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**EMPLOYMENT RELATIONS
RESEARCH SERIES NO. 55**

The experience of claimants
in race discrimination
Employment Tribunal cases

JANE ASTON, DARCY HILL AND
NII DJAN TACKEY
INSTITUTE FOR EMPLOYMENT STUDIES



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Postal enquiries should be addressed to:

Employment Market Analysis and Research
Department of Trade and Industry
Bay 4100
1 Victoria Street
London SW1H 0ET
United Kingdom

Email enquiries should be addressed to: emar@dti.gov.uk

The views expressed in this report are the authors' and do not necessarily reflect those of the Department of Trade and Industry or the Government

Foreword

The Department of Trade and Industry's aims to create the conditions for business success, and help the UK respond to the challenge of globalisation. As part of that objective we want a dynamic labour market that provides full employment, adaptability and choice, underpinned by decent minimum standards. DTI want to encourage high performance workplaces that add value, foster innovation and offer employees skilled and well-paid jobs.

The 2003 Prime Minister's Strategy Unit report '*Ethnic Minorities in the Labour Market*' called upon the DTI to develop a new research programme to improve understanding of the nature, causes and extent of racial discrimination and harassment in the labour market. In support of these recommendations DTI commissioned a range of research to map the extent of unfair treatment in the workplace, and to look specifically at the characteristics and experiences of claimants in race discrimination Employment Tribunal cases.

This report takes an in-depth, qualitative look at the experiences and motivations of race discrimination claimants. This gives an invaluable insight from the claimant's perspective into the dynamics driving the process, including how disputes emerge and how they escalate to the point where a claim is made. We expect soon to publish the two other research reports on Employment Tribunals.

Additional copies of the report can be downloaded from the DTI website, or ordered from Publications@DTI.

Anyone interested in receiving regular email updates on EMAR's research programme, new publications and forthcoming seminars should send their details to us at: emar@dti.gov.uk



Grant Fitzner, Director, Employment Market Analysis and Research

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Executive summary

A qualitative study of race discrimination Employment Tribunal claims found that they originate through a complex process. Claimants described their claim as having originated in a mixture of both overt racism as well as other unfair treatment that was not, on the face of it, racist. Once a claimant had experienced behaviour perceived as overtly racist, however they tended to attribute subsequent unfair treatment to racism at work.

Claimants felt that challenging issues of discrimination with their employer had ultimately contributed to the deterioration of the working relationship. The primary reason given for making a claim was the pursuit of justice rather than potential financial gain.

Claimants tended to be unaware of what would be involved in taking an Employment Tribunal case. Their 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.

Introduction

This qualitative study explored the perceptions and subjective experiences of claimants who were involved in Race Relations Act Employment Tribunal cases. It compliments the quantitative Survey of Claimants in Race Discrimination Employment Tribunal Cases (SETA RRA). In-depth interviews with 40 race discrimination claimants were carried out between May 2005 and February 2006. Where permission was given by the interviewee, the interviews were recorded and transcribed. If permission was withheld then detailed notes were taken. Interview transcripts and notes were analysed with the assistance of a qualitative research software package (Atlas.ti).

Of the 40 claimants interviewed, 16 were women and 24 were men. They encompassed a range of ages, religions and ethnicities; 14 claimants were Asian, 25 were Black and one was White. Sixteen had no representation for their race discrimination case, although others had representation from their trade union, solicitors or barristers. Eight claimants' cases had been successful at a Tribunal and ten had been unsuccessful. Seventeen claimants had settled their cases and five had withdrawn their cases.

Key findings

The origins of the case

Claimants had often gone through long periods of difficulty and dispute with their employers before they applied for an Employment Tribunal. Very few claimants reported taking a case after a single event, although some had lodged their cases after being dismissed. Those who had been dismissed often felt that their dismissals were as a result of bringing racism to the attention of their employer. Many had experienced overt racism involving, for example, name calling, or racist notes or literature being circulated. Claimants working for service organisations reported racist abuse from clients, and their disputes often originated with their employers not supporting them when such abuse occurred. Claimants usually attributed further unfair incidents to racism, even when they were not overtly so.

Prior to their disputes, claimants reported cordial relationships with their colleagues. The perpetrator of the discrimination was often senior to the claimant, and difficulties in the working relationship began as soon as the claimant and perpetrator had to work together. Claimants felt that challenging issues of discrimination with their employer had ultimately caused them even more problems. Internal communication tended to have broken down by the time they became involved in the formal grievance procedures. As a result, they often felt that their concerns had not been dealt with fairly through the domestic workplace grievance procedure and, if anything, such processes had only made things worse for them at work. Few claimants had been subjected to direct disciplinary action, but some of those who had been felt that the underlying cause of the disciplinary action was their allegations of racism to their employer.

Taking the case

Claimants' primary reason for taking their case was the pursuit of justice. They felt that their employer should be told they had been wrong, and they should be made to change their behaviour towards ethnic minority employees. Some claimants who had been dismissed hoped to be reinstated in their jobs. They were rarely motivated by potential financial gain, although they wanted to be compensated for loss of earnings. Most claimants had no prior experience of Employment Tribunal cases, but sought advice from their trade union, the Citizens Advice Bureau (CAB) or the Commission for Racial Equality (CRE) before applying to the Employment Tribunals Service (ETS). They had sometimes lodged their case after the outcome of their workplace grievance procedure had been unsatisfactory, or when they felt that this would be stalled beyond the three-month time limit for claim form submission.

Most claimants did not inform their employer they would be applying for a Tribunal. They were unlikely to remain at work when the case was being prepared, often being off sick or having been dismissed by this time. Claimants' expectations of the Employment Tribunal process were different from the experiences they reported, particularly regarding how long the process would take, the amount of work involved, the amount of legal

knowledge required, and the need for representation. At the outset, claimants were confident they could win their case, being convinced that they were in the right.

Advice, support, representation and conciliation

Claimants consulted a range of sources of advice for information, support and representation. These included the CAB, their unions, local law centres, race equality organisations, and solicitors. Some also conducted personal searches for information, and used sources including the Internet and the literature provided by the ETS. Most claimants had found the process of securing representation difficult and time consuming, especially as they were usually unable to afford to pay for it. Some claimants had chosen to represent themselves, but most wanted representation for the Tribunal and throughout their case.

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.

Cases which were withdrawn or settled prior to hearing

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. 'No win no fee' solicitors, in particular, seem to have pushed claimants into settling their cases, when many would have preferred to continue to a Tribunal hearing. Such claimants usually had substantial regrets about having settled their cases. Those who had settled cases with representation from their union seemed to have fewer regrets, perhaps because they felt more ownership over the decision to settle. Some cases had been settled in the weeks and months leading up to the hearing, but some were settled only hours before. 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.

Those who had withdrawn their cases usually regretted having had to do this, but felt that they were left with no other viable course of action. They withdrew for reasons including a lack of evidence and witnesses, and sometimes even because of perceived threats to their personal safety.

Employment Tribunal hearings

On the whole, claimants did not feel adequately prepared for the Tribunal hearing, and did not know what to expect. Claimants felt that the Chair, and whether or not they were sympathetic towards the claimant was central to the way they experienced the hearing. The ethnicity of the Chair and panel was mentioned by some claimants as being an issue in race cases, affecting their confidence of getting a fair hearing.

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 felt that the balance of power rested with the respondents as they had more experienced legal teams, more financial resources and a greater number of witnesses.

Outcomes of cases that went to a Tribunal hearing

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.

Claimants who had settled their cases after the main hearing had started had usually felt pressured to do so, and were generally not satisfied with the terms. Those who had withdrawn their cases during the main hearing felt that the Tribunal panel would not be convinced that discrimination had taken place.

The impact of the case

Claimants found it difficult to differentiate between the impact of having taken the case, and the impact of the preceding events in the workplace. Claimants were often distressed before they lodged their case with the ETS; however, it seems that the process of taking their case exacerbated this. 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. Those who had struggled with long disputes at work prior to applying for a Tribunal hearing seemed to suffer the most during the case itself. Claimants who represented themselves had often experienced some of the worst effects on their health during their cases. Health conditions seemed to particularly persist where claimants had been unhappy with the outcome of their cases.

Negative financial effects were reported by claimants, both during and after the case had finished, in terms of loss of earnings and paying for solicitors advice. Some claimants said that their experiences had damaged their confidence and trust in other people. Some were still unemployed several years after their case had ended for reasons including poor health and low confidence.

Claimants felt that the process of taking an Employment Tribunal case was not 'user friendly' enough, that it should be less formal and less reliant on legal terms and knowledge. They felt that securing good representation and providing evidence were very important. Claimants had mixed views on whether they would take another Employment Tribunal case, with some feeling that it should be used only as a last resort. Very few claimants reported positive outcomes from their cases, although those who had won

were clearly pleased that they had made a stand against their employers and had been successful.

Emergent themes

Some of the key emergent and overarching themes that arose from the analysis of the interview transcripts are discussed in detail at the end of the report. The main emergent themes are as follows:

The progress of the case: including dispute emergence and escalation prior to submitting the claim form, whether claimants viewed the case as being primarily about race, and the effect of any pre-hearing events on the outcome of the case.

Advice, guidance and representation: including representation and access to justice, the strength of the case, routes into self-representation, the disadvantages of self-representation, 'no win no fee' representatives, claimants' trust in their representatives, and the perceived role of Acas.

Expectations and motivations: including justice as claimants' key motivation, their expectations compared with their experiences of taking a case, and the lack of appropriate resolution.

Issues of power: including claimants' perceived control compared with a sense of powerlessness, the balance of power between claimants and respondents, and claimants and the system as a whole, and the ethnic composition of the panel.

Conclusions

Claimants reported a mixture of overt racism as well as other unfair treatment that was not, at face appearance, racist. Once a claimant had experienced treatment perceived as being overt racism they tended to attribute subsequent incidents and disputes to racism. They may even retrospectively perceive earlier incidents of unfair treatment by the employer as being racist in origin. Their relationships with their employers deteriorated rapidly after bringing alleged racism to the attention of their employer. Claimants felt that some of their subsequent difficulties in the workplace were as a direct result of having done this. It would seem that more could be done to prevent disputes from escalating to the point where claimants saw an Employment Tribunal as their only course of action. Steps could include ensuring a fair hearing through the grievance procedure, and/or introducing an additional mediation and conciliation stage before a claim for an Employment Tribunal is lodged.

Claimants tended to be unaware of what would be involved in taking an Employment Tribunal case. Having gone through the experience they felt that the current process gave the employer respondent a natural advantage due to their having more resources, greater access to legal teams, and prior experience of Tribunals. The availability of advice, support and representation greatly affected how claimants experienced the process of taking their case,

and claimants believed this was a key factor in the case outcome. However, few had been able easily to secure good quality, trustworthy and reliable representation.

Negative effects were felt by many, especially in terms of their health and well-being. Good representation had the capacity to ease this burden considerably. Those who had been most able to put the experiences of their race discrimination case behind them had usually experienced fewer negative effects during the case, and/or had felt that justice had been done. Those who had felt in control of the decisions made about their case were often more able to recover from their negative experiences.

Changes could be made to improve claimants' future experiences of taking race discrimination Employment Tribunal cases, either by managing their expectations, or by altering the Employment Tribunal process and hearing to align it more closely with their expectations. Measures to help prevent long-term damage to claimants wherever possible could include a code of practice for employers on how to deal with individuals who have taken Employment Tribunal cases. In addition, it would be helpful to provide a service whereby claimants would be referred to specialist agencies that could help get them back into employment at the end of their case.

About this survey

In December 2004, the Department of Trade and Industry (DTI) issued a tender for a research project on the experience of claimants in race discrimination Employment Tribunal cases. Early in 2005, the DTI commissioned the Institute for Employment Studies to carry out the research. This consisted of a literature review on race discrimination and Employment Tribunals and 40 in-depth qualitative interviews with claimants. Interviews were conducted between May 2005 and January 2006.

1

Introduction

This chapter presents the background to this research study, and why it was commissioned by the DTI. It considers the original aims and objectives of the research, and sets out the methodology that was devised in order to meet those. It also presents details on the claimants who took part in the research, including demographic data and basic case information. Finally, this chapter provides the employment histories of the claimants prior to their taking RRA cases to Employment Tribunals.

1.1 Background to the study

At the end of 2004, the Department of Trade and Industry (DTI) issued a tender for a research project on the experience of claimants in Race Relations Act Tribunal cases. Early in 2005, the DTI commissioned the Institute for Employment Studies to carry out the research, which consisted of a literature review and 40 qualitative interviews with claimants. This report presents the findings from the interviews. The literature review is included as an Annex to this report.

1.2 Aims and objectives of the research

The main aims of the study were to explore, in-depth, the experiences of claimants involved in Race Relations Act cases. This current qualitative study is seen as complimenting current quantitative research, such as the Survey of Employment Tribunal Applications 2003 (SETA 2003) and the Survey of Claimants in Race Discrimination Employment Tribunal Cases (SETA RRA). It covers many of the same themes used in the SETA telephone survey, but examines them more extensively. It particularly considers claimants' subjective experiences, in order to provide deeper insight into the perceptions and motivations of claimants in race discrimination cases. This research provides some insight into the in-depth experiences of claimants who sought an Employment Tribunal hearing on the grounds of race discrimination. These 40 claimants are not representative of all claimants who take this course of action, and their stories should not be taken as a representative or comprehensive picture of the experiences of claimants as a whole. Rather they provide insights into the experiences of a range of claimants involved in race discrimination claims.

The research covers the following main research themes:

The characteristics of the parties and the nature of the dispute

Knowledge and pre-conceptions of the Tribunal process prior to making a race discrimination claim

Reasons for applying for an Employment Tribunal (pathways into the Tribunal system)

The use and experience of workplace dispute resolution procedures

Sources of advice and representation used, and their role in the case

Issues around access to representation

The role of Acas

The experience of Tribunal hearings (if any attended)

The outcome of the case, especially subjective explanations for the outcome of the case

The costs and benefits to the claimant of bringing the case

The experience of the Tribunal process as a whole

The impact, both immediate and longer-term, on the claimant as a result of having taken an RRA case.

It was agreed with the DTI that IES should try to secure 20 interviews with claimants whose cases had been decided as successful or unsuccessful at Tribunal, and 20 interviews with claimants who had withdrawn or settled their cases. It was also agreed that across the 40 interviews there should be a good range of other personal and case characteristics; claimants' gender, age, ethnicity, religion, type of employer, and type of representation or lack of representation.

The overall aim of the research was to understand people's real experiences of taking race discrimination cases and of the Employment Tribunal process. It was carried out with a view to finding ways of making the system work better in the future.

1.3 Methodology

1.3.1 Pilot

In April 2005, 20 claimants were randomly selected from the sample and written to in order to pilot the research instrument – a semi-structured discussion guide (the letter and procedure was the same as that used for the main-stage, see below). Pilot interviews were carried out with three claimants, covering three different case outcomes; a settled case, a withdrawn case, and an unsuccessful case. The discussion guide was

amended slightly as a result of the pilot interviews and as a result of discussions with the DTI, but in general the interview schedule worked well in the pilot interviews. The claimants were allowed to tell their story in their own words, and the discussion guide was used to check that all relevant aspects of the case and their subjective experiences were covered during the interviews. (The final version of the discussion guide can be found in Appendix 1). Piloting also revealed that these interviews could be very long; two pilot interviews lasted around 90 minutes each, while a third lasted for two and a half hours, with a later additional 90 minute telephone call to gather all required information.

1.3.2 Main-stage recruitment

In May 2005, letters for the main stage fieldwork were sent to the remaining 293 claimants in the sample, reminding them of the BMRB telephone survey and inviting them to take part in this more in-depth research (see Appendix 2). The letters were sent on an opt-out basis; claimants were asked to contact IES if they did not wish to participate, or if they had any questions about the research. In practice, a number of claimants contacted IES offering to participate, and were very keen to share their experiences. These claimants were recruited to the study wherever possible, providing they met with the recruitment criteria in terms of case types and other key criteria. Additional claimants were recruited by telephone, and in all cases, a suitable date, time and location was arranged for a visit by an IES researcher. IES worked in partnership with Agroni, an independent research organisation, to undertake interviews with claimants who preferred to be interviewed in languages other than English.

1.3.3 Conducting and analysing the interviews

A total of 40 interviews with claimants took place, between May 2005 and February 2006. All interviews were conducted face to face. Interviews usually took place at the claimant's home; however, a small number of claimants preferred to be interviewed at their place of work, or in another venue such as a café. The length of interviews varied greatly, depending on the claimant and the complexity of their case(s); the shortest was 45 minutes and the longest lasted for three hours.

Wherever possible, interviews were recorded and later transcribed, although four of the claimants interviewed did not want their interview recorded. In these cases, the interviewer took detailed notes during the interview, which were then written up as fully as possible. All transcripts and interview notes were annotated with key facts about the claimant and their case, interviewer observations and comments about the interview itself, and a short summary of the case.

All transcripts and interview notes were coded and analysed using the Atlas.ti qualitative analysis software package. This report is based on that analysis.

1.4 The claimants

This section presents some key factual data about the claimants interviewed, and on whom this report is based. It is worth stressing again that, in line with the aims of this research, these 40 RRA claimants are not intended to be representative of all claimants who take this course of action. In essence, they provide 40 personal stories, which are a useful starting point for further discussion and research. They should not be taken as a representative or comprehensive picture of the experiences of race discrimination claimants as a whole.

1.4.1 Key characteristics

Table 1.1 gives the gender, age, ethnicity and religion of the claimants, and shows a good spread across all these variables. There were 16 women and 24 men interviewed, and their ages ranged from 24 to 69. There were 14 Asian claimants, 25 Black claimants (Black Caribbean, Black African and Black British), and one White claimant. Fourteen of the claimants were Christian, and seven were Muslim. Those in the 'other' religion category included Hindus, Sikhs and Buddhists. Ten claimants had no religion.

Table 1.1: Gender, age, ethnicity and religion of claimants

		N
Gender	Female	16
	Male	24
Age	20-29	2
	30-39	9
	40-49	15
	50-59	11
	60-69	3
Ethnicity	Asian	14
	Black	25
	White	1
Religion	Christian	14
	Muslim	7
	Other	9
	None	10

Source: IES/BMRB, 2006

Table 1.2 outlines the type of respondent employer against which these claimants submitted their claim for an Employment Tribunal. Several claimants had submitted more than one application, and usually these were against the same employer. Where this was not the case, the most recent application was used to provide this data. The majority of the claimants were divided equally between having worked for public and private sector employers. A small number had worked in the voluntary sector. The table also shows claimants' current employment status at the time of the in-depth

interview. Many of the claimants were not working, and within this category, there were examples of people who were unemployed and seeking work, those who were unable to work due to poor health, and one claimant was retired. Around half of the claimants were working at the time of the interview, and some of these were working for the employer against whom they had taken their Employment Tribunal case.

Table 1.2: Sector in which claimants were working at the time of claim, and current employment status

		N
Sector at time of claim	Private	18
	Public	18
	Voluntary	4
Current status	Not working	18
	Working	22

Source: IES/BMRB, 2006

The type of representation used by claimants is shown in Table 1.3. This data refers to claimants' representation at an Employment Tribunal. However, if the case did not proceed this far, it refers to the key adviser the claimant used in the case preparation or during any negotiation. Where claimants pursued more than one case, this data refers to the most recent case. Claimants most commonly had no representation, although eight had solicitors and eight had union representatives. Five had other types of representation such as caseworkers from local law centres or equality units. The table also shows the outcome of the case. Again, where claimants had taken more than one case this refers to the most recent completed case. This report is based on the experiences of individuals most recently involved in eight successful cases, ten unsuccessful cases, 17 settled cases and five withdrawn cases.

Table 1.3: Type of representation, and case outcome

		N
Representation	Barrister	2
	Solicitor	8
	Union rep	8
	Other	5
	None	17
Case outcome	Successful	8
	Unsuccessful	10
	Settled	17
	Withdrawn	5

Source: IES/BMRB, 2006

1.4.2 Employment history

This section sets out some background details on the claimants' employment history to contextualise the circumstances under which race discrimination cases were lodged.

Of the 40 claimants, 18 had been employed in public sector organisations, 18 had worked in the private sector, and four had been employed by voluntary sector organisations.

The claimants had worked in a variety of sectors and roles and for varying lengths of time, which depended, at least in part, on their ages and other personal circumstances such as having had time out of the labour market to raise children. There were examples of claimants working in manual occupations, sales, personal and protective services, clerical and secretarial and associate professional and technical roles. There were a small number of claimants in professional roles. Some of the claimants had supervisory duties, but none worked in senior management.

Some claimants had worked for the same employer for many years; for example, one claimant had worked for a private company as a labourer for 28 years, another had worked for the same local authority for 30 years, although in a number of different roles. In such instances, the organisation against whom the claim was made was sometimes the only employer the claimant had ever worked for. One claimant had worked for the police for nine years, whilst another had worked for the same law firm for 15 years. More often, the claimants had worked for their employer for a shorter time than this. Many reported having been with the respondent employer for two to five years. Industrial sectors of respondent employers included sales, ICT, the NHS, government agencies, publishing companies, health club and local authorities.

Several of the claimants were in their teens or 20s with relatively short careers to date. Several of these had other jobs prior to the one that resulted in their taking an Employment Tribunal (ET) case. One of these claimants had worked for their employer for less than three months before making a discrimination claim (following a dismissal).

1.4.3 Type of case

This section considers the jurisdictions under which the claims were brought. Table 1.4 shows the 'main' jurisdiction as recorded by the Employment Tribunal as well as the 'other' jurisdictions under which the claim was assessed. Interestingly, 27 of the cases had race discrimination as the main jurisdiction, and 23 of these had no other jurisdictions, meaning that they were categorised as purely race discrimination claims. There were 13 cases where race discrimination was not categorised as the main jurisdiction. Nine of these cases were for unfair dismissal and a small number of cases were lodged using disability discrimination, redundancy payment and breach of contract as the main jurisdictions. Looking across all the cases, additional jurisdictions used alongside the main jurisdiction included unfair dismissal and sex discrimination.

Table 1.4: Main and other jurisdictions of case

Main jurisdiction		Other jurisdiction	
Race discrimination	27	None	23
Unfair dismissal	9	Race discrimination	13
Disability discrimination	2	Unfair dismissal	5
Redundancy payment	1	Sex discrimination	3
Breach of contract	1	Working Time regulations	1

Source: IES/BMRB, 2006

2

The origins of the case

This chapter considers the first origins of the RRA cases included in this report. It looks at the act of discrimination itself, the factors which led up to this, and the contextual factors which may have affected the claimants' perceptions of these events, including their overall job satisfaction and their relationships with their colleagues. We then turn to look at the help and advice sought and received prior to taking a case. Finally, the chapter looks at internal grievance procedures followed by the claimants, and any disciplinary action which was taken against them by their employers.

2.1 The act of discrimination

This section covers the events which claimants perceived to be discriminatory, and which eventually led them to apply for an Employment Tribunal hearing. The claimants' accounts of the events leading up to their application rarely pointed to single or isolated acts of race discrimination. Even the final trigger which prompted claimants to take external action was sometimes unclear. When it seemed that a particular event had caused the claimant to take action through seeking an Employment Tribunal, it was rare that that particular event was the only negative experience reported by the claimant. Rather, there had usually been a build up of difficulties, which claimants felt were not being dealt with fairly through internal methods including their employers' grievance procedures.

2.1.1 Dismissal

Some of the claimants interviewed as part of this research had submitted their Tribunal application after having been dismissed by the employer. There were two basic dismissal scenarios, one where the claimant felt that they were performing well in their job, and their dismissal came unexpectedly. In the other scenario, dismissal was the last in a long chain of events which the claimants perceived to have been unfair, and usually as a result of race discrimination. These two scenarios are dealt with in turn below.

Unexpected dismissal

There were a small number of cases where claimants were dismissed with little warning. Claimants felt that their performance at work had been good and they had not usually perceived any problems with their managers or colleagues. The claimants had not been working for the organisations for very

long before they were dismissed or singled out for redundancy. In fact, one claimant had been within his probationary period of employment.

A Black Caribbean man who was within the three-month probationary period with his private sector employer was dismissed without any warning. To the claimant's surprise, he was called into a meeting with the finance manager and the personnel manager, where he was dismissed on the grounds of unsatisfactory performance, punctuality, and because he did not fit in to the organisation:

'She said I wasn't fulfilling my potential, I wasn't getting a lot of my work done correctly. I wasn't coming in on time. General things – I speak to my manager all the time and he hasn't pulled me up on any of this. It turned out to be my dismissal. When she first started she said all these other things but her main point was that I wasn't fitting into the cultural environment of the workplace.'

The claimant did not contest the decision on the spot and left without arguing with his employer; however, he said he was alerted to the fact that there was a racist aspect to his dismissal as a result of the comments about not fitting into the organisation's culture. In the hours following his dismissal he thought over what had happened and felt sure that he had been dismissed because as a Black man he did not fit into an organisation which was almost completely White. As he was within the probationary period, he was not able to make a claim of unfair dismissal, so he applied to an Employment Tribunal on the grounds of race discrimination. (Settled case)

In another case where dismissal was swift and unexpected, an Asian claimant had worked for a software company for just over three months, seemingly with no problems, when he and an Asian woman were selected for redundancy. They were both told that they had been selected on the basis of a matrix assessment that covered all aspects of their performance; however, the employer refused to make the scores of other employees available to the claimant for comparison. The claimant did not believe that he would have scored lower than people who had recently joined the organisation, and who he himself had trained. He felt that the organisation had picked the only two non-White employees for redundancy on the basis of their race rather than their performance. He appealed the redundancy decision with his employer directly, but was unsuccessful. The claimant was aware of Employment Tribunals as a result of previous contact with Acas, and sought advice from the CAB about whether he had a case. He lodged a single jurisdiction claim of race discrimination. (Successful case)

Eventual dismissal after a period of difficulty

There were a number of cases where dismissal followed a period of difficulty with the employer. These cases differed from those where claimants were dismissed unexpectedly because there tended to be an ongoing sense that they were being treated unfairly as a result of race discrimination.

The claimant, a Black African woman, had worked in a school as a deputy head teacher for several years before a new head teacher arrived, and this was when the claimant started to experience problems. She immediately felt that the new head did not respect her, and this manifested in a lack of communication from the head to the deputy. The head's actions also suggested that the claimant was not trusted with the responsibilities which her role entailed, as she was no longer given the opportunity to do certain things, for example, to look after the school in the head's absence. Right from the start, she felt that this treatment was as a result of subtle racism because the head made racist comments about Black people. Although not directed towards the claimant, these comments convinced her that the new head did not like her because she was Black, and was treating her unfairly on the grounds of race. The head eventually accused the claimant of misconduct, and when she went to talk to the head about this, she was suspended. The claimant received a letter of allegations from the head and she sought advice from her union on how to respond. They advised her to respond to the letter or face dismissal; because she was unwilling to respond to the letter, as she felt her response would not be dealt with fairly by the head, she was dismissed. She appealed to her employer but this was unsuccessful. Despite her having felt treated unfairly on the grounds of race, she was originally advised by the CAB and her union to apply for an unfair dismissal case. The solicitor later added the race discrimination element of the case to the claim. (Settled case)

There were several other cases where racist attitudes or treatment appeared to have led to, or contributed to, a subsequent dismissal. In the previous case the perpetrator was the claimant's immediate line manager. Claimants usually reported that the perpetrator was senior to them, and therefore had some power which they were able to take advantage of in the way they behaved towards the claimant. However, there were a few examples of claimants who reported that the discriminatory acts which subsequently resulted in the claimants' dismissal came from colleagues who were not senior to them. For example, a Black Caribbean woman who managed a privately owned care home reported that the assistant manager turned both colleagues and the residents' families against her. The claimant said that this colleague's attitude was overtly racist towards her, and that she spoke of the claimant in racist terms to others.

'They used to call me names even, Black nigger or Black bastard.'
(Unsuccessful case)

Eventually, when the claimant met with the owner to discuss this, the owner dismissed her rather than tackling the issue with the assistant manager, who he had employed for many years. The claimant was familiar with the procedures which needed to be gone through to dismiss someone, and

already knew that she had a potential case for unfair dismissal. Prior to lodging her case, the claimant consulted a solicitor specialising in race issues, as she felt that it was racism which had led to her dismissal.

This was one of many examples of seemingly overt racism which was not dealt with effectively by the employer. The claimant, rather than the perpetrator of the alleged discrimination, was treated as the troublemaker, and the resulting breakdown in communication between claimant and employer often seemed to eventually lead to dismissal.

An example of overt racism which, left unresolved by the employer, appeared to have ultimately led to dismissal, was reported by an Asian man who worked at a leisure centre. He had been employed in a managerial capacity for three years, but had always experienced racist attitudes and prejudice from certain members of staff. This escalated following the terrorist attacks on 11 September 2001. Racist comments and notes were left on his timesheet accusing him of being Bin Laden, or being a terrorist. He felt disrespected and harassed by certain staff, whose attitude towards him became increasingly hostile, and it became very difficult to manage his team effectively. As the leisure centre was part of a chain they did not have a personnel function on site, so he made complaints about the way he was being treated when personnel staff visited the site from another city. However, he felt that his complaints were ignored. Meanwhile, there was increasing friction between the claimant and his supervisor. After about a year of what the claimant described as 'harassment and intolerance', he was dismissed. (Settled case)

In the case of the care home manager, dismissal followed soon after she attempted to tackle issues with her own manager. This contrasts with the leisure centre employee, where some time had passed between his challenging racism and his dismissal. There were other examples of both of these patterns. Where it took some time for the claimant to be dismissed following an initial incident, claimants had often experienced deteriorating relationships with their managers and their colleagues, and felt increasingly singled out. Some claimants also reported that their performance was scrutinised in a way which it never had been before, some were refused leave requests, or their absence record was questioned. Some were put through internal disciplinary procedures as a result of their sickness record (see Section 3.4.2). Claimants in these situations usually felt that their employers were trying to find ways to push them out, either by finding reasons to dismiss them or by making things so unpleasant for the claimant that they would leave of their own accord.

A Black Caribbean male reported that he had worked for a private sector company for three years and had experienced no difficulties until a new line manager joined. The claimant soon received a verbal warning which he felt had been unnecessary, and following this, he began to feel uneasy at work. He also noticed that racist comments were being made by his colleagues, and when he met with his managers to challenge this he was unhappy with the way it was dealt with. After this, he felt that his whole attitude and ability to do his job was called into question, and he was offered money to

leave. He was refused a leave request, and a grievance procedure was started against him for reasons which were not made clear. This eventually led to his dismissal; although the only reason he was given for his dismissal was that it was the result of the grievance procedure. He had a friend who was a law specialist who advised him that he had a case. The main jurisdiction of his case was breach of contract, with unfair dismissal and race discrimination as other jurisdictions. (Settled case)

Reports of overt racism which are not dealt with effectively can lead to seemingly unfair treatment of a more general nature which, in turn, eventually led to dismissal. This claimant's dismissal appeared to be on the grounds of concerns around performance but these appeared to have begun only after the claimant had experienced racism. As with many of these cases, a number of the key events which led to the case being lodged did not appear to be overtly racist, being concerned with more general issues, but at the core there often appeared to be an overt racist issue which had not been dealt with by the employer and this had prompted subsequent unfair treatment.

Looking across all of the cases where claimants had been dismissed, it was startling how many had similar origins. Overt racism was ignored or not dealt with effectively by the employer, and this escalated into other difficulties between the claimant and their manager, and sometimes their colleagues too. The claimant was subsequently cast as the villain for 'rocking the boat' and work became increasingly unpleasant before the claimant was finally dismissed. The example below shows how this type of situation could arise between a claimant and an employer where the ethnic divisions are not straightforward.

The claimant, a Black Caribbean woman, was in a trainee position in a large public sector organisation which also involved her studying at a local university whilst working. She said that right from the start there were problems between her and course staff and her employers; she described it as Black on Black racism or 'island politics' as she was from Jamaica and her course staff and supervisors were from Barbados. She explained that there was considerable animosity between the two islands which people not from those backgrounds were usually unaware of.

'It may sound surprising being in a country like England, we're hearing about Black on Black crime but you have a lot of conflict which is Black on Black in the workplace. I don't think race relations actually addresses that. Maybe people think we'd rather not complicate matters, it's easier if it's a Black and White situation. It's much broader these days. The Asians and Caribbeans is a conflict. The Africans and Caribbeans is a conflict. It shouldn't be unusual to be in the workplace and have similar conflict or what I call island politics, Jamaica, Barbados.'

The claimant had felt discriminated against by her Barbadian course staff and her line manager on the grounds of being Jamaican, from the start of her course and her employment. She had attempted to challenge this in the past with no success.

'The man who was head of the training from the university angle was a Black man. They're all in it together. Maybe if it was somebody else, it might have been different but I'm saying my [supervisor] was Barbadian, the head of training at the university was a Barbadian and so was my line manager. They definitely didn't like me as a Jamaican. Things that they did.'

The difficulties became more tangible when she failed an essay and was asked to re-submit it. She felt that the grounds on which the essay had been failed were suspicious; however, around the same time, she also requested leave to attend to a personal matter in Jamaica and did not have time to question her reasons for failure too closely. Her request for two weeks paid leave was granted, but she had not heard about the requested week of unpaid leave prior to her departure, so she informed her colleagues that it was important that she was in Jamaica for three weeks and she would be back after her week of unpaid leave. On her return, she was told that disciplinary action would be taken against her for failing to attend work the previous week. (This action was dropped after nine months.) She had re-submitted the essay whilst away in Jamaica, although she said that the re-submitting conditions she had been given were virtually impossible to meet, and she failed the essay again. She was allowed to submit the essay once more, but failed on exceeding the word count, although she contested that this had not been the case. Since she had failed an essay three times she was thrown off the course at university, and found herself employed in a trainee position with no hope of becoming a fully qualified professional. She reported that the organisation did not know what to do with her, and she asserted, in an effort to get rid of her, she was offered a position which was unsuitable for her as it was potentially dangerous and she was not fully qualified. She refused this position and was dismissed as a result of this. She felt that her eventual dismissal was as a result of her challenging some of the negative attitudes she had experienced:

'If you shout and make a noise you become labelled a troublemaker and you're on a short life span with them. It's a classic example of institutionalised racism, without a doubt.'

The main jurisdiction of her case was race discrimination, with unfair dismissal as an additional jurisdiction. Despite the claimant viewing the case as being primarily about race, her race discrimination allegations were thrown out at a preliminary hearing. However, she subsequently won her case of unfair dismissal.

In another case, which resulted in the claimant's dismissal, the claimant and his employers were both Asian and the problems appear to have arisen as a result of the claimant being of a different religion and culture to his employers.

The claimant, an Asian man, worked for a voluntary sector organisation. He was employed as an HR manager, and had worked there for only six months when he lodged his case. Interestingly, the organisation was predominantly Asian. The Chief Executive was of Indian origin, but a Gujarati, as were other senior managers in the organisation. According to

the claimant, the organisational culture discriminated against people who were not of Gujarati origin, for example, if they were Muslim, Sikh or African-Caribbean. The claimant alleged that there was a pecking order within the organisation; Gujarati Indians were left alone, and often promoted. White people, although a minority in the organisation, were also treated favourably. But all the other Asian and Black staff were treated badly. The claimant was Punjabi Sikh Indian, and hence, he felt that he fell into the category of people who were treated unfavourably.

The claimant was recruited as a human resources manager, having been lured with the offer of a high salary and good career prospects. He gave up a very good position in his previous job. Within a short time of joining the company, the claimant experienced bullying behaviour from his line manager, who was also the Deputy Chief Executive. The Deputy Chief Executive would create conflict, play people off against each other and ask others to deal with problems by carrying out actions, some of which the claimant considered to be illegal, on behalf of the organisation. If the claimant did not carry out those actions, he was told indirectly that he would lose his job. Consequently, he felt the culture of the organisation did not fit with his own values. As time went on, he felt increasingly pressured into resigning. The claimant discovered that his immediate predecessor as HR manager had also left after a short time, and that the organisation had a large number of cases of people being asked to leave in similar circumstances. After six months, the claimant was asked to leave by the Chief Executive, ostensibly by mutual agreement, because he did not think the claimant fitted into the organisation. The claimant perceived this to be unfair dismissal, and he felt that he would not have been treated this way if he was of a different race or religion. The claimant applied to an Employment Tribunal for unfair dismissal and victimisation because of his race. (Settled case)

2.1.2 The number of incidents which led to the case

Whether they were dismissed or not, most of the claimants reported that they had taken their cases on the grounds of multiple acts, most of which they attributed to racism. Claimants had generally experienced incidents, attitudes and treatment which continued over months and, in some cases, for many years. A small number of claimants had taken more than one case against the same employer; as a result of more incidents occurring after the first Employment Tribunal application, or because the first case had not resulted in the changes that had been hoped for by the claimant. Whilst not all of the acts were in the form of overt racism, in many cases the difficulties which claimants had experienced had begun this way. As a result, they felt that subsequent incidents and difficulties that they experienced were as a result of an underlying current of racism. Such claims involved complex situations which had lasted for several years, with chains of seemingly related incidents, many of which did not appear to be overtly racist. The two case studies below provide examples of how Employment Tribunal cases originated in this way.

A White Italian man had worked in a manual job for the same employer for more than 20 years, and for most of this time he had enjoyed his work and got on well with his colleagues. His problems began in 1995 when a new shift manager started, who was openly racist towards the claimant and the Asian workers; he called them names and made derogatory comments. The claimant and others made numerous complaints to personnel and to their union but nothing was done. Eventually there were a number of meetings, but the claimant felt that the company put him on trial as a result and that they and the union were trying to 'sweep the incidents under the carpet'. The shift manager then started to tamper with the claimant's forms of hours worked, which affected his pay. The claimant contacted his union at a regional level and after investigation, the shift manager was sacked and the claimant received the wages he was owed. However, when the new shift manager started it seems that the problems continued. The claimant again found that his wages were being tampered with, and there was a failure to reach agreement over this in an internal meeting. The claimant felt that the wages problems were as a result of his challenging the racist comments from the first shift manager. Around this time, the claimant began to have health problems, but leave to attend two hospital appointments was not approved, which he felt was active discrimination. He was then put on a particular job which paid him less than all his colleagues; he felt by now that his employers were trying to get him to leave. In response, he submitted a claim form (ET1) on the advice of, and with the help of, his union. This case was settled shortly afterwards with Acas, on a COT3 agreement. However, the claimant's difficulties with his employer continued. By now relations with most of his colleagues were terrible, with rumours circulating that he was trying to 'turn the company over'. The claimant needed a carpal tunnel operation, after which he requested light duties while he recovered from the operation. However, he was told he should return to his usual role, and he had to go off sick as he was unable to do such physical work. Eventually he was offered light duties but at 60 per cent of his usual pay. There were additional incidents involving issues of ill-health and non-payment of holiday wages. By now, the claimant had lost all faith in being able to resolve issues within the organisation, and he lodged another case, which was again settled with the help of his union, on a COT3 agreement, this time without Acas. Finally, a case was taken jointly by a number of employees for unlawful deduction of wages, and the claimant added an additional element of race discrimination to his case. This case was settled prior to a Tribunal. Then the claimant had an accident at work and was unable to do any heavy work; however, he was not put onto different duties, and he received a warning because he was not fulfilling his quota. He was off sick for a time and was certified permanently unfit to do his original job. He was offered a different role which he knew would be just as physically demanding and so he refused to take it. He was dismissed in October 2003 on the grounds of ill-health, and lodged a final case of unfair dismissal, race discrimination and disability discrimination, which was unsuccessful at Tribunal.

Although the example above was at the more extreme end in terms of the number of difficulties and the length of time which passed between the initial incident and the case being lodged, it provided a good example of how

claimants perceived subsequent treatment as racist, in the light of initially overtly racist incidents which had previously been left unchecked by their employer. They also felt that these subsequent events happened because they had challenged the initial incident. This was a fairly common thread running through many of the claimants' stories; that after they complained about a particular incident the difficulties they experienced escalated into a much worse situation.

There were very few claimants who reported a single discriminatory act which had caused them to take action against their employer through the ETS (Employment Tribunals Service). For most, this route had been a last resort after having experienced a series of difficult events, at least some of which they felt had been as a result of racism. The exceptions to this were few, and included the cases in Section 3.1.1 where claimants were dismissed without warning.

This case was a seemingly unusual situation where an Asian male claimant took his case as a result of a particular incident. He had worked part-time for a voluntary organisation since retiring from his career which was in equal opportunities and diversity. He reported that he had always enjoyed the work and that his relationships with his colleagues were good. During one shift, the claimant had wanted to make a private telephone call and asked his shift manager if he could use his telephone to 'phone a client, rather than use the one in the main office which was noisy and did not afford any privacy. His shift manager refused his request, but a few minutes later, the claimant saw one of his colleagues, a Black woman, using the shift manager's telephone. The claimant challenged this with his manager, who said that the woman had needed to make an emergency call. At this point the claimant felt that he had been treated unfairly, and this was when he first thought about applying for an Employment Tribunal. Shortly afterwards he found that his timesheet had been tampered with and he thought that this was as a direct result of the incident with the telephone. There was an internal meeting, at which it was not accepted that the claimant had been discriminated against, and so he applied to an Employment Tribunal just within the three-month time limit. (Unsuccessful case)

There were a small number of claimants who felt that although there was a particular incident which prompted their application for an Employment Tribunal, other events which took place whilst they were challenging the initial event clouded the picture and as a result their cases appeared to be based on not just the incident itself, but the way in which it was subsequently dealt with by the organisation. The case which follows is an example of this.

The claimant, an Asian woman, worked part-time for a large law firm where she had been employed for several years. She was responsible for the company intranet, and when her line manager – whose job role was 'intranet manager' – left, the claimant took on her duties. Her appraisal was very good and her job title was changed to reflect her manager status but she was not given a pay rise in line with this status change. In the company

pay review she was given a pay rise of 4.5 per cent when the average pay rise across the company was five per cent. She felt unfairly treated, especially as another girl in a different department who was less qualified than she was, was awarded £12K more pay than the claimant. Up until this point, the claimant had loved her work and got on well with her colleagues. She spoke to her manager and his manager, who denied that there were any grounds for her to feel unfairly treated. She also approached one of the senior partners informally, and he wrote back to her saying the same as her line manager and his manager had said to her already. The claimant felt that the response must in fact have come from them rather than the senior partner himself. She then put in a formal grievance, and there was a formal meeting where, although the finance director agreed that she deserved to be paid more, there was a disagreement over her job description. Her manager said he had not seen her job description and they needed to come up with another. The claimant said they used this opportunity to demote her, take away the responsibility of her position, and therefore not have to pay her accordingly. They refused to have the words 'manage' or 'manager' in her new title, as that would be commensurate with extra pay. She was also told she had no right to appeal as her informal contact with the senior partner counted as her initial approach. As she had been told that she had no further recourse of appeal with her employer, she sought advice and information about Employment Tribunals, and submitted her claim just prior to the three-month deadline. However, at the time of these events, it seems that the claimant felt that she was being treated unfairly but was not sure why:

'I didn't know what grounds I was being unfairly treated, I put in part-time work as I was working part-time at the time. I thought because I was Asian and I was the first person in the HR Department who was Asian and not White skinned. At my level, I was the only female. I knew I was being unfairly treated.' (Successful case)

2.1.3 Lack of support from employers

The previous case studies have provided some evidence of employers who were unsupportive of their employees when they reported racism, and how this made the claimant's problems far worse. There were several interesting cases where claimants who worked in public sector service organisations were not supported by their employers in the face of explicit racism from their clients. Two of these are presented below.

The claimant, a Black Caribbean woman, has worked as a nurse in the NHS for more than 30 years. She explained the origins of her case:

'Nine years ago, ten now, the mother of one of the babies said to her consultant that she didn't want me looking after her baby because I was Black and she was racist and she didn't want any Black people to nurse her child. The consultant agreed with her on the grounds that the child's care was paramount and I couldn't do anything about it. The child has a life threatening illness so she is in hospital quite often and every time she came into hospital, even if she was admitted to the ward I worked on before I went on duty, she was moved so that I couldn't look after her. I was

subjected to a lot of racist abuse by the mother because she got her own way. Eventually she got another mother involved who treated me in exactly the same way and that was when I decided enough was enough and I had to do something about it. I went to my union and they were the ones who helped me through the Tribunal.'

Although the claimant brought the issue up with her managers, they told her that she was imagining the whole thing. The claimant felt that she had to make a stand, not just for herself but because she felt there would be others being treated in the same way by her employer, so she decided to take her employers to an Employment Tribunal. (Successful case)

The case study above illustrates how management failed to support their employee in the face of overtly racist attitudes from clients. In fact, the claimant reported that they had denied that the situation was occurring. This lack of acknowledgement and internal resolution then affected the claimant's job on a day-to-day basis. When the problem, left unchecked, worsened because the perpetrator enlisted a friend to racially abuse the claimant as well, the claimant felt that she was left with no other course of action but to take her case to an Employment Tribunal. The claimant in the case below told a remarkably similar story.

The claimant, a Black Caribbean woman, was a social worker with more than 20 years of experience. She had always experienced difficulty in advancing her career and had applied for promotion many times without success. She never attributed this to racism, although she had suspicions that it could be. Then a case arose with a client which changed her mind. She was working with a family and she had some child protection concerns about the situation of the children, in relation to the mother's boyfriend. While the mother had been working with the claimant without any difficulty before the child protection issue was raised, after this, the mother became very difficult to work with. The mother claimed that one of her children had been knocked down by a Black female driver, and for this reason, felt uncomfortable having a Black female as the family's social worker. The claimant felt that this was an unreasonable request; however, her employer agreed with the mother's request to have a White worker. The claimant felt betrayed, that being taken off the case was degrading, and an unfair reflection on her professional practice.

'I just felt it was focussing on me as a Black worker and there was nothing I could do about it. They weren't focussing on the child protection concerns, it was just a case of they saw a problem and get rid of this problem. Which is wrong, because as a Black worker you come across a lot of issues like that and if you ask most service users, non-Black service users, half of them wouldn't want a Black worker. They would say, "I don't want a Black person". The department didn't support me and I felt really angry, I was just doing my job. I wasn't doing anything I shouldn't have been doing. I was doing my job, I thought I was experienced, I had these concerns and they weren't listening to it. They just wanted to get rid of the problem.'

The claimant spoke to her union representative from the start of the situation, although she said that they were not particularly supportive, and

she felt they would have preferred her to drop the issue. But the claimant was concerned that the equality policy be examined and amended to deal with future incidents of this type. The union representative and the claimant had a series of meetings with the employer, in which the claimant felt that she was being told to forget about the situation because it was unusual and would probably not happen again. The claimant felt that the problem was being minimised and she was increasingly made to feel like a troublemaker by pursuing the issue and seeking a resolution. The claimant recalled that her union representative submitted the claim on her behalf; however, this did not appear to be an explicit decision made by the claimant, who was mainly concerned with obtaining a clear answer about what to do in the future, and whether her employer's response had been within the law.

'When something like that comes up, everybody wants to just push it under the carpet, just get on with it, don't cause a stir, and it wasn't necessarily to cause a stir. I just needed to know in cases like that where do I stand? I felt rubbish and I would like to know next time if I come across that again, can I refuse to take on a case if the family are going to say they don't want a Black worker? At the end of the day I felt I was the problem and I'd done something wrong.' (Settled case)

Another case provides a similar scenario. A Black claimant had worked for eight years in a voluntary sector care home for people with mental illness. During this time, he and other ethnic minority staff had put up with sporadic racial abuse from particular patients. However, a patient arrived who was particularly extreme in the way he racially abused all of the ethnic minority staff, involving constant name calling, and complaints, which culminated in him smashing up the claimant's car and pouring paint on it. The claimant felt that management's response to this was not supportive towards him; they gave him some money but this did not cover the cost of repairing the damage to his car. He felt that the patient should have been evicted from the home, as had happened with disruptive patients in the past. However, the managers felt that he had 'played the race card' despite the incidents apparently being racist in nature. In the absence of action from the employer, the patient's behaviour continued for two years, and the claimant was offered a transfer. Instead, he initiated a grievance procedure against his employer, which was supported by his union. This resulted in the same offer of a transfer, but the claimant wanted the patient to be told that his behaviour was unacceptable. Management then told the claimant to stop creating problems, and it was at this point that the claimant decided to lodge a case, which was later unsuccessful at Tribunal.

As the previous sections of this chapter also show, many race discrimination cases appear to have originated from employers failing to support employees' complaints of racist behaviour from other employees. This model of failure to support was particularly apparent in these cases involving racism from clients. In these cases, it appeared to be the claimant, rather than the perpetrator who was 'punished' by the employer, and this demonstrated clearly to claimants that they would not be able to obtain a fair hearing within their organisation.

2.1.4 The extent to which racism was overt

It was striking how many of the claimants' stories included examples of overt racism. There were also plenty of examples where claimants had experienced some incidents which were overtly racist, and other incidents which were seemingly not, but they felt that they were racially motivated.

There were, of course, examples of overt racism which was not dealt with effectively by employers, such as the case below.

The claimant, a Black African man, had worked for a private sector organisation for two years as a night manager. A White security guard was taken on who went around the different sites, and he harassed some of the claimant's staff – those who were Black and Asian. He accused them of stealing and would ask them to strip, before checking whether any money was missing. These actions were also beyond the remit of his job. One night the security guard, with whom the claimant had spoken on the telephone with but had never met face to face, came to the claimant's office. The claimant said:

'I showed him all the paperwork and he looked at it, saw what I was doing, said it was okay and got up to leave and that was when he said, "well I will have to keep an eye on all you lot because all you Blacks and Asians are thieves." I said, "I beg your pardon, what do you mean by that? Have you seen anything go wrong or have they told you that a penny is missing? Can you take back that statement please?" He said, "What do you mean, I'm not taking anything back, you can do whatever you want." I said, "Is that why you go about putting your hands into people's pants thinking you can do whatever you like? This has to stop." He got enraged and starting using foul language. I said, "I am going to take this up with you no matter how far it goes." He banged the door and left. Next day I wrote a strongly worded letter to my line manager, who was a Ghanaian, a Black man also, and he now forwarded the letter to his line manager who was British and nothing was done... I wrote another letter again after a month and nothing was done.'

The security guard was now picking on people more than before, and the British manager started to harass the claimant. The claimant had sought advice from the CAB but they wanted to mediate, and he wanted justice. His immediate manager, the Ghanaian, advised him to apply for an Employment Tribunal as he knew that nothing would be done internally. Just before the three-month time limit, the claimant submitted his claim. (Settled case)

There were also cases where claimants experienced a mixture of overt racism and unfair treatment which they perceived to have been racially motivated. They then interpreted subsequent events as racist as a result of this. For example, one claimant had experienced harassment and intimidation of a racist nature when a new line manager joined his company. He eventually lodged a case which was settled prior to a Tribunal hearing. He has since lodged another case due to a lack of promotion. All of his White colleagues had been promoted during his 15 years of employment with the same

company, whereas, he had not, and he interpreted this as racism, possibly in the light of previous events. There were a small number of claimants who appeared to have subsequently re-cast events in the past as racist in the light of a more recent racist incident (see, for example, Section 3.1.4). However, there were far more examples where claimants' difficulties began with a racist incident.

Many claimants said that they took their cases in order to make a stand against racism in their organisations, and to try to prevent others from going through similar events in the future; however, there were a small number of claimants who said that they had been reluctant to use race as part of their case.

An African woman who was working for a large public sector organisation had been reluctant to bring race into her potential case; however, she was advised by a solicitor at her local CAB that this was an important element of her case:

'They felt there were racial connotations and I said I don't want to pull the racist card because I don't want to be seen as doing it, but they said but this is a race issue here.'

Interviewer: 'Did you feel that it was a race issue when you were on the receiving end of it?'

'Yes. To the point where you feel you're not even that big and there was a time, in fact it's in here [her diary] because I went and saw my GP because I was not sleeping.' (Successful case)

Other claimants said that the racism they had suffered was more subtle and that it was hard to pin down exactly what was going on. However, these claimants felt very strongly that they had been treated differently from some of their colleagues, and that this was as a result of the colour of their skin, their race or their culture.

2.1.5 *Unfair treatment perceived to be racist*

Although the majority of claimants appeared to have experienced at least one incident which was overtly racist in nature, there were a few examples where claimants had not. They had interpreted their treatment as having been unfair as a result of their race. Typically, this arose when claimants questioned their lack of promotion, in comparison with their (usually White) colleagues.

The claimant, an Asian man, had worked in the same company as a housing officer for eight years and in this field for 20 years in total. He applied for a more senior position and was unsuccessful. The job was given to someone with only 18 months experience, who the claimant had trained and coached. When the claimant asked why and how the decision had been made, he felt the explanations given were insufficient; for example, he was told that his written English was not good enough. He felt the reasons given were just excuses, and that the intention had always been to choose the

newer employee. The claimant felt the main reason that he did not get the job was because he did not socialise enough with his colleagues after work and in the pub. He initialised a process of internal grievance for not having been awarded the promotion, first verbally, and then in writing. The employer enlisted specialist solicitors from the start of the internal grievance process, and all responses came from the solicitor. Once this formal dialogue began, the claimant noticed that the employer was starting to 'nit-pick' his work, and seemed to be trying to compile evidence against him, especially regarding his time keeping. Despite the office using a flexi-time system, and the claimant saying that he never took his lunch breaks, and that he regularly worked long hours, the employer still came back to the claimant with criticisms of being late in the morning, and also said that he was not social enough. In addition, the atmosphere between the claimant and his colleagues became increasingly strained, and he found it very unpleasant. He felt that he was being treated in a way which was subtly, rather than overtly, racist:

'They would deliberately order bacon sandwiches in the morning and eat in front of you when they knew full well that I'm not Muslim but I said if you're going to have anything that is fine, but have it in the kitchen because it's a public environment... They started doing it on purpose to antagonise me. They were making it difficult for me to stop. They had to find something to get rid of me. I didn't like that at all. I could see my face wasn't fitting any more.'

The claimant began to seek his own legal support and visited the local CAB office. There he had a lengthy discussion with a solicitor who was very supportive, and agreed that there was a strong case. (Settled case)

In another case where race was not explicitly mentioned, an Asian claimant felt that he had been unfairly treated due to his race when, after his employer moved premises, he was no longer given his own office. The claimant had medical certificates to prove that he needed an office to himself as he suffered from migraines which were aggravated by the noise in an open plan area. However, his employer requested that he see another medical expert to confirm this. The claimant attributed these events to racism as he could find no other explanation for his employer's behaviour. The claimant said that although the office situation was the only act of discrimination, once he had put his claim into writing, his employer became evasive and confrontational. This created a hostile work environment and made it difficult for the claimant both personally and professionally. He submitted a claim with the help of his union, and the case was settled prior to a Tribunal hearing.

A common pattern which emerges from our interviews is that following one or more overtly racist incidents, subsequent difficulties were also perceived to be as a result of racism, even when the incidents were not overtly racist.

2.2 Contributing factors

This section examines other potential factors which could potentially have contributed to claimants' workplace difficulties, the origins of the case, and

claimants' decisions to take external action by applying for an Employment Tribunal hearing.

2.2.1 *Satisfaction with job*

The picture regarding claimants' satisfaction with their job prior to their case was a mixed one. However, it was clear that claimants who were unhappy in their work tended to feel that way because they were already experiencing some of the difficulties which led up to their taking a case. Many claimants reported that they had been very happy prior to their difficulties which led to their case. In a number of instances, claimants had worked for the same employer for many years before their circumstances at work changed in some way. For example, one claimant, an Asian woman who had worked for an organisation for seven years before problems arose said she loved her work. She also said that her relationships with her colleagues were:

'Fantastic. I enjoyed going to work. I didn't mind working late. I enjoyed the atmosphere and the people. I was doing what I really liked doing.' (Successful case)

There were others who reported that for many years they had got on well with their colleagues and their managers, and there had been no problems. These same claimants later experienced considerable difficulties with their employer, and sometimes with their colleagues too. They included an Asian man who had worked in a factory for over 20 years before experiencing any difficulties, and a Black woman who had worked as a nurse in the NHS for a similar length of time. Others had been in their organisations for a shorter amount of time but nonetheless said that they had been happy enough in their work.

For some claimants there was usually a change that marked the beginning of their difficulties. There were examples of organisations being taken over or undergoing restructuring which resulted in changes for the claimants; for example, in the people they worked with. It was interesting how many claimants said that their problems began when they were given a new line manager who caused problems for them straight away. One claimant, who had worked for his employer for more than 20 years explained:

'I never had any problems 'till 1996, then a new shift manager started, he was racist and blonde. When he called me over, he'd say "Itaye". The Asians had a rougher time, they made numerous complaints but nothing was ever done.' (Italian man, two settled cases and one unsuccessful case)

A smaller number of claimants had experienced problems with their employer from the beginning. There were examples of a series of events which built up and gradually got worse over time, to the point where the claimant was no longer able to ignore the situation in the hope that it would go away. This usually culminated in a particularly difficult or tangible situation prompting the claimant to take some formal action, usually through the internal grievance procedure if they were still in employment. One man, who had worked for a public sector organisation said that he had started to experience difficulties due to his race from the beginning of his employment there.

'I joined in 1987... I came into a system that is White, male orientated. The only Black people were [clients] so obviously they were only used to treating them in a certain way. I come along in uniform and it was a struggle all the time.' (Black man, settled case)

This claimant said that he was called racist names by his colleagues, and to begin with, he did not challenge this in an effort to fit in. Regarding the eventual decision to take action, he said:

'How much do you put up with before you lose a fuse?'

Another claimant who was training in a public sector organisation had also felt difficulties right from the start of her employment, although at that time she felt them in a fairly general way:

'Yes, [there were problems from] the first month. We went on training and sometimes being a mature student doesn't help because you've been around, seen a lot, maybe done a lot and hopefully more aware, and being Black you've got to be because there's so much negatives that goes with being Black.' (Black woman, successful case)

Of course, there were some claimants who were neither happy nor unhappy in their work prior to the events which led up to their lodging cases. As one claimant explained:

'It was a job, it wasn't interesting. I hate being in an office all day long.' (Asian man, successful case)

There was little evidence from these claimants of any other dissatisfaction with their work, aside than the events which led them to take Employment Tribunal cases. However, as we have seen, dissatisfaction was tolerated by some for a considerable length of time before they took external action against their employers.

2.2.2 Relationships with colleagues

Most claimants reported that, at least to start with, their relationships with their colleagues had been good. In line with claimants' general satisfaction at work, many had experienced years of working in a cordial environment before they started to experience difficulties.

'I'd been working with them for three years before this started and I hadn't had any problems with anyone. I got on well with all the staff, even the person who was involved in my grievance.' (Black Caribbean woman, settled case)

A small number of claimants had, however, experienced difficulties with many of their colleagues right from the start:

'Right up they had no regard for me as an individual apart from keeping me where I was.' (Black Caribbean man, settled case)

The way in which claimants' relationships with their colleagues changed once they started to experience difficulties in the workplace is interesting. Once a potential dispute became apparent, claimants' relationships with their

managers usually deteriorated fairly quickly. They worsened as time went on and issues were not resolved to the claimants' satisfaction. This led claimants to continue to press for answers and resolution, when the employer reportedly wanted the claimant to drop the issue.

'I know that once I'd made the complaint that was it. I know that managers, employers don't like people complaining officially. I knew my days were numbered because I'd made a complaint. They were really pissed off with me for not accepting what they'd said.' (Black Caribbean woman, settled case)

In a number of cases, claimants' difficulties reportedly began as a direct result of a particular senior colleague, such as a line manager, shift manager or supervisor starting to work with the claimant (see the previous section). In such cases, claimants who had, prior to this, seemed to have got on well with all of their colleagues at work experienced difficulties with the individual in question. Sometimes this spread to affect their relationships at work more widely, as other colleagues also turned against the claimant. However, some claimants reported that their colleagues stood by them, supporting them and even encouraging them to fight back.

'The others were very supportive, they'd seen it, maybe not as severe as in my case, I'm talking about a lot of months of nonsense going on. They were quite respectful that I was trying to sort myself out.' (Black Caribbean woman, successful case)

Similarly, a man who was still in dispute with his employer at the time of the interview said of his colleagues:

'They're fantastic. My colleagues, whenever they want any advice or any knowledge they come to me.' (Black Caribbean man, settled case)

Other claimants reported that their colleagues were still supportive, but in a less obvious way, as once it became clear that the claimant was in dispute with the organisation, they were fearful that their own circumstances and jobs could be at risk. For example, a claimant who worked in a school, who experienced difficulties with the head teacher felt that although other colleagues were supportive of her they were unable to actively demonstrate this:

'Teachers became afraid to talk to me, staff became afraid to be seen talking to me. If staff spoke to me, they got ostracised. I always walked with my head held high because I knew I hadn't done anything. She [the head] didn't like that. I'm quite a strong person. There were little things that she did and it just never worked, to provoke me. Members of staff that spoke to me were ostracised. They never got redeployed within the school when the school eventually closed.' (Black Caribbean woman, unsuccessful case)

Another claimant who worked for a private sector organisation told a similar story regarding the relationships with his colleagues:

'They [the management team] made my life miserable. Literally did, although the staff knew. They kept on saying to me on the quiet we don't like what's happening to you.' (Asian man, settled case)

Some claimants reported that their relationships with most of their colleagues deteriorated significantly once their difficulties began, and this could often include many individuals with whom the claimant appeared to have no direct dispute. One claimant said that once his dispute with his employer began, initially after a new shift manager had joined, his relationships with colleagues worsened and eventually became:

'Terrible. Rumours were going round that I was trying to turn the company over and I wanted better treatment than them.' (White Italian man, unsuccessful case)

Hence, while claimants' relationships with colleagues working at the same level suffered to varying degrees, relationships with senior colleagues almost always broke down once difficulties had begun. It appeared that claimants' relationships with their managers suffered regardless of whether or not the original dispute had been anything to do with them. Claimants had to deal with their manager and senior colleagues when addressing issues internally; for example, by complaining informally, or going through the grievance procedure. There were no instances where claimants were able to maintain good working relationships with their managers whilst going through such processes and this undoubtedly compounded their perceptions of having been treated unfairly by their employers. Having lost their confidence in internal dispute resolution, they sought external action through the ETS.

2.2.3 Other contributing factors

There appeared to be very few, if any, outside factors which contributed in any tangible way to claimants' difficulties at work, or in their decision to take their employer to an Employment Tribunal. However, as a result of their experiences, claimants often reported that their life outside work was negatively affected (see Chapter 9 on Impact). A small number of the claimants said that they had kept the difficulties that they were going through at work from their partners and families, to prevent them from worrying.

2.3 Help and advice prior to taking a case

The claimants and their actions regarding seeking help and advice prior to taking a case seemed to fall into four groups. The first group of claimants had prior experience of taking cases to a Tribunal. Hence, they had some knowledge of what might constitute a case and the places where they could go for assistance. Some had learned from their previous experiences about the types of advice and support which they felt would be helpful, and conversely, which kinds of support they had not previously found to have been useful. The second group of claimants had no prior experience of taking an Employment Tribunal case themselves but knew a little about employment law as a result of their own work, or because they had come across it through outside interests, from friends, colleagues or through the media:

'The two years I spent not working, I was in a left wing organisation and we dealt with Stephen Lawrence, a lot of BNP... We had meetings when the Asylum Act was coming in; we were dealing with knowing your rights... One of my friends has worked for the CAB and he's taken _____ [employer] to

court and won and he does a lot of legal work and he helped me on my case from the beginning, he knew straight away that I was going to win my case.' (Black Caribbean man, settled case)

'The last manager who left, he said he went to an Employment Tribunal and won, he got £3,000. That gave me the idea of the Employment Tribunal.' (Asian man, successful case)

'Everybody who watches the news knows exactly that people shouldn't be bullied and as a manager that's one of the things you've got to take on board. When you are managing, you have to remember and know the disciplinary and grievance procedure to the top of your finger. Because anybody can get hurt any time. I know about it, reading about it, know exactly what can go wrong, what you can do if somebody tries to bully you. Somebody tries to push you out of employment I know exactly. Not only by looking at the TV, I've got the books there to tell me exactly how it works. I was totally aware of that.' (Black Caribbean woman, unsuccessful case)

There was another group of claimants who sought advice at a fairly early stage of the dispute, for example, with their union, or from their local Citizens' Advice Bureau (CAB). There were many examples of claimants having been in contact with their union or the CAB for some time before they were advised that they could apply to an Employment Tribunal. Union representatives in particular tended to assist claimants through internal procedures before suggesting that the next course of action would be to apply for an Employment Tribunal hearing. However, there were a small number of examples where CAB caseworkers became involved in internal procedures on behalf of the future claimant.

'I got my union involved sometime in 2002; [by the time of the case] my union rep had been involved for two years on and off.' (Asian woman, unsuccessful)

An Asian man who worked for a manufacturing company for many years had started to experience difficulties in 1996 when he had a new supervisor. In response to overt racism which was not dealt with by the employer, he sought advice from a local race equality organisation. However, their involvement at this point simply worsened the situation for the claimant, because they involved the police. The claimant reported that he suffered ongoing intimidation at the hands of the supervisor, together with a number of wage and promotion discrepancies. In 2001, the claimant sustained an injury and requested lighter duties, but he did not get moved despite multiple medical examinations. In 2002 he went to the Citizens' Advice Bureau. Letters from the CAB, who worked closely with the race equality organisation, were sent to the employer on behalf of the claimant, regarding the issues that had already arisen. The CAB advised the claimant from an early stage that he could take his employer to a Tribunal. The claimant was reluctant to do this as he had been working for the employer for a long time and did not want to make waves. However, he finally decided that he was getting nowhere by trying to pursue things through internal routes with the assistance of the CAB, and he did not think he would ever be moved from heavy work. He decided to submit a claim to an Employment Tribunal in March 2003. (Withdrawn case)

The final and largest group of claimants sought advice immediately prior to taking a case to find out about the courses of action which might be available to them, and to seek support. Common sources of advice at this stage were union representatives, CABs, local law centres and less frequently, solicitors.

One claimant who had worked for a local authority had had many internal meetings with her managers to try to address issues around the lack of support for her in her role, and regarding line management and appraisal issues. Eventually, she consulted her union, who refused to fund a solicitor to help her take an Employment Tribunal case. However, her union representative said that he would support her, should it get that far.

'I'd been to see the union solicitor... She said she thought it was 50:50 and couldn't recommend the union paying for a solicitor. I said I don't agree, I think I have a strong case and I know they [her employer] could not have given a valid answer to an Employment Tribunal. I said I'm still going ahead. My union rep is brilliant, I can't thank him enough. He said he would support me at the Tribunal in his own time.'

Of whether her union had informed her that she had a case she said:

'Under the Race Relations Act I didn't even think in terms of a definition, I just thought is it because I'm Black? If it isn't to do with colour show me a valid reason? I didn't see my union rep until after I'd sent the letter and I'd put in there that I think it's to do with race. It was only after I'd been to see him and I explained what happened that he looked up the definition and in terms of the Tribunal... I said I'm taking it to grievance. It was part of the internal procedure. When we talked about it, he looked up the definition. I said if they don't settle then I will take it to Employment Tribunal.' (Black Caribbean woman, settled case)

Those who were dismissed without much warning were typical of this group, as they had not had the same length of time as many of the claimants to research their options. One claimant who had worked for a security company for several years had gone through the formal grievance procedure before seeking external advice. By this point, he knew he was on the verge of being dismissed:

'The CAB asked me to wait until the formal dismissal, then I could take them to court.' (Black African man, settled case)

Some claimants still in employment who had already attempted to internally redress their issues contacted potential sources of advice or support, to be told that they could take their employer to a Tribunal. One claimant, a Black Caribbean man, had complained to his managers about a number of issues before consulting his union:

'I hadn't made any sort of formal claim in the past, although there was ongoing issues of lack of promotion prospects and stuff... I spoke to my union and they advised me to take it further as a racial discrimination case.' (Settled case)

Another woman had consulted her local CAB for advice when she felt she was being treated unfairly. She was told that she probably had a case on the grounds of race discrimination. Then she approached her trade union, where she met with a specialist caseworker who had experience in dealing with race issues.

'I saw someone at [the union] and I took my documentation with me and they decided to put it through to the, apparently I had to go through to somebody and it was agreed that there was a case.' (Black African woman, successful case)

2.4 Internal grievance and disciplinary procedures

This final section considers claimants' use of internal disciplinary procedures, and the role they played before claimants made the decision to take their employer to a Tribunal on the grounds of race discrimination.

2.4.1 Grievance procedures

Almost all of the claimants had taken steps to address their situation directly with their employer prior to lodging an Employment Tribunal case. Many appeared to have tried to initiate a formal grievance procedure, although some had at first simply told their manager or the personnel department of their situation in an effort to have their concerns addressed. In such cases it seems that claimants feared the repercussions of 'rocking the boat' and preferred to keep their complaints as low key as possible. This usually involved informal conversations and meetings, which often later turned into procedures that are more formal when they did not yield the results hoped for by the claimant.

Some claimants reported that grievance procedures were initiated fairly quickly. This was in contrast to the generally much longer time it took for claimants to decide to lodge the cases with the ETS, particularly when the discrimination had taken the form of multiple events worsening over time.

For claimants to have eventually applied for an Employment Tribunal hearing, they had all reached a stage where they felt that the routes for resolving disputes within the organisation would not work for them, or they had tried these and they had failed, leaving them with no other options. A good number of claimants had been through their employers' internal grievance procedure, and had felt that they had not received a fair hearing, or that the eventual outcome was not satisfactory. However, there were a small number of claimants who initially felt that early attempts to resolve their issues with their employer had been successful. Despite this, their problems continued, so although grievance procedures had found evidence of race discrimination, this did not translate in practice to the situation being resolved in favour of the claimant.

<p>The claimant, a Black African Man, worked for the London Borough of Greenwich for five years as a Housing Officer. He applied for a promotion which he got, but there was a (race related) dispute among the panel members and although he still got the job, he was subjected to bullying and</p>

harassment over the dispute that had taken place. The claimant took an internal grievance procedure which found in his favour, but nothing was actually done to the perpetrators and the claimant was moved to another location. He then decided to take this matter to Tribunal.

'The internal panel met and poured a lot of criticism on all the people for what they've done to me in that new job but then they fell short of imposing any real discipline on them. Instead, they said, "Mr ____ we'll just move you on the same pay to another location." They moved me to another location. While I was in this other location, I filed this action and said for what those people did they were not punished and only me had to leave a job I loved, it was unfair. And if you don't redress it I'll go to an Employment Tribunal.' (Settled case)

In the case above, the claimant felt that he was punished, rather than the perpetrators, and this prompted him to take further action. Where claimants had found the internal grievance procedures to have been unfair or the outcomes to have been unsatisfactory, they said they were left with no option but to take action through the ETS.

A claimant, a Black African man who had worked as a security guard had his supervisory responsibilities taken away from him when his company was taken over and restructured. Although he had since applied for more senior positions he had never been successful. He noticed that all his colleagues who were getting promoted were White. At one interview, he was told that he would not get the job because he was Black and clients might react badly to him being in charge. Initially, he put his complaints in writing, and received telephone calls in response, saying that the matter would be looked into. However, this did not appear to happen. As a result, the claimant reported that he had initiated formal grievance procedures 'as prescribed':

'I followed all those, the procedures if you have a problem, if you a security officer go to your supervisor. I would carry it to the area manager, then you go to regional manager, then to the director. Up the chain and I followed all those.'

The outcome of the internal grievance procedure was that the claimant was told to accept his current position and wage or be dismissed. When the claimant was dismissed he decided to take his employers to Tribunal. (Settled case)

Unsurprisingly, many who had gone through the internal grievance procedure felt that far from resolving the situation, it had made matters worse.

'It ended up with me being under more pressure.' (Black Caribbean man, settled case)

In particular, claimants' relationships with their managers soured as a result of the claimant having challenged the organisation. Many claimants reported that they felt that as they went through the stages of the grievance procedures their employers increasingly viewed them as troublemakers

rather than people with genuine concerns and complaints which were not being dealt with effectively.

There were a number of examples of grievance procedures which were followed with the help of the claimants' unions. A small number of claimants felt that their union representatives were colluding with their employers, and that this was contributing to the unsatisfactory outcomes of any internal grievance procedures.

A White Italian man had experienced a number of problems with his shift manager, and at the point that he found his wages being tampered with, he enlisted the help of his trade union. There was an internal meeting at which there was repeated failure to agree, not least as the claimant suspected the union to be conspiring against him, and being in league with his employer. His first claim form was submitted shortly afterwards. (Settled case)

An Asian claimant who had been chosen for redundancy for reasons which he felt were to do with his race rather than his performance or time served, said that he had had two meetings with his employers after he learned of their decision. However, at both of these meetings, his employer refused to change their minds about the decisions they had reached. The Citizens' Advice Bureau originally told him that he might have a case and they advised him to:

'Go back to the employer and have a couple of meetings to see. I went to discuss it with them and they said no, we're sure we're doing the right thing.'

At this point, the claimant said that he wanted compensation or he would take them to an Employment Tribunal:

'I did let them know. I said I want five grand and at least three months salary and I'll leave it at that, otherwise I'll see you in court. They said see us in court.' (Successful case)

There were also claimants, usually those who had been dismissed from their jobs, with little warning, who did not invoke formal procedures against their employers prior to applying for a Tribunal hearing. For example, a woman who worked in a care home was dismissed from her job, following overt racist treatment by another member of staff. She had not appealed against this decision to her employer, and said of her decision not to do this:

'Yes I could have. Well maybe it's because by nature I'm a very assertive person, but sometimes I back down easily when I shouldn't... I will fight for my rights but in a nice way, not an aggressive way. So the way I saw it, if I start bringing grievance procedure this and that, it's too much. I just want peace. That's why I left.' (Black Caribbean woman, unsuccessful case)

She explained that her job had become increasingly difficult because she was not getting the support that she needed to carry out her duties effectively, and so she saw little point in fighting for her job. However, she was aware of the dismissal procedure which should be followed and felt that they had not been in her case, and that the root of this was racism. She explained:

'I was fed up. To be quite honest with you, because I wasn't getting support from my manager... You [the manager] don't provide me with the sheets, I come to you for things to make the resident comfortable, you don't give it to me. I'm working in a very dirty environment, very stressed situations, you're not supporting or helping me, you're not doing anything for me. Why would I want to stay there and get more stressed until I develop hypertension?'

As was the case for many of the claimants, she had first attempted to address the situations she was unhappy about by talking to her manager, but these requests and complaints were reportedly ignored.

It was interesting to note that retrospectively, some of the claimants were fairly dismissive of the formal grievance procedure. This was despite the fact that for some it had clearly taken up a good deal of time and effort. For example, in response to a question about whether she had followed the internal grievance procedure, one claimant said dismissively:

'I went through all that.' (Black woman, unsuccessful case)

Although the procedures had been formal it seems that claimants simply saw them as an extension of their initial, less formal complaints to their managers, neither of which had worked for them. As a result, they hoped that going to an Employment Tribunal would enable them to tell their story to an impartial panel, who would accept what their employee had been allegedly unwilling to acknowledge. One claimant explained that his perceived failure of the internal procedures to address his issues was the trigger for him deciding to take the case to an Employment Tribunal.

'It was frustration. Because I did everything internally possible.' (Black African man, successful case)

2.4.2 *Disciplinary procedures*

The majority of these claimants had not been subjected to any disciplinary procedures by their employers. Occasionally, claimants knew that their employers had not gone through the necessary disciplinary routes before dismissing them.

'I said what have I done, you haven't given me a warning, you haven't gone to do the procedure because as a manager I know you have to give me a warning. Did you give me a written; did you give me any verbal warning? I said we haven't gone through the disciplinary procedure, have you disciplined me before? I said you haven't done that, are you asking me to leave just like that?' (Black Caribbean woman, unsuccessful case)

There were some claimants, although not a large number, who had been disciplined. It seems that in most cases, disciplinary procedures were brought against claimants after communication with their managers had started to break down, often after the claimants had brought to their managers' attention the issues they perceived as discriminatory. Some viewed the disciplinary action against them as an extension of the discrimination, while others felt that it was part of their employers' response to their having made complaints. One claimant, who had had a difficult relationship with his

employer since a new line manager had joined, felt that he was eventually singled out and treated unfairly by his employer.

'Yes I was disciplined on many occasions. We had managers who were picking on me.' (Asian man, settled case)

There were a number of examples of claimants' sickness absence record being called into question by their employers. Such claimants usually reported that they had needed time off because their health was deteriorating as a result of the discriminatory treatment they were experiencing at work. It seemed that for these claimants, the disciplinary action against them was perceived to be part of an increasingly unpleasant vicious circle of events.

A Black Caribbean claimant who worked for a large public sector organisation since 1987 had experienced problems of racism and lack of support and resources from the start of his employment there. Although he repeatedly asked for more assistance, he did not receive it. After he had been in his job for four years, he received an unfavourable annual report, about which he lodged a grievance, but he was not satisfied with the time this took to proceed, nor with the way it was dealt with. As a result of traumatic incidents at work over the next few years, and an ongoing lack of support from his employers, by 1999 the claimant was increasingly off sick. There were a number of confrontational situations with managers which culminated in a disciplinary procedure.

'I was off sick for five days and when I came back to work in November they gave me an oral warning. On 20 November 1999, I provided my line manager with a written reply to the oral warning. This is when the battle lines were drawn. They had warned me about my sickness before and I had put a reasonable explanation forward... This letter highlighted the causes of my concerns on my absence and what should be done to assist me in providing an effective service.' (Black Caribbean man, settled case)

The claimant was disciplined again for something which he alleged was untrue, once the case had actually been lodged.

'Mr _____ [a manager] alleged that he found me asleep on duty. I was further issued with a code of conduct for disciplinary investigation. Since lodging the (claim form) and my contact with the area manager I believe that Mr _____ was attempting to use the system to make a false and malicious allegation that I was sleeping on duty which led to [the employer] launching a swift investigation.' (Black Caribbean man, settled case)

It was often difficult to determine the extent to which disciplinary action preceded the claimants' perceptions that they were being discriminated against due to their race. However, it was clear, as in the case above, that a number of the claimants felt that challenging their employer about particular issues created a backlash, which then prompted disciplinary action to be taken against them. For example, one claimant said that he was disciplined only after he had lodged his case with the ETS:

'After the case has gone to the Tribunal I was then subjected to unnecessary disciplinary... I was subjected to disciplinary one time for; I was eating an apple during office hours, the time I was supposed to work. I was eating an apple in the office and I was subjected to a disciplinary.'
(Black African man, successful case)

There were two claimants who reported disciplinary action having been taken against them relatively early on in the events which led to their case. One of these was a woman who was disciplined when she took an additional week of unpaid leave which had not been formally granted. However, although she was told that this was happening, no actual proceedings were taken against her and the disciplinary was eventually dropped. Although it never materialised, the fact that the disciplinary was 'hanging over her head' for nine months contributed to the claimant's dissatisfaction with her position and the way that she was treated by her employers. The second case below demonstrates how the disciplinary procedure set off a chain of events which eventually led the claimant to lodging a case.

An Asian man had worked for a large public sector service for nine years. He did not attend one meeting and was not able to inform anyone in advance. Disciplinary action was taken against him, and he was moved to another location. He felt that when similar situations occurred with any White people, they were simply given verbal warnings. When the claimant approached his manager for the reason for his treatment, his manager started talking about the claimant being Indian and having married an Indian woman. The claimant then started to gather evidence that he was being discriminated against. He went through three stages of internal grievance procedures to sort out the issue, but was unhappy with the outcome and decided to lodge a case with the ETS. (Successful case)

Claimants said that disciplinary procedures usually made their relationships at work more much difficult, which in turn made it much harder to resolve disputes internally. One claimant described the effect of a disciplinary action on him:

'No it ended up with me being under more pressure.' (Black Caribbean man, settled case)

Claimants reported that having disciplinary procedures brought against them, which they often felt had been unjust, increased their mistrust of their employers. This in turn contributed to their eventual decision to take their cases to an Employment Tribunal hearing. However, claimants rarely appeared to take this course of action as a result of being disciplined in itself, but rather because they felt that they would be unable to get justice any other way.

2.5 Summary

Virtually all claimants had applied for an Employment Tribunal after a series of difficult events (including grievance procedures), rather than as a result of a single incident.

Some claimants had submitted their Tribunal claim after having been dismissed by their employer. This was usually after a long period of disputes, although there were a small number of claimants who reported having been dismissed after few or no prior difficulties with their employers.

In some cases, claimants felt that they had been dismissed as a result of attempting to tackle and resolve racism from colleagues. They felt that their face no longer fitted the organisation after they had 'rocked the boat'.

Whether claimants were dismissed or not, most of their claims were preceded by a breakdown in communication between the claimant and the employer.

Many claimants reported that their difficulties had begun with incidents which were overtly racist. As a result, they usually attributed subsequent incidents to racism, even when they were not overtly so.

It appeared that employers' failure to deal effectively with claimants' complaints of overtly racist treatment usually led to an increase in difficult events for the claimants. Some of these appeared to be overtly racist, and some were seemingly not; for example, disputes over wages, or over claimants' performance, or their sickness absence.

There were several cases where claimants who had worked for service providers experienced overt racism from clients and their employers did not support them. They felt that they, rather than the perpetrators, were punished by the employer.

There were very few examples where claimants re-cast past events as having been down to racism, as a result of a later incident which was overtly racist.

The perpetrator of the original alleged discrimination was usually a colleague senior to the claimant; for example, their line manager. This was particularly so where the discrimination was overtly racist.

Most claimants had taken only one Employment Tribunal case. A small number of claimants had taken more than one case against the same employer, and even fewer had taken cases against different employers.

Many claimants reported that they had been happy in their work prior to the difficulties which led to their case. However, a few had experienced problems with their employer right from the start.

The claimants who had worked without incident for a number of years before their dispute began usually reported that their problems began after a change, such as a new line manager who was racist, or a organisational restructuring which disadvantaged them.

Prior to their disputes, most claimants reported cordial relationships with their managers and colleagues. Relationships with managers and senior colleagues usually deteriorated quickly once disputes began. Relationships with other colleagues were more varied; some stood by the claimant, others turned against them.

There appeared to be few, if any, other contributing factors to claimants' cases, aside from the incidents which they had experienced at work, and the subsequent failure to resolve these internally.

Regarding advice and support sought prior to the claim, a few had prior knowledge or experience of what might constitute a race discrimination case. Some sought advice early in their disputes, usually from their unions. Others did not seek advice until shortly before lodging their cases. They most commonly consulted their union, the CAB, a local law centre or a race equality organisation. A small number of claimants sought advice from solicitors.

Most of the claimants had attempted to address the situations with their employer, and many had gone through the formal grievance procedure, after first having tried more informal methods. Most felt that their concerns were not heard fairly, or dealt with appropriately by their employers.

Claimants usually reported that having gone through the grievance procedure made their situation at work, particularly their working relationships, more difficult.

The majority of claimants had not been subjected to any disciplinary procedures by their employers. Where disciplinary action was taken, it was usually after communication between claimants and managers had started to deteriorate. This was sometimes after the claimant had brought their allegations of racism to the employer. In such cases, claimants either viewed the disciplinary proceedings as an extension of the discrimination, or felt that it was a reaction to their having complained to their employer.

3

Taking the case

This chapter focuses on the experience of taking the case to Tribunal. It begins with an examination of claimants' motives in taking the case; in other words, what claimants hoped to get from the case. We also look at the impact of any prior knowledge or experience they had of the process of taking an Employment Tribunal case. The chapter continues by looking at the process of lodging the case itself; whether or not claimants received any advice and help to do so, especially given the time limitation for bringing a case. The process of lodging the case is also important, to the extent that it is at this stage that the employer may first become aware of a potential case against them under the RRA. Thus, it is at this stage that claimants' relationships at work, with both the employer and colleagues, are likely to come under strain. The discussion is extended, therefore, to look at how taking the case affected the claimants' employment situation. Lastly, the chapter looks at claimants' expectations about what was involved in taking a case to an Employment Tribunal.

3.1 What claimants hoped to gain from the case

Although the claimants brought their cases under different circumstances and had different reasons for making the claim, it is striking that most were not motivated by any financial gains. A claimant described how a Tribunal panel had been surprised he was not seeking monetary compensation.

'They said, "You haven't put any damages or claim." I said, "I'm not interested in money. I want justice".' (Unsuccessful case)

This appeared to typify the motivation of claimants to bring a case. Their main concern was with having an injustice put right, and for those responsible for the injustice to be held to account. According to one claimant:

'I expected them [the company] to simply say sorry. I was not expecting a lot of money. I wanted a Tribunal to tell them they had done wrong... They should be taken to task.' (Unsuccessful case)

This desire for justice means the claimants hoped for a sympathetic judgement, and thus, a reprimand to employers, as in the case above. For others though, it was the righting of wrongs, i.e. that the process will force a change on the employer. For example, one claimant made a claim in order to

compel the employer to take steps to change the behaviour of a supervisor who was racist towards the claimant and other ethnic minority employees. In this case, the claimant's complaints had been brought to the attention of the employer through numerous letters written to that effect by the CAB on the claimant's behalf. A race equality council had also reported matters to the police, when racist material was circulated within the firm. Thus, this claimant hoped the claim would prompt the employer to take action.

'I hoped because the firm [had] never done anything to him, and he's still there and still carrying on; and now he's still not behaving, he's still giving me abuse. I wanted them to do something.' (Withdrawn case)

Similarly, another claimant had lodged a claim because she wanted an external, impartial body to adjudicate on the rightness or otherwise of her complaint against her employers for not giving her a pay rise commensurate with her position; especially as she had taken steps to resolve issues through the internal grievance procedure. In this case, the claimant wanted the Tribunal proceedings to be regarded as a continuation of the employer's internal procedures. This claimant genuinely believed the difficulty she was facing was 'just a hiccup', and that they would overcome it. Thus, even though she was challenging the employer, she felt she was challenging them fairly.

'I knew the matter couldn't be dealt with internally. If I'd gone to an Employment Tribunal without having gone through the grievance procedure, they would have said, "Have you gone through the procedure?" You have to show you are willing... I wanted to be paid fairly and continue my job. I said at the Tribunal that I loved working for the firm, and they were shocked. I wanted the Employment Tribunal to be treated as an internal procedure; that it didn't matter that I'd gone outside, and I could go back to doing my job.' (Successful case)

For others, the main motivation was an ethical one. Taking the case was a matter of standing by their principles, of not allowing themselves to be treated unfairly by the employer because of their race. A Black nurse, who was not allowed by hospital authorities to look after a sick child because the White mother objected to it, brought a case because:

'I had to make a stand and that is why even though I was advised by many people not to go to Employment Tribunal I decided that was the only way to get it out into the open.' (Successful case)

In this case, the claimant hoped taking the case would lead to a change in discriminatory practices in the NHS. In a similar incident, a Black social worker was withdrawn from dealing with a White family's case because they had objected to a Black person handling the case. The claimant believed that by agreeing to the family's request, the employer had betrayed its own policy on equal opportunities.

'When something like that comes up everybody wants to just push it under the carpet, just get on with it, don't cause a stir, and it wasn't necessarily to cause a stir. I just needed to know in cases like that where do I stand? I felt rubbish and I would like to know next time if I come across that again can I refuse to take on a case if the family are going to say they don't want

a Black worker? At the end of the day, I felt I was the problem and I'd done something wrong. If they'd said it was my practice okay, you can look at your practice, you can change your practice, but I can't change the colour of my skin and where does that leave me? I don't know what to do then. You go away feeling what do you do?' (Settled case)

Similarly, two other claimants had turned down their (different) employers' initial attempts at a financial settlement because they did not want other Black people to be treated in the way they had been. Both these claimants indicated they wanted to take a stand against their employers' inaction, when Black employees were unfairly treated by other White employees.

'The main issue was that I was abused and all my people were abused and nothing was going to be done about that and they just wanted to bury the hatchet. Them apologising and bringing the man to book is much better than offering me money. I can win the lottery any day.' (Settled case)

'I wanted to speak for the downtrodden, those people who are being discriminated against. It wasn't remuneration per se. I wanted those cowboy employers should be brought to book.' (Settled case)

In this latter case, the claimant's focus was to name and shame the employer. Exposing employers' wrongdoings to public scrutiny appeared to be a particular motivation for claimants whose employers agreed to settle the case. Some were convinced it was the threat of exposure that had compelled their employer to seek a settlement. According to one such claimant:

'I wanted them reprimanded and opened to the scrutiny of people outside the organisation so other people could see what they were doing, and how they were behaving towards Black people. That's the only thing that matters to them. They settled because they don't want that exposure.' (Settled case)

Some claimants sought more tangible redress. Perhaps unsurprisingly, claimants who thought they had been unfairly dismissed by their employer hoped that by taking the case, the Tribunal would confirm that, and order they be given their job back. One claimant believed he was dismissed from his job because his new manager did not like him. As this claimant put it:

'I wanted to get my job back, [with] some compensation, and not to be treated like this; not because somebody doesn't like somebody else. That's not right. I didn't like a lot of customers, but I had to sell them cars.' (Successful case)

Of those who were hoping for some kind of financial recompense, most were seeking to offset the experienced loss of earnings. For example, although another respondent claiming unfair dismissal initially only wanted his job back, he also wanted to be compensated for the period of unemployment he had endured since his unfair dismissal.

'In the beginning I was hoping to get my job back. I wasn't bothered about a lot of money. £8,000 isn't a lot of money, calculated to the eight to nine months I was out of work.... I wanted my job back and I did want compensation for the time I was not working. I had to fend for myself in a way. I don't claim social security or unemployment benefit.' (Settled case)

Another claimant only wanted the employer to give him the sickness pay he was entitled to under his contract of employment. As he put it, when asked about the attraction of a large compensation as a probable motive:

'Not really, as long as they paid me what they owed me.' (Withdrawn case)

For some claimants the motivation for taking the case was two-fold; to compel the employer to correct the perceived misdemeanour and, at the same time, be compensated for the act of discrimination itself. Thus, one claimant wanted to be compensated for loss of earnings for the duration of the period she was unfairly dismissed (a claim upheld by the Tribunal), whilst also exposing the employer's discriminatory practices.

Of course, it might be expected that claimants who had no desire to continue in their employment would seek monetary compensation for the perceived discrimination against them. In the case of a claimant who considered he had been unfairly dismissed, monetary compensation, rather than re-instatement was the motive for taking the case.

'I felt I was unfairly dismissed, and I was hoping to get a lot of money.'
(Settled case)

In a small number of cases, however, respondents wanted to exact some retribution against their employer. Such cases were exceptional, and such motives appeared to be influenced by what they considered to be wilful attempts by their employers or other employees in the organisations to 'destroy' claimants' lives. In one case, a trainee midwife had suffered psychological distress because her colleagues had made what she felt were false allegations about her competence at work; allegations that had prompted the hospital authority not to apply for her registration as a qualified midwife. According to this claimant:

'I wanted these midwives punished because they basically tried to ruin my life and they did alter my life for a while and I just felt it was unfair. How do you try and destroy somebody for no reason other than the fact that I stood up for myself and it's just, yes I wanted them punished as well because all the stuff they'd done to people, I just felt, yes, you've dished out the medicine, now you take it.' (Successful case)

In another case, a poorly handled redundancy sparked an angry response.

'I wanted to piss them off; they pissed me off. I was working there, I was going to leave the company a year later and do something else. It wasn't what I really wanted to do. Because they made me redundant and didn't do it fairly. If they'd done it fairly I would have walked away, these things happen.' (Successful case)

3.2 Prior knowledge of Employment Tribunals

It was evident that only a few claimants had previous experience of the ETS, Employment Tribunal hearings, or of lodging or preparing cases. For some of those who did, their experience was considerable. One claimant had worked on behalf of others, giving advice and helping with Employment Tribunal claims (as part of his job with a local authority). This had given him an

insight into the workings of the ETS, but also led him to conclude that there were very few people, including Tribunal panel members, with detailed knowledge of the issues that come to Tribunal. One claimant described his role as an informal adviser, which had also given him prior experience of taking cases to an Employment Tribunal:

'I took the case of a person [who] is on the board of directors of [named] hospital. She came and saw me. It was a complaint against someone in the education department in [named] Council. I advised her to keep a record of anything that happened and any witnesses; and she kept that for a year. In the end, it got so bad she had to take this case, and it was decided in her favour. She got £25,000.' (Unsuccessful case)

A successful claimant, although with less extensive experience than illustrated above, had learned about Employment Tribunals from a former colleague who had taken an employer to Tribunal and won £3,000. Armed with that knowledge, the claimant contacted Acas to find out more, and was sent books and leaflets about Tribunals, and a claim form. Another successful claimant said she had a little knowledge of Employment Tribunals through people she knew who had taken action in the past. Yet another successful claimant said they knew about the success rate for claimants taking a case (estimated one in five), and weighed that evidence carefully before deciding to proceed with the case. It is true to say, though, that much of this was general rather than detailed knowledge of what taking a case would involve.

Even so, such prior experience was not the norm among the respondents we interviewed. For most claimants, their own case was their first experience of an Employment Tribunal. Most had only learnt about Employment Tribunals after they first sought external advice, often from their local Citizens' Advice Bureau. Indeed, most claimants indicated they did not even have any experience of the legal system before their case. Consequently, some had to make what was a difficult decision to take their case, as one claimant explained:

'It was really hard. I had to weigh up whether I could go through a Tribunal. I'd never been to court in my entire life. I couldn't imagine what a Tribunal looked like, or courts. Although courts I've done on a work basis over the 'phone, not in person, [but I'd] never seen inside a court, apart from on the TV.' (Withdrawn case)

As a result, people were generally not aware of their rights under employment law. One claimant spoke about people's perceptions and knowledge of Employment Tribunals:

'Most people like me – first generation immigrants – don't know that they can go to an ET, and think it's expensive, so they don't go. I would probably not go myself, but I had no job and had nothing to lose. At the time I talked to colleagues, visited a lawyer and the Citizens' Advice Bureau.' (Unsuccessful case)

Once claimants had any dealing with an Employment Tribunal, they seemed to lose this initial apprehension. There was no evidence that previous knowledge of Tribunals encouraged claimants to make a claim instead of seeking resolution through internal procedures.

3.3 Multiple cases

Only a few claimants indicated they had taken multiple cases. Bringing multiple cases against a single employer was more frequent than taking cases against different employers, with claimants taking a case for different acts of unfair treatment or discrimination. In some instances, multiple cases were brought so different allegations of discrimination could be heard together. Thus, one claimant indicated he had instituted proceedings on three separate occasions.

In 1999, the claimant lodged a claim form, with the help of his trade union Tribunal officer after his employer retained him on piecework rate, whilst moving all others on a wage. He felt his employer was hoping he would leave. In 2002, he started another case against his employer for race discrimination. He did not use the union, so he hired a solicitor who made the claim on his behalf. Also in 2002 there was another case lodged, jointly with other colleagues for unlawful deduction of wages. This case was eventually settled just prior to the hearing. (Withdrawn case)

One claimant had taken cases against different employers; the first for unfair rejection for a job after an unsuccessful interview; the second, for discriminatory transfer and constructive dismissal; and the third for non-payment of wages. After filing the first case, the claimant approached his union, who provided him with a lawyer who felt he had a sound case. The claimant did not use any representation in his subsequent cases, because:

'I had experience from last time, so I felt it was a strong case; and I had evidence, so I didn't seek support or representation.' (Unsuccessful case)

3.4 Lodging the claim

The majority of claimants submitted their claim (using the ET1 claim form) after they had sought and received advice from their union, or from the Citizens' Advice Bureau (CAB) and/or CRE. In such cases, it was usually these sources that had advised claimants they could take a case regarding their treatment at work. Trade unions, the CAB and CRE were also likely to prepare and lodge the application on behalf of the claimant. Other claimants, however, sought legal help to prepare and lodge their application. In some cases, claimants appeared to teach themselves about the application process. One claimant indicated he first obtained a book about Tribunals, at the back of which was a claim form, which he completed. Another got books from the library, and then sent off for the ET brochure.

A number of claimants indicated they had also gone through their employer's grievance procedure. In such instances, the claimants often lodged their application after the grievance procedure appeared to be stalled; or where they were not satisfied with the outcome. In some cases, the claimants had precipitated the action because they were concerned the employer was dragging out the grievance procedure to ensure any application to the ETS would be out of time. One claimant highlighted such a concern.

'The grievance had been in for a while at that time. It was coming up to three months after the complaint that we put in for a racial case. We were getting some responses back throughout, but they were never actually productive ones. They were trying to evade every way they could evade an issue.' (Settled case)

Where claimants had been dismissed from their jobs, they felt they had no recourse other than to lodge a claim.

3.5 How the employer became aware of the ET case

On the whole, claimants were unlikely to give the employer advanced notice about taking a case. Consequently, their employer became aware of the case only after claimants had made their claim (using a claim form) to start the process, and the employer had been officially notified with a Response form (ET3). As one claimant put it when he was asked how his employer got to know they had made a claim:

'The ET system worked, and they got word.'

Occasionally, claimants sought advice from their colleagues prior to their claim. Usually however, they did not think it was appropriate to consult or notify work colleagues, as they did not think they would get much support:

'I was just looking for ways of defending myself. I knew what was happening; I'd seen it happen to people in there. [But] everybody has a mortgage, nobody wants to get involved. So I just made it [the application].' (Settled case)

Quite often, the circumstances of their case made claimants reluctant to inform their employer they were contemplating taking them to Tribunal. Some were confident enough to tell their employer they were taking such action, or did so immediately after submitting their application, as was the case of this claimant.

'I did write to them probably three weeks before putting the application in, that if I do not have a satisfactory outcome of the grievance or the grievance is not proceeded with, then I will have no option but to put in a race discrimination case.' (Settled case)

There was evidence to suggest it was sometimes imperative that claimants inform the employer about taking a case. As part of the pre-Tribunal preparation, employers are required to respond to a claimant's request for information that deals with some of the issues likely to be raised at a hearing.

'The idea is that sometimes that [questionnaire] can explain your questions and obviate the need for a Tribunal. But the way the [named professional body] did it, we put the application in and a questionnaire at the same time. I don't know what statutory status it has, but basically you ask a set of questions about their equal opportunities practice and why on this occasion did this happen to me. Why was I treated differently from such and such a person? They have to reply, and it's a bit of the freedom of information stuff; if you say how many of your consultant staff are from a non-White background, you can ask that sort of question.' (Unsuccessful case)

On the other hand, claimants who were also aware of the time limitation (of three months) for bringing a case, believed if they informed their employer beforehand, the employer would seek to delay, or even prevent them from lodging the case, by starting an internal grievance procedure.

A claimant who had alleged he was discriminated against had received a written response from the personnel manager, as follows:

'In concluding, I don't think [named organisation] had discriminated against you, although I think there is room for improvement on both sides. On our part, I would take this up with your line manager and seek an improvement. If you accept my reasons, I suggest that we meet in three months' time to follow this up.'

According to the claimant:

'That [sic] three months would have taken away my right to have taken this to ET. I told her [personnel manager] I would take them to ET.'

It is paradoxical that in some instances, claimants had started action without informing the employer, only because their own attempt to resolve the issues at stake through a settlement had been rebuffed. In such instances it was the claimants' frustration that they had exhausted all avenues to resolve matters that drove them to apply to the Tribunal, but without informing the employer.

As we have already noted, most claimants taking a case were also likely to have a deteriorating relationship with their employer, particularly if they had already started a grievance procedure. For example, a claimant did not tell her employer she had applied for an Employment Tribunal, but became increasingly isolated at work due to a grievance procedure she had started. Her manager had stopped talking to her, and there was a lot of tension at the office. She did not think it would have been possible for her to inform her employer that she had made a claim.

Even where claimants had informed their employer of the impending action, the claimants felt that the employers had made little or no attempt to seek resolution of the problem before it went to Tribunal. Claimants felt that employers either believed they could defend the action successfully, or otherwise relied on claimants losing their nerve and not proceeding with the action. We asked one claimant how their employer had reacted after being informed by the claimant's union that they were taking the case.

'They didn't really think it would come to that. They thought I would buckle under, and I was doing this for money; and they did not take it seriously.'
(Successful case)

Of course, where the claimants no longer worked for the employer, because they had been dismissed, they did not feel the need to inform the employer about taking them to Tribunal. In such instances, claimants also needed to act quickly; and so applied to the Tribunal, instead of getting into lengthy appeals about the dismissal. A claimant who had been dismissed from her teaching job indicated she had not informed the local authority employer

about taking them to Tribunal. She believed she needed to act quickly so that her claim would be in time. She described the dilemma she faced.

'Remember the procedure. I had been dismissed. I appealed. I was dismissed again. It lasts about one month, they said, until I receive the final letter. They did that to prevent me going to an industrial [sic] Tribunal. It was the CAB who said I'm running late.' (Settled case)

3.6 How taking the case affected the claimant's employment situation

Only a few claimants carried on actively working for their employer after lodging their case. The majority of the claimants stopped working with their employer after taking the case, several of them on long-term sickness absence. Some of those who carried on working described a working life bordering on intimidation and fear for their personal safety. One claimant described how it was very hard being at work during the Tribunal. She was being threatened, and thought she was being followed, but was not sure if she was being paranoid. In the end, she began to doubt her own sanity. She started to take taxis to and from work every day, as this was the only way she felt safe. Another claimant said he was confident that his employer would not be able to dismiss him from the job, and so carried on working. There were seemingly few problems between the claimant and his colleagues during this time; however, the chief executive no longer spoke to him.

By far the greatest difference in the employment situation of claimants who continued to work for the employer was the change in the attitude of managers towards them, once they learned of the Employment Tribunal claim. In the most extreme instance, an HR manager called the claimant into the office and said they knew she had applied for an Employment Tribunal against the organisation, but added that the claimant had 'committed professional suicide' by doing so. More generally, though, claimants spoke of tacit threats from, or being victimised by, managers.

'There was lots coming down from different direction; things like "we have a strong case, what are you going to do when you get found, when the case is not proven, what is your working going to be like if you don't win." Threats like that. Things like "do you think you are in the right job?" All these sorts of things. "If you take the court, we will make your life hell." Even after I won the case, I heard through the [named employee association] that senior managers were saying that you were protected by law for two years.' (Successful case)

'I had a call one evening from one of the consultants at the hospital who asked me to drop the case because I was going to lose it and he will be going and talking against me. I said that I had fought many battles for the children at work, most of them are disabled that I look after. I said this is for me and I haven't given up on the children I fight for and I'm not giving up on this. I don't care what anybody says, how much you threaten me. I will not give up. He 'phoned one of the people who were supporting me, and said, "Do you think you can do anything to ask her to give this up." They said, "No, we wouldn't dream of it, we will support her whatever she decides to do." There was a lot of pressure around for me to drop it.' (Successful case)

'The victimisation continued, and was getting worse. The management said that I should keep my mouth shut, and that when they are ready they will do whatever they want, but since I want things in my own way, then they are prepared to defend it to the last hilt.' (Successful case)

Some employers were also quick to use financial threats as part of their attempt to put further pressure on claimants. Several claimants described how their employer had threatened to recover their costs from claimants if they lost the case. The accounts of two claimants are illustrative:

'There was a letter going back to the first case when they were trying to settle...they would always put a paragraph at the end, "if you don't accept this we are going to show this to the panel and we are going to try to get costs".' (Settled case)

'I think there was an implicit cost, an implicit threat about costs. I'm trying to remember what stage it was. They said my statement was too long, and it's expensive for them to process it.' (Unsuccessful case)

Where claimants were not intimidated by such tactics, managers sought to humiliate them by asking them to carry out what some described as menial tasks. A teacher who was in dispute with her school described her situation at work.

'She [manager] did little things like tried to give me menial things to do. Of course, I sometimes refused because it wasn't in my job description. One of the things they wanted me to do was the lunch. They wanted me to be registering the students for lunch and collecting dinner money, and I refused. It wasn't part of my job.' (Withdrawn case)

Often, claimants' relationships with their other work colleagues also took a downward spiral. One claimant described his work situation with colleagues around this time as:

'Terrible. Rumours were going round that I was trying to turn the company over, and I wanted better treatment than them. An elderly gentleman has stood by me for years, and I wish he hadn't because he's having a rough time now. They're picking on him something terrible. There were all sorts of rumours flying about. Conversations I'd had with personnel who [sic] were private got round the yard, and I made a complaint about it. Nothing came of that.' (Unsuccessful case)

That claimant went off sick with stress soon after submitting his claim, and did not return to work until after the case had finished.

Some claimants appeared to be surprised and even shocked by the sudden change in the behaviour of colleagues they had previously got on well with.

'Before all this happened, even the deputy heads were really nice. There were two deputy heads, they were really nice, they stopped talking to me. A lot of the head of years, they stopped. They became really unpleasant. There were whispers and the people that continued to speak to me; if someone they know that's close to the head was coming along they'd say we can't be seen talking to you.' (Withdrawn case)

But other claimants also accepted the change in the behaviour of colleagues towards them with equanimity; as almost inevitable under the circumstances. On the whole, claimants did not seek to excoriate their colleagues. As one claimant put it:

'There were a handful of nurses who stuck their heads out and said this is true what [claimant] is saying, this is what happened, we know it happened, and were prepared to put their jobs on the line. Most people were scared, and still are scared. I understand that. Their mortgages have to be paid and they will be discriminated against and they will be intimidated. Some of them were intimidated who stuck up for me.' (Successful case)

On the other hand, some claimants continued to receive support from their colleagues, even if clandestinely.

'My colleagues, they rallied round me when nobody's there and said "yes, get on with it". But when other people are there they just shy away. They were scared.' (Settled case)

We found very few examples of claimants who had continued to work for their employer, even after they had lost their case at Tribunal. Perhaps unsurprisingly, one such claimant's relationship with his work colleagues appeared to have broken down completely as a result of taking the case.

'When I lost the case I was still with them. They were trying all the things to throw me out of sight, you know. I became a ridicule to them; anybody would just come to me and said [sic] nonsense. When I wanted to get angry, they only needed to say "oh he shouts, he threatens me", though I talked to them nicely. It affected me for a long time.' (Unsuccessful case)

It was not uncommon for the circumstances of their case to have sometimes engendered a deep distrust of their employer; to such an extent that claimants could not contemplate remaining there, even where the employer had become more emollient in their behaviour.

A trainee midwife brought action for constructive dismissal because the employer had not extended the contract that would enable her to complete her training and be certified to practice. However, after filing her claim, the employer offered her employment on three separate occasions, she felt, to get her to withdraw the case. She turned down these offers because:

'It was untenable. There was no way I'd have worked there under the same management.' (Successful case)

We found a few rather exceptional instances too where the employers appeared to have realised the strength of the (successful) claimants' case. They had, consequently, attempted to head off the unwanted publicity by offering financial inducements to the claimants to drop the case. In two such instances, the claimants declined the offer, at the risk of possibly losing everything, because of the deep distrust they now held the employer in.

'All I wanted was for this to be highlighted as a national problem. The Trust at the beginning when they were telling me that I was telling lies; [now] they said we'll give you £1,000 and you can drop the case and I said

to my union rep. If only they realised, they don't know me at all, after 30 years. Then they upped it to £5,000 and I said to her "what am I going to do with that? This is not about [money]". They're telling me I'm going to lose this and in my heart feel that the chairman ... I've only got to get a racist chairman and I've lost the case. But at least it will be highlighted that there is a problem.' (Successful case)

And the other:

'They came to my home to buy me off... The manager who said I committed professional suicide came with a woman who was trying to negotiate my job description... They gave me a day's notice. They sent a letter marked 16th, post dated 17th, I received on 18th and they came to my house on 19th. I'd been off about three to four week by then. They said it's irreconcilable and it was a without prejudice meeting....but I said no.' (Successful case)

3.7 Expectations about what was involved in taking a case to an ET

Lastly, in this chapter, we look at how the claimants' expectations of the process of taking a case compared to the reality of what actually happened. Only a small number of claimants indicated they had any previous experience of taking a claim to Tribunal. A few had some knowledge of Employment Tribunals, and what taking a case involved; mostly because they knew others who had taken a case. For the large majority, though, their case was the first occasion they had come into contact with ETS, and they know little or nothing about taking a case until they applied for their own Employment Tribunal hearing. It is perhaps not surprising, therefore, that the majority of claimants did not know what was involved in taking a case to Tribunal; nor what to expect. Nonetheless, the reality was disturbing for many.

To begin with, claimants were frustrated by the length of time it took for their case to come through; from when they submitted their application to the hearing. Some suspected their employer of dragging out the case in order to break their resolve.

'I had to wait a year for the Tribunal case to come through. They [employer] stalled a lot. The problem with the Tribunal process is they make it too easy for the other side to stall and drag out the case. The company have resources to survive. If you haven't got any and it's a winnable case for you, you want the case to go ahead as soon as possible. But if you're sitting around waiting for your case to come up, and its taken six or eight months what do you do your whole life before it you can lose your property and anything you have in that time where they're messing around; and it's a strategy they use anyway.' (Settled case)

At the same time, most claimants appeared to be genuinely surprised by the amount of work involved in the preparation of their case. Indeed, some claimed they were overwhelmed by the sheer volume of information they were required to provide. They were similarly disconcerted by the technical, legalistic jargon they had to deal with. For example, one claimant felt there was not enough help available during preparation of the case – a common complaint amongst claimants. There were a lot of letters between the parties,

and he often got confused with the language used. As a result, claimants did not anticipate the importance of having legal assistance with preparing the case, and the potential importance of being represented by a legal professional at a Tribunal. Nor did they expect that the Tribunal proceedings would be conducted with such strict legal formality. We heard the experiences of two such claimants.

'I've always known about an Employment Tribunal but what I didn't know was the formality of it. I thought it was three people behind a desk. You sit on one side, the prisoner [sic] sits on the other, you put your case forward, they put theirs and somebody comes to a decision. I thought I was going to be up against my managers. I didn't expect barristers. It was just me and I don't think they expected this to go as far as it did. I drew on every aspect of employment law.' (Settled case)

'I never thought that. Because I was being assisted by a friend, and because the employer is in a better or bigger position or may be [sic] more legal knowledge, I never thought they would be using a solicitor....No, I had no clue.' (Withdrawn case)

Nor did claimants anticipate the adversarial tone of the Tribunal hearing itself. A claimant who taught himself to bring a case commented that the Tribunal book he used gave him a simplistic impression that the process was quite straightforward and that there would not be a confrontation, as it was not intended to be an adversarial environment; the Tribunal was intended to make enquiries and come to an appropriate decision. As this claimant put it in colourful prose:

'They fail to tell you that you will be subjected to lies, legal argument that you've never even contemplated....I was led like a lamb to the slaughter. It was an arena set to fight against a trained gladiator....I thought they [the Tribunal panel] were in cahoots with the respondent. They seemed to always give them the benefit of the doubt.' (Settled case)

But perhaps worse, they did not expect that the employer would be allowed to use all the resources they could muster against claimants, some of whom could not even afford paid representation. One claimant described her experience:

'When we had the directions hearing they hired a QC. They have four to five partners who concentrate on employment law, plus staff. With the Employment Tribunal if they feel you haven't got a case they can ask you to pay £500 if you proceed. [named employer] were saying they wanted me to put down £500 and the Employment Tribunal said no.'

Another claimant who faced considerable legal resources on behalf of the employer did not appear unduly overawed because he had prepared himself well for the proceedings.

'There was nobody helping me. I was going solo. I went on the Internet and began to read a lot about Employment Tribunal. But I couldn't afford a lawyer so I had to defend myself at the Tribunal. I read a lot, printed out things....I have a masters degree [in engineering] and so I can read and understand most things by myself. For me it was fun and games, but I wanted justice. I could be my own lawyer and that was what I did....I read

a lot, night and day. I was just reading about unemployment law, how to speak in the court, how to defend yourself. That was what I did. And on the day of the Tribunal, I just went there ready for action. There were ten lawyers and I stood against them....About ten lawyers, head of service, they had quite a lot of people. They had [named manager] who was the guy in question. All my bosses and I was on this side.' (Settled case)

Claimants appeared perplexed about the complicated rules of the Tribunal hearing itself; and were initially surprised that there were different stages or types of hearing. They were equally surprised there did not appear to be specific rules about employers' use of witnesses at different stages of the proceedings. The testimony of one claimant is illustrative.

'I found when we went to the hearing, they had a directions hearing and at that hearing, at which I wasn't present, but my solicitor was. [Named employer] had three to four witnesses and we had one and at the hearing, based on that, we were allocated three days. Originally, we were given two and it was extended to three. In the rules of the Tribunal, you bring to the court the witnesses you take to directions hearing. They had three to four and as it approached two to three days before the hearing we got their witness statements through, and there were eight of them. They'd extended it from three to eight. Having to plough [through] the statements, which were lies, we get to the Tribunal hearing and they're turning up with eight people. When we get into the room with their eight witnesses and me - my witness couldn't come until the next day - it was so intimidating; and I thought this was wrong, nobody was objecting to the fact that they'd turned up with eight. Why is this being allowed?' (Settled case)

In one particular example, the claimant was shocked to find that her trade union was representing both herself and the employer's manager, with whom she was in direct dispute.

'[Named union] didn't explain anything to me about grievances, about the Tribunal. I just accepted what they were telling me to do, to sign this or whatever. When it went to the Tribunal, that's when I found out that [named union] were also representing the Director who I'd taken this race discrimination case against. I didn't even know. I only found that out in the Tribunal. I didn't for one minute think they were representing both of us and maybe that's why they were so complacent and didn't really want to push it.' (Settled case)

Whilst the majority of claimants did not explicitly criticise the proceedings of Tribunal hearings, a small number expressed their concern about the composition of the Tribunal panel. Given the particular jurisdiction involved, some claimants were surprised that the panel was made up of White people only. This appeared to influence the views of claimants about their satisfaction with the decision of the Employment Tribunal in their case. It also raised doubts as to whether to bring a purely Race Relations Act case, or to involve other jurisdictions. Some claimants believed their own legal advisers were also uncomfortable about handling direct race cases. The concerns felt by three claimants were instructive.

'It was discussions between the CAB and the employer. Then we put an application in. He came and said to me you have a very good case here. I

can see what they've done but, however, it's proving it. That's where the law says you've got to prove it. We know it's happening all the time, we know it's happening, people coming and going all the time, but it's proving and how to go about it.' (Settled case)

'They gave me written advice from their solicitors, but it was a case for me to make a decision on whether I wanted to proceed on the advice their solicitors had given me. Obviously, this legal advice had caveats within it. It doesn't necessarily mean a racial case that we could win but yes, there are sufficient grounds to say it's a racial discrimination. I decided to go down that route....Personally [I was] 90 per cent confident that we had a strong case and we'd win it in one shape or another. The Employment Tribunal might not say it's racial discrimination, but it will make a judgement that this employer had not complied with their own policies. The only thing you can construe from that is racial discrimination.' (Settled case)

'At the end, they [representative] said go for a settlement. I don't want a settlement, I want my day in court I want precedent. I can't think of anything else. They just said where possible we'd like to truncate your claims as much as possible. We have more chance of succeeding on fewer claims than a wide scatter. They were saying rather than going for public interest disclosure, gender and race, if we can we'll make it one or two. It wasn't I went against their advice, it's what they said should happen and it didn't happen. I suspect that was them trying to wriggle out of another race if they could.' (Unsuccessful case)

Notwithstanding the wide-ranging concerns of the claimants that we have highlighted above, the majority were very confident they would win their case. Their optimism appeared to be based on the deeply held convictions about the justice of their case. Thus, although some had concerns about the whole process of taking an Employment Tribunal case, claimants were nevertheless convinced that any reasonable person looking objectively at the circumstances of their case would conclude they had been wronged by the employer. According to those who took this view, the onus was on the employer to prove they had not discriminated against the claimant.

3.8 Summary

On the whole, claimants were not motivated by financial gains as the principal reason for taking a case. They were more concerned about justice; that their employer be compelled to right a wrong, and to change their behaviour towards their ethnic minority employees.

Claimants who believed they had been unfairly dismissed wanted the Tribunal to order the employer to give them their jobs back.

In a few cases, the claimants wanted to be compensated for loss of earnings, especially where they had been unfairly dismissed.

A small number of claimants, however, wanted to exact some retribution against their employer; and believed that the employer should be punished for their misdemeanours.

Very few claimants had any previous experience of the ETS, or knew what taking a case would involve. For the majority, the case was the first time they had come into contact with the service. Only a few claimants had taken multiple cases, either against the same employer or against different employers.

The majority of claimants lodged their claim after they had sought advice from their trade union, the CAB or the CRE.

Claimants who had also gone through their employer's grievance procedure lodged their claim after the process appeared to be stalled; or in a few cases because the outcome was not to the claimants' satisfaction.

Claimants' actions were often precipitated by the time limitation (three months) for the submission of their application. Very few employers appeared prepared to seek resolution of matters internally before the case went to Tribunal.

Most claimants did not inform their employer about taking a case to Tribunal, usually because communication had completely broken down by this point. Hence, most employers first learned of the case through formal channels, i.e. when they received the ET3 response form.

Claimants were unlikely to remain with their employer once they had lodged their case. Quite often, claimants had such antipathy towards their employer, they could not contemplate remaining there, even when offered the opportunity to continue.

Employers often threatened claimants with financial retribution, seeking to recover their costs were claimants to lose the case.

Claimants' experience of taking a case differed considerably from what they expected. Claimants had wide-ranging concerns, including:

- the length of time it took for their case to come to hearing
- the amount of work involved in preparation of the case
- confusion with the technical and legalistic language used
- the need for proper legal representation
- unequal context between employers with infinite resources, against claimants with little or none
- lack of clarity about the rules of the Employment Tribunal process
- perceived bias of the Tribunal panel, particularly given the jurisdiction under which claimants had taken the case.

Despite these concerns, claimants were confident about winning, because of the morality of their case.

4

Advice, support, representation and conciliation

The chapter looks at the sources of advice, support, and representation sought and used by the claimants, and how they felt this affected their case. The claimants received advice and support from a variety of sources, formal and informal. The chapter looks first at the people who helped the claimant, before turning to other sources of advice which were consulted, and the role of Acas. Finally, it considers representation at Tribunal, and the effect that claimants felt that this had on their case and its outcome.

4.1 Case advisers and supporters

In stark contrast to respondents, who, almost without exception, had been represented by solicitors, barristers or QCs, claimants were more likely to have been represented by advisers outside the legal profession. In an effort to get the information they required, and to secure representation, claimants consulted a range of people, through formal and informal channels. Many of the claimants consulted colleagues, partners, friends and relatives early on in their experiences of discrimination at work. For some this was an invaluable source of information, especially for claimants who knew people with some professional knowledge or experience of employment law, and/or Employment Tribunals. Such confidantes had often encouraged the claimants to take action, either by guiding them to seek further legal advice or by suggesting an Employment Tribunal. There was a variety of involvement from family and friends; while some offered moral and emotional support, others were able to provide more practical advice; for example, they helped claimants fill in their claim forms, and in some cases even represented the claimants at the Employment Tribunal hearing.

A number of claimants reported that they initially sought advice from the Citizens' Advice Bureau (CAB). It was through this route that some claimants first became aware that their experience could be covered by race discrimination legislation, and that they could take an Employment Tribunal

case against their employer as a result. Others already knew or suspected that they had a case suitable for an Employment Tribunal, and went to the CAB for additional guidance. The CAB were often seen as a route to finding other sources of support and advice, or a way to find suitable representation. In a number of cases, a CAB caseworker or solicitor took on much of the case preparation and negotiation on behalf of the claimant.

A Black Caribbean male claimant, who took a case after having been dismissed from his job, sought advice from his father who worked in equality and diversity and had assisted a number of friends and colleagues with Employment Tribunal cases in the past, but also sought advice from the CAB on whether he had a case.

'(I) came home, told my dad and because my dad has seen things like this before he immediately took a draft of how everything went in the meeting while it was still fresh in my head, what was said, how I felt I was doing my work properly. How I felt work was going for myself, had I spoke to my manager... We got the contract and my dad said go to the CAB to get them to get the ball rolling.'

On being advised by the CAB that he had a case under the RRA, the claimant looked in the Yellow Pages for a 'no win no fee' solicitor to represent him. However, he was not able to find anyone to take on his case on this basis as they said that he had no witnesses, and therefore no evidence. As he could not afford to pay a solicitor, he then turned to his father again, who helped him with the case and represented him in subsequent discussions with the respondent. Despite receiving guidance from the CAB and having the assistance of his father who had some legal knowledge and experience of Employment Tribunals, the claimant described the process of preparing the case as 'like walking down a dark alley'.

(Settled case)

While most claimants who had made contact with CABx were satisfied with the support offered, there were a few claimants who had negative experiences of this. One claimant, an Asian male, went to the CAB after escalating mistreatment from his colleagues and line manager culminated in an aggressive verbal assault in the workplace. The claimant described the circumstances to a CAB solicitor, and was told that he had a very strong case. The solicitor also told the claimant that he would represent him if he wanted to submit a claim. The claimant was very relieved that he had the support of the CAB solicitor, but when he attempted to get in touch the following week, he found that the solicitor was unavailable and not answering the claimant's messages. Eventually, the claimant received a letter from the CAB solicitor saying that he did not feel there was a strong enough case, and that he would not be pursuing it. The claimant did not understand why the solicitor had withdrawn his support, but later discovered that the solicitor was an acquaintance of the Chief Executive at the claimant's place of work, because both the Chief Executive and the solicitor were Freemasons. The claimant felt very betrayed, and said that he had been 'sold out' by the CAB. Other claimants were disappointed that the CAB were not able to offer more legal support, and several claimants remarked that the CAB took very few cases on

each year, and so tended to choose the cases which they felt they were most likely to win.

Although the CAB was often a first point of contact for claimants, many approached other organisations for support. These included local law centres, and national and local equality organisations, including the Commission for Race Equality, and the Equal Opportunities Commission, and local race equality organisations. Such sources often provided claimants with advice on whether they had a good case, and how to proceed with preparing for the Tribunal, in a way similar to the CAB. Sometimes caseworkers at these organisations offered to take cases on behalf of claimants, and represented them at Tribunal; occasionally they provided barristers for the Tribunal hearing.

There was some use of trade unions, often as a source of initial advice on how to deal with a dispute or incident in the workplace. Unions tended to be contacted some time prior to the case itself, and were often involved in investigations into grievance procedures. At later stages, when the claimant was considering lodging a case or had done so, unions generally provided claimants with a solicitor with whom to talk through their case, and in some instances, they also represented claimants at the Employment Tribunal hearing.

A Black Caribbean male claimant initially contacted his workplace union, who carried out an investigation and advised the claimant to go through an internal grievance procedure, which proved unsatisfactory to the claimant. Although the union advised him that he had little chance of success at an Employment Tribunal, he decided to lodge the case. His union provided solicitors who looked through his case, although they could not provide a representative at the Tribunal hearing. The claimant represented himself, but found the advice he had received from the union solicitors very helpful, even though they advised him against taking the case. He particularly appreciated their candour regarding how stressful the experience of Employment Tribunals could be, and about his likely chances of success. (Unsuccessful case)

If claimants were not provided with free legal advice or representation through union membership or from other sources, they usually had limited choices due to affordability. One claimant attempted to seek representation through legal aid but found he was not eligible:

'I tried the legal aid board and found that a complete joke. They said I was £20 a month above the limit. You hear stories about people who get legal aid, how on earth can it happen for the ordinary man?'

The fact that most claimants were not able to afford to pay for solicitors and barristers was seen to stack the odds of winning the case in the respondents' favour, regardless of the strength of the case. Respondents were able to afford solicitors, barristers, and in a small number of cases, a QC, to prepare their defence, and to fight the claimant on their behalf at Tribunal. According to the claimants, almost all of the respondents in these cases had legal representation. It seems that only one respondent did not, where the defence

was presented by a senior employee in the respondent's HR department, and who had considerable experience of Employment Tribunals. For many claimants, their contact with solicitors was limited to talking over their case around the time they lodged it, and some had no advice at all from the legal profession.

One claimant, a White Italian male, had significant involvement with his union representative and with the union regional office over a long period of time regarding two Employment Tribunal cases. However, it seems that the union appeared to have contributed to the claimant's disputes with his employer rather than helping to resolve them. As a result, when he sought representation for a third case, he paid for a solicitor. The impact on his finances has been severe, and he and his wife are now in considerable debt as a result. (Unsuccessful case)

'No win no fee' solicitors were mentioned by a number of the claimants. Some had received letters from such sources, but had ignored them, and were puzzled about how these law firms had their details. A small number of the claimants hired 'no win no fee' solicitors to handle their cases and to represent them at a Tribunal hearing, sometimes in response to letters sent to them, but also of their own volition; for example, sourced from the Yellow Pages. The reason for using 'no win no fee' solicitors was always given as cost; claimants said they needed representation but could not afford to pay for it. Despite the solicitors ostensibly being 'no win no fee', some claimants who did seek representation through this route were asked to pay lump sums of between £1,000 and £2,000 up front. There was one example of a solicitor representing a claimant, a Black Caribbean woman, on a *pro bono* basis, although this was because he was originally hired when he was working for a 'no win no fee' firm. When he left, he agreed to keep the case on as a *pro bono* case. The claimant felt that this was because he wanted experience in the area of race discrimination in employment, but she was not satisfied with the quality of representation that he provided at the Tribunal hearing.

4.2 Other sources consulted

Several of the claimants had consulted other sources of advice and information, usually the Internet or books. The Internet was used to find information about the process of taking a case, for more detailed information about the Race Relations Act, and about previous landmark judgements and the resulting case law. One of the claimants, a Black Caribbean male, who was unable to work during the lead up to the hearing due to a combination of physical and mental illness, commented that the process of taking his case became like a full-time job. He used the Internet as his main source of information about the race relations act and Employment Tribunals, and observed:

'Because it was complicated and I was mentally impaired, I couldn't go out very much. I had access to the Internet. I got broadband and it became like a job. I saved about 50 gigabytes of information on my computer.'
(Settled case)

Claimants searching the internet to inform their cases had varying degrees of success. One Asian male claimant was looking for information about the actual procedures involved at the Tribunal:

'Yeah, I went through some websites and all this. I didn't get anything that was specific enough and anything that I could use from the search. Nothing about procedures or what it is going to be about.' (Successful case)

Quite a few claimants mentioned using leaflets and other published materials from the ETS. Most claimants who used these found them helpful, but several also noted in retrospect that they could have provided more detail. One claimant, a Black male, commented that:

'I think if you look closely it basically tells you where you stand if you're an employer, employee. It gives the whole picture... That's the main one we used, picked up points from there and then 'internetted' it, to get a bigger picture. Not that you understand it. I found it was very, the wording was very ambiguous. It give me the lot. It encompasses a whole heap of possibilities. That was the way I saw it, but I'm sure if I was legally trained I'd see it in a completely different way.' (Unsuccessful case)

On the whole, there was a range of views about the ease of access to information and advice and its usefulness. While some claimants found it relatively easy to get the information and advice they needed, others found it more difficult and as a result, relied heavily on advisers such as union representatives and solicitors.

'I wasn't sure who to go to... the Tribunal, Acas... it was only through my solicitor that I knew they existed. Prior to that, I wasn't sure where to get advice. If you've got someone to talk to initially it may help, they may have been able to do something.' (Black female, settled case)

4.3 The role of Acas

Most of the claimants said that they had some contact from Acas; this was usually in the form of a letter, although some had more contact than this, typically one or more telephone conversations. The first contact from Acas was often also the first time claimants had heard of Acas, and they initially had very little understanding of the role Acas played in the ETS. Claimants who were seeking compensation or a resolution from the Tribunal were more interested in involvement from Acas than claimants who felt strongly aggrieved and who sought justice and retribution. On the whole, Acas did not take a predominant role in claimants' cases.

A few claimants found the information received from Acas to have been useful. Others said they would have liked more information from Acas, or would have liked to have met with them face to face in order to discuss the case, although this was sometimes the result of a misconstrued understanding of Acas' role. For example, one claimant thought that the letter she had received from Acas should have explained more about the process of taking an Employment Tribunal case. Other claimants found the tone of the letter received from Acas (which was an offer of settlement on behalf of the respondent) was unfair because it was too discouraging:

'Acas were terrible... I received a letter saying what they are there for, but I didn't find them to be objective at all. They are very biased towards the other organisation, even HR said that I think you should take the offer because we (Acas) are not going to offer any more support after that. I felt that you have not offered any support in the first instance.' (Asian male, Successful case)

An Asian female claimant received a letter from Acas following her claim for a Tribunal. As a result, she rang Acas to find out more about the Employment Tribunal process. However, she felt that negotiation with the assistance of Acas was not the route she wanted to take as she felt that this would have meant an agreement involving her leaving her job and she did not want to leave. At this stage, she felt that an Employment Tribunal could make it possible for the situation to be addressed and for her to stay working for the same employer. (Successful case)

In other cases, it seems that additional contact from Acas could have been useful, especially where claimants were keen to negotiate and settle.

A Black female claimant had some limited contact with Acas over the telephone and by letter, but felt that they could have been in touch more. Unlike some other claimants who seemed more determined for their claim to be heard at an Employment Tribunal, this claimant did subsequently settle prior to a Tribunal hearing, so was clearly open to negotiations with her former employer. Acas advised in a letter that taking the case to an Employment Tribunal would mean a risk of losing, and of having to pay legal fees. (Settled case)

A claimant who took a total of three Tribunal cases against the same employer had significant involvement with Acas on the first of these. The first case was settled with Acas using a COT3 agreement, but there did not appear to be any significant involvement from Acas in the second and third cases. Another claimant said that he had some contact with Acas, but that he had not found them very helpful:

'I went everywhere, even to Acas, they weren't very helpful, they're not there to give you advice, it's to settle. If the (employer) doesn't want to use them then what use are they?'

Another claimant spoke about Acas' lack of statutory powers, meaning that they cannot enforce any decisions made and that actions from both parties is voluntary. As a result, he had preferred to have his case heard at a Tribunal. In a less typical case, one Black female claimant told of Acas encouraging her to take her case to Tribunal:

'We went to Acas and they said to me that this needs to be highlighted, this was six months before the Tribunal and she said they wouldn't even consider trying to sort this out with (the employer) because they felt this had to be publicised.' (Successful case)

4.4 Representation at the Tribunal hearing

Claimants felt that the type of representation (or the lack of it) at their hearing was a very important factor influencing the eventual outcome of their case. As was discussed in Section 4.1, in the first instance, claimants often went to the CAB for advice on whether they had a case and how to proceed with it. Although the CAB does provide free legal representation to those in need, there is often a long waiting list for this service and cases are carefully chosen. A few claimants were initially offered representation through CAB, but in most of these cases, the representation was later withdrawn. Many claimants who sought advice from CAB were given candid descriptions of the Employment Tribunal process, the difficulties of arguing race discrimination cases, and of representing one's own case. Most claimants were strongly advised to seek representation, at which point they then approached other organisations in order to find someone who was willing to take their case and represent them at a Tribunal.

An Asian female claimant had involvement from her union representative from early on in her dealings with her employer. It was he who advised her on how and when to submit her claim. Once she had submitted the claim, the merits of her case were subjected to an 'odds test' to see if she had a good (better than 50 per cent) chance of winning. This was successful and so she was provided with a barrister to represent her at the Tribunal hearing. There was a long wait between submitting the claim and the actual hearing, and during this time, the claimant began to suspect that the barrister was reconsidering representing her. She felt that she was being strung along, and considered seeking representation elsewhere, but was reassured that he would be taking the case. A few weeks before the Tribunal hearing, the barrister changed his mind, and told the claimant he would not be representing her as he did not feel her case was strong enough. With only a few weeks before the case was to commence, the claimant was unable to find another barrister, and ended up representing herself. She felt greatly disadvantaged in arguing her own case, not least because the Chair made no attempts to explain the legal jargon exchanged between the respondent's legal team and the panel. (Unsuccessful case)

The extent to which claimants were able to secure adequate representation for their Tribunal hearing often appeared to have been based on little more than chance, for example, what was available in their local area. In addition, it seems that although there are some routes open to claimants for securing low cost or free representation at Tribunal hearings, they were often less reliable than legal services which were paid for. The quality of some of the free sources of representation also appeared to have been questionable, especially, for example, in terms of the expertise or the integrity of a few of the solicitors used by the claimants. Some claimants said that their cases were dropped by their representatives at a late stage, leaving them unsupported and without representation at the Tribunal hearing. When representation arrangements fell through, claimants who were not paying for representation were at the mercy of the organisations to whom they had originally gone for help, to provide them with suitable replacements. There were examples of no other representatives being available, or of the Tribunal

being too imminent for anyone else to take on the case. Claimants who had experienced such situations reported that they had, by then, lost faith in the system as a whole. Given the absence of other options, they were faced with the choice of representing themselves at a Tribunal hearing, or settling or withdrawing their case. Several claimants reluctantly agreed to settlements specifically because they had lost their representation and could not face the Tribunal hearing on their own. Many of the claimants who represented themselves at Tribunal had done so because their legal representatives had withdrawn their representation shortly before the Employment Tribunal hearing.

An Asian female claimant who was taking a case against her private sector employer initially sought advice from the CAB. They agreed to take on her case and provided her with a barrister who would prepare her case and represent her in court. However, shortly after this had been decided, the barrister suddenly advised her that she did not have a case against her employer after all, and that he would therefore not be able to represent her. The claimant felt that the CAB barrister may have been silenced in some way, as the respondent was a large law firm which the claimant felt wielded considerable power. She did not seek alternative advice and representation, as she knew that this would be very costly, especially since in order to take on a law firm respondent, the advice and representation would have to be of a high standard. Fortunately, her sister was a solicitor and was able to assist the claimant in making sense of the law surrounding the case, and to provide general advice. (Successful case)

Several claimants sought representation from 'no win no fee' solicitors, as discussed in Section 4.1. Those who secured representation through contingency fee arrangements often experienced difficulties in taking their cases forwards. Many felt that their 'no win no fee' solicitors were unwilling to take the risk of having cases heard and decided at the Tribunal, and rather, sought to settle cases in order to ensure that their fees would be paid. Once these solicitors had been hired, however, claimants were unable to change representation without incurring charges for the services rendered up to that point.

One Black female claimant found representation through a 'no win no fee' arrangement. When the original solicitor left the firm, the case was handed over to another solicitor who was less confident of the case being successful and pressurised the claimant to accept a settlement being offered by the respondent.

'This was two weeks before the hearing. I was so stressed I could not believe it was happening. I wrote to the head of the firm about it. I was on the verge of a breakdown. After I'd done that he finally wrote to me saying he'd read my papers in a day and he didn't think it was a strong enough case so he wouldn't continue. We'd been building this case for the last six months and he now is telling me I've got no case? We held a meeting and went through it all and they said I had a very strong case... I did think about getting another solicitor. I was ill with it and the only option would be to get another, a few days ahead of the trial. I think I looked around and I

can't remember. There was something going on about it was 'no win no fee' and how much have I got to pay if I transfer to another solicitor. They were hanging something over my head saying if I lost the case I would be liable to pay [the respondent's] costs.'

The claimant's solicitor was aware that there was another concurrent case for personal injury, in which the claimant stood to win a considerable amount. The claimant believed that her solicitor's were forcing her to settle her case because their sole interest was financial.

'It's very difficult to get the right support and representation... What you're getting is a system where they're only interested in money. I'm getting the feeling that it's open to corruption. If a big company like [the respondent] is being taken to court by one person, that person's solicitor on a [contingency] fee basis is open to bribes. You need legal representation for what you are complaining about, and that's not happening. I would never get a fair hearing on a 'no win no fee'.' (Settled case)

Money to pay for suitable, reliable representation is clearly a barrier for claimants securing representatives, and in turn, to having their cases presented effectively at Tribunal. There is evidence to suggest that easier access to good quality representation for claimants would also greatly reduce the stress experienced in taking a case (see Chapter 9).

One claimant, a Black Caribbean male, had been provided, by a local law centre, with a barrister to represent him at Tribunal. Unfortunately, the barrister left the centre, and was not able to represent the claimant at Tribunal. As a result, the claimant was forced to represent himself against the respondent's barrister. In retrospect, he felt that this had a significant bearing on how the Tribunal had gone. He said that he had not prepared the case and set out his claim effectively, and it would have been done very differently by a lawyer. As a result, he felt that he was in a vulnerable position from the start of the Tribunal. He said that he did not feel equipped to defend himself and his case against a barrister, even at the directions hearing. He said of the respondent and the barrister, 'they ripped me apart'. (Unsuccessful case)

Some claimants actively chose to represent themselves at Tribunal. They felt that they knew their case well, and given the alternative of having to pay expensive fees for solicitors and barristers, claimants felt that representing themselves was a better option. However, they were usually very surprised at the formality of the Tribunal, and the extent to which not being legally trained put them at a disadvantage when faced with the respondent's representative. One claimant chose to represent himself, but was surprised when, at Tribunal, he found himself faced with the respondent's barrister. He had expected to simply be arguing his case against someone from personnel.

An Asian male claimant sought advice during the early stages of taking his case from a number of sources, including the CAB, colleagues, and his union. However, he chose to represent himself at the Employment Tribunal, as he felt that the spirit of the Employment Tribunal is for employers and

employees to interact. However, at the Tribunal hearing he felt that as a non-lawyer, he was at a disadvantage, as he was not able to quote case law in detail. (Unsuccessful case)

In general, claimants found the process of seeking advice and support, and securing representation for Tribunal hearings bewildering, and in some instances, frightening, not least due to the potential costs involved. One claimant, who sought advice from a number of sources and eventually secured 'no win no fee' representation commented:

'I was left in the dark [on] where to go from here. I was standing up but my head was going round, where do I go, who do I talk to?' (Settled case)

Issues around representation are also discussed in Chapter 7.

An Asian male, went to see a solicitor but was not confident that they would be able to manage the case successfully, and so chose to represent himself. He was confident that he had a good case and so although he did not take advice on his chances of success from anyone legally trained, he felt he had a good chance of winning his case at Tribunal. At the Tribunal hearing, the respondent was represented by a barrister from a large law firm, who the claimant felt was 'crooked'. In retrospect, the claimant felt that part of the reason that he lost the case was because he did not hire his own counsel. (Unsuccessful case)

4.5 Summary

Many claimants sought advice from CAB in the first instance, and they were usually satisfied with the information provided there. Others went to their unions, although their views on the extent to which they were satisfied with their unions' representatives was mixed.

Some claimants consulted other organisations, including local law centres and race equality organisations in seeking advice and/or representation.

A few claimants conducted extensive personal searches for information regarding their cases; this included searching the Internet, and reading leaflets and books relating to employment law and the process of taking a case.

Acas did not play a major role in most cases, although almost all claimants remembered having had some contact from them, usually by letter. Some felt that Acas could have provided them with more information.

Most claimants found the process of securing legal representation for the Tribunal to be very difficult and time consuming.

The vast majority of claimants could not afford to hire legal representation, and found themselves at the mercy of various forms of 'free' representation which was of variable quality and unreliable in some cases where the representation was withdrawn at the last minute.

A small number of claimants actively chose to represent themselves at Tribunal; however, the majority said that they had wanted representation at the Tribunal hearing, and throughout their case.

5

Cases withdrawn or settled prior to hearing

This chapter looks at cases which were withdrawn or settled before they were heard at a main Employment Tribunal hearing. It examines the reasons why cases were withdrawn, and the ways in which settlements were reached. It also looks at the involvement of representatives and third parties, and at the terms of settlements reached. Finally, it considers how claimants felt about having settled or withdrawn their cases.

5.1 Third party involvement

Fourteen claimants had experience of cases which were withdrawn or settled prior to a main Tribunal hearing. Cases which were withdrawn or settled had usually had some third party involvement on the claimant's side, which meant that claimants themselves seldom negotiated directly with the respondent's representative. Third parties involved on the claimant's side tended to be solicitors or union representatives with Acas involved in bringing about one of the settlements (also see the previous chapter). There rarely appeared to have been any great influence exerted by other less formal parties, for example, family or colleagues in the decision to withdraw or settle cases. Two of the claimants whose cases were settled did not have representation, although one of these had an informal adviser who negotiated on the claimant's behalf.

Third parties appeared to exert considerable influence over claimants, prompting them to withdraw or settle rather than continue with their case. It seems that some of these claimants were given realistic assessments of their chances of winning their cases and what they stood to lose if they lost, and they based their decisions on these. One claimant was advised by her union representative to withdraw her case or risk losing thousands of pounds. Another representative, a solicitor specialising in race discrimination made it clear to the claimant that the race discrimination aspect of the case would not be worth pursuing unless she was able to persuade some witnesses to appear on her behalf. In another case, a solicitor negotiated on behalf of the claimant and advised her to withdraw (and receive a private settlement from the respondent) rather than have the case heard and risk gaining nothing.

Although most of the claimants who settled their cases had taken the advice of their representatives, one of the claimants mentioned also talking it through with his wife. However, even here, the overriding influence of the representative on the claimant's ultimate decision is clear:

The claimant, a Black African male, who had worked for a private sector organisation had settled prior to his case coming to Tribunal when the respondent offered him £800, and his solicitor and his wife had advised him to accept it. His solicitor, who represented him on a 'no win no fee' basis, had told him that cases such as his were often settled before they reached a hearing.

'My solicitor said that if he can confirm that okay I'll win the case but the compensation that will be coming would not be all that good. If those people, my employer's lawyers want the whole thing to go to court he'd prefer to go to court. But he said normally these sort of cases are settled out of court.... When he said that I said listen, I just want this case to go to court. Forget about the remuneration. I'm going to prove to them that they are discriminatory employers...'

Despite the fact that the claimant wanted his case to be heard by a Tribunal, his representative advised him to settle, and the claimant eventually took his advice:

'His advice was that if they ask for a settlement out of court I should accept it. I said you've already told me about the remuneration so let's send this case to court. He said think about it deeply. I discussed it with my wife and my wife said they are the experts, they know. She wanted me to refer that to the solicitor and he advised me that for me to prove racial discrimination would be difficult, my word and their word so I should accept the solicitor's advice which I did.'

Despite settling on the advice of his solicitor, the claimant would have preferred to take his employers to a Tribunal because for him, it was equally important to show that his employers had mistreated him as it was for him to receive a financial payment. He said that with hindsight he wished he had pursued the matter to a Tribunal hearing.

The use of 'no win no fee' solicitors in race discrimination cases, and the effect this might have on whether a case proceeds to a Tribunal hearing is worth considering. It is highly possible that such representatives might prefer to settle, and guarantee some income from the case, than go through a Tribunal hearing and risk earning nothing, particularly given that the proportion of race discrimination cases which are successful at Tribunal is very low (four per cent). There were four examples of cases which involved a 'no win no fee' representative, and all of these were settled before they reached a main Tribunal hearing. The case below illustrates well the difficulties which could arise when claimants have such representation.

The claimant, a Black woman, settled five days before her previously adjourned case went to a Tribunal hearing. This was due to a combination

of factors, but ultimately, she felt that her representative had coerced her into settling. On the first day of the main hearing, the claimant had requested an adjournment as the respondent brought eight witnesses against the claimant, when she had been expecting only four. In addition, when the claimant saw that the Chair consisted of three White men she felt that they would be biased against her. The claimant was represented on a 'no win no fee' basis, and the solicitor who had taken on her case had originally said that she had a good chance of winning at Tribunal. However, before the next hearing date, this solicitor withdrew from the case and another solicitor from the same firm took over. It seems that this second solicitor was less optimistic about her chances of winning the case. This solicitor contacted the claimant to let her know that the respondent had offered a settlement (with a confidentiality clause preventing the claimant from disclosing the amount). The claimant was not happy with the amount offered but her new solicitor said that he would not represent her any further if she didn't accept the offer. By this point, the claimant said that her health had deteriorated and that she was suffering from depression. She took the settlement as she did not feel that she had any other option.

'My solicitor left the firm. She didn't tell me, she passed my case on and I expected to hear from this man. Two months later, I'm still trying to get hold of this man and I'm not getting anywhere until five days before the hearing he decides to get in touch. I've had it by now and think there's something going on here. Two days before the hearing they were doing deals with [the respondent] to get me a settlement. He said what they offered he thought was adequate which it wasn't to me and that wasn't the point of it anyway. I said I want to take this to court and he said no we think what they're offering you ... I said it's not about the money it's about the case. He said we think it's adequate and we're not prepared to go into court with you.'

Although the claimant felt that her poor health and the trouble she was having in dealing with her representatives had forced her into agreeing to settle, she had never been happy about taking this course of action.

Of those cases where claimants were represented by their trade unions, around half had resulted in settlements prior to a Tribunal hearing. Some of these settlements included COT3 agreements, changes to working conditions, and voluntary redundancy. Claimants who had had their cases settled with the help of union representatives seemed to have fewer regrets than those who settled before a hearing with representation by a 'no win no fee' solicitor.

Most of the cases where claimants were represented by their trade unions, around half had resulted in settlements prior to a Tribunal hearing had involved representatives. There were few examples of claimants deciding to take this course of action without specialist advice. This is in contrast to cases which were heard at Tribunal, where there were a mixture of claimants who had representation and claimants who represented themselves. It is possible that representatives were in some cases able to identify cases which were unlikely to be successful at Tribunal, and by advising claimants to withdraw or settle, they were preventing the claimant from undergoing a potentially traumatic experience to no avail. However, in retrospect, claimants tended

not to view the decision to settle or withdraw in this way. They usually said that they would have preferred to have had their case heard and decided by a Tribunal.

5.2 Reasons for withdrawal

Only four of the claimants had entirely withdrawn cases before their case proceeded to a main Tribunal hearing. A further claimant spoke explicitly of having withdrawn the race discrimination element of her case. These claimants had withdrawn their cases either as a result of some resolution being reached with the respondent, because they were unable to continue the case any further, or in one extreme case because of death threats and vandalism of property. There were also examples of claimants withdrawing their cases part way through the main Tribunal hearing, which are discussed in Chapter 7.

One claimant, a Black woman who had worked in the public sector, withdrew a case when she was asked by her representative to make a snap decision about whether or not she wanted to proceed to a Tribunal. This was the second of two cases which she took against the same employer – the first case concerned events during employment and the second was an unfair dismissal case, lodged as a result of having been made redundant. The case was withdrawn at an early stage, when her representative, a solicitor from her trade union, advised her that if she proceeded with the case it would cost her thousands of pounds. The claimant was not sure whether the request for a quick decision on whether to proceed or not came from her representative or from the respondent. However, she said that she felt pressured into making a quick decision, on a day when she was at work in a new and high-pressure job. She did not have time to think the situation through, and so asked her representative to make the decision for her. Her representative then made the decision on her behalf to withdraw the case. She did feel however, that she would have preferred the case to have been taken further:

'I felt it was unfair in that they didn't look at the case properly. I felt pressured into making a decision. I told you about that in the beginning, getting a call out of the blue... I was in the middle of doing something really urgent when I got the call... I received the call telling me you don't have time to think about that sort of thing. I said whatever you think is best. I couldn't give a decision there and then. He [the claimant's representative] said if you don't make a decision then you'll have to go through the motions of a Tribunal and it could end up costing you thousands of pounds. They had to know by four o'clock that day.'

An Asian woman claimant who had worked for a large international organisation withdrew her case a few days before the Employment Tribunal hearing as a result of a private settlement from her employer. Her representative, a solicitor, advised her to take this course of action rather than risk losing her case at Tribunal. There were some negotiations about the amount of money the claimant would be paid before they arrived at an amount the claimant was prepared to accept. She was instructed not to speak to anyone about the amount of money that she had received. In retrospect, the claimant said that she felt under pressure to withdraw the

case, and that it would not have been her decision to take this course of action:

'According to me it was forced upon me. It was not by choice. I think I would have recovered from my depression had I had the chance or the opportunity to bring the matter to court and got a hearing.'

Turning to the claimant who withdrew the race discrimination part of her claim, this woman, who was Black Caribbean, did so on the advice of her solicitor who was a race discrimination specialist. The claimant was advised that she would need witnesses who had also worked for her employer who could provide evidence to back up the claims that she was making. The claimant did not think that she would be able to provide witnesses, as all of her former colleagues were still working for her old employer. She could not foresee them standing against their current employer at a Tribunal. The claimant decided to drop the race discrimination part of her case altogether, although she was able to proceed with the case on the grounds of unfair dismissal. This case was heard at a Tribunal, which decided against the claimant. Two years on from this experience, the claimant was reasonably philosophical about having been unable to pursue her claim of race discrimination. This seemed to be partly because she had carved out a new career for herself, but also because she had resigned herself to racist treatment as she had experienced it for much of her career:

'What could I do? What chance have I got? I'm Black. That's what life is about in Britain whether I like it or not, that's how it is. At my age, I've been putting up with it all my life... If I've been called all these names throughout my life do you think I'm going to make a big issue of it, it's a fact of life.'

A more harrowing example of reasons for withdrawal was found in the case of a Black claimant who worked in an educational institution. After initiating an internal grievance procedure for unfair treatment at work, British National Party (BNP) literature was sent to her home and work. She also received death threats of a racist nature by telephone, bricks thrown through her window and damage to her car. The police were involved but did not manage to apprehend anyone. The claimant found it very hard to cope with these events, and was afraid for her safety and for the safety of her child. Due to these pressures she decided to withdraw the case soon after submitting the IT1, and she did not return to work. Her decision to withdraw was partially because of guidance from a CRE advisor but mainly because of the threats she received. The claimant now regrets withdrawing her case as she felt that in resigning from her job the perpetrators ultimately got what they wanted. However, at the time she felt she did not really have any choice due to the severe effect the case and threats were having on her health.

Only one of the five claimants with experience of withdrawing cases (or aspects of them) was happy about the course of action they had taken. Although the case included race discrimination elements, the claimant viewed this as a less important part of the claim, with the most crucial aspect being that his working environment was improved. This claimant, an Asian male

who had worked for a public sector organisation, had withdrawn his case after it was discussed at an internal meeting, and it was decided that he should be provided with a different office space. Two days later, one of the company's regional directors met with the claimant and talked through the situation. This director was new to the company, and seemingly had a different attitude to her predecessor; preferring to try to sort out the grievance before it got to a Tribunal. The claimant was happy with the way his case had been resolved, but he felt that the main reason he had been able to move on from the events and put the dispute with his employer behind him was that he got recognition from the company that they had acted wrongly.

5.3 Reasons for settlement

A quarter of the claimants had experience of settling cases prior to a main hearing being held, although some of these cases were settled on the day of the main hearing, but before it began. Other cases were settled in the days and weeks prior to the Employment Tribunal hearing.

In most of these claimants' cases, potential settlement terms were first tabled by the respondent's side. This was often in the late run-up to the main hearing. In only one of the cases did the claimant's side contact the respondent and ask for a settlement. An example of the former pattern of events is outlined below. In this case, whilst the respondent offered the settlement in the first place, the claimant subsequently had great difficulty in getting the respondent to pay him the money they had agreed on, and had still not received all of it by the time of the interview. However, this seemed to be quite unusual, with most claimants reporting that they received the money that was owed within a few weeks or months of the settlement being agreed.

A Black Caribbean male claimant's case was settled during the weekend before the main hearing. The respondent came forward at this point and negotiated with the claimant's union representative. Negotiations began on the Friday evening prior to the main hearing which was due to start on the following Monday. Negotiations continued by email and telephone, and an agreement was reached on Saturday afternoon. Although both parties did attend the Tribunal on the Monday morning, this was simply to inform the Tribunal of the decision to settle the case. There was a confidentiality clause in the settlement which prevented the claimant from disclosing the amount of money he received. The claimant said that he no longer felt that settling had been the right decision as 18 months after the settlement the respondent had not given him the money that had been agreed. The claimant's union had written several letters to the respondent to try to rectify this, but to no avail. He eventually went to the County Court for a warrant in an effort to get the money he was owed by his employer. At the time of the interview, he still had not received the payment he was owed, and he was on long-term sick leave from work.

Few claimants whose cases were settled prior to a Tribunal hearing represented themselves. However, just as claimants could feel pushed into

settling by third parties, claimants who had no representation could feel similarly pushed by respondents and their representatives, as the example below illustrates.

One claimant, a Black Caribbean man who had worked for many years for a large public sector organisation, said he had felt under pressure from the respondent and their representatives to settle. After having been let down by his local law centre, and not having the money to hire a solicitor, he decided to represent himself. He was called to his employer's barrister's chambers for a meeting. The claimant said it was 'very intimidating circumstances for a meeting', since he was on his own but his employer was represented by two barristers and a solicitor. At this point, the claimant was suffering from stress-related illnesses and had been off sick from work for some time. He said that the meeting lasted for five or six hours, during which time the respondent put him under considerable pressure to settle. They threatened him with having to pay more costs, and the claimant eventually decided to back down and settle for the amount they offered, which was £7,000.

Health appeared to be an important factor in some claimant's decisions to settle. Interestingly, they often claimed that their poor health was as a direct result of the discrimination they had experienced, together with the stress of taking a case. In fact, some felt that their deteriorating health left them with little option but to end the Employment Tribunal process by accepting a settlement. Although there were other issues which also impacted on their decision, health often seemed to have been the overriding factor in the decision to settle. Two examples of this are presented below.

A Black woman, who had worked for a government agency, reported that her deteriorating health had forced her to settle her case. Her solicitor, who she had been able to pay for through her household insurance, advised her that although she could continue with the case, he felt that she should settle to avoid making her health worse.

'The form had set a date to go but I was that ill on the days leading up to it that I could not have gone. My solicitor said health-wise in his opinion for me to go further, he had seen I was that ill he said it might make me worse. With that, they offered a first settlement of £1,000 something. My solicitor wrote back that he didn't think it was feasible so they made another offer of £2,000 something and he didn't feel that was appropriate but they wrote to say that was their last offer.'

She said that she had not received some of the sick pay she was owed, her bills needed paying and she felt so ill that she settled for £1,000. She wishes that she had not felt forced by health and circumstances into taking this course.

'If my health was better I would have taken it the full way. I would have gone to the Tribunal and gone to the media to make it known. That would have been the outcome I would have liked. Even after all these years I feel upset and angry because of the way I was treated. I felt the loser; I lost out

in every way... I wish I had been strong enough to pursue it and go to the Tribunal with it.'

In the second example, the claimant instructed her representative to ask the respondent for a settlement before the case was heard. Amongst the claimants interviewed for this research at least, such a situation was unusual. This claimant's health was worsening as the case continued towards the Tribunal hearing, and she did not feel she would be able to go through with it, which was why she instigated a settlement.

A Black Caribbean woman who had been employed by a local authority settled 18 months after having submitted the claim form. During this time, her health was suffering and she had spent much of the time signed off from work. She said that she came to a point where she felt she was 'losing her mind'. As a result, in a meeting which was held several days before the Employment Tribunal hearing with her union representative and the respondent, she offered to settle. The organisation offered voluntary redundancy of £30,000 and she took it. She now wishes that she had gone through with her case rather than settling as she still feels a terrible sense of injustice.

'The Employment Tribunal should have started the following Monday [but] I didn't feel I had the energy to fight them by myself. I told the union rep to make a settlement, voluntary redundancy. I felt if I'd gone to the Employment Tribunal, I would have ended up in a mental hospital... No. I didn't feel I could cope with the Employment Tribunal... I regret having to do that. I wanted it to go to the Employment Tribunal, I wanted them exposed. What they're doing is so wrong. I know I'm not the only one.'

She said that she would have loved to name and shame her former employer. Through being in touch with some of her old colleagues, she said she was aware that discrimination was still going on. 'They are still at it', she remarked. She also felt that if she had had some legal support, that is, a solicitor rather than a union representative, she might have felt more able to continue with her case rather than settle.

Not all claimants were suffering from ill-health, or felt under any other pressure to settle. Some claimants' decisions to settle were simply based on the desire to put difficult experiences behind them and move on, whether this be with the same employer, or more generally. Two claimants, a White Italian man, and an Asian man, had reported cases which were settled under a COT3 agreement prior to a hearing. Both claimants explained that they did not receive any money as part of the settlement, but that they simply wanted assurance that they would be treated fairly in their jobs in the future. One claimant in particular did not wish to pursue the matter to a Tribunal if this could be avoided as he had had a bad experience in court when going through a divorce, and did not wish to put himself in a similar situation again. Both of the claimants had been represented by their unions when these settlements were negotiated. It is interesting that both said that they continued to be treated unfairly after having settled using COT3, and later had to instigate further proceedings against their employers.

The final example of a claimant who settled in order to move on with life is of a young Black Caribbean male claimant who had been dismissed from his job.

The claimant, who had worked for a private sector organisation was not formally represented but his father advised him. The respondent's solicitor contacted the claimant's adviser by letter requesting a telephone conversation. Over the telephone, the respondent's solicitor initially offered a settlement of £800. The claimant's adviser negotiated the sum up to £2,000 and they settled at this figure. The claimant said that he would have liked the case to have gone to a Tribunal, but that he also wanted an end to the case so that he could get on with his life, particularly as his first child had just been born. He was also influenced by the possibility of having to pay costs if he lost the case; he had learned about this in a letter from Acas. At the time, this claimant said settling had felt like the right thing to do; he felt there was not enough help and guidance available to him as the case was going along. As his son was just a few months old, he felt that he needed to find work and start earning money, and he did not feel able to do this while the case was proceeding. However, he said that if he could go back, he would not have settled.

5.4 Terms of settlement

The majority of the claimants who had settled their cases had received a financial settlement. Several claimants who had settled also had confidentiality clauses which prevented them from discussing the financial terms of their settlements. A small number had clauses which prevented them from taking their stories to the media.

The amounts of money which claimants (not bound by the terms of confidentiality agreements) were awarded as a result of settling their cases varied from £800 to £30,000 (although the latter was as part of a voluntary redundancy package). Claimants were most commonly awarded between £1,000 and £8,000. Two of the claimants settled for £2,000 each. One of these claimants was represented by a 'no win no fee' solicitor, and the solicitors fees had to be deducted from this. Neither of these claimants felt that they had been awarded enough money to offset the upsetting treatment they had received from their employers. A claimant who had been off sick from work for three years due to illness said that the money she received had not even made up for what she had lost as a result of her sickness absence. In fact, many of claimants agreed that their case had never really been about the amount of money that they could be awarded, but about gaining justice, recognition for what had happened to them, and trying to ensure that their employer would not be able to act in a similar way in the future. However, they were usually adamant that they should at least receive enough money to compensate them for what they had lost through, for example, ill-health and lack of potential future opportunities. Most of these claimants who had received financial settlements did not feel that they had received an amount of money commensurate with this.

Not all of the settled cases resulted in the respondents making financial payouts to the claimants. Two claimants did not receive financial settlements

as their cases were settled using COT3 agreements. In both cases, these settlements were reached with the assistance of the claimants' unions, and the claimants hoped the agreements would ensure future changes in their employment situations. In fact, one of these claimants had two separate cases which were settled using a COT3 on the basis that his working conditions and treatment would be fair and just in the future. However, he felt that very little changed in his workplace as a result. In a third case against the same employer, the claimant hired a solicitor who negotiated a settlement of £2,700. However, the solicitor did not claim costs from the claimant's employer, and the claimant had to pay £2,600 in legal fees after the case was completed. He did not blame the solicitor for not claiming costs on his behalf, although he said that in retrospect she probably should have done. He eventually took a fourth case to an Employment Tribunal.

5.5 How claimants felt about having withdrawn or settled their case

For most of the claimants, some time had elapsed between the events at their workplace (including the process of lodging and preparing a case) and the time of interview. Claimants had an opportunity to reflect on their decisions in the light of subsequent events. Most of the claimants who had withdrawn or settled their cases had at least a few regrets about having taken this course of action, and some were clearly still greatly troubled by the way their cases had been resolved.

Amongst those who had settled their cases, many wished that with hindsight, they could have done things differently. A young Black Caribbean man said in retrospect regarding his decision to accept a settlement:

'I still don't think it [the settlement of £2,000] was enough. I would have preferred court to give these people what they deserve, shaming them. It's a big company. Now I want to name and shame them [but] at the time I wanted it to be over.'

In general, claimants' regrets usually centred on a desire for justice which had not been satisfied as a result of the settlement, rather than wishing they had received more money. For example, claimants spoke of how they wished they had pursued their cases to an Employment Tribunal hearing in order to get formal recognition of the wrongs done to them. They also wanted their employers to be made to change their practices, and particular individuals who worked there to be reprimanded, so that the claimants themselves and others in the future would not have to endure similar treatment. Claimants had felt at the time, but felt even more keenly later, that these justice-focused outcomes were more important than a financial payout. A Black woman who had felt forced into a settlement due to a combination of ill-health and a 'no win no fee' solicitor threatening to drop her case if she did not accept, said:

'It [the settlement] was totally wrong. The case wasn't about money, that's what it turned into, it was about justice and justice was not done and it will never be done in that system. What was happening at [her former employer] when I left continued to happen.'

One of the claimants, an Asian man whose case was settled with the help of Acas, received a settlement of £8,000, which was one of the larger sums received. He was happy with the role that Acas had played, and understood that their primary concern was to resolve the case in a way which was satisfactory to both sides. However, he expressed a commonly held view, that the money was better than nothing, but he would rather have seen what he felt to be justice done.

'If it's £8,000 out of their pocket it's better than nothing. Although the justice factor's not there. Those people were never brought to justice. They did an act which they got away with and they should have been brought to justice even if I was to be dismissed, so should they, they should have equal dismissal.'

Hence, he felt that although he would have liked more money, other things were more important. These were gaining a sense of justice in terms of having his employers reprimanded, and having his position reinstated, and he did not feel he had achieved these through settling.

'They [Acas] were not really fighting anything, just trying to bring an understanding and a settlement. They were just trying to bring a settlement. They weren't really looking at whose fault it was. For both sides to give in. The thing I didn't understand is they didn't fight on getting my job back. Why that wasn't put in ... That is what I was interested in. I would have liked to have taken [my employer] for compensation and if they'd had to pay out £50,000 I would have loved it and justice. If the choice was justice or money, I would have taken justice. Both is better.'

Although many claimants reported that they would have liked to have done things differently, it was often hard to see what they could have realistically done instead, if they were in the same situation again. This was particularly apparent when they had been grappling with issues such as inadequate or inflexible representation, and/or ill-health.

Only one of the claimants who had settled or withdrawn prior to a main hearing was still entirely happy with the outcome of his case. This was the claimant who had withdrawn his case after the issues had been resolved at an internal meeting. He had also had the opportunity to discuss what had happened with a senior manager, who had admitted that he had been badly treated. The claimant withdrew rather than settled his case, and he did not receive any financial payment. He felt he had been able to put the experience behind him and continue to work for the same employer in more conducive working conditions, because of his employer's admission of having been wrong, and because he felt that this could prevent similar issues arising in the future:

'I was happy with the result, yes. That is what I wanted, a quiet environment to work in and it was settled in my favour. Although it was not said in the official [internal] hearing, I had a private meeting a day or two later with the Regional Director who said I accept everything you are saying. I agree with you we have not acted in an appropriate manner to deal with this case. Up to that point yes, I was happy I'd got what I wanted

but I also felt sore and bitter. They'd dragged me through this for no reason. Yes that 50 minute talk with the Regional Director a day or two later significantly helped in making me happy again so this will not happen in future to me or someone else down the line.'

Those who had withdrawn cases tended to feel that their hands had been tied, and this was the only course of action they could have taken.

5.6 Summary

Cases which were withdrawn and settled prior to a main Tribunal hearing usually had third party involvement on the claimant's side. They tended to be solicitors and union representatives. Acas was involved in one of the settlements.

Third parties were able to exert considerable influence over claimants' decisions to settle. Some seem to have advised claimants to take this course of action as a result of their realistic assessment of the strength of the case, and what claimants stood to lose if they lost.

All four claimants who had been represented by a 'no win no fee' solicitor had settled prior to the main hearing. Claimants with 'no win no fee' representation usually felt pushed into settling, and wished that their case had been heard at a Tribunal.

Of all the cases where claimants had been represented by their trade union, around half had been settled prior to a main hearing. These claimants appeared to have fewer regrets about settling than those who had settled on the advice of a 'no win no fee' solicitor.

Only four claimants had withdrawn cases prior to a hearing. One claimant had withdrawn the race discrimination aspects of her case after a solicitor advised her that unless she could provide witnesses her case would not be strong enough.

Some of the cases were settled in the weeks and months leading up to the main hearing, but some were settled only hours before.

Several claimants settled as a result of their poor health; they did not feel able to cope with continuing with the case, or attending the Tribunal hearing.

Most claimants who had settled received a financial payment. There were several claimants whose settlements had confidentiality clauses which prevented them from disclosing the amount they had been awarded. Settlements not bound by such terms varied from £800 to £30,000.

Most claimants had some regrets about having settled their cases. In retrospect, many wished that they had been able to take their case to an Employment Tribunal hearing. Regrets usually centred on a desire for justice which had not been satisfied through settling. Although claimants stressed that justice was more important than money, they usually felt that in addition, the amount they had been awarded was not commensurate with what they had been through, and what they had lost.

Those who had withdrawn cases said that they would have preferred a different course of action; however, they felt that withdrawing had been their only realistic option.

6

Employment Tribunal hearings

This chapter explores the experiences of claimants whose cases went to Employment Tribunal hearings. In particular, it explores claimants' expectations and perceptions of the Tribunal hearing itself, and how this was affected by the role of the Chair and panel. Claimants' views on the effect of representation, or a lack of it, and their thoughts on the balance of power between the claimant and the respondents during the Tribunal hearing are also explored here.

6.1 Claimants' expectations and perceptions of the Employment Tribunal hearing

As we have seen, the majority of claimants had no experience of Employment Tribunals before they took their cases. These individuals were mostly unprepared for what to expect of the hearing, both in terms of how it would work, and what the general atmosphere would be. A few of the claimants had considerable experience of Tribunals, usually through their current or previous occupations (for example, one claimant had worked for an equality agency advising others on how to submit claims, and acting as a representative at Tribunals). As a consequence, most of the claimants did not know how each of the stages leading up to the main hearing would proceed, or what would occur at each stage. For example, one claimant was very surprised when at the directions hearing, their case was opened for review, and several aspects of their claim were thrown out. A lack of adequate preparation of this nature seemed to exacerbate claimants' apprehension regarding the main hearing, as they became aware that they would need to operate within a system which was more reliant on legal knowledge than they had anticipated.

One of the claimants, an Asian man, who had no prior experience or knowledge of Tribunals, attempted to prepare for his hearing by attending a few other RRA hearings to observe.

'What I did was go and sit in to a couple of cases for two to three hours each to see how a person representing himself acted and how barrister or representative representing the case, so I had some idea.'

Despite this initiative, the claimant still felt surprised when it came to his first day in court.

'I found the pre-hearing intimidating because it was me, the barrister and somebody from the Tribunal. And I didn't think of feel comfortable because the person chairing the meeting would decide or they would get annoyed because I didn't know the procedure. But the fact was there was no way of knowing what the process was.' (Successful case)

This claimant felt strongly that there should be someone independent to advise claimants on what to expect at the Tribunal:

'They should take you through and explain, and recommend you take it down, and come and sit in, down in the public gallery and take you through the procedures really.'

As was discussed in Chapter 4, claimants had mixed expectations of the Tribunal hearing. While some claimants thought that they would finally have a chance to tell their stories and argue for justice, others took a more sceptical approach. Having been told that race cases very rarely succeed, one claimant decided that she probably would not be successful but that she would 'see what happens'. Another claimant who was not sure what to expect at the Tribunal, said he imagined the hearing to be like things he had seen on the television. He pictured 'The Bill', and expected his hearing to be as formal and legal as that and other courtroom dramas.

6.2 The Chair and the Tribunal panel

Many of the claimants commented on the pivotal effect the Tribunal Chair had on a case. Interestingly, claimants tended not to mention the rest of the panel, or only mentioned them in passing. It seemed that they did not perceive the other members of the Tribunal panel to have had any great bearing on the way their case was run or the decision which was reached. In fact, one claimant commented directly on this:

'I don't know why they have three people there – the other two so rarely dissent against the Judge or Chair.' (Unsuccessful case)

6.2.1 The approach of the Chair

Claimants felt that a Chair who was fair and sympathetic to them could make all the difference to the way a case was run. This was particularly so when they represented themselves; in such instances they relied on the Chair to some extent to help them through the process of fighting their case. Therefore, it cannot be emphasised enough how much the attitude and approach of the Chair could affect the way that the claimant felt about the Tribunal hearing as it proceeded, and also in retrospect.

A claimant, a Black Caribbean female, had been pleasantly surprised by the kindness of the panel. She was expecting to go into the Tribunal and to be shouted at, and was nervous as she was feeling extremely vulnerable at the time. Instead, the Chair introduced himself and the panel and told the claimant that the Tribunal would proceed at her pace, and that if she wanted to take a rest, or go for a walk, she could.

'He gave us plenty of breaks. When he found that I was faltering and going down he'd adjourn and say go and have a break now. That was good. He didn't rush it, he gave us plenty of time.'

She felt very at ease after this, and was very impressed with the balance that the Chair struck during the hearing between being fair and being kind. (Successful case)

Another claimant was impressed by the Chair for her case because she felt the Chair had taken control of the questioning.

'They asked leading questions, probing questions, during the process, to understand my case more clearly to them. It was very probing questions. And when they were cross-examining they were so, when they were going to the council's lawyer was going too far, they were able to tell him, that is out of order. You can't ask those questions.' (Successful case)

However, other claimants whose cases had reached a Tribunal hearing felt that they had not been dealt with fairly by the Chair. Those who had experience of more than one case at Tribunal, or who had several hearings, reported that the attitude and approaches of the Tribunal Chairs varied greatly. They talked about the likelihood of getting a Chair who would hear their case fairly as being 'luck of the draw'. Claimants who felt the Chair to be unsympathetic found it difficult to adjust to the adversarial tone set by their approach.

One claimant, an Asian female, who had to travel several hours back and forth to the hearing each day, was scolded at the hearing by the Chair for not having a document related to her evidence in her bundle and demanded she bring it in the following day. When she brought it in, she was scolded again for not having photocopied the document for the respondent. The claimant felt that the Chair was being unreasonable, and that such issues like this made the Tribunal especially difficult.

'The Chair of the panel was really very rude at times, and I think he was sometimes rude to the other side as well. I never knew whether it was personal or not or whether that was his way of doing things, but I don't think it's the right way of doing things. He's got to be there to test people's evidence; I think you can do that without being rude. He was snapping at people and being quite hostile and sarcastic in his tone sometimes.'

The Chair's attitude also seemed to extend to how the Claimant was allowed to present her case:

'Because I was representing myself the other side's barrister said she would agree to cross examine me and that at the end of it I could have a break, and if there was stuff I wanted to come back on (say if I had a barrister of my own who would go back and re-examine me) she'd let me pick up any issues. The Chair just disallowed that. I don't know why. I just don't understand the fairness of that. He just said I would have plenty of time to answer her questions, which isn't the same. You're in the witness box, it's your case, it's very personal. So normally, you would have a barrister re-examining you. It wasn't as if the other side was objecting to this, she'd agreed in advance that that seemed fair. He just arbitrarily disallowed it, I don't know why.'

Despite being a medical professional, with considerable academic and professional achievement, the claimant found the legal jargon and processes very confusing.

'I just didn't feel that stuff was adequately explained. There was a lot of technical stuff that just went over my head.' (Unsuccessful case)

6.2.2 Bias in the Tribunal panel

Several of the claimants said that they felt the Chair and panel had been on the respondent's side from the start of the case. They had felt this to varying extents, from the Chair simply being more sympathetic towards the respondent than the claimant, to the Chair seemingly having decided much about the case before it had even been heard. These claimants felt that the Tribunal hearing had been run in an unjust manner and they had concluded, in their own ways, that the whole process was unfair, stacked against them from the beginning, or even that it was potentially corrupt.

An Asian male claimant who had an impending court case felt that this had a strong negative bearing on how the Chair of the Employment Tribunal panel treated him and his case. He said that he felt the Chair was not interested in hearing his case because she openly told him that he would get nothing:

'The first thing she turned around and said was if you're looking for anything you'll get nothing... She said if you're looking for money or anything you won't get nothing.'

The claimant also said that the Chair did not appear to be paying sufficient attention to his case:

'She never even looked at the papers. There was a big bundle there, she never even looked.'

His story had been in the paper and the Tribunal panel had a copy of the newspaper, so they were clearly aware of it. The claimant's representative advised him to withdraw the case because it seemed that the panel were not going to hear it properly, and that they had already decided before hearing the evidence. His adviser at the CAB later told the claimant that this Chair had thrown away a good case in the past. This had not been at all what he had expected from the Tribunal:

'I thought it was a Tribunal for work people if something is going wrong and solve the problem. To me, I don't think that was right.' (Withdrawn case)

Another claimant, a White Italian man, commented that he felt that the Chair had been on the respondent's side from the beginning. He also suspected that there had been some underhand collaboration between his barrister and the Chair and/or respondent. The claimant said that prior to the Tribunal, his barrister was very professional, but at the hearing, he was 'terrible'. There were papers missing from the bundle, which caused the claimant to have to drop some elements of the case at the last minute. The claimant said that one of his witnesses had commented to him 'I think you're being stitched up'.

The claimant said that at the Tribunal the panel were sniggering at the claimant and his barrister, he thought that something was not right:

'The panel was biased, and the sniggering! I thought there something not right here... it all went against me.'

The respondent had hired a barrister to represent them but in fact, he did not represent them on the day. His wife (a human resources practitioner) took over. According to the claimant, it later transpired that the barrister's wife also sat on Tribunal panels in the next region, but as it was not in this region, she did not have to declare it. The claimant believed that that Chair and the barrister's wife (the respondent's representative at Tribunal) must have known each other as it would explain why the Chair was on their side from the start. The case was decided in the respondent's favour. The claimant tried to contest what had happened, but to no avail:

'I made a complaint to the Employment Tribunal and they said that she didn't have to state that [she was a Tribunal panel member] because she's a member in the next region. They admitted they do have mixed training sessions so now I was supposed to believe that she had been a member of a Tribunal for 12 years and they're not known to one another.' (Unsuccessful case)

Even in cases where claimants felt satisfied with the tone and approach of the Chair and panel, questions were raised when the decision reached seemed very different to how the claimants remembered the hearings to have gone. Not surprisingly, the final result of the Tribunal may have influenced how claimants viewed their experience of the Tribunal in retrospect. Where hearings had gone well from the claimant's perspective, an unfavourable decision was a shock, and led claimants to question the impartiality of the panel.

One of the claimants said that at the main hearing itself (which was an Employment Tribunal hearing), he felt his case had been dealt with fairly, and he had been reasonably satisfied with how the hearing had gone. However, when he received the decision in writing some weeks later, he felt differently, as the decision reached did not bear much resemblance to the hearing as remembered by the claimant. He felt that for the decision to have been so different from his experience of the hearing, something untoward must have occurred:

'I had not had a full hearing before so I didn't know what to expect, but on the whole it seemed fair. I felt that their [respondent] lies and faults had been exposed and the Chair and members had seen that. I find it hard to say but I feel that they were bribed, because the judgement was very different from what had happened in the Employment Tribunal... I didn't perform that bad in the Employment Tribunal. I am not a lawyer and you always think you could have done better, but I wasn't bad. The judgement was totally unexpected. I was shocked and when I told my colleagues they were shocked.'

He said he became aware that judges belonged to 'some sect' (he appeared to be referring to Freemasons) and felt that that could have come into play. The suggestion of Freemason involvement also came from another claimant who had considerable difficulty securing representation. He became convinced that a CRE solicitor who had reneged upon his offer of representation had done so after learning that the employer was also a Freemason. (Unsuccessful case)

6.2.3 Ethnicity of the Chair and panel members

Several claimants commented on the ethnicity of the panel, and the effect this had on their confidence of winning their cases, but also on their perception of the proceedings at the Tribunal. For example, a few claimants noted that the Chairs and Panels at their cases had all been White. Those who commented on the panel's ethnicity also tended to feel concerned about it; they doubted the capacity of an all White panel to be sympathetic about racism and its manifestations.

'On the bench three White men all looking like [the employer], sitting there and my barrister said are you happy with the make-up of the bench and I said no. I had a choice to accept the situation to speak to three men, bearing in mind the man at the centre of this looks like these guys so it was down to whether I wanted to proceed or get it adjourned. They should have had that in place. I should not have had to do this, so it was put back another two-three months.' (Black woman, settled case)

'I don't see how White people, no matter how educated they think they are, can sit there and listen to all this, what's going on, and then put their shoes in your boots. They can't do that. They can't put their feet in your shoes. Even if they could they'd say, oh well, bollocks. That's what I felt as soon as I walked in there.' (Black male, unsuccessful case)

'If I feel I've been discriminated against on the grounds of race then I don't care how expert people are, they are not the best judges. You have to be on the receiving end to be the best judge and I was on the receiving end for a lot of months. I live in a society where it is integral, our kids are born into it, they grow up into it. I'm not making anything up. It's not something you read in a book, its real life.' (Black woman, successful case)

In another case, however, the Tribunal of a Black male claimant was heard by a panel where the Chair was Black. The claimant said that the panel made no attempts to disguise their bias against the claimant:

'It was like "how can you represent yourself against a company and think you can win". I told him I am confident. They burst into laughter when I told them I was representing myself.'

Despite his experience, the claimant maintained that ethnic minority representation on Employment Tribunals was important:

'I don't want to sit in front of a White panel. I just know that... but where I sit in a panel of Black people and they're against me, that would throw me off balance.' (Settled case)

In some cases where claimants faced a White Tribunal Chair and panel, and were unsuccessful at Tribunal there was sometimes a suggestion of racism at the hearing itself. It seems that having experienced injustices based on racism in the workplace, some claimants found it difficult to trust in the unbiased authority of the Employment Tribunal panel. Aside from a few exceptions, amongst the claimants involved in this research the levels of trust and confidence in the Chair and panel were low.

6.3 Representation and self-representation

Many of the claimants in this research had no representation at their Tribunal hearing. Of those with representation some had a union representative, but more often claimants were represented by a solicitor or a caseworker from a local law centre or CAB. Many of the claimants commented on the effect that representation, or more usually, the lack of it, had on their experience of the Employment Tribunal hearing(s). They contrasted their situation and their own capability of performing at a Tribunal with the situation of the respondent, defended in almost all cases by a barrister or QC.

For most of those without legal representation, this was seen to be a significant disadvantage. In addition to their lack of legal knowledge, which affected the way they presented their case, claimants also had little understanding of the way the Tribunal hearing would proceed, what to expect, or how to interact effectively with the Chair and panel.

One claimant was surprised that when she arrived at the pre-hearing, the respondent and the Chair were disputing several aspects of her claim.

'They were saying time limits, but some of the incidents I was complaining about were only three weeks ago up until when I put the claim in. They were recent. They still threw them out. I didn't know until after the process

had finished that they were literally throwing them out. I didn't understand that the pre-hearing is to sift through everything and what you're left with is what you go on to Tribunal if you go. That compromised me big time. [...] Had I understood and realised at the time that that was what they were doing then I would have objected.'

She also said:

'In the handbook it states that you should not be at any disadvantage. How can you not be at a disadvantage when you've got no lawyer? It's a fundamental point that makes a nonsense of the situation. If you have no lawyer, you're at a disadvantage big time. [...] Even if I was a lawyer, you shouldn't really be the victim as well as the barrister in any litigation. It's not advisable, you don't see yourself. You'll be liable to making mistakes, mainly from lack of experience.' (Black woman, successful case)

Another problem which claimants commonly reported when representing themselves was that it was difficult to maintain an emotional distance from their case. They felt that this impacted negatively on how well they were able to argue the points of their claims. One claimant who had considerable experience of Employment Tribunals, through previous employment in the equalities field, was surprised that despite this, he could not distance himself from his own case enough to make clearer arguments. Although he did not find the Tribunal stressful as such, he said that if he were to do it over, he would have obtained professional representation:

'When it's your own case, it's difficult to step back emotionally.' (Asian man, unsuccessful case)

Another claimant, an Asian woman, had no prior experience of Employment Tribunals. She expected the Tribunal hearing to be like a grievance procedure, and was greatly surprised when it turned out to be, as she put it, 'like a battle situation'. At the main hearing, the respondent came with their witnesses, the QC and the senior associate. In total, they had around ten people at their table, and the claimant found this very intimidating. When it came to asking questions however, she could see that the respondents' QC knew what they were doing:

'He was asking clever questions. My questions were "did you" and not "how did you". I was too emotional.' (Successful case)

Others were so confident that they were right that they were not intimidated by the courtroom setting, or the adversarial tones set by the respondent and/or the Chair.

An Asian man who had been dismissed from his job said:

'I knew what was going to happen. I knew I would win that case. I know that's cocky but I knew. What they done was wrong.'

In this case, having strong evidence helped the claimant to remain confident.

'It was all in writing on their headed paper that they sent to me. How they judged the matrix system, how the scoring was done. They contradicted themselves, they said something in writing and in the court they said something else. When we pointed it out they judge looked at them and said why have you said X and then said Y?' (Successful case)

One claimant, a Black African man who was successful at Tribunal said:

'No, I wasn't intimidated. I'm well educated, I've not [been] intimidated... I was confident of the case so the questions that were being probed out were actually flowing; the answers were flowing out, because of my experience.'

Another claimant though, despite feeling confident of his case and his ability to represent himself, still felt that the respondent's representatives were better able than he was to manipulate the process to their advantage:

'Because of the amount of time it takes to go to the court, the barrister and employers have a lot more chances to cause more hassle and they play a game. They know how the system works. And I think that the court should be more direct and fair in applying the law and criticise the use of such practices.' (Asian man, successful case)

While claimants representing themselves often felt that they lacked in confidence or legal knowledge, some claimants with legal representation also experienced problems. We have seen (Chapter 6) in some cases, claimants felt pressurised by their solicitors and/or barristers to withdraw or settle their cases once the hearing had begun. Others however, were disappointed by their solicitor's/barrister's performance at the Tribunal.

An Asian male who made his claim to the ET on the grounds of race discrimination and unfair dismissal, and was successful in his case, but felt that he was let down by the performance of his solicitor. The respondent, who had experience of Employment Tribunals, was representing herself, and according to the claimant, was a powerful businesswoman. He felt that the reason he did not receive a greater award of compensation, was because his solicitor was not aggressive enough in his questioning:

'My barrister didn't attack the other side properly. They presented paperwork which doesn't involve this case at all.'

In describing his solicitor's performance at the Tribunal, the claimant said that they were 'a trainee trying to help'. (Successful case)

There were other claimants who felt strongly that their legal representatives had 'sold them out' and suggested that these individuals had somehow made deals where they were profiting from settlement agreements. Claimants' retrospective satisfaction with having represented themselves, or with their representatives did not seem to depend exclusively on the success or failure of their case. Rather, it seemed that many claimants found the whole process of the Tribunal difficult and emotive. When looking back at their experiences, they saw how it could have been better, and often this related to their

capacity to argue their own cases, or their wish for someone with the appropriate expertise to have argued their case on their behalf.

A White Italian man, had a series of claims against the same employer, and had dealt with one main solicitor who had represented him in a previous case. This solicitor had encouraged him to take forward his final (and most recent) claim, and had agreed to represent him pro bono. She prepared the case for him, with claims under the RRA, the DDA, and constructive dismissal, and then left the firm she was working for a few months before the Tribunal hearing date. She arranged for another solicitor to take over the case; however, soon afterwards, when the claimant's new solicitor started communicating with the respondent's barrister, 'things started to go wrong'. His solicitor was advising him to drop the DDA element of his claim, just a few weeks before the Tribunal hearing date. A barrister became involved in the claimant's case, and his solicitor ceased attending to the case saying to the claimant that 'he wouldn't be coming because there was nothing he could do'. On the day of the pre-hearing, the barrister (now the third representative to be involved in the case) told the claimant that he should drop the race claim:

'He said it was too time wasting and of low value. By dropping it we'll save on that to add to the more valuable claim of unfair dismissal. He caught me unawares. I said I'm taking your advice and trust what you are doing is in my best interest. He just nodded.'

As the case proceeded, the claimant became aware that it had been intended that the race claim should be dropped from before this point, as the documents relating to it had already been omitted from the bundle. By the time the claimant realised this however, there was no going back, and in the end, the case was unsuccessful. The claimant felt that he was let down by his representation, and also suspected his barrister of bribery:

'The whole system is stacked against you. If I spend any more money it will be for someone to investigate and see if any money changed hands, and I have no doubt that it has.' (Unsuccessful case)

6.4 The balance of power between claimant and respondent

Several claimants talked about the balance of power at the Tribunal hearing between the claimant and the respondent. While some claimants felt that the main hearing provided a balance of opportunity for both sides to put their points across, many others did not. In almost all cases, a perceived unequal balance of power related to the attitude and sympathies of the Chair and the panel, and the differences in representation between the claimant and the respondent. This has been demonstrated by the examples given in the preceding sections. However, there were several other examples of how claimants felt the balance of power between the two sides was askew.

Some claimants felt that the balance of power was illustrated by the number of people at each of the tables. Most respondents attended the Tribunal with several people: sometimes this was a large legal team, in other cases there were several witnesses who attended the whole Tribunal. Claimants, on the

other hand, were more likely to be on their own, without representation or witnesses. Some had brought their partners, parents, siblings, friends and colleagues to the hearing, in an effort to feel supported and to help them feel less intimidated by the number of people sitting on the respondents' side of the room.

A claimant, a Black woman, was surprised that when she arrived at the Tribunal, she had to walk past her employer and their eight witnesses each day. They were all present for the duration of the Tribunal, despite some having completed their statements and questioning early on. The claimant had only one witness, who attended only on the day she was due to read her statement. The claimant felt that the presence of the respondents' witnesses was intimidating and overwhelming, and questioned the legal reasoning behind it. She thought it would be much easier for the witnesses to corroborate each other's stories, as they were all able to watch the statements being read and to see the line of questioning taken against the statements. (Settled case)

Another claimant commented that they were disturbed by the respondent and their solicitors being allowed entry to the claimants' waiting room. As a result of this, the respondent used breaks and adjournments as opportunities to threaten and pressurise the claimant:

'[The] respondents and barrister walked into the waiting room I was sitting in. And said quite loudly in front of people that you shouldn't think about going through this because you are going to lose. So, they use scare tactics and threats. They can come into the claimants' waiting room but claimants can't go their room. So, they have that power sort of thing. They use it to their advantage.' (Successful case)

A few claimants commented on the authority of the Chair, and the Employment Tribunal in general, suggesting that their ability to enforce rulings and take control of the proceedings was less than they had expected. One claimant felt he was unable to secure the necessary witnesses who were still in employment with the respondent, and feels strongly that not doing so had affected the outcome of his case:

'What I didn't do, I didn't involve the people that were important to my case... all the people who were telling me these are dodgy people [the respondents]. I didn't involve them for the simple fact I didn't want them to get into trouble and lose their job. [...] They were basically taken away from me. Was pushed away so I didn't see them. But once you're out of [there (the respondent employer)], they're controlling the whole of the south, where are you working?' (Black Caribbean man, unsuccessful case)

Another claimant spoke of her frustration at having to listen to the respondent lie in response to questions and in statements. She felt disappointed in the Tribunal for not holding the respondent to account for this:

'If you went to an ordinary court and told those lies you would be charged with perjury. The same should happen to the Employment Tribunal, they should have been made to answer for those lies they told.' (Black Caribbean woman, successful case)

Many claimants made observations about the ethnicity of those participating in the Employment Tribunals. Several claimants remarked that they were the only non-White person in the room where their cases were heard. Other claimants had difficulty obtaining the services of Black or non-White representatives (this is discussed in Chapter 5). In addition, as mentioned above, while some of the cases were heard by mixed panels, many more of the Tribunal panels were all White. One claimant, whose case was unsuccessful, felt that the whole ETS, and the hearings themselves were flawed, in that those involved did not understand the needs of Black people. She also admitted that she did not trust White people at all and realised that she herself had racist attitudes now, as a result of her experiences. This view was common amongst several of the claimants, both successful and unsuccessful, and if nothing else, demonstrates the extent to which their experiences have impacted on their ability to trust others as a result. In terms of claimants' experiences of the hearing, however, it seems that the ethnicity of the panel and its usual 'Whiteness', contributes to the perceived lack of power for claimants, whether the actual bias is real or imagined.

6.5 Summary

Claimants on the whole, are not well prepared for what to expect at the Tribunal, and this exacerbates their apprehension about the hearing itself.

The role of the Chair is central to the Tribunal hearing, and whether or not the Chair appeared to have sympathy (with one side over the other) had a significant impact on how claimants perceived the experience of the hearing as a whole.

Many claimants had difficulty following the developments in their case, whether they were representing themselves or had professional legal representation, and often felt confused over how the Chair had reached their decisions.

The ethnicity of the Chair and the panel members was commented on by most claimants, and seemed to have a direct effect on their confidence of achieving justice through the Tribunal.

Claimants who represented themselves usually felt they were at a significant disadvantage compared to respondents who, in almost all cases, were legally represented.

Some claimants with representation had problems with their representatives. Some appeared to lack experience, be unfamiliar with the claimant and the case, pressurised them to settle, or withdrew their representation at the last minute.

Many claimants felt that the balance of power rested with the respondents, who tended to have larger and more experienced legal teams, greater financial resources, and a greater number of witnesses.

7

Outcomes of cases decided at a Tribunal hearing

This chapter considers cases which were decided at a Tribunal hearing, and cases which were settled or withdrawn by claimants once the hearing had begun. Appeals, and whether claimants were asked to pay respondents' costs are also covered.

7.1 Settled and withdrawn cases

7.1.1 *Withdrawn cases*

There were two cases which were withdrawn during the Tribunal hearing. The circumstances surrounding each of the withdrawn cases are very different, but both claimants felt that they had no choice but to withdraw their cases.

One of the withdrawn cases involved an Asian male who had a court case pending while awaiting a date for his Employment Tribunal. At the directions hearing, it became clear that the Chair and the panel members were aware of his court case, as it was publicised in the local paper, and the panel had copies on the day. They felt that the Chair of the panel was clearly biased by this; the claimant said that she told him that he should not expect to get anything from the Tribunal. After this, the claimant's representative (a union rep) advised him to withdraw his case, as the rep had known that particular Chair to have thrown cases out in the past, and felt there was nothing to be gained by pursuing the case with that individual as the Chair. (Withdrawn case)

Another claimant who withdrew his case during the Tribunal had done so under different circumstances.

A Black African male had been working with a local government body, and had experienced several incidents of racial harassment which had been successfully resolved, first through grievance procedures, and secondly through the Employment Tribunal. When the claimant became involved as a

witness for a colleague from the same employer however, he was subsequently dismissed on grounds of 'gross misconduct'. The employer alleged that he had been working for someone else in the evenings, but the claimant had already written to the employer to inform them of this and had not received a reply. The claimant felt that the employer was penalising him for contributing to another employee's claim against the organisation, and so filed his final claim against the employer for unfair dismissal and race discrimination.

As his case progressed to Tribunal, the claimant realised that he would not be able to substantiate his claim without involving more colleagues as witnesses. He attempted to gather witnesses, but the main witness (who was a senior employee) did not want to testify and was very concerned about being subpoenaed. The witness asked the claimant to withdraw his claim, and in order to protect his witness he obliged. He had to pay £8,000 in legal fees, and feels that the Tribunal case was a whitewash and a waste of money. (Withdrawn case)

7.1.2 *Settled cases*

There appeared to be seven cases which reached a settlement after the Employment Tribunal hearing had begun. In some cases, however, it was unclear when the settlement had been achieved; that is, whether it was during the main Tribunal hearing, or just before or after the directions hearing. Cases which reached the Tribunal, and were then settled seem to have more issues in common than those that were withdrawn.

Some of the claimants who settled at this stage felt extremely stressed and emotional, settling their cases was a way to avoid worsening their emotional and physical health.

One claimant who had taken a claim against her employer for race discrimination found the entire process leading up to submitting her claim difficult. Her case centred on a particular incident in which a client of hers was allowed to request a White worker, and the employer allowed a new (White) worker assigned. In the claimant's eyes, this upheld the racist prejudice of the client over the claimant's right to work without unfair racial discrimination. The claimant felt completely unsupported by her employer, and said that she needed to take the case forward as a matter of policy, although she was also very upset and demoralised by the whole experience.

From the first few meetings and correspondences with the employer, the claimant felt that the issue was being minimised. Her union (who were also representing the employer at the Tribunal) were discouraging her from taking the claim forward, although they did submit the claim on her behalf. Finally, at the directions hearing, the panel told the claimant that she was entitled to claim for much more than she had already submitted and so the claimant interpreted the advice as an affirmation of her claim. In the interim, following the directions hearing, the respondent offered £1,000 to the claimant and promised to set up a policy working group to look at how those types of situations would be dealt with in the future. The claimant accepted the settlement, but did not feel satisfied with the outcome.

'It was really stressful. With working and then chasing everybody and then Unison saying you're not to get any further and if you did win, what happens then? I have to work. What's the atmosphere going to be like? What's going to happen? I thought, at least they're aware of it... what they were saying was this was a one-off, it doesn't happen very often and that is not the case at all. It happens quite a bit and they need to do something about it.'

She said of the advice from the Chair at the directions hearing:

'It lifted my esteem a bit. I felt I was justified to go as far as I did go and I felt something would be done. They were taking me seriously.'

Despite feeling satisfied with the terms of the settlement, the claimant has lost confidence in her employer, and has little hope of progression in what she now considers to be a racist organisation. (Black woman, settled case)

The emotional and physical strain was present for many claimants throughout the whole of the Tribunal experience, but this was at its height during the hearing itself. Hence, some claimants felt that accepting a settlement was a way to put an end to the stress of the hearing, and the case. As one claimant said:

'I was in extreme pain... I just wanted to finish my final submission and go home. I was an emotional wreck, I had not been sleeping.' (Black African man, settled case)

Two claimants settled because they were put under pressure by their own solicitor or barrister to accept settlement offers. In both cases, the legal representatives threatened to withdraw their representation if the claimants did not agree to the settlements.

An Asian male felt that he had a very strong case against his employer but on the first day of the main hearing, the claimant felt that his barrister made arrangements for his union rep to not attend so that he could reach a quick settlement in order to avoid the eight-day Tribunal hearing. At the first opportunity, the barrister began negotiating with the respondents' legal team, but the claimant was not at all interested in a settlement. He had been exposed to aggressive racial harassment in his work place, had suffered physically and emotionally for over two years, and was intent on bringing the employer to justice.

As the barrister tried to convince the claimant to settle, the settlement offer rapidly increased from £200, eventually to £30,000, at which point the barrister became very angry with the claimant. The barrister told the claimant that he would withdraw his representation if the claimant did not accept the settlement, and as the claimant was still suffering physically and mentally, the prospect of handling his own case without representation was too much. He felt he had no other choice, and so signed a scribbled handwritten settlement agreement then and there. The claimant had to leave employment with the respondent, and has not been able to secure an equivalent position in his field. He is still very much disturbed by his

experience of his Employment Tribunal case, and has a huge amount of regret at succumbing to the barrister's pressure. (Settled case)

Others settled for a combination of reasons; however, only a very small number of claimants felt completely satisfied with the terms of their settlements. One said of his experience:

'I had my day in court. I didn't want to go through the whole court process and end up with nothing. I was happy with that. He had to go on the stand and justify his actions and pay me out and I got a reference.' (Black Caribbean man, settled case)

A Black male had experienced several delays to his hearing, but when the directions hearing finally went ahead, the claimant was very surprised to see that the respondent was represented by a barrister. Without any representation for himself, the claimant felt he was 'ripped apart' by the respondents' team and made the decision that he would need professional representation for the main Tribunal hearing. With limited financial means, the claimant finally managed to secure representation through a local law centre. One week before the main Tribunal hearing however, the barrister assigned to him through the law centre decided that the claimant 'did not have a reasonable chance of success', and so refused to attend the hearing. The claimant felt he had no choice then but to accept an offer that the respondents' team had made. The barrister did agree to finalise the settlement, however, the claimant feels that this too did not go well, as the barrister failed to notice several key aspects of the wording, which resulted in the claimant receiving less than he expected. In the end, the claimant received £5,000. (Settled case)

7.2 Cases decided at hearing

7.2.1 Unsuccessful cases

Ten of the claimants whose cases were decided at hearing were unsuccessful. While some of these claimants were told why their cases had not succeeded, others were very surprised by the decision and thought the ruling did not seem to correlate with how they had viewed the proceedings. Claimants who had represented themselves and were unsuccessful also felt that they could have won their cases if they had had good quality legal representatives. A small number of unsuccessful claimants who had been represented at Tribunal by solicitors felt that they could have been successful if their solicitors had done a better job representing the case.

Two claimants were told that their cases were unsuccessful due to insufficient evidence. The first claimant, who represented himself, had no witnesses but felt that he had made a strong case by clearly pointing out how the respondent's statements had contradicted each other. The Chair ruled that because there was no evidence or witness statements supporting his claims, the claimant had not proven his case. In another case which was unsuccessful due to insufficient evidence, the claimant felt that in retrospect, her solicitor had failed to make the case as well as he could have. This claimant had a long history of grievances with the employer, and although

there was evidence of her having taken steps to resolve the issues internally, there was little evidence to demonstrate the actual experiences she had relating to her colleagues and managers, against whom she alleged the discriminatory behaviour. The claimant felt very unsupported at work, and also had difficulty getting information and advice when she was putting together her claim. While the claimant feels strongly that her solicitor had lost the case, the difficulty she experienced in compiling her case and supporting her claims with evidence was common amongst these claimants.

Seven of the ten unsuccessful claimants did not have representation at their Tribunal hearings. The other three were represented by a barrister, a solicitor, and a union representative. All of the unsuccessful claimants were disappointed and surprised at the verdicts reached by the Tribunal panel. One of the claimants said that he did not win his case, and did not appeal the decision because he was 'totally disappointed'. He felt that one of the reasons for not winning the case was the fact that he was not represented and so, compared to the barrister he was against, he had not been able to prepare and present his case effectively. However, as a secondary issue, he also felt that the panel were not as knowledgeable about employment law as they might have been.

An Asian male claimant who had represented himself at the Tribunal felt it had gone reasonably well, and that the panel had heard his case fairly. But when he received the judgement in writing, it shocked him greatly as he lost on all elements. He also said that the judgement was of an entirely different tone to the way he had experienced the Tribunal hearing itself; so much so that he felt that the respondent must have had a hand in writing the judgement.

'At the end, when the judgement came, it really stunned me and my colleagues. Out of four elements I expected to lose one, but not on discriminatory transfer, or on constructive dismissal. But I lost on every one.'

This claimant was very unhappy with the way the judgement had been reached; in fact, he felt that it made no logical sense, unless the whole system was, in some way, corrupt.

'I believe this country is not beyond corruption. It looked like the judgement was written by the opposite party's lawyer... I didn't perform that bad in the Employment Tribunal. I am not a lawyer and you always think you could have done better, but I wasn't bad. The judgement was totally unexpected. I was shocked and when I told my colleagues they were shocked.'
(Unsuccessful case)

7.2.2 Successful cases

Eight of the cases which were heard by an Employment Tribunal panel were successful, although some claimants were only successful in certain aspects of their claims. Many of the successful claimants feel that they had won their case because they had strong evidence:

'I just had all the paperwork, when I realised the difficulties I was having. It seemed like every other week there was something, I couldn't do anything right. I used to keep copies of all my emails and their emails to do with the disciplinary and once that started happening I realised I didn't know where we may end up. I thought it was the only thing that might help me if they try to push me out.' (Black Caribbean woman, successful case)

In some of these successful cases, the Chair and panel decided what the remedy would be, although other cases were forwarded to separate remedy hearings in which the claimant and respondent were required to both argue their cases regarding what would be a fair amount of compensation. One claimant, whose successful case went to a remedy hearing, regretted her decision not to retain the services of a solicitor.

Despite her successful experience of representing herself at the main Tribunal, a Black female claimant felt that the amount of compensation she was awarded had been reduced because she had not presented her arguments for compensation as well as she could have:

'They had high flying lawyers and they were able to use laws from previous cases that will allow them to minimise the payout. It doesn't matter how technical they wanted to be. There was some intent of them giving me the least amount possible and that's what they did. I got about £3,500 but I had months of loss of income. I had a miscarriage in the process which was due to the stress and suffering. They also gave me bad references of which I have copies, and they were clearly telling employers not to employ me which could be seen as defamation of character. It's things like that I felt weren't taken into consideration in terms of my abilities to find alternative employment. Those were reasons why I'd applied for some jobs and it wasn't going anywhere. They penalised me for not making enough effort to get a job.' (Successful case)

A claimant who won on victimisation but was unsuccessful in the other parts of his claim, found that he was out of pocket by £1,000 after he had paid his solicitor and other costs from his compensation award. When considering taking an appeal, he was told that if he lost the appeal he would have to pay the respondent's costs. Having lost money in taking the case to the Tribunal, the claimant was not prepared to take another financial risk.

Although some successful claimants were not allowed to discuss the amounts of compensation, the levels of awards appeared to vary greatly. However, many were relatively low, and the recipients of them did not feel that their monetary awards were sufficient compensation for their experiences. While in some cases it was the amount that was felt to be insufficient, in other cases it related to the lack of other measures, for example, making sure that the respondent did not repeat the situation with someone else in the future. One claimant (who received £9,000) felt that the Chair should have ordered some kind of monitoring programme to make sure the respondent could not discriminate again. Another successful claimant expressed disappointment that the written decision made reference to the fact that the respondent's

statements had been proved false, but there was no censure apart from the respondent being unsuccessful.

7.2.3 Notification of the decision

Many of the successful and unsuccessful claimants had to wait several weeks, and in one case four months, before being informed of the panel's decision. The claimant who had not heard from the Tribunal after four months, decided to ring to find out why the decision was being delayed. It was only when he spoke to someone at the Tribunal that he was told his case had been successful.

An Asian female claimant (who represented herself) took a case to Tribunal which was successful. However, she only won on victimisation, and was unsuccessful on the grounds of sex, race or working part-time. She learned the decision in writing after the hearing. She was disappointed that she was successful on only one point, and she also felt that the decision was not a reflection of what had been heard at the Tribunal. However, she said that she had not had the energy to lodge an appeal. Although she had represented herself at the main hearing, she employed a solicitor for the remedy discussions as she felt that it would be too stressful for her to cope with. As part of the agreement, she had to leave her employment, and there was a secrecy agreement preventing her from disclosing how much money she was awarded.

7.3 Appeals

Claimants have the option of appealing the decision reached by an Employment Tribunal panel. Four of the claimants whose cases were decided at Tribunal chose this course of action. Others who said that they would have liked to appeal, but were too exhausted by the process of taking a case to do so, or they simply wanted the case to be finally over so they could start to move on. As was noted in the section above, one claimant whose case was unsuccessful at Tribunal, due to lack of evidence, did appeal the decision, but the original decision was upheld.

In a similar situation, another claimant, a Black male, took his case to the Court of Appeal after the Tribunal panel had found in favour of the respondent. After paying additional costs to have his evidence and documents reassembled for the Appeal, the claimant was told that because there was no point of law that was being contested from the original ruling, there was no grounds for appeal and so the original decision was upheld. A third case involved a similar scenario, in that the original ruling was upheld because there was no argument about the interpretation of law. Each of these cases suggest that claimants were insufficiently informed as to the purpose of the Court of Appeal. As each of these claimants were representing themselves at the Court of Appeal (and in some cases at their main Tribunal hearing too) it is likely that their lack of legal knowledge led them to believe that appealing would give them a second chance to argue their case. Instead, claimants felt let down by the whole system, that they had wasted their time, effort, and money.

One claimant who seemed to have a better understanding of the law pursued appeals against the decisions from two separate cases, against different employers. His experience is described in the case study example below.

An Asian male took the first of his two appeals in relation to a complex case which was originally ruled to be out of time. It was a recruitment case based on the notion of an exclusionary recruitment policy. The claimant contested that it was not out of time, due to previous rulings and the resulting case law on recruitment cases. The claimant took his case to the Court of Appeal. It was accepted at a preliminary appeal hearing as a viable case but there was a different judge at the final hearing at the Supreme Court. The claimant's appeal was based on two classic House of Lords judgements regarding time limits which were of direct relevance to his case. The claimant reported that there were two well known and frequently quoted paragraphs, but that many people did not know the full cases. The claimant asserted that the Court of Appeal Judge reversed these classic judgements (which he did not have authority to do as they had been approved by the House of Lords) and on this basis, rejected the claimant's appeal. He felt very strongly that this reversal should never have happened and that it has subsequently had a negative impact on both race and sex discrimination legislation. With hindsight, he felt that if he had known more about case law, or if the Judge had, he would have won his case. The claimant asserted that the Judge did not know enough about the case law, and that he had made up his mind before hearing the case.

The claimant wanted to appeal against the Court of Appeal decision by taking the case to the House of Lords. He knew he needed to appeal within 28 days and that he would need to submit a transcript of the Court of Appeal hearing, so he applied for this, but only just received it in time, because it underwent two sets of corrections from the Court of Appeal Judge. According to the claimant, the Judge's argument for rejecting the appeal does not appear in the transcript and the claimant asserted that this is because the Judge realised that it was wrong. He said that in the transcript:

'He [the Judge] portrayed me in the worst possible light — he quoted me as saying things I never said. The transcript was distorted by this man. It was a most unfortunate experience.'

The experience has made the claimant distrust the integrity of the judicial system:

'If you can't trust a Lord Justice in a Supreme Court, then who can you trust?'

In order to pursue the appeal in the House of Lords, a deposit of £28,000 was required, and the claimant did not have such funds. He approached the Commission for Racial Equality (CRE) who agreed to take the case on his behalf as they felt he was fighting against wrong judgements. They engaged a lawyer specialising in the RRA who would stand in the House of Lords for them. However, the case was never heard by the House of Lords as they did not have time. The claimant reported that his case has been

widely quoted, for example, on the Equal Opportunities Commission (EOC) website, but that it was based on faulty reasoning. He said that this faulty reasoning has contributed to new case law, preventing justice for cases like his in the future. He felt that this was very unfortunate.

Regarding a later case against a different employer, which was unsuccessful, the same claimant wrote to the President of Tribunals to appeal against the integrity of the Tribunal, but he did not receive a reply to his letter. He decided at that point that he had taken things as far as he could, and that he would not pursue the case any further. However, he had lost all faith in the ETS as a fair and just way of pursuing grievances.

'So now I am letting sleeping dogs lie. I feel that the President has found the Tribunal wrong, but rather than admit it they are sitting on it. There is a lot of support for the corrupt. I know [claimant's country of origin] is corrupt, but I didn't expect it here.' (Unsuccessful case)

7.4 Costs

There is a possibility that employers could try to claim costs from claimants as a result of them bringing an unreasonable case. Only a few claimants made mention of this in their cases.

One claimant (whose case was unsuccessful) was told by the Chair that he might have to pay costs in the region of £5,000 to £6,000. However, the claimant argued that he had brought the case in good faith and it had never been about money. As a result, the Chair said that nominal costs of £800 would be awarded to the respondent, but this was never enforced. Another claimant, who had been unsuccessful in his claim, had told the respondents that he would not appeal against the decision unless the opposite party claimed expenses against him. He was aware that there was a time limit for appealing, and learned just in time from someone at the ETS with whom he had been in contact, that the respondent had in fact applied for expenses. As a result, he was forewarned in time to prepare the appeal which he faxed to the Employment Appeal Tribunal just before the deadline. (The appeal was turned down as they felt that there was no legal point involved – as mentioned above.) A date was set for the costs hearing, but it never actually went ahead. The claimant felt that this was because the case had been a strong one although he had been unsuccessful, and the respondent would have had little chance of actually being awarded costs.

Only one other claimant, a Black woman, was ordered to pay costs. In her claim for unfair dismissal and race discrimination, the Chair decided she was not entitled to a bonus she had received after being dismissed from the company, as this was not explicit in the Conditions of Service. After finding that she had not been unfairly dismissed or discriminated against, the Chair ruled that she repay the bonus of £500 to the employer to compensate for the costs in responding to the claim.

7.5 Summary

Two cases were withdrawn during the main Tribunal hearing. While both claimants felt strongly that they had been wrongly discriminated against in their workplaces, neither felt that they would be able to convince the panel.

Many of the claimants who settled their cases during or after the Employment Tribunal hearing had felt pressured to accept the settlement offers, and were, in general, not satisfied with the settlement terms.

Unsuccessful claimants attributed their loss to a variety of factors: bias in the panel, lack of witnesses and/or insufficient evidence, disadvantage in having to represent their own case, inexperience and/or incompetence of representatives.

Successful claimants were not necessarily satisfied with the outcomes of their cases; in some cases, the dissatisfaction stemmed from the amount of compensation awarded, in others it related to the lack of cautions issued to respondents.

8

The impact of having taken a race discrimination case

This chapter looks at the impact that taking a case against their employer on the grounds of race has on claimants. It considers both the impact on claimants during the case, and also the longer lasting impact on claimants beyond the life of the case itself. Our definition of impact includes the financial impact of taking a case, the impact on health and well-being, and claimants' current and future employment circumstances. We also outline claimants' attitudes about the process of taking a case and towards the ETS and hearings, and any positive effects mentioned by claimants.

It should be noted that during the interviews, claimants were not always able to differentiate between the impact of having taken the case and the impact of the events at work which led up to the case being taken in the first place. It cannot be assumed that all of the negative effects described in this chapter are solely due to the process of taking an Employment Tribunal itself. Some of the claimants were clearly already upset or even traumatised by particular events and subsequent treatment in their workplaces. However, the process of taking a case had the potential to exacerbate the effects of the perceived acts of discrimination.

8.1 Impact during the case

Claimants reported a variety of negative effects during their case, which affected their emotional well-being and physical health. Some continued to work in their jobs, but usually found this unpleasant and difficult. Relationships with colleagues became increasingly strained, to the point where some claimants were signed off sick. Many claimants also found the process of going through the hearing itself very frightening and stressful, although a minority of claimants said that this aspect of the case had not worried them, as they felt prepared and ready to cope with the hearing.

The alleged discrimination was generally the first in a chain of events to affect the claimants, and was frequently exacerbated by the experience of the Tribunal itself. When looking at the emotional experiences of claimants during the case, it must be remembered that most claimants were also still reeling from the events at work which had caused them to lodge the case in the first place; that is, the alleged discriminatory treatment and the subsequent failure of this to be resolved within their workplace:

'I had to handle the impact of being racially abused. I hear these things on radio and I've never felt how bad it was until it happened to me. I couldn't sleep, I was so bitter. I had to go to the doctor; I had tablets given to me. Going to work was a horrible experience for me. On top of that I had to now read up for this Tribunal.' (Black African man, settled case)

Some claimants continued to work for their employers while the case was being prepared and they waited for the Employment Tribunal hearing. The descriptions of claimants' relationships at work during this time was mixed. Some said that their relationships with their immediate peers and colleagues at work were still very good, and they received a lot of support from them. Others said that although their colleagues had quietly expressed their support, they were unable or unwilling to do this publicly, for fear of becoming victimised themselves. There were other claimants, who said that they felt that the person or people at the root of their troubles had pulled rank and turned the entire workplace against them. Despite this mixed picture amongst workplace peers, it was clear that claimants had always experienced deteriorating relationships with those individuals against whom they had made their allegations, who were usually in a position of superiority to the claimants. In fact, claimants still in work usually reported that they felt even more victimised by these individuals, as a direct result of having started proceedings against them. They often experienced similar difficulties with the other managers, and several alluded to the notion of those in senior positions uniting against the claimant as soon as they learned of the case. At the very least, claimants found the process of trying to deal with their employer during this time difficult and bewildering, and even in some of the less severe cases it impacted negatively on their health:

'I did find it at times before the previous hearing, when we were having internal meetings or meetings between them and my Unison rep, they kept changing the subject or what they agreed in these meetings and then going back on it. It did make me quite stressful so I did get medical help, I did get medication for stress but I didn't go off sick.' (Asian man, settled case)

However, many of the claimants found being at work under these circumstances uncomfortable and distressing to the point where they went off sick with stress and related conditions as a result of the unpleasant atmosphere.

An Asian woman, who prepared her own case and represented herself at Tribunal, said that it had become a 'full-time job'. Once her employer, a large private sector organisation, had learned of the case, working relationships deteriorated quickly and it became so difficult for the claimant

that she went off sick and was unable to return. She described the impact of preparing the case and the impending hearing on her:

'I was anxious, depressed, not sleeping, lost a lot of weight, I felt withdrawn, didn't want to go anywhere, up until it ended.'

During the hearing which ran for more than a week, when the claimant was starting to cross examine the respondent she fainted as a result of stress and not eating. The case had to be adjourned until after the weekend to allow her to recover. (Successful case)

Many of the claimants were out of work during the run up to the hearing due to having been dismissed. Those who had been dismissed concentrated on preparing their cases, rather than seeking new work. In fact, many of our claimants said that the process of preparing their case took up all their time and energy, and that they were not ready to move on and find new work until the current situation had been resolved. They spoke of how they were unable to concentrate on anything else, and that they spent all of their time preparing their case, gathering evidence and corresponding with all necessary parties. Some claimants had kept detailed and meticulous records of their cases, including copies of all correspondence sent and received. One claimant had even written a thesis on the subject of relationships between employees and employers at his place of work, as a result of his case. Like others, he also said that fighting his case had become 'a full-time job', and that he had to become 'an expert in employment law'.

Despite generally constant recall of negative emotional impact, not all of the claimants reported such devastating effects on them during the case itself. One claimant in particular appears to have experienced few, if any, negative effects whilst preparing his case and taking it to a Tribunal (where he lost). Nor did he report any longer lasting effects. However, he was retired and financially secure, and was not dependent upon the result of the case in any way for his security, career or wellbeing. The organisation that he took to a Tribunal was employing him for just a few hours a week. The claimant was also a well-educated and articulate man, who had, prior to retirement, worked in a senior capacity in the field of equality and diversity. As such, he was better able than most of the other claimants to handle his case in such a way that it had the least possible adverse effect on him. In addition, his case was based on a single episode of alleged discriminatory treatment, in contrast to some other claimants, whose cases were as a result of prolonged periods of difficulty which sometimes lasted for many years.

The scenario above provides some insight into why some claimants were much more severely affected than others by the process of taking a case. It seems that the greatest negative impact experienced by claimants was felt amongst those who were already struggling after long periods of alleged discriminatory treatment, and who often had longstanding bad relationships with their managers. Many had found this very stressful and reported knock-on effects on both their physical and mental health. It seems logical that the more claimants had suffered prior to lodging their case, the less able they would be to deal with the subsequent stress of managing the preparation of the case itself. Another influence was whether claimants were faced either

with the task of representing themselves, or if they experienced problems with their representative. If so, the negative impact on them tended to be greater, as they had no professional assistance or support to share the burden of preparing the case. An exception to this was found amongst claimants who were particularly articulate and assertive, and had been able to glean substantial legal knowledge during the preparation of their case. There were a small number of examples of such claimants, including the claimant described above. They had prepared their cases diligently, had felt capable of taking on their employer at Tribunal, had not been intimidated, and once the case had been concluded, had been able to put the experience behind them.

8.2 Financial impact

There are several ways in which claimants could have been financially affected by their case, positively and negatively. These include past and future loss of earnings, and the effects of having to live on benefits whilst out of work. There was also a potential financial impact of funding representation, although many said that they had not been able to afford to do this. Claimants who had won or settled their cases might also have felt that they had benefited financially from the remedy or settlements they received.

For most of the claimants there were negative effects, not only around the time of their case but also of a longer-term duration (e.g. due to not working or after having been dismissed). Some had experienced periods of unemployment both during their case and following its completion, although they were later ready and/or able to find employment again. For most, the financial impact of long periods of time without income from a job had taken its toll, even on those who had won their cases. One claimant had won her case and received £3,000, but she was out of work for two years following her dismissal from her employer. She had two young children, and when living on benefits during that time she found that she was unable to meet her living costs:

'The costs were that I became financially in debt because I wasn't able to meet my regular domestic bills... I'm still trying to catch up on bills and things that got left. I'm trying to clear up the mess. The £3,000 was like a month's wages, it went back against the bills. It wasn't luxury money. Financially I'm still struggling.' (Black Caribbean woman, successful case)

Around half of the claimants had been left without employment as a result of what had happened to them at work, and/or through taking their employer to a Tribunal. Some had been dismissed, and had been unable to find another job. Others had been left in such poor health that they had been unable to work since their Employment Tribunal cases; in some cases, this situation had lasted for several years. Some were receiving incapacity benefit. Still others were working, but in jobs in which they earned less and had fewer prospects than they had previously. A number of claimants had decided that they were not willing to work for an employer again, preferring to become self employed to avoid any similar experiences in the future. However, only one of these claimants appeared to have made an entirely successful transition to self-employment, with the others seemingly struggling financially (also see the next section).

Turning to the cost of representation, many claimants said that they had always been aware that they could not afford to pay for a solicitor or barrister, and had sought assistance from free sources such as the CAB or their trade union. However, some of the claimants had paid out more money than they had expected, and more than they could afford, for solicitors and barristers. When they lost their cases this was particularly devastating, but there were also examples of claimants who paid for representation, won their cases and were still left out of pocket.

A claimant who was successful at Tribunal was left financially worse off as a result. He was awarded £3,000, but he had earned £1,600 since being dismissed from his job through selling cars, and this was deducted. He had to pay 40 per cent to his solicitors who prepared his case on a 'no win no fee' basis. He also paid £1,500 to a barrister as he did not trust the solicitors firm to represent him at the Tribunal hearing. He was left £1,000 out of pocket by the payment he received. He felt that he should have been awarded more money, and that going to the Tribunal had been a waste of time. He would not take another case, but advised anyone who did to get a specialist solicitor to prepare their case and represent them at Tribunal. He had not been able to find work since being dismissed from his job, and he felt that his age (he was 60) made it very hard to find work. (Asian man, successful case)

Hardly any of the claimants who had received payments, either as a result of winning their cases at Tribunal, or from settling with their employer said that they were financially better off as a result of having taken a case. Indeed, payments were usually low, and claimants felt that they had not been given enough either to compensate them for their distress or cover their costs. Some pointed out that in addition they felt they would be unlikely to find work in the future to provide them with a comparable wage to that which they had originally been earning. Claimants who had settled often seemed to be particularly dissatisfied with the amount that they had been awarded, as they felt that justice, which was their primary concern, had not been done. This meant that the potentially positive impact of any payment received, especially if it was not large, was not felt by them. Those who had received smaller payments felt in retrospect that these had been rather insulting, considering what they had been through both before and during the case.

Another claimant, a White Italian male, had paid a substantial amount of his own money to hire a solicitor to prepare his case, and a barrister to represent him in court. In fact, he had spent a total of £13,000 doing this, and when he lost the case, he was left in debt with no job. As he was in his 50s and had health problems, he saw little chance of finding work again. Taking the case had a severe financial impact on this claimant and his family. His wife was having to work long hours to redress the fact that he was now without work.

'It affected the wife. It got to the point where she was angry at the company. She was having to work more hours and we cope... It's a constant

worry now because we're living on debit. I can't rely on finding a job.'
(Unsuccessful case)

There were few, if any, examples of claimants who had received large amounts of money from their cases; however, the following example shows that even for a claimant who appeared to have received a substantial award, and hence, gained financially, the claimant herself did not view it in such simple terms.

A young Asian woman had received an undisclosed amount of money as a result of winning at a Tribunal, and this had meant that she was secure financially. However, for her, this had been offset by her pessimism regarding her future earning potential. She felt that she had lost her career, which she had trained for and had very much enjoyed, and she did not expect to be able to work in her chosen field again. Her original objective of going to an Employment Tribunal was to get a fair external hearing for her grievance, and to be able to continue working in her job. Although she received a payment, she was never able to return to work with her employer and so although she had gained financially, she felt she had lost overall.

8.3 Health and well-being

Most of the claimants reported some adverse effects on their health, both during and after the case. A number said that they had always been healthy before they experienced discriminatory treatment at work, and they believed their experience had caused their health conditions. For some, health conditions were in existence prior to their claim. Disputes began or worsened as a result of time taken off sick, or because claimants felt that they were not getting the support they needed at work. At the times of the interviews, some were still suffering from conditions which they believed had been started or had been made worse by the events in their former workplace and by taking the case itself. Some of the claimants became emotional during the interviews when they told their stories and re-lived their experiences. These included some who said they had got over the ill-health that they had experienced during their cases.

The ways in which taking the case had affected claimants' health included depression, anxiety, stress, and being unable to sleep. One claimant said that his seizures had started at this time, and another reported heart problems and a stroke. Claimants also mentioned loss of confidence and that their trust in other people had been shaken. There appeared to be a very close link between emotional well being and physical health, with problems in one area usually seeming to adversely affect the other. Some of the claimants reported that their current circumstances were also affecting their health; for example, they were unemployed and felt it would be difficult for them to find new employment. This was causing them additional worry and stress.

Since some claimants had pre-existing health conditions, it was difficult to isolate the impact of the case itself on their health. However, most were in agreement that taking the case had worsened any existing conditions. Many

had also experienced sleepless nights through anxiety before the case came to Tribunal, and this often persisted after the case had finished if they were unhappy with the outcome.

Those who had prepared their own cases and had represented themselves often seemed to have experienced some of the worst effects on their health. They had had to take on all of the responsibility for their case, and this, together with the actual work involved in preparing the case and representing themselves at the hearings, had left them stressed, tired, and prone to existing health conditions becoming worse. However, some claimants who had representation had also experienced difficulties, especially when they did not keep claimants informed of progress, or claimants felt their cases were not being handled properly.

A Black female claimant who had worked for a large retail organisation had not been in employment since her case due to poor health. Some of her health conditions pre-dated her case but became worse, and others appeared to have been caused by a combination of the events at her workplace and the process of the case itself. In addition, her confidence and trust in people had been greatly undermined, to the point where she was extremely nervous about meeting the interviewer to take part in this research. She explained:

'Physically and emotionally it took months to get over it [the case] and I was traumatised and weakened by it. You don't know what's going on, you're in it and all I knew is that I was having to deal with this solicitor and getting no support and becoming anxious and crying, shaking. It was driving me to the point of being suspicious about what's going on and thinking things aren't right. I should have a solicitor who is behind me who I can trust to put my case and it was a few days before. How is that going to affect me?'

The claimant had eventually settled her case against her will, but because her 'no win no fee' solicitor gave her little option. She also spoke of how difficult it would now be for her to find different work, as a result of the way the case had made her feel, and because of her health:

'I won't get another job like that. I couldn't go back to that sort of work but the thought of going into a working environment I'm quite phobic about... I'm limited in what I can do. That sort of job doesn't interest me, and because I've lost a lot of the function of this arm I can only work a certain amount of time and I'm having to live on Incapacity Benefit and I hate it. I can't get off it. I would rather get a job than be on Incapacity Benefit but I can't because I'm restricted in what I can do. The money I got didn't cover for me to be living like this. I'm being bullied and pushed around by Incapacity Benefit and I can't overcome it.'

Some felt that their long-term health problems such as high blood pressure and depression had been caused or worsened by their experiences. Another reported that he became so stressed when he was experiencing difficulties at work that he started to have seizures, although up until that point he had always been fit and healthy:

'I believe, hand on my heart, that where I stressed myself out about the whole situation, it got so bad I ended up having a seizure. When I'm out of that situation, because I had about four in that year, when it was all finished and done with, no more seizures.' (Black Caribbean man, unsuccessful case)

Another claimant said that she felt her experiences at work and the subsequent stress of taking a case had affected her permanently:

'I think it has affected me in that my tolerance for stress is less than it used to be. I am weaker.' (Black Caribbean woman, settled case)

One of the claimants, who had worked as an administrator for a public sector organisation, said that after the case had finished, she continued to work for her employer while looking for another job. Eventually she was unable to cope with being at work and was signed off sick at the beginning of 2005. She had not been able to work since, and had what she described as a 'complete mental collapse' shortly afterwards. She was unable to leave the house for two months and lost two stone in weight. She also said that she now hates White people and does not trust them. (Black Caribbean woman, unsuccessful case)

The claimants' health after their case greatly affected what they were able to do subsequently. An Asian woman who had worked as a PA, and had withdrawn her case had suffered from depression ever since. She said that her illness was making it very difficult to find work, but she also felt that as a woman in her 50s, her age was also against her.

'Even though I am suffering from depression and some days I am so bad, I just do not want to do anything. But I still force myself a couple of times a week to look for and apply for jobs.' (Asian woman, withdrawn case)

However, not all claimants experienced ongoing negative impacts on their health, and a small minority had not suffered greatly, either before or during the case. A few more said that there had been no lasting health impact once the case had finished. For these people, the health consequences of their cases were short-term and ended when the case was resolved:

'My girlfriend at the time did a psychology degree and she said I was depressed, I was sleeping a lot. Maybe I was depressed. She said there were signs I was stressed out. It stopped when I got the money.' (Black Caribbean man, settled case)

Claimants who continued to suffer from depression, anxiety and stress-related disorders long after their cases had ended were usually those who were least happy with the outcomes. They often felt that they had not even been able to tell their story and have it heard. They felt a lingering sense of injustice which continued to negatively affect their outlook and their health, and prevented them from putting their difficult experiences behind them.

8.4 Employment circumstances

This section looks at the impact of taking a race discrimination case on claimants' employment circumstances. It first considers those who were in work at the time of the interview for this research, and then looks at those who had found new work, before turning to those claimants who were still working for the employer against whom they took their case. It then considers the claimants who were not working at the time of the interview, most of whom had not worked since their case.

8.4.1 In work

Around half of the claimants were in employment at the time of the interview, with the majority working for a different employer than the one they took to Tribunal. Those who had been most successful in employment following their case were often fairly young, and had been reasonably satisfied with the way that their case had been concluded, either through winning their case, or having settled for conditions or a sum of money which, at the time at least, they had been pleased with.

Negative experiences with former employers, had led some to seek self-employment. Several of the claimants mentioned that they would not want to work for another employer as a result of their bad experiences, as they feared that they would be discriminated against again:

'I'm going to be self-employed 'till I die. I'll never be sacked again.' (Black Caribbean man, settled case)

'I'm trying to work from home; I'm trying to start a business. Because I live and work in the area a lot of people know me and the sort of work I'm doing there's no chance of me getting work from them. I've spent the money I had trying to set up the business and live for the last 18 months so I've got to make it work. They [her former employer] are one of the main employers in the area for that work. If I was ever to put an application in with my name on it, it would go in the bin.' (Black Caribbean woman, settled case)

Some believed that, having taken an Employment Tribunal case, future employers would see them as troublemakers.

An Asian female claimant who had been told by her employer that by taking a case against them she was committing 'professional suicide' felt that, given her present circumstances, this had in fact been the case. All through her case, she had hoped that she would be able to return to working for her employer. During the case itself, it became clear that this would not be possible. She now did not see how she would be able to work for someone else again as a result of her case and the publicity it received:

'I don't think I can get a job again... I don't feel I can have a career after this, I've been labelled.'

This claimant was now working for herself, but described it as 'floating'; it was not what she really wanted to do. She had really enjoyed her previous

job and during the case she had held on to the hope that she would be able to return to work there. In addition, she did not feel that she would be able to take another case again without being labelled a troublemaker. (Successful case)

At the time of the interviews, few of these claimants appeared to have made a successful transition to self-employment. The claimant, who had successfully started her own business, was an isolated example:

One claimant, a Black Caribbean woman had worked as a nurse in hospitals and residential care homes for more than 30 years, and said that she had experienced racist treatment all of her life. Friends had encouraged her to open her own residential home when she was going through the difficulties with her former employer which culminated in her dismissal. Following her Employment Tribunal, at which she was unsuccessful, she decided to make the move to self-employment, by opening her own residential care home, although it took her nearly two years to achieve this. She said:

'I didn't go back to work. I just decided that with all my experiences working in residential homes I don't need another one. I decided to open my own.'

Interviewer: 'How's it been since you opened here?'

Claimant: *'I haven't had any problems. Nothing whatsoever.'*

Interviewer: 'So you've been pretty happy?'

Claimant: *'Yes, I've moved on.'*

For others, self-employment was seen as a poor substitute for their previous work.

An Asian man said that he was now unwilling to work for anyone else and ran a small business from his home. He had originally taken a case against his first employer in the UK, a large media organisation where he had worked in a professional capacity for a number of years. Following his dismissal, he took a race discrimination case, which was settled. He then took a job as a guard with a security firm, but again experienced discrimination and resigned. He took another race discrimination case, and was unsuccessful at Tribunal. Regarding his new employment circumstances, he commented:

'Financially, I haven't got the kind of work I should have. I should be a senior _____ at [the original employer]. So my dignity is lost.' (Asian man, unsuccessful case)

Other claimants agreed that taking an Employment Tribunal case against their former employer had damaged their future employment prospects. Although they were able to obtain work, it was not of the calibre that they had been used to. Several claimants who were working had taken what they

considered to be lower level jobs than those they were in when they took their cases to Tribunal. For example, one woman had been training for a particular profession in the public sector when she had experienced discrimination which had ended her training. Despite having been successful at Tribunal, she was unable to complete her training, and at the time of the interview, she was working as a teaching assistant while also studying for some GCSEs. Another claimant, whose case had been unsuccessful, said that he had found new work but it was effectively a demotion from what he had been doing before. He attributed this to a country and a system which was, in his experience, inherently racist:

'I've gone let's say from a number four on the scale back down to a number one on the scale and the money reflects that... Drop in pay, drop in career, everything. The only hope I've got is to pay my mortgage as quick as I can and go and live in a third world country where people look like me. That's the only hope I've got.' (Black Caribbean man, unsuccessful case)

Some claimants had eventually been able to move back into employment which was similar to what they had been doing previously. However, it had taken them some time to recover from the events at work, and from the stress they had felt whilst taking their case. They had needed some time out of the labour market altogether, and had been apprehensive about finding a new job and going back to work. For example, after having taken a break of almost a year, one claimant found new work as a PA in a different public sector organisation, and had settled in well there. Another was able to find new work in her chosen profession within the NHS when she was ready to return to work several months after her case was heard at a Tribunal.

A claimant who had been employed by a government agency did not work for more than three years after her case. She had no confidence and was very depressed when she left her job. She now works part-time as an administrator and journalist. She found it very hard going back to work but she has now been there for three years and has settled in well. Even though many years have passed since she left the Benefits Agency, she still gets very upset when thinking or talking about it, and she feels a strong sense of injustice.

'I'd been off work for so many years this was my first part-time job since I've left but initially I didn't want to work again it was that bad. I was just getting benefits and living day to day. Somewhere inside I wanted to do something, even if it was part-time but it was frightening the first day back at work after four years. My confidence wasn't 100 per cent, I was feeling fearful to work among other people. In the back of my mind, [I thought] is all this going to happen again? Everything registered and I was quite tearful on my first day, not wanting to go.' (Black claimant, settled case)

A number of claimants had been able to find work with different employers, and were happy in their new jobs. They did not consider their new work to be a demotion, and felt valued by their employers. Two claimants had been able to do this very quickly. An Asian man who had formerly been working for an IT company now worked as a software sales manager, after having been successful at Tribunal. Another claimant, a Black African man who had

worked as a supervisor for a private sector organisation had, following his case, obtained IT work, which was his preferred profession. He obtained this job within a few weeks of his case being settled after a hearing. It is interesting to note that there were similarities between these two cases where claimants were able to bounce back quickly and found suitable work after their cases had concluded. In both cases, the incidents on which each of their claims had been based had been one-offs rather than a long series of ongoing mistreatment. This meant that they were more confident and mentally more able to deal with case preparation than many of the claimants had been. In addition, one of these claimants had won his case, and another had settled after the hearing and was happy about the conditions of the settlement. In other words, neither had been experiencing long-term distress, and both got satisfactory resolution to their cases. As a result, it seemed that both were eventually ready to move on and seek new work once their cases were over.

Other claimants obtained work they were satisfied with, but it took them longer to feel able to do this. They had needed a period of time, typically of between three and 12 months away from the labour market following the completion of the case, before they had felt ready to actively tackle the task of finding work. For example, a Black Caribbean woman, whose case had been unsuccessful had formerly been working as a PA, and was able to gain new work of the same nature after her Employment Tribunal, after taking some time out:

'I wasn't ready. I felt I needed a break, just to unwind from all the stresses of the couple of years that I'd gone through and I needed to rejuvenate and get my strength back. I didn't feel confident, it took me a while. When I was ready, I went out, did my research. In between I did some research on getting back out there and going to interviews and I had to prepare myself.' (Black Caribbean woman, unsuccessful case)

8.4.2 Claimants still working for the same employer

There were several claimants who had continued to work for the same employer after their cases had finished. However, they all felt that having taken an Employment Tribunal case against their employer had a negative impact on their future there. One claimant who had taken his employer to a Tribunal and won was, at the time of the interview for this research, still working for the same large public sector organisation. However, of his future there he said:

'I will never progress, I know that much. It would never end. I have been demoted.' (Asian man, successful case)

Similarly, a woman who still worked for her employer following a case said:

'You put it to the back of your mind but you do feel undermined. I've just lost confidence in myself. I used to apply for senior positions, I can't do that now. That's just confirmed to me if you are Black how can you be a manager? If somebody says I don't want a Black manager, they're just going to dismiss it.... That's why you don't get into senior positions. It made me feel, lose self-confidence in myself. I'm training now. I'm doing

as many courses as I can, but I haven't applied for any senior posts, I think it's a waste of time.' (Black woman unsuccessful case)

Claimants also felt that many of their working relationships had never really recovered from their having taken their employers to an Employment Tribunal; it seemed that there was now a lack of trust on both sides.

An Asian claimant who worked for a telecommunications company continued to work for the same employer after his case had been settled. He reported that although his relationships with his colleagues were good, he felt that management were putting pressure on him to leave:

'I'm still having problems with them, even more problems. I have a manager who's less qualified than me, less experienced, [he] under-performed compared to my performance. I have to work under him; he's trying to manage me out of the business.'

When asked whether the case had had a long-term impact on him he said:

'Yes. I will never get promoted. Even if I am the best guy for the job, looking back at management I will never get promoted... there haven't been any benefits at all. It's a disadvantage.'

Another claimant who was successful at Tribunal and still worked for the same employer, a large NHS Trust, said that the worst thing about having taken the case was that she now felt very differently about the work that she did there:

'It turned a job that I loved doing into a job that I just go through the motions of doing now.' (Black Caribbean woman, successful case)

8.4.3 Out of work

Around half of claimants had not worked since their Employment Tribunal case. With the exception of one claimant who was retired, this was not by choice, but due either to being unable to find work or as a result of poor health (see Section 8.3). They tended to attribute both an inability to secure employment, and their health issues, at least in part, to having taken their cases.

Several claimants pointed out the difficulties of finding more work in terms of potential problems in getting a reference from their former employer. Claimants also felt that the experience of having been discriminated against, and then having gone through the process of taking a case had damaged their confidence. They felt that this contributed to their being out of work, which in turn had had a lasting adverse financial impact:

'Economically I've not earned. I haven't applied for jobs. I don't know what their reaction would be if they're asked for a reference.' (Black Caribbean woman, settled case)

'I've applied for similar jobs and never got an interview. Whether it's [former employer] and a reference... I do put [former employer] in for a

reference and if they give me a bad reference I don't know.' (Asian man, settled case)

In addition, they spoke of how future employers would not want to employ someone who had been involved in an industrial dispute:

'People in organisations talk. I was quite well known. I've got an application for a contract for some work and I said to my friend yesterday I'm not going to do it because the person I have to send it to is one of the managers that was involved in the organisation [against which he took the case] and she is now head of service. In that way things might impact on me.' (Black Caribbean woman, settled case)

One claimant, an Asian male, had been in prison since his Tribunal case and due to these two things, he was not optimistic about his chances of finding work. He felt that the fact that he had taken a claim against his employer was the reason why his employment contract was terminated while he was in prison, and so he felt that taking a case had resulted in his becoming unemployed.

'When I was in prison they sent a P60 to my house and they said contract was finished. I was there 26 years and got nothing. I said to citizens' advice and they sent them a letter saying this person was there 26 years and we know you're moving, but they're still there, any chance for any help, because he's just come out of prison and they said no. Then they said all you can do is take them to court privately, you have to get a solicitor, to pay to take them to court. I have no money, I came out of prison with no money and I really needed help. I kept going to citizens' advice and even when I was in prison, he said to me see them and they said they would send some form and I never got it. Supposed to fill it and do something, but I never got it. I never got a form in the prison. When I came out and I went to see them, they said we don't believe this is right. You were there a long time, 26 years. People are off sick two years, you were off six months only because you were in prison and I lost all that money, I get nothing. I lost the job and I got nothing.' (Withdrawn case)

Claimants who were out of work were often still suffering from a myriad of negative effects. One claimant who had settled his case had then had great difficulty in getting the money from his employer. At the time of the interview, which was three years after the case was lodged, he was on long-term sick leave, and when asked about the impact of the case said:

'Well, it's had lots of impact. Financial yes, also medically, mentally, physically, socially, so yeah, impact all round.' (Black Caribbean male, settled case)

In terms of the benefits to him, he said:

'Well there's no benefits so far. I'm hoping for some sort of benefit; some sort of apology and compensation.'

Another man who had taken a case against his employer because he was dismissed from his job, and had not worked since, said of the impact taking the case had had on him:

'The whole thing has affected me because although I may have followed some kind of process, justice has not been delivered, not delivered at all. I feel the pain, I feel the hurt because an employer was allowed to use a legal system, dismiss me, took my livelihood away from me, my pension, everything. My pride, pride in my job, people I worked with, good people.' (Asian man, settled case)

8.4.4 Social and family impact

Claimants gave mixed reports of how having taken a case had affected their relationships with other people and around their family and friends. Many of the claimants had less to say about this than they did on many of the other topics covered in the interviews for this research.

A small number of claimants had seemingly been able to 'switch off' when they were around friends and family, or took great care not to let the case interfere with their personal relationships. A small number of others specifically mentioned the impact that having taken a case had had on their personal lives and their families. Two of the claimants said that they were now divorced, and they attributed this to some extent to their Employment Tribunal cases, and the stress this had placed on their marriage. Another claimant spoke of how he ended up taking out his frustrations on his family:

'Because of all the grief that was going on I'd say things to my wife that probably I wouldn't say, hadn't said before and saying things and shouting and screaming at your mum... And I've got a feeling in me, when you feel you're not right.' (Black Caribbean man, unsuccessful case)

Another claimant who was unsuccessful at Tribunal reported that a lot of his personal relationships had suffered during the time he was taking the case. He said that his friends got fed up with hearing about the case and listening to his problems, and he felt he was becoming a burden to them. He said he internalised everything, and could not socialise because he was caught up in his own world. Although things have improved since the case finished he said that he still did not have as many friends as he did before.

Other claimants talked more generally of how what they went through had left them feeling suspicious and mistrustful of other people, both regarding employment and outside work. One claimant spoke of how the process of preparing for a race discrimination case made everything more difficult to cope with, and how it clouded his perceptions of everyone around him:

'I was always talking about it and I started seeing people in the light of their colour rather than seeing them as friends and enemies. Things that don't normally come to mind. When you go through a bad experience, you start seeing things in a different way and I didn't like that. It started making me prejudiced and thinking maybe he's White or Black. I was considering people's actions based on their colour.' (Black African man, settled case)

This claimant was able to put his experiences behind him, and he gradually regained his perspective and confidence. However, this was not always so. Another claimant spoke of how her experiences had affected her for some considerable time after her case had ended:

'For a long time I didn't trust anybody. I wouldn't confide in anybody if something was wrong. I put it back to this work place. It's amazing when something like this happens what comes into play and how it affects you. Two to three years after, it's really bad.' (Black woman, settled case)

8.5 Impact on attitudes about Employment Tribunals

This section covers claimants' retrospective views about having taken an Employment Tribunal case. It also looks at claimants' views on whether they would take another case and any advice they had for people who were considering taking race discrimination cases against their employers.

8.5.1 General attitudes

Looking first at claimants' general attitudes about Employment Tribunals, many claimants felt that the process was not 'user friendly' enough, and that it required legal knowledge. They said that they had found the process of taking a case to be difficult and stressful because they did not know how it worked and how they should do things. For example, they were not initially aware of things like time limits, which placed additional stress on them:

'I think the laws are too strict. When they tell you, you have to put an application in and you have to provide all the evidence within that time scale. Because number one, you don't know the process, you've never been in that situation. You're emotionally tired with the fear, hurt and pain and it doesn't take into account any extenuating circumstances. They want everything A, B, C, D. If you got over that time limit, you [can't take a case]. That is wrong. That time limit should be removed completely.' (Asian man, settled case)

The lack of guidance for claimants during the process of taking a case was also highlighted by many. Claimants commented on how disadvantageous a lack of legal knowledge, together with a lack of access to good quality representation was.

'If the Tribunal system wants to help the individual they have to find a way of giving practical support that doesn't cost the earth. If they set up a system like legal aid but for people in work. Just because you're working, it doesn't mean you have lots of money to pay for things like solicitors. There are people going through things like this who aren't members of a union and it's difficult to get advice even at an advice centre. I had to wait two to three weeks to get an appointment.' (Black Caribbean woman, settled case)

The claimant in the case study below felt that the emphasis of Tribunals needed to change, to make it less formal, less legal and more accessible to individuals. He also felt that it was wrong to place the onus on the individual to prove that they had been wronged, especially when it was often very difficult to provide evidential proof. He felt that a less adversarial process

which looked more carefully at the events that had transpired would better serve claimants without legal knowledge or the means to secure representation.

A Black Caribbean male claimant argued that the process needed to be less formal, less reliant on complex legal terms and on adversarial principles. He felt that an inquisitorial rather than adversarial process would better serve claimants taking Employment Tribunal cases against employers. He said:

'Until they change the format how many of us will know about case law? How do we get access to these cases? How do we know the guiding principles? On the Employment Tribunal, they should have guiding principles which Judges have laid down in cases. Explain it in layman's terms; don't put us up to be slaughtered. We're made to look a fool. The initial act of discrimination may not have been enough to cause mental damage, it's the battle after that compounds and destroys the individual. Lawyers are doing their job, they're paid to argue.' (Settled case)

Turning to the claimants' perceptions of the Tribunal panel members, those whose cases had been found to be successful usually felt that the Chair and the panel had understood their case and dealt with it fairly. However, even claimants who had been successful at Tribunal were often disappointed that the individuals at whose hands they had suffered had not been directly punished, or that employers were not made to change the way they dealt with similar issues in the future.

Those who had been unsuccessful at Tribunal, or who had had some experience of Tribunal hearings before settling or withdrawing their cases usually felt that their case had not been heard fairly. They had felt a double injustice, firstly regarding what they alleged had happened to them at work, and secondly for being let down by the system to which they had turned for help. Their experiences had shaken their faith in the Employment Tribunal process and in the judicial system more widely. Some went as far as to see what had happened to them as being symptomatic of corruption and conspiracy between the parties involved. For a few, their experiences had called White people in general, and the whole of the establishment, into question.

'It is very sad, unfortunate, it has taken me 18 or 19 years but there are some people who did not want you to integrate, be part of the community. Who do you go to? These experiences have shown me that... I am not left with much faith in the judicial system, and my friends tell me that this is not just my experience... I know [claimant's country of birth] is corrupt but I did not expect it here... I came to this country to integrate, not to sit in a ghetto, and I still have faith in this country. But after these experiences, I have come to see that there are corners where there are problems and they will not accept a fair-minded person... Losing faith is very destroying. I question why I live in this country.' (Asian, man, unsuccessful case)

'Courts are supposed to be public friendly or customer friendly, but they are not. There's too much law and not enough justice, the victims always suffer and the criminals get away. And that's what's happening. The employer is earning £50,000 a year salary and enjoying a better life than I

am. The abuser is working full-time and I'm out of a job. Where is the fairness in that? I ask you. Seriously, but the Tribunal service must open these cases, review them every so often to see if the claimant got justice.' (Asian man, settled case)

Other claimants commented on the composition and training of the Employment Tribunal panel with respect to the way cases were dealt with. Two in particular had felt that the panel did not understand the finer points of employment law. Both of these claimants were highly educated, and had represented themselves after having prepared for their cases very carefully. One of these claimants, who had settled his case after having gone through a Tribunal hearing, also expressed his concerns about the racial biases which might be present amongst particular panels:

'I would suggest that the people on the panel for the Employment Tribunal should be trained up a lot. Sometimes they can be very prejudiced. I might be wrong here, but I'm going to make a general statement. I don't want to sit in front of a White panel I just know that...' (Black African man, settled case)

Another claimant expressed a similar view:

'I believe the only way the industrial Tribunal will ever work is to have two Black people on the panel at all times, no matter what the case is, that's the only way you'll get justice. At the moment, you're going to get nothing. You have a panel of three people and if anybody's face fits, it's going to go that way. And Black people as a whole will feel frustrated.' (Asian man, settled case)

8.5.2 *Would they take another case?*

There were three main responses given by these claimants when it came to the question of whether they would ever take another race discrimination case. Some claimants said that they definitely would not, some felt that they would because it was important to make a stand, and a third group thought that it was important to weigh up the effects of doing so against what could be gained and lost.

A number of the claimants felt that taking a case had been a 'waste of time', and said that they would not take the same action in the future. Such claimants had usually been unsuccessful at Tribunal, as in the case of this claimant:

The claimant, a Black Caribbean woman was working as a PA when she experienced a series of events which she perceived to be discrimination based on her race. She prepared her case with the help of her husband and a family friend, who also represented her at the Tribunal. The case was unsuccessful, and as a result, the claimant said:

'I felt I wasted my time and energy and it wasn't worth doing it. Next time I would just leave... I would just walk out of the job and not even bother. It's not worth all the aggravation to go through what you have to go through and at the end of the day you go to the Tribunal and they're not even

interested in what you have to say and they just take the side of the employer.'

The claimant was subsequently dismissed. After taking nearly a year out of the labour market, she obtained work as a PA for a different organisation, where she was very happy. She said that she had found the process of taking the case terribly stressful, and she was angry that she had not had a positive outcome. In terms of what she had hoped to gain from taking the case, she said she had hoped to be listened to at the Employment Tribunal, and that the Tribunal would reprimand her employer and make the individual concerned understand that they had been wrong. Nonetheless, she was pleased that she had caused her previous employer trouble, in return for the way she had felt treated by them:

'I knew it [the Tribunal] cost them, and the fact that it cost them made me feel good. That's satisfaction enough. Even if I got nothing from it I knew it cost them.'

However, a small number of claimants who had been successful also held the view that taking their employer to an Employment Tribunal had been a waste of time. They had tended to receive payments which were at the lower end of those reported in this research, for example, £1,000 to £3,000.

The sense of injustice lingered with many of the claimants, and this coloured their views of Employment Tribunals, and their willingness to use them again, particularly the lack of support available to claimants to help them deal with the impact of having taken a case. One claimant, a Black woman whose case was eventually settled before a Tribunal, commented:

'The injustice of it hurts me most. I felt if I go to another work place, I would never take one of these out again. I'd just leave it alone. There's no real support network. No one to say we're behind you, we'll back you 100 per cent so people come up against these cases and just leave them. The statistics that the government have of how successful or unsuccessful these cases are, I don't think they've got the right statistics, there's a lot more people like myself.'

Of whether she would take another case, she said:

'I don't think I would. It would be difficult if it happened again to take a case. I'd have to think seriously about it, get proper advice and information and support if I needed to. I suppose it's wrong to say that because the powers that be will never know what's going wrong but when things happen in the first instance, it puts you off, it makes you feel you can't go through all that again. If things are in place there's a possibility if it did happen again, yes, but I would want a positive outcome from all the sections, Acas, Tribunal, Equal Opportunities Commission, more support network. And if it's a race issue claim the police should be involved. I told them, they noted it, they were aware. It's a criminal offence.'

In contrast, there were other claimants who said that if difficulties arose in their workplace again and they felt strongly about what was happening then they would go through the Employment Tribunal process again. They felt that taking a case against their employer had been the right thing to do at the

time and would be again, given similar circumstances. They said that it was the principle of highlighting and fighting against racism which was important.

'I did the right thing. There was no option for me but to take the steps that I've taken. So I did the right thing. And like what you have asked me, would I do such a thing again, I said yes I would do it.' (Black African man, successful case)

Another claimant commented:

'Some of us have to stand up and be counted. If you're not part of the solution then you're part of the problem.' (Black Caribbean woman, successful case)

She felt that despite winning her case she had suffered both financially and emotionally but that it was important to make a stand to try and change things in the future:

'If you feel strongly and you want justice and you've been through all the different various stages of trying to sort the problem out then you will never ever have peace until you get what you're working for. If it's something that will happen to other people like racism, then you have to make a stand and the cost to you comes second to what you hope to achieve for the people following you. The fact that I don't feel that I've been able to achieve much is not from the lack of fighting or still fighting for it. When you're dealing with an organisation that you know is institutionally racist, like [the employer], sometimes it's not something you can do on your own. You've got to keep slogging away at it. Institutional racism is a very hard bug to get rid of. If the good intentions of people are not there and if the people at the top, it isn't a priority to them, until the government makes it a priority they're not going to do it.'

A smaller number of claimants were more circumspect about whether they would take another case, and would advise others to think carefully about the impact doing so would have on them. One claimant who expressed this view said that whilst she was glad she had taken the case it had also been very hard, and it was taking her a long time to recover:

'I think it's a question of personality, I'm still glad I went through it. It would have been worse for me if I hadn't said my bit, so from that point of view it did make me feel better. But I think being unsuccessful was humiliating. I think if I was advising anybody else I would say think very carefully, particularly if you haven't got union support... It's only in the last few months that I've started feeling like myself again professionally. I've been scared to rock the boat in any way. In the first stages of the current job, I kept my head down. In the last few months I've started feeling better. The answer's probably yes [to whether she would take a case again], but not yet... You have to be strong and have good support at home. It was traumatic. When you go somewhere for justice and find it doesn't exist there either it's a real blow. It leaves you feeling very vulnerable.' (Asian woman, unsuccessful case)

Another felt that the pros and cons of taking a case, rather than walking away from a situation, needed to be considered carefully.

'You have to weigh up the emotions that you have to go through. The possibility of loss. When you go out of here knowing that you're right and you haven't done anything wrong it does come as quite a shock when you get a result saying you're not believed. It does make you angry. From my point of view if someone had to go through that sort of thing I'd just say leave the job, move on... At the end of the day, unless you have legal representation you don't stand a chance. The Tribunal's not on your side.' (Black Caribbean woman, unsuccessful case)

8.5.3 Advice for other claimants

Advice for potential future claimants often centred on the issue of representation. Most of the claimants felt that good representation was essential in ensuring a fair hearing at a Tribunal, and advised others to get representation if they were going to take a case. Claimants who had been unsuccessful at Tribunal felt that they had had good cases, but that it was their lack of representation, or unsatisfactory representation, which had let them down. They had not been able to present their case in the way which had been required by the Tribunal, and had not been able to compete with the legal training of the respondents' representatives. One of the claimants who had been successful also pointed this out. She had some of her claims thrown out at the pre-hearing stage, and felt that this would not have happened had she been represented by a legal professional.

'I needed a lawyer. I think that was all that was wrong with my case. I needed someone that understands the law from a race related point of view and the work ethics so they could put my case in proper order. I had all the paperwork. I had enough evidence. I didn't have the skills to sort it the way it needed to be sorted and to find the laws that back up and support it. That's where the weakness was. What the lawyers say, that sets precedents...' (Black Caribbean woman, successful case)

Another claimant agreed that representation, and keeping records was important:

'I would first of all ask them to go and seek legal advice about it all and make sure they keep a record of events which was one mistake I did. I would actually say to the person make sure you keep a record of events of everything that has happened, who said what, what was said, what time, what action was taken. When you get all these things then you can seek advice and then take all these things from there. Make sure when you go you are represented. Because if you are represented it's a different ball game altogether... You are not legally trained to handle these situations. I felt I could cope but I wasn't. I needed a little back up from somebody where I would not see certain problem; he might see it and pick it up from there. Some answers I might give he might say that's not the correct answer. You need somebody who's legally trained to do that. Rather than just go and face the music.' (Black Caribbean woman, unsuccessful case)

The importance of keeping a careful written record of events was highlighted by several claimants. One claimant, whose successful case had hinged on her having provided detailed written evidence in the form of reports and testimonials to her capability in the job said that she would advise others to keep careful records of what happened to them. She referred to this in the

context of the difficulty of proving that racial discrimination had taken place, when it was subtle rather than overt.

'Make sure you've got records. Because it's very hard to prove. Very very hard to prove, as I said, it's done in such a subtle manner; nobody ever blatantly comes out and says anything derogatory. They will not say it to your face because they know they've had it, but if you've got records like I had and they were saying one thing at the Tribunal, yet they've written something different here, just keep records.' (Black African woman, successful case)

Other claimants felt that anyone who was thinking of taking a case should consider an Employment Tribunal as a last resort. They should feel determined and confident in their abilities to deal with the process, because it could have deep and potentially lasting effects on them:

'Think about it carefully because it does affect you in every possible way. It will affect you at home, how you see yourself.' (Black woman, settled case)

'Anybody who takes the case I'd say be very guarded. You will get far more stress and pain in taking a case than backing out. Most employers will fight you tooth and nail and do anything to make sure they've got better evidence. They will go and try to get that evidence.' (Asian man, settled case)

8.6 Positive outcomes

Hardly any of the claimants reported positive effects from having taken an Employment Tribunal case, although implicit in the stories of some whose cases were successful was a satisfaction that they had got justice. Unsurprisingly though, they viewed this as a right rather than a positive effect, especially in the light of the difficulties they had been through as a result of traumatic events at work, the case preparation and the hearing itself. Hence, any positive effects felt were usually small in comparison to the negative ones. In addition, cases were rarely financially motivated and so monetary awards, which were often rather modest, were not usually seen as a positive outcome, when compared to the damage done to people's lives and careers.

Only one of the claimants did not report any negative effects of having taken a case. He said that he was glad he had taken the case despite being unsuccessful at Tribunal. He felt that it had given him the opportunity at Tribunal to make his feelings known, even though he had lost his case.

'I ventilated my feelings of injustice.' (Asian man, unsuccessful case)

A small number of claimants who had been successful at Tribunal said that they felt the experience had made them more confident in their own abilities. One said that as a result of having been through such a difficult series of events, she thought she would be able to face anything in the future. Another claimant, a Black African woman, said that she felt going through the Tribunal process had helped her to be more assertive, and that it would help her to stand up for herself in the future:

'What it's done has taught me to be, I will not be bullied, I refuse to be put down; and the other thing is I get very defensive, that's what it's taught me and if somebody, I wouldn't be talked down at, because as soon as someone tries that, I put a stop to it there and then. I think I've become more assertive in the sense that I know that, yes, this will not be allowed to happen and I think once you let someone know you won't put up with it they leave you alone. Look for another victim.' (Successful case)

Thinking more generally about reducing the negative impact and maximising the potential positive impact of taking a race discrimination case to an Employment Tribunal, one claimant explained how he had been able to move on from the events which caused him to take the case. He also explained why he felt he had been able to put the experience behind him, when he knew that others were unable to do this:

'After I got justice I just forgot about it and started my work. People who don't get justice now have a different attitude to life. Things they didn't do before, they start doing them, because they never got justice. The issue was not resolved in their mind. But because I got justice the issue died.' (Black African man, settled case)

He had settled his case after the main hearing had finished but before the Tribunal gave their decision. He settled because the employer agreed to his conditions, which included reprimanding the individual responsible for discriminatory behaviour, and ensuring that similar situations did not happen in the future. He did not ask for any payment as part of his settlement. Although he left his job shortly after the case had finished, he was able to move into better work in the field in which he was highly qualified. He also felt that having had a forum in which to express his dissatisfaction directly to his employer had been helpful in helping him resolve the workplace issues which he had found so traumatic:

'It gave me a hearing to face my employers face to face and because I had done my own homework very well I could deal with the situation at the Employment Tribunal. When my employers realised they didn't have a case they had to back off and back down.'

As a result of his experience, he said he would advise others to take the same course of action that he had done, but taking a case:

'If I know anyone who's having difficulty at work I'd say don't suffer in silence, go to the Employment Tribunal. Take the risk.'

8.7 Summary

Claimants found it difficult to differentiate between the impact of having taken the case, and the impact of the events which preceded it. However, it seems that the process of taking an Employment Tribunal case usually exacerbated the effects of the perceived discrimination.

The process of taking the case impacted negatively on the vast majority of claimants, often affecting their physical health and emotional well-being. Most

said they found the process very stressful, and others reported depression, nervous disorders, and insomnia.

Those who had struggled with long disputes at work appeared to be most likely to have felt severe negative impact on their health and well-being during the case itself. It is possible that these claimants were, by the time of their cases, the least able to deal with them, as a result of what they had already experienced at work.

Some claimants were unable to continue working due to ill-health and stress. Those who had been dismissed usually reported that preparing the case took up so much of their time and was so stressful, it prevented them from seeking work. Those still working for their employer were usually subject to ever worsening relationships in the workplace.

Most claimants reported negative financial effects on them, both during and after the case had finished, and over the longer-term. Few who had won or settled their cases said that the financial awards they had received had been enough to cover their financial losses.

In the longer-term, some claimants said that their Employment Tribunal case and the events that had led up to it had shaken their confidence and their trust in others.

Those who had prepared their cases and had represented themselves at Tribunal often seemed to have experienced some of the worst effects on their health. Health conditions, particularly those associated with stress, appeared to be most persistent where claimants had been unhappy with the outcome of their cases.

Some claimants had experienced periods of unemployment during and after their case, and around half of the claimants were still not working at the time of the interviews, many due to poor health. Some of those who were working said that their career prospects had been severely damaged by their case. A number of claimants had found work they were satisfied with.

Many claimants felt that the process of taking a case to an Employment Tribunal was not 'user friendly' enough, and that it required legal knowledge which they did not have. They felt that Tribunals needed to be less formal and more accessible to individuals without legal knowledge and training.

Claimants' views on the Tribunal Chair and panel were mixed. Those who had been successful were more likely to have felt that their case had been heard and decided fairly. Those who had been unsuccessful felt very differently. They did not feel that their case had been given a fair hearing, and some even made allegations of corruption and conspiracy between parties.

Some claimants said that they would definitely not take another case, fearing that, on the basis of their previous experiences, it would be a waste of time. Others said that they would, as it was important to make a stand against injustice. Still others felt it would be important to weigh up what might be gained against the stress of the process, and what could be lost.

Advice for other claimants included securing good quality representation, and keeping a careful record of events for evidence. Some advised others that an Employment Tribunal should only be used as a last resort.

Very few of the claimants reported any positive outcomes from having taken an Employment Tribunal case, although the claimants who had won their cases were clearly pleased that they had made a stand against their employers and been successful. A small number mentioned that having been through the process they felt more confident about their abilities to deal with difficulties in the future. One claimant said he was glad that he had been able to express his feelings of injustice, another felt the experience had taught her to stand up for herself.

9

Summary and conclusions

This chapter draws together the key messages from the substantive chapters (3 to 8) and presents the main findings which emerged from the qualitative interviews with claimants. It also summarises the themes which were discussed in the previous analytical overview chapter.

9.1 The origins of the Case

Most of the claimants had experienced long periods of difficulty with their employers, which eventually led to them taking an Employment Tribunal. Very few claimants reported a single event leading them to take a case. Dismissal was a common trigger for claimants to seek redress through taking a Tribunal case and this event was usually the culmination of a series of disputes between the claimant and employer. In many cases where claimants were dismissed, they felt that this was at least in part as a result of their having in the past challenged issues of discrimination with their employer. They felt they were now seen as troublemakers and the employer wanted to be rid of them. The vast majority of cases were lodged following a complete breakdown in communication between claimants and their managers and senior colleagues.

It was striking how many claimants' stories had started with incidents involving overt racism, for example, name calling, or racist notes being circulated in the workplace. There were also cases where claimants who worked for organisations providing services to the public experienced racist abuse from clients. In most instances, claimants quickly brought racist incidents to the attention of their managers, with the expectation that some action would be taken against the perpetrators. However, it seems that employers were reluctant to do this, and rather than tackle the situation head on, they either dismissed the situation as unimportant, or took steps to diffuse it by offering the claimant options such as a transfer. In such instances, claimants felt that they, rather than the perpetrators were being punished. Employers' apparent failure to deal with overt racism also appeared to exacerbate or cause future mistreatment of the claimant from the perpetrator. It also seems that claimants began to experience difficulties

with their employers more generally after they had complained about racist treatment. These were often not in the form of overt racism, being, for example, disputes over claimants' performance at work, their timekeeping, sickness record or their wages. However, as a result of their prior experiences, claimants tended to interpret these subsequent events as racially motivated. There were very few examples of the corollary of this; where claimants re-cast previous incidents as racist in the light of more recent overt racism.

The perpetrator of the original alleged discriminatory event was usually a colleague senior to the claimant, for example, a line or shift manager. Where incidents were overtly racist, such individuals had caused difficulties for the claimants as soon as they came into contact with them. Whilst some claimants said that they had, for some time, had good relationships with everyone they worked with, and had been happy in their work, some had experienced difficulties from the start of their employment with that particular organisation, for example, if they worked straight away with the perpetrator of the discrimination. Once disputes began, their relationships with most, if not all, of their senior colleagues tended to deteriorate very quickly. The reactions of claimants' peers at work was mixed; some stood by the claimants and supported them, others did so, but covertly to avoid becoming targets of the employer themselves. A number of the claimants reported that once their difficulties began, all of their co-workers turned against them, and that work became increasingly unpleasant as a result.

There seemed to be few, if any factors outside claimants' disputes at work which contributed to their decision to take an Employment Tribunal case against their employer.

A few claimants had prior knowledge of Employment Tribunals and where to go for support and advice, but most did not. Some had sought advice from their trade unions or the CAB at a fairly early stage of the dispute, but some, particularly those without unions, did not seek advice until matters with their employer had come to a head, and it seemed that they could not be resolved internally. Many claimants had been through the grievance procedure with their employer, but felt that they had not been given a fair hearing and hence, the issues had not been resolved to their satisfaction. As a result, they felt there was no other course of action available to them but to seek an external Employment Tribunal hearing. Claimants reported that their relationships at work became even more difficult as a result of having invoked a grievance. The majority of claimants had not been subjected to any disciplinary action by their employer. Some of those who had been disciplined felt that this was a reaction to their having complained to their employer of racist treatment, as they had never experienced any difficulties prior to this.

9.2 Taking the case

Claimants' primary motivation for taking a case was justice, rather than for financial recompense. For example, some of those who had been dismissed hoped that an Employment Tribunal would ensure that they were reinstated to their jobs. Others hoped that their employers would be punished for their misdemeanours by the Tribunal. Some claimants also hoped for financial

compensation for the money that they had lost, especially where they had been unfairly dismissed.

Very few claimants had any prior experience of Employment Tribunals, and only a small number had taken more than one case. Most claimants sought advice from, for example, the CAB, their trade union, or more rarely, a solicitor, before submitting their claim form; however, they were often precipitated by the three-month time limit for submission. Claimants did not usually inform their employer directly that they had applied for a Tribunal, hence, most employers learned of the claim when they received their ET3 response form. Most claimants were not actively working for their employer by the time they lodged their case. They had either been dismissed, or had to take time off sick as a result of the stress of their experiences. A small number of claimants continued to work despite the difficult atmosphere at their place of work. Employers sometimes threatened claimants with costs, telling them that they would have to pay all costs if, or when, they lost their case.

When preparing their cases, claimants were confident that they could win, due to the morality of their situation. Their expectations of taking an Employment Tribunal case were considerably different from their actual experiences. Their concerns included the problem of not knowing the processes which were involved in taking a case, the length of time it took for their case to come to a hearing, the amount of work involved in preparing their case, and the legal knowledge this required. Many expressed concerns around the importance of having good quality representation, but the difficulties of finding this. They felt that employers were at a distinct advantage as a result of the availability of representation.

9.3 Advice, support, representation and conciliation

Many claimants approached their unions or the CAB in the first instance, for more information and advice about their potential case. Some claimants consulted other organisations, including local law centres, and race equality organisations for advice and potential representation. Some claimants had used the Internet extensively, searching for information on the Employment Tribunals, the Race Relations Act, and employment law. Others had made use of books and leaflets from the ETS.

Although most claimants remembered some contact from Acas, usually in the form of a letter, Acas did not play a major role in their cases. Some claimants felt that Acas could have provided them with more information, although it appeared that some claimants misconstrued the purpose of Acas involvement.

Claimants often found it difficult, time consuming and stressful to secure representation for their case. Most could not afford to hire solicitors and barristers, although some secured representation in the form of 'no win no fee' solicitors. Such claimants usually felt pushed into settling before the main Tribunal hearing. A small number of claimants were represented by solicitors through other free sources, such as local law centres. Others were represented by caseworkers from organisations including the CAB and race

equality units. Some claimants were forced to represent themselves at Tribunal after their representatives pulled out or were not available at the last minute. A small number of claimants actively chose to represent themselves at Tribunal, but most said that they would have preferred to have been represented.

9.4 Cases which were withdrawn or settled prior to hearing

Most cases settled prior to a main hearing had third party involvement, typically a 'no win no fee' solicitor, or a union representative. In some cases, third parties appeared to exert considerable pressure on claimants to settle; this may have been based on a realistic assessment of the likelihood of the claimant's chances of success; however, in the case of 'no win no fee' solicitors, this appeared to have gone beyond such an assessment, to the point where they preferred the certainty of a settlement sum to the possibility of not winning (and hence, not receiving any payment for their services). Claimants represented by 'no win no fee' solicitors usually expressed considerable regret at having taken this course of action. Those who had settled with the help of a union representative appeared to have fewer regrets. Claimants with regrets about having settled usually wished that they could have gone to an Employment Tribunal hearing in pursuit of justice, which they felt they had not achieved as a result of settling their cases.

Some cases were settled only hours before the main Tribunal hearing was due to begin. Reasons for settling included poor health, wanting the case to be over, not wishing to attend the Tribunal hearing, and pressure from representatives. Most settlements involved a financial payment, although there were examples of cases which were settled without payment using a COT3 agreement. A few claimants were subject to confidentiality clauses over the amounts they had been awarded. Amongst those who were not, settlements ranged from £800 to £30,000 (although the latter was also a redundancy payment). Many of the payments were relatively low, and claimants rarely felt that the amount awarded was commensurate with what they had been through.

Few claimants had withdrawn their cases at this stage. Reasons for doing so included a lack of witnesses and therefore a lack of evidence to back up the allegations of race discrimination. Other reasons for withdrawal were more idiosyncratic and case-specific. They wished that they had been able to pursue their cases further but felt that their particular circumstances left them with no option but to withdraw their cases.

9.5 Employment Tribunal hearings

Claimants were usually very apprehensive about the Employment Tribunal hearings, and this was made worse because they did not know what to expect. The role of the Chair was felt to have been particularly important in shaping claimants' experiences of their Tribunal hearings. Some claimants felt that the Chair and panel were on the respondent's side from the start of the hearing. Many claimants had difficulty in following the Tribunal hearing proceedings, and understanding the legal terms which were used. This was a

particular problem for most of those without representation. Some were confused as to how the panel had reached their decision.

Many claimants commented on the ethnicity of the Chair and the panel. The fact that they were usually all White appears to have had an impact on their confidence as to the extent which their case would be heard and decided fairly. Claimants also felt that the likelihood of achieving justice was greatly affected by representation issues; those who represented themselves usually felt at a significant disadvantage compared to their employers, virtually all of whom had legal representation. In addition, some claimants who did have representation reported problems with this. Their concerns included representatives lacking experience in this area, and some said that they did not entirely trust their representative to make the right decisions on their behalf.

The balance of power between claimant and respondent was mentioned by many. Claimants often felt that the balance of power was tipped in the favour of the respondent. Compared to the claimant, they tended to have higher calibre representation, more people attending the Tribunal, and a greater number of witnesses.

9.6 Outcomes of cases which went to a Tribunal hearing

Claimants who were unsuccessful at the Employment Tribunal attributed this to factors including representation, a bias in the Chair and panel, and insufficient evidence. Those who had represented themselves usually felt that they had been at a considerable disadvantage, when faced with the respondent's barrister or QC. Even those with representation often said that they had been let down to some extent because their representative lacked relevant experience or knowledge. A few claimants felt that their representatives had not acted in their best interests, and may have had other agendas. These claimants were usually extremely dissatisfied with the way that their case had been handled and decided at the Employment Tribunal hearing.

Successful claimants were, of course, pleased that they had won their cases and that the employer had been proved to have acted wrongly against them. However, they too commonly expressed dissatisfactions with the outcomes of their cases. Some claimants spoke of their disappointment at the lack of cautions issued to respondents. Others felt that the amount of compensation they had been awarded was too low and did not compensate them for the discrimination they had experienced, or what they had lost.

Most of the claimants who settled after their main hearing had done so as a result of pressure from their representatives. They were usually dissatisfied with the terms of the settlement. Two cases were withdrawn during the main Employment Tribunal hearing. These claimants would have preferred to continue; however, events had occurred which meant that they did not feel that they would be successful in their cases.

9.7 The Impact of having taken an race discrimination case

Most claimants said that taking their case had a negative impact on them, affecting areas including their health and well-being, their careers and career prospects, and their finances. Claimants found it hard to distinguish between the impact of the discrimination and the impact of taking the case itself, particularly regarding their health and well-being. In some cases, this was further compounded by claimants feeling let down by their employer when they attempted to resolve their difficulties directly. This too seemed to have had an adverse impact on many interviewees, especially when internal disputes continued over a long period of time. Such claimants appeared to have experienced particularly adverse effects on their physical health and emotional well-being, to the extent that some were scarcely able to deal with the stress of preparing their ET case. Health problems which claimants said had been triggered or made worse by their Employment Tribunal case included stress, anxiety and depression, insomnia, skin conditions and other nervous disorders. For one claimant, the stress of taking a case appeared to have triggered seizures. A number of claimants were unable to work during the preparation of their case as a result of ill-health, or the stress of preparing for their hearing. Some claimants had not returned to work since their case due to poor health, which they said had been worsened, or even caused, by the case and the events which preceded it.

Those claimants who had represented themselves throughout their cases and at the Tribunal hearing often reported some of the worst effects on their health, presumably as a result of the stress that having done so had placed upon them. Looking at long-term health effects, those who had achieved the least satisfactory resolution to their cases appeared to be the ones who continued to suffer from poor health, perhaps partly as a result of not being able to put their difficult experiences behind them.

In terms of financial impact, most claimants reported that this had also been negative. Claimants had lost income, some had lost their jobs, and some felt that they had lost careers or their chances of being promoted. Most claimants had experienced periods of unemployment, or were now working in lower paid or lower skilled work, although a few had found new work of a similar status and felt that having taken the case would have no long-term impact on their career prospects. A few claimants had been left severely out of pocket after paying for legal representation. Even amongst those claimants who had won or settled their cases, there were few who did not report being financially worse off as a result of their experiences, as they did not usually feel that they had received a large enough award to cover their losses. Some claimants said that their bad experiences at work, followed by a similarly bad experience of taking an Employment Tribunal case had shaken their confidence in themselves, and their trust in others.

Most claimants felt that the process of taking an Employment Tribunal case was not 'user friendly' or transparent enough and that it required too much legal knowledge, which the majority of claimants were unlikely to have. Some claimants felt that the way their case had been dealt with at Tribunal had been fair, but others did not, and in some cases, this went as far as allegations of collusion and corruption. Regarding whether these claimants

would ever take another case to an Employment Tribunal, their views were mixed. Some felt that it would be a waste of time, while others felt that it was always important to make a stand against racism and discrimination. Claimants advised those taking cases to Employment Tribunals in the future to try to secure good quality representation, and to keep careful records of events to use as evidence.

There were few positive outcomes reported by these claimants as a result of having taken an Employment Tribunal case. Even those who had won their cases reported few benefits aside from having proved to have been right. A small number mentioned that having survived the experience had made them more confident in their abilities to deal with future difficulties.

9.8 Conclusions and suggestions

Many of the claimants reported incidents that were not at face-value overtly racist, although most had also experienced what they perceived to be overt racism, which was sometimes expressed in quite a subtle form. They also attributed other subsequent events to racism, even when these were seemingly more general disputes. They often felt that these were a reaction to their having brought race discrimination to the attention of their employer. Claimants' attempts to resolve disputes with their employers usually inflamed situations rather than solved problems, and claimants' relationships with their managers, and to some extent with their other colleagues, deteriorated quickly. Hence, a failure to deal with reported incidents resulted in many more problems arising for the claimant, which eventually led them to seek redress at an Employment Tribunal. There were a few examples of claimants attributing their mistreatment to racism in the absence of any overtly racist incidents, or re-casting their past experiences as racist in the light of a subsequent racist incident. From many of the claimants' perspectives, more could be done to prevent many disputes from escalating, perhaps through ensuring a fair hearing for claimants through the grievance procedure, or by introducing a mediation and conciliation stage, to provide an outside view on the situation. It seems that given the negative impact of Employment Tribunal cases on claimants, disputes should be prevented from going this far whenever possible.

Claimants usually felt race discrimination to have been at the root of all of their disputes, whether the events which prompted them to take their case had been overtly racist or not. Claimants were aware to varying extents of the likelihood of successfully taking a race discrimination case; particularly of the difficulties in proving that race discrimination had occurred, compared with proving other types of cases. There may be a role for more provision of advice before claims are submitted, to ensure that claimants' expectations of the process of applying for an Employment Tribunal hearing, and the hearing itself, are realistic.

The availability of advice, support and representation greatly affected how claimants experienced the process of taking a case. Claimants also felt that it had been a key factor in their case outcome. Most had been unable to easily secure suitable and reliable representation, and some were faced with no option but to prepare their cases themselves, and to represent themselves at

Tribunal. The problems of self-representation were many, appearing to place most claimants at a considerable disadvantage compared with respondents, and exacerbating claimants' stress and ill health. The influence of some types of representatives, particularly 'no win no fee' representatives was strong; claimants often felt pressured into settling, a decision which they deeply regretted afterwards. The fact that so many race discrimination cases are settled is also likely to be perpetuating the low success rate at Tribunal. In addition, a lack of robust advice at the pre-application stage may result in claimants lodging cases which have little chance of success at Tribunal.

Most claimants appeared to know very little about what would be involved in taking a case, prior to making their claim. In particular, they were not aware of the amount of work their case would involve, nor how stressful it would be. Claimants agreed that Employment Tribunal hearings, and the processes involved in their preparation, currently gave the respondent a natural advantage due to their greater resources and/or prior knowledge of Employment Tribunals and employment law. Good representation had the power to minimise these effects for claimants and provide a more evenly balanced contest. Regarding the Tribunal hearing, the composition of the panel could benefit from more ethnic diversity than at present, if only to improve claimants' confidence that their case would be understood and dealt with fairly, following their prior experiences. Changes could be made to improve future claimants' experiences, either by managing claimants' expectations, or bringing the process of taking a case, and the Employment Tribunal hearing itself, more in line with their expectations.

Negative impacts were felt by many, particularly in terms of health and well-being. For some claimants, this lasted well beyond the case, leaving them emotionally damaged and in poor health. Claimants who had been through the most lengthy and acrimonious disputes with their employers experienced some of the worst effects on their health before, during, and after the case. They were also the least able to deal with the stresses of taking a case as a result of their poor health when it began. Again, good representation had the capacity to ease this burden considerably. Claimants with a high level of education appeared to have experienced some of the least severe effects during their case, and were often also able to recover from it reasonably quickly. They were the best equipped to rise to the intellectual challenges that preparing the cases presented. Claimants who represented themselves and won had usually been educated to degree or postgraduate level.

Those who had been able to move on from their cases had usually experienced fewer negative impacts during them, and had felt that justice had been done. This was linked to, but not entirely dependent upon the outcome of the case. Those who had felt in control of the decisions that were made during their cases were also more likely to have been able to recover from their experiences. Those who had found the process of their case and its outcome to have been particularly unsatisfactory were the least able to let go of the experience, and were most likely to report long-term adverse effects such as persistence of health conditions. A few claimants, often those who were fairly young, had been able to find new employment of a suitable calibre, and this had helped them to recover from their experiences. However, many claimants felt that their career prospects had been damaged

by their Employment Tribunal case and some of these had been unemployed since their case. There was a common perception that obtaining a reference from their former employer would be difficult, and this seems to have prevented a few from attempting to find work.

It would seem important to prevent long-term to damage to claimants' health and careers wherever possible. Measures to assist this could include a code of practice for employers on how to deal with individuals who have taken Employment Tribunal cases. In addition, it would be helpful to provide a service whereby claimants would be referred to agencies that could get them back into employment at the end of their case.

10

Analytical overview

This report has explored the experiences of individual claimants taking Race Relations Act cases to Tribunal. Their stories have been rich with detail and we have presented them under key headings. In exploring these individual stories and perceptions, a number of themes emerge which we feel are central to any understanding of claimants' experiences and for determining future policy. This chapter discusses some of the emergent themes.¹ It is presented under the following headings:

The progress of the case

This section covers dispute emergence and escalation. It looks at the extent to which these cases were about race discrimination in the eyes of the claimants, and how this was reflected in the eventual case jurisdictions. It also considers the role of the pre-trial hearing.

Advice, guidance and representation

The critical role of advice and representation is discussed in this section, including issues around access to justice, the strength of the case, routes into, and the disadvantages of, self-representation. It also looks at 'no win no fee' representation, the importance of trust in the claimant-representative relationship, and the perceived role of Acas.

Expectations and motivations

This section looks at the key reasons why claimants took their employers to a Tribunal, and what they hoped to achieve by doing this. It covers justice as the key motivation for taking a case, claimants' expectations compared to their experiences, and the lack of appropriate resolution which claimants felt once their cases had finished.

Issues of power

¹ Where relevant, it also includes footnotes which refer to the literature - see the Literature Review in the Annexe to this report for the reference details.

Control or powerlessness over their cases, as perceived by the claimants during their case is discussed in this section, together with issues around the balance of power between claimant and respondent in the Employment Tribunal process. The issue of the ethnicity of the Chair and panel is also raised.

10.1 The progress of the case

This section covers how disputes emerge, and why claimants felt that they could not be resolved within the workplace. It looks at the extent to which these cases were about race discrimination in the eyes of the claimants, and how this was reflected in the eventual case jurisdictions. It also considers the role of the pre-trial hearing.

10.1.1 *Dispute emergence and escalation*

One of the areas which this research hoped to address was the issue of emergence. How do disputes, which later become race discrimination cases, first begin, and how do they develop? This also raises the question of the extent to which race discrimination was overt. In addition, was the eventual trigger for claimants to take the Employment Tribunal route an incident which was clearly racist, or an incident of some other kind?

While claimants often reported incidents which were not, on the face of it, racist, they had usually experienced racial abuse of some kind. However, even claimants who had not experienced overt racism attributed at least some of their alleged unfair treatment as having been as a direct result of their race or culture. Some, with hindsight, had attributed previous unfair treatment to racism, as a result of having later experienced overtly racist incidents. Sometimes, claimants were not sure why they were experiencing unfair treatment, but race seemed to be one of the most likely underlying reasons. However, a more commonly reported scenario was the experience of racism or events which claimants felt at the time were racist, despite their subtlety.¹

After having brought such incidents to the attention of their employers, they were not dealt with in a way which claimants felt to be effective in preventing the same treatment in the future, neither did they result in a just resolution of the issue. The common response of employers from these examples would

¹ This finding is supported by other research where racial discrimination in the UK is described as often arising '*through processes of unfair discrimination which are established, routine and subtle, and only occasionally will an individual 'act' of racial discrimination become visible within these processes*' (Wrench and Solomos, 1999). American research also describes the subtlety with which racist acts are manifest, and the added detriment of these incidents being 'attributionally ambiguous'. The victims of unfair treatment often felt unsure why they were receiving such treatment, at the time (Deitch et al., 2003).

seem to be the desire to evade the issue so they did not have to deal with it.¹ These apparent failures on the part of employers to face up to allegations of racism and deal with them head on by, for example, confronting the perpetrators at once, seem to have created a whole host of additional problems for the claimants. In fact, there were often subsequent reactions from line managers and other managers indicating that they had now cast the claimant as a troublemaker for having identified their treatment as racist. This also resulted in continued and sometimes worse mistreatment by the original perpetrator.

Claimants felt that after complaining to their employer they started to feel singled out or 'picked on' by the perpetrator and others, and they usually felt increasingly isolated at work. The escalating difficulties reported by claimants in these situations manifested in a variety of disputes, which according to claimants, were a knock-on effect of their having made complaints in the first place. Claimants reported that once they had complained of unfair treatment, their performance and competence at work, their sickness absence record or their punctuality started to be scrutinised, questioned and criticised. Some claimants reported that disputes over pay emerged at this time. Although these later problems were not overtly racist, claimants felt that racism was the underlying cause, since such disputes had not begun until after they had originally brought racism to the attention of their employer. In a number of cases, these disputes lasted for several years, and sometimes resulted in the claimant's dismissal.

It was clear that taking action against perceived racism is itself problematic. Once the course of action has been started, there is no going back to the way things were before. The common theme is that challenging the behaviour of others, especially those in a more senior position, damages the employment relationship to a significant degree.² At this point, employer and employee take up their positions, and become increasingly entrenched in them. It appears that a 'line in the sand' is drawn when an individual tells their employer they feel they are being discriminated against. Both sides believe that they are right, and the conflict builds, so that it cannot be resolved within the organisation, even with use of the grievance procedure. In fact, on occasion, the disciplinary procedure is used against the individual.

¹ This might relate to the fact that incidents brought to employers' attention may only represent one single manifestation of more widespread processes of unfair treatment (Wrench and Solomos, 1999).

² In explaining why staff at Higher Education Institutions in the UK do not take action in response to perceived acts of unfair discrimination, Carter et al. (1999) remark that '*if a complainant member of staff remains at the same institution, they subsequently have to work with a Head of Department, manager or colleague against whom they made a complaint*'. The nature of organisational structures in many workplaces often require an operation of intricate social and professional networks. The mastering of the dynamics of these networks can be integral to an employee's success within an organisation – however, when an employee takes a stand against either an individual or an act within the network, they risk being ostracised from the group.

The perpetrator of the original incidents was usually senior to the claimant, commonly their line manager, and this made it very difficult for claimants' voices to be heard in their organisations at the time of the dispute. Relationships deteriorated quickly between claimants and their senior colleagues, even where they had previously been good. The resulting inability by both sides to communicate effectively, and without high emotion, clearly greatly reduced the chances of an internal resolution. For example, if conflict arises between an individual (the potential claimant) and a particular perpetrator (for example, their supervisor, line manager or a client) then there may realistically be no way of reconciling such individuals to enable them to work together in a truly cordial manner. How then should this be dealt with? Organisations clearly struggle to cope with such fractured relationships. Most organisations seek to separate antagonists in order to resolve the conflict. The potential difficulty here is that this may not be seen by the potential claimant as a suitable and just resolution. This is even more the case where the claimant, rather than the perpetrator was offered a transfer, or moved from a particular job. Claimants did not feel that this was a fair solution, and felt that they, rather than the perpetrator were being 'punished'. As a result, their dispute remained unresolved and they eventually sought justice externally by applying for an Employment Tribunal. The question remains as to whether claimants would view moving the perpetrator as a more satisfactory solution.

The breakdown of the relationship is also reflected in a lack of faith in the neutrality of internal procedures, and some had also felt that their employers were 'stringing out' the grievance procedure to stall claimants' Employment Tribunal claims beyond the three month time limit. This had led some claimants to start the Employment Tribunal process even before the internal procedures had ended. Claimants seemed to view Employment Tribunals as the logical next step in resolving a dispute; they often thought that they would provide an external view on an internal problem. Some clearly envisaged Employment Tribunal hearings as less formal, and less separate from the internal dispute resolution process than they later found them to be.

The question of whether any of these disputes could have been prevented from becoming full-blown Employment Tribunal cases is an important one. The scenarios outlined by the claimants who took part in this research showed that many Employment Tribunal cases were preceded by a lengthy period of unrest between claimant and employer, where the claimant sought redress for specific incidents within the organisation, but failed to get this. It is difficult to judge, on the basis of only one side of the argument, the extent to which these employers acted unfairly; however, many of the claimants felt that more could have been done within the organisation to ensure that they were provided with a fair internal hearing. They did not feel that the internal grievance procedure had done this, particularly when invoking it involved senior colleagues with whom they already had a dispute. Further, even where claimants felt that the grievance procedure had decided in their favour, there seems to have been little done to ensure that the decision was upheld in practice, in a way that did not further disadvantage the claimant, or prevent such difficulties from recurring. Such decisions did not seem to have the 'teeth' required to bring about a lasting change in the organisation, or alter the claimant's circumstances. In short, according to these claimants,

allegations of racial abuse and other unfair treatment were dealt with half-heartedly by employers who adopted a tactic of 'sweeping them under the carpet', or punishing the claimant rather than the perpetrator. They felt that this kind of approach frequently made things worse. As we have seen, once the working relationship degenerates, the outcomes are generally poor.

It seems important therefore to ensure that everything is done to resolve disputes before they reach the point at which claimants feel a Tribunal hearing is their only option, to prevent causing long-term damage to claimants in terms of their health and their career. There could be a role for some form of official mediation and conciliation to be available after internal grievance procedures have been exhausted, but prior to an Employment Tribunal case being lodged. Such a service could intervene on an inquisitorial, rather than a confrontational level, providing an external, unbiased view on an internal dispute, and providing options for employers. It could give claimants more confidence that their allegations were being taken seriously. It also has the potential to improve claimants' feelings of 'ownership' of the decisions reached, and their subsequent satisfaction, compared with the way many felt following their experiences of taking an Employment Tribunal case. Given appropriate powers to ensure change as a result of decisions and agreements reached, mediation and conciliation prior to the Tribunal application stage could play an important part in preventing cases being lodged with the ETS.

10.1.2 Primarily a race case?

The extent to which claimants felt that their case was about race is of interest. The claimants involved in this research tended to view what had happened to them at work very much as a result of race discrimination, even where other more overt aspects (such as unfair dismissal) were involved. From what these claimants said about their experiences, it was clear that many wanted the claims made in their case to reflect the racism which they felt had caused it. There were only a few cases where there was evidence of race discrimination being 'tacked onto' other types of claim, to add weight to a case or as a back-up measure. Hence, there were few, if any, instances where it appeared that claimants had 'played the race card'. In fact, there were a small number of claimants who volunteered that they had initially not wanted to use race in their case to avoid being accused of this, although they felt that their problems had been as a result of race discrimination. Despite feeling discriminated against as a result of their race or colour, they thought that drawing attention to this fact would go against them and create more problems than it would solve.

The relative chances of success using the RRA compared to other employment legislation is worthy of mention here. Claimants were aware, to varying extents, that they would need evidence to prove their case at a Tribunal hearing; and their representatives (where present) often seemed to have advised them of this. It would appear in many cases, to be easier to provide evidence for non-race jurisdictions. For example, DDA cases rely to some extent on medical evidence from professionals who are not linked to the dispute. Unfair dismissal cases can rest on certain standard procedures not having been followed. However, race discrimination cases can be greatly

reliant on evidence from witnesses, who are likely to also be the respondent's employees. It is easy to see why other employees would not wish to take the stand at a hearing to bear witness to a claimant's experiences. They are also not required to attend, i.e. the ETS cannot summons them. In addition, demonstrating the existence of racism can also be difficult due to the subtle way in which racial discrimination is sometimes expressed.

The jurisdictions of each case (which at the time of this research were separated into a 'main' jurisdiction and 'other' jurisdictions) are determined not by the claimant or representative, but by the Employment Tribunals Service. Jurisdictions are assigned as a result of the way the claim form had been filled out and the relative importance given to the individual claims made on the form. The role of advisers and representatives in affecting the dominance of race discrimination in a claim is therefore an important one. They could shape the way the case would be listed and heard, from the way they filled out the claim form. At this early stage, they were far more likely than the claimants to be aware of how the claim form would affect the case in terms of the dominance or otherwise of race discrimination. If claimants filled out their own claim form, they may not have been aware of how critical the emphases they gave to particular aspects could be to their case.

There were a number of examples of claimants being advised that race discrimination cases were hard to prove and that evidence or witnesses would be necessary for them to stand any chance of winning. It must be remembered that many claimants had fairly limited access to advice, and they may not necessarily have acted in their own best interests in terms of using the claim form to lodge their case in a way which maximised their chances of success. Nonetheless, the respective roles of the claimant and their advisers in shaping case jurisdictions, whether by design or default, would benefit from further investigation.

10.1.3 Pre-trial hearing

Our interviews suggest that further investigation into the conduct of the pre-trial hearing could be fruitful. Pre-trial hearings appeared to have the potential to drastically alter the course of cases, and crucially, claimants were often unaware of this prior to the event. There were instances of many points (for example, all the points on race discrimination) being thrown out at this stage, and the claimant being completely unprepared for this. In some cases, they said they did not understand at the time that this was happening, only being made aware afterwards that much of their original claim would now not be included in their case. If the claimant is unable to anticipate and follow the proceedings of the pre-trial hearing, they cannot be expected to be able to object, at the appropriate time, to the decisions being made about their case.

The impact of the pre-trial hearing on the rest of the case, and whether this impact is very different from that anticipated by claimants needs further research. There is evidence from this work to suggest that, in some cases, the ramifications of claimants being unprepared for the pre-trial hearing can be unexpected and substantial, and from the claimants' perspective, extremely negative. It is potentially another source of considerable frustration for claimants with regard to their Employment Tribunal

experience, affecting in the longer-term their retrospective perceptions of justice.

10.2 Advice, guidance and representation

The critical role of advice and representation is discussed in this section, including issues around access to justice, the strength of the case, routes into, and the disadvantages of, self-representation. It also looks at 'no win no fee' representation, the importance of trust in the claimant-representative relationship, and the perceived role of Acas.

The role of advice, support and representation is an important one, with the availability of the latter, in particular, seeming to have been pivotal in many of these claimants' stories. It has the capacity to affect whether potential claimants decide to take a case, and their expectations of what they might achieve from doing so. It can also affect how the claim form is completed, and as a consequence the jurisdictions the case includes. Representation can have a great bearing on the way claimants experience the process of the case itself, in terms of the work they have to do and the stress they feel under. The presence or absence of trustworthy representation had a substantial impact on these claimants' expectations and experiences of their Tribunal hearings, and in how claimants felt in retrospect about having taken their case, and about its outcome. Representation may also be critical in reducing the perceived power differential between claimant and respondent throughout the case, and cuts across many of the other issues covered in this chapter.

10.2.1 Representation and access to justice

Although a few of the claimants reported that they had found it easy to secure adequate support and advice, most had found the process difficult and time consuming. There are two main issues here; firstly, that appropriate and timely advice may prevent claimants taking cases they have little chance of winning. Secondly, the fact that the Employment Tribunal culture is adversarial, and so pitting unrepresented and naive claimants against experts can leave them greatly disadvantaged. The advantages and disadvantages of representation in general, and particular types of representation, are discussed at length in this report. It is clear that many of the claimants felt that the presence or absence of suitable representation was one of the main 'make or break' factors in the outcome of their cases, and therefore an important factor in their access to justice.¹

Access for claimants to impartial, reliable and good quality advice, support and representation at an early stage would appear to be key in ensuring that claimants understand they receive both a fair hearing, and that they do not suffer unduly during the preparation of their case. The presence or absence of trusted representation also appears to have considerable influence over

¹ This view is supported by findings in other pieces of research amongst Employment Tribunal claimants in the UK and in Wales, both in terms of discrimination claims and other types of claims more generally (Hammersley and Johnson, 2004a; Williams, 2003).

claimants' subsequent perceptions of the fairness of the ETS, and over the satisfaction of their case outcomes. There were very few claimants who had actively chosen to represent themselves, the vast majority wanted representation, but many could not get it, or were faced with very limited options, for example, a 'no win no fee' solicitor, or a representative without legal training. There does seem to be a distinct gap between what claimants wanted (i.e. accessible, reliable, good quality, affordable representation) and what they actually received. On the whole, the availability of representation appeared patchy, and where claimants had secured representation, they did not always trust them to make the right decisions for them. However, the role of the representative is a difficult and sensitive one, as claimants are convinced of the justice of their case and claimants are very unwilling to consider any advice which does not concur with their views. Inevitably, problems can arise in the relationship between the claimant and their representative which will add to their sense of injustice and imbalance.

10.2.2 *Strength of case and representation*

This research did not provide any answers to the question of whether claimants with stronger cases are more likely to secure good quality representation than are claimants with weaker cases. However, it did raise a number of points for reflection. Claimants themselves tended to report that they judged their case to be strong, although this appeared to be based on their perceptions of their being right than of their case having sufficient evidence or being able to stand up to the legal scrutiny required at the Employment Tribunal hearing. It was rarer for claimants to have taken a case because they were told by a representative that their case was strong. As we have seen, their motivation was almost always rooted in the notion of justice, and seeking justice was more important even than whether they had a strong case which was likely to be successful. It seems that by the time the decision needed to be made about whether to submit the claim form, some claimants simply wanted to continue to take action against their employer rather than accept defeat.

It could be that access to representation, particularly that which is not paid for by the claimant, is in part dependent upon the strength of the case and the likelihood of success. It seems logical that sources of free and low-cost representation such as local law centres and race equality organisations might prioritise the cases they supported in this way. However, there were still elements of chance in securing representation, regardless of the case itself. For example, for some claimants, finding suitable representation seemed to depend on their knowledge of the resources available in their area and their ability to identify suitable places to go to for advice. In short, finding adequate support was a rather hit and miss affair, and this seemed to place many claimants at a considerable disadvantage, compared with respondents. There were also examples where claimants were promised representation through free or low cost sources, such as law centres, but the representative was unable to stay with the case. Presumably, their cases were strong enough to merit free representation, but this did not prevent them from being left without it shortly before their Employment Tribunal hearing, for reasons such as a representative no longer working at a local law centre. *Pro bono* representation may be difficult to get in the first place, but

there is evidence to suggest that it is also difficult to keep it for the duration of a case. Reliability of *pro bono* representatives may not simply depend on their view of the strength of the case, but on more practical issues entirely separate from the claimant and their case.

10.2.3 *Routes into self-representation*

It is worth considering the routes into self-representation, in terms of the extent to which claimants chose this course, and the stage at which it was clear that this is what they would do. Some claimants actively chose to represent themselves from the start, as they felt that they understood their cases better than anyone else. In such situations, there is of course a danger that claimants may feel that a detailed knowledge of their case is more important than an understanding of how Employment Tribunals work and what constitutes a strong case. This point has links with claimants' expectations of what is involved in an Employment Tribunal. The claimants who took part in this research who chose to represent themselves from the start of their cases were relatively well equipped to do so, being well educated and able to research and learn to operate within the legal framework of the Employment Tribunal process. There may be others who choose to represent themselves without being aware of what they are letting themselves in for, believing that the strength of their case (as they perceived it) would see them through the process.

There were claimants whose trajectories into self-representation were determined by necessity rather than choice. They would have taken other options, had they been available, and they did not want to represent themselves. Self-representation usually followed attempts to secure representation from free sources such as CABs, local law centres and race equality organisations. Some claimants had never found any suitable legal representation, and were aware from an early stage that they would have to prepare their own cases, and represent themselves at the Tribunal hearing. There were also instances when claimants felt that they had secured a *pro bono* representative, only to be let down at a later stage for reasons beyond the claimants' control; for example, their legal representative switched organisation and was not able to take the claimant's case with them. From the experiences of the claimants in this research, representation on a *pro bono* basis would seem to be far less reliable than paying for representation. Such claimants are reliant on their representative's goodwill in retaining their services for the duration of the Employment Tribunal case. The more reliable alternative of paying for legal representation was not available to many claimants, as they simply could not afford to do this. Claimants who had had representation and who were let down by their representative shortly before the main Tribunal hearing seemed to be in a particularly bad position. They would now have to represent themselves, and they had not had the benefit of being involved in the preparation of their case. This may well have helped them get to grips with the procedures and legal language required at a Tribunal hearing. The ways in which claimants could be safeguarded from the situation of being left without representation at a late stage are certainly worth careful consideration in the future.

10.2.4 *Disadvantages of self-representation*

The problems of self-representation have been clearly documented in this report. A lack of representation meant that claimants had to take on the full burden of preparing their case, communicating with their employer, and learning to understand the legal terminology which their case required. Claimants were, therefore, having to do what amounted to (in the words of several) a 'full-time job', in an area in which they rarely had any experience. Not only were they often unable to do this job to the standard required by the Tribunal, they usually found the process extremely stressful. At the Employment Tribunal hearing, claimants were required to present their case but were pitted against highly trained professionals hired by the respondent. This seldom appeared to have been a fair contest, regardless of the strength of claimants' cases. In addition, claimants reported that although some Chairs made allowances for their layperson status, and their lack of understanding of some points of law, this was not always the case. Some claimants had experience of hearings where the Chair became impatient at their lack of legal knowledge, and their failure to understand particular aspects of the case. They felt that this made the Chair less sympathetic to their case as a whole. Given the fact that claimants often represented themselves at Tribunal hearings (and sometimes, in preparing their case prior to this) as a result of an absence of any other viable alternatives, it is important to highlight the disadvantages to claimants that self-representation can bring.

10.2.5 *'No win no fee' representatives*

The use of 'no win no fee' solicitors by claimants, and the ways in which claimants viewed this in retrospect was very interesting. Claimants usually engaged a 'no win no fee' solicitor when they had exhausted other options, for example, if they were not entitled to union representation and had not been able to secure *pro bono* representation, or sufficient assistance from a CAB or law centre caseworker. Hence, 'no win no fee' representatives were often claimants' last resort, and their final chance to avoid having to represent themselves, which they did not feel equipped to do. Claimants did not seem to anticipate that this type of representation would present them with any particular problems, or have any bearing on their control over how their case proceeded. However, there is evidence to suggest that in contrast to their expectations, some claimants with 'no win no fee' representation felt that they had little or no influence over the direction of their case and the decisions which were made. In an effort to avoid the burden of self-representation, they felt they had unknowingly relinquished their case in its entirety to their representative.

'No win no fee' representatives had considerable power over claimants because they could threaten to drop the case if claimants did not go along with a decision, for example, to settle rather than to go to Tribunal. Claimants would then be faced with the possibility of having to pay legal fees if they were to find alternative representation at such a late stage of their

case.¹ Experiences of this nature appeared to adversely affect claimants subsequently. It seems likely that this is related to claimants' perceptions of control over the situation; perhaps the more helpless claimants felt in influencing the decisions made about their case, the less resolution they felt when it ended. This would be exacerbated when the outcome was not what claimants would have chosen, for example, if claimants wanted the case to go to a Tribunal hearing but the representative decided to settle the case prior to this. Such claimants could see that their representative had a vested interest, for example, in bringing about an early settlement in order to receive a guaranteed income at an early stage. It seems likely that this type of situation adds to, and perpetuates, claimants' perceptions of not being heard and understood. The effect is to further erode their faith in the systems which they had hoped would provide them with justice.

The full extent to which the use of 'no win no fee' representatives are affecting outcomes of race discrimination cases as a whole cannot be answered by this research. But it does, however, provide anecdotal evidence that this type of representation could result in a higher level of early settlements than might be expected. It also raises the issue of claimants' potential loss of control over case decisions when using this kind of representation. There is also a possibility that 'no win no fee' representation may be resulting in particularly bad experiences for claimants, and in turn, damaging their perceptions of the Employment Tribunal process as a route to justice. Claimants' perceptions of lack of control during their case could also be affecting their chances of moving on with their lives after their case has finished. The effect of 'no win no fee' representation on outcomes, and on claimants retrospective satisfaction with, and recovery from, their Employment Tribunal experience is worthy of further consideration².

10.2.6 *Claimants' trust in their representative*

From the cases covered in this research it was clear that representation was only felt to ease the burden of taking a case if claimants trusted their representative. Where claimants felt that their representative was not acting in their best interests, this added to, rather than reduced the stress of taking a case. This also seemed to contribute to the aftermath experienced by some of these claimants, in terms of their health, and a lack of recovery in their careers. Claimants wanted to be able to communicate freely with their representatives, and feel that their representative had heard and understood what they said and would act accordingly. Obviously, claimants were relying

¹ Hammersley and Johnson (2004b) also found that claimants with 'no win no fee' representatives often felt pressurised to accept quick settlements in order to minimise legal costs and maximise profits.

² Interestingly, Hammersley and Johnson (2004b) examine the role of 'no win no fee' representation at Employment Tribunals and conclude that the arrangement offers more potential benefit to Employment Tribunal claimants (with all types of claims) than to employers. However, they also suggest that claimants with claims under the RRA are less likely to secure this type of representation as RRA cases tend to be more complex and therefore present too great a financial risk to 'no win no fee' representatives.

on their representatives to make informed decisions on their behalf, and they were not always able to tell their representatives what they wanted them to do. However, claimants did expect their representatives to take their wishes into account when there were big decisions to be made, for example, whether to settle or to proceed to a main hearing. They also expected to be able to negotiate with their representatives when they disagreed about the best way to proceed, rather than to be coerced into a course of action they did not want.

Some claimants did not feel they were able to negotiate with their representative. There were good examples of this amongst the claimants with 'no win no fee' representatives, who did not feel that they had much say in some of the decisions made. There were other instances where claimants reported that they did not trust their representative to be making the right decision for them, for reasons including suspecting their representative of colluding with the respondent or with panel members. As a result, there were several potential scenarios where claimants did not trust their representative to listen to their wishes, and act without an ulterior motive.

The relationship between claimant and representative seemed to work best when there was a sense of partnership between the two, and when the claimants felt some ownership over the major decisions which were reached. When claimants felt, at the time and/or in retrospect, that they had been steered away from what they felt was right for them, they felt betrayed. The person they had relied on to help them through the process of the case had actually made things even worse. It seems that when claimants lost trust in their representative, they could also lose trust in the entire Tribunal process; they saw little distinction between the two.

The question of whether a perceived loss of trust and control affects the long-term negative impact on claimants is an interesting one. There is certainly evidence to suggest that this is possible. For some, the experience of being let down by their representative, and the loss of control over their case and its outcome contributed to the negative effects on their physical health, their emotional well-being, and to the time it was taking for them to re-enter the labour market. The extent to which these experiences are more widely felt is worthy of investigation with a view to preventing unnecessary long-term damage to claimants.

10.2.7 The perceived role of Acas

According to our claimants, Acas played a relatively minor role in their cases. They had usually had some contact with Acas, most often by letter, and less frequently also by telephone. It is interesting that many of the claimants had not heard of Acas before their Employment Tribunal case, and that as a result, they had very little understanding of its role. Some claimants felt that they should have had more information from Acas; they would have liked more general information about the Employment Tribunals service, the hearing itself, and the process of taking a case. The information they wanted was not always to do with conciliation, and the claimants who requested more contact and information from Acas were not necessarily interested in settling their cases. It seems, therefore, that the role of Acas was

misconstrued by some claimants. Their expectations did not seem to be in line with what the service was designed to do, and this might be one of the reasons some claimants were not particularly positive about Acas. Claimants' expectations of the level of direct contact to be expected from Acas may also have been misguided. Since Acas deals directly with representatives where they exist, where claimants had secured representation, they would not have had much contact from Acas even if they had been involved. From these findings, there could be potential for greater involvement from Acas, or simply for better informing claimants about the role of Acas, and their level of likely involvement.

10.3 Expectations and motivations

This section looks at why claimants applied for an Employment Tribunal, and what they hoped the Tribunal would achieve. It also covers claimants' key motivation of justice for taking a case, and with this in mind, the lack of appropriate resolution they felt once their cases had finished. It also compared claimants' expectations with their experiences.

10.3.1 Justice as claimants' key motivation

The fact that claimants take cases in order to get 'justice', rather than financial recompense emerged strongly from these interviews. What justice means in these circumstances would have been the Employment Tribunal clearly telling the respondent that they had been wrong, and preventing them from acting towards the claimant or others in such a way in the future. More specifically, claimants felt that individual perpetrators should be told that they had behaved unacceptably, and that they should be punished for this. Claimants felt, for example, that perpetrators should lose their jobs, or at the very least, steps should be taken to prevent them from inflicting the same or similar treatment on others. Claimants also felt that those in their organisation who had been responsible for resolving difficulties, but who had become part of the problem rather than the solution, should also be told that they were in the wrong.

The importance of justice was made clear by claimants who had settled their cases, and had come to greatly regret their decision. Claimants' regrets were based on the perception that although settling their case had given them a financial settlement, it had not brought justice. Although some were unhappy with the amount of money they were awarded, feeling that it simply added insult to injury, they usually qualified this with the view that their case had never really been about the money, but about seeing a wrong put right. Many felt, in retrospect, that settling their cases had meant that their employer had 'got away' with their behaviour, or had been able to sweep it under the carpet, rather than having to acknowledge and address the fact that they had done something wrong. Claimants felt that having their story heard in court, and having the chance to see their employer publicly reprimanded was, in the long-term, more important than the financial settlements they had received.

10.3.2 *Expectations compared with experience*

Many claimants said that they did not know what to expect from taking an race discrimination case, as they had no experience of an Employment Tribunal prior to their own. However, the fact that they were often surprised or shocked by what was involved in taking a case, and by the hearing itself, suggested that they did in fact have implicit expectations. For example, some claimants who said they did not know what to expect, were surprised by the amount of work which was involved in the preparation of their case, and in some cases, the length of time which it took to reach the main hearing. They were surprised and bewildered at the formality of the process, and the legal understanding which was required of them. We can extrapolate from these responses that many were implicitly expecting a simpler, more informal process.

The support and advice received by claimants, including prior to their cases being lodged, clearly has the capacity to shape their expectations of the ETS. For example, many claimants' first point of advice was their CAB, who usually advised claimants whether they had a case. However, claimants did not always remember whether the CAB had told them about the difficulties of proving a race discrimination case, and the amount of work it would involve. It is possible that claimants were advised of these issues, but did not remember them or consider them too carefully. This meant that some claimants apply for Employment Tribunal hearings with apparently little awareness of what this would mean for them in practical terms. It is difficult to know how much information claimants were given by their initial advisers, whether they would have benefited from more, or whether they needed advice earlier than they received it, in order for it to have any bearing on their subsequent decisions. Perhaps by this stage, claimants grievances had gathered such momentum that they were unable or unwilling to hear any cautions offered to them about the likely realities of taking a case. At this point claimants had exhausted internal dispute resolution procedures, and/or lost all faith in the likelihood of gaining justice within their organisation. As a result, they viewed external action as their only viable alternative to dropping the matter altogether, which they were not willing to do.

Even when claimants knew something of Employment Tribunals already, they were still surprised at the amount of work which was involved in preparing their case, and the steep learning curve that was required in their knowledge of employment legislation and legal terms. Whether claimants had any prior knowledge and experience of Employment Tribunals or not, those who had good representation from the start of their case were shielded from this to a great extent, but those who represented themselves had to bear the full brunt of the work required. There was a great deal of variation in the time it took for cases to reach a main hearing; some cases were heard in just a few months, and this was in line with claimants expectations. Other claimants had waited for a year or more for their case to reach a main hearing. They had not expected the process to be so long and drawn out, and were usually dismayed at this. Some claimants felt that their cases took so long to reach a main hearing because the respondents used delaying tactics in the hope that the claimant would drop the case. They also felt that the fact that the ETS allowed the case to be postponed at the request of the respondent

demonstrated that the ETS was on the side of the respondent, rather than the claimant.

This brings us to the claimants' expectation of 'fairness', both in terms of the Employment Tribunal process and the case outcome. Claimants opted to go down the Employment Tribunal route when they felt that they would no longer get a fair hearing from their employer. They clearly expected an Employment Tribunal to be a fair process which would provide them with an unbiased, impartial hearing of their case. However, the reality of preparing and presenting their cases proved, for most, to have been different. Claimants agreed that regardless of the strength of their case, the process of case preparation always placed the employer in the strongest position because they had greater resources and knowledge of what a case would involve. The hearing was an extension of this, and claimants usually felt at a distinct disadvantage, compared to their employer. Whilst they felt that good representation, and a sympathetic chair could help to offset this balance, their expectations of the Employment Tribunal process and hearing providing a level playing field were rarely met.

The mismatch of expectations and experience was a source of considerable difficulty and disillusionment, and it gives rise to the question of how they might be brought more closely together in the future. There would appear to be two alternatives. One is to seek to provide information which would create more realistic expectations of the process, with the possible effect of deterring some with good cases. The other is to bring the process and the hearing more in line with claimants' expectations, which may prove very difficult to do. This current research cannot answer the question of which would be the best way forward.

What was clear, according to the claimants in this study, was that timely advice, together with good quality representation has the capacity to affect both claimants' expectations and their experiences. There may be a case for advisers to stress the realities of taking a case to an Employment Tribunal hearing to claimants who are considering this course of action, to prevent them from entering the system unprepared for what lies ahead. In addition, if claimants have adequate access to representation for their case, and much of the burden of case preparation and communicating with the respondent is taken away from them by their representative, their expectations and experiences may be more closely aligned.

10.3.3 Lack of appropriate resolution

Very few of the claimants, even those whose cases had been successful had been entirely happy with the process and outcome of their case. This seemed to be at least in part concerned with their motivation for taking their case and their expectations of what the Employment Tribunal would be able to do. Most of the claimants said their main reason for taking their case was to get 'justice'. It is unsurprising that most of the claimants who had settled or withdrawn their cases, and claimants who were unsuccessful at Tribunal did not feel their cases had been adequately resolved. But it is interesting that even some of the claimants who had been successful at Tribunal did not feel that justice had been done. For a few, the fact that a case had been

successful or had been settled was enough for the claimants concerned, as they felt that these outcomes were an admission that the employer was in the wrong. But other claimants with similar case outcomes felt disappointed and let down by the ETS. When the successful outcome is balanced against what claimants often meant by 'justice' though, this is not surprising. To many of these claimants, the concept of justice meant their employer being publicly reprimanded and being made to change their practices. Their employer had seemingly not been prevented from acting in the same way again towards them or others. Claimants were particularly aggrieved when despite having won their cases, individual perpetrators remained unpunished, and continued to work in the same position and with the same responsibilities for the employer. In essence, it seems that the Employment Tribunal is simply not equipped to bring about the kinds of judgements that claimants were hoping for. As a result, even when claimants won at Tribunal, they did not always feel that justice had been done.

Claimants' feeling that they had not received an appropriate resolution was particularly noteworthy because it influenced how they viewed the entire process of having taken a case, and the fairness of the whole system, in retrospect. It also appears to be one of the factors affecting whether claimants were able to put their experience of having taken the case behind them once it was over. Claimants not at peace with the result of their case had still not been able to come to terms with it several years afterwards. This had affected their ability to move on from the events, which was evident in their long-term unemployment, and for some, in the persistence of poor health.¹

10.4 Issues of power

This section considers the issues of power described by claimants, including their perceived control or powerlessness over their cases. It also looks at the balance of power between claimant and respondent in the Employment Tribunal process. The issue of the ethnicity of the Chair and panel is also raised.

10.4.1 Control compared with a sense of powerlessness

The extent to which claimants felt they were in control of the claim process seemed to have a great bearing on how they viewed their case. Claimants' perceptions of control, or a lack of it, also seemed to have the capacity to influence how they viewed the entire Employment Tribunal process in retrospect. As discussed above, claimants' sense of control over their case was closely bound up in their relationship with their representative, where one existed. Some of the clearest indications of claimants feeling they had

¹ Several pieces of American research have shown clear links between perceived race-based discrimination and: hypertension and high blood pressure (Din-Dzietham et al., 2003), psychological well-being (Broman et al., 2000; Sellers et al., 2003), and physical and psychological distress in addition to decreased sense of well-being (Ryff et al., 2003). The impact of discrimination has also been shown to affect an individual's labour supply propensity (Goldsmith et al., 2004).

lost control of their cases came from those who had 'no win no fee' representation.

A sense of control is also critical in determining the extent to which claimants were able to put the experience behind them after it had finished. This research revealed that some claimants, having felt that they had lost control over their case, perhaps as a result of their representative not acting as they would have wanted, seemed to feel a generalised sense of powerlessness with regard to themselves against the entire 'system'. If claimants perceive a lack of control over the events about which they feel so strongly, it follows that this could have a very negative effect on their experience as a whole, and for a long time afterwards. Some of these claimants seemed to have felt so helpless over the way their cases were resolved that they had been dragged down into a negative spiral of perceptions and feelings, from which it was very difficult to escape. This had tangible and sometimes devastating and long lasting effects on their daily lives, for some time after the case had ended, having eroded their sense of security and their trust in other people. Conversely, claimants who had felt in control of their case, or felt that their representative was acting according to their wishes and in their best interests seemed more able to come to terms with the experiences which led to their taking the case, and with the case and its outcome.

10.4.2 Balance of power

Distinct from the perception of a lack of control over the case and the way it progressed, was the notion of a power differential between the claimant and the respondent, which was supported, rather than negated, by the Employment Tribunal process and hearing. Claimants spoke of the balance of power between claimant and respondent, and felt that the scales were tipped greatly in favour of the latter. Claimants felt that this was evident in a number of areas, including their prior knowledge and experience of Employment Tribunals, and the resources available to them. This was particularly stark in terms of access to representation. Respondents had legal professionals to prepare their defence, whilst many claimants prepared their own cases. At Tribunal hearings, respondents were represented by barristers or QCs, while claimants were often unrepresented or had representation of a seemingly lower status, for example, a union representative, a caseworker or a solicitor.¹

Claimants often felt relatively powerless when compared to the respondent, but some also expressed their powerlessness with regard to the 'system' as a whole. The 'system' appeared to refer to the relationship between the claimant and employer, the entire process of lodging and preparing a case, the hearings, and the ways in which they operated. Claimants felt that the requirements of proving within an adversarial legal system that discrimination had occurred placed them at a considerable disadvantage. They also felt that this type of discrimination, often being subtle and incremental, was particularly difficult for them to prove. Claimants' experiences of taking cases

¹ The lack of balance of power at the Employment Tribunal hearing was also observed in other research (Hammersley and Johnson, 2004a; Williams, 2003).

had led them to conclude that the 'system' inherently favoured the respondents, and some claimants believed that the employer would almost always win. Some claimants also found the Employment Tribunal hearing particularly intimidating, and that it highlighted their own lack of power. They often noted the number of people involved in presenting their case, compared to the far larger number of people present on behalf of the respondent. Some had found facing their respondent at the Tribunal difficult, and others said that dealing with the respondents' representative, and with the Chair and panel was very daunting. Where claimants did not feel intimidated by such things, they usually had the benefit of a high level of education, or were simply very confident in their own abilities to stand up for themselves against their employer. However, some claimants did not have a high level of education, nor were they particularly confident, particularly after having gone through disputes with their employer which had damaged their confidence and faith in others. As a result, they perceived a strong power dynamic between themselves, the respondent, and the process and 'system' as a whole.

10.4.3 Ethnic composition of the panel

Regarding the Tribunal hearing itself, the Chair, and to a much lesser extent the panel, were felt to have been pivotal in claimants' experiences. They had the capacity to make claimants reasonably comfortable in stressful and unfamiliar circumstances; or to produce the opposite effect. The ethnic composition of the Chair and panel was mentioned by some of the claimants as being a concern. They said that the 'Whiteness' of the panel undermined their confidence in their likelihood of achieving a fair hearing. Hence, there may be merit in having a panel which more closely reflects the jurisdiction of race discrimination. The composition of the panel is worthy of attention as it includes laypeople, and therefore has the potential to recruit widely. A panel which more commonly represents a range of ethnic origins could be important in increasing claimants' confidence in the system, their expectations of receiving a fair hearing, and their retrospective perceptions of having felt understood.

11

Literature Review

Race Equality has been an aim of modern governments since the 1960s, when new waves of immigration brought a mix of new cultures, ethnicities, and races into the UK (Wrench & Solomos, 1999). The existence of racism, and race-based discrimination has also posed a continuous burden to Britons and non-Britons alike, who, as a result of their non-White and/or non-British backgrounds, can experience unequal and unfair treatment in the labour market. The Race Relations (Amendment) Act 1976 was, therefore, introduced to enable claimants to seek justice and equality through Employment Tribunals.

This section provides an overview of the content and structure of the literature review, in addition to providing some background information regarding the Race Relations (Amendment) Act, the Employment Tribunal system, and this current research project.

The methodology for this literature review is set out at the end of this section.

11.1 Aims and parameters of the review

This literature review seeks to provide an overview of existing research covering the issues surrounding the application of the Race Relations Act through Employment Tribunals. In particular, its focus will be on the experiences of claimants under the Act. Considering that this research has been commissioned, in part, to inform an area that has, to date, received relatively little exposure or investigation, it is not surprising that there is little published research focusing primarily on the experiences of claimants under the Race Relations Act. As such, the literature will seek to inform two main areas surrounding race claims to Employment Tribunals: experiences of racism and race-based discrimination, and information regarding the Employment Tribunal systems and processes.

It is suspected that very few individuals who experience racism in their workplaces actually make claims to the Employment Tribunals (a claim for which finds various examples of support in the literature). Understanding why victims of racism choose not to make claims will be very important in seeking ways to improve access to Employment Tribunals. Likewise, an increased understanding of discriminatory behaviour and its impact on those targeted will help to identify differences between those who do choose to make claims

and those who do not. In exploring the experience of race-based discrimination, the topics examined will be:

- Experiences of racism and unfair discrimination in general
- Race-based discrimination at work
- The impact of perceived discrimination on health and well-being.

It is acknowledged that only a small proportion of all claims to Employment Tribunals actually reach hearings, and even fewer are successful there (Hayward *et al.*, 2004). In addition to providing important background information regarding the procedures surrounding taking claims, the second section of the review will seek to identify issues affecting success rates through existing research. Topics covered will include:

- Employment Tribunal processes and systems
- Information and advice for claimants
- Experiences of Employment Tribunals.

Together, these topics will inform the research, and help to contextualise the findings with regard to claimants' experiences leading up to legal action being taken, and the issues that may have arisen during the process of taking claims. Due to the legal nature of the research subject, there is a vast amount of case study evidence (legal cases) documenting Employment Tribunal rulings, and employment appeal Tribunal rulings regarding specific claims under the Race Relations Act. In order to avoid the research taking on the role of legal interpreter, the majority of case study precedence has been excluded from the research, focusing rather on the experience of race discrimination and Employment Tribunals. The literature has drawn on research conducted mostly in the UK and US: unless otherwise stated, the sources are from the UK.

11.2 Background

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, makes it unlawful to discriminate against anyone on the grounds of race, colour, nationality (including citizenship), or ethnic or national origin. The amended act places additional responsibility on public authorities to promote and uphold racial equality, but applies to both public and private sector employers, as well as trade unions and employment agencies. Both the Home Office and the Commission for Racial Equality publish detailed legal definitions of these Acts on their websites, which are accessible to the public.

The Commission for Racial Equality (CRE) is a publicly funded, non-governmental organisation that was set up within the Act, to tackle racial discrimination and promote equality. In 'Towards Racial Equality: An evaluation of the public duty to promote race equality and good race relations in England and Wales' (2002), the CRE sets out its objectives in working with public authorities and other employers to promote racial equality, and

documents progress towards these ends. While the CRE's tasks include promoting and encouraging racial equality for service users, clients and employees, it plays an integral role as a mediator and an enforcer, for employees who have experienced racism. The CRE has the power to assist and advise people with complaints of racial discrimination, harassment, and abuse. It also has the authority to conduct formal investigations of companies and organisations where there is evidence of possible unfair discrimination. The CRE is likely to be a vital source of information and advice for those bringing claims under the Race Relations Act (RRA).

11.2.1 Types of unfair discrimination

The Race Relations Act identifies three main types of racial discrimination, and are defined in practical terms by the CRE:

- direct racial discrimination
- indirect racial discrimination
- victimisation.

Direct racial discrimination occurs when someone has been treated less favourably on racial grounds than others in similar circumstances. Direct racial discrimination also includes harassment on racial grounds, which must have the effect of violating a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for someone. Harassment on racial grounds is not only illegal in the workplace, but is also in partnerships, trade unions, qualifying bodies, and employment agencies.

Indirect racial discrimination may fall into one of two categories. The first is on grounds of colour or nationality; the second is based on race, ethnic or national origin. The first type (on grounds of colour or nationality) occurs when someone from a particular racial group, is less likely to be able to comply with a requirement or condition, and that requirement cannot be justified on non-racial grounds. The second type (based on race, ethnic or national origin) occurs when a provision, criterion or practice is applied to everyone, but puts people of the same race or national or ethnic origin at a particular disadvantage.

Victimisation occurs if someone has been treated less favourably because they have complained about racial discrimination, or supported someone else who has (CRE advice published on website, 2005).

11.2.2 Coverage of the amended act

The amended act covers all employers, no matter how small or large, and gives protection to most employees, including vocational trainees and people who work for someone else on a contract. Employers and employment agencies must not discriminate on racial grounds against people seeking work. Trade unions are under a similar duty not to unfairly discriminate against their members or those wishing to become members. The amended act also applies to bodies responsible for conferring qualifications or authorisation to enter a particular profession. All aspects of employment are

covered by the amended Act, including: recruitment, selection, promotion, transfer, training, pay and benefits, redundancy, dismissal, and terms and conditions of work.

11.2.3 SETA and ETS Annual Report

The Survey of Employment Tribunal Applications conducted in 2003 (DTI, 2004), provides a useful profile of claims made to Employment Tribunals. Detailing the outcomes of claims, as well as other particulars, it is an essential resource in quantifying the experience of claimants to the Tribunal. The Employment Tribunals Service Annual Report (2004) is also a useful resource. Some of the findings from these reports regarding race discrimination cases include the following:

- The number of cases made with race discrimination as the main jurisdiction has dropped slightly from 3,183 (2.8 per cent) in 2001/2002, to 2,830 (2.5 per cent) in 2003/2004.
- Slightly higher than average proportions of race discrimination cases were conciliated by Acas (39 per cent, compared to an average of 37 per cent).
- The proportion of race discrimination cases which were successful at Tribunal were far lower than average (four per cent compared to 14 per cent), although the success rate of Sex Discrimination cases was even lower.
- Larger proportions of men than women included a Race Relations Act claim in their case.
- Race Relations Act claims were most prevalent in London, the North West and the East Midlands.
- These points suggest that the research will need to look, in particular, at the role of Acas in conciliating race discrimination claims, as well as perceptions of those claimants whose claims have been heard at a Tribunal.
- At the time of writing, the first quantitative Survey of Claimants in race discrimination cases (SETA RRA, see ERRS 54) was being carried out, which will provide more extensive quantitative data on race discrimination claimants and cases.

11.3 Experiences of racism

The effect that racism and race-based discrimination can have on any given individual is likely to relate to various personal circumstances and characteristics. Understanding the relationship between these factors and the myriad outcomes of unfair discrimination, is key in understanding the experiences of those who ultimately brought claims to the Employment Tribunal system. This section of the literature review will examine:

- a background to racism in the UK

- the prevalence and particular circumstances surrounding racism and race-based discrimination in certain industries and professions
- the outcomes associated with perceived racial discrimination, both to health and well-being and to one's labour market potential.

11.3.1 Racism in the UK

Attempts to define differences between racism and racist discrimination, in order to develop policy directions to combat racial inequality, draws on evidence compiled in the 1980s and early 1990s highlighting the labour market inequalities between the White population and different ethnic minority groups, e.g. *'Black people generally being employed below their qualification and skill level, earn less than White workers in comparable level jobs, and are still concentrated in the same industries as they were 25 years earlier'* (Brown, 1984; as in Wrench & Solomos, 1993). There are also persistently higher levels of unemployment amongst the Black community (as compared to the White community).

'Ethnic Minorities and the Labour Market' written by the Strategy Unit (2003), collates a wide selection of statistical indicators documenting the systematic under-performance of almost all ethnic minority groups in the Labour Market, despite, in some cases, higher achievement and qualifications in education and training. The report, produced by the Cabinet Office, positions the Government's response to this situation, arguing that this *'failure to make the most of the potential of ethnic minorities has an impact on the UK's economic performance'*, moving the anti-discrimination agenda away from the sole topic of equality, and towards a strategy for national economic prosperity.

Despite these and other demonstrations of persistent inequalities, Wrench and Solomos (1999), assert that in the UK, racist discrimination is often denied: *'the denial of racial discrimination is common because, quite simply, it can be denied, owing to the normality of its invisibility'*. They argue that tackling racial discrimination is not as simple as calling individuals to account for their acts, but rather that acts of unfair discrimination often arise through processes of unfair discrimination which are established, routine and subtle, and only occasionally will an individual 'act' of racial discrimination become visible within these processes. Even less frequently can one individual be held accountable for the wrongful exclusion of another. These arguments and observations suggest that those who have, or will, experience racist discrimination (in the workplace or other environment) have a distinct challenge in calling discriminators to account – or in gaining recognition and amends for their experience(s).

Other research into the prevalence of unfair discrimination in the workplace (Wise Owls' Employment Agency, 2004) showed that while ethnicity was seen to have become less of a barrier to training and employment than it had been in the past, there was still considerable disadvantage for particular ethnic groups, such as Black Africans, Black Caribbeans, Pakistanis, and surprisingly, White Europeans. These groups continued to experience their ethnicity as a basis for unfair discrimination, and for those not born in the

UK, the unfair discrimination did not seem to lessen by the length of time spent living in the country.

The report also remarked that those who had experienced unfair discrimination (including forms other than race) were unlikely to have complained or have taken any kind of action. Worse still, of those who had taken some action in response to their experience of unfair discrimination, only a small proportion obtained a satisfactory outcome. The extent to which these negative results deter others from taking action, or pursuing claims, will be of great relevance to the current research. Furthermore, if the perception of ineffectiveness in taking claims to Employment Tribunals persists, what factors enable and persuade those who decide to take claims despite this? This will be an important area to explore in the research.

Another useful gauge of public attitudes regarding race, racism, and ethnic minorities, comes from the Home Office Citizenship survey (Home Office, 2004). In 2003, the sample was boosted to include an additional 4,571 adults from ethnic minority groups, which enabled it to capture a more robust snapshot of the views and experiences of British ethnic minorities. Some of the findings include the following:

People of Black Caribbean descent had the lowest levels of trust in courts and in the police; however, those from Asian backgrounds tended to have higher than average trust in these institutions.

The proportion of people feeling that there is more racial prejudice (generally) in Britain than five years ago has increased from 43 per cent to 47 per cent between 2001 and 2003; however, those living in multi-ethnic areas had the most positive views regarding the extent of racial prejudice, with only 37 per cent of respondents feeling that racial prejudice had increased.

White respondents were most likely to report that racial prejudice was more prevalent than five years ago, along with people aged 50 and over, and those with no educational qualifications.

In terms of experiences of discrimination in employment, Black people had the highest rates of job refusal and perceived unfair treatment at work (39 per cent refused jobs and 21 per cent unfairly treated, compared with 20 per cent and 12 per cent among White people, and 31 per cent and 16 per cent among Asians).

About half of Asian and Black employees who had been refused a promotion or a move to a better job in the previous five years thought this was because of race.

A similar question regarding the changes in perception of prejudice over the last five years was asked of respondents in the British Social Attitudes Survey in 2003 (which showed 45 per cent of respondents believing there to be more racial prejudice than five years previously); however, the Citizenship Survey is more reliable as it is reporting on a boosted sample of minority ethnic respondents. The British Social Attitudes Survey did, however, draw a positive correlation between increased racial prejudice and increased immigration (Park *et al.*, 2004).

While these results paint a general picture of the state of race relations in the UK, other research shows slightly different results. In 'Causes of Action', research based on a large-scale British survey looking at 'Justiciable problems' found that Asian and mixed-ethnicity respondents were much more likely to report discrimination than either White or Black respondents (Pleasence *et al.*, 2004). This research also reported relatively low incidences of racial discrimination, however, as the sample was not boosted to represent ethnic minority respondents proportionately (unlike the Citizenship Survey), these results are less robust in describing these groups of individuals.

11.3.2 Racism in the US

As overt racial discrimination has become increasingly unacceptable in personal and professional environments, racist attitudes, so too, increasingly gain expression through subtle everyday expression rather than through major acts of unfair discrimination in incidents and events. In research undertaken in the US, Deitch *et al.* (2003), examined the presence of everyday racial discrimination in the workplace by looking at the prevalence of perceived unfair treatment (not attributed to racist discrimination) among White and Black workers, and found consistently higher numbers of reports of unfair treatment among Black workers. The subtlety with which these everyday acts were manifest, had the added detriment of being 'attributionally ambiguous', in that victims of unfair treatment felt unsure for what reason they received such treatment. This ambiguity was also associated with higher incidences of diminished well-being, self-esteem and health, as compared with those who reported unfair treatment attributed to racial discrimination.

11.3.3 Racism in particular industries and institutions

Institutional racism is often considered to be one form of indirect discrimination, however, there has not yet been a successful case of race discrimination on these grounds (Fairclough, 2003). This is, in part, due to the requirement for the claimant to make distinct claims of institutional racism, but is also related to the need to offer evidence supporting the claims that the employer created or supported an environment 'which encouraged individual acts of discrimination'. The distinction between 'individual acts of discrimination' and institutional racism is critical, however, for claimants who have experienced unfair discrimination from colleagues rather than employers. It is also an important issue to be considered, on reflection of the pervasiveness of accounts of unfair discrimination within certain industries and institutions.

11.3.4 Protection services

The Police (HMPS) have recently acknowledged their difficulties in achieving racial balance and representation of various minority ethnic groups among their ranks (Metropolitan Police, 2005; Home Office, 1999). Certain high profile criminal cases have brought into question the capacity of the Police to deliver fair and equal treatment to the public because of inherent attitudes and imbalances within the force (McPherson, 1999). Describing the experiences of ethnic minority officers, Cashmore (2001), drew connections

between the racist workplace culture and the nature of the work itself. Moving away from the 'Institutional Racism' claim, she argues that the racist culture in the police has emerged from a performance culture which has prompted racial profiling to meet targets for police action (e.g. the practice of stopping and searching young Black youths disproportionately, in the belief that this will most likely result in exposing some type of offence, and aid in reaching one's targets). The perceived 'need' to perpetuate these discriminatory practices also resulted in White officers 'testing' their non-White and ethnic minority colleagues to ensure that they would uphold these practices, and maintain alliances within the White-majority force, and not with the ethnic minority 'suspects'.

While the practice of racial profiling may not excuse the presence of some deeper and wider-spread institutional bias, it serves well to highlight how cultural and racial stereotypes are brought into the workplace, and result not only in inappropriate professional behaviours, but also in significant and frequently unfair discrimination in the workplace. Referring to evidence from interviews with over 80 ethnic minority officers, Cashmore cites various examples of direct and indirect racial discrimination, and generally racially offensive behaviour. Oddly though, for ethnic minority police officers who experience these comments and behaviour from colleagues (only four out of the 80 she interviewed had not experienced racism from their White colleagues), very few had spoken out or complained. This was deemed part of a work culture where, because of the extreme risks inherent in the work, taking claims against one's colleagues posed not only a threat to one's occupational security, but more importantly to one's life.¹

The Fire Service has also had its share of problems in achieving racial equality, observed most notably by the under-representation of ethnic minority staff within its ranks. An investigation into 'Equality and fairness in the Fire Service' (Home Office, 1999), noted that *'there was a marked lack of understanding of the need for diversity in the service, and of the issues that need to be addressed to achieve diversity'*. Furthermore, *'Black and ethnic staff had coped with all sorts of difficulty, sometimes as a result of open racism, but predominantly due to ignorance on the part of White male colleagues'*. Black and minority ethnic staff also felt limited in their capacity to respond to such abuses, as they felt that complaints to management were either dissipated, or blown out of proportion to the extent of creating an 'us and them' environment amongst the staff.

11.3.5 Higher Education

Racism has also been identified as a continuing challenge to Higher Education Institutions in Britain (Carter, Fenton, Modood, 1999). The report 'Ethnicity and Employment in Higher Education' draws attention to the continued

¹ The HMPS have extensive internal grievance procedures, which may affect the likelihood of an officer (or other type of HMPS employee) taking a claim to an Employment Tribunal. The extent to which the Police access the service of Employment Tribunals is not known, but this organisation is discussed as a means of understanding patterns of workplace discrimination.

disadvantage posed to non-British and non-Whites in relation to the lack of permanent contracts, the under-representation of various particular ethnic groups (such as Black Caribbean/Other, Pakistanis, and Bangladeshis), and the consistently worse position of women in every category defined by nationality and colour with an *'alarming number of ethnic women reporting they suffered from racial harassment'*. Purwar (2004), takes a more theoretical approach to her analysis of race in higher education, suggesting that patterns of discrimination are endemic to a work culture defined by class and (perhaps subsequently) colour. All authors agree that the issue of racism in higher education is highly complex, and make reference to 'institutional racism' as a way of understanding the systemic manifestations of racial inequality, including racial discrimination and harassment.

In a survey of higher education staff, 23 per cent of minority British staff, and 30 per cent of minority non-British staff reported having experienced discrimination in job applications. Also, a further 18 per cent of minority British, and 12 per cent of minority non-British staff claimed to have experienced unfair discrimination in applications for promotion. Perhaps most disturbing were the levels of reported racial harassment (again, drawing on results of the staff survey) with 18 per cent of ethnic minority staff (British and non-British) being victims of racial harassment (Carter *et al.*, 1999). This level of discrimination being reported in a survey provides another example of evidence that very few victims of discrimination in work bring claims to an Employment Tribunal.

In higher education, as in other types of institutions, because career progression is linked to intricate social/professional networks and patronage, standing up against discrimination poses various risks. Predominating explanations for not having taken action against discriminatory practice, was the prevailing belief that *'formal proceedings seldom lead to a satisfactory outcome for the complainant'* (this is with regard to internal grievance procedures). Further to this, *'if a complainant member of staff remains in the same institution, they subsequently have to work with a Head of Department, manager or colleague against whom they have made a complaint'* (Carter *et al.*, 1999). The nature of organisational structures present in Higher Education Institutions, mean that the operation of small departments and faculties can depend on intricate social and professional networks. Mastering the dynamics of these arrangements can be integral to an academic's professional success, and often the risk of upsetting these relationships by exposing inappropriate behaviours and actors, is too great.

Another point made in the Carter *et al.* report, is that the experience of racial discrimination will be different amongst different ethnic groups, and indeed, will be different between men and women of the same group. The Black experience in particular was highlighted, as well as that of female Asian academics. The latter has been explored in more depth, albeit in an American context, by Lee (2003), in *'Asian female faculty in Christian academia: a qualitative exploration of discrimination and coping'*. It goes into considerable detail conceptualising the experience of discrimination in the workplace into five main themes: subtlety, tokenism, identity, emotional consequences and context. Other themes were drawn out in relation to coping with the experience of discrimination, including such areas as proactive coping,

external support, and personal resources. These themes may also have resonance in the experiences of claimants under the RRA.

11.3.6 *The medical professions*

Racism and racial discrimination is also a major issue in the NHS, and in related medical professions, perhaps, in part, due to the particularly diverse nature of its workforce. Shields and Wheatley-Price (2000), report that since the 1960s when overseas nurses were recruited to counter chronic shortages in nursing staff, ethnic minorities have been over-represented in the NHS, also making the NHS the largest employer of ethnic minority groups in Britain (Department of Health, 1998, cited by Shields & Wheatley-Price, 2000). Nurses and Doctors are exposed to a greater risk of racial discrimination also, by the nature of their work, dealing with the public and, therefore, potentially being subject to harassment from both colleagues, patients, and patients' families. Research into experiences of racial harassment in the British nursing profession revealed that more than one-third had experienced harassment from other staff (39 per cent), while almost two-thirds had experienced harassment from patients (64 per cent). The research also drew conclusions linking the experience of harassment with lowered job satisfaction, and ultimately, with an increased likelihood of having the intention to leave the NHS.

Looking at other parts of the medical profession, another piece of research documents the experiences of UK medical graduates as they developed in their careers as doctors. It concluded that there was a significant and pervasive presence of '*racial discrimination in access to training and careers, and in norms of acceptable behaviour*' (Cooke *et al.*, 2003). It describes a system of patronage, which is controlled by a White, male, public-school, 'old-established university' group of individuals. Both White and non-White graduates overwhelmingly acknowledged that ethnicity was a factor in career progression, despite the more widespread acceptance among non-White graduates. For example, while 62 per cent of non-White medical graduates felt that race was a factor in access to medical training, only 41 per cent of White graduates acknowledged this to be the case. With regard to early career opportunities, 70 per cent of non-White graduates felt race mattered, while only 45 per cent of White graduates agreed. In accessing medical specialities (a factor linked significantly to levels of pay within the field) more than half of White graduates felt that race mattered (53 per cent); however, non-White graduates were much more conscious of this component of discrimination, as 87 per cent felt that race impacted on access to specialities. In general, while recognition was higher amongst non-White graduates (86 per cent) the majority of both groups felt that race impacted on career advancement (59 per cent of White graduates).

The explanations given by graduates for how such a system was maintained (despite the introduction of the Race Relations (Amendment) Act 2000), identified three factors:

1. 'don't rock the boat': adherence to a code within the profession, that 'doctors in training do not complain, and those who do, risk jeopardising their careers'

2. exhaustion: doctors in training are over-worked and sleep deprived, and had little energy to consider alternative options
3. justification: doctors who do complain or speak-up about inappropriate behaviour are told: 'Well perhaps you don't understand the English culture well enough'.

The authors expound that the research was based on 'self-reported occurrences of perceived racial harassment rather than objectively identified episodes'. As with much of the research examining the impact of racism on its victims, this relies on the victims' capacity to identify themselves as such – recipients of racial discrimination, a process familiar to all those who have taken a claim under the RRA (1976) and the Race Relations (Amendment) Act.

11.3.7 *Discrimination and well-being*

Several American studies have examined links between race, ethnicity, and health, looking in particular at the African-American community and their experiences of discrimination (all of the research mentioned in this section is from the US). Consistently, the results demonstrate that there are clear links between perceived race-based discrimination, and the following conditions and outcomes:

- hypertension, or high blood pressure (Din-Dzietham *et al.*, 2003)
- psychological well-being (Broman *et al.*, 2000; Sellers *et al.*, 2003)
- physical and psychological distress, in addition to decreased sense of well-being (Ryff *et al.*, 2003).

Some of the studies above also noted differences in the effect of perceived discrimination, between men and women; most usually that women seemed particularly prone to psychological distress in the face of race-based discrimination. Other studies also examined the effects that racial/ethnic identity played in coping with perceived race-based discrimination, finding that having a strong ethnic identity could help to buffer the negative effects of discrimination (Mossakowski, 2003; Ryff *et al.*, 2003; Lee, 2003).

The impact of unfair discrimination has been shown to affect not only one's psychological well-being but also (and perhaps as a result) seems to have links with an individual's 'labour supply' propensity (Goldsmith *et al.*, 2004). Perceptions of unfair discrimination during job searching and when in employment (from employers) are shown to create the effect of an individual being more '*likely to change their beliefs about the quality of job that they can expect to attain, which provides an incentive to reduce their labour supply*'. As in other research, findings varied between men and women (female labour supply being more strongly linked to perceived discrimination), and also between different ethnic groups: '*Blacks did not exhibit comparatively reduced labour supply when beliefs about exposure to discrimination [...] are taken into account*' (Goldsmith *et al.*, 2004).

The impact of perceived discrimination on health and well-being is undoubtedly negative and significant. In considering the experiences of claimants to Employment Tribunals, it will be important to explore the physical and emotional impacts associated with their experiences of unfair discrimination.

11.4 Employment Tribunals

The Employment Tribunals Service structure is a unique legal establishment in the UK, in that it allows workers to seek justice for unfair or inappropriate practice in the workplace. As in most legal establishments, it follows a set of procedures in order to work through cases and claims. Understanding what these procedures are will be an important backdrop to the research. Also, understanding what others' experiences of the Employment Tribunals Service have been will help to place in context, and compare, the results of this research within a wider scope (where possible). This section of the literature review will cover both of these topics, including more detailed topics such as:

- guidance for resolving disputes (between employees and employers – before legal action)
- access to information and advice (on employment law and the Employment Tribunal)
- procedure for taking a claim to an Employment Tribunal
- issues around legal representation and findings from the survey of Employment Tribunal representatives (1998)
- experiences of taking claims (including Race Discrimination claims in Wales).

11.4.1 Resolving disputes prior to making an Employment Tribunal application

In October 2004 the Department of Trade and Industry issued guidance for employers and employees regarding new procedures for resolving disputes in the workplace. These procedures must have been pursued before a claim can be accepted by the Employment Tribunals Service (unless a claim is submitted with a reasonable explanation for it not having been followed). The process consists of three main steps:

- Put it in writing: either the employer or employee (referring to disciplinary action or a grievance) must describe the reason(s) for taking action, and specify the time for which the recipient has in which to respond.
- Meet and discuss: after sufficient time has passed from the initial notice (to consider the facts presented) employer and employee must meet to discuss the disciplinary action or grievance. Both may be accompanied by another to witness the meeting.

- Appeals: if required (usually in the case of disciplinary action), an appeal can be made in writing, to contest the decision taken from previous events. The employee must be informed of the outcome of the appeal.

Failure to follow the grievance procedures by either side may result in penalties if the claim is taken to a Tribunal: any awards issued can be increased or reduced between ten and 50 per cent (DTI, 2004).

11.4.2 Access to information – legal advice, and understanding the legal process

Advice seeking

The decision to pursue a claim through the Employment Tribunal system is not one that all victims of workplace discrimination take. According to the LSRC Survey of Justiciable Problems (Genn and Pleasence, 2004), almost one-fifth of people who experience problems in their employment do nothing to resolve it. An additional 20 per cent handled their problem alone, without seeking advice. In regards to people experiencing discrimination, the proportions doing nothing to resolve, or attempting to resolve it themselves (without seeking advice) are even greater with more than half of this group falling into these two categories. In general, it was found that men were more likely than women to do nothing about their problem, and Black and minority ethnic respondents were more likely to do nothing to resolve their problem than White respondents. Amongst those doing nothing, the single most common reason given was the feeling that nothing could be done, given by about 30 per cent of respondents. Importantly, a further six per cent said that they were too scared to do anything (keeping in mind that this includes all types of Justiciable problems, and not just discrimination and employment problems).

For those who did seek advice, the LSRC survey reveals that the first choice of adviser can often be the most inappropriate. For example, amongst those experiencing employment problems, the employer was often used as the first source of advice. As Genn and Pleasence point out, it seems unlikely that advice from the source in which the problem originates will be as valuable as the advice which could be offered by an independent adviser. For those with employment problems, fairly equal numbers sought advice in the first instance from Citizens' Advice Bureaux (CABx), trade unions, and their employers. This first point of contact had great significance, considering that more than half of people with employment problems tended to seek advice only once (or from only one source).

Genn and Pleasence (ibid) identify a range of structural and personal obstacles which operate to inhibit access to advice. The lack of availability of free sources of advice such as the CAB (due to limited opening hours, and unanswered telephones) unaffordable costs in regards to solicitors, and the lack of specific knowledge and help available were some of the structural obstacles mentioned. What was considered even more challenging (in terms of redress) were the psychological and personal barriers expressed by

respondents which lead to inaction. *'Fears of making a bad situation worse, and a fatalistic sense that there is little to be done about problems and they must simply be endured'* were considered to be especially problematic as the research showed that certain disputes and difficulties often lead to a cascade of other problems.

Advice

Claimants making claims to the Employment Tribunals Service are not required to have legal representation. In order for claimants without solicitors to properly represent their case, they must make use of all available resources in order to build the legal and procedural knowledge necessary to successfully manage the progression of their claim. In the guides issued by the Employment Tribunals Service, claimants are encouraged to consult various organisations (depending on the nature of their claim) in order to gain information and advice about the claim process and about Employment Tribunals (Employment Tribunals Service, 2004).

For claims relating to unfair discrimination, claimants are encouraged to consult the CRE (Commission for Racial Equality), the EOC (Equal Opportunities Commission) and/or the DRC (Disability Rights Commission), in addition to gaining more particular legal advice from the CAB (Citizens' Advice Bureau) and Acas (Advisory, Conciliation and Arbitration Service).

In an assessment of accessibility to information and advice for those taking claims under the RRA to Employment Tribunals in Wales, several observations were made (Williams *et al.*, 2003). There were problems associated with 'unmet need' with regard to representation for race discrimination cases, with the prevalence of solicitors with race specialisms being particularly low, forcing many claimants to seek representation from outside Wales (an issue which may be more generally relevant to claimants taking cases across Great Britain, especially in geographically remote or rural areas).

There were also issues around the way in which advisory agencies such as Acas, trade unions, the CRE (and Racial Equality Councils in Wales), and the Citizens' Advice Bureau worked together, or rather did not work together. Participants in the research remarked that they felt 'fobbed off' and 'passed around' between agencies, often delaying attempts to gain information and advice to such an extent that claims could not be made as too much time had expired since the incidents had occurred. In general, the authors concluded that there was poor liaison and poor transfer of expertise between agencies providing advice to individuals.

Some of the other issues remarked upon included:

too few agencies

trade union reluctance to become involved in race cases (in fact, some participants felt that the unions themselves represented cases of 'institutional racism')

variable quality of advice given

variable quality of private solicitors.

While this research was conducted in Wales, which was noted as being particularly behind with regard to race equality awareness and related issues, it nonetheless identified various themes which are relevant to those taking race claims anywhere in the UK.

Representation

Hammersley and Johnson (2004b) have conducted research into 'no win no fee' representation at Employment Tribunal cases. The 'no win no fee' arrangement is also sometimes referred to as 'contingency fees' or 'conditional fee' arrangements. These consist of payment methods whereby legal professionals (usually solicitors or barristers) offer their services in exchange for a portion of compensation awarded, if and when the case is won. In this way, the representatives make an estimation of the likelihood of success for each case, based on the circumstances and available evidence. While there are various arguments which question the moral and ethical legality of this type of arrangement, Hammersley and Johnson conclude that it offers greater potential benefit to employee claimants than to employers, as the system is in existence to provide a legal service to those who otherwise may not be able to afford it.

As race discrimination cases tend to be more complex, and are often deemed higher risk (in terms of success rates), claimants to Employment Tribunals with claims under the RRA are less likely to be able to access this type of representation. 'No win no fee' solicitors are required to assess the likelihood of success from the outset, and race claims rarely fare well in these assessments. The proportion of compensation being paid to the solicitor will also relate to the extent of risk in taking on the case, implying that successful race cases are likely to cost claimants more under these arrangements than would other types of claim. Since awards to Employment Tribunal claimants tend to be quite low, this also restricts access to 'No Win No Fee' representation. Hammersley and Johnson assert that claimants were unlikely to be represented if the estimated award is less than £12,000 (the average for unfair dismissal cases in 2003 was £6,776).

Procedure for taking claims to Tribunals

Claims are brought to Employment Tribunal hearings after grievances have been filed, and advice has been sought (recommended, but not necessary) from either union representatives or legal professionals (Employment Tribunals Service, 2004). If the claim is complete, and the circumstances surrounding the dispute qualify it for eligibility (*e.g.* the proper grievance communication has been held between claimant and the employer), the claim is accepted and the reconciliation process begins.

The reconciliation process involves the Tribunal issuing notice to the employer, which requires an acknowledgement of receipt, and a response to the offence being alleged. If the accused employer does not respond, a default judgement is issued (in the favour of the claimant). If the response is made, and accepted – it must adequately respond to the Tribunal request –

(Employment Tribunals Service, 2004), the case moves forward towards a hearing. During this time, before the hearing, representatives from both sides will often be in communication attempting to resolve the dispute out of court (to settle). If a resolution has not been achieved, the case will move forward to an Employment Tribunal hearing, after which a judgement will be issued.

From the point of the claim being sent to the Employment Tribunals office (this must happen within three months of the alleged incident/action), the entire process is estimated to take approximately 30 weeks, with the case management and negotiation between claimant and employer contributing the bulk of this period, lasting approximately 26 weeks.

Issues around representation in Employment Tribunal cases

The Department of Trade and Industry commissioned a survey of representatives in Employment Tribunal cases in 1998 (Latrielle *et al.*, 2004). The research report identifies interesting differences in case outcomes between types of representation (usually relating to type of payment arrangement, and association with third parties). Evidence was found to suggest that claims with representation had better outcomes, while it was also noted that in cases where both sides had representation, the likelihood of it being settled before reaching a hearing was increased. Looking at the representatives themselves, it was found that the majority had significant experience of Employment Tribunal cases in the previous 12 months, and when representing the claimants, tended to be involved from the case from early on (Latrielle *et al.*, 2004). Representatives often felt well placed to advise their clients on the likely outcomes of their cases, and where cases were deemed strong, advice was often to seek settlement or proceed to a full hearing. Trade Union representatives were found to be less likely to advise their members to seek settlement (encouraging, rather, to push cases to full hearings). Keeping in mind that this survey includes all types of cases, and not only discrimination cases (the report does not detail how the sample is distributed across different types of claims), it serves as an interesting juxtaposition to the research conducted in Wales.

In the report on race discrimination cases in Wales (Williams *et al.*, 2003), problems were associated with 'unmet need' regarding representation for race discrimination cases. The prevalence of solicitors specialising in race discrimination was particularly low, forcing many claimants to seek representation from outside Wales (an issue which might also be present for claimants taking cases in the rest of Great Britain, but in geographically remote or rural areas). Unmet need was, in part, attributed to a shift in the role of CRE (or Racial Equality Councils in Wales) played in race equality in general, moving away from casework and towards public relations activities. Welsh claimants also had concerns about confidentiality, in part because advice was often given in 'very conspicuous and public places'. This risk of exposure was also felt to deter other potential claimants, who often already held concerns about backlash in their close-knit communities and labour markets (also remarked upon with regard to various industries across the UK).

11.4.3 Experiences of taking claims

As mentioned above, the experience of taking unfair discrimination claims (under the RRA or other legislation) to Employment Tribunals has received very little exposure or direct research to date. The search for literature has confirmed this fact, as the review has found only two relevant studies, and one unpublished conference paper from a web-based search on the topic.

Hammersley and Johnson (2004a), conducted research into the experiences and perceptions of claimants who pursue claims at Employment Tribunals, including in their sample applications for all types of claim. While the majority of their sample had settled their cases before a full hearing (proportions were in line with Acas figures; 76 per cent in 2004), various themes and issues surrounding their applications were brought to light:

Low levels of satisfaction regarding the quality of all types of representation; however, satisfaction with the quality of representation by trade unions was particularly low.

Claims made by employees in the public sector found that 'the prevailing management attitude [was] to seek to ensure that no adverse publicity is generated by cases which are of a sensitive nature, especially those concerning race or sex discrimination'.

There was a perception that public sector employers were supported by trade unions officials *'in their attempts to reach settlement and thus prevent such cases going to hearing'*.

Those claimants who had chosen legal representation under 'no win no fee' arrangements felt pressurised to accept quick settlements in order to minimise legal costs while maximising representatives' profits.¹

While there was mixed evidence regarding the financial costs of pursuing claims, as well as with regard to the impacts on claimants' job prospects (post-claim prospects showed a mix of outcomes, some better and some worse), the emotional and physical costs of pursuing claims were consistent, showing that most claimants underwent a sustained period of stress.

Motives for pursuing claims were focused on 'having their day in court and calling their employer to account'.

This report summarises research with claimants taking all types of claim to Employment Tribunals (race discrimination claims represented less than four per cent of their survey sample, while interviews conducted with claimants and representatives were not identified by type of claim); however, the findings highlighted above have relevance to the general experience of taking

¹ Up until recent changes, claimants' details were published in a public register, allowing them to be contacted by various types of legal representatives marketing their services. This was changed, in part, because of a flood of marketing to Employment Tribunal claimants (by contingency fee solicitors in particular).

claims, and therefore may also relate to individuals who have taken race discrimination claims.

Experiences of taking race discrimination claims in Wales

The study of unfair discrimination cases in Wales (Williams *et al.*, 2003), identified issues relating specifically to the experiences of those who brought race discrimination cases (in Wales). From the views of professionals involved in race discrimination cases, the following themes were identified:

Low levels of awareness of rights amongst the Black and ethnic minority communities, and especially amongst women.

Language and communication problems which resulted in claimants not being able to sufficiently describe their cases, and the cases, therefore, appearing weaker than they actually were in some cases.

Cultural factors — whereby, some individuals felt it inappropriate to make complaints about their employer, or other more senior positions (this was noted especially with regard to ethnic minority women).

Concerns about employment instability discouraged some individuals from taking claims, for fear of being branded a 'trouble-maker' in a very small community, and in what was generally felt to be a very tight labour market.

With regard to taking cases to Tribunal, and the actual experience of the Tribunal hearing, respondents (professionals and claimants) commented on the following issues:

The experience of the Tribunal was described as being 'confrontational' and 'intimidating', creating an environment which disadvantaged minorities *'by virtue of cultural norms, language barriers and power differentials'*.

There was a confirmed understanding in the community that very few cases succeed at Tribunal. This was with particular reference to race discrimination cases taken to Welsh Employment Tribunals, as some thought it advantageous to take their claims to English Tribunals (for example, in Bristol).

Many survey respondents who had taken claims, had experienced *'a long but persistent process of undermining'* and found it *'difficult to put [their] finger on what was happening'* (drawing parallels with Deitch *et al.*, 2003).

Difficulties in defining racism often discouraged complainants from proceeding with their claims, in part, because the perceived *'impacts of making a complaint were seen as greater than the benefits of attaining justice'*, despite knowing that they had been victims of race discrimination: the financial and emotional costs were high, as were the demands on time, and the potential risk on future employment prospects.

Employment Tribunal claimants under the DDA (Disability Discrimination Act)

IES conducted research into the experiences of claimants to Employment Tribunals with claims relating to the DDA in 2003 (Hurstfield *et al.*, 2004).

The research was the third phase of a series of studies which monitored the implementation of the Disability Discrimination Act (DDA) 1995. It involved 139 qualitative interviews with claimants, respondents and representatives. The research aimed to examine how the act was being implemented in the ETS and the courts system, and also explored and analysed the views and experiences of participants in DDA cases. It looked at issues of access to justice, the conciliation process, the effect of factors such as characteristics of participants and access to representation on case outcomes, and the impact of taking a case on the parties involved.

Findings which were of particular relevance to this research on race discrimination claimants are summarised here. They include the difficulties and prohibitive costs reported by claimants in obtaining support, advice and representation. While respondents were generally able to seek advice from in-house or external specialist lawyers, claimants were more likely to seek free sources of support, such as CABs or trade unions. They did not have the financial resources to choose who represented them, and some experienced so much difficulty in securing representation that they ended up preparing their own cases and representing themselves at Tribunal. Most of the claimants interviewed had little or no prior knowledge of the ETS and they had not anticipated how formal and legalistic the Tribunal process would be. Many of them found this particularly daunting and distressing. Respondents were able to rely on their representatives to mediate the process and deal with legal technicalities. In contrast, claimants were often represented by people with little legal expertise or experience of DDA cases, or they represented themselves. Some claimants reported the difficulties of obtaining written evidence.

Reasons for settling and withdrawing cases prior to a full Tribunal hearing were explored. Claimants took these courses of action due to, for example, concerns about the cost of pursuing a case to hearing, the perceived stress of continuing with a case, or a realisation of only a slim chance of success at Tribunal. Other claimants decided that the benefits of winning might not outweigh the personal and financial costs of continuing with their case.

Factors affecting case outcomes at Tribunal were perceived to be the availability and quality of evidence, witnesses, the quality of representation and the attitude of the Tribunal members. Both claimants and respondents reported that the attitude and behaviour of the Tribunal chair and panel had a great deal of influence over the case outcomes. It was evident from their reports that there were differences between Tribunal panels, and the way that they treated claimants and respondents. There was a notable tendency for claimants to imply that the whole process was stacked against them, particularly with regard to the difficulty in securing representation and the implications that this had on the case as a whole. Some also reported that the Tribunal system itself was biased against them.

The qualitative interviews demonstrated a range of positive and negative impacts of taking cases, both short- and long-term. A minority of claimants reported positive impacts such as winning an award or settlement, and developing greater confidence in themselves through having pursued a case. However, the majority perceived more negative, longer-term impacts on

them. Many were left with large legal costs which they could not meet, even if their case had been successful. Others reported that the case had been so stressful that they would not have taken it had they realised what it would involve. Some claimants said that taking the case had not only impacted negatively on their health and well-being, but on that of their friends and family too. Claimants also believed that taking an Employment Tribunal case had adversely affected their ability to participate in the labour market. Most had been unable to return to their original jobs, and some felt that they would be unable to find different work in the same sector.

While the experiences of individuals who have been unfairly discriminated against in the workplace will undoubtedly relate to the nature of the discrimination, there are certainly parallels to be drawn from the research described above. The experience of preparing a case, and attending the Employment Tribunal in particular, may prove to have similar impacts on its participants, regardless of the nature of the discrimination claimants experienced. The research on DDA claimants will serve as a useful benchmark in interpreting the findings of the research on race discrimination claimants in understanding the distinct roles of race discrimination and the ways such claims are handled by the Employment Tribunal Service.

11.5 Methodological issues

This research presents methodological issues due to the personal, sensitive and difficult experiences which will be discussed. As the literature has shown, the experience of race-based discrimination poses various threats to an individual's physical and psychological well-being. Participants in this study will also have experienced the added experiences, which are likely to have been negative (Williams *et al.*, 2003), of pursuing claims, and possibly attending Tribunal hearings. Participants whose claims were unsuccessful, may find discussing their experiences particularly difficult. This section of the literature review considers best practice methods in conducting research into sensitive issues, and on topics including race, to inform the current research into claimants' experiences of bringing race discrimination cases.

It is very likely that many of the participants in the research will be a member of some type of minority ethnic community (90 per cent of race claims were made by minority ethnic claimants, Latrielle *et al.*, 2004). Therefore, this section of the review will also present current thinking in regards to the race of the interviewer in relation to the race of the interviewee, and discuss implications for the research.

11.5.1 Sensitive issues

Sensitivity in research is common, as '*depending on the context, all topics are potentially sensitive*' (Lee, 1993, as in Elam *et al.*, 2003). Various approaches to research have been developed and tested in order to alleviate the adverse impact that research into sensitive issues may otherwise impose on those taking part. Some of the recommended methods include the following:

Providing clear explanations about the study and use of appropriate consent procedures (at recruitment stage in particular).

Design of the interview structure should provide for a 'warming-up' period before the most sensitive topics are introduced: appropriate allowances for timing must also be considered.

Confidentiality procedures should be clearly addressed to the respondent, and more generally, should be considered in the design of each phase of the research (the confidentiality agreement can also be referred to at the beginning, end, and even during the interview at the onset of discussion of particularly sensitive topics).

Qualitative interviewing techniques in themselves can be useful in putting the respondent at ease, and at eliciting detail around difficult topics: the appropriate training and skill in the interviewer is essential.

Building trust and confidence with the respondent: 'the respondent needs to be convinced that the interviewer will not judge the person and has the respondent's best interest at heart' (Elam *et al.*, 2003).

11.5.2 *Race of interviewer*

In research with minority ethnic participants, there are mixed views about the use of 'matched ethnic' interviewers. While some argue that this can help the respondent to elicit culturally specific experiences (important in topics relating to racial discrimination), other literature suggests that the familiarity offered by an interviewer of the same ethnicity may challenge the respondent's trust in confidentiality and anonymity (Elam *et al.*, 1999). In a study of African-American women's experience of the 'glass-ceiling', a White male researcher adopts a humanistic participatory research design in order to compensate for the potential power differential inherent in his own demographic (Sherman, 2002). Where the emphasis in the research is on understanding the participants' experience, appropriate use of qualitative interviewing techniques in combination with a sympathetic research design can equal outcomes of research which have used matched interviewers (Elam *et al.*, 2003).

Others have remarked that the practice of 'ethnic matching' may inadvertently prioritise race over other important characteristics such as '*gender, class, age, and regional affiliation*' (Nazroo *et al.*, 2002). While race will undoubtedly be a significant factor for the research being undertaken, Nazroo *et al.* also suggest that the practice of ethnic matching itself may imply that participants are so far removed from the researchers that the only way to access their experience is through individuals of the same ethnic background, inadvertently perpetuating the experience of unfair discrimination by characterising them solely by their own ethnicity. Language may be the only real barrier to interviewers who are not from the same ethnic group as interviewees, where participants' first language is not (in this case) English. Nazroo *et al.* recommend the use of freelancers to enable participants to describe their accounts in the language they feel most fluent in, but emphasises the need for the multi-lingual interviewers to be

appropriately trained in the techniques of qualitative interviewing, as well as appropriate familiarisation with the issues and aims of the research (Nazroo *et al.*, 2004).

11.6 Summary

This review of the literature has gathered evidence on issues surrounding the experience of unfair discrimination, and on the procedures and issues associated with taking claims to Employment Tribunals. While there was limited material relating specifically to the experience of taking race discrimination claims to Employment Tribunals, the review has included evidence from a number of related areas, which will help to inform and contextualise the current research.

As noted in much of the research included in this review, the experience of unfair discrimination is often subtle and continuous. Those experiencing unfair discrimination are generally unlikely to protest, as discriminators are often supported by processes and institutional cultures which perpetuate inappropriate behaviours. The literature suggests that many of those who experience unfair discrimination will not do anything in response. Some will seek advice, but if this fails, very few will pursue a resolution.

Those who do pursue grievances, either internally or through the Employment Tribunals Service, often perceive a significant risk to their current employment status and future career prospects. When cases are brought to a Tribunal, the emotional and physical stresses already experienced through the act(s) of unfair discrimination are compounded by the stresses associated with presenting themselves and their case for judgement, and also by the repercussions from doing this.

Race discrimination cases seem to present a unique set of challenges and issues with regard to both Employment Tribunal hearing outcomes, and legal representation, as suggested by differences between reports on Employment Tribunal cases generally, compared with race discrimination cases specifically (as found in Wales). The extent to which this is true in a broader context has yet to be explored in-depth. What is clear, however, is that claimants' understanding of the legal procedures and processes, and/or their access to good quality legal representation, is of great importance in relation to both case outcomes and the longer-term repercussions.

In conducting the research on claimants in race discrimination cases, it has been important to keep in mind the potential sensitivity surrounding the experiences of participants. This has been reflected in the research tools and timings (of interviews), in order to develop rapport with participants, and to create an environment where questions can be freely asked by participants, and concerns can be openly expressed.

11.7 Methodology

Several different research strategies were employed in gathering knowledge and literature to inform this review. Existing bibliographies at IES were referred to, in addition to extensive searching of electronic databases,

together with specific and general web-based searches. Because of the relatively unexposed nature of the research topic, it was not surprising to find very few references to the experience of taking race discrimination claims to Employment Tribunals. As a result of this dearth of existing research, the literature review was expanded to inform the research on the experience of race-based discrimination (in and out of work), and issues relating to the Employment Tribunal Service process.

The search terms or words used included (including various combinations therein, with and without restrictions, *e.g.* UK):

race relations claimants

employee race discrimination

experiences of Employment Tribunal

Employment Tribunal race discrimination

experience of race discrimination

Employment Tribunal

discrimination and race

discrimination and experiences

discrimination and employment/work.

Databases searched include:

PsychINFO: contains periodical articles from 1887 and books from 1987, and dissertations on psychology.

ZETOC: contains the British Library Electronic Table of Contents database of over 15 million article titles derived from the 20,000 most important research journals in the world, dating back to 1993.

Web of Science: contains journal articles and comprises the Arts and Humanities Citation Index, the Sciences Citation Index, the Social Sciences Citation Index, and the Index to Science and Technological Proceedings.

Respect database: an international economic database (<http://ideas.repec.org/>).

Specific web-sites consulted and searched include:

Employment Tribunals

Acas

Commission for Racial Equality (CRE)

Equal Opportunities Commission (EOC)

The Home Office

AMICUS/MSF

Unison

Trades Union Congress

Citizens' Advice Bureau (CAB)

The Treasury

Policy Hub

Strategy Unit (Office of the Deputy Prime Minister)

Department for Constitutional Affairs

direct.gov.co.uk

Social Exclusion Unit

National Employment Panel.

A snowballing approach was also taken, where the bibliographies of key articles were used to identify further literature. When all avenues began to result in the same articles and references, the search was deemed 'saturated'. References were then entered into a bibliographic database called 'Endnote'.

Appendix 3 contains the references used and cited in this literature review.

Appendix 1: Interview topic guide

Introduction

First of all, thank you for helping us with this research. I would like to start by giving you a bit of background to the work we are doing.

If IES: I work for an organisation called IES – The Institute for Employment Studies.

If Agroni: I work for an organisation called Agroni. We are working together with an organisation called The Institute for Employment Studies (IES) throughout this project. Agroni are doing the interviews which are in languages other than English.

IES (and Agroni) have been asked to conduct this research on behalf of the Department of Trade and Industry (the government department with policy responsibility for Employment Tribunals). IES (and Agroni) is an **independent research organisation**, and we are not part of the Government. Everything you say to us is strictly confidential, and you will not be named in anything we publish. We will not pass your name on to any other company or organisation.

We want to know more about the experiences of people who apply for an Employment Tribunal because they believe they have been discriminated against because of their race.

A little while ago (in February or March this year), you took part in a telephone survey about Employment Tribunals. In that survey, you said you were willing to take part in further research. This is why we have contacted you and asked for this interview.

It is one of a number of interviews taking place across the country. We want to understand more about the events that lead to your application for a Tribunal, and what your experience of the Tribunal process was. The aim of the research is to inform the Government about how the system really works so it can plan future improvements.

Before we begin, I'd like to tell you how the interview will be conducted.

We would like to record the interview, to make sure we capture fully everything you tell us. The recording will be transcribed, and then all recordings will be erased. Is this OK with you?

The interview may touch on experiences that you find difficult to talk about. Please let us know if you would rather not answer a question and we will move on.

You can also stop the interview at any time, or you can ask us to pause for a while if you want to take a break.

Check how much time they have for the interview. If appropriate, explain that we have a maximum of two hours for the interview, and that there is probably going to be quite a lot to cover. We might need to review how we are doing in terms of time and what we have managed to cover at intervals throughout the interview, to make the most of the time we have with them.

Do you have any questions before we start?

A. General background

This 'guide' is intended to assist interviewers when probing for more information. Interviewees must be encouraged to 'tell their story' rather than providing short answers to structured questions.

- ⇒ Before we start, can I just confirm that you applied for an Employment Tribunal on the grounds of race discrimination?
- ⇒ Was this purely a Race Relations Act case, or were there other issues – and other legal jurisdictions or actions involved? Which ones? Which did you regard as the 'main' part of the case?
- ⇒ I'd like to begin by asking about the background to this race discrimination case. Can you tell me some details about the employer about whom you made the Tribunal application?
- ⇒ Were they working there at the time of the application? Had they left, or was it concerning a job application (recruitment case)?
 - Probe for details such as job title, the industry, size of employer, their work history there.

ASK IF A RECRUITMENT CASE:

- ⇒ When were you last in work? Ask about last job and employer. Why did this job end?

ASK ALL:

- ⇒ And what was your work history before that?
 - Probe for details as before.
- ⇒ Had you ever made a claim to an Employment Tribunal before?
 - If yes, probe on the employer and their history there, the circumstances leading to the application, type of case, what happened, outcome.

The aim of the next two questions are to enable the claimant to tell their story in their own words. The rest of the interview can then be spent following up what they say, confirming, clarifying and probing for detail as necessary.

- ⇒ Please tell me *briefly* in your own words about what led up to you taking the claim. This is just to get an idea of what the case is about, before we go on to ask you in more detail about what happened before, during and after the case.
 - And how was your case resolved? (successful/unsuccessful at ET hearing, settled, withdrawn).

Thank you, I'd now like us to look at some of the things you've told me about in a bit more detail.

B. Origins of case

Stress that this and the following sections are about recapping and getting all the information we need about what they told us when summing up the case and what happened (above). For example, where relevant/necessary, ask 'You told me that.... Can I just check with you....' before the questions set out in the sections below.

*We need to understand at each stage why they took a particular course of action, whether they considered doing anything else, and how they felt as events progressed. Be sure to probe on **why** they made particular decisions, and **how they felt** about them and what happened.*

*The **expectations** of the claimant of the Tribunal process and expected outcomes are very important to this research – interviewers should allow for the post-hoc rationalisation by claimants, but should probe for expectations before the case started.*

- ⇒ What was the act of discrimination?
 - Explore whether this was a one-off, or part of a series of incidents. If the latter, what was it about this occasion that prompted their making the application?
- ⇒ And how comfortable did you feel at work before this act?
 - Explore their relationships with their colleagues, line manager, personnel, trade union *etc.*
 - Also explore relationships and circumstances outside work at that time, with family, friends, *etc.*
- ⇒ Tell me what led up to this act.
 - Check if things were always like that or if relationships had deteriorated, explore their view on how and why this happened.
- ⇒ How did the act of discrimination affect you?
 - Check how it affected their job, and relationships at work.

- Check how it affected their relationships and circumstances at home and with family and friends.
 - Check – what happened, and how did they feel?
- ⇒ What happened next? Get the full story on:
- All the events leading up to the Tribunal (or the conclusion of the case).
 - Why they decided to take each particular course of action.
 - Whether they considered anything else.
 - How they felt at each stage and about the decisions they made.
- ⇒ When did you realise that this might amount to discrimination under the RRA?
- Check how they knew they might have a case, e.g. did anyone suggest they submit a claim? Or were they influenced by the media, e.g. TV or newspaper reports, or by friends' and relatives' personal experiences?
- ⇒ Did you get any help or advice at this stage (i.e. before submitting the IT1)?
- Check who from, e.g. a union rep, Citizens Advice Bureau, the Acas helpline or an Acas officer, an Employment Rights Adviser or Employment Consultant, a solicitor, barrister or some other kind of lawyer, family or friends, the CRE, any local ethnic minority community groups, someone else?
 - What were people suggesting?
 - How useful was the help or advice?
 - What were you hoping for?
 - Were you contacted by any 'no win, no fee' legal assistance or personal injury companies? How did you feel about them contacting you?
- ⇒ Did you raise the issue with the employer before taking the case (i.e. before submitting the IT1)?
- If so, with whom, e.g. line manager, HR etc.? What happened? How did you feel about this?
- ⇒ Did you go through any formal internal grievance or harassment procedures? If so, what did these involve and what happened?
- Did you have any representation during these procedures?
 - What was the impact of these procedures?

- Had these procedures finished by the time you submitted the IT1? If not, why did you decide not to wait until they had finished before making your application?
- If they did not go through these routes, explore why not.
- ⇒ Were you subjected to any internal disciplinary procedures? What did these involve and what happened?
 - What was the impact on you? How did you feel about having to go through this?
- ⇒ What led you to make the Employment Tribunal application?
 - Check what triggered their application – anger, frustration, wanted to change things for them, or others in the future, it was a last resort, they had nothing to lose etc... Did someone advise them to apply?
- ⇒ What did you expect to gain from taking this case?
 - e.g. case outcome, how they would feel as a result etc.
- ⇒ And how was what actually happened different from what you expected?

C. Events leading up to the application

I'd like to explore the background circumstances leading up to you deciding to take the case.

ASK ALL, EXCEPT RECRUITMENT CASES:

Before you took the case, how happy were you in your job? Did this change over time? How? When? Why?

- ⇒ Prior to taking the case, how would you describe your relationships with your colleagues?
- ⇒ Prior to taking the case, how would you describe your relationships with your line manager?
- ⇒ Did your relationships with your colleagues and line manager change over time from when you joined to when you took the case? How? When? Why?
 - If they were still working at the time the case was proceeding, ask how their relationships with the line manager and colleagues were at this time.

ASK ALL

- ⇒ Was there anything outside work (or applying for work) which made things difficult or distressing for you?

- ⇒ Once you had decided to take the case:
 - How confident were you at the outset, of winning the case?
 - Did you tell your/the employer that you were putting in the application? If yes, how did you tell your employer (e.g. by letter or face to face), and how did they react? If no, why did you decide not to tell them yourself?
 - Did the employer at any stage threaten you with having to pay their costs if you lost your case?
- ⇒ Having decided to take the case, what happened next?
 - Let them explain what happened next in their own words, before moving on to the next section.

D. Advice, support, representation and conciliation

This section explores access to and use and perceptions of all types of support, advice and conciliation processes, formal and informal.

Check whether we have covered all the people who gave them support and advice prior to making the Tribunal application.

Make sure that the following have been covered: Where they got the IT1 form, who, if anyone, helped them with the application? Who was responsible for handling the case on a day-to-day basis? Was anyone listed on the form as the representative for the case? Was the representative at the hearing different from this? If different, why did they change?

- ⇒ Was there any advice you received that you didn't act on? Why was this?
- ⇒ Were there any links or cross-referrals between any of the people or agencies you've mentioned?
- ⇒ Did you pay any of the people/agencies involved in giving you support advice etc?
 - *If yes, try to establish the amount paid, but treat this question sensitively. Also establish:*
 - The extent of any *pro bono* involvement (where advisers were prepared to take on or advise on case without a fee).
 - The extent of any 'no win, no fee' involvement.
 - Where the case was actually taken, whether any legal representation was provided on a 'no win, no fee' basis. If so, did they contact you to ask if you would like this, or did you go to them?

- Whether the claimant received any financial support from a third party to pursue the case (and if so, from whom and how much).
- You haven't mentioned Acas, what role did they take in your case? Check whether:
 - They received a letter from Acas? If yes, explore what it said and what they did as a result.
 - They had any personal contact with Acas? If yes, explore.
 - Their representative or anyone else involved in supporting them, had any contact with Acas? If yes, explore.
- If they had no contact with Acas, ask: Would you have liked Acas to get involved? If yes, explore why Acas were not involved.
- Before this case, what did you think Acas did? And how satisfied were you with what Acas actually did?
- For each of the people involved providing support, advice, conciliation (including Acas) etc., ask:
 - How satisfied were you with the advice, support, conciliation you received?
 - Why was this? i.e. establish why they were satisfied or unsatisfied & did it relate to the eventual outcome of the case?
- If there was 'no win, no fee' or *pro bono* representation, were they happy with this or did they feel pushed into particular courses of action as a result?
- Did anyone advise you on the likely outcome of the case?
- What did they say? Did they mention expected levels of compensation if case was successful?
- What effect did this have on you?
- Were you aware of how often other claimants were successful?
- Was there any support, advice, or representation that you would have liked to have had at any point during the case, but did not get? If so, what? And why were you not able to have this?
- If they did not have any representation ask:
 - Why did they not have representation?
 - What effect, if any, do you feel that this had on and on the case?
 - Did it have any other effect, e.g. on you personally?

- Did you consult any other sources of information (e.g. websites, organisations books, publications, leaflets etc.)?
- FILTER QUESTIONS:
- Did your case go to a Main (or Full) Tribunal Hearing, or was it settled or withdrawn prior to this?
- If settled or withdrawn prior to Tribunal, go to **Withdrawn or Settled Cases** section, skip **Heard Cases** section and continue onto **Outcomes** section
- If it went to Tribunal, ask:
- Was it settled or withdrawn after Main Tribunal Hearing proceedings had begun?
- If yes, go through all sections, asking questions as relevant to the case circumstances
- If no, skip **Withdrawn or Settled Cases** section, go through **Heard Cases** section and continue onto **Outcomes** section.

E. Withdrawn or Settled Cases

Establish whether the case was withdrawn, settled via Acas, by a valid compromise agreement, or privately settled.

NB. in ETS case management data, cases settled by routes other than by Acas are classed as 'withdrawn'. However, the Survey of Claimants in Race Discrimination Employment Tribunal Cases (SETA RRA) includes privately settled cases within the 'settled' category, and we should too.

WITHDRAWN CASES:

- ⇒ Why did you withdraw the case?
 - What led up to that decision?
 - What and who influenced you?
 - Were there any particular factors that you considered or people who advised you?
- ⇒ Probe on:
 - How far withdrawal was a 'free choice' on their part (e.g. where they discovered there was little chance of success, or where they decided that they were not willing to continue with the process of taking the case.

- How far it was constrained by external factors (e.g. financial concerns, lack of representation, fear of or pressure from employer, fears about the process itself).
 - How far was it constrained by personal factors (e.g. their own health, family circumstances etc.).
 - Was anything given to you in return for the case being dropped?
- ⇒ At what stage in the process did you withdraw?
- Check whether the claimant had attended any Tribunal processes (e.g. a pre-hearing, a directions hearing, or during the main hearing itself). If so, had this had a bearing on their decision to withdraw? How and why?
- ⇒ Were there any other people (e.g. those providing support or advice) involved in the decision to withdraw? Who, and what roles did they play in the decision to withdraw?
- ⇒ Do you still feel that withdrawing was the right decision? Why? Why not?
- ⇒ How satisfied are you with the outcome of your case?
- ⇒ Can I just check – you said you withdrew the case – does that mean that no financial or other settlement was made with your employer? ***If there was a settlement of some sort, also ask the questions in the next section on Settled cases.***

SETTLED CASES:

- ⇒ How was the case settled? Why did you decide to settle?
- At what point in the case did you reach the settlement? (e.g. after IT1 but before a hearing, after a pre-hearing, during the main hearing). Why did settlement occur at this point?
 - Who initiated the settlement process?
 - Who else was involved? e.g. adviser, legal representative, Acas, Tribunal chairman etc.
- ⇒ What were the terms of the settlement? Was there a confidentiality clause involved? ***If yes then do not pursue details to prevent voiding the settlement.***
- If no, then probe sensitively on what the settlement involved, i.e. financial settlement & how much this was, and any other conditions involved.
 - Has the employer honoured the terms of the settlement?
- ⇒ Do you still feel that settling was the right decision? Why? Why not?
- ⇒ How do you feel about the outcome of your case? Why?

ASK ALL WHO SETTLED OR WITHDREW:

- ⇒ Did the employer ever threaten you with having to pay their costs if you lost the case?

F. Heard Cases

The next questions are about your experiences at the Employment Tribunal, and of the way the panel treated you and your case.

NB. This section may also apply to some of the cases which were eventually settled or withdrawn.

Firstly, clarify the eventual outcome of the case.

Establish how many hearings were held (e.g. pre-hearing, directions hearings, main hearings etc.) and who attended these (e.g. the claimant, their representative, witnesses presenting evidence, who attended from the employers side).

- ⇒ What were your expectations of the Tribunal hearing?
 - Relate this to any previous experience they have had of Employment Tribunals (we asked about this in the last section).
 - Had they had any other experience of the legal system (civil or criminal) and how had this influenced their expectations?
 - And how was what actually happened different from what you had expected?
 - Probe on how the administration/process of the ET hearing differed from their expectations.
- ⇒ Who presented your case at the pre-hearings? And at the main or full hearing?
- ⇒ What happened at each of the hearings you attended?
- ⇒ What was your experience of attending the hearing?
 - Ask the claimant to describe the process in their own words, as they remember it, including how they felt.
- ⇒ Thinking now about the full Tribunal Hearing, how did you feel about the way the Tribunal panel dealt with your case? Probe on how they:
 - Handled the case (i.e. was it fair to you and to the employer?)
 - Decided the case.
 - Explained their decision.
 - Understood you and your case? Probe for examples of how they felt and why.

- Treated you during the hearing? Probe for examples of how they felt and why.
- ⇒ How did you feel about the decision the Tribunal panel reached? Why?
 - Probe on whether they thought it was a fair decision, and if they thought it was unfair, why, and what contributed to this.
 - What could have made the experience better?
 - What could have made the decision fairer?

ASK SUCCESSFUL CLAIMANTS:

- ⇒ You said that the Tribunal decided in your favour. What did they order?
 - e.g. re-engagement (old job back), re-instatement (new or alternative job) money, or something else?
 - If money, how much money was the employer ordered to pay you? Have you received this yet?
- ⇒ What do you think helped you succeed?
 - e.g. strong, clear cut case, good representation, lots of support, plenty of evidence, sympathetic Tribunal panel, etc.

ASK UNSUCCESSFUL CLAIMANTS:

- ⇒ Why do you think you were unsuccessful?
 - e.g. case difficult to prove, lack of evidence, unsatisfactory representation, lack of support, unsympathetic Tribunal panel etc.

ASK ALL:

- ⇒ Was the hearing what you expected?
 - If not why not?
 - Was it better or worse than you had expected?
- ⇒ With hindsight:
 - Would you have done anything differently?
 - Would you go through the process of taking your case to an Employment Tribunal Hearing again? Why? Why not?

G. Appeals

- Has an appeal been made to the Employment Appeal Tribunal about the decisions made in this case?

- If yes, who made the appeal? And what happened as a result of this?
- Has the original decision been changed as a result of a review hearing?
- If yes, how? How did you feel about this?

H. Costs

- ⇒ Did you or the employer ask for costs to be awarded as a result of bringing an unreasonable case?
 - If yes, explore the details of this, and the costs awarded.

I. Outcomes

- ⇒ Looking back, how do you feel about having made a claim against your employer under the RRA?
 - e.g. probe on the time it took, any specialist knowledge needed, the ease of getting adequate support and/or representation etc.
- ⇒ At the time you were taking the case, what impact did it have on you?
 - e.g. probe on whether it affected their working life (their job, their relations with colleagues etc.), life outside work, their health, their family, their financial situation. How? Why?
- ⇒ And what about the longer lasting impact of taking the case? After the case had finished, has having taken it continued to affect you?
 - e.g. probe on whether it affected their working life, life outside work, their health, their family, their financial situation. If so, how, and why, and how long for?
- ⇒ What are your employment circumstances now?
 - Have they changed or been affected since taking the case? Was this as a direct result of the case?
 - What about your future employment prospects? Have these been affected?
- ⇒ Are there any other areas of your life (personal circumstances etc.) that have changed as a result of having taken the case?
 - If yes explore what has changed, and why.
- ⇒ With hindsight, would you decide to take the case again?
 - Would you do anything differently? If so, what and why?
- ⇒ What have been the costs to you of taking this case?

- e.g. financial costs and any other negative impact the case has had.
- ⇒ What have been the benefits to you of taking this case
 - e.g. financial benefits, any other positive outcomes.
- ⇒ Would you take another Race case to an Employment Tribunal?
- ⇒ What advice would you give to someone else who is thinking about taking a case?

J. At end of interview

- ⇒ What would you describe as your ethnic origin?
- ⇒ What is your religion, if any?
- ⇒ How old are you?
- ⇒ Are there any things you would like to add that we have not covered?

Explain that at the end of the project, the DTI would like the transcripts from the interviews to be anonymised (all names and other details which would make you easily identifiable would be changed or removed) and for the transcript to be stored on an electronic database available to other researchers - the Data Archive, held by Essex University.

You would be completely anonymous, the only purpose for doing this is so that others can learn from your experiences.

Would you be happy for us to do that?

Thanks and close

Instructions to interviewers:

Interviews should be recorded and transcribed wherever possible, and if permission to record isn't given then they should be written up in detail. File names should use the convention 'RRA id number initials' *e.g.* RRA 2365 JEA.dss or RRA 113005 Agroni.doc

The transcript or write-up needs to be headed with the following:

- case outcome
- gender
- age
- ethnic origin
- religion
- recruitment case (yes/no)
- type of representation at ET
- sector of employer (public/private/non profit or voluntary)
- current employment status (working/not working)
- does claimant agree to transcript/notes being lodged at the Data Archive
- approx. length of interview
- whether recorded
- interviewer observations and comments.

Please also head the transcript with a **one page summary of the case**, pulling out the main facts about the case and the key points made by the interviewee.

Appendix 2:

Letter to claimant

Dear XXXXX

Confidential research on people's experience of taking a race discrimination claim to an Employment Tribunal

I am writing to invite you to take part in research we are undertaking on people's experience of race discrimination at work that led to a claim for an Employment Tribunal. You recently took part in a telephone survey of people who had applied for an Employment Tribunal to do with race discrimination at work. The survey was commissioned by the Department of Trade and Industry (DTI) and carried out by BMRB Social Research. During the survey interview, you indicated that you would be willing to be contacted again to talk about your personal experiences of the Employment Tribunal system.

The Institute for Employment Studies (IES), an independent research organisation, has been commissioned by the DTI, to carry out further research into the experiences of people in race discrimination Employment Tribunal cases. Because you said you would be willing to take part in future research in this area, your name was passed to us by BMRB. This research has the full support of the Employment Tribunal Service (ETS).

We would like to arrange a meeting with you to talk about your personal experiences of taking a race discrimination case to an Employment Tribunal. Taking part would involve a researcher visiting you in your home or another location convenient to you. We want to hear your views regardless of whether or not your case went to a Tribunal hearing or whether your claim was successful or unsuccessful. This research is very important since it helps us to understand people's real experiences of race discrimination cases and of the Employment Tribunals system. Our research will help the Government to find ways of making the system work better in the future.

Everything that you tell us would be in the **strictest confidence**. Neither the DTI nor anyone else who is not part of our research team will know that you have taken part in this research. **You will not be identified in the published report.** We will not be speaking to anyone else who was involved in your case. You can also be assured that we will not be passing your name to anyone else.

I or one of my colleagues will contact you in the next few weeks to see if you are willing to talk to us about your experiences. In the meantime, if you

would like any more information about this work, please call me, **Jane Aston**, at the Institute for Employment Studies on [telephone number].

If you have any questions about why this research was funded, or how the findings will be used by the DTI, you can call the **DTI Research Manager**, Wayne Diamond, on [telephone number].

I hope that you will be able to help with this important study.

Yours sincerely

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