

BECOMING AN ELAAS REPRESENTATIVE

1. Thank you for your interest in becoming an ELAAS representative.
2. The ELAAS Scheme was set up to allow barristers and solicitors who specialise in statutory employment law to use their skills and experience in appellate advocate to help unrepresented litigants appearing before the Employment Appeal Tribunal (EAT).
3. It is intended to be a scheme for those barristers highly experienced in these areas, and for whom statutory employment law forms a substantial part of their practice.
4. Barristers who are interested in undertaking employment work, but do not currently satisfy the eligibility criteria for ELAAS (see below), may wish to build up their experience by undertaking pro bono ET work via the ELIPS scheme or on behalf of FRU or Advocate.
5. The ELAAS Scheme is an extremely popular scheme with the Bar, and there are many more approved ELAAS representatives than there are ELAAS hearings each year.
6. The EAT and ELBA Committee are very grateful for the many hours of pro bono work done by ELAAS representatives every year.
7. The ELBA Committee recognises that the bar to becoming an ELAAS representative is a high one, however this is considered appropriate in circumstances in which ELAAS representatives may be faced with multiple complex questions of statutory employment law, and have a considerable responsibility to provide highly specialised advise to unrepresented litigants in respect of these points as well as EAT practice and procedure within a relatively short time frame. The eligibility criteria below should be read on that basis.

Criteria For Eligibility

8. Barristers are eligible to be ELAAS representatives if they:
 - a. hold a current practising certificate.
 - b. have at least three years' post qualification experience. This means at least 3 years' rights of audience. Hence, second six months of pupillage can count if the barrister was on their feet during the second six.
 - c. Have EITHER (i) acted as advocate in at least 10 employment cases; OR (ii) handled at least 5 EAT cases as an advocate.

9. The current ELBA Committee takes the view that the requirement to have acted as an advocate in at least 10 employment cases requires the following:
 - a. That barristers have acted as sole or lead advocate in at least 10 substantive hearings in the Employment Tribunal i.e. full trials and/or a preliminary hearing at which a substantive issue of law has been determined (e.g. disability, time limits etc)
 - b. These 10 substantive hearings should normally have occurred within the period of **3 years** prior to the date of any application to become an ELAAS representative. By way of example someone applying on 1 February 2021 could rely on cases between 1 February 2018 and 1 February 2021. However, if the barrister in question was not practising during those 3 years for any reason, or there is another good reason why a period of 3 years would not be appropriate, then barristers should explain this in their application and provide supporting evidence. For example, a barrister applying in February 2021 who took parental leave for the whole of 2020, would not be expected to

include that period in their application, and would be entitled to rely on substantive cases they had undertaken during the previous year (from February 2017).

- c. Unfortunately, High Court employment work, or other employment work, does not count since the EAT's jurisdiction is almost exclusively concerned with appeals from the Employment Tribunal.
- d. That the 10 substantive hearings in the Employment Tribunal must have been done post-qualification as a barrister, and after the date when the barrister commenced their second six months of pupillage.
- e. Unfortunately, employment cases undertaken prior to the commencement of a barrister's second six do not count.
- f. Acting as an advocate means that the barrister in question was the sole or lead advocate at the relevant hearing. This includes cases done for example as a FRU representative, although only if the individual in question was sole or lead advocate and the cases were undertaken after the commencement of the barrister's second six months of pupillage. However, it does not include cases in which you were involved in any other capacity (e.g. pupil, note-taker, witness etc).

10. The current ELBA Committee takes the view that the requirement to have handled at least 5 EAT cases as an advocate requires the following:

- a. That barristers must have acted as sole or lead advocate in at least five EAT cases.
- b. These hearings should normally have occurred within the

period of **5 years** prior to the date of any application to become an ELAAS representative. However, as with the qualifying period for ET cases above, if the barrister in question was not practising during those 5 years for any reason, or there is another good reason why a period of 5 years would not be appropriate, then barristers should explain this in their application.

- c. That the 5 EAT hearings must have been done post-qualification as a barrister, and after the date when the barrister commenced their second six months of pupillage.
- d. Unfortunately, EAT cases undertaken prior to the commencement of a barrister's second six do not count.

11. The current ELBA Committees take the view applicants must either satisfy the requirement for 10 ET cases OR 5 EAT cases. They cannot rely on a combination of the two.

How to Apply

12. If you wish to be added to the list of ELAAS representatives held and maintained by the EAT, please forward the following to admin@elba.org.uk:

- a. Your CV:
- b. a covering letter/email signed by you (the barrister concerned) confirming that you meet the above criteria, and
- c. any supporting information demonstrating this.

13. Please note that any supporting information should include information about

the 10 ET or 5 EAT cases you are relying on, including confirmation of the date of any hearings, that it was a substantive matter and a brief summary (e.g. 1 day Preliminary Hearing on jurisdiction), and confirmation that you were sole or lead counsel in the case. It would be helpful if you could include hyperlinks to the ET/EAT Judgments in question, so that these can be easily reviewed by the member of the ELBA Committee who assesses your application.

14. It is standard procedure for the member of the ELBA Committee responsible for assessing your application to get in touch with you (by email or telephone) with questions about your application, for example asking for a bit more information about the cases that you have been involved in or your general experience of statutory employment law. It is the duty of the member of the ELBA Committee who assesses your application to be satisfied that you have sufficient expertise that you should be added to the list of ELAAS representatives.
15. Applications will be assessed three times a year by members of the ELBA Committee (January, after Easter, September). Current members of the ELBA Committee who will assess applications are Ben Cooper QC, Claire Darwin, Jane Russell, Tariq Sadiq and Jack Mitchell.
16. The ELBA Committee will consider a request by the EAT to consider an application on an urgent basis if this is required (e.g. because a barrister with particular expertise or qualifications is required for a hearing).
17. If you are unhappy with the decision of the ELBA Committee in respect of your application, you can ask for your application to be reviewed by Mohinderpal Sethi QC (Vice Chair).

1 April 2021