

Written evidence from Jane Russell, on behalf of ELBA

Question:	By who:	Answer:	Where found:
<p>Q291: I notice that the Employment Law Bar Association talked about the tribunal being slower to introduce virtual hearings and not making as much use of remote technology. Was there also an issue around the rules governing procedure and so on that made it harder than, say, in the High Court or something like that?</p>	<p>The Chair.</p>	<p>No.</p> <p>Regulation 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Regulations”) allows the President to make Practice Directions about the procedure of Employment Tribunals in the area for which the President is responsible. This Practice Direction concerns hearings held by electronic communication in England and Wales under rule 46 of the Employment Tribunals Rules of Procedure (as set out at Schedule 1 of the Regulations), which can be categorised as remote hearings. Having regard to the paramount importance of the principle of open justice, it addresses methods to safeguard open justice when hearings are conducted remotely.</p> <p>Rule 46 provides as follows:</p> <p><i>A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal.</i></p> <p>However, it appears from a transcript written by Pinsent Masons on the matter, that the issue of live evidence via remote technology has been of concern for some judges. Pinsent Masons noted: “I was speaking earlier to an</p>	<p>https://www.judiciary.uk/wp-content/uploads/2013/08/14-Sept-2020-SPT-ET-EW-PD-Remote-Hearings-and-Open-Justice.pdf</p> <p>https://www.pinsentmasons.com/out-law/news/employment-tribunal-procedure---virtual-hearings</p>

		<p>employment judge about this [i.e. remote hearings] and he told me that, given the choice, he prefers for the witness to be with their representative when they give evidence because he's then not worried about outside interference. His concern is that if a witness is on their own at home they don't necessarily follow the rules as they would if they were present in person in front of him at tribunal."</p> <p>Also, HMCTS and MOJ have actually developed their own in-house Cloud Video Platform (CVP) which is used by Employment Tribunals to conduct remote hearings.</p>	
<p>Q292: I understand that. You talk about getting more judges. Is there an issue about getting sufficient lay members to sit on the tribunals?</p>	<p>The Chair.</p>	<p>The real problem seems to be that there is an underinvestment in the tribunal system and its buildings, as well as the number of people being dismissed from their jobs, and an increase in lay members sitting as judges will not solve these problems. Therefore, no, it does not seem that there is an issue getting sufficient lay members to sit on tribunals, rather, how much investment there is in tribunals for lay members to work with.</p> <p>Also, changes to the EC Regulations, (The Amendment Regulations make changes to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (SI 2014/254) (the "EC Regulations") which come into force on 1 December 2020), also provide that, from 8 October 2020, non-employment judges may sit as Employment Judges, subject to certain criteria. In addition, some functions currently carried out by Employment</p>	<p>https://www.lexology.com/library/detail.aspx?g=574c1718-6e86-44fb-9da2-2563f9244e12</p>

		<p>Judges may be delegated to Legal Officers. The Amendment Regulations also make various changes to the Employment Tribunal Rules, which include making it easier for Tribunals and parties to conduct remote hearings, giving the Tribunals greater powers to accept claims, which contain administrative errors, and giving parties wider scope to deal with multiple claims or responses in one form.</p>	
<p>Q296 : Yet again, employment is an area that I used to practise in many years ago, but not since late 1996. The experience was somewhat different in those days. To what extent do you think that the Government’s approach to the recovery of the courts is helping with respect to employment cases and the backlog, which is not necessarily caused so much by Covid as by things like fees being abolished? We have an increasing backlog, but to what extent is the Government’s recovery plan going to make an impact on that? Are employment and other tribunals a forgotten bit of the system?</p>	<p>Maria Eagle.</p>	<p>It is unclear whether the recovery plan will make an impact. The Government has put in place measures to support the justice system, such as the opening of Nightingale courts. However, it is unknown whether this will be of particular help to employment tribunals, as only 4% of recovery money to courts has been allocated.</p> <p>Bricketts (law firm) blog states:</p> <p>“The backlog is expected to increase as the government has allocated only 4% of its courts recovery money to employment tribunals, despite the increasing caseload and the expectation of even more cases in the coming months.</p> <p>The government says it has provided extra capacity to hear cases through Nightingale courts, with extra investment in audio and video technology allowing for more remote hearings to be conducted. However, of the 10 Nightingale courts announced, the closest to the East of England are those at Hertfordshire Development Centre</p>	<p>https://www.birketts.co.uk/insights/latest-news/employment-tribunal-backlog-now-ten-year-high</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf</p>

		<p>(Stevenage) and Knights’ Chamber and Visitor Centre (Peterborough), although two more are also open in London.”</p> <p>Also, the Amendment Regulations make changes to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (SI 2014/254) (the "EC Regulations") which come into force on 1 December 2020. The key change is that the current one-month period (which can be extended by a further 14 days with agreement) is changing to a new six-week period with no opportunity to extend. The impact of the extension is not yet known, but it is hoped a decrease in the tribunal’s backlog will be seen in the near future.</p>	
<p>Q302: There is a trend towards people representing themselves in difficult times. Are you aware very roughly of the statistics in relation to discrimination cases at an employment tribunal?</p>	<p>Miss Dines.</p>	<p>Legal representation is high in discrimination cases.</p> <p>Over half of claimants (56%) were represented by a lawyer in 2019/20, down from 64% in 2018/19. In contrast, 32% of claimants in 2019/20 had no representation recorded, up from 21% in 2018/19.</p> <p>Representation was most common in discrimination cases among claimants (64%) and high among employers (76%) - from a 2018 Survey carried out by SETA.</p> <p>This, unfortunately, is the most recent survey published by the government on these statistics.</p>	<p>https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2020/tribunal-statistics-quarterly-april-to-june-2020#employment-tribunals</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899048/survey-employment-tribunal-applications-2018-findings.pdf</p>

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