsewhere in the city.

A new venue for Essex ET hearings would have to be considered as hearings in Colchester would be affected by proposals there.

Robert Cater asked as to the position of Caradog House in Cardiff, which he understood had been sold for student accommodation. The President replied that he could not comment directly on the future of Caradog House. However, while the future of Cardiff ET was not part of the 2015 consultation on estates, undoubtedly it would have to be examined during the course of 2016.

The President confirmed that the position of the Exeter ET at Keble House was presently secure. The President also confirmed that it was HMCTS policy to keep lease break-points under review, so that all courts' and tribunals' premises could be subject to changes in the future, even if not expressly addressed in the 2015 consultation.

The President addressed the emerging debate about the future structure of the Employment Tribunals, particularly in the light of contributions from the Employment Lawyers Association (*ELA Survey: The Future of Employment Tribunals*, April 2015) and The Law Society's Employment Law Committee (*Making Employment Tribunals Work for All: Is It Time for a Single Employment Jurisdiction?: A Discussion Document*, September 2015). These were welcome and timely contributions at a time when the HMCTS Reform Programme was looking at the future structure of courts and tribunals generally.

Bronwyn McKenna asked about the relationship between the Employment Tribunal and the Civil Court. The President referred to the Master of the Rolls's review of financial thresholds within the Civil Court and Lord Justice Briggs's review of the Civil Court structure, including its relationship with tribunals. The President expected that any proposals that emerged from these reviews would be subject to wider information and consultation. The President

would share with the National User Group such information that he could once it was to hand.

The President reported on the initiatives that the judiciary and the administration were taking to improve ET performance and timeliness in single cases. The aspiration was to improve the disposal of short track cases within 10 weeks of the ET1; standard track cases within 20 weeks; and open track cases within 30 weeks. In addition, all single claims should be capable of disposal within 26 weeks on average disposal time. Performance and timeliness would be kept foremost in the minds of the judiciary and the administration. There would come a time shortly when we would also expect parties and practitioners to cooperate with this.

The President updated the meeting on two pilots currently underway. The first pilot concerned ELA's assistance in providing initial support and advice to litigants in person (both claimants and respondents) at London Central ET. This was progressing well.

The second pilot was examining the use of electronic signatures on judgments and orders in an effort to speed up promulgation. It would result potentially in judgments and orders being issued more frequently in electronic form and by email rather than on paper and by post. This pilot was being run in the Midlands East and Midlands West ET regions. There had been some initial problems with this pilot and the timetable for it had been extended.

The President informed the National User Group that the three Presidents of the Employment Tribunals (the Industrial Tribunal & Fair Employment Tribunal in Northern Ireland) – Judge Doyle, Judge Simon and Judge McBride would be holding their annual meeting the following week to discuss matters of mutual concern and interest.

Item 6 HMCTS report

GB reported that since highlighting the availability of the on-line system at the national user groups and with the Law Society and Employment Lawyers Association, there had been an increase from 81% to 85% of claims made using the on-line system. She re-iterated that the system had no restriction on the number of claimants that could be added so it was suitable for single claimants as well as those who wished to be part of a multiple claim.

GB also reported plans for changes to fee remissions which will become a simpler and faster process. The fees remission process will be called "Help with Fees" and a new and improved form will be available online from .Gov.uk as well as in courts and tribunals. The new form was developed in partnership with, and tested extensively, with users.

HMCTS will have the ability to check directly with the Department for Work and Pensions (DWP) whether an applicant is on the qualifying benefits, and will check whether an applicant's income makes them eligible for help with their fees. [Subsequently the 'Help with Fees' system was introduced by HMCTS on 28 October]

MR expressed concern that people had been confused not only with the word "remissions", but also after paying the initial issue fee to be told in another letter that they needed to pay another hearing fee. **GB** replied that HMCTS was aware of the need to simplify correspondence and making it less legalistic, which the new remissions process was designed to achieve. **GB** said that she needed input from users to identify problems or misunderstandings with correspondence. **HR & Emma Wilkinson** agreed to offer help to HMCTS to understand the problems that individuals faced.

Item 7 BIS Report

Debra Macleod (**DM**) reported on three ongoing issues. (1) Advice was now with Ministers regarding the Small Business, Enterprise and Employment Act concerning unpaid ET awards. (2) Advice was also now with Ministers detailing options regarding the consultation on postponements in the Tribunal. (3) Concerning zero hours contracts, the ban on exclusivity clauses had just come in. Colleagues were in the process of preparing draft regulations and then it would be just a case of finding parliamentary time. After the meeting **DM** advised the President's Office that the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 had been laid in Parliament. See the following link:
http://www.legislation.gov.uk/id/ukdsi/2015/9780111139950.

The background to this is that in May this year exclusivity clauses in zero hours contracts (ZHC) were banned. This means that an employer cannot prevent someone they employ on a ZHC from working elsewhere even when they themselves do not guarantee work. An individual is free to look for work elsewhere so they can boost their income. The Regulations laid will create a route of redress for someone on a ZHC if their employer mistreats them with regard to the exclusivity ban. This means the individual can make a complaint to an Employment Tribunal and be awarded compensation if the Tribunal upholds their complaint.

BIS has also published detailed guidance on ZHCs. See:
https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers.

DM referred to maternity/pregnancy research: Government and the Equalities and Human Rights Commission jointly funded independent research into the perceived problem of pregnancy and maternity-related discrimination. This is the largest research of its kind to be undertaken in Great Britain. Interim findings were published in July 2015 and can be found at: http://www.equalityhumanrights.com/publication/pregnancy-and-maternity-related-discrimination-and-disadvantage-first-findings-surveys-employers-and-0 The final report, due to be published later this year, and the EHRC will make recommendations at that time which will inform the Government's response to the research findings.

Concerning payment/non-payment of awards **DM** confirmed the research which BIS commissioned. The IFF have concluded their research into non-payment of ET awards and are in the process of finalising the report.

DM said she would share the fact sheet published on the Immigration Bill, which announced the introduction of a Director of Labour Market Enforcement. The link is at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462004/Immigration_Bill_Factsheet_01_-_overarching.pdf

It was noted that the Immigration Bill is scheduled for Second Reading in the House of Commons on 13th October 2015.

DM subsequently confirmed that the Director of Labour Market Enforcement will be appointed by, and report to, both the BIS Secretary of State and the Home Secretary.

Item 8 Acas Report

NL indicated that Acas proposed that its statistics on Early Conciliation would be published on a half yearly basis rather than quarterly. The President said he would prefer quarterly publication, but if Acas were only to issue on a six monthly basis, then it would be preferable if Acas were to synchronise with the publication by the MoJ of the ET's quarterly statistics. **MR & HR** were in agreement for preferring quarterly statistics from Acas.

NL reported that between April and September 2015 of the 46,000 notifications made to Acas, just over 7,000 were settled on a COT 3 (16%), just over 30,000 didn't progress to tribunal claim (69%), and 7,000 (15%) progressed to tribunal claim. At time of recording about a quarter of those that became tribunal claims were also settled by Acas conciliators a figure which will rise gradually until all these cases reach a hearing date. The spike in group holiday pay claims has meant that more cases than usual have been filtering through to tribunal recently.

NL informed members that employer-led notification doubled over the first half of the year, which was a good indication that employers were keen to solve problems at an early stage (these claims were not related to holiday pay claims). The employers recognised that this process would be quicker, cheaper and would avoid being involved in tribunal hearings.

The feedback from the research survey of user views of EC was good - take up is high and satisfaction with the service is also high. In 75% of cases both parties participated, and 85% of parties (with slightly differing rates for individuals, employers and representatives) said they would use Acas again. The fieldwork for part 2 of the survey, of those who went on to present a tribunal claim is just underway. At the 18 month stage EC appears to be well on the way to becoming established as 'business as usual'.

HR said that trade unions were supportive of early conciliation. **HR** suggested the inclusion of a question in the survey asking if they "were to proceed to tribunal or not?" **NL** replied that an open question was preferred rather than one that was leading. He was conscious of the preference not to pull Acas into the ET fees review. **NL** said that in 75% of notifications early conciliation took place, the opportunity was valued by parties, and **NL** thought it was encouraging for the first year.

MR said some Acas conciliators were inconsistent according to reports from clients and staff. **NL** replied clients could sometimes get hold of the "wrong end of the stick" in thinking that Acas was like a trade union – there to be representational and to offer support. It was also dependent upon the employers agreeing to conciliation and "playing ball".

The President notified the meeting that from 1 October 2015 the Tribunal's judicial mediation scheme would be available in any case listed for a final hearing of three days or more, and not just discrimination cases. This brought England and Wales into line with Scotland. Acas was aware of this change.

Item 9 Any other business

Shona Simon reported on the proposals to devolve reserved tribunals, including Employment Tribunals (Scotland), to Scotland. The power to do this is set out in clause 33 of the Scotland Bill which was considered by the House of Commons on 6 July 2015. Clause 33 does not specifically mention that power over tribunal fees is to be devolved. Amendments to the clause were put forward by opposition MPs which, if accepted, would have resulted in it being clear that this power would be devolved. However, the amendments were not accepted. That having been said, the Bill is still making its way through Parliament so clause 33 could yet be amended. Furthermore, announcements by the Scottish Government in June and September showed they were proceeding on the basis that they would have powers in connection with tribunal fees. In both these announcements Scottish Ministers had indicated that ET fees would be abolished when the Scottish Government had power to take that step.

It was not yet clear how the transfer would be effected. The Tribunals (Scotland) Act 2013 does not, at the moment, have a separate employment pillar into which the employment tribunal could transfer. If it was to be decided that the ET would transfer into the First Tier tribunal in Scotland that could have a number of implications. Until a draft of the Order in Council effecting the transfer was produced it was difficult to speculate further. If the nature of the body dealing with employment disputes in Scotland was to become quite different to its counterpart south of the border that could also have a range of implications.

The President (England & Wales) said when speaking at a series of ELA-hosted meetings in England and Wales recently, a common question asked of him concerned the possibilities for "forum shopping" after devolution. For example, could an employee living and working in England for an employer with a legal presence in Scotland seek to issue ET proceedings in Scotland in order to avoid fees? The two Presidents confirmed that the answer to that question would depend upon the definition of a "Scottish case" in the Order in Council effecting the devolution of the ET in Scotland.

RC suggested restructuring preliminary hearings in favour of telephone hearings instead of in-person hearings. The President said that what type of hearing would be appropriate would depend on representation (or whether there was a litigant in person who might be disadvantaged by one form rather than the other), whether there was an agreed agenda and list of issues, and whether the parties were able to agree the case management orders and

timetable. Each case would be different. For case management hearings, Regional Employment Judges would look to see if telephone hearings were appropriate or not. The President said this was more likely to be achievable if the parties had prepared the groundwork prior to hearing.

Date of next meeting

The President suggested either December or January for the next meeting. Members agreed on a meeting in January 2016. The date will be advised in due course.