

## AMENDED MINUTES OF USER GROUP MEETING

Thursday – 10 September 2015

### 1. Apologies

Esther McGuinness  
Daire Murphy  
Mark McEvoy  
Scott Alexander  
Mary Gavin

### Minutes of the last User Group Meeting on 4 June 2015

2. No comments or objections were made in relation to the minutes of the June 2015 Meeting, other than the following.
3. At paragraph 17 of the minutes of the June 2015 meeting, Daire Murphy is recorded as having suggested that, in many instances, "... it would be helpful if the employment judge, during the course of an ENE, were to express a view as to the merits of the particular claim". In comments on those minutes, Mr Murphy has asked that it be made clear that what he was suggesting was that the merits and weaknesses of both the claim and the defence should be scrutinised by the judge. By agreement, the minutes are now to be deemed to be altered accordingly.
4. Tom Campbell, who had not been present at the June 2015 meeting, referred to the statements in the minutes of the June 2015 meeting regarding bundles. (See paragraphs 4-9 of those minutes). Mr Campbell made it clear that he had reservations about what he regarded as the overly-prescriptive nature of the revised arrangements, in respect of bundles, which had been agreed during the course of the June 2015 meeting.
5. As a response to that comment, the President stressed that there was room for flexibility, in light of the particular circumstances of particular cases, in the implementation of the new arrangements.
6. The discussion in relation to bundles led on to a debate about the merits and practicability of settling cases well in advance of the date fixed for the main hearing. The Vice President drew attention to the negative consequences of the culture in Northern Ireland of settling only on the eve of the hearing. Adam Brett stated that, in his view, in considering any questions relating to "late" settlements, human nature has to be taken fully into account.

## The Proposed new rules

7. Dr Alan Scott of the Department for Employment and Learning, gave a brief, but very helpful, presentation on key aspects of the proposed new employment tribunal rules.
8. Dr Scott pointed out that the closing date, for receipt of comments on the proposed new rules, is 25 September 2015.
9. He pointed out that a key feature of the new rules is that the provisions of the old IT rules, and of the old FET rules, had been assimilated into one set of rules.
10. He stated that some key aims of the process of modifying the rules were as follows:-
  - (1) The aim was to achieve a single set of rules, for both the industrial tribunals and the Fair Employment Tribunal.
  - (2) It was hoped that, in the new rules, language would be simplified, so that, in particular, self-represented claimants would better understand what was required of the parties.
  - (3) In drafting the new rules, due account was taken of the provisions of the rules in Great Britain which have recently come into operation in respect of tribunals.
11. Dr Scott pointed out that the following had already been decided:
  - (1) Employment tribunal fees will not be introduced.
  - (2) **It was not intended to impose new financial penalties on employers who have breached employment rights.**
  - (3) Unfair Dismissal won't be a jurisdiction in which an employment judge will, as a general rule, sit alone.
  - (4) There will be no imposition of powers to require payment, by a party, of witness expenses.
  - (5) It is not proposed to increase the maximum amount which a tribunal may specify in a costs order.
12. During the course of his presentation, Dr Scott drew particular attention to the following:
  - (1) The provisions in the proposed new rules in respect of early conciliation.
  - (2) The provision in the proposed new Rule 27 for early case management processes.

- (3) The provision in the new Rule 33 for lead cases to be binding in some circumstances.
13. The presentation highlighted some issues upon which the Department would particularly welcome comments from consultees:
  - (1) What gaps are there, in the current arrangements, in respect of protection for vulnerable litigants? (And would Presidential guidance help in that connection?)
  - (2) Should anything be done, and can anything usefully be done, in relation to failures on the part of employers to pay tribunal awards?
  - (3) What impact do costs “threats” have on the outcomes of litigation?
  - (4) Can any improvements usefully be made to the current arrangements regarding mechanisms whereby the Department seeks to engage with tribunal users, with employers, with employee’s representatives and with the tribunals themselves?
14. In the context of the review, Tom Campbell initiated a lively discussion on the question of whether arrangements could or should be made for the establishment of a review/appeal mechanism, within the Office of the Industrial Tribunals, with the aim of acting as a substitute for a full-blown EAT system.
15. Mr Drennan QC asked what would happen if it turns out that there will be a very lengthy delay in the process leading to the enactment of the currently envisaged Employment Bill. In particular, in those circumstances, would the Department be willing to go ahead with those of the new rules which could come into force without the need for underpinning primary legislation. Dr Scott confirmed that, if necessary, the Department would, in the absence of the contemplated new primary legislation, go ahead with those of the rules which could be adopted without the need for any associated primary legislation. He envisaged that the target for introducing the new rules, in that situation, would, approximately, be summer 2016.
16. In the context of Rule 27 of the new rules, it was suggested that it should be made clear that the alternative dispute resolution process and the ENE process can be done simultaneously. (It was suggested that Rule 27 should make it clear that early case management can be done before, instead of after, the full-blown “discrimination” CMD which is typically held in discrimination cases.)
17. The President drew attention to the provisions of Rule 90, which are a particular Northern Ireland innovation, and which are intended to address the difficulties that can arise if an employer abandons the workplace and leaves no forwarding address.

### **Next Meeting**

18. The next User Group Meeting will take place on **Thursday 14 January 2016**, at **1.30pm**.