EMPLOYMENT TRIBUNALS
England & Wales

28th MEETING OF NATIONAL USER GROUP

Minutes of the National User Group meeting held at Victory House on 12th February 2016

In attendance:

Judge Brian Doyle President, Employment Tribunals (E&W)
Judge Shona Simon President, Employment Tribunals (Scot)
Helen Nolan HMCTS
Hannah Reed Trades Union Congress (TUC)
John Sprack Law Works
Michael Reed Free Representation Unit (FRU)
Emma Wilkinson Citizens Advice
Richard Boyd Department of Business, Innovation & Skills
Robert Cater Peninsula Business Services
Richard Fox Employment Lawyers Association (ELA)
Andrew Lingard Bar Pro Bono Unit
Omar Khalil Engineering Employer’s Federation (EEF)
Noel Lambert Acas
Flora Williams Law Centres Federation
Mark Stone Equality & Human Rights Commission
Andrew Parsons Public Concern at Work
Deshpal Panesar Employment Law Bar Association (ELBA)
Simon Carr Senior President of Tribunals Office
Jackie Hunsley-Wilson HMCTS (minutes)

Apologies:

Rosemary Lloyd Equality & Human Rights Commission
Sarah Slaughter Bar Pro Bono Unit
Gillian Brooks HMCTS
David Schumm HMCTS
Jo May HMCTS
Bronwyn McKenna Employment Lawyers Association
Debra Macleod BIS
Fionnuala Horrocks-Burns CBI
Emily Gordon Walker ELBA
Item 1 Welcome & Introductions

The President welcomed members to the 28th 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 7th October 2015

The minutes of the previous meeting were approved and accepted.

Item 3 Action Points Arising

No action points had been raised from the previous meeting.

Item 4 President’s report

Judicial Resources

The President confirmed that it was likely that there would be no new judicial recruitment for both fee-paid and salaried Employment Judges for the foreseeable future. The only exception for recruitment was for the vacant post of Regional Employment Judge in Wales (now filled by Employment Judge Barry Clarke). The President reported that with retirements the numbers of Regional Employment Judges had been reduced to 11 (from 12) and salaried Employment Judges had reduced to 128 (compared with 135 last year). This meant that the Employment Tribunal (E&W) had available to it 140 salaried judges (including the President). With fractional appointments, that equated to 122.0 full-time equivalent.

It was also possible that there will be considerably fewer fee-paid sitting days, except where absolutely necessary to cover part-heard cases, Welsh language cases and the Miller/O’Brien and judicial pensions litigation.

The President informed users that 26 salaried Employment Judges were being deployed to the County Court for up to 30 days per year. This was a pilot to test the flexible deployment of judges and which could become a model for the future. In addition, 6 salaried Employment Judges were also being cross-assigned to sit in the First-tier Tribunal (Immigration & Asylum Chamber) for up to 30 days per year.

From 1 April 2016 the Regional Employment Judge for the Yorkshire & Humber region is reducing to an 80% appointment and she is likely to retire by the end of 2017. This will mean that the Yorkshire & Humber region (Leeds, Sheffield and Hull) and the North East region (North Shields and Middlesbrough) will be managed in tandem by the two Regional Employment Judges during 2016 and 2017, with a view to the two regions merging under one Regional Employment Judge in 2018.

In discussion on this item the President confirmed that the retirements of salaried Employment Judges were not due to any morale problem. These were retirements that were occurring in the ordinary course of a judge’s career and pension planning. The President confirmed that the deployment and
assignment developments were part of the Senior President’s policy to promote the concept of “one judiciary” and a flexible judiciary. This reflects a recognition of a core of judicial skills that were transferrable to enable judges to be moved to where the judicial work was at any given time.

**Performance**

The last set of official statistics had been published by the Ministry of Justice (MoJ) on 10 December 2015. They cover Q3 of 2015 (Q2 of 2015/16). The next set will be published on 10 March 2016.

Although the statistics show an apparently large increase in Employment Tribunal receipts compared with Q3 of 2014 (Q2 of 2014/15), this is almost entirely due to a number of large multiple claims. There has been only a modest increase in single claims. The ET statistics have been artificially inflated in the last year or so, first, by holiday pay claim activity, and more recently by litigation challenging the reforms of public sector pension schemes.

The ET has also radically reduced its outstanding caseload, largely as a result of the disposal of the airline holiday pay claims (some 250,000 claims), but also as a result of weeding out large numbers of cases that had become dormant or had not progressed.

The emphasis in improving performance during 2015 has produced results. The MoJ reports that single claims were taking an average of 31 weeks to disposal in 2015 compared with 39 weeks in 2014. Multiple claims disposal time has also improved, from 215 weeks in 2014 to 143 weeks in 2015 (bearing in mind that large numbers of individual claims in multiple cases are stayed for settlement negotiations or appeals or references to Europe or parallel legal proceedings in other courts). 25% of single claims are disposed of in 15 weeks or less; 50% of single claims are disposed of in 22 weeks or less; and 75% single claims are disposed of in 33 weeks or less.

**Fees**

The MoJ is now reporting data on the payment of fees. Where a fee has been requested, 67% of cases involve the payment of a full fee; 23% of cases involve a full or partial remission of fees; 10% of cases do not progress further.

The President referred users to the work being done by the House of Commons Select Committee on Justice and the oral evidence given to it on fees by Lord Dyson, Sir Ernest Ryder and the Minister for Justice (Mr Vara MP), among others. The President was unable to cast any light on the stage to which the MoJ internal review of fees had reached. The Minister’s evidence to the Select Committee was that the review was not yet complete.

**Estates**

On the day before this meeting, the MoJ had announced the decisions on closures of court and tribunal buildings, following consultation during 2015. There are no decisions that impact directly upon ET buildings, although we will have to make arrangements to relocate hearings that were previously conducted in Colchester. This affects the CO and CM postcodes and it will
necessitate redirecting these hearings to Bury St Edmunds and to Anchorage House.

However, there are separate developments which are relevant to ET accommodation. Bristol ET has just successfully relocated to the Bristol Civil Justice Centre. Cardiff ET expects that a move from Caradog House will be necessary in the near future. Preliminary work has been undertaken to plan for relocation within Cardiff. Sheffield ET is very likely to move from its existing premises and to be co-located at the Sheffield Combined Court Centre. Hull ET is also very likely to move between existing tribunal premises within Hull. The move of the Newcastle ET to North Shields last year is intended to be a temporary relocation.

There was some discussion about the estates position. The view was expressed by a user that with transferrable judges, on-line processes and better listing there should be more local courts and tribunals rather than fewer. The President confirmed that the closure programme was intended to free up under-used premises, which in some cases would consume scarce resources in rent, repair and maintenance. Some buildings had been ill-suited for multi-jurisdictional use. The sale of redundant buildings would create savings and capital income that could be used for modernisation of the estate (including better use of IT, wi-fi and digitisation).

**HMCTS Reform**

The President confirmed that HMCTS had government approval to spend some £738 million on reform of the courts and tribunals service. This was made up partly by overhead savings, partly from the sale of capital assets and partly from fresh investment. Reform would involve use of digital processes, simpler procedures and more cost-effective, efficiently-used buildings. The President assured the users that the programme would take 4-5 years to realise and that the goal was overall to result in a more efficient justice system.

A wide-ranging discussion followed. A particular point was made about the use of online adjudications, especially in relation to disabled and vulnerable litigants. The President referred users to the concept of the online court developed in the Susskind and Brunton reports last year.

**Briggs review**

The interim report on the Civil Court Structure Review had been published. An invitation to contribute to Sir Michael Briggs’s further thinking was open till the end of February 2016. A final report was promised by July 2016. The President encouraged users to read the interim report and to send comments to the review secretariat. The President had given initial evidence to the Briggs Review. He had argued for the creation of a new Employment and Equality Court for all employment and equality disputes. That argument was recognised in the interim report.

In discussion, the President confirmed that a potential model for a new Employment and Equality Court would be like the development of the single family court in recent years. The President emphasised that his preference would be for any new court to build upon the strengths of the Employment
Tribunal: in particular, with simple procedures, an inquisitorial approach and a largely costs-free environment.

HR commented that there was some merit in seeking to align competing employment jurisdictions, but she was concerned that the direction of travel would have to ensure that the new court was cheap and accessible. The President replied that his vision of such a court was that it would be much closer in ethos and procedure to the Employment Tribunal rather than to the High Court or County Court. The President confirmed that there would be further opportunities for consultation.

**Alternative Dispute Resolution**

Judicial Mediation should now be available nationally in all suitable cases where a final hearing of at least 3 days has been listed. We have also introduced greater flexibility for such cases to be listed (at the case management hearing) for a Judicial Mediation hearing sooner and more efficiently.

Judicial Mediation statistics are not kept by HMCTS. They are maintained by the Regional Employment Judge in each region. These statistics have not previously been published. The President has decided that the statistics should be made more widely available, as there is some misreporting of the statistics (for example, last year’s JUSTICE report on civil justice in an age of austerity wrongly reported the Judicial Mediation statistics for GB based only on the statistics for Scotland, thus seriously under-reporting Judicial Mediation activity).

The ET judiciary in E&W are hoping to introduce voluntary Early Neutral Evaluation into case management hearings during the course of 2016. The judge would define the issues, identify the need for witness and documentary evidence and would list the case for a final hearing. The judge would then explain the availability of Early Neutral Evaluation on a voluntary and confidential basis. If the parties were both agreed, the judge would explore with them the strengths and weaknesses of both cases. This would be done with a view to promoting and assisting settlement, either subsequently through private negotiation or via Acas conciliation or other ADR.

EW emphasised her concerns about litigants understanding jargon in case management and said that very clear language should be used. The President said the language should be clear and the training for the judges would underscore this. The discussions held would be confidential and could not be referred to at the final hearing (including as to remedy or costs).

**Item 5 President of Scotland ET – devolution update**

SS reported on the proposed devolution of the Employment Tribunal (Scotland). She referred to the draft illustrative Order in Council and the proposal that Employment Judges would be referred to as legal members (rather than judges) and appointed for fixed terms of 5 years. SS confirmed the consultation document had been the result of input from BIS, MoJ and Scottish Government officials.
The President (BD) noted that there would be knock-on effects for E&W from these changes in Scotland.

RF reported that England & Wales lawyers were not generally aware of these proposals and he would report back to his members. DP and MR were equally concerned about what was proposed.

**Item 6  HMCTS report**

HN reported on Help with Fees, as remission is now called. EW and MR both agreed that, although it was still early, the changes to remission looked very positive. It was hoped that by Summer 2016 there would be an online service for remission.

It was noted that the rules of procedure are to be amended from April 2016 to regulate the number of applications that a party might make for postponement of a hearing and that requests within 7 days of the hearing would be permitted only in exceptional circumstances and with cost implications.

**Item 7  BIS report**

RB reported on the proposed postponement powers. RB confirmed the intended implementation of penalties for non-payment of ET awards. RB also confirmed stakeholder events would be held concerning the proposals for devolution of the Employment Tribunal (Scotland). Particular issues concerned how to identify what would be considered a “Scottish case” and how to address “forum shopping”.

**Item 8  Acas report**


**Item 9  Any other business**

There was no other business.

The date of the next meeting is to be confirmed.