

Employment Tribunals, South West Region

Bristol User Group Minutes 10 November 2015

1. Attendance: REJ Parkin; EJ John Livesey; Rob Casey & Steve Ireland, (HMCTS).

Helen Connelly, ACAS & 16 users

Apologies from 7 users

2. Regional Administration

Southampton ET office closed at the end of March 2015 and the whole administration office moved to Bristol. 8 months on, REJ Parkin acknowledged there had been some problems of communication both ways between Bristol administration and listing and Southampton judges and clerks, on interlocutory matters and about hearings.

Bristol Tribunal office (the Regional Administration Centre) will move from the Crescent Centre to the Civil Family Justice Centre at the end of January /beginning of February 2016.

The REJ stressed the need to make the subject-matter of emails clear and raise the urgency in the header so staff can prioritise the work.

Bristol office telephone number is 0117 929 8261 and the listing officers are Steve Ireland and Jonathan Ongaro.

3. Performance and Statistics

There are no great delays in processing claims presented online when the fee is paid but some remission applications can still cause delay. The delays have been much reduced since the fees regime came in and it is hoped the new arrangements (see below) will improve timing further.

The major reduction in claims since fees were introduced is demonstrated by the following national statistics, which record single claims received. Short track is listed as 1 hour judge alone hearing, standard track typically as 1 day judge alone hearing and open track is typically a multi-day discrimination or detriment hearing:

2012/13	126,245 claims	47% short,	36% standard,	17% open
2013/14	80,184	45%	36%	19%
2014/15	39,056	41%	36%	23%

Quarterly statistics are available and were last published in September (up to June 2015): <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015>.

In the 3 months to June, there were 358 single claims and 438 multiple claims in SW Region. By September, for 6 months the single claims had roughly doubled, but multiple claims had soared to over 10,000 with receipts of approximately 9500 new age discrimination claims from fire fighters, challenging new pension provisions. SW Region has received the bulk of these claims for England; it is likely they will be case managed nationally.

Some rise in multiple working time/holiday pay cases, particularly in the construction and manufacturing sectors following Lock v British Gas and Bear Scotland v Fulton. From July, the legislation restricting backdating of claims has caused these to fall back.

Simple fast track small money claims have nearly disappeared completely at final hearing. Standard Track are being received but often do not proceed to final hearing (which may often be due to the £950 hearing fee). Complex discrimination and whistleblowing cases still often go to final hearing and hearings are getting longer, often taking 10 to 15 days. A recent Southampton case has lasted well over 20 days, one in Bristol currently is listed for 35 days, Exeter case listed for 19 days settled but 10+ day cases still in list.

4. Fees & Remissions

Fees – the 2nd Unison Judicial Review and the combined appeal failed. The Lord Chancellor is still reviewing the ET fees regime and there may be more information for the next user group.

Overall, since the impact of fees has been fully felt, the lists of cases remaining for hearing have stabilised.

Remission applications can still cause delay but will be dealt with more promptly when the new remission process is in place as DWP and HMCTS will share information and no evidence will be required in respect of benefits.

5. Case management

EJ Livesey stressed that discrimination/detriment claims are case managed robustly by the Tribunal. The parties need to clarify their cases, particularly in indirect discrimination and reasonable adjustments claims: what are the PCPs and disadvantages contended, what adjustments does the claimant say should have been made, how does the respondent put its justification defence, does it rely upon the statutory defence that it took all reasonable steps to prevent its employee from doing unlawful acts?

We need realistic time estimates, with time for the Tribunal built in. Expect to see case management orders with timetables, and check-up case management hearings one or two weeks before the final hearing.

Claims with vast numbers of complaints of individual acts of discrimination are very common but can be unmanageable. Can the case be put more simply and more proportionately? Can the 10 or 15 central allegations be determined first? This situation going to be any greater if 50 rather than ten allegations are pursued? Are some of the allegations a perpetuation of the same detriment? Is the claimant in danger of losing the thrust and clarity of his/her main allegations by having so many others around them? See higher authorities Gillespie v HSBC, McKinson v Hackney Community College, Davies v Sandwell in which the EAT supported robust case management of such claims.

6. Early Conciliation

ACAS (Helen Connelly) confirmed that many cases do settle through early conciliation – about 17% of them. If the employer is notified and aware of the claim, outstanding wages are often paid. They urge claimants to speak with their employers even before making EC notification. Many claimants wrongly believe they get a full month's extension of time limit even if they do not want the employer notified or to carry on with the EC. Only about 20% of cases where EC notification is given proceed to an ET claim.

REJ is still waiting for EAT authority on the situation where the claimant applies to amend an existing claim to include a subsequent act which C hasn't notified ACAS under EC about.

NB: See now new EAT judgment in Science Warehouse v Mills UKEAT/0224/15/DA which rules that the requirement to notify ACAS falls on a "prospective", rather than an existing, claimant, so EC is not required before an application to amend.

7. ET1s

A revised claim form will come out soon.

8. Judiciary

There are still 3.6 full-time equivalent salaried judges based at Bristol, 2.9 at Southampton and 2.6 at Exeter, but with EJ Christopher Carstairs retiring that will be 1.6 from April 2016. Currently 10.1 FTE (including the REJ) in SW Region, but reducing by more than just EJ Carstairs, may be that some transfer in of judge or judges is possible.

Fee Paid Employment Judges Su Jenkins and EJ Ian Soulsby (Southampton) have retired. In 2012 there were 31 FPJ's in the region, only 19 now – soon fewer still.

There was a huge reduction in allocation of fee paid judge sitting days this financial year because of the lower numbers of claims, lesser reduction in NLM days. However, the lists remain heavy and resourcing is very tight with

FPJs' sitting days. By September, the FPJ allocation had been pretty well used up; the vast majority of cases are heard by salaried Judges and some have been postponed. The REJ is aware of this and is keeping a close watch on the allocation and sittings; he remains optimistic that more will be forthcoming for the April 2015-March 2016 current financial year.

Case management is carried out more thoroughly and there is more communication with the parties to establish if cases will be effective or not. When it is indicated that a case may settle, it does not mean that the case will lose its listing until it does; it will be used to help decide how many cases to leave in the list.

The non-legal member panel numbers are also falling, mainly due to retirements.

9. Listing and Hearing Venues

The main venues for SW Region are Bristol, Exeter and Southampton, with Plymouth and Bodmin also listed regularly and Havant occasionally. Bournemouth, Taunton, Yeovil and Worle have also been used where special listing needed.

We hope Exeter hearings will remain in Keble House.

10. Judicial Mediation

Mediations in SW Region have fallen away this calendar year and there is a lower rate of settlement, at about 50% (rather than 66-70%) too. Most are held in Bristol. Parties are encouraged to consider JM in any case listed for 3 days upwards, where the issues have been clearly identified. If the parties feel the case is suitable, they should raise it at the case management hearing even if the judge has not done so.

11. Any other business

Nothing raised by the group. The REJ requested that if there are any specific concerns regarding cases and how they are dealt with users should write to him directly.

12. Next meeting: 11 May 2016