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# Current trends in United Kingdom labour dispute resolution

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## 1. *Introduction*

The mechanisms originally developed for labour dispute resolution within the United Kingdom tended to reflect a "non-interventionist" philosophy which has historically been attributed to the national system of industrial relations. Settlement of disputes was traditionally left to voluntary procedures agreed between the labour market parties – although on occasions this was entrusted to "third parties", assisting employers and trade unions to reach agreement, but, generally, on a voluntary basis without the formal sanction of legal binding effect. It may also be noted that the United Kingdom has not witnessed any significant trend towards the compulsory settling of industrial conflicts such as might be found in systems such as those which developed in Australia or New Zealand (notwithstanding both belonging to the Common Law family).

Indeed, largely due to this historical environment of non-legal intervention, with relationships conducted on the basis of collective agreements which do not carry the "binding" force of legal sanctions[1], and disputes re-

[1] For the status and role of the "collective agreement" under Common Law in the United Kingdom, see NEAL, *The Collective Agreement as a Public Law Instrument*, in BANAKAS (ed.), *United*

solved on a voluntary basis, the United Kingdom is generally regarded as unique. Consequently, what might seem familiar or "normal" characteristics which are taken for granted in other national systems cannot be approached in the same way when considering the United Kingdom situation. One example of this "uniqueness" for the United Kingdom context is that it is very difficult to draw a sharp distinction between "collective" and "individual" disputes, since frequently these overlap[2]. By the same token, disputes are sometimes classified in terms of "disputes of interest", where the focus is upon the creation of new terms for working relationships, and "disputes of rights", where what is in issue is the application or interpretation of existing terms for those relationships[3]. However, this categorisation is not recognised in, and would not be regarded as significant for, the modern United Kingdom situation, where collective bargaining – and, by extension, the means for resolving disputes – is often said to be "dynamic" rather than "static"[4].

In what follows, the architecture of the modern United Kingdom labour dispute resolution system is presented, before comment is made about current challenges for that system. This includes presentation of the system of "Employment Tribunals"[5], which is where a majority of individual employment rights disputes are handled, together with the Employment Appeal Tribunal which acts as an appeal instance where issues of law arise, Mention is also made of the general system of civil courts in the United Kingdom

*Kingdom Law in the 1980s*, Butterworths/Sweet & Maxwell, 1988. On the phenomenon of the "collective agreement" in comparative legal theory, see SCHMIDT, NEAL, *Collective Agreements and Collective Bargaining*, in *IECL*, Volume XV, Chapter 12, Tübingen, 1984. The most recent theoretical taxonomy is to be found in NEAL, *In Search of the European (Union) "Collective Agreement"*, in COSIO, CURCURUTO, DI CERBO, MAMMONE (eds.), *Il Diritto del Lavoro dell'Unione Europea*, Giuffrè Francis Lefebvre, 2023.

[2] Thus, by way of example, disputes over termination of employment for "economic" reasons and so-called "redundancy payments" could be regarded both as collective disputes and as matters of individual dispute resolution.

[3] When such a distinction has assumed significance in many European systems, it has tended to result in the establishment of different mechanisms to deal with each category of dispute.

[4] In that system, parties to an agreement will enter into undertakings which may be modified, as problems arise, in a dynamic and fluid manner. Those same parties will then establish, interpret and amend their own agreements – thereby assuming a dual "legislative" and "judicial" role in relation to the administration of those agreements. Such a process, it is said, "encourages open-ended agreements and discourages the fixing of time limits".

[5] Formerly, the "Industrial Tribunals".

whose jurisdiction covers most "collective" disputes (between employers and trade unions). For these purposes, the most common forum for labour dispute resolution is the High Court, from which appeals lie to the Court of Appeal (Civil Division) and thereafter to the Supreme Court of the United Kingdom.

## 2. *Formal Judicial Dispute Resolution Bodies: The Employment Tribunals*

Historically, "Industrial Tribunals" were created under the Industrial Training Act 1964 to deal with the question of appeals by employers against levies imposed on them by industrial training boards[6]. Other jurisdictions of an "administrative" nature followed, but a turning point came with dispute resolution jurisdiction conferred by the Redundancy Payments Act 1965, which gave those Tribunals more of a "judicial" function, since they were dealing with complaints between employers and employees[7]. In 1968, the Donovan Commission proposed that "Labour Tribunals" should determine all disputes arising between employers and employees where there was

[6] Section 12 of that Act gave powers to the relevant Minister to make regulations for the establishment of "appeal tribunals" to deal with matters covered by the statute. Those powers were subsequently utilised to give rise to The Industrial Tribunals (England and Wales) Regulations 1965 (S.I. 1965/1101), which, having been brought into force on 31 May 1965, were modified thereafter through The Industrial Tribunals (England and Wales) (Amendment) Regulations 1967 (S.I. 1967/301) which came into force on 13 March 1967. See also The Industrial Tribunals (England and Wales) (Amendment) Regulations 1970 (S.I. 1970/941), which came into operation on 3 July 1970.

[7] Albeit with "the State" implicitly involved as the guardian of what was known as "the redundancy fund". It has been noted – see WEDDERBURN, DAVIES, *Employment Grievances and Disputes Procedures in Britain*, University of California Press, 1969, Chapter 12, *The Practice of the Industrial Tribunals* – that the Minister of Labour in introducing the Redundancy Payments Bill in 1965 stressed that the tribunals in handling the cases would be "easy of access to workers and employers" and would "provide a speedy means of settling disputes with less formality and expense than might be entailed if disputes were to go to the courts." See HANSARD, 1965, Vol. 711 H.C. Deb. col. 46. That terminology expressing those aspirations was subsequently taken up by the Donovan Commission in its 1968 Report – see *Royal Commission on Trade Unions and Employers' Associations 1965-1968* (Cmnd. 3623) – in explaining their proposal for what were described as "labour tribunals" as being "…primarily, to make available to employers and employees, for all disputes arising from their contracts of employment, a procedure which is easily accessible, informal, speedy and inexpensive, and which gives them the best possible opportunities of arriving at an amicable settlement of their differences" (at para. 572).

no suitable voluntary machinery[8]. More specifically, it was suggested that these labour tribunals should be concerned with individual rights only, since collective matters should be dealt with by means of procedures emerging from the process of collective bargaining. The specific recommendation of the Donovan Commission has not been consistently adhered to, although it is clear that, so far as the protection of individual employment rights is concerned, Industrial Tribunals played a predominant role, since their jurisdiction over these kinds of disputes was increased substantially after 1968 – bringing with it a substantial rise in the work loads of those bodies[9].

In 1998 the Industrial Tribunals were renamed as "Employment Tribunals"[10], and the formerly "Chairmen" of Industrial Tribunals were redesignated as "Employment Judges"[11].

However, it is important to stress that what are now the Employment Tribunals – while "specialised" in the sense that they deal primarily with disputes arising out of working relationships – do not constitute a system of special "Labour Courts" in the sense of certain other European systems. Their range of competence is the result of a process of attributing jurisdiction

[8] *Royal Commission on Trade Unions and Employers' Associations 1965-1968* (Chairman, Lord Donovan), Cmnd. 3623, London, 1968. See especially Chapter X, under the heading "Labour Tribunals". At paragraph 576, the Donovan Commission was at pains to stress that: "In a number of fundamental respects our recommendation differs from some of the proposals for the creation of 'labour courts' or 'industrial courts' which have been placed before us. We do not propose that they should be given the job of resolving industrial disputes or differences arising between employers or employers' associations and trade unions or groups of workers, since these are matters which must be settled by procedures of, or agreed through, collective bargaining. Nor do we envisage that any matters arising between trade unions and their members or applicants for membership should be within the jurisdiction of the labour tribunals: we elsewhere recommend the setting up of a review body for the handling of such cases. Nor do we propose that the tribunals should deal with actions for damages arising from strikes or other labour disputes, except in so far as damages for breach of the contract of employment are claimed by either party to it against the other. In particular all claims for damages by reason of torts alleged to have been committed in connection with strikes would continue to go to the ordinary courts."

[9] The "trigger point" for a fundamental shift towards the granting of dispute resolution jurisdiction over normative rights arguably came with the introduction of power to deal with claims alleging "unfair dismissal", first introduced in the Industrial Relations Act 1971, which came into force in 1972.

[10] See Employment Rights (Dispute Resolution) Act 1998, s.1

[11] With effect from 1 December 2007. See Schedule 8 of the Tribunals, Courts and Enforcement Act 2007.

progressively by way of legislation, rather than a conscious and coherent move by the legislator to create a specialised component within the overall civil justice system. Consequently, the modern Employment Tribunals have developed as an institution to which has been delegated an increasing range of competence, in periods when legislation relating to the protection of employment rights was flourishing, rather than as a separate "Labour Court" as such[12].

Notwithstanding that there is no "formal" legal or reporting distinction drawn between "individual" and "collective" labour disputes, the reality is that employment-related disputes involving relations between worker organisations and employers are viewed very differently from disputes arising out of individual employment protections enjoyed by particular members of the workforce (who may or may not belong to a trade union or any other collective representative body).

Thus, while there may not be any formal definition of "individual labour disputes" in the United Kingdom, the matters commonly described in these terms include: (1) Where a dispute arises out of an alleged contractual entitlement for the worker (Non-statute-based claim to the High Court or the County Court); and (2) Where a dispute arises out of an alleged statutory entitlement for the individual (Statutory jurisdiction allocated to the Employment Tribunal).

Historically (before 1963) such individual rights almost inevitably arose from the Common Law tradition developed within the United Kingdom legal system. Since 1963 there has been a steady (and accelerating) shift to normative individual rights being set out in legislative provisions. The primary collation of individual rights is now to be found in the Employment Rights Act 1996 – although numerous rights are contained in secondary legislation (normally, in the form of Statutory Instruments).

During the period of United Kingdom membership of what is now the European Union (1973-2020) a wide range of individual rights were transposed into United Kingdom law on the basis of European Union leg-

[12] The rapid extension of jurisdictions in the employment field also owed much to the arrangements under which the United Kingdom discharged its obligations under (what is now) European Union law to transpose the content of social policy Directives into domestic law. In the eyes of some, the Employment Tribunals offered a convenient forum for the adjudication of disputes arising out of a significant volume of social policy provisions introducing substantial new rights to workers.

islation (mainly in the form of Social Policy Directives)[13]. Where these gave rise to individual employment protection rights, the jurisdiction for dispute resolution in relation to these was almost always placed upon the system of Employment Tribunals. These provisions were normally to be found in Statutory Instruments passed by Parliament. Since Brexit, those instruments have largely remained in place[14].

By the same token, while there may not be any formal definition for "collective labour disputes", the matters commonly described in these terms include (1) Where a dispute arises out of an alleged right enjoyed by a trade union arising from a collectively agreed term (on the basis of Common Law contractual principles – always subject to the doctrine of restraint of trade and/or any statutory restriction placed upon the freedom to enter into any such binding contractual arrangement); or (2) Where a dispute arises out of an alleged right enjoyed by a trade union arising from a statutory provision.

Against this background, the question is commonly raised as to how many "labour disputes" there might be in the United Kingdom and how easy it is to identify such phenomena. However, that question is almost impossible to answer without introducing a large number of caveats. The ostensibly simple issue of defining what might be said to constitute a "labour dispute" – as well as more nuanced questions involving when what might be initially regarded as a "difference" turns into a "dispute" – leaves definitive proclamations on exceedingly thin ice[15]. In the following, therefore, some

[13] For the major European Union social policy instruments developed up to the Millenium, together with the policy documents setting out their rationale, see NEAL, *European Labour Law and Policy: Cases and Materials*, Kluwer Law International, 2002 vol. I and II.

[14] Draft legislation placed before the United Kingdom Parliament initially envisaged large-scale repeal through the mechanism of a so-called "sunset clause" (designed to take effect on 31 December 2023) contained in the Retained EU Law (Revocation and Reform) Bill. However, following some indication from Ministers that the scope of that proposed "sunset clause" was under reconsideration (so that only specifically designated provisions derived from EU law would be repealed at the end of 2023), an announcement was made on 10 May 2023 that the "sunset clause" was to be abandoned and replaced by a list of designated measures which are to be repealed. The list has now been set out in Schedule I to the Retained EU Law (Revocation and Reform) Act 2023, which received its Royal Assent on 29 June 2023.

[15] For example, the 2004 Impact Assessment on the statutory dispute resolution procedures estimated, on the basis of the Legal Services Research Centre (LSRC) Periodic Survey, that there may be between 700.000 and 900.000 employment-related justiciable events each year. See BIS, *Final Impact Assessment. Dispute resolution review*, January 2010, p. 12, para. 34.

commonly-utilised indicators are presented to offer a broad-brush picture of the current United Kingdom situation[16].

The 2021 census of the United Kingdom suggests that there was a total population (mid-year 2021 estimate) of 67.026.300. The most recently reported employment rate (aged 16 to 64) for October 2023 (seasonally adjusted) was 75.7%, and the rate of unemployment for the same period was 4.2%[17].

One measure of "collective" labour disputes is the number of days lost through strikes. The figures produced by the United Kingdom's Office for National Statistics (ONS) present "Work stoppages because of disputes between employers and employees". This includes strikes and lock-outs, and presents a figure for the number of days lost in both the public and private sectors, together with the number of workers involved. From the available statistics it appears that "an estimated 2,472 million working days were lost between June and December 2022" – reflecting a particularly marked upsurge in industrial action since the end of restrictions introduced to deal with Covid-19[18].

That measure of days lost through strike action needs to be set against the background of trade union membership in the United Kingdom[19]. This has been declining over four decades, since reaching a peak in 1979 of 13.2 million, with modern-day concentration of membership being in the public sector[20]. The level of membership in 2022 was reported at 22.3% of

[16] The material presented in the following draws, in particular, upon the following: ONS, Census 2021; ONS, *Trade Union Membership, UK 1995-2022: Statistical Bulletin* (published on 24 May 2023); ONS, *Tribunal Statistics Quarterly: April to June 2023* (published 14 September 2023); ACAS, *Annual Report and Resource Accounts* (various years – the most recent being for 2022-2023, published on 13 July 2023); Certification Officer for Trade Unions and Employers' Associations, *Annual Report 2022-23* (submitted to the Secretary of State for Business, published 6 July 2023); Central Arbitration Committee, *Annual Report 2022/23* (published 6 July 2023).

[17] See ONS, *Labour Market Statistics, November 2023* (published on 14 November 2023).

[18] Of these, over three-quarters (79%) came from workers in transport, storage, information and communication. See ONS, *The impact of strikes in the UK: June 2022 to February 2023* (published 8 March 2023).

[19] ONS and the Department for Business, Energy & Industrial Strategy issue various statistics in relation to trade union membership. See, in particular, *Trade Union Membership, UK 1995-2022: Statistical Bulletin* (published on 24 May 2023).

[20] According to the 2023 *Statistical Bulletin*, "Trade union membership levels as reported by the unions listed or scheduled in Great Britain reached their peak in 1979 (13.2 million) and declined sharply through the 1980s and early 1990s. From 1996 onwards the rate of decline

United Kingdom employees, reflecting trade union membership of 6.25 million.

So far as individual disputes can be identified, various approaches have been taken to measuring the level of such disputes in the United Kingdom[21]. In terms of the number of claims presented to the Employment Tribunals, the statistics focus upon the number of claims received by the Tribunals ("receipts"), and the number of claims completed and disposed of ("disposals"). They also indicate the current state of what remains a significant backlog in dealing with cases (presented in terms of "caseload outstanding", or, more recently, "open cases"). The available statistics are divided into "single cases" and "multiple cases"[22]. First quarter figures for 2023 suggest that there were

slowed significantly, with occasional years of slight growth interspersed with the general annual reductions in membership. In 2020-21 unions reported membership at 6.73 million, up slightly on the year but down 15% from the 1996 level of 7.94 million. … The trend since 1995 for numbers of employees who are trade union members is similar. However, there are clearer periods of broad stability, between the mid-1990s and mid-2000s, and between 2011 and 2015, and slight recovery in 2017 to 2020, along with significant falls in the late 2000s, in 2016 and in 2021 to 2022. Overall, between 1995 and 2022 union membership levels among UK employees fell by 860,000 (12.1%) from 7.11 million to 6.25 million. … Union membership as a proportion of employees has fallen from 32.4% in 1995 to 22.3% in 2022. This is due to overall UK employee numbers rising in the period by around 6.3 million to 28.3 million, while union membership among employees fell."

[21] Much weight was placed by Government up until the turn of the Millennium upon work undertaken by Hazel Genn. See in particular, GENN, *Paths to Justice: What people do and think about going to law*, Hart Publishing, 1999, and the comments in relation to the propositions contained in that by GAYMER, *The Employment Tribunal System Taskforce*, in DICKENS, NEAL (eds.), *The Changing Institutional Face of British Employment Relations*, Kluwer Law International, 2006, at p. 119. The statistics presented by Genn in her "Paths to justice" research work led to figures being put forward which had been extrapolated from what were, in relation specifically to employment disputes, surprisingly low survey response rates. Nevertheless, these were repeatedly relied upon by government publications and swiftly became the "received wisdom". Thus, although a proposition that: "…between 1992-1997, there occurred 2.4 million serious employment problems (i.e. 500.000 per annum), while, during the same period, there were 429.280 applications to the Employment tribunals Service…" became widely accepted as a basis for governmental reform proposals in this field, the methodology for putting forward the estimate of "serious employment problems" remained somewhat opaque.

[22] "Single" claim data gives a reasonably consistent picture of "the normal state of affairs" in terms of the administration and processing of claims, whereas "multiple" claim data is presented as being "more volatile as they can be skewed by a high number of claims against a single employer". There has been a recent trend towards utilising "leading cases" whose outcome can then determine the outcomes of (often a very large number of) related cases. If the position is considered at the end of the financial year 2022/23, some five and a half thousand

7,900 single Employment Tribunal receipts, along with 6,700 multiple claim receipts. In that period, there were 7.100 single claim disposals, and 6.700 multiple claim disposals. At the end of June 2023 there were 35.000 single claim "open" (outstanding) cases, while at the same point multiple claim open cases stood at 436.000[23].

## 3. *The Institutional Framework for Labour Dispute Resolution*

As has already been indicated, there is no "Labour Court" so-called in the United Kingdom legal system – although consideration was given to this possibility during the course of the deliberations of the Donovan Commission which reported in 1968[24].

Collective labour law disputes – especially concerning strike action and the potential commission of "economic torts" – are dealt with in the High

"lead cases" were "open" at that time, giving a combined figure of all cases being listed for hearing slightly in excess of 43.000 cases.

[23] See MINISTRY OF JUSTICE, *Official Statistics: Tribunal Statistics Quarterly: April to June 2023* (published 14 September 2023). However, there are significant problems with reliance upon the statistics produced by the Ministry of Justice, since (as explained in the 2023 Q1 report): "Employment Tribunals transitioned to a new database (Employment Case Management) during March to May 2021. It has not been possible to provide full results from both databases during this migration period on a consistent basis. Therefore, Employment Tribunal (ET) data is not available for Q1 2021/22. Jurisdictional breakdowns for disposals, timeliness and outcome data are still undergoing more rigorous checks and will not be presented until the checks are complete. In addition, because of the operational differences between ECM and the previous database (Ethos), caution should be exercised when making comparisons in the statistical results before and after migration. Again, from September 2022, the Employment Tribunal has moved some cases in specific areas to a new case management system (Reform ECM). A very small proportion of cases (less than 2,000) in the new system are not included in the statistics. The numbers involved are not large enough to impact on the trends seen in the statistics." Although it is possible to find a wide variety of graphs and tables in published works which purport to offer an overview of trends over the fifty years since the introduction of statutory protection against "unfair dismissal", these need to be treated with the utmost caution. This is by reason of alterations made to the methods of data collection and the statistical evaluation of the data by the national statistical services. The nature of the changes, and explanation of the consequential impact, is usually evident in the relevant official statistical series – notwithstanding (often rather less than fair) allegations that the Government is keen to obfuscate the true picture by resorting to regular and significant changes in methodology – although it remains extremely difficult to produce truly comparable longitudinal data in this area.

[24] Cmnd. 3623, London, 1968. See *supra.*

Court, as part of the normal civil justice institutional framework. From there a right of appeal lies to the Court of Appeal (Civil Division) and thereafter to the Supreme Court. These courts exercise inherent jurisdiction over all matters[25]. There is a possibility of resort to the County Court in relation to (low value) claims involving contract or tort – although very few cases actually take this route[26].

The bulk of individual employment dispute cases are first heard by an Employment Tribunal, which, like the County Court, is a "creature of statute" and thus has jurisdiction limited to that bestowed by the legislation[27].

It may be noted that the Industrial Tribunals were initially conceived of as more akin to "administrative" bodies – dealing with disputes between the citizen and the State (first with the administration of training levies, and then in 1965 with making decisions in relation to "redundancy payments" from the State-administered redundancy fund – under the Industrial Training Act 1964). Subsequently, the modern Employment Tribunals have become positioned clearly within the judicial institutions dealing with labour law[28].

Legislative reform eventually led to the Employment Tribunals becoming part of the United Kingdom's "unified tribunal system", within a newly-constituted Ministry of Justice, under the Tribunals, Courts and Enforcement

[25] The High Court also has jurisdiction to deal with individual labour disputes where specific provision has not been made for these to be dealt with elsewhere.

[26] The County Court is a so-called "creature of statute" – limited in its powers only to those powers granted by the specific legislation.

[27] In its 1994 Green Paper, the Department of Employment reported an overall twenty-two jurisdictions. See *Resolving Employment Rights Disputes: Options for Reforms* Cm. 2707, Employment Department, 1994, Annex A, at p. 69. Since then the range of jurisdictions has rapidly expanded. The most recent set of judicial codings (not available publicly – being contained in a document for administrative use only) indicates a total of 79 separate jurisdictions – although this is open to some debate, given that a number of codings can be said to cover more than one potential cause of action.

[28] Although their origins and development have continued to present challenges to traditional Civil Service approaches to a tribunal which is somehow not a "tribunal" in the sense of the 1957 Franks Committee Report on Administrative Tribunals and Enquiries. See Franks Committee Report on Administrative Tribunals and Enquiries (Cmnd. 218) published on 15 July 1957. That report eventually gave rise to a Tribunals and Inquiries Act 1958 and resulted in the establishment of a body known as the Council on Tribunals. Nor has the issue entirely disappeared as to whether (and, if so, in what contexts) the Employment Tribunal constitutes "a court" for various statutory purposes: see, for example, the discussion in the case of *Advisory, Conciliation and Arbitration Service v. Woods*, (2020) EWHC 2228 (QB), per Auerbach J.

Act 2007[29]. That statute also underscored the independence of tribunal judiciary (including judicial officers in the Employment Tribunals) in the context of the Constitutional Reform Act 2005[30].

The composition of the Employment Tribunal is provided for in s.4 of the Employment Tribunals Act 1996[31]. Following a sequence of amendments which have increasingly allocated cases to be heard by an Employment Judge sitting alone, it would appear that there has been substantial departure from the original concept of the "Industrial Tribunal" set out in the report of the

[29] See Tribunals, Courts and Enforcement Act 2007, which received the Royal Assent on 19 July 2007. Following controversial treatment of the general tribunal system by a report published at the end of 2001 – see: *Tribunals for users: One System, One Service – Report of the Review of Tribunals by Sir Andrew Leggatt* (The Stationary Office, London, March 2000) – a Task Force on Employment Tribunals delivered its report during the Summer of 2002: *Moving Forward: The Report of the Employment Tribunal Taskforce*. These documents needed to be seen together with the report of the Better Regulation Task Force, *Employment Regulation: striking a balance*, published in May 2002. This led to proposals to modify the standing and position of the Employment Tribunals and the EAT within the general courts and tribunals system, as had been set out in the White Paper (published by the DCA in July 2004) *Transforming Public Services: Complaints, Redress and Tribunals* (Cm 6243). Subsequently, see DEPARTMENT OF TRADE AND INDUSTRY, *Better Dispute Resolution: A review of employment dispute resolution in Great Britain* (Chairman, Michael Gibbons), HMSO, London, March, 2007.

[30] See Tribunals, Courts and Enforcement Act 2007, s.1, by reference to s.3 of the Constitutional Reform Act 2005.

[31] This is a subject which has been under continual political consideration. Currently, it is envisaged that, when it is brought into force, section 35 of the Judicial Review and Courts Act 2022 will substitute new sections 4 and 28 into the Employment Tribunals Act 1996. Those new provisions will give the Lord Chancellor the responsibility to make regulations determining the number of members who are to compose the Employment Tribunal and Employment Appeal Tribunal in a particular case. Against that background, a *Senior President of Tribunals' Consultation on Panel Composition in the Employment Tribunals and the Employment Appeal Tribunal* was launched with a deadline for responses extended until 27 April 2023. The introduction to that consultation points out that the Lord Chancellor can discharge that responsibility by delegating it to the Senior President of Tribunals ("SPT"). Furthermore, it is indicated that the Ministry of Justice have shared draft regulations under which the Lord Chancellor's responsibility will be delegated to the SPT on the basis that for each matter in the Employment Tribunals, the SPT will be required to determine whether the tribunal should be composed of one, two, or three members, having regard to (1) the nature of the matters to be decided and the means by which they are to be decided, and (2) the need for members of tribunals to have particular expertise, skills or knowledge. The Employment Appeal Tribunal would be composed of a single member by default, unless the SPT determines that it is to consist of two or three members. At the time of writing, no formal position has been announced in response to the consultation process, with the senior Law Officers concerned having announced that they would await conferral of new legislative powers before committing themselves to a formal position.

Donovan Commission in 1968[32]. Writing in 2009[33], this author commented that:

"The 'normal' perception of the Employment Tribunals' composition remains 'tripartite', although there have been repeated attempts to increase the proportion of cases dealt with by an Employment Judge sitting alone – mostly orchestrated by HM Treasury in the purported interest of 'efficiency gains' – which have, so far, been resisted. Indeed, the employment judiciary themselves have been vociferous in their disapproval of such proposals – as can be seen through the public representations made on their behalf by the Council of Employment Tribunal Judges".

Support for that concern was offered by reference to what was described as "recent peddling of the virtues of 'judge sit-alone' disposal of employment cases"[34]. Since the time of that observation, indeed, recent

[32] Particularly in so far as successive changes have shifted substantially away from any notions of "tripartism" developed in the middle of the 20th century – whether in the sense familiar to those concerned with the activities of the International Labour Organisation (ILO) or as to be found in national variants of "tripartite representation" on official bodies. See *inter alia* The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012 (SI 2012/988), which came into force on 6 April 2012. That instrument introduced an amendment to s.4(3)(c) of the Employment Tribunals Act 1996. That section had previously been amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8), sections 3(1) to (3), 15, and Schedule 1, paragraph 12. Section 4(2), which is relevant to section 4(3), was amended by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 48(1), and Schedule 8, paragraphs 35 and 37. Section 4(3) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8), sections 1(2)(a), 3(1) to (5), 15, and Schedule 1, paragraph 12(1) and (3), and Schedule 2; Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regulation 20, and Schedule 2, paragraph 8; National Minimum Wage Act 1998 (c.39), section 27(1); Employment Act 2008 (c.24), section 9(4); and the Employment Tribunals Act 1996 (Tribunal Composition) Order 2009 (S.I. 2009/789), article 2.

[33] NEAL, *Labour Dispute Resolution in Recessionary Times: Some Comparative Sino-British Perspectives*, paper prepared for High-Level Conference of the Chinese Academy of Social Sciences (CASS, Beijing, 24 July 2009).

[34] See, for example, DEPARTMENT OF TRADE AND INDUSTRY, *Better Dispute Resolution: A review of employment dispute resolution in Great Britain* (Chairman, Michael Gibbons), HMSO, London, March 2007, at para.3.22: "There are several types of Employment Tribunal claims, i.e. those involving determinations of fact in monetary disputes, such as unlawful deductions of wages, holiday pay, breach of contract and redundancy pay, which could in most cases be settled quickly without the need for a Tribunal hearing. What is required is a quick, expert view on the legal position, and on the appropriate next steps (e.g. payment of an amount due to the Claimant, or the withdrawal of the claim), coupled if necessary with some kind of enforcement order".

developments might be suggested to have been promoting such a direction of travel to an even greater extent[35].

The issue of panel composition in the Employment Tribunals has remained at the forefront of policy review in relation to the activities of those bodies. However, the current situation provided for in s.4 of the Employment Tribunal Act 1996 is still that:

(1) Preliminary hearings (in all kinds of cases) are conducted by an Employment Judge sitting alone – unless a party has made a written request for the hearing to be conducted by a panel (consisting of an Employment Judge sitting together with two non-legal members) and a judge has decided that this would be appropriate. Thus, "case management" between the time of presentation of a claim and its eventual full trial is carried out almost exclusively by Employment Judges sitting alone.

[35] Including various attempts at the political level to limit the scope of the activities of the Employment Tribunals in general. See, in particular, an ill-fated experiment with introducing fees as a condition of accessing the dispute resolution procedures offered through the Employment Tribunals: For the first time Employment Tribunal fees were introduced by the *Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013* (SI 2013/1893). Prior to that, Claimants had not been required to pay fees to bring their claims. Fee payment was also introduced in relation to taking appeals to the Employment Appeal Tribunal. The arrangements for the imposition of fees are described in detail in the Judgment of Lord Reed delivering the unanimous opinions of the United Kingdom Supreme Court in *R (on the application of UNISON) v. Lord Chancellor,* (2017) UKSC 51 – see, in particular, paras. 16-19 and 21-25. Following the introduction of the fees regime, the volume of claims presented to the Employment Tribunals fell dramatically. This was summarised by the Supreme Court in terms that: "Since the Fees Order came into force on 29 July 2013 there has been a dramatic and persistent fall in the number of claims brought in ETs. Comparing the figures preceding the introduction of fees with more recent periods, there has been a long-term reduction in claims accepted by ETs of the order of 66-70%". The propriety of introducing tribunal fees was the subject of repeated judicial review proceedings. However, until the matter reached the Supreme Court, those challenges failed. Eventually, on 26 July 2017 the United Kingdom Supreme Court handed down a judgment quashing the Fees Order and declaring it to be an unlawful interference with the common law right of access to justice. In consequence of the Supreme Court ruling, Employment Tribunal and Employment Appeal Tribunal claims therefore no longer attract fees. Furthermore, the effect of the declaration was that fees were ruled as being unlawful from the outset, meaning that the Government had collected them unlawfully. By reason of this, the Ministry of Justice and HM Courts and Tribunals Service announced the establishment of an Employment Tribunal Refund Scheme through which those who had paid fees would be reimbursed. The most recent report on the operation of that reimbursement scheme indicates that the total value of refunds had risen to £18.595.000 as at 31 March 2022. See *Tribunal Statistics Quarterly: January to March 2022* (published 9 June 2022).

(2) Cases falling within s.4(3) of the Employment Tribunals Act 1996 are conducted by an Employment Judge sitting alone[36].

(3) All other cases are heard by a "panel", normally consisting of an Employment Judge and two other members ("non-legal members")[37]. These cases thus continue to reflect something of a "tripartite" structure[38].

It should be noted that "preliminary hearings" may include hearings to determine so-called "preliminary issues" – such as whether the Tribunal has jurisdiction to hear a claim, whether a claim has been presented in time, or whether a Claimant alleging unlawful discrimination by reference to the protected characteristic of disability is able to satisfy the statutory definition of "disabled person". Where the determination of such issues could result in the final disposal of a party's claim or defence, these preliminary hearings will be heard in public (what has come to be described as "Open Preliminary Hearings")[39].

[36] The cases falling within this category are diverse and wide-ranging, including so-called "short track" cases (in particular, cases involving alleged non-payment of wages due). This category represents what are sometimes referred to as "judge-only by default" cases (with a discretion for the judge to decide that the case should be heard by a full panel instead) – to which cases concerning allegations of "unfair dismissal" were added with effect from 6 April 2012. See Employment Tribunals Act 1996, s.4(3)(c) as enlarged by The Employment Tribunals Act 1996 (Tribunal Composition) Order 2012 (S.I. 2012/988). The shift away from the "industrial jury" towards cases heard by a professional judge sitting alone has developed since the enactment of s.36 of the Trade Union Reform and Employment Rights Act 1993.

[37] Employment Tribunals Act 1996, s.4(1).

[38] Although the original model, under which the judge sat with a lay member nominated by the Confederation of British Industry (CBI) (bringing experience from the "employer side" of industrial relations) and a member nominated by the Trades Union Congress (TUC) contributing experience from the "worker side" of industrial relations, has been changed. Thus, the non-legal members are no longer nominated by the CBI and TUC, but are still split between what are described as an "employer panel" and an "employee panel". Some indication of the backgrounds from which non-legal members of the Employment Tribunals are drawn can be discerned from Ministry of Justice, *Official Statistics: Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2022 Statistics* (published 14 July 2022 and updated 13 July 2023), see in particular section 1.9 (Non-legal Members of Tribunals). A drive to further diversify the judiciary has been taken up by the Lady Chief Justice of England and Wales, while calls for improvement continue to be heard. See, for example, *Increasing Judicial Diversity: An Update - A report by JUSTICE*, London, 2020, which built upon an earlier report (*Increasing Judicial Diversity*) published in 2017.

[39] The procedure in this respect has been driven by a concern to ensure that rights under Article 6 of the European Convention on Human Rights 1950 are respected. Article 6.1 provides that: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press

However, the normal position is that "preliminary hearings" are held in private[40].

Numerous proposals have been put forward over the half century of their existence to modernise and "make more efficient" the use of Employment Tribunal resources[41]. Many of these have sought to suggest that there should be a greater "professionalisation" of the Tribunal judiciary and a move away from the "1970s notion" of "the industrial jury"[42]. A particular theme

and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

[40] See Employment Tribunals Rules of Procedure 2013 (as amended), Rule 56.

[41] In this context, note may also be made of the statutory power to issue "Practice Directions" – see s.7A of the Employment Tribunals Act 1996 (as introduced in 2002). However, no such instruments have so far been issued under the power contained in s.7A. Instead, Regulation 10A of the Employment Tribunals Rules of Procedure 2013 has been utilised to issue directions concerning such things as the use of "Legal Officers". This power is exercised by the Senior President of Tribunals, in conjunction with the Presidents of the England and Wales Employment Tribunals and the Scottish Employment Tribunals. Powers are granted by Regulation 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for the Presidents to issue "Practice Directions", while there are also powers under Rule 7 of the Employment Tribunals Rules of Procedure to issue "Presidential Guidance". Wide-ranging use of these powers has been made, including the important *Presidential Guidance (England and Wales): General Case Management* (issued on 22 January 2018; *Practice Direction (England and Wales): Remote Hearings and Open Justice*, issued on 14 September 2020; *Presidential Guidance (England and Wales): Alternative Dispute Resolution*, first issued in 2018 and updated on 7 July 2023; *Practice Direction (England, Wales and Scotland) Recording and Transcription of Hearings*, issued on 20 November 2023; and *Presidential Guidance (England & Wales): Vulnerable Parties and Witnesses*, issued on 22 April 2020.

[42] The expression "industrial jury" was coined by a series of judgments in the Employment Appeal Tribunal – see, in particular, *Iceland Frozen Foods Ltd v. Jones*, (1983) ICR 17, where Browne-Wilkinson J., in a case concerning "unfair dismissal", commented that: "…the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted". The expression reflected the original composition of the tribunal panel as a tripartite body comprising a judge, sitting together with two non-legal members (one nominated by the Confederation of British Industry, to provide "employer" experience, and the other nominated by the Trades Union Congress, to provide experience from the "worker" side of industry). It may be noted that, in the Impact Assessment for proposals under consideration in 2016 relating to the "Composition of First-tier Tribunal panels", the view was expressed that, in relation to Employment Tribunals, "The proportion of unfair dismissal cases successful at hearing has not been notably affected at around 10% between 2007/08 and 2009/10, 8% in 2010/11, 9% in 2011/12, 8% in 2013/13 and 2013/14,

in these reform proposals has been to reduce the number of cases in which a full panel sits, in favour of more cases being disposed of by an Employment Judge sitting alone[43].

Provisions in the recently enacted Judicial Review and Courts Act 2022 are, at the time of writing, waiting to be brought into force, substituting a new s.4 into the Employment Tribunals Act 1996[44]. In consequence, arrangements governing the composition of both the Employment Tribunals and the Employment Appeal Tribunal will be determined through regulations made by the Lord Chancellor[45]. With a view to discharging this obligation to produce new arrangements within the framework of the 2022 Act, the Senior President of Tribunals launched a consultation on panel composition in the Employment Tribunals and the Employment Appeal Tribunal, responses to which are, at the time of writing, being evaluated[46].

The powers and formal requirements relating to judgments being reached in the Employment Tribunals are to be found in the Employment Tribunals Rules of Procedure 2013[47]. After that, there is a right to seek "reconsideration" of a decision or judgment made by an Employment Tribu-

and 11% 2014/15. This would imply that the reduction in panel members in these cases has not significantly affected the outcome for users." (IA MoJ021/2016, p. 7 at para. 45). Whether the suggested implication could be substantiated or not remains a matter of contention, but, in any event, the proposal was not acted upon at the time – not least, given the problem arising with the unconstitutionality of the "fees regime" which arose shortly afterwards.

[43] Amongst proposals for reform may be mentioned: *Industrial Tribunals, A Report by Justice* (Chairman of Committee Bob Hepple), 1987; *Tribunals for Users One System, One Service*: *Report of the Review of Tribunals by Sir Andrew Leggatt*, 2001; Department for Business Innovation & Skills, *Resolving workplace disputes: A consultation*, 2011; The Law Society, *What is the future for Employment Tribunals?*, 2014; *Good Work: The Taylor Review of Modern Working Practices*, 2017; and the current rounds of consultation already referred to above.

[44] See Judicial Review and Courts Act 2022, s.35, which also substitutes s.28 of the 1996 Act (dealing with the composition of the Employment Appeal Tribunal). The 2022 Act contains a number of provisions (in ss.34-38) relating specifically to Employment Tribunals and the Employment Appeal Tribunal.

[45] Who, in turn, may delegate the task of producing the regulations to the Senior President of Tribunals.

[46] See Senior President of Tribunals, *Consultation – panel composition in the Employment Tribunals and the Employment Appeal Tribunal*. The consultation closed on 27 April 2023.

[47] See Rules 60-69 of the Employment Tribunals Rules of Procedure 2013 (decisions and reasons). For completeness, it should also be mentioned that there is also facility for so-called "judicial assessment" within the framework of the Employment Tribunals, as well as provision for "judicial mediation" before a dispute comes to a panel at full trial.

nal[48]. From a judgment of the Employment Tribunal an appeal lies (on a point of law only) to another "creature of statute" – the Employment Appeal Tribunal[49]. Appeals from the Employment Appeal Tribunal then may lie to the Court of Appeal (Civil Division)[50] and, finally, to the United Kingdom Supreme Court[51].

It may be noted that, unlike the position in some other countries, there is no formal "labour chamber" in the higher United Kingdom courts. Notwithstanding this, however, it is not uncommon to find that the com-

[48] Under the provisions of Rules 70-73 of the Employment Tribunals Rules of Procedure 2013.

[49] See s.21 of the Employment Tribunals Act 1996. The formal jurisdiction of the Employment Appeal Tribunal is set out in s.21 of the Employment Tribunals Act 1996, while that body's powers are provided for in s.35 of the same enactment. The composition of the Employment Appeal Tribunal is provided for by s.28 of the Employment Tribunals Act 1996 (as amended in 2013). The procedures relating to the lodging of appeals before the Employment Appeal Tribunal are set out in a Practice Direction of 2018 – see Practice Direction (Employment Appeal Tribunal - Procedure) 2018. The Employment Appeal Tribunal's powers are set out in Part II of the Employment Tribunals Act 1996 (as amended) and the Employment Appeal Tribunal Rules 1993 (as amended).

[50] See s.37(1) of the Employment Tribunals Act 1996, which provides that: "…an appeal on any question of law lies from any decision or order of the Appeal Tribunal to the relevant appeal court with the leave of the Appeal Tribunal or of the relevant appeal court."

[51] During the period when the United Kingdom was a member of what is now the European Union there was power for any of these bodies to make references to the Court of Justice of the European Union in Luxembourg, under the provisions of Article 267 of the Treaty on the Functioning of the European Union. Since Brexit and the departure of the United Kingdom from those arrangements in January 2020 that power has been removed. Nor do the provisions of Article 19 of the Treaty on European Union (provision of "remedies sufficient to ensure effective legal protection in the fields covered by Union law") apply any longer, or the provisions of Article 47 of the Charter of Fundamental Rights of the European Union (Right to an effective remedy and to a fair trial). Outwith the European Union, however, it is the case that the United Kingdom remains obligated by Article 13 of the European Convention on Human Rights 1950 (Right to an effective remedy) as overseen by the Council of Europe. In relation to the effect of the Brexit Withdrawal legislation, see *inter alia HMRC v. Perfect*, (2022) EWCA Civ 330. See also pending proceedings where a 2020 decision of the United Kingdom Supreme Court in relation to an arbitration matter has become the subject of challenge by the European Commission. On 9 February 2022, the European Commission announced that it had decided to refer the United Kingdom to the Court of Justice of the European Union in relation to the Supreme Court's judgment of 19 February 2020 in *Micula and others v. Romania*, (2020) UKSC 5. See also House of Commons Library publications, S. de Mars, *Brexit Next Steps? The Court of Justice of the European Union and the United Kingdom* (CBP 8713, published on 17 October 2019).

position of the panel (especially at the level of the Court of Appeal) hearing labour dispute cases will include judges who have previously served in the Employment Appeal Tribunal (normally, as a former President of that body).

In terms of other institutional actors which could be said to fall within the umbrella of judicial bodies, mention should be made of the Central Arbitration Committee, which is responsible for disputes arising in relation to the statutory recognition of trade unions; the disclosure of information for collective bargaining; applications and complaints related to information and consultation arrangements; establishing and operating European Works Councils[52]; and complaints about the level of involvement employees have in certain decisions covered by regulations related to European companies, co-operative societies and cross-border mergers[53].

## 4. *Challenges and Proposals for Reform: Catching up after Covid*

The establishment of the original Industrial Tribunals in 1964, the creation of administrative jurisdiction in cases of economic dismissal (redundancies) in 1965, and responsibility for adjudicating party-to-party "private law" disputes over termination of employment in 1972, may be regarded as key moments in the evolution of a modern system of labour dispute resolution in the United Kingdom. So, too, have the (eventually ill-fated) introduction of substantial fees as the price of access to justice in individual employment disputes and a significant move away (over many years) from the original 1960s model of "tripartism" presented fundamental challenges to traditional notions of "industrial justice". However, it is now increasingly becoming evident that developments in the last half decade (and, in particular, measures emerging in the context of State responses to the Covid-19 pandemic) are bringing with them dra-

[52] The situation in relation to "European Works Councils" and the role of the CAC remains less than entirely clear in the context of post-Brexit arrangements. See, for example, the judgment of the Employment Appeal Tribunal in *easyJet PLC v easyJet European Works Council and Secretary of State for Business Energy and Industrial Strategy*, (2022) EAT 162.

[53] The Central Arbitration Committee, which is an independent tripartite body with statutory powers, also offers facilities for voluntary arbitration in collective disputes. The role of the Chair of the Central Arbitration Committee is quasi-judicial and decisions can be appealed to the higher courts.

matic change at a pace quite unlike anything which has been seen over the last 75 years.

For some idea of the extent of this revolution it is necessary to cast one's mind back to "how things were done" immediately before the Covid-19 "lockdown" imposed across the United Kingdom in March 2020. The Employment Tribunals held trial hearings in person in the physical location of each of the regional Employment Tribunal areas. Although a certain amount of pre-trial "case management" had been routinely dealt with by telephone conference involving a judge and representatives of the parties, this remained limited and the provision of technical facilities in the tribunal centres was – to put it at its kindest – basic. Traditional tape-recording machines in the hearing rooms, along with personal dictation machines for some of the full-time judges, were in the process of being replaced by digital recording devices, while the use of dictation/transcription software was very much a question of personal preference (or, simply, availability) for individual judges.

The case files held for each set of proceedings were in paper format, with the physical documentation being held securely in the tribunal offices. Bundles of documents for use during litigation, as well as written witness statements prepared on behalf of witnesses to be called during the trials, were assembled in paper form, with regular logistical problems arising from the inadequacies of "lever-arch files" within which to contain them. A "control file" would be collated for each case, physical possession of which was transferred from department to department within the tribunal hearing centre, and onto which was appended each additional document, handwritten note, instructions and miscellaneous items associated with the case as it progressed through the system to final trial and judgment. There was no question of this physical data being moved outside the physical location of the hearing centre itself – and, indeed, it was regarded almost as "a hanging offence" to even contemplate removal of an original document from the physical confines of the tribunal building.

Little more than three years on from the outbreak of the Covid-19 pandemic that "way of doing things" is scarcely recognisable. An early embracing of video-conferencing facilities by the senior judicial leadership of the Employment Tribunals[54], coupled with remarkable investment of goodwill

[54] See, in particular, *Presidential Guidance on remote and in-person hearings*, issued by the President of the Employment Tribunals (England and Wales) on 14 September 2020.

on the parts of both full-time and part-time judges, laid the foundations for what has already come to be regarded as "the new normal"[55].

Case documentation across the Employment Tribunal system is now routinely held electronically, along with case dossiers, "bundles" of documents for use at trial, and pre-prepared witness statements. This development, together with rapid improvements in video-link technologies and a greater availability of those technologies to the judiciary, has enabled a much more flexible and effective framework to be created for case management and trials. Almost all pre-trial "case management" activity is now conducted by judges sitting alone by way of video or audio links. Large numbers of trials now take place "on-line", with parties joining court administrators and judiciary remotely. Even where more complex trials are involved – for example, where multi-day hearings are listed for tripartite panels to adjudicate claims alleging discrimination or "whistleblowing" at work – many (if not all) of the early reservations about "effective justice" have been dispelled. Meanwhile, particular types of proceedings – such as "judicial mediation" – have shown themselves to be ideally suited to the flexibility afforded by video-link facilities.

Indeed, so far has this progress come that the Employment Tribunals established a pilot version of a "Virtual Region", whereby a limited number of judges drawn from the various geographical regions across England and Wales are available to sit (remotely, by video-link) on cases arising nationally in any of the Employment Tribunal regions. That experiment has proved highly successful, and has been taken as a model for developments in a number of other jurisdictions apart from the employment field.

Nevertheless, while progress towards more flexible modes of administering and hearing labour dispute cases has been achieved at a speed which would have been unimaginable in the pre-Covid rule-bound and conserv-

[55] The United Kingdom was not alone in this shift of attitude to former ways of working. See, for example, the experiences detailed in the Proceedings of the extraordinary meeting of the European Association of Labour Court Judges (EALCJ), held (on-line) on 6 June 2020, dealing with *Challenges and Experiences with Administration of Labour Courts in the face of Covid-19*, and the Proceedings of the following meeting (held – also on-line – to mark the 25th anniversary of the EALCJ), *The Future of Labour Law & the Role of the Labour Court*, on 19 & 20 November 2021. A survey conducted in June 2020 by the UK Council of Employment Judges provided further information across a range of jurisdictions. For more detailed indications of some of the changes which were afoot at that time, see, *inter alia*, HM Courts & Tribunals Service, *Evaluation of remote hearings during the COVID 19 pandemic: Research report*, compiled by Janet Clark, HMCTS and published in December 2021.

atively introverted administrative arrangements within the United Kingdom's public service, there remain a number of critical problems affecting the labour dispute resolution framework which are confronting the senior judiciary and policy-makers with major challenges.

Perhaps the most obvious challenge is to be seen in a significant backlog of cases within the Employment Tribunals system. As has already been noted, the most recently available statistics suggest that, by the end of June 2023, the figure for "open cases" – largely a euphemism for "backlog" – stood at 35.000 "single" claim cases together with around five and a half thousand lead cases reflecting 436.000 "multiple" claims. There are many reasons (some of which elicit more sympathy than others) for this state of affairs, although it may be noted that the extent of a growth in "open" cases attributed to the Covid-19 restrictive period appears to have been relatively limited – the present figures being compared with a backlog of just over 30.000 pre-Covid.

A long period of "cuts" to public services – within which "the justice system" is not afforded any special or enhanced protected status – provides the historical context to much of the problem. That tendency to reduce public spending on the administration of justice gathered pace during a prolonged period of what was dubbed "austerity policies" following a change of government in 2009. Furthermore, measures designed to address perceived problems in relation to "employment disputes" are not regarded politically as carrying the same degree of urgency as, for example, issues arising in relation to crime or family disputes.

Notwithstanding this, however, there has been a substantial programme of appointing new recruits to the Employment Tribunals judiciary[56]. Both

[56] An early recruitment exercise was launched in 2018, not long after the United Kingdom Supreme Court had ruled the 2013 "fees regime" unconstitutional – with a consequent return to pre-2013 levels of claims placing sudden and severe pressure upon judicial resources in this jurisdiction. See an overview of that appointment exercise by the then President of the Employment Tribunals of England and Wales, Judge Brian Doyle: Doyle, *Could you be an employment judge? Your employment tribunal needs you!*, 2018, 25 *ela Briefing* 6. Further appointment exercises took place in 2021, after initial announcement in October of that year. During 2023 two further exercises have been under way with a view to (1) recruiting 50 further fee-paid employment judges into the England & Wales system; and (2) recruiting an additional 50 full-time equivalent salaried Employment Judges for appointment primarily to the London and South-East of England – where there have been particular pressures upon judicial resources. These appointment exercises are conducted by the Judicial Appointments Commission (JAC) which is responsible for selecting candidates for judicial office in England and Wales, and for some tribunals with UK-wide powers.

salaried judges (full-time and fractional appointments) and fee-paid judges have been appointed, and the impact of this increase in judicial resources is gradually beginning to be felt as the new appointees complete their induction and early experience career development[57].

### 5. *Challenges and Proposals for Reform: More Efficient Dispute Resolution*

Even before the "shock" delivered by Covid-19, there had already been growing calls for improvement to the Employment Tribunals system on a number of fronts. More recently, a survey undertaken by the Employment Lawyers Association (ELA) in April and May 2021 (a year after the first "lockdown" measures introduced to combat Covid-19) identified widespread dissatisfaction at delay in bringing cases to trial and a general sense that tribunals were taking longer to handle standard administrative matters. The findings were summed up in terms of "…a creaking tribunal system which, in many regions, is functioning at a snail's pace and threatening access to justice for both workers and employers", while the root causes were said to lie in "…chronic understaffing, unavailability of resources and an increase in the volume of work for Tribunals".

On the other hand, the ELA survey also indicated a strong measure of approval for ways in which the Employment Tribunal system had been at the forefront of innovating with ways of working in the new circumstances. Thus, it was noted that "…Employment Tribunals have led the way in pioneering video hearings. They have been a great success in hearings and trials of fewer than three days. We believe they are here to stay".

Looking back even to developments in the past two years, it is clear that many of the most pressing issues concerning judicial resource have been addressed through large-scale recruitment into the Employment Tribunal judiciary. So, too, has the widespread acceptance of video-link hearings,

[57] However, there had remained some problematic "judicial morale" issues – in particular, as regards the continuing commitment of fee-paid judges whose judicial sittings had been reduced to negligible levels during the period of the "fees regime" between 2013-2017 – although there are encouraging signs that conscious efforts by successive Presidents of both the England & Wales and Scottish tribunals to address that unfortunate legacy have largely succeeded in mollifying any underlying dissatisfaction on the parts of judicial officers subject to a particularly unattractive public sector variant of a zero-hours contract.

electronic documentation for trials, and associated improvements to the underlying administration of the Employment Tribunals case-load been credited with some success in tackling the backlog of "open" cases and fundamental questions of "access to justice" in the employment field. Nevertheless, long delays are still encountered in bringing cases to trial – something not assisted by the increasing complexity of much of the subject-matter with which the Employment Tribunals deal on a daily basis[58].

A recurring problem in relation to the availability of judges for sittings within the Employment Tribunals is shared with other jurisdictions across the civil justice system of the United Kingdom. This is in relation to the allocation of what is described as "sitting days" – a process which is conducted in relation to financial years and which is regularly severely limited by financial constraints determined by central government[59].

For the Employment Tribunals, whose allocation of sitting days is undertaken along with all other resource allocations across all jurisdictions, the designated requirement for judge sitting days is – at least in theory – settled for the forthcoming financial year as part of the resourcing of HM Courts and Tribunals Service (HMCTS). The decision in this context is made by the Lord Chancellor, who is a political appointee. Such decisions are reached on the basis of projections of current trends in receipts, disposals and outstanding cases, together with some possible input from users[60].

[58] A "snapshot" of the position in the largest Central London tribunal centre at the beginning of December 2023 suggests that 1, 2 and 3-day hearings are being accommodated within four months, but that hearings listed for four days or more are unlikely to be brought on until the latter half of 2024. The picture varies depending upon individual regions, with some hearing centres already looking at listing cases well into late 2024.

[59] The presentation here of the procedure for allocating "sitting days" is drawn from *'Sitting days': How are they decided?*, in *https://insidehmcts.blog.gov.uk/2021/06/18/sitting-days-how-are-they-decided/* (last accessed 5 December 2023).

[60] The procedure is for the Lord Chancellor to consider the forecasts, the level of outstanding work in jurisdictions and the available judicial resource, after which a proposed allocation of sitting days will be decided. This is then shared with the Board of HMCTS, which then advises the Lord Chief Justice and Senior President of Tribunals as to whether the settlement is sufficient for the efficient and effective operation of the system. This then leads to a formal discussion between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, where the Lord Chancellor sets out the proposal, which includes the number of sitting days across Crown, Civil, Family and Magistrates' courts as well as for all Tribunals. The Lord Chief Justice and Senior President consider the Board's advice and respond. This may involve highlighting any risks associated with the proposals and concerns relating to shifting volumes of demand. If the Lord Chief Justice and the Senior President of Tribunals are concerned

Unfortunately, however, recent years have witnessed serious delays in determining the eventual allocation of sitting days – such that allocations have been finalised as late as the end of the second quarter of the financial year. In consequence, half of the operational year has already been completed, with listing of cases having to be done without any idea of what the eventual capacity will turn out to be. Once the final allocation figure is released, it is then possible for a more informed listing process to be completed for the remainder of the financial year. However, this gives rise to a number of knock-on problems.

Given that even single day, 2-day and 3-day cases in the Employment Tribunals are taking some four months to bring to a final trial hearing, this leaves very little flexibility in the latter part of the financial year. Once it is realised that longer multi-day cases may have to be listed a year or more ahead, the frustration of the senior Employment Tribunal judiciary[61] will be self-evident.

Furthermore, in time-honoured practice within the public service, budgets are set for a specific financial year, and the prospect that a budget allowance might not, in the end, be expended will raise the prospect of "claw-back" in following financial years, with consequential rolling under-resourcing. Such a situation can lead to frantic endeavours during the final two quarters of the financial year to ensure that any allocation is fully utilised – not necessarily an easy challenge, given that listings require not only an available sitting day, but also the availability on particular dates of fee-paid judges and non-legal members (who perform their public judicial duties alongside complementary obligations in their professional lives)[62].

that the proposed allocation is not sufficient to ensure the efficient and effective operation of the courts and tribunals, they can make their concerns known and ultimately could raise them with Parliament. Finally, a decision on the allocations will be made, and it will then be a matter for the independent judiciary to arrange the listing of cases within the allocated sitting days.

[61] Primarily, the President, at the head of the system, and Regional Employment Judges, who are responsible for the administration of cases in each of the regions. The structure for England and Wales is broadly mirrored in Scotland.

[62] While an "expanding" demand for fee-paid and non-legal member sittings may be met with general satisfaction by many, this is far from the case if the demand diminishes – as was the situation during the period of the "fees regime" between 2013 and 2017. The extent of that impact from the fees policy can be appreciated only too sharply when it is recalled that the last financial year of the fees arrangements (2016-2017) saw only just over 1.700 sitting days allocated to fee-paid Employment Judges, as contrasted with the more recent 2022-2023 figure which reached close to 12.000 days.

One developing policy approach which has met with great enthusiasm at senior judicial levels has been encouragement to promote the use of "alternative dispute resolution" (ADR) in labour dispute cases coming before the Employment Tribunals[63]. Such initiatives are seen as being complementary to the long-established range of activities already undertaken by the Advisory, Conciliation and Arbitration Service (ACAS)[64].

For a number of years there has been provision for what is described as "judicial mediation" within the employment field[65], whereby a day of judge time is provided for private mediation between the parties with a view to finding a form of non-judicial resolution which could avoid lengthy final trial hearings before a full judicial panel. Following a broadly positive evaluation of early pilot schemes conducted in Newcastle, Central London and Birmingham between June 2006 and March 2007 (involving discrimination cases)[66], a general national initiative was put in place, involving existing Employment

[63] More broadly, such developments now have to be seen against a background in which it appears that the higher courts are actively expressing support for ADR (or "NDR"). See, for example, the observations of the Court of Appeal in *Churchill v. Merthyr Tydfil*, (2023) EWCA Civ 1416 (judgment delivered 29 November 2023), clarifying that what had previously been thought to be problematic obstacles identified in the case of *Halsey v. Milton Keynes General NHS Trust*, (2004) EWCA Civ 576, should not be taken as absolute bars to a court ordering a party, in appropriate circumstances, to engage in a non-court-based dispute resolution process. This is undoubtedly an area which will be subjected to close attention as pressures upon judicial resources continue to grow. In the *Churchill* case, the Master of the Rolls (delivering a unanimous judgment of the Court of Appeal) held that: "The court can lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost". However, despite discussion in the body of the judgment of a variety of possible situations, the Master of the Rolls concluded that he would "…decline to lay down fixed principles as to what will be relevant to determining the questions of a stay of proceedings or an order that the parties engage in a non-court-based dispute resolution process".

[64] The most recent data in relation to the duties and activities of ACAS can be found in Acas, *Annual Report and Resource Accounts 2022-2023*, cit.

[65] Thus, to take just one variant of ADR, an enthusiasm for "mediation" is evident more broadly than just in the employment context. See, for example, the proposals and call for evidence in relation to greater use of this facility set out in Ministry of Justice, *Increasing the use of mediation in the civil justice system*. Presented to Parliament by the Lord Chancellor and Secretary of State for Justice by Command of Her Majesty, July 2022 (CP 721).

[66] See Urwin, Karuk, Latreille, Michielsens, Page, Siara, Speckesser, with Boon, Chevalier, *Evaluating the use of judicial mediation in Employment Tribunals* (Ministry of Justice Research Series 7/10, March 2010).

Judges who were either already accredited meditators as part of their professional skill-set or who had been provided with internal training within the framework of the judicial training programmes provided for experienced judges[67]. Results from this initiative demonstrated an impressively high percentage (reported to be between 65-70%) of successful mediations, with substantial consequential savings of sitting days as a result. The arrangements proved particularly valuable during the period of "lockdown" introduced at the outbreak of the Covid-19 pandemic, with video-link arrangements being generally well-suited to the dynamics of a judicial mediation.

Most recently, following a pilot of a new form of ADR hearing in the West Midlands region of the Employment Tribunals, a form of hearing known as a "dispute resolution appointment" has been introduced into the armoury of labour dispute resolution[68]. Under these arrangements, there is a requirement for parties (particularly those involved in long complicated hearings) to attend an appointment (conducted confidentially) with a view to finding a resolution of their case which might avoid an otherwise long journey to eventual judicial resolution by way of a full trial. There is no obligation to reach a settlement at one of these appointments – or even to enter into negotiations or the like – but reported experience from the pilot scheme suggests that parties do attend the appointments and can derive benefit from that opportunity to address their dispute afresh. Facilitation of this innovation has been underpinned by fresh Presidential Guidance issued in July 2023[69].

### 6. *Challenges and Proposals for Reform: Effective Enforcement of Decisions*

A lively debate continues in relation to the effectiveness of the labour dispute mechanisms provided (especially) through the Employment Tribunals

[67] This scheme was underpinned by *Presidential Guidance: Alternative Dispute Resolution*, issued on 22 January 2018.

[68] In this context, the expression "*negotiated* dispute resolution" (NDR) has sometimes been introduced in place of "*alternative* dispute resolution" (ADR), with a view to emphasising that such arrangements are increasingly being seen as features of "the new normal".

[69] *Presidential Guidance: Alternative Dispute Resolution*, issued by the President of the Employment Tribunals (England and Wales) on 7 July 2023. The Presidential guidance on "dispute resolution appointments" was also accompanied by updated guidance in relation to "judicial mediation" and "judicial assessment". Unlike judicial mediation, there has been a widespread sense that the phenomenon of "judicial assessment" has not been particularly popular amongst tribunal users.

and the extent to which there can be said to be effective enforcement of decisions rendered by those bodies[70].

Indeed, in 2013 the United Kingdom Government published a report of research into what happens after awards are made by an Employment Tribunal[71]. That research indicated that, amongst the cohort studied, around half (49%) of Claimants had been paid in full, and a further 16% had been paid in part. This left 35% who had not received any money at all. Just over a half of those successful Claimants (53%) received full or part payment without having to resort to enforcement[72].

There has long been criticism that successful parties in Employment Tribunal proceedings are not provided with a remedy (award) which is "self-executing" or which can readily be executed through the Employment Tribunal without significant additional costs associated with that enforcement[73].

[70] In relation to money awards in individual employment disputes determined by the Employment Tribunals the award made to the successful party will include interest on the judgment sum. This begins to run if payment is not made within 42 days (14 days for discrimination cases). If (normally) the employer defaults on payment, the Claimant can choose to pursue "enforcement" options. In England and Wales this could occur at any point – although historically the position was different in Scotland.

[71] See *Department for Business Innovation & Skills, Payment of Tribunal Awards: 2013 Study*, IFF Research, 2013. The report summarised the findings of a study of Claimants who had been successful at Employment Tribunal and were awarded a sum of money by the Tribunal. This study constituted a follow-up to earlier research on the subject, published as Ministry of Justice, *Research into Enforcement of Employment Tribunal Awards in England and Wales* (2009). More recent data which might update these findings (which are over ten years old) is extremely difficult to locate. For a recent more "theoretical" treatment of individual labour dispute mechanisms in comparative perspective, see CORBY, *Adjudicatory Institutions for Individual Employment Disputes: Formation, Development and Effectiveness*, in *IJCL*, 2022, Vol. 38, No. 1.

[72] The data suggested that Claimants who had received assistance from lawyers, unions or informal arrangements either before, during or after their initial hearing were more likely to receive payment without needing enforcement (58% compared to 53% overall).

[73] In England and Wales, as described in the 2013 Report, at the time of writing, individuals could choose to pursue enforcement of their award through applying to their local County Court for an enforcement order, after which enforcement officers would seek to secure payment from the employer. This process involves completing an application to the County Court and there is a fee payable for the process. It was also noted that, as part of the Government's response to an earlier similar survey conducted in 2008, a "Fast Track" scheme had been introduced in 2010, which was designed to speed up and simplify the process of enforcing an award. Under this scheme, a High Court Enforcement Officer would act on the Claimant's behalf to file the claim with the County Court, issue a writ and attempt to recover the money. The fee for using this service was slightly higher. Mention should also be made of a policy of "naming and sham-

The unsatisfactory situation in relation to enforcement of Employment Tribunal awards remains the subject of comment in the context of various reform proposals currently under discussion[74]. However, an absence of effective enforcement is widely acknowledged – although it remains to be seen whether the necessary political will to remedy the problem can be mustered in the sensible future[75].

By contrast, enforcement of judgments given by the High Court and the higher courts of appeal is handled in the normal manner, with the usual execution methods available throughout the United Kingdom civil justice system.

ing" employers who default on obligations to pay awards. A so-called "naming scheme" was announced on 17 December 2018 by the Department for Business, Energy and Industrial Strategy, and came into effect for all awards registered on or after 18 December 2018. The initiative came about in response to observations set out in a review of working practices which had been commissioned by the Government. See *Good Work: The Taylor Review of Modern Working Practices* (published 11 July 2017). The Department for Business, Energy and Industrial Strategy (BEIS) guidance on the scheme states that: "Individuals can register their unpaid award free of charge with the BEIS penalty scheme 42 days after the date of an employment tribunal judgment. Once an enforcement officer has verified the claim, a warning notice is sent to the employer, warning them that if they do not pay the award they will face a penalty and public naming. If the award remains outstanding after 28 days, the employer is sent a penalty notice, ordering them to pay a penalty to the value of 50% of the original award amount and 8% interest per year. At the penalty notice stage employers will be sent a naming notification letter warning that they will be named unless they submit valid representations within 14 days and the representations are accepted. This letter is only sent if the claimant has agreed for their employer to be named. BEIS will send letters to employers on the list prior to the naming round taking place. The naming round will take the form of a press release on GOV.UK. Employer names will appear on a list alongside the outstanding award after a minimum of 42 days following a warning notice." See Department for Business, Energy and Industrial Strategy, *Naming Scheme for Unpaid Employment Tribunal Awards: Policy on Department for Business, Energy and Industrial Strategy's naming scheme for employers who fail to pay Employment Tribunal awards*, December 2018.

[74] See *infra*.

[75] As has already been pointed out, during the period of the United Kingdom's membership of the (now) European Union, the duty to provide for "effective remedy" formed part of the State's obligations by reference to Article 19 of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union. Those provisions no longer have the same formal impact since completion of "Brexit". In the context of the Council of Europe, the United Kingdom remains obligated by Article 13 of the European Convention on Human Rights 1950. See, for proposals on "self-executing norms" and other innovations found in various national systems, Neal, *Enforcing EU Labour Law: Is there a need for new sanctions/means of redress?*, Report presented to an Expert Meeting of the European Commission, Brussels, 13 October 2017.

## 7. *Ongoing Reform and Modernisation*

While many of the dramatic changes to practice in the Employment Tribunals were provoked directly by the restrictions placed upon society as a whole in the face of the Covid-19 pandemic, it should also be recognised that policies to achieve reform and modernisation of the justice system (including in relation to the delivery of "industrial justice") had been taking place for some time before the outbreak of that pandemic. The current position thus needs to be placed in a broader context of HM Courts and Tribunals Service reform, which is ongoing[76].

Ever since the time of the publication of the report of the Donovan Commission in 1968, there has been no shortage of criticism and proposals for "improvement" of the United Kingdom system of labour dispute resolution. Mention has already been made of proposals emanating from a variety of official government-established bodies and other interested organisations, including the private organisation JUSTICE[77], the Department of Employment[78], the Tribunals Review conducted by Sir Andrew Leggatt[79], the Employment Tribunal Taskforce[80], the Better Regulation Task Force[81], The Department for Constitutional Affairs[82], the Department of Trade and Industry[83], the Department for Business Innovation & Skills[84], the Law Society[85], the "independent report" produced at the invitation of the government under the supervision of Matthew Taylor[86], and

[76] For a pre-Covid-19 policy position on reform across the entirety of the United Kingdom legal system, see, for example, the presentation of the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, *Transforming Our Justice* System, September 2016.

[77] *Industrial Tribunals, A Report by Justice* (Chairman of Committee Bob Hepple), 1987.

[78] *Resolving Employment Rights Disputes: Options for Reforms*, Cm. 2707, 1994.

[79] *Tribunals for users: One System, One Service - Report of the Review of Tribunals by Sir Andrew Leggatt* (2000).

[80] *Moving Forward: The Report of the Employment Tribunal Taskforce*, 2002.

[81] Better Regulation Task Force, *Employment Regulation: Striking a balance*, 2002.

[82] *Transforming Public Services: Complaints, Redress and Tribunals*, Cm 6243, 2004.

[83] *Better Dispute Resolution: A review of employment dispute resolution in Great Britain* (Chairman, Michael Gibbons), 2007.

[84] Department for Business Innovation & Skills, *Resolving workplace disputes: A consultation*, 2011.

[85] The Law Society, *What is the future for Employment Tribunals?*, 2014.

[86] *Good Work: The Taylor Review of Modern Working Practices*, 2017.

the Law Commission[87]. The most recent contribution to this debate has come from The Law Society of England and Wales, which in October 2023 published a "Green Paper" setting out specific reform proposals[88].

Currently, the policy framework for modernisation and reform of the Employment Tribunals is in the hands of HM Courts and Tribunals Service through the "Reform" programme. Delays to that programme were announced in the Spring of 2023, and an announcement from the Lord Chief Justice and the Senior President of Tribunals confirmed that the Reform Programme "will not include all the projects which were first in scope"[89].

Nevertheless, recent successful reform developments include, in particular, the appointment of "Legal Officers" who took up their duties in the Employment Tribunals from April 2021[90]. Meanwhile, technological improvements are being introduced to assist the administration of cases within the system, including a novelty, with effect from 20 November 2023, by which Employment Tribunal hearings are being recorded[91], thus bringing this jurisdiction in line with most of the rest of the civil justice system in the United Kingdom. The framework for this technological (primarily information technology related) modernisation has been located within the HMCTS "Reform" project.

Finally, it should be pointed out that when the Judicial Review and Courts Act 2022 comes into force[92], important amendments will be intro-

[87] Law Commission, *Employment Law Hearing Structures: Report* (HC308, Law Com No 390), 2020.

[88] The Law Society, *Proposals for a 21st Century Justice system* (2023). Proposals in relation to the system of Employment Tribunals are set out at page 18 of the report, reflecting proposals first put forward in 2020, under the heading "Strengthening employment tribunals".

[89] See the public statement relating to this: *The Lord Chief Justice and Senior President of Tribunals: the next stage of HMCTS Reform*, 20 March 2023.

[90] Power to make such appointments was contained in the Employment Tribunals Act 1996 – see Section 4(6B) – but it took more than twenty years for action to be taken under that power. For an overview of the duties and activities of these Legal Officers, see HIGGINS, *A Day in the Life of an Employment Tribunal Legal Officer*, in *Tribunals Journal*, 2023, 1.

[91] Within a framework established by *Presidential Practice Direction: Recording of Employment Tribunal Hearings and the Transcription of Recordings*, issued by the President of the Employment Tribunals (Scotland) and the President of the Employment Tribunals (England and Wales) and taking effect on 20 November 2023. See also the *Presidential Guidance* issued on 20 November 2023 in conjunction with the Practice Direction.

[92] The 2022 Act received its Royal Assent on 28 April 2022, but its provisions will only

duced to the basic legislative framework governing the operation of the Employment Tribunals and the Employment Appeal Tribunal[93].

## 8. *Comment*

All in all, after coping with the shock of a pandemic, the post-Covid-19 pace of change for the system of labour dispute resolution in the United Kingdom now shows no sign of slackening in the foreseeable future. In particular, the system of Employment Tribunals continues to undergo significant reform – both in relation to the administration of labour disputes and as regards the substantive content of the subject-matter with which the judiciary is engaged in the world of work.

The challenges arising within the system continue to pose political and financial problems, as well as raising fundamental issues of "access to justice" and the delivery of effective remedies to ensure judicial protection of the employment rights of a labour force now embracing well over 30 million citizens.

In consequence, the United Kingdom system of labour dispute resolution still has a long path to travel as it continues its journey from the Donovan Commission's original vision of "labour tribunals" as a mechanism: "… primarily, to make available to employers and employees, for all disputes arising from their contracts of employment, a procedure which is easily accessible, informal, speedy and inexpensive, and which gives them the best possible opportunities of arriving at an amicable settlement of their differences"[94].

be brought into effect once secondary legislation (in the form of Statutory Instruments) has been enacted to facilitate this. See, most recently, The Judicial Review and Courts Act 2022 (Commencement No. 4) Regulations 2023 (S.I. 2023/1194).

[93] Changes will be made to the Employment Tribunals Act 1996 and to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (which set out in Schedule 1 the Employment Tribunal Rules of Procedure).

[94] *Royal Commission on Trade Unions and Employers' Associations 1965-1968* (Cmnd. 3623), at para. 572.

**Abstract**

This presentation offers a contemporaneous overview of labour dispute resolution institutions and mechanisms in the United Kingdom. An introductory section identifies the United Kinigdom's well-documented non-interventionist ("collective lasissez-faire") approach giving way to increasing legal intervention – primarily through normative provisions in legislation enacted with minimal input from the labour market actors. The historical roots of the modern United Kingdom framework are considered with particular emphasis upon the system of Employment Tribunals which deal with individual labour disputes. Attention is drawn to dramatic changes in practice which formed part of the judicial system's response to the Covid-19 pandemic. It is noted that these opened the way to a "new normal" for handling labour disputes which currently forms part of a wider "Reform" programme. Current reform initiatives are presented and comment is made on the post-Covid-19 shift towards greater use of information technology including, in particular, increasing resort to remote (on-line) hearings by the courts and tribunals. Continuing challenges are also identified, including problems with "access to justice", difficulties in enforcing remedies obtained through the legal process, and a sizeable "legacy" backlog of cases awaiting final disposal.

**Keywords**

Employment rights, Labour dispute resolution, Employment Tribunals, Labour Courts, Judicial procedures, Access to justice, Covid-19 challenges, Post-pandemic procedural reform, Judicial use of information technology.