**Employee lay judges in Great Britain: for decoration only?**

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Introduction

British labour courts (known as employment tribunals) were established over 50 years ago and now determine over 80 types of complaints in respect of an individual’s workplace rights with cases adjudicated by either a professional judge alone or by a professional judge and two lay judges, one drawn from an employee panel and one drawn from an employer panel. These lay judges are appointed by the judicial authorities after some consultation with trade unions employer associations[[1]](#footnote-1) for a five year term, normally renewable until age 70.

This paper considers why people become employee lay judges, how they see their role and contribution, and how they view the professional judge and vice versa. It finds that employee lay judges feel that they possess valuable skills and knowledge derived mainly from their workplace experience but that these are no longer as important as before in judicial decision making because of policy decisions taken by successive governments; nonetheless, they consider that they are able to add some value in other respects. It also finds that employee lay judges consider in the main that the more recently appointed professional judges treat them as an equal, although paradoxically they invariably say that they defer to the professional judge’s knowledge of the law in coming to a decision, with some interviewees explicitly saying the law overrides their sense of fairness.

The plan of this paper is as follows: after sketching the procedures governing the appointment of employee lay judges, we then discuss tripartism in decision making, legal norms and industrial relations norms, and previous research on mixed (that is lay and professional) tribunals/courts. Next, having reviewed our methodology, we examine our findings: our interviewees’ motivation for becoming employee lay judges, their recruitment, their role as an adjudicator, and their contribution. We also see how employee lay judges view professional judges and vice versa. Finally, we discuss our findings and make some concluding observations.

Background

In October 2015, there were 1,025 lay judges in England and Wales (Senior President of Tribunals (2016) and as noted above there are two panels: an employee lay judge panel and an employer lay judge panel. A full tribunal is composed of a professional judge and one lay judge drawn from the employee panel and one lay judge drawn from the employer panel and each of the three judges has an equal vote, although in practice the vast majority of decisions are unanimous.

Up to 1999 appointment as an employee lay judge was on the basis of nomination by employee organisations, principally the Trades Union Congress (TUC), and appointment as an employer lay judge was on the basis of nomination by employer organisations, principally the Confederation of British Industry (CBI)[[2]](#footnote-2). Typically the TUC called for nominations from its affiliated unions and the CBI from, for instance, the Engineering Employers’ Federation and the Chartered Institute of Personnel and Development.

In 1999, as part of a wider governmental move to curtail nepotism in public appointments, a new system for recruiting lay judges to employment tribunals was introduced: self- nomination and open competition with an application form, an on-line test, interviews and recommendation for appointment. Although candidates could still be recommended by the nominating bodies, the then minister said that they would be treated equally alongside applications from other candidates. (It seems that in practice nomination guaranteed an interview, but not appointment.)

In fact there has not been a recruitment exercise since 2009 and this is for two reasons; first the professional judge can sit alone (that is without the two lay judges) in certain specified types of complaints. Since 1994 successive governments of different political complexions have added to the types of complaints where a professional judge is empowered to sit alone. This culminated in 2012 in the professional judge being empowered to sit alone in discrete unfair, that is unlawful, dismissal complaints,[[3]](#footnote-3) which comprised over a fifth of all claims in 2010-2011 (Ministry of Justice, 2011).

The second reason is the introduction of court fees in July 2013; this now requires a complainant to pay a fee of £1,200 for an unfair dismissal or discrimination complaint. This has resulted in a stark decline in the number of cases being brought to employment tribunals: a reduction of 42 per cent comparing 2013-14 with 2014-15 in England and Wales (Senior President of Tribunals, 2016).

 The literature

Employment tribunals were established as tripartite bodies. Tripartism, literally three parties, has a specific meaning in employment relations, a three-way interaction between business (through employers’ organisations), labour (through workers’ organisations) and government entities in respect of the formulation and implementation of economic, social or labour policy. It can take the form of institutions for information sharing and consultation, for negotiation and for decision-making. (See Fashoyin, 2004 for a fuller discussion.)

This paper focuses on the last of these in a British context where tripartite decision making entails an employer representative, an employee representative with the third party being the professional judge. Such tripartite decision making bodies can be traced back to the First World War, when there were munitions tribunals with a legally qualified chairperson and two lay members, one drawn from a workmen’s (sic) panel and one from an employer’s panel, essentially to deal with a person’s labour mobility and compensation (Rubin, 1977). When employment tribunals were established in Great Britain in 1964, this was the heyday of tripartite structures.[[4]](#footnote-4)

Bourdieu (1987) distinguishes the ‘juridical field’ from the external social field and contrasts a sense of fairness with legal norms. Entering the juridical field (as is the case with a lay judge who comes from an industrial relations context) implies a ‘redefinition’ of ordinary experience and of the issue at stake in the case under consideration. The ‘ideal type’ adjudicator is characterised as being impartial, but the ‘ideal type’ trade union representative is characterised as being *parti pris*. Employee layjudges could, therefore, experience cognitive dissonance when faced with a situation that entails acting on two incompatible beliefs or sets of values. One option for mitigating or avoiding this dissonance is that of adopting the norms promulgated by juridical personnel: see Festinger (1957) for an exposition of cognitive dissonance theory, an approach that is not without its critics.

That legal norms predominate over industrial relations norms in British employment tribunals is supported by research by Dickens *et al*. (1985: 66) over 30 years ago who maintained:

The lay members are not part of an industrial arbitration body whose prime purpose is to settle the dispute in a practical acceptable way, rather they are part of a court concerned with the adjudication of legal entitlements set out in statute and interpreted in case law.

The primacy of legal norms also tallies with the power of the professional judge

vis-à-vis the lay judges and this has been explored in a number of court settings in Great Britain and in other countries. See for example Wikeley and Young, (1992) in the context of social security appeals in the UK; Fujita and Hotta (2010) in the context of the *saiban-in* system in Japan where three professional judges and six lay judges sit together in criminal cases; and Kutnjak Ivković (1997, 2000, 2003, 2007) in respect of lay and professional judges in criminal courts in Croatia.

Drawing on status characteristics theory, Kutnjak Ivković maintains that expectations among group members undertaking a task about the performance and power of other group members, and hence the interaction of those members, are formed on the basis of two types of status characteristics. Specific characteristics are those potentially of direct relevance to performance of the task, while diffuse characteristics are those which may have only an indirect bearing (e.g. gender, age, ethnicity). In the context of Croatian criminal courts which involve legal decision-making, Kutnjak Ivković (1997) argues that professional judges’ legal background/training constitutes a specific characteristic, and they will therefore be accorded higher status by group members compared with non-legal judges. As a result of this higher status, professional judges ‘will wield more influence’ and any differences are likely to be ‘resolved in their favour’” (Kutnjak Ivković, 1997: 410).

It is also argued that the professional judges have more power than lay judges not only because of their legal knowledge, but also because they have an informational advantage. Thus Fujita and Hotta (2010) submit that that the power of the professional judge is enhanced as they lead the pre-trial conference where evidence is discussed, while in German labour courts the professional judge chairs the mandatory pre-hearing conciliation at which the lay judges are not present. Focussing on British employment tribunals, Latreille and Corby (2011) reporting on a survey of employer/employee lay judges and professional judges found that the latter saw themselves as the lead actor with lay judges in the supporting role. The lay judges for their part, seemed to see their role largely as quasi-legal, for example in identifying issues, and thus judicial, rather than complementary and confining themselves to providing workplace experience.

Methodology

This paper presents the initial findings of an 18-month research project financed by the *Hans B̈öckler Stiftung* considering the roles, resources and competencies of employee lay judges in Great Britain, France and Germany. These initial findings stem from interviews in Great Britain where 40 employee lay judges, and 12 professional judges were interviewed.[[5]](#footnote-5) Interviews were held in five locations in England, Wales and Scotland, normally lasted an hour or more and were recorded and transcribed. The transcripts are currently being analysed using MaxQDA and the initial coding has been used to retrieve segments for this paper.

The research questions for this paper are:

1. What motivations do employee lay judges cite as their reason(s) for taking on this role?

2. How do employee lay judges see their role and contribution?

3. How do employee lay judges view professional judges and vice versa.

Findings

*Motivation*

Employee lay judges were asked what motivated them to either agree to be nominated or to apply to sit on employment tribunals. A common reply was a desire to broaden expertise and some elaborated saying they already knew about employment tribunals but were interested in knowing more and actually finding out how they operated.

A number of interviewees said that other lay judges were motivated by money, although they were not. As one employee lay judge said:

The one thing that worries me is that some colleagues, they seem to be looking at it how much money they’re going to have, …but I went on there, to sit as a Tribunal member, because I felt it would give me an insight in how a decision from a legal perspective is made.

A professional judge also was of the view that money was a motivator for some lay judges, (both employee and employer). He said: ‘They can frankly, sometimes drag things out to ensure they get paid more (it's a fact) and that's really frustrating.’ Only one of our interviewees, however, stated expressly that that she was motivated by financial considerations.[[6]](#footnote-6) This individual, who was semi-retired, had built a portfolio of voluntary activity and remunerated activity on two tribunals (the employment tribunal and a further one). A small number indicated that it was right that their activity as a lay judge was properly remunerated and said that they would only be willing to read case papers before the day of the hearing if they were to be paid for so doing.[[7]](#footnote-7)

Even if/where money was a motivator, it was not necessarily the sole motivator: a number of interviewees spoke about ‘good cases’, suggesting that it provided them with a meaningful activity, enabling them to deal with (sometimes forced) retirement from their workplace. Of those still at work, several interviewees said that their motivation was to gain status/esteem in the workplace. For instance an interviewee who had joined the employment tribunals when he was a union workplace representative said: ‘my employer’s attitude changed quite significantly. They were paying more credence, more attention’. Another interviewee, a full-time union official, said that when she discussed a case with the union’s in-house lawyers ‘then you could drop the magic words - “well in my experience sitting on the employment tribunal” - and then they kind of perk up a little bit more’.

Many interviewees spoke about knowledge transfer – how they used the information they obtained as a lay judge to the benefit of their union role. For instance a national union official who managed a team of regional and local negotiating union officials said:

I try and make sure that that learning, if you like, from doing the tribunal work is passed on in managing my team, but also, you know, where I'm not expressly prevented from doing it, I’ll share stuff with our legal officers here.

A few employee lay judges’ said that their motivation was value driven, not instrumental and that they certainly had not become a lay judge for the money. Thus one interviewee said that she saw an advertisement for the open competition in 2009 and originally thought it was voluntary work because it just said, ‘Do you believe in justice?’ and she said the word ‘justice’ motivated her to apply. Another said: ‘I applied because I believed that I could bring a sense of fairness, justice, equity.’ Furthermore, a couple of interviewees talked about ‘putting something back’.

*Recruitment*

As noted above self-nomination and open competition replaced trade union nomination from 1999, with selection being outsourced to a private sector recruitment company who utilised conventional human resources techniques with an application form asking for examples of competencies, an on-line test and then an interview.

Some interviewees expressed dismay/surprise at the selections that were made as a result of self-nomination. Thus one professional judge interviewed for this research project, who had chaired a lay judge selection interview board, was highly critical of the process, which she said disadvantaged those with ‘industrial worker type experience’ whom, she thought ‘would have done very well’ as an employee lay judge, but according to the recruitment system, could not be put forward for appointment. Similarly, an employee lay judge who had gone through the trade nomination route said that he had sat with an employer lay judge who was ‘a barrister as a day job’ and he wondered how one could be a lay judge if one was professionally qualified.

Under the open competition procedure, an applicant can opt for either the employee or the employer panel. Although some appointees who had self-nominated had a clear class or occupational affiliation and opted unambiguously for the employee panel, others had not. It seems that occasionally the selectors, anxious to fill their quotas in each region, directed a successful applicant to a panel where there was a shortfall, especially where an applicant had been both a lay trade union official for a short time early on in their career and then later had moved into human resources. One employee lay judge noted:

Quite a few people who are on the employee panel [as a result of self-nomination] haven’t really got any history of activism or employment by unions. They’re often people with an HR [human resources] background who perhaps are just more sympathetic to the employee, and just thought that they would put in for that.

This was corroborated by an employee lay judge who was interviewed. She had worked in human resources (HR) for a local authority for many years and during that time she had held a lay post in the union’s branch (‘education person’) for just a few years. She was still working in HR but was no longer a branch official when she self-nominated, but nevertheless she had chosen the employee side because ‘it was more my natural inclination’. Similarly another employee lay judge said that she knew at least three people who were asked which side they wanted to sit on. In her view that was ‘bizarre… I mean you're either one or the other’.

This undermining of tripartism was in one instance aided by the stance of the senior professional judge in the region who asked a new recruit which side she wished to sit on. In response, she asked to be allocated to the employee side because her ‘heart’ was with employees. In fact, she had been self-employed for some 25 years before she became an employee lay judge in 2009 and her history of activism amounted to just two years as a lay official for a higher education union in the late 1980s. Interestingly, of our 40 employee lay judges interviewed, 14 were not in a trade union at the time of the interview.

It should be noted, however, that employee lay judges who had gone through the self-nomination route welcomed it and one female, a full-time regional union official, who had been blocked from becoming a lay judge by her male boss under the old system of TUC nomination, added:

one of my bosses was on in the tribunals.. and he loved it… but he didn't love it enough so that any of the staff get on it! … When I would ask periodically it was, ‘well if you're not busy enough .. I'll give you more work to do’.

*Their role as an adjudicator*

Pronouncements in judicial publications make it clear that employee lay judges are not representatives of their own side and this study found that employee lay judges distinguish between the juridical field and the workplace and between their role as an adjudicator and their role as an employee representative.

A few interviewees, however, admitted that at the start they thought that their role was to ‘be here for the claimant’, but ‘you realise this isn’t a workplace anymore; it’s a court of law’. Similarly, another employee lay judge admitted that when he first started he tried to help the claimant make his case, but he was ‘corrected straightaway’ by the professional judge. Yet another said that ‘in the beginning I had to sort of pinch myself to remember I was there to be impartial’.

An employee lay judge who was a workplace representative said; ‘we’re not supposed to take sides; of course we’re not’, while another interviewee who was a senior trade union workplace representative and had responsibility for negotiating terms and conditions in a large car manufacturing plant said:

I am very impartial and you know, if my Mother was there, or my wife or my daughter, I would make exactly the same you know- so- and that's how you have to be.

Another employee lay judge not only said she was impartial, but added that the transition from trade union official to adjudicator was not difficult. She said:

I think if you come from the employee side and you've been a trade union officer, that you come with a healthy dose of scepticism about whoever approaches you and tells you they've been badly treated.

Employee lay judges interviewed also said that their counterparts, employer lay judges were not on the tribunal to represent respondents. Another employee lay judge said that he and the employer lay judge often thought the same ‘many, many times’. The same interviewee added that if the tribunal were not impartial, it would be horrendous. He said:

I would be digging the trenches because I've got my cloth cap [and the employer lay judge] would be digging the trenches because he or she's the boss, and the [professional] judge is sitting in the middle scratching his or her head.

Interestingly employee lay judges sometimes elided impartiality and legal norms. For instance, one employee lay judge, when speaking about her impartiality, mentioned one of her first cases when she recounted that the professional judge had said to her that they were not there to be fair. They were there to say what the law was and she then agreed that he was ‘right really’.

*Contribution*

When employment tribunals were established half a century ago lay members i.e. lay judges) were often termed an industrial jury or industrial members and were appointed for their workplace experience (Hepple, 1987: 49). Furthermore, this workplace experience has been welcomed by senior judges.[[8]](#footnote-8)

Nevertheless, such workplace experience has been problematic from the start. First, there is no attempt to marry the workplace experience of the lay judge with the case to be determined. Second, the higher courts have considered that such workplace knowledge should be unspecific as lay judges’ decisions might be informed more by their own knowledge than the facts and evidence relevant to the particular case.[[9]](#footnote-9) As a result where a lay judge has workplace experience that is particularly relevant, normally the parties are informed at the hearing and can, if they wish, comment. Nonetheless, many lay judges indicated that professional judges asked them about their generic workplace experience where that was relevant to the case under consideration, for instance in respect of grievance and disciplinary procedures and payment systems. For their part, lay judges indicated that they volunteered such information when it was germane.

The contribution of workplace experience, however, has been called into question by more recent developments. We have already noted that the open competition process sometimes resulted in the appointment of some employee lay judges who had had little experience of acting as a workplace representative. Furthermore, some employee lay judges had no recent experience of being an employee either because they were retired, (and almost half our sample fell into this category), or were self-employed.

Most important of all since 2012, workplace experience is far less relevant than hitherto. As noted above, the default position is that lay judges no longer sit on discrete unfair dismissal cases, but it is in unfair dismissal cases that their workplace experience is expressly relevant if the case revolves around the reasonableness of the employer’s behaviour. Essentially now lay judges only routinely sit on discrimination cases where there are complex legal tests and although an unfair dismissal complaint may perhaps be one of the issues to be adjudicated as well in such cases, they are often not the main issue.

A number of matters flow from this. First, when asked for an example of a case where their workplace experience had influenced the outcome, most interviewees gave an example of a dismissal case, not a discrimination case.

Second, because lay judges now normally only sit on discrimination cases, their specific skill – workplace experience – is no longer seen as their main contribution and has been replaced by generic skills. Many lay judges interviewed said that their main contribution in the hearing was to act as the ‘eyes and ears’ of the professional judge who often could not look around the court room because he/she had to take a note of the proceedings. Their other contribution at the hearing was to take notes to supplement the professional judge’s note, especially when the professional judge was questioning a witness as he/she could not easily both ask questions and write simultaneously. Lay judges asked about the deliberations after a hearing also often said that their main contribution was the deployment of analytical skills, which again are generic, not specific. One employee lay judge interviewed said that allowing lay judges to sit alone on unfair dismissal cases ‘has sort of lessened our role’. Another compared the contribution he could make on unfair dismissal where workplace knowledge/experience is often central, with the contribution he could make on discrimination. He said:

Whereas in unfair dismissal, you know, the reasonableness and what is a norm in the range of reasonable responses, in different types of employer and different sizes of employer is actually fundamental to deciding the issue… Because discrimination is so legally bound and ever-changing and complex, the [professional] judges really lead…. So, you know, you feel less empowered, if you like, in discrimination claims.

Third, because discrimination cases are longer than discrete unfair dismissal cases, this has made it difficult for lay judges who have full-time jobs to sit and has resulted in lay judges who have retired sitting more often than those still working. Indeed, a few interviewees said that they knew of lay judges who had left when the 2012 changes were made because they would not be able to fit in sitting as a lay judge with their job, while another interviewee said he was hanging in as a lay judge because he would soon retire and be able to sit more frequently.

This skewing towards retired lay judges means they are not representative in terms of age of those who come to tribunals. It also means that their knowledge of the world of work is not current. Of course, whether representativeness is desirable is questionable and we have already commented on the fact that workplace experience is less relevant now than in the past.

*Employee lay judges’ views of professional judges*

Employee lay judges were asked whether professional judges treated them as equals. One said ‘Good god, no’, but that reply was not at all typical with many interviewees speaking about deliberating in a ‘collegiate’ manner or as a ‘team’. Moreover, many of the longer serving interviewees differentiated between those professional judges who had retired or had left the employment tribunals and the newer professional judges who were more inclusive. For instance one employee lay judge said that there were now far fewer ‘prima donnas‘ and yet another said: ‘it’s probably getting better these days’. This was echoed by another interviewee who said that ‘it was more authoritarian and now it’s much more democratic and respectful and collegiate’.

A couple of employee lay judges differentiated between professional judges who had been solicitors and those who had been barristers. They preferred sitting with professional judges who had been solicitors, as unlike barristers, they were more used to acting as part of a team. Another interviewee rejected the idea that it was length in post or the earlier career of a professional judge. He said ‘it’s a personality thing as much as anything’.

In one court location the regional judge had started a newsletter to lay judges in his region as part of an involvement and communication approach and employee lay judges interviewed in that region on the whole held a much more positive view of professional judges than their colleagues elsewhere and indeed one employee lay judge interviewed confirmed this comparison as he had recently moved regions.

Whatever their views, employee lay judges generally admitted that the law trumped and that professional judges spelt out what the law was and lay judges had to go along with that as ‘we’re not required to understand the law’ to quote an interviewee. Another employee lay judge recounted a case where the tribunal ‘had to find against [the claimant] and I was really sad about that, but it was legally the right decision’. Yet another employee lay judge said that decisions were made because ‘the law says so…; just because it’s unfair doesn’t make it unlawful’.

Although lay judges interviewed realised that in a juridical setting, those responsible for adumbrating the legal principles, that is the professional judges, had primacy, interviewees generally did not think professional judges had an informational advantage. In most, but not all, regions, the professional judge hearing the case had not done the case management beforehand and often did not see the case papers until an hour or two before the commencement of the hearing.

With the practice introduced in 2013 that witness statements[[10]](#footnote-10) should be taken as read and not read out in the tribunal by the witness, it was common for reading time to be arranged very shortly after the start of the hearing, that is after introductions, timetabling and a review of the issues to be decided. Such reading time, which could vary from an hour to a day or even more depending on the case’s complexity, was normally done together: the professional judge reading with the two lay judges.

*Professional judges’ views of lay judges*

In general, professional judges found lay judges useful both during a hearing when their role as ‘eyes and ears’ and note taking was appreciated and in deliberations when they said that they were useful as ‘a sounding board’, a phrase that several professional judges used.

Most of them, however, put workplace experience low down on the list of lay judge contributions. Although virtually all professional judges gave an instance of when a lay judge deployed his/her workplace experience in deliberations about a case, and persuaded them to change their mind, they said this was just one case in many years. Indeed almost all the professional judges interviewed commented that lay judges’ workplace experience was principally useful in unfair dismissal cases and lamented the fact that unless unfair dismissal was allied with discrimination, lay judges did not normally adjudicate. As one professional judge put it:

They should never have been taken off unfair dismissal cases where their presence is most valued… because those are the cases where the experience of the industrial jury as to what happens in the workplace, as to whether someone would be sacked for this sort of thing, is really valuable.

Yet another professional judge said:

 50% of [lay judges] don’t really understand the difficult legal concepts [in discrimination cases]….they'll say ‘look, I don't understand. I'm happy to go with you. I trust you; you tell me- you spell it out for me and I'll tick the box’ almost. So we don't have them in the unfair dismissal regime where their usefulness was most appropriate.

Interestingly, however, very few of the professional judges had exercised their discretion in unfair dismissal cases to sit with lay judges where *inter alia* ‘there is a likelihood of a dispute arising on the facts’.[[11]](#footnote-11) The few that had exercised their discretion, had done so once or twice in the four years since the provision was introduced, although unusually one professional judge said that he had used that discretion 15 times.

Moreover, although professional judges said it was certainly quicker to make decisions alone because, as one said, ‘you don’t have to give a law lecture’, broadly speaking professional judges liked sitting with lay judges, because otherwise ‘you’ve got no one to have a laugh with’. Less flippantly, another professional judge said:

I think decisions reached with three are, in many respects, better than decisions reached by one because, I mean, how could it be otherwise? They sit as a three in the Court of Appeal, you know.

Discussion and conclusions

This paper has shown not only that tripartism has been eroded in an overt way by professional judges being empowered to sit alone in many types of complaints, particularly unfair dismissal. It has also been eroded by the way that open competition has been administered: the criteria for appointment which seem no longer to require trade union activism or even membership; allowing applicants to choose their side and/or to be persuaded to opt for a side depending on where there was a shortfall.

We also found that employee lay judges’ main contribution at a hearing were generic skills: ‘eyes and ears’ and note taking, while their main contribution in deliberations after the hearing similarly were generic: analytical skills. Indeed workplace experience, a specific skill, is now of secondary importance on the whole as lay judges normally do not sit on unfair dismissal cases and as a result, although they are not only for ‘decoration’, their contribution is now less salient.

As to employee lay judges’ motivation, we found that many had an instrumental approach, seeing it as an opportunity to develop their expertise and to give them status in their workplace. We also found that those interviewed did not find it difficult to separate their role as an adjudicator (Bourdieu’s juridical field) with their role as a workplace representative (the social/industrial relations field) and readily accepted legal norms. Accordingly, if any cognitive dissonance was experienced, it was short lived. Furthermore, this study confirms the research by Kutnjak Ivković in Croatia about the dominance of the professional judge in mixed tribunals. Even though professional judges might treat them as equals and might not have an informational advantage, employee lay judges accepted that professional judges, as the expositors of the law, were the first among equals.

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1. Employment Tribunals (Constitution & Rules of Procedure) Regs 2004 para 8(3). [↑](#footnote-ref-1)
2. Other nominating bodies included the Institute of Directors for employer lay judges and the Council of Managerial and Professional Staffs for employee lay judges. [↑](#footnote-ref-2)
3. The professional judge, however, has the discretion to sit with lay judges and depart from this default position of sitting alone in certain circumstances in discrete unfair dismissal complaints, principally where the parties say they would prefer a three-person tribunal, where the case is ‘fact heavy’ i.e. if ‘there is a likelihood of a dispute arising on the facts’, and whether any other proceedings requiring a full tribunal might be heard concurrently (Employment Tribunals Act 1996 s.4(5)(a)). [↑](#footnote-ref-3)
4. See, for instance, the National Economic Development Council, Industrial Training Boards, the Manpower Services Commission and then the Central Arbitration Committee and the Advisory, Conciliation and Arbitration Service. [↑](#footnote-ref-4)
5. 12 employer lay judges have also been interviewed in Great Britain but this paper does not draw material from those interviews. [↑](#footnote-ref-5)
6. The fee in 2016 is £182 per day, 10-4.30, with a half fee for a half day- 1 pm. [↑](#footnote-ref-6)
7. At present case papers are only available on the day of the hearing, generally about an hour or less before the hearing commences normally at 10 am. [↑](#footnote-ref-7)
8. See, for instance *Martin v MBS Fastenings* [1983] IRLR 198 and *Grady v HM Prison Service* [2003] EWCA Civ 527. [↑](#footnote-ref-8)
9. *Halford v Sharples and Ors* [1992] ICR 146. [↑](#footnote-ref-9)
10. In Scotland, unlike England and Wales, there are not always witness statements. [↑](#footnote-ref-10)
11. See footnote 3. [↑](#footnote-ref-11)