SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

2019

Contents

Introduction

By the Senior President of Tribunals, The Rt Hon Sir Ernest Ryder

It is now four years since my appointment as Senior President. In that time, we have developed and published our strategy and plans for reform. This next year will see an increased emphasis on implementation i.e. the transition from the design and planning of our change projects to the use of new process as business as usual. It is now time to return to first principles and ask the question: what remains to be done to achieve the aim we set ourselves four years ago? That was to create a tribunals justice system that is the best in the world with a tribunals judiciary that has the skills, abilities and capacity to be able to sit in any court or tribunal jurisdiction anywhere in the United Kingdom.

This year's annual report comes later in the year than previous reports because of the additional materials that were published last year: the Modernisation of Tribunals 2018 and the Innovation Plan 2019/20:

https://www.judiciary.uk/wp-content/uploads/2019/01/Supplementary-SPT-report-Dec-2018_final.pdf

https://www.judiciary.uk/wp-content/uploads/2019/04/SPT-Innovation-Plan-for-2019-20-Amended.pdf

These reports covered in detail the delivery of the programme of reform of courts and tribunals in England and Wales. The focus of this annual report is the future of tribunals justice. I shall also highlight the excellent work that continues to be done to provide high quality independent decision making by tribunals throughout the United Kingdom.

One System

The detail of our reform plans will continue to develop as we learn from the pilot schemes and projects in each of our jurisdictions. It remains my vision to develop new process and language that are more accessible to our users by opening up the opportunities that information technology presents, while at the same time safeguarding the protections that our different jurisdictions have developed over time. In particular, for those who are vulnerable or who need procedural adjustments to be able to access justice. There is no 'one-size-fits-all' in tribunals justice. Our service is justifiably proud of the investigative and inquisitorial ways of working that judges and panel members have developed to provide access to justice in circumstances both of high adversarial conflict and complexity and, also, where there is little or no legal support or representation. We will continue to provide that service and intend to improve it by responding to our users' digital needs and capabilities.

Our new system will be based around a core of reusable components that will deliver:

- A digital bundle of documents,
- Evidence sharing with users, Government agencies and both private and public sector bodies,
- Digital, telephone and video-enabled case management by judges and their authorised officers who are trained with and supervised by their judges,
- Fully video (virtual) hearings and continuous online resolution where the credibility and reliability of oral evidence is not the determining issue and in particular where early neutral evaluation of the documentary materials can lead to earlier resolution without the need to attend a court or tribunal building, and
- New front-loaded preparation and process that is digitally recorded with easy to understand rules, directions, guidance and reasons.

We will make available to all tribunals the lessons of projects that have been successful in a pilot tribunal and we will decide whether the new process or ways of working are suitable for implementation elsewhere. Similar plans are being made for Scotland to ensure that tribunals jurisdictions that are to be devolved have the benefit of the best we can offer before devolution takes place.

By 2020 I expect to be able to report that the plan to digitally record the proceedings of all reserved tribunals in the United Kingdom has been implemented. By then each tribunal will have selected the digital presentation screens and equipment that are appropriate to their jurisdiction. Once the projects that inform this work are complete, I shall expect Her Majesty's Courts and Tribunals Service to conclude the details of the digital offer that needs to be made to fee paid judges and panel members to enable our proceedings to continue to be specialist and expert led in a digital environment.

Work continues in parallel with our reform projects to identify the data which ought to be collected to evaluate reform and in particular access to justice. The 'assisted digital' project will continue to develop to identify what can and should be offered to users who wish to access the new services digitally. We remain committed to the continuation of paper based options for those who cannot or do not wish to use digital services. The integration of legacy ways of working into new services is an important part of the preservation of protections for our users.

The digital tribunal described in my previous reports is on the horizon. This next year will see a firm resolve to create new process and accessibility that are second to none, as compatible as possible with the best that the courts' services across all three geographic jurisdictions in the United Kingdom can provide and, most importantly, that provide for the diverse needs of tribunal users to have access to swift, innovative, specialist justice that is comprehensible for the user from their first point of use. I am very pleased to report that agreement has been reached with the Judicial College to provide digital and reform training materials for all judges and panel members before a new process or way of working is launched.

One Judiciary

My aim is to expand flexible deployment between tribunals' and courts' judiciaries across the United Kingdom so that decisions can be made to further integrate our judiciaries, eradicating all remaining differences in their status and terms and conditions of service.

The decisions that will need to be made will be different in each part of the United Kingdom, dependent on the legislation in each geographic jurisdiction, the devolution principles that we must follow and the opportunities for integration that they present. For example, there already exists in Wales, statutory powers which permit the reserved and devolved judiciaries to be shared at the request of the President of Welsh Tribunals and myself. That is a model which ought to commend itself to each geographic jurisdiction and each Government. We are working with the Lord President of the Court of Session and the President of Scottish Tribunals towards a dedicated model for Scotland that will appropriately respect the long tradition of an independent Scottish judiciary which is so highly valued by us. In Northern Ireland, the close relationship between the Chief Commissioner and the Lord Chief Justice of Northern Ireland has produced collaborative arrangements for devolved tribunals and service level agreements across the United Kingdom that work very well. The integration of the courts and tribunals judiciaries in England and Wales is a prize to be chased and I am pleased to be able to report that the Lord Chief Justice of England and Wales and I have agreed in principle to develop a strategy that will lead us to this.

Our pilots have been very successful. The employment judiciary have been sitting as judges of the County Court in England and Wales for over two years. The judges of the property tribunal have also successfully trialled joint sittings with the County Court and the property tribunal jurisdictions in what previously had to be separate, time consuming and inevitably costly hearings. Not only has the trial demonstrated real cost effectiveness, it can provide a swift 'one-stop-shop' that is the model for a future housing court or tribunal. The Upper Tribunal possesses, where authorised, all the powers and duties of the High Court's judicial review jurisdiction. It is a superior court of record that specialises in appeals and legal questions rather than factual disputes. The Upper Tribunal is already the first port of call for the vast majority of judicial review proceedings in immigration and asylum and regularly hears judicial review claims in other discreet subject areas alongside the many and varied statutory appeals that are its trademark work. There exists a significant opportunity to use this highly specialist judicial college for other judicial review subject areas including appeals that arise as a consequence of withdrawal from the European Union. We are presently examining new tribunals jurisdictions across all of our chambers that may arise as a consequence of the proposed exit.

Now is the time to consider the development of tribunals justice in a systematic, that is, a strategic way. It is important to emphasise that what is achievable by the development of tribunals' jurisdictions and the integration of our judiciaries is a more effective and efficient administration of justice for the public. There is no longer any hesitation among lawyers or specialist practitioners in wanting to join the tribunals' judiciary. Such is its standing and popularity that we can now boast the largest talent pool of any judiciary in the United Kingdom. Furthermore, as I record below, the tribunals' judiciary is now representative of the population at large, that is arguably the most diverse judiciary in Europe and perhaps beyond.

There are three key elements of the tribunals service that must not be lost as we move to the next phase of planning how to integrate our judiciaries: specialist adjudication at first instance, a bespoke cross-jurisdictional appellate service and leadership and governance that delivers the administration of justice while furthering the constitutional independence of the judiciary. The hallmark of specialist adjudication is the provision of expert, quality decisions in an informal, procedurally flexible and swift way by judicial office holders who can re-make decisions from the public and private sectors without the user having to go back to the body whose decision maker made the error. We make approximately 400,000 of these decisions every year in more than 500 areas of expertise. Our appellate service is provided by a dedicated small college of Upper Tribunal judges who are first and foremost experts in the same specialist fields in jurisdictions from mental health and special educational need to welfare benefits, immigration and asylum, information rights, professional regulation, armed forces compensation, criminal injuries, tax and the law of property and infrastructure regeneration. They provide decisions on points of law that are binding precedent and have the force of specialist guidance as well as in judicial review. They have all the powers and duties of the High Court. Our leadership and governance is collaborative, well developed and intense in the sense that as a 'managed service' we have 5,500 people to work with, the majority of whom are fee paid practitioners, high volume and fluctuating workloads requiring significant flexibility and user needs that depend on the maintenance of high performance. Our strategies, plans, change management, HR, engagement and communication and workforce and workload planning require a sophisticated approach to governance and leadership and a dedicated cadre of judges who provide it with protected time in which to do so.

The tribunals' judiciary have a great deal to offer to their colleagues and to the public. The integration of judiciaries does not and must not dilute the unique nature of tribunals' justice. It is not my intention that our specialist and innovative process, plain language and investigative ways of working should be changed or converted to a 'courts model'. Judges sitting in tribunals' jurisdictions will continue to be trained in specialist decision making and the best practice of the expert subject matter in their jurisdiction. That will be the case whether the judge is appointed directly to a tribunal jurisdiction or is deployed and assigned as part of a flexible deployment initiative. There must be no attempt to over-judicialise the tribunals in the sense of importing the very different procedural protections and ways of working of the courts. It is in the nature of tribunals that we are a managed service providing first instance decision making to substitute for that of Government, the agency decision maker or the public or private body that has erred in law. Judges in the tribunals understand the need to determine the right facts, the right law but also the right decision. Provided that this fundamental practice is respected, now is the time to look at improving yet further our recruitment principles, the equivalence of our judiciaries and our leadership to be able to provide the best service for the public in the longer term.

Recent developments in flexible deployment have been significant. In the last year we saw the first expression of interest (EOI) exercise for the Court of Protection being extended to include tribunal judges. There had been limited opportunities previously for tribunal judges to sit in courts jurisdictions without applying for a separate and parallel appointment as a result of an independent commission / board competition. The interest generated and the opportunities provided were significant. There has also been a recent opportunity for courts judges to be cross deployed into the tribunals. An EOI exercise was launched in July 2019 for circuit judges and recorders in England and Wales to sit in the First-tier Tribunal. This gives courts judges the opportunity to see at first hand the complexity and variety of tribunals jurisdictions and the level of specialism and skill involved

in our work. This exercise will soon be followed by an equivalent exercise which allows tribunal judges to express an interest in sitting in courts jurisdictions in England and Wales. Both of these opportunities were modelled on a new, comprehensive opportunity for tribunal judges to express an interest in sitting in other tribunal jurisdictions on an annual basis coincident with the independent commission / board competitions for new judges to be appointed. It is my hope and expectation that the flexibility and experience that these exercises provide will combine to produce a model of principle and practice for the future.

Tribunal judicial office holders are the most diverse part of the United Kingdom judiciary. By July 2019, 46 per cent of tribunal judges were female, 63 per cent were from non-barrister backgrounds and 11 per cent identified themselves as being from a BAME background. Taking tribunals' judicial office holders together, the statistics are: 50 per cent female and 15 per cent BAME. We are now representative of the communities we serve. The rapid improvement in our diversity is the consequence of the deliberate widening of recruitment in accordance with principles that have helped identify new talent pools of high quality candidates from backgrounds that have not previously been well represented in the judiciary, for example, academics, in-house lawyers and lawyers from central and local government and public-sector agencies such as the Crown Prosecution Service. We still have much to do and I hope that our recruitment policies and the leadership and morale of the tribunals judiciary which is its hallmark, will continue to be attractive to new applicants.

2019 has also been marked by the success of our authorised officers. Our registrars who exercise delegated functions have done so with exceptional skill and dedication, demonstrating their aptitude for judicial work. The knowledge and experience that they have gained in these roles has given them improved opportunities to apply for judicial appointment. Recent successes include Registrars Rebecca Worth and Julia Smailes who were appointed as Deputy District Judges in the courts in England and Wales. I warmly congratulate both of them and hope that there will be others following their example.

The position of legal adviser in the tribunals has also proved to be excellent experience for a judicial career. Three legal advisers who were appointed registrars have subsequently become judges of the First-tier Tribunal; Helen Pitts, Gregory Head and Steven Hood. Sarah-Jane Griffiths followed the same path to become a judge of the First-tier tribunal and is now also a District Judge (Magistrates Court) sitting in crime while continuing to sit in the First-tier Tribunal (Social Entitlement Chamber). Two more of our legal advisors have been appointed as registrars: Ester Kibwana and Sobia Hussain. Sobia has also been appointed to the independent Valuation Tribunal and as a senior prosecutor for the Crown Prosecution Service. I extend my congratulations to them all.

It is also very encouraging to record that our career development planning has now provided professional training opportunities for our authorised officers. Leanne Lees has recently qualified as a solicitor while working as a tribunal case worker in the Social Entitlement Chamber under a training contract. She is now able to work as a Registrar and Legal Adviser. I know others are following in her footsteps and I wish them all good luck in their important studies.

The tribunals judiciary are very well represented among the diversity and community relations judges who make such a positive impact upon the local communities they visit and with whom they work. I join the Lord Chief Justice of England and Wales in commending and thanking them for the work that they do.

The commitment to the realisation of the Smith Commission promise to devolve tribunals justice in Scotland remains as strong as ever. Despite our desire to deliver upon the promise, the political principles must first be agreed between the United Kingdom and Scottish Governments. At present, the two Governments anticipate devolution being implemented in 2022/23. It is only when Governments are able to provide the judiciary with principles which can be put into primary and secondary legislation that the judiciary can begin the process of implementation. The tribunals' judiciary and our cross jurisdictional working group remain actively involved and available to take any proposals forward with expedition. Indeed, the delay while understandable, causes uncertainty which has a negative impact at a time when Scotland is rightly pursuing its own devolved systems. The sooner agreements can be reached between Governments the better, although I am realistic that implementation will not be before 2022. The judicial working party has offered to consider detailed proposals in the autumn of this year and I hope that target can be achieved.

Quality Assured Outcomes

Last financial year, like every other, contained both financial and workload pressures. Despite these and the ever-changing nature and volume of our work, this was our best performing year since the creation of the unified tribunals in 2007. Regional judges, their chamber presidents and jurisdiction boards work very hard to maintain that performance and I am grateful to them all. It is a mark of our managed service that our joint working relationship with HMCTS managers and the HMCTS Senior Management Team is very strong. I take the view that time spent governing the service both in its leadership and in its collaborative management arrangements is time well spent both for judicial morale and for the quality of the outcomes we strive to achieve.

The quality of the training and development work provided by our dedicated training judges in each tribunal under the guidance and direction of the tribunals director of training, Judge Christa Christensen, is better than ever. I am very grateful to her, to Chamber and Tribunal Presidents and to their dedicated training advisors and judges. I have visited almost all residential and occasional training across the country and have used these excellent opportunities to talk with colleagues, salaried and fee paid, in many different specialisms who come together to share their experience of good practice, the law and their technical expertise. Our emphasis on collegiate training that brings together specialist panel members, practitioners and salaried judges is key to the way tribunals operate. The new faculty induction training which is a cross-jurisdictional judgecraft course for all of our judiciary has now been launched. It brings together the experience and skills of the courts and tribunals. I look forward to its success during this next year

We have continued the excellent work that is done by the tribunals appraisal network which is now focussing on implementing and developing our model appraisal scheme across both our salaried and fee paid judiciary. This not only helps to provide constructive feedback for judges but assists them in their career aspirations in providing the objective material that is necessary to fulfil selection criteria. As we move into data rich environments that arise out of our reform projects we shall strive to identify research and analysis that will help us to improve not only our performance but also broader social policy outcomes that are in a part dependant on the decisions that we make.

The tribunals' judiciary play an extensive part in the Judicial College's leadership and management development courses. At any one time they provide the majority of tutors and all tribunals' leadership judges are required to attend one or more of these important courses. We have recently re-written our training and development for the leadership of judges which is compulsory for each level of leadership judge in the tribunals and we are proud of the continuing tribunals' contribution to that work. I am particularly grateful to Lord Justice Irwin (Court of Appeal of England and Wales) and Judge Brian Doyle (President of the Employment Tribunals in England and Wales) for their dedication to this project and to our educational advisors, Michelle Austin and Trevor Elkins for their skill and understanding.

The tribunals are a 'managed service' which means that their funding is related to the effectiveness and efficiency of their decision making and the needs of their users. Given the high percentage of fee paid practitioners who work as judicial office holders, it is necessary to provide an intensive leadership and work management regime. The success of that regime which is reflected in all of the leadership structures that we have is demonstrated by the personal successes of some of our leaders. This year we have warmly congratulated Dame Vivien Rose and Dame Ingrid Simler on their promotions to the Court of Appeal from the High Court in England and Wales (in which roles they were presidents of the Upper Tribunal and Employment Appeal Tribunal, respectively), Sir Bernard McCloskey (who was a High Court judge and Upper Tribunal President from the Northern Ireland judiciary) on his promotion to the Court of Appeal of Northern Ireland and Dame Judith Farbey and Dame Sarah Falk who join Sir Peter Lane and Dame Gwynneth Knowles in the High Court of England and Wales. The Senior Judiciary is now well served by those who began their careers in the tribunals or who have significant experience of our jurisdictions.

Upper Tribunal and First-tier Tribunal Review

In July 2018 I reported upon the work of our Vice President, Sir Keith Lindblom, who produced a report on the leadership and structure of the Upper Tribunal and the Employment Appeal Tribunal. I accepted the recommendations that he made. Sir Keith has now produced a parallel report into the leadership and structure of the First-tier Tribunal and the Employment Tribunals. I am very grateful to him for this and extend my thanks to the tribunal and chamber presidents and judges who supported him. The main recommendations of both reviews are summarised in the annex to this report and an action plan will be developed over the autumn of this year to ensure that all of the recommendations, which I have accepted, are implemented. The continual process of renewal that reports of this kind described demonstrate how important leadership is to the health of a dynamic service which must constantly consider whether its skills, abilities and flexibility are sufficient to meet the tasks required of it.

Promotions and Retirements

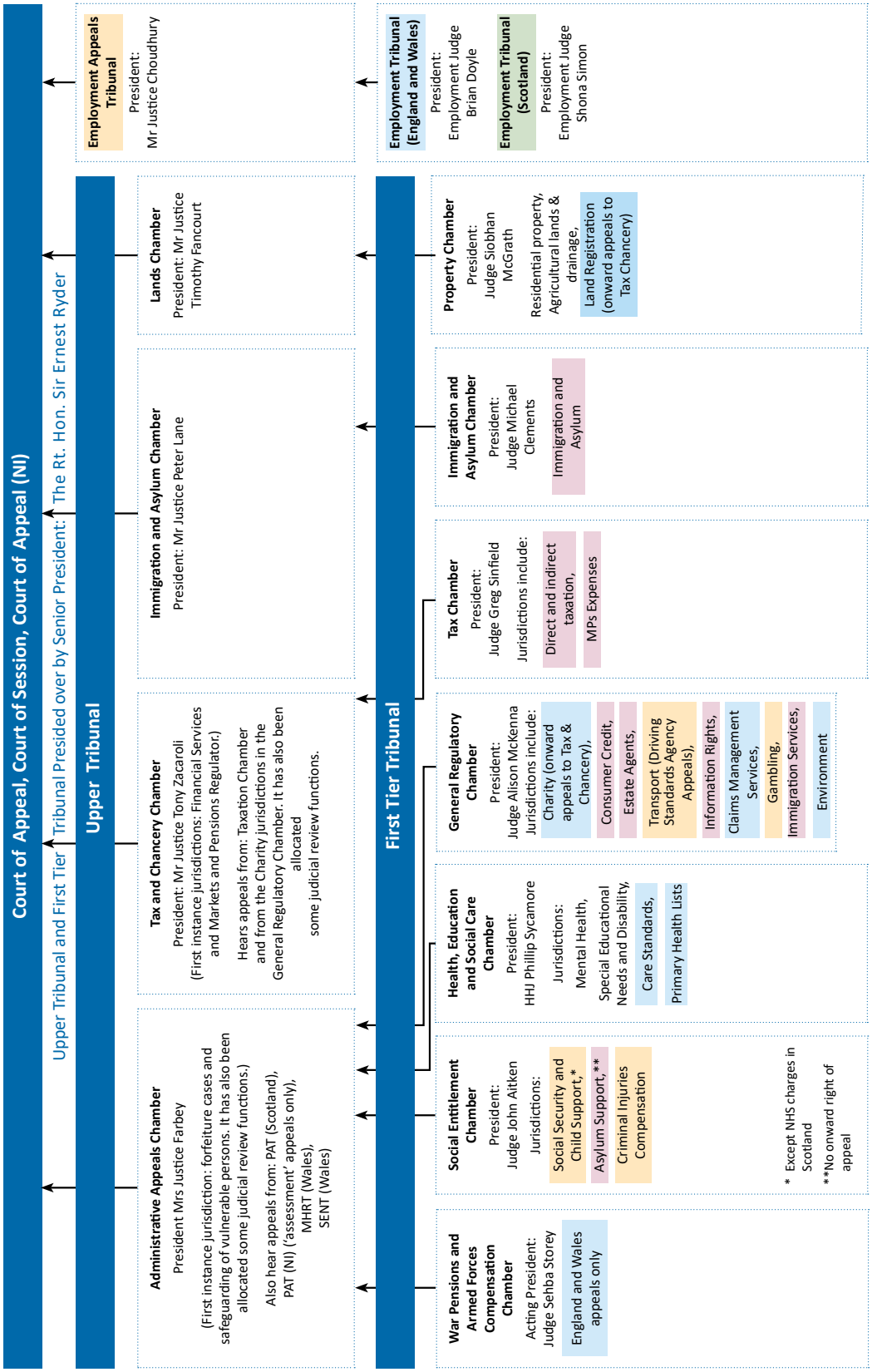
Since my last report, there have been a number of new appointments and retirements. Sir Timothy Fancourt (Mr. Justice Fancourt) has been appointed as President of the Upper Tribunal Lands Chamber in succession to Sir David Holgate who returns to the Queen's Bench Division of the High Court in England and Wales. In congratulating Sir Timothy on his appointment, I also extend my sincere gratitude to Sir David not only for his able leadership of the Lands Chamber during a period of very significant public regeneration but also for agreeing to an extension of his role to enable a successor to be identified. I would also like to take this opportunity to congratulate Her

Honour Judge Jennifer Eady QC on her appointment to the High Court from the Employment Appeal Tribunal. Dame Jennifer was appointed as a Senior Circuit Judge of the Employment Appeal Tribunal in 2013 and a Deputy High Court Judge in 2016. Her subsequent appointment to the High Court re-enforces my belief that tribunals' and judicial career development go hand in hand.

Finally, I conclude by thanking the dedicated staff in my own office, some new and some 'well established', together with the staff of the private offices of the chamber and tribunal presidents. Without them the tribunals service would not operate as well as it does.

The Rt Hon Sir Ernest Ryder
Senior President of Tribunals

Tribunals' Structure Chart



Annex A

Upper Tribunal

Administrative Appeals Chamber

President: Dame Judith Farbey

The jurisdictional landscape

The Administrative Appeal Chamber (AAC) covers some 33 appellate and first instance jurisdictions. Its main work in terms of numbers of appeals (but not time) is deciding appeals on points of law from decisions of the First-tier Tribunal (Social Entitlement Chamber) relating to social security.

This year, the Chamber gave its first 'leap-frog' certificate under section 14A of the Tribunals Courts and Enforcement Act 2007, enabling the claimants in *Secretary of State for Work and Pensions v DL and RR* (HB) [2018] UKUT 355 (AAC) to apply directly to the Supreme Court for permission to appeal in cases concerning reductions in housing benefit for under-occupancy. The Supreme Court has given permission to appeal and will decide whether the Court of Appeal in *Secretary of State for Work and Pensions v Carmichael and Sefton* Council [2018] EWCA Civ 548 correctly decided that the Upper Tribunal had no authority in statutory appeals to afford claimants a remedy for the unlawful discrimination found by the Supreme Court in *R (Carmichael and Rourke) (formerly known as MA and others) v Secretary of State for Work and Pensions* [2016] UKSC 58.

Personal Independence Payment (PIP) appeals were the greatest in terms of number from the Social Entitlement Chamber this year. Numerous decisions have examined the entitlement criteria for PIP. Two decisions this year gave guidance to the First-tier Tribunal about the relevance of evidence in disability living allowance cases to PIP (*CH and KN v Secretary of State for Work and Pensions* [2018] UKUT 330 (AAC); *FJ v Secretary of State for Work and Pensions* (PIP) [2019] UKUT 27 (AAC)).

In tax credit, *HO v HMRC* (TC) [2018] UKUT 105 (AAC) and *C v HMRC* [2019] UKUT 69 (AAC) the Tribunal mapped out aspects of the decision-making regime under the Tax Credits Act 2002.

In child support, the *Green and Adams* litigation referred to in last year's report has since addressed the law regarding the calculation of child support liability. *Green v Secretary of State and Adams* (Diversion of Income) [2018] UKUT 240 (AAC) analysed the 'diversion of income' rules in the Child Support Maintenance Calculation Regulations 2012 in the context of the transfer of an asset that was not generating income, and *Green v Secretary of State for Work and Pensions* and *Adams (Interests in Trusts and Ability to Control Assets)* [2018] UKUT 377 (ACC) decided that interests in trusts are not 'assets' within regulation 18 of the Child Support (Variations) Regulations 2000.

Appeals to the AAC from the Health Education and Social Care Chamber of the First-tier Tribunal include mental health cases. This jurisdiction has seen two important developments in the past year. *VS v St Andrew's Healthcare* [2018] UKUT 250 (AAC) dealt with capacity to bring proceedings before the First-tier Tribunal. Three linked cases including *LW v Cornwall Partnership NHS Trust*

[2018] UKUT 408 (AAC) have clarified the law on the risk of relapse by patients made subject to a community treatment order.

A high-profile case in the Chamber's education jurisdictions was *C and C v The Governing Body of a School and others* [2018] UKUT 269 (AAC). It examined whether pupils whose disability manifested itself in a tendency to physical abuse were validly excluded by delegated legislation from the protection of the Equality Act 2010. The Secretary of State for Education and the National Autistic Society were parties. The conclusion, that the exclusion constituted discrimination contrary to article 14 ECHR, was widely reported. Other significant themes concerned education otherwise than at school *(M and M v West Sussex CC (SEN)* [2018] UKUT 347) and the interaction between health, social care and educational provision, an area likely to continue to give rise to cases in view of the wider power the First-tier Tribunal has to make recommendations in relation to the two former areas (*West Berkshire Clinical Commissioning Group v First-tier Tribunal and others* [2019] UKUT 44 (AAC).

The Chamber decides applications for judicial review of decisions of the First-tier Tribunal in criminal injuries compensation cases. Current issues include the application of the "same roof rule" and the treatment of claimants who have a criminal record. A three-judge panel comprising a judge of the Court of Session along with two judges of the AAC determined an important constitutional issue as to the respective judicial review jurisdictions of the Upper Tribunal in England and Wales and the Court of Session in Scotland, and the application of the doctrine of *forum non conveniens*.

The Chamber determines appeals from the varied jurisdictions of the General Regulatory Chamber, including information rights cases. A three-judge panel held that, where the First-tier Tribunal allows an appeal against a decision by the Information Commissioner, that tribunal has no power to remit the matter to the Commissioner but must re-make the decision under appeal itself (*IC v Malnick and ACOBA* [2018] UKUT 72 (AAC). The decision gives practical guidance on how to deal with cases where more than one exemption under the Freedom of Information Act ("FOIA") is relied upon but the Information Commissioner has not adjudicated on such other exemption(s). In the same case it was held that the test of reasonableness under section 36 of FOIA (opinion of qualified person) is substantive and not procedural. The principles governing applications for anonymity by requesters in tribunal proceedings were considered in *D v IC* [2018] UKUT 441 (AAC).

The boundaries between FOIA and the Environmental Information Regulations 2004 (EIR) were analysed in *IC v DoT and Hastings* [2018] UKUT 184 (AAC) and *DfT, DVSA and Porsche v IC and Cieslik* [2018] UKUT 127 (AAC) (and *Highways England v IC and Manisty* [2018] UKUT 423 (AAC) on exceptions under the EIR). Likewise, the intersection between FOIA and data protection law has been explored in several decisions providing guidance on the FOIA exemption for personal data (*Cox v IC and Home Office* [2018] UKUT 119 (AAC); *IC v Miller* [2018] UKUT 229 (AAC); *Morton v IC and Wirral MBC* [2018] UKUT 295 (AAC) and *IC v Halpin* [2019] UKUT 29 (AAC)).

A three-judge panel sat in Belfast to hear a series of ongoing appeals, made under the national security provisions of the Data Protection Act (DPA) 1998, in respect of subject access requests for internment records from the 1970s. It has been held that the right of appeal does not survive the requester's death (*Campbell v Secretary of State* [2018] UKUT 372 (AAC)) and that appeals against national security certificates issued under the 1998 Act had effectively lapsed with the issue of new certificates under the DPA 2018 (*Fryers and Hogg v Secretary of State for Northern Ireland* [2019] UKUT 22 (AAC)). A significant decision in relation to war pensions is *SN v SSD (AFCS)* [2018] UKUT 263 (AAC), that any injury sustained more than five years after commencement of service could not be

regarded as a worsening of a pre-service injury and so must be classed as a separate injury. Further, a mental disorder caused by stress experienced while serving may be caused by service, even where there had been no inappropriate or improper behaviour (such as bullying) towards that claimant.

One of the two first instance jurisdictions exercised by the Chamber (the other being Disclosure and Barring Service appeals) is appeals from the Traffic Commissioner (the Transport Regulation Unit in Northern Ireland) in which AAC judges sit with specialist lay members. It has seen a rare appeal in relation to the regulation of bus services: *Diamond Bus Ltd* [2019] UKUT 0040 (AAC).

The Chamber continues to handle a small but steady stream of applications and appeals, on a point of law, from decisions of the Care Standards and Primary Health Lists Tribunals.

The Chamber has determined the only appeal to date in relation to flood defences: *The Environment Agency v RP* MISC/2322/2017. It has also determined the first appeal to this Chamber relating to estate agent decisions: *Littlewood v Powys County Council* GE/2637/2017. It is gaining an increasingly wide range of jurisdictions in other regulatory areas. Recent additions are equine identification, ivory trading, protected designation labelling of food products and transport fuel labelling.

Scotland

In April 2018 Judge Poole QC was appointed to the Chamber. She is based in the AAC's offices in George House, Edinburgh. She has taken over from Judge Markus QC as the Chamber's lead judge for its work in Scotland. Judge Markus continues to give valuable assistance. Fee-paid judges, now joined by Laura Dunlop QC, continue to play an important part in handling the Scottish caseload.

The Social Security Chamber within the Scottish Tribunals System came into being in 2018, with onward appeals to the Upper Tribunal for Scotland rather than the Upper Tribunal AAC (UTAAC). There is to be a phased transfer to the Scottish Tribunals of appeals concerning eleven benefits currently within the UK tribunal system. It is likely to be some time before the work of UTAAC in Scotland is significantly affected. In addition, work continues on the transfer of reserved tribunals into the Scottish Tribunals system. This will not be completed by April 2020, as previously planned, and no new timetable has been confirmed at the time of writing.

Wales

Welsh Ministers recently announced that implementation of the Additional Learning Needs and Education (Wales) Act, providing for a right of appeal to the UTAAC against decisions of the Education Tribunal for Wales, will commence in September 2020. Appeals to the UTAAC from devolved tribunals within its remit are rare.

Judge Mitchell has continued to work in the Cardiff Civil Justice Centre for approximately one week every month. He has also conducted hearings in Caernarfon, partly in the Welsh language, and Newport.

Northern Ireland

The Chamber currently has jurisdiction in Northern Ireland to deal with appeals from the First-tier Tribunal in relation to freedom of information and data protection; certain environmental and transport matters; the regulation of estate agents, consumer credit providers and immigration service providers; and Vaccine Damage appeals. It also hears appeals from the Pensions Appeal Tribunal for Northern Ireland in assessment cases.

Two judges sit in Northern Ireland. They combine their AAC functions with their roles as Chief Commissioner and Commissioner respectively. Five UTAAC Judges serve as Deputy Social Security and Child Support Commissioners in Northern Ireland.

People and places

In terms of judicial leadership this was a transitional year for the AAC. Lord Justice Lindblom was Acting Chamber President from May to December 2018, dividing his time between his work in the Court of Appeal, his role as Vice-President of the Unified Tribunals and President of this Chamber. On 1 January 2019 Mrs Justice Farbey took up appointment as Chamber President. Dame Judith previously sat as a Deputy Upper Tribunal Judge in this Chamber from 2014 until her appointment as a High Court judge in 2018.

Not all new appointments to the Chamber from last year's Judicial Appointments Commission recruitment exercise had been publicly announced when the last Senior President of Tribunals' report was published. In addition to those previously announced, Upper Tribunal Judge Rupert Jones has now taken up appointment. Three new Deputy Upper Tribunal Judges, Matthew Gullick, Joanne Clough and Helen Robinson also took up appointments in 2018. They are all based in the Rolls Building in London. Judge Mark Rowland retired from office on 1 January 2019 and now sits as a Deputy Upper Tribunal Judge. He was first appointed as a Social Security and Child Support Commissioner in 1993 and became a Judge of the Upper Tribunal in 2008. He has made an outstanding contribution to the Chamber's work and we are pleased that he will continue in his new role.

The Chamber bid a fond farewell to three fee-paid judges who retired in 2019: Judges Andrew Bano, John Mesher (both former salaried Judges), and Sir Crispin Agnew of Lochnaw.

Senior Registrar Simon Cockain leads a team of registrars who contribute in multiple ways to the life of the Chamber.

The AAC offices in London and Edinburgh have experienced a number of staff changes and we mark with gratitude the valuable contribution of those who have left.

Tax and Chancery Chamber

President: Sir Anthony (Tony) Zacaroli

Jurisdictional landscape

The most significant potential jurisdictional changes in relation to the tax chamber relate to EU-Exit. Most of these are concerned with regulation in the financial services sector, in the event of a no deal EU-Exit, either creating new rights of appeal to the Upper Tribunal (where matters would previously have proceeded in Europe) or anticipated increases in the number of appeals as a direct result of EU-Exit. The former includes a new right of appeal created pursuant to new anti-dumping legislation. This creates a new body in the UK, the Trade Remedies Association, which together with the Secretary of State will make determinations and impose sanctions on entities found to have been guilty of anti-competitive dumping of goods within the UK. An appeal will lie to the Upper Tribunal. The latter includes appeals against determinations by the Financial Conduct Authority (FCA) in relation to applications for authorisation to conduct business, a direct consequence of the loss of passporting rights for financial firms in the event of a 'no deal'. The impact of any new appeals, in either category, is unlikely to be felt for at least six to nine months, and possibly longer. A close eye is being kept on the likely impact on judicial and staff resources as a result of these changes. The need for an additional member of administrative staff has been identified and is catered for. At present, subject to one point, it is considered that existing judicial resources will be able to cope with the anticipated increase in workload.

Given the uncertainties surrounding EU-Exit, and the likely number of appeals, it is considered premature to take steps to increase the number of judges immediately, but this will continue to be monitored closely. The one area where the need for new judicial resources has been identified is in relation to the new (potential) anti-dumping jurisdiction. This will require additional resource in the form of members with specialism in economics (closely related to the specialism of members in the Competition Appeal Tribunal). The existing members in the tax and chancery chamber of the Upper Tribunal do not have this specialism.

In addition, we are beginning to see an increase in the number of applications brought under paragraph 50 of Schedule 36 Finance Act 2008. This provision allows Her Majesty's Revenue and Customs (HMRC) to apply direct to the Upper Tribunal for a penalty to be imposed on a taxpayer who is particularly recalcitrant in providing information in response to "information notices" issued under Schedule 36.

Judges

This year saw the retirement of Upper Tribunal Judge Roger Berner, after many years of service both in the First-tier Tribunal and Upper Tribunal. His departure and outstanding contribution to tax and the tribunal was celebrated among other ways with a dinner attended by many present and former colleagues. We wish him well in his retirement.

As noted in last year's report, a competition was then under way to find two new Upper Tribunal judges. The successful candidates were Judge Jonathan Richards and Judge Swami Raghavan, both of whom were judges of the First-tier Tribunal. Judge Richards took up his post at the beginning of

June 2018, and Judge Raghavan will commence sitting at the end of a period of parental leave later this year. The full-time ranks were further swelled (so that there will be four on Judge Raghavan's return), by the addition of Judge Tom Scott, who commenced sitting in December 2018. Finally, two new fee paid Upper Tribunal judges have been appointed in order to deal (primarily) with appeals in Scotland: Judge Andrew Scott and Judge Jennifer Dean.

An important and welcome development in 2018 was the appointment to the High Court bench, Chancery Division, of Mrs Justice (Sarah) Falk, formerly a tax partner in a city law firm and a fee paid judge of the First-tier Tribunal. We welcome Mrs Justice Falk back to the tax chamber, now in her capacity as a High Court Judge, and hope that her appointment will encourage others within the tribunal judiciary to appreciate the opportunities for broadening their judicial experience.

The annual tax judges' conference was again held at Walton Hall in Warwickshire, in March 2019. Attended by most of the judges of the First-tier Tribunal and Upper Tribunal it was well appreciated and covered a wide variety of topics, with break-out sessions on topics such as equal treatment, expecting the unexpected and evidence and unrepresented appellants. Many thanks are due to John Brooks and Jennifer Dean, for their hard work in organising the conference, as well as to Greg Sinfield and his PA Audrey Lum, for making it all go smoothly. The second evening saw the swearing in of four new First-tier Tribunal judges: Zaman, Austen, Malek and Bedenham. Recognising the importance of continuing education, ad hoc informal sessions on particular topics of interest are being arranged from time to time, so that the (now relatively new) cadre of Upper Tribunal judges can benefit from the experience of more senior judicial colleagues.

Administrative Staff

We were delighted to welcome this year our new delivery manager Martine Muir, following the departure last year of Sharon Sober. Martine has fitted seamlessly into the existing dedicated team. In addition to the increased workload caused by planning for various Brexit scenarios, the major challenge facing the team has been, and continues to be, changes to the accommodation in the Rolls Building, caused by the imminent arrival of the Employment Appeal Tribunal. Most recently, this has necessitated the entire team moving out to Fox Court for a few months while necessary work is carried out on the fifth floor of the Rolls Building. I would like to pay tribute to the fortitude and positive attitude of the whole team in identifying and dealing with the challenges this has presented.

Work undertaken

The bulk of the work of the Chamber continues to be tax appeals. Those of particular interest (including onward appeals to the Court of Appeal and Supreme Court) are mentioned in the annex of cases decided during the year. In the final months of the year the Upper Tribunal saw its longest case yet, a 25-day appeal *Ingenious Media v HMRC*, concerned with film and video partnership investments.

In the financial services sector, the Tribunal gave judgment in the first substantive decided case on the power of the Pensions Regulator to make a Financial Support Directive (FSD), in *Granada UK Rental and Retail Ltd v Pensions Regulator.* In upholding the FSD, the Upper Tribunal (Rose J and Judge Herrington) decided several issues of general importance to the FSD regime. In addition, *Arif Hussein v FCA* was the only case to have reached the tribunal involving allegations that an individual trader had sought to manipulate LIBOR for the benefit of his derivative positions,

and *Stewart Ford & Mark Owen v FCA* saw the biggest fine (£76m) ever levied by the tribunal, in conjunction with upholding the FCA's decision to prohibit Mr Ford and Mr Owen from working in the financial services industry.

Immigration and Asylum Chamber

President: Sir Peter Lane

Jurisdictional landscape

The past 12 months have seen the Chamber continue to work under considerable pressure, as a result of a shortfall in the number of judges. I am, however, happy to say that, as was announced in last year's report, the Judicial Appointments Commission (JAC) undertook a selection exercise for Upper Tribunal Immigration and Asylum Chamber (UTIAC) in the latter part of 2018. This has resulted in offers being made to nine candidates. We are, accordingly, looking forward to a significant increase in our salaried cadre during the summer of 2019.

The arrival of these judges will be particularly welcomed by Mark O'Connor who, since April 2018, has been UTIAC's Principal Resident Judge. As such, Mark has primary responsibility for judicial deployment, including last-minute changes to itineraries. The fact that we have coped is a testament to Mark's organisational skills and to the willingness of colleagues to step in at very short notice. Mark has rapidly gained the respect of all who have dealings with him.

Our new colleagues will largely be replacing those who have retired in the recent past or who are about to do so. Most recently, we saw the departure of Peter King, after many years of devoted public service, beginning as an Immigration Adjudicator. He will be much missed; but, since he is an ordained Anglican priest and a senior figure in Rotary International, he will continue to lead a busy life. In May, we shall also say farewell to John Freeman. His judicial career extends back well over 20 years. He has made an invaluable contribution, not least in developing the jurisprudence in written decisions noteworthy for their clarity and concision. We wish Peter and John all the best.

UTIAC would not be able to function without the assistance of its deputy Upper Tribunal Judges. A JAC selection exercise for new deputies is due to launch this summer.

UTIAC continues to be grateful for the vital support given by the President of the Queen's Bench Division and by the Lord President of the Court of Session, who respectively make Queen's Bench and Court of Session judges available to sit in UTIAC. As I said in my 2018 Report, UTIAC's judges gain from sitting with these senior colleagues, who, in turn, are able to keep abreast of the latest developments in immigration and asylum law. I am also particularly pleased that, over the past year, a number of recently appointed deputy High Court Judges have started to sit with us.

All of this serves to emphasise the closeness of the connection between UTIAC and the Administrative Court; a fact that it is underscored by our regular liaison meetings with Mr Justice (Michael) Supperstone, the judge in charge of that Court, together with its Lawyers and administrative team.

UTIAC has its own group of lawyers, which has quickly become a key part of the Chamber's operations. The Senior President of Tribunals has enabled me to delegate certain judicial functions

to the lawyers, in respect of both UTIAC's appellate and judicial review jurisdictions. Much of the work formerly carried out by UTIAC judges, in dealing with such matters as applications for adjournments and directions prior to hearing, is now being successfully undertaken by our lawyers. I am extremely grateful to Helen Chaytor for expanding the team of lawyers, thereby allowing us to make best use of our judges.

Outside London, there has been progress in co-locating UTIAC's judicial review and appellate work in the Civil Justice Centres. I referred last year to the circuit-system which was about to be introduced in Manchester. This began in April 2018 and has, by common consent of both courts' and tribunals' judiciary, been an enormous success. More recently, we have been able to establish co-location at the Birmingham Civil Justice Centre; and, with effect from January 2019, at the Cardiff Civil Justice Centre thanks to the invaluable support of Mr Justice (Clive) Lewis. I am indebted to Andrew Grubb for agreeing to transfer his judicial base from the First-tier hearing centre in Newport to Cardiff.

With the approval of the Lord President of the Court of Session, UTIAC will this summer sit for the first time in the Parliament House in Edinburgh. I am very grateful to Lord Carloway for making this possible.

My colleagues have continued their participation in the international training of judges, reaching places as far afield as Hong Kong and Odessa. They and I have also participated in various training and conference events in the United Kingdom, both for existing practitioners and law students interested in entering the field of immigration and asylum law.

All who practise in this field know the work can be difficult and demanding, at both a legal and a human level. The vast majority of practitioners discharge their professional responsibilities assiduously. However, in order to ensure that this majority can safely enjoy the societal recognition they deserve, professional regulators must be prepared to deal robustly with those who standards fall short. In this regard, UTIAC, like the High Court, may call for an explanation from those whose behaviour is adjudged to be problematic, with a view to referring the individual to the relevant regulator, where it is appropriate to do so. I am particularly grateful to Fiona Lindsley for acting as the co-ordinating and liaison judge on these issues.

As the schedule of important cases in the annexes to this report demonstrates, UTIAC's judges continue to be active in developing the jurisprudence of the Chamber.

Lands Chamber

President: Sir David Holgate[1]

The work of the Lands Chamber has increased noticeably this year through the addition of new jurisdictions in Land Registration appeals and references under the Electronic Communications Code. Overall the influx of work in other areas has remained steady. Disputed claims for compensation for compulsory purchase and the adverse consequences of public works reached the bottom of their cycle in 2018 as the last references arising from the 2012 Olympic Games and the Crossrail project were resolved, but new receipts in this core jurisdiction are again accelerating as

1 Sir David Holgate was the President of the Lands Chamber for the period of the report and was succeeded on 1st August by Sir Timothy Fancourt.

references associated with HS2 and, for example, the redevelopment of Euston station have begun to arrive. Appeals from the Valuation Tribunals for England and Wales concerning non-domestic rating continue to give rise to significant issues of principle under the 2010 rating list, but appeals from assessments in the 2017 list have not yet begun to arrive. Applications under the Law of Property Act 1925 for the discharge or variation of restrictive covenants have shown a significant decline to about half their number in the previous twelve months. Appeals from the Property Chamber of the First-tier Tribunal concerning leasehold enfranchisement, residential landlord and tenant disputes and local authority regulation of housing standards remain the single biggest source of the Lands Chamber's work, accounting for about half of new receipts in the year under review.

In the Chamber's appellate jurisdictions in rating there were many decisions providing further guidance and support in the efforts of the Valuation Tribunal for England to secure compliance with its own procedures. Beyond these procedural appeals two cases stood out as of general significance, one a decision on the meaning and effect of a core provision of rating legislation, the other concerned with the standards of conduct expected by the Tribunal of expert witnesses appearing before it.

The ratepayer's appeal in *Merlin Entertainment Group v Cox* VO[2018]UKUT 0406(LC) addressed the consequences for the value for rating of the Alton Towers leisure park of a crash on one of its rides which caused serious injury to five passengers. The question arose whether a decline in the attraction of thrill rides to members of the public, which was said to have caused a 35 per cent reduction in visitor numbers to the park, was a material change of circumstances justifying a reduction in rateable value. The Tribunal concluded that visitor numbers were not a relevant characteristic of either the hereditament or its locality but were simply concerned with the way the ratepayer operated its business. The appeal provided an opportunity for the Tribunal to review the relevant statutory framework and legislative history and to provide guidance on the proper approach to the "reality principle" (as the *rebus* sic *stantibus* principle is now known) in assessing rateable value when a new list is compiled and on material changes of circumstances which permit that value to be reassessed.

In contrast, the appeal in *Gardiner and Theobald v Jackson* VO[2018] UKUT 253LC had been resolved by agreement before it came before the Tribunal for a hearing which was solely concerned with an important point of practice, namely the Tribunal's expectations of those appearing before it as expert witnesses. Expert witnesses have to confirm that they have not been instructed under a conditional fee arrangement, which courts and tribunals generally consider to be incompatible with an expert's ability to form an independent and objective opinion on the matter on which they have been asked to give evidence. The expert in this appeal had given the required confirmation but was subsequently contradicted by his own client. After hearing the witness's explanation, the Tribunal took the opportunity to review the role of expert witnesses and provide important guidance regarding permissible fee arrangements, emphasising that any conditional fee agreement (at whatever stage of the proceedings it was entered into) must be disclosed and reiterating the fundamental duties of an expert witness to Tribunal.

Decisions by the Tribunal on important principles of valuation law in rating and other areas continue to reach the Supreme Court. Its approach to the handling of market demand in the assessment of rateable value was recently upheld in *Telereal Trillium v Hewitt (Valuation Officer) [2019] UKSC 23.*

The Lands Chamber's other source of appellate work is from the First-tier Tribunal (Property Chamber). In *Avon Ground Rents v Child* [2018] UKUT 204(LC) the Chamber President and Judge Hodge QC sat simultaneously as Judges of the Upper Tribunal and as Judges of the County Court to

hear appeals in both jurisdictions arising under the Residential Property Dispute Deployment Pilot. The Pilot permits the flexible deployment of judges to ensure that all aspects of a dispute are resolved efficiently and economically on a single occasion, even where jurisdiction is divided between a court and a tribunal. The Tribunal gave guidance concerning the importance of judges maintaining a clear separation of their powers when sitting in a dual capacity.

Two leasehold enfranchisement appeals provided an opportunity for the Tribunal to consider the related matters of the entitlement of a landlord, after enfranchisement, to retain common parts of a building (usually with a view to their profitable development) (*LM Homes v Queen Court Freehold*) [2018] UKUT 367(LC) and the value to be attributed to the potential to develop additional accommodation on the roof of a residential building (*Francia Properties v St James House Freehold*) [2018]UKUT 79(LC). Other subjects considered in Property Chamber appeals this year included the distinction between a covenant to provide a service and a covenant to repair (*LB Southwark v Baharier*) [2019]UKUT 0073(LC), and the importance of tribunals firmly discouraging guerrilla warfare between professional representatives in multi-party proceedings (*Rotenberg v Point West*) [2019]UKUT 68(LC). A few appeals have now begun to arrive under the new regime of civil penalties targeting the behaviour of "rogue landlord".

This year also saw the Lands Chamber receive its first appeals from the Land Registration Division of the Property Chamber. These were formerly assigned to the Upper Tribunal Tax and Chancery Chamber (UTTCC) but the Lands Chamber has long been considered their more natural destination. Appeals which had already been commenced when the change took place will remain in UTTCC, which accounts for only two appeals having yet been determined here.

In first instance jurisdictions the relatively small number of compensation cases decided in the Chamber during the year nevertheless illustrate the diversity of this jurisdiction with claims arising out of the creation of 500 million cubic metres of underground gas storage capacity in former salt caverns in Cheshire, coal mining subsidence in Warwickshire, and the first procedural decision concerning land taken for the HS2 project in Birmingham. About 300 new compensation references were commenced during the year. Many of these have been brought by private individuals whose homes have been affected by public works, including more than 100 claims related to the expansion of Southend airport and 55 arising out of works at the Roath docks in Cardiff Bay. Where a large number of claims is received concerning a single project the Tribunal aims to manage them together, identifying common issues or representative cases to ensure that all references can be determined within a reasonable time and at proportionate expense. The redevelopment of Euston station in London in preparation for HS2 has also seen the commencement of a number of high value commercial claims relating to office buildings and hotels adjoining the station; with land already being taken along the early stages of the route of the proposed new line we anticipate an increasing number of similar claims next year.

An entirely new source of first instance work for the Lands Chamber has been provided this year by the Electronic Communications Code introduced in December 2017 by the Digital Economy Act. It is difficult to over-state the significance of electronic communication to modern social and commercial activity. Business, entertainment, and personal lives now rely hugely on devices undreamt of only a few years ago, and digital communication is regarded as a utility service comparable to the supply of water, gas or electricity. Our indispensable phones, tablets and laptops would be of little use without the physical infrastructure essential to support them. In 2016 it was

estimated that telecommunications operators paid £359m annually for rents, licence fees and business rates for 18,200 greenfield sites and 4,000 rooftop sites for their masts, dishes and other equipment. The expansion of that infrastructure to meet additional demands would not be achievable without the legal tools necessary to enable network providers to secure sites and to resolve disputes between operators and site providers. Those legal tools are now provided by the new Electronic Communications Code.

The new Code replaced a first-generation code introduced in 1984 which regulated telecommunications in the era of landlines and which was updated in 2003 in response to technological changes. The old code was described in the High Court as one of the least coherent and thought-through pieces of legislation on the statute book. One of its demerits was that it left dispute resolution to the County Court or to arbitration, which made it difficult for any coherent interpretation of the code to emerge. The uncertainty of Parliament's intentions and the inability of the county court to resolve disputes with the speed required to keep pace with the demand for telecommunications services meant that in more than thirty years there were fewer than a handful of decided cases on the provisions of the old code. One of the significant changes proposed by the Law Commission in its work on the new Code was the allocation of all disputes under the revised Code to the Upper Tribunal, and specifically to the Lands Chamber. It was hoped that this would allow authoritative guidance on the effect of the complex new provisions to be given in a specialist forum familiar with issues of land valuation and compensation.

The new jurisdiction is distinctly different from the Lands Chamber's long-established functions in relation to compensation for compulsory acquisition, where we generally resolve disputes over the value of land which has been already been acquired for public purposes using other processes. Our role under the Code is a much more immediate and instrumental one; where parties cannot agree, it is the Tribunal which will impose agreements conferring Code rights.

The Lands Chamber now has a vital part to play in realising the ambition of the Law Commission and Parliament for the health of the UK as a leading digital economy to be founded on the provision of a world-class full-fibre network and fifth-generation (5G) infrastructure. It was fundamental to the Law Commission's thinking that the new regime should be capable of meeting the needs of a rapidly developing sector by resolving disputes quickly and by making interim relief available within even shorter timescales. The Government's stated aim is for mobile technology to be available throughout the UK by 2027, and for 15 million homes and businesses to have access to full-fibre broadband networks by 2025 with nationwide access by 2033. A significant responsibility for achieving that objective now falls on the Lands Chamber.

It is apparent that operators and site providers take very different views of the effect of the valuation provisions in the new Code. It is said that finalising many agreements is being delayed while definitive guidance is awaited. So far, each case which has been determined by the Chamber has been a test case on a different point of principle.

References under the new Code began to arrive in the Lands Chamber in April 2018, a few months after the commencement of the legislation. More than 50 had been received by the end of March 2019, of which six have been determined after contested hearings and a further 23 have been resolved by agreement after case management hearings. The Code presents particular case management challenges in cases where rights are sought over new sites; these are required by statute to be determined within six months of the issue of proceedings. Where the statutory deadline

applies it has been complied with. Most cases received have concerned the renewal of rights over existing sites to which the same stringent time limit does not apply, but the Chamber recognises the importance of prompt resolution of these disputes and, except where parties have agreed to a more elongated timetable, we have sought to list final hearings (generally of two or three days duration) within about six months of issue.

The Chamber's first Code cases were determined in October 2018 and concerned transitional provisions and the availability of interim relief. A series of decisions has followed on fundamental issues concerning the availability of access to determine whether a site is suitable to host apparatus, the jurisdiction to impose rights where a third party is in occupation of a site, the relationship between the compensation and consideration provisions of the Code, and the consideration payable for new rights in urban and rural locations. As each case has been argued the complexities of the legislation have become more apparent, and new issues have been identified. The Chamber has adopted a cautious approach, resolving only those issues which arise directly for determination in each reference while sign-posting others which are likely to arise in future so that parties may give them proper consideration.

With its growing workload and small cadre of full-time Judiciary the Lands Chamber has continued to rely on its visiting Circuit Judges, the longest serving of whom, His Honour Judge Nicholas Huskinson, retired in December 2018. His career in the tribunals judiciary began in 2003 when he was appointed Vice President of the Immigration Appeal Tribunal, and in 2005 he became a Judge of the Lands Tribunal (which was subsequently absorbed into the Upper Tribunal and became the Lands Chamber). He sat in the Lands Chamber for two months each year and set high standards of both congeniality and judicial productivity. We are delighted that he has agreed to continue sitting in the Chamber on an occasional basis in retirement.

We are delighted to welcome Elizabeth Cooke as an Upper Tribunal Judge assigned to the Lands Chamber. This means that the Chamber now has a second full-time judge in addition to the Deputy President. Upper Tribunal Judge Cooke was admitted as a Solicitor in 1988, became a Recorder in 2009 and a Deputy High Court Judge in 2013. She was appointed as a Deputy Judge of the Upper Tribunal in the Tax and Chancery Chamber and Lands Chamber and as a Principal Judge of the First-tier Tribunal, Property Chamber in 2015. Judge Cooke is one of the authors of Megarry and Wade: The Law of Real Property and brings a wealth of experience in property law to the Chamber.

Finally, the Lands Chamber's staff has experienced some significant departures in the period under review. Sandra Bourner, our ever-efficient librarian and problem solver, has moved to the Government Legal Service, while our unfailingly cheerful colleague Harsh Mastana has been promoted to a post in the Property Chamber. We are grateful to them both, as we are to all the Chamber's staff, for their hard work and dedication to the administration of justice.

Annex B

First-tier Tribunal

Social Entitlement Chamber

President: Judge John Aitken

The Social Entitlement Chamber comprises three jurisdictions, namely Asylum Support (AS), Criminal Injuries Compensation (CIC) and Social Security and Child Support (SSCS). The Principal Judge of Asylum Support and Criminal Injuries Compensation is Sehba Storey. SSCS is managed by seven Regional Tribunal Judges led by the Chamber President. The jurisdiction of Asylum Support is UK-wide. SSCS and CIC are Great Britain-wide.

Social Security and Child Support (SSCS)

Jurisdictional Landscape

Appeals against decisions of the Department for Work and Pensions have increased rapidly this year although figures are not yet available for the complete period.

The trend in our intake in recent years saw receipts reach a peak of 507,000 in 2012-13 followed by a sharp decrease to 112,000 in 2014-15. The trend to 2018 was up again, increasing from 157,000 in 2016, to 228,000 in 2017 and 238,000 in 2018. In response to this we have increased our clearances rate from 190,000 cases in 2017 to 214,000 in 2018.

Although the rapid rise in appeal numbers has outstripped our ability to recruit and train sufficient numbers of panel members to keep pace with increased receipts, in recent years we have worked closely with the Her Majesty's Courts and Tribunals Service (HMCTS) and the Judicial Appointments Commission (JAC) to secure large scale recruitment exercises across Tribunal member types and in the past year been able to deploy a considerable number of new members across the jurisdiction. We have appointed a total of 130 fee-paid judges, 225 medically qualified members, and 125 disability qualified members during the course of the last year. We have also worked flexibly across the First-tier, assigning 58 fee-paid judges and eight disability qualified members.

We are presently engaged in negotiating and running number of further competitions via the JAC to recruit any shortfall from previous rounds of recruitment, so our longer-term strategy should see us being to be in a position shortly where we can effectively address the increased intake and begin to reduce the total number of cases outstanding.

At the same time, we have worked on a number of initiatives undertaken to ensure work progresses as rapidly as possible including listing more Personal Independence Appeals into each session which commenced at Bexleyheath and following that successful introduction has been expanded elsewhere in the London region and to the Midlands. In the North East closer case management of cases ready to list has allowed many cases to be dealt with in advance of a hearing. Use of text messaging to

make panel substitutions more rapid and prevent cancellations, has worked in Midlands and South East now rolled out nationally. The monitoring of these initiatives is ongoing.

At the moment we are anticipating vacancies for four key Regional Tribunal Judge roles to be filled via a JAC competition later in the year. The loss of the well respected and experienced lead judiciary will be unsettling but it is hoped that sufficient handover periods will, where possible provide for continuity.

Reform

The reform project team continue to make advances; the electronic submission of appeals went live last year. Our longer term aim however is to provide a service not only improved by better use of digital working, but one that provides fair hearings in the most appropriate way for all users, and a long-awaited pilot into online resolution will commence shortly. The aim is to provide a voluntary system used by appellants because it is more attuned to their needs.

Training

During the course of the year Regional Tribunal Judge Mary Clarke very kindly took on the lead role for training from Adrian Rhead. The SSCS jurisdiction has been very active in offering jurisdictional training to all judges and members. Newly appointed judges some of whom had no judicial experience have been trained by way of a stepped programme designed to meet the needs of each delegate and the new judges are now sitting across all jurisdictions.

Induction training was provided for 225 newly appointed medically qualifed tribunal members and 125 new disability qualified tribunal members most of whom had no judicial or legal experience and who are now sitting regularly on 03 and 04 appeals across all regions. This has made it possible for HMCTS to arrange more sessions and has led to fewer cancellations.

At the start of March 2019, 130 newly appointed fee paid judges were trained over four days and the oath was taken by all of them in preparation for sitting. All the delegates participated enthusiastically in what was a challenging and demanding training conference and are now starting to sit.

Separately, ongoing training which provides updates in the law and refines and enhances the skills of all judicial office holders has been maintained through a rolling programme of training conferences. New programmes are continually being developed to address the additional training needs of the jurisdiction.

The annual conference for judiciary provided an opportunity for updates in law and practice and for judicial office holders to see, first hand, what has been achieved as part of the reform programme.

It is particularly welcome that the Training Board of the Judicial College has agreed to pay all delegates a full days training fee from 1 April 2019. This recognises the value that all judicial office holders provide.

The 2019-20 training programme provides an opportunity for the jurisdiction to benefit from cross-jurisdictional training. In addition, the range of digital methods available and the support offered by the Judicial College will enhance the learning experience and enable the Training Committee to deliver appropriately focussed training by a variety of methods.

None of this would be possible without the dedication of the training team who are enthusiastic and innovative in their approach.

Significant Cases

The past year has seen a number of significant cases affecting the jurisdiction of the Tribunal. The attached annex lists most of them, but a few are worth noting in this section of the report. The biggest area of work for the Tribunal has been in relation to personal independence payment (PIP) appeals which has seen a number of important decisions. However, social security law is fast moving and ever changing and the past year has seen a gradual rise in the number of universal credit appeals come through the pipeline. This has resulted in more decisions in the Upper Tribunal (AAC), which the First-tier Tribunal has to incorporate and apply to its decisions. Finally, the impact of European Union law continues to make an impact on the Tribunal with two important decisions in the Court of Appeal.

PIP remains the bulk of the Tribunal's workload. The regulations relevant to a claim to PIP were drafted in such a way that considerable interpretation was always going to be a significant requirement and the past year has seen a number of Upper Tribunal decisions on the subject. *ZI v Secretary of State for Work and Pensions* [2018] AACR 1 considered the nature of a cooked main meal for the purposes of an award of points under daily living activity '1: Preparing Food'. In a previous reported decision in relation to claims to disability living allowance a reasonable cooked main meal might take account of cultural requirements, but it is now clear that, for the purposes of a claim to PIP, the nature of the cooked main meal must be the same for all claimants, regardless of any cultural, religious or ethnic differences.

MH v Secretary of State for Work and Pensions [2018] AACR 15 represented a challenge under Article 14 of the ECHR on the basis suspension of the mobility component of PIP for hospital in-patients constituted unlawful discrimination. The claim was unsuccessful for a variety of reasons, including the fact that in-patients and disabled claimants living at home or care home residents were not true comparators in the sense that a hospital in-patient was likely to have substantially less need to mobilise outdoors and venture beyond the perimeter of the hospital whereas that was not the case with those living at home; and in any event, the Government's attempt to rein in welfare spending was a legitimate aim under the European Convention on Human Rights (ECHR) and differential treatment by way of targeting resources was a proportionate response.

Universal Credit appeals are now starting to appear regularly before the Tribunal, and they can be tricky and difficult appeals. As a result, there have been a number of Upper Tribunal decisions on how we should be interpreting the legislation. Universal credit has now generally replaced housing benefit and the "legacy benefits" for new claimants. Whilst overpayments were generally recoverable under the housing benefit scheme, in cases where there had been an "official error" an overpayment might in certain circumstances not be recoverable. Likewise, in legacy benefits, recovery of an overpayment was dependent upon a failure to disclose or misrepresentation on the part of the claimant. In *LP v Secretary of State for Work and Pensions* (UC) [2018] UKUT 332 it has been made clear that the only consideration possible in an appeal against an overpayment is the amount of the payment which is recoverable and nothing else. Accordingly, official error, lack of misrepresentation and an absence of a failure to disclose do not result in the overpayment not being recoverable.

The general approach, that for a benefit sanction to bite as a result of a failure to attend an appointment, there must be some adequate prior notification, has been carried through into Universal Credit sanctions. *JB v Secretary of State for Work and Pensions* [2018] UKUT 360 (AAC) determined that for a failure to attend an appointment with a work coach to be sanctionable, the Secretary of State must be able to show that there has been proper notification of the work-related requirement and the consequences of any failure to attend. Such notification, together with evidence of the claimant commitment and records of any telephone or other electronic communications must be available to the Tribunal at any appeal hearing. In the circumstances of *JB,* the failure of the Secretary of State to produce a signed copy of the claimant commitment was fatal to the Secretary of State's defence of the appeal.

The "assessment period" in relation to a claim to Universal Credit came under scrutiny in the divisional court in *R (on the application of) Johnson, Woods, Barrett and Stewart* [2019] EWHC 23 (Admin). This case was a successful challenge to the interpretation of the assessment period defined in regulation 54 of the Universal Credit Regulations 2013. All four claimants were employees whose monthly salary was paid twice during one assessment period. The effect of the way the Secretary of State applied the regulation was to combine the two salaries into one assessment period leading to considerable fluctuation in entitlement and severe cash flow problems for each of the claimants. The divisional court (Lord Justice Singh and Mr Justice Lewis) held that the approach adopted would lead to "nonsensical situations" where a claimant's salary paid twice in one assessment period would result in that person being unable to retain the work allowance in that month but in the following month they would be shown as having no earned income. The court held that, on a proper interpretation of regulation 54, the amount of earned income in an assessment period might require an adjustment where a claimant receives two months' salary in one assessment period but both payments do not constitute earned income for work done in that assessment period.

Over the years, the question of how to interpret the issue of the "genuine and sufficient link" test in the regulations relating to Disability Living Allowance (DLA) and Attendance Allowance (AA) has often arisen. Generally, the "past presence" requirement for entitlement to DLA and AA does not apply to a claimant who comes within the scope of EC Regulation No. 883/2004 and can demonstrate a "genuine and sufficient link to the UK's social security system." The decision in *(1) Kavanagh (2) Mohamed v Secretary of State for Work and Pensions* [2019] EWCA Civ 272 is interesting for its consideration of the European Union (EU) jurisprudence on the point, but in short the Court of Appeal determined that the "genuine sufficient link" test should be read as applying to the UK in general and not just to the UK's social security system.

Finally, and sticking with EU law, *DM v Secretary of State for Work and Pensions* (PIP) [2019] UKUT 26 (AAC) is an important case for the First-tier Tribunal as it is confirmation that "Regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 (and regulation 15A (4A) of the 2006 Regulations) applies to carers of adult British citizens as well as children, and this reflects the relevant EU case law". The Secretary of State was accordingly prepared to concede in *DM* that the European Court of Justice decision in C34/09 Ruiz Zambrano was not only confined to the carers of children in the UK but also adults.

A table of further cases is included in the annex to the report.

Criminal Injuries Compensation (CIC)

Jurisdictional Landscape

The CIC is a jurisdiction with a case load of around 2,000. In 2018/2019 receipts have been above the anticipated profile but encouragingly clearances have exceeded receipts and the overall case load has been reducing. There has been a significant reduction in interlocutory work with appropriate appeals being listed immediately upon receipt and the introduction of case management hearings and case management discussions conducted by telephone. Overall this has improved waiting times but there remains a need to continue focusing on clearing outstanding appeals under the pre-2012 Schemes.

The jurisdiction has adopted a more flexible approach to the listing of appeals including sitting at additional venues and reducing travel for appellants, arranging special sessions particularly for older cases and where appropriate telephone hearings.

People and Places

Principal Judge Sehba Storey has moved to take up the role of Acting Chamber President of the War Pensions and Armed Forces Compensation. Regional Tribunal Judge Adrian Rhead has been appointed as Acting Principal Judge for CIC.

There has also been a significant increase in judicial capacity. After a cross-ticketing exercise, the number of judges has increased to 62, medical members to 28 and lay members to 14. This provides CIC with increased judicial flexibility and greater capacity to cover a national jurisdiction.

The Tribunal continues to be administered from Glasgow but has moved from Wellington House to the new Glasgow Tribunal Centre in York Street, which opened to the public on 3 April 2018.

Significant cases and legislative changes

This has been a year of important judicial activity and legislative changes, with more to follow.

In *JT v First-tier Tribunal & CICA & EHRC* [2018] EWCA Civ 1735 the Court of Appeal found that it was in breach of Article 14 of the ECHR to refuse compensation to a claimant on the grounds that they were living as a member of the same family as their assailant (the same roof rule). On 28 February 2019 the Government legislated to remove the rule.

In *A and B the CICA & Anor* [2018] EWCA Civ 1534 the High Court found that there was no discrimination and no discretion to award compensation under the 2012 Scheme where a claimant had unspent convictions resulting in a custodial sentence or community penalty.

One area of law which appeared to have been settled by the Court of Appeal in *CP v First-tier Tribunal (CIC) & CICA* [2014] EWCA Civ 1554 was of whether a claimant born with foetal alcohol syndrome or foetal alcohol spectrum disorder could be the victim of a crime of violence. However, there has been further judicial activity in relation to this issue and an appeal is awaiting a hearing before the Upper Tribunal which will seek to distinguish *CP*.

There are likely to be major legislative changes with the introduction of a new compensation scheme, although no timetable has been set. On the 9 September 2018 the Government announced the launch of a review of the CIC Scheme with the aim of better serving victims of crimes of violence especially child sexual abuse and terrorism.

Asylum Support (AS)

Jurisdictional Landscape

Previously, we reported on the abolition of the Home Secretary's power to provide support under Section 4(1) of the Immigration and Asylum Act 1999 (as amended) (the 1999 Act). We had anticipated a possible decline in appeal numbers as a result, but we have in fact experienced a four per cent rise in appeal numbers. This could be due to new appeals from persons whose Section 4(1) support has been discontinued after many years.

The other (more extensive) support provisions set out in the Immigration Act 2016, remain in abeyance due to competing parliamentary and Home Office priorities, but we continue to hear many both Section 95 and Section 4(2) appeals against the discontinuance of support based on concealed assets.

Refusals of Section 95 support to those who declared considerable assets for the purposes of entry clearance also provide a continuing source of lengthy appeals. The grounds of appeal in these cases can involve an assessment of the credibility of evidence which may later be raised as part of the asylum claim, giving rise to interesting questions as to how far the jurisdiction of this Tribunal overlaps with that of our immigration counterparts.

We have seen an increase in similarly overlapping arguments regarding appellants who have a lengthy immigration history, requiring the Tribunal to rule on the status of alleged implicit or explicit withdrawals of asylum claims to assess their entitlement to support.

The Principal Judge issued some clarification on a number of these topics in the reported case of ZN (AS/17/09/37288). She determined that, where issues in the support claim overlap with those in the asylum claim, First-tier Tribunal-Asylum Support (FTT-AS) judges should reach their own findings on the narrow issues before them. Their evaluation of the evidence is not binding on the immigration courts.

She also advised that, if entry clearance officers had not themselves evidenced assessments of credibility and authenticity, then First-tier Tribunal-AS judges were unlikely to be able to make findings of fact on these issues. This case also gave guidance as to the duties of the Tribunal and the respondent Home Office towards vulnerable individuals and minors in the light of *AM (Afghanistan) v Secretary of State (Home)* [2017] EWCA Civ 1123 and Section 55 Borders, Citizenship and Immigration Act 2009.

Judicial Review

There have been three challenges to the decisions of the First-tier Tribunal – AS. Of these, two have been refused permission and are awaiting further consideration at an oral application. The third challenge (CO/4364/2018) is summarised in Annex B.

People and places

With effect from 5 September 2018 Principal Judge, Sehba Storey, took on the role of Acting Chamber President of the First-tier Tribunal, War Pensions and Armed Forces Compensation Chamber. Whilst retaining active involvement in the work of the FTT-AS, she has been able, of necessity, to dedicate less time to this Tribunal on a day to day basis, with much of that responsibility falling on the Deputy Principal Judge, Gill Carter. We have also lost fee-paid Judges Jessica Wyman to retirement and Rebecca Owens on appointment to the Upper Tribunal Immigration and Asylum Chamber, for which we offer her our warmest congratulations.

Whilst we await the recruitment of up to three salaried judges, our increasing lack of judicial resources has required some creative solutions and we have been fortunate to be able to rely on some of our dedicated fee-paid judges to step up to new roles. We have trained two more judges in interlocutory work; for the first time our Annual Conference was arranged by fee-paid judges in new roles as Training Officers and our fee-paid judges now represent the Tribunal at National Asylum Support Forum meetings. Such work has not only assisted the Tribunal, but has also offered valuable training and development opportunities to our judges.

We remain committed to the appraisal process and judges are regular attenders at Tribunal Appraisal Network meetings. Notwithstanding the pressure on resources, we have also completed the revision of our judicial appraisal scheme in line with the Senior President's model and the appraisal of all our fee-paid judiciary. The opportunity to share appraisal reports between jurisdictions has been welcomed by appraisees and has considerably lessened the pressure on our judge appraisers.

For the first time we have included compliance with our statutory timescales for the delivery of judgments (Reasons Statements) as part of our appraisal reports. Despite the extremely tight deadline of three days in oral hearings and the same day in paper cases, we are proud to have recorded a compliance rate of 98.6 per cent.

Reform

Despite difficulties with the upgrade to Windows 10, we managed to keep our adjournment rate to below 2 per cent, which was largely a tribute to the flexibility and dedication of our judicial and administrative teams and our strong working relationships with Presenting Officers and our duty solicitor scheme, the Asylum Support Appeals Project (ASAP).

We have improved our efficiency and service to stakeholders by sharing the Tribunal's bundle online with ASAP. We have for some years received Home Office evidence via a shared portal, but the introduction of scanned bundles for the appellant's duty representatives is a relatively new development, which has helped to reduce delays to the start of hearings.

Whilst we may be some years away from Continuous Online Resolution (due largely to the need for interpreters in most of our appeals and the lack of legal advice and access to online services amongst our deprived appellate group), we are enthusiastic about the expansion of other online hearing facilities.

This year we have for the first time arranged video-links to two immigration removal centres but, despite working with other locations to add new venues each year, the demand for video hearings continues to outstrip supply.

We have also experienced multiple failures of video hearings at venues which require a bridging link (i.e. those venues whose system is not the same as our own) and this problem is compounded by the inability to test such links in advance due to the prohibitive cost of doing so. It is significant that over a third of our adjournments have been caused by video link problems.

We therefore look forward to the development of more streamlined, reliable and faster video conferencing facilities and to this end the Deputy Principal Judge has visited and contributed to a pilot scheme.

Health, Education and Social Care Chamber (HESC)

President: His Honour Judge Phillip Sycamore

The Chamber comprises four jurisdictions. Mental Health which covers the whole of England; Special Educational Needs and Disability (SEND), which also covers the whole of England; Care Standards, which covers the whole of England and Wales, and Primary Health Lists which also covers the whole of England and Wales. In addition to the President, the Chamber's senior judicial leadership comprises two Deputy Chamber Presidents, Judge Meleri Tudur who has responsibility for the SEND, Care Standards and Primary Health Lists jurisdictions, Judge Sarah Johnston who has responsibility for the Mental Health jurisdiction and Chief Medical Member Dr Joan Rutherford who has a leadership role for the specialist medical members who sit in the mental health jurisdiction.

The Jurisdictional Landscape

On the 3 April 2018, the government implemented an extended two-year national pilot of the extension of the Tribunal's jurisdiction to include making recommendations in respect of health and social care issues in an attempt to further test the proposal that the Tribunal should become a "one-stop shop" dealing with all aspects of the education, health and care (EHC) plan. Based on the response to the earlier Recommendations Pilot run over 30 English local authority areas, the Department for Education anticipated that about 350 appeals would be made over the two-year lifetime of the National Trial. However, by the end of the first year of the national pilot, the number of National Trial appeals registered has already exceeded 500, demonstrating tribunal users' appetite for challenging health and social care aspects of EHC Plans. All National Trial appeals arise from an education based appeal, hence the appeals are not adding to the Tribunal's caseload, but rather increasing the complexity of the issues to be determined.

Overall, there has been a further significant increase in the caseload in SEND, with the number of appeals registered increasing during 2017/2018 to 5,179 and a further projected increase in 2018/2019. If the Tribunal reaches its predicted number of 6,400 by April 2019, the work of the Tribunal will have more than doubled since it registered 3,147 appeals in 2014/2015.

The number of Disability Discrimination in schools cases has remained stable but with a slight drop in the number of hearings.

Appeals to the Care Standards jurisdiction have also increased in volume with, for the first time, over 300 appeals registered in the last financial year. The Care Standards jurisdiction will be dealing with new appeal rights arising under the Higher Education and Research Act 2017 ('HERA').

The Mental Health jurisdiction deals with the fundamental right to liberty and private life of the citizen in every case it hears. Applicants to the Tribunal range from those who are detained under the civil sections of the Mental Health Act to get treatment for their illness to those who have been convicted of offences and are mentally ill. The applicants range from children to older adults.

Detention under the Mental Health Act has risen by 40 per cent from 2005/2006 to 2015/2016.[2] This has meant a rise in the number of cases. The Tribunal is working hard to make sure every case is heard speedily given the fundamental rights at stake.

Across all jurisdictions, there are still challenges filling the number of tribunal panels needed. In the Mental Health jurisdiction, to ensure panels are allocated to cases which need a full oral hearing, a review of the Tribunal's rules took place. With the agreement of the Senior President of Tribunals, a pilot of judge alone paper cases for community treatment orders (CTOs) is being run where the patient does not want a hearing. So far, the pilot is going well and will be fully reviewed when concluded.

Because mental health patients are referred to the tribunal to review their detention at regular intervals there are cases in which patients are not challenging the legal basis for their detention and/or do not want to attend. To this end, the possibility of piloting video hearings for uncontested restricted patient cases is also being investigated. Under Her Majesty's Courts and Tribunals Service (HMCTS) Reform plans, it may in the future, be possible to make more use of video hearings when we do not have panels in certain geographical areas but can provide a panel from another area.

In the last year, about 100 applications for review of Mental Health Tribunal decisions were received and of those 4 were given permission to appeal and 28 of the decisions were set aside. Given that the jurisdiction has approximately 16,000 hearings a year, very few decisions are appealed and of those that are, only a small number result in a new hearing.

The Chamber President, Deputy Chamber President (Mental Health), Tribunal Judges and the Chief Medical Member were included in discussions with the Mental Health Review led by Professor Sir Simon Wessely. This review of reforming mental health legislation was announced by the government in 2017. Discussions with Sir Simon and other members of the review team included the application of the current law in the Tribunal. The recommendations from this review, if adopted, will significantly increase the workload of the Tribunal. The final report was published in December 2018. Work is ongoing about the implementation of the recommendations.

The Chamber's leadership judges work closely with stakeholders which includes regular meetings. They also work hard to deliver training to all fee paid judges and members across the Chamber.

Both Deputy Chamber President Judge Meleri Tudur and Tribunal Judge Habib Khan were appointed senior tutors by the Judicial College to the Leadership and Management courses.

For the Mental Health jurisdiction, the Chief Medical Member and judges have been involved with training for hospitals on giving evidence to the Tribunal when needed. For the Mental Health jurisdiction, the Chief Medical Member and judges have been involved with training for hospitals on giving evidence to the Tribunal when needed. At the request of the Secretary of State's Mental Health Casework Section (MHCS) which is the department with responsibility for restricted

2 *Modernising the Mental Health Act: Final report of the Independent Review of the Mental Health Act 1983* (December 2018)

patients, Deputy Chamber President Sarah Johnston delivered training about the Tribunal to Victim Liaison Officers. The jurisdiction's judiciary are also working with the MHCS and the Parole Board to ensure the cases that are considered by both are expedited.

The Child and Mental Health Service (CAMHS) Panel Lead Judge has worked with the charity YoungMinds in order to have accessible information available to children and young people through their website; this now includes a *judge's blog*.

Internationally renowned Professor Sir Harry Burns, the Director of Global Public Health and Chair of the Scottish Government's Review into Targets for Health and Social Care was involved in training mental health judicial office holders at a core course training event this last year. Sir Harry spoke about the link between poverty, deprivation and their impact on health.

For the Mental Health jurisdiction, there have been two Supreme Court cases that have had a significant impact on the power of the Tribunal to discharge patients and we have informed and trained members about the effects of these judgements. *(Secretary of State for Justice (Respondent) v MM (Appellant)* [2018] UKSC 60; *Welsh Ministers (Respondent) v PJ (Appellant)* [2018] UKSC 66)

People, places and recruitment

In May 2018, Deputy Chamber President Judge Mark Hinchliffe retired from office. Mark, appointed as the first Deputy Chamber President (Mental Health) in 2009, had day to day judicial leadership for the mental health jurisdiction. Mark's considerable experience and expertise is retained as he has remained a fee paid judge in the Chamber.

Tribunal Judge Hugh Brayne also retired from office in May 2018. Hugh was the last remaining of the four original salaried judge appointments sitting mainly in the SEND, Care Standards and Primary Health Lists part of HESC in 2009. Hugh has also remained as a fee paid judge in the Chamber thus retaining his experience and expertise.

In April 2019 Tribunal Judge Cathy Healy also retired from office and from the Chamber. Cathy too was one of the early appointments to the newly created Chamber in 2009 and will be much missed.

In June 2018 Judge Sarah Johnston was appointed as Deputy Chamber President for the mental health jurisdiction. Sarah had been a tribunal judge in the Chamber until her promotion and has been warmly received in her new role by all her colleagues.

Tribunal Judge Clive Dow joined HESC as a full time judge in SEND, Care Standards and Primary Health Lists, based in Havant from January 2019. Clive was formerly a Commander in the Royal Navy amongst other roles before becoming a tribunal judge. Having successfully navigated the first generic tribunal judge appointment exercise through the Judicial Appointments Commission, Clive brings his considerable knowledge and experience of naval and foreign affairs to provide a different perspective on the work of the Tribunals, launched on a different tack.

Across all four jurisdictions, the Chamber has used the flexible deployment and recruitment methods available with both internal expressions of interest exercises and external Judicial Appointments Commission campaigns to recruit salaried and fee paid judges and specialist members to both replace and enhance the chamber's judicial resources.

In addition, in SEND, two new Tribunal Caseworkers (TCWs) have been recruited to cover the National Trial work and to allow SEND Registrar resources to concentrate on other significant interlocutory work. The TCWs remit will broaden as they gain experience to include other types of appeals and claims. They are a welcome addition to the TCW team in across the Chamber which also includes Laura Collins and Natalie Early for the mental health jurisdiction.

The dedicated administration staff for the mental health tribunal who are based in Leicester, continue to work incredibly hard for this jurisdiction. Their commitment to and involvement in ensuring that cases are delivered in a fair and timely manner is always evident.

For SEND, Care Standards and Primary Health Lists, the dedicated staff who are based in Darlington also work with unwavering commitment. The past two years in particular have been challenging given the increase in workload. Staff have been working overtime to manage the increasing workload, and their dedication has been key in maintaining the excellent performance. Additional support has been recruited as mentioned above, both through the selection of legal adviser Registrars, two Tribunals Caseworkers (TCWs) working remotely in Leicester are supplementing the work in Darlington and the evening team in Leicester who work from 18:00-22:00 have also joined the SEND administrative support team from March 2019. SEND is actively demonstrating the possibilities of cross-jurisdictional deployment of staff and use of remote support to good effect and Darlington could be described as the model for the Courts and Tribunals Service Centres, supporting the jurisdictions nationally from Darlington and consistently maintaining exceptionally good performance across their Key Performance Indicators.

War Pensions and Armed Forces Compensation Chamber (WPAFCC)

Acting President: Judge Sehba Storey

People

During the period covered by this report, there have been significant personnel changes within WPAFCC most notably the departure of Judge Fiona Monk, who led the Chamber from September 2016 to September 2018. She has since returned to the Employment Tribunal (England and Wales), West Midlands Region as Regional Employment Judge, in addition to becoming a JAC commissioner and Principal Judge of Strategy and Implementation. On behalf of the Chamber, I would like to record my gratitude to Fiona for her inspiring leadership and contributions to continuing developments within the Chamber. I am particularly grateful for her help and guidance to me personally since I took over as Acting Chamber President.

In June 2018, Claire Horrocks (who retired as Principal Judge in 2017), received the Order of the British Empire from Her Majesty the Queen at St James's Palace, London, in recognition of her vast contributions and service to the Armed Forces and to the administration of justice. We offer Claire our warm congratulations on a well-deserved honour and look forward to her continuing her work within the Chamber.

In May 2018, we were joined by Moshuda Ullah, the Chamber's one and only Tribunal Case Worker. Working under the supervision of Judge Surinder Capper, she has quickly familiarised

herself with the jurisdiction and exercises the full range of functions included in the Senior President's 2018 Practice Statement. In partnership with the Chamber's team of administrators, Moshuda has done much to improve the throughput of cases from receipt of appeals to hearing. Our performance would be greatly enhanced if the Chamber could be allocated a second Tribunal Case Worker.

We are pleased to welcome five new Judges (Anthony Metzer, Clare Burns, Edward Solomons, Karen Bennett, and Naomi Hawkes) to the Chamber. In September 2018, however, Anthony Metzer was appointed a Deputy High Court Judge for England and Wales. Understandably, he felt he should prioritise his High Court work, but has agreed to retain his WPAFCC appointment in the hope that he will be able to offer the Chamber some availability in the future.

In November 2018, two medical members (John Bennett and John Bolton) were assigned to WPAFCC from the Social Entitlement Chamber, both of whom have previous Armed Forces experience. We now have a healthy complement of medical members. I am grateful to the Senior President for allowing me the discretion to list them as either medical or service members, should the need arise.

As previously reported, we continue to rely heavily on our service members in the Chamber, some of whom have kindly agreed to extend their service pending the long - awaited recruitment exercise. This is finally due to launch in May 2019 and we hope to have at least nine new service members in post before the end of the year.

Sadly, we said farewell to Judge Roger Hedgeland, and Judge Graham Ritchie. Roger was appointed in April 1999 and retired in December 2018. Graham was appointed in 2001 and retired in July 2018. Known for their high standards and dedication to delivering a quality service, they have set the bar high for colleagues they leave behind. I thank them warmly for their service and wish them a long and happy retirement.

Places

The Chamber continues to experience difficulties with booking venues in some locations, including Leeds and Southampton. This can cause delays in listing cases which otherwise are ready to be heard. I am, however, pleased to report that we have added a new centre to our list of venues. The Havant Justice Centre is to replace our previous reliance on Southampton Magistrates Court. This will be particularly welcomed by our appellants, some of whom have voiced concerns about attending hearings at venues designed for criminal proceedings.

Jurisdictional Landscape

Veterans UK, part of the Ministry of Defence, administer the Armed Forces Pension Scheme and the War Pension Armed Forces Compensation Scheme. In the past twelve months, receipts of appeals have fallen by approximately 20 per cent. This is partly attributed to staff shortages at Veterans UK and to repeat work occasioned by cases adjourned for various reasons, including requests for further evidence not in the respondent's original submission. In the past, the respondent's original files were available at the appeal hearing so that any missing documents could be quickly retrieved and the appeal concluded. This practise has ceased, apparently on legal advice, due to concerns over data protection and lack of secure file storage facilities at tribunal venues. Although Veterans UK has advised that it can be contacted on the day of the hearing via the departmental representatives, this is

not always possible as it causes delays for other appellants. The respondent has agreed to reconsider its position and has been reminded that many government departments continue to make files available in other jurisdictions. It is, however, not unreasonable for the respondent to request secure fire proof storage facilities for their files and this has been arranged.

Throughout the summer of 2018, we received a high number of postponement/adjournment requests from the Royal British Legion (RBL), the charity that represents approximately 70 per cent of our appellants. This appears to have been a long-standing problem, with former Chamber Presidents (since 2015) urging RBL's senior management to address the issue. The problem peaked in October 2018, when RBL acknowledged that their staffing and resource challenges were "having a significant and negative impact" on the service they provide for veterans, but also on how well they engage with the Chamber. The practical effect of RBL's staff shortages was that entire lists collapsed during October - December 2018, with most appellants refusing to proceed without RBL representation. In a series of meetings with RBL's managers, we set out the Chamber's requirements and expectations, and emphasised that in future, postponements/adjournments were unlikely to be granted because a representative was unavailable for hearings. We understand that RBL have since triaged their work and successfully recruited two new advisers who will shortly begin to work independently. We hope that further (much needed) appointments will follow so that the Chamber can progress its backlog of cases.

We are pleased to note an increase in appellant representation by other charities, most notably, by the Royal Air Force Association (RAFA) and Blesma, the Limbless Veterans. We hope the trend continues and that these, and other charities will continue to play an active part in assisting veterans with their compensation applications and appeals.

Direct Lodgement

Unlike appeals to the Pensions Appeal Tribunal in Scotland, appeals in England and Wales against the decisions of Veterans UK must be made directly to the respondent. This has been a cause for concern amongst the Armed Forces community for some time. Since 2014, the Confederation of Service Charities (COBSEO) has raised these legitimate concerns in the Armed Forces Covenant Annual Reports for 2014, 2015, 2016, 2017 and 2018. The Armed Forces Covenant 2000 is a pledge by the Government to ensure that:

'all those who serve or have served in the Armed Forces [...] face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is acknowledged as appropriate for those who have given most, such as the injured and the bereaved.'

The Armed Forces community has championed the introduction of direct lodgement in England and Wales, not only to eradicate the perception that the Tribunal "[lacks] independence and objectivity" (2018) but also to improve the process by speeding up appeals for veterans (2014). The failure to introduce direct lodgement is seen to "disadvantage" appellants in England and Wales (2016).

COBSEO have received repeated assurances from the Ministry of Justice that direct lodgement will be introduced in England and Wales. Disappointingly, however, the timing of the implementation is ever-changing with the promise of change shifting from 2018 to 2019, 2019/2020 and most recently to "2020 - if we can" (the Honourable Mark Lancaster, Minister of State for the Armed Forces)

when he debated the issue in Parliament on 13 March 2019.[3] The Minister added that there may be further slippage, "because of other work ahead of [direct lodgement] in the reform programme" and that the Government "cannot give [...] the firm assurance that that will happen".

This Chamber is committed to working with the Ministry of Justice to deliver direct lodgement in England and Wales as a matter of priority. We see no justification to delay the process. The current system is cumbersome and inefficient. Veterans UK routinely take 12 months (and sometimes longer) to inform the tribunal of an appeal. It is not surprising that appellants are often angry and frustrated. Direct lodgement will result in a fairer, just, efficient and cost-effective system of appeals. It is time for a radical overhaul of the system and that time is now.

Tax Chamber

President: Judge Greg Sinfield

Introduction

The Tax Chamber hears appeals against decisions relating to all taxes (save for certain devolved Scottish taxes) and duties made by Her Majesty's Revenue and Customs (HMRC). We also hear appeals against refusals to restore goods seized by either HMRC or Border Force and against some decisions made by the National Crime Agency (exercising general revenue functions where income or gains are suspected to have arisen as a result of criminal conduct). The Chamber has jurisdiction to hear appeals against decisions of the Compliance Officer for the Independent Parliamentary Standards Authority relating to claims for expenses by Members of Parliament. Subject to appeals relating to the devolved Scottish taxes, the Tax Chamber's jurisdiction extends throughout the UK.

Jurisdictional Landscape and Legislative Changes

During the period covered by this report, there have not been any significant jurisdictional or procedural changes that affect the Tax Chamber's work. There have been legislative changes, as there are every year in the field of tax, but there will be little if any impact on the work of the Chamber in the next year.

We have, of course, been assessing what the impact on the Tax Chamber might be in the event of a 'no-deal' departure from the European Union and making plans for that. The only relevant proposal of which we are aware concerns new Customs Civil Penalties which will come into force on a 'no-deal' EU-Exit but, given the inherent time lag in the HMRC review processes (and the hope that they will operate a 'light touch' in first few months), we are unlikely to see any EU-Exit-related increase in appeals received for six months to a year after EU-Exit and then a further three months to a year before any hearing.

3 *The Hansard Debate*

Our Work

The number of appeals received and disposed of by the Tax Chamber during the period covered by this report are set out in the following table, together with those of the previous year for comparison.

Year	Appeals received	Appeals disposed of after hearing	Appeals disposed of without hearing	Total appeals disposed of
2018-19	8905	2342	9064	11406
2017-18	9430	3009	7179	10188

Digests of the most important decisions of the Chamber during the year are included in Annex E.

Our People

During the year, one judge (Richard Thomas) and eleven non-legal members (Derek Speller, John Cherry, David Earle, Ruth Watts Davies, Toby Simon, Nigel Collard, Peter Sheppard, Ian Condie, Amanda Darley, John Wilson and Tony Hennessey) retired. Their contribution to the Tax Chamber over the years was very much appreciated and they will be much missed by colleagues who have sat on appeals or attended training events with them. We wish them a long and healthy retirement.

We also said farewell to a number of colleagues who were appointed or promoted to judicial office elsewhere. Two of our judges (Jonathan Richards and Swami Raghavan) and one fee-paid judge (Thomas Scott) were appointed as salaried judges of the Upper Tribunal Tax and Chancery Chamber.

There were some other appointments among our fee-paid judges during the year. Sarah Falk became a High Court Judge on 1 October 2018 but she has not given up tax cases altogether as she sits in the Chancery Division and has already heard several tax cases in the Upper Tribunal Tax and Chancery Chamber. Another of our fee-paid judges, Ian Huddleston, was appointed a judge of the High Court of Northern Ireland in January 2019.

One of our judges, Jennifer Dean who is based in Manchester, was appointed as a Deputy Upper Tribunal Judge but will continue to sit primarily in the Tax Chamber. A fee-paid judge, Rupert Jones, became a salaried judge in the Administrative Appeals Chamber of the Upper Tribunal. I am pleased to say, however, that he will continue to sit in the Tax Chamber for some of the time. Finally, I should mention that another fee-paid judge, Richard Chapman, was Queen's Counsel this year.

This year has not been one of departures only but also of arrivals. I am pleased to record that we have been joined by ten new fee-paid judges. Six of them were already fee-paid judges sitting in other Chambers who have been assigned to the Tax Chamber. They are Tracey Bowler, Peter Hinchliffe, Abi Hudson, Natsai Manyarara, Parminder Saini and Kelvan Swinnerton. We also have four new judges as a result of the recent recruitment exercise for fee-paid judges. They are James Austen, David Bedenham, Asif Malek and Jeanette Zaman. They were sworn in as new judges at our annual training conference for tax judges by the President of the Upper Tribunal Tax and Chancery Chamber, Mr Justice Zacaroli.

At the time of writing this report, the Tax Chamber has eight salaried judges, including the Chamber President, who hear some of the most demanding cases and, crucially, do the bulk of the case management box work. Two years ago, the Chamber had ten salaried judges. The Tax Chamber currently has 53 fee-paid judges and 60 members, including one authorised presiding member. In the next two years, i.e. by April 2021, four fee-paid judges and nine members are due to retire.

The volume of appeals received does not fluctuate greatly. This year the numbers of appeals received was less than last year but that could easily be reversed next year. We need to be able to forecast capacity and judicial resource requirements. To that end, we have been working with the HMCTS Head of Demand and Judicial Modelling on a tool to forecast sitting days and, thus, number of judges/members required to deal with the volume of appeals received. The modelling tool is important because it is clear that, notwithstanding the latest additions to the Tax Chamber, we do not have enough judges. However, it is not clear how many more judges we require. That is what the judicial modelling tool is for, but it is still at an early stage of development.

Our need for more judges (if not the exact number needed) is clear from two things. First, our administration in Birmingham has had difficulty finding judges to sit on cases which has resulted in hearings being unacceptably delayed. Some hearings have been listed and then subsequently cancelled when they were listed on dates convenient to the parties on the (mistaken) assumption that a judge would be available. The second factor is that it is currently estimated that there will be some 145 extra appeals as a result of EU-Exit. Those new appeals are expected to require around 55 extra sitting days but, as many of the cases will concern new penalty provisions, the earlier cases may take longer than expected as judges get to grips with new law and arguments. When we will actually receive any new appeals will depend on when EU-Exit happens.

In order to address the lack of judicial resource, we are currently looking to recruit four new salaried judges to the Tax Chamber in the current generic First-tier Tribunal recruitment competition. In next year's annual report, I hope to be able to announce the appointment of new judges. As we have seen from the appointments and promotions made in the last year, being a judge in the Tax Chamber can be just the first step in a judicial career that can lead to the High Court (and perhaps beyond).

Our Premises

There have been no significant changes in our main premises at Taylor House in Rosebery Avenue in the past year. We have 10 dedicated modern hearing rooms which vary in style from the traditional courtroom set up, the largest of which can accommodate 22 persons, to the less formal "turn up and talk" arrangement where the parties sit round a table with the judge at one end. We have found, however, that even our largest hearing room is not big enough for our larger, more complex hearings where we commonly have leading and junior counsel on both sides and many witnesses. Unfortunately, this has meant that we have had to list a number of hearings in the Rolls Building which rather negates the point of having a modern hearing centre at Taylor House. As a result, we plan to knock two courts into one very large court. Work should start later this year. Work will also start on converting one of our two "turn up and talk" rooms into a dedicated video hearing room (see below).

In Manchester, the lease at Alexandra House expires in September but we believe that a renewal for five years has already been agreed.

There have been no judicial moves in our other permanent location in Birmingham.

Reform

Between March and July 2018, the Tax Chamber undertook the first pilot for fully video hearings as part of the project to transform and modernise the justice system. An evaluative report about the pilot was published by Dr Meredith Rossner, Associate Professor of Law at LSE. For the pilot, suitable basic appeals against penalties were selected, and where the appellant consented and had the necessary IT equipment, a fully video hearing took place. The HMRC presenting officers took part from offices elsewhere in the country; the appellants took part from their home, workplace or the office of their representative. The judges sat in an adapted court room in London, to which the public had access. All parties were very positive about the experience as it saved on travel time and cost. However, while the IT platform used for the video hearings gave excellent sound and visual and was head-and-shoulders above old-style video conferencing, unfortunately most hearings suffered from connection breaks. The pilot gave the video hearings team a great deal of useful insight into best practice for video hearings which will feed into the next pilots shortly to take place in other courts and tribunals, but which will now be based on a new and more reliable IT platform. We were very pleased to learn that the upgraded technology will be made available to the Tax Chamber later this year. We see video hearings as a useful tool in our efforts to extend access to justice. The facility to participate by video is particularly important for appellants who find it difficult or impossible to attend a tribunal centre for the hearing, perhaps because they are disabled or located in remote areas or even outside the country, and also those penalty appeals where the amount of money at stake does not justify taking an entire day off work.

The Tax Chamber also participated in a trial of using electronic bundles for hearings. It was not entirely successful because of external factors rather than failings in the concept. Like the video hearings pilot, the idea is sound and promises improvements in efficiency as well as reducing the number of trees sacrificed to bundles but that depends on having the right technology. We will be conducting further trials this year.

The Tax Chamber was and continues to be involved in the scheduling and listing project, participating in the test stages of the development of a new 'tool' for this purpose.

Training

We continue to invest in developing the skills and knowledge of judges and non-legal members of the Tax Chamber by way of training conferences and the circulation of updates. The training conferences are planned and organised by John Brooks and Jennifer Dean assisted by my Personal Assistant, Audrey Lum, who does so much to ensure the smooth running of the events.

In October 2018, an induction course was held at Taylor House to introduce seven new fee-paid judges assigned from other jurisdictions to the work and practices of the Tax Chamber.

The conference for the non-legal members of the Tribunal was held the day after the induction event and, as last year, a single event was held in London for all members. Lectures were given by judges on a variety of topics.

In March, as in previous years, the annual Judges' Conference took place over two days at Walton Hall in Warwickshire attended by almost all the Tax Chamber judges and the judges from the Upper Tribunal Tax and Chancery Chamber. There were presentations given by the judges on various subjects from "black letter" law to the practical and "judge craft" skills needed for the wide range of matters that come before the Tax Chamber as well as case studies in small topics.

In addition to the training events described above, Jonathan Cannan produces a quarterly update which, not only provides a helpful summary of tax cases in the Tax Chamber and Courts over the period but also includes other relevant material such a decisions on non-tax related matters which could have a bearing on our work and practical matters (such as venue guides) which can prove invaluable when sitting for the first time at a different location.

Administration

In my last report, I drew attention to the fact that we were suffering difficulties in recruitment and retention of staff at our administrative service centre in Hagley Road, Birmingham. I am sorry to say that the situation has not improved, and the attrition rate remains shockingly high. The problem is obvious but seemingly insoluble. Other Government departments are able to lure our staff with offers of higher pay at the same grade or better terms. The managerial team led by Helen Dickens and Liz Hipkiss, both of whom have now moved on, worked hard to cope but it is not realistic to expect standards of service to be maintained with a 20 per cent shortfall in headcount. I am very grateful to everyone at Hagley Road for their hard work in difficult circumstances.

We are benefiting in particular from our new tribunal caseworkers (TCWs) who carry out, with delegated authority and under the supervision of our highly experienced Registrar, June Kennerley, some work which would otherwise have to be undertaken by judges. We originally recruited four TCWs but one left last year. We have just recruited two new TCWs but have recently learned that another is likely to leave (for HMRC) this year and so we must now try to recruit more to bring us up to our complement of six.

Conclusion

This report shows that there are several challenges in the year ahead and there are surely many, as yet, unforeseen. I look forward to reporting on how the Tax Chamber has met those challenges in next year's report.

General Regulatory Chamber (GRC)

President: Judge Alison McKenna

Jurisdictional Landscape

The Chamber 's work load continues to rise, with notable increases in receipts in the Information Rights, Pension and Transport jurisdictions.

The Chamber has taken on a number of new jurisdictions in the past year. We have received, and in some cases determined, our first applications and appeals in respect of:

- An enforcement notice served under the Welfare at the Time of Killing (England) Regulations 2015;
- An Improvement Notice served under s. 10 of the Food Safety Act 1990;
- Financial penalties for Secondary Ticketing infringements under s. 90 of the Consumer Rights Act 2015;
- Case Progression Orders under s. 166 of the Data Protection Act 2018;
- An Information Notice served by the Information Commissioner under s.142 of the Data Protection Act 2018; and,
- An Information Notice served by the Independent Office for Police Conduct under paragraph 19ZA of Schedule 3 to the Police Reform Act 2002.

As of 1 April 2019, our jurisdiction in respect of appeals from decisions of the Claims Management Regulator transfer to the Upper Tribunal (Tax and Chancery Chamber) (Financial Services).

We have been planning for EU-Exit as a number of new environmental appeal rights are due to come to the Chamber on EU withdrawal day. These include appeals about the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), financial penalties in respect of road vehicle emissions and appeals in respect of geographical indication decisions concerning food and other products. We have also recently acquired a new jurisdiction in relation to appeals brought under the Ivory Act 2018.

We receive a growing number of applications across the Chamber for anonymity orders. Our approach to such matters was upheld by the Upper Tribunal (Administrative Appeals Chamber) in *D v The Information Commissioner:* [2018] UKUT 441 (AAC) in respect of which permission has been given for an onward appeal to the Court of Appeal.

People and places

Our long-serving Delivery Manager in Leicester, Kevin Pole, retired last October and was succeeded by Andrea Walker. Sadly, Andrea recently passed away and is greatly missed. Michelle Foxon is now the Acting Delivery Director.

A number of fee-paid judicial office holders have retired in the past year – Chris Ryan, David Laverick, Mahmud Quayum, Neil Pardoe, Chris Perrett. I would like to thank them all for their valuable and dedicated service. We were saddened to learn of the death of non-legal member Narendra Makanji and I take this opportunity to thank him for his valuable and dedicated service in the Local Government Standards and Information Rights jurisdictions over the past 17 years.

We are in the process of recruiting one salaried Judge and six new fee-paid judges to the Chamber, in recognition of our expanding work load. We also hope to recruit some new information rights specialist non-legal members to the Chamber in the coming year.

Our legally-qualified Registrar Rebecca Worth has received her first judicial appointment as a Deputy District Judge (Civil) and we offer her our warmest congratulations. She will continue to work as our Registrar on her non-sitting days. She is supported at Arnhem House by two new Tribunal Case Workers.

Our use of technology to support the peripatetic nature of our work has grown through the use of electronic bundles, paperless hearings and our first training podcast. We have finalised a Service Level Agreement with Her Majesty's Courts and Tribunals Service (HMCTS) which gives us a guaranteed number of hearing room days in a specified number of locations nationwide for the forthcoming year.

Immigration and Asylum Chamber (IAC)

President: Judge Michael Clements

The Jurisdictional Landscape

Last year I was able to report that reform was well underway. However, we were then only at the stage of gathering evidence and mapping how we might put into practice that which had been conceived. I am extremely proud to be able to say that this year we are now piloting the new online process at Taylor House and Manchester Hearing Centres, albeit it in a very limited way, with carefully filtered international protection appeals. To date, the feedback from stakeholders has been very positive; we have met the target dates set for us; and, though not wishing to tempt fate, we remain on track to be fully operational by the end of 2020 as intended.

I am not nor shall I be complacent. There is still a lot of work to be done.

The pilot is being case-managed with the use of 'Pilot Directions' and therefore, changes to the Procedure Rules may well be required. This will involve engagement with the Procedure Rules Committee and proposals have already been prepared for the committee. I remain hopeful that these proposals will be well received.

Those who have any dealings with 'reform' will be aware that the construction of the new platform is being completed in an 'agile' way. Having taken on board the recommendations of the Fundamental Review of this jurisdiction[4], published in 2014, and the Report of Justice, *'Immigration and Asylum Appeals – a Fresh Look'*, dated 2 July 2018, the IAC has been working towards a new end to end way

4 *https://justice.org.uk/our-work/administrative-justice-system/immigration-asylum-determination-reform/*

of working. Every aspect of the process from lodging, progressing, managing and deciding an appeal has been examined. I would like to express my gratitude to the very many stakeholders, including members of the judiciary, Tribunal Caseworkers (TCWs), the Immigration Law Practitioners' Association, the Home Office and the many members of our administration who have all assisted, and continue to assist, the Appeals Transformation Team convert the original concept into a functioning online system.

One of the many efficiencies which we expect to make in reform will be the better use of resources. Over the last year we have increased the number of existing TCWs and we are set to increase the number further. In May 2018, the Senior President of Tribunals extended the powers delegated to TCWs and it is my intention to have TCWs working to the full extent of those delegated powers which in turn will release more judges to deal with the final disposal of appeals. The better management of cases by specialists and the powers delegated to TCWs is at the very heart of reform and will be vital to ensure success.

Given that it is of utmost importance for those TCWs around the country, as well as the judges who might be required to supervise and review their work, to approach similar cases in the same way we have begun, together with HMCTS, to address the process of jointly training judges and TCWs, as appropriate. This will certainly become an important aspect of our rolling training programme. In order to assist with this endeavour, a 'Box-work Benchbook' is being produced which will be made available to all TCWs, as well as those judges tasked with supervising and reviewing such work, in the next few weeks. It may well be that this benchbook will have been circulated by the time this report is published.

Most of the hearing centres around the country are still operating below profile. In large measure this is because there was, in previous years, a moratorium in recruitment. However, I am delighted to confirm that recruitment is once again underway. This year, we have been able to welcome 64 new fee-paid judges amongst our ranks and are anticipating recruiting additional salaried judges in the forthcoming months. I am keen to welcome even more next year.

The increase in the number of judges has created the opportunity for me to increase the number of Assistant Resident Judges following an Expressions of Interest exercise run in January 2019. I look forward to the contribution that I know they will make at the various centres to which they have been appointed in the years to come.

In addition to the regular residential and continuation training courses attended by all judiciary over the course of the year there have been three induction courses for judges new to the First-tier Tribunal Immigration and Asylum Chamber (FtTIAC). In January 2018 we ran a course for new judges, in July 2018 there was another for judges assigned to the IAC from Social Security and Child Support (SSCS), and in March 2019 a course for newly appointed fee-paid judges. The Judicial College have been impressed by the interest and commitment shown by all judges at these courses. I would like to express my particular thanks to John Manuell who retired as Deputy Training Judge at the end of December 2018 and to Anna-Rose Landes and Jonathan Holmes who have taken up this role in his place.

Overseas training has also been undertaken by our judges with Paul Shaerf, Anna-Rose Landes and Julian Phillips conducting seminars on behalf of the European Asylum Support Office (EASO) in Malta. In addition, Julian Phillips has trained on behalf of the Academy of European Law (ERA) in

Strasbourg, on behalf of the United Nations High Commission for Refugees Bulgaria and, alongside myself, conducted induction training for a new Refugee Protection Appeals Tribunal that has been established in the Cayman Islands.

Last year, I mentioned that the guidance in the case of *AM (Afghanistan) v SSHD & Lord Chancellor* [2017] EWCA Civ 1123 had caused us to look again at how we identify vulnerable persons before their substantive hearings. We have now modified our pre-listing forms to better enable us to identify such persons and have taken steps to ensure that there is increased awareness of how the Tribunal can provide assistance when it is appropriate to do so.

The outstanding caseload for 2018-19 in FtTIAC stands at 25,448 with overall receipts and disposals for the year at 43,355 and 59,407 respectively. I am pleased to announce that the arrears of work have decreased significantly. Bail receipts have also steadily declined throughout the year from 13,623 in 2017-18 to 8,595 this year. The outcome of EU-Exit remains uncertain however, this will invariably have an impact on the work of FtTIAC.

Last minute adjournment applications in all jurisdictions are a perennial problem and FtTIAC is no exception. I am grateful to those judges who take float cases to make up the list but the cost to the public purse of having to relist appeals, send out notices and book judges is unacceptable. I have been even more determined this year to improve the practice of all stakeholders. To address this issue, I have introduced a new listing questionnaire to assist TCWs in identifying vulnerable persons and indicate which cases might require more attention before being listed for a hearing.

At the beginning of the year, at Bradford Hearing Centre, I piloted 'auto-delisting'. What this entailed, quite simply, was if a party failed to get their evidence lodged in accordance with directions, their appeal was automatically delisted and if the evidence was not then lodged when next required, a notice requiring the party in default to show cause as to why a wasted costs order should not be made against them would be sent out. I have now rolled this approach out across the country. Though adjournments remain unacceptably high, the pilot demonstrated significant improvements. I expect that many of the disciplinary challenges will be addressed in reform, though I would like the Tribunal to have greater enforcement powers. Some work is already being done on this and I hope to be able to provide a detailed update in next year's report.

Following guidance from the Supreme Court in *Kiarie & Byndloss (R on the application of)* [2017] UKSC 42, I have been testing video hearings at Birmingham, Glasgow and Taylor House Hearing Centre and am pleased to report that the trials worked well. I have also been piloting the audio recording of proceedings at Newport Hearing Centre.

People and Places

We were sorry to lose six salaried and two fee-paid judges to the Upper Tribunal Immigration and Asylum Chamber following the recruitment exercise earlier this year. I would like to wish them every success in their new role.

My thanks go to Daniel Flury and Natalie Mountain of HMCTS who greatly assisted during the past year in obtaining financial resources for FtTIAC and in the projects we have undertaken. I am also grateful to all the judiciary and administration as we have worked together and the constructive and amicable approach each has developed with the other over our increasingly heavier workloads

and new ways of working. I continue to work closely with Sir Ernest Ryder as the Senior President of Tribunals and my thanks go to him and his administration. In particular, Cathy Yallop and Rebecca Lewis are always unfailingly courteous and helpful.

Vicky Rushton retired last year after a long and distinguished service as Head of Office. I would also wish to express my thanks to the Presidential Team at Field House, in particular Rob Theodosio (who we welcome as Vicky's replacement) and Jane Blakelock for their hard work and loyalty not only to me but also the Tribunal.

EU-Exit remains imminent and although we are still not informed fully as to what this will mean or the implications for FtTIAC in terms of workload. We will, however, be ready to meet the exciting challenges that the next year will bring.

Conclusion

Finally, I enclose the below message sent on behalf of Daniel Flury, Deputy Director for Tribunals, which I wholeheartedly endorse:

"It has been an extraordinary year in IAC where so many challenges have been met head on and where so much progress has been made. The FTT [First-tier Tribunal] caseload has now reduced to 24,800, down from 36,300 at the end of 2017/18. Listing ahead times are beginning to fall. FTPA [First-tier Permission [to appeal] Application] and UTPA [Upper Tribunal Permission [to appeal] Application] caseloads have been reduced to frictional levels with average clearance times substantially lower.

I wanted to take this opportunity to thank you all for your contribution. So much has gone into trialling new processes, making sure courts are running efficiently and working with the Reform team to help shape our future. This puts us in a strong position for whatever we may face in the coming year."

Property Chamber

President: Judge Siobhan McGrath

The Chamber in context

The work of the Property Chamber is closely aligned to that of the courts. Both deal with landlord and tenant, property and housing cases. The vast majority of our cases are *party v party*. The main exceptions are our jurisdictions to deal with Housing Act 2004 cases and the new rogue landlord jurisdictions introduced in 2017. That context is important. Property cases are complex and involve competing and vested interests. It is not only the value of a property that is important but also the fundamental importance of a home. Users of the Chamber are very diverse and we deal with a wide variety of disputes. Against that background we seek to provide expert, consistent and accessible redress. In this contribution, I concentrate on initiatives and developments in the Chamber during the past year. However, they are often simply a continuation of the work that has been carried out in the Chamber and the individual divisions of the Chamber over quite some time.

Our Work

The Chamber has three divisions: Residential Property, Land Registration and Agricultural Land and Drainage. Altogether the Chamber deals with some 140-separate landlord and tenant, housing and property jurisdictions and has an annual case-load of about 11,000. For Residential Property, applications include leasehold enfranchisement, leasehold management cases, applications in park homes challenges, rent cases and an increasing number of appeals and applications in local authority enforcement matters. In Land Registration, the main work relates to adverse possession, boundary disputes, beneficial interests and fraud and in the Agricultural Land and Drainage division the majority of applications relate to succession to tenancies and drainage issues.

Leasehold

For Residential Property, leasehold cases represent the mainstay of our jurisdictions. During the past year significant work has been done both by the Ministry for Housing, Communities and Local Government and by the Law Commission in considering reforms to leasehold law. Three Law Commission consultation papers were published during the winter of 2018-19. The first is *Leasehold home ownership: buying your freehold or extending your lease*.[5] This relates to the procedures and basis for valuation in enfranchisement under both the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993. In the consultation views were sought on changes designed to simplify the process for the acquisition of the freehold or the extension of a leasehold together with reforms to redress including the transfer of jurisdictions currently in the county court to the First-tier Tribunal. The second consultation is *Leasehold home ownership: exercising the right to manage*.[6] This seeks views on proposals to address some of the difficulties, including technical difficulties in exercising the right which was introduced by the Commonhold and Leasehold Reform Act 2002.[7] The need for such reform was endorsed by the Court of Appeal in *Elim Court RTM Company Ltd v Avon Freeholds* Ltd [2017] EWCA Civ 89, where Lord Justice Lewison (as he then was) observed: *"Otherwise I fear that objections based on technical points which are of no significant consequence to the objector will continue to bedevil [the right]"*. Again, an important aspect of the consultation are the proposals for dispute resolution and an expanded role for the Tribunal.

The third report is *Reinvigorating commonhold: the alternative to leasehold ownership*[8]. This consultation seeks views on reforming Commonhold tenure which was also introduced by the 2002 Act but has had very limited take-up.

Separately, the Ministry of Housing, Communities and Local Government (MHCLG) have published their response on implementing leasehold reform indicating an intention to take steps to prevent the sale of leasehold houses and to ban excessive ground rents.

Finally, last Autumn saw the introduction of *The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018*. These provisions are intended to reform the process and criteria for the recognition of tenants' association. In particular the provisions reduce the

5 Consultation paper 238

6 Consultation paper 243

7 See for example *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2015] EWCA Civ 282 deciding that one RTM company could not acquire the RTM over more than one set of premises.

8 Consultation paper 241

membership threshold required to form a Recognised Tenants' Association (RTA) to 50 per cent; require landlords to disclose contact details of consenting qualifying leaseholders and in default gives a right to apply to the Tribunal and sets out criteria for the Tribunal to apply when granting and revoking recognition.

There have been three Court of Appeal decisions on leasehold this year. They are: *Nathan R Jones v Roundlistic Ltd* [2018] EWCA Civ 2284; Corvan (Properties) Ltd v Abdel-Mahmoud [2018] EWCA Civ 1102 and *Whitehall Court London Ltd v Crown Estate Commissioners* [2018] EWCA Civ 1704.

Housing Act 2004 and Housing and Planning Act 2016

The Tribunal's jurisdictions under these Acts are increasing. In 2006 the Housing Act 2004 introduced a new regime for local authorities to deal with housing conditions in their areas both through the application of the Housing Health and Safety Rating System (HHSRS) and in the imposition of national standards for Houses in Multiple Occupation (HMO) and mandatory licensing for specified categories of HMO. In October 2018, *The Licensing of Houses in Multiple Occupation* (Prescribed Description) (England) Order 2018, extended the definition of HMOs required to be licenced so that buildings within scope no longer need to be three storeys or more. In the October of 2018, the Supreme Court gave its judgment in *Nottingham City Council v Parr* [2017] UKSC 51, dealing with licencing conditions.

In April 2018, the provisions of the 2016 Act relating to the Rogue Landlord Database were brought into force with jurisdiction for the Tribunal to deal with appeals. The right for local authorities to apply to the Tribunal for "Banning Orders" preventing a landlord or agent from operating in the private rented sector were also commenced. Furthermore, although not directly related to the Tribunal's work, in March 2019, the Homes (Fitness for Human Habitation) Act 2018 came into force which interestingly adopts the HHSRS standards to measure the condition of private rented sector properties.

The number of applications for Rent Repayment Orders (RROs) and appeals against the imposition of Financial Penalties by local authorities for housing offences are now increasing across all of the Residential Property regions. For RROs, the range of offences has been wide and has included allegations of harassment and illegal eviction.

Tenant Fees Act 2019

In June this year, the Tenant Fees Act 2019 will come into force. The intention is to tackle "prohibited payments" associated with securing or renewing a tenancy and imposed by either a landlord or an estate agent. Prohibited payments include almost all charges except refundable holding deposits, protected deposits against damage and rent. Where prohibited payments are charged local authorities may impose financial penalties which can be appealed to the Tribunal. Additionally, tenants will be able to apply directly to the Tribunal for repayment of prohibited fees.

Housing Court

In November 2018, MHCLG issued a call for evidence on considering the case for a Housing Court, seeking views and opinions from the judiciary, landlords and tenant on their experience of using courts and tribunals in property cases. The call for evidence closed on 22nd January 2019 and an

analysis of the responses is awaited. In a press statement issued on 15th April 2019, it was announced that the government would be consulting on the reform of security of tenure under the Housing Act 1988, which itself raises questions of dispute resolution in the courts and the Tribunal.

As well as the call for evidence, JUSTICE has convened a Working Party to take a look at the systems in place for the resolution of housing disputes. The Working Party will consider ways to promote access to justice through dispute resolution systems designed for those who have housing problems. The Working Party has convened three subgroups which will look to test ideas, gather evidence and create recommendations for reform. The subgroups are (a) Digitisation within housing disputes; (b) Current processes used to resolve housing disputes; and (c) User needs/alternative dispute resolution within housing disputes.

Deployment

The distribution of cases between the courts and the Tribunals causes confusion and may act as a deterrent to litigants who properly wish to bring a dispute for formal resolution. For many of our more significant jurisdictions, dispute resolution is split in this way which inevitably detracts from appropriate access to justice. In May 2018, Sir Geoffrey Vos gave a lecture at the Professionalism in Property Conference where he observed:

"The problem is well-known and can be shortly stated. Property legislation in recent years has bifurcated the responsibility for determining specific property disputes in numerous areas between the courts and the tribunals, such that in a significant number of cases, the parties have no choice but to engage in both types of proceedings. This increases the costs, causes additional delay, and in some cases, stress and frustration associated with an illogical judicial process. Many of the parties in this area are litigants in person and many are vulnerable."

In May 2016 I provided an interim report of the Working Group on Property disputes in the courts and tribunals to the Civil Justice Council (CJC).[9] The proposal made was that work should be undertaken to establish whether access to justice in property disputes could be improved by the deployment of judiciary to sit concurrently in courts and tribunals. A pilot was established to test the premise and was very successful. By October 2018, we had conducted over 300 cases under the pilot. During that time only one case was substantively appealed. This was *Avon Ground Rents Limited v Child* [2018] UKUT 0204 (LC), where Mr Justice Holgate and HHJ David Hodge QC endorsed the principal of the concept.

In October 2018, I prepared a further report for the CJC,[10] detailing the progress of the deployment project and making proposals on the recommended way forward and in particular suggested that consideration be given to amending the Civil Procedure Rules (CPR) and the First-tier Tribunal Procedure (Property Chamber) Rules to simplify the process for concurrent sitting. As a possible approach I suggest that CPR rule 26 should be amended to include a new case management track, possibly known as the "court and tribunal track." Since then I have been working with Ministry of Justice policy colleagues and Her Majesty's Courts and Tribunals Service (HMCTS) to consider options for either a separate tribunal track or a listing direction for District Judges to send cases to the Tribunal and how this might be implemented.

9 *https://www.judiciary.uk/wp-content/uploads/2011/03/final-interim-report-cjc-wg-property-disputes-in-the-courts-and-tribunals.pdf*

10 *https://www.judiciary.uk/wp-content/uploads/2018/11/property-chamber-deployment-project-report-oct2018.pdf*

Mediation Pro-bono advice and assistance

Judicial mediation is offered in both Residential Property and Land Registration divisions and is very successful. Mediation is a sensible way to resolve property disputes where the parties often have a continuing relationship.

In common with other Tribunals, many of our users are unrepresented. This is a particular challenge in an area of law that can be complex and technical. For leasehold and mobile homes cases, the Residential Property division of the Chamber is greatly assisted by LEASE which, as a government funded advice organisation, is able to provide assistance to Tribunal users. Additionally, over a number of years, Residential Property has established a working relationship with a number of law schools and universities who offer advice and, in some cases representation to parties.

Judges and Members and Registrars

I am Chamber President and Principal Judge for the Residential Property division. The Principal Judge for Agricultural Land & Drainage is Judge Nigel Thomas and the Acting Principal Judge for Land Registration is Judge Michael Michell, pending a JAC competition to fill this post.

Residential Property has eleven salaried judges and five salaried valuers. Land Registration has four salaried judges. Each of the Residential Property areas has a Regional Judge and one or more deputies. Otherwise the work of the Chamber is carried out by fee-paid judges and members (about 300 in total). The membership includes those with expertise in valuation, housing conditions and in agricultural matters. Both the Residential Property, Agricultural Land and Drainage jurisdictions also have a cohort of lay members.

Retirements

In the Eastern Region, Bruce Edgington who was the Regional Judge and David Brown, the Deputy Regional Valuer both retired during the last six months. Bruce had been a chairman in the Tribunal since May 1984 and had been Regional Judge since October 1998. David was appointed as his Deputy in February 1999, and then in February 2010 he was appointed as Director of Training. In the Midland Region, Nigel Thompson who had been Deputy Regional Valuer for the Midland Region has also retired. He was appointed as a valuer member in 1996 and on 1st April 2011 he took up his appointment. We will miss Bruce, David and Nigel and wish them well in their retirement.

Appointments

Following those retirements, we are delighted to welcome three new members: Vernon Ward and Mary Hardman who are the new Deputy Regional Valuers for Midlands and Eastern respectively and Ruth Wayte as the new Regional Judge for the Eastern Region.

Sonya O'Sullivan

Sadly, Sonya O'Sullivan who was appointed as a Deputy Regional Judge in November 2017, died after a very short illness in November 2018. She is very much missed.

Recruitment

During 2018 we were pleased to welcome new fee-paid judges who were successful in the generic First-tier Tribunal competition and also a number of judges who were cross-ticketed from other First-tier Tribunal Chambers and from the Welsh Residential Property Tribunal. This year we are taking part in the salaried generic competition which will increase our overall number of salaried judiciary and in the summer, we will see the launch of competitions for new valuer and professional members.

Administration

As always, the success of the Chamber owes a great deal to the dedication and work of our administrative staff. The Chamber largely operates on a different model from most of HMCTS. Each admin officer has their own case load and sees cases through from cradle to grave. Much of our work is dealt with on a Case Management System which was developed in co-operation of with staff. The staff achieve challenging performance indicators with skill and in collaboration with judges with whom they are co-located. The system works efficiently and well.

Conclusion

During the coming year it is likely that the Chamber will be involved with HMCTS Reform initiatives. We will welcome the opportunity to provide better and more accessible systems and processes and we look forward to work with colleagues in the reform teams.

Finally, however, I would like to thank judges, members, staff and my tireless Chamber support officer, Tom Rouse, for all of their contributions to our work over the last year. As a result, we have a dynamic and interesting Chamber which provides consistent and high-quality determinations.

Annex C
Employment

Employment Appeal Tribunal (EAT)

President: Sir Akhlaq Choudhury

I was appointed to be President of the Employment Appeal Tribunal (EAT) on 1 January 2019, taking over from Mrs Justice Simler DBE, who is soon to become Lady Justice Simler. During her three years as President, Mrs Justice Simler had to deal with many major challenges faced by the EAT, principal amongst them being the steep increase in the number of appeals lodged following the abolition of fees in June 2017, and the negotiations relating to the move of the EAT from its current premises in Fleetbank House to the Rolls Building. That move will have occurred by the time this report is published. I must pay tribute to Mrs Justice Simler's stewardship of the EAT during this turbulent period. It is thanks to her calm determination and resolve that the EAT has emerged from this period as strong as ever to face the challenges that lie ahead.

The Jurisdictional Landscape

General

The EAT has jurisdiction to hear appeals on points of law arising from decisions of Employment Tribunals (ETs) in a diverse range of disputes relating to employment across the UK. It sits principally in London and Edinburgh, and occasionally in Cardiff, where (unlike London and Edinburgh) there is no dedicated court room or administrative resource in place because the small number of appeals originating in Wales means that separate premises there cannot be justified. In Northern Ireland, appeals lie direct to the Northern Ireland Court of Appeal, and again, the volume of appeals is now so small that a specialist appellate tribunal is regarded as unnecessary. Resolution of the question of what devolution means for the EAT in Scotland has still not been reached though primary legislation and orders in council are now on the horizon. In the meantime, the EAT remains a reserved tribunal in Scotland.

Receipts

In 2013, the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, SI 2013/1893 ("the Fees Order") came into force. This had the effect of substantially reducing the number of claims in the ET and appeals in the EAT. As is now well known, the Fees Order was revoked following the 2017 decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, in which it was held that the Fees Order was unlawful. The number of claims and appeals has been steadily rising ever since, although the number of appeals has not quite reached pre-Fees Order levels.

In the period from April 2018 to March 2019, new appeal receipts were 30 per cent greater than for

the previous year. EAT disposals in the same period increased by 20 per cent. These sharp increases reflect both the abolition of fees for the EAT and the increase in the number of claims being heard by ETs. The ET (England & Wales) and ET (Scotland) have seen an increase of 11 per cent in claim receipts between the period April 2018 and February 2019. ET disposals increased by 14 per cent.

Procedural Changes

One of the previous President's last acts was to introduce The Practice Direction (Employment Appeal Tribunal – Procedure) 2018, which was handed down on 19 December 2018. This new Practice Direction did not introduce any radical changes to the well-established 2013 Practice Direction, but did incorporate a number of changes which had been suggested following consultation. Perhaps the most significant procedural change is the extension of time from 14 to 28 days for Respondents to lodge an Answer to a Notice of Appeal. This is a helpful change, well-supported during consultation, that provides Respondents with a much more reasonable period in which to respond to often complex and detailed Notices of Appeal. Other changes included the deletion of references to fees.

Gig Economy Cases

In *Uber BV & others v Aslam & others* [2018] EWCA Civ 2748, the Court of Appeal (by a majority) upheld the judgment of HHJ Eady QC of the EAT in deciding that Uber drivers were 'workers' within the meaning of the *Employment Rights Act 1996* and other legislation. There was a powerful dissenting judgment from Underhill LJ, and there is an appeal to the Supreme Court. It seems clear that gig economy cases will continue to be a feature of employment litigation, and consequently appeals in the EAT, for some time.

People and places

Registrar and Staff

The efficient, effective and well managed operation of the EAT has continued throughout 2018 - 2019, despite significant pressures as a result of the increase in receipts. The Registrar, Nicola Daly, who commenced in her role in September 2017, having previously worked as a legal advisor in the Magistrates Court and as a commercial solicitor, continues to show tremendous leadership in ensuring the delivery of a remarkably effective and reliable service to litigants in the EAT. She is supported by a dedicated and efficient team of staff, who continue to work cohesively (and in often difficult circumstances) in providing 'cradle to grave' case management of appeals. Whilst staffing numbers have been increased to meet the greater caseload, there is still a shortfall, and this is something that is being addressed.

Judges

The EAT's judicial resource comprises a pool of 10 High Court judges authorised to sit in the EAT. This year we have welcomed Swift J to the pool. Lord Summers took over from Lady Wise as the lead judge in the EAT in Scotland and we welcome him to the EAT too.

The EAT was delighted to announce in late 2018 the appointment of a new Senior Circuit Judge, HHJ Simon Auerbach, to be a resident judge alongside HHJ Jennifer Eady QC. Simon's appointment

is an important one, not only because he represents an extra (and extremely capable) pair of hands to cope with the increased demand, but also because he is the first resident judge of the EAT to have been a full-time ET judge. Simon was an ET Judge sitting in Central London ET until his appointment as a Circuit Judge in 2018, and before that he was the Senior Partner of a well-known firm specialising in employment and trade union law. Simon brings a wealth of employment law expertise and experience to the EAT and is a very welcome addition to our ranks.

There were two retirements amongst our regular and long-standing visiting judges: HHJ David Richardson and Slade J. We are delighted that both will continue to sit as additional judges of the EAT from time to time. Our pool of visiting Circuit Judges now comprises HHJ Murray Shanks, HHJ Martyn Barklem, HHJ Mary Stacey and HHJ Katherine Tucker. All of them sit at the EAT on a regular basis.

The EAT also has a pool of six s.9, Deputy High Court Judges, including some of the leading lights at the Employment Law Bar. We have no doubt that these judges will prove to be a valuable resource and will help to alleviate some of the pressure under which the EAT operates.

Lay Members

The EAT has a long tradition of sitting with lay members with special knowledge or experience of industrial relations. However, for various reasons, including the decline in cases heard in the ET with lay members and the introduction of fees, the number of lay member sittings reached an all-time low in late 2017 and into early 2018 with only a handful of sittings in that period. Discussions took place at lay member and judicial level to understand the reasons for this, and steps were taken by Mrs Justice Simler to increase lay member sittings where appropriate. We are glad to report that those steps have borne fruit in that there has been an almost five-fold increase in lay member sittings in the last 12 months as compared to the previous year. Our pool of lay members has been depleted, primarily through retirement, and has not been replenished for many years. A business case has been prepared to recruit new members to the pool. However, given the constraints on the Judicial Appointments Commission (JAC), it is not expected that the recruitment exercise will take place until 2020.

Training & other matters

HHJ Eady QC continues to lead the training of judges and lay members. Last year, we were addressed by Matthew Taylor in respect of his review of Employment Practices in the Modern Economy ("the Taylor Review"). This year, HHJ Auerbach took us through the Good Work Plan – the Government's Response to the Taylor Review. Next followed Rebecca Hilsenrath, Chief Executive of the Equalities and Human Rights Commission (EHRC), who discussed the EHRC's perspective on appeals in discrimination cases. Professor Virginia Mantouvalou (University College London) delivered an interesting presentation on a highly topical issue in the workplace – Discipline and Dismissal for Social Media Activity. Finally, we welcomed back Professor Tom Fahy (King's College London) to talk to us again about persistent and querulant litigants. Staff case managers also attended this session as they have to deal most directly with the abuse and threatening behaviour that some querulant litigants can display.

Pro bono legal advice schemes, the Employment Law Appeal Advice Scheme (ELASS) in London and Scottish Employment Law Appeal Legal Assistance Scheme (SEALAS) in Scotland, continue to operate (as they have for many years) successfully at the EAT with legal professionals giving their

time freely to assist and represent litigants in person at renewed application to appeal hearings and full appeal hearings. Their assistance is invaluable, both to the litigant in question, but also to the EAT itself and enables appeals to be dealt with more speedily and effectively than would otherwise be the case.

The EAT continues to maintain contact with a wide range of judicial and legal organisations. There are regular meetings with the Presidents of the ETs in both England (Brian Doyle) and Scotland (Shona Simon). A user group meets the judges of the EAT twice yearly to discuss issues of concern. Judges of the EAT meet regularly and contribute to the training of employment judges, and employment judges who are interested to do so attend the EAT on a rota basis to observe proceedings. All EAT judges learn from these contacts, as they do from assisting visiting international judges on a regular basis. This year the EAT hosted a delegation of Thai judges over a period of two days.

Premises

After eight years at Fleetbank House, the EAT moved, on 29 April 2019, to the newly refurbished fifth floor of the Rolls Building, Fetter Lane London. Whilst the EAT has lost a considerable amount of space and its dedicated courts by moving, it is expected that it will continue to be able to provide the first-rate service that has been the hallmark of the EAT for many years to come. I am particularly grateful to all staff at the EAT for their cooperation, adaptability and resilience during this difficult and turbulent period of change.

Employment Tribunal (England & Wales)

President: Employment Judge Brian Doyle

The jurisdictional landscape

Fees

The effects of the abolition of Employment Tribunal (ET) fees following the Supreme Court decision in *R (on the application of Unison) v Lord Chancellor* [2017] UKSC 51 on 26 July 2017 are now apparent.

The latest ET statistics published by the Ministry of Justice on 14 March 2019 reveal that, from the launch of the ET fee refund scheme in October 2017 to 31 December 2018, there were 21,791 applications for refunds received and 21,306 refund payments made, with a total value of £16,950,082.

Single claims have been steadily increasing quarter on quarter, only falling for the first time from 10,996 in Q1 2018/19 to 9,020 in Q2 2018/19, before rising to 9,811 in Q3 2018/19 (a 23 per cent increase compared with Q3 2017/18). In the 12 months before the abolition of fees the ET was receiving an average of 1,407 single claims per month. In the 12 months that followed the average was 3,047 single claims per month. Receipts are now averaging 3,314 single claims per month.

The increase in claims has had an inevitable impact upon performance. By way of example, in October to December 2018 disposals and outstanding caseload increased by 30 per cent and 53 per cent respectively. Mean age at disposal was 30 weeks, which is four weeks older than in October to December 2017.

In last year's Annual Report, it was not yet clear how many historic or legacy claims, other than those being reinstated, would be brought out of time in reliance on an argument that they were deterred or affected by fees in some way at the original time. In practice, there have been very few historic or legacy claims, while reinstated claims have not produced any particularly noticeable increase in workload.

Judicial resources

In June 2018, the Judicial Appointments Commission (JAC) launched a selection exercise to appoint 54 full-time equivalent (FTE) Employment Judges in England & Wales. Following a selection process during the second half of 2018, 58 new judges (falling just short of 54 FTE) are expected to take up appointment in three groups in April, July and September 2019.

In addition, in March 2019 the JAC commenced a recruitment exercise for up to 50 new fee-paid Employment Judges. It is expected that a separate competition to appoint 300 new non-legal members will begin in April 2019. These further judicial resources are likely to be on stream in early 2020.

Other matters

The joint Presidential Guidance on *Employment Tribunal awards for injury to feelings and psychiatric injury* was uprated for inflation in March 2018 and March 2019.

The Presidential Practice Direction on Presentation of Claims was updated in November 2018.

Claims and responses can now be presented online in Welsh. In addition, the form for appealing against a notice of underpayment of the minimum wage has been amended to include appeals against a notice of underpayment of the agricultural minimum wage in Wales and Scotland.

The need to replace the ET's case management database (Ethos) has led to accelerated plans to introduce new software (Core Case Data) that will provide the ET with a flexible and agile case management system based upon common platform principles.

The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 provides that the President and the Regional Employment Judges become judges of the First-tier Tribunal and of the Upper Tribunal, while the President is also enabled to sit in the Employment Appeal Tribunal.

Further and deeper reform of the ET must await primary legislation that will better enable the ET to keep its procedural rules up to date and to delegate certain types of interlocutory work to legal officers or caseworkers, thereby freeing judges for hearings rather than duty work. Such primary legislation is also likely to be the vehicle for the reforms to substantive employment law proposed by the Independent Review of Employment Practices in the Modern Economy (the Matthew Taylor Report). A date for the introduction of a Bill is awaited.

The Law Commission's consultation on Employment Law Hearing Structures opened on 26 September 2018 and closed on 31 January 2019. A final report is expected during 2019.

In 2018 the ET (England and Wales) conducted 525 judicial mediations, with a success rate of 70.9 per cent, resulting in 1,643 net days saved. Including those cases that settled after a mediation appointment (but before the mediation) and those settling after the mediation 2,394 listed days were saved.

The Employment Law Litigant in Person Support scheme has now been extended to Birmingham and Bristol. The ET is very grateful for the considerable pro bono activity in the sector. It is right to acknowledge, in particular, the triage work that is done by law students from a number of universities.

Legislation and case law

There was little primary legislation directly relevant to the ET's jurisdiction during the period under review, other than the *Courts and Tribunals (Judiciary and Functions of Staff) Act 2018* and the *Parental Bereavement (Leave and Pay) Act 2018.*

Secondary legislation of note includes: *Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018; Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018; Employment Rights (Increase of Limits) Order 2018; Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018; Seafarers (Insolvency, Collective Redundancies and Information and Consultation) (Miscellaneous Amendments) Regulations 2018; Agricultural Wages (Wales) Order 2018; Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018; Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations 2018; Trade Secrets (Enforcement, etc) Regulations 2018; Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018; Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018 (with a new associated Code of Practice on Preventing Illegal Working: Civil Penalty Scheme for Employers);* and *Employment Rights (Increase of Limits) Order 2019.*

The correct tax treatment of compensation for injury to feelings in discrimination cases is the subject of *Moorthy v HMRC* [2018] EWCA Civ 847, although the decision itself is now overtaken by the Finance (No. 2) Act 2017 from 6 April 2018.

Notice of dismissal takes effect when the employee reads it or had a reasonable opportunity to do so: *Newcastle-upon-Tyne Hospitals NHS Foundation Trust v Haywood* [2018] UKSC 22. This aligns the relevant law in wrongful dismissal and unfair dismissal.

The extent to which the objection to a unilateral variation of an employment contract that is required if the variation is not to have been treated as accepted is examined in *Abrahall v Nottingham City Council* [2018] EWCA Civ 796.

The legal route to finding that a trade union might be liable for harassment of its employee by an elected officer is explored in *UNITE v Nailard* [2018] EWCA Civ 1203.

Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978 is a useful and updated review of the "last straw" doctrine in constructive dismissal.

The ET has invested in proper case management, including the need to identify an agreed list of issues. Save in exceptional cases, that list will limit the issues that the ET will be expected to decide: *Scialuna v Zippy Stitch Ltd [*2018] EWCA Civ 1320.

The difficult line to be drawn in unfair dismissal claims based upon carrying out trade union activities is examined in *Morris v Metrolink RATP Dev Ltd* [2018] EWCA Civ 1358. A distinction often has to be made between the activities and the way in which they have been carried out.

For the purposes of whistleblowing protection, the Court of Appeal considered if there is a distinction to be drawn between disclosing information (protected) and making an allegation (not protected). The real question, according to the Court of Appeal in *Kilraine v Wandsworth LBC* [2018] EWCA Civ 1436, is whether the disclosure contains sufficient information to be a protected disclosure.

Despite the media attention that it generated, the Supreme Court's decision in *Pimlico Plumbers Ltd v Smith* [2018] UKSC 29 is less significant than it might appear. The case is not concerned with the so-called "gig economy", but the more usual fare of ET preliminary hearings – was the claimant a worker or was he self-employed? That is largely a question of fact for the ET.

Does a successful workplace appeal against dismissal have the effect of reinstating the employee or can the employee nevertheless regard themselves as being dismissed? A successful appeal implicitly revives the employment relationship holds the Court of Appeal in *Patel v Folkestone Nursing Home Ltd* [2018] EWCA Civ 1689.

Royal Mencap Society v Tomlinson-Blake [2018] EWCA Civ 1641 sees the Court of Appeal grapple with the difficult problems under the national minimum wage provisions posed by carers being on-call and sleeping-in overnight.

The extent to which a respondent is debarred from taking any part in the proceedings (for example, because their response has not been presented in time) is explored in Office Equipment Systems v Hughes [2018] EWCA Civ 1842. It might be appropriate to permit participation in a remedy hearing following a default judgment on liability.

Roberts v Wilsons Solicitors LLP [2018] EWCA Civ 52 is an interesting case on worker status where employment law trumped partnership law.

The question of whether an ET can construe the employment contract when deciding what amount of wages was properly payable in a Wages Act claim has troubled us for many years. We can now take comfort from the Court of Appeal ruling in *Agarwal v Cardiff University* [2018] EWCA Civ 2084 that we can.

In Brangwyn v South Warwickshire NHS Foundation Trust [2018] EWCA Civ 2235 the Court of Appeal stresses the importance in indirect discrimination cases of identifying the provision, criterion or practice (PCP) being challenged.

British Council v Jeffery; Green v SIG Trading Ltd [2018] EWCA Civ 2253 provides a useful review of the recent appellate case law on the ET's territorial jurisdiction.

In *Timis v Osipov* [2018] EWCA Civ 2321 the Court of Appeal has ruled that it is possible to bring a whistleblowing complaint against co-workers where the alleged detriment is dismissal (for which the employer would also be vicariously liable).

The proper interpretation of section 15 of the Equality Act 2010 on discrimination arising from disability was the central point of the Supreme Court decision in *Williams v Trustees of Swansea University Pension and Assurance Scheme* [2018] UKSC 65 and earlier in *City of York Council v Grossett* [2018] EWCA Civ 1105.

That the issue of "less favourable treatment" in discrimination cases is nearly always a straightforward (although not inevitably simple) question of fact is emphasised by the Court of Appeal in *British Airways plc v Pinaud* [2018] EWCA Civ 2427, a case concerning the part-time workers regulations.

The meaning of "establishment" is one of the most keenly fought issues in litigation on transfers of undertakings. In *Seahorse Marine Ltd v Nautilus International* [2018] EWCA Civ 2789 the question was whether, in the context of labour supply arrangements, the establishment was an individual ship or the whole shipping operation. Overruling the ET and the Employment Appeal Tribunal (EAT), the Court of Appeal decided that the establishment was the individual ship, such that the claim fell foul of the 20 employees threshold.

Uber BV v Aslam [2018] EWCA Civ 2748 in the Court of Appeal is one thread of a tapestry of cases that are being litigated in the ET arising from the so-called "gig economy". The case reveals an obvious tension between what the contractual arrangements say and what the realities of the working relationship might otherwise suggest.

The challenge to the new judicial pension scheme brought by over 200 younger judges has progressed from the ET to the EAT and now to the Court of Appeal in *Lord Chancellor v McCloud and others* [2018] EWCA Civ 2844. Aspects of the new scheme have been found to be challengeable as unjustified direct age discrimination.

In the long-running litigation over the pension entitlement of fee-paid judges, the Court of Justice of the European Union (CJEU) has answered the question referred to it by the Supreme Court: *O'Brien v Ministry of Justice* (C-432/17). Claimants can claim back payments for service before 2000 (the date of the effect of the relevant EU law), but a judge who retired before 2000 would have no claim at all.

In *Royal Mail Group v Efobi* [2019] EWCA Civ 19 the Court of Appeal restores the orthodox interpretation of the Equal Pay Act 2010 section 136 concerning the reversal of the burden in discrimination cases.

The centre of focus in equal pay litigation has begun to move slowly from its previous emphasis upon the public sector (and, in particular, local government and the NHS) to the private sector (with emerging multiples in the retail sector, especially supermarkets). *ASDA Stores Ltd v Brierley* [2019] EWCA Civ 8 is an important procedural decision from the Court of Appeal about the multiple use of the ET1 claim form in a group action, first explored by the EAT in *Farmah v Birmingham City Council*. In a separate appeal [2019] EWCA Civ 44 in the same litigation, the Court of Appeal also addressed the substantive issue of common terms and single status, which is essential if a cross-establishment comparison of pay is to be permitted.

In *London Underground Ltd v Amissah* [2019] EWCA Civ 125 the Court of Appeal considered for the first time the Agency Workers Regulations 2010. The appeal concerned liability for back payments as between the agency and the client.

In *Hare Wines Ltd v Kaur* [2019] EWCA Civ 216 the Court of Appeal upheld an ET decision on whether personal conflict issues were the real reason for a dismissal taking place against the background of a transfer of an undertaking.

Ameyaw v PriceWaterhouseCoopers Services Ltd (4 January 2019) is an important EAT decision on the recent practice of placing ET judgments online. The EAT holds that there is no power to remove a judgment once it is placed on the register. A party's article 8 right to privacy was not engaged in relation to a judgment made at an open hearing. A party should look to a rule 50 application for anonymity instead.

People and places

Employment Judge Rohan Pirani was appointed as a Regional Employment Judge (South West) from 1 August 2018. He replaced Employment Judge Olga Harper (who retired on 30 April 2018) and Employment Judge Paul Holmes (who returned to the North West region), who had been Acting Regional Employment Judges for a temporary period.

Regional Employment Peter Hildebrand (London South) retired on 31 January 2019. Employment Judge Philip Davies (Wales) is Acting Regional Employment Judge in his place from 1 February 2019 pending a JAC appointment exercise.

Regional Employment Judge Fiona Monk (Midlands West) returned from her secondment to the First-tier Tribunal, but was seconded for a further period to other duties for part of her time at the Senior President's request. Employment Judge Lorna Findlay has been nominated as Acting Regional Employment Judge (Midlands West) for a further period.

The following Employment Judges retired during 2018/19: Olga Harper, Jonathan Bridges, Keith Robinson, Helen Milgate, Michael Kolanko, Martin Kurrein, George Sigsworth, John Goodrich, Jenny Mulvaney, Mark Houghton, David Pearl and Christopher Baron (some of whom will be sitting in retirement).

The following fee-paid Employment Judges retired or resigned during 2018/19 (some of whom had been sitting in retirement): Joanne Woodward (on appointment as a District Judge), John Macmillan, Heather Williams QC (on appointment as a Deputy High Court Judge), Michael Bauer, Lyndon James, Paul Rose QC and Linky Trott.

In addition, 19 non-legal members retired, resigned or died in service during 2018/19.

As at 31 March 2019 the ET (England & Wales) comprised the President, nine Regional Employment Judges, two Acting Regional Employment Judges, 88 salaried Employment Judges, 178 fee-paid Employment Judges and 731 non-legal members.

Employment Tribunals (Scotland)

President: Employment Judge Shona Simon

The Jurisdictional Landscape

Despite the uncertainty about what changes, if any, may be made to employment rights following the UK's departure from the European Union it is certainly clear that following the abolition of Employment Tribunal (ET) fees,[11] the rights which are currently available have been used to a much greater extent than was the case when fees were being charged. Putting it another way, the judiciary and staff of ET (Scotland) have been extremely busy over the past year and I am grateful, on a daily basis, that we were able to recruit new Employment Judges, both salaried and fee paid, not long after the abolition of fees. Without this new judicial blood, we would not have been able to maintain the level of service which I believe our system users are entitled to expect in seeking access to justice when they are involved in an employment dispute.

Refund of Employment Tribunal Fees

Following the decision of the Supreme Court, in which it was held that the fee charging scheme implemented in ETs was unlawful from the date of its introduction, a commitment was made by the Ministry of Justice that it would launch a fee refund scheme. That scheme has continued to remain open throughout 2018 and efforts were made to increase take up by a targeted mailshot campaign in the first half of 2018. As at 31 December 2018 21,791 applications had been received for fee refunds. 21,306 refund payments had been made at as that date, with a total value of £16,959,082.

Case receipts following fee abolition and tribunal performance

The Ministry of Justice published statistics for the calendar year 2018 show that in the year to December 2018 Employment Tribunals (Scotland) received 29,828 jurisdictional complaints (Bear in mind that an individual claim may contain several jurisdictional complaints – for example, if someone claims unfair dismissal and sex discrimination on a single claim form that would count as two jurisdictional complaints). By way of contrast in the year to end of December 2016 (the last complete calendar year when ET fees were in place), Employment Tribunals (Scotland) received 10,520 jurisdictional complaints. These figures give some indication of just how steeply our workload has risen.

Burrowing down into the figures a little deeper, if one compares the period October to December 2016 with the same period in 2018 then over that time the tribunal received 36 sex discrimination claims in 2016 compared to 51 in 2018, 265 unfair dismissal claims in 2016 compared to 432 in 2018 (up by over 60 per cent), 314 working time related claims in 2016 compared to 615 in 2018 (these are mostly claims alleging insufficient pay for holidays) and four equal pay claims in 2016 compared to 662 in the same three month period in 2018 (equal pay receipts are notoriously volatile). Further information is available at *https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2018*.

11 R (on the application of Unison) v The Lord Chancellor [2017] UKSC 51

In response to the increase in caseload, as well as deploying more judges, we have increased the number of cases we list every day in every main ET hearing centre, to more than three times the number of cases we have judges and hearing rooms available, in an effort to maintain the throughput of cases. At times we have begged and borrowed (although not yet stolen!) hearing rooms from other tribunals and have once again started to use hearing rooms in our Glasgow Office previously mothballed when fees were in place – this is not as easy as it might seem due to infrastructure changes that need to be unpicked. When there is no other option my private office has been changed into a small hearing room – better that than to have the hearing postponed due to lack of accommodation. Of course, this strategy means we run a risk, if cases do not settle in the numbers we have come to expect, that we will end up with more cases listed to be heard than hearing rooms or judges available. We take this gamble every day. It is a testament to the cool head and adept management of the Vice President and listing staff that postponements of this type have been kept to a minimum. We are all too aware of the expense and anxiety occasioned to parties when the tribunal has to postpone a hearing due to insufficient judges or hearing rooms and we continue to do everything we possibly can to avoid that happening – the reason we have to overlist like this, however, is because many parties to continue to settle their cases very close to, or even on, the day of the hearing.

Despite the rising caseload over the last year we have managed to get over 70 per cent of cases heard completed within 26 weeks of receipt, albeit performance under that measure has declined by around 5 per cent over the course of the year. Our ability to continue to perform at that level will, of course, depend from a judicial perspective upon the continuing availability of funding to ensure we can deploy as many fee paid Employment Judges and ET non-legal members as we need to ensure the expeditious progress of cases.

Snapshot of cases and ET practice matters

While many parties who bring or defend claims in the ETs have the benefit of legal representation from qualified lawyers a significant proportion do not. That is despite the fact that in Scotland Legal Aid of a kind (although not full civil Legal Aid) remains available for more complex employment matters through the Legal Advice and Assistance and Advice by Way of Representation (ABWOR) Schemes. There are several reasons why a party may be representing themselves but over the past few years I have increasingly heard it suggested that many lawyers will not provide advice or representation under these schemes, given the low level of the hourly rates which apply. Having perused the latest annual report of the Scottish Legal Aid Board (2017-18) it is clear that applications for civil Advice and Assistance, including ABWOR, have steadily declined from 2013 to 2018. If you compare 2017/18 with 2013/14 then applications are down 18 per cent. The Board's annual report does not give information which allows one to work out how many of that declining number of applications were in connection with employment matters. However, I am going to hazard an educated guess and say it was likely to have been a very small number, given how often I am told about how difficult it is in Scotland to find an employment lawyer who is prepared to do a legal aid funded case. I have also been told on many occasions that Citizens Advice Bureaux in Scotland now provide representation in far fewer employment cases than in the past because of funding cuts and the view that they are likely to be difficult to deal with and resource intensive.

These might be two of the reasons why we have seen the significant expansion of the university law clinic network in recent years in Scotland – we now have two student run clinics in Glasgow, two in Edinburgh and two in Aberdeen, supporting each other through the Scottish University Law Clinic Network. Although the students can only handle a small number of cases each year – they are, after all, at university principally to secure a law degree- the service they are providing is greatly appreciated by the Employment Judges and members, to say nothing of the individuals who might not otherwise feel able to pursue their claims at all. On several occasions over this past year the Employment Judges have mentioned to me the impressive work done by the students which, dare I say it, is often at least as good as that of the qualified legal representatives on the other side of the case.

As is the case every year, ETs in Scotland have continued to deal with a variety of interesting and complex cases, several of which have hit the headlines. October 2018 saw national media attention focussed on workers employed by Glasgow City Council who staged what was reported to be the UK's biggest ever strike over equal pay. Many, if not all of those participating, had equal pay claims being dealt with by the ET. While we already had more than 40,000 of these cases (down a little from a peak of 50,000 plus) in our live load at the end of 2017, several thousand more were received throughout the course of 2018. It is understood that an agreement has been reached in principle to settle many of the cases with the media reporting this to be at an estimated cost of more than £500 million pounds; this provides a very good example of the high financial value of many of the cases (particularly group/multiple claims) dealt with by ETs.

Another case which attracted a lot of interest was that of *McEleney v Ministry of Defence* (S/4105347/2017). The question for the tribunal (Employment Judge Eccles, sitting alone) to decide was whether the claimant's belief in Scottish independence amounted to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010 so that it could be relied upon by the claimant as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010. The tribunal concluded the claimant's belief did indeed amount to a philosophical belief, and upheld that decision following a reconsideration hearing at the request of the respondent. The case will now proceed to a hearing on its merits to decide whether the claimant was treated less favourably than others were or would be treated because of the identified protected characteristic.

People and places

Last year I reported on the successful recruitment of new Employment Judges; since their appointment they have made a very significant contribution to the work of the Employment Tribunals in Scotland, focussing on hearing claims of unfair dismissal and wage related complaints. Having developed their judicial skills over the course of 2018 these judges will now receive further training in June 2019 and thereafter will be able to deal with discrimination claims. That will further enhance our ability to progress cases as expeditiously as possible.

I also indicated last year that I was turning my attention to the issue of whether more non-legal members needed to be recruited to help us cope with our rising workload. The last time members were recruited was in 2009 and since then a significant number have retired. I am pleased to report a recruitment exercise for 40 new non- legal members (distributed across the employee and employer panels) for Employment Tribunals (Scotland) will commence in April 2019 (with a parallel campaign in England and Wales).

The new Glasgow Tribunals Centre, which currently houses both the devolved and some of the reserved tribunals operating in that city, opened as planned in March 2018. The current expectation is that Employment Tribunals will move to the new location (which is close to the current operating base) in mid 2020.

Changes are also afoot in connection with our location in Inverness, where a brand-new Justice Centre is currently under construction and due for occupation in 2020. That building will contain civil and criminal courts and the expectation is that Employment Tribunals will have the use of one of the civil court rooms on a regular basis.

Devolution of functions

It has now become clear that devolution of the functions of Employment Tribunals (Scotland) is unlikely to occur before 2022 at the earliest. Work has continued on the part of both the UK and Scottish Governments to produce a draft Order in Council dealing with the transfer of employment, tax and social entitlement related functions. It is understood that the Scottish Government may undertake a formal consultation exercise with system users once the draft Order is published.

Conclusion

The increased workload of the Employment Tribunals has meant that judicial office holders have had to work extremely hard over the past year to continue to provide the level of service our system users have come to expect. Every week brings fresh and sometimes daunting challenges and they rise, repeatedly, to the occasion. It is an honour and a privilege to lead such a dedicated, collegiate and committed team.

Annex D

Cross Border Issues

Northern Ireland

Dr Kenneth Mullan
Chief Social Security Commissioner
Upper Tribunal Judge

There have been no further developments with tribunal reform in Northern Ireland. At the time of writing talks to enable the restoration of the devolved Northern Ireland Assembly have failed with the consequence that routine devolved Departmental matters, including proposals for the introduction of tribunal reform, remain on hold.

The Northern Ireland dimension for those First-tier and Upper Tribunal jurisdictions which extend to Northern Ireland has been described in the other relevant sections of the Senior President's Report.

Scotland

Sir Brian Langstaff

Progress towards the intended devolution of currently reserved tribunals to Scotland has been almost imperceptible. This may well be because other matters have had a certain prominence and priority in the legislative programme.

Three matters have first to be resolved before more progress will become apparent. First, an Order in Council will need to be made in order to effect the transfer; second, funding will need to be allocated to the SCTS to carry out necessary transition planning and implementation; and proposals for the terms and conditions which will apply to members of the judiciary of the currently reserved tribunals have yet to be finalised. These "ts and cs" will be designed to honour a commitment that those judges may transfer to service in the devolved tribunals without detriment to their current terms and conditions. Once the proposals have been received the Judicial Working Group will meet to consider them further, and advise the Senior President of Tribunals appropriately.

It seems likely that once those three matters are resolved, implementation of the change-over will require a preparation period of some two years: it thus looks increasingly unlikely that devolution of the reserved tribunals will occur before Easter 2022 at the earliest.

As can be seen, therefore, there is little to report further to that which I reported last year.

In one area, though, there is a particular challenge to be met. It is predicted that the existing devolved Social Security jurisdiction will present very significant increases in workload once cases involving DLA and subsequently PIP fall for consideration in Scotland. This will impose both a requirement for a larger judicial complement in Scotland and a reduction in the number of judges

required to consider such cases in the reserved judiciary. The best way of managing this, so as to preserve the advantages of current judicial experience and expertise in the area whilst not only adapting to the requirements of the Scottish service, but ensuring there is no adverse impact on the existing judiciary, will continue to require careful collaborative discussion.

Annex E
Reform in the Upper Tribunal and Employment Appeal Tribunal

In April 2018, the Vice-President was asked by the Senior President to report to him on the need for reform of leadership and governance in the Upper Tribunal and the Employment Appeal Tribunal.

A working group was set up to ensure that the interests of each chamber of the Upper Tribunal and of the Employment Appeal Tribunal were properly represented and the views of each properly taken into account. The report considers the structure of the Upper Tribunals and the Employment Appeal Tribunal, as well as the role of the President; the report was published in July 2018.

The present policy is that the President of each of the chambers of the Upper Tribunal and the Employment Appeal Tribunal should be a High Court judge (or the equivalent in Scotland); the report recommends this should be maintained.

The report highlights the importance of chamber Presidents and the President of the Employment Appeal Tribunal sitting regularly on cases in their chamber to ensure they maintain their high level of specialist expertise and contribute to the body of authority and to the coherent development and application of legal principles in that field of the law. It also recognises the essential function the Presidents play in the governance of their chamber or tribunal, in managing judicial resources and performance and the associated pastoral role that leading a chamber or tribunal entails. It also notes that a President's role must also be to maintain the interests of the chamber in their dealings with fellow Presidents, judicial colleagues in the courts and tribunal system and others.

The report emphasises that the role of a Chamber President or President of the Employment Appeal Tribunal requires a range of judicial and leadership skills which ought to be recognised both by the Judicial Appointments Commission (and its equivalent in both Scotland and Northern Ireland) and across the courts judiciary.

The compatibility of the role of chamber President or Employment Appeal Tribunal President with the other work of a High Court judge is also explored in the report. It observes that the presidential duties are only full-time in the Employment Appeal Tribunal. Within the chambers, the time commitment varies between each one and the role is entirely compatible with a High Court judge's other duties, including sitting out of London. Continued cooperation between the Senior President and the Heads of Jurisdiction and Division should ensure that Presidents have enough time to commit to their leadership tasks and to sittings in the tribunals without unreasonably reducing their availability for their other duties.

The report also highlights the similarities between the role of President and that of a Presiding Judge on a circuit in England and Wales or an administrative judge in Scotland. It stresses that the role of President should be regarded as having equivalent status to a Presiding Judge on circuit and success in that role should be seen as no less significant an achievement in a High Court judge's career.

Senior President of Tribunals' response

I am most grateful to the Vice-President for the production of this report. I welcome his recommendations and accept them all. I am particularly pleased that the report finds that the current structure to be working well, although I welcome the suggestions for improvement. I will work with my Strategy team to develop an action plan to implement the actions, with oversight from the Vice-President.

Annex F
Reform in the First-tier Tribunal and Employment Tribunals

In January 2019, the Vice-President of Tribunals was asked by the Senior President of Tribunals to report to him on the need for reform of leadership and governance in the First-tier Tribunal and the Employment Tribunals, a request formally endorsed by the Tribunals Judicial Executive Board (TJEB).

The Vice-President set up a working group of leadership judges to assist in this project.

The working group met on three occasions, in April, May and July 2019. Each of the Chamber Presidents and the Presidents of the Employment Tribunals submitted his or her own report, and these reports are pended to the Vice-Presidents report.

The report considers the First-tier Tribunal and the Employment Tribunals in their present form and their role and performance. It presents detailed conclusions on the opportunities for reform, which cover the role of the tribunal judiciary, the leadership and structure of the tribunals, recruitment and diversity, career progression, training and cross-deployment.

The report highlights that a main concern expressed by all chamber/tribunal presidents was the disparity in terms and conditions between the courts and tribunals judiciary. This weakens morale among leadership judges in the tribunal system and hinders flexible cross-deployment.

A firm consensus did not emerge in the working group for radical change in the structure and leadership of the First-tier Tribunal and the Employment Tribunals. The report recommends maintaining the current present structure, at least for the time being.

The introduction of the roles of Regional Tribunal President and Regional Tribunal Liaison Judge is discussed and found to be a good step, but it is suggested greater administrative support would help to establish good working relationships between the tribunals within a region, and with Her Majesty's Courts and Tribunals Service (HMCTS) and the court judiciary in England and Wales.

Judicial career progression is highlighted as an issue of fundamental importance and the report recognises that there are a number of career development opportunities for First-tier Tribunal judges and Employment Tribunal judges, both within and outside the chambers of the First-tier. Further opportunities for First-tier Tribunal and Employment Tribunal judges to develop their careers are identified, including shadowing judges in other chambers, and increasing opportunities for training leadership judges. The working group did not find enough evidence to support the view that there are insufficient opportunities for career advancement. The report does however suggest that there should be an increase in cross-jurisdictional training.

The report also recognises that judges could develop their skills and knowledge through cross-deployment to different chambers. This would also provide valuable opportunities for sharing skills and knowledge. The report acknowledges that this is common amongst recently appointed fee-paid judges, but greater use could be made of cross-deployment for judges. The report recommends that there should be a process identified to process for selection and cross-deployment within the First-tier Tribunal, as well as for permanent assignments to different chambers.

Furthermore, the report recognises the importance of effective cross-deployment and opportunities for tribunal judges to sit in the courts, equivalent to those available to judges in the court system to sit in the tribunals.

Senior President of Tribunals' response

This is the second report that the Vice President has produced for me and once again, I am very grateful to the Vice President for his work on this report, as well as those who supported him. I accept all the recommendations and I agree with his suggestion that the working group should be maintained to help implement the accepted recommendations. I will offer my full support to both the Vice President and the working group as they work to implement them.

Annex G

Important Cases

Administrative Appeals Chamber

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 72 (AAC)	*Information Commissioner v Malnick and Advisory Committee on Business Appointments (ACOBA)*	Information rights	A three judge panel of the Upper Tribunal decided that taking into account matters of public interest when deciding whether an opinion of the qualified person was reasonable for the purpose of the "exempt information" provisions in section 36(2) of the Freedom of Information Act 2000 was an error of law. Section 36(2) is concerned with substantive not procedural reasonableness and the public interest balancing test must ascribe appropriate weight to the qualified person's opinion. There is no power for the First-tier Tribunal to remit a case to the Commissioner.
[2018] UKUT 103 (AAC)	*Bolton MBC v HY (HB)*	Social security	The Upper Tribunal decided that it is correctly a requirement that, in order for a child to access the rights conferred by Article 12 of Regulation 1612/68 or Article 10 of Regulation 492/2011 (and so the child's parent a derivative right), the child must have been installed in the host Member State at a time when at least one of the child's parents resided there as a worker.
[2018] UKUT 105 (AAC)	*HO v Her Majesty's Revenue and Customs (TC)*	Social security	The Upper Tribunal addressed the question of how decisions of the First-tier Tribunal take effect under the Tax Credits 2002, particularly in the context of the basis, if there is such, of HMRC's ability to change such decisions under that Act.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 119 (AAC)	*Cox v Information Commissioner and Home Office*	Information rights	The Upper Tribunal considered whether the general public interest in transparency, and in particular the public interest in the disclosure of the names of public officials exercising public functions and powers in the public interest, is necessarily a "legitimate interest" at the first stage of the test for the fair processing of personal data for the purpose of paragraph 6 of Schedule 2 to the Data Protection Act 1998. It also considered the ongoing status of open evidence referred to in course of open proceedings before the First-tier Tribunal.
[2018] UKUT 122 (AAC)	*SB v Secretary of State for Work and Pensions (PIP)*	Social security	Here the Upper Tribunal endorsed the Secretary of State's position that lip reading is not considered an acceptable way to interpret verbal communication, particularly when one takes into consideration regulation 4(2[A]) of the Social Security (Personal Independence Payment) Regulations 2013.
[2018] UKUT 126 (AAC)	*Kirkham v Information Commissioner*	Information rights	The Upper Tribunal rejected a rigorous scientific approach to the interpretation of section 12 of the Freedom of Information Act 2000, although it accepted that some elements of that approach may be relevant as evidence in a particular case.
[2018] UKUT 127 (AAC)	*Department for Transport, Driver and Vehicle Standards Agency and Porsche v Information Commissioner and Cieslik*	Information rights	The Upper Tribunal considered whether information is "environmental information" within regulation 2(1)(c) Environmental Information Regulations 2004 and how the principles in DBEIS v IC and Henney [2017] PTSR 1644 apply.
[2018] UKUT 157 (AAC)	*SH v Secretary of State for Work and Pensions, CH & HMRC (CSM)*	Social security	The Upper Tribunal considered the methods for calculating income charged to tax under the Child Support Maintenance Calculation Regulations 2012 as compared to the Income Tax regime with the result that Regulation 36(2)(b) of the Child Support Maintenance Calculation Regulations 2012 is of no effect.
[2018] UKUT 162 (AAC)	*Her Majesty's Revenue and Customs v MB*	Social security	The Upper Tribunal considered the entitlement of an EU "worker" claimant to child benefit for a step child he was responsible for. It decided a step child is not a child of the claimant for the purposes of Head (2) of the definition of "member of the family" in Article 1(i) of Regulation 883/2004.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 184 (AAC)	*Information Commissioner v Department of Transport and Hastings*	Information rights	This case concerned a journalist's request for information about a meeting between HRH The Prince of Wales and Government Ministers where the Upper Tribunal considered issues with important practical implications for other cases involving information rights requests that may straddle the two statutory regimes under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (SI 2004/3391;'the EIR') respectively and set out the proper approach.
[2018] UKUT 208 (AAC)	*Cabinet Office v Information Commissioner and Ashton*	Information rights	The Upper Tribunal considered a request under the Freedom of Information Act 2000 for access to Prime Minister's Office files on UK relations with Libya following a refusal to provide access by the Cabinet Office on the basis that it was a vexatious request within s.14 because of the burden of compliance. It further considered whether a compelling public interest in disclosure can necessarily outweigh the resource burden on the public authority.
[2018] UKUT 211 (AAC)	*NJ v Secretary of State for Defence*	Armed forces compensation	The Upper Tribunal considered the case of a member of the forces deployed as head ski coach at the Army Medical Services Ski Championships. While she was coaching from the side of the piste, a civilian skier on a parallel piste lost control and collided with her, causing injuries. The issue was whether benefit was payable to her under Article 8 of the Armed Forces and Compensation Scheme Order 2011, which turned on the issue of whether there was a service cause for her injuries.
[2018] 0213 (AAC)	*MB v Secretary of State for Work and Pensions (PIP)*	Social security	The Upper Tribunal considered Regulation 9 of the PIP Regulations on negative determinations following a failure to attend or participate in a medical consultation and upheld the view that the Secretary of State needed to provide copy of the appointment letter to the First-tier Tribunal.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 226 (AAC)	*FI v Her Majesty's Revenue and Customs (CHB)*	Social security	The Upper Tribunal considered the position of a public authority in deciding whether a document is relevant for the purposes of rule 24 of the First-tier Tribunal's rules. It must not act as if it is a tribunal making findings of fact on the evidence as this usurped the tribunal's fact-finding role. A document is to be disclosed if a tribunal could (not would) rely on it to make any relevant finding of fact.
[2018] UKUT 229 (AAC)	*Information Commissioner v Miller*	Information rights	The Upper Tribunal considered the question of whether anonymised information is "personal data" and whether the First-tier Tribunal should have called for the disputed information when it had not been provided to it, or considered other material which had been provided but which it had not been asked to view.
[2018] UKUT 240 (AAC	*Green v Secretary of State and Adams (Diversion of Income)*	Social security	The Upper Tribunal analysed regulation 71 of the Child Support Maintenance Calculation Regulations 2012 concerning diversion of income and its operation in relation to the transfer of an asset that was not generating any income at the time of transfer.
[2018] UKUT 347 (AAC)	*M and M v West Sussex County Council (SEN)*	Special Education Needs	The Upper Tribunal decided that the First-tier Tribunal is required to take into account a child's views, wishes and feelings in determining an Education, Health and Care Plan (EHC) appeal, despite the absence of an express statutory requirement to do so.
[2018] UKUT 250 (AAC)	*VS v St Andrew's Healthcare*	Mental health	The Upper Tribunal decided that the capacity required by a mental patient to bring proceedings before the First-tier Tribunal in its mental health jurisdiction is that the patient must understand that they are being detained against their wishes and that the First-tier Tribunal is a body that will be able to decide whether they should be released.
[2018] UKUT 269 (AAC)	*C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN)*	Special Education Needs	The Upper Tribunal considered the current interpretation of the rule which removes a "tendency to physical abuse" from the definition of "disability" for the purposes of the Equality Act 2010 (regulation 4(1)(c) Equality Act 2010 (Disability) Regulations 2010) and its compatibility with Article 14 of the European Convention on Human Rights.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 270 (AAC)	*R(Smith) v Secretary of State for Work and Pensions (ESA)*	Social security	A three judge panel of the Upper Tribunal considered revision for official error and the operation of the anti-test case rule in section 27 of the Social Security Act 1998 on a judicial review transferred from the Administrative Court.
[2018] UKUT 285 (AAC)	*EG v Secretary of State for Work and Pensions*	Social security	The appellant was an Estonian and EEA national who was residing in the United Kingdom and the Upper Tribunal considered Jobseeker's Allowance and the relationship between a genuine prospect of work and participation in government scheme such as the New Enterprise Allowance.
[2018] UKUT 295 (AAC)	*Morton v Information Commissioner and Wirrall MBC*	Information rights	In this case a competitive tender exercise for the provision of highway and engineering services took place. A number of individuals who were employees of the Council at the time of the tendering exercise raised concerns with the Chief Executive regarding the conduct of that exercise. The Upper Tribunal considered whether information was personal data and whether this was exempt under section 40(2) of the Freedom of Information Act 2000.
[2018] UKUT 296 (AAC)	*KM v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal considered Personal Independence Payment daily living activity 3 (managing therapy) as it was in force before 16 March 2017 and the interaction of the descriptors as well as the application of Secretary of State for Work and Pensions v LB (PIP) [2016] UKUT 530 (AAC).
[2018] UKUT 330 (AAC)	*CH & KN v Secretary of State for Work and Pensions*	Social Security	The Upper Tribunal considered in what circumstances (if at all) the First-tier Tribunal should obtain evidence relating to a previous award of Disability Living Allowance when considering the entitlement to Personal Independence Payment of a person who had previously been in receipt of DLA (a "transfer case"). How if at all do the principles in R(M)1/96 apply to the First-tier Tribunal's duty to give reasons in transfer cases? Is the decision in YM v SSWP [2018] UKUT 16 (AAC) correct?

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 339	*AA v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal considered whether in respect of Personal Independence Payment the "person" in mobility descriptor 1d and 1f has to be playing an active role in preventing overwhelming psychological distress from occurring when a claimant is attempting to follow the route of a journey? Is mere passive presence sufficient?
[2018] UKUT 355 (AAC)	*Secretary of State for Work and Pensions v DL and RR (HB)*	Social Security	The Upper Tribunal allowed the Secretary of State's appeal following the decision in SSWP v Carmichael and Anor [2018] EWCA Civ 548 and granted a "leapfrog" certificate under section 14A of the Tribunals Courts and Enforcement Act 2007 allowing an appeal to the Supreme Court on a point of law of general public importance as defined.
[2018] UKUT 360 (AAC)	*JB v Secretary of State for Work and Pensions*	Social security	The Upper Tribunal in Scotland considered universal credit and the application of sanctions to claimants and decided that tribunals deciding certain sanctions cases should consider not just the issue of good reason for failing to comply with a requirement, but also whether that requirement was validly imposed in the first place.
[2018] UKUT 372 (AAC)	*Campbell v Secretary of State*	Data protection	The Upper Tribunal decided that a data subject's right of access to his personal data and to bring an appeal against the Secretary of State's national security certificate under s.28(4) DPA 1998 did survive that data subject's death.
[2018] UKUT 376 (AAC)	*P v Secretary of State for Work and Pensions*	Social security	The Upper Tribunal decided that what has previously been described as the Secretary of State's ''concession' that lip-reading is not to be taken into account in assessing ability to communicate verbally is a correct description of the law.
[2018] UKUT 377 (AAC)	*Green v Secretary of State for Work and Pensions and Adams (Interests in Trusts and Ability to Control Assets)*	Social security	The Upper Tribunal decided that interests in trusts are not assets for the purposes of regulation 18 of the Child Support Maintenance Calculation Regulations 2012, in a case involving 8 appeals concerning the child support liability of the appellant for his son.
[2018] UKUT 404 (AAC)	*PH and SM v Secretary of State for Work and Pensions*	Social security	The Upper Tribunal considered the question of whether a claimant has a right of appeal where a request for mandatory reconsideration was made after the maximum period of 13 months.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 408 (AAC)	*LW v Cornwall Partnership NHS Trust*	Mental health	The Upper Tribunal considered what is to be expected of the First-tier Tribunal when it is deciding whether or not to uphold the making (or continuation) of a Community Treatment Order. Is a defined degree of imminence of likely relapse required in order to justify not discharging a patient from a Community Treatment Order.
[2018] UKUT 416 (AAC)	*DC v London Borough of Bromley (HB)*	Social security	The Upper Tribunal considered cases of two appellants on housing benefit, eligible rent and maximum rent (Local Housing Authority) together with the question of whether joint tenants living in separate households in the same premises each had exclusive possession of certain rooms and whether agreement between joint tenants was enforceable and relevant.
[2018] UKUT 423 (AAC)	*Highways England v Information Commissioner and Manisty*	Information rights	The Upper Tribunal refused an appeal concerning a request for information concerning the possible route of the Expressway between Oxford and Cambridge, which was being investigated by Highways England and confirmed the correct approach to apply the exception in Regulation 12(4)(d) which applies if a request relates to material in the course of completion.
[2018] UKUT 439 (AAC)	*R (Criminal Injuries Compensation Authority) v First-tier Tribunal (CIC)*	Criminal Injuries Compensation	The Upper Tribunal considered its jurisdiction to decide an application for judicial review in relation to a decision of a First-tier Tribunal relating to criminal injuries compensation where the claimant was injured in and was living in Scotland and the First-tier Tribunal sat in Scotland. The Upper Tribunal decided that, even if the Upper Tribunal had jurisdiction, it should decline to exercise it on *forum non conveniens* grounds. The Upper Tribunal gave guidance on the application of the principle of *forum non conveniens* in the Upper Tribunal.
[2018] UKUT 441 (AAC)	*D v Information Commissioner*	Information rights	The Upper Tribunal decided that the First-tier Tribunal was right not to make an anonymity order in the particular circumstances of this case. In short, the Applicant's Article 6 and Article 8 rights are outweighed by the Article 6 and Article 10 rights of others as per the ultimate balancing test.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 22 (AAC)	*Fryers and Hogg v Secretary of State for Northern Ireland*	Information rights	The Upper Tribunal considered an appeal by former internees who had made subject access requests under section 7 of the Data Protection Act 1998 (DPA) for their internment records. The tribunal considered the impact on the original appeal of a national security certificate being issued by the Minister under s.28(2) of the DPA, which then caused the original appeal to the Upper Tribunal under s.28(4) to go part-heard which was followed by a review of the certificate by the Minister who then withdrew it under the DPA and issued a new national security certificate in its place.
[2019] UKUT 27 (AAC)	*FJ v Secretary of State for Work and Pensions (PIP)*	Social security	The Upper Tribunal allowed an appeal in respect of Personal Independence Payment following a failure by the Secretary of State to comply with the requirement in rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 that she provide an adjudication history and supporting documentation on a new PIP claim where such prior history is relevant.
[2019] UKUT 29 (AAC)	*Information Commissioner v Halpin*	Information rights	The Upper Tribunal decided that the First-tier Tribunal had wrongly required an NHS trust to disclose details of qualifications and training of two named social workers. That tribunal had erred in its approach to Section 40 Freedom of Information Act 2000 (FOIA) and condition 6(1) of schedule 2 of the Data Protection Act 1998 (DPA) because it failed to take into account that disclosure under FOIA is to the world. The Upper Tribunal made observations as to different approaches under FOIA and DPA.
[2019] UKUT 33 (AAC)	*ST v Sunderland City Council (HB)*	Social security	The Upper Tribunal allowed this appeal which concerned whether rent payable in advance of the commencement of the tenancy can be immediate arrears for the purposes of regulation 95 of the Housing Benefit Regulations 2006 and the application of that regulation as to the overriding interest of the claimant and the correct approach to the cessation of direct payments.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 40 (AAC)	*Diamond Bus Ltd and Traffic Commissioner for the West Midlands of England*	Traffic Commissioner	The Upper Tribunal refused an appeal against a decision of the Traffic Commissioner and the imposition of a financial penalty on bus companies outside London in respect of noncompliance with their timetable obligations and considered the application of "reasonable excuse" to such failures.
[2019] UKUT 43 (AAC) CSH/793/2014	*FT v Perth and Kinross Council and SSWP*	Social security	The Upper Tribunal decided that a member of the travelling community's chalet and pitch were not exempt from the application of the removal of the spare room subsidy (Regulation B13 of the Housing Benefit Regulations 2006). There was no violation of Article 8 or 14 of the European Convention on Human Rights. The claimant's status as a traveller and her particular factual circumstances were appropriately taken into account by the local authority and discretionary housing payments were made which mitigated in full any shortfall in housing benefit..
[2019] UKUT 44 (AAC)	*NHS West Berkshire Clinical Commissioning Group v The First-tier Tribunal (Health, Education and Social Care Chamber) (interested parties: (1) AM; (2) MA; (3) Westminster City Council)*	Special Education Needs	The Upper Tribunal decided that a First-tier Tribunal did not unfairly refuse a Clinical Commissioning Group's application to be joined as a party to appeal proceedings in which a healthcare-related recommendation was under consideration.
[2019] UKUT 69 (AAC)	*C v Her Majesty's Revenue and Customs*	Social security	The Upper Tribunal decided that a decision taken by HMRC not to award a tax credit under section 14 of the Tax Credits Act 2002 cannot be followed by a final entitlement decision under section 18 of the 2002 Act. Therefore, there is no section 18 decision to cause an appeal to the First-tier Tribunal against such a decision to lapse. To the extent that a three-judge panel of the Upper Tribunal in *LS & RS v HMRC* [2018] AACR 2; [2017] UKUT 0257 (AAC)) expressed the contrary view, its comments were obiter and should not be followed.

Tax and Chancery Chamber

Citation	Parties	Jurisdiction	Commentary
[2018] UKSC 31	*JP Whitter (Water Well Engineers) Limited v HMRC*	Supreme Court	Under the construction industry scheme ("CIS"), people are not obliged to deduct tax from payments made to a contractor who holds "gross payment status". That makes contractors with gross payment status attractive counterparties since there is a much lower regulatory burden involved in dealing with them. HMRC has a power to revoke gross payment status where, for example, a contractor fails to comply with its tax obligations without reasonable excuse. Following the taxpayer's late payment of tax due under the PAYE regime, HMRC revoked its gross payment status. The taxpayer appealed on the ground that HMRC had not considered the effect on its business of such a draconian step. The Supreme Court, concluded that the legislation contained "highly prescriptive" requirements that must be met in order for a taxpayer to be entitled to gross payment status including a good track record of tax compliance. While HMRC had a discretion not to revoke the status if those requirements were not met, the statutory scheme did not require them to consider the effect on a taxpayer's business in deciding whether to revoke the status. The Supreme Court expressed doubt whether the taxpayer's A1/P1 rights were engaged because, even if its gross payment status was a "possession", its rights to that "possession" were circumscribed by the very terms of the Act permitting gross payment status to be awarded. However, in any event, the Supreme Court considered that any interference with the taxpayer's A1/P1 rights was proportionate. The taxpayer's appeal was dismissed.

Citation	Parties	Jurisdiction	Commentary
[2018] UKSC 44	*Total Ltd v HMRC*	Supreme Court	Before the Tribunal can entertain an appeal against a VAT assessment, the taxpayer must pay or deposit the amount of tax in dispute unless it can satisfy HMRC or the Tribunal that doing so would cause it "hardship". The taxpayer argued that this requirement breaches the EU "principle of equivalence" since certain appeals against purely UK taxes (such as income tax and stamp duty land tax) were not subject to a "pay first" requirement. The Supreme Court rejected that argument. Their core reasoning was that the domestic taxes that the taxpayer identified were not truly comparable with VAT. That was because, in the case of income tax and stamp duty land tax, the person paying the tax was discharging that person's own economic liability. By contrast, the economic incidence of VAT falls on the ultimate consumer (and not the trader who merely collects and accounts for that VAT). Therefore, even if appeals against those domestic taxes were treated more favourably, there could be no breach of the principle of equivalence.
[2018] UKSC 35	*HMRC v Taylor Clark Leisure Limited*	Supreme Court	The representative member of a VAT group ("TCL") transferred its business to another group company ("Carlton"). Carlton then left the group and, after doing so, made claims under s80 of VATA 1994 for repayment of VAT that TCL had accounted for in the mistaken belief that supplies associated with bingo and gaming machines made while Carlton was a member of the VAT group were standard-rated for VAT purposes. It made these claims without the knowledge of TCL and the question arose whether TCL could rely on them for time-limit and other purposes. The Supreme Court concluded that HMRC's liability under s80 of VATA 1994 to repay output VAT is owed to the person who accounted for that VAT. Section 43 of VATA 1994 does not make a VAT group a "single taxable person" but treats the group's supplies and liabilities as being those of the representative member of the group for the time being. Therefore, where a representative member of a group has overpaid output tax, unless the claim has been assigned, it is the representative member of the VAT group (or a duly authorised agent) that must submit the claim under s80. TCL could not rely on Carlton's claim.

Citation	Parties	Jurisdiction	Commentary
[2018] EWCA Civ 1406	*Lithuanian Beer Limited v HMRC*	Court of Appeal	The Court of Appeal considered the time limit for making excise duty assessments that starts to run when "evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge". The case is of general importance because similar provisions apply in the VAT context. An HMRC officer visited the taxpayer's premises and was shown into a room that contained a large number of lever arch files some of which contained documents that would, if read carefully, and compared with HMRC's published Excise Notices, have demonstrated that assessments could be made on the taxpayer. However, the Court of Appeal concluded that this did not result in the requisite information coming to HMRC's knowledge. Accordingly the assessments HMRC made were in time and the taxpayer's appeal was dismissed.
[2018] EWCA Civ 118	*Farnborough Airport Properties Company and another v HMRC*	Court of Appeal	One member of a "group" of companies (a "surrendering company") can surrender current-year corporation tax losses to another company in the group (a "receiving company"). However the ability to do so is restricted where there are "arrangements" in place that would enable a person to obtain control of one of the companies but not of the other. In this case, the surrendering company had a receiver appointed by a floating charge holder. The question was whether this constituted an "arrangement" that gave the receiver control of the surrendering company but not of the receiving company, thereby preventing the surrender of losses taking effect. The Court of Appeal considered the scope of the receiver's powers and concluded that the receivers had the power to carry on the business of the surrendering company which amounted to "control" of the surrendering company. It followed that the receivers had "control" of the surrendering company, but not of the receiving company and the surrender of group relief was not permitted.

Citation	Parties	Jurisdiction	Commentary
[2018] EWCA Civ 2075	*GDF Teesside Ltd v HMRC*	Court of Appeal	The amount of profit chargeable to corporation tax on loan relationships is expressed by statute to be the amount that "fairly represents" profits and gains on those loan relationships using the credits and debits that appear in the company's accounts. There has long been some controversy as to whether the accounting credits and debits conclusively establish the amount of taxable profit or whether those credits and debits can be overridden by the "fairly represents" requirement. In this case, the taxpayer held loans which were worth more than the "carrying value" shown in its accounts. In order to mitigate a tax liability that would otherwise arise on a realisation of the loans for their market value, the taxpayer transferred the loans to another company in return for shares. (The transferee company was resident in a low-tax jurisdiction and was able to realise the loans without a tax charge). In accordance with applicable accounting principles, this transaction generated no accounting profit for the taxpayer. The Court of Appeal concluded that, even though there was no accounting measure of profit, that outcome did not "fairly represent" the true profit that the taxpayer had made when it assigned the loans. In short, the "fairly represents" requirement was capable of overriding the accounting treatment to produce a taxable profit in the absence of an accounting profit.
[2018] UKUT 0111 (TCC)	*Aria Technology Limited v HMRC and Situation Publishing Limited (third party)*	Upper Tribunal -Tax and Chancery	Situation Publishing Limited ("SPL") publishes a trade journal and applied to the Upper Tribunal for copies of pleadings and other documents that had been lodged in the substantive appeal by Aria Technology Limited ("Aria"). The documents in question had not yet been referred to in open court (since SPL made its application before the substantive appeal was heard). Aria objected to the documents being released. The Upper Tribunal concluded that it had the power to release the documents and that, in deciding whether to exercise that power, it should perform a balancing exercise that takes into account the competing interests in issue. On the facts before it, the Upper Tribunal concluded that the interest in allowing SPL access to the documents for journalistic purposes outweighed Aria's concerns that its business might suffer because of reaction to the publication and that SPL's reporting might be inaccurate. The Upper Tribunal therefore provided copies of the documents to SPL.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 0156 (TCC)	*Christine Perrin v HMRC*	Upper Tribunal – Tax and Chancery	The First-tier Tribunal (Tax Chamber) receives hundreds, if not thousands, of appeals each year from taxpayers who have been charged penalties by HMRC for failing to send notices and returns on time. Many of these penalties are subject to the statutory defence of "reasonable excuse", but there have been relatively few binding precedents as to the nature of that defence. In the case of *Perrin*, the Upper Tribunal gave some guidance to the First-tier Tribunal as to how it should approach questions of "reasonable excuse": 1. The First-tier Tribunal must first decide whether HMRC have discharged their burden of proving that the necessary conditions to impose the penalty are met. In a tacit acknowledgement that HMRC routinely overlook the requirement for proof in small penalty cases, the Upper Tribunal reminded the First-tier Tribunal that the mere assertion of facts in a statement of case is not enough. 2. Assuming that the penalty is prima facie due, the First-tier Tribunal must seek to establish the facts relevant to the "reasonable excuse" that is being advanced. Some of those facts might relate to the state of the taxpayer's mind such as whether he or she genuinely believed that the return had been filed on time or whether he or she genuinely believed that it was not necessary to file a return. In making findings on issues such as this, the First-tier Tribunal is entitled to assess the taxpayer's credibility using all the usual tools available to it. 3. The process does not end at Step 2. Once the First-tier Tribunal has found the necessary facts, it must decide whether those facts are sufficient viewed objectively to amount to a reasonable excuse. Where, for example, the taxpayer is saying that the reasonable excuse consists of a genuine belief that he or she had filed the return, Step 3 will involve the First-tier Tribunal deciding whether that belief was objectively reasonable. A genuine belief which is not objectively reasonable is not capable of amounting to a "reasonable excuse". Finally, the Upper Tribunal expressed some (probably obiter) views on the situation where the "reasonable excuse" being advanced consists of a misunderstanding of the law, for example a genuine but mistaken belief that the taxpayer was not required to file a return. The Upper Tribunal said that the well-known aphorism that "ignorance of the law is no excuse" does not mean that such ignorance is incapable of amounting to a reasonable excuse. Rather, it will be a matter of judgement for each First-tier Tribunal to consider whether, in the circumstances in front of it, it was objectively reasonable for the taxpayer involved to have been ignorant and, if so, for how long.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 0164 (TCC)	*Granada UK Rental and Retail Ltd and others v Pensions Regulator*	Upper Tribunal -Tax and Chancery	This was the first substantive decided case on the power of The Pensions Regulator to make a Financial Support Direction ("FSD") requiring companies to provide financial support to address a deficit in a pension scheme of an affiliated company. In upholding the FSD, the Upper Tribunal decided several issues of general importance for the FSD regime. For example, it decided that FSDs could be imposed by reference to actions taken before the Pensions Act 2004 (which gave the Pensions Regulator power to make FSDs) came into force and dismissed arguments that this construction breached the presumption against retrospective legislation. The Upper Tribunal also dismissed arguments that FSDs could only be issued in cases of "moral hazard" – i.e. where there would otherwise be a risk of employers manipulating their affairs so that liability for pension scheme deficits would fall on the Pension Protection Fund. Permission to appeal to the Court of Appeal has been granted.
[2018] UKUT 178 (TCC)	*Martland v HMRC*	Upper Tribunal – Tax and Chancery	The Upper Tribunal gave guidance to the First-tier Tribunal on the approach it should adopt when considering the exercise of a statutory discretion to permit a taxpayer to appeal against an HMRC decision outside the usual statutory time limit. The First-tier Tribunal should follow a three-stage approach: first it should establish the length of the delay; second it should understand the reasons for that delay and it should then perform a balancing exercise that assesses the merits of those reasons in the light of the prejudice that would result to the parties if permission to make a late appeal is, or is not, granted. In performing its balancing exercise, a First-tier Tribunal must take into account the particular importance of litigation being conducted efficiently and at proportionate cost and for statutory time limits to be respected.
[2019] UKUT 18 (TCC) [2018] UKUT 129 (TCC)	*HMRC v Tesco Freetime Limited and another* *Marriott Rewards LLC and another v HMRC*	Upper Tribunal - Tax and Chancery	The VAT treatment of "points-based" retail loyalty schemes has divided legal opinion over the years and led to high-value litigation between taxpayers and HM Revenue & Customs. That controversy was exemplified in the Supreme Court's refusal, in 2013, to apply the approach endorsed by the Court of Justice of the European Union ("CJEU"). In both *Tesco Freetime* and *Marriott Rewards*, the Upper Tribunal applied, in different contexts, reasoning similar to that of the Supreme Court and declined to follow the competitor approach apparently endorsed by the CJEU.

Citation	Parties	Jurisdiction	Commentary
[2018] UKUT 380 (TCC)	*Clive Beagles v HMRC*	Upper Tribunal - Tax and Chancery	In recent years, there has been some controversy as to whether HMRC's "discovery" of a taxpayer's under-declaration of an income liability can, if not acted on sufficiently quickly, become "stale" so as to prevent HMRC issuing a "discovery assessment" to recover the shortfall. This is a matter of general importance as taxpayers are now routinely arguing that HMRC discovery assessments are "stale" and so invalid and, moreover, are seeking disclosure of internal HMRC correspondence to help them to bolster such an argument. In *Beagles*, the Upper Tribunal conducted a survey of existing Upper Tribunal authorities indicating that discoveries could become "stale" but was not satisfied that they were wrong and concluded that the particular discovery before it had become "stale". Permission to appeal to the Court of Appeal has been granted so a clarification of the law in this area can be expected.
[2018] UKUT 0186 (TCC)	*Arif Hussein v FCA*	Upper Tribunal - Tax and Chancery	The only case to have reached the tribunal involving allegations that an individual trader had sought to manipulate London Inter-Bank Offered Rate (LIBOR) for the benefit of his derivative positions. The Authority sought a prohibition order against Mr Hussein. The tribunal accepted Mr Hussein's explanation that he had not acted either dishonestly or without integrity because he genuinely believed that his actions were consistent with the definition of LIBOR but the tribunal nevertheless decided that prohibition was justified because he had lied both to the Authority and the Tribunal as to the reasons why he had carried out the transactions in question.
[2018] UKUT 0258 (TCC)	*Chickombe and others v FCA*	Upper Tribunal - Tax and Chancery	The Financial Conduct Authority (FCA) made an order under s 28A Financial Services and Markets Act (FSMA) 2000 permitting a large number of loan agreements entered into between Barclays Partner Finance and consumers the provision of finance for timeshares to be enforced. The agreements were unenforceable because they were entered into through the agency of an unauthorised broker. 44 of the consumers concerned made references to the Tribunal under s 28 B FSMA challenging the validation order on the basis that they had suffered detriment as a result of misleading information given to them by the unauthorised broker. This was the first time that such a reference had been made. The Tribunal decided that the Authority had failed to take into account relevant factors before granting the validation order, namely the extent of the consumer detriment that had occurred as a result of the activities of the broker and accordingly remitted the matter to the Authority for it to reconsider its decision.

Citation	Parties	Jurisdiction	Commentary
[2019] UKUT 0019 (TCC)	*Alistair Burns v FCA*	Upper Tribunal - Tax and Chancery	The Tribunal upheld the Authority's decision to prohibit and fine Mr Burns from exercising significant influence functions in a regulated firm. Mr Burns was the managing director of an independent adviser firm which had failed to provide suitable advice to investors with the result that many of them agreed to transfer their defined benefit or personal pension schemes into a self invested pension plan in which the underlying investments consisted wholly of unregulated overseas property investments, most of which failed, resulting in losses of over £100 million to investors concerned, much of which fell upon the financial services compensation scheme.
[2018] UKUT 0358 (TCC)	*Stewart Ford & Mark Owen v FCA*	Upper Tribunal - Tax and Chancery	The Tribunal upheld the Authority's decision to prohibit Mr Ford and Mr Owen from working in the financial services industry. The Tribunal also decided that it was appropriate to impose a financial penalty of £76 million on Mr Ford and £3 million on Mr Owen. The penalty imposed on Mr Ford was the largest ever penalty imposed by the tribunal. The matter concerned the activities of Mr Ford and Mr Owen in their capacity of directors of Keydata Services Limited, a financial services firm which marketed bonds issued by various Luxembourg entities which were backed by US life settlements and which turned out not to perform in the manner represented, resulting in large losses by many retail investors. Most of the penalties imposed were represented by sums which Mr Ford and Mr Owen were directed to disgorge as representing unjustified fees which were paid to them or their associates by the various entities involved in the structures.

Immigration and Asylum Chamber

Case	Subject	Commentary
TY (Overseas Adoptions – Certificates of Eligibility) [2018] UKUT 00197 (IAC), 12 April 2018	Children	In cases where an adoption is not recognised by the law of the United Kingdom: The Tribunal should be aware of the underlying legal process in each part of the Kingdom by which a Certificate of Eligibility is issued. The Certificate of Eligibility is the definitive outcome of the fact-finding and assessment that underlies it. The requirements to be met in the law of adoption and under the Immigration Rules for a minor to be admitted for the purposes of adoption ought properly to be seen as a unified whole where each plays its part in determining whether entry clearance should be granted.
SR (subsisting parental relationship – s117B (6)) Pakistan [2018] UKUT 334 (IAC), 5 September 2018	Children	If a parent ('P') is unable to demonstrate he/she has been taking an active role in a child's upbringing for the purposes of E-LTRPT.2.4 of the Immigration Rules, P may still be able to demonstrate a genuine and subsisting parental relationship with a qualifying child for the purposes of section 117B(6) of the 2002 Act. The determination of both matters turns on the particular facts of the case.
JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 00072 (IAC), 27 February 2019	Children	Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 requires a court or tribunal to hypothesise that the child in question would leave the United Kingdom, even if this is not likely to be the case, and ask whether it would be reasonable to expect the child to do so.
R (on the application of TM (A Minor) by his litigation friend, The Official Solicitor) v Secretary of State for the Home Department (Minor – asylum – delay) [2018] UKUT 00299 (IAC), 23 August 2018	Children	In considering whether the delay in determining a person's ('P') asylum application is unlawful all the circumstances must be considered in the round including, inter alia: length of delay; whether P was a minor at the date of his application; whether P continues to be a minor; if a minor, P's best interests; the complexities of the claim; the explanation provided by the Secretary of State for the Home Department (SSHD) and resource allocation; compliance with timeframes provided; the impact of delay on P.
R (on the application of JS and Others) v Secretary of State for the Home Department (litigation friend – child) [2019] UKUT 00064 (IAC), 11 January 2019	Children	Although all cases are fact-specific, the Upper Tribunal gave general guidance on the approach it is likely to adopt in deciding whether a child applicant in immigration judicial review proceedings requires a litigation friend to conduct proceedings on the child's behalf. This approach is one that, as a general matter, should also be followed in appeal proceedings, whether in the First-tier Tribunal or the Upper Tribunal.

Case	Subject	Commentary
AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC), 23 March 2018	Country Guidance	A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul. Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there, it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.
AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), 26 June 2018	Country Guidance	Section C of Country Guidance annexed to the Court of Appeal's decision in *AA (Iraq) v Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944 has been supplemented. Section E of Country Guidance annexed to the Court of Appeal's decision in *AA (Iraq) v Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944 has been replaced.
HB (Kurds) Iran CG [2018] UKUT 00430 (IAC), 12 December 2018	Country Guidance	*SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone. Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.
R (on the application of HA, AA & NA (a child, by her litigation friend HA)) v Secretary of State for the Home Department (Dublin III; Articles 9 and 17.2) [2018] UKUT 00297 (IAC), 19 April 2018	Dublin Regulation	The phrase "who has been allowed to reside as a beneficiary of international protection" in Article 9 of Dublin III is in effect the same as the phrase formerly used in paragraph 352D of the Immigration Rules and following *ZN (Afghanistan)* [2010] UKSC 21 at [35]. Acquisition of British citizenship by a family member does not alter the fact that he was in receipt of international protection and so article 9 would still apply. Article 17.2 of Dublin III does not set any specific criteria, but the Dublin Regulations themselves and the CFR provided the general parameters within which decisions must be taken, albeit that the general provisions set out in articles 21 and 22 do not apply.
R (on the application of SM & Others) v Secretary of State for the Home Department (Dublin Regulation – Italy) [2018] UKUT 00429 (IAC), 4 December 2018	Dublin Regulation	On the evidence before the Upper Tribunal, no judge of the First-tier Tribunal, properly directed, could find there is a real risk of an asylum seeker or Beneficiary of International Protection (BIP) suffering Article 3 ill-treatment if returned to Italy pursuant to the Dublin Regulation, by reason only of the situation that the person concerned may be reasonably likely to experience in Italy, as a "Dublin returnee". The evidence does not rebut the general presumption that Italy will comply with its international obligations in such cases.

Case	Subject	Commentary
R (on the application of MS) (a child by his litigation friend MAS) v Secretary of State for the Home Department (Dublin III; duty to investigate) [2019] UKUT 00009 (IAC), 19 July 2018	Dublin Regulation	A Member State considering a Take Charge Request ("TCR") made by another Member State under the Dublin III Regulation has a duty to investigate the basis upon which that TCR request is made and whether the requirements of the Dublin III Regulation are met. The Member State's duty is to "act reasonably" and take "reasonable steps" in carrying out the investigative duty, including determining (where appropriate) the options of DNA testing in the requesting State and, if not, in the UK. The duty of investigation is not a 'rolling one'. The duty does not continue beyond the second rejection, subject to the requirements of fairness.
R (on the application of BJ & Ors) v Secretary of State for the Home Department (Article 9, Dublin III; interpretation) [2019] UKUT 00066 (IAC), 17 January 2019	Dublin Regulation	The phrase "family member…who has been allowed to reside as a beneficiary of international protection" in Article 9 of Dublin III is to be interpreted as including a person who has, since the grant of international protection, acquired the nationality of the EU member state; and, the phrase "persons concerned" in Article 9 of Dublin III does not include the family member or members previously granted international protection in the requested state.
Kovacevic (British citizen – Art. 21 TFEU) Croatia [2018] UKUT 00273 (IAC), 5 July 2018	European Union	A Union citizen who resides in a Member State of which he or she is a national is not a beneficiary under Article 3(1) of the Citizens Directive. A dual Croatian/British citizen who was residing in the United Kingdom when Croatia joined the EU and who has never exercised EU Treaty rights does not acquire a right of residence under Article 21 TFEU.
Gauswami (Retained right of residence: Jobseekers) India [2018] UKUT 00275 (IAC), 19 July 2018	European Union	For the purposes of determining retained rights of residence, in regulation 10(6)(a) of both the Immigration (European Economic Area) Regulations 2006 and the Immigration (European Economic Area) Regulations 2016, the reference to a worker includes a jobseeker.
Abunar (Para 339C: "Country of return") [2018[UKUT 00387 (IAC), 24 October 2018	European Union	It appears that paragraph 339C of the Immigration Rules does not correctly transpose the relevant provisions of the Qualification Directive.
LS (Article 45 TFEU – derivative rights) [2018] UKUT 00426 (IAC), 9 October 2018	European Union	In determining whether the absence of adequate provision for the childcare of the child of a Union citizen may be a factor capable of discouraging that Union citizen from effectively exercising his or her free movement rights under Article 45 TFEU, the Tribunal will need to undertake a wide evaluative assessment of the particular childcare needs in light of all relevant circumstances.

Case	Subject	Commentary
Amsar (Isle of Man: free movement) [2019] UKUT 00012 (IAC), 18 December 2018	European Union	The Isle of Man and the Channel Islands are not part of the United Kingdom and have only a very limited legal relationship with the European Union. An EU national who works on the Isle of Man is not thereby exercising EU rights of free movement for the purposes of the Immigration (EEA) Regulations 2006.
Kunwar (EFM – calculating periods of residence) [2019] UKUT 00063 (IAC), 28 December 2018	European Union	An "extended family member" ("EFM") of an EEA national exercising Treaty rights in the UK (such as a person in a durable relationship) has no right to reside in the UK under the Immigration (EEA) Regulations until he or she is issued with the relevant residence documentation under reg 17(4) of the 2006 Regulations (now reg 18(4) of the 2016 Regulations). Following *Macastena v SSHD* [2018] EWCA Civ 1558, it is clear that it is not possible to aggregate time spent in a durable relationship before the grant of a residence document with time spent after a residence document is issued, for the purpose of the calculating residence in accordance with the Regulations.
AUJ (Trafficking – no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC), 17 May 2018	Evidence	In cases in which there is no "Conclusive Grounds" decision: If a person ("P") claims that the fact of being trafficked in the past or a victim of modern slavery gives rise to a real risk of persecution in the home country and/or being re-trafficked or subjected to modern slavery in the home country and/or that it has had such an impact upon P that removal would be in breach of protected human rights, it will be for P to establish the relevant facts to the appropriate (lower) standard of proof and the judge should make findings of fact on such evidence. If P does not advance any such claim in the statutory appeal but adduces evidence of being trafficked or subjected to modern slavery in the past, it will be a question of fact in each case (the burden being on P to the lower standard of proof) whether the Secretary of State's duty to provide reparation, renders P's removal in breach of the protected human rights.
HKK (Article 3: burden/standard of proof) Afghanistan [2018] UKUT 00386 (IAC), 22 October 2018	Evidence	It has long been a requirement, found in the case law of the European Court of Human Rights, for the government of a signatory state to dispel any doubts regarding a person's claim to be at real risk of Article 3 harm, if that person adduces evidence capable of proving that there are substantial grounds for believing that expulsion from the state would violate Article 3 of the ECHR. This requirement does not mean the burden of dispelling such doubts shifts to the government in every case where such evidence is adduced, save only where the claim is so lacking in substance as to be clearly unfounded.

Case	Subject	Commentary
R (on the application of Khan) v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 00384 (IAC), 3 May 2018	Evidence	Where there has been a significant difference between the income claimed in a previous application for leave to remain and the income declared to HMRC, the Secretary of State is entitled to draw an inference that the Applicant has been deceitful or dishonest and therefore he should be refused ILR within paragraph 322(5) of the Immigration Rules. Such an inference could be expected where there is no plausible explanation for the discrepancy.
MS (Art 1C(5) – Mogadishu) Somalia [2018] UKUT 00196 (IAC), 22 March 2018	Immigration and Asylum generally	The Secretary of State is not entitled to cease a person's refugee status pursuant to Article 1C(5) of the Refugee Convention solely on the basis of a change in circumstances in one part of the country of proposed return.
PK (Draft evader; punishment; minimum severity) Ukraine [2018] UKUT 00241 (IAC), 5 May 2018	Immigration and Asylum generally	A legal requirement for conscription and a mechanism for the prosecution or punishment of a person refusing to undertake military service is not sufficient to entitle that person to refugee protection if there is no real risk that the person will be subjected to prosecution or punishment.
Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 336 (IAC), 19 September 2018	Immigration and Asylum generally	Before concluding that submissions regarding the positive contribution made by an individual fall to be taken into account, for the purposes of Article 8(2) of the ECHR, as diminishing the importance to be given to immigration controls, a judge must be satisfied that the contribution is very significant. The fact that an application for permission to appeal involves the assertion that a person's removal from the United Kingdom would violate his or her human rights does not, without more, engage that part of the second appeal criteria, which allows permission to appeal (or permission for a 'Cart' judicial review) to be granted, on the basis that removal constitutes a 'compelling reason' for the appeal to be heard.
PA (protection claim: respondent's enquiries; bias) Bangladesh [2018] UKUT 337 (IAC), 21 September 2018	Immigration and Asylum generally	There is no general legal requirement on the Secretary of State to obtain the consent of an applicant for international protection before making an inquiry about the applicant in the applicant's country of origin. The United Kingdom's actual legal obligations in this area are contained in Article 22 of the Procedures Directive (2005/85/EC), as given effect in paragraph 339IA of the Immigration Rules. An allegation of bias against a judge is a serious matter and the appellate court or tribunal will expect all proper steps to be taken by the person making it, in the light of a response from the judge.

Case	Subject	Commentary
R (on the application of Prathipati) v Secretary of State for the Home Department (discretion – exceptional circumstances) [2018] UKUT 00427 (IAC), 26 October 2018	Immigration and Asylum generally	The Secretary of State has a discretion to allow an application for leave to remain to succeed even if made outside the 28-day period of grace referred to in paragraph 319C(j) of the Immigration Rules, provided that supporting evidence of exceptional circumstances is produced at the same time as making the application. The temporal requirement must, to avoid unfairness and absurdity, be read as subject to the caveat that it cannot rigidly be applied if ignorance of what constitutes the exceptional circumstances makes it impossible to comply with that requirement.
R (on the application of FB and another) v Secretary of State for the Home Department (removal window policy) [2018] UKUT 00428 (IAC), 1 November 2018	Immigration and Asylum generally	The Secretary of State's "removal window" policy, as set out in Chapter 60 of the General Instructions of 21 May 2018, was, as a general matter, compatible with access to justice but was legally deficient, both in its treatment of cases where a removal window is deferred and in the lack of information regarding place and route of removal.
AMA (Article 1C (5) – proviso – internal relocation) Somalia [2019] UKUT 00011 (IAC), 12 November 2018	Immigration and Asylum generally	The compelling reasons proviso in article 1C (5) of the 1951 Refugee Convention, as amended, applies in the UK only to refugees under article 1A (1) of the Convention. Changes in a refugee's country of origin affecting only part of the country may, in principle, lead to cessation of refugee status, albeit it is difficult to see how in practice protection could be said to be sufficiently fundamental and durable in such circumstances.
R (on the application of Ahmed) v Secretary of State for the Home Department (para 276B – ten years lawful residence) [2019] UKUT 00010 (IAC), 23 October 2018	Immigration and Asylum generally	If there is no ten years continuous, lawful residence for the purposes of para 276B(i)(a) of the Immigration Rules, an applicant cannot rely on para 276B(v) to argue that any period of overstaying (for the purposes of 276B(i)(a)) should be disregarded. Para 276B(v) involves a freestanding and additional requirement over and above 276B(i)(a).
OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC), 16 January 2019	Immigration and Asylum generally	In a human rights appeal under section 82(1)(b) of the 2002 Act, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied. The fact that P completes ten years' continuous lawful residence during the course of P's human rights appeal will generally constitute a "new matter" within the meaning of section 85 of the 2002 Act.

Case	Subject	Commentary
AK and IK (S.85 NIAA 2002 – new matters) Turkey [2019] UKUT 00067 (IAC), 1 February 2019	Immigration and Asylum generally	If an appellant relies upon criteria that relate to a different category of the Immigration Rules to make good his Article 8 claim from that relied upon in his application for LTR on human rights grounds or in his s.120 statement such that a new judgment falls to be made as to whether or not he satisfies the Immigration Rules, this constitutes a "new matter" within the meaning of s.85(6) of the Nationality, Immigration and Asylum Act 2002 which requires the Secretary of State's consent even if the facts specific to his own case (for example, as to accommodation, maintenance etc) remain the same.
AJ (s 94B: Kiarie and Byndloss questions) Nigeria [2018] UKUT 00115 (IAC), 28 February 2018	Practice and Procedure	In the light of *Kiarie and Byndloss v Secretary of State for the Home Department* [2017] UKSC 42, the First-tier Tribunal should adopt a step-by-step approach, in order to determine whether an appeal certified under section 94B of the Nationality, Immigration and Asylum Act 2002 can be determined without the appellant being physically present in the United Kingdom.
Williams (scope of "liable to deportation") [2018] UKUT 00116 (IAC), 2 March 2018	Practice and Procedure	A person who has been deported under a deportation order that remains in force is a person who is liable to deportation within the meaning of section 3 of the Immigration Act 1971 and is therefore unable to bring himself within section 117B(6) of the Nationality, Immigration and Asylum Act 2002. By the same token, the fact that such a person has been deported does not mean he or she is thereby able to avoid the application of the considerations listed in section 117C.
Yussuf (meaning of "liable to deportation") [2018] UKUT 00117 (IAC), 9 March 2018	Practice and Procedure	Section 32 of the UK Borders Act 2007 impliedly amends section 3(5)(a) of the Immigration Act 1971 by (a) removing the function of the Secretary of State of deeming a person's deportation to be conducive to the public good, in the case of a foreign criminal within the meaning of the 2007 Act; and (b) substituting an automatic "deeming" provision in such a case. The judgments of the Supreme Court in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 make this plain. To that extent *Ali (section 6 – liable to deportation) Pakistan* [2011] UKUT 00250 (IAC) is wrongly decided.
R (on the application of Watson) v (1) Secretary of State for the Home Department and (2) First-tier Tribunal (Extant appeal: s94B challenge: forum) [2018] UKUT 00165 (IAC), 5 April 2018	Practice and Procedure	Where an appellant's appeal has been certified under section 94B of the Nationality, Immigration and Asylum Act 2002 and the appellant has been removed from the United Kingdom pursuant to that certificate, the First-tier Tribunal is the forum for determining whether, in all the circumstances, the appeal can lawfully be decided, without the appellant being physically present in the United Kingdom. The First-tier Tribunal is under a continuing duty to monitor the position, to ensure that the right to a fair hearing is not abrogated. In doing so, the First-tier Tribunal can be expected to apply the step-by-step approach identified in *AJ (s 94B: Kiarie and Byndloss questions) Nigeria* [2018] UKUT 00115 (IAC).

Case	Subject	Commentary
Andell (foreign criminal – para 398) [2018] UKUT 00198 (IAC), 4 May 2018	Practice and Procedure	Paragraph 398 of the Rules includes not only foreign criminals as defined in the 2002 Act and the 2007 Act but also other individuals who in the view of the Secretary of State, are liable to deportation because of their criminality and/or their offending behaviour.
Tirabi (Deportation: "lawfully resident": s.5(1)) [2018] UKUT 00199 (IAC), 9 May 2018	Practice and Procedure	For the purposes of applying to para 399A of the Rules and s. 117C of the 2002 Act a definition of "lawfully resident" analogous to that in para 276A (as mandated by *SC (Jamaica)*), the invalidation provisions of s. 5(1) of the 1971 Act are to be ignored.
R (on the application of KA and another) v Secretary of State for the Home Department (ending of Kumar arrangements) [2018] UKUT 00201 (IAC), 13 June 2018	Practice and Procedure	(1) In *R (on the application of Kumar) v Secretary of State for the Home Department (acknowledgment of service: tribunal arrangements)* IJR [2014] UKUT 00104 (IAC), the Upper Tribunal stated that it would not generally consider "on the papers" an application for permission to bring immigration judicial review proceedings until after six weeks from the filing of that application. As a result, it was not considered necessary for the Secretary of State to file an application for an extension of the 21 day time limit for filing an acknowledgment of service, as provided in rule 29(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. (2) The arrangements described in *Kumar* will not have effect in respect of any application for permission to bring judicial review proceedings which is filed with the Upper Tribunal after 1 January 2019.
Essa (Revocation of protection status appeals) [2018] UKUT 00244 (IAC), 27 June 2018	Practice and Procedure	An appeal under s 82(1)(c) is an appeal against revocation of the basis upon which the leave referred to in s 82(2)(c) was granted. The only allowable ground under s 84(3)(a) is by reference to the Refugee Convention, and by s 86(2)(a) that matter must therefore be determined in all cases. Where s 72(10) applies, however, the appeal must be dismissed even if the ground is made out.
AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC), 5 July 2018	Practice and Procedure	Before it has re-made the decision in an appeal, pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal has jurisdiction to depart from, or vary, its decision that the First-tier Tribunal made an error of law, such that the First-tier Tribunal's decision should be set aside under section 12(2)(a).

Case	Subject	Commentary
R (on the application of Shrestha and others) v Secretary of State for the Home Department (Hamid jurisdiction: nature and purposes) [2018] UKUT 00242 (IAC), 20 June 2018	Practice and Procedure	The "Hamid" jurisdiction of the High Court and the Upper Tribunal exists to ensure that lawyers conduct themselves according to proper standards of behaviour. The bringing of hopeless applications for judicial review wastes judicial time and risks delaying the prompt examination of other cases, which may have merit. In many cases, the only tangible result of such an application is that the applicant incurs significant expense. Solicitors who practise in the difficult and demanding area of immigration law and who are properly discharging their professional responsibilities can only safely enjoy the recognition they deserve if the public is confident appropriate steps are being taken to deal with the minority who are failing in their professional responsibilities.
R (on the application of the Secretary of State for the Home Department) v First-tier Tribunal (Immigration and Asylum Chamber) (Litigation Privilege; First-tier Tribunal) [2018] UKUT 00243 (IAC), 22 June 2018	Practice and Procedure	Whether or not to entertain an application for judicial review is a matter that falls within the Upper Tribunal's discretion. Where there is an alternative remedy it would only be in the rarest of cases that the Upper Tribunal would consider exercising its jurisdiction to grant permission to bring judicial review proceedings. Litigation privilege attaches to communications between a client and/or his lawyer and third parties for the purpose of litigation. It entitles the privileged party not to disclose information even if it is relevant to the issues to be determined in a court or tribunal. Proceedings in the First-tier Tribunal are sufficiently adversarial in nature to give rise to litigation privilege. The fact that human rights issues are in play does not mean litigation privilege has to be balanced against those issues.
Mansur (Immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 00274 (IAC), 16 July 2018	Practice and Procedure	Poor professional immigration advice or other services given to P cannot give P a stronger form of protected private or family life than P would otherwise have. The correct way of approaching the matter is to ask whether the poor advice etc that P has received constitutes a reason to qualify the weight to be placed on the public interest in maintaining firm and effective immigration control. It will be only in a rare case that an adviser's failings will constitute such a reason.
Ortega (remittal; bias; parental relationship) [2018] UKUT 298 (IAC), 6 August 2018	Practice and Procedure	In an Upper Tribunal error of law decision that remits an appeal to the First-Tier Tribunal, a clear indication should be given if the appeal is to be re-made de novo. If that is not the case, the error of law decision should set out clearly the issues which require re-making and any preserved findings of particular relevance to the re-making of the appeal.

Case	Subject	Commentary
ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 335 (IAC), 6 September 2018	Practice and Procedure	Following the amendment to s 82 of the 2002 Act, effective from 20 October 2014, a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities), is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in *AS (Afghanistan) v SSHD* [2013] EWCA Civ 1469 and *SSHD v MS (Pakistan)* [2018] EWCA Civ 594.
Oksuzoglu (EEA appeal – "new matter") [2018] UKUT 00385 (IAC), 17 October 2018	Practice and Procedure	By virtue of schedule 2(1) of the Immigration (EEA) Regulations 2016 ('the 2016 Regs') a "new matter" in section 85(6) of the Nationality, Immigration and Asylum Act 2002 includes not only a ground of appeal of a kind listed in section 84 but also an EEA ground of appeal.
Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC), 13 November 2018	Practice and Procedure	It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.
PAA (First-tier Tribunal: Oral decision – written reasons) Iraq [2019] UKUT 00013 (IAC), 10 January 2019	Practice and Procedure	In accordance with rule 29(1) the First-tier Tribunal may give a decision orally at a hearing. If it does so, that is the decision on the appeal, and the effect of *Patel v SSHD* [2015] EWCA Civ 1175 is that there is no power to revise or revoke the decision later. The requirement to give written reasons does not mean that reasons are required in order to perfect the decision.

First-tier Tribunal Tax Chamber

Citation	Parties	Jurisdiction	Commentary
[2018] UKFTT 69 (TC)	*Christa Ackroyd Media Ltd v HMRC*	Tax – income tax	Whether payments by the BBC to the personal services company of a regional presenter were caught by the intermediaries legislation (IR35) such that the personal services company was bound to account for PAYE and national insurance contributions. The Tribunal dismissed the appeal. An appeal is due to be heard by the Upper Tribunal in July 2019.
[2018] UKFTT 181 (TC)	*Devon Waste Management Ltd & Others v HMRC*	Tax - landfill tax	This case concerned the taxability of the layer of (generally) ordinary household refuse usually deposited at the base, up the sides and on top of each cell in a landfill site with a view to limiting the risk of damage to the cell lining system (with consequential risk of environmental damage). The issue was whether the landfill site operators disposed of this material "as waste", i.e. "with the intention of discarding it". The amount at issue in this and related appeals apparently exceeded £100 million. It is now on appeal to the Upper Tribunal.
[2018] UKFTT 200 (TC)	*McCormack and others v HMRC*	Tax – income tax – pension schemes	A 'pension liberation scheme' appeal in which HMRC had issued discovery assessments in respect of an 'unauthorised payments charge' and 'unauthorised payments surcharge' under ss 208 and 209 of the Finance Act 2004. The taxpayers, who had transferred money from registered pensions schemes to another pension scheme ("SEPS") claimed that they had been taken in by the assurances given by an adviser of the SEPS of the high returns that could be expected if they transferred their pensions to the SEPS. They contended that, in all the circumstances of the case, it would not be just and reasonable for them to be liable to the unauthorised payments surcharge in respect of their payments. The Tribunal held that an unauthorised payments surcharge was not a penalty but a measure to recoup tax relief on pension contributions. As such, the circumstances in which it would not be just and reasonable to impose an unauthorised payments surcharge were limited. Further, it was not necessary for there to be any dishonesty or negligence on the part of a taxpayer and the fact that the taxpayer had taken legal, accounting or tax advice was not sufficient of itself to make it unjust or unreasonable for the surcharge to be imposed. The taxpayers received and had the benefit of the funds paid to them. Having regard to all the circumstances of the case, the Tribunal upheld the unauthorised payments surcharge.

Citation	Parties	Jurisdiction	Commentary
[2018] UKFTT 405 [2018] UKFTT 406	*Rank Group v HMRC* *Done Brothers (Cash Betting) Ltd and others v HMRC*	Tax – value added tax	These appeals related to different supplies and accounting periods but were linked by a common theme and were heard by the same panel. In both cases, the issue was whether the different VAT liability of supplies of gambling made through fixed odds betting terminals ("FOBTs") and supplies made by other methods, eg by slot machines or on line or at tables in casinos breached the EU principle of fiscal neutrality- whether other slot machines and fixed odds betting terminals were similar. The total amount at stake in these appeals and related appeals is said to be several billion pounds. The Tribunal allowed the appeals. HMRC has appealed to the Upper Tribunal.
[2018] UKFTT 240 (TC)	*Pettigrew v HMRC*	Tax – income tax	The dispute concerned the tax treatment of out-of-court payments made by the Ministry of Justice to fee-paid Tribunal Judges, to settle claims for unfair treatment in relation to pensions and other terms of appointment (pursuant to the O'Brien and Miller litigation). The Tribunal concluded that the payments constituted taxable emoluments of employment for income tax purposes, rather than tax-free compensation.
[2018] UKFTT 241 (TC)	*Healthspan Ltd v HMRC*	Tax – value added tax	The appellant stored its goods in the Netherlands and supplied them to UK customers. The VAT charged on these "distance sales" depended on whether the goods were delivered by, or on behalf of, the appellant. The relevant legal provision has been considered by the EU VAT Committee, but there has been no clarity as to its meaning. The First-tier Tribunal made detailed findings of fact and made a reference to the CJEU. The amount of tax involved is over £27m, and there are many similar cases.
[2018] UKFTT 267 (TC)	*Sandpiper Car Hire Ltd v HMRC*	Tax – value added tax - penalties	The director of the appellant, a small taxi company, was seriously ill with Menière's disease, a degenerative disorder causing significant hearing loss; he was then hospitalised following a diagnosis of cancer which was expected to be terminal. He entrusted the business to a manager who committed fraud. The company's VAT was paid late; HMRC did not accept there was a reasonable excuse and repeatedly told the director to communicate by phone. The First-tier Tribunal made special arrangements to hear the case, taking into account the director's hearing loss; it allowed the appeal and drew HMRC's attention to its Public Sector Equality Duties.

Citation	Parties	Jurisdiction	Commentary
[2018] UKFTT 292 (TC)	*Duncan Hansard v HMRC*	Tax – income tax - penalties	The appellant failed to submit his tax return for over 12 months after the deadline. Under paragraphs 5 and 6 Schedule 55 FA 2009, the penalty for failures after 6 and 12 months is a tax-geared one, subject to a minimum of £300. Shortly after the 6 month and 12 month point, HMRC's computer system issued automatic penalties of £300. After the return was delivered, further penalties were issued equal to 5% of the tax shown in the return less £300. Paragraph 24 Schedule 55 requires that where a return has not been filed before a tax geared penalty is assessed HMRC is required to estimate the penalty to the best of their information and belief. The tribunal held that they had not done so because a £300 penalty is always issued automatically by the computer, and so the £300 penalties were invalid. The tribunal also held that the tax geared penalties issued were valid but had to be taken as only charging the excess of the tax geared amount over £300.
[2018] UKFTT 301 (TC)	*John Fraser v HMRC*	Tax – income tax – accelerated payment notice	Jurisdiction of the First-tier Tribunal to consider a challenge to the validity of an accelerated payment notice on an appeal against a penalty for non-payment. An appeal against the decision is due to be heard by the Upper Tribunal in January 2020.
[2018] UKFTT 369 (TC)	*Pertemps Limited v HMRC*	Tax – value added tax	The Tribunal decided that the operation of an employer's salary sacrifice scheme which provided travel and subsistence payments to participating employees did not involve a taxable supply for VAT purposes. The provision of the scheme involved a supply of services for a consideration within article 2 of the Principal VAT Directive, but the supply was not an "economic activity" for the purposes of article 9. This case is under appeal to the Upper Tribunal.
[2018] UKFTT 416 (TC)	*SSE Generation Limited v HMRC*	Tax - corporation tax	A case about capital allowances on the Glendoe Hydroelectric Scheme in Scotland. The dispute was about the extent to which the various elements of the scheme qualified for allowances as machinery or plant. The elements included the various water intakes up in the mountains above Loch Ness, the network of conduits feeding the captured water into the main reservoir (though the reservoir itself and associated dam were agreed to be non-qualifying), the 5km long subterranean headrace which fed the water from the reservoir into the underground generating chamber, the chamber itself and the network of other tunnels, conduits and ancillary structures. The disputed capital expenditure in respect of which capital allowances were claimed was £227 million.

Citation	Parties	Jurisdiction	Commentary
[2018] UKFTT 478 (TC)	*Hastings Insurance Services Ltd v HMRC*	Tax - procedure	The Tribunal granted an application by a third party for disclosure of the statement of case and skeleton arguments in the appeal after decision had been issued. The applicant was an accounting firm and they contended that the documents were relevant to the arguments in another case in which they acted. The Tribunal considered the Court of Appeal's decision in *Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Group)* [2018] EWCA Civ 1795 and granted the application. This is the first decision on this issue in the Tax Chamber.
[2018] UKFTT 502 (TC)	*DAC Beachcroft LLP v HMRC*	Tax - information notice - legal privilege	The Tribunal considered the extent to which legal professional privilege applied to all the documents on a solicitor's conveyancing file, in the context of a Schedule 36 notice requiring production of the file to HMRC.
[2018] UKFTT 509 (TC)	*George v HMRC*	Tax – capital gains tax	The appeal related to Mr George's entitlement to £1.8m entrepreneur's relief from capital gains tax. For someone to qualify for the relief, they must hold a minimum percentage of voting shares. Mr George held the required percentage of shares, but his shares were non-voting. He had reached an agreement with some of the other shareholders to enfranchise his shares, but this agreement was not implemented in time for him to be able to claim the relief. The Tribunal held that the mere existence of the agreement was not sufficient to entitle Mr George to the relief - the agreement had to have been implemented, and the voting rights actually granted. The equitable maxim "equity looks on that as done which ought to be done" was held not to be applicable.
[2018] UKFTT 535 (TC)	*The Serpentine Trust Ltd v HMRC*	Tax – value added tax	At the end of an Alternative Dispute Resolution process, the parties signed an agreement. HMRC subsequently sought to argue that this agreement was *ultra vires*. because it related to the future. The Tribunal reviewed and reconciled the case law on "forward agreements", distinguishing those which were *intra vires* from those which were *ultra vires*. It found that this agreement was *ultra vires* because it prevented the application of a taxing provision. The appellant is now taking judicial review on the grounds that it had a legitimate expectation that it could rely on the forward agreement.

Citation	Parties	Jurisdiction	Commentary
[2018] UKFTT 617 (TC)	*Arron Banks v HMRC*	Tax – inheritance tax	The Tribunal decided that the requirement in the Inheritance Tax Act 1984 s.24(2) for a political party to be represented in the House of Commons before donations to it were exempt from inheritance tax discriminated against a taxpayer who made donations to a party with significant support but insufficient Parliamentary representation on the grounds of his political opinion (contrary to the ECHR art.14 and the First Protocol art.1). However, the Tribunal dismissed the appeal on the basis that, while other means of demonstrating significant public support were available which would not have a disproportionate effect, the choice of those less restrictive means was a matter for Parliament and not for the Tribunal. [Under appeal to the Upper Tribunal.]
[2018] UKFTT 746 (TC)	*W Resources PLC v HMRC*	Tax – value added tax	The First-tier Tribunal considered whether a holding company which incurred various expenses and resolved to cross-charge those expenses to one of its subsidiaries as long as the subsidiary had the revenues to discharge the expenses was thereby carrying on an economic activity and making supplies for a consideration. It was held that the holding company was making supplies for a consideration and carrying on an economic activity but only after the contingency was satisfied and not before.
[2019] UKFTT 63 (TC)	*HMRC v Curzon Capital*	Tax – income tax - DOTAS	In which HMRC were seeking an order that a particular set of tax arrangements were DOTAS arrangements. At least £113 million was known to have been put through the scheme in question. HMRC lost, because their application was made against an administrator of the arrangements who was not a "promoter".
[2019] UKFTT 67 (TC)	*Eat Ltd v HMRC*	Tax – value added tax	Although most food is subject to zero-rating, "hot" take-away food is liable to VAT at the standard rate. Eat Ltd appealed against decisions by HMRC (relating to £1.2m of VAT) that their breakfast muffins and grilled filled ciabatta rolls were standard rated, on the grounds that these products were heated for the purpose of being served "fresh", as the bread was only 90 per cent baked and needed to be finished in the grill. The Tribunal held that as it was the common intention of Eat and its customer that the products were heated for the purpose of being consumed whilst still warm, these products were liable to standard rated VAT.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 72 (TC)	*Paul Harrison, Lee Solway and Harrison Solway Logistics Ltd v HMRC*	Tax – income tax	The appellant company leased expensive cars from various suppliers. It allowed its directors, the other two appellants, to use the cars and in return the directors' loan accounts were debited with the amount paid by the company so that their debt due to the company increased. The tribunal held that on the pre-2016 law, and in accordance with *HMRC v Apollo Fuels Ltd* [2016] EWCA Civ 157, there was no benefit taxable on the directors.
[2019] UKFTT 86 (TC)	*Pokorowski v HMRC*	Tax – income tax - penalties	Mr Pokorowski appealed against £1600 of penalties for failing to submit his self-assessment tax return on time. Although he was homeless at material times, HMRC submitted that he was under a duty to notify HMRC of any changes in his address, notwithstanding his homelessness. The Tribunal held that the fact that he was homeless amounted to a "reasonable excuse" for failure to file a self-assessment tax return by the due date, and that the penalties were therefore not payable.
[2019] UKFTT 177 (TC)	*Neville Andrew v HMRC*	Tax – income tax	The Tribunal decided that a tax avoidance scheme involving the grant of call options over gilt strips in favour of a family trust and a sale of the strips to a third party bank did not create a loss which was capable of being set against the taxpayers other income (under Finance Act 1996 Schedule 13 para 14A), but that the payment by the bank to the trust to cancel the option was not income for tax purposes and so was not assessable on the taxpayer (under Income Tax Act 2007 s.660A or s.739).
[2019] UKFTT 207 (TC)	*Gallaher Limited v HMRC*	Tax – corporation tax - capital gains	The Tribunal considered whether the UK legislation which limits the deferral of tax on gains realised on intra-group disposals to disposals to transferees within the UK tax net was contrary to the EU freedom of establishment insofar as (i) a disposal to a Dutch resident parent company and (ii) a disposal to a Swiss resident common subsidiary of that Dutch resident parent company were precluded from qualifying for that deferral. It was held that the exclusion of (i) was contrary to the freedom of establishment, with the result that the exclusion should be disapplied in that case but that the exclusion of (ii) did not amount to a breach of the freedom of establishment.

Citation	Parties	Jurisdiction	Commentary
[2019] UKFTT 227 (TC)	*Hull City AFC (Tigers) Ltd v HMRC*	Tax – income tax – employed earnings	Whether payments in respect of the overseas image rights of a Premier League footballer were in reality earnings and therefore subject to PAYE and national insurance. The Tribunal concluded that the playing contract with the player and the image rights agreement, under which the club paid an offshore company for rights to exploit the player's overseas image rights, were an overall package which the player required and the club was willing to pay for him to sign for the club. The Tribunal held that the payments to the company were a reward for the player's services as a footballer and formed part of his earnings. The Tribunal dismissed the appeal.