SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

2021

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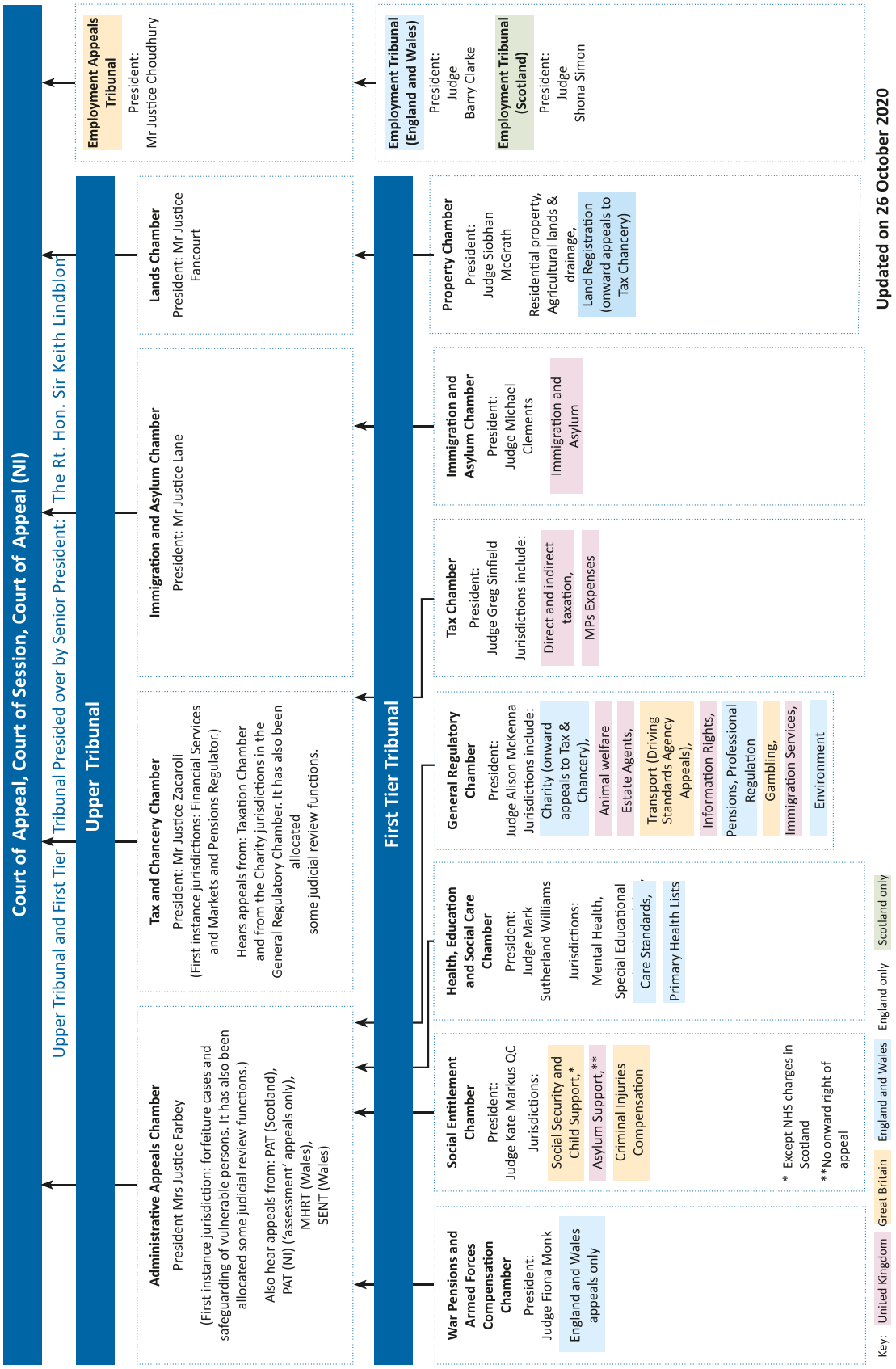

Introduction

By the Senior President of Tribunals
The Rt Hon Sir Keith Lindblom

This is the first annual report I have presented as Senior President of Tribunals, following my appointment in September 2020. Though I knew the role of Senior President would bring with it some welcome challenges, I had not imagined that I would be taking up office during a global pandemic. Dealing with successive lockdowns and the restrictions affecting the justice system in this country has been the most pressing priority for my first year, and this will remain so as we all work to bring about the recovery of both courts and tribunals from the effects of the pandemic. But of course it is not the only priority. I have identified three strategic objectives on which I am going to concentrate as Senior President – the promotion of 'One Judiciary', the imperatives of equality, diversity and inclusion in the tribunals, and the efficient performance of the tribunals system in maintaining access to justice and the rule of law.

Strategic objectives

'One Judiciary'

An ambitious but necessary objective is to achieve greater cohesion and harmony between the courts and tribunals judiciary. Some progress has already been made, but there is still a good deal of work to be done. Although maintaining specialisms and expertise is essential, I do not believe it is helpful, or correct, to think of the judiciary in this country as being divided between 'courts judges' and 'tribunals judges'. Simply, a judge is a judge.

The ambition to build 'One Judiciary' is not new, but it is not an easy task. There are broad considerations to keep in mind – such as the different statutory responsibilities of the Lord Chief Justice and myself as Senior President, the multiplicity of specialised jurisdictions in the tribunals, and the different ways of working between the courts and tribunals judiciary. Perhaps most significant, however, and most difficult, is the persistence of a culture within the judiciary in which tribunal judges and courts judges tend to view themselves as separate and disunited. Overcoming this culture will take time, but the Lord Chief Justice and I are committed to doing it.

The cross-deployment of judges between different jurisdictions in the courts and tribunals will play an important part here. I am delighted that since the publication of the last annual report the 'Flexible Deployment and Assignment Guidance' has been published. This provides the structure for greater cross-deployment, both within the tribunals system and outside it. Encouraging tribunal judges to sit in the courts, and courts judges in the tribunals, will engender a greater understanding of each other's roles and jurisdictions.

In October 2020 the relevant legislation was amended to allow other judges to be deployed into the Employment Tribunals for the first time. The Employment Tribunal (England and Wales) launched an 'expressions of interest' exercise earlier this year to take advantage of this opportunity. I am sure that assigning more judges to this jurisdiction will prove to be a great success, both for the judges involved and for the tribunal itself.

Equality, diversity and inclusion

I have made it clear that a central objective for me in my time as Senior President is to improve equality, diversity and inclusion within the tribunals. The Judicial Diversity Forum recently published its combined statistical report on diversity of the judiciary. The report finds that 50 per cent of tribunal judges were women (as at 1 April 2021), which is seven percentage points higher than in 2014. There has also been an increase in the proportion of Asian and Mixed ethnicity individuals in the overall judiciary, since 2014. I am of course pleased to see these promising signs of progress but there is still work to be done.

To generate some momentum in our efforts to attain this objective, I set up the Diversity Taskforce for the tribunals soon after I became Senior President, in September 2020. This is chaired by Judge Kate Markus QC, now President of the Social Entitlement Chamber. I am grateful to her for all she has done in establishing the taskforce, and also to its members for the energy they have bought to its work. I have been greatly impressed by their dedication.

The Diversity Taskforce was created with the aim of devising and implementing a strategy to strengthen the positive treatment of minority groups within the tribunals judiciary, to tackle discrimination against those groups, and so to enhance the careers and experience of tribunal judges. It seeks to assist us all in the tribunals system to achieve tangible and lasting change. It does not operate in isolation from the 'Diversity and Inclusion Strategy' for the judiciary as a whole but works closely alongside the 'Diversity Committee of the Judges' Council' under Lady Justice Simler, to support what it is doing.

The taskforce includes judiciary drawn from across the tribunals. They bring to its work a wide range of background and experience. And they share a strong commitment to working together, and with judicial colleagues, on the various initiatives the taskforce is pursuing.

The taskforce has its own webpages on the judicial intranet, which provide information, publish articles, and contain a range of resources for diversity and inclusion. Contributions are invited from the tribunal's judiciary, and many are already getting involved.

Members of the taskforce are supporting leadership judges in what they are doing to achieve the aims of the 'Diversity and Inclusion Strategy', suggesting practical ways of fulfilling those aims, and providing information to help them. The taskforce invites responses from the judiciary about the action they are taking, and about best practice. This is an evolving and vital conversation.

Access to justice and the rule of law

I am keen to explore opportunities for the tribunals to improve access to justice and to hasten the resolution of disputes by means other than adjudication by a judge after a lengthy period awaiting a hearing. If we find and act on these opportunities, we shall benefit both our users and the judiciary itself. In doing so, we shall not only improve access to justice but also reinforce the rule of law. We must put in place procedures for bringing disputes to a swift outcome through mediation or arbitration wherever this is appropriate to do so, and ensure that our judges and members are enabled to use their expertise and time in determining only those cases that have a true need for resolution by a judicial decision. In many cases it may be possible for resolution to be reached through an entirely online process. Technology now enables us to do this. We must use it to the full.

I am grateful to Judge Greg Sinfield, President of the First-tier Tribunal's Tax Chamber, who has recently formed the Online Dispute Resolution Working Group to look at the prospects of greater innovation in this area, in the tribunals. I am also grateful to Judge Fiona Monk, Chamber President of the War Pensions and Armed Forces Compensation Chamber, for her work as Chair of the Tribunals' Alternative Dispute Resolution Working Party, and also as a member of the Judicial Alternative Dispute Resolution Liaison Committee, alongside Judge Siobhan McGrath, Chamber President of the Property Chamber, and Regional Employment Judge Lorna Findlay.

COVID-19

No annual report in 2021 would be complete without some reflection on the COVID-19 pandemic and its effects on the tribunals system. The tribunals judiciary has shown itself to be remarkably adaptable and resilient in the face of the COVID-19 crisis. Processes had to be changed overnight as the majority of cases were, out of necessity, dealt with remotely, and judiciary and users alike have had to adapt repeatedly to an ever-changing procedural landscape. We have learned much from the pandemic and will continue to do so as we work with Government towards recovery. Some practices we shall probably retain. Video hearings will no doubt perform a larger role in the tribunals than they did before the pandemic. This, in my view, ought to be welcomed. However, I am also clear in my opinion that face-to-face hearings will never, and should never, be completely replaced by remote methods. There are always going to be cases – indeed, many cases – in which a face-to-face hearing is clearly the best form of hearing, and for several reasons. Judges are responsible for, and will make, the decision, taking into account the interests of justice and the particular circumstances of each case.

The modernisation of the tribunals system

Work continues on projects to reform and modernise the tribunals system, the judiciary working in partnership with Judicial Office and HMCTS to bring about changes that will both improve access to justice and the efficient conduct of proceedings in the tribunals, with advantages for judges, members and users.

The 'Video Hearings Service' is now being used in four chambers and tribunals (First-tier Tax, Property, the General Regulator Chamber and the Employment Tribunals (England and Wales)). The project team is continuing to liaise with chamber and tribunal Presidents, so that an acceptable bespoke service for video hearings is designed and put in place for each jurisdiction, suitable for the types of hearing in that jurisdiction. Further features will be introduced to increase the number of hearings that can take place. The 'Scheduling and Listing' project is also making progress. The Employment Tribunal 'Virtual Region' will make use of the 'List Assist' system for the listing of cases. 'List Assist' is also being used in the First-tier Property Chamber in several hearing centres, enabling them to streamline the scheduling and listing process by removing the need to use numerous spreadsheets. The pilot schemes are providing valuable responses from the judiciary, which will help the further development of these new systems and will accelerate their introduction in the tribunals – which can only be accomplished successfully if judges, members and staff have confidence in them.

Individual chambers also continue to improve their service through their own reform projects. The Social Security and Child Support ('SSCS') jurisdiction has continued to enhance the 'digital journey' for its users, with success. The three main benefit types (Personal Independence Payment, Employment Support Allowance and Universal Credit), which together represent 85% of appeals, are now digitised up to the point at which the case is ready to list for hearing. SSCS is also able to share evidence digitally with the Department for Work and Pensions in cases concerning these benefits. The aim is that by December 2021 there will be a complete 'digital journey' for all appeal types, including any post-hearing action preceding an appeal to the Upper Tribunal. The First-tier Immigration and Asylum Chamber, which already offers a complete 'digital journey' for appeals involving legal representatives, was able to extend this system to out-of-country appeals in March 2021. The Immigration and Asylum Chamber was the first jurisdiction to take up the 'Work Allocations' common component. This was made available to tribunal caseworkers and legal officers in May 2021, making it possible for cases to be channelled automatically to the right team or person. It is to be extended to judges in both the Immigration and Asylum Chamber and SSCS in October 2021.

Tribunals Reform

In 2018 and 2019 as Vice-President of Tribunals and at the invitation of the Senior President, I chaired two working parties to consider and recommend reforms within the tribunals. All the recommendations arising from the working parties were accepted by the Tribunals Judicial Executive Board. Work has now begun to implement them. Judge Mark Sutherland Williams, Chamber President of the Health, Education and Social Care Chamber, is leading this project, and I am grateful to him for all that he has done so far.

Governance

On taking up appointment as Senior President, I introduced two separate cabinets to fortify governance in the tribunals – the First-tier Tribunal and Employment Tribunals Cabinet and the Upper Tribunal and Employment Appeals Tribunal Cabinet. These two cabinets act in support of the Tribunals Judicial Executive Board, whose place remains at the heart of administration of the tribunals. They meet regularly, usually each month. At their meetings they address a number of standing items, including training, diversity, tribunals reform and the modernisation programme, as well as any current topics on which discussion or a decision is required.

The cabinets have been, I think, an invaluable addition to the governance of the tribunals, providing a forum for more detailed and more frequent discussion of the matters affecting the day-to-day running of the tribunals. I am grateful to the chamber and tribunal Presidents for their lively and constructive contribution to that discussion.

Appointments and retirements

During the last year there have been retirements. We are fortunate to have worked alongside them and we wish them well in the future.

Alison McKenna has decided to retire from her role as President of the General Regulatory Chamber. I am extremely grateful to Alison for all that she has contributed to tribunals which has included a period as President of the War Pensions and Armed Forces Compensation Chamber and more recently as the President of the General Regulatory Chamber. Alison began her judicial leadership career as the President of the Charity Tribunal shortly before it became part of the unified structure in 2008 and has sat also in the Tax Chamber, in the Mental Health jurisdiction and as an Upper Tribunal Judge. Judge Mark O'Connor has ably led the General Regulatory Chamber in Alison's absence and I would like to extend my thanks and appreciation to him in this regard.

Libby Arfon-Jones formally retired from judicial office in July. I would like to thank Libby for her immense contribution as the Lead judge on judicial welfare. She has supported a great many tribunal judges in her time in this role. She has also made an invaluable contribution to the discussions at the Tribunals Judicial Executive Board as the lead judge on matters pertaining to Wales. I thank her and wish her a long and fulfilling retirement.

There have been new appointments too. Following a period as Acting President of the War Pensions and Armed Forces Compensation Chamber, Kate Markus QC was appointed as the President of the Social Entitlement Chamber following a JAC competition. I offer my congratulations to Kate and my thanks to Regional Tribunal Judge Mary Clarke for acting as President following the retirement of Judge John Aitken. Mary took over on the most challenging of times at the start of the pandemic and ably led the chamber until the substantive appointment could be made.

We also welcome and congratulate Judge Fiona Monk on her appointment as the President of War Pensions and Armed Forces Compensation Chamber also following a JAC competition.

Whilst writing of appointments I would mention that Lord Stephen Woolman was appointed as the President of Scottish Tribunals in succession to Lady Anne Smith. We welcome Lord Woolman who has already attended several meetings of the Tribunals Judicial Executive Board to contribute on the devolved tribunals in Scotland. I am pleased also to report that the Lord Chief Justice has agreed the extend the appointment by a further year of Sir Wyn Williams as President of Tribunals in Wales.

On the matter of appointments, both Peter Lane and Tony Zacaroli have kindly agreed to continue for a further year as Presidents of the Immigration and Asylum Chamber and of the Tax and Chancery Chamber (both of the Upper Tribunal) respectively. Their continued service is very much appreciated.

Conclusion

Finally, I want to thank all the tribunals judiciary and administrative staff for their extraordinary hard work and good humour throughout the COVID-19 pandemic. This has been a uniquely difficult year for us all. But your tireless commitment to sustaining the rule of law and the independence of the judiciary in the tribunals has ensured that justice, and access to justice, have been sustained. It has been a truly heroic effort.

The Rt Hon Sir Keith Lindblom

Annex A – Upper Tribunal

Administrative Appeals Chamber

President: Dame Judith Farbey

The jurisdictional landscape

The Upper Tribunal (Administrative Appeals Chamber) ('UTAAC') decides cases in a range of areas of public and administrative law. The greatest volume of cases this year remained appeals on points of law from decisions of the First-tier Tribunal (Social Entitlement Chamber) ('F-tT') relating to benefits administered by the Department for Work and Pensions and HM Revenue and Customs.'

Many social security appeals concern either employment and support allowance or personal independence payment. These cases have continued to provide a rich source of procedural and other fairness issues. *CH (by TH) v SSWP (PIP)* [2020] UKUT 70 (AAC) concerned the Secretary of State's policy for ensuring that medical evidence used when a claimant was last awarded disability living allowance is considered on a claim for a personal independence payment (the latter benefit having replaced the former for most claimants) and the F-tT's role in verifying its application. *SM v SSWP* (II) [2020] UKUT 287 (AAC) examined the circumstances in which, in the context of an inquisitorial jurisdiction, a mistake as to fact might translate into an error of law and whether, with respect to new evidence, the Ladd v Marshall principles ought to be applied flexibly. As to some other decisions of importance concerning these benefits, the meaning of 'basic written information', 'simple budgeting decision' and 'complex budgeting decision' for the purposes of entitlement to a personal independence payment received consideration in *SE v SSWP (PIP)* [2021] UKUT 1 (AAC). RP v SSWP (ESA) [2020] UKUT 148 (AAC) and *MR v SSWP (ESA)* [2020] UKUT 210 (AAC) dealt with aspects of the Secretary of State's duty to provide accurate information as to previous adjudication history and the nature of available work-related activity such that F-tTs were in a position properly to assess entitlement.

There has been a small flow of universal credit appeals which is now gathering momentum. The administration of this benefit makes very extensive use of online procedures. In *GDC v SSWP (UC)* [2020] 108 (AAC), the workings of the online claims system were evaluated in the context of disagreement as to whether the date of claim was the date at which a claimant had commenced the online process or whether it was when a completed form had been sent by the pressing of a 'submit' button. *PP v SSWP (UC)* [2020] UKUT 109 (AAC) assessed whether an electronic notification informing a claimant that his case had been 'closed' constituted an appealable decision.

Turning to cases which have a European dimension or a human rights aspect, in *HK v SSWP (PC)* [2020] UKUT 73 (AAC), it was decided that the line of authority in European Union law that included the case of C-370/90 Surinder Singh precluded a requirement that a British citizen who had worked in an EU member State and then returned, with a non-British family member to the UK, had to be a 'qualified person' within regulation 6 of the Immigration (European Economic Area) Regulations 2016 following his return, if the family member was to derive a right of residence. In *CL v SSWP* [2020] UKUT 146 (AAC) it was decided that a claimant who had been 'living in' the European Union common travel area for more than three months such as to trigger potential entitlement to jobseekers' allowance did not have to show habitual residence because 'living in' was to be given its ordinary rather than some form of modified meaning. In *RA v SSWP (BB)* [2020] UKUT 165 (AAC) it had to be decided whether the word 'spouse' in section 39A of the Social Security (Contributions and Benefits) Act 1992 could include someone who was living with a partner having undergone a religious marriage ceremony which did not satisfy the formal requirements of the Marriage Act 1949, which was not a foreign marriage recognised by English law and where the presumption of marriage did not apply. It was concluded that Parliament had expressly and intentionally provided a benefit to those who are married as a matter of English law and that it was not possible or permissible to read the legislation in any other way. To do so would cross the line between the interpretative function of the courts and the matters of policy that are democratically entrusted to Parliament.

The UTAAC deals with appeals from most of the varied jurisdictions of the General Regulatory Chamber (GRC), with the most resource intensive being in the arena of information rights. This year has been no different. As to the more significant of such cases, in *Information Commissioner's Office v Poplar Housing and Regeneration Community Association and People's Information Centre* [2020] UKUT 182 (AAC) the Upper Tribunal considered the correct interpretation of article 2(2)(b) of Directive 2003/4/EC on public access to environmental information, which in turn reflects article 2(2)(b) of the Aarhus Convention, and the question whether the respondent housing association in these proceedings was a public authority within the meaning of that Directive. In *DVLA v Information Commissioner and Williams* [2020] UKUT 334 (AAC) the Upper Tribunal addressed how the exemption in section 31 of the Freedom of Information Act 2000 was to be properly interpreted. In *Moss v the Information Commissioner and the Cabinet Office* [2020] UKUT 242 (AAC) the Upper Tribunal had to ask itself whether the decision of the European Court of Human Rights (ECHR) in *Magyar Helsinki Bizottsag v Hungary* [2016] ECHR 957 applied in domestic law with respect to Article 10(1) of the European Convention on Human Rights or whether it should follow the decision of the Supreme Court in Kennedy v Charity Commission [2014] UKSC 20 as to the scope of that Article. It decided Kennedy was binding.

The Upper Tribunal decides appeals from decisions of the F-tT in the Health and Social Care Chamber. In *AA and BA v A local authority (SEN)* [2021] UKUT 54 (AAC), there was a topical consideration, on an application for permission to appeal, of the difficulties those with a visual impairment might experience in a hearing conducted online. The F-tT was reminded of the need in such circumstances to keep in mind the content of the Practice Direction of 30 October 2008 concerning Child, Vulnerable Adult and Sensitive Witnesses.

In the field of mental health, in *SM v Livewell Southwest CIC* [2020] UKUT 191 (AAC) the Upper Tribunal considered the capacity a patient was required to have in order to make an application to the F-tT. It decided, by a majority, not to depart from previous caselaw to the effect that an appreciation that the F-tT had the power to discharge the patient was required. Detailed guidance was given as to a range of issues which might arise in circumstances where capacity was in doubt.

Disclosure and Barring Service (DBS) appeals are one of the two initial appeal jurisdictions (appeals on fact and law) UTAAC has. In this jurisdiction permission to appeal must be obtained and, if it is, UTAAC judges sit with specialist lay members when hearing such appeals. The number of appeals received in this field has been increasing for some time. In *CD v DBS* [2020] UKUT 219 (AAC) it was recognised that there was a degree of overlap between the remit of the Probation Service and the Disclosure and Barring Service but it was said that, nevertheless, it was primarily for the individual concerned to obtain whatever evidence he/she wished to have considered.

So, in that case, there was no error of law on the part of the Disclosure and Barring Service through its not, on its own initiative, seeking a report from the Probation Service. In *PF v Disclosure and Barring Service* [2020] UKUT 256 (AAC) the proper approach to the Upper Tribunal's mistake of fact jurisdiction in this area was clarified and explained.

UTAAC's other mixed fact and law jurisdiction relates to appeals from decisions taken by Traffic Commissioners. These are regulatory decisions concerning, in large measure, the issuing or otherwise of licenses to goods vehicle operators and public passenger vehicle operators. There is a small but steady flow of such work. The appeals may be heard by a judge sitting alone but more commonly are decided by a Panel consisting of a Judge and one or two specialist members. In *Parker Body Repairs* Ltd T/2020/20 the Upper Tribunal clarified what the licensing regime required of operators who used vehicles in the course of a business to recover other vehicles which had broken down and then return them to their owners.

Wales

Appeals to UTAAC from devolved tribunals within its jurisdiction are rare. The vast majority of hearings in Wales involve challenges to decisions of the F-tT rather than to decisions of Welsh tribunals. The Chamber sits regularly in Wales, normally at the Cardiff Civil Justice Centre though the usual practise has been modified during the period of the coronavirus pandemic.

Scotland

Judge Wright has taken over from Judge Markus QC as lead judge for UTAAC in Scotland. Fee paid judges continue to do much of the work of the Chamber in Scotland.

The transfer to the Scottish Tribunals of appeals concerning devolved benefits has continued but it cannot be said that this process has, as yet, reached such a pace as to affect the work of UTAAC to any significant extent. The work of UTAAC in Scotland will in time transfer into the Scottish system.

Northern Ireland

UTAAC currently has jurisdiction in Northern Ireland to deal with appeals from the F-tT in relation to freedom of information and data protection, certain environmental matters, certain traffic matters, the regulation of estate agents, consumer credit providers, and appeals in Vaccine Damage cases. It also hears appeals from the Pensions Appeal Tribunal in assessment cases.

Two salaried judges sit in Northern Ireland. They combine their UTAAC functions with their roles as Chief Commissioner and Commissioner respectively (the specialised members of the judiciary appointed to hear and determine appeals on points of law from Appeal Tribunals under the Social Security and Child Support legislation in Northern Ireland). Five UTAAC Judges serve as Deputy Commissioners in Northern Ireland and provide assistance with the principal workload or sitting on a Tribunal of Commissioners where an appeal involves a question of law of special difficulty.

SH v Department for Communities (IS) [2020] NICom 30 clarified the approach to be taken to married couples (as opposed to unmarried couples) where there is a dispute as to the fact of cohabitation. In *MS v Department for Communities (JSA)* [2020] NICom 42, it was held that where a tribunal is not satisfied by a claimant's assertion that he has disposed of money such that it remains part of that claimant's capital for assessment purposes, it is not necessary to go on to make a positive finding of fact about where the money is held. It was explained that previous caselaw which had been taken to suggest the opposite had been misunderstood.

People and places

There have been several retirements from the Chamber this year. Upper Tribunal Judge Shelley Lane retired from salaried office on 14 May 2021. Judge Lane was appointed a Social Security and Child Support Commissioner in September 2008 and became a Judge of the Upper Tribunal assigned to the Administrative Appeals Chamber, in November 2008. The following Deputy Upper Tribunal Judges also fully retired from judicial office this year: Judge Andrew Lloyd-Davies, who retired in December 2020, and Judge Douglas May QC, who retired in May 2021. Both were former salaried judges who latterly became Deputy Upper Tribunal Judges in the Chamber. Judge Alison Green retired in March 2021. Judge Green became a Deputy Social Security and Child Support Commissioner in 1995 and since 1998 was a Deputy Upper Tribunal Judge. Judge Robin Purchase QC retired in June 2021. He became a Deputy Upper Tribunal Judge in the Chamber in January 2010 following the creation of the First-tier Tribunal General Regulatory Chamber.

The Chamber also bade farewell to Registrar Arnold James who retired on 31 July 2020 after nearly 25 years as a legal officer/Registrar; and the following fee paid specialist members who retired during the year: Margaret Diamond, George Inch, John Robinson, and Nigel Watson.

The valuable contributions to the Chamber's work of all those who have retired this year, will be greatly missed.

In terms of new appointments, new specialist members were appointed to the Chamber during the year, ten to sit in the Information Rights jurisdiction and ten to sit in the Barring jurisdiction.

In June 2020 two of the Chamber's judges, Judge Christopher Ward and Judge Mark West, were appointed as Deputy High Court Judges. Two of the Chamber's judges became Tribunal Chamber Presidents this year. Both judges retain their appointments to the AAC and continue to sit here. Judge Kate Markus QC, formerly a salaried AAC Judge, was appointed President of the First-tier Tribunal Social Entitlement Chamber from 22 March 2021 and Judge Mark Sutherland Williams, a Deputy Upper Tribunal Judge in the Chamber, was appointed President of the First-tier Tribunal Health, Education and Social Care Chamber from 1 April 2021.

In May 2020, the Chamber was pleased to welcome Jacqueline Fordyce as AAC Registrar based in Scotland. Also in 2020, the Chamber's London office welcomed Emma Ranaweera as Operational Manager and John Booth as Delivery Manager. I would like to express my gratitude to them and to the UTAAC Registrars led by Simon Cockain for their collaborative approach during the difficulties of the pandemic.

Tax and Chancery Chamber

President: Sir Antony Zacaroli

Like all chambers, the work of the tax and chancery chamber of the upper tribunal has been dominated over the last year by the coronavirus pandemic. Given the nature of most of the work (relatively short hearings rarely involving taking evidence from witnesses), following a brief hiatus in March and early April 2020, almost all hearings have gone ahead, but remotely rather than in person. The one exception is financial services cases, which tend to be longer and do involve taking evidence. Longer cases that should have been heard during 2020 had to be postponed for a variety of reasons including the difficulties of self-represented litigants participating in a remote or a hybrid hearing.

The hiatus in the hearing of tax cases at the beginning of the pandemic was caused by the fact that the clerking and administrative staff, who are essential to the listing and hearing of cases, were unable to access their offices and there was not enough computer equipment to go round to enable proper remote working.

The importance of the exceptional commitment and vital work of the staff over the past year cannot be overstated. In particularly stressful circumstances, for much of the time they have followed a rota system for coming into the office in order to maintain social distancing and have otherwise worked remotely. They quickly learned the skills necessary for setting up and managing remote hearings, so that the chamber was able to adapt speedily and efficiently to holding cases over Skype for business and then Microsoft Teams. This applies to all those who have worked in the chamber office over the past year, but two deserve particular mention. First, Martine Muir, who until recently was the delivery manager for the chamber (and lands chamber). The pandemic placed very considerable additional burdens on her, but she worked tirelessly and cheerfully to ensure the smooth running of both chambers. This was compounded by the introduction of CE-file to the chamber during this period, which involved numerous meetings and testing programmes, to tailor a version of CE-file to the needs of the chamber. Martine was integral to this process.

Second is the chamber's longest serving member of staff, Dan Leeves, who sadly for us retired in October 2020. During the first few weeks of the pandemic it is fair to say that the work of the chamber would have ground to a halt without him: he was (un)lucky enough to possess for a while the only laptop that enabled remote working, which meant that he was shouldering the entire burden of the chamber's work for a while.

More generally, the experience of remote hearings has been generally positive and, while a return to face to face hearings for substantive appeals and other larger hearings will hopefully become the norm, it is hoped that fully remote hearings will continue to be an option for shorter applications and that technology can be used to ensure participation in hearings taking place in a courtroom by those who cannot physically attend (hybrid hearings).

The past year has seen an influx of seven new High Court judges to the Chancery Division, all of whom are assigned to the chamber. These are, in order of appointment: Mr Justice Miles, Mr Justice Meade, Mr Justice Adam Johnson, Mrs Justice Bacon, Mr Justice Michael Green, Mrs Justice Joanna Smith and Mr Justice Mellor. In addition, Sir Julian Flaux was appointed Chancellor in place of Sir Geoffrey Vos. Two upper tribunal judges with existing tax expertise have been cross assigned to the chamber: Upper Tribunal Judge Rupert Jones and Upper Tribunal Judge Phyllis Ramshaw. A competition will launch later this year for the appointment of up to two further deputy judges to the chamber. Martine Muir was replaced in January 2021 as delivery manager by Susan Brady and Hawa Kebe was appointed team leader in April 2021 (following John Booth's move to acting delivery manager for UTAAC).

Amidst the pandemic, it was easy to miss the formal departure of the UK from the EU at the beginning of this year. As noted in previous reports, a number of new appeal routes have been created for the Tax and Chancery Chamber as a result of Brexit. Cumulatively, these are not expected to lead to a significant increase in workload, but the position is being monitored.

Immigration and Asylum Chamber

President: Sir Peter Lane

Before embarking on a description of the Upper Tribunal Immigration and Asylum Chamber's (UTIAC's) activities over the past year, it is important to acknowledge the human cost of the pandemic to society in general, including those who work for the Chamber, whether in a judicial or administrative capacity, and those who come before it, whether as individual parties and witnesses or as professional representatives. Whatever professional problems we have had pale in relation to the global human tragedy of coronavirus.

In common with the rest of the justice system, the Chamber had quickly to adapt to new ways of working, putting in place in just a few days arrangements for the continued progression of work. This included devising an online process for lodging urgent applications in immigration judicial review. The credit for this lies with the Chamber's judiciary and, particularly, its Lawyers who carried the burden of processing the urgent applications at a time when the activities of the administrative staff were profoundly affected by the first national lockdown.

The presence of administrative staff at Field House was quickly re-established. The dedication to the public service shown by the Chamber's staff during 2020 has been striking and humbling. I have been very fortunate to work alongside an exceptional operations manager in the person of Surrinder Singh. She and her team have overcome every administrative challenge arising from the pandemic, whilst pressing on with the implementation of the Reform Agenda, of which more later.

Our new judicial ways of working included dealing with certain matters without the need for a hearing, pursuant to the Senior President's 2020 Practice Directions (although certain paragraphs of my associated Guidance Note on this topic were the subject of successful legal challenge). These new ways also included remote and hybrid hearings, using *Skype for Business* and, more recently, *Microsoft Teams*, pending the implementation of the Reform programme's permanent Video Hearing System. Again, the clerking team, led by Carol Mathurin, together with the Digital Support Officers, responded excellently, enabling users and judges to operate to their full potential. Technical difficulties are, however, fairly frequent, often because of band-width issues at the remote locations. Whilst these difficulties have seldom led to the abandonment of a hearing, they are a reminder of the differences that exist between a remote and a fully face-to-face hearing.

With very limited exceptions, the UTIAC's policy has been to conduct remote hearings from courtrooms. There are significant advantages in doing so, not least the administrative and technical support already mentioned. Having judges present at the hearing centre means that they can be deployed to other judicial tasks, at short notice, and benefit personally and professionally from interactions with colleagues. All of this is, of course, dependant upon there being appropriate arrangements in place to ensure a safe working environment.

My admiration for the judicial colleagues I have the privilege to lead has been reinforced by the way in which they have responded during the coronavirus crisis. Despite their own personal difficulties, which in some cases have involved the loss of close relatives or partners, they have continued to deliver justice and to perform the myriad other tasks demanded of a modern judge.

In August 2020, Mark O'Connor, our Principal Resident Judge (PRJ), was asked to become Acting President of the General Regulatory Chamber, as a result of the long term of its current President. Judge Louis Kopieczek very kindly agreed to act as our PRJ. Stepping into that role in the most challenging of circumstances, Judge Kopieczek has acquitted himself superbly, calmly and efficiently dealing with everything that comes his way, including the unpredictable demands of the President. I am hugely grateful to him, and to Judge Sue Pitt, who is acting as Deputy PRJ.

Judge Judith Gleeson continues to discharge a number of cross-jurisdictional functions, including what must at times appear to her the somewhat thankless task of informing colleagues of developments on the IT front. Her work for the Chamber includes responsibility for our Deputy judges. She and I continue to be concerned about the current lack of work for Deputy colleagues; largely, it seems, as a result of a downturn in decision-making by the Home Office.

In my last report, I described the achievements of Judge Melanie Plimmer during her first year as the UTIAC's judge in charge of training. She has continued in the same vein, delivering the United Kingdom judiciary's first wholly on-line continuation training, which was of our Deputies in the summer of 2020. She is currently arranging training for salaried colleagues in September, which will focus on issues arising from the United Kingdom's departure from the European Union, as well as matters concerning Reform.

Judge Jeremy Rintoul drafted the Guidance on Permission to Appeal and is working on the updating of Practice Directions. Judge Mark Blundell recently completed a comprehensive overhaul of our judicial review templates. Judges Melissa Canavan and Stephen Smith are undertaking an examination of website pages relating to the Chamber, in order to recommend their updating and other beneficial changes. Judge Fiona Lindsley has continued to take the lead on 'Hamid' issues.

Under the guidance of the Vice President, Lawyers Sukhi Bakhshi and Lydia Watton have finalised updated versions of the forms for users; and arrangements are in progress for these to be placed on the website. The UTIAC lawyers have been ably supported by our caseworkers, Zeenat Jiwani and Robyn Keegan. Lawyer Asim Hussain has ensured that Zeenat and Robyn have received a thorough training and he continues to provide them with guidance and to encourage their progress.

We recently said goodbye to Lydia, who has moved to the Administrative Court Office. I wish her well and thank her for the excellence of her work for us.

It says a great deal about the dedication of the Chamber that the activities just described have been undertaken within the most challenging environment we have ever experienced. Besides these, however, the Reform programme has continued to be progressed by Surrinder and her team, in conjunction with the Chamber's judiciary. As with much of the High Court and the other Upper Tribunal Chambers, the UTIAC will adopt CE filing for its appeals and judicial reviews. Judges will be trained on the system in September and it is anticipated that it will then be made available for representatives. Meanwhile, the Chamber has had to deal with the ramifications of the decision by the FtTIAC to use a quite different system, Core Case Data, for many of its appeals. We have identified what we consider to be a satisfactory interface between CCD and CE filing. Judge Blundell and the Vice President are at the forefront of activity in these areas.

In 2020, we saw the retirement of two of our salaried colleagues. Judge Jane Coker's energy and enthusiasm have long been an inspiration to her colleagues. So too was her huge commitment to public service, which saw her overcome a serious injury, having been run down in the street, that would have permanently incapacitated many others. Jane's contributions to the development of our jurisprudence are significant, particularly at the interface between immigration and family law. As soon as conditions allow, I am sure Jane's life in retirement will be equally vigorous, with frequent visits to family in Vietnam.

Shortly after Judge Coker's departure, Judge Nadine Finch retired. It was my good fortune to have sat with her on a number of occasions, and to benefit from her profound knowledge of, in particular, the law relating to human trafficking/ modern slavery. Nadine was a thoughtful and compassionate colleague, who is much missed. One of her roles was to chair the Chamber's Welfare Committee. I am very pleased that Judge Hugo Norton Taylor has taken this over.

The mention of welfare brings me to the important subject of judicial diversity and inclusion. The Senior President has asked tribunal leadership judges to prepare plans to encourage judicial diversity. To this end, a meeting of the Chamber's permanent judiciary took place in April 2021, at which colleagues were encouraged to consider ways of achieving the following:

- Supporting greater understanding of judicial roles and achieving greater diversity in the pool of applicants for judicial roles
- Encouraging supporting and utilising the Diversity and Community Relations Judges (DCRJs)
- Supporting and developing the career potential of existing judges
- Supporting and building an inclusive and respectful culture and working environment.

The Chamber is already well-served in this regard. Judge Gaenor Bruce is a DCRJ, as is Judge Plimmer (who also sits on the Senior President's Diversity Task Force). They have considerable experience of mentoring, and in giving presentations about the work of a judge to students in schools and colleges in the North of England, thereby helping to demystify the subject in the minds of those who may imagine judges to be universally old and out of touch with modern society. Meanwhile, Judge John Keith frequently speaks to schools and academies in the South East.

I am very heartened by the degree of enthusiasm shown by other colleagues at and following the initial meeting. The Welfare Committee will have a key role with regard to our working environment and the professional aspirations of colleagues. A system of one-to-one meetings with the President will be introduced. Useful suggestions have been made for creating or in some cases re-building links with relevant institutions, with the aim of offering opportunities to see judges and representatives in action, particularly for those who may lack contacts in the legal profession.

Despite COVID-19, the Digest of Important Cases, which you will find later in this document, testifies to the UTIAC's continuing function as a source of legal guidance on immigration and asylum law and practice, including country guidance. The number of such cases that deal with procedural issues is, I believe, instructive. There is a tendency to see procedure as a poor relation to 'black-letter' law. As the Court of Appeal has been at pains to point out, however, rules of procedure are created for a reason; namely to further the just dispatch of business. Insufficient regard to such rules risks unfairness to other cases in the system, if not also to the other party, who may have complied with the rules. In addressing procedural issues for tribunals, there is an understandable tendency to confine one's gaze to one's own Chamber or jurisdiction. However, it can often be instructive to look at other Chambers and jurisdictions. Indeed, a failure to do so may result in an outcome which may meet the needs of one Chamber or jurisdiction but may be inapt for others.

At the time of writing, it is uncertain how quickly life may return to something approaching what it was before the onset of the pandemic. The UTIAC is, however, making appropriate plans. Thanks to the support of the Lord President of the Council, we aim to resume sittings in Parliament House, Edinburgh, when conditions allow. I continue to be grateful to the President of the Queen's Bench Division for enabling QB judges to sit in the Chamber. I look forward to welcoming judges from the Outer House back to London, as well as my being able on occasion to sit with them in Edinburgh.

Despite the pandemic, judges of the Chamber have maintained our presence in Manchester, Birmingham, Cardiff and Leeds/Bradford; but I am keen to re-establish the circuiting system as it was before March 2020, which enabled us to maintain close contact with the senor circuit judges and circuit judges who do UTIAC judicial review work outside London.

In last year's report, I wrote of how fortunate I have been to enjoy the support and advice of our Vice President, Mark Ockelton. The events of the past twelve months have served to increase my gratitude several-fold. I am very much in his debt.

Lands Chamber

President: Sir Timothy Fancourt

The life of the Upper Tribunal, Lands Chamber in the last 12 months has been dominated by the continuing pandemic and by the need to adapt our conventional ways of working to difficult new circumstances. I am immensely grateful to the Chamber's judges, members and administrative staff for their industry and flexibility, which have enabled us to end the year with no backlog of cases and no significant delays in listing new work. Without the cooperation and perseverance demonstrated by our lay and professional users we would not be in that fortunate position and, on behalf of the judiciary and staff of the Chamber, I extend our thanks to them all.

Despite the restrictions under which the Chamber and its users have operated this year the total volume of work received has not declined, and our challenge throughout the year has been to ensure that that workload has been managed as efficiently as before. The one jurisdiction which has seen a noticeable fall in receipts as a result of the pandemic has been rating. In a normal year we expect to receive 50 to 70 new rating appeals from the Valuation Tribunals for England and Wales, but during the last 12 months this work stream has reduced to a trickle. A rather smaller reduction in the number of appeals from decisions of the First-tier Tribunal, Property Chamber has been offset by an increase in the number of new cases in jurisdictions where the Chamber is the tribunal of first instance, in particular new compensation references and claims under the Electronic Communications Code.

The handful of rating appeals which were heard during the year focussed for the most part on procedural issues rather than valuation principles. Unglamorous but important questions were addressed, such as whether a right of appeal lies to the Upper Tribunal against a Valuation Tribunal's refusal of an application to review a decision, and whether the Valuation Tribunal has power to order a temporary alteration to the rating list. Meanwhile, a policy decision to deal with the effect of the pandemic on rateable values by legislative change, rather than by individual valuations, has relieved the Chamber of what might have been a tsunami of new appeals.

The Electronic Communications Code has continued to be one of the Chamber's liveliest jurisdictions. More than 250 disputes under the new Code have been referred to the Chamber since the first case arrived in the middle of 2018. 21 decisions have now been handed down, mostly on issues of principle.

Appeals in three of those cases have been decided by the Court of Appeal. The Supreme Court has given permission to appeal in *CTIL v Compton Beauchamp Estates*, which will be heard in January next year, and the Tribunal itself has granted a leapfrog certificate in *Arqiva v AP Wireless*. Code cases determined this year included *CTIL v University of the Arts*, the first case in which the Tribunal has had to consider whether prejudice to a landowner outweighs the benefit to the public of a grant of rights to install electronic communications apparatus. The rapid development of a reasonably consistent body of case law on a novel and complex piece of legislation is one of the most important services a specialist tribunal can offer to its users, and it is to be hoped that, as a better understanding of the operation of the Code emerges, many more disputes will be capable of being resolved without recourse to the Tribunal.

The Chamber's role in resolving claims for compensation brought by individuals disturbed or displaced as a result of public works, while at the same time providing guidance which can be applied in comparable cases, was exemplified this year by the determination of a sample group of compensation claims arising out the expansion of Southend Airport. More than 200 claims by the owners of residential properties in the vicinity of the airport ought now to be able to resolve their claims by agreement, applying the compensation scale identified by the Tribunal in its decision. Two trends which I noted last year, claims arising from HS2, and appeals against certificates of appropriate alternative development (CAADs), have also continued to feature in the Chamber's compensation jurisdiction. The two came together in Secretary of State for Transport v Curzon Park in which the Court of Appeal has upheld the Chamber's decision that CAADs have to be considered for the property subject to the claim without regard to applications for different certificates for neighbouring land.

The CAAD appeal in *Leech Homes Ltd Northumberland County Council* turned on the planning status of land on the undefined boundary of the greenbelt, an issue which had not previously been considered in a court of record. The Chamber's decision was subsequently upheld by the Court of Appeal.

Notable appeals from the First-tier Tribunal included a series of decisions concerning the rent repayment order regime, which was significantly expanded by the Housing and Planning Act 2016, and a decision of general importance on the meaning and operation of the adverse possession regime in Sch. 6 to the Land Registration Act 2002. In *Rakusen v Jepsen* the Chamber restated its preferred construction of the Act, which is that it is targeted widely and exposes the superior landlord in a 'rent-to-rent' relationship to the risk of repayment orders.

The correctness of that view is soon to be considered by the Court of Appeal. Meanwhile, the Chamber has continued to interpret the very limited statutory guidance on the quantum of rent repayment orders with a view to promoting consistency between first-tier tribunals. In *Dowse v City of Bradford*, the Chamber explained the exceptional circumstances in which an applicant may secure early registration by virtue of 10 years' adverse possession and the limited nature of those cases.

The year saw the retirement of Andrew Trott FRICS, who served as a Member, first of the Lands Tribunal and then of the Upper Tribunal, since 2006. He made an immense contribution to the work of the Chamber and was responsible for a number of important decisions in the Chamber's rating and compensation jurisdictions in particular. He will be greatly missed by his colleagues and those who had appeared before him. In his place, we welcomed Mark Higgin FRICS, who joined the Tribunal in November 2020 as a surveyor member, as foreshadowed in last year's report. Retirement also beckoned for Enrico Matteoni ('Matt' to us all) amongst the Chamber's longest serving members of staff who originally joined the Lands Tribunal to stave off the boredom of a previous premature retirement and who stayed for more than twelve years. Things will never be quite the same again without him.

A particularly sad event was the sudden and unexpected death of His Honour Judge Stuart Bridge in September 2020. Stuart was a life fellow of Queens' College, Cambridge and former Law Commissioner, who was one of the Tribunal's most regular deputy judges. As an editor of Megarry Ors & Wade, alongside Judge Elizabeth Cooke of the Tribunal, Stuart had a wealth of property law knowledge and was imbued with robust good sense in addition to his great learning. He will be greatly missed by us.

In October 2020 we published new Practice Directions which are intended to describe how, in practice, proceedings in the Chamber should be conducted. The variety of disputes which the Chamber has to consider each year is immense, from multi-million-pound compensation claims to modest service charge disputes, and no rigid set of rules could ever suit the needs of all cases. The underlying theme of the Practice Directions is the need for flexibility and for parties and their professional representatives to cooperate with each other so that disputes brought to the Chamber can be resolved with the minimum of delay and unnecessary expense and in a manner proportionate to the importance of the issues. We are grateful to those professional associations and regular users of the Chamber who took the trouble to comment on the draft of the new Practice Directions when they were published for public consultation.

This year has also seen the introduction of a new filing and digital case management system, CE-file, which will soon be made available to the public and practitioners. It will make the commencement of new cases, the filing of documents and the making of applications less paper dependent, cheaper and easier. As a result of coping with the pandemic, the Tribunal has developed the ability to hold effective fully remote video hearings, where these are appropriate. It is expected that, for shorter hearings, video hearings may be used more often in future, as a means of saving time and costs for the parties. However, the Tribunal intends to revert to face to face hearings in court for substantial, contested matters, unless in any particular case it is inappropriate.

Finally, I would like to note the establishment of two users' groups which met for the first time during this year. Because of the specialist nature of the Chamber's jurisdictions, and the close relationship maintained between its judiciary and the professional associations whose members practice in those fields, it had not previously been thought necessary to formalise the opportunity to exchange views and share ideas about the work of the Chamber. As those jurisdictions have expanded, however, we have recognised the value of bringing together practitioners in regular meetings. We hope that the groups, one covering the generality of the Chamber's work, the other focussed on the telecommunications jurisdiction, will play a useful role in improving communication between the Chamber and its users and, as a result, the procedures and efficiency of the Chamber's work.

Annex B – First-tier Tribunal

Social Entitlement Chamber

President: Judge Kate Markus QC

Introduction

When I took up my appointment as President in March 2021, it was clear to me that this Chamber had not merely survived the past year but had, despite the pandemic, thrived. The success of the Chamber in quickly rising to the challenge and continuing to operate is testament to the skilled leadership of Regional Tribunal Judge Mary Clarke, who was Acting Chamber President throughout the period. In addition, while leading the Chamber through these challenges, Judge Clarke was at the forefront of the Chamber's work on Reform which continued unabated during 2020 and 2021 as well as continuing to perform her role as Regional Tribunal Judge of the North-west region of the Social Security and Child Support jurisdiction (SSCS).

The Chamber's successful response to the pandemic has also been due to the hard work and clear leadership by the Regional Tribunal Judges and Principal Judges of the Chamber, and to all the judges, non-legal members, tribunal case workers and administrative staff who have worked tirelessly to ensure that the Chamber continued to deliver justice, demonstrating flexibility, resilience and commitment during this most difficult period. The individual and collective effort cannot be overstated, particularly at a time when other major changes were being introduced through the Reform project including working from digital files.

Social Security and Child Support

Jurisdictional Landscape

When the national lockdown started in March 2020, there was no choice but to suspend all hearings. However, in this jurisdiction, where many users are vulnerable, it was essential that the pause was as short as possible and so work started immediately to find ways of delivering justice in those unprecedented circumstances. It took only a few days to draw up a plan to use BT MeetMe and Skype to deliver hearings. With some creative thinking and design, and extensive collaboration between judiciary and administration, after only a week panels were hearing cases from home with clerks working remotely.

Initially priority was given to appeals for those appellants whose benefit had ceased entirely. Many of those appeals were identified in a matter of days and appeals were referred to a judge for a decision and/or direction.

During the next two weeks additional BT MeetMe lines were made available at all regional processing centres. This meant that many appeals were able to proceed as telephone hearings. Staff at all regional processing centres developed innovative ways of working so that as many appellants as possible could have their appeal determined without delay. Representatives and staff from first-tier agencies were quickly contacted and were able to participate in hearings. Detailed instructions were quickly drafted to provide guidance to all users. Arrangements were made for interpreters to participate remotely.

Following the introduction of new practice directions, Tribunals continued to determine appeals in ever greater numbers and quickly returned to pre-pandemic levels. Judges made use of all the technology that was available to maintain close contact with clerks and users. Clerks, provided with additional technological solutions, embraced new ways of working. Together, administrative staff and judges continued to refine and enhance the service that could be offered to some of the most vulnerable people in our society. No appeals were delayed until after the end of the pandemic, although some which could not be heard remotely have been delayed until it is possible to list them face-to-face.

Additional new technologies were introduced during the next few months and tribunals increasingly moved to using the Cloud-based Video Platform (CVP) so that tribunals and users could participate in hearings visually as well as orally. CVP can be used for fully video, or hybrid video and telephone, hearings and it enables screen-sharing. All oral hearings are recorded and the recordings are stored at regional processing centres and can be provided to parties as the record of proceedings.

The intake of appeals fell significantly during the period. As tribunals had operated at close to full capacity throughout the pandemic, the backlog that existed in March 2020 has been reduced significantly. The consequence is that most appeals are now listed within 20 weeks of the appeal being lodged.

All regions are now listing a mix of telephone and CVP hearings, and increasingly face-to-face hearings. The response to remote hearings from tribunal users has been very encouraging and many welcomed the opportunity to present their case remotely. It has also been possible to advance some of the solutions associated with the reform programme and these have been successfully tested.

Although we will return to face-to-face hearings for a proportion of our cases, I have no doubt that remote hearings are here to stay for others even when the pandemic is over. The Chamber is undertaking work to understand the advantages and disadvantages of both remote and face-to-face hearings in this jurisdiction, and this will inform future decisions about mode of hearing.

Statistics

At the time of writing this report there are no available statistics for publication in respect of Social Security and Child Support (SSCS). This is due to ongoing issues identified during the migration of work to a new operating system as part of the HMCTS Reform Programme. A complete back series of data will be published when the issues have been resolved, sometime during 2021.[1]

Reform

The solutions that emerged for the case management and hearing of SSCS appeals during the pandemic have had a positive impact upon the reform process. Around two-thirds of tribunal users are now able to engage with the Tribunal digitally. Previously it had been difficult for the regional processing centres to acquire and retain the equipment that was needed to make progress with digital hearings but the measures put in place during the pandemic resulted in greater access to IT equipment so that video and telephone hearings could be conducted more frequently and with greater ease. The ability of tribunals to conduct hearings remotely was enhanced by the provision of training which was designed by judges and delivered to all judicial office holders with the support of Judicial College. The enhancement of features of the Core Case Data system has meant that most interlocutory referrals in appeals for Personal Independence Payment, Universal Credit and Employment and Support Allowance can be managed digitally, whilst retaining the ability to conduct appeals on paper for those who are not able to engage digitally. Extensive work has been done to design online decision notices for these categories of appeals and these are now ready to be introduced following appropriate training. In the shorter-term work is being done so that case papers can be delivered digitally to all judicial office holders and work is in hand to enable post hearing referrals to be managed digitally before the project is due to end in December 2021.

1 https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-october-to-december-2020/tribunal-statistics-quarterly-october-to-december-2020

Recruitment

Recruitment slowed considerably during 2020. Eight salaried judges and 64 fee-paid judges were announced during the year. 2021 has been much busier. It has seen the appointment of 13 financially qualified members and 16 new salaried judges. 202 medically qualified tribunal members and 80 disability qualified tribunal members are expected to be announced following a delay due to the pandemic. It is expected that the intake of appeals will increase later in the year and the appointment of these additional judicial office holders will ensure that appeals are listed for hearing without delay. The jurisdiction is now strongly placed to meet any increase in the intake of appeals as and when it occurs.

Training

Although the COVID-19 restrictions impacted the ability to deliver continuation training, with priority being given to the induction of new salaried and fee-paid judges and members, it has been a very busy and successful year.

The induction of new salaried judges that commenced face to face in January 2020 was completed digitally, and 76 new fee-paid judges and medical members were inducted to enable them to hear disability and work-related benefit appeals. Following a successful pilot of a digital version of face-to-face continuation training delivered to all judicial office holders in the jurisdiction (Tribunal Member Refresher Training), approval was obtained to continue to deliver this digitally for the remainder of the 2020/21 training year. This enabled at least some continuation training to be offered to judicial office holders, which has had a positive impact on collegiality. In addition, nearly 2000 fee-paid judicial office holders were provided with training to support them to conduct video hearings. A digital Spring Conference was held for salaried judges and regional medical members that provided a broad range of learning opportunities.

Trainers have embraced new and varied training methods, and these have been well received by delegates. The jurisdiction is hugely indebted to them for their flexibility and hard work in continuing to prepare and deliver high quality training, and also indebted to colleagues in the Judicial College for their support and guidance.

Significant cases

Despite the impact of the COVID-19 pandemic on the work of the Social Entitlement Chamber, and the concomitant move away from face-to-face hearings to working remotely, the SSCS jurisdiction has continued to be steered and guided by a number of significant cases coming from the Upper Tribunal and the higher courts. As in previous years, those decisions reflect the wider legislative context within which the Tribunal operates. So, for example, as the roll out of universal credit has continued to take hold, so too has the volume of decisions affecting the work of the Tribunal in relation to that benefit continued to increase and several decisions of the Divisional Court and, on appeal, the Court of Appeal have shaped the universal credit landscape. The work of the Tribunal over that time has been to implement and give force, as appropriate, to those decisions. A few important ones, which exemplify the issues faced on a day-to-day basis by the SSCS jurisdiction, are highlighted below.

Secretary of State for Work and Pensions v Johnson and Others [2020] EWCA Civ 778 concerned the way in which the Universal Credit Regulations 2013 should be applied to the calculation of monthly income in circumstances where a claimant is paid twice in one assessment period for work carried out in a different assessment period. This might, for example, occur where a claimant is usually paid on the last day of the month but is paid early because the end of the month falls on a weekend, with the result that two wage payments are made in the same assessment period. The approach of the Secretary of State was to include both payments as income for the same assessment period with the result that any universal credit payment would be substantially reduced or extinguished for that month causing wide and frequent oscillations in monthly income for claimants and the loss, for some, of related allowances. Both the Divisional Court and the Court of Appeal held that the failure of the Secretary of State to remove this very real unfairness, by putting in place a solution to the problem, met the high bar of irrationality and was thus declared unlawful.

The Government response to the *Johnson* judgment came in the form of an amendment to regulation 61 of the Universal Credit Regulations from the 16 November 2020.

R (on the application of TD, AD and Reynolds) v Secretary of State for Work and Pensions [2020] EWCA Civ 618 provides a good example of how the jurisdiction of the SSCS jurisdiction continues to be affected by human rights issues and, in particular, discrimination within Article 14 ECHR.

The Court of Appeal held that the lack of transitional protection for severely disabled claimants moving onto universal credit following an incorrect 'legacy benefit' decision by the Secretary of State, which left the claimants significantly worse off, was unlawful discrimination in breach of their human rights.

The work of the SSCS has continued to be affected by the interpretation of EU law in relation to the issue of the right to reside and also in relation to issues of coordination under Regulation (EC) No 883/2004. A good example of the latter is provided by the decision of the Court of Appeal in *Konevod v Secretary of State for Work and Pensions* [2020] EWCA Civ 809, which concerned the question of whether the UK was the competent state under the relevant provisions of Regulation (EC) No 883/2004 on the co-ordination of social security systems insofar as it applies to the payment of carer's allowance to a claimant living and caring for an attendance allowance claimant in Cyprus by the UK. The Court of Appeal held that, despite the close relationship between attendance allowance and carer's allowance, they remain separate benefits with the result that the competent state for the purposes of a claim to carer's allowance is that which is competent for the purposes of the claim by the carers allowance claimant as opposed to that which is competent for the purposes of payment of attendance allowance.

Finally, and despite what may be perceived as their dwindling significance, the importance of decisions on the issue of the right to reside continue to affect the day-to-day work of the SSCS jurisdiction. In *Fratila and Tanase v Secretary of State for Work and Pensions and Advice on Individual Rights in Europe (AIRE) Centre* [2020] EWCA Civ 1741, the Court of Appeal held that the 2019 amendment to regulation 9 the Universal Credit Regulations – which prevented those with 'pre-settled status' (i.e. those with limited leave to remain) from having a right to reside for the purpose of entitlement to an award of universal credit and certain other means-tested benefits - was unlawful discrimination contrary to EU law. In the Divisional Court, the judge dismissed the judicial review claim, relying on Article 18 of the Treaty on the Functioning of the European Union, holding that although the claimants were entitled to rely upon Article 18, the exclusion under regulation 9 was only indirectly discriminatory and was otherwise objectively justified on the facts. In the Court of Appeal, that decision was overturned on the basis that rather than being indirect discrimination, the amendment gave rise to unlawful direct discrimination on the grounds of nationality and as such could not be justified on the grounds of objective justification. An appeal to the Supreme Court is pending.

Asylum Support (Principal Judge: Sehba Storey)

Jurisdictional Landscape

On 26 March 2020, Import Building was evacuated for deep cleaning following three staff members testing positive for the COVID-19 virus. Since that date all judges and caseworkers of the Asylum Support Tribunal (AST) have worked remotely from home, with one caseworker attending Import Building daily to open the post.

The Tribunal's response to electronic working was rapid and effective and there has been no backlog of appeals at any time since the start of the pandemic. The Tribunal adjusted the timetabling of appeals and made greater use of email and electronic files, which resulted in efficiencies and improved rates of response to directions and inquiries.

Telephone hearings have been in operation since mid-April 2020, initially by salaried judges with fee-paid judges starting in May. The Tribunal has had a positive experience of telephone hearings with very few reported problems in terms of connectivity.

After extensive testing and consultation, it was found that CVP hearings were not an option for AST appellants who are mainly housed in hostels and hotels by way of emergency accommodation or street homeless and so experienced difficulties with data and bandwidth and with privacy. There is a possibility that refugee agencies, solicitor firms and other representatives may be able to provide access to CVP hearings from their offices. If so, then it is envisaged that CVP will be used in the long term in many cases which will greatly assist access to hearings by appellants who live out of London.

The caseload decreased as a result of the Home Office's change of policy on provision of support during the pandemic and a lower number of asylum claims. It is expected to increase significantly following the lifting of coronavirus restrictions.

Significant cases

In *PA and MA* (AS/20/09/42386 and AS/20/09/42397) the Principal Judge declined to rule on the legality of Secretary of State Home Department's (SSHD) decision in September 2020 to end the provision of accommodation to failed asylum seekers who no longer satisfied the conditions of entitlement to asylum support, and rejected the argument that public health considerations (as at the date of hearing) were sufficient to justify support to the appellants who resided in tier-2 areas. However, she found, obiter, that such considerations would warrant support to those in tier-3 areas pursuant to Article 8 of the European Convention on Human Rights (ECHR). The appeals were allowed solely because the appellants had lodged judicial review claims challenging the SSHD's September 2020 decision. Other claimants also issued judicial review proceedings challenging the SSHD's September 2020 policy and obtained interim relief in the High Court.

During the period of heightened restrictions and national lockdown between November 2020 and March 2021, although they were not bound by it, AST judges consistently followed *PA and MA* and allowed appeals on human rights grounds where appellants were subject to restrictions equivalent to tier-3 or above.

In the lead case of *AM* (AS/21/02/42852) the Principal Judge held that there was a positive obligation on the State under Article 8 to protect everyone from the real, immediate and serious risk posed by COVID-19, and that a failure to accommodate the appellant constituted a disproportionate interference with his Article 8 rights.

People and places

Gill Carter, Deputy Principal Judge, retired from full time salaried office in the AST and now sits in the Health, Education and Social Chamber. Judge Carter has sat in the AST since the tribunal (originally the Asylum Support Adjudicators) was created in April 2000 and has been instrumental in shaping it into what it is today. She deserves special credit for managing the response to the COVID-19 pandemic, ably assisted by salaried judges Sally Verity Smith, Martin Penrose and Richard Wilkin.

The extraordinary contribution of the HMCTS administration team is also recorded, especially that of Brian Garvey and Carole Doyle who worked tirelessly throughout the pandemic to keep the tribunal and hearings running.

Reform

As a result of the pandemic all work on reform of the AST was halted but is due to recommence.

Criminal Injuries Compensation (Acting Principal Judge: Adrian Rhead)

Jurisdictional Landscape

During the Covid pandemic there has been a significant reduction in the receipt of appeals. At the start of the pandemic appeals were suspended but, after a short period of disruption, hearings recommenced with appeals being predominantly conducted remotely by telephone. By the middle of 2020, the number of hearings had returned to pre-Covid levels and by the end of 2020 the jurisdiction was also able to provide access to oral hearings via the CVP video platform. As we move forward, face to face oral hearings will be listed by summer 2021.

Whilst the number of disposals has dropped, they have outstripped receipts with a continued reduction in the live load and focus on 'old' cases.

The jurisdiction continues to develop the use of Case Management Discussion (CMD) to resolve appeals, where appropriate without the need for an oral hearing.

People and Places

There have been no significant changes in judiciary, but we have welcomed new Tribunal Case Workers (TCWs). The TCW's have continued to develop and extend the scope of appeals they deal with, including triaging new appeals, issuing making Directions in complex cases and working towards conducting CMD's.

It has been a challenging year for both judiciary and HMCTS staff processing appeals at the Glasgow Tribunal Centre (GTC). Judiciary have responded with resilience and flexibility, and tribute must be paid to HMCTS staff in facing a new challenge and so effectively supporting telephone and CVP hearings.

Training and Reform

Sadly, but understandably, the jurisdiction's training programme for the last year was suspended, the only exception being CVP training arranged with considerable support from HMCTS staff at the GTC.

Criminal Injuries and Compensation Tribunal (CICT) involvement in the reform programme has, for the time being, been held in abeyance.

Legislative Changes and Significant cases

We await the Government's response to the proposed reform of the 2012 Criminal Injuries Compensation Scheme with possible developments later this year. We also await the outcome of *A and B v CICA*, heard by the Supreme Court in November 2020, dealing with the prohibition of compensation for claimants with certain unspent convictions and the relationship with modern slavery.

The number of applications for judicial review has historically been relatively low, and this has continued during the last 12 months with figures well below 20. As a result, Upper Tribunal activity in CICT has been limited.

Diversity and Inclusion

I welcome the Judicial Diversity and Inclusion Strategy 2020-2025 and I have appointed Regional Tribunal Judge Verity Jones as diversity lead for SSCS. Discussions are being held by the salaried judiciary in each region around the Strategy's objectives. There has been a very positive response, and a commitment by judicial office holders to address the objectives and to consider what practical steps can be taken to put them into practice.

Preliminary responses have covered a wide range of issues relevant to achieving the objectives, with a particular interest in enhancing opportunities for career progression. The AST judiciary will also be participating in similar discussions. Informed by the outcome of these discussions, I will work with the diversity lead to develop a Chamber-wide strategy and action plan for diversity and inclusion.

A number of judges within the Social Entitlement Chamber are involved in other diversity and inclusion initiatives within the judiciary including as Diversity and Community Relations Judges, and as members of the Diversity Committee or the Senior President of Tribunals' Diversity Taskforce (which I chair). There is a wealth of experience and expertise in the Chamber which will provide a valuable contribution to our programme.

Health Education and Social Care Chamber

President: Judge Mark Sutherland Williams

The Health, Education and Social Care Chamber (HESC) comprises of four central 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 team comprises of two Deputy Chamber Presidents, Judge Meleri Tudur – who has responsibility for the SEND, Care Standards and Primary Health Lists jurisdictions, and Judge Sarah Johnston - who has responsibility for the mental health jurisdiction, together with the Chief Medical Member, Dr Joan Rutherford, who has a leadership role for specialist medical members who sit in the mental health jurisdiction.

The Jurisdictional landscape

Like no doubt all First-tier Chambers, it has been a year like no other.

The Mental Health jurisdiction

Applications to the tribunal in Mental Health have remained relatively stable over the last year, despite the pandemic. There have been slightly fewer applications, but more oral hearings. This may in part be due to the coronavirus, which has resulted in restrictions on leave from hospital and restricted community provision, making it more difficult for clinicians to discharge patients.

The tribunal has dealt with a small number of cases on the written evidence by consent and without the attendance of witnesses. These are only granted when the patient is legally represented. There has been a rise in applications for review and leave to appeal, but they are still at a very low level (less than 1 per cent of all decisions).

In last year's report, the tribunal announced it was about to hold its first video hearings in hospitals. The logistics of this have been considerable, but we are pleased to report that we have been able to continue to offer hearings and access to justice throughout the pandemic, with nearly all cases being held via video since May 2020.

This will continue for the foreseeable future, particularly while the coronavirus situation remains prevalent, with no immediate plan at the time of writing to return to face to face hearings. Matters are being kept under review in this regard and will need to be determined only when the time is right for the tribunal to consider whether face to face hearings in hospitals are appropriate. The concerns in this respect are wide-ranging but include the risk of detained patients passing on Covid to others on their wards and equally, ensuring our judicial office holders remain safe and able to conduct hearings without similar risk.

The tribunal has asked the Tribunal Procedure Committee (TPC) to consider changing the timeframe within which section two hearings must be listed from seven to ten days. This reflects the change brought about by The Coronavirus Rules, which extended the duration to ten days.

Section 2 applications make up about 33 per cent of the tribunal's work and hearings need to be held quickly. This remains a constant challenge. The extra days will help ensure that patients, representatives, and hospitals have more certainty that the hearing date will be effective and thus potentially reduce the number of applications for postponements. This is particularly important for patients, for many of whom a tribunal can be a stressful time. The consultation on this, at the time of writing, is still live.

As with all Chambers, our training programme has been curtailed because of the pandemic. Nonetheless, we are pleased to report that induction programmes for new Mental Health judicial office holders were delivered remotely for judges who sit in both restricted and non-restricted patient cases and Medical Members. Continuation training will also be given to all our judicial office holders digitally, but we hope to return to some form of face-to-face training later in this financial year.

The Mental Health jurisdiction has an established appraisal system for all judicial office holders, which feeds into our training. Mental Health was the first jurisdiction to return to judicial appraisals during the pandemic, and these are also now done via remote means. We are pleased to report that this appears to be working well, as it is, on one view, less intrusive for the parties.

The use of remote working has allowed the tribunal to list cases (and appraisals) nationally, ensuring fewer short-notice cancellations and fewer delays for our users, driving greater efficiency.

Pre-hearing examinations (Rule 34) (PHEs) resumed on 1st March 2021 following *EB v Dorset Healthcare and the Lord Chancellor* [2020] UKUT 362 (AAC), which, in short, suggested that PHEs should be held if it were practicable to do so. We have subsequently piloted having PHEs on application via video, with PHEs taking place when requested by the patient or the patient's representative. Early results from the pilot have been positive. However, there remain some technological difficulties in Trusts and the Independent Sector. These practical issues have been reported to the Care Quality Commission as they are largely outside the remit or control of the tribunal.

The biggest potential forthcoming change to the Mental Health jurisdiction will rest on whether the government accepts the recommendations suggested by the Independent Review led by Professor Sir Simon Wessely in the report entitled, 'Modernising the Mental Health Act'.[2]

The Chamber was consulted on practical matters throughout the Independent Review and has submitted a response to the White Paper consultation. The recommendations will potentially increase the tribunal's statutory jurisdiction and powers, leading in turn to an increase in the tribunal's workload as patient rights to apply and the frequency of referrals increase.

Special Educational Needs and Disability, Care Standards, Primary Health Lists (SEND/CS/PHL)

Following a move to fully video hearings on 23 March 2020, the SEND/CS/PHL jurisdictions have continued to positively drive change, acting as an example of what can be achieved in a relatively short timeframe. We are pleased to report that our judicial office holders have tackled the obstacles that have arisen with both commitment and dedication, with the productivity of panels and the volume of disposal of cases continuing to increase at almost unprecedented levels.

Although the COVID-19 emergency legislation made provision for enabling other means of delivering the work of Tribunals, that did not prove necessary in SEND/CS/PHL, where we have continued to offer fully video oral hearings that have proved successful with our users. As a result, the three jurisdictions have not had to fall back on those emergency legislative provisions and have been able to dispose of all cases listed, thus ensuring access to justice and fewer delays.

2 https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review

It is to be hoped that the lessons learned regarding digital and remote working will inform the future delivery of the service, as the jurisdictions emerge from the pandemic.

It is correct to end by noting that the successful delivery of a service to our users has been very much down to the effort and hard work of our administrative staff and judicial office holders, who have given more than ever to ensure the success of the remote hearing venture, and to whom we owe a debt of gratitude as a consequence.

Special Educational Needs and Disability (SEND)

In early 2020, the SEND jurisdiction was experiencing an increasing caseload. The move to fully digital working has helped resolve that issue, enabling the tribunal to schedule more hearings than it has before and listing more cases to be heard during the year. The backlog of appeals postponed due to lack of a panel or a hearing venue has been erased due to national and remote listing and, at the time of writing, we are pleased to report no cases have been postponed for those reasons up to May 2021.

The National Trial, which is the name given to the government pilot granting the SEND jurisdiction extended powers to consider health and social care issues, in addition to special educational needs and provision, has been extended to August 2021. During the lifetime of the pilot, about 3,000 appeals have been registered. This is higher than the DfE's original estimate. The high volume indicates an appetite for a 'one-stop shop' where families and young people can have all issues considered through a single appeal process.

The Department for Education has now received the draft evaluation report and a ministerial decision is awaited to identify whether the extended powers will become part of the SEND jurisdiction's mainstream work at the conclusion of the trial.

While the caseload in SEND continues to increase, and we have been taking measures, including seeking to recruit more judicial office holders to meet that challenge, it should be noted that the overall increase in case volumes is not to be attributed in any way to the delivery of the National Trial: only appeals with an education element can be registered with the additional recommendations element and therefore, every appeal in the National Trial would have been a free-standing appeal against the educational elements, even if the pilot had not been running.

Care Standards

The Care Standards jurisdiction experienced a downturn in its appeal numbers during 2020, as a result of the limited inspections and enforcement action undertaken by the regulators across the care sector. The jurisdiction registered about half the number of appeals it had during the previous year but anticipates that the work levels will recover over the next year. User groups and meetings have continued and have been held fully remotely by video, enabling greater participation by users in the meetings.

Primary Health Lists

Appeal figures have remained stable, and the jurisdiction has to a large extent remained insulated from the effect of the pandemic.

New processes and procedures in HESC

The move to fully video hearings in SEND has required a different approach to hearings and to a degree, a stricter management of hearings, to ensure that all are able to participate fully. The tribunal will continue to list by default to video for the time being, although the position is being kept under regular review as the government's COVID-19 restrictions are eased.

A judicial Alternative Dispute Resolution pilot is to be launched in SEND in early June 2021 to target certain types of appeals that may not require a formal hearing. The purpose of the exercise is to encourage parties to consider their position (applying the relevant legal tests) about three weeks before the hearing, to help narrow the issues between them, and to facilitate the full resolution of the outstanding issues by consent. A review of the success of the pilot will then be undertaken during the summer and, if successful, consideration given to extending the scheme across other types of appeals.

The Mental Health jurisdiction is also constantly refining processes to ensure stakeholders are given the best possible choices. Information leaflets about remote hearings have been written by the tribunal for several groups of patients: community, Children and Adolescent Mental Health Services (CAMHS), other inpatients, with an easy read version for those with learning disabilities[3]. These leaflets explain the process of a video hearing and emphasise the patient's right to free legal representation.

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902971/mht-hearingguide-easyread.pdf

The tribunal has collaborated with the Royal College of Psychiatrists' and the South London and Maudsley NHS Foundation Trust to obtain feedback about video hearings from patients and clinicians. It is encouraging that the patient satisfaction with the remote hearing was similar to that given by a different representative group of patients in face-to-face hearings in October 2019 (such as being treated politely and treated with respect). The age and gender of the patients was consistent with that of detained patients, although ethnicity was less representative. Only one patient referred directly to the experience of a video hearing making them uncomfortable. Although there were technological issues in some hearings, 40 per cent of patients reported no problems. Of further note, the ethnic group of clinician responders (BAME 42 per cent; White UK/Irish/other 58 per cent) from this first survey is equivalent to the BAME membership of the Royal College of Psychiatrists which is 39 per cent.

Both surveys led to recommendations to continue to improve the experience for patients. These include a meeting with the Responsible Clinician (RC)/deputy and the patient's representative before the hearing to discuss what aspects of the statutory criteria are being challenged, and for the panel to confirm order of evidence and what reasonable adjustments can be made with the RC and patient's representative, including regular breaks. All these matters should help shorten the hearing and facilitate in the patient's engagement at their video hearing.

Reform

HESC completed the discovery phase of Reform before the pandemic, and we hope to resume this programme in the coming year when budgets and circumstances allow.

People and places

This has been a very busy year for the Chamber in terms of judicial recruitment across all four jurisdictions.

On 1 April 2020, His Honour Judge Phillip Sycamore retired as the President of the Health, Education and Social Care Chamber. Judge Sycamore was also Deputy Vice-President of Tribunals and a Circuit Judge. Judge Sycamore had been HESC President since its creation in 2008 and his contribution to the development of the Chamber and wider Tribunals is inestimable and widely acknowledged. We once again sincerely thank him for his service and dedication to our Chamber.

Judge Mark Sutherland Williams was appointed as the second President of the Chamber and a Judge of the Upper Tribunal in April 2020. Judge Sutherland Williams has extensive experience across tribunals, having been a deputy Upper Tribunal Judge in both Immigration and Administrative Appeals, as well as Resident Judge in the Immigration and Asylum Chamber.

Three of the Chamber's original team of salaried judges retired this year. Judge Robert Holdsworth, Judge Hamish Hodgen and Judge Deborah Postgate. Robert Holdsworth was the lead judge for judicial appraisals in the Mental Health jurisdiction. He has made a significant contribution to the practice and policy for judicial appraisals in Tribunals generally. Hamish Hodgen, who also sat in the Mental Health Review Tribunal (Wales), was active in training and mentoring new Mental Health judicial office holders. As part of her role in the tribunal, Deborah Postgate worked with the Legal Aid Board to ensure that those appearing in front of the Mental Health Tribunal were approved as specialists by the Law Society, significantly improving the quality of representation. We are delighted that we have been able to retain all three judges' experience and expertise as they will continue to sit as fee paid Judges.

The timing of the last Senior President's Annual Report meant we could not identify all the new salaried judges who joined the Chamber from the last JAC competition as their appointments had not been announced at the time of printing. In March, April, and May 2020, however, the Chamber was delighted to welcome four new judges. Two were primarily appointed to the SEND, Care Standards and Primary Health Lists jurisdictions, Judge Shelley Brownlee and Judge Sean Bradley, while Judge Graeme Downs and Judge Katharine Lawrence were appointed to the Mental Health jurisdiction. All had to undertake induction training and start their judicial careers working remotely, and we are pleased to report that they have done so admirably. The Chamber was also delighted that in August and September 2020, Judges Alex Durance and Jodie Swallow transferred from the Social Entitlement Chamber to join the cadre of Mental Health salaried Judges.

In June 2020, the SEND jurisdiction welcomed 19 new fee paid judges following a Judicial Appointments Commission (JAC) competition. Their induction training was delivered wholly remotely in September. The Judicial College adapted well to the delivery of blended training, with modules delivered by self-study and video, leading to direct small group participation. This tranche of fee paid judges were the first not only to be trained fully remotely, but also to conduct their hearings entirely by video.

An external JAC competition has recently identified over 70 new specialist members for SEND, who will join the Chamber in 2021. Once again, induction training will be delivered through blended learning, self-study, video modules and remote small group work.

Following an internal expressions of interest exercise across the SEND jurisdiction, seven HESC members with education experience were selected to join the Care Standards jurisdiction. Ten new Care Standards members with other specialisms also joined the Chamber, following a joint JAC competition in conjunction with the Administrative Appeals Chamber of the Upper Tribunal. All received their induction training by video and ease of observation for hearings has been significantly enhanced by the use of video.

In the Mental Health jurisdiction, 67 new medical members were appointed following a JAC competition, and JAC recruitment for new specialist members for the Mental Health jurisdiction is ongoing following unavoidable delays caused by the pandemic. This recruitment exercise has been one of the first organised remotely through the JAC.

We are pleased to further report that the administrative staff across our jurisdictions, and the Chamber President's judicial support team, have readily adapted to the new remote way of working, with particular thanks to the senior managers for co-ordinating the same throughout HMCTS.

The Chamber was proud and delighted that the dedication and hard work of our jurisdictions was recognised in the last year in four ways. The SEND, Care Standards and Primary Health Lists jurisdictions' administration teams, based in Darlington, received the HMCTS National Openness Award in November 2020; Elisabeth Portas, Head of the Chamber President's Office, received the London Region Purpose Award; Jason Greenwood, the Delivery Manager, now Acting Operations Manager, was awarded an MBE in the Queen's New Year Honours List; and the former Chamber President, His Honour Phillip Sycamore was awarded a CBE also in the Queen's New Year's Honours List. We extend our warmest congratulations to them all on these fine achievements.

Finally, in common with other Chambers, HESC welcomes the appointment of Sir Keith Lindblom, to his new role as Senior President of Tribunals, as we bid last year a fond farewell to his predecessor, Sir Ernest Ryder.

Conclusion

The Chamber President would like to express his personal gratitude to our stakeholders, administrative staff, case workers, the judicial support team in the President's Office, and our judiciary, for helping provide an ongoing service throughout the pandemic. Together, we have been able to lay the foundation for a remote hearing model that has helped ensure the continued delivery of justice to those, often vulnerable members of society, who come before our tribunals. The flexibility of approach we have seen this year has been an essential component in achieving that aim and has helped ensure our cases continue to be decided effectively, efficiently and without delay. These accomplishments are a direct result of our collective efforts in helping build a new, remote way of working, through which our users can have confidence that their cases will be heard in a timely manner and decided fairly, according to the law.

War Pensions and Armed Forces Compensation Chamber

President: Judge Fiona Monk

The work of the Chamber

It really goes without saying that, like all jurisdictions, our work over the last year has been dominated by the unprecedented events of 2020 and our response to the pandemic. The performance of the Chamber reflects the disruption to the work caused in the early stages of the COVID-19 pandemic. It is a real testament to the dedication and joint working of all the judges, members and HMCTS staff that after an initial hiatus when hearings were suspended the Chamber has managed to get back on track successfully. In reflecting on what we have achieved over the last year it is also obvious how much joint and co-operative working across the Tribunals has been vital to our recovery. We are a small Chamber and we simply could not have responded as we have were it not for the support of judicial and HMCTS colleagues across the Tribunals.

The March lockdown closed Fox Court, our then administrative base. As a paper-based Chamber we had no access to files, staff or the limited IT. We were missing in action for 12 weeks. With significant help from Social Security and Child Support (SSCS) administrative colleagues in Bradford providing remote hearing facilities and training clerks the Chamber was able to get back to work.

We first listed cases for appeals that had originally been due to take place during the hiatus and where the panel members had received and retained their papers.

This gave the staff room to manoeuvre, when they returned to Fox Court after three months to open the sacks of post and respond to e-mails. Hearings were all initially by BT Meet Me with the panels meeting on Skype or Teams to preview appeals and for private deliberations. Judge Surinder Capper and our Tribunal Case Worker (TCW), Moshuda Ullah did a huge amount of work triaging and prepping every single case to get the Chamber moving again.

We increased sittings from four to five days a week but because remote hearings were initially taking longer, the number of appeals cleared in each session went down. The complexity of appeals meant that they were not amenable to triage and clearance on a paper basis.

There was a challenge in engaging the with Ministry of Defence and the Royal British Legion (the largest representative organisation) because their staff had been sent home and had limited access to papers and IT, but one of the strengths of the Chamber has always been its co-operative working with our stakeholders and we established regular meetings to work together and understand the challenges they were facing.

We took the decision to move from telephone hearings to video and after comprehensive training for the Chamber, led by Judge Surinder Capper, and assisted hugely by colleagues in SSCS and Jason Greenwood from the Health, Education and Social Care Chamber we started hearings by Common Video Platform (CVP) in early February. There was good deal of trepidation about how panels would cope with the technology and also how receptive our demographic of appellants, who are older and less technically engaged, might respond. We have been very pleasantly surprised – take up of the offer of video hearings has been high and appellants seem to appreciate not having to travel long distances and the ability to participate from the comfort of their home. I pay tribute to all the judges and panel members in the Chamber who responded magnificently to the challenges of adapting to new ways of working and just got on with the job of doing justice.

We have a plan for starting to return to face to face hearings as a small, but growing number of our appeals need to be heard in person. Although strictly outside the remit of this report it is really pleasing to report that two panels have now held in person hearings, in Liverpool and Havant in early May. Both were hybrid hearings and were very dependent on the significant support they were given by the HMCTS teams in both venues.

Although the number of appeals we received during the year fell by around 30 per cent, the number of outstanding cases rose to an all-time high in the middle of the year. However, since May 2020 we have been making steady inroads into that. We are focusing on getting our oldest appeals listed and have been holding case management hearings to get them moving again. Many of our appellants have already waited over a year for their appeal to be sent to the Tribunal by the Secretary of State so it is vital that we prioritise those for hearing.

Appeals from our decisions to the Upper Tribunal (Administrative Appeals Chamber) are relatively rare, and over the last 5-6 years have steadily declined. Between 1 April 2020 and 1 April 2021 out of 21 permission to appeal applications only six were given (one on limited grounds) and two appeals were determined, both of which were allowed and remitted.

People and Places

I said in my report in 2018 that because we are a small Chamber, individuals are very important and personnel changes make a big difference – that is no less true now.

From 4 March 2020 Upper Tribunal Judge Kate Markus QC took on the role of Acting Chamber President and from February, Regional Tribunal Judge Hugh Howard took on the role of Senior Judge overseeing the day-to-day management of the Chamber. I was appointed as Chamber President on 1 December 2020, so they, along with Judge Surinder Capper, undertook all the heavy lifting in responding to the pandemic.

The Chamber has 1.4 salaried judges, 30 fee-paid judges, 30 medical members and 30 service members and a TCW. In February 2020 we had welcomed Richard Wilkin as a salaried judge, and he joined salaried Judge Surinder Capper who has been with the Chamber since 2018. He split his time working two days a week for this Chamber and three days in the Asylum Support jurisdiction in the Social Entitlement Chamber. In April this year he gave up his salaried appointment with us to enable him to focus on the Asylum Support jurisdiction. We are sad to see Richard leave us – he had picked up the work remarkably quickly, particularly as he was throughout that period working remotely, but we are very pleased not to have lost his expertise completely as he will continue to sit for us for up to 30 days per year.

A new salaried judge has been appointed to the Chamber who will start with us in September and will be a very welcome boost for the salaried judicial team.

We are also extremely lucky in having as the Chief Medical Member for the Chamber – Dr Laleh Morgan. Laleh is a salaried Regional Medical member in the Social Entitlement Chamber, and together with Surinder did a huge amount of work in supporting and providing training and guidance for panel members on hearing cases remotely, as well as starting the important work of revamping our Chamber's website.

The Chamber has undoubtedly really benefitted from having a TCW since 2018. Moshuda Ullah was instrumental in keeping the Chamber running through the pandemic. She has recently been acting up as a Senior TCW and although her work is still primarily focussed on this Chamber, I was very pleased to secure another TCW. Sharon Jarvie stared with us in April 2021 and is based with the administrative team in Leicester.

We are also fortunate that Mark Rowland, a retired judge of the Administrative Appeals Chamber with substantial experience in relation to the jurisdiction of the WPAFCC, was appointed as a fee-paid judge in February. In addition, he brought his wealth of knowledge to the task of re-writing our Bench Book. The new edition will be published very shortly and will be an invaluable reference for all of us.

During this period, we said goodbye to two long serving colleagues; Judge Faith Elaine Levey (aka Mark) retired in February 2021 and Service Member Peter McCutcheon resigned in March 2021. We have also just said goodbye to another of our Service Members, Giles Orpen-Smellie who has stepped down as he has been elected as a Police and Crime Commissioner. They will all be greatly missed, and we thank them for their valuable contributions to the work of the Chamber.

In December the administrative support for the Chamber moved from Fox Court in London to Arnhem House in Leicester. The decision was taken primarily to give us space to adapt our processes to bring direct lodgement of appeals to the Chamber. All the hard work was done before my arrival as Chamber President but the HMCTS teams in Fox Court and Arnhem House, supported by jurisdictional support colleagues worked hard to ensure a relatively seamless transfer of work. It would have been challenging at the best of times but to manage it during lockdown when all training was done remotely was a remarkable achievement.

Once again Judge Surinder Capper and Moshuda Ullah did a great job in training the new staff and supporting them in the months since.

We have also been very fortunate to have benefit of a very technically skilled, dedicated group of CVP clerks in Leicester who have rightly earned praise from all quarters for their ability to resolve technical difficulties and support us in the remote hearings.

Reform

The Chamber now has its own Jurisdictional Board and the benefit of much greater support and oversight of the resource needs of the Chamber. A major and long-standing issue is the fact that our appeals are not lodged directly with the Chamber but are instead sent by the appellant to Veterans' UK, an agency of the Ministry of Defence (MoD) which is wholly unsatisfactory. Last year it was agreed in principle that the process of direct lodgement of appeals to the Chamber will be implemented. Despite an outline commitment by MoD to work towards implementing Direct Lodgement by the end of 2021, and even making allowances for the interruption of the pandemic, progress has been disappointingly slow. MoJ Policy are working with MoD to try and get the project moving again and I very much hope to be able to report next year that, at last, Direct Lodgement has been achieved or is on course to be achieved in 2022.

I am pleased that the Chamber's slot in the Reform programme has been brought forward and am looking forward to working with and building on other jurisdictions' work for the benefit of our users and the Chamber as a whole.

Tax Chamber

President: Judge Greg Sinfield

Introduction

The period covered by this report has been without doubt the most challenging since the Tax Chamber came into being in April 2009. At the beginning of the period covered by this report, the World Health Organization had just declared COVID-19 a pandemic. It was clear that the situation was serious but we did not know how dark the days ahead would be. The last year has been extraordinarily difficult at times and I record my gratitude and admiration for the hard work and determination of the judges, members and all the staff of the Tax Chamber during that time.

As I write this in May 2021, I firmly believe that the next year will be much brighter.

Jurisdictional Landscape and Legislative Changes

The Tax Chamber hears appeals by individuals, corporate bodies and organisations against decisions made by HM Revenue and Customs ('HMRC') relating to taxes both direct (such as income tax, corporation tax, capital gains tax, PAYE and NICs, and stamp duty land tax) and indirect (such as VAT) and duties (such as customs duty and excise duty). We also hear appeals against tax related penalties imposed by HMRC which can be significant amounts and may raise human rights issues and some, eg where allegations of dishonest conduct are made, are subject to Article 6 European Convention on Human Rights (ECHR) safeguards. The Chamber also deals with appeals brought against decisions of HMRC or Border Force relating to restoration of seized goods (e.g. smuggled items and vehicles used to smuggle) and against some decisions made by the National Crime Agency. Our jurisdiction extends beyond tax related matters to include appeals from decisions of the Compliance Officer for the Independent Parliamentary Standards Authority in relation to Member of Parliaments' expenses claims and appeals against penalties for breaches of the money laundering regulations.

On 31 December 2020, the United Kingdom completed its exit from the European Union (EU) when the transition period came to an end and Great Britain finally left the EU single market and customs union (while leaving Northern Ireland in the EU single market for goods). The consequences and effects of these changes will be with us for some time 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 impact from Brexit on appeals received until the second half of 2022.

As it does every year, the Finance Bill brings the prospect of change. This year we see the rare prospect of a reduction in our work in the proposal in the Finance Bill to remove the need for HMRC to make applications to the Tribunal under Schedule 36 Finance Act 2008 for approval of third-party information notices addressed to financial institutions. Against that must be set the provisions giving us a new supervisory jurisdiction over decisions of HMRC to refuse to grant temporary approval to carry on certain activities in relation to excise goods pending review or appeal.

Remote Hearings and the Return to Face-to-Face

Unsurprisingly, the use of remote hearings within the Tax Chamber has increased significantly during the last year. The Video Hearing Service platform which was merely a pilot before the first lockdown has been tested and refined in the furnace of restrictions.

The Tax Chamber's judges, non-legal members and staff have gained considerable knowledge, skill and experience of video hearings during this period which has been put to good use. We have also produced a video for litigants in person and others unfamiliar with the procedure to show them what happens in a video hearing of a simple tax appeal. The mock hearing is available online at **https://www.gov.uk/tax-tribunal/if-you-have-a-hearing**. Please watch it and be amazed at the dramatic talents of the judges and members of the Tax Chamber.

Video hearings and e-bundles have proved popular with many of our users and for some types of proceedings there is no going back. For example, we have already agreed with HMRC that, following our experience under lockdown, all ex parte applications for approval to issue information notices will be made electronically and considered at a video hearing by reference to electronic documents. This will reduce paper and remove the need for HMRC officers to travel. Taxpayers could see similar benefits from moving short penalty cases to video hearings which they can attend without, as often happens, losing an entire day in attending.

Some users may not have the means to join a video hearing and we can also deal with matters by telephone although the growth in the use of video hearings has seen the telephone hearings dwindle. To assist those who wish to participate by video but lack the means, we now have a 'video booth' (in fact a small hearing room) in Taylor House in London which can be used to allow litigants and others who do not have the necessary facilities or technology to join hearings elsewhere. We have also arranged for an appellant to participate in one appeal from a video hearing booth at an Immigration and Asylum Chamber (IAC) venue in south Wales. We anticipate other HMCTS premises offering such facilities thus enabling better and easier access to justice for some, perhaps many, users than the old system of requiring attendance at a hearing centre.

We also believe that hybrid hearings will become more common in the future. Hybrid hearings can take a variety of forms: judicial office holders in hearing rooms with parties joining by video and/or audio or different combinations of judicial office holders joining remotely with parties and/or some tribunal panels in a hearing room.

Many cases will still require a face-to-face hearing because the nature of the proceedings requires it or a party or witness does not have access to suitable equipment to participate remotely. The Tax Chamber expects that a return to face-to-face hearings will be possible with effect from late June 2021 but not in any great number until September. The speed of the return to face-to-face hearings will be determined by Government advice and the understandable caution of some to attend hearing centres while COVID-19 remains endemic. Even when all restrictions have been lifted, the Tax Chamber will continue to offer fully video hearings and hybrid hearings.

Our Work

Notwithstanding the other challenges, the Tax Chamber has managed to avoid being overwhelmed throughout the pandemic. During the year to 31 March 2021:

- receipts of appeals and applications were a shade over 50 per cent of the number for the year ending 31 March 2020
- hearings and paper determinations of appeals and applications were also around 50 per cent of the historic rate.

In the months from September 2020, the Tax Chamber's video hearings regularly exceeded 50 per cent of the number of face-to-face hearings heard in the same month of the previous year with a peak of 75 per cent. As a result of the levels of hearings keeping pace with the reduced receipts of appeals, far from building up a backlog, the Tax Chamber had a lower caseload on 31 March 2021 than it had had at 31 March 2020. We do not expect the lower than historic volume of new appeals, due to reduced activity on the part of HMRC and advisers during the pandemic, to continue. We anticipate that, as HMRC and advisers return to normal working over the next year, we will see a release of pent-up appeals.

It must be acknowledged that the average length of time from receipt of a notice of appeal/application to disposal increased during the period. The lengthening in the average life of an appeal was largely due to the greatly reduced number of hearings in the first few months of the pandemic and the general stay of proceedings for three months at that time. Over the year, those factors became less significant as the number of hearings and paper determinations increased.

We were and remain a largely paper-based tribunal but, in order to improve the efficiency of the appeals process in lockdown, we required users to send all communications (including service of witness statements, documents and authorities) to the Tribunal electronically wherever possible. In June 2020, we issued guidance to tribunal users on the format, structure and content of PDF bundles. That guidance accelerated and standardised a developing practice which we believe, like the use of video hearings in appropriate cases, is here to stay. We have been greatly aided in this process by our engagement with our Tax Tribunals Users Group.

Digests of some of the most important decisions of the Chamber during the year are included in annex to the Senior President's annual report.

Our People

The last year has been unlike any year that any of us have experienced and for some it has been particularly difficult. Judge Barbara Mosedale has suffered from long COVID for most of the last year. She is, unfortunately, still not well enough to return to work but keeps in regular contact and we all look forward to her return when she has fully recovered.

It has been difficult to maintain a sense of community with colleagues in lockdown when it is not possible to meet in person. Teams meetings have been both a blessing and a curse but they have allowed us to hold regular update meetings and training sessions as well as informal events such as monthly virtual tea parties and coffee roulette. These have been well received and some people have said that they feel more involved in the Chamber now than before.

In May 2020, we were joined by Jennifer Newstead Taylor as a new fee-paid judge based in the north west. At the time of writing this report, the Tax Chamber has ten salaried judges, 46 fee-paid judges and 49 members, including one authorised presiding member. Our group of ten salaried judges will be increased by one when Anne Fairpo, one of our fee-paid judges, takes up her appointment as a salaried judge in the Chamber on 1 June 2021.

During the year, five of our fee-paid judges (Andrew Long, Michael Connell, Kameel Khan, Philip Gillett and Malcom Gammie CBE QC) retired. Six non-legal members (Elizabeth Pollard, Jacqui Dixon, Rayna Dean, Ian Abrams, Ian Menzies-Conacher, Charles Baker and John Adrain) also retired in the period covered by this report. These judges and members all brought a lifetime of knowledge and experience to the Tax Chamber for which we are very grateful, and their absence will be keenly felt.

Notwithstanding the addition of Jennifer Newstead Taylor, overall the number of judges has decreased in the last year due to retirements. As I have stated in every report since my first in 2018, we do not have enough judges. This can be seen from the fact that, in normal times and even in a time of reduced hearings due to the pandemic, we have had to postpone hearings because no judge was available to hear the appeal. With an expected increase in workload referred to above, that situation can only get worse and it is essential that we address the lack of judicial resource as a matter of urgency. Accordingly, in the next year, we will be seeking to recruit more salaried judges and more fee-paid judges.

We must also address the decline in the number of non-legal members in the Tax Chamber. Many of the current members are approaching the statutory compulsory retirement age and, in the next year, seven members will be required to retire. Although there is now a proposal to increase the mandatory retirement age to 75, for many that will come too late even if they wish to continue sitting into their seventies. We will be seeking to recruit more members in the next couple of years.

Our Premises

I am pleased to report that the much-needed large hearing room in Taylor House has now been created by knocking two courts into one. We hope that the new hearing room will become fully operational in the second half of 2021.

There have been no changes of note in our other locations in Birmingham, Edinburgh and Manchester.

Training and Know-how

Even in the midst of a pandemic, the need to maintain and develop the knowledge and skills of judges and non-legal members remains a priority. John Brooks, Jennifer Dean and Kim Sukul have been outstanding in their delivery of an effective (and engaging) training programme in new ways.

The annual Judges' Conference due to be held in 2020 and 2021 was cancelled. The training team adapted the conference programme from March 2020 into weekly interactive web-based seminars which took place from the first week in May 2020. In April 2021, they organised a very successful two-day virtual conference for judges and members. Of course, virtual conferences cannot be a complete substitute for the 'real' conference: online meetings can never reproduce the social interaction between judges and the informal sharing of experiences which occur outside the formal sessions and are so essential in building a collegiate spirit and maintaining morale.

Administration

I would like to pay tribute to our Registrar, June Kennerley, the Tribunal Caseworkers and all the staff at our administrative service centre in Hagley Road, Birmingham for their hard work during the last year in very difficult conditions. In my last report, I drew attention to the fact that it had been difficult to recruit and retain staff at Hagley Road. The staff shortages have continued and the need to maintain social distancing and other measures have created challenges. Inevitably there have been some delays in processing correspondence and listing hearings but there has been steady progress. I believe that one benefit of the last year is that Hagley Road, along with other parts of the Tax Chamber, has been forced to adapt to new ways of working and incorporate digital solutions into what remains a largely paper-based system. Another positive development for the future of the Tax Chamber is that Hagley Road will be looking to recruit a further 20 permanent staff in the year ahead which should lead to even greater improvements in capacity and response times.

Reform

There has been, perhaps understandably, no discernible progress in the Reform project in relation to the Tax Chamber during the last year. The next year is more promising with a design review starting in May 2021 and then development. I hope to report on the progress made by that process in next year's report.

Conclusion

It has been a year like no other. Although, with hindsight, some things might have been done differently and better, for which I take responsibility: we never closed; there were delays but we were never overwhelmed; we have fewer outstanding cases at the end of the year than when it started; and our remote hearings have been a remarkable success.

Those who predicted that we would not cope have been proved wrong. I am proud of what the Tax Chamber has achieved and profoundly grateful to the judges, members and staff who ensured that, in the midst of a pandemic, cases were dealt with fairly and justly.

General Regulatory Chamber

Acting President: Upper Tribunal Judge Mark O'Connor

The Chamber's jurisdiction is multifarious and includes, amongst other things, appeals from decisions made by regulatory bodies in the spheres of: Charity, Community Right to Bid, Environment, Electronic Communications, Postal Services, Network Information Systems, Estate Agents, Exam Boards, Food Safety, Gambling, Immigration Services, Information Rights, Pensions, Professional Regulation, Transport and Welfare of Animals.

Three seismic events have affected Chamber operations during the past year – the Coronavirus pandemic, European Union Exit and an extended period of leave by the Chamber President from August 2020. Each brought a very different, and very significant, challenge to the Chamber and I will touch on these further below. What cannot go without saying at this early stage is that the staff, caseworkers, registrars and judges of the Chamber have risen magnificently to these challenges, and it has been a privilege for me to be part of the 'Chamber family' during this time.

A further event of significance to the Chamber was the much anticipated publication, in July 2020, of a report relevant to the work of the GRC, authored by the Centre for Socio-Legal Studies at the University of Oxford: *'A Critical Analysis and Review of the Procedure and Substance of Appeal Rights to the First-tier Tribunal (General Regulatory Chamber)'*. The report, which includes a foreword by Sir Ernest Ryder (written in his capacity as the Senior President of Tribunals) and the Chamber President, identified the complex and varied nature of the legal and procedural regimes within the Chamber's jurisdiction and made a series of consequential recommendations to the legislature – the overarching theme being the need for an homogenous approach to rights of appeal across the Chamber. Discussions regarding the implementation of these recommendations are well underway.

Jurisdictional Landscape

The pandemic led to a degree of unpredictability in the timing and number of appeals coming into the Chamber. Over the course of the year, appeal receipts were approximately two-thirds of the number anticipated and, as a consequence of this and the tremendous efforts of those who work within the Chamber to ensure that the wheels of justice continued operating during the pandemic, the Chamber's outstanding caseload has steadily reduced.

The most significant changes to the jurisdictional landscape of the Chamber have fallen within the Environment jurisdiction, with the United Kingdom's exit from the European Union leading to new and diverse UK regulated environmental regimes, many of which incorporate appeal rights to the Chamber. The new spheres of environmental regulation that impact on the Chamber's business are too numerous to list in this publication, but encompass emissions regulations, offshore oil and gas exploration, plant health, Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) compliance and control of hazardous waste. Other jurisdictions within the Chamber have also felt the impact of EU Exit with, for example, a range of additional animal welfare regulatory regimes incorporating rights of appeal to the Chamber. We anticipate that the flow of additional workstreams into the Chamber will continue throughout the year ahead.

The Chamber has also started to see the fruits of the Upper Tribunal's decision in *Moss v Information Commissioner and Royal Borough of Kingston upon Thames* [2020] UKUT 174 (AAC), which concluded that the First-tier Tribunal had the power to enforce a substituted decision notice, by means of certifying a party's conduct as contempt to the High Court (or in more recent times, to the Upper Tribunal), Equally significantly, the Upper Tribunal also concluded that the Information Commissioner did not have the power to enforce a substituted decision notice. The *Moss* decision has led to a significant number of certification applications being lodged with the Chamber.

The Chamber has engaged with a number of thorny legal issues during the year, with four decisions being of particular interest. In *Maurizi and others* [2021] UKFTT 0085 (GRC), the Tribunal, in the context of a jurisdictional issue, addressed the territorial scope of the Freedom of Information Act 2000.

In *McGrady v Secretary of State for Business, Energy and Industrial Strategy* [2021] UKFTT 84 (GRC), the Tribunal once again had occasion to address a significant issue of jurisdiction, this time in the context of the application of regulation 87 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc) Regulations 2012 (the appeal provisions) to decisions of the Secretary of State not to treat a complaint about a Green Deal Plan as eligible as a consequence of such complaint being made outwith the specified timeframe. In T*rue Vision Production v Information Commissioner [2021]* UKFTT 2019_0170 (GRC), the Tribunal considered whether the journalism exemption in section 32 of the Data Protection Act 1998 applied such that the personal data processed during filming was exempt from the First Data Protection Principle and, if not, whether a Monetary Penalty Notice should have been issued, and in what amount. Finally, in *Williams, Wickham-Jones and Lownie v Information Commissioner and Foreign, Commonwealth and Development Office* [2021] UKFTT 2019_212 (GRC), the Tribunal gave consideration to whether a public authority was entitled to rely on mutually exclusive national security exemptions 'in the alternative'

People

During the Chamber President's period of leave, Upper Tribunal Judge O'Connor has taken on the functions of that role and continues to do so as of the date of writing. During the year, the Chamber was delighted to welcome our third salaried judge, Lynn Griffin. Judge Griffin was assigned to us from the Social Entitlement Chamber on a full-time basis from January 2021 and is already making a significant contribution to the work of the Chamber; indeed, it is hard to remember life without her.

Judge Macmillan, who joined the Chamber in January 2020, was appointed as lead Environment Judge, and is working tirelessly to ensure that the Chamber is as prepared as possible for the additional workstreams brought into the Environment jurisdiction as a consequence of EU Exit. Judge Macmillan is also the Chamber's training lead and, in her short time in the role, has established a strong working relationship with the Judicial College. She is, in very large part, responsible for four enormously successful, innovative and highly effective training events undertaken by the Chamber during the year.

The Chamber welcomed judges: Elizabeth Ord, Michael Rawlinson, Jo Swaney, Margo Ford, Deni Mathews and Gareth Wilson, to its Environment and Immigration Services jurisdictions, and Tribunal Members: David Cook, Rumanjit Edwards, Kate Gaplevskaja, Dr. Aimee Gasston, Kate Grimley-Evans, Naomi Matthews, Alf Murphy, Dan Palmer-Dunk, Susan Wolf and Emma Yates to its Information Rights jurisdiction. The Registrar compliment of the Chamber is also soon to be supplemented by the assistance of Rebecca Van Beers, Sara Coverdale and David Hosking. The Chamber is also currently in the process of recruiting specialist Environment jurisdiction Members and we hope to have those Members on board by the autumn of this year.

We have this year bid farewell to Tribunal Members Andrew Whetnall, Alex Rocke and Daryl Stephenson. I wish to thank each for their contribution to the work of the Chamber and wish them well in their retirement.

This year the Chamber also had to bid farewell to Shindo McGuire, although not through retirement. Over the Christmas period we received the sad news that Shindo, a serving Tribunal Member in the Immigration Services jurisdiction, had passed away. I had the pleasure of sitting with Shindo on a number of occasions and our paths also crossed outside of the Tribunal. Shindo served as a Tribunal Member for upwards of 20 years and was a valued colleague. She was knowledgeable, conscientious and utterly dependable and the Chamber owes her a large debt of gratitude.

Reform

The Chamber is peripatetic and prior to the onset of the pandemic operated an entirely paper-based system, with hearings either 'on the papers' (with the parties' consent) or face to face. The onset of the pandemic required the Chamber to make fundamental changes to its ways of working, none more significant that its move into the digital world. Save for in a small number of National Security cases and where reasonable adjustments otherwise require, the Chamber is now paperless; electronic filing, electronic case files and video hearings being the norm. Once again, tribute needs to be paid to the staff and judiciary of the Chamber, who have not only embraced the change but driven it with innovation and collaboration. My particular thanks go to Lara Moseley, who devised and provided in house training on the use of the Cloud Video Platform for the Chamber's judicial office holders.

The Chamber is anticipating with some relish the opportunities that HM Courts and Tribunals Service (HMCTS) Reform will offer in the year ahead. There is already close engagement with the Video Hearings team and with the listing project, with the former being piloted by the salaried judges of the Chamber. As was indicated in last year's report, the Chamber is very much alive to the need to work with HMCTS to identify a suite of different tools from its Reform Programme that are suitable for each of its regulatory jurisdictions, and looks forward to such engagement in the coming year.

Immigration and Asylum Chamber

President: Judge Michael Clements

Jurisdictional Landscape

The Immigration and Asylum Chamber (FtTIAC) is one of the largest of the seven Chambers of the First-tier Tribunal. It deals with appeals against decisions of the Secretary of State or an Entry Clearance Officer.

There is a varied case load. Appeals come from persons seeking international protection in the United Kingdom (asylum or humanitarian protection) for a variety of reasons: those suffering war or conflict trauma; trafficking into prostitution or slave labour or at risk because of gender, religion or sexuality. Those convicted of offences in respect of whom a deportation order has been made may also appeal requiring a judge to determine whether the circumstances of the appellant, or their family members, outweigh the public interest in the offender's removal. Where there has been no criminality the judge will be required to decide whether the private and family life established by a person outweigh removal and should allow them to remain in the United Kingdom or be given leave to enter despite their inability to meet the requirements of the Immigration Rules. The judge will be required to conduct a balancing exercise between the interests of all those individuals set against the relevant public interest.

Appeals are also made against decisions made under the EEA Regulations and the EU Settlement Scheme which require not only a judicial assessment of the overall proportionality of the decision under appeal but to determine whether a marriage is valid under the law of a third country, whether a marriage is genuine or whether one individual is genuinely financially dependent upon another.

Decisions to deprive individuals of their British citizenship carry a statutory right of appeal.

Finally bail applications are heard for those in detention.

Our Caseload

The number of appeals received and disposed of by FtTIAC is set out in the following table with those of the previous years for comparison. The pandemic has had a significant effect on our caseload over the past year. I anticipate a sharp increase in the number of appeals during 2021/22 as the Secretary of State returns to pre-pandemic decision levels.

Year	Appeals received	Appeals disposed of
2018-19	43,860	59,310
2019-20	42,290	49,900
2020-21	25,210	20,410

Reform

Reform has been a constituent part of the future plans of our Chamber since March 2018. The FtTIAC Reform Team was the first to conceive and design an end-to-end online appeals process. The vast majority of online appeals have been commenced during the pandemic. This has been achieved by FtTIAC extending the service to include most appeals lodged in the UK where there is a representative and proscribing, by way of Directions (effective from 22 June 2020), that in certain categories appeals are brought in that form unless it is not reasonably practicable to do so.

I thank all stakeholders for their support in enabling us to advance this digital process. Of particular pride is that we were invited to demonstrate our progress to the Ministry of Justice of another country who were impressed by what our team had achieved.

Appeals are case managed throughout by a Tribunal Caseworker 'TCW' with a view to maximising fairness to the parties and hopefully minimising the need for adjournments. Under the new process cases are not listed until they are ready to be heard.

The process provides for greater focus on the key elements of the claim, the key issues that are actually in dispute between the parties, and the reasons for that dispute. Before an appeal is listed the Secretary of State will also have thoroughly reviewed the merits of the appeal.

The pandemic brought a sharp focus on the benefits to be gained from these reviews. Active case management by judges and TCWs led to around one-third of Reform appeals being disposed of without the need for a final hearing.

Great care has been taken to ensure that unrepresented appellants are not disadvantaged in their use of the MyHMCTS system. Construction is underway for the provision of a MyHMCTS service for unrepresented appellants. They will be prompted by the system to provide the key details allowing an effective review of the merits of their appeal by the Secretary of State.

The system depends heavily on our dedicated cadre of TCWs, and with our experience using the system during 2020/21 came the recognition that we would need further recruitment and a different management structure. I am very pleased to report that Bernadette McQueen, Senior Legal Manager, is leading our team of Senior TCWs. I am also very grateful to all those judges who have helped with national skills training and who continue to provide support within hearing centres.

The project has not been without its challenges with both the technology and ensuring that Legal Aid payments were fair for the work required in engaging with the online system. I am aware that there are still discussions between practitioners and the Legal Aid Authorities in some parts of the UK. We expect that Pay By Account will be introduced as part of the online reform service in July 2021. This will speed up the fee payment process for the majority of our professional users who are able to use this facility.

I express my gratitude to all those who have sought to make positive contributions and persevered with our teething troubles. I do not suggest that the project is yet complete, but we continue to make steady progress. Our Chamber owes a great deal of gratitude to the team of judges who sit alongside the project. They are Resident Judges David Zucker, Russell Campbell, Julian Phillips and Judges Steve Povey and Joe Neville all of whom have dedicated themselves to the delivery of reform. None of that would have been possible without the IT and HMCTS teams too. Special mention should be made of Julie McCallen, Pavanpal Dady and Kerri Bodenham. Between them they have overcome the obstacles and made digital reform a reality.

Response to the Pandemic

The decision in March 2020 to adjourn appeals that had been listed in April, May and June for face to face hearings was not taken lightly. It was made to protect the health and welfare of the parties, the judiciary, our staff and all of our court users. Hindsight has confirmed that this was the correct decision. It was rapidly overtaken by the closure of our hearing centres by HMCTS, the national restrictions that affected travel and the ability of all of our stakeholders to operate normally.

Although our hearing centres closed and judges and HMCTS were required to adapt rapidly to working remotely, everyone accepted that bail applications by those in immigration detention remained a priority. Systems were rapidly developed to accept and distribute papers by email and hearings were conducted using BTMeetme, the telephone conferencing service.

We devoted significant resources to accelerate the development of our online appeals service, the clearance of any application or appeal that could be disposed of either by a hearing on the papers or by telephone and embarked on a review, by judges and consequent case management, of all delisted appeals. Appeals were subject to judicial case management hearings with tailored directions issued to the parties to prompt engagement with what were perceived to be the key issues. This process also identified those appeals that were suitable for final remote hearing, and these were listed from mid-July. We tried out a variety of platforms, and developed our practices, until the new Cloud Video Platform (CVP) system was ready for deployment. We welcomed back our fee-paid colleagues and a programme of panel sittings was implemented to ensure each fee-paid judge could gain confidence in the new systems and benefit from the accumulated experience of their salaried colleagues.

New Ways of Working

The pandemic outbreak led to an acceleration of the implementation of the reform process and the swift adoption of video hearings. These allowed remote hearings whenever these were suitable for the parties. Not every party will, in practice, be able to access a remote hearing satisfactorily. I accept that, even when access to technology allows them to do so, the personal circumstances of some require careful consideration to ensure a fair hearing and that best evidence is given. This will continue to inform our listing decisions as to whether to list an appeal for face to face or remote hearing. These decisions will be driven by the circumstances of the parties not by the representatives, and it will remain a judicial decision.

Although considerable progress has been made, we will continue to refine our systems to allow large volumes of digital documents to be handled and accessed with ease by judges and TCWs in those appeals that were lodged prior to the implementation of our online system, or which cannot be brought within it. It can be frustrating and time consuming to search for an individual digital document within an electronic folder when none carry a useful title, and I hope that engagement with stakeholders will, in time, provide a naming convention for digital documents that all will use and respect. Meanwhile we continue to pilot, with stakeholders, a document upload system attempting to find a way to reduce the administrative burden for all in the creation and timely delivery of digital bundles.

As the technology available to us develops, we will continue to explore how we can make better use of the judicial resources available, consistent with our primary obligation to deliver fair hearings. Bail hearings are now routinely dealt with remotely with the applicant joining from their detention centre or prison. The immediate benefit is to eliminate the delay and administrative burden associated with arranging the detainee's physical production. Looking forward, remote hearings will allow us to develop systems that will enable bail applications to be heard immediately the Secretary of State has filed her response to it, and, for bail hearings to be allocated more equitably between judges assigned to different hearing centres.

We will continue to research the effects of video hearings on outcomes and court users and of remote working on our judges. I seriously consider the many reports that remote video hearings take longer and cause more judicial fatigue. However, those must be balanced against the reports I receive suggesting many court users prefer remote hearings, finding them less stressful, cheaper and more efficient. There are clear benefits to using remote hearings 'in appropriate cases', but I remain vigilant in ensuring that they are properly identified.

Other developments

It is essential that FtTIAC is an inclusive, diverse chamber which is underpinned by equality and respect. Diversity and inclusion benefit us all. They lead to better working practices, enhance collegiality and make for better overall decision making. As President, my commitment to these objectives is echoed in the **Judicial Diversity and Inclusion Strategy** and the SPT's vision for all tribunals.

Our Diversity and Inclusion Committee will be integral to implementing Equality, Diversity and Inclusion initiatives within our Chamber. It builds on and cements the principles within the work of our Tribunal. The committee is led by Resident Judge Juliet Grant-Hutchison with a consultative pool of judges. A published strategy EDI policy will be published providing a road map for the work ahead.

Like the SPT Diversity Taskforce, FtTIAC's committee will focus on the objectives identified in the Judicial Diversity and Inclusion Strategy. The initiatives put forward will be pragmatic, research-based and effective. The implementation of these will take hard work and time with all our judges working in collaboration.

This will be an ongoing, long-term programme of commitment and engagement. During the pandemic FtTIAC judges have continued to rise to the challenge of new and different ways of working. We have shown ourselves to be dynamic and innovative such that I have every confidence that our Tribunal can achieve these objectives.

Despite the limitations imposed by the pandemic, judges have continued to deliver a programme of judicial outreach, affirming FtTIAC's commitment to diversity, inclusion, social mobility, and the improvement of community relations. Students from schools, colleges of further education, and universities discussed their work with judges and the realities of a judicial career. This is in addition to the mentoring offered to would-be judicial officeholders.

2021/22 is likely to bring new legislation, following consultation by the Home Office on 'The New Plan for Immigration' and the Nationality and Borders Bill. When there is clarity we will respond with training for both judiciary and TCWs. We anticipate legislative reform of the approach to be taken in protection appeals. It is also likely that the ability to direct both parties to an appeal to appoint a single joint expert will result in a significant number of appeals being resolved without the need for a hearing.

To assist judges, we have issued a new Bench Book and are reviewing all our Practice Directions and Practice Statements to identify what consolidation can be effected. To make key materials more accessible we have relaunched the FtTIAC judicial website under the editorship of Judges Joe Neville (who also edits 'Tribune' our monthly newsletter) and Lindsay Connal.

FtTIAC has continued to increase and develop its international ties through engagement with the European Asylum Support Office in Malta, and the European Judicial Training Network. We have contributed to the training of the judiciary within other jurisdictions and helped affirm the Rule of Law. Invitations to assist in specific training projects have been received from Cyprus, and the Cayman Islands. I extend my thanks to Resident Judge Julian Phillips, our judicial training lead, and his two deputy training judges, Anna-Rose Landes and Jonathan Holmes, for transferring to a digital delivery of first-rate training that we continue to provide to our judges. We have covered the use of new technology and the potential pitfalls for judgecraft in video hearings, alongside the inevitable new legal developments. Not least amongst these have been the new provisions that implement the EU Withdrawal Agreement, upon which Anna-Rose Landes has bravely taken the lead. We have started to receive appeals that raise issues relating to these provisions, but some uncertainty remains as to what the implications will ultimately be for FtTIAC's workload.

People

Sadly, during the year two of our judges passed away: Jeremy Callow and Peter Hollingworth. I wrote to both widows sending the condolences of their judicial colleagues.

I wish to convey my personal thanks not only to my immediate team of Resident Judges, but also in particular to Jane Blakelock and Martine Muir (the presidential team at Field House), together with Natalie Mountain and her team for their continued hard work and support, not only to me personally, but also the Tribunal. My thanks also go to the administrative team in the Senior President's office for its helpful and unstinting support.

Conclusion

My report would not be complete without acknowledgement that very little would have been achieved this year without the hard work and extraordinary dedication of our judges and administrative staff. In extremely difficult circumstances they have risen to the challenges we have faced with good humour and resolve. I am not only extremely grateful to them, but proud of all those who have devoted so much of their imagination, effort and patience to ensure that our work has continued in the face of the pandemic. Our decisions profoundly affect people's lives, and I have been impressed that the challenges we have faced have been met with the recognition that, unable to make those decisions or delay them, would be extremely damaging to many.

As the pandemic continues to affect the world, I remain committed to ensuring the safety of our judges, our staff, and all our court users.

Property Chamber

President: Judge Siobhan McGrath

Introduction

Before reviewing our progress during the past year, I would like to pay tribute to the Property Chamber staff and judiciary who have all worked so hard and achieved so much during the challenges posed by the COVID-19 pandemic. Despite lockdowns and the temporary closure of our two main Tribunal buildings, we have continued to progress and manage our caseload. This has been an extraordinary achievement.

The Property Chamber

The Property Chamber has expertise in Landlord and Tenant, Property and Housing law. Specialist judges sit together with professional experts and lay members. Most of our work is *party v party*.

Our shared vision is to provide accessible and expert dispute resolution in this challenging area of law. Expert adjudication is not a narrow construct and includes a number of elements: firstly, knowledge of the law and just as importantly, knowledge of how that law is applied in practice; secondly, knowledge of or access to expertise in housing conditions and housing management; thirdly (and I would say crucially) there needs to be expertise in case management so that cases move smoothly from application to determination.

Our Work 2020-2021

The Property Chamber has three divisions: Residential Property (RP), Land Registration (LR) and Agricultural Land and Drainage (ALD). Altogether the Chamber has jurisdiction in 160 separate types of case and has an annual case-load of about 11,000. For Residential Property, applications are received in leasehold enfranchisement, leasehold management, park homes, rents and local authority housing standards cases. In Land Registration references are received in adverse possession, boundary and beneficial interests disputes and applications in network access cases. In the Agricultural Land and Drainage division, most applications relate to succession and drainage issues.

Residential Property

Leasehold Disputes

Leasehold disputes are the mainstay of the Residential Property division of the Chamber. In the summer of 2020, the Law Commission published three reports: *Leasehold home ownership: buying your freehold or extending your lease; Reinvigorating commonhold: the alternative to leasehold ownership and Leasehold home ownership: exercising the right to manage*. Each report makes ambitious proposals for the reform of leasehold law and recommendations for the expansion of the Tribunal's jurisdictions to deal with disputes. The reports are part of a wider suite of proposals by the Ministry of Housing Communities and Local Government (MHCLG) to reform leasehold tenure. In January this year, the Housing Secretary Robert Jenrick announced plans to bring forward two-part reforming legislation to address problems in leasehold and to re-introduce Commonhold Tenure. The Ground Rents Bill was laid before Parliament in May and is the first iteration of that plan.

There have been a number of Court of Appeal decisions relating to leasehold in the past year: *LM Homes Ltd et al v Queen Court Freehold Company Ltd* (2020)[4]; *GR Property Management Ltd v Safdar and Ors* (2020)[5]; *Curo Places Ltd v Anthony Pimlett* (2020)[6]; *Aviva Investors Ground Rent GP Ltd and Anor v Williams and Ors* (2021) EWCA Civ 27[7]; *Chuan-Hui and Ors v K Group Holdings Inc and Ors* (2021)[8]; *City of London v Various Leaseholders of Great Arthur House* (2021)[9]; *Aster Communities v Chapman* (2021)[10].

Housing Act 2004 and Housing and Planning Act 2016

In 2006 the Housing Act 2004 introduced a new regime for local authorities to deal with housing conditions through the application of the Housing Health and Safety Rating System (HHSRS) and in the imposition of national standards for Houses in Multiple Occupation. 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.

4 [2020] EWCA Civ 371
5 [2020 EWCA Civ 1441
6 [2020] EWCA Civ 1621
7 [2021] EWCA Civ 27
8 [2021] EWCA Civ 403
9 [2021] EWCA Cuv 431
10 [2021] EWCA Civ 660

Under the 2016 Act, applications for Rent Repayment Orders (RROs) and appeals against the imposition of Financial Penalties imposed by local authorities for housing offences now represent the bulk of our housing standards work.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force in June 2020. They make provision for the maintenance and enforcement of safety standards and confer jurisdiction on the Tribunal to decide applications and appeals.

There have been two relevant Court of Appeal cases: *Hussain and others v Waltham Forest LBC* (2020)[11] and *Nicholas Sutton v Norwich City Council* (2021)[12].

Building Safety

The impact of the Grenfell Tower fire in June 2017 has been significant. The Chamber receives applications for the determination of the liability of lessees to pay for the costs of recladding and other fire safety measures in high rise buildings. Additionally, it continues to deal with applications for the dispensation of consultation requirements under section 20 of the Landlord and Tenant Act 1985, where urgent works to deal with fire safety are required.

The Building Safety Bill which emanates from MHCLG's response to its consultation of *Building a Safety Future* is likely to be laid before Parliament this session. Proposals are likely to include a new duty holder regime and proposals for enforcement and sanctions will include new rights of appeal to the Tribunal.

Telecommunications

In 2017, the Digital Economy Act introduced a new Electronic Communications Code which provides a set of rights designed to facilitate the installation and maintenance of electronic communications networks. Dispute resolution is conferred on both the Upper Tribunal (Lands) Chamber and on the First-tier Tribunal Property Chamber although any originating application must be made to the Upper Tribunal (UT). From June this year, it has been agreed that the UT will start to transfer cases to the First-tier Tribunal (FTT) for determination.

11 [2020] EWCA Civ 1539
12 1[2021] EWCA Civ 20

Additionally, the (snappily named) Telecommunications Infrastructure (Leasehold Property) Act 2021 received royal assent in March this year and following commencement in 2022 will confer jurisdiction on the FTT to determine applications for access to leasehold premises in default of landlord consent.

Land Registration

The Government has now issued its response to the Law Commission Report: Updating the Land Registration Act 2002. In particular it has accepted the Law Commission's proposals that the jurisdiction of the tribunal be expanded to include an express statutory jurisdiction in cases that come before it to allow it firstly, to determine how an equity by estoppel should be satisfied; and secondly, to declare the extent of a beneficial interest.

When the proposal is enacted, it will be clear that the tribunal can determine more fully the issues between the parties in matters referred to it concerning equitable interests and saving the parties the expense and delay of making additional applications to the court.

The Government has also accepted the Law Commission's recommendations that the tribunal should be given an express statutory power to decide where a boundary lies in a referred determined boundary application and to direct the registrar as to where the determined boundary lies. This recommendation will make it clear that the tribunal is not limited to deciding whether the boundary is or is not in the position shown on the application plan. The proposal will enable the tribunal to assist the parties by deciding where the boundary lies and giving appropriate directions to the registrar so that the line of the determined boundary is shown on the title plan.

Agricultural Land and Drainage

Following consultation with stakeholders, including the judiciary of the ALD Division, the Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (England) Regulations 2021 was introduced. These regulations establish an updated suitability test criteria that must be considered by the Tribunal when determining whether a prospective tenant is a suitable person to succeed to a 1986 Act tenancy following the death or retirement of the tenant.

Access to Justice

Judicial Deployment

The jurisdiction to deal with Property cases is split between the courts and Tribunals. In a significant number of cases, the parties have no choice but to engage in both types of proceeding. This increases the costs, causes additional delay, and in some cases, stress and frustration. Since 2017, with the support of the Civil Justice Council, the Tribunal has conducted a project, the 'flexible deployment' project, where Property Chamber judges exercise both county court and Tribunal jurisdictions so that all issues can be decided in one place at one hearing. By 2020 we had successfully conducted at least 500 cases in this way and work has started to look at how the scheme may become a mainstream case management option.

In March this year, the Association of District Judges agreed a standard form 'Listing Direction' for District Judges to use in 'double hatted' cases. The Direction is an order, sending the case to the Tribunal office for administration and 'to resolve all matters falling within the jurisdiction of the Tribunal and … all or any remaining proceedings including any claims for costs and interest.' To facilitate the scheme, the Tribunal administrative staff have been given access to the County Court case management system (Caseman). The system is not without its challenges and in particular, because a hybrid adjudication requires the application of both the Tribunal's Procedure Rules and CPR, we have had to work extremely hard to reconcile (in particular) cost and appeals. However, Sir Keith Lindblom, the Senior Presiding Judge and the Master of the Rolls have all indicated agreement to the direction of travel and the scheme will be rolled out across the country during the summer of 2021.

Property Portal and Property Network

To put this in context it is important to remember that the complexity of the various contractual relationships involved in property cases means that proportionate, accessible dispute resolution must be readily available. It is also worth pointing out that the answer to a particular property dispute may not be binary. In the Property Chamber we deal with multi-faceted disputes where the answer may not be that one side wins and the other side loses. It is more likely that one party will be found to be correct in some of its claims but not in others. Finally, it is of great significance that after a determination or resolution of a dispute, there will be a continuing relationship between the parties as landlord and tenant or even, in the case of resident management companies, as neighbours.

There is broad recognition that the resolution of Property disputes is disparate and confusing. In our view, the best way to tackle this challenge is to work to provide a single point of access for property dispute resolution: a 'property portal'. As a first step a complaint, claim, appeal or application would be lodged with the Property Portal. As a second step the dispute resolution providers would collaborate in a light touch triage and the complainant, claimant would receive a recommendation for the best way to proceed. The advice might be to mediate, to have an early neutral evaluation, to lodge a complaint with a regulator or ombudsman or to make a formal claim or application. If the chosen method of dispute resolution does not work, then it will be open to the parties to request a transfer to another provider. The concept is gaining traction. We are working with the Property Ombudsman and Housing Ombudsman on disputes mapping and will continue to press the case with Ministry of Housing, Communities and Local Government.

HMCTS Reform

In January 2020, the Property Chamber commenced a 'Discovery Phase' for the reform of its processes and procedures. As a result of other priorities and the impact of COVID-19, reform was not taken forward last year. However, there is a recent proposal to revisit Reform for the Chamber and we look forward to working with HMCTS to realise improvements to our system. Our main ambition is to preserve the capability afforded by our Case Management System but to improve it so that access to justice is enhanced. We would like applications and references to be made to the Tribunal on-line whilst preserving the choice for users to make paper applications. It should also be possible for documents, evidence and submissions to be lodged electronically. We seek to embed mediation and early neutral evaluation into our process. We would like to offer remote video and telephone hearings. We think it is essential that files and cases can be transferred easily between courts and tribunals and the Upper Tribunal. Our processes should be simple and intuitive.

Mediation Pro-bono advice and assistance

Judicial mediation is offered in both Residential Property and Land Registration divisions and is very successful. 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. During the pandemic we have continued with some mediations either by telephone or using Teams.

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, we have established a working relationship with a number of law schools and universities who offer advice and, in some cases representation to parties.

Judges, Members, Registrars and Legal Officers

The Principal Judge for Agricultural Land and Drainage is Judge Nigel Thomas and the Principal Judge for Land Registration is Judge Michael Michell who is supported by two salaried judges. Each of the Residential Property areas has a Regional Judge and one or more Deputy Regional Judges and a Regional Surveyor. 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, architecture, environmental health and in agricultural matters. Our decision making is also greatly enhanced by the input of our lay members.

In the Land Registration we also have two very experienced Lawyer Registrars. In Residential Property we have been happy to welcome a number of Legal Officers to our teams. They will exercise judicial case management powers and we are confident that they will enhance our effectiveness and assist in improving case management.

Appointments and Retirements

During the last year we have been pleased to welcome a number of new valuer chairmen and valuer members and also a new cohort of professional members. As experts, all the new appointees will enhance our ability to give expert adjudication and they are very welcome.

We also have two new salaried judges: David Whitney, who joins the Southern Region of the Residential Property Division and Ewan Paton who has joined Land Registration. We are delighted with their appointments and look forward to working with them going forward.

There have been a number of retirements during the last 12 months and I would just like to record my thanks for the contribution that both judges and members have made to the Chamber. In Land Registration, Judge Ann McAllister and Judge Owen Rhys retired from their salaried posts with Land Registration. Both Ann and Owen will be very much missed.

They made a significant contribution to the development of the office of the Adjudicator to the Land Registry and latterly to the Chamber. I am pleased to say however, that they will continue to sit as fee-paid judges and therefore we will not lose their judicial skill.

Administration

As always, the success of the Chamber owes a great deal to the dedication and work of our administrative staff. During the past year, this has been demonstrated as never before. In the final section of the report, I set out some of the challenges that we faced. Throughout all difficulty, staff remain focused, adaptable and agile. They have embraced new ways of working and very simply have kept the show on the road. Although output was impacted by building closure, we have no backlog at all in some of our offices and are catching up quickly in others. They are owed a debt of thanks for all they have done.

COVID-19

The effect of the COVID-19 Pandemic was sudden and far reaching. For about a month before the first lockdown on 23 March last year, we were making contingency plans for dealing with our work in a challenging environment. When lockdown happened our two biggest hearing and administrative centres in London and the South closed and did not re-open until July. During that time we managed to move all of our administrative processes on-line so that staff could work from home and the judiciary continued with case management on paper and by telephone. By June 2021 we had secured licences to hold video hearings and since then virtually all of our cases have been dealt with remotely. We have been successful in dealing with our cases. This has been achieved with the co-operation and positivity of parties and users.

The more pressing and interesting question now is how we propose to go forward as social distancing measures are lifted. Very simply we will retain the best of what we have achieved and this will include: offering a menu of options for hearings: consideration of cases on documents alone, telephone hearings, fully remote hearings and hybrid hearings; using PDF hearing bundles; asking parties to provide correspondence and communications with the Tribunal either by email or by using the upload centre that we are developing.

Conclusion

It has been another very busy year. Despite the pandemic we have continued to develop and grow. There are exciting new initiatives for the coming year and beyond. We are getting closure to achieving our goal of providing proportionate access to justice in property disputes. To that end we are forging closer contacts with the courts and other dispute providers. We are looking forward to the next 12 months and we are excited about the celebrations and parties that I have promised to organise!

Finally, a big thank you again to my Chamber Support Officer, Tom Rouse, who has, as usual, kept our little ship sailing though some very stormy seas.

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, now Lady Justice Simler. The period covered by this report (April 2020 to April 2021) coincides with the dramatic challenges thrown up by the Coronavirus pandemic. Throughout this time, the EAT has continued to function smoothly, thanks to the dedication and hard work of its staff and the flexibility shown by its judges.

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 very occasionally in Cardiff. In Northern Ireland, appeals from first instance decisions lie directly to the Northern Ireland Court of Appeal. The question of what devolution means for the EAT in Scotland has still not been resolved. In the meantime, the EAT remains a reserved tribunal in Scotland.

Receipts

As is now well known, the fees for bringing appeals to the EAT were abolished following the 2017 decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51. The number of claims and appeals has been steadily rising ever since, although it has not quite reached the level it was at before fees were introduced in 2014.

In the period from April 2020 to April 2021, there were slightly fewer new appeal receipts as compared to the previous year. This is probably the result of the short hiatus in ET hearings during the first lockdown. The number of receipts is once again on the rising trajectory that commenced with the abolition of fees.

Procedural and Rule Changes

The changes introduced by the 2018 Practice Direction, in particular the additional time given to Respondents to lodge an Answer to a Notice of Appeal (from 14 to 28 days), have worked well. However, the 2018 Practice Direction, and the EAT Rules 2003, both proved to be out of step with the new regime of remote hearings ushered in by the Coronavirus pandemic. The EAT Rules were amended by the enactment of the *Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020/415*. These provided a firm legal foundation for conducting video hearings, although it was considered that the EAT did have the power, implicitly, to conduct such hearings in any event. A new Practice Direction amending the provisions of the 2018 Practice Direction was issued in June 2020. This updated the procedures so as to enable remote hearings to take place and clarified the rules on the recording of proceedings.

Cases

The EAT continues to deal with appeals on a wide variety of issues effecting all aspects of employment rights, many of which reflect key societal issues. For example, in *Varnish v British Cycling Federation* [2021] ICR 44, a decision which had ramifications for many professional athletes, the question for the EAT was whether a talented professional cyclist who had entered a contract with British Cycling to train hard for the common purpose of winning medals could be said to be an employee or worker. The EAT held that the ET was entitled to conclude that the cyclist was neither. At the time of writing, judgment was awaited in the case of *Forstater v Centre for Global Development* where the issue was whether a belief that gender is immutable was a protected belief within the meaning of the *Equality Act 2010*. Other significant judgments of the past year are set out in the relevant annex to this report.

People and places

Registrar and Staff

The efficient, effective and well-managed operation of the EAT has continued throughout 2020 – 2021, despite the enormous pressures created by the pandemic. Staff had to adjust extremely quickly to working from home and to managing remote hearings instead of oral ones. More recently, staff members have taken on the Herculean task of converting the EAT's wholly paper-based system to CMS and CE-File. The Registrar, Nicola Daly, 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, headed by the EAT's delivery manager, Domingo Rodrigues, all of whom continue to work cohesively (and in often difficult circumstances) in providing 'cradle to grave' case management of appeals. The EAT is fortunate in that there are several members of staff with many years of dedicated service behind them. One such member of staff is Gill Kotz from listing who retired in May 2021 after over 20 years of service. The EAT is most grateful to Gill for being a wonderful colleague and wishes her the best for the future. New staff members, in listing and general operations, have taken to their roles quickly and effectively, helping to maintain the standard of service to which litigants have become accustomed.

Judges

The EAT has three permanent judges: the President, and two Senior Circuit Judges, HHJ Auerbach and HHJ Tayler. HHJ Tayler joined the EAT in July 2020 after several years sitting as an Employment Judge in Central London ET. He replaced HHJ Eady QC (as she then was) following her elevation to the High Court. However, Eady J continues to sit in the EAT as a visiting High Court Judge along with Soole J, Lavender J, Kerr J, Swift J, Eady J, Cavanagh J, Griffiths J, Linden J, Stacey J, Bourne J and Ellenbogen J. The EAT's other visiting judges comprise three Circuit Judges (HHJ Murray Shanks, HHJ Martyn Barklem and HHJ Katherine Tucker), several Deputy High Court Judges and one Upper Tribunal Judge. The EAT was also delighted to welcome Judge Clarke, President of the ET (England and Wales), as a visiting judge of the EAT last year. The EAT now boasts no fewer than five judges with experience of sitting at first instance; thus demonstrating that career progression from the ET to the EAT is, unlike the position a few years ago, now an achievable reality.

The EAT is one of the few jurisdictions to straddle the border with Scotland and is fortunate to have the services of Lord Summers and Lord Fairley to sit in the EAT in Edinburgh. The high calibre of all these Judges reflects the complexity and importance of the cases heard by the EAT.

At the time of writing, it was expected that another Circuit Judge would be authorised to sit in the EAT following an Expressions of Interest exercise launched in May 2020.

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 introduced to increase lay member sittings where appropriate. We are glad to report that those steps have borne fruit in that there was an almost five-fold increase in lay member sittings in the 12 months to April 2019 as compared to the previous year, and a further 5 per cent increase in the period to February 2020. Initial technical limitations meant that lay member sittings reduced during the first lockdown, but the number of sittings is now approaching pre-pandemic levels and is set to rise further.

The Judicial Appointments Commission conducted a recruitment exercise for new lay members in early 2021. At the time of writing, it was expected that the announcement of new appointees would be made by June 2021.

Other matters

Training

HHJ Auerbach is the lead judge on training. Following a highly successful training event in 2019, HHJ Auerbach had planned an excellent training day for 2020 with contributions from, amongst others, the City Mental Health Alliance on mental health awareness training. Unfortunately, that session had to be postponed due to the pandemic. An online training day is now scheduled for 7 June 2021. Training has also been provided to Judges and Staff on CMS and CE-File and another training day is planned for the new lay members once their appointments are announced.

Pro Bono assistance

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 permission 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.

External engagement

Despite the pandemic, the EAT continued to maintain contact with a wide range of judicial and legal organisations. Close cooperation between the ETs and the EAT, in particular, on matters of common concern is vital in ensuring consistency and fairness in these tiers of the employment law justice system. There are regular meetings and exchanges with the Presidents of the ETs in both England (Barry Clarke) and Scotland (Shona Simon).

There is an EAT user group, chaired by Deshpal Panesar QC, which meets with the judges of the EAT to discuss issues from the perspective of litigants and advocates appearing in the EAT. Judges of the EAT meet regularly and contribute to the training of Employment Judges.

Other external engagements include speeches at the Industrial Law Society, judicial recruitment events in England and Scotland, the Council of Employment Judges, Employment Judge training events and at various schools, colleges and community organisations.

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 has fully adapted to its new environment and is continuing to provide an efficient service. I am particularly grateful to all staff at the EAT for their cooperation, adaptability and resilience during this difficult and turbulent period of change.

Reform – CE File

The EAT, like other civil jurisdictions, is transforming from a largely paper-based jurisdiction to one where electronic filing of documents is the norm. The CE-File system being introduced across Courts and Tribunals in England and Wales is currently being tailored for the EAT's specific requirements and is expected to go live in July 2020. Once again, I must express my deep gratitude to those members of staff who have worked tirelessly to ensure that all procedures and documents are properly replicated on the new electronic system. After over four decades as a paper-only jurisdiction, the transition to CE-File and CMS will be a momentous one for Judges, staff and EAT users alike. I am confident that after the forced head-start imposed by the pandemic and the hard work of staff in the last year, the EAT is in a good position to ensure that the transition will be a relatively smooth one.

Coronavirus Pandemic

The extraordinary events from late February 2020 onwards necessitated fundamental and rapid changes to the EAT's practices. The initial lockdown announcement led to a number of postponements, as in-person hearings in court were no longer possible whilst adhering to social-distancing and stay-at-home requirements. The EAT quickly introduced remote hearings using internet-based conferencing platforms such as Skype for Business and MS Teams. During much of the lockdown, the EAT was able to conduct most of its regular caseload remotely. Since April 2021 and the easing of some restrictions, the EAT has steadily reverted to in-person hearings. At the time of writing, the vast majority of the EAT's full hearings were being heard in-person with the same applying to a significant proportion of shorter hearings. Whilst the return to in-person hearings is welcomed by most, it cannot be ignored that remote hearings provide an important alternative format that may, in some cases, be preferable in the interests of justice. Some disabled litigants and those unable to travel have particularly benefited from being able attend hearings remotely. I have no doubt that such hearings will continue to be a feature of the EAT's services in future. I am grateful once again to all the staff of the EAT for their remarkable resilience, adaptability and industry during this period of unprecedented adversity. I am also grateful to the judges of the EAT for their flexibility and the speed with which they took to virtual hearings. It is thanks to the staff and judges of the EAT that I am confident that the EAT will continue to provide an effective and safe service as restrictions are further eased.

Employment Tribunals in Scotland

President: Judge Shona Simon

Introduction

What an extraordinary year in which to continue our endeavours to deliver justice! I am sure that virtually every Tribunal and Chamber President will say this in their contribution to this report, in one way or another. If anyone had suggested to me that one year into the pandemic our case disposal rate (a case is 'disposed' of when it leaves the Employment Tribunal (ET) system, having been determined judicially, settled or withdrawn) would be back up to around the same level it was pre-pandemic I would have responded with a healthy degree of scepticism. That this, in fact, is so is a testament to the hard work, commitment and professionalism of Employment Judges, non-legal members and the staff who provide administrative support to the Employment Tribunals.

It should come as no surprise that this contribution will largely focus on the extent to which we have managed to continue to deliver employment justice in Scotland during the pandemic. I would be the first to acknowledge that it has been far from business as usual but I feel justified in saying that everything that I, and my judicial colleagues in Scotland, could do to keep 'the show on the road' has been done.

Providing employment justice during the pandemic

Working together cross-border to provide direction and support

There are two groups of Employment Tribunals in Great Britain – those in England and Wales and those in Scotland. Each group has its own President who is responsible for judicial leadership and oversight of the tribunals in their own geographical jurisdiction. However, when it became clear, in late February 2020, to me and my then counterpart in England and Wales, Judge Brian Doyle, just how serious the consequences of the pandemic were likely to be for our ability to deliver employment justice, our first instinct was to work together as closely as possible, while respecting the fact that we have our own legal traditions and cultures. Amongst the factors pointing us in that direction were that: (1) Many businesses operate on a cross border basis as do many legal representatives – if we could, where possible, take a consistent approach to how Employment Tribunals went about their business at a time of crisis and confusion, the easier that would make life for our system users; (2) If we combined resources we could provide structural support to judicial office holders and system users, in the form of Presidential Guidance and Directions, more quickly and effectively than might otherwise be the case and (3) No one has a monopoly on good ideas – we thought that if we worked together and shared ideas we would be likely to find the best solutions to the problems we were facing more readily and that a system based on mutual support would assist both jurisdictions. So it has proved to be and I was delighted when Judge Doyle's successor, Judge Barry Clarke, adopted exactly the same approach on taking up his appointment in May 2020.

Thus you will see that on 18 March 2020 both Presidents issued joint Presidential Guidance in connection with the conduct of ET proceedings during the pandemic and that on 19 March 2020 we issued a joint listing direction in connection with in person hearings that had been listed to take place up to 26 June 2020. Similarly, as practical issues emerged connected to electronic and remote working, such as what format should be used by judges when signing documents electronically, we gave joint directions.

It will come as no surprise to learn that system users north and south of the border were contacting ET offices to ask similar pandemic related questions – to help reduce the administrative burden on staff a joint document giving answers to Frequently Asked Questions (FAQs) was produced in June 2020. This was drafted by the Presidents with the assistance of the Vice President in Scotland and the Regional Employment Judges in England and Wales; many of them have been present in person in their offices throughout the pandemic and have been acutely aware of the difficulties faced by the tribunal administrative staff in trying to respond to user enquiries at various points in time.

The FAQ document was appended to a Joint ET roadmap which provided a strategic overview of how both Presidents saw the Employment Tribunals north and south of the border operating, looking ahead over the following six months or so. A new joint ET roadmap was issued on 31 March 2021, covering the period until the end of 2021. It is readily available on the internet (**https://www.judiciary.uk/wp-content/uploads/2015/03/ET-road-map-31-March-2021.pdf**).

However not all Presidential Guidance and Directions have been issued on a joint basis. For example, I issued a Practice Direction on Fixing and Conducting of Remote Hearings, with associated practical guidance, in June 2020.

Differences in the legal position with regard to recording and broadcasting hearings north and south of the border meant that it was more sensible to proceed separately in this area. All the documents I have referred to above are readily available at **https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland/**

Administrative Support and the Introduction of a new Case Management System

The Employment Judges and Non-Legal Members of the Employment Tribunals rely, to a very great extent, on the administrative support provided by HM Courts and Tribunals Service (HMCTS) staff, as do our system users. There is no escaping the fact that the administrative support system has been under great pressure during the pandemic; I would like to pay tribute to the staff many of whom have continued to work tirelessly in ET offices as 'key workers' during the pandemic. However, as is the case in other workplaces, some have been ill themselves with Covid, have had to self-isolate and shield or be responsible for the dreaded home-schooling.

Their office accommodation was not designed to give space for two metre social distancing so some have had to work from home while those in the office have been separated from each other, sometimes into hearing rooms, meaning that communication between team members is harder than usual. To add to their difficulties the case management system they used until very recently (Ethos) was not fit for purpose and could not be accessed by those working from home. These and other factors have combined to create a perfect storm which has made their working lives very difficult. The easing of social distancing requirements will make a significant difference but so will the fact (and this really is very good news) that a new case management system, ECM (Employment Case Management – perhaps a prize should be offered for a more exciting name!) has been rolled out across Great Britain. May 2021 saw this project completed. Of particular note is the fact that ECM is cloud based and can be accessed by staff working at home. The expectation is this will make a very positive contribution to the provision of administrative support to the Employment Tribunals. Glasgow was a pilot office for the system and several of the staff there played a significant role in its development. Particular thanks must go to them but also to the whole of the development team who have been outstanding.

Delivering hearings during the pandemic

The fact that a significant number of people with a role to play in proceedings have had to self-isolate or shield (sometimes at short notice), the risks for all concerned in asking case participants to travel into hearing centres, and the fact that the vast majority of our hearing rooms were not built on the premise that each individual in the room would have to remain two metres apart from anyone else at all times, have had a major impact on our ability to hold face-to-face/in-person hearings in tribunal buildings over the last year. We have continued to do so when that has been necessary to deliver justice, but the vast majority of the hearings that have taken place have been conducted remotely. Of particular note is our high use of a Ministry of Justice (MOJ) provided cloud-based video platform, known as CVP. If anyone had said to me pre-pandemic that multi-day hearings, involving hearing evidence from various witnesses, would be conducted by full tribunal panels using video, wholly or partly, my sceptical hat would have been on once again. However, that is how the majority of hearings have been taking place during the pandemic.

I take my hat (the sceptical one and any others I possess) off to the Employment Judges, Non-Legal Members and ET staff, who have shown remarkable determination and ingenuity in the efforts they have made to ensure employment justice could continue to be delivered despite the pandemic. We have been greatly assisted also by the willingness of representatives and parties to step into the unknown and participate in such hearings. In many cases the hearings have been conducted entirely remotely, with the judge and members based at their home locations. However, we now have equipment at all ET locations in Scotland which allows hearings to take place in a 'hybrid' format. This could mean, for example, that the tribunal is present in the hearing venue along with parties and representatives with other witnesses joining remotely when required. That said, I do not envisage that video hearings will become the norm in Employment Tribunals – while they have their pros, they also have their cons. I am aware of various surveys and research already done or ongoing which will feed into developing judicial thinking going forward. Further information is available in the updated Roadmap I refer to above.

Additional developments of note

Introduction of Legal Officers

Regulation 10A of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 allows the Lord Chancellor to appoint legal officers who can carry out such of the functions specified in regulation 10B as are authorised in a Practice Direction issued by the Senior President of Tribunals, following consultation with both ET Presidents. Four legal officers have now been appointed in Scotland (out of a total of 16 posts across Britain) who have been authorised to carry out all the functions listed in regulation 10B. I am delighted to welcome all four of our legal officers, all of whom were previously highly experienced ET administrative staff. All are undergoing an extensive judicially developed and led training programme to support them in their new roles. Expectations are high that they will make a significant contribution to the work of Employment Tribunals in the future.

ET Regulation and Rule Changes

Regulation 10A and 10B above were added to the 2013 Regulations with effect from 8 October 2020. Various ET Rule and Acas Early Conciliation changes were made at the same, variously coming into force in October or December 2020. Full details are available at **https://www.legislation.gov.uk/uksi/2020/1003/introduction/made**

New ET location in Glasgow and Dundee

While moving 'home' in the middle of a pandemic is not for the faint-hearted we had no choice but to move to Glasgow Tribunals Centre in August 2020, this being a move long planned well before the pandemic. That said the move went without a hitch thanks to very careful planning by administrative staff and managers. Our new premises are in the city centre, close to Glasgow Central Station, and have provided a welcome morale boost for both judiciary and staff. We are also moving our location in Dundee to premises very close to those we have occupied for several years. The new premises are again very well located and are in the process of being refurbished for ET use.

Devolution of functions

For the record, I have nothing to report on the topic of devolution of Employment Tribunal functions to the Scottish justice system, except to say that I understand work has been continuing on the draft Order in Council necessary to effect the transfer of these functions and on the arrangements which are to be made in connection with the transfer of the tribunals' judiciary.

Final Note

I began by referring to the commitment and professionalism of the judiciary of Employment Tribunals in Scotland. I want to end by referring to three other qualities which they have also displayed in abundance which can be hard to come by when the going gets really tough, as it has in this past year: resilience, creativity and comradeship/teamwork. Having been President of Employment Tribunals in Scotland for more than eleven years, I like to think I know my judicial team very well but even I have been amazed by the resilience they have displayed in the face of adversity, by their willingness to learn and try out new ways of working and by the manner in which they have striven to support each other and me over the last year, so that we could all continue to do the best we could to further the Employment Tribunals' overriding objective which, at its heart, is to do justice. I am exceptionally proud to lead them.

Employment Tribunals in England and Wales

President: Judge Barry Clarke

The last year has been a challenge and a struggle to all those charged across the organs of state with maintaining the delivery of justice, whether as judges, civil servants or ministers. While the system of workplace justice has faced the same pressures during the pandemic as civil justice, family justice, administrative justice and criminal justice, there has been one notable additional pressure on the Employment Tribunals: by its inevitable disruption of the labour market, the pandemic has resulted in an increased number of claims.

These new claims arise from, among other matters, the operation of the Coronavirus Job Retention Scheme, the regulation of furlough payments and the calculation of associated sums such as holiday pay, the permanent or temporary closure of many workplaces, the legal requirement to maintain safe systems of work, and the treatment of those workers who raise concerns about whether those systems are safe enough. The issues raised have presented significant challenges to employers, trade unions and workers, as well as those who advise them.

Moreover, these individuals do not live and work in a vacuum. While facing these professional challenges, they may have experienced periods of infection, self-isolation, loneliness and bereavement, while some will also have faced difficulties caring for children and other loved ones. Those personal challenges should not be overlooked or underestimated.

These personal challenges have been faced by individuals working in the justice system, just as they have by those in society at large. Throughout the pandemic, those supporting the administration of workplace justice have been 'key workers' in every sense. While I do not seek to evade criticism of the responsiveness of the Employment Tribunals over the last year, especially in London and the South East, I wish to pay a heartfelt tribute to the judges, non-legal members and HMCTS staff who have done their best to keep workplace justice moving.

The Employment Tribunals entered the pandemic in a difficult position, having seen our caseload rise steadily since the judgment of the Supreme Court in the *Unison* case in July 2017 (**https://www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf)**, which led to the abolition of the fees regime. Although the arrival of over 50 new salaried judges in England and Wales in 2019 – our first recruits for six years – had begun to reduce the outstanding caseload of single claims, this work was quickly undone by a pause of several months in conducting in-person hearings in the spring and early summer of 2020, while our buildings were made safe and we investigated alternative ways of delivering justice.

Good strategic use was made of this period. A large mobilisation exercise resulted in the procurement of over 300 'Cloud Video Platform' (CVP) rooms and the training in stages of salaried judges, fee paid judges and non-legal members in the conduct of remote hearings. This training, covering about 1,300 people, concluded by the early autumn. It enabled the resumption of hearings in volume – albeit mostly on video – before judges on sit-alone cases in July 2020 and before full tribunal panels in September 2020. The swift adoption of radically new ways of working over this short period testified to the innovation, commitment and resilience of the Employment Tribunals judiciary. Strenuous efforts were made to secure the necessary hardware and software to facilitate hearings by video and especially the use of electronic bundles. A Practice Direction on safeguarding open justice (**https://www.judiciary.uk/wp-content/uploads/2013/08/14-Sept-2020-SPT-ET-EW-PD-Remote-Hearings-and-Open-Justice.pdf**) and comprehensive Presidential Guidance on the conduct of remote and hybrid hearings (**https://www.judiciary.uk/wp-content/uploads/2013/08/14-Sept-2020-SPT-ET-EW-PG-Remote-and-In-Person-Hearings-1.pdf**) followed in September 2020. They were accompanied by changes to our rules of procedure (**https://www.legislation.gov.uk/uksi/2020/1003/made**) that took effect in October 2020. Although long in the planning, the amended rules were a handy vehicle for introducing provisions to facilitate new ways of working.

Despite only becoming President of Employment Tribunals in England and Wales in May 2020, I had three strokes of good fortune. One was to pick up the baton from an outstanding predecessor, Judge Brian Doyle, whose calmness and focus during March and April 2020, as the pandemic hit, set the tone for replacing him. Another was to have a team of supportive and inspiring Regional Employment Judges. The final stroke of good fortune was to have a professional working relationship with Judge Shona Simon, my counterpart in Scotland, that stretches back over 25 years.

Whereas Shona and I had collaborated in the 1990s on some appellate litigation in the field of equality law, we found ourselves collaborating again through various cross-border initiatives. While wishing to preserve the necessary distinctiveness of the two Employment Tribunal jurisdictions, we were of the firm view that it served our respective system users well for us to 'move in step'. That effort found its most effective expression in a joint FAQ document issued in the early weeks of the pandemic (**https://www.judiciary.uk/wp-content/uploads/2020/05/FAQ-edition-date-30-April-2020-1.pdf**), followed by a joint road map issued in June 2020 (**https://www.judiciary.uk/wp-content/uploads/2020/06/FAQ-edition-date-1-June-2020.pdf**) and a further joint road map for the 2021-22 financial year published on 31 March 2021 (**https://www.judiciary.uk/wp-content/uploads/2013/08/ET-road-map-31-March-2021.pdf**). Together, these documents have reflected our shared belief that system users north and south of the border welcome clarity and consistency of communication, even if we cannot give them certainty.

I do not underestimate the task we have faced and continue to face. The outstanding caseload of single claims shown in the data released by HMCTS (**https://www.gov.uk/government/collections/hmcts-management-information**) reached an all-time high by the autumn of 2020 as each successive week appeared to bring fresh inflation. I know that these are not just figures on a page. Each outstanding case represents an unresolved dispute involving parties whose disagreement has reached the stage where only a judicial decision can bring closure. Each outstanding case brings uncertainty, anxiety and sometimes financial hardship to the participants, whose lives may be on hold while waiting for a judgment. Long delays in the resolution of such disputes are antithetical to justice and fairness.

In tackling that caseload, CVP has been our greatest ally. I cannot imagine that any Employment Judge in the land would have considered, before the pandemic, that it would be appropriate to conduct a full merits hearing of any case wholly by video. However, needs must. The Employment Tribunals have become one of the biggest jurisdictional users of CVP, regularly spending 3,000 hours a week on a platform that, one year ago, was largely unknown to us. During that year, we have crash-tested it and, for the moment, learned to live with it. We have developed guidance on its use and sought to improve it.

In the South West England region, we have also piloted its intended replacement, presently known as the 'video hearing service'.

As a mechanism for keeping justice on the move during the pandemic, CVP has been indispensable. The longest hearing we have conducted fully on video lasted 22 days. In some respects, it has enhanced access to justice: it has facilitated remote participation by parties and witnesses, for whom travel may be unsafe or whose physical mobility is limited. We have sought to maintain open justice as well, by the measures described in my aforementioned Practice Direction; one case had over 150 public observers. Each week, across England and Wales, hundreds of judges, non-legal members, parties and representatives assemble on this platform from a variety of locations to secure the rule of law in the workplace, dealing with issues of the utmost complexity in an imperfect virtual environment. Only in that way have we managed to restore the so-called 'disposal rate' to its pre-pandemic level. While we should steer well clear of complacency, there are encouraging signs that the backlog may be slightly reducing as a result of these measures.

We will continue to be heavily reliant on CVP and its successor platform for the next two years. Video hearings are needed to help us bring down waiting times, and not simply to keep cases going during times of physical restrictions; this is because CVP has effectively tripled the size of our estate.

The biggest question faced by the Employment Tribunals is the appropriate use of this platform beyond the next two years. Shona Simon and I will take full account of the views of our judiciary and our system users when setting longer-term judicial policy in this area. In the meantime, the latest joint road map for the Employment Tribunals, referred to above, sets out our current thinking.

In my public communications, including through meetings of the national user group (minutes **https://www.gov.uk/government/collections/employment-tribunal-national-user-group-minutes#national-user-group-minutes**), I have been keen to emphasise that the backlog is not a geographically uniform problem. Our resources, whether they be judicial, administrative or estate, are not evenly distributed. Across England and Wales, about 60 per cent of the outstanding caseload sits in London and the South East, which only has a third of our judges. Two Employment Tribunal regions in particular, South East England (administered mainly from Watford) and London South (administered from Croydon), have far fewer judges than they need. It is therefore no surprise that those two regions are experiencing the longest waiting times for a hearing. The limited operational resilience of the London Central region has compounded the problem in this part of the country.

Its premises at Victory House were closed to judges and staff for a period of four months while the landlord took steps to improve the mechanical air ventilation system. The regional Ethos server was moved to nearby premises in March 2021, but the office inbox remains congested. These matters are discussed at weekly meetings that sometimes turn into daily meetings.

I do not underestimate the impact of these problems on our users. My office receives correspondence daily from dissatisfied users, who are legitimately concerned about the problems across London and the South East, including excessive waiting times, unserved claims, unanswered telephone calls and unanswered correspondence. My office responds to such concerns where and when we can but, in many cases, we can only forward them to HMCTS. What are the steps we have been able to take, in collaboration with HMCTS?

First, we have worked alongside HMCTS to support the replacement of our case management software. The migration from Ethos to the new system, ECM, took place between February and May 2021. Ethos was an antiquated platform, requiring us to use networked servers that were physically housed in tribunal premises. It regularly failed, causing the demoralising loss of significant work. Our operations suffered greatly, because staff could not be present in buildings during the pandemic in enough numbers to deal reliably with incoming correspondence and then update the case management system.

This was not simply because of the closure of some venues, but because there was insufficient space in those venues for staff to work at a safe distance from each other. The ten Regional Employment Judges attended tribunal offices almost every day to ensure the effective allocation of cases to judges, doing their best to support HMCTS colleagues in tackling the mounting correspondence. ECM, in contrast, promises us greater operational resilience because it does not require physical office presence by staff or judges. It is cloud-based. It replicates the functionality of Ethos but, crucially, can be accessed from remote locations. We are hopeful that, as ECM embeds in the coming months, some administrative efficiencies will return.

Second, we have continued our efforts to recruit new salaried and fee paid judges. 67 new fee paid judges were appointed in early 2020, and we swiftly decided to induct them on a remote, digital basis rather than await the return of face-to-face training. I am very proud of this new cohort; most have still not entered a tribunal building as a judge or met any of their new colleagues in three dimensions, yet they are enthusiastically tackling the cases they have been trained to adjudicate.

Additionally, 19 new salaried judges will be taking up their appointments over the summer. Two thirds of them will support the work of the South East England and London South ET regions. I am in regular discussions with workforce planning colleagues in the Ministry of Justice in the hope of boosting the number of salaried and fee paid judges further, as there is no substitute for increased judicial and administrative strength. I am also in the advanced stages of planning an exercise that will, I hope, achieve the cross-deployment into the Employment Tribunals of members of the wider judicial family in possession of employment law expertise.

Third, we have brought into service a quasi-judicial role that has lain dormant on the statute books since 1998: the legal officer. We have about a dozen of them in England and Wales, and I am ambitious to recruit more. They are benefitting from extensive training over a six-month period. They will take certain important delegated decisions but, just as crucially, they will support the Employment Tribunals in what we call 'case progression'; this, in essence, is the process by which a file is intelligently examined in the weeks ahead of a listed hearing to increase the likelihood that the hearing will be effective and have an appropriate allocation of time. Our users will begin to see certain types of orders and judgments bear the signatures of these legal officers in the coming weeks.

Fourth, in England and Wales, we have brought together about a hundred fee paid judges in an enterprise we have called the 'virtual region'. It does not have the administrative apparatus of a typical ET region – there is no 'virtual Regional Employment Judge', for example – but it acts instead as an intermediary between those cases in need of a judge (which are disproportionately generated by the regional offices in Watford and Croydon) and those fee paid judges (regardless of where they live or the physical region to which they are assigned) who could sit on those cases on a fully remote basis. It is a model of working that has been made possible by CVP, and an illustration of the importance of keeping hold of what we have learned over the last year. We are treading carefully in our early months, before opening the virtual region to non-legal members in the autumn of 2021. I am very grateful to our judicial flying squad, whose flexibility has enabled us to keep in the list a large number of cases that might otherwise have been cancelled. I am also grateful to HMCTS, who embraced the idea from the outset and identified staff members willing to support its early operation.

Among the challenges the last year has witnessed, both strategic and operational, it is easy to lose sight of the 'business as usual' issues that, in a more typical year, would have populated a report of this nature. In the last year alone, three Supreme Court cases have received significant publicity: one on the employment status of gig economy drivers (**https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf**); one on the jurisdictional hurdles facing those seeking to establish a right to equal pay in the retail supermarket sector (**https://www.supremecourt.uk/cases/docs/uksc-2019-0039-judgment.pdf**); and one on the entitlement of residential care workers to the national minimum wage during required 'sleeping in' periods (**https://www.supremecourt.uk/cases/uksc-2018-0160.html**). The fact that these judgments were so widely reported in the media demonstrates that questions of employment status and pay remain as relevant in the 2020s as they did sixty years ago when the industrial tribunals first came into existence.

Employment law continues to regulate the world of work despite the impact of modern technology. As the principal body that Parliament has entrusted with this task, Employment Tribunals play a vital role in upholding the rule of law in the workplace. It is crucial that we continue doing so effectively as we recover from the impact of the pandemic. In that endeavour, it is my privilege to lead so many dedicated judges and members.

Annex D – Cross Border Issues

Northern Ireland

Dr Kenneth Mullan

Reserved tribunals – First-tier

There are four first-tier Tribunal Chambers with reserved jurisdictions which extend to Northern Ireland – Tax, Immigration and Asylum, Social Entitlement (one very limited class of case) and the General Regulatory Chamber. The work of those Tribunal Chambers during the present circumstances is prescribed by the relevant Senior President and Chamber President Practice Directions and published Guidance.

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

Reserved tribunals – Upper

There are onward appeal rights from the first-tier reserved Tribunal Chambers to the relevant Upper Tribunal Chamber – Tax, Immigration and Asylum and Administrative Appeals Chamber (AAC). Once again, the work Tribunal Chambers during the present circumstances is prescribed by the relevant Senior President and Chamber President Practice Directions and published Guidance.

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

There is separate AAC Guidance for Northern Ireland – **https://www.judiciary.uk/wp-content/uploads/2020/09/15-Sep-20-SPT-UTAAC-Guidance-for-Users-in-Northern-Ireland-revised-14-Sept-2020-1.pdf**

The Upper Tribunal (AAC) in Northern Ireland has judges and a registrar who, in the period under consideration by this Report, were working in 'mixed-mode' from home and in the Tribunals Hearing Centre (THC) in the Royal Courts of Justice. The caseload is very small compared with England and Wales and Scotland and is concerned with two principal UT (AAC) reserved jurisdictions – information rights and transport or traffic.

During the period under consideration, parties were invited to choose whether (i) they were content for the appeal to proceed on the papers (ii) they were willing to participate in a remote oral hearing or (ii) wanted an adjournment to await a face-to-face oral hearing when the crisis is over. The majority chose remote oral hearings. These were conducted using a using a bespoke video and audio conferencing facility called 'Sightlink' (which is being used in other tribunals and courts in Northern Ireland). Participants can be seen where their mode of access (smartphone, tablet or PC) has a camera and will see others who have the same facility or otherwise they are heard and can hear others. All participants can use this facility from their home or in the case of respondents and representatives from their offices.

The UT (AAC) in Northern Ireland has been able to achieve continuity of judicial business through the past year.

Devolved tribunals – First-tier

There are seventeen individual first-tier tribunals in Northern Ireland. These are administered by the Northern Ireland Courts Tribunals (NICTS) through the THC. The THC is operating with staff working in 'mixed mode' from home or in the THC itself. Guidance has been issued to the public - **https://www.justice-ni.gov.uk/topics/courts-and-tribunals/tribunals**

In summary, arrangements have been put in place to use 'Sightlink' (as above for the UT (AAC)) and other technology to continue to conduct cases remotely. The technology is working well and individual tribunals are operating at very good and, in some cases, close to normal levels.

The largest devolved first–tier tribunals are those concerned with the social security and employment jurisdictions.

The President of Appeal Tribunals for Northern Ireland (social security) reports that all appellants have been offered various hearing options as follows (i) a 'paper' determination (ii) a 'remote' hearing by telephone or video-link (iii) an oral face to face hearing. To date, 60% of appellants have opted to await an oral face to face hearing. Following the initial easing of lockdown some oral face to face hearings are taking place. Very stringent safety measures are in place. Health and safety assessments of some external venues have been conducted and face to face oral hearings recommenced in eight of these.

Guidance on arrangements for employment tribunals, correct at the time of writing, may be found at: **https://www.employmenttribunalsni.co.uk/covid-19**

Devolved tribunals – appellate

The Social Security Commissioners are the only discrete second-tier appellate authority in Northern Ireland for devolved tribunals. The office of the Commissioners is located in the THC. The Commissioners, the Legal Officer to the Commissioners and other members of the administrative support staff are working in mixed mode from home and in the THC itself. Remote hearings, where required, are held using 'Sightlink'. The office of the Commissioners has had in place a digitalised case management system for a number of years. Each case has an electronic file which is accessible from a common folder.

All of the papers relating to each case are digitised and placed in the electronic file. The judiciary and the administrative support staff can access the case management system from home when they are working there. Because of this, the Commissioners have been working at close to normal levels.

It is essential to place on record the gratitude of the tribunal judiciary to the administrative support staff who have been creative, energetic and assiduous in seeking to achieve ongoing delivery of justice.

Scotland

Sir Brian Langstaff

The last few times I have reported on progress towards devolution of previously reserved tribunals to Scottish control, I have struck a somewhat resigned note of pessimism that there had been any progress. It is particularly gratifying, therefore, now to be able to report that things are stirring. It is all the more to be appreciated, given the public health challenges which the UK and its constituent parts have faced over the past two years, which might have excused progress at all.

After a long period of hibernation, during which the Judicial Working group set up to advise the respective Governments on aspects of devolution of tribunals has seen Lady Smith relinquish her co-chair's post to Lord (Stephen) Woolman since she felt the need to concentrate on the Inquiry into Child Abuse in Scotland, which she chairs, meetings of the group have just recently resumed. This is outside the reporting period, but since it is the culmination of much quiet work which has been done by civil and judicial servants during the 2021 year deserves to be recorded.

Consideration of the final form of an Order in Council is at quite an advanced stage. Some uncertainty persists as to funding for the costs of transition planning and implementation; and proposals for the terms and conditions which will apply to members of the judiciary of the currently reserved tribunals on and after devolution have yet to be finalised, though proposals are under active scrutiny. 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. A current topic tor consideration is whether, if certain changes or safeguards are thought appropriate, there may need for a legislative vehicle to enshrine them.

It seems likely that once those matters are resolved, implementation of the change-over will require a preparation period: it remains difficult to predict with any certainty whether devolution of the reserved tribunals will occur before the end of 2022, which seems the earliest of possible dates, or later.

Experience of the desirability of co-operation in the public health field between the home nations of the UK may have added further impetus to the growing consensus as to the need for continued cross-border co-operation after devolution, especially in relation to those fields where the statutory regime is common across the whole of Great Britain. It is well recognised that each jurisdiction, separate though it will be following devolution, has much to gain from collaborative and co-operative discussion with the other.

I look forward to reporting some further progress next year, perhaps with greater detail than has been possible where discussions remain in progress and it would be premature to say more than I have.

It remains for me to give particular thanks to Lady Smith, my retiring co-chair, for her comprehensive command of detail, her ability to contextualise it within the larger picture, her energy, and her commitment to ensuring the best outcome so far as the users, staff, chairs, non-legal members and judges of tribunals are concerned. She made my part of the co-chairmanship easy, and I am personally grateful to her.

I am glad to have Lord Woolman as her replacement. We have something in common – without there being in any sense an old boy's network at play in our respective appointments, we happen both to have been at the same school for some of the same time: on the delicate subject of age, all that needs to be said is that I left before he did, and I envy his youthful vigour!

Annex E – Important Cases

Administrative Appeals Chamber

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 165 (AAC)	*AR v Secretary of State for Work and Pensions (BB)*	Social Security	A three judge panel analysed the 'grain' of the *Social Security (Contributions and Benefits) Act 1992 (the '1992 Act')*, and whether it is 'possible' to interpret the word 'spouse' in section 39A of the 1992 Act to include someone living with a partner, having participated in a religious marriage ceremony which did not satisfy the formal requirements of the *Marriage Act 1949*, which was not a foreign marriage recognised by English law, and where the presumption of marriage did not apply. The panel considered what was said in *Ghaidan v Godin Mendoza* [2004] UKHL 30, [2004] 2 AC 557 about the application of Section 3 of the Human Rights Act 1998 and decided that it is an ingrained feature of the 1992 Act that Parliament expressly and intentionally provided a benefit to those who have been married as a matter of English law, and it is not possible to read the legislation in any other way. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 165 (AAC)	(continued) *AR v Secretary of State for Work and Pensions (BB)*	(continued) Social Security	(continued) To do so would cross the divide between the interpretative function of the courts and matters of policy that are democratically entrusted to Parliament.
[2020] UKUT 191 (AAC)	*SM v Livewell Southwest CIC*	Mental Health	A three judge panel decided, by a majority, that the decision in *VS v St Andrew's Healthcare [2018] UKUT 250; [2019] AACR 4* remains good law as to the capacity a patient requires in order to make an application to the First-tier Tribunal ('FtT') under the Mental Health Act 1983. The view of the minority was that VS sets the bar too high in requiring an understanding that the FtT has power to discharge the patient. The three judge panel gave guidance on a number of issues which may arise where a patient's capacity is in doubt, including (a) encouraging readier use of the ability to raise the matter with the Secretary of State with a view to him/her referring the patient's case to the FtT under the *Mental Health Act 1983* s.67 and (b) identifying areas in patient records and other documentation where changes might facilitate the FtT's task.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 256 (AAC)	*PF v Disclosure and Barring Service*	Barring	A special panel (two judges and a non-legal member) decided the proper approach to the Upper Tribunal's mistake of fact jurisdiction under s.4(2)(b) of the Safeguarding Vulnerable Groups Act 2006. The decision explains the limits of that jurisdiction, as well as the relevance of the Disclosure and Barring Service's specialist expertise.
[2020] UKUT 362 (AAC)	*EB v Dorset Healthcare NHS Trust and the Lord Chancellor*	Mental Health	A three judge panel ruled that Practice Directions cannot override or amend a rule of procedure and must be interpreted, if possible, in a way consistent with the procedure rules. It held that paragraph 8 of the Senior President of Tribunals' Amended Pilot Practice Direction: Health, Education and Social Care Chamber (Mental Health) is valid and relates only to the practicability of a pre-hearing examination by a panel member: it cannot narrow the statutory purpose of a pre-hearing examination, which is the examination of a patient in order to form an opinion of the patient's mental condition.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 26 (AAC)	*Leave.EU and Eldon v Information Commissioner*	Information Rights	A three judge panel dismissed five appeals in circumstances where the Information Commissioner had issued Leave.EU and Eldon with monetary penalty notices, assessment notices and, in the case of Eldon, an enforcement notice under the *Data Protection Acts 1998 and 2018*. The First-tier Tribunal had dismissed all five appeals and the Appellants' grounds of appeal to the Upper Tribunal concerned the scope of regulation 22 of the *Privacy and Electronic Communications (EC Directive) Regulations 2003*, the meaning of 'consent' and 'instigates', the criteria for making a monetary penalty notice ('serious contravention' and knowledge of risk of breach), the relevance of the Commissioner's regulatory action policy, proportionality, the criteria for an assessment notice, and unfair process.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 182 (AAC)	*ICO v Poplar Housing and Regeneration Community Association and People's Information Centre*	Information Rights	This appeal concerned the correct interpretation of article 2(2)(b) of *Directive 2003/4/EC* which, in turn, reflects article 2(2)(b) of the *Aarhus Convention* and the question whether a housing association was a public authority within the meaning of Article 2(2)(b) of *Directive 2003/4/EC* on public access to environmental information. The Chamber President considered the application of the 'functional test' in *Fish Legal and another v Information Commissioner and others [2014] QB 521* and whether the Court of Justice of the European Union laid down a dual test as to entrustment with performance of services of public interest and the vesting of special powers. *Cross v Information Commissioners and another [2016] AACR 39* was also considered.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 69 (AAC)	*PM v Midlands Partnership NHS Foundation Trust*	Mental Health	The Upper Tribunal considered the power of Tribunals under s.72(1)(c)(iv) of the *Mental Health Act 1983* to discharge a patient from a Community Treatment Order and the relevance of legal barriers to administering 'medical treatment' in the context of whether medical treatment can be said to be 'appropriate' and 'available' It gave guidance on the meaning of each of these terms. This was the first decision to deal with the issue of the lawfulness of giving medical treatment in the context of the discharge criteria, and the first significant discussion of the concept of 'availability' in the statutory criteria.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 73 (AAC)	*HK v Secretary of State for Work and Pensions (PC)*	European Union	This pension credit appeal was about the proper construction of regulation 9(1) of the Immigration (European Economic Area) Regulations 2016/1052 (the '2016 Regulations'), given the obligation to construe domestic legislation consistently with EU law obligations. The Upper Tribunal decided that the line of authority in EU law based on the cases of C-370/90 *Surinder Singh, C-291/05 Eind* and *C-456/12 O and B* meant that regulation 9(1) should not be read as requiring that a British citizen who returns to the UK with a non-British family member following a period working in an EU Member State must on return be a 'qualified person' within regulation 6 of the 2016 Regulations, if the accompanying family member is to derive a right of residence from them.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 107 (AAC)	*RJ v Secretary of State for Work and Pensions (PIP)*	Social Security	The Upper Tribunal identified a lacuna in the Personal Independence Payment legislation which worked to the disadvantage of claimants because secondary legislation failed to provide any exemption from s.83(1) of *Welfare Reform Act 2012* in a Disability Living Allowance transfer case where a revision or supersession decision was made. The lacuna was closed by amendment to secondary legislation from 4 July 2019.
[2020] UKUT 108 (AAC)	*GDC v Secretary of State for Work and Pensions (UC)*	Social Security	The Upper Tribunal considered the practical workings of the online claim system for Universal Credit and ruled on what constituted the date of claim when a defective online claim for Universal Credit was made. It rejected the appellant's argument that the date of claim was the date when the claimant starts (but does not complete) the process of entering information in an online claim form, rather than when the completed form is submitted by pressing the 'submit' button.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 109 (AAC)	*PP v Secretary of State for Work and Pensions (UC)*	Social Security	The appellant had been sent an electronic notification on his online Universal Credit journal informing him that his case was closed because he had failed to attend an interview in respect of his self employment. The Upper Tribunal held that this electronic notification was a decision which gave rise to appeal rights in the First-tier Tribunal.
[2020] UKUT 134 (AAC)	*MOC (by MG) v SSWP (DLA)*	Human Rights	The Upper Tribunal held in this case that the rules in regulations 8 and 12A of the *Social Security (Disability Living Allowance) Regulations 1991* restricting payability where an adult has been an inpatient in an NHS hospital for more than 28 days do not breach article 14 of European Convention on Human Rights in the case of a patient with severe learning disabilities (*Mathieson v SSWP [2015] UKSC 47* distinguished).
[2020] UKUT 152 (AAC)	*GM v Dorset healthcare NHS Trust and the Secretary of State for Justice*	Mental Health	In this appeal the Upper Tribunal held that when a patient who had been detained pursuant to section 3 of the Mental Health Act 1983 was later made subject to a hospital order, the First-tier Tribunal ceased to have jurisdiction in respect of any application or reference that had been lodged before the order was made.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 155 (AAC)	*W (GRB) v Secretary of State for Work and Pensions*	Forfeiture	The Upper Tribunal determined, pursuant to a reference under the Forfeiture Act 1983, that the forfeiture rule does not apply to a person who (a) was found to have done the act comprised within a charge of murder, but (b) was unfit to plead by reason of insanity.
[2020] UKUT 158 (AAC)	*AB v London Borough of Camden*	Housing Benefit	The Upper Tribunal held that payment of a houseboat licence fee was an eligible cost for housing benefit purposes since it fell within regulation 12(1)(b) of the *Housing Benefit Regulations 2006*. The decision agrees with the decision in *Kirklees MBC v JM [2018] UKUT 219 (AAC)* that such payments are not within regulation 12(1)(d) as they are not payments for 'use and occupation', but disagrees with the Social Security Commissioner's decision in *CH 844 2002* that, in relation to housing benefit claims in respect of houseboats, regulation 12(1)(b) only catches rental payments made to the owner of a houseboat.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 174 (AAC)	*Information Commissioner v Moss and the Royal Borough of Kingston upon Thames*	Information Rights	When the First-tier Tribunal, on appeal, substitutes a decision notice for that of the Information Commissioner, it is the First-tier Tribunal which is responsible for (a) deciding whether the public authority has complied with that notice and (b) taking action to enforce it.
[2020] UKUT 242 (AAC)	*Moss v the Information Commissioner and the Cabinet Office*	Human Rights	The Upper Tribunal considered whether the European Court of Human Rights' decision in *Magyar Helsinki Bizottság v Hungary [2016] ECHR 975* applies in domestic law in terms of Article 10(1) of *European Convention on Human Rights* covering a right of access to information or whether the Upper Tribunal should follow the Supreme Court's decision in *Kennedy v The Charity Commission [2014] UKSC 20* as to Article 10(1)'s scope. Dismissing the appeal, the Upper Tribunal determined that *Kennedy* was binding and *Magyar* should not be followed.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 247 (AAC)	*EAM v Secretary of State for Work and Pensions (UC)*	Social Security	The Upper Tribunal considered what a claimant needs to establish in order for the proceeds of sale of their former home to be disregarded as capital under paragraph 13(a) of Schedule 10 to the *Universal Credit Regulations 2013* on the basis that the capital is to be used to purchase a new home. The Upper Tribunal declined to follow *R(IS) 7/01* and the earlier authorities to the extent that they require a claimant to show an 'element of certainty', or an 'element of practical certainty', or that it is 'reasonably certain' or 'practically certain', or any other form of 'certainty' that the proceeds of sale of a former home will in fact be used to purchase another. Considering the subsequent decision of the House of Lords in *In re B (Children) [2008] UKHL 35*, the Upper Tribunal determined that all a claimant needs to prove is that it is more probable than not that the money 'is to be used' for that purpose.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 284 (AAC)	*TS (by TS) v Secretary of State for Work and Pensions (DLA); EK (by MK) v SSWP (DLA)*	Social Security	The Upper Tribunal decided (1) that it does not have jurisdiction on a statutory appeal to consider breaches of the Public Sector Equality Duty ('PSED'); (2) If, contrary to that, the Upper Tribunal does have jurisdiction in respect of the PSED, the Secretary of State for Work and Pensions was in breach of it in relation to children aged 3-16 in extending the Past Presence Test ('PPT') from 26 weeks to 104 weeks; (3) The extension of the PPT is in breach of Article 14 with Article 1 Protocol 1 in relation to the appellant British national children returning to Great Britain from a period of residence abroad and did not follow *FM v SSWP [2017] UKUT 380*; (4) Where the challenge is directed to the human rights implications of making existing legislation more onerous, the appropriate remedy is to disapply the amending legislation: *RR v SSWP [2019] UKSC 52* applied; (5) The existing line of authority derived from *CSDLA/852/2002* regarding advance claims for DLA was followed.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 285 (AAC)	*CM v (1) Bradford Metropolitan District Council (2) SSWP*	Human Rights	The Upper Tribunal considered whether limiting the Appellant's housing benefit to the one-bedroom shared accommodation rate of the local housing allowance, as mandated by regulation 13D(2) of the *Housing Benefit Regulation 2006*, unlawfully discriminated against her on the grounds of disability contrary to Article 14 of the European Convention on Human Rights in conjunction with Article 1 of the First Protocol and the principle in *Thlimmenos v Greece [2001] 31 EHRR 411*. The Upper Tribunal decided that, in the context of the scheme as a whole and given the availability of Discretionary Housing Payments on a case by case basis, the adverse impact of regulation 13D(2) on the Appellant and those in her position was not 'manifestly disproportionate to its legitimate aim'. It was therefore not 'manifestly without reasonable foundation'.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 24 (AAC)	*Secretary of State for Work and Pensions v AS (CA)*	Social Security	This appeal concerned the ability of family members of EEA nationals to claim certain social security benefits, on which there are conflicting Upper Tribunal authorities. A person who is a 'person subject to immigration control' under s.115(9) of the Immigration and Asylum Act 1999, is generally ineligible for carer's allowance by reason of regulation 9 of the Social Security (Invalid Care Allowance) Regulations 1976/409). However, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000/636 provide an exemption for members of the family of a national of a state which is a party to the Oporto Agreement on the European Economic Area. In this case the Upper Tribunal decided that the exemption could be relied upon only if the relevant national had exercised freedom of movement rights under EU/EEA law.

Citation	Parties	Jurisdiction	Commentary
[2021] UKUT 40 (AAC)	*RJ v HMRC; HMRC v RJ*	Tax Credits	This case decides that, on a proper construction of section 3(4)(a) of the Tax Credits Act 2002, the death of one of the claimants to a joint claim for tax credits brings the entitlement of the surviving claimant to an end, and regulation 15(3) of the Tax Credits (Claims and Notifications) Regulations 2002 does not have the effect of extending the entitlement to tax credits to the end of the tax year, and this did not involve unlawful discrimination against the surviving claimant contrary to the Human Rights Act 1998 on the basis of his status as a widower.

Tax and Chancery Chamber

Citation	Parties	Jurisdiction	Commentary
[2020] UKSC 49	*HMRC v London Clubs Management Ltd*	Supreme Court	Gaming duty is charged broadly, on the difference between (i) the 'value in money or money's worth' of stakes wagered and (ii) the 'value of prizes provided'. The respondent offered its customers non-negotiable gaming chips ('Non-negs') which those customers could use to place wagers, but could not encash and could not use to buy goods or services. The question was how the 'money or money's worth' of those Non-negs should be determined. Their Lordships came to a variety of reasons for concluding that the Non-negs had no value in money or money's worth. The majority, Lord Kitchin, Lord Carnwarth, Lady Black considered that the Non-negs had no value in money or money's worth as the question had to be approached from the casino's perspective, with a focus on the gaming activity. What mattered was the real world value of the Non-negs in the hands of the casino. A gambler who played with cash chips was not staking the chips themselves, but the money those chips represented, which the gambler had deposited with the casino. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKSC 49	(continued) *HMRC v London Clubs Management Ltd*	(continued) Supreme Court	(continued) That was not the case with the Non-negs, which represented, in effect, free bets. Therefore, a Non-neg had no real world value to the casino when it was retained following a losing wager by a customer except that it eliminated the chance of the casino having to pay out winnings corresponding to that bet. That was not 'value in money or money's worth'. Lord Sales agreed with that reasoning, though adopted different reasoning on other issues. Lady Arden agreed with Lord Kitchin's conclusion, but for markedly different reasoning to the effect that the 'value in money or money's worth' depended on the price that a person would pay for it in the open market, but no evidence had been adduced to demonstrate what the price might be.

Citation	Parties	Jurisdiction	Commentary
[2020] UKSC 28	*HMRC v KE Entertainments Ltd*	Supreme Court	Continuing with the theme of tax cases shining a bright light on everyday transactions, this judgment dealt with the VAT treatment of 'session bingo'. A customer participating in 'session bingo' pays a single sum in return for the right to participate in all games of bingo held during that session. A game of bingo will involve the organiser retaining a net sum after deducting winnings paid out and, accordingly, for VAT purposes the fees charged must be divided between (a non-VATable) contribution towards prizes and a (VATable) participation fee. This calculation is doubly complicated in the case of session bingo since customers paying the same session fee may participate in different numbers of bingo games. In 2007, HMRC changed their guidance on how the VATable element should be calculated. HMRC's revised approach was more favourable for the taxpayers who therefore sought to make reclaims of VAT that had been paid under HMRC's former practice. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2020] UKSC 28	*HMRC v KE Entertainments Ltd*	Supreme Court	Crucially, the taxpayers argued that the normal three-year time limit for making claims did not apply because that time limit applied only to the recovery of money paid that was not 'VAT due to HMRC'. Here, said the taxpayers, the sums that they had paid was VAT due (since both the former basis for calculating VATable participation fees and HMRC's revised approach set out acceptable bases of calculation). The Supreme Court rejected that argument, concluding that there was only one correct basis, the 'session by session' method set out in HMRC's revised practice. Accordingly, in calculating its VAT liability under the old practice, the taxpayer had paid VAT that was not 'due'. The three-year time limit for claiming repayment applied.

Citation	Parties	Jurisdiction	Commentary
[2020] UKSC 47 and 48	*Test Claimants in the Franked Investment Income Group Litigation v HMRC*	Supreme Court	This is another case in which what might seem to be a narrowly focused tax dispute has led to significant developments in the general law. It was of sufficient importance to merit being heard by a panel of 7 judges. The taxpayers had brought claims concerning the way in which advance corporation tax used to be charged on dividends received by UK resident companies from non-resident subsidiaries. That claim was founded on an assertion that the differences between their tax treatment, and that of a UK company receiving dividends from a UK resident subsidiary breached the provisions of the EU Treaty guaranteeing freedom of establishment. The taxpayers' claims were brought on a restitutionary basis; the argument being that they had paid tax on the basis of a mistake of law. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKSC 47 and 48	(continued) *Test Claimants in the Franked Investment Income Group Litigation v HMRC*	(continued) Supreme Court	The taxpayers' claims dated back to 1973, when the UK joined what was then the EEC, but they argued that s32(1)(c) of the Limitation Act afforded them an extended limitation period, with time only starting to run from the date on which they 'discovered the … mistake… or could with reasonable diligence have discovered it'. That point, they argued, came only in 2006 when the CJEU held that the UK's system of dividend taxation was incompatible with EU law. HMRC sought to argue, for the first time in the Supreme Court, that s32(1)(c) did not apply to mistakes of law. The Supreme Court allowed this argument to be advanced, having considered whether an 'issue estoppel' or 'cause of action estoppel' applied. The majority of their Lordships held that s32(1)(c) does apply to restitutionary claims based on a mistake of law. However, they departed from previous authority of the Supreme Court, in the *Deutsche Morgan Grenfell case* ([2006] UKHL 49), as to the 'discoverability' of a mistake of law. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKSC 47 and 48	(continued) *Test Claimants in the Franked Investment Income Group Litigation v HMRC*	(continued) Supreme Court	(continued) Contrary to the decision in *Deutsche Morgan Grenfell*, a mistake of law did not only become 'discoverable' following a decision to that effect by a court of final jurisdiction. Rather, time began to run from the date when the taxpayers could, with reasonable diligence, discover the mistake in the sense of recognising that they had a worthwhile claim. The matter was remitted to the High Court to decide when that condition was satisfied. The minority would have held that s32(1)(c) had no application to claims based on a mistake of law.
[2021] EWCA Civ 584	*Devon Waste Management and others v HMRC*	Court of Appeal	This was an appeal against an assessment to landfill tax. Landfill tax is, by Part III of the Finance Act 1996, charged on 'taxable disposals'. One condition for a 'taxable disposal' to arise is that it is a 'disposal of material as waste' which, in turn, is the case if 'the person making the disposal does so with the intention of discarding the material'. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] EWCA Civ 584	*Devon Waste Management and others v HMRC*	Court of Appeal	The appeal concerned the tax treatment of 'fluff' and 'EVP', the bottom layer of waste in a landfill site which, since it is soft and contains no sharp material, serves the function of protecting the plastic membrane at a landfill site from being punctured by other waste placed above it. The question was whether landfill tax was charged in connection with this waste, with the taxpayer arguing that it was not 'discarded', but rather 'used' as part of the construction of the landfill site. The First-tier Tribunal had rejected the taxpayer's arguments, but the Upper Tribunal had reversed the First-tier Tribunal's decision. The Court of Appeal restored the decision of the First-tier Tribunal, with Nugee LJ giving a detailed judgment as to how authorities dealing with the application of ordinary English words in statutes should be approached.

Citation	Parties	Jurisdiction	Commentary
[2021] EWCA Civ 283	*Eastern Power Networks and others v HMRC*	Court of Appeal	HMRC have the power to conduct enquiries into a taxpayer's returns and to require the provision of information in connection with such enquiries. Dealing with such enquiries can be time-consuming and expensive and, as a safeguard against unduly protracted enquiries, taxpayers are given the right to apply for a 'closure notice', requiring HMRC to bring their enquiries to an end. In this case, the taxpayers applied for a closure notice arguing, among other points, that a particular point of law should be determined in their favour and that HMRC's enquiries were unnecessary in the light of the correct interpretation of the law. Agreeing with both the FTT and the Upper Tribunal, the Court of Appeal concluded that no closure notice should be directed. The Court of Appeal also gave general guidance to the effect that closure notice applications should not be used to determine what were, in effect, preliminary issues of law. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] EWCA Civ 283	(continued) *Eastern Power Networks and others v HMRC*	(continued) Court of Appeal	(continued) That was particularly the case given that the courts and tribunals were being invited to determine those preliminary issues in the absence of factual findings. Moreover, it would not be in the public interest for taxpayers in receipt of HMRC enquiries to pick and choose which questions to answer and then, in the course of a closure notice application, ask the tribunal to determine the applicability or otherwise of one particular statutory condition on which HMRC rely in the hope of scoring a 'quick win'bringing the entirety of HMRC's enquiries to an end. Rather, taxpayers dissatisfied with the extent of HMRC's requests for information should, in such cases, exercise their statutory rights to challenge those requests.

Citation	Parties	Jurisdiction	Commentary
[2021] EWCA Civ 91	*HMRC v News Corp UK and Ireland Limited*	Court of Appeal	This case dealt with interesting issues arising out of the 'always speaking' doctrine of statutory construction. Statutory provisions set out in the Value Added Tax Act 1994 provided that supplies of 'newspapers' were zero-rated for VAT purposes. At the time of enactment of this legislation (and its predecessors), 'newspapers' existed only as printed items. However, more recently, the taxpayer has been making news available by means of a 'digital news service' that allowed readers to access digital editions of certain newspaper titles. The question was whether supplies of these digital news services benefited from the same zero-rating provision as printed 'newspapers'. The First-tier Tribunal had held that zero-rating was not available; the Upper Tribunal disagreed. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] EWCA Civ 91	(continued) *HMRC v News Corp UK and Ireland Limited*	(continued) Court of Appeal	(continued) In agreement with the First-tier Tribunal, the Court of Appeal concluded that zero-rating was not available. First, there were inferences in the UK statutory provisions (for example the way that supplies of 'music', which also benefited from zero-rating were dealt with) that suggested that Parliament had only printed material in mind. That conclusion was reinforced by the EU law doctrine to the effect that zero-rating was a 'standstill' regime, designed to preserve the effect of domestic provisions in force in 1973 before the UK joined the then EEC, and, accordingly, the scope of zero-rating must be construed strictly.

Citation	Parties	Jurisdiction	Commentary
[2020] EWCA Civ 1705	*Development Securities v HMRC*	Court of Appeal	This was a comparatively rare example of a modern decision on corporate residence. Much of the case law in this area is derived from the early to middle 20th century. The case confirms that a company is resident for corporation tax purposes where its 'central management and control' is conducted. An understanding of the company's constitutional documents is at the heart of determining that issue since central management and control will normally be in the jurisdiction where its 'constitutional organ' is located. In this case, the company in question was incorporated in Jersey, and its 'constitutional organ' consisted of its board of directors. The company entered into transactions as part of a tax avoidance scheme that was to benefit its UK parent. The Court of Appeal concluded that the First-tier Tribunal was entitled to conclude that the company, despite having a board of directors largely based in Jersey, was resident in the UK because those directors 'followed the instructions' of the UK parent.

Citation	Parties	Jurisdiction	Commentary
[2020] EWCA Civ 663	*NCL Investments and another v HMRC*	Court of Appeal	For tax purposes, the measure of 'profit' of a company carrying on a trade takes, as its starting point, the accounting measure of profit. However, by statute, not all items that are taken into account as deductions in computing accounting profit are deductible for tax purposes. In particular, 'expenses not incurred wholly and exclusively for the purposes of a trade' are not deductible for tax purposes. In this case, accounting principles required the taxpayer companies to recognise expenses in their profit and loss accounts in consequence of their parent companies' grant of share options to employees. HMRC argued that, even to the extent that the expense was properly recognised as an accounting matter, it had not arisen as the consequence of any actual outgoing, the expense was not wholly and exclusively 'incurred' in the necessary sense. In agreement with the Upper Tribunal and the First-tier Tribunal, the Court of Appeal rejected that argument. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] EWCA Civ 663	(continued) *NCL Investments and another v HMRC*	(continued) Court of Appeal	(Continued) The case raises important issues, of general application, on the interaction between accounting principles and statutory provisions of the tax code dealing with the deductibility of expenses. It is going on appeal to the Supreme Court.
[2020] UKUT 0139 (TCC) and [2020] UKUT 0243 (TCC)	*Financial Solutions (Euro) Ltd v Financial Conduct Authority*	Upper Tribunal (Tax and Chancery)	This case involved a small financial adviser firm. The FCA sought to remove the authorisation of the firm on the basis that it had failed to pay its regulatory fees and levies and had failed to maintain appropriate professional indemnity insurance (PII). The FCA deals with many such cases on a routine basis without the need to conduct a detailed investigation, relying purely on the of the failure to pay the relevant fees and failure to obtain the necessary insurance without looking at the reasons for failure, unless the firm makes representations in that regard. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0139 (TCC) and [2020] UKUT 0243 (TCC)	(continued) *Financial Solutions (Euro) Ltd v Financial Conduct Authority*	(continued) Upper Tribunal (Tax and Chancery)	(continued) Likewise, the firm said that it could not pay fees because it could not continue to carry on business without PII pending the completion of the FCA's investigation into its activities. The Tribunal found that the FCA had failed to investigate the reasons why the firm could not obtain PII and could not pay the fees. The Tribunal found that because of the outstanding investigation against the firm, which the FCA had not taken steps to progress, the firm's PII insurers and other possible alternative providers declined to offer cover. The Tribunal allowed the firm's reference on the basis that it was wrong of the FCA to institute new regulatory proceedings to cancel the firm's authorisation because of its failure to have PII and pay the outstanding fees despite the outstanding investigation as to the firm's activities. The FCA was therefore wrong to deal with the matter as a routine case of non-payment of fees and failure to obtain PII. The Tribunal found that the Authority failed to investigate properly the reason why the firm could not obtain PII. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0139 (TCC) and [2020] UKUT 0243 (TCC)	(continued) *Financial Solutions (Euro) Ltd v Financial Conduct Authority*	(continued) Upper Tribunal (Tax and Chancery)	(continued) The Tribunal also found that as a result the firm had to cease trading pending completion of the investigation and could not pay the outstanding fees. The Tribunal criticised the Authority for failing to provide any witness evidence of its own as to the market for PII to support its submission that it would have been possible at the relevant time for the firm to obtain PII. Subsequently, the Tribunal exercised its jurisdiction to award costs, not only on the basis that the FCA's original decision to cancel the firm's authorisation was unreasonable but also that it was unreasonable for the FCA to have defended the proceedings in the Tribunal. The Tribunal held that the FCA should have realised that its decision to cancel the firm's authorisation could not properly be defended. It has been very rare for this jurisdiction to be exercised. The case as a whole illustrates the important role of the Tribunal in preventing a public authority abusing its power.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 0117 (TCC)	*HMRC v The Rank Group PLC and Done Brothers (Cash Betting) Limited and Others*	Upper Tribunal	The Tax Chamber hears many cases concerning point of law which sound esoteric, but where huge amounts of money are at stake, not only for the parties to the appeal. This case concerned the VAT treatment of certain gambling supplies made by electronic gaming machines. While games of roulette, real or virtual, played in casinos did not attract VAT, HMRC had applied VAT to various supplies of gambling through machines such as fixed odds betting terminals and slot machines in betting shops and clubs. The taxpayer companies argued that this infringed the EU law principle of 'fiscal neutrality'. This principle requires that supplies which have similar characteristics and meet the same needs from the point of view of consumers should be treated in the same way for VAT purposes. HMRC argued that in applying this test it was necessary first to determine the characteristics of the 'average consumer'. The Tribunal firmly rejected this argument and found for the taxpayers. Several billions of pounds of VAT became repayable to the appellants and other taxpayers as a result of the decision.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 0147 (TCC)	*HMRC v Professional Game Match Officials Ltd*	Upper Tribunal	One of the most topical areas of law over the last year has been employment status. The Tax Chamber has seen its fair share of decisions on that front. This appeal concerned the question of whether part-time referees, who officiated in matches outside the Premier League, were employees for tax purposes. The arguments covered the various limbs of the classic test for employment status set out in *Ready Mixed Concrete* 2 QB 497. The Tribunal held that the FTT had been right to conclude that the particular arrangements with the part-time referees lacked the necessary 'mutuality of obligation' to be employment contracts. If it had been necessary to decide the point, it would have concluded that the FTT was wrong, however, to conclude that the necessary 'control' did not exist for employment to exist. While some people might have thought it was all over, permission to appeal has been granted. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0147 (TCC)	(continued) *HMRC v Professional Game Match Officials Ltd*	(continued) Upper Tribunal	(continued) There have been other cases on employment status in the Upper Tribunal: for example *HMRC v Atholl House Productions Limited* [2021] UKUT 0037 (TCC) and *HMRC v Kickabout Productions Limited* [2020] UKUT 0216 (TCC) both of which are going on appeal.
[2020] UKUT 0253 (TCC)	*HMRC v John Charman*	Upper Tribunal	Even though it has long been widespread practice to reward executives with share options and share incentives, difficult questions still arise in relation to their tax treatment. In this appeal, the Tribunal decided that Mr Charman received a 'right to acquire securities' when his share options were granted (when he was UK resident), and not when they vested (by which time he had ceased to be UK resident). It also decided that shares he acquired on a share-for-share exchange inserting a new holding company over the company he worked for remained shares acquired 'as a director or employee' where the original shares were so acquired. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0253 (TCC)	(continued) *HMRC v John Charman*	(continued) Upper Tribunal	(continued) Mr Charman argued unsuccessfully that he held the new shares as a shareholder not by reason of employment. Permission to appeal to the Court of Appeal on these issues of wider importance has been granted.
[2020] UKUT 0370 (TCC)	*HMRC v Epaminondas Embiricos*	Upper Tribunal	When HMRC open a tax enquiry into an individual's tax position, they must issue an enquiry notice. When that enquiry is closed they must issue a closure notice. The taxpayer may also apply to the FTT for a closure notice to be issued, which it might do where it believes that HMRC's enquiries are being prolonged unnecessarily. However, that is a blunt tool, because the effect of a closure notice is to determine all tax liabilities for that tax year, whereas in practice there might be a number of separate issues in dispute for a year. To deal with that problem, Parliament recently introduced a 'partial closure notice'. This allows enquiries to be closed in relation to a particular matter in a tax year, leaving other matters open. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0370 (TCC)	(continued) *HMRC v Epaminondas Embiricos*	(continued) Upper Tribunal	(continued) The issue in this appeal was whether in issuing a partial closure notice HMRC must be in a position to quantify the tax arising in relation to the matter in question. Mr Embiricos claimed that for the years in question he was non-domiciled, and there was no need for HMRC to be able to quantify the tax arising if they disagreed with that claim. There were conflicting FTT decisions, so this was an example of the Tax Chamber determining the position for the first time. The Tribunal found that HMRC did need to be able to quantify the tax arising in order to issue a partial closure notice. The decision is under appeal.

Citation	Parties	Jurisdiction	Commentary
[2020] UKUT 0170 (TCC)	*Ampleaward Ltd v HMRC*	Upper Tribunal	This case concerned the correct VAT treatment of 'triangular' transactions in excise goods involving three separate member states. A taxpayer, based in the UK, purchased alcohol from a supplier based in Member State A. The taxpayer did not take delivery of the goods in the UK, but asked the supplier to deliver them to a bonded warehouse in Member State B. In order to claim VAT exemption in its jurisdiction, the supplier quoted the UK taxpayer's VAT number on its tax returns. The question was whether the taxpayer was liable to acquisition VAT in the UK on its purchase of alcohol from the supplier. The Upper Tribunal concluded that EU law and UK domestic law were at odds with each other. EU law gave member states the option to exempt transactions such as this from VAT, but only where the acquisition was into a bonded warehouse in the member state concerned. However, UK domestic law departed from EU law. First, it did not confer exemption, but instead provided for an amendment to 'place of supply'. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2020] UKUT 0170 (TCC)	*Ampleaward Ltd v HMRC*	Upper Tribunal	Second, it provided for the place of supply to be treated as outside the UK, whenever an acquisition in such circumstances was into a bonded warehouse in any member state. The UK domestic provisions could not be 'read down' so as to be consistent with the provisions of EU law. The Upper Tribunal accordingly allowed the taxpayer's appeal. The matter is now going on appeal to the Court of Appeal.
[2020] UKUT 0062 (TCC)	*Fisher and others v HMRC*		The taxpayers were shareholders and/or directors of the UK betting company Stan James. In 2000, the company transferred its tele-betting business to a company in Gibraltar where betting duty was lower. HMRC assessed the taxpayers to income tax on profits of the Gibraltar company, arguing that the 'transfer of assets abroad' ('TOAA') code applied. The statutory words introducing the tax charge (s739(1) Income and Corporation Tax Act 1988) explained it had effect 'for the purpose of preventing' the avoidance of income tax liability. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0062 (TCC)	(continued) *Fisher and others v HMRC*		(continued) The Fishers argued there was no avoidance of income tax so as to engage the charge in the first place since, as shareholders, they had never been liable to pay income tax on the profits of the UK company. The Upper Tribunal rejected that argument, concluding that s739(1A), which had been introduced to reverse the effect of an earlier Court of Appeal decision, meant that the TOAA provisions could apply, even if there was no avoidance of income tax. The next issue was whether the transfer of assets by the UK company could be imputed to any of the taxpayers on the basis that they were 'quasi-transferors' who 'procured' the company to make the transfer. Here the UT rejected HMRC's case and the FTT's conclusion that the transfer could be imputed this way. The imputation ignored i) the separate legal persona of the company, ii) the fact the company could only make the transfer if its board of directors resolved that, iii) that the directors were officers and agents of a company not vice versa and iv) that a director's obligation was to vote in best (Continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKUT 0062 (TCC)	(continued) *Fisher and others v HMRC*		(continued) The above conclusion disposed of the appeal in the taxpayers' favour, but the UT went on, amongst other matters, to consider, on an obiter basis, the parties' further arguments including the taxpayers' case that they escaped the charge because a 'motive' defence applied. The UT held that the FTT had been wrong to consider that once a tax avoidance purpose, consisting of a wish to avoid UK betting duty, had been established that that could not then be 'trumped' by a greater or underlying purpose for the avoidance (such as the taxpayers' argument that the very viability of the business would have been threatened if it could not, like its competitors, reduce its betting duty costs). The UT also considered whether the TOAA code breached EU law fundamental freedom of establishment or free movement of capital. The decision is under appeal to the Court of Appeal and will be heard in July this year.

Immigration and Asylum Chamber

Case	Subject	Commentary
AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), 1 May 2020	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. There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence. Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) 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 and even if he does not have a Tazkera.

Case	Subject	Commentary
KAM (Nuba – return) Sudan CG [2020] UKUT 00269 (IAC), 1 September 2020	Country Guidance	An individual of Nuba ethnicity is not at real risk of persecution or serious ill-treatment on return to Sudan (whether in the Nuba Mountains, Greater Khartoum or Khartoum International Airport) simply because of their ethnicity. A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker. Prior to the political developments in 2019, individuals who were at risk on return (whether at the airport or in Greater Khartoum) were those who were perceived by the Sudanese authorities to be a sufficiently serious threat to the Sudanese Government to warrant targeting. The assessment of that risk required an evaluation of what was likely to be known to the authorities and a holistic assessment of the individual's circumstances including any previous political activity in Sudan or abroad and any past history of detention in Sudan. Factors include whether the individual was a student, a political activist or a journalist; their ethnicity; their religion (in particular Christianity); and whether they came from a former conflict area (such as the Nuba Mountains).

Case	Subject	Commentary
PK and OS (basic rules of human conduct) Ukraine CG [2020] UKUT 314 (IAC), 23 November 2020	Country Guidance	Where a person faces punishment for a refusal to perform military service that would or might involve acts contrary to the basic rules of human conduct, that is capable of amounting to 'being persecuted' on grounds of political opinion for the purposes of the Refugee Convention. The UT gives guidance on this issue and also gives country guidance on the conduct of the Ukrainian military in the conflict in the Anti-Terrorist Operation Zone; and on conscripts and mobilised reservists in Ukraine.
Choudhury (Extended family members: dependency) [2020] UKUT 00188 (IAC), 29 April 2020	European Union	The words 'and continues to be dependent' in regulation 8(2)(c) of the Immigration (European Economic Area) Regulation 2006, properly characterised, require an applicant to establish that there has not been a break in their dependency on the EEA national sponsor.
MM (section 117B (6) – EU citizen child) Iran [2020] UKUT 224 (IAC), 8 June 2020	European Union	The definition of 'qualifying child' contained in section 117D(1) of the Nationality, Immigration and Asylum Act 2002 does not include an EU citizen child resident in the United Kingdom for less than seven years. The non-inclusion of EU citizen children resident for less than seven years in the definition of 'qualifying child' does not breach the EU law prohibition against discrimination on grounds of nationality.

Case	Subject	Commentary
R (on the application of BAA and Another) v Secretary of State for the Home Department (Dublin III: judicial review; SoS's duties) [2020] UKUT 227 (IAC), 23 June 2020	European Union	Article 17(2) of Regulation 604/2013 of the European Parliament and of the Council ('Dublin III') confers a discretion on a Member State to examine an application for international protection 'in order to bring together any family relations, on humanitarian grounds, based on family or cultural considerations'. Although the discretion is wide, it is not untrammelled: *R (HA and others) (Dublin III; Articles 9 and 17.2)* [2018] UKUT 297 (IAC). As in the case of any other discretionary power of the Secretary of State in the immigration field, Article 17(2) must be exercised in an individual's favour, where to do otherwise would breach the individual's human rights (or those of some other person), contrary to section 6 of the Human Rights Act 1998. The Secretary of State's Article 17(2) decisions are susceptible to 'ordinary' or 'conventional' judicial review principles, of the kind described by Beatson LJ in *ZT (Syria) v SSHD* [2016] 1 WLR 4894 as 'propriety of purpose, relevancy of considerations and the longstop Wednesbury unreasonableness category' (para 85). Where a judicial review challenge involves an allegation of violation of an ECHR right, such as Article 8, it is now an established principle of domestic United Kingdom law that the court or tribunal must make its own assessment of the lawfulness of the decision, in human rights terms. If, in order to make that assessment, the court or tribunal needs to make findings of fact, it must do so.

Case	Subject	Commentary
MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 (IAC), 11 March 2020	Evidence	Part 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 contains a 'toolkit' of powers, the proper use of which saves time and expense and furthers the overriding objective. A judge of the FtT who is minded to grant permission to appeal on the basis of a seemingly obvious error of law should consider whether, instead, to review the decision under appeal pursuant to rule 35. A decision which contains a clerical mistake or other accidental slip or omission may be corrected by the FtT under rule 31 (the 'slip rule'). Where a decision concludes by stating an outcome which is clearly at odds with the intention of the judge, the FtT may correct such an error under rule 31, if necessary, by invoking rule 36 so as to treat an application for permission to appeal as an application under rule 31. Insofar as *Katsonga* [2016] UKUT 228 (IAC) held otherwise, it should no longer be followed. Written and oral evidence given by 'church witnesses' is potentially significant in cases of Christian conversion (see *TF and MA v SSHD* [2018] CSIH 58). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is for the judicial fact-finder.

Case	Subject	Commentary
Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC), 30 July 2020	Evidence	A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport. The burden of proving the contrary lies on the claimant in an asylum case. Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.
QC (verification of documents; Mibanga duty) China [2021] UKUT 33 (IAC), 12 January 2021	Evidence	The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. The Court also gives general guidance on the verification of documents and on the *'Mibanga duty' to consider credibility 'in the round*.
DK and RK (Parliamentary privilege; evidence) [2021] UKUT 00061 (IAC), 27 January 2021	Evidence	Although the Upper Tribunal is not bound by formal rules of evidence, it cannot act in such a way as to violate Parliamentary privilege, whether that be to interfere with free speech in Parliament or by reference to the separation of powers doctrine. The Tribunal cannot interfere with or criticise proceedings of the legislature. Courts and tribunals determine cases by reference to the evidence before them and not by reference to the views of others, expressed in a non-judicial setting, on evidence which is not the same as that before the court or tribunal. Indeed, even if the evidence were the same, the court or tribunal must reach its own views, applying the relevant burden and standard of proof.

Case	Subject	Commentary
R (on the application of Mansoor) v Secretary of State for the Home Department (Balajigari – effect of judge's decision) [2020] UKUT 00126 (IAC), 11 March 2020	Immigration and Asylum generally	The process required by the Court of Appeal in *Balajigari* may be carried out by the Tribunal in effect applying that guidance, such that the Secretary of State's failure to do so is rendered immaterial.

Case	Subject	Commentary
Hysaj (Deprivation of Citizenship: Delay) [2020] UKUT 00128 (IAC), 19 March 2020	Immigration and Asylum generally	The starting point in any consideration undertaken by the Secretary of State ('the respondent') as to whether to deprive a person of British citizenship must be made by reference to the rules and policy in force at the time the decision is made. Rule of law values indicate that the respondent is entitled to take advice and act in light of the state of law and the circumstances known to her. The benefit of hindsight post the Supreme Court judgment in *R (Hysaj) v Secretary of State for the Home Department* [2017] UKSC 82, does not lessen the significant public interest in the deprivation of British citizenship acquired through fraud or deception. No legitimate expectation arises that consideration as to whether or not to deprive citizenship is to be undertaken by the application of a historic policy that was in place prior to the judgment of the Supreme Court in *Hysaj*. No historic injustice is capable of arising in circumstances where the respondent erroneously declared British citizenship to be a nullity, rather than seek to deprive under section 40(3) of the British Nationality Act 1981, as no prejudice arises because it is not possible to establish that a decision to deprive should have been taken under a specific policy within a specific period of time.

Case	Subject	Commentary
Younas (section 117B(6)(b); Chikwamba; Zambrano) [2020] UKUT 00129 (IAC), 24 March 2020	Immigration and Asylum generally	An appellant in an Article 8 human rights appeal who argues that there is no public interest in removal because after leaving the UK he or she will be granted entry clearance must, in all cases, address the relevant considerations in Part 5A of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') including section 117B(1), which stipulates that 'the maintenance of effective immigration controls is in the public interest'. Reliance on *Chikwamba v SSHD* [2008] UKHL 40 does not obviate the need to do this. Section 117B(6)(b) of the 2002 Act requires a court or tribunal to assume that the child in question will leave the UK: *Secretary of State for the Home Department v AB (Jamaica) and Anor* [2019] EWCA Civ 661 and *JG (s 117B(6): 'reasonable to leave' UK) Turkey* [2019] UKUT 00072 (IAC). However, once that assumption has been made, the court or tribunal must move from the hypothetical to the real: paragraph 19 of *KO (Nigeria) and Ors v Secretary of State for the Home Department* [2018] UKSC 53. The assessment of whether a child, as a result of being compelled to leave the territory of the European Union, will be deprived of his or her genuine enjoyment of the rights conferred by Article 20 TFEU in accordance with *Ruiz Zambrano v Office national de l'emploi* (Case C-34/09) falls to be assessed by considering the actual facts (including how long a child is likely to be outside the territory of the Union), rather than theoretical possibilities.

Case	Subject	Commentary
R (on the application of Dzineku-Liggison and Others) v Secretary of State for the Home Department (Fee Waiver Guidance v3 unlawful) [2020] UKUT 222 (IAC), 20 May 2020	Immigration and Asylum generally	The Secretary of State's Fee Waiver Guidance, version 3, was unlawful because it failed properly to reflect the settled test, of whether the applicant is able to afford the fee.

Case	Subject	Commentary
DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC), 5 June 2020	Immigration and Asylum generally	The Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation of Article 10(1)(d) of the Qualification Directive (Particular Social Group). Article 10 (d) should be interpreted by replacing the word 'and' between Article 10(1)(d)(i) and (ii) with the word 'or', creating an alternative rather than cumulative test. Depending on the facts, a 'person living with disability or mental ill health' may qualify as a member of a Particular Social Group ('PSG') either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin. A person unable to secure a firm diagnosis of the nature of their mental health issues is not denied the right to international protection just because a label cannot be given to his or her condition, especially in a case where there is a satisfactory explanation for why this is so (e.g. the symptoms are too severe for accurate diagnosis). The assessment of whether a person living with disability or mental illness constitutes a member of a PSG is fact specific to be decided at the date of decision or hearing.

Case	Subject	Commentary
Ashfaq (Balajigari: appeals) [2020] UKUT 226 (IAC), 17 June 2020	Immigration and Asylum generally	If the decision of the Secretary of State carries a right of appeal, the availability of the appeal process corrects the defects of justice identified in *Balajigari*. In an earnings discrepancy case there is no a priori reason to suppose that any of the declared figures is or was accurate. In particular, the fact that a person is now prepared to pay a sum of money to HMRC does not of itself prove past income at the level claimed. The explanation by any accountant said to have made or contributed to an error is essential because the allegation of error goes to the accountant's professional standing. Without evidence from the accountant, the Tribunal may consider that the facts laid by the Secretary of State establish the appellant's dishonesty.

Case	Subject	Commentary
Mahmood (paras. S-LTR.1.6. and S-LTR.4.2.; Scope) [2020] UKUT 376 (IAC), 7 October 2020	Immigration and Asylum generally	Paragraph S-LTR.1.6. of Appendix FM does not cover the use of false representations or a failure to disclose material facts in an application for leave to remain or in a previous application for immigration status. Paragraph S-LTR.4.2. of Appendix FM is disjunctive with two independent clauses. The Home Office is consequently obliged to plead and reason her exercise of discretion to refuse an application for leave to remain based on one or both of those clauses. The natural meaning of the first clause in paragraph S-LTR.4.2 requires that the false representation or the failure to disclose any material fact must have been made in support of a previous application and not be peripheral to that application. The use of the words 'required to support' in the second clause in paragraph S-LTR.4.2 confirms a compulsory element to the use of the document(s) within the application or claim process, and the obtaining of the document(s) must be for the purposes of the immigration application or claim.
Mx M (gender identity – HJ (Iran) – terminology) El Salvador [2020] UKUT 00313 (IAC), 22 October 2020	Immigration and Asylum generally	Decision-makers should where possible apply the guidance in the Equal Treatment Bench Book and use gender terminology which respects the chosen identity of claimants before them. The principles in *HJ (Iran)* are concerned with the protection of innate characteristics. As such they are to be applied in claims relating to gender identity.

Case	Subject	Commentary
Patel (historic injustice; NIAA Part 5A) [2020] UKUT 351 (IAC), 25 November 2020	Immigration and Asylum generally	The UT provides guidance on 'historic injustice', as used in the immigration context, historical injustice, and on Part 5A of the Nationality, Immigration and Asylum Act 2002 and the weight to be given to the maintenance of effective immigration controls in that context.
R (on the application of C6) v Secretary of State for the Home Department (asylum seekers' permission to work) [2021] UKUT 0094 (IAC), 13 January 2021	Immigration and Asylum generally	Insofar as the Secretary of State's policy Permission to work and volunteering for asylum seekers, version 8.0, 29 May 2019, admits no exceptions, it has not been justified and so is unlawful.

Case	Subject	Commentary
R (on the application of Waleed Ahmad Khattak) v Secretary of State for the Home Department ('eligible to apply'- LTR - 'partner') [2021] UKUT 00063 (IAC), 23 February 2021	Immigration and Asylum generally	An applicant is 'eligible to apply for leave to remain as a partner' within the meaning of para E-LTRPT.2.3 of Appendix FM only if it is readily apparent from the information contained in their application and any information available to the Secretary of State that they meet the autonomous definition of 'partner' in GEN.1.2. of Appendix FM unless the route under which the application is being made clearly provides for a different meaning of 'partner'.
Chang (paragraph 276A(a)(v); 18 months?) [2021] UKUT 00065 (IAC), 26 February 2021	Immigration and Asylum generally	In paragraph 276A(a) (v) the reference to '18 months' must be interpreted as meaning 548 days.

Case	Subject	Commentary
Ammari (EEA appeals - abandonment) [2020] UKUT 00124 (IAC), 2 March 2020	Practice and Procedure	Under the 2000 and 2006 EEA Regulations there was provision for appeals brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002 to be treated as abandoned where an appellant was issued with documentation confirming a right to reside in the United Kingdom under EU law. Following the changes to the 2002 Act brought about by the Immigration Act 2014 that abandonment provision was revoked and never replaced. There has never been provision under any of the EEA Regulations for an appeal against an EEA decision brought under those Regulations to be treated as abandoned following a grant of leave to remain or the issuance of specified documentation confirming a right to reside in the United Kingdom under EU law. It follows that a grant of leave to remain following an application under the EU Settlement Scheme does not result in an appeal against an EEA decision brought under the 2016 EEA Regulations being treated as abandoned.
WA (Role and duties of judge) Egypt [2020] UKUT 00127 (IAC), 16 March 2020	Practice and Procedure	During the taking of evidence a judge's role is merely supervisory. If something happens during a hearing that disrupts the normal course of taking evidence, it is essential that the judge records what happened and why; who said what; and what decision the judge made and on what basis.

Case	Subject	Commentary
SC (paras A398-339D: 'foreign criminal': procedure) Albania [2020] UKUT 00187 (IAC), 27 April 2020	Practice and Procedure	Paragraph A398 of the immigration rules governs each of the rules in Part 14 that follows it. The expression 'foreign criminal' in paragraph A398 is to be construed by reference to the definition of that expression in section 117D of the Nationality, Immigration and Asylum Act 2002: *OLO and Others (para 398 – 'foreign criminal')* [2016] UKUT 00056 (IAC) affirmed; Andell (foreign criminal - para 398) [2018] UKUT 00198 (IAC) not followed. A foreign national who has been convicted outside the United Kingdom of an offence is not, by reason of that conviction, a 'foreign criminal' for the purposes of paragraphs A398-399D of the rules. In the absence of a material change in circumstances or prior misleading of the Tribunal, it will be a very rare case in which the important considerations of finality and proper use of the appeals procedure are displaced in favour of revisiting and varying or revoking an interlocutory order: *Gardner-Shaw (UK) Ltd v HMRC* [2018] UKUT 419 (TCC) followed.

Case	Subject	Commentary
BH (policies/ information: SoS's duties) Iraq [2020] UKUT 00189 (IAC), 14 May 2020	Practice and Procedure	The Secretary of State has a duty to reach decisions that are in accordance with her policies in the immigration field. Where there appears to be a policy that is not otherwise apparent and which may throw doubt on the Secretary of State's case before the tribunal, she is under a duty to make a relevant policy known to the Tribunal, whether or not the policy is published and so available in the public domain. Despite their expertise, judges in the Immigration and Asylum Chambers cannot reasonably be expected to possess comprehensive knowledge of each and every policy of the Secretary of State in the immigration field. In protection appeals (and probably in other kinds of immigration appeals), the Secretary of State has a duty not to mislead, which requires her to draw attention to documents, etc. under her control or in the possession of another government department, which are not in the public domain, and which she knows or ought to know undermine or qualify her case. There is a clear distinction between information and policy: the fact that country information is contained in a COI (country of origin) document published by the Secretary of State does not, without more, make that information subject to the duty in sub-paragraph (a) above.

Case	Subject	Commentary
MZ (Hospital order: whether a 'foreign criminal') Pakistan [2020] UKUT 225 (IAC), 15 June 2020	Practice and Procedure	An individual sentenced to a hospital order following a finding under section 5 (1) (b) of the Criminal Procedure (Insanity) Act 1964 that he 'is under a disability and that he did the act or made the omission charged against him' is neither subject to section 117C of the 2002 Act (as amended) nor to paragraphs A398-399 of the Immigration Rules. He is excluded from the statutory provisions by section 117D(3)(a) and from the Immigration Rules concerning deportation. [Note: The difference between *OLO* and *Andell* to which the judge refers at paras [10] to [13] is now resolved in *SC (paras A398-339D: 'foreign criminal': procedure) Albania* [2020] UKUT 187 (IAC).]
Ali (permission decisions: errors; slip rule) [2020] UKUT 00249 (IAC), 9 July 2020	Practice and Procedure	Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 may each be employed in order to correct an error in a decision granting or refusing permission to appeal to the Upper Tribunal. The UT describes how, in cases of obvious error, the Upper Tribunal Immigration and Asylum Chamber can, in general, be expected in future to proceed.

Case	Subject	Commentary
R (on the application of L) v Secretary of State for the Home Department (return of person removed: discretion) [2020] UKUT 00267 (IAC), 10 July 2020	Practice and Procedure	A decision to remove a person (P) from the United Kingdom under immigration powers will not be unlawful by reason of the fact that it is predicated upon an earlier decision which has not, at the time of removal, been found to be unlawful, but which later is so found: *AB v Secretary of State for the Home Department* [2017] EWCA Civ 59; *Niaz (NIAA 2002 s.104: pending appeal)* [2019] UKUT 399 (IAC). The fact that P's removal was not unlawful will not necessarily preclude a court or tribunal on judicial review from ordering P's return. The fact it was lawful will, however, be a 'highly material factor against the exercise of such discretion': *Lewis v Secretary of State for the Home Department* [2010] EWHC 1749 (Admin). Where P's removal was unlawful, by reference to the position at the time of removal, that fact should not only constitute the starting point for the Tribunal's consideration of the exercise of its discretion to order return but is also likely to be a weighty factor in favour of making such an order. The same is true where the effect of P's removal has been to deprive P of an in-country right of appeal.

Case	Subject	Commentary
AB (preserved FtT findings; Wisniewski principles) Iraq [2020] UKUT 00268 (IAC), 11 August 2020	Practice and Procedure	Whether and, if so, when the Upper Tribunal should preserve findings of fact in a decision of the First-tier Tribunal that has been set aside has been considered by the Higher Courts in *Sarkar v Secretary of State for the Home Department* [2014] EWCA Civ 195, *TA (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 260 and *MS and YZ v Secretary of State for the Home Department* [2017] CSIH 41. What this case law demonstrates is that, whilst it is relatively easy to articulate the principle that the findings of fact made by the First-tier Tribunal should be preserved, so far as those findings have not been 'undermined' or 'infected' by any 'error or errors of law', there is no hard-edged answer to what this means in practice, in any particular case. At one end of the spectrum lies the protection and human rights appeal, where a fact-finding failure by the First-tier Tribunal in respect of risk of serious harm on return to an individual's country of nationality may have nothing to do with the Tribunal's fact-finding in respect of the individual's Article 8 ECHR private and family life in the United Kingdom (or vice versa). By contrast, a legal error in the task of assessing an individual's overall credibility is, in general, likely to infect the conclusions as to credibility reached by the First-tier Tribunal.

Case	Subject	Commentary
Zulfiqar ('Foreign criminal'; British citizen) [2020] UKUT 00312 (IAC), 11 September 2020	Practice and Procedure	The meaning of 'foreign criminal' is not consistent over the Nationality, Immigration and Asylum Act 2002 and the UK Borders Act 2007. Section 32 of the 2007 Act creates a designated class of offender that is a foreign criminal and establishes the consequences of such designation. That is, for the purposes of section 3(5)(a) of the Immigration Act 1971, the deportation of that person is conducive to the public good and the respondent must make a deportation order in respect of that person. A temporal link is established by section 32(1) requiring the foreign offender not to be a British citizen at the date of conviction. Part 5A of the 2002 Act prescribes a domestically refined approach to the public interest considerations which the Tribunal is required to take into account when considering article 8 in a deportation appeal. Unlike the 2007 Act it is not a statutory change to the power to deport, rather it is a domestic refinement as to the consideration of the public interest question. Part 5A establishes no temporal link to the date of conviction, rather the relevant date for establishing whether an offender is a foreign criminal is the date of the decision subject to exercise of an appeal on human rights grounds under section 82(1)(b) of the 2002 Act. In such a case, the weight to be given to former British citizenship is case-sensitive.

Case	Subject	Commentary
Ndwanyi (Permission to appeal; challenging decision on timeliness) [2021] UKUT 378 (IAC), 16 October 2020	Practice and Procedure	If a decision of the First-tier Tribunal that an application for permission to appeal was in time represents the clear and settled intention of the judge then, as it is an 'excluded decision' (see the Appeals (Excluded Decisions) Order 2009 (SI 2009/275, as amended), it may only be challenged by way of judicial review; that remains so even if both parties agree that the decision is wrong in law. Only if the judge has overlooked the question of timeliness and any explanation for delay will the grant be conditional upon the Upper Tribunal exercising a discretion to extend time (see *Boktor and Wanis (late application for permission) Egypt* [2011] UKUT 00442 (IAC)).
NRS and Another (NA (Libya) in Scotland) Iraq [2020] UKUT 349 (IAC), 9 November 2010	Practice and Procedure	The decision of the Court of Appeal in *NA (Libya) v SSHD* [2017] EWCA 143 that a Country Guidance decision has effect on other decisions sent out after it is published, will be followed in Scotland.
Wilson (NIAA Part 5A; deportation decisions) [2020] UKUT 350 (IAC), 25 November 2020	Practice and Procedure	The UT summarises the current case law on 'caused serious harm' for the purposes of the expression 'foreign criminal' in Part 5A of the 2002 Act and considers the correct approach to deportation decisions and human rights appeals.

Case	Subject	Commentary
Yerokun (Refusal of claim; Mujahid) [2020] UKUT 377 (IAC), 16 December 2020	Practice and Procedure	The reasons given by the President in *R (Mujahid) v First-tier Tribunal and SSHD* [2020] UKUT 00085 (IAC) are reinforced by two further factors: (1) Under s 104(4A) a human rights appeal is deemed to be abandoned if a period of leave, however short, is granted after the appeal is brought. It is inconceivable that it was intended that a refusal of an application accompanied by a grant of leave was intended to generate a right of appeal. (2) There is an inherent difference between an application and a claim and the refusal of the one does not imply or entail the refusal of the other, even where the application includes a claim.
Binaku (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 34 (IAC), 27 January 2021	Practice and Procedure	The appellate regime established by the Nationality, Immigration and Asylum Act 2002, as amended, is concerned with outcomes comprising the determination of available grounds of appeal; A party who has achieved the exact outcome(s) sought by way of an appeal to the First-tier Tribunal being allowed on all available grounds relied on (in respect of an individual) or because it has been dismissed on all grounds (in respect of the Secretary of State) cannot appeal to the Upper Tribunal under section 11(2) of the Tribunals, Courts and Enforcement Act 2007 against particular findings and/or reasons stated by the judge; *Devani* [2020] EWCA Civ 612; [2020] 1 WLR 2613 represents binding authority from the Court of Appeal to this effect. The UT also considers the relationship between Part 5A of the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules.

Case	Subject	Commentary
R (on the application of AM) v Secretary of State for the Home Department (legal 'limbo') [2021] UKUT 00062 (IAC), 11 February 2021	Practice and Procedure	A person whose removal from the United Kingdom has become an impossibility in the sense identified by the House of Lords in *R (Khadir) v Secretary of State for the Home Department* [2005] UKHL 39 cannot be subject to immigration bail (formerly temporary admission). Such 'Khadir' Impossibility is, however, a high threshold to surmount. Applying the four-stage analysis of Haddon Cave LJ in *RA (Iraq) v Secretary of State for the Home Department* [2019] EWCA Civ 850, an individual who is subject to immigration bail may still succeed in a human rights challenge, based on ending his state of legal 'limbo' in the United Kingdom, where the case is of a truly exceptional nature.
SYR (PTA; electronic materials) Iraq [2021] UKUT 00064 (IAC), 24 February 2021	Practice and Procedure	As paper is increasingly replaced by electronic forms of communication, it is particularly important that judges engaged in the permission to appeal process, whether at First-tier or Upper Tribunal level, satisfy themselves that they have the requisite materials before them in order to make a proper decision on permission. Accordingly, a judge should not grant permission to appeal on the basis that the requisite documentation is not before him or her.

Employment Appeal Tribunal

Case Name	Citation	Summary
K v L	UKEATS/ 0014/18/JW [2021] ICR 192	The Claimant, a schoolteacher, was charged by the Police with possession of indecent images of children. The Procurator Fiscal decided not to prosecute. The Crown had provided the employer with a summary of the evidence but would not permit it to be released to anyone else. It was withheld from the decision maker at a disciplinary hearing. The Claimant was dismissed because the decision maker concluded that she was unable to exclude the possibility the Claimant being responsible for the images and because of the risk of serious reputational damage. *Lord Summers* overturned the decision of the Employment Tribunal (ET) that the dismissal was fair; because (1) the letter calling the Claimant to the disciplinary hearing referred to conduct not reputational damage; (2) an employer was not entitled to dismiss an employee on the basis that misconduct was a possibility that could not be excluded; and, (3) the spectre of reputational damage abated when the decision not to prosecute was taken. Lord Summers also reviewed the authorities about the type of evidence that is necessary to support the possibility of conduct having occurred that could result in reputational damage.

Case Name	Citation	Summary
PGA European Tour v Kelly	UKEAT/ 0285/18/DA UKEAT/ 0338/19/DA [2020] IRLR 927 [2021] EWCA Civ 559	The ET, by a majority, ordered that the Claimant, who had been unfairly dismissed and subject to age discrimination, be re-engaged in the role of Commercial Director, China Professional Golfers Association European Tour. *HHJ Auerbach* held that the majority had erred by not considering, and deciding, whether the Respondent had genuinely and rationally concluded that it lacked trust and confidence in the Claimant's capability and had erred, by ordering re-engagement to a position in respect of which the Claimant did not meet an essential requirement (being bilingual). The decision was upheld by the Court of Appeal.
Phelan v Richardson Rogers Limited	UKEAT/ 0169/19/JOJ UKEAT/ 0170/19/JOJ	*HHJ Auerbach* held that when an appeal concerns a decision of the ET on an application to postpone a hearing because the applicant is not fit to attend, the EAT may only intervene on Wednesbury grounds.
Queensgate Investments LLP v Millet	UKEAT/ 0256/20/RN	*HHJ Tayler* upheld the decision of the ET that hearings to determine applications for interim relief (an order that a contract of employment remain in place for the purpose of payment pending a full hearing) are public hearings; and held that while it could not be said that the commercial damage that would be done by a matter being heard in public could never be the basis of making an order limiting publicity, the circumstances would have to be such that publicity would have such catastrophic consequences that justice simply could not be done without the restriction.

Case Name	Citation	Summary
Sarnoff v The Weinstein Company LLC and others	UKEAT/ 0252/19/LA [2020] ICR 1499 [2021] ICR 545	Despite the wording of Rule 31 ET Rules: "The Tribunal may order any person in Great Britain to disclose documents or information to a party …" *Kerr J* upheld, on different grounds, the decision of the ET that an Order can be made against a party outside of Great Britain. The decision of the EAT was upheld by the Court of Appeal, again on different grounds.
Sinclair v Trackwork Ltd	UKEAT/ 0129/20/OO	The Claimant was employed as a Track Maintenance Supervisor and was tasked to implement a new safety procedure. The Respondent dismissed the Claimant for the 'upset' and 'friction' that his activities had caused. The Claimant claimed that his dismissal was automatically unfair as the reason or principal reason for his dismissal was that, having been designated to carry out health and safety activities, he carried out such activities; s100(1)(a) ERA. The decision of the ET that the dismissal was not automatically unfair as alleged was overturned. *Choudhury P* held that where the Claimant's health and safety related activities did not exceed his mandate and were not found to be malicious, untruthful or irrelevant to the task in hand, the manner in which those activities were carried out was not properly separable from the carrying out of those activities itself.

Case Name	Citation	Summary
Nursing and Midwifery Council v Somerville	UKEAT/ 0258/20/RN	The ET held that the Claimant, a panel member chair of the Respondent's Fitness to Practice Committee, was a worker. The Tribunal found that there were a series of individual contracts each time the Claimant agreed to sit on a hearing, for which the Respondent agreed to pay him a fee, and also an overarching contract between them in relation to the provision of his services. *Heather Williams QC*, sitting as a Deputy High Court Judge, held that an irreducible minimum of obligation was not a prerequisite for satisfying the definitions of worker status, in circumstances where, as in the instant case, an overarching contract existed between the parties under which the individual agreed to perform services personally to the Respondent and had done so in respect of a series of separate contracts.

Case Name	Citation	Summary
Steer v Stormsure	UKEAT/ 0216/20/AT [2021] IRLR 172	*Cavanagh J* held that the absence of provision in the Equality Act for a person who has been subject to unlawful discrimination to obtain interim relief infringes ECHR, Article 14. However, the EAT has no power to make a declaration of incompatibility under the Human Rights Act and it would be wrong for the EAT to apply a conforming interpretation to the Employment Rights Act, in order to read in a right to apply for interim relief in discrimination/victimisation claims arising from dismissals because that would cross the line between interpretation and quasi-legislation, and because to do so would require the EAT to take decisions for which it is not equipped and would give rise to important practical repercussions which the EAT is not equipped to evaluate.

Case Name	Citation	Summary
Tesco Stores Limited Element and others	UKEAT/0228/20/AT	Equal Pay claims have been brought by approximately 9,000 employees of the respondent. The appellant argued that the ET had erred in law in making orders for the disclosure of documents and the provision of information relating to comparators because the pleaded cases disclosed no prima facie case and the request amounted to a 'fishing expedition'. *Choudhury P* dismissed the appeal, holding that the Employment Judge was entitled to make the orders that she did. The request was not a 'fishing expedition'. Leverton is not authority for the proposition that there must be a prima facie case, in the form of some evidential threshold, before the power to order disclosure is engaged. The test is, assuming the documents are relevant in the sense of being likely to support or be adverse to a party's case, the well-established one of whether the order for disclosure is necessary for the fair disposal of proceedings.
Varnish v British Cycling Federation	UKEAT/0022/20/LA [2021] ICR 44	The Claimant, a talented professional cyclist, entered into a written agreement with the Respondent, pursuant to which she undertook (amongst other things) to train hard for the common purpose of winning medals for the British cycling team. *Choudhury P* held that the ET was entitled to conclude, based on an evaluative judgment taking account of all relevant factors, that the Claimant was not an employee or a worker.

First-tier Tribunal

Tax Chamber

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 432 (TC) [2020] UKFTT 433 (TC) [2020] UKFTT 434 (TC)	*Chelmsford City Council v HMRC* *Midlothian Council v HMRC* *Mid Ulster District Council (formerly Magherafelt District Council) v HMRC*	FTT (Tax)	A dispute concerning the VAT treatment of sports and leisure facilities provided by local authorities involved most authorities across the United Kingdom. Because the local government law varied between England and Wales, Scotland and Northern Ireland, three test cases were nominated (one for each jurisdiction) and, unusually, the Tribunal sat as a panel of three judges (one legally qualified in each jurisdiction). The appeal of the Northern Ireland council was allowed, while a preliminary issue in the appeals of the English and Scottish councils was determined in the taxpayers' favour.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 267 (TC)	*Royal Bank of Canada v HMRC*	FTT (Tax)	In this case, the Canadian head office of the bank had loaned CAD$540 million in the early 1980s to help finance the development of the Buchan Oil Field in the North Sea. The exploration company sold its interest in the field to BP for sums including a contingent royalty which only applied if the market price of oil exceeded a certain threshold. It then went into receivership and its entitlement to the royalties was transferred to the bank towards satisfaction of its debt. When royalties were ultimately paid by a successor to BP, the bank treated them as repayment of the original loan in Canada; but when they came to light, HMRC sought to tax them as profits from a deemed oil exploitation activity in the UK. This required an analysis of whether the UK/Canada tax treaty allocated taxing rights on such payments to the UK and whether the UK legislation actually imposed taxation on them. There was also an issue about whether HMRC had made a valid discovery entitling them to issue an assessment in respect of some of the older payments. The tribunal found in favour of HMRC on all material points.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 427 (TC)	*Swanage Sea Rowing Club v HMRC*	FTT (Tax)	The Club had built a new boathouse and after talking to a VAT helpline had issued a certificate enabling the construction of it to be zero-rated for VAT, on the basis that either the building was not intended to be used solely for the purposes of the club's business, or it was to be used as a village hall or similarly in providing recreational facilities for the local community. The Tribunal held that neither of the exemptions in fact applied but on the basis of the prior consultation with HMRC (the details of which were disputed), the club had a reasonable excuse for issuing the certificate and therefore would not have to pay a penalty equal to the VAT saved.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 443 (TC); [2021] SFTD 267	*BlackRock Holdco LLC5 v HMRC*	FTT (Tax)	This appeal concerned transfer pricing and unallowable purposes issues in relation to the appellant's loan relationship debits on intra-group debt in the context of a third party corporate acquisition. HMRC challenged the deduction of interest on the basis that (i) the loans would not have been made between two independent enterprises; and (ii) that the 'main purpose' of entering into the loan transaction was to secure a tax advantage. On the transfer pricing issue, the Tribunal, having found, on the basis of the expert evidence, that although an independent lender would not have entered into the actual transaction, it would have lent the same amount and on the same terms (subject to the additional covenants) as the parties to the actual transaction. In relation to the unallowable purposes issue it was held that there was both a commercial and tax purpose. The Tribunal held that the securing of the tax advantage had not changed the amount of the loan relationship debits incurred, all of the debits in question could be apportioned to the commercial purpose rather than the tax advantage purpose. The appeal was therefore allowed.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 449 (TC) [2021] SFTD 397	*Eurochoice Ltd v HMRC*	FTT (Tax)	An application by HMRC that the appellant and its sole director and shareholder (who was not a party to the proceedings) be jointly and severally liable to pay HMRC's costs of and incidental to this 'Complex category' appeal which had been struck out because of the appellant's failure to co-operate with the Tribunal to such an extent that it was unable to deal with proceedings fairly and justly. The Tribunal held that, in accordance with s 29 Tribunals, Courts and Enforcement Act 2007 and Rule 10(1)(c) of the Tax Chamber Procedure Rules, it had the power to make an order for costs not only against the appellant but also, in the circumstances, against its non-party director and shareholder.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 10 (TC) [2021] SFTD 512	*King's Lynn and West Norfolk Borough Council v HMRC (No 2)*	FTT (Tax)	This appeal concerned the VAT treatment of an 'overpayment' for parking at a public authority 'pay and display' off-street car park e.g. a person who wishes to park their car for an hour, for which the tariff is £1.40 and who has only a pound coin and a 50p piece, puts £1.50 into a ticket machine that does not give change. The sole issue was whether the 10p 'overpayment' should be treated as consideration for the supply of parking services and therefore subject to VAT. It was effectively a re-run of *King's Lynn No 1* [2012] UKFTT 671 (TC) in the light of *National Car Parks Limited v HMRC* [2019] STC 1126 in which the Court of Appeal had held that an overpayment, the 10p in the example, was part of the consideration for parking if provided by a private supplier of car parking services. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKFTT 10 (TC) [2021] SFTD 512	(continued) *King's Lynn and West Norfolk Borough Council v HMRC (No 2)*	(continued) FTT (Tax)	(continued) Rejecting the appellant's argument that the case was distinguishable from NCP because it was a public authority and, due to a statutory parking order, it was prevented from making an offer to provide off-street parking other than as set out in a scale contained in that order it was held that neither the order nor any other statutory provision prevented a driver from making a counteroffer for the parking that was in excess of the statutory parking charge. Similarly, nothing prevented the council from accepting the higher counteroffer. Consequently, there was a direct link between the entire payment and the parking services with the result that VAT was due on the full amount including the overpayment.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 61 (TC)	*Euromoney Institutional Investor PLC v HMRC*	FTT (Tax)	This appeal was against an amendment to the appellant's corporation tax return made on the basis that the appellant was liable to corporation tax on the disposal of its shares because the exchange took place as part of a scheme or arrangements of which one of the main purposes was the avoidance of a liability to corporation tax on chargeable gains, with the result that s 135 of the Taxation of Chargeable Gains Act 1992 ('TCGA') was disapplied by s 137(1) TCGA. The Tribunal found, taking into consideration the specific circumstances of this appeal, that, in order to reflect the reality of the position, and in accordance with the wording of the statute, the arrangements must be taken as a whole and that, based on the witness evidence and all the other evidence in this appeal, the appellant's subjective intention was focused on the commercial purpose of the transaction, which was the main purpose of the arrangements when taken as a whole. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKFTT 61 (TC)	(continued) *Euromoney Institutional Investor PLC v HMRC*	(continued) FTT (Tax)	(continued) The company considered the tax advantage to be no more than a bonus and not important in the context of the transaction as a whole. The Tribunal concluded that avoiding tax liability was a purpose of the arrangements but not one of the main purposes. The appeal was therefore allowed.
[2020] UKFTT 448 (TC)	*Dolan v HMRC*	FTT (Tax)	This appeal was against a penalty for providing a self-assessment tax return to HMRC that contained an inaccuracy, namely the incorrect application of residency rules to the treatment of dividend income. The Tribunal found that the appellant, who is a qualified accountant, did not know that he should have taken steps to ascertain the correct position as he was under the mistaken belief that he already knew the correct position. As he had not knowingly provided HMRC with an inaccurate document, the inaccuracy in the return was not a deliberate inaccuracy but a careless one. On the issue of the validity of the penalty, the Tribunal considered whether paragraph 13(4)(b) Schedule 24 Finance Act 2007 precluded the issuance of a penalty before an assessment had been issued. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKFTT 448 (TC)	(continued) *Dolan v HMRC*	(continued) FTT (Tax)	(continued) The Tribunal found that the statute provides that an assessment must be made before the end of a defined period, that is when the window for assessment closes, but the legislation does not provide for the beginning of that period when the window opens. The Tribunal therefore held that the assessment had been validly made but reduced the penalty on the basis of the inaccuracy having been careless as opposed to deliberate.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 511 (TC)	*Fastklean Limited v HMRC*	FTT (Tax)	This case concerned an application by a third party for a copy of an e-mail contained in the bundle of documents presented in evidence and referred to in the Tribunal's decision on this appeal. The applicant is a barrister, practising frequently in the Tribunal with a particular interest in the operation of the Taxes Management Act, who was not a party to the appeal nor did he represent any party. In considering the power of the Tribunal to allow third party access to documents relating to proceedings, the Tribunal applied the principle that legitimate interest does not require a direct personal or professional interest in the outcome of proceedings and that an interest in other related litigation, whether actual or in contemplation, is sufficient. Accordingly, the Tribunal found that the applicant had a legitimate interest in obtaining access to the document requested and that granting access to this document would advance the principle of open justice. The Tribunal did not consider there to be any risk of harm which the disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others and therefore granted the application.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 201 (TC)	*Window to the Womb (Franchise) Limited and others v HMRC*	FTT (Tax)	This was a lead case in which the taxpayers claimed that supplies of ultrasound scanning services to pregnant women at high street clinics were zero rated for VAT as supplies of medical care. The evidence included detailed evidence of fact from various witnesses and expert evidence from medical experts. HMRC contended that what was being supplied was a 'bonding experience' or a 'reassurance scan' for pregnant women based on viewing the foetus and being provided with images. The decision considered various EU cases on the meaning of medical care and their application to the specific facts of the case. The FTT allowed the appeal finding that the services in question were medical care. There was no onward appeal to the Upper Tribunal and HMRC subsequently issued HMRC Brief 17 (2020) clarifying their policy.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 0475 (TC)	*Project Blue Limited v HMRC (No 2)*	FTT (Tax)	This case followed on from a decision of the Supreme Court in 2018 in a separate appeal (Project Blue Limited). In the original case, the Supreme Court had held that stamp duty land tax (SDLT) on the purchase of Chelsea Barracks was payable on a chargeable consideration of £1.25 billion giving rise to a liability to SDLT of £50 million. The purchase had been made by a Qatari sovereign wealth fund using Shari'a compliant financing. The appellant contended that part of the chargeable consideration was contingent and, in the event, never became payable. In the circumstances, it claimed to be entitled to a repayment of SDLT amounting to £11.64 milion. It also contended that HMRC could not deny that the SDLT was repayable on grounds of cause of action estoppel, issue estoppel, the doctrine of precedent and abuse of process, all said to arise out of the Supreme Court decision. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKFTT 0475 (TC)	(continued) *Project Blue Limited v HMRC (No 2)*	(continued) FTT (Tax)	(continued) The FTT held that the consideration was contingent and the taxpayer's appeal was allowed. The FTT further found that there was no cause of action estoppel or abuse of process. However, there would have been an issue estoppel and it was bound by the Supreme Court decision which had implicitly found that part of the consideration was contingent. There was no appeal by HMRC.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 0392 (TC)	*RT Rate Limited and others v HMRC*	FTT (Tax)	This was a case by various motor traders in which they sought to reclaim VAT which they had overpaid between 1973 and 1992 on demonstrator vehicles sold to customers. The taxpayers had previously settled claims for these periods in or about 2007 on the basis of what are known as the 'Italian Tables' published by HMRC. Further claims for repayment were made in 2016 on the basis that the Italian Tables were materially incorrect. The taxpayers argued that they had a legitimate expectation as a matter of EU law that their original claims would not be closed on a materially incorrect basis and should therefore be treated as remaining open. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKFTT 0392 (TC)	(continued) *RT Rate Limited and others v HMRC*	(continued) FTT (Tax)	(continued) They also argued that HMRC had agreed to pay similar claims by another motor trader and the taxpayers were entitled to be treated in the same way pursuant to the EU law principle of equal treatment. The taxpayers' appeals were dismissed on the basis that the FTT did not have jurisdiction in relation to claims based on an alleged breach of the EU law principle of legitimate expectation, in any event the taxpayers did not have a reasonable expectation that the Italian Tables were correct and the FTT was not satisfied that there had been a breach of the principle of equal treatment.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 0168 (TC)	*Kestutis Vosckas v HMRC*	FTT (Tax)	Appeal against customs and excise duty assessment and penalty. Grounds of appeal included failure to provide Mr Vosckas with information about the criminal act which he is suspected or accused of having committed contrary to Article 6 of EU Directive 2012/13 and the failure to provide Mr Vosckas with an interpreter contrary to Article 2 of EU Directive 2010/64. Decided that the directives did not apply to the appeal against the duty assessments as not criminal proceedings and also did not apply to the appeals against the penalties as it was not suggested that the behaviour was deliberate. It appears however that these directives could apply to an appeal against a penalty for deliberate behaviour.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 80 (TC)	*Hargreaves and Ors v HMRC*	FTT (Tax)	Review of authorities on burden of proof in relation to information notices. In the case of a taxpayer notice, HMRC initially has the burden of explaining the reasons why they believe that the information is reasonably required and only then does the taxpayer have the burden of proving that it is not. In the case of a third party notice, HMRC will already have had to persuade a tribunal that the information is reasonably required. On an appeal against a third party notice (which can only take place by way of judicial review) the burden is on the appellant to show why the information is not reasonably required.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 0145 (TC)	*Dolphin Drilling Ltd v HMRC*	FTT (Tax)	Dolphin Drilling Ltd ('DDL') provided vessels by way of bareboat charter to operators in the oil and gas industry. DDL had chartered the Borgsten, a tender support vessel which supports drilling activities but also includes accommodation on board which could be used for offshore workers. HMRC sought to restrict the deductibility of rentals paid by DDL under Part 8ZA Corporation Tax Act 2010. The tax at stake is approx. £6.7 million. The appeal turned on whether 'it is reasonable to suppose that its use to provide accommodation for offshore workers is unlikely to be more than incidental to another use, or other uses, to which [it] is likely to be put'. The Tribunal concluded that incidental does not need to be confined to uses which are trivial; it can capture uses which, whilst being desirable, sought-after or even important are nevertheless, when viewed in context, secondary to (or less important than) another use or uses. The appeal was allowed. The decision is being appealed to the Upper Tribunal.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 99 (TC)	*Aozora GMAC Investments v HMRC*	FTT (Tax)	Aozora pursued both an appeal and judicial review against HMRC's decision to deny unilateral double tax credit relief in respect of US withholding tax deducted from interest paid to Aozora by its US associated company. Section 790 ICTA allows unilateral tax credit relief to be given against UK taxes for foreign taxes imposed in a country in circumstances where credit relief is not available under a tax treaty. This is subject to s793A, which applies where a treaty contains an 'express provision' to the effect that relief by way of credit shall not be given in particular cases or circumstances specified or described in the treaty – and in such cases and circumstances unilateral relief is blocked. Section 793A has since been rewritten and its equivalent provisions are now in s11(3), Taxation (International and Other Provisions) Act 2010. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKFTT 99 (TC)	(continued) *Aozora GMAC Investments v HMRC*	(continued) FTT (Tax)	(continued) The appeal to the FTT was stayed pending the outcome of the judicial review which was ultimately determined in favour of HMRC. The FTT decided that s793A did not prevent Aozora from being able to claim unilateral tax credit relief, notwithstanding the 'limitation of benefits' provisions in the UK/US double tax treaty, which prevented Aozora from being able to claim an exemption from US withholding tax on interest. However, the FTT decided that s793A was not engaged, as the limitation of benefit provisions were not explicit as to the cases and circumstances in which credit relief was not to be made available. In particular, the FTT held that it was not the purpose of s793A to ensure that the 'balance' in the tax treaty was reflected in UK law – not least as the treaty recognised that there were circumstances in which domestic law could be more favourable to a taxpayer than the treaty, and in those circumstances domestic law prevailed.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 113 (TC)	*Candy v HMRC*	FTT (Tax)	This was a decision on a preliminary issue of whether a purported amendment of an SDLT land transaction return was made within a relevant time limit for the purposes of para 6(3), Sch 10, FA 2003. Section 44 FA 2003 imposes a charge to SDLT where substantial performance of a contract occurs prior to completion. It was common ground that this had occurred in this case, and that Mr Candy had paid the tax. Section 44(9) provides that where tax has been charged under s44, but the contract is 'afterwards rescinded or annulled or for any other reason not carried into effect', then the tax shall be repaid. The claim for repayment is made by amending the original land transaction return, and para 6(3), Sch 10 provides that amendments may not be made more than 12 months after the filing date 'except as otherwise provided'. Mr Candy novated the contract, and submitted that it was therefore rescinded, annulled, or otherwise not carried into effect. SDLT was then paid on the novation by the counterparty. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKFTT 113 (TC)	(continued) *Candy v HMRC*	(continued) FTT (Tax)	(continued) Mr Candy amended his return more than 12 months after the filing date, and HMRC submitted that the amendment was therefore late. The FTT held that 'except as otherwise provided' in para 6(3) should be construed as referring to 'afterwards' in s44(9), and as the amendment was filed 'afterwards', it was not late – at the time FA 2003 was enacted there were no provisions to which 'except as otherwise provided' could refer, other than to 'afterwards' in s44(9). HMRC have appealed and the decision of the Upper Tribunal is awaited.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 162 (TC)	*Cape Industrial Services Ltd and Another v HMRC*	FTT (Tax)	This appeal was against HMRC's refusal of the appellants' claims for capital allowances on sums paid under transactions relating to assets used in their trade where (a) the appellants already had an on-going entitlement to allowances on 'qualifying expenditure' they incurred when they initially acquired the assets, and (b) the appellants' sole purpose was to generate further 'qualifying expenditure' in respect of the assets without them suffering any actual financial cost or disturbing their existing entitlement to allowances, so that, in effect, they would obtain capital allowances twice on a single expenditure. Using simplified figures, the taxpayer sold its assets to a bank for £100, (b) the bank leased them back to it for four weeks in return for rentals of a total of £5, and (c) on the expiry of the leases, the appellant re-acquired the assets for £95 on the bank exercising a put option which the taxpayer had granted to the bank at the outset. The intention was that each appellant became entitled to capital allowances on £95 it paid to reacquire the assets which was funded (as were the rents) by the sales proceeds received from the bank. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2020] UKFTT 162 (TC)	*Cape Industrial Services Ltd and Another v HMRC*	FTT (Tax)	Applying a purposive approach to the construction of the relevant provisions in the Capital Allowances Act 2001, the Tribunal held that, on a realistic view of the facts, viewing the overall effects of the transactions as they were intended to operate as a composite whole, the appellants did not (a) 'dispose' of the assets when they sold them to the bank, (b) incur any 'qualifying expenditure' under the special 'funding lease' regime on entering into the leases (or make a 'disposal' of them on the expiry of the leases), or (c) incur any further 'qualifying expenditure' when they re-acquired the assets from the bank. Accordingly, the appellants were not entitled to allowances on the put option price and the appeal was dismissed.

Citation	Parties	Jurisdiction	Commentary
[2020] UKFTT 407 (TC)	*Lancashire and others v HMRC*	FTT (Tax)	These are lead appeals concerning offshore (Isle of Man) trust and partnership arrangements designed to enable UK individuals to receive the majority of the income generated by the provision of their services to UK clients without attracting income tax and NICs. It was accepted that the structure does not achieve this result due to legislation introduced with retrospective effect. The tribunal rejected HMRC's argument that the tribunal does not have jurisdiction to consider the appellants' argument that (i) the relevant income is taxable as earnings and not income from a partnership as HMRC had assumed in the amendments made to the appellants' tax returns, (ii) on that basis, the appellants are entitled to a 'credit' for the income tax which the clients were liable to account for under the PAYE system (but failed to do so), which is to be off-set against the tax otherwise payable by the appellants for the relevant tax years and, (v) they have the right to appeal to the tribunal in respect of HMRC's failure to take this 'credit' into account and the tribunal has the power to amend their returns to give effect to the 'credit'. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2020] UKFTT 407 (TC)	(continued) *Lancashire and others v HMRC*	(continued) FTT (Tax)	(continued) The tribunal decided these points in favour of the appellant but dismissed the appeal on the basis of HMRC's alternative argument that the sums are taxable under the 'transfer of assets abroad' rules. Shortly before the hearing HMRC notified the appellants that they had decided not to require any party to comply with the PAYE rules as regards payments under this structure and there is no 'credit' in the first place under a provision which states: "Nothing in the PAYE regulations may be read –... (b) as requiring the payer to comply with the regulations in circumstances in which an officer… is satisfied that it is unnecessary or not appropriate for the payer to do so". The tribunal decided that (a) it does not have jurisdiction to hear the appellant's objections to this on the basis they raised public law arguments (such as whether HMRC's acted beyond their powers) but (b) as a matter of statutory construction, the provision does not apply, in effect, to permit HMRC retrospectively to override the manner in which the PAYE rules otherwise apply.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 31 (TC)	*Odey Asset Management LLP v HMRC*	FTT (Tax)	This concerns the tax consequences of arrangements operated by a hedge fund management business carried on by an LLP for the remuneration of its individual members. A proportion of its profits for each year were paid to a corporate member of the LLP. The LLP recommended to the company that it should exercise its discretionary powers (a) to contribute the funds it received to the LLP as special capital notionally attributable to each specified member as a potential 'award', on the basis that the LLP would invest the specified sum in the hedge fund which the relevant member managed, and (b) to reallocate the special capital to the member on specified dates over a two or three year period subject to the satisfaction of certain conditions in the LLP's remuneration policy (such as that the member remained with the LLP on the specified dates) on the basis that, following any such reallocation, the member could withdraw the monies referable to the special capital. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 31 (TC)	*Odey Asset Management LLP v HMRC*	FTT (Tax)	The company always acted in accordance with the recommendations made by the LLP. Some members did not receive a reallocation of special capital as they left the LLP before the specified date. The appellants argued that they are not taxable in respect of the sums either when the 'awards' were made or when they withdrew the monies. The tribunal (a) rejected HMRC's argument that on a purposive construction of the relevant legislation, viewing the facts realistically, the members were subject to an upfront charge to income tax on the sums allocated to the company, but (b) decided that the members were subject to income tax on the sums received when the special capital was allocated to them under the rules relating to miscellaneous income.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 0106 (TC)	*Wm Morrison Supermarkets Plc v HMRC*	FTT (Tax)	Morrison's had appealed against HMRC's decisions that Nakd and Organix cereal bars were subject to VAT because they were 'confectionery'. It argued that the bars were zero-rated because they were not confectionery, or in the alterative because they were 'cakes' and so fell within that specific exclusion from zero-rating. The Tribunal carried out a multi-factorial examination, including tasting each of the bars. It also considered the normal meaning of the word 'confectionery' and went on to decide that the bars were confectionery and were not cakes. The appeal was therefore refused.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 100 (TC)	*Albany Fish Bar Ltd and Akhtar v HMRC*	FTT (Tax)	HMRC had identified that Mr Akhtar, the director of Albany Fish Bar, was suppressing sales, and issued assessments to recover VAT on those sales, together with penalties. The Tribunal agreed with the appellants that many of the assessments had been outside the relevant statutory deadlines and set them aside. The appellants also submitted the penalties should likewise be reduced, because they were calculated as a percentage of the tax assessed. The Tribunal considered the detailed wording of the penalty provisions, the Notes on Clauses, and the Court of Appeal's judgment in a case involving the previous penalty regime. It then decided that the penalties were not to be reduced simply because the related assessments were out of time. The appeal against the assessments was therefore allowed in part, and that against the penalties was dismissed.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 131 (TC)	*Stephen Mullens v HMRC*	FTT (Tax)	A case concerning the appropriate tax treatment of approximately £40 million received by the appellant, who was a solicitor and an adviser to Formula 1 and the Ecclestone family, and whether these payments were (i) signing-on fees to entice the appellant to move from his firm of solicitors and (ii) gifts from Mrs Slavica Ecclestone. The substantive appeal dealt with whether goodwill and knowledge were financial assets or intangible assets for the purposes of GAAP and whether the amortisation of the purchase consideration was appropriate or not.
[2021] UKFTT 96 (TC)	*Jupiter Asset Management Group Limited v HMRC*	FTT (Tax)	This appeal related to supplies of management services made between two VAT groups within the same corporate group. HMRC had assessed the supplying group on the basis that the open market value of the supplies in question (by reference to which the output tax was to be determined) had been under-estimated by the supplying group. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 96 (TC)	*Jupiter Asset Management Group Limited v HMRC*	FTT (Tax)	In the alternative, HMRC had assessed the supplying group in respect of over-recovered input tax on the basis that some of the input tax in question did not have a direct and immediate link with the supplies of the management services, which were the only economic activity carried on by the supplying group. The essence of the supplying group's output tax case was that (a) the supplies made by the supplying group involved only the supply of the services of the non-executive directors within the group and the supply of certain legal services, (b) the open market value of those supplies was the same as the arm's length price for those supplies, determined in accordance with the OECD transfer pricing guidelines, (c) that value was therefore to be determined by reference to the price for the services of the non-executive directors and the legal services when they were supplied to the supplying group, as those were comparable arm's length supplies and (d) that value was therefore low relative to the amount of input tax sought to be recovered by the supplying group. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 96 (TC)	*Jupiter Asset Management Group Limited v HMRC*	FTT (Tax)	The essence of the supplying group's input tax case was that all of the input tax incurred by the supplying group was recoverable because (a) apart from its holding of shares in entities within the recipient group, its only activity was the provision of management services to those entities and (b) EU and domestic case law showed that a holding company making supplies of management services was entitled to recover all of the input tax which it incurred as long as the holding company did not make any exempt supplies or carry on any non-economic activity and, for this purpose, the holding of shares in the companies to which the holding company was making its supplies of management services was not a non-economic activity. The FTT agreed with the supplying group's submissions in relation to the recovery of input tax. In particular, it was not necessary for the supplying group to establish that there was a direct and immediate link between the supplies to which the input tax related and the supplies made by the supplying group. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 96 (TC)	*Jupiter Asset Management Group Limited v HMRC*	FTT (Tax)	It was merely necessary to show that the supplying group did not make any exempt supplies or carry on any non-economic activity and EU case law showed that the holding of shares in companies to which supplies of management services were being made did not amount to a non-economic activity for this purpose. However, the FTT dismissed the appeal in relation to the output tax assessments, holding that (a) the supplies of management services in this case encompassed more than merely the supply of the services of the non-executive directors and the supply of certain legal services (b) as such, there was no open market comparable to the supplies of the management services and the open market value of those supplies was to be determined by reference to the full cost of the supplies (c) that full cost included the cost of all of the supplies the input tax in relation to which had been recovered by the supplying group (because those were part of the 'cost component' of the supplies of management services and... (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued)	(continued)	(continued)	(continued)
[2021] UKFTT 96 (TC)	*Jupiter Asset Management Group Limited v HMRC*	FTT (Tax)	(d) in any event, the open market value of supplies for VAT purposes was not the same as the arm's length price for those supplies, determined in accordance with the OECD transfer pricing guidelines.
[2021] UKFTT 0160 (TC)	*West Burton Property Limited v HMRC*	FTT (Tax)	This appeal related to the deductibility of deferred revenue expenditure incurred by the owner of a power station which formed part of the cost of the power station in the books of the owner. On the sale of the power station, the difference between the net sale proceeds and the book value of the power station – which was nil, as the two amounts were the same – was required by generally-accepted accounting practice to be recorded in the profit and loss account of the owner. The owner alleged that that accounting treatment meant that the deferred revenue expenditure (which was part of the book value) had been brought into account as a debit in calculating the owner's accounting profits and was therefore deductible for tax purposes. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued) [2021] UKFTT 0160 (TC)	(continued) *West Burton Property Limited v HMRC*	(continued) FTT (Tax)	(continued) The FTT held that it had been so brought into account. Moreover, it rejected HMRC's contention that, even if the deferred revenue expenditure had been so brought into account, it was precluded from being deductible for tax purposes because the sale of the power station was not part of the property business carried on by the owner. In the view of the FTT, the sale of a capital asset which had been used in a property business was required to be taken into account in calculating the profits of the property business even though it did not give rise to an income receipt. Moreover, even if the sale of the property was not to be taken into account for that purpose, the deferred revenue expenditure had clearly been incurred in the course of the property business and therefore fell to be deducted for tax purposes as and when it was brought into account as a debit in calculating the accounting profits, regardless of the trigger for that event.

Citation	Parties	Jurisdiction	Commentary
[2021] UKFTT 88 (TC)	*Pacific Computers Ltd v HMRC*	FTT (Tax)	This was an application for the Tribunal summarily to allow an appeal lodged over 13 years ago because the appellant's right to a fair trial 'within a reasonable time' (under Article 47 of the European Charter of Fundamental Rights) had been breached. The appeal had originally been heard (and allowed) by the Tribunal in 2014 (five years after it was lodged), but was then successfully appealed to the Upper Tribunal, which (in 2016) had remitted it back to the FTT for a re-hearing. The decision considered both whether 'summary judgment' in the appellant's favour was an appropriate remedy for breach of the right to a hearing within a reasonable time and whether there had been such a breach in the appellant's case. On the first issue (remedy), the Tribunal found that summary judgement would be appropriate only where, due to the passage of time, it was no longer possible to have a fair trial, or, if a decision had already been made, the delay had affected the outcome. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued [2021] UKFTT 88 (TC)	(continued) *Pacific Computers Ltd v HMRC*	(continued) FTT (Tax)	(continued) In the appellant's case, evidence of the relevant facts, including witnesses and documents, remained available; and although the witnesses' memories may have weakened, the process of preparing for the trial (and the transcripts of the original FTT hearing) mitigated that inevitable deterioration. The Tribunal decided that the hearing could be held fairly and refused to give summary judgement for the appellant. On the second issue (right to hearing within a reasonable time), the Tribunal found that the principal reasons for delay in the case had been (i) the judicial process of hearing, appeal and re-trial which, although they took a long time, were essential to justice; and (ii) case management of a complex case in a manner that was fair to both parties, including inevitable delays in finding dates for a hearing involving busy legal representatives for both parties. There had been a single instance of the Tribunal causing a delay of a number of months by a late postponement of a hearing due to non-availability of a judge. (continued over)

Citation	Parties	Jurisdiction	Commentary
(continued [2021] UKFTT 88 (TC)	(continued) *Pacific Computers Ltd v HMRC*	(continued) FTT (Tax)	(continued) The Tribunal held that this single incident was not sufficient, in context, to cross the line into 'unreasonable delay'. The application was dismissed.
[2020] UKFTT 271 (TC)	*Dunsby v HMRC*	FTT (Tax)	A decision on a marketed tax avoidance scheme known as Project Scimitar which was designed to allow owners of private companies to extract profits in a tax-free form. This is the lead case for a number of related appeals. The scheme relies upon a particular provision within the anti-avoidance rules applicable to settlements to take the position that a payment received by the owner of the business could not be treated as taxable in his/her hands. The FTT dismissed the taxpayer's appeal against the assessment after considering the application of the rules relating to company distributions, the settlements code, and the anti-avoidance rules governing the transfer of assets abroad. The taxpayer has appealed to the Upper Tribunal.