

Research Paper

The experiences of sexual orientation and religion or belief discrimination employment tribunal claimants

Ref: 02/07

2007

Prepared by Ann Denvir, Andrea Broughton, Jonny Gifford and Darcy Hill (Institute for Employment Studies)

Funded by the Department of Trade and Industry (DTI)

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Employment Tribunal Claimants**

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Prepared on behalf of Acas Research and Evaluation Section by:

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IES aims to help bring about sustainable improvements in employment policy and human resource management. IES achieves this by increasing the understanding and improving the practice of key decision makers in policy bodies and employing organisations.

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We would like to thank all those who participated in the survey for sharing their experiences with us.

Disclaimer

This report contains the views of the authors and does not represent the views of the Acas Council or DTI. Any errors or inaccuracies are the responsibility of the authors alone.

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Foreword from Jim Fitzpatrick MP

I am pleased to introduce this research report exploring the impact of the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003. The research was run by Acas and funded by the Department of Trade and Industry (DTI).

The introduction of these regulations has been an important development in the area of equality and diversity, and indeed experiences of sexual orientation and religion and belief at work have been subject to significant media attention. However, the area has been largely unexplored from a systematic, research perspective. That is why this report is so important.

The findings show that 470 sexual orientation employment tribunal claims and 461 religion or belief employment tribunal claims were brought between 2004 and 2006. While the sexual orientation claims were dominated by allegations of bullying and harassment, the religion or belief claims included a wider variety of issues: principally, concerns around working hours, time off or leave to follow religious practices.

Discrimination at work is an important issue for both Acas and DTI. We will be examining the findings carefully in order to improve our understanding of the nature and causes of discrimination and harassment on grounds of sexual orientation or religion or belief in the workplace.

Anyone interested in receiving further copies of this report should contact Acas at research@acas.org.uk

A handwritten signature in black ink, appearing to be 'J Fitzpatrick', written in a cursive style.



**Statement from Rita Donaghy, CBE
Chair of Acas Council**

The introduction of the legislation relating to sexual orientation and religion or belief at work provides an important step forward in outlawing discriminatory behaviours and actions in our workplaces. I am proud of the work carried out by Acas, since the introduction of the law, to raise awareness and promote good practice in these important areas.

The Acas research, reported in this volume, comes at an opportune time – summarising developments since the legislation and providing an opportunity for reflection and learning.

The rights and obligations of employers and employees in respect of sexual orientation and religion or belief are matters of considerable importance to Acas. We shall be looking closely at the research findings as we move forward in developing our services to meet the needs of customers.

Further information on Acas guidance on sexual orientation in the workplace and religion or belief in the workplace is available on the Acas website www.acas.org.uk

A handwritten signature in black ink that reads "Rita Donaghy". The signature is written in a cursive style and is positioned on a light-colored, textured background.

EXECUTIVE SUMMARY

In 2006, Acas commissioned the Institute for Employment Studies to conduct a qualitative study exploring the experiences and views of employees who had been involved in sexual orientation or religion or belief employment tribunal cases.

This is the first study to explore the impact of the Employment Equality (Sexual Orientation) Regulations and the Employment Equality (Religion or Belief) Regulations 2003. It reports the views and experiences of 30 individuals who had submitted a claim under these separate jurisdictions: 15 religion or belief claimants and 15 sexual orientation claimants.

Claimants reported wide-ranging experiences of direct discrimination and harassment by managers and colleagues in their workplaces. Although there were similarities, sexual orientation claims were more likely to centre on bullying and harassment and religion or belief claims more likely to relate to terms and conditions of work that made the observance of religious practices impossible.

One strong theme among both sets of claimants was the tendency of their employers to respond to their complaint by seeing them as the problem, rather than a victim of unfair treatment. However while religion or belief claimants were typically dismissed, sexual orientation claimants tended to be disciplined or demoted for work performance until they felt they had no option but to resign. For a majority, dispute resolution procedures were seen to be flawed often exacerbating their experience of discrimination rather than resolving it.

Employment tribunal claims were generally submitted as a means of seeking justice and to obtain an external confirmation of unfair treatment, rather than as a way of gaining financial compensation. The experiences of claimants in relation to the employment tribunal system were mixed and there were fewer differences between the two claimant groups evident at this stage. Most sought information and representation early. Trade union members were at a particular advantage being able to secure free expert advice and representation for the duration of their cases although satisfaction with trade union services was not always guaranteed. Those who were unable to obtain legal assistance attributed this to prohibitively high costs and financial constraints. Those who were not trade union members or did not engage a solicitor independently were more likely to withdraw their claim and report dissatisfaction with the outcome of their case.

There was considerable variation in amount of financial compensation received by claimants who settled their case. Only one claimant was successful at a final hearing although at the time of the research the employer was appealing against the tribunal decision.

Among those who settled their case there was generally relief at closing their case, however some had regrets about not having their 'day in court'. Claimants chose to settle for a number of reasons: advice from representatives; ill-health caused by the discrimination experience and exacerbated by pursuing the claim; the stress caused to partners and families; or because they felt the amount offered exceeded the amount that could be potentially be obtained following a full hearing. A small number of the cases in this study were known to be settled via Acas and where Acas services were

used satisfaction was generally expressed. However there was a lack of clarity about Acas' role amongst many claimants.

Although one claimant in retrospect regretted taking an employment tribunal claim all others felt that bringing a claim was the right thing to have done. Many felt the process allowed them to defend against discrimination in a way they felt unable to within the workplace and to make an important symbolic gesture.

SEXUAL ORIENTATION EXECUTIVE SUMMARY

This part of the study explores the impact of the Employment Equality (Sexual Orientation) Regulations and reports the views and experiences of 15 employment tribunal claimants who pursued a claim under the sexual orientation jurisdiction.

Sexual orientation sample

Four women and eleven men who took an employment tribunal claim under the sexual orientation regulations agreed to be interviewed. Four of these were aged between 35 and 44; five were in the 45-54 age category, five in the 25-34 age grouping and one between 18-24 years. Three of these fifteen claimants were heterosexual, one was transsexual and the remaining eleven lesbian or gay. Five were disabled.

Eleven of the sexual orientation claimants stated their ethnicity as British, one European, one Anglo-Bangladeshi, one Indian, and one mixed race White and Black Caribbean. Seven reported that they had no religion; six were Christian, one Buddhist and one Sikh.

Five took claims in the South East, four in London, two in the South West, one in Yorkshire, one in the North East, one in the East Midlands and one in the West Midlands.

Five of the cases were from 2004, six from 2005 and four from 2006. Eight of the sexual orientation claimants had representation. Of those represented, three had trade union help, three had a solicitor, and one had the help of a friend. Twelve of these cases were settled with Acas assistance in three of these, two were struck out and one was withdrawn. All of the represented cases were settled ones.

Alleged act of discrimination

A range of discrimination experiences were reported including both direct discrimination and bullying and harassment. Often claimants reported experiences of both, typically bullying and harassment over long periods followed by an alleged incident of direct discrimination immediately prior to taking an employment tribunal claim.

Alleged discrimination relating to the employment contract was one theme. Another related to discrimination in recruitment, pay, pension entitlement and working conditions. The situations differed substantially in nature, but claimants generally reported that it was assumed or suggested that they could not do their job as well as other colleagues, because of their sexual orientation.

There were also claimants who felt that their employers were using disciplinary procedures unfairly or excessively to force them from the organisation and would ultimately use these procedures to dismiss them. These claimants invariably felt that the way the disciplinary procedures were used and the judgements that were made were disproportionate to the professional mistakes of which they were accused. They also reported that, in their view, heterosexual colleagues were treated differently. They also felt that the reasons given for the use of the disciplinary procedures masked prejudice on the grounds of their sexual orientation.

However, the strongest theme in cases of alleged sexual orientation discrimination was bullying and harassment by both colleagues and managers. Bullying and harassment experiences reported varied by case and ranged from verbal abuse to sabotage of work and physical aggression. There was evidence of a great deal of tolerance from claimants and in most cases the harassment and bullying had continued for considerable periods. Claimants typically felt that their employer was complicit by not dealing with the problem or not remedying it sufficiently.

From workplace dispute resolution procedures to employment tribunal claims

Sexual orientation claimants were involved in both grievance and disciplinary procedures and the inter-play between the two processes was generally complex. Claimants voiced a number of objections about the way procedures were invoked or operated and allegations of bias were common. Other complaints raised by claimants included the difficulty of finding a colleague to represent them, unnecessary delays and the involvement of unsuitable managers who, in a number of cases, were felt to have been complicit or active in the discrimination experience. Claimants were often frustrated or dissatisfied and felt it would be futile to expect internal resolution processes to address workplace discrimination.

Some claims under the sexual orientation regulations involved situations which had been raised by claimants at early stages. Complaints of bullying and harassment about sexual orientation were directed towards Human Resources staff, and in some cases line managers. There was little evidence of these complaints being addressed in a way that was satisfactory to the claimants involved.

In the research it was apparent that in a number of cases a similar chain of events led to the submission of a claim in relation to discrimination on the grounds of sexual orientation. Claimants reported being the target of disciplinary action, often after an allegation relating to performance issues, which they felt was in response to their claim of discrimination. They tended only to report their perception of unfair treatment once they felt their position was threatened by this disciplinary action. Grievances therefore often followed disciplinary action or grievances about discrimination were raised defensively as mitigating factors during disciplinary hearings. The disciplinary action was seen to intensify the experience of discrimination and these claimants tended to resign and submit an employment tribunal claim.

Claimants submitted employment tribunal claims at different stages during internal grievance and disciplinary procedures: some initiated their applications at an early stage in order to not miss the three month deadline, others waited until the internal investigations had been brought to a close. In most cases, claimants had already left the workplace.

Advice, support and representation

Claimants expressed a strong need for information, advice, support and representation. Needs changed as claims progressed. Initially claimants sought information about the law, employment tribunal procedures and the merits of their cases. Later claimants referred to the need to share the burden of work and obtain representation to effectively pursue their claim.

The costs of obtaining legal representation were seen to be prohibitively high and claimants often felt that the outcomes of their cases, and their experience of the tribunal, would have been different if they had been represented. Claimants who paid for their solicitors tended to only use them at certain points in their claim, for example to check a submission.

Claimants typically contacted their trade unions where they had membership and were generally satisfied with the legal advice and representation received. Those outside of trade union membership tended to contact the CAB or the Acas helpline in the first instance. The information and advice given by both organisations was on the whole considered useful but claimants struggled to obtain legal advice on the merits of their claim. There was little evidence of claimants contacting gay rights organisations.

The employment tribunal experience

Since in general cases in the study did not reach a full hearing, claimants had limited employment tribunal experience. Those who settled did so at various stages in their claims but typically immediately after a pre-hearing review or just before a final hearing. Settlement amounts varied and settlement agreements generally contained a confidentiality clause regarding this amount. Those who settled tended to follow the advice of their representative regarding the timing and appropriateness of the settlement. Those without representatives seemed to feel at a particular disadvantage relative to their respondents.

Where claimants withdrew their claims the risk of costs, the lack of representation and the stress involved were generally deciding factors.

Impacts and outcomes

Claimants reported a range of impacts including mental and physical problems and difficulties in finding employment. Difficulty in obtaining a reference was one factor restricting employment opportunities, others were the self-confidence and esteem issues attributed to the long experience of bullying. There was evidence of the experience leading to claimants changing their career or the place that they lived following on from their employment tribunal application.

A strong theme was of enduring mental and physical problems particularly those relating to depression and anxiety. In some cases this meant that claimants remained out of work on ill-health grounds.

For claimants the experience of pursuing a claim was generally a negative one and many still held some regrets. Despite this claimants did not generally regret that they had taken a claim in response to the discrimination experienced. They said they were seeking justice and closure rather than financial compensation.

RELIGION OR BELIEF EXECUTIVE SUMMARY

This part of the study explores the impact of the Employment Equality (Religion or Belief) Regulations and reports the views and experiences of 15 employment tribunal claimants who pursued a claim under the religion or belief jurisdiction.

Religion or belief sample

Of the fifteen religion or belief claimants interviewed, five were women and ten men. Most of the claimants were aged between 35 and 53; two were younger than 35 and two older than 53. One religion or belief claimant was disabled and one claimant was gay.

Four of the religion or belief sample stated their ethnicity as British, two Asian British, two Indian, three Pakistani, one Bangladeshi, one Algerian, one American and one Irish. There was also a spread of religions and beliefs represented. Seven claimants were Muslim, three of no religion, two Christian and one from each of the following faiths: Hinduism, Sikhism and Judaism.

Interviews were carried out across Britain. Three were in London, three in Scotland, two in the East Midlands, four in the South East, one in the North West, one in the South West and one in the East of England.

Four of the fifteen religion or belief cases were taken in 2004, four in 2005 and the remaining seven in 2006. Seven claimants had representation. Of these, three had representation from trade unions and two from solicitors. Five of the religion or belief cases were withdrawn, one was struck out, five were settled without Acas involvement, three were reported as successful and one unsuccessful.

Alleged act of discrimination

Unfair dismissal was a common basis for employment tribunal claims on religion or belief discrimination. For some claimants dismissal or redundancy was unexpected and sudden, for others dismissal was related to an on-going dispute. These claimants typically felt that their employers had created false reasons for dismissing them, the real reason being that the employer was prejudiced against their religion, was unwilling to accommodate their religious needs, or wanted to replace them with an employee who was of the same religion as the majority in the organisation.

Discrimination over terms and conditions of employment was a major theme of religion or belief cases. Typically the claims related to an employer not accommodating the particular religious needs of claimants, for example relating to annual leave, while meeting the needs of other religion or belief groups. Examples were given of pressure to put work routines before religion needs and to conform to a standard based on Christian employees. A further theme was of organisations with a religious ethos reportedly discriminating in areas such as promotion on the basis that the claimant did not have a religion or was from a different faith.

Where bullying and harassment occurred it was generally in the form of intimidation during a dispute where claimants felt that their employers were discouraging them

from pursuing their case. There were also examples of verbal abuse, intimidation and sabotage of work by colleagues.

From workplace dispute resolution procedures to employment tribunal claims

Religion or belief claimants in the study typically took either informal or formal grievances in response to perceived discrimination. Where the complaint was related to bullying and harassment, claimants reported non-response or delays and breaches of confidentiality on the part of the employer. Where the discrimination related to a dismissal, claimants who had appealed against these decisions had low expectations that the employer would resolve the issue. Although there was some exceptional evidence of claimants in the study managing to successfully resolve their problem through internal procedures an employment tribunal claim was generally seen to be the only way to achieve justice.

Claimants submitted employment tribunal applications at various stages. Where the discrimination was followed by dismissal, or the act of dismissal was understood to be discriminatory, claimants tended to submit at the same time as pursuing internal resolutions. Those claimants being bullied or harassed had typically submitted their claim while on sick leave or once complaints about discrimination turned to disciplinary action against the claimant. At this stage internal grievance or appeal procedures were perceived to be pointless.

Advice, support and representation

Claimants contacted a range of third-parties seeking information, advice and support. They were particularly interested in obtaining an opinion about the strengths and weaknesses of their claims and were disappointed when this could not be found. As claims progressed, claimants became aware of the need to secure representation and several referred to the 'language of the law' which they felt unable to understand alone. Costs were cited as a significant barrier to obtaining representation and claimants felt at a severe disadvantage relative to respondents in this respect. Some claimants felt that they would have been successful, or not have settled, had they had access to legal expertise.

Trade unions were contacted by those who were members and they provided advice, representation and legal expertise in some cases. Although there were positive appraisals, some claimants reported poor experiences.

The CRE, CAB and Acas were contacted by those who were not trade union members. Claimants were generally satisfied with information and advice received but high or misinformed expectations left many claimants frustrated. Those without trade union representation and without the personal financial resources to secure their own legal representation tended to look to these institutions to fill that need.

The employment tribunal experience

There was some experience amongst religion or belief claimants of full tribunal hearings, although earlier settlement or withdrawal were the prevailing themes. Settlement amounts varied and settlement agreements typically contained a confidentiality clause regarding this amount. The advice of representatives regarding

the timing and acceptability of the settlement amount was the determining factor. Where cases were withdrawn costs were a decisive factor.

The need for representation was emphasised and those who had not been represented reported greater stress and also felt that the outcomes of their cases had been affected.

Impacts and outcomes

Overall, the claimants interviewed for this study said that the experience of making a claim of discrimination had a great impact on their lives. The effects felt included difficulty in finding alternative employment and reductions in income. A further theme was of short term or enduring physical and mental health problems.

Despite these significant impacts claimants expressed satisfaction that they had pursued a claim. Their goal had been to seek justice rather than financial compensation and they felt that internal mechanisms could not resolve their cases or prevent employers from further discriminating.

1 INTRODUCTION

In December 2003, laws were passed in Britain to prevent discrimination at work on the grounds of sexual orientation and religion or belief. Between January 2004 and September 2006, 931 people brought an employment tribunal case against their employer under these jurisdictions (470 for sexual orientation and 461 for religion or belief).

This study, carried out by the Institute of Employment Studies (IES) for the Advisory, Conciliation and Arbitration Service (Acas), analyses the experiences and perceptions of 30 of these claimants. Detailed semi-structured interviews were carried out between November 2006 and January 2007 across Britain with 15 sexual orientation claimants and 15 religion or belief claimants. The interviews explored their experiences of discrimination at the workplace and their experiences of taking an employment tribunal claim. It should be noted that this was a claimant-only study and that interviews were not carried out with either employers or representatives.

This chapter details the background to the sexual orientation/religion or belief study and the scope and structure of the report. It also outlines the aims of the research set by Acas and the methodology devised by IES to meet these objectives. Finally it provides a description of the thirty claimants who took part in this study.

1.1 Aims of the study

In 2006, Acas commissioned a small-scale qualitative study exploring the experiences and views of employees who had been involved in sexual orientation or religion or belief employment tribunal cases. The main aim of the sexual orientation and religion or belief research was to build a body of research evidence regarding the first three years of the sexual orientation and religious belief equality legislation in order to inform Acas practice in this area and influence wider debates.

Specifically, Acas expected that this qualitative study would aid understanding of the following areas:

- The personal characteristics of individuals with experience of submitting employment tribunal claims under the sexual orientation or religion or belief jurisdictions;
- The background of cases: the circumstances leading to the case, including motivations and impacts, and actions taken to resolve difficulties prior to a claim being submitted, including internal dispute resolution methods;
- Experiences of advice and information sought throughout the case;
- Experience and views on Acas conciliation and (where applicable) the employment tribunal system, including resolution of the case; and
- The overall impact and outcomes resulting from the employment tribunal case.

1.2 Scope and structure of report

Chapter Two details the main provisions of the two 2003 regulations on religion or belief and sexual orientation. It outlines briefly the role and remit of the new Commission for Equality and Human Rights (CEHR) which will work in the future to prevent sexual orientation and religion or belief discrimination and to support those who have been discriminated against. Finally, it discusses the increasing pressure on the employment tribunal system in Britain, the role that Acas plays in providing conciliation services and outlines key findings from earlier research on employment tribunal claimants.

Chapter Three provides a brief overview of the literature on sexual orientation and religion or belief in relation to the workplace and discrimination.

Chapter Four outlines the methodology of this study.

Chapters Five to Nine present the findings of interviews with thirty sexual orientation and religion or belief claimants, as follows:

- Chapter Five focuses on the various alleged acts of discrimination.
- Chapter Six explores the events and circumstances leading up to the employment tribunal claims.
- Chapter Seven discusses advice, support and representation including the role of Acas.
- Chapter Eight explores claimants' tribunal experiences.
- Chapter Nine explores outcomes and the impact which the experience of discrimination and of taking a tribunal claim has had upon the claimants.

The final chapter, Chapter Ten, draws out the key themes and findings of the study and analyses these in the light of the available literature and research.

1.3 The claimants

IES researchers interviewed fifteen people who submitted employment tribunal claims under the Sexual Orientation 2003 Regulations and fifteen who submitted claims under the Religion or Belief 2003 Regulations. These thirty claimants were chosen at random to reflect a range of experiences and to ensure a gender and social demographic spread from a total sample of just under three hundred. In the main body of the report all quotes from claimants are followed by a reference which gives their gender, sexual orientation (for sexual orientation claimants) or religious affiliation (for religion or belief claimants), occupation and the outcome of their case.

1.3.1 Religion or belief sample

Of the fifteen religion or belief candidates interviewed, five were women and ten men. Most of the claimants were aged between 35 and 53; two were

younger than 35 and two older than 53. One religion or belief claimant was disabled and one claimant was gay.

Four of the religion or belief sample stated their ethnicity as British, two Asian British, two Indian, three Pakistani, one Bangladeshi, one Algerian, one American and one Irish. There was also a spread of religions and beliefs represented. Seven claimants were Muslim, three of no religion, two Christian and one from each of the following faiths: Hinduism, Sikhism and Judaism.

Interviews were carried out across Britain. Three were in London, three in Scotland, two in the East Midlands, four in the South East, one in the North West, one in the South West and one in the East of England.

Four of the fifteen religion or belief cases were taken in 2004, four in 2005 and the remaining seven in 2006. Seven claimants had representation. Of these, three had representation from trade unions and two from solicitors. Five of the religion or belief cases were withdrawn, one was struck out, five were settled without Acas involvement, three reached a tribunal and were reported as successful and one was unsuccessful at tribunal.

Most of the religion or belief cases were multi-jurisdiction cases. Nine of them also included a race discrimination jurisdiction. In these cases, two claimants were women and seven men. Six of the nine claimants were not represented; of the three that were, two were represented by their trade union. Looking particularly at the outcomes of these cases: three were settled; two were withdrawn; one was struck out; one lost and two won. Five of the nine cases were in London and the South East, the remaining spread across the country.

1.3.2 Sexual orientation sample

Four women and eleven men who took an employment tribunal claim under the sexual orientation regulations agreed to be interviewed. Four of these were aged between 35 and 44; five were in the 45-54 age category, five in the 25-34 age grouping and one between 18-24 years. Three of these fifteen claimants were heterosexual, one was transsexual and the remaining eleven lesbian or gay. Five were disabled.

Eleven of the sexual orientation claimants stated their ethnicity as British, one European, one Anglo-Bangladeshi, one Indian, and one mixed race White and Black Caribbean. Seven reported that they had no religion; six were Christian, one Buddhist and one Sikh.

Five took claims in the South East, four in London, two in the South West, one in Yorkshire, one in the North East, one in the East Midlands and one in the West Midlands.

Five of the cases were from 2004, six from 2005 and four from 2006. Eight of the sexual orientation claimants had representation. Of those represented, three had trade union help, three had a solicitor, and one had the help of a friend.

Twelve of the sexual orientation cases were settled, of which three were settled with Acas assistance. Two cases were struck out and one was withdrawn. All of the represented cases were settled.

2 THE SEXUAL ORIENTATION AND RELIGION OR BELIEF CONTEXT: LAWS, INSTITUTIONS, ACTORS

Anti-discrimination legislation was first introduced in the UK decades ago. Gradually discrimination in the workplace on grounds of race, sex and, more recently, disability was legislated against. In December 2003 it became unlawful to discriminate on the grounds of sexual orientation and religion or belief¹.

This chapter provides the background to the sexual orientation and religion or belief claims and discusses the laws, actors and institutions which set the context for this study. The key aspects of the Employment Equality (Sexual Orientation) 2003 Regulations and the Employment Equality (Religion or Belief) 2003 Regulations are outlined. As many detailed guides are available on the scope and detail of the sexual orientation and religion or belief regulations² – advising employers and employees about their rights and detailing best practice in the area – this chapter will only summarise these new regulations.

The role and remit of the new Commission for Equality and Human Rights (CEHR) is then discussed followed by an outline of the employment tribunal system and processes and a brief consideration of the work of Acas in the field of individual conciliation.

2.1 Employment Equality (Sexual Orientation) 2003 Regulations

This legislation came into force in December 2003 and applies to all aspects of employment and vocational training, including recruitment, promotion, terms and conditions (including pay) and dismissals. It is now unlawful on the grounds of sexual orientation to:

- discriminate directly against anyone, i.e. to treat them less favourably than another person in a comparable situation, because of their actual or perceived sexual orientation;
- discriminate indirectly against anyone, i.e. to apply a policy or practice which disadvantages people of a particular sexual orientation unless it can be objectively justified;
- subject someone to harassment; harassment is defined as unwanted conduct which takes place with the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment;

¹ Discrimination on the grounds of sexual orientation or religion or belief before that date, in certain circumstances, was covered by the Human Rights Convention or in rare cases could constitute unlawful indirect race discrimination. There were also laws in place in Britain before December 2003 governing working time and rights to time-off which could be used for religious purposes.

² See, for example, guides produced by Acas, The Muslim Council, and Stonewall.

- victimise someone because they have made or intend to make a complaint or allegation or give evidence in relation to a complaint of discrimination on grounds of sexual orientation.

The regulations define sexual orientation as orientation towards people of the same sex, of the opposite sex, or of the same sex and opposite sex. This means that people are protected against discrimination in the workplace whether they are lesbian, gay, heterosexual or bisexual.¹

2.2 Employment Equality (Religion or Belief) 2003 Regulations

This legislation came into force in December 2003 and also applies to all aspects of employment and vocational training, including recruitment, promotion, terms and conditions (including pay) and dismissals. It is now unlawful on the grounds of religion or belief to:

- discriminate directly against anyone, i.e. to treat them less favourably than another person in a comparable situation, because of their religion or belief;
- discriminate indirectly against anyone, i.e. to apply a policy or practice which disadvantages people of a particular religion or belief unless it can be objectively justified;
- subject someone to harassment because of their religion or belief;
- victimise someone because they have made or intend to make a complaint or allegation or give evidence in relation to a complaint of discrimination on grounds of religion or belief.

Religion or belief is defined as being any religion, religious belief or similar philosophical belief. It will be the responsibility of Employment Tribunals and other Courts to decide whether particular circumstances are covered by the Regulations.

Exceptions to the regulations may be made in limited circumstances, for example if there is a genuine occupational requirement for a worker to be of a particular religion or belief or to comply with the religious belief or ethos of the organisation.²

2.3 The Commission for Equality and Human Rights

There have been, in the UK, separate institutional champions for each discrimination jurisdiction: the Commission for Racial Equality (CRE) for race

¹ Acas (2004), *Sexual Orientation and the Workplace: A guide for employers and employees; The Employment Equality (Sexual Orientation) Regulations 2003*, Statutory Instrument 2003 No. 1661

² Acas (2005), *Religion or Belief and the Workplace: A guide for employers and employees; The Employment Equality (Religion or Belief) Regulations 2003*, Statutory Instrument 2003 No. 1660

discrimination; the Equal Opportunities Commission (EOC) for sex discrimination; and the Disability Rights Commission (DRC) for disability. However to date, there has been no governmental body devoted to safeguarding sexual orientation or religion or belief rights.

Plans are in place to merge the three existing bodies and establish a new body, the Commission for Equality and Human Rights¹ (CEHR) to provide 'coherent, accessible advice and support for individuals on all discrimination issues' (CEHR Vision). The CEHR aims to 'tackle discrimination', 'demonstrate and share best practice' and 'promote equality and human rights principles in public and private bodies' (see CEHR website for full details).

The first Chair of the new CEHR will be Trevor Phillips (currently with the CRE) aided by up to 15 Commissioners (at the time of writing 11 have been appointed²) drawn from the different constituencies that the CEHR will represent. The CEHR will integrate the work of the EOC, the DRC and the CRE when operations commence in Autumn 2007³. From the start the new Commission will also promote equality and tackle discrimination in relation to sexual orientation, religion or belief and age.

The CEHR faces many challenges as a new organisation having to merge and balance the cultures and priorities of the existing institutions. Each has a long-standing reputation. Added to this will be the challenge of successfully carrying and resourcing new remits in the areas of sexual orientation, religion or belief, age and human rights and supporting those whose rights have been breached.

2.4 The employment tribunal system

Employment tribunals are judicial bodies that resolve disputes between employers and employees over employment rights. Their remit and roles are well documented in the employment relations literature⁴ and elsewhere.

Over seventy different types of complaints can be heard and determined by employment tribunals including those relating to race, sex and disability discrimination and unfair dismissal and redundancy. Sexual orientation and religion or belief complaints were added to this list in December 2003. Most cases typically contain a complaint in more than one area, e.g. unfair dismissal and sexual orientation discrimination. It is estimated that one million claims have been made to employment tribunals in the past thirty years.

¹ Established by the Equality Act 2006

² See CEHR website

³ The CRE was expected to join in 2009 but this has now changed. See Equal Opportunities Review, January 2007.

⁴ See, for example, Dickens (2000) which provides a recent summary of the literature on the employment tribunal system and its processes. See also the Employment Tribunal Service website (in particular their topic booklets and Annual Report) and the DTI website which contains details of the laws which govern employment tribunals.

2.4.1 Number and type of applications

According to the most recent Employment Tribunal Service (ETS) Annual Report in 2005-06, 115,039 claims to employment tribunals were registered. This compares to 86,181 in 2004-05. In 2005-06, the 115,039 cases received covered 201,514 jurisdictional complaints, resulting in an average of 1.8 complaints per case.

Since employment tribunals were first established there has been a steady increase in claims¹. In response, in recent years, there has been a growing focus on mechanisms for resolution of disputes within workplaces. This was reflected in new legislation introduced in October 2004 which established new statutory discipline and grievance arrangements. At the time of writing it was not yet clear whether this change had acted either as a deterrent to lodging an employment tribunal claim or as a facilitator of better workplace employment relations².

2.4.2 Outcomes

According to the latest ETS Annual Report, tribunals heard just over 29,750 cases in the last year, an increase of 1 per cent on 2004-05. In 2005-06, 60 per cent of all jurisdiction cases were withdrawn or settled before a tribunal hearing. This compares with 67 per cent of all cases in 2004-05. The number of current 'live' cases, according to ETS figures, was 112,657 at 31 March 2006.

2.4.3 Research on employment tribunal claimants, respondents and representatives

Some interesting and useful research has been carried out on aspects of employment tribunals. Of particular note is the Survey of Employment Tribunal Applications (SETA) series, commissioned by the DTI, the latest of which was published in 2003. The SETA studies provide us with information on, amongst other things, the characteristics of the parties, their sources of advice and representation, their use of Acas, experience of tribunal hearings and the outcome of their cases.

SETA is a useful first tool for contextualising and considering the nature and experiences of sexual orientation and religion or belief claimants. According to the Survey of Employment Tribunal Applications 2003³:

¹ Attributed to a number of different factors such as the growth in individual employment rights, changes in compensation limits, the reduction in the qualifying period for claiming unfair dismissal, the growth in jurisdictions, and so forth.

² Dickens, et al. (2000), *Review of research into the impact of employment relations legislation*. DTI Employment Relations Research Series 45

³ Hayward, et al. (2004), *Findings from the Survey of Employment Tribunal Applications 2003*, DTI Employment Relations Research Series 33. BMRB.

- Claimants were more likely to be men, managerial workers or aged 45 or over.
- The private sector accounted for 82 per cent of cases with small workplaces (1-24) and small-medium sized organisations (50-249) over-represented. Employers were significantly more likely than claimants to report that workplace dispute resolution procedures were in place and followed.
- Solicitors were the main providers of legal advice but were used significantly more by employers. Four in ten parties received unsolicited calls offering professional advice and representation.
- Overall satisfaction with the employment tribunal system was found to be quite high, more so amongst claimants (72 per cent as opposed to 65 per cent), though employers were more likely to be satisfied with the outcome of the case (67 per cent as opposed to 56 per cent).

Representatives

A 'spin-off' survey of advisors/representatives from SETA 1998¹ examined the role and impact of these professionals. The study reported an increasing use of 'professional' advisors or representatives, who were found to be influential in determining case outcomes through their role in advising clients on case merits and courses of action. Advice, the study reported, is crucial to success. The vast majority of clients (94 per cent) were reported as having followed their representative's advice on how to proceed.

Parties' views of Acas officers were also gathered in this study. Where these officers had contact with representatives, the median number of contacts was in the 3 to 5 five range. Almost 70 per cent of representatives felt that Acas had worked 'Very hard' or 'Quite hard' in promoting settlement and, it was felt, typically without exerting undue pressure. More than half of representatives felt that the Acas officer was important in reaching a settlement and bringing the parties closer together.

Although settlement was more likely where both sides are represented, trade union representatives were significantly less likely to recommend seeking settlement than other representative types acting for claimants, and more likely to recommend proceeding to a full hearing.

Race discrimination

In recent years additional research has been carried out to complement the work of SETA focusing on race discrimination claimants. The results reported in

¹ Latreille, et al. (1999), *Findings from the 1998 survey of representatives in Employment Tribunal cases*, DTI Employment Relations Research Series 35

'Findings from the Survey of Claimants in Race Discrimination Employment'¹ both challenge and add to the mainstream SETA series findings.

The study found that claimants in race discrimination employment tribunal cases differ significantly from other types of claimants as do the nature and outcomes of these cases. These claimants tended to be younger, better educated, and more likely to be employed in professional occupations. They were also more likely to work in the public sector. They were also more likely to have been represented at the tribunal hearing than claimants in cases without a race discrimination element in their claim and were more likely to have sought additional professional advice after submitting their claims.

Despite this, race discrimination claimants (and those in other discrimination cases) were much less likely to be successful at tribunal than non-discrimination claimants, and also less satisfied with the outcome of their case, even where their claim was successful.

A further study – reported in 'Experience of claimants in race discrimination employment tribunal cases'² – was based on follow-up detailed qualitative interviews with forty claimants from the above study. Key findings were that:

- The primary reason given for making a claim was the pursuit of justice rather than potential financial gain.
- Claimants' expectations of the employment tribunal process were very different from their reported experiences, particularly regarding how long the process would take, the amount of work involved, the amount of legal knowledge required, and the need for representation.
- Internal communication tended to have broken down by the time they became involved in the formal grievance procedures.
- Acas seemed to have played a relatively minor role in these cases, and some claimants would have liked more contact and information from Acas.
- Claimants found securing representation difficult, and many represented themselves in the absence of any other options.
- Representatives were often involved in cases that were withdrawn or settled prior to a main employment tribunal hearing. They appeared to exert considerable influence over claimants' decisions.
- Some claimants settled as a result of their poor health; they did not feel well enough to be able to continue with the case. Although claimants had not been motivated by money they rarely felt that the sums they were awarded were sufficient compensation for what they had been through.

¹ Peters, et al. (2006), *Findings from the Survey of Claimants in Race Discrimination Employment Tribunal Cases*, BMPB, DTI Employment Relations Research Series 54

² Aston et al. (2006), *The Experience of Claimants in Race Discrimination Employment Tribunal Cases*, IES, DTI Employment Relations Research Series 55

- Some claimants had difficulty following the developments in their case, and those who were without representation felt at a significant disadvantage compared to employer respondents, who were almost always legally represented.
- Claimants who were unsuccessful at Tribunal attributed this to factors including bias in the panel, lack of witnesses, insufficient evidence, having to represent themselves, or the inexperience or incompetence of their representatives.
- Successful claimants were not always satisfied with their case outcome. This was either because they felt they had not been awarded enough money or because of a perceived lack of formal cautions or punishments directed at employer-respondents.
- Most claimants reported that the case had a negative impact. They had found it very stressful, and many said that it had worsened their physical health and emotional well-being.

These findings have much in common with the work of Lewis and Legard¹ where claimants, respondents and representatives reported strong emotions, a reluctance to settle, confusion about the role of Acas and aspects of the employment tribunal process and the critical importance of legal fees in determining options and choices.

These studies provide a vital backdrop to this sexual orientation and religion or belief research. Findings from these studies informed the methodology and tools developed for this sexual orientation and religion or belief study and will be referred to later in this report in order to aid our understanding of the similarities and differences between the experiences of claimants under sexual orientation and religion or belief jurisdictions and others.

2.5 Acas

Acas performs a number of important statutory and other duties. Its roles range from the provider of advice and mediation services to employees and employers, to collective conciliator in industrial disputes. Acas also has a duty to provide conciliation in individual disputes over employment rights where a conciliation officer must 'endeavour to promote a settlement of the proceedings without their being determined by an employment tribunal'². It is with this function of Acas that this study is concerned.

2.5.1 Individual conciliation

The increase in employment tribunal claims noted in 2.4.1 above has a direct impact upon the workload of Acas conciliators. It is estimated that Acas has

¹ Lewis J and R Legard (1998), *Acas Individual Conciliation: a qualitative evaluation of the service provided in industrial tribunal cases*, Acas Research Paper 1.

² Employment Tribunals Act 1986 s18(2)

dealt with over a million cases arising from employment rights disputes in the last 30 years¹. An increase in the number of cases, alongside an increase in the number of jurisdictions, has led to a caseload of approximately 300 to 340 claims per Conciliator per year.

Conciliation occurs after a claim has been submitted to an employment tribunal and before that claim is heard. It aims to facilitate a resolution or settlement between the parties without the need for an employment tribunal hearing. This role is well researched and documented. In looking at the experience of employment tribunal claimants and their perceptions of Acas, it is as important to note the boundaries of the conciliation role: what they can and cannot do in seeking a resolution of the dispute. Dix (2000) refers to conciliators as 'communicators', a 'neutral third party'. For example, they must remain independent and cannot assist either side with their case or provide a view on the merits or possible outcome of any case. Yet, they are most valued when pro-active. As Dickens (2000, p.76) notes, the line is not an easy one to tread and may lead to confusion and unrealistic expectations.

According to Acas Annual Report, in 2005/6, Acas achieved settlement in 3 per cent of ET cases. A further 35 per cent of claims were withdrawn and 24 per cent went on to be determined through a tribunal hearing². It is estimated that Acas saved 66 per cent of employment tribunal hearing days through its individual conciliation work.

¹ See for example Brian Towers and William Brown eds (2000), *Employment Relations in Britain. 25 Years of the Advisory, Conciliation and Arbitration Service*. Blackwell, USA.

² Acas Annual Report 05/06.

3 DISCRIMINATION IN THE UK: RELIGION OR BELIEF AND SEXUAL ORIENTATION IN THE WORKPLACE

A number of key sources provide a window on the extent of discrimination currently faced in UK workplaces. WERS 2004¹, one example, reports that in the last twelve months racial harassment and race or sex discrimination complaints were raised (through the grievance procedure) in 1 per cent of UK workplaces, sexual harassment in 2 per cent of workplaces and bullying in 7 per cent. Also, relations with other employees became a grievance issue in 1 per cent of UK workplaces in the previous twelve months and relations with supervisors or line managers (i.e. unfair treatment or victimisation) were the subject of grievance procedures in 16 per cent (p226).² WERS is a rich source of information on workplace practices but unfortunately the scope of the survey has not yet been fully extended to include sexual orientation or religion or belief.

Another source of information about the extent of workplace discrimination in the UK is the number of employment tribunal claims submitted. According to the 2005/06 Employment Tribunal Service Annual Report there were 14,250 ET1s submitted during that year that contained a sex discrimination jurisdiction, 4,103 a race discrimination jurisdiction, 4,585 a disability discrimination jurisdiction and 17,268 an equal pay jurisdiction. With the exception of disability discrimination, this marks an increase across all discrimination jurisdictions. Discrimination issues may also have been involved in other additional claims over hours of work and flexible working. These figures can be read in a number of ways: that discrimination is increasing in the UK or being less often resolved at workplace level, that individuals are increasingly likely to pursue their legal rights through the legal system, or that discrimination is occurring across a number of legal jurisdictions.

The picture obtained about discrimination in the workplace from WERS or from the number or type of employment claimants is not a clear one. One problem with looking to formal procedures or claims to provide an accurate picture of workplace discrimination in the UK is that in order to pursue rights one has to at least be aware of those rights in order to know that they have been breached. A recent study by IES³ found that the most vulnerable groups in the UK had lower levels of awareness and knowledge about their rights at work than other workers. There may also be many other factors – financial and personal – which prevent employees from taking claims or grievances and make silence or resignation more likely⁴ and so the extent of discrimination may be under-represented in grievances or tribunal claims.

¹ Kersley et al. (2006), *Inside the Workplace*. London: Routledge.

² Unfortunately, discrimination on the grounds of religion or belief and sexual orientation was not covered by these questions.

³ Casebourne et al. (2006), *Employment Rights at Work: Survey of Employees 2005*, DTI Employment Relations Research Series 51, IES

⁴ *Fair Treatment at Work*, EERS 63, 2005. Men, for example, are apparently more likely to do nothing and women more likely to leave.

The DTI Fair Treatment at Work Survey (2006) provides an alternative insight into unfair treatment, perceived discrimination, bullying and sexual harassment in the workplace. Although it reported 'a relatively low incidence of unfair treatment at work' the authors noted that lesbian, gay or bisexual workers were twice as likely to have experienced unfair discrimination as other employees. 0.3 per cent of employees felt that they were unfairly treated because of their religion.

Interestingly, unfair treatment was not considered to be discrimination by all (only seven out of ten felt they had been discriminated against by such unfair treatment). Still 3.5 per cent of all employees said they had experienced sex, race, disability, religion, sexual orientation or age discrimination at work in the last two years. According to the report the figure is higher for gay, lesbian or bisexual employees (8.1 per cent), black employees (7.3 per cent), foreign-born employees (6.4 per cent), Muslim employees (5.7 per cent), and Asian employees (5.5 per cent).

3.1 Religion or belief

This section contains a brief outline of the literature and research available on the UK's religion or belief population. Although information is available on the size and demographic spread of different religious groups in the UK from the most recent 2001 Census, much less is known about their position in the labour market or their experiences in the workplace.

Studies on minority ethnic groups are also referred to briefly in this section as there is some overlap between race and religion, and evidence of significant barriers to obtaining employment for some ethnic minority religious groups. These studies must however be used with caution as members of many religion or belief groups come from diverse ethnic backgrounds and may not suffer racism.

This section also includes a brief consideration of the issues that make research into religion or belief discrimination problematic. The regulations have in part created a new category of employees to be studied and this group is a very broad and diverse one indeed.

3.1.1 The religion or belief population

According to National Statistics Online¹ the main religion in Britain is Christianity. It is estimated that in 2001 there were 41 million Christians (that is approximately three quarters of the population) in Britain. This group included: the Churches of England, Scotland and Wales; Catholic, Protestant and all other Christian denominations. People with no religion formed the

¹ Figures used are from the 2001 Census where the question on religion was voluntary and 8 per cent of respondents did not state their religion.

second largest group, approximately 15 per cent of the population, and this group varies by age, gender, geography and ethnicity¹.

Again, using National Statistics Online figures from the 2001 Census, about 5 per cent of the British population belonged to a non-Christian religious denomination. Muslims were the largest religious group after Christians comprising 3 per cent of the total population, approximately 1.6 million people and over half of the non-Christian religious population.

Hindus were the second largest non-Christian religious group. There were over half a million Hindus, comprising 1 per cent of the total population, over a third of a million Sikhs, making up 0.6 per cent of the total population and just over a quarter of a million Jewish people. Buddhists make up 0.3 per cent of the population of Britain.

Other sources of information provide more details about these individual religion or belief groups. According to figures published by Faithworks² Muslims make up 36 per cent of BME communities in Britain. They estimate that 43 per cent of Muslims are Pakistani, 6 per cent black and 11 per cent white which cautions against conflating race with religious belief. Half of the Muslim population in Britain live in London and half (600,686) outside.

The Faithworks study referenced above also provides some details about Muslims in the labour market: 14 per cent of working-age Muslims are unemployed; 30 per cent of Muslim men and 68 per cent of Muslim women of working age are economically inactive. Muslims are, they note, more likely to be self-employed and least likely to be in managerial or professional occupations.

According to the Office for National Statistics³, the majority of the 336,000 Sikhs in the UK live in larger cities, with 31 per cent living in the West Midlands and 31 per cent in London⁴. There are a number of similarities between the positions in the labour market of Sikhs and Muslims. Muslim and Sikh men are the most likely to be working in the transport and communication industry: over one in seven are employed in this area, compared with less than one in ten from any other group. Muslim and Sikh men are also the least likely to be working in managerial or professional occupations (less than a third of these groups).

Sikh and Muslim women are concentrated in low-skilled occupations in the UK and are more likely than other women to work in manufacturing – one in seven work in manufacturing compared with less than one in ten women from any

¹ British Humanist Association

² MCB and DTI (2005), *Muslims in the Workplace: A Good Practice Guide for Employers and Employees*, The Muslim Council of Britain, DTI and CAB guidance

³ Annual Population Survey, January 2004 to December 2004, Office for National Statistics: <http://www.statistics.gov.uk/cci/nugget.asp?id=964>

⁴ Kaur-Singh Kanwaljit, Parsons Tim, *Sikhs and Sikhism in Britain, A guide for Non-Sikhs*

other religion. Nonetheless, there is some evidence of upward social mobility among Muslims and Sikhs who are not first-generation immigrants. For example, Muslims and Sikhs who were born in the UK are more likely than those born elsewhere to have a degree or equivalent qualification, regardless of age.

The Hindu population is most concentrated in London, Leicester, Birmingham, Manchester, Leeds and Bradford. The position of Hindu men in the labour market contrasts quite markedly to that of Muslim and Sikh men. Hindus are the second most likely religious group to work in managerial or professional occupations and one in 20 Hindu men is a medical practitioner¹. However, there are some similarities among women. Sikh, Muslim and Hindu women are the most likely to work in the distribution, hotel and restaurant industry. Over a quarter of women in each of these groups work in this sector, many of whom are in sales and customer service jobs (between 16 and 20 per cent).

Jewish men are more likely than men from any other religion to work in financial areas. They comprise a third of the total banking, financial and insurance sectors in the UK. Jewish and Buddhist women are the most likely to work in managerial or professional occupations. Jews, Buddhists and Hindus are more likely than other groups to hold a degree. About four in ten Jews (44 per cent) and three in ten Buddhists (30 per cent) and Hindus (29 per cent) hold a degree, compared with 22 per cent of people with no religion, 20 per cent of Sikhs and 16 per cent of Christians.

3.1.2 Religion or belief in the workplace

A significant challenge for any literature review of religion or belief in the workplace is the lack of a strong research base. The passing of the Religion or Belief Regulations in 2003 prompted several 'best practice' guides on the law² which contain details and anecdotes about direct and indirect workplace discrimination relating to religious practices and observances. However, little research currently exists into patterns of discrimination relating to religion or belief in isolation from race, ethnicity and culture³.

The main study documenting religion or belief discrimination in the workplace, and wider, was carried out in 2001⁴. As the authors note: "*until now ... there has been little research into the nature and extent of religious discrimination in*

¹ Annual Population Survey, January 2004 to December 2004, Office for National Statistics: <http://www.statistics.gov.uk/cci/nugget.asp?id=964>

² For example, the Acas publication *Religion or Belief and the Workplace: A guide for employers and employees*, and *Muslims in the Workplace A Good Practice Guide for Employers and Employees*, The Muslim Council of Britain and DTI 2005 and CAB guidance.

³ An important observation in Speeden S, et al. (2005), *Diverse Journeys – Diverse Needs: Improving Employment Opportunities in BME Communities: Final Report for the SEQUAL Development Partnership*, Centre for Local Policy Studies, Edge Hill.

⁴ Weller P, et al. (2001), *Religious Discrimination in England and Wales 2001*, Home Office Research Study 220, University of Derby

this country". Unfortunately this study is confined to England and Wales but nevertheless it is a comprehensive and detailed empirical study of the experience of discrimination on the grounds of religion or belief¹.

The aims of the study were to assess the evidence of religious discrimination in England and Wales (actual and perceived) and to examine the extent to which religious discrimination overlaps with racial discrimination. The study is based on organisations rather than individuals and contains many interesting findings.

Many of the respondents were concerned about 'ignorance and indifference' which, the authors note, do not constitute evidence of discrimination "*but in organisational settings they can contribute towards an environment in which discrimination of all kinds (including 'unwitting' and institutional discrimination) is able to thrive.*"

The study also found evidence of overt hostility, violence and discrimination. There were however differences in the direction of change. Respondents were asked whether, in the last five years, problems such as ignorance, hostility and discriminatory practices had become more or less frequent. Muslims felt that the situation had worsened; Christian and Jewish respondents thought that things had stayed much the same; and some religious groups (for example Buddhist and Bahá'í organisations) reported improvements over the last five years.

The experience of discrimination was different. For example, the authors note that Muslims frequently identified problems with organisational policy or practice as well as with the attitudes and behaviours of individuals whereas Christians tended to identify mostly individual attitudes and behaviours as the cause of unfair treatment. This was also true in the workplace where Christians and Jews were mainly concerned about the attitudes and behaviours of managers and colleagues, while other religions referred also to policies and practices.

Differences in the experiences of discrimination between these religious groups – in and outside employment – led the authors to consider the importance of the 'visibility' of the religious belief and the overlap between religious and racial discrimination. As they note: "*the ethnic, cultural and religious aspects of individuals' identities are often closely related and visibly apparent. The response to this 'visible difference' may lead to an intensification of unfair treatment*".

The study found higher levels of unfair treatment reported by Muslims, Hindus and Sikhs and notes that these respondents themselves often identified a degree of overlap between race and religion. The authors dismiss racism alone stating that "*there were also claims of unfair treatment from white people of British descent with no outward, visible signs of their religion. This suggests that such treatment can be a response to the nature of someone's beliefs and practices.*"

¹ No other more recent study of the scale and scope of this 2001 one could be found.

One of the key areas where unfair treatment was experienced was employment¹. The main findings from a questionnaire survey were as follows:

- The majority of Muslim, Sikh, and Hindu organisations reported unfair treatment in almost every aspect of employment and most of the NRM/Pagan organisations indicated likewise. Muslim organisations were more likely than Sikh or Hindu organisations to indicate that this unfair treatment was 'frequent' rather than 'occasional'.
- The small numbers of black-led groups responding to these questions were more likely to report unfair treatment than other Christian organisations.
- In the private sector, three quarters or more of the Sikh, Muslim and Hindu organisations said their members experienced unfair treatment from private sector managers or colleagues. This compares with just over 40 per cent of the Christian organisations, and lower proportions in some of the other religions (eg Buddhists and Bahá'ís). Moreover, whilst 25 out of 55 Muslim organisations said unfair treatment by private sector managers was 'frequent', this was the case for only 5 per cent of the Christian organisations. Also while 27 out of 31 Sikh organisations reported unfairness in private sector employment policies only a quarter of Christian organisations said their members experienced unfairness from the policies and practices of private sector employers.
- In the public sector, some religious traditions reported marginally less unfair treatment but the differences were not large. A higher proportion of Muslim organisations continued to report 'frequent' unfair treatment than was the case for other traditions. Organisations from some religions (e.g. Muslim, Sikh, Christian) reported slightly more unfairness in public sector employment practices than in policies.

The report also provides many examples of unfair treatment in employment which the various respondents gave relating to: dress restrictions, working on religious days/holidays; lack of respect and ignorance of religious customs; application and recruitment practices and promotion prospects. Verbal abuse was also reported by most groups². Where individuals were not part of the 'visible minority' referred to above, the authors also found evidence of self-censorship.

Recommendations from the report and its respondents include policy reviews to promote equal treatment, a greater flexibility in employment and acceptance of religion and better consultation between employees and employer. A notable recommendation was a change in the law.

¹ See chapter on Employment, p37

² This chapter of the Home Office report contains many personal anecdotes of discrimination from the application process to workplace behaviours. Some of the personal stories relate to employment tribunal claimants and contain themes similar to those reported by claimants under study in this report.

A further study which focuses specifically on religion or belief in the workplace assesses the awareness of over 400 employers in the Yorkshire and Humber Region and the likely impact of the law on workplace policies¹. This area has more than 100,000 ethnic minority residents. The report found high levels of awareness (67 per cent) but a much smaller proportion of employers planned to make any changes to workplace practices as a result (19 per cent). Of those that anticipated making changes to practice, most (87 per cent) already had an equal opportunities policy covering religion or belief. In contrast, only half of those that had not and would not be changing their employment policies already had an equal opportunities policy in place covering religion or belief.

The authors report that many employers did not believe they needed to make any changes but unfortunately no workforce details are provided. They do note however that "*less than 50 per cent of employers allow religious dress to be worn in the workplace, less than 40 per cent allow flexible working to accommodate prayer time and less than 5 per cent have a prayer room in the workplace*" although again it is difficult to analyse these results in isolation.

3.1.3 Religion or belief and the link with race

It is important not to conflate religion with race. As illustrated above, for example, 11 per cent of Muslims in Britain are white and may have different experiences of discrimination. A significant proportion of the religion or belief population in Britain is white and indeed the CRE explicitly states that it has "*no authority to provide assistance to anyone who intends to bring a case under the new (religion or belief) law*"² if their religious group is not also a 'racial group'.

However, there is also an undeniable over-lap between race and some religious groups in Britain. In order to understand the discrimination on the grounds of both race and religion it is useful to consider recent research on ethnicity in the workplace.

Two recent DWP reports, using secondary data, found evidence of an 'ethnic penalty' in Britain's labour market. They question why, despite anti-discrimination legislation: "*the nature of employment and employment status varies considerably across ethnic minority populations*"³. According to their findings a number of ethnic minority groups, notably Pakistani, Bangladeshi, Black Caribbean and Black African continue to experience higher unemployment rates, greater concentrations in routine and semi-routine work and lower hourly earnings than their white comparators. Men suffered from these 'ethnic penalties' slightly more than women. As both reports note that

¹ Nunn A (2003), *Measuring the awareness of the Employment Equality (Religion or Belief) Regulations amongst employers in the Yorkshire & Humber Region*, The Policy Research Institute, Fair Play Partnership

² Religious discrimination - what the CRE can and can't do

³ Simpson, et al. (2006), *Ethnic minority populations and the labour market: an Analysis of the 1991 and 2001 Census*, Research Report No. 333, Department for Work and Pensions

since the situation of some groups is a particular cause for concern, for example, Pakistani and Bangladeshi, it would not make sense to ignore the inter-relationship between race and religion.

The studies conclude that as differentials cannot be explained by the age, education, foreign birth of ethnic minority groups, gender or social class that "*unequal treatment on grounds of race or colour is likely to be a major factor underlying the pattern of ethnic penalties*"¹. Although the studies do not deal with treatment in the workplace but in the labour market more generally they do point to the prevalence of discrimination on the basis of race in employment and they recommend "*policies aimed at employers*".

3.1.4 Research issues

The 2003 Regulations represent the first specific legal protection in the UK against discrimination on the grounds of religion or belief. A limited degree of protection was offered previously through: the Race Relations Act 1976, which linked religious discrimination to ethnicity; and through the Human Rights Act 1998, which protects the right to freedom of 'thought, conscience and religion'.

The emergence of a specific legal jurisdiction of religion or belief in the UK – independent of race laws – has created some interesting issues when searching for or analysing research and literature in the area.

The first is the inter-relationship, or not, with racism and race laws. In some cases there will be an overlap, in others not. There may also be an overlap or conflict with other forms of discrimination, for example through the 'genuine occupational requirement' clause. The experience of discrimination may be complex and multi-faceted and the introduction of a new legal framework potentially increases this complexity.

A second important research issue is the integrity or usefulness of the category itself. The coverage of the regulations are wide and while it is possible to obtain research on individual religion or belief groups this is not the case for the religion or belief population as a whole. That there has not been an institutional framework for religion or belief has of course compounded this problem and the diversity of the category may present a challenge to any research to be undertaken in the future.

Related to this is the fact that the definition of religion or belief used within the regulations has been criticised as too wide-ranging and lacking in clarity. While there is not likely to be much controversy about the rights of people from established faiths within the legislation, the position in relation to atheists or adherents of non-conventional faiths is far less clear. The religion or belief population may be subject to change.

"It is arguable that groups such as Rastafarians, humanists, Satanists, pagans and animal rights activists, are practising a belief system and it

¹ Heath A, et al. (2006), *Ethnic penalties in the labour market: Employers and discrimination*, Research Report No 341, Department for Work and Pensions

remains to be seen how employment tribunals will decide which beliefs are worthy of protection." (Gingell, 2004)¹

Another factor is the newness of the regulations and the lack of an established body of evidence. This small qualitative study goes some way towards increasing our understanding of how some individuals have experienced discrimination that has not been resolved at workplace level and thus pursued the issue through the employment tribunal system. However there is no large-scale, UK-wide, quantitative study on religion or belief available.

A further complication to consider is that religion or belief is not in all cases readily identifiable and that data is poor and cannot be easily collected². The literature refers to a 'visible minority' amongst religion or belief groups but for many there will be an element of disclosure involved and in this way there is an important connection to the 2003 regulations on sexual orientation. Research may not therefore be able to capture the full extent of discrimination based on religion or belief due to self-censorship or lack of awareness.

A final research issue relates to the broadness of the religion or belief population and the lack of institutional support so far. There are difficulties in gathering and comparing research and literature on a range of religions or belief over time and from many sources.

3.2 Sexual orientation

This section contains a brief overview of the literature and research available on lesbians and gay men in the UK. A particular focus is that of the workplace and discrimination and harassment in the workplace.

This section also includes a brief consideration of the issues that make research into sexual orientation problematic, for example visibility and disclosure of sexual identity.

3.2.1 The lesbian and gay population

It is estimated that there are 3.6 million lesbians and gay men in the UK³, approximately 6 per cent of the population. There is however currently no question about sexual orientation in the national Census, and the collection of such information would in any event be problematic because of fears about the consequences of self-identification (Stonewall Cymru 2004)⁴, so these estimates may under-represent the UK lesbian and gay population.

¹ Gingell M (2004), *The Employment Equality (Religion or Belief) Regulations 2003*, Black Information Link. Available from:
www.blink.org.uk/pdescription.asp?key=2997&grp=62&cat=214

² Equalities Review (2007) *Fairness and Freedom*

³ According to DTI figures

⁴ Stonewall, Cymru (2004), *Count Us In!: Addressing the needs of Wales forgotten community of interest*, Cardiff. Available from:

This is a particular concern when considering discrimination in the workplace and actions taken in defence. It has been reported that many lesbians and gay men choose to avoid homophobic workplaces and/or leave these workplaces when discrimination or harassment is experienced instead of complaining or pursuing a grievance¹. Others may not be 'out' in the workplace – for personal reasons or because they perceive it to be unsafe to come out – and thus not directly subject to homophobic discrimination. The extent of sexual orientation discrimination may therefore also be under-reported and the nature of that discrimination not fully appreciated.

Recent surveys carried out by lesbian and gay community organisations in various parts of the UK have highlighted the fact that fear of prejudice and discriminatory attitudes remains a major problem for many lesbian and gay employees, leading frequently to concealment or partial concealment of their sexual identity (Webb and Wright, 2001; Morgan and Bell, 2003).² Figures vary on the extent to which lesbians and gay men are 'out' at work. A 2003 Stonewall survey³ by Palmer found that two thirds of respondents chose to conceal their sexuality in the workplace and one third kept their homosexuality secret from their employers and colleagues. In a study of 16 'best practice' employers, Colgan et al. (2006) reported that 58 per cent of their respondents were out to everyone at work, although not all by choice.

3.2.2 *Sexual orientation in the workplace*

There are several useful studies which analyse the experiences of lesbians and gay men in the workplace. These studies cover different timescales and survey different groups and are most usefully read together⁴.

A recent study carried out by the Comparative Organisation and Equality Research Centre (COERC) at London Metropolitan University (Colgan et al., 2006) pulls together much of the literature and research in the field and adds to this with case study material from 16 'good practice' employers. The findings of both this study and earlier research are consistent however it must be kept in mind that Colgan et al. (2006) report from 'good practice' employers

[www.stonewall.org.uk/documents/ Full_report_English.pdf](http://www.stonewall.org.uk/documents/Full_report_English.pdf)

¹ Colgan F, Creegan C, McKearney A, Wright,T (2006), *Lesbian, Gay and Bisexual Workers: Equality, Diversity and Inclusion in the Workplace*, London Metropolitan: London University

² Morgan L, Bell N (2003), *First Out: Report of the findings of the Beyond Barriers national survey of lesbian and gay people in Scotland*, Beyond Barriers/FMR: Glasgow

³ Palmer A (1993), *Less Equal than Others: A survey of lesbians and gay men at work*, Stonewall: London

⁴ A number of studies have been produced on prejudice in the UK for example for Stonewall and Mori and by Centre for the Study of Group Processes at the University of Kent. However this chapter is limited to a discussion of discrimination and the workplace.

and so although the forms of discrimination experienced are similar the scale is different¹.

For example, Colgan et al. (2006) report that 18 per cent of those questioned had experienced discrimination on the grounds of their sexual orientation in the last four years and 22 per cent were not sure. By contrast, a TUC survey² reported that 44 per cent of trade union respondents had been discriminated against and the figure is higher again at more than half the workforce according to a UNISON survey³.

Colgan et al. (2006) also report that 23 per cent of their sample had experienced harassment on the grounds of their sexual orientation in the last four years and a further 7 per cent were not sure. Again by contrast a Stonewall survey⁴, albeit from 1993, found levels of harassment on the basis of sexuality to be double this level (at 48 per cent).

The discrimination experienced in the study by Colgan et al. (2006) ranged from *"discomfort and signs of embarrassment on the part of managers and colleagues, exclusion by colleagues through to homophobic comments and insults. At its most extreme, harassment had been experienced in the form of bullying and physical intimidation."*

The 1993 Stonewall survey, carried out ten years before the introduction of the 2003 regulations, found similar experiences *"from mild to very serious"* in the workplace including refusals of promotion and dismissal. One in four of 354 lesbian and gay people surveyed in Wales⁵ had been dismissed from a job at some point during their careers for being gay. Stonewall also reported avoidance of certain employers, jobs and careers because of the fear of discrimination on the grounds of sexuality and, in a recent overview⁶, the negative impact this has on workplace performance. As noted in the 1993 study: *"Discrimination is only part of the problem. Harassment is probably the most serious problem. And discrimination avoidance is the most common experience."*

The findings of these surveys are supported by other studies carried out at different regional or sectoral levels. An AUT report⁷ found that 20 per cent of gay male academics felt they had suffered discrimination and 27 per cent had

¹ There is the methodological issue of self-selection of respondents in many of the studies produced.

² (2000), *Straight Up! Why the Law Should Protect Lesbian and Gay Workers*, TUC

³ The figure cited by Colgan et al. was 52 per cent from an unpublished UNISON report.

⁴ Palmer A (1993), *Less Equal than Others: A survey of lesbians and gay men at work*, Stonewall: London

⁵ University of Cardiff for Stonewall Cymru, 2003

⁶ See, for example, research in Stonewall (2007) *Sexual Orientation Research Review*, Equalities Review report.

⁷ Carried out by the AUT and Proud group, reported in the Guardian, 1 July 2003.

been harassed. The equivalent figures were 30 per cent and 42 per cent for lesbian academics. They also reported a lesbian and gay 'glass ceiling' and that generally their lesbian and gay members in higher education did not feel comfortable in the workplace.

A number of studies have also explored sexual orientation in the workplace from a regional perspective. A recent study conducted by the University of Sussex (Bellis et al. 2005)¹ found homophobic attitudes to persist, despite the regulations, leading to concealment or partial concealment of sexual identity, feelings of isolation and a wastage of skills and talents. This study also found that awareness raising strategies about sexual orientation issues tended to be mainly targeted at larger employers rather than at SME level which the authors suspected would pose a problem in terms of implementing the new legislation, especially in areas where SMEs form a major part of the employment sector.

Another regional study, of employers, in the Yorkshire & Humber Region² reported increased levels of awareness and some changes in terms and conditions, for example in the provision of compassionate leave. Again they noted a difference according to employer size: "*There is a marked trend towards larger and medium sized employers being far more aware, proactive and positive ... There are high levels of ignorance, and indifference, concerning the regulations especially amongst smaller employers, and in a few cases overt resentment.*" They said that responses from employers ranged from overt homophobia to direct support.

Taking action

The study carried out by Colgan et al. (2006), after the introduction of the 2003 regulations, found that over two thirds of lesbian and respondents said they would be more likely to take a grievance if a problem arose on the grounds of sexual orientation. They highlight an important 'implementation gap' between gay-friendly policy and gay-friendly practice and the 'whistle-blowing' role which many lesbians and gay men are forced to take as a result.

Most of the respondents in their survey felt that "*the regulations had made little or no impact on organisational policy and practice. This was commonly associated with a perception that organisations were 'ahead of the game' and that policies had been in place prior to the introduction of the regulations.*" This finding is in line with WERS 2004, where 71 per cent of workplaces in the UK were found to have a formal equal opportunities policy including sexual orientation. Unfortunately, WERS 2004 does not capture the difference between policy and practice, the 'implementation gap' relating to sexual orientation.

¹ Bellis A, Boice M, Cairns T, McGrath S (2005), *In or Out? Sexual Orientation and the Employability Agenda*, Final report SEQUAL Development Partnership: University of Sussex

² *Measuring the awareness of the Employment Equality (Sexual Orientation) Regulations (2003) among employers in the Yorkshire & Humber Region*, Surya Monro and Alex Nunn, Policy Research Institute

Colgan et al. (2006) also refer to many barriers to raising complaints for example issues around confidentiality and anonymity, concerns of exposure or of a 'backlash', and the fact that no change might occur. The AUT and Proud study added a further barrier of relevance: *"if you don't want to be 'out' at work then there's very little you can do even if you think you have been treated unfairly."*

While the Colgan et al. (2006) study suggests that employees may be more likely to raise a complaint it does not produce evidence of an increase in grievance-taking on the basis of sexual orientation following the introduction of the 2003 regulations. WERS 2004 gathered evidence about 'type of grievance' by workplace in the twelve months prior to the survey but no sexual orientation category was included.

The earlier AUT and Proud study in the higher education sector reported that few who had suffered discrimination or harassment reported it. For example, only 15 per cent of lesbians suffering harassment said they reported the abuse to university authorities. They explain this in a number of ways. The first reason is that where complaints were made no action was taken and the second related to a fear amongst members that the situation would actually be made worse by complaining. A further factor may be related to the fact that in 72 per cent of cases the homophobic acts were committed by other, usually more senior, members of academic staff.

Although there is much evidence of the extent and nature of discrimination on the grounds of sexuality, it is less clear who is carrying out the harassment or discrimination. Colgan et al. (2006) refer to line managers in their organisations as a '*common source of potential support*' where '*perceived to be positive to equal opportunities and diversity*'.

Sources of advice and support

Many of the studies produced on the extent and nature of sexual orientation discrimination and harassment have been produced by trade unions. In the Colgan et al. (2006) study unions were perceived to be a source of information, advice and support. A recent LRD Guide¹ found that in practice over a quarter of union representatives in their survey of union branches had dealt with discrimination complaints related to sexual orientation. The LRD also found evidence of much activity at a local and national level to combat discrimination in employment terms and conditions.

Finally, although information on the lesbian and gay population in the UK and the discrimination against lesbians and gay men in the workplace and wider can also be found in many guides issued in response to the 2003 regulations²,

¹ Lesbian and Gay Workers Rights, Labour Research Department

² Acas guide, TUC 2006 guide for Union Negotiators on lesbian and gay equality in the workplace, which includes the impact of the Civil Partnership Act and publications by Stonewall (some to be updated shortly to include civil partnerships and human rights).

there are no facts available on the relative use of different sources of advice and support or satisfaction levels.

3.2.3 *Research issues*

Although there is relatively more research available on lesbians and gay men in the UK, and on issues of workplace discrimination, the emergence of a specific legal jurisdiction has created some interesting issues when searching for or analysing research and literature in the area.

Unlike religion or belief the sexual orientation category is fairly robust. Decades of organising and campaigning worldwide have helped to create a stable group with firmer boundaries to study. There are also relatively fewer issues of difference and conflict with the category. The regulations however also cover discrimination on the basis of perceived homosexuality or on the grounds of heterosexuality which are not covered in the mainstream literature or research on sexual orientation.

Like religion or belief, there has been no institutional framework for sexual orientation in the UK although there are a number of campaigners and non-governmental campaigning institutions and there are no broad, UK-wide, recent or regular studies available on lesbians and gay men. Although several good quality reports exist they tend to be one-off and rely on self-selecting individuals.

Again, the experience of discrimination may not be singular and not solely based on sexuality. A further complication is that of visibility¹. Research may not be able to capture the full extent of discrimination based on sexuality and such discrimination itself – or the fear of – may in itself inhibit disclosure of sexuality or pursuit of legal rights. There is also a lack of quality data and difficulties in remedying this.

3.3 Added-value of the Acas sexual orientation and religion or belief

The previous sections have provided a review of the main studies available on religion or belief and sexual orientation. Published research relating to workplace discrimination on the grounds of sexual orientation and particularly religion or belief is quite limited. This IES study aims to add to the existing body of literature and research and expand our understanding of the nature of sexual orientation and religion or belief discrimination in the workplace.

The study also provides initial research findings on the impact of the new discrimination regulations through an exploration of the varieties of discrimination experienced, the nature of claims subsequently submitted and

1 An IES report (424) produced by Strebler M and O'Regan S on *Non-Disclosure and Hidden Discrimination in Higher Education* notes the difficulty of effectively implementing and monitoring equal opportunities policies where there is a high degree of non-disclosure of identity. In their study, seven per cent of respondents withheld personal information about their religion or belief and/or sexual orientation.

the outcomes ultimately obtained. It considers the inter-relationship between these new jurisdictions and other existing jurisdictions, particularly the relationship between religion or belief and race jurisdictions, as they impact upon the claimant or claim.

The reach of this study, from workplace to employment tribunal, allows us to consider the ways in which internal dispute resolution mechanisms are seen to operate and fail in relation to sexual orientation and religion or belief discrimination and the crucial role managers play in mediating the effects of the law such that the submission of a claim appears to employees to be the best option.

This study also adds to and, in some areas, challenges the findings of other studies on employment tribunal claimant groups. In particular, it confirms many findings of those studies which explore the views and experiences of other discrimination claimant groups.

Finally the study allows an increased understanding of the needs, expectations and vulnerabilities of religion or belief and sexual orientation claimants. It considers the support available to and accessed by these claimant groups. It identifies barriers to justice which religion or belief and sexual orientation groups perceive, both in workplaces and in employment tribunals. In this, the study may inform and guide future policy priorities or legislative change. Future research may also be prompted to fully explore some of the issues raised by the experiences of these claimants.

4 METHODOLOGY

This chapter discusses how the qualitative research exploring the impacts of the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 was carried out. It contains an outline of the methodology used and details the stages of the research undertaken¹.

4.1 Number and types of interviews with claimants

Thirty in-depth qualitative interviews were carried out. Half of these were with claimants who had made a claim against their employer on the grounds of sexual orientation discrimination and half with claimants who had made a claim against their employer on the grounds of religion or belief discrimination. In all the cases selected, sexual orientation or religion or belief was the main jurisdiction. In most of these claims other jurisdictions were involved, for example, race discrimination, or unfair dismissal².

4.2 Development of research tools

Separate, albeit similar, topic guides were developed for sexual orientation and religion or belief claimants in order to tailor questions as closely as possible to their experiences. These semi-structured guides provided interviewers with a series of questions and probes to allow the experiences and perceptions of each claimant to be explored in detail. These guides were informed by the topic guide used by colleagues at IES for the 'experience of claimants in race discrimination employment tribunal cases' research carried out for the DTI. The DTI topic guide was in turn informed by earlier IES work with claimants of disability discrimination employment tribunal cases. Changes were made to the guide following an idea-generation session with researchers and policy makers at Acas.

The topic guides included:

- personal details
- work history
- details of employment where the alleged discrimination occurred, type of organisation: claimants' occupation, position, length of service, salary
- origins of the case, nature of the discrimination faced and its impacts
- experience and views of conciliation
- experience and views of the employment tribunal system

¹ Full details are presented in a separate technical report.

² See technical report for analysis of jurisdictions.

- how the case was settled and resolved
- impacts of the case: financial, personal and emotional
- claimants knowledge and expectations of the employment tribunal system prior to taking their case
- advice and representation, ease of access to this, the role of this in their case, choices made
- the jurisdictions of the case and claimants views on the use of these in their case
- costs and benefits to the claimant of taking the case.

4.3 Recruitment

Claimants were recruited from the records of sexual orientation and religion or belief cases held by Acas. Prior to the research beginning, an introductory letter was sent by Acas informing individuals of the study. The letter assured them of confidentiality and anonymity and gave them the opportunity to opt out. Some claimants responded to this letter expressing an interest in being interviewed but this was not a factor in sample selection.

IES then recruited four claimants by telephone, using an agreed script, for an initial pilot phase. Interviews typically took place in the homes of the claimants and were recorded and later transcribed with permission.

With very minor revisions to the discussion guides following the pilot phase, recruitment of the remaining 26 candidates took place in three further phases.

4.4 Conducting the interviews

The experiences of these claimants were intensely personal and sensitive. All interviews were face-to-face, allowing sufficient time allowed for the claimant to be able to tell their story. The lengths of interview varied from one to two and a half hours. Claimants were given the option to stop the interview at any stage.

4.5 Sensitive topics

Guarantees of confidentiality and anonymity were given at several stages of the recruitment and interviewing process in order to secure trust and openness. Claimants who had confidentiality clauses covering aspects of their settlements were not asked to divulge any details.

4.6 Interviewing those with significantly limited ability in English

Claimants were offered the option of being interviewed in their preferred language. One claimant chose to have a friend accompanying instead of an interpreter. Interpreters were also available for the recruiting phase.

4.7 Analysis

All analysis was carried out using Atlas.ti, a Computer Assisted Qualitative Data Analysis Software (CAQDAS) package. All data collected through the interviews was transcribed and coded thematically in Atlas.ti. The data was then coded a second time to allow a finer attention to detail¹.

¹ Again, full details are available in the technical report.

5 ALLEGED ACTS OF DISCRIMINATION

This chapter presents the nature of the discrimination allegedly faced by claimants; who the alleged perpetrators were and how their positions related to those of the claimants; and the perceived reasons for the discrimination. As many cases were multi-jurisdiction, and many experiences of discrimination complex, it is structured to explore the range of discrimination experiences across the two claimant groups rather than individual claims.

There were two broad types of discrimination in sexual orientation and religion or belief reported by these claimants, namely discrimination that related to the employment contract, and bullying and harassment. However, it should be noted that the distinction between the two was not always clear-cut: while some cases were firmly based on one or the other type, others were a mixture of the two. For example, some claimants felt that their employer used discrimination relating to the employment contract as a direct method of pushing them out of the organisation; equally, some other claimants felt that their employers bullied or harassed them, or encouraged their colleagues to do so, to weaken their position in fighting discrimination in the employment contract. A third group reported bullying and harassment not related to their contracts of employment or terms and conditions but related to general prejudice.

5.1 Discrimination relating to the employment contract

Claimants' cases related to a range of aspects of the employment contract, including terms and conditions, unfair dismissals and partiality in the allocation of work or benefits. The sections that follow explore examples of these different experiences of direct discrimination. The experiences of sexual orientation claimants are detailed before those of religion or belief claimants.

5.2 Sexual orientation

Disciplinary

Three claimants, although not dismissed, experienced discrimination through the use of disciplinary procedures which they all felt would ultimately lead to dismissal.

In one case, a gay male store manager felt he was being bullied and harassed by his line manager who took issue with his sexual orientation. The bullying eventually developed into various disciplinary actions and a warning. He found it difficult to get colleagues to represent him at these meetings and felt that the managers carrying out the hearings were biased. He eventually resigned as he felt this discrimination through the use of formal procedures would continue.

Another claimant had a disciplinary set in motion by his boss over inappropriate use of email and the internet.

"They'd looked at my internet history and they sort of said that I'd done so many hours on the internet which has had a detrimental impact upon

work. But they couldn't provide any proof of any detrimental impact because I was the best [of my type of] officer in terms of [performance] ... the most efficient in the team."

SO, gay, male, local authority, settled

This claimant felt discriminated against for several reasons. There was, he said, no clear policy on internet usage and it was common practice for staff to use it for personal use. It had been alleged that he sent inappropriate e-mails but the claimant said the grounds for this accusation were 'flimsy'. By contrast he felt, the grounds for others who he said were not disciplined, including the claimant's line manager, sending inappropriate e-mails was very strong: "Some of them were pornographic, the images that was being sent out, and being sent to the head of services as well." Further, his partner, who worked for the same organisation and joined the interview, added that when they asked the Human Resources department about the disciplinary, "They lied, didn't they, and said that they'd done an audit of all internet usage across the team. And they hadn't at all, they'd singled one person out which was [my partner]."

This case was one of several which raised the issue of privacy, particularly regarding disclosure of sexual orientation. The claimant's partner felt he shared the discrimination because his employer "delved so glibly into my e-mails" and after the disciplinary, he was ostracised by various people. He explained:

"As part of [my partner's] disciplinary hearing, for some reason, they found the need to go through 18 months of my sent items [in] my e-mail account ... They never explained why they did that... They pulled up e-mails, just stupid e-mails, [like] 'What do you want for tea?' ... It was almost like it was to highlight our relationship to the whole world, to the whole of HR. I sat around and just felt like they were just having a good laugh going through these e-mails, I'm sure. There was no need for them to use mine."

SO, gay, male, local authority, settled

Thirdly, one claimant, a male civil servant, faced criminal and internal investigations because of a complaint made by a male colleague. On arriving at work one day, he was arrested for indecent behaviour for an incident that happened a year before at a work social event. The claimant explained that 'theoretically a crime had occurred', but was certain that the colleague had been consenting. Although the colleague later claimed to be heterosexual, the claimant believed him to be bisexual but in any event felt that heterosexual colleagues would not receive the same treatment.

The matter was dealt with on two levels. Initially, a criminal investigation was held that lasted two months, during which the claimant was suspended on full pay followed by a brief internal investigation. He was cleared and returned to his workplace, the colleague who made the allegation moving to another department. The claimant felt discriminated in the way that the investigations were conducted and explained that heterosexual colleagues would not, and

had not to his knowledge, been investigated in the same way. Many claimants made such explicit references to heterosexual comparators.

He described the investigation as traumatic. After being arrested and booked into custody,

"... they took me to my house and searched my house and my computer and the phone bills, then took me back to the police station and interviewed me ... I thought they were particularly biased, prejudiced ... I felt that they were going out to prove it and they'd chosen to take sides with the person that was the complainant. Because it was conducted like a witch hunt in my eyes, they went round a lot of my friends [and] people I'd tutored, asking them whether they'd experienced any sort of inappropriate behaviour [from me]."

SO, gay, male, civil servant, settled

Terms and conditions

Two claimants' cases contained elements relating to the terms and conditions of employment. One claimant, a transgender employee in a male-dominated industrial environment, was refused permission to use the female toilets.

"The toilet that was allocated, that I was told was the only one that I could use, was right next to the urinals. I had to walk past the urinals to get to it. To go right in past the sinks, round the corner. They then put a 'Unisex' sign on the door."

SO, male-to-female transsexual, skilled manual, successful

A more complex case was that of a male teacher who faced discrimination from occupational health professionals also working for an education authority both during the recruitment process for his job and later with his application for a pension. He linked these two incidences because the two doctors involved were in each others' confidence and appeared to hold similarly prejudiced views towards him.

The first incident arose during the recruitment process, when he volunteered information on a medical form¹ that he was on medication for his HIV condition. The doctor contracted by his employer to administer this form proceeded to write "very impertinent letters" to the claimant's HIV consultant and GP without his knowledge, asking for information about his sexual behaviour and whether he may be considered a threat to children.

"He asked all sorts of very, I thought really outrageous questions about my sexual proclivities and did I have a history of sexually molesting boys and things like that ... I just thought that was really underhand and

¹ Completing a medical form constitutes a standard yet voluntary part of recruitment for this profession, as well as obligatory criminal records checks.

that he had no right to do that. So I felt I was being discriminated against because I don't think that he would do that of anybody else."

SO, gay, male, teacher, settled

The claimant's HIV consultant apparently refused to divulge any such information, telling the doctor that his request was unprofessional, as any such information was covered by the criminal records check. However, the claimant's GP *'willingly gave the information that was asked ... she responded in her own personal way, which was to say that 'as for his sexual activities, I have no information about that'."*

A couple of years into this job, the claimant took a year off work in order to undergo a lengthy treatment for another medical condition. At the end of the year, he decided to retire, partly because the treatment had failed and partly due to the high levels of stress in his job. He applied for an ill-health pension before resigning from his teaching position. The claimant explained that, according to the employer's procedures, his application should have been processed normally, irrespective of the fact that he had subsequently resigned. However, when he had not received a response to his pension application a month or so later, he contacted the occupational health service to follow it up.

"And I happened to speak by chance to the secretary of the [doctor who had my application] ... And she went away, came back and said I've got your file here, it says 'to discontinue' or 'do not process'. I said, 'What does that mean?' 'It means your file's closed.' ... '[Name] has resigned, don't worry about continuing his application'."

SO, gay, male, teacher, settled

Pay and allocation of work

Two claimants mentioned discrimination in pay as aspects of the alleged discrimination. In both cases, this was integrally linked to the allocation of work. One case was a gay woman working on a large-scale private sector project. Performance-related pay was in practice and she was the only woman at her level.

"[My boss] paid me less than any other person on the executive team ... this guy refused to increase my salary, they refused to pay me the bonus that I was due. Yet they paid the other people the bonus."

SO, lesbian, HR manager, settled

The other case that contained this element of discrimination was that of a male to female transgender claimant who found herself demoted to jobs far less skilled than those she had long been performing as a man. Further, despite the fact that she was a skilled shop floor worker and all the other women did office work, the employer wanted to reduce her wages *"in line with the female staff"*.

Recruitment and promotion

A further group of claimants felt that they had been discriminated against in recruitment or promotion. One had submitted a job application and recalled having talked about gay succession rights in housing at the job interview. He thought that the employer may have presumed he was gay and, being a religious body, decided not to employ him on this ground. He sent them a letter and subsequently decided that it was important to submit an ET1 claim to 'make sure' that they were not discriminating on the grounds of his (perceived) sexual orientation.

Two claimants faced discrimination in internal applications. Both felt their cases should be understood with reference to previous experiences of discrimination within the organisation or industry in which they worked. One was a female civil servant, who referred to a demotion over two decades previously because she had an affair with a female colleague. This was something she felt would not, and indeed in her view did not happen to employees in the service who had heterosexual affairs. She believed this incident stayed with her throughout her career at the organisation: it informed others of her sexuality and also slowed her career progression.

"I had a relationship, an affair with a woman colleague. The organisation took exception to this and I was disciplined and [demoted] and of course I never recovered from that, my career never recovered from that."

SO, lesbian, civil servant, settled

The discrimination that formed the basis of the employment tribunal application related to what she felt her employer earmarked as a "*job for the white heterosexual boys*". No formalised selection processes were followed, and instead of being appointed to a new consolidated position very similar to her current role and close to the work she was currently undertaking, she was appointed as "*a type of personal assistant*" in another area. This was a role far less senior than her previous position and one to which her skills she said were highly unsuited.

"This guy was heterosexual, white, Catholic I think, but I mean that wasn't an issue; but you know, he was a bog standard male [employee] and they're trying to say that he's more fitted than I? ... Here am I with [over 15 years] years service ... and they're gonna give the job to somebody who [was a few months in], on the basis that he's more fitted or qualified or greater experience or anything. He couldn't hold a candle to me."

SO, lesbian, civil servant, settled

Although she said she had faced discrimination throughout her career, she "*just put up with it ... when things like have happened to me in the past, my attitude has been well just get on with it, you know, just move on*". However on this occasion she said that she "*couldn't think of anything more blatant really that could possibly happen.*"

The other claimant similarly applied to an employment tribunal following a job application for an internal post which was he said subsequently filled by a more junior and less suitably qualified colleague. Initially both he and the other candidate were rejected for the post.

"It was advertised again – so I'm told, because I didn't see it – in a [trades magazine]. The person who I knew who'd seen it said previous applicants need not apply. About two days later, this guy's got the job. And I saw that as a deliberate attempt, by them, to stop me from getting that job, even though I was better qualified and better experienced ... And so, you know, my experience is quite vast compared to his, and I thought oh, this isn't really right you know."

SO, gay, male, senior manager, settled

He believed he was discriminated against on the grounds of his sexual orientation and because there were rumours circulating within the industry about a sexual harassment incident that was alleged to have occurred in a previous job of his.

5.2.1 Religion or belief

Unfair dismissal

A number of cases regarded unfair dismissal. In most cases claimants said that the dismissal was a complete surprise for them, although in retrospect many said that they could see tension building in the employment relationship. Many employers gave what the claimants felt were inadequate, unrelated or no good reason to justify the dismissal and this turned out later to be an important factor in submitting an employment tribunal claim.

One claimant was a non-religious woman sacked from her job at a Church-run pre-school, and the only warning or explanation she was given was a letter outlining reasons that seemed to the claimant to be insufficient and fairly trivial.

"I started my first day back at term and [my manager] called me over to see him and just sacked me on the spot ... I sat down and then he proceeded to read the letter telling me that he was dismissing me with immediate effect. And I was speechless, absolutely speechless. No warning, no you know, no verbal warnings about anything that he was unhappy with or whether he felt that I was doing something wrong, nothing, absolutely nothing."

RB, no religious affiliation, female, child carer, settled

Another example of a dismissal that occurred without warning, but related to an external event, was reported by a Muslim woman who was sacked from her job at a private healthcare clinic. While she said she had always been made to feel out of place at her workplace, she felt that there had been a definite change of atmosphere following the London bombings in July 2005. She felt she was treated with increasing suspicion and hostility and then dismissed

without notice. The employer also tried to withhold the holiday pay she was owed.

"We had our three monthly appraisal, they said everything you're doing is fine ... Suddenly the bomb happens; a week later: 'Sorry, we're going to have to let you go'. And they had a list of things which I thought, 'Where did you get them from?' I don't know, it was as if to say they'd already made their minds up, sat together, said right we'll say this, that and the other and I was out the door ... There was no warning, no written warning, nothing."

RB, Muslim, female, nurse, withdrawn

Other dismissals related to disputes about accommodating religious practices. One claimant working in retail explained how he was nominally sacked over an incident involving a fight between a security guard and a customer, in which the latter was injured. As the manager on duty responsible for first aid, he administered treatment to the customer, but was dismissed for his alleged part in bringing the company into disrepute. However, while he said his employer did not admit it, the claimant felt that his dismissal was directly related to an ongoing dispute over taking holiday booked for Ramadan.

Another claimant, also working in the retail sector, reported being similarly sacked for what he said was an unproven offence; and he too related it to a grievance that he had made against a manager who was instrumental in his disciplinary. While suspended on full pay prior to the disciplinary, he felt he was obstructed by the manager in question, who was his only point of contact, in exercising his rights to prepare for his case (e.g. obtaining a company handbook). The disciplinary, which found him guilty, was, he felt, biased against him and the punishment disproportionate for what was a relatively minor offence.

"They didn't have any evidence ... it was just basically pure speculation to fire me. And looking back at some of the other cases they had, disciplinaries had taken place, I mean they got away with a written warning or a final warning or you know, or slap on the wrist and mine was a straight 'out!'."

RB, Muslim, male, salesman, settled

A fifth case which also involved a dismissal was more directly related to an ongoing dispute. The claimant, a Hindu chaplain whose claim was ultimately withdrawn, became aware that deductions were being made inappropriately from his salary and that this had been going on for the previous two years. He confronted his line manager, who was a chaplain of another religion and, following an argument over the issue, was dismissed from the job.

Finally, one claimant was dismissed between signing a contract for a job and starting work.

"I was employed, [but] I was told not to come in on the day that originally was stated [and] to await further instructions ... I think I had a letter about two days following, giving me a date to go into the

*personnel [office] ... I had no idea what they were going to tell me at all, just went in completely blind ... And they more or less dismissed me [within about two sentences] ... They told me that because my partner's previous wife was at that college working, then I was dismissed."*¹

RB, Christian, female, FE teacher, struck out

Informal agreements and terms and conditions

A number of claims were also rooted in changes to the terms and conditions of employment that occurred after the claimant had joined the organisation, or in changes in the organisation leading to the employer renegeing on a previous agreement or making unilateral changes to existing working practices. Such changes that discriminated against their religion or belief were felt to be particularly unjust. Claimants in this position invariably felt that the onus should be on the employer to accommodate them within or alongside the new practices, rather than for employees to adapt their religion or belief to changes over which they had no influence.

One example was a Muslim engineer whose job centred on contracts that could involve a substantial amount of travelling. The changes this claimant reported involved less discretion in the allocation and management of contracts and job intensification in the form of more contracts per employee, longer working hours and more travelling, often for no extra pay. The claimant first experienced problems with the new system during Ramadan, when he told his employer that he would prefer not to work away from home during that time, as it was difficult to manage his fasting when staying in a hotel. Management, he said, would agree verbally, and then proceed to send him on assignments anyway. In one instance he said that the employer agreed that he could do paperwork instead of travelling, but later accused him of using his religion to get out of doing work.

"I told them it's quite hard, because when you start your fast ... it's quite hard to do in a hotel room ... four o'clock in the morning, where are you gonna go and find some food? So, I told them that, it's not feasible for me to go."

RB, Muslim, male, engineer, settled

The situation was exacerbated further when the employer refused to allow him to take a holiday, which he had requested with the required notice and had previously been granted, and then, *"On the day that they refused me holiday, I found that someone else booked the same day a couple of days beforehand, and for some reason he was given the holiday."* Even though the claimant had the paperwork documenting approval of his holiday, the employer apparently

¹ It should be noted that this claimant applied for an employment tribunal under the religion or belief discrimination jurisdiction because she could not claim unfair dismissal, being employed by the organisation for under 12 months. The link to religion or belief was, she reported, considered tenuous and the application was rejected.

denied having approved it: *"They just turned round and said 'No, we didn't'... That's all I got off them."*

Another similar claim regarded a sales and business manager being prohibited from taking his holiday for Ramadan. Under a previous manager, he had adhered to the company policy that a period of leave of more than three weeks had to be requested one year in advance and had his holiday approved. However, under a new manager, he was told that, due to the nature of his role, and because the busy retail period of Christmas was pending, he could not take this leave. Eventually, he was dismissed as *"a means of managing me out of the business"*.

Promotion and recruitment

Although some acts of discrimination, most notably some of the dismissals, were one-off events that came as a surprise to the claimants, some claimants reported experiencing discrimination over prolonged periods. Two such claims related to internal promotion, both of which were non-Catholic teachers being passed over for promotion in Catholic schools.

One noted that he had been passed over for promotion numerous times. He said that he had felt clearly discriminated against as a non-Catholic for at least the three or four last years of his ten years service. Internal jobs he applied for were, he said, consistently given to Catholic-approved teachers much less experienced than himself.

"I know I gave excellent interviews, [but] I knew before the interviews were finished who was getting the job; I had told everybody who was getting the job ... We have a system in the school called preferred candidate ... the pet person of the head teacher ... I don't think it's formally recognised, [but] it's quite obvious, in the school that I teach – or I taught, should I say – that you could tell who was going to get the job before the interviews took place. It was as cut and dried as that. It was jobs for the boys."

RB, non-Catholic, male, teacher, successful

The claimant had also felt discriminated against in the allocation of resources to his department and in the setting of his timetable. His frustration at this situation led to him requesting transfers to other schools, but he said he was always turned down. For one external job application he made, he recalled that his head teacher provided a weak and unsuitable reference with, he felt, the aim of keeping him at the school, in his current position, because of his strong performance record and success with the students.

The trigger point that ultimately led to his application to an employment tribunal was related to an internal job application he made for a senior pastoral and teaching role. He felt he was particularly suited to the job but he said he knew in advance that the promotion would be given to a Catholic teacher with less experience. Aware of the recent religion or belief legislation, he applied for the job as an expression of his right to do so. The head teacher refused to consider his application.

"I made my application directly to the headmaster who refused to interview me on the grounds that I wasn't approved by the Catholic Church ... He said to me, 'I'm not giving you it. I'm not interviewing you.' I said, 'Well I'm sorry, I'm not accepting that, I've had the courtesy to give you in writing that I want the job, you have the courtesy to give me in writing you're not giving me the job.' 'I'm not doing that. I'll have to ask you to leave my office.' I refused to leave his office. I said, 'Let's discuss this. I want to go through this with you step by step ... You have no right doing this, you have no right in not giving me a chance to get the job. I should be interviewed for this job, I'm demanding an interview here.' He said 'I'm not doing it'."

RB, non-Catholic, male, teacher, successful

Likewise, the other teacher working in a Catholic school said he had been passed over for promotion previously, although he had accepted the explanation that the job was given to a better candidate. He also alleged discrimination in the persistent under-funding of his post, being told that the funds were not available to pay him fully for the job he was carrying out in contrast to the position of other teachers.

The claimant said that the pressure mounted over time, but the tipping point came when he was the only eligible person to apply for a senior teaching post and was not given the job. He concluded that this was unfair discrimination because, as he said, he was the only eligible claimant, he felt he had an excellent record as a teacher and was highly suited to the post, and he was given no good reason by the head teacher as to why he was not given the post.

"I applied for the post ... And I went and spoke to the head teacher about the interview and was told not to worry about it, it would be a standard [interview] ... I went in for the interview on the Friday morning and was called down a couple of hours later to be told that I hadn't got the job ... I was aware after it that he had not carried out the procedures properly of the interview ... He had failed to write a head teacher's report on the candidate's suitability for the post, i.e. me ... he had failed to say anything about the job that I had done for the last 6 years. So they had no prior information about the level that I'd been working at or indeed the way that I'd been carrying out my responsibilities."

RB, non-Catholic, male, teacher, withdrawn

Finally, one claimant had filed a claim on the grounds that he had been discriminated against in recruitment. He was not interviewed or short-listed for the post, for which he believed he was highly qualified, and felt that this was due to his name being obviously Arabic.

"I thought at least – I'm not saying that I should get the job – but at least with the experience I've got, at least to be short-listed for an interview ... I phoned them, I tried to get an explanation why I wasn't short-listed and ... they just put the phone down ... busy, can you ring later? Can you do this? Can you do that? ... I rang them maybe 5/6 times. The last time I phoned them I was very strict, I said if I'm not going to speak to the lady, I'm going to make a formal complaint."

RB, Muslim, male, translator, withdrawn

5.3 Bullying and harassment

Many claimants referred to experiences of bullying and harassment. For some this had been tolerated over significant periods of time. Experiences of harassment included: verbal and physical abuse, intimidation and sabotage of work.

The sections that follow, on sexual orientation claimants and religion or belief claimants, outlines their experiences of bullying and harassment.

5.3.1 Sexual orientation

Of the fifteen sexual orientation claimants interviewed, eight said that they had faced outright bullying and harassment at work. In addition to this, some of the claimants who faced discrimination through disciplinaries felt that the disciplinaries were used as a means of harassment, for example to force resignation.

A male to female transgender claimant said she was subjected to a barrage of bullying and harassment at work that persisted for two years. This included a colleague "*flashing his private parts as I walked past the toilets*"; demeaning questions about her sexual practices and transgender operation, such as "*So did you have your willy chopped off?*"; and colleagues deliberately making mistakes in their work and blaming it on her.

"They literally forced me out of a job ... Like taking the Mickey, poking fun all the time ... I started my real life test as in living a year in the gender that I required to be and they made it as difficult for me as ... The tea room – that was the best part. I chose to stay in there, eating my lunch, sandwiches, and every tea time there was remarks about gays and filthy remarks about women, which I found very degrading ... After I told my employer, then they started keeping records on everything I did and I was put on [a very basic unskilled job]. And I told my employer that due to the hormone treatment that I was taking, I will lose body strength. And they just totally dismissed it. 'If you don't do this job, you're fired, you're sacked, there's no point in you being here'."

SO, male-to-female transsexual, skilled manual, successful

Bullying and harassment usually took a range of forms in each case, the perpetrators often using various different tactics to belittle, intimidate, offend or otherwise make life difficult for the claimants.

The most frequent form of bullying from colleagues was verbal abuse, which included comments about claimants' physical appearance and clothes, as well as taunting over their sexuality, and which could also be done in front of customers and other colleagues. One claimant was observed:

"[My boss] said he didn't like my hair, he touched my hair at the first meeting. He didn't like my glasses, he said he didn't like what I wore either ... He would just constantly bully and harass me in front of everybody ... He punched me in the arm in a meeting once, and told me I wasn't a woman, because I am a gay woman ... And it just didn't stop, and I actually asked him to stop doing this ... He screamed once at me which was so embarrassing - I hate your glasses, why can't you wear more feminine glasses, you're so aggressive."

SO, lesbian, HR manager, settled

Another lesbian claimant, in the civil service, also referred to being considered masculine, some managers not being able to look her in the eyes and general unease around her by some male colleagues. Gay male claimants also reported verbal abuse. One store manager said his line manager constantly referred to him, and only him, as 'flower' despite his objections and also at times caricatured gay men in his presence: *"making camp gestures which I thought was really odd [as I don't see myself as a camp man]"*.

Mild yet degrading physical abuse and the threat of violence were also common for some claimants. Harassment from colleagues could also be more covert, for example ostracising the claimants and obstructing their work. Two heterosexual claimants who were perceived to be gay reported being subjected to quite extreme abuse over a period of time. One man in the hospitality industry, who settled his claim, initially had *"silly comments whispered into [his] ears"*, colleagues would talk in *"a girlish way"* around him and this progressed to *"they would ... put [tools] up my behind and just joke about it all trying to make out it's like a normal [working] life. But it's not ... and then ... [a senior colleague] tried to grope me."*

A second heterosexual claimant who was a manual worker reported having to do jobs that did not need to be done, having his work knocked over or moved. In his view this persisted in an attempt to make him resign.

A gay salesman gave an example of both verbal and physical abuse:

"One of the people there was quite homophobic ... He always used to call me 'batty boy' and used to wind me up and say things. Nine times out of ten times I just used to ignore him, but he used to keep on doing it quite a lot, calling me 'batty boy' and doing things. He used to slap me around the head a couple of times ... [Another member of staff] kept on winding me up ... he threatened to hit me. I said, 'I advise you not to'. And then [he] went to actually chase me."

SO, gay, male, salesman, struck out

One claimant, a gay male civil servant (transport) who was only partly 'out' felt harassed by comments made about members of the public who regularly

entered their offices. He said that he worked in a male-dominated environment where sexism and homophobia were long tolerated.

"It did start getting to me after a while, just the endless comments and the first time I complained to a senior manager ... was about a young [male member of the public]. And this was at lunchtime and we were in the smoking room and there was about five of us in there and this young man was coming in ... and he had to walk across the courtyard and he was obviously very effeminate, gay. And it was just rank abuse of him ... [and they were saying,] 'Come and see this, at the window. Have you ever seen that?' ... and then it started: 'Oh there's that such and such again, he's a big queer, blah blah blah' and putting on a mincing voice. And I just sat there squirming, basically."

SO, gay, male, civil servant (transport), settled

For many harassment cases, the pressure on the claimants built up steadily and the incident that proved the tipping point was not necessarily much different from any other.

Finally, in some cases the harassment started with one colleague and spread. One claimant was bullied and harassed by a male colleague with whom she had previously had an affair, despite the fact that 'my preference was for women'. Among other things, he spread rumours about her sexual orientation and rumours that she was having an affair with her new boss. He also verbally abused her when he was sure no one else could hear. She felt generally ostracised: people stopped talking to her directly; and people stopped talking when she approached and started talking in low voices and laughing when she had passed.

One key incident occurred while she was showing a supplier round the factory. She saw the colleague in question talking to an employee with learning difficulties, who she thought was easily led astray. The colleague then disappeared and the employee with learning difficulties started barking at her incessantly. She approached him, telling him to stop and that it was highly inappropriate. She was in no doubt as to why this had happened, as the colleague she had had an affair with "*was on this other piece of machinery as I walked past later on he was sort of sniggering. So I knew he put this guy up to it, I just knew it, it was as clear as day.*"

5.3.2 Religion or belief

One claimant's case was based on two incidents of offensive comments about Jewish people at the start of her employment. During her induction training for the job, which was in security, one of the instructors made offensive comments about Jewish people whilst describing methods of searching [customers] of different ethnic and religious backgrounds.

"[A trainer] was giving a lecture to the class on appropriate ways to pat down any ethnic clothing ... He was talking about possibly turbans or garments, and that point was relevant stuff, I mean you have to know how to respect people when they come through [security]. [But] he went off on a tangent and he started to talk about the Hasidic Jews, the

very religious ones, you know with the curls and the hat. And I don't know where this came from and it had nothing to do with the lesson, but he started to get very derogatory about it and talking about their sex life and their marital practices. And it was rude and crude and vulgar and I couldn't believe what I was hearing pretty much."

RB, Jewish, female, security officer, settled

Having decided to 'let it lie' that time, she then encountered another offensive comment about Jews at the beginning of her first day on the job: *"I was waiting to go on shift with the group ... and some guy from the security department basically just shouted out at the top of his lungs a Jewish joke."* This claimant felt that her experiences related largely to religion but also included a race element.

Another claimant, who eventually submitted under both religion and race jurisdictions, experienced prolonged and at times subtle bullying and harassment while working night shifts, restocking shelves at a supermarket. The bullying was based on the fact that she was Irish and a consequent assumption that she was Catholic. The bullying started within her first few shifts of work, when the supermarket held its staff Christmas dinner.

"... you had to sort of trundle in, you know they had 3 or 4 settings, everyone had to get back to work afterwards. And I went in and someone said, pointed me to a seat, and I sat down because I didn't know anybody. And suddenly a woman sitting across – like you are from me, only except nearer – looked at me and said, 'Don't you know what a knife and fork is? Or are you Irish?' And I started looking round, was she speaking to me or was there somebody else? And I knew everybody had heard, but everyone was sort of looking in different ways and there was a manager sitting right next to her and he actually stopped talking to the person he was speaking to, because he heard, and he sort of looked around at her, and then looked away again. And nothing happened, he did nothing, said nothing."

RB, non-practising Catholic, female, shopworker, settled

As time went on, the claimant realised that a number of her colleagues were complicit in the bullying and felt a complete lack of support. She thought that *"it was all done, I think to break your confidence and just to drive you out really"*. The acts of bullying included: colleagues persistently being uncooperative with her; unfair criticism of her work; and covert obstruction of her work.

"Because of my size, I'm not very tall, we had to have these [portable steps] to get on the thing. And ... I'd look back and my steps were gone... What they used to do was they'd hide it because then I couldn't carry on with my work because I needed it to get to the top shelf. So I was spending an hour looking for another one and trying to borrow one and nobody would give you one. And eventually I caught one person and [I knew he had taken my steps] because there was writing on it ... And he took it, and he hid it under his jacket on his trolley. And because

I'd already had problems with him, I didn't approach him and he was a union rep. So basically he was involved in this as well."

RB, non-practising Catholic, female, shopworker, settled

The harassment became more confrontational after another incident of obstruction, when a colleague removed the cage she was using to distribute her stock.

"As I went to pull my cage back, she then turned round and came back with her fist up like that, shouting, 'I'm sick of you, we don't want you here,' all that sort of thing. And as she was coming towards me, I was backing off because I actually thought she was gonna hit me. And then suddenly she turned around, she turned around and marched off."

RB, non-practising Catholic, female, shopworker, settled

Harassment during disputes

Bullying and harassment also occurred alongside other act of discrimination or during disputes over terms and conditions. There were two significant examples of this and both of these claimants eventually submitted religion and race jurisdiction claims.

The work regime of one claimant was changed so that it became difficult for him to fast during Ramadan. At one point, he said that his boss asked his fellow colleagues to report on the detail of what he was doing, when he arrived for work and when he left. This isolated the claimant and put pressure on him to compromise his religious practices and conform to the company's new practices.

Another case was a Muslim employee in the retail industry who had experienced problems going to Friday prayers and who claimed unfair dismissal. While at a bank a few days before his dismissal, he bumped into the manager who would be leading his disciplinary.

"He acknowledged me, 'Oh, hello' ... and then what he did is he waited ... towards one side until I'd finished and he came outside and the conversation that took place with me and him was: 'It would be in your best favour to resign. Because I've got no control over the decision on Thursday' ... I think it was to scare me more than anything else."

RB, Muslim, male, salesman, settled

Similarly, when he brought back the keys to the shop after he had been dismissed, the same manager waited until they were outside and advised him not to appeal against the decision.

5.4 Actors involved in discrimination

The range of perpetrators of discrimination was similar for sexual orientation and religion or belief cases.

Some cases strictly regarded one person who had discriminated against the claimant, for example, a claimant whose boss had been illegally docking his wages and other claimants who were unfairly dismissed by a new boss with prejudiced ideas.

Often, however, claimants found that acts of discrimination by one person were actively supported by groups of managers or the employer as a whole, or passively supported by failing to help the claimant stand up to the discrimination. Almost invariably in these cases, claimants felt that the prejudice and discrimination was approved or even agreed upon. Claimants often said that the employer appeared to want minimal fuss and supported the discrimination because it saw the quiet removal of the claimant as the easiest option.

In many harassment cases, the perpetrators were other colleagues, but in some the problem lay with the claimants' line managers. In either case, the main perpetrators were often popular or influential people at the workplace and there was evidence in a number of cases of other colleagues being drawn into the discrimination. No examples of harassment or bullying by a client were given, although one claimant reported discrimination by two occupational health professionals contracted by his employer.

5.5 Reasons for discrimination

In order for a claimant to be successful in a religion or belief and sexual orientation employment tribunal claim, it is essential to demonstrate not only that their employer treated them unfairly, but that the reasons for their treatment related to their religion or belief or sexual orientation.

The sections that follow consider the reasons given to sexual orientation and religion or belief claimants for their discriminatory treatment and the views of the claimants about these. Many concluded that there was no relationship between the reason given and the actions experienced.

5.5.1 Sexual orientation

Denial or 'false' reasons

Discrimination was sometimes denied outright by the employer, or not discussed at all. Nonetheless, for many of the claimants in these cases it seemed clear that they were being discriminated against because of their sexual orientation.

One claimant, a gay male teacher, referred to 'red buttons' going off in the mind of a doctor contracted by his employer on the basis of honest information about his sexuality and his HIV status which he had been asked to give in his application form. He said that this "*irresponsible medial professional ... then used that information ... as an opportunity to exercise all his base prejudices and preconceived ideas.*"

Many other gay claimants reported routinely noticing unfair treatment relative to their heterosexual colleagues. Relationships or sexual contact resulted in

disciplinary action for two claimants who were adamant that heterosexual colleagues would under no circumstances be treated in the same way. In both cases the employer did not overtly relate their treatment to the sexuality of the claimants but referred to issues of seniority or consent.

A further claimant felt that her sexual orientation was an issue in terms of her level of pay. She observed that as "*the only woman and the only gay woman*" she was on the lowest pay of her team. Her boss allegedly denied discrimination and said she was being paid what she should be paid. This claimant said that she found this hard to accept given his discriminatory attitude:

"He made it quite clear to me in front of everybody that he didn't want gays in the [workplace]. He didn't want 'pink pounders', and he would always refer to me."

SO, lesbian, HR manager, settled

A final claimant, whose case regarded discrimination in recruitment, also felt that he was meeting prejudice against homosexuality beyond his individual application or performance record. He referred to his industry as 'reasonably small and closely knit' and said that 'senior players' had been openly homophobic in the past. A dismissed accusation of sexual harassment against him by a more junior employee in an earlier post was, he believed, preventing him from obtaining a new post.

Forcing resignation

For a number of claimants with bullying and harassment cases, it seemed clear to them that the aim of the discrimination they faced was to drive them out of the organisation. The same was also true for some claimants whose cases related to disciplinary action.

Two reported a direct attempt to force a resignation through 'unjust and humiliating' disciplinarys. One claimant, a gay man of Asian origin, said he felt that it was "*just victimising me because of who I am*". He went on to explain that he thought their strategy was to push him to resign rather than dismiss him.

"They were pushing me out, like making me feel so uncomfortable and almost unliked that I had to find another job. Because I [think they] knew that if they sacked me then yes ... I'd even [sell my house] ... to get myself a lawyer, so I can take them to court."

SO, gay, male, local authority, settled

One claimant, who had worked in a factory, believed that two of his colleagues doing the same work harassed him to oust him from the organisation to protect their own jobs.

"They basically did everything they could to force me out the door. So they used sexual orientation, or anything, to try to make me hand my notice in. When I worked there, my boss was telling me to do like so much an hour, and they were telling me not to. And I was doing more

than they were and they thought it made them look bad ... Because every year in January, February, a lot of people get laid off; so if they got rid of me, that's more work for them. That's how it started."

SO, heterosexual, male, skilled manual, withdrawn

As with the religion or belief cases, some sexual orientation claimants felt that their own strong personalities made them stand out as targets for victimisation. However, some claimants also felt that the main reason for their discrimination was simply the aggressive or unkind personalities of the perpetrators.

"She used that to try and break my spirits, that was to try and break me as a human being, as any bully does and also to use the one thing that may be a sensitive issue, which would be being gay ... She, I think by nature, was a very aggressive woman. I wasn't the only person that was getting bullied and harassed ... most managers, 60 per cent of the managers were getting bullied and harassed."

SO, gay, male, retail manager, settled

5.5.2 Religion or belief

While all these claimants had applied for an employment tribunal under the religion or belief regulations, certainty that the discrimination was related to their religion or belief varied substantially: the cases with the clearest reasons for discrimination centred on harassment in the form of blatant discriminatory remarks; other cases were based on acts of discrimination relating to covert prejudice or prejudice that was merely hinted at.

Some claimants felt completely sure that religion or belief was at the core even though no reason had been given by the perpetrator; others said that they could only assume that their religion or belief was the reason, because no other explanation made sense.

Further, it should be noted that for several claimants, the issues of race and religion could not be separated such that the religion or belief jurisdiction did not suffice.

"Well, to me both go hand in hand ... because overwhelming majority of the Asian community or the ethnic community is Muslim."

RB, Muslim, male, doctor, struck out

This was true in particular for people of Asian origin, but also for one Irish claimant, who felt that the people discriminating against her assumed that she was Catholic and discriminated against her equally on this ground.

Covert prejudice

In a number of cases, the employer presented the discrimination as entirely fair, its justification resting on what the claimants felt was fabricated evidence

and no other reason ever being mentioned. In other cases, employers made no attempt to explain the discrimination and ignored the claimants' requests to do so.¹ For example, one claimant who was working at a private practice felt that false reasons were given for her dismissal.

"They just said, 'Well we don't think that you're up to the standards of [this] practice and you know we have told you several times to do things the [name of practice] way'. And I said, 'But you only told me last week [at a quarterly appraisal] that what I was doing was fine.' They go, 'Well we're sorry about that, we're discussing your dismissal here now.'"

RB, Muslim, female, nurse, withdrawn

Thus, a number of claimants could only conclude that the discrimination was motivated by differences in religion or belief through a process of elimination. For example, a claimant who was unfairly dismissed explained:

"[My boss] didn't like me being Muslim and himself being Hindu, and the guy below me was Hindu. So [it] just didn't click ... I mean that's my assumption and that's my thinking, that this was the reason they got rid of me ... I had 30 years of experience and there was nobody in that [workplace] with that kind of experience in IT. So it could not be technical, and it could not be me being rude ... All I can think of is I'm a Muslim. The only reason they said to me was 'We have to re-organise the department' [which was clearly untrue]."

RB, Muslim, male, IT manager, settled

Similarly, when another claimant, a teacher, asked his employer why he had not been appointed the job for which he applied, "All he would say to me was that I didn't meet the quality threshold, which he couldn't actually define." He said he could only assume that his religious difference was the reason.

One claimant, whose case regarded not being interviewed for an externally advertised job, again felt that he was not given a true reason:

"I think it was because of my name ... because it shows that I'm Muslim ... I applied for job with my name, I was turned down."

RB, Muslim, male, translator, withdrawn

This claimant felt that racism and religious discrimination was commonplace in the UK, especially in recruitment. He had encountered numerous situations in which he suddenly met a brick wall while applying for jobs when he mentioned his name, making his religious and racial differences apparent. Nonetheless, he stressed that it was very difficult to prove that this was the case, as there is no obligation on employers to disclose why certain people were or were not offered employment.

¹ Often these claimants felt particularly wronged because they had not been given a sufficient reason for their maltreatment.

Some other claimants, all of whom submitted under religion or belief and race jurisdictions, situated the discrimination they had faced in a broader societal context. One doctor felt that white professionals in his sector were protecting people of their own race and colour and that doctors of ethnic minorities were treated 'like dirt' by their employers and trade unions. Further, he felt that a biased legal system allowed this workplace discrimination to continue.

Overt prejudice

Several claimants felt more certain of the reasons for their discrimination, although establishing the link between discrimination and religion or belief often required a look at the preceding history and the context in which the acts had occurred. A recurrent theme was discrimination that in itself was not clearly related to religion or belief, but which followed a dispute over terms and conditions of employment that related to the claimant's religion or belief such as taking leave during Ramadan or facilitating fasting requirements.

There were also claimants who were clear about the reasons for the discrimination against them on the basis of hints or outspoken comments they had received. This included bullying and harassment that was interspersed with insulting comments about the claimant's religion or belief, as well as claimants who had clear confirmation from the perpetrators of the reasons why they were being discriminated against.

Personal and organisational reasons

Some claimants believed that part of the reason they were discriminated against related to personal factors and individual circumstances as well as prejudice based on their religion or belief. For example, a claimant who was unfairly dismissed felt that she was discriminated against primarily for being a Muslim. However, she thought that 'another factor for me to go' was that the woman for whose maternity leave she was covering wanted to return to work much earlier than had been expected.

It seems likely in several cases that the difference of religion was one of various reasons why claimants did not 'fit in' socially with their colleagues or the organisation. This, in some cases, seemed to create a dynamic whereby the claimant was forced to stand up for themselves and be 'a strong character' in not compromising on their religious differences and needs. In turn, some claimants suggested that this increased management disapproval and exacerbated their discrimination. This lends support to the view expressed by some claimants that many employers wanted to avoid confronting discrimination and prejudice, and saw the most straightforward option as ousting people who would not conform to the prevalent culture. One claimant said that his colleagues didn't like 'straightforward talk', another felt he was unfairly dismissed because he was seen as a troublemaker, in part because of his religious difference and the fact that he wore a turban.

However, a desire among employers that the religiously different would 'fit in' with the rest of the organisation was not only expressed on a personal level according to several claimants. Where business or organisational demands became urgent the pressure was placed, in the first instance according to a

number of claimants, on religion or belief entitlements. One claimant explained that his employer tried to remove the right of employees to attend Friday prayers when it became a problem for staff numbers.

“Well, he took on some new staff, they recruited some new staff who were also Muslims as well. This issue about Friday prayers was starting to get out of hand for them, because originally ... there was about two or three of us that were going. Now all of a sudden the majority are Muslim people working there, all wanting to go for Friday prayers. Now they couldn't do that, they just couldn't do it, they couldn't let everybody go, so obviously there was now an issue for them.”

RB, Muslim, salesman, settled

5.6 Comparing religion or belief claims with and without a race jurisdiction

It is worth investigating whether claimants that drew upon both the religion or belief and race discrimination legislation reported different forms of or reasons for discrimination than those who drew only upon religion or belief discrimination. For example, it may be hypothesised that there are differences between two groups in the frequency of alleged harassment or discrimination relating to terms and conditions. It may also be hypothesised that those who drew upon both pieces of legislation had a less clear idea of the reasons for their perceived discrimination, or did not distinguish between racial and religious discrimination in their cases. These questions and the limitations of the data to answer them are now explored.

Alleged discrimination relating to terms and conditions

Among employment tribunals claims concerning terms and conditions, there were no clear differences between cases that used the religion or belief legislation only and those that used both religion or belief and race discrimination legislation. Both groups included cases that focused on the refusal to accommodate religious practices, dismissals and (internal or external) applications for jobs. It may be that generalisable differences do exist between these groups, but none have been identifiable from this research. Quantitative rather than qualitative research is better suited to investigate such areas.

Alleged harassment

Of the cases that focused on alleged harassment, more drew upon both the religion or belief and race legislation than solely the religion or belief legislation (three and one respectively). Of these, two cases (one from each group) were mainly based upon alleged discrimination regarding terms and conditions and included harassment as a secondary area. Thus, the only two religion or belief cases that were mainly based upon alleged harassment also drew upon the race discrimination legislation.

There may be good reason for this, as alleged cases of harassment often relate to various areas, the perpetrators using all the 'ammunition' they can on the

recipient. However, with such small case numbers, it is impossible to make any such generalisations that are reliable.

Perceived reasons for discrimination

No generalisable difference was discernible between religion or belief only cases and religion or belief and race discrimination cases in the variety of perceived reasons for discrimination or the clarity with which claimants linked the alleged discrimination to their religion or belief. Both groups included claimants who were unclear or felt unsure about the actual reasons for their treatment.¹ Equally, both groups included claimants who cited specific reasons relating to their working relationships and history as well as reasons relating to their religion.² However, this does not preclude the possibility that such differences exist and a numerically superior study may reveal such trends.

5.7 Summary

5.7.1 Sexual orientation

Several sexual orientation cases regarded discrimination relating to the employment contract. These included employers who claimants felt were either using the disciplinary procedure to remove them from the organisation, or planning to escalate the disciplinaries to a sacking. These claimants invariably felt that the way the disciplinary procedures were used, and the judgements that were made, were disproportionate to the professional mistakes of which they were accused and, notably, that heterosexual colleagues were treated differently. As with the religion or belief cases of unfair dismissal, they also felt that the reasons given for the use of the disciplinary procedures veiled prejudice on the grounds of their sexual orientation.

There were also sexual orientation cases that related to discrimination in recruitment, pay, pension entitlement and working conditions. The situations differed substantially in nature, but in many it was assumed or suggested that the claimant could not do their job as well as other colleagues because of their sexual orientation.

Bullying or harassment was a dominant theme in the discrimination described by sexual orientation claimants. This often went hand-in-hand with victimising behaviour and the disrespectful treatment of claimants was not always limited to aspects of their sexuality. Bullying and harassment most often came from claimants' colleagues, but claimants typically felt that their employer was also complicit by virtue of not dealing with the problem sufficiently. Bullying and

¹ These claimants generally thought that they had faced covert prejudice and often used a process of elimination to link their treatment to the RB legislation (ie no other reason made sense).

² Examples of claimants who gave 'personal' reasons for their treatment included: those who were competing with colleagues for jobs or clients; a claimant who was living with the ex-husband of an influential employee; and a claimant who was 'seen as a troublemaker' for protecting other employees' rights.

harassment usually took a range of forms in each case, the perpetrators often using various different tactics, including verbal abuse and ridiculing, for example acting 'camp' as if to mimic the claimant, obstructing behaviour, physical aggression and humiliating physical acts.

5.7.2 Religion or belief

Unfair dismissal was a basis for many religion or belief discrimination employment tribunal claims. Sometimes these dismissals were unexpected by claimants; at other times, they believed it was an inevitable consequence of long-term disputes relating to terms and conditions of employment. These claimants tended to feel that their employers generated false reasons for dismissing them; the real reason being that the employer was prejudiced against their religion, was unwilling to accommodate their religious needs, or wanted to replace them with an employee who was of the same religion as the majority in the organisation.

Discrimination in the terms and conditions of employment was also common among religion or belief cases, often relating to an employer refusing to accommodate claimants' religious needs. Claimants generally felt that their employers were partial in the way they respected religions, for example in allowing employees to take time off for Christian festivals but not Muslim festivals. Further, a common sentiment was that claimants were being pressured to put their work routines before their religion. Thus, it seems likely that some employers took an attitude that employees in religious minorities should conform to the 'normal' working regime and not cause trouble by demanding exceptional treatment.

Bullying and harassment was less apparent among the religion or belief cases included in this study. Where it did occur, it was often a form of intimidation during a dispute relating to aspects of the employment contract. In this way, several claimants felt that their employers were discouraging them from pursuing their case on the grounds of religion or belief. Besides these cases, there was one case that centred on anti-Semitic comments and one that centred on anti-Irish and anti-Catholic comments in conjunction with covert harassment and bullying largely by colleagues.

5.8 Commonalities and differences between sexual orientation and religion or belief cases

The range of acts of discrimination alleged in sexual orientation and religion or belief cases was similarly diverse. In both types of case, examples were given of unfair use of the disciplinary procedure, unfair treatment in the terms and conditions of employment, discrimination in recruitment or promotion, and bullying and harassment.

However, in general, bullying and harassment was a more dominant theme in the sexual orientation cases than in the religion or belief cases included in this study, with a number of religion or belief cases revolving around discrimination relating to terms and conditions and aspects of the employment contract. Sexual orientation claimants commonly felt that they were being encouraged to resign from the organisation through a variety of means. While this was

often simply harassment, it sometimes included the unfair use of disciplinary procedures, or other discrimination relating to the employment contract. Thus, in several sexual orientation cases, although the case focused on discrimination relating to the employment contract, the claimants felt that it was essentially about bullying and harassment. They believed that the employer was trying to force them out of the organisation without actually sacking them. By comparison, religion or belief cases were less centred on bullying or harassment. Where this had occurred, claimants often did not feel that bullying had been the main issue at stake, but that it was secondary to equality and fair treatment in the employment contract.

One likely reason for this difference is that prejudiced comments about people's sexual orientation may be more socially acceptable than those about people's religion, especially if there is an obvious link between a person's religion and their race or nationality. It seems that in many working environments, a person's sexual orientation is considered 'fair game' for banter and ridiculing in a way that cultural differences of religion and race are not. Several claimants made this observation and one speculated that the discrimination he faced would not have been accepted in his working environment if it had been about race.

A second implication of this general difference is that the reasons for discrimination may tend to be more openly acknowledged in sexual orientation cases than in religion or belief cases. Religion or belief claimants more commonly said that they were given spurious reasons or no reasons at all for their unfair treatment potentially making it more difficult to establish the reason for the discrimination at employment tribunal.

6 FROM WORKPLACE DISPUTE RESOLUTION PROCEDURES TO EMPLOYMENT TRIBUNAL CLAIMS

Since 1 October 2004 the Employment Act 2002 (Dispute Resolution) Regulations 2004 introduced new rights and responsibilities for employers and employees. Minimum procedures for resolving grievances, disciplinary action and dismissal must be in place in all workplaces and employees are required to meet certain rules in order to submit an employment tribunal claim, for example grievances should have been submitted in writing at least 28 days prior to submitting an employment tribunal claim. An earlier right to representation (in 2000) in these internal workplace hearings was also established¹.

The available research tells us that although most workplaces do have these formal procedures in place there is "*a stark contrast between formal procedures and informal arrangements for dispute resolution*"² Less than half of the workplaces surveyed for WERS 2004 applied the statutory '3-step' procedure.

This chapter has been written to explore the presence and operation of these procedures as perceived by the sexual orientation and religion or belief claimants. It focuses on attempts made by claimants and managers to resolve workplace discrimination issues. It explores the actions of claimants and their experiences and perceptions regarding the operation of internal grievance and disciplinary procedures and practices. This chapter also considers the outcomes of these processes and, where resolution attempts fail, discusses the decision to submit an employment tribunal claim and the experience of doing so.

This chapter relies on the views of each claimant about the operation of the grievance and disciplinary procedures at their place of work. It finds that either internal procedures operate or are applied in a highly random way in these workplaces or there is great general confusion amongst claimants. In many cases both disciplinary and grievance procedures were reported to have been invoked in parallel or in relation to each other so there is an important and complex inter-relationship to be explored.

6.1 Complaints, grievances, disciplinaries and appeals

Following the act or acts of discrimination, most claimants reported attempts to resolve matters from within their organisations. This included the taking of informal and formal grievances. The type of action taken depended, in part, on the nature of the alleged discrimination. In cases where the discrimination was perceived to be by colleagues, or was part of a prolonged or repeated series of events, there was often some involvement from line or senior managers. Those claimants who had been dismissed instead invoked their right of appeal. The

¹ It is important to note that at the time of writing a DTI consultation exercise was taking place following the publication of the March 2007 Gibbons review of employment dispute resolution in Britain.

² WERS 2004, p.216.

section that follows details the grievance experiences of sexual orientation and religion or belief claimants.

6.1.1 Sexual orientation

Claimants who submitted claims under the sexual orientation regulations had varying experiences of internal grievance procedures. Typically, it seemed, claimants tolerated some forms of discrimination and harassment over prolonged periods with little or no complaints. In many cases however a one-off incident or allegation, often following a change in management, which was perceived to be particularly biased or unfair triggered an informal or formal complaint about that event and the entire discrimination history that preceded it. In some cases that incident or allegation was the result of disciplinary proceedings.

In one case, a senior manager in the hospitality sector felt her new general manager was making particularly derogatory remarks about her sexual orientation. She also felt that she was being paid less than all the male members of staff in his team despite their equal status. The claimant raised her concerns with this manager but he deflected her accusations by calling her professionalism into question: “[Name of boss] said that I was inapproachable, I was aggressive, I didn’t know how to have a laugh.”

She chose to raise the matter formally with head office but they passed the complaint back down to the workplace and that individual manager to resolve and:

“said [he] was an old fashioned manager and that they were going to send him on an equal opportunities course and get him to really understand what the workplace does have, you know people of different nationalities, sexual orientation and all the rest of it. But, they just stood their ground ... in the end, that was the [manager].”

SO, lesbian, HR manager, settled

She described this as an example of her complaint not being taken seriously and a bias in the procedure. She was unable to resolve the issue directly with the manager and recalls several stressful meetings. She was also unable to secure representation from amongst her colleagues as she worked in a small team so requested a minute-taker from head office. Delays in meetings were matched by delays in minutes and allegedly the minutes provided bore no resemblance to the conversations at the meetings. This claimant eventually took sick leave and submitted her claim during this leave.

Where the individuals involved in the discrimination also held power in the organisation, claimants often felt that little could be achieved through internal procedures. A store manager who ultimately settled, faced two successive investigations raised by a new area manager, who he felt was bullying and undermining him. She raised the first over an assault and theft in a bar that had occurred outside of work, before she had started, and over which he said the company had been sympathetic. This struck him as a surprising and unnecessary thing to do. While questioning him, she asked him whether the bar at which the incident took place was a gay bar, which he felt was intrusive

and unnecessary. She recorded the outcome of the investigation as 'not satisfied but not taking forward'. He recalled that she had also not followed company procedure in allowing him to tape the meeting despite approval by his Head Office. He also had difficulty in getting a colleagues to witness which he attributed to the fact that this manager was bullying widely.

The second investigation raised by this line manager, about an allegation of mismanagement, happened 'within a matter of weeks' and he was given a verbal warning. Although he said he had experienced problems managing his store, the claimant felt this decision was incorrect and unjust for various reasons. A major part of the problem he said had been that he was understaffed and had an unreasonable workload. He noted that another store manager who had similar problems was not disciplined but counselled. He said he appealed against the decision but the appeal was led by a manager he knew to be a friend of this boss and the original decision was upheld.

"The appeal was another - the area manager from a different region. And it was [line managers]'s best friend. And it was the person that got [line manager] the job. And I explained to her and I said 'I find this totally unfair that you should be doing this appeal, you're [line managers]'s best friend ... I know the outcome of this before it's started. And I don't think this is fair'. And she went 'I will be absolutely impartial' ... Head office said 'well she will be impartial, you're saying it's her best friend, she's saying it's not'. And I'm going - 'Ok so you've really got me over a barrel here.' They went ahead with it and of course, she said she was going to do a full investigation, she had contacted no witnesses. She didn't do any investigation to anyone that's overheard or seen her, the way she's treated me."

SO, gay, male, retail manager, settled

As the disciplinary procedures were, he felt, being used to further his experience of harassment he felt that taking a counter-grievance would be a futile action. He did however try to bring his own grievances into the disciplinary hearings but said he was forced to do this defensively and as a mitigating factor and admitted that he was unable to process these effectively through this channel. This claimant felt that a third investigation would follow shortly and that he had no choice but to resign.

In several sexual orientation cases, claimants similarly referred to internal disciplinary processes not addressing parallel grievances or complaints of discrimination. This may result from a key characteristic of the sexual orientation claims: it appears that sexual orientation claimants in this study had tolerated, or put up with, a degree of discrimination or bullying or harassment in the workplace for an extended period of time. Although informal complaints were sometimes voiced to managers, formal grievance procedures were rarely invoked at an early stage. Instead, formal grievances were brought at a later stage, as a counter measure, when complicated performance or work issues had already become part of the situation faced by the claimant. Furthermore, early informal complaints to managers sometimes made the situation worse. For example, in one case, the claimant, a transsexual working on a factory shop floor, said she attempted to persuade line managers to take action on regular taunting and bullying but this instead resulted in an

increased focus on her own work. A complaint was seen to intensify the discrimination.

In one example, a claimant was disciplined by his line manager for his supposed misuse of the internet and printer at work, and the claimant was subsequently suspended from work. The claimant felt his line manager's actions were excessive and amounted to bullying and harassment, and subsequently took a grievance against this line manager on those grounds. However, the claimant's line manager continued to work in an office positioned a few feet away from the claimant and so the claimant felt that his grievance had not been dealt with fairly. He also felt that the grievance was taken much less seriously than the disciplinary (as described by the claimant's partner who was also an employee at the same workplace and wished to attend the interview to aid his partner):

"The interesting thing was that it was how differently that was dealt with. This is what I just can't understand, [my partner, the claimant's] disciplinary was for internet, you know not really affecting anybody else in the team, purely internet. [My partner, the claimant] puts a grievance in for bullying and harassment against two people in the team. Yet, they're not suspended, they sit in the same room, his boss sat next to him, two metres away and then she sat five metres away."

SO, gay, male, local authority, settled

The claimant was given a final written warning and had his access to the internet removed for 18 months, which would he said have made his job much more difficult and the targets he was previously reaching unattainable. After his disciplinary, the claimant raised a grievance against his line manager for bullying and harassment. The claimant felt further discriminated against for the way that this serious issue was dealt with. His partner commented:

"He couldn't wait to march you quick enough down those flight of steps out the door as fast as possible for the Internet [case]. But for bullying and harassment, [my partner was expected to work] next to the person who put the allegation in and ... [you] had to just get on as happy as Larry ... And they really dragged their feet about it, it was just comical yet for something again, for the Internet it was like lightning, like lightning, couldn't happen fast enough. But bullying and harassment claim goes in, it was drag my feet as slowly as possible."

SO, gay, male, local authority, settled

One further case, that of a gay male civil servant, regarded an investigation and disciplinary that the claimant felt would have occurred had he been heterosexual. Again, although cleared, he felt that it would be pointless to rely on the grievance procedures and that there was no choice but to reach outside the organisation for a resolution. He submitted an ET1 while employed, settled and remains with the same employer. In the end he invoked the procedures as a formality in order to have his claim accepted.

Two further cases dealt with unfair discrimination in recruitment or promotion. Both of the grievances in these cases were investigated, however the

claimants said they felt forced to pursue the employment tribunal claims concurrently, as neither investigation yielded an outcome within the time limit for submitting claims to the employment tribunal. In one case, for example, the claimant felt that the respondents were trying to delay the internal grievance procedure by saying that she would be put forward for other equivalent posts, which did not materialise.

6.1.2 Religion or belief

The line between informal and formal grievances process was not always clear in the reporting of these claimants. Only a few organisations involved with religion or belief employment tribunal claims were said by claimants to have followed formal grievance or appeal procedures. This was usually in cases of a claimant being dismissed, and subsequently challenging the dismissal.

Many claimants reported that they took some sort of action internally, in response to perceived unfair treatment, whether this was speaking to direct line managers or more senior managers. Those who raised informal grievances, such as making complaints or having conversations with supervisors, often found that this did not bring about the resolutions they sought. For example, there were several instances where claimants reported that informal grievances and complaints had been ignored. This often seemed to occur in cases where the perceived discrimination took the form of bullying and harassment.

The formal appeal procedures, once invoked, tended to allow presentations of the issue from both sides, with the help of external and/or more senior managers, and also employee advocates such as union representatives. In some cases, claimants said that managers were required to conduct investigations as a result, and to provide evidence to either rebuke the accusations of discrimination from the complaint, or support the case for dismissal. Claimants who became involved in these 'mini-tribunal' scenarios had mixed views.

In two cases, claimants managed to find a resolution to their problems through the internal appeal processes. One of these cases was in relation to the unfair dismissal of a Muslim salesman, and the claimant was successful in getting his job back, albeit in a different location. With the support of union representatives, legal advice, and evidence such as CCTV footage, the claimant felt able to refute the accusations made against him. Although the claimant retained his post, he said that the individual who made the false accusation was not disciplined.

Claimants also described delays by employers in processing grievances. As described in Chapter 5, one female shopworker started to experience bullying from a number of colleagues almost as soon as she started in the post. She made complaints to her manager and to Human Resources but said there was very little action taken. She said that after about a year, having made numerous complaints, a Human Resources officer interviewed some of the accused aggressors and came up with a list of 'steps' which the management team were required to 'action'. The claimant reported that these steps were in fact never 'actioned', and the bullying continued to the point where the claimant became ill and was signed off sick. The procedures themselves in

some cases operated to continue and intensify the experience of discrimination.

"Well firstly I wrote a letter to personnel and put down in writing what was happening to me. Because I had actually spoken to them on a few occasions and nothing had happened. They then started having meetings and I think the meetings are generally to frighten you and to think well this will teach you to make a complaint."

RB, non-practising Catholic, female, shopworker, settled

The lack of action taken in response to complaints also convinced some claimants that the management team had sided with the perpetrators. Indeed, in some cases, the perceived discriminatory behaviour originated from the managers themselves and in these situations claimants felt there was little point placing faith in grievance procedures. This was especially the case in small and medium sized organisations.

"I did say to them that, to be fair, why am I getting all these jobs when other people are staying around or why aren't you giving it to someone else? Why always me? And then, I didn't really get a response out of them, it's just that, he goes it's my company and I'll do what I want. Which is what he said quite a few times ... he says either you do it or quit. ... Well every time I raised the point, it was just ignored completely. Quite a few times where I did raise the point where he said something but I raised it with someone else, and they go alright, we'll get back to you and we'll have a word with him. And they never did. So I just thought it's a waste of time actually going through that route."

RB, Muslim, male, engineer, settled

In the case of unfair dismissal in small organisations, claimants reported a similar lack of recourse. Claimants seemed to refer to quite informal processes and suggested that it was futile complaining to the person who carried out the discrimination. One claimant had been working as a child carer for a community playgroup. After a change in management it became evident to the claimant that the new manager assigned took issue with her lack of religious belief. This claimant felt that he began to seek out evidence of malpractice. After a few weeks the claimant received notice of dismissal, which was subsequently withdrawn and replaced with severe restrictions in her role, including what she felt was stringent supervision of her work. Once the action had been taken by the employer, the claimant felt that she had very few options to challenge the decision:

"He did say to me, he goes oh if you do disagree with this, you can write to me in seven days. Then I thought to myself, what's the point? It was like I'm arguing with him now and he's not listening, what difference does it make in a letter? It was like in a nutshell he was saying oh don't bother because you're not gonna get your job back. It was like that but in a really cunning way, the way they do it, it's so cunning ... Because they had nobody else, they didn't have no head office, they don't have no HR. I find places like that, if they don't like you, goodbye. It's very much that kind of attitude, because if they know

they don't have to answer to anyone, and that's the kind of attitude they have, and they get away with it. And I can see how easily they can."

RB, non-Christian, female, child carer, settled

For others, whatever the size of the organisation or the nature of resolution procedures, making complaints was seen as 'making waves' and generally being disruptive. The individuals making the complaints felt that colleagues perceived them as being the problem. One claimant said that this was made worse by the fact that senior staff breached confidentiality in carrying out their investigations of her complaint. This resulted in a situation where she felt she could not return to the workplace:

"And I guess there's a part of you that doesn't really want to make waves you know, stand out, make people aware you've made a complaint. Because then all of a sudden you know what happens, inevitably it gets out, which it did. Confidentiality breaches from their own security training staff were beyond belief. That woman I told you about who was representing me in house, the union rep, she said she couldn't walk into a break room without hearing them gossiping about it. No one was supposed to know, I didn't tell anybody, I wasn't there. So it came from the original trainer and their staff and it went out like wildfire. And she said that she was even starting to get flack for defending me. So it was really ugly and really fast."

RB, Jewish, female, security officer, settled

Confidentiality breaches were reported by a number of claimants, and suggested to claimants that their grievances were not being taken seriously. Several religion or belief claimants also reported that their complaints were not being answered or action was not seen to be taken. Overall, these perceived problems led some claimants to become discouraged about the potential to resolve the problems internally. Some claimants also felt that this sent a message to those involved in the discrimination that their behaviour was being tolerated and could continue.

"You got the impression that, you just knew they weren't going to look into anything because they were just pushing it from one person to another, writing letters, filling in time and nothing ever got done about it. And of course I am quite sure the people carrying out the bullying and the harassment would have known about it because unfortunately, the managers shared a lot of what was going on with certain people. And then certain people would tell somebody else. So, I would assume they knew that nothing was being done, so that actually told them you can carry on doing whatever you like. And I believe it was a case of well, are we going to take these people to task where there's 99 per cent of the workforce is going to be upset or are we going to just let this person run along until she gets tired and just goes away. And it's the latter."

RB, non-practising Catholic, female, shop worker, settled

Several claimants referred to 'missed opportunities'. For one claimant, a Jewish security officer, the first three stages of the internal grievance procedure were perceived to have the intention of covering up and defending the individual accused of making discriminatory jokes. It was only when a senior manager was brought in from an external office that it was ruled that the claimant was justified in making her complaint, and that the subsequent handling of the investigation had missed an important opportunity to resolve the problem. As the employment tribunal claim had already been advanced at this stage, the manager made an offer of settlement which was accepted. Although the claimant felt vindicated by the settlement, she also felt that the entire situation could have been avoided if it had been dealt with directly and appropriately from the start:

"... obviously they had to find the joke teller, that I understood, I didn't know who he was, I'd been there one day. I knew some of the people around him and he did not give his name, which is you know, typical maybe. But the fact that they knew the trainer and could have very simply sat him down and said look, that's not appropriate, don't appreciate you saying that stuff to our trainee ... Never did that ... I wanted him to be told not to do it again. [...] I think at that stage if they'd have taken care of it, I guess I would have felt a little bit vindicated and I probably would have gone right back [to work] at that point. I mean why not, I mean they fixed it, right, they warned the guy, makes sense, right."

RB, Jewish, female, security officer

The example described above is a good illustration of the kind of defensive response some employers were considered to have taken in reaction to complaints of unfair treatment, regardless of whether the perpetrators were part of the management team or not. Although many claimants had been subjected to disciplinary procedures, perpetrators were not. By taking a defensive stance in response to complaints, adversarial situations evolved in several cases where claimants were positioned against the employer and the organisation. These situations were characterised by a lack of communication or compromise and claimants described not only delays but missed opportunities for resolution:

“Even at that stage internal grievance, if [the company] came back and said to me sorry we got your religious discrimination side wrong, I would have dropped that from my case. I gave them the opportunity in my formal grievance letter to say that if you can accept the unjust way you have dealt with my religious holidays, I can drop that from the employment tribunal and I will pursue constructive and unfair dismissal. But they, I think when a company like [large electronics retailer] decide to pursue an individual, there’s an element of bullying, institutional bullying.”

RB, Muslim, male, sales manager, settled

Some claimants expressed low levels of confidence in the potential for their internal grievance procedure to maintain impartiality and independence or to reach a resolution. This was exemplified in several religion or belief claims, which were also related to unfair dismissal. For one claimant, a teacher in a Catholic school who was denied a promotion because of his lack of religious belief, there was seen to be very little purpose in pursuing the internal grievance procedure. He felt that the findings were a foregone conclusion:

“If they’re trying to cover up this, you’re not going to get anywhere, what’s the point of a grievance? When it’s internal like that, there’s not an outside person looking at it ... and at the end of the day what good does a grievance do? What actually happens to the person that has done it? And the answer is very little. They’ll get a verbal warning if they’re lucky and that’s it, but it doesn’t actually change the situation.”

RB, non-Catholic, male, teacher, withdrawn

In another example, the individual who was responsible for conducting the investigation into the complaints the claimant raised was the accused manager:

“I even went to [Mr.X], the Chief Executive of [the company]. He then brushed everything aside and gave the issues that I raised with him to the area manager in question to investigate. Which was basically, I felt as though, the guy who was hounding me down in terms of my religious belief: he became the judge, jury and the executioner.”

RB, Muslim, female, nurse, withdrawn

6.2 Submitting the claim

This section discusses the point at which claimants decided that they were going to take their case to an employment tribunal. It covers how and where claimants obtained the ET1 forms, how they notified their employers, and what they hoped to achieve by taking the case.

6.2.1 Sexual orientation

Submitting the ET1

In some cases, claimants under the sexual orientation regulations felt that submitting an ET1 form was the only course of action left to them. It seemed more common amongst these claimants for there to have been disciplinary action taken which was felt to force a resignation. Several more claimants reported leaving initially on sick leave later resigning.

Some claimants had problems with getting the timing of an application right, in some cases being unaware that there is a time limit on submitting an application. In one case, a consultation with solicitors helped the claimant to counter attempts to delay the internal grievance procedure:

"Then I went to see a solicitor, to sort out if I had a case for what happened. She mentioned to me that there's only a certain time period where you can put a case to the tribunal. I had a time period, I think I had like a couple of months left that something would have to be resolved in that. And it made me quite wary that, because obviously [the employer] have sort of their own insurance company, where lawyers will be attached, so they would have sought advice on this. The letters coming back from the contractor had some legal input. I showed my solicitor them and she said yes, this isn't just, somebody here kind of knows what they're doing."

SO, lesbian, factory worker, settled

In another case, the motives of the claimant changed when the search for a new job proved more difficult than was anticipated. The claimant felt that he then had no choice but to submit a claim against his previous employer:

"I decided that, if I want to stay in the same industry, that, well first of all, I applied for a job with [another company]. And they weren't recruiting at all, and next best thing was go to London, that's where all the major players are. And thinking that I was gonna get a job when I came to London, in the same industry, and I didn't. But I applied for them and applied, and that's when I was here, that I decided I was gonna put a claim in."

SO, gay, male, store manager, settled

Only a few claimants filled in their ET1 form themselves without any help from advisors or solicitors. One claimant, as a result, did not find it very easy:

"It was hard because there's no advice. Never done one before, and I don't know what's expected so it wasn't very good. But at least you could do it on line and get it done, but no it wasn't very easy because I didn't know what I was doing."

SO, gay, male, civil servant (transport), settled

Notifying employers

Claimants notified their employers of the pending employment tribunal cases in a number of ways. This depended mainly on whether or not the claimant was still employed, and on the level of communication that had been maintained.

One claimant told her employer of her intentions to submit her claim to the Employment Tribunal, and found that the employer tried to discourage her from doing so:

"Then he talked to me about how terrible tribunals are and really don't want to do that because there'd be some terrible things said and I was well they already have been said anyway. So just they're gonna be said to my face this time."

SO, lesbian, factory worker, settled

When the decision to submit the ET1 came after unsatisfactory conclusions to internal grievance procedures, one claimant ended communication by giving verbal notification:

"I resigned, then they invited me to find out the outcome. So I obviously went and the outcome you know, wasn't what I expected at all. So I said to them that I'm taking you to tribunal because this is a bloody farce. Who do you think you are?"

SO, gay, male, local authority, settled

Hopes and expectations

Claimants under the sexual orientation regulations had a variety of hopes and expectations about what they wanted to achieve through the employment tribunal such as a 'day in court', moral victory, closure, a third party validation. On the whole though, claimants were motivated by a profound sense of injustice.

"I was sure I'd win and I was sure I was right, all along, I'm a great believer in justice and if you're right, you fight for it, if you're not, you just admit it. So I had no doubt all the way through that I was right and I'd done nothing wrong and they'd made everything a thousand times worse by their actions, and how they carried it out. And I had faith that you know, that .. people would be able to read the evidence, see it and see what the truth of the matter is. I didn't think I would lose, I had no idea what the outcome would be on any financial side. I had actually

looked into it on the internet but obviously there were not many cases at that stage , I think there was virtually no reference to it. So I was obviously worried about how they might perceive it, I mean they could go either way, you just don't know."

SO, gay, male, civil servant (transport), settled

In a few cases, claimants also felt that they would be able to exonerate themselves of the accusations they'd been subjected to through disciplinary actions.

"I felt bitter about why the person had done it to me and I felt bitter about the way the organisation had treated me above all. And that's where I needed to get the closure really. [...] Having lodged the employment tribunal, I thought well there's some sort of, maybe they'll respond to some sort of pressure by giving me the job, by giving me a job. But when that didn't work, then I thought all I want to do now is I want my day in court, I want to air this. And I want to air, because I felt willing to expose myself. I didn't feel I'd done anything wrong."

SO, gay, male, civil servant, settled

Although a few claimants felt confident that their cases were strong, the likelihood of winning a case was not an important factor in deciding whether or not to take cases forward.

6.2.2 Religion or belief

Submitting the ET1

Claimants under the religion or belief regulations had a mix of experiences in submitting their ET1 forms. Experiences tended to differ according to the level of legal advice they had received, and likewise, whether or not they had a representative at the start of their claim (either a solicitor or a trade union representative). Time was also a factor in submitting the claims, as claimants often realised the three month deadline would expire before internal grievances and other appeals were complete.

One claimant was taking her case against a large private employer. Her union representative advised her that despite the case progressing through the internal grievance procedures, she would have to submit her claim to the employment tribunal immediately. The union representative said this would give the claimant something to fall back on if the grievance process did not reach a successful conclusion.

Another claimant received advice from a friend, which made her rush her application:

"I started to chase this up because I knew one of my friends, they said to me you've got a three month period, you've got to get in there before that. So then I got the letter, got the application, started filling it out and just sent it off."

RB, Muslim, female, nurse, withdrawn

Although the claimant above managed to submit her application to the tribunal within the deadline, submitting the ET1 without having consulted a solicitor first created difficulties later on. The claimant later withdrew her application, when she realised that taking the case forward would cost £200, and that she had very little hard evidence to support her case.

Not having access to legal advice in the early stages of the case also had a serious impact for other claimants later on. In one case, an employee was influenced by the respondent's legal team into rewording her resignation letter in a way that was later used against her during the tribunal.

"I think once I decided to go to tribunal, while I was off ill, I wrote to them and said ... that I wasn't coming back to work any more, that I felt I had what's the word for it, when you come to a situation where they are forcing you out? Constructive dismissal, that I felt that was the only conclusion I could come to and that I was now going to tribunal. And unfortunately, because I was ill, I don't think I made it very clear in my initial letter to them and upon realising this a few days later, I looked at the letter and I thought oh heavens I haven't actually made it clear you know, because I didn't know that you have to do it in a certain way."

RB, Irish, female, shopworker, settled

Notifying employers

Respondents were informed of the ensuing employment tribunal claims in a number of ways. Where claimants had unsuccessfully pursued the perceived discrimination through internal grievance procedures and appeals, claimants often informed employers in person at the close of internal grievances. Similarly, in some cases where the discriminatory incidents related to disciplinary action and/or dismissal, claimants concluded the appeals with verbal notification.

"So yes, so I actually eventually handed in my notice and informed them that I would be forwarding the case for unfair dismissal."

RB, no religious affiliation, female, child care, settled

Some claimants did not tell the respondents themselves, but instead waited for them to be informed by the tribunal administrators. In several cases under the religion or belief regulations this was because communication had already been severed, for example after negotiations about taking leave for a religious holiday came to a halt or where inaction over workplace bullying had resulted in the claimant not being able to return to work.

Hopes and expectations

Claimants were asked what they hoped to achieve by taking their cases forward to an employment tribunal. In most cases, claimants sought some sort of acknowledgement that they had been treated unfairly. For some, this took the form of an apology. For one claimant, it was felt that the individual who had discriminated was in need of awareness training to improve his knowledge of equality and diversity, as this was central to the role he held in the organisation.

"I was not expecting anything or any money or any kind of ... favour from them, only for principle. This person should not be check me out, he have to get lesson. He have to change his behaviour or thinking. How to be, make good relation with other ethnic minority faith person. Because he is working as a coordinator, as a superior person for the multi faith team."

RB, Hindu, male, chaplain, settled

Only one claimant under the religion or belief regulations was explicitly looking for monetary compensation, for loss of earnings, in part because there was no realistic expectation for the employer to change its practices.

"I just hoped actually for some kind of recognition, at least to say right you was unfairly treated and I don't know really. I don't know what I expected, I just wanted the satisfaction for myself to know that they didn't get away with it. And it would have been nice to, the loss I gained to get that back because I did spend a whole month or 2-3 weeks you know wandering around trying to look for jobs. Because they put me at a loose end. So you know for that inconvenience I would have, it would have been nice to have some money as well because money does ease the load."

RB, Muslim, female, nurse, withdrawn

In most cases, claimants when discussing the expectations they held at this early stage were adamant that their pursuit was for justice and not for financial gain. This was, in part, because they felt that there was a perception more generally that employment tribunal claims were seen as a way of making money:

"It was a question of dignity. Respect. Trust. Respect was a key word for me. [...] It has never been a financial gain for me, I mean that wasn't the main agenda. I did not pursue them because of financial gains. My wife was absolutely determined that it wasn't about money, it was about dignity and respect. And the right of the individual employee to pursue their religious belief."

RB, Muslim, male, sales manager, settled

One claimant, however, found that as she progressed her internal grievance through the organisation, her intentions changed shape with each subsequent mistreatment. She reported that a financial settlement became increasingly

important to her to compensate for the effort needed to pursue a case she felt should have been resolved early. She said that she wanted the employer to pay in one way or another.

6.3 Summary

6.3.1 Sexual orientation

Many of the claimants under the sexual orientations regulations seemed to have been involved in disciplinary action perceived to be a response to discrimination, and only reported the perception of unfair treatment once they felt their position was threatened by this disciplinary action. This caused various complications in seeking resolution internally, not least because many of the individuals involved in implementing the disciplinary action tended to be direct line managers.

Other claims under the sexual orientation regulations involved situations which had been raised by claimants at early stages. Complaints of bullying and harassment about sexual orientation were directed towards HR staff, and in some cases line managers. However, it was generally reported that these complaints were not addressed in way that was satisfactory to the claimants involved, and as a result problems tended to escalate further.

Claimants submitted their applications to the employment tribunal at different stages during internal grievances and appeals: some initiated their applications early on during the grievance procedures in order to not miss the three month deadline while others waited until the internal investigations had been brought to a close. In most cases, claimants had already left the workplace, typically following a period of sickness absence.

6.3.2 Religion or belief

Most religion or belief claimants took either informal or formal grievances in response to the perceived discrimination. Where the origin of the case was related to bullying and harassment, many claimants reported that complaints were not treated with urgency or confidentiality. In cases where the discrimination stemmed from unfair dismissal some claimants did appeal against these decisions, however they had very low expectations that the employer would act independently and without bias in considering these appeals. Only two claimants under the religion or belief regulations managed to successfully resolve their problem through internal procedures. Both of these cases resulted in settlements.

The point at which claimants under the religion or belief regulations decided to put their claim forward to the employment tribunal varied. While each of the fifteen cases were unique, on the whole, a lot of the variation could be explained in relation to the different contexts in which cases originated. For claimants who felt they were being bullied or harassed, submitting a claim to the employment tribunal was usually a last resort. This typically occurred after being signed off sick due to stress, or once complaints about discrimination had led to disciplinary action against the claimant, with internal grievance and appeal procedures being perceived as futile. In cases where the discrimination

claim stemmed from unfair dismissal, claimants tended to have pursued both the internal grievance or appeal processes and submitted their ET1 application at the same time.

6.3.3 Commonalities and differences between sexual orientation and religion or belief cases

On the whole, there were more commonalities than differences in the experiences of the two jurisdiction groups with regards to the use and operation of internal dispute resolution processes and the submission of ET1 applications. The main differences between the two groups of cases, with regard to invoking internal procedures, and submitting the ET1 applications, seemed to stem from the different circumstances in which the discrimination cases had originated. Another important factor was the size and type of organisation against whom the claim was made. Regardless of jurisdiction, claims against larger sized organisations were the ones likely to have reached settlements and otherwise satisfactory outcomes. This was attributed to the more formal grievance procedures which were in place. Small and medium sized organisations were more commonly linked to cases where claimants felt unable to have their complaints processed or addressed appropriately. However this conclusion must be treated with care as in many instances resolution was not achieved in larger organisations and procedures were not always felt to be fully or fairly followed.

The main factors affecting the submission of applications to the employment tribunal were the availability and quality of advice and representation. Representatives played an important role in advocating during internal grievance procedures, and also in advising claimants on the content of their employment tribunal applications. Timing was felt to be particularly crucial, as many claimants under both jurisdictions reported that respondents were felt to be using internal grievance procedures to tactically delay and stall proceedings.

7 ADVICE, SUPPORT AND REPRESENTATION

This chapter explores the need for information, advice and representation expressed by the claimants in this study and their ability to access or secure such help. It details the experiences of claimants in relation to a wide variety of actors, institutions and other sources, from trade unions and solicitors to friends, family and community organisations. The role Acas was seen to play in these cases is also explored.

Third parties played a number of roles which typically varied according to the nature and stage of the claim and also the affiliations and resources of the claimant. Most employment tribunal claimants in this study received support and advice at some point in their claim but the extent and type of support differed dramatically.

Expectations varied widely and seemed to have had an important impact on reported experiences and satisfaction levels. Although some claimants were satisfied with the support they received many others felt isolated and disadvantaged in the absence of advice or representation. While it cannot be concluded that those claimants who were able to access advice and representation secured better outcomes it was certainly the case that the majority of claimants who withdrew their claims were not represented. Many claimants without adequate support also cited this as a primary motive for settling, particularly where a negative impact on health during the course of the claim had been reported.

The roles of representatives during employment tribunal meetings and hearings and their impact upon outcomes is briefly mentioned in this chapter but covered more fully in relation to the employment tribunal experiences of claimants in the next chapter.

7.1 The need for information, advice and representation and barriers to access

With few exceptions, claimants expressed a strong need for advice and support in submitting and pursuing their employment tribunal claim. As might be expected, those who had support or representation, notably from a trade union representative or solicitor, spoke less about the need than the quality of that support. Those without institutional or legal support typically told stories of countless attempts to secure help and advice and of regular disappointment.

7.1.1 Sexual orientation

Only one claimant under the sexual orientation jurisdiction spoke of not needing support or advice. This claimant, a male professional taking a recruitment claim, had experience of taking another employment tribunal claim under a different jurisdiction and reported being comfortable with legal procedures and terminology. His claim was struck out following a pre-hearing review.

For most other claimants, the need expressed for external advice and support was great. These needs varied according to the individual but also according to

the stage of their claim. An early need was for information about the law and tribunal proceedings and, in particular, some external validation of the viability of their employment tribunal claim. A later need was for representation.

As cases progressed needs changed in response to a variety of external factors. The strategies and actions of employers and their legal teams were significant. Particular needs for assistance were expressed by claimants who felt that their employers were attempting to get claims struck out or were being obstructive in preparations for hearings. One claimant reported that all of 'his witnesses' were, he felt, appropriated by his employer. Two were allowed to amend their initial claims, in ways that they themselves had not even anticipated, once they had obtained legal advice so there were clearly 'needs' for advice and support beyond those perceived or expressed by the claimants.

As cases progressed claimants were called to employment tribunal meetings and spent time preparing their claims. The burden of work involved at this stage was stressed. Most claimants also emphasised the importance of practical help, including financial assistance with the costs of photocopying for example. A significant need expressed by those whose claims progressed to this stage was help in understating the legal procedures and terms which they found intimidating and confusing. Claimants reported feeling like 'outsiders' once claims reached the tribunal. The absence of a representative who could give confidence, and the presence of a strong legal team on the side of the respondent, exaggerated this for some.

Barriers to access

Without doubt the most important factor which claimants said prevented them from obtaining the support they desired was money. Several claimants were convinced that having a legal representative would have changed their experience of the process and possibly the outcome. A number of these also felt that the personal impact of taking a claim would have been lessened.

Those who did not have institutional support, for example through trade unions, were more likely to seek out or rely on a friend or colleague with some legal knowledge or a partner. A further important barrier in accessing the information, advice or representation required was trade union membership or not obtaining trade union membership some time in advance of raising a grievance, being disciplined or submitting an employment tribunal claim. Finally, some claimants observed that as their claim progressed their knowledge grew and they became aware of sources of advice and information at too late a stage.

7.1.2 Religion or belief

Claimants who took employment tribunal claims under the religion or belief jurisdiction also expressed a great need for information, advice and support. Again, needs changed as cases progressed and in response to external factors.

Individual differences were evident according to different personalities and the context of each case. However most claimants referred to the importance of

early basic information on discrimination law and employment tribunals. Many claimants referred to the importance of obtaining a legally informed opinion on the strengths and merits of their claim. Those without trade union or legal representation referred to a range of information, advice and support needs that they perceived they had missed out. These ranged from the confidence which a representative might engender in the claimant through to the ability of representatives to make abstract and complicated processes and terms relevant.

Needs varied according to the stage of the claim being considered. Once claims were being heard it was felt by some that the help of a legal professional was vital for the pursuit of justice. This was particularly so for those claimants who had both a religion and race jurisdiction. These claimants referred to the importance of being able to speak the 'language of the law'. They related the needs of the claimant not just to factors in the claim but also to external factors such as the motives of employers and the level of legal expertise they were deploying.

Cost, time and work burdens in preparing the claim for tribunal meetings were also referred to and the importance practical and financial help in sharing these. For those out of work these costs were felt to impact greatly.

Barriers to access

While claimants with religion or belief jurisdictions described many of the same barriers as those with sexual orientation claims the position for those with added race jurisdiction elements was slightly different. These claimants potentially had access to the support of the CRE but also the frustration when that support was not seen to be forthcoming.

Again, the most important barrier identified was that of money. Many claimants who were not represented by legal experts felt that the outcome of their claim would have been different with this support.

A further barrier mentioned was the lack of trade union membership although there were instances where claimants joined unions in order to receive advice if not representation as grievance and disciplinary procedures and employment tribunal claims progressed.

A final issue related to familiarity with the processes. As claimants progressed through each stage their knowledge grew. Many claimants during the interviews referred to their difficulty in engaging with abstract information sources and literature and their ability now to help and advise others having gone through the processes themselves.

7.2 Trade Unions

Claimants were members of a number of different trade unions and both lay and full-time officers in these unions played an important role in religion or belief and sexual orientation claims. The section that follows explores the views and experiences of claimants who were trade union members. Views

expressed about solicitors and barristers provided by trade unions are included in the next section.

7.2.1 Sexual orientation

In a small number of cases, trade union representatives had been involved in attempts to resolve cases in the workplace and their support continued; in others, representatives were contacted at the point of, or just prior to, submitting a claim.

One claimant, for example, who reported that his union had supported him through internal disciplinary procedures over alleged misuse of email and internet facilities said that they also encouraged his employment tribunal claim.

"The union was kept fully informed and it also wanted us to go to tribunal. [It was] on my side because it saw all the evidence ... It was very supportive and the union rep was very supportive. He was always there you know whenever you wanted him, he was just there like a shot."

SO, gay, male, local authority, settled

Once claims had been submitted, trade union representatives gave information, advice and practical help in most cases. This ranged from handing out information on the law and relevant Acas booklets to advice on jurisdictions and on obtaining and completing ET1 forms.

Trade unions also were more likely than any other third party to give an opinion on the merits and likely outcome of the claims with which they were involved and seemed to play an important role in the management and moulding of expectations.

In some cases trade unions bargained on behalf of their members reaching settlement in advance of employment tribunal contact but more typically they provided free expert legal advice and representation supporting claims as they progressed through to the hearing. All trade union supported claims detailed in this study were settled typically after a pre-hearing review but before a final hearing, as discussed in greater detail in the chapter which follows.

Claimants described a variety of experiences with their trade union representatives and officers and not all of these were positive. Some were seen to lack the necessary skills and knowledge, particularly given the new jurisdictions involved.

It was usually the case that more senior representatives were eventually drawn into employment tribunal cases and a distinction emerged in the reports of claimants between the quality of local versus other lay or officer representatives and their strength in challenging the employer. One claimant however continued to have the sole involvement of a local 'company' representative who had been involved in internal discussions for a year about the claimant's grievance and ill-health absence and was felt to be too close to management. The claimant explained that this representative, having just one

employer to negotiate with, was over-reliant on this relationship to the detriment of his members.

"I dare say that the union guy would be there, but at that stage, if he had gone, he wouldn't be doing much, I would have been doing it all because I wouldn't have had any faith in him to ask the right questions or say the right things ... So yes, I would have brought him along but I almost certainly would have conducted it all myself."

SO, gay, male, civil servant (transport), settled

Another claimant doubted the general competence of her representative but was able to ultimately rely on the advice of the legal team the union sponsored for her claim instead.

"I did have a chat to the [union] chap, who wasn't much use to be honest ... Not much happened, I had one meeting [with a union representative], but essentially I was on my own really."

SO, lesbian, civil servant, settled

Although satisfaction with trade unions and their representatives was generally high there were a number of criticisms voiced. Some were considered too busy or disinterested to take on board the claims in their entirety and examples were given of rushed telephone calls and last minute meetings. A final complaint was from a small number of claimants who had joined their unions at the end of or after the experience of discrimination and were therefore not able to receive representation.

Despite these criticisms, the ability to obtain free legal expert advice on discrimination law was greatly appreciated and the solicitors and barristers provided by trade unions uniformly praised. Trade union support and advice was generally accessed early in the claim and continued throughout and those claimants who were members seemed on balance to have reported less trauma than those who were not.

7.2.2 Religion or belief

The role of trade unions in religion or belief cases also varied as did satisfaction levels. Trade union representatives gave early information and advice in a number of cases and provided free expert legal advice and representation in others.

The support provided by trade unions ranged from providing practical assistance in applying for an employment tribunal claim through to discussing the strengths of claims and likely case outcomes. As claims progressed some unions played an active role in settlement bargaining. In some cases they provided expert legal advice and support. Trade union representatives seemed to be particularly influential in setting expectations.

Claimants described a variety of experiences with their trade union representatives and officers, some positive and some not. According to the claimants in this study trade union representatives were at times wary of the

new religion or belief jurisdictions. Those with a race jurisdiction were marginally more likely to receive trade union support although this may also mean that cases with trade union support were more likely to also submit a race jurisdiction.

There were two particularly negative trade union experiences reported in religion or belief jurisdiction claims both with race jurisdictions attached. One claimant was actually pursuing a claim for discrimination against his trade union for not providing representation in an earlier race claim against his employer. The second reported how her workplace representative was a member of the group of colleagues bullying her.

The first claimant, a medical professional, had not received the support of his trade union in an on-going race claim and felt that he had been unfairly treated. He submitted a claim against the union on the grounds of race and religion. He said he said that he had needed 'representation not advice' in order to '*compete with [his employer] on an equal basis*'. His claim against his trade union was struck out.

In the second case it was the workplace union representative who the claimant asserted was involved in the bullying and harassment she faced. When she complained about the discrimination that she faced, prior to submitting a claim against her employer, she said that her union representative told her to:

"put [her] coat on and get a job somewhere else ... I was in the union and they totally ignored me ... That was the assistance I got from the union."

RB, non-practising Catholic, female, shopworker, settled

Unions were contacted and informed about cases at various stages. In cases involving dismissals and contractual disputes unions were generally consulted at the point of dismissal. Satisfaction also varied amongst those with trade union involvement in these cases. Some felt that the practical support or engagement was not there. A non-Catholic teacher in a Christian school who ultimately withdrew his claim felt "*my union should have done more. I don't think it was good enough for them to say they were taking great interest in the case.*"

One claimant who was made redundant felt particularly aggrieved at the way his trade union supported his religion, race and unfair dismissal claim. He said it was "*a fiasco on [his] side*", one which ultimately affected the outcome of his case and his satisfaction with this.

Initially, he said, his trade union representatives called his case was strong but this changed when a new representative took responsibility. The claimant felt that his confidence in his own case had been unfairly undermined by this. He said that not one of the representatives had taken the time to listen to his claim.

"[The] trade union lawyer, she said 'yes you have got a strong case'. And then suddenly I find she is off sick, someone else comes, takes over ... So I said 'what's going on?' ... There is a time limit after you are made

redundant, and it was coming to that time limit and nothing has happened. I say 'what the hell is going on?' So there is another lawyer ... I talked to her and she said 'you've got a very weak case' ... I thought oh my god. I was feeling let down by the trade union and then by the process. Because there is no one to talk to ... I don't have legal representation, I don't have legal knowledge."

RB, Muslim, male, IT manager, settled

This claimant referred to a number of other complications which he felt his representatives, and the change in these, created. He said that his representatives were often absent and that this had caused unnecessary delays in reaching an internal resolution. As his side weakened he reported his employers side strengthening. After several months, he finally arranged for his representative to come to a meeting scheduled with HR. On hearing that a trade union representative was to attend he said that the company 'changed their attitude' and engaged a barrister. This barrister would only communicate with his new representative who had, he recalled, only spent ten minutes in a fast-food restaurant finding out about the claim prior to the meeting. They settled on behalf of the company and claimant that day and ended his claim. The claimant felt hurried and pressured and as the representative went back and forth from claimant to barrister he apparently said that he could not guarantee trade union support for the claim if the settlement was not accepted. The claimant said that he still holds some regrets over settling.

Another claimant also had a change in representative during her case but reported being extremely pleased about this. Unlike the case above it was not a substitution of representative at the same level but a move from dealing with a local to a full-time area representative. She described this area representative as:

"amazing ... awesome, she just knows her stuff ... Things were resolved, because she was a power house, she was brilliant, she knew the law, she knew my rights, she stuck up for me. And it wasn't until she showed up that all of a sudden everything you know, sort of like broke and they realised they couldn't keep punching me any more, they had to do something to resolve this."

RB, Jewish, female, security officer, settled

In contrast her earlier representative was, she felt, "completely inadequate, no offence to her, because she tried but not a lot ... I wouldn't have got through it. They would have ran over me like a steamroller, it just was the most horrible experience."

A further issue raised about the role of trade unions in these claims related to the rights of members who had only recently joined to obtain full representation. One claimant told how he had been dismissed on a charge of theft later disproved. He was re-instated and withdrew his employment tribunal application. In the course of defending himself he had been unable to get trade union representation:

“I represented myself but all the advice that I had was through a trade union. The reason being, because I joined the trade union just after the case, which means that they couldn’t physically represent me. They could give me advice but couldn’t physically represent.”

RB, Muslim, male, salesman, withdrawn

Despite complaints attached to individual cases, satisfaction with trade union support was generally high, especially where this representation came with the advice or practical support of legal experts.

7.3 Solicitors

Solicitors were involved in a number of cases and typically provided by trade unions. Where there was no solicitor, or limited legal advice sought, claimants tended to attribute this to financial difficulties and to refer to the disadvantage faced as a result. In a small minority of cases, claimants engaged solicitors independently, typically as claims approached the hearing stage.

In a number of cases claimants were either contacted by no-win no-fee solicitors or tried themselves to obtain no-win no-fee representation.

7.3.1 Sexual orientation

Few claimants under this jurisdiction without trade union membership engaged a solicitor. For the majority this decision was explicitly related to what they felt were prohibitively high costs. While trade union claimants did not refer to the hours solicitors worked this seemed to be an important consideration for those paying personally and by the hour. Those who did pay for legal support all said that they would have appreciated financial help.

Claimants who engaged solicitors tended to relate this to a weakness or gap in their own competence and knowledge. Legal experts were trusted and their judgement and advice typically accepted and followed. As with trade union representatives above, these experts played a key role in creating and managing expectations.

One claimant, a HR manager, contacted a solicitor twice during the preparations for her claim to ensure that the documents she was submitting to the employment tribunal were comprehensive and terminologically correct. She would have liked permanent legal support and representation:

“A solicitor would have been fabulous but it just didn’t come into the equation because from a financial point of view, it’s impossible.”

SO, lesbian, HR manager, settled

Satisfaction with the work of solicitors or barristers was high irrespective of outcome. Some of those claimants with legal representatives who they deemed to be competent seemed to have felt that they had more successfully challenged their employers and achieved ‘closure’. Representation by solicitors

also seemed, in the accounts of several claimants, to reduce their feelings of being outside the process and of being involved in the claim:

"I had an excellent legal team, absolutely excellent. I had every confidence in them. We worked hard, but we worked together, and I did feel as if I was very much a part of the team. And that was very important, I think. So they were superb. I didn't have any other help."

SO, lesbian, civil servant, settled

'No-win no-fee' and pro bono solicitors

Some claimants who were not trade union members approached 'no-win no-fee' solicitors with mixed results. One claimant recalled how he:

"just sat and watched TV one day, and ... it was when they said employment law, I thought well OK, give them a call. And their advice was very shabby actually."

SO, gay, male, store manager, settled

This claimant used their advice to submit his claim but without a sexual orientation jurisdiction which had to be changed later. He did not return to them. In another case, of a claimant dismissed for gross misconduct, all firms rejected his application for assistance.

There was within this category of claimant only one employee in the hospitality sector, a heterosexual man, who secured 'no-win no-fee' assistance. He described how settlement rather than a 'day in court' was the objective from the outset.

7.3.2 Religion or belief

Solicitors tended to be provided by trade unions for those religion or belief claimants who were members. Few claimants without trade union membership paid for solicitor advice or representation. Costs were a major factor in this decision. Claimants who engaged solicitors tended to refer more to the legal expertise of the employers team and the perceived relative disadvantage of their own.

Solicitors, where used, were generally trusted and satisfaction levels were high. They were appreciated for knowledge and competence not held by the claimant. Legal experts played a key role in the managing of expectations through the life of claims.

Where claimants used solicitors, they tended to accept their advice. They also tended to accept their reservations particularly given that the religion or belief jurisdiction is a new one. One claimant, for example, explained the advice he received:

"The solicitor did, told me all the different scenarios that could happen, how the tribunal is conducted and everything. They did say I had a good

case, but then he did also say that because of the way the tribunal works, it just depends on who they listen to on the day. Because most of it was just my word against theirs and there was ... either way."

RB, Muslim, male, engineer

Another claimant who was contacted by many no-win no-fee solicitors settled on a solicitor who charged by the hour chosen on, he said, the basis of trust:

"[The solicitor] saw my case on the internet and basically saw that I had no legal representative. He then rang me on my mobile and said I'm not trying to make money out of you. Yes, I do charge a fee, but I think you need to have a representation because if you don't then you might not be able to articulate all the points that I would raise for you. And I basically had a meeting with him and he was quite honest and sincere and he was full of integrity and that's what I really wanted, someone to represent me with equal amount of integrity."

RB, Muslim, male, sales manager

There was only one case where the claimant was unhappy with the performance of his solicitor:

"[The solicitor told me he] doesn't feel confident enough to handle it himself, the expert help will cost £200 an hour etc. etc. I went, this is ridiculous, phoned them up and said I'm paying you, you're the expert. You're supposed to be dealing with this for me."

RB, non-Catholic, male, teacher, successful

This claimant subsequently switched solicitors within the same partnership. Costs were a significant factor in this claimant's case, being one of the few to reach a full hearing.

'No-win no-fee' and pro bono solicitors

A small number of claimants attempted to obtain 'no-win no-fee' representation. Again, there was evidence of 'no-win no-fee' firms targeting those claims they perceived to be strong and rejecting those claimants whose cases they decided were weak or risky.

As one of the claimants who had tried to seek 'no-win no-fee' representation commented:

“To get no-win no-fee, you’ve really got to have a 95 per cent case and if you need that, you might as well go yourself. Basically what I needed was somebody to say, this is wrong, this is wrong and really, you do have a case. But because I didn’t have the evidence on me at the time, they wouldn’t let me take on no win, no fee, but nevertheless I spent nearly £1,000 getting to that stage.”

RB, non-practising Catholic, female, shopworker, settled

This claimant then attempted to obtain a pro bono solicitor on the advice of her employment tribunal Chair but also found this difficult:

“There were half a dozen at least solicitors on the list which [was given to] me in [the local city] who had agreed to do pro bono work in such circumstances. And I think I went to every one of them and they were all either busy, some didn’t respond and basically I mean I can understand it. I mean nobody wants to work for nothing and if it was a case of probably pro bono work that was going to take an hour, I’m quite sure that maybe solicitors might have been more inclined to take it on. But this wasn’t going to take an hour, this was like something which was going to take up 4-5 days in a tribunal and no pro bono I think covered that amount of assistance.”

This claimant eventually prepared her case on her own stating that she was too worried about the financial risks.

7.4 CAB

The Citizens Advice Bureau (CAB) was the first point of contact for most of those claimants without trade union membership. Expectations were generally high and satisfaction varied.

7.4.1 Sexual orientation

CAB offices were typically contacted by claimants who were no longer in employment for information and advice prior to the submission of their ET1s. While trade union members went to their union those without tended to seek CAB advice about the merits of their case, the details of their claim and the procedures for submitting this employment tribunal claim.

In general, information received by claimants who contacted CAB offices was praised. As one claimant, a gay salesman, commented *“they gave me brief info, outline of [the case], suggested how things would work, and all the basic information was extremely useful.”*

A number of claimants also sought information about the value and likely outcome of their claims and felt that CAB staff were not entirely familiar with the new sexual orientation jurisdiction or not specialised enough to give the kind of legal advice that they believed was needed.

Complaints generally referred to the accessibility of CAB services. Limited office hours and under-staffing were mentioned in a number of cases.

Two claimants were particularly critical. One said that "*Citizens Advice is the worst thing that ever was here, I think. I tried to contact them several times*" and that when he did finally make contact he received poor conflicting advice:

"... one of them was as bad as the other, but the third one was worse than anyone I've ever experienced."

SO, gay, male, retail manager, settled

The second claimant who criticised the CAB service complained:

"I did go to Citizens Advice Bureau, [which said] you need to get yourself a solicitor really, and gave me, they printed out some stuff for me to read it, it wasn't really that relevant."

SO, lesbian, factory worker, settled

It seems from the reports of many claimants who initially relied on the CAB that their advice and information helped with the submission of claims but was inadequate in helping the progression of those claims. In part, this may be a reflection of the desire expressed by many non-union claimants for representation which was directed at CAB staff. Those claimants also noted the importance of obtaining an opinion to validate or re-enforce their confidence in pursuing a legal claim:

"[I found] the information they gave me was limited and it wasn't that supportive of me. I wanted an official party to actually sit in with me to actually try to support me and to say things and support me. I didn't get that, so I was unhappy that they couldn't actually attend the actual industrial tribunal to support me. And I was unhappy that they couldn't give me much further information."

SO, gay, male, salesman, struck out

7.4.2 Religion or belief

Religion or belief claimants who contacted their local CAB office were also generally positive about the advice and information which they received. Unlike the sexual orientation claimants those outside trade union membership also had the option of contacting the Commission for Racial Equality for advice or information where there was a race discrimination element attached to their claim.

One claimant decided in advance that it would not be worth contacting the CAB:

"I did think of going to Citizens Advice but then they're funny, their opening times and their service, ticketing services and you never can get through to them. You can hardly find them, they're not really, it's not like the Job Centre where I can see them straight away. And when you ring their office, they don't answer, it's always the answer machine. And I thought, they can only advise me so I thought I know what I'm doing, I'll just carry on doing it myself then."

RB, Muslim, female, nurse, withdrawn

7.5 Other sources

Claimants approached other organisations who represented their interests or identity or were based in their community, for example the CRE. These organisations were contacted in parallel with others. Partners, friends and family also played an important role in a number of claims or at various stages in a number of claims.

7.5.1 Sexual orientation

Partners, friends and family

Some claimants reported that their partners or friends and family, where informed or involved, played a critical role in their claims.

In some cases they were there for moral support, in others, particularly where there were gaps in third party support or representation, they became involved in the detail of claims.

One claimant referred to the general support and encouragement family and friends provided:

"I'd speak to my mother about what was going on, some of my friends about what was going on. There wasn't really a great deal that they could say because they couldn't give me any legal sort of thing [but] they saw how stressed I was and upset about it [and said] you want to get this sorted out quite quickly. But no one actually said drop it, just let it go."

SO, lesbian, factory worker, settled

Another claimant hoping for this support expressed disappointment:

"I did speak to my family, but they didn't really understand. They understand now, but they didn't really think it was as bad. They probably thought it was me more than anything else. Unhappy in a job and stuff like that."

SO, heterosexual, male, skilled manual, withdrawn

Although most claimants felt supported at home or amongst friends and family this was not always the case. In order to access full support many of these

claimants referred to the need to be 'out' or 'come out'. One claimant in particular, a male civil servant, felt unable to do this fully as one parent was ill and he said he did not want to place extra pressure on this parent. As his claim progressed and was investigated, and he was suspended from work, he told of how he had to maintain his daily work routine to avoid his parent's suspicion.

Although there were reports of many cases where friends and partners were deeply affected, there were two cases in which friends and partners seemed to play a pivotal role. In one, that of a gay male store manager who eventually settled, a friend who was a trainee barrister helped in discussions to re-frame his experience of discrimination and his claim and submitted a new additional jurisdiction of sexual orientation. He also took over the management and direction of the case, giving, as the claimant said, 'homework'. The claimant said he felt intense relief once he had started to receive help.

In another case, that of a lesbian HR manager, her partner attended the pre-hearing after which the case was settled 'due to ill-health'. This case is covered in the following chapter on employment tribunal experiences.

Other organisations and sources of advice

Most claimants carried out research into their claims regardless of whether or not they were represented. Many used the internet and a few their local library.

Although Stonewall has published on sexual orientation discrimination in employment and campaigns on behalf of the lesbian and gay community no claimants reported contacting them for help or guidance. Those who pursued sexual orientation discrimination claims but were heterosexual did not consider that Stonewall was a suitable organisation to contact. Several lesbian or gay claimants said that they had considered contacting Stonewall but did not feel it would add to information obtained from the internet or CAB offices. One gay male claimant said he decided not to ring stating:

"Sexuality's a small part of my life so I don't immediately think gay, Stonewall, I don't do gay bars very often, I have lots of heterosexual friends and I don't think that way."

SO, gay, male, retail manager, settled

One claimant, frustrated with delays in settling his claim, threatened to bring their case to the attention of the gay rights campaigner Peter Tatchell as he felt his employer in particular would suffer from the stigma of sexual orientation discrimination and lose business. Other organisations contacted by just a few claimants included the Terence Higgins Trust and Liberty.

7.5.2 Religion or belief

Partners, friends and family

Partners, friends and family were also considered to provide vital support and encouragement for religion or belief claimants. This was the case whether claimants were represented or not. As one claimant explained:

"I don't think I would have got through that if I hadn't had the support of a very good friend. Without the support of her I think I probably would have just caved in."

RB, no religious affiliation, female, child carer, settled

Partners and friends were also relied upon for their judgement and competence. One claimant, who eventually settled, said she relied substantially on support from her husband who had experience as a trade union representative himself, even though she was also represented by her own trade union:

"I couldn't have done it without my husband so he was number one."

RB, Jewish, female, security officer, settled

Brothers, sons, nieces, neighbours and so forth were all mentioned for practical tasks involved in the claims and in some instances these family members also provided financial support for those claimants attempting to secure representation. Quite a number of religion and belief claimants also referred to the role of their partners and close family members in confirming that settlement was a good option, if only, as some reported, to reduce the stress upon the family. One claimant, with a race and religion or belief claim, said he could not have continued without the financial support of family abroad. He stressed that he would not have been able to pursue his claim if he had had a wife and children.

CRE, community organisations and other sources of advice

Again, religion and belief claimants tended in the first instance to research the claims and the employment tribunal service on the internet. Libraries were also used.

Claimants with race jurisdictions also generally referred to contact with the CRE although not all did. Satisfaction varied and seemed to be related not to case outcome but again to whether or not the claimant was represented and the expectations that might then have been present.

One claimant was pleased with the advice and support he received which included advice on which jurisdiction to use for the claim, and help with filling in the ET1 form. Another claimant, who had decided to represent himself but had contacted the CRE for advice, expressed dissatisfaction with the advice offered by the CRE. He suggested that they did were not fair or open in deciding which cases to support.

Another, who was unrepresented, regretted contacting the CRE instead of the CAB and blamed the CRE for what he saw as inaccurate advice which he said led him to submit his claim late:

“They accepted my case because they felt that it was something not normal. But I didn’t receive the help like they should help me, you know. Even when I went for pre hearing, they said oh we are coming with you, [but] afterwards they changed they mind, they said no, no, I have to go alone ... They didn’t do their job properly. I don’t know if their staff is inexperienced but it wasn’t the case, I am not happy with the service I received from them.”

RB, Muslim, male, translator, withdrawn

Claimants did not report contacting many other community groups or organisations. One who did was an Irish claimant who received support from an Irish welfare organisation.

7.6 Acas

The majority of claimants referred to ‘the letter’ they had received from Acas and recalled no further contact. For some, Acas was simply understood to represent the route to settlement and was not considered relevant in their pursuit of justice. Others sought out and welcomed the information and advice given by Acas, and particularly the accessibility of that relative to other organisations and these claimants rated the help of Acas highly.

Although claimants had both positive and negative comments to make about Acas, most expressed indifference. A few claimants were suspicious of the impartiality of Acas or felt the entire employment tribunal system was on the side of the employer and this influenced their desire not to use Acas services. Many were not familiar with some or all of the services that Acas offers and there was evidence of extensive confusion and misunderstanding, for example one claimant who regularly referred to Acas as the employment tribunal. Overall, other organisations and individuals, notably trade union representatives and solicitors, were seen to play a more central role in claims and in the minds of claimants.

The section that follows outlines some experiences of and views on Acas and explores the reasons for these views. In a number of cases expectations about the role of Acas were seen to lead to disappointment amongst claimants. Notably those claimants without representation who were seeking legal advice, an opinion on the merits of their claim and its likely outcome, or physical representation were particularly disappointed with Acas.

A small number of sexual orientation claimants reported that Acas played a valuable role in brokering or validating final settlements. Two further sexual orientation claimants would ideally have like Acas to help with the settlement of their claims but their employers apparently refused.

7.6.1 Sexual orientation

Virtually all sexual orientation claimants remembered receiving a letter from Acas. For the majority this represented their first contact with Acas. A few, in the past, had used the Acas helpline to seek advice on their rights and one had heard of Acas through its role in high profile collective disputes but many said they had never heard of Acas. Most expressed the fact that they were, and some claimants remained, uncertain about its exact role. One claimant said:

"I didn't even know [Acas] existed. I think they probably should do a bit more to advertise what they do really. To make people know there is people that you can speak to."

SO, heterosexual, male, skilled manual, withdrawn

Although some claimants who were represented could not be certain about the contact between Acas and their representatives, most said that there was no contact with Acas beyond the letter. In the words of one claimant:

"Just a little standard letter and that's it, saying ... we're here to help before it goes to employment tribunal ... And nothing came here after it."

SO, gay, male, local authority, settled

A small number of claimants recalled a desire to achieve a settlement with the involvement of Acas but their employers were not willing. In one case, the claimant contacted Acas and said that he spoke with an officer at length:

"I contacted Acas, well they sent me a letter saying that they could work to maybe try and get this settled. At one time, I said if you could, because I'm really stressed out about this. And they got in touch with the company and [they] said 'no, we're not willing to discuss a settlement'."

SO, gay, male, retail manager, settled

This was also the situation for another claimant dismissed for gross misconduct after a prolonged period of bullying:

"... they were very good, they kept me informed. They sent me a letter detailing information about what the protocol is and what's gonna happen and everything. I agreed to it, and the only problem was [the employer] was not interested whatsoever. So though I was all up for it, [the employer] didn't want to know and they said they're not prepared to negotiate. The end."

SO, gay, male, salesman, struck out

Some claimants ultimately settled with the involvement of Acas and praised the efforts of Acas. One of these claimants who had no representation said she had been particularly critical about Acas in the early stages of her claim:

"I spoke to Acas a couple of times just to get some things clear in my head. But I didn't find them overly helpful at all ... I got really cross at one stage because in some instances, they would give me conflicting information. ... [The Acas representative] was a complete and utter waste of space. He actually upset me ... I was never asking him to make decisions, because he can't do that. But you know, he also is not supposed to take a side and I didn't always necessarily believe what he said to me either. You know what, this is really awful, but I didn't trust him ... I was really really disappointed."

SO, lesbian, HR manager, settled

This claimant however felt that for health reasons she could not cope with the final hearing and contacted Acas days before this was due to take place to liaise with her employer and arrange a settlement. She expressed satisfaction with this final contact.

For some other claimants Acas was seen to 'rubber-stamp' their settlements and were seen to be efficient in this.

A small number of claimants made negative comments about Acas, typically these claimants were unrepresented and expressed the fact that they were in need of support, legal advice, personal contact and representation.

One claimant was extremely disappointed when she said she went to meet her Acas representative and they didn't turn up:

"I felt that I had to fight, I had a real fight on my hands to try and get anyone. I just felt that it just wasn't fair, not at all."

She recommended they:

"... get their act together. Seriously get their act together. And find out more about transgender issues, rather than thinking that they can help."

SO, male-to-female transsexual, skilled manual, successful

7.6.2 Religion or belief

The majority of the religion or belief claimants had not heard of Acas prior to making their claim. There was evidence of significant confusion about the role and remit of Acas in some interviews. For many claimants the initial letter from Acas was their only contact. For a number, Acas represented a settlement route which they felt was irrelevant to their claim and so they reported no need to rely on Acas.

Many of the comments made about Acas, and indeed the other parties involved in providing advice or assistance to employment tribunal claimants, need to be placed in the context of claimant expectations and needs. In most cases, although not all, those religion or belief claimants frustrated by the services of Acas were not represented and also expressed disappointment with the services of other organisations.

Amongst some religion or belief claimants, particularly with an added race jurisdiction, the first Acas letter itself raised expectations and prompted disappointment. For one claimant it re-enforced how little support there was generally available to those in his position:

"The only feedback I got from Acas was that letter that your case has been registered with Acas and the number is blah blah blah. Ok. So who cares about the case being registered, Ok it's been registered, well what are you gonna do, what's the next step? ... I can't remember the leaflet but they did send me a leaflet with it. I was more interested in my case, look who's gonna be helping me? Where do I stand? Nobody was talking to me in the sense that this is your case, this is where you stand, whether they have done something wrong or right."

RB, Muslim, male, IT manager, settled

Views differed. While a small number were disappointed not to receive personal contact one claimant said she would have preferred a leaflet in place of the call she received. Largely again this seemed to be related to the fact that the contact in itself made her realise how little help was generally available:

"I got a letter from them saying something about they'd been notified or something. And then after that I had a lady ring me up and she explained on the phone things like what your entitlements were, by going to tribunal, 13 weeks of pay and what not ... I don't even know whether it's relevant or not but it's not why you go to tribunal. And really the things that I was told on the phone about 13 weeks wages and whatever, it's irrelevant. I mean really it should be written down to save all the hassle of spending 2 hours on the phone listening."

RB, non-practising Catholic, female, shopworker, settled

This claimant explained that her initial frustration was caused by her lack of knowledge about the role of Acas and her high expectations:

"I certainly didn't know at the beginning what [Acas] was, I assumed wrongly, that you could probably go and see someone, tell them what was going on, and they'd probably contact the employer and say well, it does appear that ... I thought they'd play the role of the solicitor if you know what I mean, or intermediary, that was my impression of Acas when I first got in contact with them, I thought that was what they were there for. [After dealing with them] I realised that they're just there to maybe tell you exactly what would be in a menu ... that they could tell you racism isn't allowed but they can't discuss your case ... And when you ring up Acas you're logically looking to talk about what's happened to you."

RB, non-practising Catholic, female, shopworker

Most of those who turned to Acas for help said they were satisfied with the advice and information received. This did not seem to be influenced by case

outcomes. One claimant who was initially unrepresented said that Acas was his only source of advice when preparing his case. He found them to be:

"... very supportive, they said at the end of the day you've got three cases. One is unfair, the other one is constructive ... the main one is religious discrimination. Then I pursued them on my own for about six months with a certain amount of help from Acas, they were giving me certain guidance, they sent me certain literature ... Acas played a pivotal role throughout my case and I think it's wonderful to have such organisations in our society where they can take care of an issue without being subjective, because they were very objective throughout the process."

RB, Muslim, male, sales manager, settled

One claimant, a female teacher said the staff were 'very very helpful'. Another who did not have much contact with Acas throughout her claim was grateful for the information received:

"It was good that they [gave information]. I have to admit, this pamphlet in particular that I probably picked up at the union office, was a very big help. It really helped because this thing has the law written in it, as to what the company is really supposed to do. And I probably got a lot from it, so if it was the only thing they did for me, it was a big thing."

RB, Jewish, female, security officer, settled

Those claimants who were seeking more than information or conciliation from Acas reported mixed experiences. One claimant who settled independently of Acas involvement regretted her lack of contact. She said that she would have welcomed more advice earlier in the process.

"Maybe if I'd known about Acas a bit sooner, but as I said earlier, it's just one of those things that you don't know about until you really do need them."

RB, no religious affiliation, female, child carer, settled

The impartiality of Acas was perceived by some claimants to imply a bias towards the employer. One claimant recalled contacting Acas after receiving a letter from them to clarify their role and see how they could assist her:

"I rang them and said who are you then? Because I was like where are we going, what happens? And then he said well I can be the middle man, I can make an arrangement outside this pre hearing. I go but whose side are you on then? And he said I'm on nobody's side. He said but the [employer] has said to me can you settle this outside. I said not really, no, because I've lost my job, how can I do that? I said no, I'd rather take it further, thanks."

RB, Muslim, female, nurse, withdrawn

One claimant who had no desire to settle before his hearing, although supportive of Acas, was frustrated by the communication between Acas and his solicitor. He said that each time his solicitor wrote to him about an Acas communication he was charged:

"Acas contacted me and contacted my solicitor ... Much as I appreciate what Acas do, I have to say that they cost me at least £900 in lawyers' fees because I had three letters from the lawyer, about Acas forms, and I also had a meeting with Acas for certain things that I had to sign. And every time I see them, or contact or talk to them on the phone, it costs me money."

RB, non-Catholic, male, teacher, successful

7.7 Summary

7.7.1 Sexual orientation

Claimants expressed a strong need for information, advice, support and representation. Needs changed as claims progressed. Initially claimants sought information about the law, employment tribunal procedures and the merits of their cases. Later claimants referred to the need to share the burden of work and obtain representation to effectively pursue their claim. The costs of obtaining legal representation were seen to be prohibitively high and many claimants felt that the outcomes of their cases, and their experience of the tribunal, would have been different if they had been represented.

Claimants typically contacted their trade unions where they had membership and enjoyed the support of their unions throughout the claim. Claimants generally appreciated the extent and quality of support provided by trade union, particularly where solicitors were provided, although the competence of local representatives was criticised.

Those outside of trade union membership tended to contact the CAB in the first instance or to use the internet. The information and advice given by the CAB was on the whole appreciated but several claimants felt that CAB offices were understaffed and open too few hours. Few claimants contacted gay organisations.

Claimants who had to pay for solicitors tended to only use them at certain points in their claim, for example to check a submission. Several claimants

rang no-win no-fee firms but most were rejected. Many costed solicitors but said they could not afford the hourly rate quoted.

Where Acas services were used comments were generally positive. Acas conciliators settled or brokered deals in a small number of cases. However, claimants tended to have used advice rather than conciliation services and many did not feel a need to maintain contact with Acas either because they were receiving support from their trade union or solicitor or they were not pursuing settlement. There was evidence of some confusion about the role of Acas and unrealistic expectations about the ability of Acas to provide legal advice or representation.

7.7.2 Religion or belief

Claimants contacted a range of third-parties seeking information, advice and support. They were particularly interested in obtaining an opinion about the strengths and weaknesses of their claims and were disappointed when this could not be found. As claims progressed, claimants became aware of the need to secure representation and several referred to the 'language of the law' which they felt unable to understand alone. Costs were cited as a significant barrier to obtaining representation and claimants felt at a severe disadvantage relative to respondents in this respect. Some claimants felt that they would have been successful, or not have settled, had they had access to legal expertise.

Trade unions were contacted by those who were members and they provided advice, representation and legal expertise in some cases. Although there were positive appraisals, some claimants reported poor experiences: one claim related to a union not providing support in an earlier employment tribunal claim; one claimant said that her local trade union representatives was one of the perpetrators in her discrimination; and one felt that the trade union gave him little time and forced a settlement.

The CRE, CAB and Acas were contacted by those who were not trade union members. Claimants were generally satisfied with information and advice received but high or misinformed expectations left many claimants frustrated. Those without trade union representation and without the personal costs to secure their own legal representation tended to look to these institutions to fill that need.

7.7.3 Commonalities and differences between sexual orientation and religion or belief cases

These two groups of claimants shared similar needs and cited the same barriers to obtaining legal advice and representation. Differences were more evident across rather than between the claimant groups.

While some religion or belief claimants accessed the services of the CRE, sexual orientation claimants chose not to contact gay organisations. Religion or belief claimants, notably those with added race jurisdictions, referred specifically to the different language of the employment tribunal system which

they felt particularly disadvantaged them but this was not a strong theme amongst the sexual orientation claimants.

Both groups shared confusion over the role of third-parties particularly Acas. Those who expressed frustration or disappointment were more likely to be unrepresented and to have believed that Acas, or indeed the CRE and CAB would provide direct legal support and representation. Although claimants in both groups were positive about the services used, a small number of religion and belief claimants rejected Acas assistance and said that they did not fully trust the impartiality of Acas conciliators given that they also communicate with employers.

8 THE EMPLOYMENT TRIBUNAL EXPERIENCE: WITHDRAWN, SETTLED AND HEARD CASES

Many of the claimants interviewed did not attend a final employment tribunal hearing. Several settled at such an early stage that they attended no employment tribunal meetings at all and a small number withdrew their claims. This chapter examines those cases withdrawn, struck out, settled or heard. It explores the experiences of these claimants and the reasons for the different case outcomes. It considers ways settlements were reached and the thoughts and feelings of those claimants who settled or withdrew their cases. It also explores the experiences and views of those whose cases went to a full hearing. The role of representatives and third parties in relation to strategies, choices and outcomes are also considered.

8.1 Withdrawn cases

The following two sections consider the one sexual orientation and four religion or belief claims that were withdrawn. Four of these claims were withdrawn without any offer of settlement, for a variety of reasons; one was withdrawn when the claimant was re-instated.

8.1.1 Sexual orientation

One sexual orientation case was withdrawn. The claimant was a skilled manual worker employed in a rural factory. Although heterosexual, he was subjected to daily homophobic harassment and bullying and finally resigned. *"They tried to force me into reluctant dismissal without sacking me. Yes. That's basically what happened."*

The main reason for withdrawal seemed to be that of finance and the risk of incurring high costs, but the claimant also admits to being depressed at the time and not wanting to pursue the claim any further because of the "weight on [his] shoulders all the time".

"I think you don't get Legal Aid if you earn over a hundred and seventy pound a week. So I thought, if I lost, it could run into a lot of money ... Like that was the bottom line, money ... So I thought I would cut my losses and move on to this other job, which is what I did ... And I was depressed and a bit confused at the time ... I lost my self confidence. I lost everything. I wasn't thinking straight. It's easy to sit here and say 'why didn't you do that' ... It makes you ill in the end ... I felt like I was on my own. And I did try and tell people ... They tried to make out I was paranoid and stuff like that ... So I just left it alone."

SO, heterosexual, male, skilled manual, withdrawn

A further reason was lack of support as he felt he could have continued with the case, and indeed felt that he would have been successful in his claim, if he had received more support.

"... but I didn't feel I had anyone to turn to ... I can't compete against a solicitor [and] I didn't feel like I could get a solicitor... They may not be

cleverer, but they know more ... And I couldn't beat the solicitor, so I had to withdraw."

SO, heterosexual, male, skilled manual, withdrawn

This claimant had mixed feelings now about withdrawing his claim. *"I felt once I'd left, I felt 'well that's it now. I am a lot happier with myself, and let's just forget about it'. And that's what happened."* With hindsight he admitted some regrets.

"When I withdrew it, I just sort of put it to bed, and thought 'Right, just forget about it', and just get on with my life. But I wish I didn't. Not for any compensation or money or anything like that, but just because I felt it was against human rights, what they'd done. I wanted to make people aware of it, not just for me, but for other people. Because it goes on all over the place ... I can't believe what some of them put up with just to earn a living. Not just for white people like me, but for all different origins or whatever."

SO, heterosexual, male, skilled manual, withdrawn

8.1.2 Religion or belief

Two religion or belief claimants without a race jurisdiction attached, and two religion or belief claimants with a race element to their case, also withdrew their cases. Costs were a significant factor in the decision to withdraw in three of these cases. In the fourth case, that of a Muslim salesman who also claimed race discrimination, the claimant was re-instated and was working in a different area of the same organisation and so felt no need to continue.

One religion or belief claimant, a female Muslim nurse, who said that she could not get time-off work in her new temporary job to attend a pre-hearing review, withdrew her case after a request for a deposit.

"They sent me a letter saying somebody's decided ... that because, your non-attendance has suggested that you are not serious or something. And if you want to pursue this you have to put a deposit down of £200 because they incurred losses or something like that, coming to the tribunal ... Yeah, it was just withdrawn. I thought I haven't got £200 ... I thought well, I just put it in the bin, I just thought forget this... I thought I don't want to battle this out ... I can't see the light at the end of the tunnel ... that's like another nail for me ... because if it starts at £200 it'll be another £200 and another £200 and then where does it end ... I thought no, why should I pay to be heard?"

RB, Muslim, female, nurse, withdrawn

She likened her case to a custody dispute where the outcome has already been decided. *"I wasn't treated as a victim if you like, it was more you're making these up, and if you want to take it, put your money where your mouth is and then we'll listen. That's what I felt like they were trying to do."* She expressed the view that the other side was too powerful for her to justify continuing. *"They'd already come fully armoured and I was coming blah blah blah."*

Another religion or belief claim withdrawn was that of a non-Catholic male teacher in Scotland. His claim was withdrawn at a very late stage following the threat of costs.

"At the end of the morning recess, my lawyer went into a room to talk to their lawyers and they all know each other ... they were joking away before you know...he came back and he said I want to see you, to myself. I've been asked to inform you that if you don't drop the case by the end of the day, he will go against you for full costs if you lose it ... And my understanding was that the court costs at that point were running at something like close to £20,000 a day ... So I was basically told by them that if I did not drop it, they would basically ruin me financially. That's what I was told."

RB, non-Catholic, male, teacher, withdrawn.

This claimant felt bitter about the threat of costs and the need to withdraw. He noted that the threat came just after a point in the hearing where the employer had admitted lying. *"I was forced to withdraw, not because I changed what I believed in. But because they had threatened me financially and they were gonna shut me up at all costs basically."*

He reported that his lawyer advised that:

"normally [the tribunal] don't award costs against the party if it has been a fair and reasonable case. But he said you can never say 'never' ... And [the company] will use their power and might to basically at all costs finish you with this. They will throw money at it, basically to win".

Following this advice, the claimant felt he had no choice but to withdraw on that day.

"And so I was left in a position that I either withdrew it or I fight on and if I lost it, it could basically ruin me. Which I've got to say you know, if it was just me myself, I would have continued but I've got a family and kids to think about...if I didn't give it up they were going to go after me for every penny I'd got...I was forced to withdraw, not because I changed what I believed in. But because they had threatened me financially and they were gonna shut me up at all costs basically."

A male Muslim translator, whose claim included both a religion or belief and a race discrimination jurisdiction, withdrew after he received a letter from his employer stating that *"his case was out of date and that they would pursue costs"*. This letter was sent to him after a pre-hearing review. He rang the CRE to seek clarification and they confirmed that he had submitted too late although he felt that they based their decision upon the letter sent by his employer, and the facts it contained, rather than their own independent research.

Again, in this case, costs were a factor in continuing with the claim. *"Like they are going to say oh, we want to claim expenses, and it will be £2,000, £3,000 and I am going to struggle to pay them."* This claimant also pointed to a

negative experience at the pre-hearing which he felt also encouraged him to withdraw.

"I wasn't happy with the chairman of the tribunal ... He started asking me questions, it's like I was [the employer] and they were the claimant. I thought he made a mistake, but he didn't ... I wasn't expecting him to give me the support you know, he's the chairman of a tribunal, what he should be, he should be impartial. But to be honest with you, he wasn't."

RB, Muslim, male, translator, withdrawn

To this day this claimant is still not certain that his claim was 'out of date' and said *"if my case wasn't out of date, it wasn't the right decision [to withdraw]."*

8.2 Settled claims

Of the 30 claimants interviewed, 16 settled. These claimants settled at varying stages of their claims, for different reasons and with different outcomes. Acas was reported to broker a deal at the last minute in one sexual orientation claim and to 'rubber-stamp' two further sexual orientation settlements. Religion or belief claimants could not recall Acas involvement at this stage.

The following sections, divided according to sexual orientation and religion or belief jurisdictions, consider the experiences of those who settled very early or extremely late – that is just before the full hearing was due to take place. It also explores those cases settled during the employment tribunal process, typically after a pre-hearing or case management meeting.

8.2.1 Sexual orientation

A number of sexual orientation claimants chose to settle their cases. Some settled at quite an early stage in the process and before any tribunal contact. A couple settled at the eleventh hour just days before the final hearing was due to take place. Most settled after some contact with the tribunal and typically after a first meeting or pre-hearing review.

Most settlements were initiated by employers. Representatives appeared to play a pivotal role in determining the timing and acceptability of settlements. Although the majority of claimants were quite pragmatic about having settled – and most justified their decision to settle as the best that could be done at the time and in the circumstances – some still held regrets about not having had their 'day in court'. That money rather than justice became the focus of proceedings was criticised by all.

Early settlements

One young service sector employee who was perceived to be gay and reported intense bullying and harassment by more senior colleagues settled at an early stage of his claim. This case never reached any tribunal hearings which the claimant said had indeed been the aim of his 'no-win no-fee' solicitor. The claimant recalls many letters back and forth *"it kind of dragged on, it was four*

months I think it was going over, at least that. Felt like a lifetime." These letters all concerned the final settlement amount which ultimately was significantly lower than his solicitor had anticipated. In the end she advised him to accept.

"Yeah, she said to me, the most I'd get from the owner was £X so she said you're better off taking, because he doesn't seem to be budging."

SO, heterosexual, male, chef, settled

However although the settlement was the prime concern of his solicitor it was not the priority of the claimant. *"The money wasn't so much of an issue for me. I would have been quite happy to get him in the paper for what he's done and have no money. But no."* When asked whether settling was the right course of action he replied: *"Think so."*

Another claimant settled quite early into the tribunal process but after a year of internal meetings. Due to the stress of internal processes and ill-health, settling was a priority for this claimant from the outset and something to be pursued in advance of any employment tribunal preparations. For some time, a trade union representative negotiated financial terms with the company although the offers were so low that this claimant said it got to the stage where he said:

"Ok we'll go to tribunal then. I said I'm pretty confident that I'll win my case. I don't think they were actually bothered."

SO, gay, male, civil servant (transport), settled

He referred to a number of factors that made settling appealing and employment tribunal procedures unappealing. The key motivator was his impression of the employment tribunal panel *"you sit before three people that are white, middle to upper class ... I certainly felt in my case as a gay man, I felt there might be some bias there yes"* but the time and effort he felt would be required were also factors.

"I just - just had enough, I just - let it go, you know ... You can't go on forever, it had been a year out of my life already. It was more afterwards I thought I should have gone, even before like I said I did think I would win, I felt I was right all along and I thought I would win."

SO, gay, male, civil servant (transport), settled

A further early settler was keen to avoid the trauma of tribunal hearings. Her solicitor

"talked to me about how terrible tribunals are and really don't want to do that because there'd be some terrible things said and I was well they already have been said anyway. So just they're gonna be said to my face this time ... I didn't want to go to tribunal in all honesty, I didn't want to because the whole process of this was incredibly stressful."

SO, lesbian, factory worker, settled

It is interesting to note that although these claimants have been categorised as 'settled early', because they avoided any employment tribunal meetings or hearings, reaching a settlement took from several months to over a year after the 'act of discrimination' in all cases.

Settlements during the employment tribunal proceedings

Several claimants maintained discussions about settling and settlements alongside preparations for final hearings. Several of these cases were settled immediately after the pre-hearing. It seems that this hearing provided an important indicator of the strength of the case to either side or perhaps made the employer accept the reality that the case was actually going ahead.

Settlements at this stage happened for a variety of reasons. One gay male senior manager felt that the employer was keen to avoid a further hearing and bad publicity and that a settlement at that stage was sufficient compensation and admission of guilt. A further two sexual orientation claimants (a gay male teacher and a gay male local authority employee) also settled at this stage on the advice of their solicitors who advised that their reward ceiling had most likely been reached.

A gay male store manager in the retail sector aided by a friend training in the law described how attempts to settle his claim took place in parallel with preparations for a final hearing. Ultimately, this claimant settled because he felt that there was a risk that victory at the tribunal might not even secure that same financial amount.

At the early stages the claimant felt quite insulted with the offer to settle. *"I said 'no' I said 'it's not for discussion, that's it, end of."* However his legal friend advised him to

"put a figure in your head that you think that this is worth. Now if it's not worth anything then we must reject every claim if you want your day. Or if it's worth something, put that figure in your head'. And I did come up with a figure, I come up with a figure ... for six months of work."

SO, gay, male, store manager, settled

After rejecting several further offers he finally settled at an amount close to this. The company seemed to be keen to avoid the negative publicity that this claimant finally started threatening.

He did not regret not getting his 'day in court': *"I was focussing on how do you get these people and – it was ducking and diving and wondering how you're*

gonna get them and I was trying to think ahead and think how are they thinking. That was way too much work."

Late settlements

The stage at which cases were settled varied. Three cases were settled just before the final hearing was due to take place. All claimants considered this to be because of efforts by the employer to avoid the publicity attached to tribunal hearings. A significant factor in aiding the settlement was the level the awards offered reached. Where financial amounts were higher than could be expected from a tribunal decision, two of these three claimants (those represented) were advised that legal support could be withdrawn.

One, a lesbian Human Resources manager who had no representation, was preparing for her hearing on the Monday and received an email from the solicitors of the respondent on the previous Friday asking if she would go into negotiation. She agreed to this but through an Acas conciliation officer. She recalls ringing an officer at Acas and after four hours the case had been settled. *"That last few hours he was in actual fact very good."* The decision to settle was made because of her state of distress, partially fuelled by negative experiences at, and in preparing for, earlier tribunal meetings.

"We stopped basically because of my mental health, I actually tried to self harm myself and it was too much then, it had to stop. And my partner was, I mean there's no way I could have put her through it either and it was time to call it a day you know. I mean I could have just turned up on the morning and then just walked out the court but I just couldn't even do that, I was ill!"

SO, lesbian, HR manager, settled

There was another late sexual orientation settlement for a male civil servant represented by a legal team provided by his trade union. *"I think the [employer] realised that this wasn't gonna go away and that it was fast looming the date, so they contacted our team with an offer, which we discussed and then [initially] rejected."*

He felt that his employer 'knew they were wrong' and concerned about the *"embarrassment of it going to the tribunal"*.

"... obviously they didn't want to have their name tarred with something like that ... could be a lot of bad press. That's my perception as to why it was settled."

SO, gay, male, civil servant, settled

Another female civil service claimant also referred to increased settlement activities on the part of her employer just before the main hearing to, in her opinion, avoid negative publicity. The first offer to settle came after the pre-hearing. To this claimant this was a welcome move but the level of the offer not acceptable. *"I was encouraged about that because I thought they've got*

something to fear, so that was good, and that took at least two seconds to dismiss that." She then recalls the offers increasing over time but she continually rejected these.

"I just wanted, a cliché I know, but I wanted the day, I wanted, I sort of wanted to stand up and be counted because in the past, I think my attitude having been 'just get on with it', and I'd not made trouble if you know what I mean ... And this time I thought I'm not going to do that, I'm going to behave in a different way this time."

She finally settled.

"I had got that impression anyway that the [employer] just didn't want to go to the full hearing. That wasn't what I was about really, I wanted to go for it really ... But then it came to the hearing, was scheduled to be the Monday and then the Thursday evening, they came with an offer that I couldn't refuse really. The solicitor said to me you know, they're offering you more than any tribunal will give you ... then I was thinking well what - what if I go and I lose? It's all for actually nothing then, how will I live with that? ... it was needless and risky ... So whilst there wasn't a formal admission of guilt, there was."

SO, lesbian, civil servant, settled

She still feels that settling was the right thing to do although she did mention that she felt guilty about letting down colleagues who were prepared to take the stand in support of her just days later. She said however that the risk of not hearing *"you have been discriminated against"* was one which at that stage she (and her witnesses) did not feel was a worthwhile one.

Advice of representatives in settled cases

Information and advice given by representatives at this stage was on the whole trusted and followed by claimants. No matter whether independent, trade union provided, or 'no-win no-fee', representatives were generally perceived to share the interests of the claimants or to act in their best interests. Their role in facilitating, and occasionally triggering, settlements was evident in most cases. Typically legal representatives informed and managed the expectations of claimants regarding suitable financial outcomes. In some cases, threats to remove representation acted as the catalyst to settling.

One claimant, who felt that the victory was his, settled after the pre-hearing and later regretted this decision. He talked about the role his solicitor, paid for by his insurance policy, played in outlining the risks of continuing. This played a major part in his decision to settle at that time and for that amount.

"Well they offered us compensation which was above and beyond the basic award for constructive dismissal and our solicitor said to take it ... she advised us that if it did go to tribunal, that if the offer was more than the basic award then that could almost be taken against us. And that [the employer] could claim costs, even if we did win ... At that time it was the right decision, we were both quite stressed and we wanted to see an end of it. But now ... I think when you get into the legal

complexities of stuff, you take the advice of solicitors don't you because that's what their job is and that's what they know best. So you do rely on them a lot ... And especially when the solicitor said you'd have to pay them out of my settlement for costs, even though I was innocent."

SO, gay, male, local authority

A great deal of trust was invested in legal experts. When it came to the terms and timing of his settlement another claimant, a gay male civil servant, who admitted that *"the financial thing wasn't the strongest of my reasons for doing it"*, also reported following the advice of his legal team.

"Well obviously I was led by my barrister, she's got experience as to what these sorts of claims could generate in terms of financial, and other criteria. And she fought for the best which we believe we got ... [I] was prepared to accept whatever she said really ... I wanted closure and I wanted to know that although it was settled, in my eyes theoretically I thought I won because it was settled to my satisfaction."

SO, gay, male, civil servant, settled

He went on to say however that the decision however was not entirely without pressure.

"I didn't really have the choice ... because the barrister ... felt the terms of their offer was acceptable and if we were not to have agreed it, then because the [union] were financing my legal fees, she would have to report back to them ... then there could have been a cost implication, a well hang on, we're funding to get the best you can, and you've been advised that this is probably the best, yet you're not choosing to take it."

This claimant was understanding:

"I think she was being fair, she was being financed by the [union] to do the best job she could for me. She managed to get to a settlement which was acceptable in her eyes, compared to her previous experiences of similar type claims."

SO, gay, male, civil servant, settled

Settlement outcomes

All claimants settled for a financial amount. Due to confidentiality agreements it is not possible to report all of these figures but those that were disclosed ranged from £500 to just under £40,000 (the higher settlements were generally based on salary). Many claimants had confidentiality clauses attached to the settlement figures. Not all settlement amounts were in respect of the discrimination element of claims and typically the higher settlement figures related to a dismissal or redundancy element.

Two refused outright to have confidentiality restrictions attached. Indeed, one claimant reported that the settlement nearly failed because the company

wanted a confidentiality agreement and the claimant was adamant that he could not sign one:

"I was like yeah, right! And I says then this will go the full way because I will not sign that clause, I will not do it...So they had taken the clause away."

SO, gay, male, store manager, settled

Satisfaction with the actual amount varied but in general was low. A sentiment echoed by several claimants is captured by a comment made by a lesbian HR manager:

"I got no satisfaction out of getting a cheque, none. Because I always wanted to have my day in court to tell people what actually happened. And how people, just because I'm gay you know, you just don't speak to people like this. So I got actually no satisfaction that way."

SO, lesbian, HR manager, settled

Another claimant felt that the amount in no way compensated or took account of the long-terms costs:

"... the wild wild figures [colleagues] think I walked away with, ten times what actually came out of it. Besides the fact I lost my job, my health and I haven't worked since basically."

SO, gay, male, civil servant (transport), settled

In some cases references were discussed. In two the claimants dictated the terms of future references. In one, it was agreed that a reference would never be provided by the company.

"They refused to give me a reference. They said if you want a reference, it will cost you £X, well I told them where to shove it!"

SO, lesbian, HR manager, settled

In a small minority of cases an apology was attached. Some claimants were asked not to bring their employers into disrepute in the future.

8.2.2 Religion or belief claims

A majority of religion or belief claimants also settled their cases. Some settled at quite an early stage in the process and before any tribunal contact; a couple settled just before the final hearing. Most settled after some contact with the tribunal and typically after a first meeting or pre-hearing review. Most settlements were initiated by employers. Representatives appeared to play a pivotal role in determining the timing and acceptability of settlements. Although the majority of claimants were quite pragmatic about having settled, and most justified their decision to settle as the best that could be done at the time and in the circumstances, some still held regrets about not having their

'day in court'. Claimants were disdainful that money rather than justice became the focus of proceedings.

Early settlements

Several religion or belief cases with race jurisdictions attached settled early. One claimant, a Hindu chaplain, who settled early did so to avoid tribunal proceedings. *"If I go to industrial tribunal then I will lose my peace of mind ... and of my family and more burden, more stress."* He was unrepresented but had received advice from the CRE stating that his case could go either way. He was disappointed with the final amount.

Another claimant, a Jewish security officer, allowed her (trade-union provided) solicitor and her employer's legal team to come to a settlement: *"they made an offer and I didn't want to go on and on and on, so I just took it."* She said the company's aim was *"to get rid of [her]"*. Her solicitor advised that they could obtain more but she reported replying *"don't ask for more, I don't want to deal with this any more, I need to get on with my life ... And we just settled it at that point."* She had no regrets about settling although happy to have put up a fight for a while:

"they were dragging their feet so long ... I felt like I couldn't get back to work, I couldn't function, I just wanted to finish you know ... the decision was my mental health, I just couldn't take it any more. I just had enough, you know, I was like living and breathing this thing, every single day. It was really making me ill that's all I can tell you, and I thought I can't keep functioning like this, I have to get this out of my life."

RB, Jewish, female, security, settled

A further religion or belief and race claimant settled just before his final days of employment following dismissal on the grounds of redundancy. His case was settled, before any tribunal hearings, by his trade union representative and the company's barrister. He still harboured regrets about settling and felt let down by the judgement and negotiating skills of his side. They undermined his confidence in the strength of his claim and advised that they would be unlikely to represent him at tribunal. He feels he settled in haste and under duress with a badly prepared team.

“And then, you end up with a settlement of £X which is nothing, but I just wanted to call it a day, I was tired, that’s their technique or probably an employer’s technique, tire them, prolong because of the stress, they’ll give up. And that’s where I was, at the point where I said I’ve had enough. Because I was discouraged on the day. I mean if I was a negotiator for anyone, and say for example if I was a trade union and negotiating for a client, I would push them and I would say no, you are wrong, and it will go to the tribunal. And that’s the way to deal with it ... But this guy didn’t have anything and he was saying you are a weak case. What kind of talk is that on the day? If it was a weak case ... re-adjourn, we’ll come back tomorrow, let us think it over, and we’ll talk. Not made me, forced me, make me decide on the spot.”

RB, Muslim, male, IT manager, settled

Settlements during the employment tribunal proceedings

Some cases settled after one or more tribunal meetings. It seems the impetus to settle in many of these religion or belief claims came after some sort of indication from the Chair about the merits of the case.

One claimant settled after a directions hearing where *“the attitude of the chair made it clear that the claimant had a good case against the respondent”*. After this hearing the respondent contacted *“offering to settle the case before it went to a main hearing.”* In this instance the claimant said he was prepared to settle because the respondent was also willing to admit they had been wrong. He also settled because

“I was quite emotional at that time, I’ve got over it a bit now, but sometimes it does come back and give me a nasty bite ... I don’t dislike [the company] ... they have been a very good employer. Certain individuals that are in middle management caused the problem, so why should I bring the company to disrepute by dragging their name through the papers because I could have done. But I did not wish to do that, so I said if you can negotiate and they can put pen to paper and say sorry for the way we treated you in terms of your religious holidays.”

RB, Muslim, male, sales manager, settled

After solicitor fees, he donated most of his settlement to charity.

A final claimant, a shop worker, also settled during the tribunal process.

“I’d been ill for 2 and a half years, I’d lost my job, and even at the end of the day I really didn’t care if the tribunal didn’t give me any money. All I wanted was for someone to say yes, they have done wrong ...”

RB, Irish, female, shopworker, settled

In the end she settled for a sum that was half what she had expected at the outset because she felt that without proper representation there was too much at stake. She recalls *“feeling devastated”* but said *“who in their right minds are*

gonna put their house on the line? And the thing is once you lose your job like that, if you've got a mortgage, how are you going to pay it?"

Her employer gave a payout in her last payslip although she had not worked there for a year and she said there was no satisfaction in this. *"I felt horrendous because ... there was no real vindication for me because you have to agree to them not taking any responsibility for what they have done."* She still had regrets.

"No, no. I feel I should have been able to go into court and be able to be given a judgement which was based on the facts. But the problem is, you can't - any judgement that the chairman gives can't really be based on the facts because you are not in a position to present the facts. Because you have to be legally minded."

RB, Irish, female, shopworker, settled

Late settlements

Two religion or belief cases, without a race element, settled just before the final hearing was due to take place. One claimant, a non-Christian child carer, received a call from her solicitor saying that the solicitors from the other side had just offered a settlement. This was on the Friday before the hearing scheduled for Monday. The claimant did not accept the initial offer and remembers many phone calls back and forth – between the solicitors on both sides and also between her solicitor and her insurance company who were paying the legal bill. She said that she remains unhappy with her decision to settle and blames the insurance company. She said that she 'needed her day in court'.

"That was the complicating factor because had [the insurance company] not been involved, I wouldn't have accepted what they offered and I would have just let it go to tribunal because I felt that they'd caused me that much problem and that much upset and that much distress that I felt that well you know, it wasn't, it couldn't have got any worse. Ok yes I could have gone to court and you know ... I might not have necessarily come out with any money but I don't think I would have necessarily lost."

RB, no religious affiliation, female, child carer, settled

A further religion or belief case without a race jurisdiction also settled late into tribunal proceedings, just two or three days before the final hearing. The claimant recalled:

"Well, really what I asked for was an apology and initially they refused saying that they were in the right and then coming close to the date of the tribunal they ... just said right Ok then, we, they admitted what happened was wrong and they admit liability. And so yeah, that's how it actually got settled."

RB, Muslim, male, engineer, settled

He attributes this to a number of factors. Firstly the company had difficulty getting his colleagues as witnesses *"to go in and lie for them"*. Also, he said they had no evidence. This claimant did not regret settling. He felt that he would not have got *"anything extra"* and that the tribunal might have *"made it out to be his fault"*.

Advice of representatives

Representatives played a key role in religion or belief claims in settling or in advising about settlement terms and timings. Several claimants also referred to the importance of the views of their friends and family and, in some cases, those trusted in the wider community.

Two claimants who had insurance companies paying for their legal support said they settled early under pressure and regretted this. One claimant with a trade union representative also settled early partly because of the threat that representation might be withdrawn. One further claimant settled despite advice from the solicitor that a tribunal might offer more: *"[He said] I think we can do better and I will fight it with you, if you want ... So he kind of gave me both sides of it. And totally left it up to me, and I just told him no more."*

Settlement outcomes

Settlements similarly ranged from several hundred pounds to just under £40,000. Some claimants did not disclose the amount they received because of confidentiality clauses attached to their settlements. Some of the higher settlements relate to unfair dismissal calculations and not directly to the discrimination element of their claims.

The settlement agreements also contained other aspects. Most had a confidentiality clause covering the settlement amount. One claimant, a female child carer, had a gagging clause preventing her from *"speaking badly"* about the person who discriminated against her which, as she noted, *"speaks volumes"*. This claimant could not get a reference though *"and at the end of the day, if I'd had to go back to the solicitor to enforce that, it would have cost me money"* and received no apology. Another claimant who was also asked not to name the company or perpetrator agreed to this condition noting *"I don't blame them because they look like idiots"*. Again, in this case, no apology was given although it seems that the company were going to make changes to training programmes and grievance procedures in the light of the case.

Satisfaction with the settlement terms varied. Much of this depended less on the amount received and more upon the ability of claimants to settle at a stage in the process that suited them, without coercion and with adequate help. Those who settled at high amounts still admitted to carrying regret and bitterness; some who settled at low amounts expressed less regret about making this decision.

Most settlement agreements were honoured immediately; with one exception all were honoured in time.

8.3 Claimants' employment tribunal experiences

This section covers the experiences and views of those whose claims went to a full tribunal meeting. It also includes the feelings and opinions of those claimants who settled after attending some meetings and those whose cases were struck out. In total, three of the thirty claimants interviewed had their cases thrown out; two sexual orientation cases and one religion or belief (with a race jurisdiction attached) claim.

8.3.1 Sexual orientation

It was only possible to interview one sexual orientation claimant whose case was fully heard¹. However several claimants had many tribunal case management meetings and had attended pre-hearing reviews and their views and experiences are explored briefly in this section.

Two sexual orientation claimants had their cases struck out. For one, the alleged discrimination happened just weeks before the regulations applied and the other, a recruitment case, was struck out on a legal point which related to his potential employee status. The first claimant was deeply affected by his experiences and the fact that the regulations did not cover these; the second, a heterosexual man testing the limits of the law, said that he felt very reconciled to the outcome.

Expectations and perceptions

Several sexual orientation claimants who settled had come into contact with the tribunal system or other courts in the past and this was helpful in guiding their expectations. On the whole these claimants reported a positive experience. For others, this experience was new and difficult but they were greatly aided or shielded by representatives. There were however three claimants in particular who were bitterly disappointed by their treatment and felt at a severe disadvantage not being represented or having legal expertise.

One human resources specialist who had attended tribunals as a respondent in the past and was unrepresented during her own case said after a case management discussion:

"I came out [from a meeting] and my partner and I were going oh my god, oh my god, and I had done tribunal stuff before but it's a different ... I found it appalling because I've got a reasonable knowledge because of my HR experience, of how these things work, and I know it's always different when you're in the driving seat. But I had never ever seen a tribunal behave in this way. And I was completely and utterly gobsmacked."

SO, lesbian, HR manager, settled

¹ Although all claimants who went to a full hearing were contacted and asked for an interview. See our technical report for a discussion of this.

In part, frustration was related to her expectations in submitting the claim "that justice would be done" and the fact that the focus of the tribunal was entirely different she felt.

"I wanted somebody to admit that this company behaved in a disgusting way. You have to stand up and be counted because if people don't do something how can you ever change the law? Or how can you ever change anything if people don't fight for a corner."

SO, lesbian, HR manager, settled

Although other claimants did not express strong expectations, there were some shocks reported which implies some pre-conceptions. One claimant, whose case was struck out, was very surprised about, and intimidated by, having to share a waiting room with his old employer and legal team.

"Though there wasn't like a threat of violence or anything, it wasn't exactly the most comfortable thing being in the same room as the person that you're kind of like fighting against ... actually in the room."

SO, gay, male, salesman, unsuccessful

Another claimant who received help from a friend in legal training part-way through his case recalls the initial tribunal meetings and processes.

"It was horrendous, it was horrendous, it went on and on and on and on ... their solicitor sent me more forms and more forms and more information and a lot of it was the legal jargon that I was not able to understand. To the point where I was like, oh my god, I think I've got way too deep into this. And I can't represent myself, it's just impossible."

SO, gay, male, retail manager, settled

He also said that he began to doubt his own case.

It was like oh god, to me I'm thinking that doesn't sound like much. My experience is a lot more than what I'm writing on paper. I was getting disheartened because what they were asking me to describe and stuff wasn't sounding like anything.

Another claimant was surprised not to see his employer but a legal representative instead. A further claimant faced an employer without representation at a first meeting and a solicitor and then a barrister at later meetings as the employer's legal assistance escalated.

Experience of pre-hearing reviews

Some claimants attended many case management meetings and pre-hearing reviews prior to settling their cases. Their experiences varied greatly. There seemed to be a significant difference between the experiences of those with or without representatives. Those without referred to the time and effort spent dealing with paperwork and the stress of operating in a legal environment

without the necessary knowledge. They referred to a bewildering array of requirements, technicalities and the impossibility of understanding legal jargon and etiquette.

"They just started talking all this legal jargon, which I hadn't a clue what they were talking about."

SO, male-to-female transsexual, skilled manual, successful

Two cases were struck out at this stage. One claimant, a male heterosexual professional, had entered his ET1 believing a potential employer had discriminated against him in his application for an executive position. This candidate had some lay legal expertise and reported no problems with the Chair or proceedings at the pre-hearing review stage. His case was struck out on a legal point about his potential employee status.

For the second claimant, the pre-hearing review was reported as an extremely traumatic event. This claimant was told that he had been fairly dismissed by his employer for gross misconduct and that his claim of discrimination under the sexual orientation regulations could not be heard. His case was struck out. The claimant, remembering the day, said:

"... we both had our points of view, so we both said, I said my thing, she said her thing. Then they made the decision and finished it, it was all over too quickly. They didn't really give me chance to defend myself. I believe I didn't really get a fair hearing, it was all over all too quickly. And then that basically was it."

SO, gay, male, salesman, struck out

For this claimant the behaviour that led to the misconduct happened after many months of discrimination and he was very disappointed that the case was decided on a narrow point of law rather than on a more moral or holistic understanding of his treatment at work. He felt that the Chair also dismissed the sexual orientation regulations as irrelevant too easily. The claimant was suspicious that his employer had dismissed him just in time to avoid the responsibilities of the law.

This claimant felt at a great disadvantage not having a legal representative stating that *"if I did, I probably would have gone a lot further and I believe I probably could have won it, or at least have attained something from it."* Instead he recalls:

"... they made an instant decision, we was in and out within about 20/25 minutes. And I don't think that was sufficient time to actually go over the issues. I could have said a lot more but again, I was very nervous on the day and I probably wasn't thinking straight. So I probably would have said the wrong thing anyway."

SO, gay, salesman, struck out

The Chair, Panel and proceedings

Mixed views were expressed about the tribunal personnel these claimants came into contact with at pre-hearing reviews. A critical factor at this stage in the process seemed to be the attitude, behaviour or even personality of the Chair. Negative experiences were typically reported by those who represented themselves. These claimants also tended to perceive bias on the part of the Chair or panel. The section that follows outlines the views expressed by claimants.

The claimant reported above, a gay salesman, whose case was struck out felt *"rushed ... they listened to me and everything, but they wanted to move on, they just wanted to see the facts ... rather than actually go into detail to understand about it"*. He said he found both the procedure and the outcome confusing and biased: *"We're siding with [your employer], I can't remember the exact words, but basically just we're siding with [your employer]."*

One claimant, a lesbian Human Resources manager, reported a particularly negative experience. She had different Chairs at several case management meetings and had no problems to report. However during her last meetings and pre-hearing review she had one Chair who she felt to be very exacting about the legal documents submitted and given that she was unrepresented she found this to be very unfair: *"that woman who we saw the last couple of times and who was giving me a mega hard time...I had to break everything down ... she kept wanting me to go one step further ... she seemed to veto everything."*

She gave a number of different practical examples. This Chair decided to reduce the number of days assigned to the final hearing which the claimant had earlier fought for and found particularly upsetting. She said that she stood up when she heard that the number of days allocated had been reduced and said: *"I'm representing myself, I can't manage all of this ... And then I just burst into tears because it all just got too much."*

She also felt that the Chair was *"aggressive"* and paid no attention to her disability: *"I said to her about my mental health and she said well I suggest you just sort yourself out ... my bottom lip just went"*.

At one particular meeting she recalled wanting to make a point but being told not to speak. In contrast she felt that the large legal team her employer had engaged was treated with respect.

"I said to her at one stage I'd like to say something. And she just turned around and she spat at me, really bad, and she said don't you speak to me now! You can just wait before you speak to me ... And then, she said NOW you can speak. I had never known anybody to speak to anybody like this ... I wanted to show her a document because she was wrong in something that she was assuming. And she said to me well show me the document, well just show me the documents. And I was shaking so bad and I had all my documents and I couldn't work out where my document was, my brain had gone."

SO, lesbian, HR manager, settled

This claimant said that in the end her partner had to stand up and speak and point out the unfairness of the situation. This series of negative experiences played some role in her decision to settle to avoid a full hearing. If she had been able to afford a representative this claimant felt that the Chair would have behaved differently and that her case could have been more effectively presented. She expressed the view that those without solicitors are expected to behave like them and regretted that no concessions, in her case at least, seemed to be given to those without legal expertise or knowledge.

Another claimant who settled just before a full hearing felt homophobic undertones from his Chair:

"... very business-like, there was no references really made to me, as an individual. I did sort of think that also they weren't too sympathetic almost to sexual orientation and I think because it was such a new thing ... just overall impression it was - there was a man Chair one day and I think not particularly, I just didn't warm to him particularly, the things that he was saying. And then next time it was a woman and she was a lot better. That was annoying that there was no consistency, you didn't get the same person."

SO, gay, male, civil servant, settled

A further issue arose when recalling experiences of contact was the non-verbal messages perceived. In part this may be related to the earlier observation that employers seemed to prefer at least some tribunal contact before settling in order to read the merits of the claim. For example, the claimant above felt that there was a strong but silent message coming from the Chair:

"The general tenor was 'settle this' ... And that was the message I got from the chair ... yes, that was how I felt about it, whether that was true, but that's what I came away thinking, there is a clear message here, 'sort this out, make this go away'."

SO, gay, male, civil servant, settled

A further claimant referred to the pre-hearing as "overwhelming" saying that the solicitor on the employers side talked-over all responses and that the Chair seemed to direct his attention at this solicitor. Two claimants said that the experience was without problems. One, a gay man employed by a local authority, said it "all went fine to be honest, it was very painless and nothing too complicated".

Preparing for the final hearing

Claimants involved in several of the settled cases spent some time preparing for the final hearing. One without representation called this experience "a nightmare" but without exception claimants believed their case would have progressed more successfully with a representative involved.

Those with representatives reported fewer problems. It is interesting to note that some claimants with representatives took an active role in completing paperwork and attending meetings and did not necessarily delegate all work to

their representative. One male gay civil servant with a full (trade-union provided) legal team recalled *"and obviously I had deadlines as well for the tribunal, I had to get this done and I had my own work commitments, so that was quite hard. It was important so I just found the time to do it."*

Two male sexual orientation claimants referred to the shock of reading witness statements. One claimant found that his potential witnesses joined the side of the company and in his view lied.

"Well, yes, witness statements from the company. I was shocked, absolutely, I was devastated to the point that that affected me for some time ... it got very dirty and it exposed people, it just exposed them. I started out with ten loyal people and it whittled down to three."

SO, gay, male, store manager, settled

One claimant prepared all her documents at great cost and posted these only to find that she had to visit her employers' offices to get access to theirs. She said that this meant time and money travelling but that in any event she did not feel mentally strong enough to visit these premises.

Many claimants referred to the amount of work and time needed and the level of detail required. One claimant, a gay male civil servant, who went to several case management meetings referred to the process *"dragging on ... it kept getting adjourned for this thing to be done and the other thing"*. This claimant also found the contact with *"the other team"* in the lead up to the final hearing to be *"quite intimidating"*.

Full hearings

The one sexual orientation claimant who reported that her case went to a full hearing initially lost. She decided to appeal and reports being successful on appeal¹.

"I just thought 'No, this isn't right'. 'This is not right'. So I looked further into it ... I found a loophole, and I wrote back to the Chairman asking if they would reconsider the trial, and they said 'Yes'."

In the end this claimant pursued an out of court settlement instead of continuing with the appeal.

"I then found another solicitor, who was a no-win no-fee, and I got what was it, about £X thousand out of court settlement, and [half of that] was legal fees. What a waste of time that was."

SO, male-to-female transsexual, skilled manual

¹ This claimant reported attending a final hearing and being successful however this is not certain. Many claimants reported some difficulty in understanding employment tribunal proceedings and it was not unusual for a claimant to refer to a pre-hearing review as a final hearing.

Unfortunately, this claimant said that she “never received the cheque. I phoned them up to ask what’s going on. Only to find out that they’d gone into liquidation ... I then had another fight to try and get my money out of them ... I could have ended up walking away with nothing. Which I nearly did.”

8.3.2 Religion or belief

Several religion or belief claimants were prepared to talk about their experiences of having gone to a full tribunal hearing. Two of those who claimed on the grounds of religion or belief without a race element went to a full hearing. This section also includes the experiences of a small minority of claimants who also attended tribunal meetings prior to settling and had views on these hearings and one claimant whose case was struck out.

Expectations and perceptions

Claimants who went to a full hearing generally expressed disappointment with their experiences. One claimant, a non-Catholic teacher, found that it was not at all what he expected.

“It’s all guided by the lawyers, the pace and the flow of the hearing and the direction it turns in ... you never get a chance to actually say the things you really want to say. As I said, I never actually got the chance to say anything ... their QC was clever enough to twist and play games with me. And I suppose that’s what he wanted ... I think it’s all a game ... at people’s expense shall we say.”

RB, non-Catholic, male, teacher, withdrawn

This claimant felt that:

“when lawyers work closely together and know each other professionally, that it’s not necessarily a good thing. That they know the games each other play and they work together. But that’s life. And I think that in actual fact, this case and probably many cases have nothing to do with the right or wrong of the case. They have to do with how clever the lawyers are. I think that was borne out in this case.”

RB, non-Catholic, male, teacher, withdrawn

Another religion or belief claimant with a race element attached pursued a case against his trade union for not representing him but this was struck out following a pre-hearing review. He was surprised at the outcome.

“I didn’t believe they would strike it out, I didn’t believe they would strike it out at a pre-hearing. Because the reasons for which I took the case were quite sound reasons...they refused [support] offhand, without having consulted their legal department ... you always have expectation, you keep your hopes, the world lives on hope.”

RB, Muslim, male, doctor, struck out

Experience of pre-hearing reviews and preparation for the final hearing

For those that went to a full hearing, the experiences of any pre-hearing reviews or case management meetings were not recalled as strongly as the experiences of the final hearing. For those who settled during tribunal proceedings pre-hearing experiences were extremely important if not decisive in terms of settling.

One claimant, a male Muslim sales manager, for example felt that he had "*exposed [him]self in many ways to their solicitor*". He went on to settle. In the case taken by a male Muslim doctor against his trade union the claimant felt that it is the very aim of pre-hearing reviews to side with legal professionals and disadvantage the claimant.

In a further case, that of a male Sikh catering industry worker who took a claim under both race and religion jurisdictions, neither an employer nor a representative of the employer turned up and the claimant remembers straightforward success at the pre-hearing review stage (on the unfair dismissal aspect of his claim). Unfortunately the company then went into liquidation and the decision was not honoured. His experience however was remembered as a positive one.

The Chair, Panel and proceedings

The actual Chair and Panel allocated were seen by claimants to represent the tribunal system as a whole. A perception of unfair treatment by these individuals equated with unfair treatment by the system itself. Experiences were mixed but where views were expressed these were generally negative.

A Muslim sales manager, who ultimately settled, referred to the panel as "*very supportive, because I was honest*" however he felt that they worried more about the "*finer aspects of law*" and he was at a loss not being a solicitor.

Most other claimants who reached this stage were critical. One claimant who won after a full hearing expressed disappointment:

"... honestly to say I was disappointed with them might be an understatement ... it wasn't until I read the transcript of what took place ... they stated that Mr X, Mr Y and Mr Z were far more reliable witnesses than me ... And the reason I say that is, in the evidence it was proven that all three of them made mistakes in their evidence and agreed with my position. And yet, that was overlooked ... if you read the judgement, at every turn it would seem that the chairperson and his two colleagues tried to find against me at every turn. Stating I was not as reliable a witness as the others. Stating that I was just testing the water, stating that I wasn't being treated like a second class citizen. Especially when they never worked in that environment, and went through that what I experienced. Always deferring to the person with the bigger promotion."

RB, non-Catholic, male, teacher, successful

This claimant also felt that the tribunal provided an arena in which his employer could openly lie. He said he was astounded to find someone opposing him at the tribunal who had previously:

"... told me at many a time that I was the best teacher he had, the most competent teacher he had in school. He told me many a time that if I ever wanted a reference off him ... and yet it's stated in there that he thought that I was never a competent teacher, I was just barely adequate for the job, and I laughed my head off at that. The chairperson ... I was laughing and he looked at me and he looked very embarrassed and he said why are you laughing? I said well, it's the biggest load of crap I've heard in my life, this is unreal that that man can say that in a court in front of you, and calls himself a Christian."

RB, non-Catholic, male, teacher, successful

A religion or belief claimant with a race element attached whose case was struck out felt that the composition of the panel was fundamentally flawed.

"Dishonesty. I mean it's not the right word, but unfair is the alternative word for it ... I believe if there was a layperson sitting with this guy, lay members, and lay members both of them not white, and not both of them white males. If the chairperson was sitting with a member, a lay member of the ethnic community, and a woman, the claim wouldn't have been struck out."

RB, Muslim, male, doctor, struck out

He also expressed concerns about the importance placed upon the notes of the Chair which he considered biased and in fact written with the expectation that they may be needed in the future to block an appeal: *"they know what to note and what not to note. And because it's only their evidence which is admissible. So they take special precautions."* For this claimant it was not just that the panel is typically white and male but more importantly the presence of a closed privileged legal circle.

Full hearings

In general, claimants did not report a good experience at the full hearing stage. This was irrespective of final outcome. Full hearings, as some claimants reported, contained some shocks.

One claimant, a teacher, referred to a mock interview which took place at the hearing to prove that he would not have got the job if all things were equal which was completely unexpected and upsetting for him. He felt undermined by this and, because the role-play was between the employer and his QC, "robbed" of his general rights to question and answer. He blamed the Chair for allowing this unfair act to go ahead.

"My QC objected because this had not been intimated in any evidence beforehand. The chairperson decided that he would like to hear this piece of evidence and gave leave for it to take place ... And quite funnily, the outcome was ... the chap who got the job was tremendous and I was unsuitable."

RB, non-Catholic, male, teacher, successful

This claimant referred to the tribunal process as "two and a half years of total stress" although he felt the hearing itself was "OK". He had some strong criticisms:

"I don't think there is enough question and answer time. I don't think the questions are penetrating enough because basically they're looking mainly at points of law and scoring points against each other, rather than looking at the nitty gritty, what did happen here, what's the history of the discrimination, and going through it. All of that seemed to be missed out."

RB, non-Catholic, male, teacher, successful

He felt however that related issues not directly to do with his case were not adequately explored. He gave one example:

"I asked the QC to bring up the very important factor of ... a witness against me ... he had shown himself to be a racist in the school where I work. He had got into a classroom full of asylum seeking pupils and ordered the teacher to tear down the Eid posters that were on the wall ... [but I was told] that was just point scoring. It looks like dirty tactics ... but to me it shows where the man's coming from, it shows the kind of guy you're dealing with."

RB, non-Catholic, male, teacher, successful

Another non-Catholic teacher, who ultimately withdrew his claim, recalled that even before the final hearing started the respondent had argued that due to his supposed mental health problems (he had been off work on stress leave) proceedings should be suspended. He had been asked to leave the room while the Chair, Panel and legal teams discussed this. It is indeed an irony in some of these cases that mental health problems arguably caused by the experience

of discrimination and pursuing a tribunal claim were sometimes used to undermine the credibility of the claimants themselves. As this claimant said:

"... it was just another case of the [employer] trying to bully me into giving up my case and trying to turn the screw if you like ... I mean I'd tried to talk to them before and I really didn't want it to go, I was looking for a way to resolve it, but they just wouldn't listen."

RB, non-Catholic, male, teacher, withdrawn

This claimant also referred to the press attending in the public gallery as a further stress and he took no pleasure in witnesses of either side being pulled apart. *"I was really upset ... you know to watch what these lawyers can do. They can twist and turn things"*. He felt that this was not necessarily directed at the culprits. As he said:

"... it was cat and mouse in terms of the games they play shall we say. And I just find sometimes it's all about how articulate and who's the smartest in terms of playing the game. It's not always about the actual truth. It's not an honest game. Not at all, not at all."

RB, non-Catholic, male, teacher, withdrawn

Finally, in some cases the perceived bias of the tribunal personnel was seen to add to the impotence of claimants. One referred to the Chair using the pre-hearing review to shut things down and as the company and their solicitors stalled on disclosure at every point in the run up to the final hearing this claimant found the Chair to be sympathetic to the other side.

8.4 Appeals

This section covers appeals. No sexual orientation claimants reported details of a formal appeal. One religion or belief claimant was having his verdict appealed against by his respondent along with the Catholic Church, a new respondent on that team.

8.4.1 Religion or belief experience

No religion or belief claimants appealed against the final verdict however in one case, where the claimant won, at the time of writing the respondent was appealing. This is a religion or belief case without a race jurisdiction attached. The claimant described how the Catholic Church recently applied to join his case and brought in their own lawyers to take part as a third party to *"represent their own interests"*. The claimant was not enthusiastic about this.

“... that means that it's gonna be now a three way contest and the days that the appeal are gonna take place is gonna change from 2 to possibly 5, 6, 7, all running up my expenses and my costs ... so basically, I see it as a move to, how would you say, bankrupt me. To make the law unattainable because of my lack of finances.”

RB, non-Catholic, male, teacher, successful

8.5 Balance of power

Many claimants felt at a disadvantage from the outset. This was true of both sexual orientation and religion or belief claimants.

8.5.1 Sexual orientation

There was a perceived imbalance of power in sexual orientation claims. In some of the cases where settlements were reached at very early stages it is not clear who exactly initiated the settling process. In all others the employer first tabled the interest in settling.

In a majority of cases employers threatened costs or claimants were made aware that they might be liable for the costs of respondents. The impact of this on claimants varied. Only one claimant was adamant that he was not intimidated by this.

“They were doing some bully tactics. And I said ‘well if that is the case then so be it’. When they’d said that, I wasn’t working, so I said ‘well then fair enough’. We just went along with it. I thought if they’re trying to scare me, they’re only doing more to push me further.”

SO, gay, male, store manager, settled

He felt that this was simply a continuation of the bullying he had been subject to in the workplace.

Most claimants reported these threats in a very matter-of-fact way. For a small number the threat of costs was a decisive factor in settling or, as was seen above, withdrawing their claims.

Those claimants who attended meetings and hearings at tribunals felt similarly. On the whole the employer was felt to be in a more powerful position whatever the merits of the case. They were more likely to be surrounded or represented by a legal team. Several claimants were dismayed at attempts by employers to get their claims struck out on technicalities or by attempts to avoid full disclosure. Finally the costs of the employment tribunal process which seemed to hit claimants hard were not perceived to be a burden for employers.

8.5.2 Religion or belief

Costs were also explicitly threatened by employers in several religion or belief cases. Two claimants who reported receiving strong threats settled in the end and one withdrew. Advisers also made it clear that costs could be awarded

against claimants. For some this was a major deterrent. One claimant, warned by the CRE, said: "*that's why I was trying to avoid, because I am not rich like those institutions*". Those with trade union support felt that the union would absorb cost risks.

Employers were also felt to be in a stronger legal position in many cases and reportedly also availed of external legal advice from a much earlier stage than claimants. In one case, settled early, a barrister was said to have been called into the final internal resolution meeting by the employer and to have negotiated the settlement. In most other cases settled claimants, even those with access to legal support, felt disadvantaged.

Claimants also referred to the difference in impact which the case has upon claimant and respondent. Many of these claimants referred to the need to settle and end the distress being caused to their families in particular. It was clear to them that their employers do not have the same considerations.

"I said to my wife, I rang, look they are offering me £X, we have been through so much stress ... my whole family was affected, my children, my wife, and myself, so I said look, either we can settle this and finish ... or we can carry on. So [name of wife] said well settle then, settle it and the hell with it."

RB, Muslim, male, IT manager, settled

The same imbalance of power was evident in the case of those claimants whose cases reached tribunal hearings. One important power imbalance related to representation and resources. As one claimant, a teacher who felt forced to withdraw, noted "*[they] got the best legal team from another city ... they couldn't afford to lose.*" Another unrepresented claimant referred to his sources of support:

"I get this assistance, the support, like unemployment. And also I get the supplement from my family. So it is, their kindness that they have continued to support me, otherwise, and they live overseas, otherwise there is, I can't do anything against [the employer]."

RB, Muslim, male, doctor, struck out

At the actual tribunal proceedings there are also 'balance of power' issues at play in terms of understanding the jargon, etiquette and legal technicalities. One claimant found this situation unacceptable particularly in a discrimination case:

"If it's about a week's wages that somebody hasn't paid you, you can go in and fight it on your own you know. And if you lose it's not a great deal depending on how poor you are. But for something like racism and discrimination, where it's imperative that you know the law, because all the time your biggest fear is that the other side are going to say something legal that you don't understand. And to begin with you've got to deal with the fact that you feel stupid, even though you're not, you've got to try and decipher what they're saying. You've got to be confident enough to say can you say that again. And you're in a court which, and

you're in front of the chairman whose time is quite valuable, and it is fear that they can very easily come in and bamboozle you with two sentences and make you fall to pieces."

RB, Irish, female, shopworker, settled

That lack of legal knowledge or representation was a major barrier was echoed by several claimants. *"So there was all sorts of things pulled on me with regard to my lack of knowledge, which of course they took full advantage of."*

The costs of the process also created an important imbalance. One claimant, still unemployed year later noted:

"It's hand to mouth whatever you get from the Government is hand to mouth isn't it, the benefits. They are a hand to mouth situation. Even the paperwork, photocopying and files and postage and computers and printers and this whole stationery office you have to open up to do this thing. And you wouldn't be able to stand the expenses if you didn't have [other] support."

RB, Muslim, male, doctor, struck out

8.6 Summary

8.6.1 Sexual orientation

Most claimants settled and only one attended a final employment tribunal hearing. Those who settled did so at various stages in their claims but typically immediately after a pre-hearing review or just before a final hearing. Settlement amounts varied and settlement agreements generally contained a confidentiality clause regarding this amount. Those who settled tended to follow the advice of their representative regarding the timing and to accept their judgment on its appropriateness.

Several claimants withdrew their claims and two were struck out. In most cases the risk of costs, the lack of representation and the stress involved were deciding factors.

Claimants reported difficulties in preparing for hearings and at the meetings themselves. Those without representatives seemed to feel at a particular disadvantage relative to their respondents.

8.6.2 Religion or belief

A small number of claims progressed to a final hearing. One was successful, one withdrawn. Most claimants settled. Settlement amounts varied and settlement agreements typically contained a confidentiality clause regarding this amount. The advice of representatives regarding the timing and acceptability of the settlement amount was generally accepted.

One claim was struck out and a number of claimants withdrew their claims. Costs were a decisive factor.

The need for representation was emphasised and those without assistance reported greater stress and also felt that the outcomes of their cases had been affected.

8.6.3 Commonalities and differences between sexual orientation and religion or belief cases

There were many commonalities and few differences between the two claimant groups at this stage in the process. Case outcome, or representative status, were significantly more important factors in explaining difference than jurisdiction. Those who withdrew across both jurisdictions reported similar barriers and rationale. Those who settled across the two claimant groups, whether early or late, also referred to similar pressures and disadvantages, for example regarding representation. The impact upon claimants and the burden of work also varied not by jurisdiction but by representative status and perhaps even by character. The main point of difference amongst the claimants in this study at this stage was the relatively greater number of religion or belief claimants whose cases progressed to a full hearing. However it would seem that this related to the cases and claimants themselves rather than the jurisdiction submitted.

9 IMPACTS AND OUTCOMES

From the workplace through to employment tribunal hearings, claimants described the impact which experiencing discrimination and taking a claim had had on their lives in terms of health, finances and employment. This chapter examines the outcomes, in both practical and personal terms, of having made a complaint of discrimination on grounds of religion or belief or sexual orientation.

9.1 Employment outcomes

9.1.1 Sexual orientation

Following a claim, few claimants wanted to, or could, go back to their previous positions once their claim had been dealt with: those who did felt changed by their experience and reported being more “wary”.

Some claimants were concerned that they would be seen as a troublemaker by subsequent employers, or by their former employer, if they had stayed in their job. One claimant who had settled on the advice of his barrister before the final employment tribunal hearing said:

“I think I’d have to think carefully about ... whether the [employer] would be less keen to promote me because I was perceived as a troublemaker, having taken this to court. I’d like to think they wouldn’t, but you always have that in the back of your mind.”

SO, gay, male, civil servant, settled

Problems of obtaining references

One difficulty experienced by some claimants was that of obtaining a reference from their former employer. Some found it difficult to obtain one, even where it was an explicit part of the settlement agreement. One claimant who had taken a claim without representation, had lost the case and was subsequently unemployed, felt that her whole previous work history had been lost:

“I’ve got no references. I have no references at all. My past employment has been totally erased.”

SO, male-to-female transsexual, skilled manual. successful

Other claimants expressed concern about gaps on their CVs or explaining why they had left their previous jobs to future employers. As one claimant, a manager in a small team, observed:

“what the hell am I going to do with this, how am I going to explain to anybody that I’ve been off sick for 8 months and now I haven’t got a job.”

SO, lesbian, HR manager, settled

Final employment outcomes

The final employment outcomes of claimants varied. Some were successful in finding another job, while others experienced more difficulties in finding one that they deemed to be suitable. This was attributed to a range of factors such as difficulties with references noted above or living in a relatively small community where their claim was more likely to be general knowledge. As one claimant noted:

"Everyone knows who I am now ... I haven't lost my career, but I've lost it round here."

SO, heterosexual, male, skilled manual, withdrawn

Claimants often found alternative employment which they felt was not as advantageous as their former job in terms of hours, location or pay. Discontent but resignation about this was expressed by many.

Several claimants moved city or changed career. Some viewed this, albeit in retrospect, as one positive impact of having pursued a claim. One woman moved to London to take up an alternative career and said:

"I don't have to work there any more, that's quite positive. You know it gave me the room to move down here and look for a job as well, that I wouldn't necessarily have done."

SO, lesbian, factory worker, settled

In other cases, people felt that their confidence or health had suffered and found it difficult to apply for jobs. One claimant who had worked as a salesman in retail was in this position.

"It affected me [in terms of] having the confidence to actually go for further jobs. And then this homophobic thing, was on my mind, I do know the law has now passed so ... I would be supported by the law a little bit more. I would be concerned going back into work and a similar thing occurring."

SO, gay, male, salesman, struck out

9.1.2 Religion or belief

In this claimant group there were relatively more dismissals and very few of the claimants were able to return to their previous job after their claim had ended. Few expressed a desire to work for their former employer again.

Problems of obtaining references

Some claimants believed that their employers were providing poor references or, in some cases, no references. This was a significant source of discontent for several claimants and had, they felt, a real impact on their ability to find alternative employment.

One claimant, a child carer, who had experienced difficulties in finding another job said:

"You can't get another job. Because ... you can't get a reference, you can't put where you last worked. That was a really really stressful time ... and then when I did go for an interview, it's 'why did I leave my other employment?'. And even now, on my file at work, which I've seen, it [says] 'took last employer to a tribunal'."

RB, no religious affiliation, female, child carer, settled

As many claimants had acted as 'whistleblowers' there was a general feeling that professional advancement would be impossible. This feeling seemed to relate to the type of industry and also the seniority and tenure of the claimant.

One claimant who was a teacher expressed the view that his chances of promotion in the profession of teacher were minimal:

"I never went back to the school since June of 2005 and the Personnel Department thought it wise, given what I showed them, that I shouldn't go back to the school. And they offered me some posts in other schools, with the proviso that the majority of headmasters thought I was too hot to handle so it was gonna be very hard to get them to take me into the school ... Professionally I'm no longer a happy man. I am never going to get promotion now. I am seen as a whistleblower, a man who's tried to sink the ship. [My employer] would do all in its power to get rid of me, the only thing is, it would [be] seen to be discriminating, that's the only reason I'm still in a job."

RB, non-Catholic, male, teacher,

Difficulties seemed to be particularly strong while the claims were progressing and, notably, at a time when the costs of pursuing the claim are high. One claimant found himself in this difficult position:

"I was having to look for jobs. It wasn't easy. Looking for a job when you have been dismissed with bringing the company's reputation into disrepute, a lot of the employers knew I was more than capable of doing the job, but they would deny me the opportunity based on the pending employment tribunal."

RB, Muslim, male, sales manager, settled

Final employment outcomes

Once claims had ended, claimants reported a variety of final employment outcomes. Although issue regarding references or knowledge about the case were important factors there were also issues related to the industry or profession and the work history of the individual to consider.

One claimant, a senior IT manager who settled his claim early, found that his twenty years of professional experience had left him too specialised to be considered for many jobs. After considerable effort he found employment but

in a less desirable role, a much less convenient location and on a lower salary. Another claimant reported the need to make important concessions to find employment:

"I feel as though I've wasted all those ... education years and practice years, so all that has been wasted. I've now got something that doesn't involve any of that, so what a waste. Through no fault of my own."

RB, Christian, female, FE college teacher

Lack of confidence and low self esteem were also recurring themes affecting the ability of claimants to secure alternative employment or perform well in their future jobs:

"And there's the stress of it ... and now, the impact it has [had] on me is that I don't think I could keep a job now, I actually feel [that] all my confidence has gone. The only way I could probably work now is if somebody said there's an empty room, go and work in that and throw things out through the window or something. And that there was nobody else involved. I would actually find it very difficult now to go to a job and not feel that [the discrimination] was going to happen again."

RB, non-practising Catholic, female, shopworker

9.2 Personal outcomes

9.2.1 Sexual orientation

Mental health

Although most claimants referred to the stress of taking a claim and the trauma of the experience for some there had been severe damage to mental health and a long-lasting impact. A number of claimants said they were receiving psychotherapeutic or counselling help and on medication. Claimants also referred to the impact which the experience of discrimination had had on their ability to trust and form relationships, particularly with work colleagues. Those who had suffered long-term bullying and harassment were most likely to refer to mental health impacts.

One claimant described the impact on her psychological well-being while taking the claim and after:

"I nearly had a mental breakdown, I actually went down the self harm route and I knew that I was suffering from mega depression ... I am a reasonably strong and tough person, but ... I ended up so ill [and] somebody else would have just actually thrown themselves off the building. And I tell you what, I came very very close to it. I'm still seeing a psychologist and I'm on anti depressants."

SO, lesbian, HR manager, settled

An IT manager who reported experiences of extreme harassment and bullying was also deeply affected:

"I hadn't worked, I was so depressed and so ill. I think I was on the verge of a nervous breakdown to be honest because it got me so low, all the things that happened. I mean I was shot at with a gun, I had damage to my property, my car. Name calling, telephone calls, you know, humiliation, intimidation, just everything that it got to a point when I did attempt to take my own life. And that is not me at all, that is not me at all ... And I actually ended up living, you know the curtains were drawn all the time, I used to just come home and go to bed, shut everything else out, not answer the phone, move my car up the road. So I just wanted to disappear really, it was terrible, really really bad, really bad. And they had no idea of the damage that they caused, they've just got no idea, none at all."

SO, gay, male, IT manager, settled

The discrimination which this claimant experienced had a substantial impact on all areas of his life and endures:

*"I've lost a relationship, I nearly lost my life. I nearly lost my mind. It upset my family. Nearly lost my home, which was really terrible, having to put that on the market because I just didn't think I could afford to live here any more. I lost my job. Lost my sex drive, that's still not right. Lost my confidence. I don't know, just everything, just everything. Financially, I'm in debt. I'm totally f***ed to be honest with you, to be perfectly honest with you."*

SO, gay, male, IT manager, settled

Some claimants felt that their attitudes had fundamentally changed. One claimant felt his approach to colleagues was now different:

"I don't trust the new people where I work ... I have to know them, my fellow work colleagues before I can feel properly relaxed in a work environment. I'm very suspicious now of people, of work colleagues anyway."

SO, gay, male, local authority, settled

He also expressed a general wariness based on his previous experiences: *"If I have suspicions of somebody then I will keep a diary for a couple of months just to cover my back"*. This impact on the ability to trust was referred to by many other claimants.

Another claimant referred to similar changes in her behaviours:

"Where I am now, I save every last e-mail, I watch what I put in e-mails. And everything I do I've always got at the back of my mind this could be used against me or that could be used against me, if something was ever to happen. So yes, it's probably made me paranoid actually, but yeah, I'm just

very aware of what I do and say and how it could be construed in the office environment."

SO, lesbian, factory worker, settled

As a result of the discrimination, some claimants had decided not to be 'out' in their subsequent workplaces or not to discuss their personal lives with their colleagues. One claimant whose emails, and those of his partner, had been read felt particularly violated and found this difficult to recover from:

"I just spent hours just coming to work to sit at my desk and I would just cry because I just couldn't face the fact, the thought that I know someone had gone through ... that somebody had read every single one of my e-mails I'd sent and received in 18 months. It was as bad as being burgled, it was like having somebody go through all our personal possessions."

SO, gay, male, local authority

Physical health

The effects on mental health of the experience of making an application were also bound up with physical effects. In some cases this was due to the medication that was being taken for depression and anxiety. One claimant discussed how deeply medication to improve his mood affected him physically:

"I didn't realise it would damage my health so much. Because I was so depressed and I went to the doctor's and he put me on Prozac. And they just, they made my metabolism just go like that, and so I just piled on loads and loads and loads of weight ... So my whole body ached, which the doctor said was a side effect of the depression. So tired all the time, I spent a lot of time in bed because I was too weak to sort of just carry out normal day to day things really."

SO, gay, male, IT manager, settled

The claimant who had undergone a male to female sex change operation had a heart attack which she related to her claim. Another, who left his job after having made a complaint about homophobic comments made by colleagues was still unemployed at the time of the interview and spoke of the physical health problems that the experience of making the claim had caused or exacerbated:

"I'm still on sickness benefit, it's not just mental problems ... I also suffer from a lot of ulcerative colitis which stress doesn't help at all. In fact I didn't have any stomach problems until I started working for [my employer] ... or a stammer."

SO, gay, male, civil servant (transport), settled

A small number of other claimants remained out of work and on disability benefit at the time of interviewing.

Personal relationships

Many claimants referred to the stress which the experience of discrimination placed on their relationships and one claimant made a direct link between his experiences and a relationship breakdown:

"I was in a very happy relationship with somebody and I used to, I was so cross when I came home when things happened at work. And I used to get so down that actually, that damaged my relationship and that split up after seven years."

SO, gay, male, IT manager, settled

9.2.2 Religion or belief

Personal outcomes

Many of the claimants who submitted a claim of discrimination on grounds of religion or belief, regardless of the outcome, said that this had an impact on their lives and work. Some found it difficult to socialise in their neighbourhood afterwards.

"It was awful, you know, I didn't feel that I could go out. I felt like everybody was, you know, you feel like everyone's talking about you ... Even though you say it's 3 years ago now, 3 years is not very long when you live ... so close. The thing is, you've only got to go round that corner or walk up the hill and that's where I worked. And I do find it very hurtful, you know, even now, I've actually been quite ... but quite often if I talk to people I get quite upset."

RB, no religious affiliation, female, child carer, settled

Mental health

In a number of cases, claimants still felt as though the experience of discrimination and of taking a claim affected their health and psychological well-being. Some claimants referred to being wary of new work colleagues, of flashbacks, of continuing and heightened levels of stress.

Depression was an issue for many of the claimants, particularly if they had not managed to find work subsequently, or were now working in what they perceived to be unsatisfactory employment. As one claimant observed:

"They don't just take your job, they take everything else from you as well. And any possibility you have of getting further employment because you are so worn down and I think the thing that wears you down is the lack of support and help. It's because you're on your own, and you never feel so on your own in your whole life."

RB, non-practising Catholic, female, shopworker, settled

This claimant still felt unable to find another job. *“I don't feel I'm well enough [to find another job], the impact it's had on me is that I've been worn down by it so much, I didn't expect it.”*

Physical health

Claimants referred to impacts on their physical health also, for example high blood pressure.

Personal relationships

In some cases, where the claims procedure was particularly long or perceived as particularly stressful, the experience was seen to also impact upon partners and family. One claimant who spent some time unemployed and at the time of interview was in a job that he did not feel was as satisfactory as his previous employment spoke about the wider impact:

“So that had an impact on the family and myself because you are out of work, you are at home all the time and you are depressed. It still has that effect on me, I don't discuss it with my wife: this is the first time I am [talking about it]. And it has an effect on my health.”

RB, Muslim, male, IT manager, settled

A male Muslim claimant, who had worked as a doctor and was submitting a claim against his union on the grounds that they had not provided him with representation, stated that it was a good thing that he did not have a spouse and children, as the responsibility that this entails, both financially and emotionally, would have caused him not to pursue his case.

9.3 Financial impact

9.3.1 Sexual orientation

Many claimants referred to the expense of taking a claim of discrimination and costs were an important motivator for withdrawing claims and a significant barrier to obtaining representation. Some claimants also reported that their income suffered as a result of being out of work following resignation or dismissal while they pursued their claim. For those still out of work or in lower paid employment the financial impact continued.

Most claimants did not put an exact figure on how much the whole process had cost them personally. One exception to this was the transsexual claimant who estimated that the overall cost to her had been in the region of £80,000.

9.3.2 Religion or belief

Costs were seen to be a significant factor in taking a claim and obtaining representation. Some claimants reported that significant costs were also incurred in the transition to a new job or career. A number also reported a lower income in their new employment.

9.4 Positive outcomes

9.4.1 Sexual orientation

Some claimants felt that there had been some positive outcomes from the experience of dealing with and defending against discrimination at the workplace.

A retail manager felt he was now a better manager:

"I think it's certainly helped me as a manager. It's without a doubt, everything that I went through in this tribunal has 100 per cent helped me as being a manager. Being an effective manager and seeing two sides."

SO, gay, male, store manager, settled

Some claimants said that they would now be more able to identify and deal confidently with discrimination and bullying in the workplace:

"I've stood up to them and I'm now not afraid and I think they probably know that I'm not afraid to challenge behaviour that's inappropriate."

SO, gay, male, civil servant, settled

9.4.2 Religion or belief

Irrespective of case outcome, many claimants felt stronger from having taken a claim and better prepared should they need to stop discrimination in the future: *"Next time I feel that I have been discriminated against, I am ready to take it to court. I don't care how much it's going to cost."* RB, Muslim, male, translator, withdrawn

Others felt that it had helped them to appreciate diversity more than they had in the past and to be more sensitive towards colleagues.

"I have always been aware of diversity issues [but it] made me more aware that you need to treat people with respect and dignity and respect people and their diversity. Whereas before I probably had that level of respect, now I appreciate more how you can easily offend someone."

RB, Muslim, male, sales manager, settled

9.5 Would people repeat the experience?

9.5.1 Sexual orientation

Most claimants said they would repeat the experience despite the stress caused. The exception to this was one transgender claimant who felt that the whole process had been a very expensive one. When asked whether she felt despite this it had been worth pursuing this claim her reply was: *"No. No. No. Definitely not. No."*

She was asked if she would take another case to employment tribunal if necessary and responded:

"I don't know. I don't think so. Because ... well basically like I said before, the system let me down. We've got all these legal people out there, come out with all these different laws to protect people like me. But when you have to use those laws when it comes to it, people back down. Back away. It's like 'Oh we don't want to know'."

SO, male-to-female transsexual, skilled manual, successful

9.5.2 Religion or belief

Most claimants said they would, on balance, repeat the experience of taking a claim of discrimination based on religion or belief to an employment tribunal if necessary.

9.6 Money versus justice

An important theme common to both sexual orientation and religion or belief claimants was that of money versus justice. Most, if not all, claimants expressed no interest in the role of tribunals upholding the law. Indeed many expressed a difficulty in fully understanding or relating to the legalistic nature of employment tribunals. The important goal for virtually all sexual orientation and religion or belief claimants was justice. Most wanted someone independent and external to the workplace environment to say that they had been discriminated against. That money was the issue or goal was strongly denied by most. These sentiments came through most strongly in cases where parties settled.

9.6.1 Sexual orientation

Without exception, claimants were dismayed that money became a focus rather than justice and disdainful about the language of money overtaking the language of right and wrong.

"I think that people must realise that there are people there who are not doing it for the money, they're doing it for their flipping, their own peace of mind and for justice. And that's what law's about, justice, you know not about money."

SO, gay, male, local authority, settled

This had an important impact upon satisfaction with settling.

"I was actually very determined that I wanted to go to the hearing and to me it seemed very strange that people kept talking about money, and I thought this isn't the issue here ... And I wasn't actually in it for the cash, I mean that was not the issue. The issue was I had been sacked wrongly, unjustifiably, on the basis of blatant discrimination ... Will I let them kick me in the teeth again? So even if I'd gone to the tribunal and lost, I would have stood up for myself."

SO, lesbian, civil servant, settled

Although another claimant was not entirely happy with settling he accepted that the money received had in some practical ways helped him to move on.

"I don't believe that money does help victims, the value of money doesn't, what it can buy does, but the actual figure, that's what I find vile. If you take money out of settlements, then I think justice should be done but unfortunately, it doesn't work that way. But I have actually got, I've bought stuff that's helped me a great deal in the career path that I'm choosing."

SO, gay, male, store manager, settled

Most claimants who settled referred to their wish to have had their 'day in court'. One claimant felt that his 'closure needs' had been met. However, like many of the others he would have liked to hear that the employer had 'done wrong'.

"I got the best I could ... I got a settlement so to me the settlement was an admission of guilt ... It frustrates me that you never get to have them up in front of the judge or whatever and have it examined independently, hopefully for the judge to say well hang on, you were actually wrong to have done this ... That would have been quite nice to hear that. But I think quite a lot of the time these cases get settled out of court because they don't want the negative publicity, that's my perception."

SO, gay, male, civil servant, settled

This sentiment was echoed by another claimant:

"What I'm here for is, the opportunity for somebody independent, somebody not in the organisation, to listen to what has happened to me and make a judgement. And say this is wrong, this is unjust ... I want somebody else to say no actually, they behaved shoddily. No, they have treated you wrongly because of these reasons, they're out of order and that's really what I wanted."

SO, lesbian, civil servant, settled

9.6.2 Religion or belief

Without exception claimants referred to the importance of justice and not money. Most did not feel they had received this. As a male Hindu claimant

observed: *"Justice, where is the justice?"* The damage to pride and integrity, and reversing that, was of much greater importance in many claims.

In some cases there was tangible evidence that money was not the goal indeed one claimant, after paying legal fees, gave his award to charity. He said it had never been about making money, but about clearing his name and getting his employer to admit that they had acted wrongly. Another, settling at a very low figure, said that the amount although insufficient was irrelevant *"I was fighting for the principle. I am not greedy, I've got everything from Almighty"*. A further claimant settled in spite of legal advice that more money could be obtained:

"She told me that I should expect more - I'm not greedy, I don't need to be latching on to this and getting more and more, I have no interest in it. I said I just feel like I just want to be vindicated and then free of this."

RB, Jewish, female, security officer, settled

Some claimants were disappointed to have received a financial rather than a moral victory. One claimant reported that she would not have settled without pressure from her solicitor who she felt delivered strong views on her case and its prospects. An added factor was the refusal of her insurance company to continue paying the fees of this solicitor.

"... yes, I think that's what I'm after actually, that was what I was after rather a moral victory and I know that I'd actually taken this [employer] to an industrial tribunal even if I'd only come out with £1, I would have known ... it's been sort of you know, he's had to settle this dispute with some money and that's the end of it ... I would have felt some sense of achievement ... no not achievement."

RB, no religious affiliation, female, child carer, settled

Those who received an apology generally expressed more satisfaction with the outcomes. Generally, these claimants felt that settling was a less painful and quicker route. This was expressed by one claimant whose case also included a race element:

"And I said to myself, I spoke to my wife and my solicitor, and my dad said at the end of the day, if they acknowledge everything that they have done wrong. And so you know, you've got the moral upper ground haven't you, what do you want to be dragging yourself through everything that happened and re-living those moments and upsetting yourself."

RB, Muslim, male, sales manager, settled

Conversely, those who were discriminated against and never received any admission of wrong or guilt still expressed disappointment. A few claimants said that an early sincere apology would have actually stopped the grievance or tribunal claim in its tracks.

9.7 Motivations for taking part in the research

9.7.1 Sexual orientation

Many claimants said that they wanted to tell their story so that others could learn from it:

“If it’s going to benefit other people going through a similar experience, then I think that’s a positive thing. I’m not frightened to talk about what I’ve gone through. I thought it would be worthwhile to do it.”

SO, gay, male, civil servant, settled

Another claimant mentioned educating people:

“I’m not on a crusade or anything like that. I’m not a gay activist or anything like that, but just [want] hopefully to educate people. Hopefully if I educate you, then you can make some positive changes to stop other people going through what I’ve been through. Maybe to have a fairer deal to change the system to make it fairer for them, maybe.”

SO, gay, male, IT manager, settled

Some claimants felt it was important to talk about the factors that had aided or hindered their fight for justice. Finally, it seemed from the comments of claimants that the interviewing process itself allowed an opportunity to tell a story that did not get to be told, or told fully, in an employment tribunal hearing.

9.7.2 Religion or belief

Claimants referred to the importance of raising awareness to stop the discriminatory behaviours and practices of employers. One referred to the regulations and procedures in place to prevent discrimination and the need to communicate this message more widely, which they felt they were in part doing by taking part in this IES study. Others welcomed the opportunity to tell their story.

9.8 Advice for others

9.8.1 Sexual orientation

Although the majority believed that pursuing their claim had been worthwhile, in many cases despite the outcome, they emphasised the impact of taking a claim. Claimants referred to the stress caused and the all-consuming nature of taking a claim. Employment tribunal claims, according to some, should only be a last resort.

Claimants all gave practical advice and the strongest suggestion by far was to engage a solicitor:

“Don’t go in on your own, it’s critical, unless you actually know the law or have studied law, whether you’re confident or not confident, especially if you’re not confident - even if you are confident, get legal representation.”

SO, gay, salesman, struck out

9.8.2 Religion or belief

Claimants emphasised the need for representation and the immense financial and personal costs of taking a claim:

“It’s stressful, time consuming, emotionally draining. So people need to be prepared for that.”

RB, no religious affiliation, female, child carer, settled

9.9 Summary

9.9.1 Sexual orientation

Claimants experienced a range of outcomes and impacts from their experiences of discrimination and of pursuing a claim. Some found it difficult to find new jobs or obtain references and in some cases claimants moved city or career. Some claimants still felt that their confidence and self-esteem had not recovered enough to face a new workplace.

Many claimants spoke of enduring mental and physical problems particularly those relating to depression and anxiety. At the time of writing a small number of claimants remained out of work on ill-health grounds.

Despite the impact, most would repeat the experience if necessary. The majority of claimants stated that their main motivation was not financial, but a desire to seek justice and closure. The desire to obtain an apology was strong.

Claimants took part in this study to tell their story and allow others to learn from their experiences. Most believed that taking the claim had been worth it. They advised others who might submit an employment tribunal claim to be prepared for the intense and long-lasting impact of taking a claim and to obtain legal representation.

9.9.2 Religion or belief

Overall, the claimants interviewed for this study reported that the experience of making a claim of discrimination on the grounds of religion or belief had had an impact in the key areas of employment, their personal life, their health and, in some cases, their financial situation. Many found it difficult to find alternative employment and several reported delays and reductions in income.

Claimants reported that the experience of taking a claim and of discrimination caused physical and mental health problems that for some have endured.

Claimants sought justice and a moral victory but not money. They felt that employers should not be allowed to continue discriminating. This formed one of their reasons for taking part in this study.

Those considering taking a claim to an employment tribunal were warned by this claimant group about the stress involved and advised to seek representation by a solicitor where at all possible.

9.9.3 Commonalities and differences between sexual orientation and religion or belief cases

The sexual orientation and religion or belief claimants reported many similar personal and employment impacts. Both sets of claimants experienced problems in obtaining references from their former employers and claimants in both groups also found it difficult to find suitable alternative employment. Equally, some claimants across both jurisdictions found that they were able to find suitable jobs.

Claimants in both groups experienced stress and depression as a result of their experiences. Sexual orientation claimants, in particular, reported severe distress, depression and ongoing mental health problems and several remained out of work on disability grounds.

Claimants across both jurisdictions would repeat the experience, if necessary, and said they had been motivated by a desire for justice rather than financial gain. They both advised others to seek legal representation and to be prepared for a process that would be lengthy, difficult and emotionally draining. Sexual orientation claimants particularly felt that as this was a new area of discrimination law it was important to take claims and establish good precedents.

10 ANALYSING KEY THEMES

Although a new group under new regulations, the sexual orientation and religion or belief claimants who are the focus of this study share much in common with each other and with other employment tribunal claimants. This chapter uses the findings from earlier studies to contextualise the findings of this research. It explores the similarities and differences between the sexual orientation and religion or belief claimants and other employment tribunal claimant groups and considers the reasons for these.

There are also certain unique aspects of both the sexual orientation and religion or belief claimant groups which need to be drawn out and considered. This chapter situates the findings of this research within the general literature and research on sexual orientation and religion or belief. It explores the extent to which the experiences of these new claimant groups reflect themes found in that existing body of work.

This chapter also considers the nature of the discrimination experienced and the failure to resolve at the workplace. It explores the impact of this identity-based discrimination – in personal, social and economic terms – and considers some of the implications which this research might have for future research, policy and practice.

10.1 Understanding sexual orientation and religion or belief claimants – key themes

One aim of this study was to “*build a body of research evidence regarding the first three years of the sexual orientation and religion or belief equality regulations*”. As there is a body of research available on other claimant groups, it is important to consider how these sexual orientation and religion or belief groups differ from, or are similar to, other claimants previously studied¹.

10.1.1 Personal characteristics

The typical employment tribunal claimant is male, older, managerial, and works in the private sector (Hayward et al., 2004). As this study is a small qualitative one rather than a survey of sexual orientation or religion or belief claimants, it is not possible to draw general comparisons here. It was also notably an aim of the study to gather the experiences from as wide a group as possible. There were however, in the first three years of the regulations, many more claims submitted by men and our sample reflects this.

Equally it is not possible to compare the sexual orientation or religion or belief samples with an earlier survey of race claimants by Peters et al. (2006)² which

¹ Although comparison must be carried out with care as this is a small qualitative study which aimed to gather views and experiences rather than to survey the sexual orientation and religion or belief claimant groups.

² Peters, et al. (2006), *Findings from the Survey of Claimants in Race Discrimination Employment Tribunal Cases*, BMRB, DTI Employment Relations Research Series 54

found claimants to be younger, better educated, and more likely to be employed in professional occupations or work in the public sector.

10.1.2 The background of cases

Studies on employment tribunal claimants (e.g. SETA 2003¹), in looking at workplace events prior to the claim, report that dispute mechanisms were generally followed by employers. Although it is important to note that this study gathered the experiences and perceptions of claimants and not employers, we do not have evidence to fully support this. This study found a complex and at times contradictory relationship between grievance and disciplinary procedures. Although formal procedures were generally invoked there were problems, in some cases, with the impartiality of management, with the ability of claimants to secure representation amongst colleagues, with the delivery of verdicts, with the perceived bias of verdicts and with delays. The outcomes, according to several claimants, even on appeal, were predictably against the claimant.

A further finding of this study was the parallel and sometimes opposing or contradictory use of grievance and disciplinary procedures. In several claims, grievance procedures were used by claimants to raise harassment or discrimination issues, while at the same time managers used disciplinary procedures to address work performance issues (as discussed further below). As a result claimants were in some cases not defending the issue that they felt was relevant or key.

10.1.3 Experiences of advice and information sought throughout the case

Earlier research (e.g. SETA 2003) suggests that solicitors were the main providers of legal advice. This finding is supported by the sexual orientation and religion or belief claimants' stories. Where solicitors were not used, with only a few exceptions, it was for financial reasons and indeed those who did not have a solicitor felt severely disadvantaged. Claimants reported, in line with earlier SETA (2003) findings, a higher proportion of respondents than claimants using legal teams, even before the employment tribunal stage.

As detailed in the SETA Representatives Study², representatives were found to be influential in determining case outcomes in both jurisdictions and most claimants reported following the advice of representatives – whether a legal expert or a trade union representative.

SETA (1998) indicated high levels of satisfaction with Acas. This current qualitative study gives a rather more complex picture. There were a number of examples of both satisfaction and dissatisfaction with Acas but in the main the finding of this study was indifference. Most claimants recalled a letter and

¹ Hayward, et al. (2004), *Findings from the Survey of Employment Tribunal Applications 2003*, DTI Employment Relations Research Series 33. BMRB

² Latreille, et al. (1999), *Findings from the 1998 survey of representatives in Employment Tribunal cases*, DTI Employment Relations Research Series 35

report from Acas but no further contact¹. Where claimants were frustrated with Acas they were most likely to be unrepresented and it is arguable that their expectations and frustrations came from that and were transferred onto Acas. Several claimants had, in advance of contact with Acas, expected Acas to act in a representative way or at least declare on the merits of their claims. In this our findings are closer to the earlier IES study on race claimants (Aston et al., 2006). Acas officers were not, in contrast to an observation in Dickens (2000), seen to shape perceptions and were largely uninvolved in settlements.

10.1.4 Experiences of and views on the employment tribunal system, including resolution of the case

According to earlier studies, satisfaction with the employment tribunal system and with outcomes is generally high (SETA 2003), although more with the tribunal than the outcome. This was not the case for either sexual orientation or religion or belief claimants in this study. Most claimants interviewed settled (in line with the available research²) and although settlement amounts varied greatly this was not a predictor of satisfaction. As Dickens (2000, p77) suggests perceptions of what might happen at the tribunal and the relative advantages and disadvantages of proceeding were critical factors in determining the likelihood of settling or withdrawing. In many cases it was the solicitor who provided this information to frame the decision the claimants in this study took.

Many claimants still held regrets. Some were sorry they settled and would have liked their 'day in court'; others understood that they made the right choice at that time but in hindsight, and stronger psychologically, would have liked to pursue the claim through to the final hearing. In general, the claimants in this study were not 'satisfied'. A lot depends on how this word is defined. Much relates to initial expectations which, for sexual orientation and religion or belief claimants, seemed to be justice and a moral victory against the employer rather than financial gain or that the law be upheld. A small degree of satisfaction came from seeing the case end rather than the achievement of closure. Satisfaction also came from the self-pride of having submitted and pursued a claim against discrimination. For several, closure was reached and success perceived in spite of, or independent of, the outcomes of the claim.

A final point to emphasise here, in line with the studies on race claimants (Aston et al., 2006; Peters et al., 2006), is the finding of this study that claimants found the employment tribunal system and its processes to be bureaucratic, confusing and legalistic. Some, who could discuss the alleged workplace discrimination in detail, had difficulty following or reporting the details of their claims and there was a particular difficulty with employment tribunal jargon and proceedings. Contrary to what might be expected it was not necessarily those who had a representative who knew least about the processes or indeed those who in the absence of a representative knew more

¹ It should be noted however that where the party is represented the Acas conciliation officer deals directly with the representative, see Dickens (2000, p82, for discussion of this).

² See Dickens (2000) pp.77-8 for a full discussion of this.

as they potentially had to take on additional responsibilities and tasks. Claimants were not necessarily shielded by solicitors or representatives. In fact those who had legal teams were as likely to carry the bulk of the document preparation and attend case management meetings as those who were preparing for a full hearing and intended to represent themselves.

The sexual orientation and religion or belief findings share more in common with the race discrimination claimants surveyed by IES¹, in a qualitative study, in this respect also. They were reported to be less likely to be successful at tribunal than non-discrimination claimants, and also less satisfied with the outcome of their case, even where their claim was successful.

The available research suggests that settlement is more likely where both sides are represented but that trade union representatives were significantly less likely to recommend seeking settlement than other representative types acting for claimants, and more likely to recommend proceeding to a full hearing². Although this study reports on a small number of claimants and thus involves a small number of cases with trade union involvement our findings do not fully support this. Settlement was more indeed likely with a representative and those without a representative were more likely to have withdrawn their claims or have them struck out. However, trade unions in this study seemed particularly likely not only to urge claimants to settle but also to largely prompt it through threats to withdraw legal support. Several claimants reported that trade union representatives, when settlement figures reached levels higher than they believed could be gained from the tribunal, suggested strongly that resources or help would be withdrawn.

In line with the SETA research findings, the majority of settled cases involved some form of financial payment and several included a reference. Also many claims had confidentiality clauses attached to settlement amounts and a few agreements specified that the claimant was not to bring the company into disrepute in the future.

10.1.5 Overall impact and outcomes resulting from the employment tribunal case

This study again reflects the findings of the earlier IES study on race claimants (Aston et al., 2006) regarding the impact of facing discrimination and taking a claim on the health and well-being of claimants. The IES race study (2006) found that some claimants settled as a result of their poor health and most claimants reported that the case had had a negative impact. Our findings contain similar themes and point to a particular impact on sexual orientation claimants, many of whom referred to suicidal feelings during the discrimination and on the point of submitting the claim. Many of the sexual orientation claimants were also currently out of work, at the time of writing, on disability

¹ Aston, et al. (2006), *The Experience of Claimants in Race Discrimination Employment Tribunal Cases*, IES, DTI Employment Relations Research Series 55

² Latreille, et al. (1999), *Findings from the 1998 survey of representatives in Employment Tribunal cases*, DTI Employment Relations Research Series 35

grounds related to depression and anxiety which they felt their experiences of discrimination caused.

Where financial sums were awarded sexual orientation and religion or belief claimants, in line with earlier studies felt that these amounts did not compensate in emotional or practical terms.

Lewis and Legard's finding of "*strong emotions*" was an important theme in many cases in this study also¹. The Lewis and Legard report was based on a qualitative evaluation of the service provided in employment tribunal cases and found that a "*sense of bitterness, anger and injustice were strong*" amongst claimants interviewed. The authors found that "*emotional objectives*" were very important to claimants leading to an initial reluctance to settle and that costs were a "*key consideration influencing the nature and extent of representation*". This study on religion or belief and sexual orientation claimants contains many similar findings.

10.2 Use of the regulations

Both the sexual orientation and the religion or belief 2003 regulations cover indirect and direct discrimination and also harassment and victimisation. Applications to an employment tribunal can also refer to other legal jurisdictions.

Although claimants reported a variety of 'acts of discrimination' including direct and indirect and also harassment, no claimant in this study referred to a legal claim on the basis of victimisation. This study found relatively more complaints and claims on the basis of harassment and direct discrimination rather than indirect discrimination. It is interesting to speculate why this was so. One possible reason, listening to the stories of claimants, is that there appears to be a great deal of tolerance of low-level discrimination amongst claimants. There were many instances, as cited by claimants, of employees fitting, for example, their religious practices around the needs of employers rather than evidence of employers newly accommodating employees in the light of the regulations. This finding is in line with several small studies carried out on a regional basis assessing changes made or planned by employers in response to the legislation².

There was an interesting relationship between the different jurisdictions. All claimants were questioned as to the prime jurisdiction of their particular claim and for most that was invariably sexual orientation or religion or belief. This seemed to relate more to the experiences and perceptions of discrimination than the nature or strengths of the actual claim. Several were emphatic about the main jurisdiction stating "*this is who I am*" to express why the sexual orientation or religion or belief jurisdiction was the leading one. Cases were

¹ Lewis J, R Legard, (1998) Acas Individual Conciliation: a qualitative evaluation of the service provided in industrial tribunal cases, Acas Research Paper 1.

² For example, in the Yorkshire and Humber regions.

however rarely simple and most involved several jurisdictions¹. It is a finding of this study that few were successful on the grounds of sexual orientation or religion or belief. This conclusion is drawn, again, from the perceptions of claimants and also in the absence of many cases which went to final hearings or received a verdict. Certainly, there was evidence of withdrawals of either the case or the jurisdiction because the sexual orientation or religion or belief jurisdiction was not considered relevant at the pre-hearing stage or indeed viable by advisors. Also, where settlements were made typically the settlement amount reflected jurisdictions relating to pay, redundancy or dismissal. Despite this, several claimants signed agreements asking them explicitly not to bring the name of the employer into disrepute for sexual orientation or religion or belief discrimination.

A further complication in considering the efficacy of the regulations, again in relation to observations made by the 30 claimants interviewed, is the presence of dual workplace processes – one in favour of the claimant and relating to discrimination and one against the claimant and relating to conduct or performance. Several claimants reported continuous harassment or bullying over quite long periods and these cases may have been successfully processed under the regulations². In the minds of these claimants the ET1 was submitted in relation to these experiences. However, in a few of these cases there were parallel events which allowed the employer to successfully defend the dismissal or redundancy or which encouraged the claimant to feel that there was no option but to resign. This interrelationship between events and motives and the subsequent claims was complex. These regulations are also new and bedding-down and there is little case law compared with other jurisdictions and these may also be relevant factors in the lack of success by these claimants under these jurisdictions.

Finally, there were four claims within the sample on the grounds of sexual orientation by claimants who identified as heterosexual and several religion or belief claims taken on the grounds of non-religious affiliation discrimination. This experience was not the same. The sexual orientation claimants were treated 'as if' they were gay and three felt the need to clear their names. The fourth challenged a job application. Religion or belief claimants in contrast, with the exception of one claimant who was assumed to be Catholic because she was Irish, were discriminated against on the basis of their actual belief identities, typically after disclosure after some time in employment or after a change in management or policy. As anticipated, this study shows that the regulations are being utilised by a wide range of claimants.

10.3 Relevance of the sexual orientation and religion or belief

Our findings support many themes in both the religion or belief and sexual orientation literature.

¹ See separate technical report for full details.

² Although for some, the regulations were not passed in time.

There was evidence of overt hostility, violence and discrimination in addition to "*ignorance and indifference*", as described by Colgan et al. (2006) and others, which claimants felt allowed managers to underplay or ignore the situation. Several claimants, particularly sexual orientation ones, mentioned being told that they lacked a sense of humour.

Managers, according to some claimants followed a strategy of least resistance seeing the one individual who was being harassed or discriminated against as the problem rather than a larger group of colleagues. In some cases, the person responsible was a supervisor or manager and rarely did a third party take responsibility to avoid bias. In line with Colgan et al. (2006) both sexual orientation and religion or belief claimants, in many instances, became the 'whistle-blowers' for practices in their organisation.

Problems were experienced with organisational policy or practice as well as with the attitudes and behaviours of individuals across both claimant groups. Our findings on types of discrimination are again reflected widely in the earlier literature. In the religion or belief claimant group, for example, there was evidence of discrimination on the grounds of working on religious days or holidays; lack of respect and ignorance of religious customs; application and recruitment practices and promotion prospects. In the sexual orientation claimant group there was evidence of "*discomfort and signs of embarrassment on the part of managers and colleagues, exclusion by colleagues through to homophobic comments and insults ... bullying and physical intimidation*", as reported by Colgan et al. (2006).

Some gay men reported that they were perceived to be too effeminate; some lesbians too masculine. These claimants typically also included a sex discrimination jurisdiction in their claim as an explicit recognition of discrimination based on gender stereotyping or gender non-conformity rather than sexual orientation. However, across all cases, claimants felt that the harassment they had been subject to was not relevant to their behaviour or appearance but an automatic recourse to crude caricatures of lesbians and gay men. As these claimants settled before a full hearing the interplay between sex discrimination and sexual orientation discrimination in these cases could not be fully explored.

A further theme in the literature¹ which our findings support is that of avoidance and self-censorship. Many sexual orientation and religion or belief claimants interviewed reported a great deal of tolerance of discrimination and harassment over quite long periods. It was a general finding that claimants tried to fit into the workplace and its practices and norms rather than expecting or receiving any accommodation from employers². Most claimants referred to their sexual orientation or religion or belief as a personal and not a work-related fact and several sexual orientation claimants were not or only partially 'out' at work. At least three sexual orientation claimants were 'outed' or 'outed' more widely as a result of taking a complaint and this was regretted

¹ This is a general theme contained in publications by both Stonewall and the TUC.

² Although again it must be stressed that the claimants perceptions are represented and the study does not include the views of employers.

by those claimants. Thus there was also evidence in this research of important 'barriers to complaint'.

Claimants also referred to an overlap between religion and race. For a small number these were inseparable. We found some evidence to support the argument that a 'visible difference' (Weller et al., 2001) did lead to an intensification of unfair treatment in that some religion or belief claimants who did not claim under race had longer periods without discrimination until their difference (for example, atheism) became known.

Finally, our findings point to a potential research issue about the integrity of the sexual orientation and religion or belief categories considered earlier. Most religion or belief claims involved two faiths (e.g. Muslim and Hindu and also between Christian and non-Christian) and sexual orientation claimants were heterosexual and homosexual and the discrimination was based on actual and perceived sexuality.

10.4 Bullying and harassment

In both groups of claimants, sexual orientation and religion or belief, there was evidence of discrimination in terms and conditions and also evidence of discrimination through bullying and harassment. In some cases both were linked.

Claimants in this study reported relatively more harassment than overt discrimination. Interestingly, in a small number of religion or belief cases the view was expressed that employers are more careful to avoid overt discrimination because it might place them in a more vulnerable position. This may be informed by the presence or experience of race discrimination laws. The relationship between harassment and discrimination was a complex one, often conducted by different actors, at different stages, and being processed in different ways through formal channels. The long-term experience of harassment was reported by some to have increased their vulnerability to formal reprimands (for example for lateness or increased drinking) so there were subtleties in the interrelationship between fair and unfair treatment and the timing or sequencing of events was important.

The bullying and harassment appeared in a variety of forms, most frequently verbal abuse, over an extended period and carried out by both colleagues and managers in the immediate workplace. These results are in line with findings from other studies on bullying and harassment (see for example the results of the National Workplace Bullying Survey 2006).

In most cases this behaviour was not tackled by other colleagues or managers and continued or escalated – something which claimants typically perceived as a form of approval of the bully or the harassment itself. For some claimants, the perpetrator was homophobic or intolerant of different faiths or races. For one or two others this person was a bully exploiting a perceived weakness; the aim was to bully, the strongest point of difference was the target. In many cases the object of the harassment – the claimant – ultimately became to be seen as the problem to be tackled and in some cases persistent bullying did indeed undermine the performance, health or confidence of the victim such

that removing this person from the workplace appeared to become a management strategy of choice.

It is interesting to question whether the bullying and harassment that took place in many cases is indicative of a more widespread culture of bullying based on sexual orientation or religion or belief discrimination. There is evidence in the UK of a growth in bullying and harassment affecting the motivation, performance and self-esteem of employees and impacting upon the costs of employers (through absenteeism, sick leave and legal intervention). Many management and personnel organisations (e.g. CIPD and CMI) and trade unions have also noted an increase in bullying and harassment (see IDS HR Studies July 2006) and a recent study estimated that two million people in the UK suffer bullying in their workplace (British Occupation Health Research Foundation with UMIST, 2002)¹. The claimants interviewed in this study confirmed the impact of bullying and harassment upon their performance and confidence and also reported an increase in sickness absence and particularly long-term absence.

A small number of studies have documented bullying on the grounds of sexual orientation and religion or belief with varying results. For example, a survey by a Scottish health and safety unit found that over 80 per cent of gay and transsexual people have been victims of verbal abuse or victimisation or assault at work and a recent Stonewall guide (January 2007) discusses the barriers to changing workplace cultures that allow this bullying. The DTI Fair Treatment at Work survey also documents the relationship between bullying and discrimination and also the unequal status between bully and bullied. As reported by claimants in this study, managers were as likely as colleagues to bully and harass.

10.5 Resolution points

The sexual orientation and religion or belief claimants interviewed for this study pointed to many lost opportunities to resolve their grievances internally. In some cases bias or incompetence in resolution efforts led directly to recourse to external parties and processes and to tribunal claims. Submitting an employment tribunal claim for most was an act of desperation or exasperation. In many cases claimants could not take any more abuse or discrimination; in some cases professional and self-pride had been so wounded that the matter could not be dropped. A number of claimants expressed the view that an early sincere apology on the part of the employer would have led them to drop their grievance or claim. This is an important finding which points towards the importance of equipping managers with the knowledge and resources to prevent or tackle discrimination and harassment at an early stage.

Most claimants reported broad levels of acceptance in the workplace and good performance and appraisal records. Several claimants reported exemplary work histories prior to their experience of discrimination. Indeed professional

¹ DTI Fair Treatment at Work reported experience of bullying by one million UK employees in the last two years.

pride prompted several claims rather than long-term harassment or discrimination. Many claims were based on issues that had not been resolved at much earlier stages (before any formal procedures had been invoked) by immediate colleagues or managers. Once formal procedures were invoked difficulties began to be compounded, sides entrenched, and the search for justice already at play. Further, at the point at which formal procedures were being followed, most claimants referred to their increased vulnerability and mental health problems. Many claims followed very soon after, or in parallel with dispute resolution procedures¹ and both were arguably too close together, or too late, to address the alleged discrimination or facilitate a mutually agreed solution. It did not just seem to be an issue of an 'implementation gap' although claimants also provided examples of such a gap.

10.6 The employment tribunal experience

Expectations were initially high when claims were submitted however exposure to various external parties and to the legal nature of the employment tribunal system did seem to bring about changes in these. Nonetheless satisfaction with the process and its outcomes was generally low. Most felt much less powerful than their respondents in terms of resources and expertise. Those without representatives were particularly vulnerable and there was evidence of a high level of confusion over employment tribunal processes and terms.

It has been noted in the literature² that the employment tribunal system works to promote settlements as the preferred outcome and that this is a pressure particularly felt by those without representation. This was certainly echoed by claimants in this study although for a variety of reasons. From the outset, a majority wanted their 'day in court' and justice was more important than money. However when settlement amounts were perceived to be significantly higher than claimants and their representatives felt could be achieved settlement was typically agreed. This is the trade-off Dickens (2000, p77-8) describes between certainty and risk albeit guided by representatives in many cases. For most this was about ending a stressful claim rather than achieving 'closure' and the decision was usually taken for pragmatic or personal reasons.

For some of those without representation lack of legal expertise or knowledge was of course considered an important barrier but it seemed to generally be only when the stress cause by this impacted on physical and mental health that the settlement option was pursued.

Although many claimants regretted settling and had misgivings over the outcomes of their claims, it is an important finding that only one claimant regretted pursuing a claim against their employer. For many, the employment tribunal system allowed an important and symbolic action against unchecked and unresolved discrimination.

¹ As would be expected given employment tribunal timescales and the current requirement that workplace channels are used first.

² See Dickens 2000, p.78, for example.

10.7 Identity, impact, emotional and practical

The experience of being the victim of discrimination, bullying or harassment at the workplace and subsequently making an application to an employment tribunal seemed to have a deep and lasting impact in a wide range of areas, including emotional and mental health, physical health and future employment prospects.

10.7.1 Identity

Many claimants in this study, both those who had taken claims on the grounds of religion or belief and those who had taken claims on the grounds of sexual orientation, referred to their religious or sexual identity as a personal fact and not necessarily a workplace issue. This is also a general finding in many published studies.

The expectation was that factors related to their identity, although to be respected, should make no difference to their treatment by colleagues or managers and claimants tended to express great disappointment and hurt at being the object of difference or discrimination. Many claimants referred to feeling so desperate prior to and during employment tribunal proceedings that they had contemplated suicide, or said that they could understand why people in this situation would want to kill themselves. Experiencing discrimination on these grounds also left many wary of colleagues at new workplaces or, at its most extreme, unable to re-enter the job market. One claimant mentioned not being 'out' in their new workplace as a direct result of their claim.

Although examples of despair were evident in the experiences of both sexual orientation and religion or belief claimants, those that took claims based on sexual orientation discrimination seemed to be particularly devastated by the experience. Relatively more referred to suicidal thoughts before and during their claim and many more suffered subsequent mental and physical health problems. It is not entirely clear why this was the case. A small number of claimants were not 'out' or only partly 'out' and had been 'outed' as dispute procedures progressed. In two of these cases, claimants felt unable to return to that workplace. A further reason may be related to the fact that sexual orientation can be bound up intimately with a person's view of their essential self in a way that religion or belief may not be and the discrimination more keenly and personally felt. Also, those claimants who experienced discrimination on the grounds of their religion or belief described being able to seek comfort, strength and advice from other members of their faith or belief and tended to refer more to wider support networks than sexual orientation claimants. A final reason may relate to the nature of the discrimination itself as sexual orientation claimants generally reported a greater incidence and quite long periods of bullying and harassment.

10.7.2 Emotional impact

Many claimants said that they felt changed by their experiences, quite often, although not always, in a negative rather than a positive sense. This was not related to case outcome. Experiences appear to have had a severe impact on mental health, with many experiencing continuing anxiety, panic and

depression. Some claimants were still on anti-depressants or in psychotherapy or counselling. Isolation was another important theme. Many claimants reported feeling unsupported, isolated and vulnerable during and as a result of their experiences, with some, especially those working in small communities, feeling that it was difficult to go out and resume a normal life. Many expressed bitterness about the impact, through no fault of their own, of the discrimination on their health, lives and careers. This was particularly the case amongst those claimants who had not been able to secure the support and representation which they felt might have changed the outcome of their case. A few felt disillusioned with the employment tribunal process, with 'justice' and sometimes with British society as a whole.

10.7.3 Practical impact

Claimants also described an impact in a range of practical areas. One of the main problems people tended to experience was in finding suitable alternative work. Although some claimants reported no difficulties in moving into alternative, and in some cases apparently better, employment, many had real difficulties in finding a job that they liked, that paid the same or was in a convenient location. Several claimants, particularly those who took sexual orientation claims, were still unemployed on disability grounds which they related to the experience of discrimination.

Lack of confidence and low self-esteem caused by the discrimination was one factor blamed. Some claimants also worried that they might experience similar issues elsewhere. Several claimants said that their employers were refusing to give references (even when this was an explicit part of a settlement) or giving poor references. A worry was expressed about being seen as a troublemaker by subsequent employers, particularly in small communities, and some claimants moved city as their claim ended.

10.7.4 Positive outcomes

The experience of discrimination, bullying and harassment at the workplace and subsequently making an application to an employment tribunal had a positive impact for some. Some cited the fact that they now felt better equipped to stand up for themselves and for other people in the same situation. There was also evidence of heightened awareness of diversity and sensitivity to the feelings of other colleagues as a result.

Many claimants said that they would repeat the experience despite the stress they had experienced. The importance of justice and the sense that what had happened was unfair were important themes in the stories of all claimants.

10.7.5 Motivations

Financial reward was not the motivating factor in taking an employment tribunal claim for any of the claimants in this study. Claimants were instead seeking an admission of guilt or an apology and in many cases it was believed that this could only be obtained outside the organisation from a third party.

Where claimants settled, financial compensation, aside from its symbolic value, was generally seen to not even compensate for lost earnings or for real costs incurred during the employment tribunal process.

Another important motivating factor was the need for closure. Where the process resulted in a definite outcome that was deemed to be fair this seemed possible. Where claims were withdrawn or cases struck out claimants seemed to remain frustrated and at times bitter. The need for closure was particularly important in cases where people had been dismissed or disciplined suddenly and/or without, in their view, good reason. Professional pride was another strong motivator. Finally, a small number of claimants said an impetus was provided by the introduction or presence of the new anti-discrimination regulations which they felt might allow them to set precedents or improve the workplace for others.

10.8 Wider social and economic impacts

It can be seen from this study that the experience of discrimination can have a significant impact on claimants themselves but there are also wider implications to consider. Those interviewed for this study referred to lower motivation and engagement, depression, anxiety and stress and a variety of physical symptoms caused by these. Claimants reported an increase in sickness absence, in some cases lasting over a year as a direct result.

While it is without doubt that the experience of discrimination and bullying in the workplace and the process of taking a claim to an employment tribunal can have a severely detrimental effect on mental health and psychological well-being, it is difficult to quantify this in terms of cost. Nevertheless, there are some broad figures relating to the financial impact of mental health problems across the UK¹ as a whole. According to recent figures published by Mind the total cost of mental health problems in England is more than £77 billion a year, twice as high as previous estimates². Depression is estimated to cost the UK economy three billion pounds a year in terms of lost productivity and benefits³. Of this, the cost to the NHS was estimated to be around £420 million a year⁴.

¹ Mind Factsheet:

<http://www.mind.org.uk/Information/Factsheets/Statistics/Statistics+5.htm>

² This figure includes NHS and private care for people with mental health problems. This breaks down approximately into over £12 billion for care, £23 billion in terms of lost employment opportunities and over £41 billion in terms of reduce quality of life and loss of life.

³ Kind P (1999), 'The Cost of Depression'. *International Clinical Psychopharmacology* Vol. 7 and in 1993 in *Hitting the Target – the role of medicines in achieving the Government's public health objectives* ABPI 1999

⁴ Kind P, Sorenson J (1993), 'The Cost of Depression', *International Clinical Psychopharmacology*, Vol. 7, pp.191-195

Mind has estimated the cost of work-related mental health problems at £23.1 billion a year.¹ It would also appear that losing a job accounts for a relatively high proportion of all mental health problems. A 1998 study² found that lost employment accounts for 37 per cent of the total cost of mental health problems in England.

It is also useful to also consider the numbers of employees affected. The Health and Safety Executive (HSE), in its Occupational Health Statistics Bulletin 2004/05, reports that each year more than 2 million workers suffer from ill-health that they believe is work-related. Stress is cited as one of the most common types of work-related disorder. More detailed statistics from the HSE show that between 2003 and 2005, 657 cases of work-related mental ill-health related to bullying or sexual harassment were reported, 410 cases of anxiety and depression related to bullying or sexual harassment were reported and a further 257 cases were reported relating to other work-related stress. A further two categories of relevance relate to interpersonal difficulties with manager/foreman and workers.

Although these figures give some indication of the wider impact of discrimination they do not capture the full extent. As detailed above, several claimants could not easily find new jobs or careers and some still remain unable to work. There are also many general and indirect costs incurred by employers in workplaces where discrimination is tolerated. A recent study on bullying³ suggests that most victims leave rather than complain – an estimated 25 per cent of targets and 20 per cent of bystanders leave organisations following bullying incidents. For those who do complain and take this complaint to an employment tribunal, as the claimants in this study did, the organisational costs are more direct⁴. From internal grievance and disciplinary procedures, through to employment tribunal hearings, managers were seen by these claimants to lose time and money as they and their legal teams defended each discrimination claim to its end.

¹ Sainsbury Centre for Mental Health and The Northern Ireland Association for Mental Health 2004, *Counting the Cost* available at:
<http://www.scmh.org.uk/8025694D00337EF1/vWeb/fsCPIR4PDJ8T>

² Patel A, Knapp M (1998), *Costs of mental illness in England*. PSSRU Mental Health Research Review, 5, 4–10

³ See Andrea Adams Trust

⁴ Estimates vary. A recent report for the DTI by Gibbons, M (2007) reports that the average cost to business of defending an employment tribunal claim has been estimated to be around £9,000. The financial cost to employees is lower but there are also very significant non-financial costs, including stress and damaged employment prospects. The dispute resolution system costs the Government around £120 million per year.

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