

Research Paper

Race discrimination claims:
Unrepresented claimants' and employers' views
on Acas' conciliation in employment tribunal cases

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**Race Discrimination Claims:
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Acas' conciliation in Employment Tribunal cases**

Maria Hudson, Helen Barnes, Sheere Brooks, Rebecca Taylor

Policy Studies Institute

Final Report to Acas

Disclaimer

The views in this report are the authors' own and do not necessarily reflect those of Acas.

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GLOSSARY OF ABBREVIATIONS

Acas	Advisory, Conciliation and Arbitration Service
CAB	Citizens Advice Bureau
CRE	Commission for Racial Equality
ET	Employment Tribunal
FETH	Full Employment Tribunal Hearing
HR	Human Resources
IC	'Individual Conciliation' (i.e. Acas' conciliation in Employment Tribunal cases).

EXECUTIVE SUMMARY

Acas commissioned the research on which this report is based in order to explore the experiences and views of unrepresented employees and employers of the Acas 'Individual Conciliation' (IC) service (i.e. Acas' conciliation in Employment Tribunal cases).who have been involved in race discrimination claims to the Employment Tribunal service. Prior to this study there was limited qualitative research which explored Acas' role in race discrimination claims and there had been none capturing the views of employers.

The research team sought to provide insights into the reasons for the unrepresented claimants' and unrepresented respondents' satisfaction gap in the delivery of IC services in race discrimination claims. As part of a wider evaluation programme of the Acas IC services this qualitative research project aimed to gain an in depth understanding of the expectations, experiences and views of unrepresented claimants and employers in race discrimination claims who have sought individual conciliation.

The Research design

The research was carried out in February/March 2007. The methodology was qualitative, involving depth interviews with 30 claimants and 10 respondents. The claimants were a mixture of men and women, from a range of ethnic backgrounds and ages and located across the private, public and voluntary sectors. The respondents were also from a range of sectors and most were large organisations. Difficulties were experienced in sampling unrepresented employers so in fact several were represented.

The circumstances of race discrimination claims

The circumstances that led claimants to raise a race discrimination claim were wide-ranging. Claimants gave accounts of less visible discrimination and racial harassment as well as more visible verbal abuse and physical assaults. There were descriptions of creeping racism where individuals realised that they were being treated differently over a period of time. Some accounts indicated multiple discrimination; with discussions of the interaction of disability and race and gender and race. Some workplaces appeared to have a culture that bred stereotypes of ethnic minority groups

It was rare for race discrimination claimants to remain working for the same employer. Just two of the claimants interviewed were working for the employer they had raised a claim against. Over a third of claimants interviewed had been dismissed whilst almost one third voluntarily left their job, with some not having alternative employment to go to.

Some claimants provided insights into how workers can feel anxious about making a complaint when race discrimination is experienced in the workplace, whether directly employed or temporary. The agency worker in the claimant sample felt particularly isolated.

Race discrimination claimants had a variety of feelings about raising the claim. These included anger at how they had been treated, a desire for revenge, being aggrieved and upset. While some were convinced about the strength of their case others felt that it would be hard to prove. Claimants could feel in a weak position

at the prospect of dealing with their (ex-) employer's legal advisers. Some were also concerned at the weakness in the evidence base of their claim.

Claimants' reasons for submitting a claim included disappointment with the employers' grievance procedure and a sense that the only remaining way to achieve justice was by taking their case to the Employment Tribunal. Positive feedback from the Employment Tribunal pre-hearing or solicitors could boost claimant confidence in their case.

Some employers would perceive alleged incident(s) of race discrimination as a 'normal' occurrence in the workplace, not requiring serious attention. Employers interviewed tended to feel that race discrimination claims were an 'opportunistic' way for the employee to seek compensation. In so doing they presented themselves rather than the claimants as the victims in race discrimination cases.

Grievance procedures and the escalation of race discrimination claims to the ET

Claimants sometimes submitted a claim for race discrimination out of frustration with the employer's internal grievance procedure. Their accounts implied that attitudes to and the handling of grievance procedures exacerbated the circumstances of race discrimination claims rather than resolving them.

Several claimants felt that the employer had hindered their attempts to put their grievance across. The rigidity of an internal grievance process might not accommodate the needs of staff such as those whose first language is not English. This included one of the few claimants in the sample with ESOL needs who found it difficult to engage in English.

Despite following various stages of the grievance process, cases were often passed between senior staff members without a resolution or, seemingly, action. In some instances it was not until a claimant had gone to Employment Tribunal that the employer responded to a grievance. Moreover, some claimants reported that they did not believe that a workplace grievance procedure existed or discovered its existence after submitting a claim to the Employment Tribunal. Race discrimination accounts implied that the resulting vacuum left in the management of the employment relationship appeared to increase the scope for capricious and arbitrary behaviour.

Minor problems were seen to escalate into more serious problems because of the seeming inability of the internal grievance process to respond to a concern or the absence of any procedure.

Most of the employers interviewed had a grievance procedure in place. There appeared to be a disjunction between the 'formal' and 'informal' grievance procedure with the latter featuring a relative lack of action, and the former featuring 'firm action'.

Small businesses in this study were more likely to settle a claim out of court because of the absence of or existence of an outdated grievance procedure.

Employers' accounts suggested that their investigations of race discrimination were hampered by claimants documenting incidents in their tribunal claims that they had not mentioned when working for the employer. There were also signs that employers found it difficult to liaise with the line managers of staff involved in cases.

Advice and representation

The large employers sampled tended to have a large HR function which took on the majority of the work for tribunal claims and used solicitors and lawyers for drawing up agreements and checking paperwork. Decisions about representation were shaped primarily by risk assessment. These employers were generally positive about self-representation.

Smaller employers tended to have less experience of tribunal claims and have less financial and human resources available to make self-representation possible. As a result they felt more constrained by the tribunal system and were frustrated by the cost of defending or settling a claim.

Claimants' priorities and experiences regarding representation were more complicated than those of the employers. They were shaped by their previous experience and knowledge of the tribunal system, the advice available to them and their confidence and mental health at that time.

The majority of claimants wanted representation and were disappointed and frustrated when they discovered they could not afford it. They felt that the tribunal system was weighted against them.

Many race discrimination claimants felt that they were in a disadvantageous position culturally, linguistically and in terms of their legal knowledge by not having representation and that this had negatively affected the outcome of their case.

Whilst many claimants found the process of self-representation stressful and difficult, conveying a sense of powerlessness, a small number (particularly those who had an outcome they were happy with) said that the process had given them confidence and enabled them to take control of the situation. This was particularly beneficial in situations where they no longer trusted those such as unions and human resources departments who they felt had failed to support them, and appeared to lack commitment in supporting race discrimination claims.

The role of Acas and the experience of individual conciliation

Few claimants had heard of Acas prior to making a claim, whereas most respondents were familiar with Acas. This had implications for their respective expectations of the conciliation service.

In most cases, initial contact with Acas was a few weeks into the claim. The information materials supplied at this point were generally well understood, but not everyone fully grasped the nature of the conciliator's role.

Both the length and extent of contact varied considerably across cases, from a single phone call to an extended period lasting several months. Most contact was by phone, with a limited amount of email contact. A few cases had involved face-to-face meetings.

Many claimants and respondents were satisfied with the ease of contacting their conciliator, although some would have liked the conciliator to be more proactive about contacting them and providing regular updates. Many claimants and some respondents would have liked the opportunity of a face-to-face meeting.

Feelings of trust and rapport with the conciliator were important to reaching an acceptable resolution of the case. For both claimants and respondents, feeling listened to contributed to satisfaction with the Acas Individual Conciliation service.

Feeling that they were not being heard and that conciliators lacked time and were under pressure fuelled claimant and respondent dissatisfaction with the Acas Individual Conciliation service.

The style of individual conciliation in race discrimination claims

The amount of time that conciliators can spend with the parties, responding to their needs, and the quality of the relationship that they build (including trust, empathy and rapport), can feed into satisfaction or dissatisfaction with the Individual Conciliation service.

The perceived competence of the conciliation was a key driver in achieving a good relationship between the parties and Acas.

Broadly speaking, conciliator competence and efficiency was more important to race discrimination clients in this study than conciliator ethnicity, gender or age.

Social support is particularly important in race discrimination cases, where conciliators are encountering clients in a heightened state of anxiety and distress.

The instances of dissonance between initial claimant expectations of the Acas role and experience in practice raises issues of the extent to which and how claimants find out about Acas' role.

Where claimants and respondents felt conciliators listened to them and acknowledged and responded to their experiences, even if they were not happy with the outcome of the case, they conveyed positive views of their experience of individual conciliation.

There were mixed feelings about the neutrality of Acas, particularly amongst claimants.

The way in which conciliators handled substantive intervention, particularly at the point where they discussed the strengths and weaknesses of the case was important. The parties wanted them to draw out positives as well as negatives. There also needs to be sensitivity in the timing of these discussions.

Some claimants strongly questioned Acas' impartial role and conveyed concerns about bias towards employers, dissatisfaction with the pressure to settle, and in some accounts there was a feeling that claimant vulnerabilities were being exploited, again particularly where there was a focus on the negatives of the case.

The impact of race discrimination claims and satisfaction with case outcomes and the Acas Individual Conciliation service

While it was not always easy for claimants to separate out the impact of race discrimination at work and the impact of bringing a claim, feelings of hurt, upset, bitterness and mistrust were widespread amongst the claimants. Some conveyed shock at how they had been treated in the workplace. When discussing the impact that their race discrimination claim as a whole had had on them, claimants

widely cited stress and depression. They also described financial hardship, negative impacts on family life, career and employment prospects.

The impact of claims on respondents included the cost of defending the case, in terms of advice and representation and staff time spent in meetings and hearings. They also cited negative impacts of the case on staff morale, which should not be ignored in assessments of the costs of race discrimination at work.

There were indications from both claimants and respondents of 'discrimination avoidance', arguably an unintended consequence of inaction or counterproductive action in race discrimination cases.

More positively there were reports of improvements to procedures in the aftermath of the cases.

There was a considerable dissatisfaction with outcomes amongst claimants and there were links between this and satisfaction with the Individual Conciliation service. The research sample was skewed to settled claims and so was the dissatisfaction. Those who were dissatisfied with outcomes often had much to say about weaknesses in the IC service, though, particularly for claimants, this was moderated by having a good relationship with the conciliator.

Where weaknesses were identified, these included:

- A perception Acas IC was committed to promoting a settlement at all costs, irrespective of the validity of claims.
- Positive relationship building was found wanting in some cases, particularly where respondents felt pressurised to settle, including a lack of conciliator empathy with the claimant.
- Some claimants perceived that conciliators were not prioritising their case, a view fuelled by insufficient opportunities for contact with the conciliator and the quality of that contact.

Claimants for whom English was a second language tended to rely on family members for language and other support. Drawing on trusted family for support in interactions with their conciliator appeared in part to moderate the potential for disadvantage.

Some claimants were satisfied with Acas services even when they were dissatisfied with the outcome of their case. Their perception that conciliators had done their best for them, under difficult circumstances, helps to explain this. The conciliators had built positive relationships with these claimants at a time when they felt varying degrees of vulnerability and anxiety due to the experience of race discrimination and the raising of a claim.

There was also considerable dissatisfaction with outcomes amongst respondents, but in explaining this they were less critical of Acas Individual Conciliation and more critical of the broader legal framework. They tended to be quite sceptical about race discrimination claims and for this reason most of those who settled were not entirely happy about the settlement, but saw it as less costly than the case going to full tribunal hearing.

Some claimant discussion of negative experiences of face-to-face meetings with conciliators conveyed how conciliators need to handle such meetings sensitively.

The heightened emotions and climate of distrust that may be generated in race discrimination claims fuelled this reaction.

Claimant suggestions for improvements to the Acas conciliation service were wide-ranging and included:

- Type of contact: more face-to-face meetings, more time spent with the conciliator, greater email contact to speed up communication, some support for greater ethnic diversity of conciliators.
- Changes to conciliator role and style: more relationship building and more proactive interventions, more balanced guidance in conciliation.
- Earlier interventions before disputes escalated, possibly at the first signs of a complaint that might lead to a potential grievance.
- There were mixed feelings about mediation, for example pointing to its potential being undermined by an imbalance in the employment relationship, but there was also some hope that it might redress the imbalance by providing a fair hearing.
- More publicity and awareness raising of Acas services.
- More preventative measures with Acas working to educate employers on the kinds of practices that could give rise to experience of race discrimination and train managers in conflict resolution.

Respondents raised a similar range of themes, including:

- Earlier Acas intervention might prevent cases escalating although they did not express views on the timing.
- Some support for mediation with the suggestion that speedier negotiation and resolution might arise from claimant and respondent exchanging evidence a lot earlier on in the proceedings.
- More time with conciliators and greater accessibility, although this was tempered by a realistic attitude about the cost of this.
- Greater support for employers, for example Acas seminars that could provide guidance on good employment practice with networking opportunities for employers to share experiences with managers in other organisations.
- A more accessible service, though some scepticism at the prospects for this given signs of resource constraints.

Conclusions and policy implications

The satisfaction gap in unrepresented claimants' and respondents' views on the Acas Individual Conciliation service is in part shaped by workplace contexts whose dynamics are beyond the scope of individual conciliators to fundamentally alter. Awareness and training have a role in strategies for preventing race discrimination. Conciliators are well placed to signpost employers to the kind of support that can contribute to organisational change. However, that support needs to be available, accessible and tailored to the workplace context so that its relevance can be seen.

The relationship between conciliator and the parties is often crucial to satisfaction with the Individual Conciliation service. Race discrimination claimants are particularly in need of social support in the aftermath of their experience of race discrimination that leaves them wondering who to trust. Providing a more intensive and responsive service that prioritises the parties' needs for contact with the conciliator is likely to improve satisfaction with the service, if not with case outcomes. However, it is also likely to require an injection of resources that conflicts with the current climate of cutbacks. Similarly while there are potential benefits from the introduction of more face-to-face contact this is likely to require higher rather than lower staffing levels. The same can be said of other possible changes to the way in which Acas supports the parties.

The research highlights that there are key aspects of Acas service delivery that can be improved, particularly improved publicity and marketing of the Individual Conciliation service. The policy implications support a range of recommendations in the Gibbons review of employment dispute resolution in Great Britain. These include actions to improve the quality of advice and access to the application process, earlier dispute resolution, greater incentives for the parties to engage in dispute resolution, the need to invest in ongoing support for dispute resolution professionals.

The majority of unrepresented race discrimination claimants contributing to this research would prefer representation and it is important that the current inhospitable climate for access to justice is addressed.

CHAPTER 1 INTRODUCTION

1.1 Race discrimination at work

The Strategy Unit report on *Ethnic Minorities and the Labour Market* identified workplace discrimination as a key factor in the labour market disadvantage of ethnic minority groups (Strategy Unit, 2003: 14). In field experiments job applications are submitted to employers presented as coming from individuals of different ethnic origin with the same qualifications. They have shown that minority ethnic job seekers in a range of occupations receive differential treatment at all stages of recruitment (CRE, 1996; Riach and Rich, 2002). The term 'ethnic penalty' is used to describe the net labour disadvantage that remains after controlling statistically for individual characteristics such as educational level, age, English language fluency and sex. Drawing on analysis of the Labour Force Survey and 2001 Census, Heath and Cheung found ethnic penalties in both the public and private sectors of employment though the nature of disadvantage varies by ethnic group (Heath and Cheung, 2006). While there needs to be caution in equating ethnic penalties directly with discrimination, evidence from field experiments suggests that unequal treatment on grounds of race or colour is likely to be a major factor (Heath and Cheung, 2006).

The less favourable treatment that takes place in race discrimination at work can be very evident in finding work and in working for an employer. For example an Asian woman job candidate not being appointed to a post even though she is the best qualified for the job, a Black Caribbean man in employment being overlooked for promotion in favour of someone less qualified for the job who is White British or an East European woman finding that on appointment to a managerial role she is not being given the responsibilities commensurate with that appointment. This kind of less favourable treatment, or direct discrimination, can include racial harassment or bullying.

Indirect racial discrimination at work can be more difficult to discern. It is in evidence where the effects of certain requirements or practices imposed by an employer create artificial barriers that have a disproportionately adverse impact on a racial group. For example, the number of people from a racial group who are able to meet non-essential job criteria is smaller than the rest of the population. It has been argued that race discrimination has become so routine and subtle that it is invisible to those engaged in discriminating practices (Wrench and Solomos, 1993; cited in Modood *et al.*, 1997).

Institutional racism has been given a high profile by the MacPherson Report which defines it as:

"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin which can be seen or detected in processes; attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people." (MacPherson, 1999: section 6.34)

MacPherson went on to note that institutional racism persists because of the failure of the organisation to "openly and adequately recognise and address its existence and causes by policy, example and leadership" (MacPherson, 1999: section 6.34).

The Strategy Unit report found awareness of race discrimination to be limited amongst some employers and suggested a need for more advice and support for employers, improvement in the efficacy of existing equal opportunity levers and a growth in transparency and awareness (Strategy Unit, 2003). The Race Relations Act 1976 (RRA) regulates employment-related discrimination and makes it unlawful for businesses to treat a person less favourably on account of their race, colour, nationality or national origins. The Act defines four main types of unlawful discrimination: direct discrimination, indirect discrimination, victimisation and harassment.

Recognition of the need for pro-active measures to tackle institutional racism is embodied in the Race Relations (Amendment) Act 2000 which introduces a positive duty on public sector bodies to promote race equality. The extent of legal advice being sought by individuals as well as the number of cases going to Employment Tribunals is an indication of the existence and persistence of perceived and actual discrimination in the workplace. Racial discrimination can be extremely difficult to challenge, as implied by the very low percentage of race discrimination cases that win at Employment Tribunals (Monaghan, 2005:4). Moreover, not all incidences of race discrimination are reported and it is difficult to gauge the extent of this.

1.2 Acas and the Individual Conciliation of Individual Employment Rights cases

Acas has a statutory duty to provide conciliation in individual disputes over employment rights and endeavour to promote a settlement without recourse to an Employment Tribunal. Acas conciliators must adopt a neutral role. They must be independent, not help either side with their case and must not provide a view on the merits and possible outcomes of the case. Acas has a statutory duty to promote good employment relations and Individual Conciliation (IC) forms a long-standing feature of its activity for a range of jurisdictions, including race discrimination. The interventions associated with the Acas role have a number of elements (Dix, 2000) including:

- A reflexive role – responding to the needs of the parties and establishing a positive working relationship.
- An information provider – clarifying the details of the case and conveying factual information, so that the parties can make informed decisions.
- A more substantive involvement – exploring the strengths and weaknesses of cases, assessing where parties' interests lie, establishing what is achievable within the confines of the law and promoting a settlement.

1.3 Race discrimination claimants

The majority of race discrimination cases received by Acas are settled or withdrawn before reaching Employment Tribunal, as illustrated by Table 1 which presents cases received by Acas from 2002 to 2006, where race is the main jurisdiction.

Table 1: Number of RRA cases conciliated by Acas 2002-2006 (main jurisdiction)

Year	Cases received	Settled	Withdrawn	Employment Tribunal
2002/2003	3,157	1,242	1,064	600
2003/2004	2,854	1,196	839	652
2004/2005	2,651	1,084	854	547
2005/2006	2,521	1,064	773	580

Source: Acas annual report and accounts 2004/2005, 2005/2006.

A 2004 survey of claimants in Race discrimination tribunal cases (SETA RRA) found approximately two-thirds to be men. Two-fifths of claimants were Black and 29 per cent were Asian, with smaller proportions being White or from other ethnic backgrounds. RRA claimants tended to have a younger profile compared to others. They also tended to be highly qualified. Forty-four per cent were educated to degree level and there was a high incidence of claimants in professional or associate professional occupations. Race discrimination claimants were most likely to be working for larger organisations. Half were employed or applying for positions with private sector organisations, two-fifths were employed in the public sector and six per cent in the voluntary sector (Peters *et al.*, 2006: 9-12).

1.4 Pressure on Employment Tribunals and the emphasis on preventative work

In October 2001 the Independent Taskforce on Employment Tribunals was set up to advise on how to make the system more efficient and cost-effective for users. The taskforce was established in the context of a rising number of cases and concerns about the associated costs of them going to a full hearing. In November 2002 it recommended that more preventative work be undertaken: a greater use of external mediation systems and the development of better internal grievance and disciplinary procedures. The Taskforce called for a greater emphasis on prevention in Acas' work (ETST, 2002). Employers too have expressed concerns about the tribunal framework. In 2004, the Federation of Small Businesses conducted a survey of 1,000 of its members and found that 44 per cent had settled out of court "rather than go through a system that they regarded as complex and costly" (IRS, 2004). A Chartered Institute of Personnel Development

survey of 1200 employers undertaken at around the same time reported that 60 per cent settled Employment Tribunal applications before they went to tribunal (CIPD, 2004). Both policy makers and practitioners are keen to promote alternative dispute resolution in the employment field to reduce pressure on the Employment Tribunal system (DTI, 2001; Acas, 2005a; Gaymer, 2006).

In October 2004 new statutory procedures came into force under the Employment Act 2002 (Dispute Resolution) Regulations. All employers and employees in Britain who become involved in an employment dispute are required to follow statutory minimum dispute resolution procedures. Employers are obliged to have in place formal grievance procedures which involve three steps: first the employee setting out their grievance in writing, second a meeting between the employer and employee to discuss the grievance and third a right to appeal against the outcome of the grievance hearing. The amount of any Employment Tribunal award can be affected by failure to follow the statutory procedure. Survey evidence suggests that at the time that the new statutory procedures came into force the majority of workplaces with 10 or more employees had in place a formal grievance procedure, but not a three-step procedure. WERS 2004 reported that 88 per cent of such workplaces had a formal procedure for handling individual grievances while 43 per cent had in place a three-step procedure (Kersley *et al.*, 2006: 215, 218-9).

During a period of greater focus on alternative dispute resolution Acas has come under pressure to reduce both its staff and offices in the wake of a government decision to cut its budget by 16 per cent between 2006 and 2008. Initial savings were found through the loss of 120 posts, and the closure of some of its 30 regional offices. The Gibbons review of alternative dispute resolution recommended a "*greatly increased role*" for mediation, meaning additional work for the government-funded conciliation service Acas. Gibbons warned that recent reductions in funding had "*adversely affected*" its level of involvement although he acknowledged that the current Acas service was "*effective and well regarded*" (Gibbons, 2007).

Acas has developed employer guidance on key procedures that it believes can minimise discipline and grievance events and recourse to Employment Tribunals (Acas, 2005b). Integral to the Acas 'Model Workplace' are the development of procedures for dealing with grievances and disputes that employees are aware of and understand and are seen to be fairly and consistently used. Moreover, employers are encouraged to spell out where they stand on tackling discrimination and promoting equality (Acas, 2005b: 16). This is in keeping with the distinction being made between dispute resolution and conflict management, the latter embracing wider strategic objectives of both anticipating and dealing with issues that could lead to disputes (Acas, 2004/5; Dix and Oxenbridge, 2004).

Where disputes do escalate, Acas has a statutory role to conciliate in claims submitted to the Employment Tribunal at a very early stage in order to avoid recourse to a full tribunal hearing. Much IC takes place by telephone. With the growth of individual employment rights (Sisson and Taylor, 2006: 27-28; Dickens, 2005) and the desire to ameliorate the increase in pressure on the Employment Tribunal system, the IC role that forms a major part of Acas' work has taken on greater importance.

The Independent Taskforce on Employment Tribunals argued that the current system of handling cases of racial discrimination was too adversarial in nature and poorly geared towards prevention. Under the Employment Tribunals

(Constitution and Rules of Procedure) Regulations 2004 discrimination cases fall into the category of open period cases with no restriction on time for conciliation. While most conciliation cases continue to take place by telephone, and SETA RRA 2004 notes that just four per cent of race discrimination claimants met an Acas officer in person (Peters *et al.*, 2006: 25), Acas has been seeking to take a more intensive approach to conciliation in open period cases. This shift in approach is characterised by more frequent use of face-to-face conciliation, blurring the distinction between Acas conciliation and mediation.

Several studies (e.g. Lewis and Legard, 1998, Aston *et al.*, 2006) have noted that some claimants are unwilling to settle cases because they feel a strong desire to see justice done, and do not view settlement as meeting this need, while those who are keen to secure settlement would welcome additional support and information from Acas. Some claimants also report feeling under pressure from Acas to settle, while feeling that their best interests may not be served by so doing (Aston *et al.*, 2006).

1.5 The representation gap in the UK labour market

Respondents and claimants in race discrimination cases seek advice in the period leading up to the claim. A range of organisations in Britain are engaged in providing informal and formal advice and support on race matters to individuals and employers. These include Citizens Advice and its network of Citizens Advice Bureaux, trade unions, the Commission for Racial Equality and race equality councils, as well as the Acas Equality and Diversity Service.

Claimants and respondents often seek formal representation. Representation is a complex issue. It can be costly. For claimants it can be secured via a trade union, though there has been a more inhospitable climate for this to happen in recent years. The growth of individual employment rights has been accompanied by a decline in trade union membership and increased discussion of a representation gap (see for example Towers, 1997; Pollert, 2006). Fewer than 29 per cent of employees in the UK are union members, and this figure falls to 17 per cent in the private sector (DTI 2006a). The Fourth Workplace Employment Relations Survey presents a continued picture of low union density particularly in the private sector where private sector managers are more sceptical of the value of trade unions compared with their public sector counterparts (Kersley *et al.*, 2006: 315). There is increasing discussion of the plight of vulnerable workers (DTI, 2006, TUC, 2006, Pollert, 2006). In Pollert's 2004 survey of 500 unorganised workers she explored their experiences of problems at work. One-quarter of the sample tried to seek informal collective solutions while the majority tried to resolve problems by liaising with managers. The evidence points to "*a high level of potential dissatisfaction, frustration and social exclusion at the workplace. Lack of independent voice and reliance on management to resolve problems resulted in a majority of workers with problems expending effort with no results*" (Pollert, 2006: 31; cited in TUC, 2006). A lack of recourse to formal representation and its costs has arguably increased the importance of other sources of advice, particularly for unrepresented claimants.

1.6 Concerns about unrepresented race discrimination claimants involved in Individual Conciliation

SETA RRA 2004 suggests that Acas had less success with conciliation in RRA cases (Peters *et al.*, 2006: 49). In order to establish whether the IC service is meeting the needs and expectations of service users, Acas invites them to participate in surveys of IC customers. Data from the most recent survey,

conducted between December 2005 and February 2006, suggests that in race discrimination cases compared to other jurisdictions, unrepresented claimants and unrepresented respondents were less satisfied with the service and outcome of their case. SETA RRA 2004 provides an indication of the scale of unrepresented race discrimination claimants. Around one-fifth (22 per cent) of race discrimination claimants had neither a day-to-day representative nor sought additional professional advice during their case (Peters *et al.*, 2006). However SETA does not provide any information on the experiences of unrepresented claimants in Race discrimination cases.

Aston *et al.* (2006) identified a number of reasons why some claimants in race discrimination cases represented themselves; this was only rarely a positive choice but instead generally resulted from factors such as a lack of suitable agencies in the local area, and the time and costs involved in obtaining representation. Some people had misunderstood the nature of the proceedings, and had subsequently been taken aback at how formal tribunal hearings were, feeling at a significant disadvantage in not being represented. People who represented themselves felt that this had affected the outcome of their case; they also reported finding it harder to maintain an emotional distance from the case, which had a negative impact on their ability to present arguments and made the process more stressful (Aston *et al.*, 2006). However, over one quarter (27 per cent) of race discrimination claimants with representation felt that they had not made the right decision in involving the representative in their case, and over half (51 per cent) of all race discrimination claimants would have liked additional help with their case (Peters *et al.*, 2006: 20).

SETA RRA 2004 indicated that race discrimination claimants as a whole were more likely to have professional representation and advice with the day-to-day handling of the case and at tribunal than non-race discrimination claimants, the most common type of professional representative being a solicitor, barrister, or some other kind of lawyer. However, indications are that race discrimination claimants in the Employment Tribunal system are much less likely to be successful at tribunal than claimants within other jurisdictions: and are more dissatisfied with the outcome of their case even when their claim is successful (Peters *et al.*, 2006).

1.7 The research aims

Acas commissioned the research on which this report is based in order to explore the experiences and views of unrepresented employees and employers of the Acas IC service who have been involved in race discrimination claims to the Employment Tribunal service. Prior to this study there was limited qualitative research which explored Acas' role in race discrimination claims and there had been none capturing the views of employers.

The research team sought to provide insights into the reasons for the unrepresented claimants' and unrepresented respondents' satisfaction gap in the delivery of IC services in race discrimination claims. As part of a wider evaluation programme of the Acas IC services this qualitative research project aimed to gain an in-depth understanding of the expectations, experiences and views of unrepresented claimants and employers in race discrimination claims who have sought IC.

Chapter two describes the research design indicating some of the challenges raised by needing to build a sample of interviewees in what is a sensitive area of research.

Chapter three explores the circumstances of race discrimination claims, including the motivations leading to claims and feelings about the claims.

Chapter four takes a closer look at actions to resolve difficulties and internal resolution methods employed prior to the claim, focusing on grievance procedures.

Chapter five explores the factors influencing employers' decisions about representation and advice and difficulties that employers encountered in accessing this. It then considers claimants' experiences and feelings about advice and representation.

Chapter six examines the role of Acas in the claim and claimant and respondent experiences of using the Acas IC service.

Chapter seven considers the style of Acas conciliation, as experienced and perceived by claimants and respondents.

Chapter eight explores the impact of the claim on the individuals and employers involved and claimant and respondent satisfaction with the outcome of claims and the Acas IC service. It then outlines claimant and respondent suggestions for improvements to the IC service.

Chapter nine concludes by discussing the policy implications of the findings.

CHAPTER 2 THE RESEARCH DESIGN

The research adopted a qualitative approach to exploring unrepresented claimants' and employers' views on the Acas Individual Conciliation service in race discrimination claims. This chapter provides an outline of the research design and considers the process of sampling claimants and employers and the characteristics of the sample. It then goes on to consider the content of the subsequent face-to-face depth interviews with claimants and respondents and the approach to data analysis on completion of the fieldwork.

2.1 The sampling¹

The first stage of the research involved sampling, initially providing potential interviewees with an opportunity to opt-out of the research before conducting telephone screening to draw the sample.

Acas keeps a database of claimants and respondents involved in individual conciliation. In December 2006, Acas contacted all respondents and claimants on the database whose claims had been completed during 2006 sending them an information sheet setting out the aims and timing of the research, assuring them of the confidentiality of the study as well as an opt-out letter asking them to contact Acas if they did not wish to participate in the study. Following the expiry of the opt-out period which lasted for a month, Acas supplied PSI with a database containing the names, telephone numbers and case outcomes of all those who had not expressed a wish to opt out of the study.

The research team aimed to purposively build a sample of 40 depth interviews containing the necessary range of experience to facilitate in-depth analysis. The recruitment of the sample was at first concentrated in London and the West Midlands, areas where ethnic minority groups and race discrimination cases are clustered. Priority was given to recruiting all those respondents in the database (and who had not opted out) who had 'face-to-face' and 'joint face-to-face' contact with an Acas conciliator, wherever in the UK these persons could be found. These locations were selected based on a large concentration of claimants to be found in these vicinities and made the clustering of respondents easier to achieve. In keeping with the time frame allocated to data collection, it was felt that this strategy would enable this phase of the study to be completed on time.

Within two weeks of completing the fieldwork, difficulties began to take place in recruiting respondents from all ethnic groups (with the exception of White respondents) in London and in the Midlands as many individuals were unwilling to take part in the study. Bangladeshi and Pakistani women were particularly unwilling to participate. The telephone screening process revealed that just mentioning the word 'Acas' to these respondents, would immediately be met with a wish not to be involved in the research despite the researcher's best efforts to continue the telephone conversation. To address this, steps were taken to identify female Pakistani and Bangladeshi claimants in the database by using surnames as an indicator. This was also followed up by sending letters to ten female claimants

¹ Further details of the sampling process are provided in a technical report.

who could not be contacted using the telephone contact details in the database. This was complemented by a series of telephone calls. In the end, only one female claimant contacted by telephone expressed a willingness to be interviewed, although assurances about the confidentiality of the study had to be made before she finally consented to taking part. The recruitment of respondents was extended to localities in the South East of England and to other parts of the United Kingdom.

The research team initially aimed for 25 depth interviews with claimants, of 90 minutes' duration, and 15 with respondents, of 45 minutes' duration. The team had chosen to adopt a larger sample of claimants to enable the diversity of their personal characteristics to be captured. The smaller number of employers to be sampled was felt to be sufficient to capture the range of their views. The shorter planned interview time for respondents reflected the team's appreciation of constraints on employer time to participate, particularly smaller employers with little or no human resource support function. It was hoped that some might be willing and able to commit more time and this proved to be the case in several instances. Many claimant interviews also ran beyond 90 minutes, the longest being for two and a half hours.

Characteristics to be screened for the purposive sampling included the following:

- Checking that claimants and respondents were unrepresented
- Ethnicity
- Age
- Size and sector of establishment
- Form of Acas conciliation
- Outcome of the case
- Forms of conciliation; 'face-to-face', letters, email and telephone contact.

As the Acas database did not contain information on all of these characteristics, the research team administered a telephone screening tool to build up the sample. Priority was given to sampling respondents and claimants in recent cases, to minimise problems of recall. It was decided not to pursue matched case studies due to the sensitivities likely to be evoked. Nevertheless, the process of building the sample proved particularly challenging. Out-of-date contact details was an issue cross-cutting both the claimants and respondents.

The telephone screening process revealed that claimants often declined to participate because they were so upset about their experiences of pursuing a race discrimination claim and did not wish to relive them. There were many instances where claimants were so angry about their experience of Acas individual conciliation that they did not wish to have anything to do with the study. For instance, a female claimant angrily remarked that the conciliator had been "useless" in dealing with her case and blamed him for the withdrawal of her case, concluding, "[Acas] is an absolutely worthless case!" At this point, the claimant terminated the call by abruptly hanging up. Another female claimant became emotional to the point where she could be heard breaking down and crying on the telephone line, saying "It was a painful experience (the incident of race discrimination) I cannot take part!". In these situations, it would prove impossible to carry out a telephone screening exercise as claimants would not be in a state to provide any information. If claimants declined to take part, then they did not see the point in providing any information. The telephone screening process had

to be conducted at times when claimants could be reached or when claimants seemed relaxed and willing to talk about the study, such as late evenings or a Saturday or Sunday evening.

Several claimants declined to participate in the study because they could not take time off work. Others participated during working hours which limited the duration of their interview. However, most claimants were unwilling to be interviewed in a workplace setting. In many cases, interviews were done in public places such as cafes, pubs and public libraries. Some claimants had a sense of distrust of the research and sought assurance of confidentiality and that the research team were independent of Acas. There were also one or two examples of claimants being in the middle of new claims and being unwilling to commit time to the study as a result. On screening some claimants were confused about the meaning of representation. While they had initially described themselves as unrepresented, at interview two claimants were found to have had some representation.

Some respondents were reluctant to participate. In addition the lack of named contacts for the employers in the database also hindered the screening process as it was time-consuming to track down the person who had dealt with the case. While priority was given to sampling respondents and claimants in recent cases, to minimise problems of recall, in order to get adequate numbers we had to look at cases from the beginning of 2004. This compounded the problems caused by staff turnover and often the person familiar with the case no longer worked there. The team also found that many respondents in the database had actually been represented and were therefore ineligible for the study and a significant proportion of those contacted claimed not to have had any contact with Acas. Several respondents had in-house solicitors who had provided advice or had a legal background, and were not the 'true unrepresented' in the spirit of the research. The process of building the employer sample proved to be time-consuming and so the team revised the target number of employers from 15 to 10 and increased the target number of claimants from 25 to 30.

However, those claimants and respondents who agreed to participate in the research were pleased to have an opportunity to talk about their experiences and thereby feed into discussions about improving Acas' Individual Conciliation service. Respondents tended to give disinterested reasons for taking part, emphasising the general or long-term benefit to employers, for instance the representative of a large private sector company said:

"If anybody's experiences can help the facilities and services that they're providing it's going to benefit us in the long run". (Human resource manager, security company)

Claimants were more likely to say that they had taken part in the research because they had particularly positive or negative experiences of Acas. One claimant said:

"I wouldn't have agreed to take part particularly at this time of what I'm going through, I wouldn't have agreed to it but I feel quite strongly that improvements need to be made. I wasn't happy with my settlement and I felt quite bullied in terms of what I had to do, and I was quite vulnerable so Acas need to support vulnerable people". (Josephine, Black Caribbean, Fund-raiser, settled)

Sonia was another claimant who wanted to make Acas more widely known:

"In my case Acas did settle very well so I think we should help Acas so just for the interview so everybody knows the Acas is good." (Lebanese, nurse, settled)

All interviews were recorded and professionally transcribed verbatim. Claimants received an incentive payment of £20 as a thank-you for taking part.

2.1.1 The claimant sample

Table 2.1 provides a summary of the claimant sample characteristics. As can be seen from the table, claimants from a range of ethnic backgrounds participated in the research though some were more represented than others. While people of Black Caribbean, Black African and Indian ethnicity agreed to contribute to the research, it proved more difficult to engage Pakistanis and Bangladeshis. Consequently Pakistanis and Bangladeshis were a smaller proportion of the sample than had been aimed for. There was fairly even participation by men and women, though more women engaged in the research. It was expected at the outset that many of our claimant cases would arise in the private sector, given the concentration of employment in this sector and the relative lack of formal equal opportunities policies in small and medium-sized establishments (IPPR, 2004:22) and discussions of formal policies as 'empty shells' (Noon and Hoque, 2004). Most of the claimants' cases had arisen in the private sector but the public and voluntary sectors were also represented with 11 and 3 claimants' cases respectively. Most of the claimant cases were settled (18) but there was good representation of those which were withdrawn (7) and went to full employment tribunal hearings (5).

A small group of claimants seemed to have ESOL needs. This included two female Asian Indian respondents. This did provide a few challenges during the interview process as questions had to be repeated or explained to ensure that respondents clearly understood the questions posed to them. Sonia had only been in the UK for two to three years, having joined her British-born husband. It later transpired during the interview that her husband, who was a human resources manager, had done much of the liaison with the Acas conciliator on her behalf. She also benefited from her husband's knowledge of labour law. The same situation occurred when interviewing Geeta, who had been living in the UK for most of her life. However, her two grown-up children who are both at university were instrumental in liaising with the Acas conciliator on those occasions when she did not feel she had the 'capacity' to deal with the conciliator. This was the same scenario for Martha, an Eastern European national who despite residing in the UK for a number of years had enlisted her British-born son and other family members to assist her when liaising with the Acas conciliator. When she experienced a communication problem with the conciliator, then at this point her son became involved in the process. Another claimant displayed some difficulty in comprehending the questions posed to her during the interview, however this was largely attributed to her emotional state during the interview, where she would break down crying several times. Once the interview came to an end, she appeared to be more relaxed and clearer in speech when conversing casually with the researcher.

2.1.2 The respondent sample

The characteristics of the employers participating in the research are summarised in Table 2.2. While, as noted in the opening chapter, most race discrimination claims arise in large private sector firms, the team sought to interview unrepresented respondents who it was thought were more likely to be based in

small and medium sized enterprises. However, the majority of the 10 employers who agreed to contribute were based in the private sector and most were large companies with in excess of 500 employees. Just one employer was a small firm with fewer than 50 members of staff. The vast majority of the cases were settled, just one going to a full tribunal hearing. Two respondents were not in reality unrepresented in that they drew on in-house solicitors. Nevertheless it was decided to include them in the research to illustrate that the issue of non representation is a greyer one for employers as compared with claimants.

While it had been decided not to pursue matched case studies due to the strong negative emotions that can be generated between the parties in race discrimination cases, a matched claimant and respondent interview was undertaken. As the claimant was no longer working for the employer it was decided to integrate this data into the research report.

Table 2.1: Summary of claimant sample characteristics

Characteristic	Numbers
Ethnicity:	
Black Caribbean	8
Black African	6
Indian	5
Pakistani	2
Bangladeshi	1
White British	2
White Other	2
Other	4
Gender:	
Male	13
Female	17
Age:	
20s	2
30s	11
40s	9
50s	6
60s	2
Sector of establishment:	
Private	16
Public	11
Voluntary	3
Form of Acas conciliation:	
Telephone	26
Face-to-face	4
Outcome of case:	
Settled	18
Withdrawn	7
To full ET hearing	5
Geographical area:	
London	20
West Midlands	6
Other	4

Table 2.2: Employer/ respondent characteristics

Interviewee ID label	Type of organisation in which the claim arose	Size and broad sector of organisation	Outcome of case
Respondent 1	A residential home for the elderly	Part of a large private sector company	Settled
Respondent 2	A retail company	Part of a large private sector company	FETH
Respondent 3	A car servicing company	Medium private sector	Settled
Respondent 4	A commercial cleaning company	Large private sector	Settled
Respondent 5	A fashion retail company	Small private sector	Settled
Respondent 6	A retail company	Large private sector	Settled
Respondent 7	A security company	Large private sector	Settled
Respondent 8	A security company	Large private sector	Settled
Respondent 9	A museum	Medium public sector	Settled
Respondent 10	A social care firm	Large voluntary sector	Settled

2.2 The fieldwork

The depth interviews followed a semi-structured topic guide, which allowed participants to describe their individual experiences fully and in their own words, while also ensuring that key domains of interest to the research were discussed in detail across the sample. For claimants, these included:

- Current/recent employment and background to their claim
- The decision to self-represent
- The role of the Acas conciliator
- The style of Acas conciliation
- Outcome of the claim and overall satisfaction
- The experience of self-representation
- Suggestions for improvements.

The areas of exploration with respondents largely mirrored this, but included more probing around employer characteristics. The respondent and claimant topic guides can be found in Appendix 1. It was anticipated that the state of mind of claimants and respondents is a crucial influence on the research process, given feelings of anger, stress and sensitivity associated with race discrimination cases and the severe breakdown in the employment relationship that they represent. With this context in mind it was decided to use vignettes to explore Acas' style of conciliation.

The stories narrated in vignettes describe a typical scenario and ask respondents to react, for instance by saying what the people involved should do next, or what they would do themselves in the circumstances described. One of their advantages is in enabling respondents to talk about potentially sensitive topics, such as race discrimination, in a 'safe' manner. They provide information not only on why a certain course of action might be preferred, but also on the reasons why alternative courses of action would be rejected or not considered (Finch, 1987).

It must be remembered that comments made about what conciliators said are from participants' perspectives, remembered in the context of their experience and not necessarily verbatim. There are points in the research where it would be valuable to have a matched sample, including claimant, respondent and conciliator, to get closer to the dynamics of their relationships.

2.3 The analysis

Analysis of the interview data, for both claimants and respondents, used a grounded methodology in which the analyst reviews the data; compares and contrasts perceptions, accounts or experiences; searches for patterns or connections within the data and seeks explanations internally within the data set. The analysis was conducted with the assistance of qualitative data analysis software, QSR NVivo7. A coding framework was devised relating to all sets of interviews and which allowed the distinctive concerns and experiences of claimants and respondents to be aired. NVivo operates two simultaneous forms of coding – 'tree nodes' and 'free nodes'. 'Tree' nodes reflect inter-related information and draw upon the structure of topic guides, while 'free' nodes reflect

more conceptual or exploratory categories which arise during the course of analysis. Both types of node were used. Data comparisons explored the impact of key demographic and personal characteristics, as well as particular aspects and experiences of the conciliation process, in order to provide explanatory accounts of influences on individual satisfaction.

CHAPTER 3 THE CIRCUMSTANCES OF RACE DISCRIMINATION CLAIMS

3.1 Introduction

This chapter outlines the circumstances in which race discrimination claims arose, drawing on the accounts of claimants and respondents. It also considers claimants' feelings about raising claims and their motivations for taking this course of action, before ending on an exploration of employers' perspectives on the grounds for claims. As will be seen, claimants and respondents tended to have contrasting perspectives. The circumstances of claims, feelings and motivations can be an important influence on the dynamics of subsequent interventions aimed at resolving the conflict and satisfaction with outcome, as will become apparent in later chapters in this report.

3.2 Claimants' perspectives on the grounds for claims

3.2.1 The basis of claims and the range of experience

- The basis of claims was wide-ranging and included direct discrimination, indirect discrimination or harassment.
- Some claimants had encountered derogatory comments from colleagues, whilst others experienced physical assaults.
- Many accounts described less visible and covert forms of discrimination and racism.

The vast majority of claimants felt strongly that they had experienced race discrimination. Their narratives indicated direct or indirect discrimination or harassment by managers or colleagues in the workplace. As well as race discrimination and 'hurt feelings' caused by racism, claimants also cited claims based on sex, religious and disability discrimination and wrongful dismissal. Three claimants based their claims on experiences that occurred at the job application and interview stage. Sonia, a recent arrival to the UK from India, based her claim on receiving application forms for a teacher's position at a local Catholic primary school, where the job specification stated applicants had to be of the Catholic faith. As a Hindu Sonia felt this requirement was discriminatory. Two claimants spoke of instances where they felt racially discriminated against at a job interview. Ali felt he was discriminated against on the grounds of his disability and ethnic background at a public sector job interview as he was interrogated about his qualifications in the waiting room in the presence of other applicants who were not subjected to similar treatment. Aside from these cases, the remaining 27 claims arose from people in employment.

There were accounts from claimants who described how they bore the brunt of derogatory comments which they did not always immediately construe as racism. Andrea described her line manager's behaviour thus:

"I remember one particular day her saying to me that she was from a pure white race and I thought that was an odd comment to make, and then when she asked you to do things, it was the way she spoke to you and the way she conducted herself. Whenever we had a meeting or anything, at the time there was me and another black member of staff and I realised that we

were always treated differently but I didn't think anything of it at first". (Andrea, Black Caribbean, administrator, withdrawn)

Soraya spoke about confrontations with work colleagues linked to her Muslim background. In her late twenties and French/Algerian, Soraya worked for a large US multi-national company as a business development manager. She had been with them for less than six months when she was dismissed. She described facing an uncomfortable reaction from her work colleagues once it was known she was a practising Muslim and observed Ramadan:

"One day I told my colleagues, 'actually today I'm breaking my fast to be here with you guys and kind of interact with everybody', and I saw the face of the actual guy from the company, he went completely white and he was completely distressed and I thought 'I think I'm in trouble', and there's so much happening in the world with regarding Islamophobia and Muslim terrorists and all that but I thought not me, it's never going to happen to me because I am just a regular person who just wants to make an income and have a life like everybody else". (Soraya, French/Algerian, business development manager, settled)

A female Russian claimant who was dismissed from her job after working for 10 months in a senior position at a multinational firm described how derogatory comments, stereotyping her Russian nationality, were made to her by White European co-workers of different nationalities:

"I realised that the sales people in business meetings started undermining me and making comments relating to my nationality, original nationality, or to my country Russia and there were constantly comments about everything British, various things British, being better than various things Russian and such comments, you know, at every occasion. You know, about chocolate, about Olympics, about Russian women being prostitutes, Russian men being Mafia and, you know, every occasion was a good time to undermine everything, you know, the worst stereotypes about Russia!" (Ivana, Russian, branding manager, settled)

Ivana's experience is illustrative of how workplace cultures imbued with these kinds of behaviours can, over a period of time, escalate into other incidents, in Ivana's case into comments about her capability to do the job. She was deemed as not performing satisfactorily, in spite of having just completed a satisfactory probation period, and was eventually dismissed.

Several claimants spoke of physical assaults taking place in the workplace, with witnesses sometimes being unwilling to come forward. These instances tended to take place in a manufacturing factory setting and involved a physical assault by a co-worker or being threatened with this. A Black Caribbean male, in his thirties experienced a series of physical fights between himself and a work colleague:

"The first time round, he [work colleague] assaulted me in front of one the team managers, who's a white, Caucasian person. And the manager actually saw the incident, and I said 'what are you going to do about it?', and he done nothing about it at all". (Joe, Black Caribbean, factory worker, settled)

Joe had worked at a factory and spoke of a series of altercations between him and his co-workers and managers. After less than three months, he was dismissed by his employer.

These threats of violence and abuse were not just restricted to male workers; Geeta, an Indian woman described the threatening behaviour of a work colleague at a motor car components factory, which had a large number of Asian women in the workforce. The claimant had been in this job for eight years and for most of this time had endured racial abuse from a White British worker:

"And then one day she threatened to kill me in front of the management, the junior leader and everybody and they did nothing about it!" (Geeta, Indian, factory worker, withdrawn).

Geeta eventually walked out without resigning from her position.

Whilst the descriptions of violence and verbal abuse are shocking, many accounts described less visible forms of discrimination and racism. Claimants became aware gradually over a period of time that they were being treated differently by a particular person. They were consistently ignored in meetings, not offered the same opportunities as other staff, and comments were made which, racist in themselves or not, undermined them and made them feel they were being victimised. Where the claimant was the only black person in a white team they found themselves forced to confront the idea that racism must be a cause of this bullying. To take some examples, Helen worked as a social worker and talked about the problems that she had with her line-manager who would make covert and underhand criticisms about her work:

"Here was a culture of this manager harassing and bullying, she had this culture for five years, after some time in the team I was told by other members of staff, the different incidents that had happened and then happening to me you know, kind of underhanded criticisms and that covert kind of bullying, in a way you'd write a report and it would be criticised before it was submitted for a panel, and then you'd try something else just to see if this was about you personally, or about your work, and then so what I'd then do is cut and paste somebody else's report and submit it to her and see what the criticism would be, and then found that it was criticised again, where that particular report was one that she highlighted in the team, it was so perfect but she had forgotten, so then I realised that this was vindictive and this was about me." (Helen, Black Caribbean, social worker, settled)

Helen also felt that the line manager was blocking her promotion.

Joan had been transferred to a new hospital on being appointed to a senior nursing post. There was no other black staff nurse and no black member of staff in a senior position at the hospital. She spoke of the resentment levelled towards her by several staff members. After several months she contacted the human resources department of the hospital to make a complaint:

"I came as a senior staff nurse, I met with some resentment with some junior white nurses, specially on the ward because they had never had anyone senior, [laughing] of colour, they never had anyone senior of colour, and I tried to sort of get on with this but being the only black working on that ward it was difficult for me to put through the complaint, and I could also tell by the atmosphere compared to where I've worked but [this hospital] sort of had a clique and most of their staff are white, so I could sense that it was going to be very difficult for me to be heard here." (Joan, Black Caribbean, nurse, settled)

Experiences of covert racism were particularly hard for claimants to articulate as each incident in isolation could appear trivial or insignificant. Some had tolerated unfair treatment for months or even years, as will be explored further in the next section.

3.2.2 *Single and multiple events leading up to claims*

Many claimants spoke at length about events leading up to their claim for race discrimination, detailing either a series of events or a specific event that occurred during their employment. The accounts of race discrimination given by almost half the claimants indicated that incidents occurred when they had been with the organisation for several years, while around one third of claimants said that the race discrimination happened during the early stages of their employment.

Older claimants reported experiencing an intermittent series of race discrimination incidents over the course of their career. Some claimants aged 50 plus felt their employment was curtailed due to a redundancy programme that lacked justification. Akbar, a male Bangladeshi social worker in his fifties spoke of experiencing a series of instances of racial abuse from his work colleagues during the 16 years he worked with a local government authority although he had never used the internal grievance procedure to report these instances. He was made redundant by his employer in 2005, but feeling that this was not genuine, he raised a claim for race discrimination based on both the earlier instances of race discrimination as well as unfair dismissal. This kind of example contrasts with examples of frequent challengers of racism. Derek, in his early sixties and a Black-Caribbean male had worked with a voluntary sector organisation as a social worker and had raised 10 separate claims of race discrimination against the same employer during the 21 years of his service. While he and other older workers were likely to suffer several incidents of race discrimination and to remain working for the employer before raising the issue, younger workers were more likely to challenge race discrimination at an early stage of their employment.

The cultural work practices of UK divisions of international companies also formed the context for some cases. Yoko was of dual nationality, Japanese/British and in her early forties. She had worked with a UK-based Japanese company for just over two years when she expressed concerns about working long hours, without pay, a practice that was expected of Japanese workers, in contrast to British workers. When she attempted to make a formal complaint, she was threatened with dismissal if she took it forward and was sidelined when the opportunity for a promotion arose, despite being the most qualified person with specialist skills to do the job. The claimant spoke about the unethical work practices of foreign companies that did not comply with UK employment law. She felt she was unfairly singled out for redundancy and received discriminatory comments, which went on to form the basis of her claim.

3.2.3 *Leaving the job in the context of dismissal or worsening work relations*

Over a third of claimants in all sectors were dismissed from their job and subsequently raised a claim for race discrimination with their former employer. Almost one third of claimants voluntarily left their job (through formal resignation or by 'walking off the job') because of a frustration with the grievance process. Some left without having arranged alternative employment before their departure. Sharon, who was in her late 30s, had worked as a nurse at an NHS hospital for over five years. Her job entailed visiting expectant mothers who wanted to have a home birth as opposed to going into hospital. Her problems

began when her employer did not support her application to do further studies at a local university. She considered this to be unfair as senior staff had told her that she had a good research proposal, and other work colleagues had been granted study leave. Soon after this, she was reprimanded by line managers for allegedly putting clients who resided in 'unsafe' areas at risk by not advising them to opt for a hospital birth as opposed to a home birth. Sharon became dissatisfied with the internal grievance procedure which failed to tackle the issue that her competency had been unfairly questioned or that she had been denied access to training and left the job in frustration.

There were also other claimants who felt that their continued employment with an employer was untenable as their race discrimination complaint had worsened relations with managerial staff or might affect their employment prospects elsewhere. For example, Andrea, a Black Caribbean woman working as a local government administrator who had experienced racial comments and abuse, became despondent with the internal grievance process and opted to leave her job and find another as she felt a race discrimination claim could damage her employment prospects. In another scenario, Sonja was advised to leave her job as part of the settlement process. She had been a nurse with an NHS primary care trust, and felt that she had been appointed to a lower grade that was not commensurate with her qualifications, which were higher than those of other appointed staff. She raised a concern about this to her line manager and with her trade union. This developed into a series of meetings between the claimant and her managers, which lasted for over a year, but was not resolved. Her relationship with management deteriorated as other incidences occurred. In the end, she was asked to leave her job by her employers.

3.2.4 Continuing to work for the same employer

Two claimants continued working for the employer they had raised a claim against, with one being redeployed to another department as part of a settlement. For Sarah this was a rather constrained choice. In her late fifties she had worked in an administrative capacity at a local government authority for 18 years and as she did not see any hope of getting a job with another employer she accepted the redeployment. Findings from a recent study (Aston *et al.*, 2006: 210) outline the challenges that claimants face when they remain with the employer against whom they have raised a claim for race discrimination. The experiences of Derek, a Black Caribbean older worker, reinforce this finding. He spoke of not having any prospect for promotion having raised a race discrimination claim and felt other employers were also unlikely to employ him on this basis, and given his age.

3.2.5 Fear of claiming

A recurring theme in several claimant narratives was their own fear and that of colleagues of complaining about race discrimination and drawing it to the attention of line managers or human resource departments. A number of Asian women had been bullied by white co-workers in the factory where Geeta had experienced race discrimination. Some were too scared to report it for fear of losing their jobs in a geographical area where alternative employment was hard to come by. Serena, an agency worker, who had a placement at a large international construction firm, had hesitated over reporting derogatory comments about her religion for fear of being labelled as a trouble maker and jeopardising her job. She felt a strong sense of isolation with the agency that had placed her with the firm saying that there was nothing that they could do.

Whether an employee or agency worker these experiences are a reminder of why race discrimination can and does go unreported.

3.3 Claimants feelings about raising the claim

Claimants were asked about how they felt when submitting a claim for race discrimination. Some individuals described feeling anger towards their employer or towards former or existing work colleagues. Some claimants were convinced about the strength of their claim based on the event(s) that took place in the work place, and in some cases there was an apparent sense of revenge in their feelings about submitting the claim:

"Vexed!...I was steaming, because they [employers] stitched me up and I thought [swear word] you've done me over, I'm going to get you back!" (Joe, Black Caribbean, factory worker, settled)

Some claimants also described feeling upset and had a strong conviction that such experiences should not happen. Mohammed, a Bangladeshi male in his forties who was visually impaired, spoke of what he perceived to be a blatant act of discrimination levelled towards him at a job interview, which upset him:

"I felt aggrieved, but I felt it was clearly, whether you call it disability or race or not, there was clear discrimination, because they saw me with my support worker and thought 'Oh my God, this person could be a liability'. That's not how it should be". (Ali, Pakistani, social worker, settled)

However, feelings of anger and revenge sometimes went hand in hand with a feeling that it would be hard to prove race discrimination. Joseph was an accountant working in the charity sector. He was dismissed after less than six months on the grounds that he had performed poorly during his probation period. Joseph conveyed the mixed feelings that can be experienced in submitting a race discrimination claim, including a sense that it would be hard to prove:

"It was like mixed feelings... there were two things I felt was against me in terms of the case. I was going against the [organisation's name withheld] and they were putting on this front of being this sort of like very nice, very helpful, very social, caring organisation.... I'd been told race discrimination claims are very hard to prove". (Joseph, Black African, accountant, settled)

There were claimants who did not feel confident about raising a claim, based on an absence of evidence to substantiate it. In a case involving 'same race and nationality discrimination' Yoko described the pessimism, and related lack of confidence, she felt about submitting her claim:

"Race discrimination is very hard to prove...when my Japanese manager made a discriminatory comment to me saying 'You old Jap, go home' this was a case of Japanese discriminating against Japanese and the conversation was done in Japanese and there were only English speakers around, so I can't find witnesses!" (Yoko, Japanese/British, web designer, settled)

Claimants from the public and private sectors could also feel in a vulnerable and weak position at the prospect of dealing with their employer's legal advisers, as was the case with Andrea, a public sector administrator:

"I felt that it was like the big boys against myself because they had the whole legal support and I was just there on my own....I didn't even have anybody that I could ask questions, without it costing me money". (Andrea, Black Caribbean, administrator, withdrawn)

There were also concerns about the career implications of challenging race discrimination at work. Helen, a Black Caribbean woman with nearly 20 years' experience as a social worker, spoke about the effect a race discrimination case could have in tarnishing her career and wanted to prevent the possibility of any form of negative publicity that could arise from her claim:

"I knew that this thing at any point could have gone down the full hearing road and I could be in the papers, which is not good for social workers, well it's not good..." (Helen, Black Caribbean, social worker, settled)

3.4 Claimants reasons for submitting the claim

Claimants' reasons for submitting the claim included:

- Disappointment with the outcomes of the internal grievance process and a desire for redress.
- The degree of confidence that they had in their claim.
- A desire to take a stand in the context of recurring instances of race discrimination at work that were going unchallenged.

There were those claimants who were disappointed with the outcome of the employer's internal grievance process and felt the Employment Tribunal might provide an avenue for redress while achieving justice against the employer. The views of a public sector claimant (Andrea) and a voluntary sector claimant (Derek) exemplify:

"I thought that 'yes', I was going to get some support and I was going to get somebody to listen to what had been going on." (Andrea, Black Caribbean, administrator, withdrawn)

"Oh I felt very angry..... I wrote to the Director and what hurt me was I wrote about what was going on and sent cc copies to all the head people in the organisation, so it's not as if they didn't know, they were all made aware of what was going on; they had an opportunity to come in and stop whatever was going on, they just let it ride!" (Derek, Black Caribbean, project officer, withdrawn)

The overall consensus was that the submission of the claim was seen as an avenue through which justice and some level of redress could be obtained through the legal system. However, this also appears to have been a last resort for most claimants, who perceived it as their only option for securing redress.

The Employment Tribunal pre-hearing had in some cases given the impression that the claimant had a genuine case of race discrimination which boosted the claimants' sense of justification for submitting the case.

"Very confident because I had already had the initial tribunal meeting, you know the tribunal chairman from his utterances, it felt like 'yes' I do have a fairly good case, but I couldn't pursue it because of the costs". (David, Black African, architect, settled)

One or two claimants mentioned receiving positive feedback from solicitors about their case, suggesting they had a genuine case.

There were cases where claimants felt a need to take a stand in challenging race discrimination at work due to the reluctance of fellow ethnic minority workers to raise such claims with the employer. Examples included ethnic minority women such as Yoko who felt that she was at least in part taking a stand for Japanese women and Sharon who was aware of other racialised incidents involving midwives. Men were also influenced by this broader desire for social justice for the many, as in the case of Joe, a Black-Caribbean male who had worked in a factory, who expressed a sense of solidarity with other black workers:

"I know that there's black people that worked there, and they're giving them shit, and I thought, f.....you. I've only been here for two and a half months and I can walk in and stand my ground, and you lot (other work colleagues) have been here for x amount of time, and these people run roughshod over you!" (Joe, Black Caribbean, factory worker, settled)

3.5 Employers' perspectives on the grounds for claims

Employers' descriptions of the events that took place leading to claimants deciding to raise a race discrimination claim were more detailed than the claimants. In part this was because they were more likely to keep records which they referred to during the interviews to jog or confirm their memory of timescales and correspondences. The employers described various cases involving redundancy and dismissals which claimants felt were unfair and alleged were linked to race discrimination. Two employers faced complicated cases involving employees who felt they had been unfairly treated but who they continued to employ.

In the case of a large retail organisation, two (White/Irish) employees filed a race discrimination claim after being dismissed for the physical assault of a Black Caribbean employee. The employer felt that the claimants who raised the race discrimination issue at a later stage in the process had chosen to capitalise on race, which was unconnected to the original event:

"All of a sudden, it boiled down to a pretty simple issue of race discrimination, that is they said that as he (the Black/Caribbean employee) was involved in the altercation, then he should have been treated similar to the way they were treated". (Human resource manager, retail company)

Employers tended to feel that the claims made against them for race discrimination were an 'opportunistic' way of seeking justice for an incident that was not actually connected with race discrimination. Thus the claimant was presented as the problem rather than the victim, echoing findings in a recent study of the experiences of sexual orientation and religion or belief discrimination Employment Tribunal claimants (Denvir *et al.*, 2007). In the case of a private sector care home, the employee was judged to have not satisfactorily fulfilled a training course and as a result, was dismissed from her job. She filed a race discrimination claim saying her dismissal had been racially motivated but the employer was adamant that the dismissal was based solely on the employee's poor performance, saying:

"She was not meeting the standards...for her to become a trained nurse. Adaptation [name of the training programme] takes six, three to six months, normally nine months, very rarely do people go over a year. She

was with us for nearly two years". (Business manager, residential home for the elderly)

The voluntary sector social care firm faced a very similar situation where the poor performance of a new employee led to the loss of a contract with an important client. The employee was dismissed for performance issues at the end of his probation period but went on to file a race discrimination claim. Another voluntary sector employer described two employees being sacked for falsifying timesheets who then went on to raise a race discrimination claim.

For the employers in the private cleaning and security companies, the circumstances leading up to claims could be difficult to establish as staff worked in isolated groups on client sites with minimal supervision. Both employer and employee were also at the mercy of the client who could ask to have an employee removed from their premises, creating problems that in one case had led to a tribunal claim.

However, several of the employers acknowledged that incidents of racist name calling had probably taken place but downplayed their importance claiming it was only banter and questioning whether they were really as hurtful for the claimants as was being alleged. A Black/Caribbean human resource manager described the initial incident that triggered a long and complicated race discrimination claim:

"When you do twelve hour shifts four days on and four days off, day and night ... I suppose you have lots of time to talk about lots of things and you know it gets a bit boring from time to time. Anyway as we understand it there was some banter that was not uncommon in the department and one day this member of staff decided that he didn't like the banter anymore..."
(Human resource manager, museum)

The perceived 'normalcy' of 'banter' was echoed by the director of the car sales and repair company:

"Within his complaint was racial harassment, which basically was on the back of a few jokes that had been said in the workshop... racial jokes that had been said in the workshop, in a workshop environment with, you know big technicians and that which he used to work with, which we obviously were not aware of and I have to say that in the real world it happens doesn't it, there's not much we can do about it". (Finance director, car servicing company)

The above remarks convey the impression that such events were 'part of the normal dealings of the day'. The lack of understanding of some employers of the effects of these incidents on employees might be labelled unwitting discrimination and has implications for how they deal with problems in the work place and the scale and timing of this intervention. This will certainly affect the potential of any internal grievance process to adequately address the matter. This will be discussed further in the next chapter.

Key points:

- The circumstances that led claimants to raise a race discrimination claim were wide-ranging. Claimants gave accounts of less visible discrimination and racial harassment as well as more visible verbal abuse and physical assaults. There were descriptions of creeping racism where individuals realised that they were being treated differently over a period of time. Some accounts indicated multiple discrimination; with discussions of the interaction of disability and race and gender and race. Some workplaces appeared to have a culture that bred stereotypes of ethnic minority groups.
- It was rare for race discrimination claimants to remain working for the same employer. Over a third of claimants had been dismissed whilst others voluntarily left their job, with some not having alternative employment to go to.
- Some claimants provided insights into how workers can feel anxious about making a complaint when race discrimination is experienced in the workplace, whether directly employed or temporary. The agency worker in the claimant sample felt particularly isolated.
- Race discrimination claimants had a variety of feelings about raising the claim. These included anger at how they had been treated, a desire for revenge, and feeling aggrieved and upset. While some were convinced about the strength of their case others felt that it would be hard to prove. Claimants could feel in a weak position at the prospect of dealing with their (ex-) employer's legal advisers. Some were also concerned at the weakness in the evidence base of their claim.
- Claimants' reasons for submitting a claim included disappointment with the employers' grievance procedure and a sense that the only remaining way to achieve justice was by taking their case to the Employment Tribunal. Positive feedback from the Employment Tribunal pre-hearing or solicitors could boost claimant confidence in their case.
- Some employers would perceive alleged incident(s) of race discrimination as a 'normal' occurrence in the workplace, not requiring serious attention. Employers tended to feel that race discrimination claims were an 'opportunistic' way for the employee to seek compensation. In so doing they presented themselves rather than the claimants as the victim in race discrimination cases.

CHAPTER 4 GRIEVANCE PROCEDURES AND THE ESCALATION OF RACE DISCRIMINATION CLAIMS TO THE ET

4.1 Introduction

Embedded in the majority of accounts of the circumstances of race discrimination claims were discussions of the grievance procedures and this is an area on which interviewees were probed. As described in Chapter one there is a legislative framework of minimum standards for disciplinary and grievance procedures that came into force on 1 October 2004. Just as employers must follow three steps before dismissing an employee, employees must follow similar procedures before submitting an Employment Tribunal claim. This chapter takes a close look at the role of internal grievance procedures in the progression of race discrimination claims, exploring in turn claimant and respondent perceptions and experiences. It also examines the role of trade unions. It reveals mixed, but largely negative, experiences of grievance procedures reinforcing the disquiet being expressed about formalisation, and the accounts provide insights into how these issues play out on the ground.

Against the backdrop of the greater formalisation of procedures, Gibbons notes that employers now have an opportunity to consider an employee's grievance before a tribunal claim is submitted, "*giving a valuable opportunity for early resolution*" (Gibbons, 2007:8). Gibbons' concern is that the procedures have led to the use of formal processes to deal with conflicts that could have been resolved informally. He notes that "*employees find themselves engaged in unnecessarily formal and stressful processes, which can create an expectation that the dispute will end in a tribunal*" (Gibbons, 2007:8).

4.2 Claimants' perceptions and experiences of grievance procedures

Claimants spoke at length about the efforts made to resolve their concerns at work. In some cases, the initial events leading to workplace conflict were perceived as relatively minor. That is, if the internal grievance process was more 'proactive' then the matter could have been resolved. Most claimants had used the internal grievance process, sometimes with the intervention of a trade union. However, most were not trade union members. Four claimants working in the public sector and three from the private and charity sectors indicated that they were members. Only three claimants from the private and charity sector reported membership with a trade union. Four claimants were affiliated with a trade union linked specifically to their profession, such as nurses and architects.

A variety of problems arose, including:

- The grievance system appeared to be weak and not proactive. Employers had not responded to a grievance until the claimant had gone ahead with submitting a claim to the Employment Tribunal.
- The internal grievance process was seen as lacking transparency, too informal, and therefore not to be trusted.
- Some claimants either did not think that an internal grievance procedure existed or discovered its existence only after submitting their claim to the Employment Tribunal.

There was considerable frustration felt by claimants who had pursued an internal grievance process with little success and this motivated them to pursue their claims to tribunal. Many felt the internal procedure was a sham. Their accounts implied that the scope for capricious and arbitrary behaviour was exploited by a range of employers. The comments of Joe, a factory worker in the private sector was indicative of this: *"The internal grievance process was unofficial as well, I mean the idea was, get me in there and [...] use the term unofficial, and screw me over, try and make it official"*. Another claimant from the public sector felt that her employers did not act appropriately:

"I made a formal complaint that was dealt with in an interview with human resources and the service manager, which at one point was going really well but then after a while, I realised they were dragging this thing out and just trying to appease me and hopefully it would lapse in the dates so that I couldn't pursue it any further, and then I thought 'no, this is no good, this is not good'." (Helen, Black Caribbean, social worker, settled)

Claimants at the professional end of the career ladder commented on the absence of an internal grievance process. An architect, who worked with a firm for ten months before resigning, expressed his 'concern' to a senior staff member about not doing the tasks that were commensurate with his profession. Just after this, he was unexpectedly told he had an appraisal three months into his contract when his contract specified one at six months. After a series of emails between himself and a senior member of staff, it appeared as if nothing was resolved, and there did not seem to be an internal grievance process in place:

"They didn't make it clear to anyone when we joined them that they had one (grievance procedure), I wasn't sure they had one!" (David, Black African, architect, settled)

A project worker in the public sector was unaware of an internal grievance process while in post and after she was dismissed, was still unable to get to the bottom of this:

"Every time I tried to get copies of their grievance procedures, they wouldn't give it to me, they never sent copies out and they never told me what my rights were....all I was told was as I haven't worked for them for two years, then I haven't got a leg to stand on". (Wendy, Black Caribbean, social worker, withdrawn)

Claimants also raised concerns about the transparency of the process. Sharon, an NHS midwife who had been in this profession for six years, highlighted the management's unprofessional attitude towards the grievance meetings and the difficulties she then had obtaining the minutes which turned out to be inaccurate:

"We organised a meeting with my Clinical Manager, the minutes was taken, the minutes was then not distributed, then when we demanded the Minutes be distributed it was not as it was taken.....it didn't recall the précis proceedings exactly". (Sharon, Black African, nurse, settled)

In Chapter three it was seen that respondents often downplayed the severity of race discrimination at work. Several mentioned that employers had hindered their attempts to put their grievance across and in some cases prevent them having the necessary help and support that would enable the procedure to take place effectively. A former nursery worker of East European background could recall being asked to attend a disciplinary meeting while she was on suspension and

because her English was not strong, she requested that proceedings from the meeting be tape-recorded, but this was declined. She was told she could be accompanied by a work colleague or a person from outside of the company. However this too was withdrawn, she explained:

"They said I could bring a friend and so I was just preparing to bring a friend on that date and then I received a letter saying that I could not bring a friend now, as it had now to be a work colleague. I had no friends from work, as they were afraid to talk to me, as they had been told not to talk to me since I've been dismissed". (Martha, East European, nursery nurse, settled)

Some claimants found that the employers failed to respond to their grievances until they submitted a tribunal claim. Andrea had spoken to her union about it and had been told to speak to her line manager, which she did. She then returned to the union to see what she could do and was advised to write a step one grievance detailing what had happened. The union representative explained that in five working days the employer would respond, acknowledging the grievance and calling her in for a meeting. The employer did not do so:

"That never happened and I waited and I waited and I kept emailing the head of HR who is the person who should have come back to me about it, and nobody responded until I went to the Law Centre. The Law Centre then wrote to them, so they wrote back to acknowledge my complaint, and then when I went to Race Equality, they said to me that I could now make a complaint because I had given them (my employers) plenty of time to address the issues and they had done nothing!" (Andrea, Black Caribbean, administrator, withdrawn)

Other claimants felt their problems and in some cases victimisation got worse because they raised a complaint with the employer:

"I had also spoken to my manager and raised this concern and I explained that it was related to business tension and it wasn't appropriate and it was making me feel... But the result of this conversation, she left more problems for me because everybody became aware so they complained about comments and now even people who weren't making any comments (to me) and, you know, my junior staff started making comments in the sense that 'she's complaining, she's not happy with our British culture'." (Ivana, Russian, branding manager, settled)

In this case not only did the employer fail to act to prevent the bullying but the problem escalated, as the other staff members began making derogatory remarks about the claimant's nationality. Previously the claimant's line manager did not make these remarks. Once the claimant met with a more senior member of staff who gave her the impression her job was under threat, then her line manager began making derogatory statements to the claimant. This worsened the level of bullying the claimant experienced:

"... he pressurised me not to complain formally because, you know, he said 'you know if we escalate and investigate essentially it's your word against the other person's word and you are on probationary period". (Ivana, Russian, branding manager, settled)

4.3 Employers' perceptions and experiences of grievance procedures

All but one of the 10 employers interviewed had some form of internal disciplinary and grievance procedure in place. The larger of the employers tended to have a formal system of internal grievance involving a series of what one employer described as 'fact finding' meetings with the claimant and an internal investigation which might involve the collection of evidence from other employees and an appeal system. These were often complex systems with many stages as one employer made clear:

"There's an investigation process in the procedure, there's a disciplinary, then there's an appeal, then there's a further appeal and following that they raise grievances, and again it was a two stage appeal in the grievance, so it is quite a lengthy process". (Human resource manager, retail company)

Only the small fashion retail company did not have any procedures at all. The director was dismissive about the need for them in such a small company with only 15 employees. She felt they would add unnecessary levels of bureaucracy. However the lack of even basic procedures had caused her considerable problems. Although she described the sacking of her employee as 'constructive dismissal' she had simply asked the member of staff to leave and then confirmed this in writing. She did not follow any procedures and the employee had no way to challenge the decision other than take it to tribunal.

However, having grievance procedures in place did not necessarily facilitate the smooth resolution of issues in the workplace. In the first place the procedures had to work properly and several employers noted that the tribunal claim had highlighted that this was not always the case. It was the smaller employers and those with less experience of these types of issue who found themselves in this position. In the case of the car servicing company, the company's internal grievance procedure was outdated and had not been followed 'to the letter' for the case in question. Their solicitor was able to identify these weaknesses and advised them that these would weaken their case if it reached tribunal and that they would be advised to settle out of court.

However, even when there was a robust internal grievance procedure in place, complicated cases could make it difficult to implement as the respondent for one of the large retail organisations commented *"It wasn't desperately easy to follow a procedure because it was an unusual set of circumstances."* In this case the claimant had gone on long-term sick leave and been reluctant to negotiate a return to work despite the employer feeling that they had done what was required of them. This had consisted of an investigation of the grievance and the removal of the workers who had made racist comments.

Often even when one issue was apparently resolved it led to further issues being raised and, for several organisations, months of negotiations. One of the security companies suspended the claimant following complaints about his conduct by a client who suggested he appeared to be on drugs. Fact-finding meetings were held and on the basis of his explanation that he was taking prescribed medication the company wrote to his GP for some confirmation. As the GP was unable to help with the investigation the employee was given the benefit of the doubt in this case. However, the case did not end there. The company subsequently found it difficult to find a suitable position for him (he had very specific requirements including only working 9-5) and although he eventually went back to work he suffered a loss of earnings while this was being resolved. A disagreement ensued

over how much he was owed and he then filed a race discrimination claim. However given that he was still employed and working the company continued to try and resolve the issues through internal meetings.

Employers described with some frustration how claimants mentioned incidents in their tribunal claims that they had not mentioned while they worked for the organisation, which made it much harder to investigate their grievance. In the case of the voluntary sector social care organisation, the claimant had submitted an appeal against a decision to dismiss him on performance grounds. He also included within that appeal a race discrimination claim against a manager who had left several months previously. The organisation then investigated these allegations including interviewing witnesses cited by the claimant and reviewing the documentation which the claimant alleged contained a record of the discriminatory action but could find no evidence that the race discrimination had taken place.

In the case of one of the large security companies the claimant was on a remote site with a small team of security staff and although there had been some performance issues she resigned before her probation ended citing that the travelling was too difficult for her. Shortly afterwards she filled in an exit interview form and made some allegations against a colleague which she then reiterated in a phone call. The employer's narrative implied that a proper investigation had not taken place at this stage partly because the claimant was unwilling to come in and discuss the allegations.

However employers also admitted difficulties in handling grievance procedures. The human resource (HR) manager involved in the case above appeared to have found it difficult to manage the line managers responsible for the claimant and the co-worker she had accused which made the grievance investigation difficult:

"And the managers that I was speaking to, they thought, you know, she was making it all up and it was just difficult and I couldn't get... I found it difficult to get them to deal with it..." (Human resource manager, security company)

The HR manager suggested that it was a difficult situation for the managers when a new employee made claims against a long-term member of staff:

"I mean it's bad, but there is some reluctance to get rid of the person who has been there ten years when they are very hard-working and well liked, but on the other had if there is discrimination going on then it's not allowed to happen and should be dealt with". (Human resource manager, security company)

These issues were echoed in the comments made by the HR manager at the museum who said that although the person responsible for the offensive remarks was dismissed, this had serious repercussions. Other staff in the department where the person had worked were very upset as he was a long-standing member of staff. The claimant felt ostracised and went on long-term sick leave. He was encouraged to return to work, which he did, but said he was looking for another job and wanted to leave. However, he then went on long-term sick leave again at which point they negotiated medical retirement with him for which he was paid nine weeks' notice. Although he apparently agreed to this he then filed a race and disability discrimination claim alleging that he had been forced into medical retirement.

Even where an employer's internal grievance procedure found in favour of the claimant this was not always enough to prevent a tribunal claim. The voluntary sector social care firm conducted an investigation into the race discrimination claims of their ex-employee and uncovered an issue with the dismissal procedure linked to the claimant's probation period which meant that he should have been offered 12 weeks' pay in lieu of his contractual notice period instead of only two weeks. However they could find no evidence of race discrimination in their investigation. Although the claimant initially accepted their offer of an apology and compensation for his loss of redundancy pay he later changed his mind and submitted a race discrimination claim. This was apparently at the advice of the solicitor he had originally consulted to draw up the compromise agreement regarding his loss of earnings.

4.4 The role of the trade union in the internal grievance process

Trade union involvement in the internal grievance process was not discussed in detail by employers. In the case of a large retail company, although the claimants were affiliated to a trade union, the employer did not discuss the actions of the trade union during the grievance procedure. In the case of a museum, despite being a public sector agency where trade union membership is more common, the claimant was not affiliated to a trade union. The other employers were mainly from the private sector, and trade unions did not have a presence or the claimant was a trade union member. A Black/African claimant who worked for a large UK chain store, gave the impression that trade union membership was open to him, but chose not to become a member:

"I didn't join the trade union there because then I just felt it was a bloody... sorry for my language, I just felt it was a waste of time!" (Sam, Black African, security officer, settled).

Several claimants expressed concerns about the role of trade unions and professional bodies during an internal grievance process. These included a perception that the unions colluded with the employer and that trade unions are reluctant to deal with race cases. Joe expressed this concern when he said, *"Well the union's basically in the employer's pocket... the union backed down or did something so that it worked in favour of the management."* In a similar vein, a nurse who had been a member of a professional trade union for nearly 20 years expressed the same sentiments:

" [the union] works hand in hand with the Trust and the representatives, whether they are bribed or they are just '[...]' I don't know, because you will tell them there's a problem but they will not see the problem." (Joan, Black Caribbean, nurse, settled).

Distrust of the trade union or a professional body's role was further compounded by the perception that the trade unions were reluctant to deal with race discrimination cases, as expressed by the following claimants:

"Nationally (name of union withheld) do not defend black cases if it's not a hundred and fifty percent chance of winning, they're the most useless bastards ... about 90 percent of race cases are turned down by the [name of union withheld]!" (Derek, Black Caribbean, project officer, withdrawn)

"I just felt it was a bloody... sorry for my language, I just felt it was a waste of time because the so called trade union they had, they were all

predominantly white and they were always on the side of the management!" (Sam, Black African, security officer, settled).

Similarly David felt that the professional body representing architects was an unlikely source of advice and support for his concerns:

"[name of professional representative body] to ethnics like myself, we don't call them [name] but [swears...] because that's what they are, you know I mean our colleagues wouldn't think about going to them for support on this because what's the point...?" (David, Black African, architect, settled)

Key points:

- Claimants were likely to submit a claim for race discrimination out of frustration with the employer's internal grievance procedure. Their accounts implied that attitudes to and the handling of grievance procedures exacerbated the circumstances of race discrimination claims rather than resolving them.
- Several claimants felt that the employer had hindered their attempts to put their grievance across. The rigidity of an internal grievance process might not accommodate the needs of staff such as those whose first language is not English. This included one of the few claimants in the sample with ESOL needs who found it difficult to engage in English.
- Despite following various stages of the grievance process, cases were often passed between senior staff members without a resolution or, seemingly, action. In some instances it was not until a claimant had gone to Employment Tribunal that the employer responded to a grievance.
- Some claimants reported that they did not believe that a workplace grievance procedure existed or discovered its existence after submitting a claim to the Employment Tribunal.
- Race discrimination accounts implied that the resulting vacuum left in the management of the employment relationship appeared to increase the scope for capricious and arbitrary behaviour.
- Minor problems were seen to escalate into more serious problems because of the seeming inability of the internal grievance process to respond to a concern or the absence of any procedure.
- Most of the employers interviewed had a grievance procedure in place. There appeared to be a disjunction between the 'formal' and 'informal' grievance procedure with the latter featuring a relative lack of action, and the former featuring 'firm action'.
- Small businesses were more likely to settle a claim out of court because of the absence or existence of an outdated grievance procedure.
- Employers' accounts suggested that their investigations of race discrimination were hampered by claimants documenting incidents in their tribunal claims which they had not mentioned when working for the employer.
- There were also signs that employers found it difficult to liaise with the line managers of staff involved in cases. Line managers were sometimes unwilling to co-operate.

CHAPTER 5 ADVICE AND REPRESENTATION

5.1 Introduction

By the time of the third workplace employment relations survey in 1998, changes in the regulation of industrial relations that heralded the climate of greater emphasis on individual rights had seen an increase in the proportion of all managers that had professional personnel management qualifications. Personnel managers had become more concerned that their internal systems conformed to the minimum standards signalled by individual rights law and with addressing complaints of breaches. Moreover, while in 1980 only one per cent of establishments had sought advice about employment issues in the past year from a lawyer, by 1998 one third of managers said that they had done so (Millward *et al.*, 2000; Hawes, 2000).

In chapter one, we explored the growth of a representation gap in the UK labour market that has accompanied the decline of trade union density. Low union density is particularly pronounced in the private sector where managers are more sceptical of the value of trade unions compared with their public sector counterparts (Kersley *et al.*, 2006: 315). In the individual rights climate, the importance to employees and agency workers of long-standing organisations with an advice role, such as Citizens Advice Bureau and the Commission for Racial Equality, has arguably grown.

In this chapter we explore factors influencing employer decisions about representation and advice, difficulties that employers encountered in accessing representation and advice. We also examine claimants' experiences and feelings about advice and representation.

As we will see, *broadly speaking*, claimants tended to be the genuinely unrepresented conveying varying degrees of vulnerability as they embarked on the process of pursuing their race discrimination claim, with some notable exceptions. While one of the aims of the research has been to explore the experiences of unrepresented employers, for this constituency the picture was even more blurred. This was in part but not wholly a reflection of the skewing of the sample to larger private sector employers (as discussed in Chapter two). It was also related to the changing landscape of advice and representation.

5.2 Employers

5.2.1 *Factors influencing decisions about representation and advice*

For the larger employers, decisions about representation were shaped primarily by the existing protocols within the organisation with regard to handling grievance procedures and tribunal claims. On the whole the nature of internal procedures and employers' access to legal advice depended on the type of organisation. Most did not distinguish race discrimination claims or grievances from other types of claim when talking about their procedures although a couple felt they had slightly less experience of handling race discrimination claims or that the law was less clear-cut in this area than in other areas of employment and that this might mean they were more likely to seek advice. Unsurprisingly in the context outlined above, very large private sector employers were more likely (than small and medium sized enterprises) to have a team of HR experts with

considerable experience and in some cases even a legal team with an employment law specialist who would provide ongoing advice on a case and representation if necessary. For example, one of the large retail companies described how senior HR managers (based at retail outlets) generally handled cases but that the legal team at head office were called in if a case was proving difficult to resolve or a tribunal claim was made. For the case under discussion the legal team had been called in when talks appeared to have broken down and the claimant was on long-term sick leave. Another large retail organisation also described an experienced in-house HR team that included four solicitors at head office who dealt with most of the cases that arose at branches around the country.

Employers in low-paying sectors such as cleaning, security or social care which employed large numbers of staff to work on client sites were strongly represented in the sample. These organisations had a particular profile which shaped their grievance and tribunal protocols which included high staff turnover, a requirement for efficient recruitment techniques to fulfil contracts and, in a volatile industrial landscape of mergers and acquisitions, were often grappling with complex contractual issues such as the transfer of undertakings regulations (TUPE). This gave rise to well developed HR functions with a team highly experienced in managing grievance and tribunal procedures. In addition the cost of representation meant that these organisations used it as little as possible. The response of the HR manager of one of the large security companies who used lawyers for checking documentation and legal arguments on difficult cases was typical:

"I do as much of the work as I can and I use lawyers for reviewing the ET3s and for more difficult cases, but we try and do ... well as much as we can because it's expensive. But going to lawyers for the little bits, it's the legwork really, it's the sort of to and fro to get further information about what happened and putting the bundles together and that sort of stuff but legal arguments, we check those usually". (Human resource manager, security company)

In fact most of the large employers tended to use a trusted firm of solicitors for advice or for drawing up agreements and explained that they might also call on the solicitors to represent the organisation at a tribunal if a case got to that point. Although the cost implications usually meant employers avoided this outcome, a small number explained that they did occasionally pursue a case (whether it was race or sex discrimination or unfair dismissal) as far as a tribunal. The Human resource manager of a security company echoed the views of several others when they explained that every now and then they choose to fight a tribunal claim *"just to kind of show people that we're not always going to pay up"*.

There were other legal advice structures utilised by the employers. The smaller of the large employers including one of the security companies sourced advice from a legal helpline that they paid for and again this service was used sparingly. For the case in question they were still employing the person who made the claim and their Acas conciliator advised them to use their solicitor to draw up the final settlement:

"I wanted everything that had happened up to that day to be a closed case and then he can't bring it up at a later day, that's why I presented it to our solicitors and we just changed a couple of wording on it, and his solicitor was happy with that". (Human resource manager, security company)

The cleaning company, also a relatively small 'large' employer, enlisted the services of an HR consultancy to provide advice on disciplinary, grievance and tribunal procedures:

"If anything like this ever happens or... we have a question for how to deal with an employee they will tell us what to do, they'll send us their advice, they'll send us draft letters or whatever...and I'm... over this one I met with a lawyer two or three times I think to discuss it and they're very much, you know, they're on hand and on call". (Director, commercial cleaning company)

Although they wanted to take the particular case to tribunal, the advice he received from the HR consultant was to weigh up the costs:

"Well, what's your time worth? You're gonna probably have to employ a barrister, which doesn't come cheap. If you do the maths on it, and all the time invested up to the build-up, find out what they'll settle for." (Director, commercial cleaning company)

The director felt that having advice readily available had enabled them to self-represent and not to seek costly legal representation which they couldn't afford.

Other large employers had taken out an insurance policy that paid for legal advice in disciplinary and tribunal procedures although this was dependent on the company having followed the advice and procedures to the letter. The respondent from the private care home explained their system:

"We use it's called Abby Legal and you pay an insurance premium that covers that, so if you have any employment relation issues and disciplinary issues you seek their advice and you follow their advice and then if by following their advice you are taken to an industrial tribunal you are then covered against any costs that's related to that." (Business manager, residential care home for the elderly)

Public and voluntary sector employers (the museum and social care firm) felt they had a duty to make best use of public funds and where they were big enough to have HR expertise they tried to minimise the use of solicitors and legal representatives. The HR manager for the museum explained:

"I think so long as we've got the expertise in-house, we'll try to take it as far as we can because we are publicly funded. We want to make the best use of public funds then therefore employing expensive firms is not the best use". (Human resource manager, museum)

The large voluntary sector organisation providing services for older people across the country also had a strong HR function at their head office and the interviewee who was head of HR oversaw all dismissal and disciplinary cases and felt they would seek external representation "very very rarely". She echoed the museum when she said:

"we don't have the money to spend, you know, if we get an employment tribunal claim in we have to try and deal with it as cost effectively as we possibly can". (Business manager, residential care home)

However both organisations said that on the rare occasion when a case went all the way to tribunal they would employ a representative for the hearing:

"If we had to go to tribunal we'll have a legal representative there, simply because we have a huge reputation and an international reputation to maintain". (Human resource manager, museum)

Larger employers were also familiar with the work of Acas and their conciliation role and several of the HR managers said they used the website and helpline to get information on occasion.

For most of the larger employers, grievance procedures and tribunals were a routine part of the job. There was little active decision-making involved in their eventual representation or self-representation for the cases under discussion. They were following organisational protocols determined mainly by cost and the availability of other resources. Self-representation was only possible because they had substantial previous experience of tribunal cases and access to various sources of legal advice or, in one case, internal legal representation. Their HR or management teams were experienced enough to make informed decisions about the financial risks involved in going to tribunal or settling and if they needed advice they knew where and how to get it.

5.2.2 Difficulties employers encountered in accessing representation and advice

Things did not always run smoothly for the large employers. Those (care provider and cleaning company) using insurance-based legal cover found that for the case in question they could not access the free legal representation because they had not followed the dismissal procedure correctly. One was led to understand (erroneously) that Acas services were no longer available to them as they had rejected Acas involvement at an earlier date in the case. Both employers found they had to pay for legal representation in the final stages as these issues became apparent.

The two small and medium sized employers also had rather a different perspective on advice and representation. For the directors of these two businesses with less experience of tribunal claims, less rigorous or non-existent disciplinary and dismissal procedures, no HR staff available to work on the case and a tighter budget there was a much stronger sense of frustration with the tribunal procedure as a whole and a lack of knowledge about the advice and support provided by Acas.

As explored in the previous chapter, the small fashion retail company employing only 15 people had no previous experience of employment tribunals, no grievance or dismissal procedures and no procedures for tackling performance issues. The experience of being taken to tribunal had come as a shock to the director and she found herself lacking the necessary knowledge and information to make informed decisions. The finance director of the car sales and repairs firm was much more in touch with HR protocols and took on the work for tribunal claims himself on the two occasions they had come up in the past 10 years.

Neither had much, if any, contact with Acas in the past and were unclear about its role. The director of the retail outlet was hoping for some guidance from Acas but was led to understand (incorrectly) by the conciliator that he could not deal with the case unless she had some legal representation. She was particularly frustrated since as a small employer she felt she really needed advice:

"He told me to get represented. And that was the end of it, and then I had to get representation. Because I mean that's what I said to him, 'So,

where's my advice? Is that your advice?' He said 'Yeah. That is your advice ... that is my advice, get some legal ...' He said. I said 'But we're a small... we haven't got ... we haven't got paid people ...' I said 'I am it'." (Director, small retail company)

The director of the car servicing company had little understanding of Acas as anything more than a settlement broker. Given his feeling that the claim was spurious, he had turned down their offer of conciliation on the first phone call as he had wanted to pursue the case to tribunal. His past experience of their services had also influenced this decision as these had not been particularly positive. He noted that *"on the previous cases that I had they've never given the impression that they've even read the response and reply"*. Like many of the employers he used an independent advice service:

"We belong to a couple of organisations that supply free advice, employment advice, particularly related to our industry and so we would obviously tend to use that rather than any services of Acas". (Finance Director, car servicing company)

Both employers felt that they did not have a choice about seeking legal representation. They either paid large sums of money for legal representation or they paid large sums of money to cover the cost of senior staff and employee time spent putting the case together and attending the hearing. The owner of the fashion retail outlet would have had to close the shop for the duration of the hearing which would have been untenable for the business. She was resentful of the cost and felt frustrated with Acas for the lack of constructive advice. Although the director of the car sales and repairs firm had been happy with his decision to represent himself in the past and initially represented himself in this case he lost confidence when he discovered the claimant had a barrister to represent him at the pre-hearing and took on a solicitor for the final stages.

5.3 Claimants

The majority of employers understood how the tribunal system worked and decisions regarding representation were typically unproblematic and shaped primarily by a risk assessment – the cost of settlement weighed against the cost of going to tribunal. For the claimants the process was much more complicated and bound up with their level of understanding of the tribunal system, the sources and quality of the advice they were able to access and their confidence and emotional state at different stages of the process. Many had little idea how the tribunal system worked at the outset or what representation actually meant. It was noted in Chapter one that representation is a complex issue. The fact that the sample contained three claimants who had representation, despite being screened for self-representation, highlighted the confusion that existed regarding some of the terminology. Some interpreted representation to mean the support provided by the Acas conciliator, others thought it meant having a union representative present at the hearing. Claimants were not always aware that they could represent themselves. One claimant who had representation only found out he could have represented himself at his tribunal pre-hearing when he had the chance to talk to other claimants. Another didn't know they could have consulted a solicitor.

5.3.1 Advice

Many claimants sought advice and support whilst they were still trying to resolve the issue with their employer, often when they were still employed and before

they put in a tribunal claim. For some their first port of call at this stage was their own HR department, their union, or professional bodies. However, few of the claimants in the sample had found these helpful. If they had, it might be argued, they may have been less likely to make a tribunal claim. As noted in chapter 4, most claimants were not trade union members. Unions were often seen to side with the employer and to not want to deal with race discrimination cases. HR departments were felt to be colluding with a bullying manager or protecting other members of staff involved. One Bangladeshi social worker who described the trade union as “*totally racist*”, said they had not bothered to read the notes for the case and he regretted paying his fees for 16 years (Akbar, Bangladeshi, social worker, withdrawn). Another claimant, a nurse, said she did not trust her union representative and asked instead for legal representation from her professional body but was told this was not possible because her case was weak:

“She say ‘Oh no your case only has a nine per cent chance of winning so the college will not give you a solicitor’.” (Sonja, Lebanese, nurse, settled)

Over half of claimants had sought advice from local Citizens Advice Bureaux (CAB) and legal advice centres, or the Commission for Racial Equality (CRE). The type and quality of the advice and the degree to which claimants found it useful varied considerably. For some the advice involved being directed to the tribunal system itself and supported in putting in a claim as a way to pursue the issues they had with their employer. Claimants were also advised on the tribunal system and were signposted to books and documents which would help them understand the procedures. Some were advised on the strengths and weaknesses of their claim. The CRE and some of the CABs also provided access to free legal advice and a few claimants had received substantial levels of ongoing advice over the course of their case and help writing letters and putting together bundles for the court. However this support stopped short of actual representation.

Almost three-quarters of the claimants had contacted solicitors and lawyers for advice at some point in the process. One described sitting down and phoning all the firms in the Yellow Pages. Some claimants were simply given the solicitors fee structure for taking on a case and given the costs involved did not take things further. A substantial number had been quite successful in getting some legal advice over the phone ranging from an opinion on the strengths of the case to advice on the tribunal process and letter writing.

5.3.2 Representation

Claimants in this study were selected because they were not represented. Once they had submitted their claim the claimants became more aware of the workings of the tribunal system and the implications of having or not having representation and they were often disappointed and frustrated to find that they could not afford solicitor’s fees and that the organisations that offered advice could not actually represent them at tribunal. As the question of representation arose some were advised by these agencies to self-represent, while others were told to get a solicitor to represent them. Whilst the CRE appeared to play an important role in signposting legal services, these lawyers and solicitors still required payment and issues of cost were paramount.

Most claimants ceased contact with solicitors and lawyers as soon as they were required to pay fees. Some paid for an initial consultation but did not proceed when they realised that the fees were not sustainable. In many cases it was the solicitor who refused to pursue the case. This appeared to happen when it became apparent that the final payout would not be substantial enough to cover

costs or the solicitor did not think the claimant would be able to pay the fees or in the case of 'no win no fee' solicitors they did not think they would win the case. A Caribbean nurse who owed her solicitor a large amount of money from the initial consultation said he had advised that it wouldn't be worth it for her to continue using his services. He said:

"I've never lost a case at the tribunal but I'm going to swallow everything and maybe you are going to owe me some more money on top of that" (Joan, Black Caribbean, nurse, FTH)

Some claimants found the timing of solicitors' withdrawal from the case particularly disconcerting as in this Caribbean administrator's experiences of finding and losing a solicitor:

"I was given his details from the Race Equality and he initially started the ball rolling and did all the paperwork for me and had contacts from the company I was working with's solicitor. I don't know what happened there and then he said he couldn't represent me because he was going to take a percentage and then he said to me that he didn't think it was... what he say, he didn't think that it was worthwhile him doing, so he pulled out, like about three days before my paperwork had to be in..." (Andrea, Black Caribbean, administrator, withdrawn)

The majority of the claimants interviewed felt they did not have a choice about representation. They wanted representation but could not have it because they simply could not afford to pay for it. This claimant was typical when they said:

"I didn't have any choice, no it was financial and you can either afford it or you can't, so I guess that's the choice yeah?" (David, Black African, architect, settled)

Most felt this significantly disadvantaged them in the tribunal procedure perceiving that they lacked the knowledge and confidence to go through the process alone. Some noted the difficulty of getting to grips with the technical and legal language and protocols. Others noted their lack of confidence speaking. A Caribbean sales assistant explained that she hated *"talking in front of people"*, to the extent that when she was called up for jury service she got nervous just being sworn in (Pauline, Black Caribbean, store assistant, settled). For her, self-representation was not an option. Similarly an Indian factory worker said she felt very shaky when CAB advised her to represent herself and she eventually dropped the case because she could not find free representation. A senior Caribbean project worker for a housing charity also dropped the case when the local legal advice centres he was consulting made clear that they could not actually represent him. He felt self representation was impossible for him:

"It was too emotional, I was too passionate about it; it would have been suicidal to do it." (Derek, Black Caribbean, project officer, withdrawn)

These case examples illustrate that there is a link between withdrawal and settlement and lacking representation.

Others went to great lengths to secure funds to pay for the solicitor's fees. Several pursued the possibility of getting legal aid to support representation. Unsurprisingly, no one in the sample had succeeded as legal aid is not available for Employment Tribunal cases. They were given a range of different reasons why legal aid was not available for them. These included being told that it could not be

claimed for Employment Tribunal cases, apparent means testing and failure to meet various eligibility criteria such as being unemployed or having dependent children.

Those that did not see legal aid as a potential source of funding looked at commercial means. Some were advised that house insurance provided legal cover but one claimant did some calculations and realised the costs for them were too high:

"They only covered you up to a certain amount, and then the insurance company would only specify legal companies that I could go to, when I sat down and worked this thing out I thought if I lose I could lose everything". (Helen, Black Caribbean, social worker, settled)

Others talked about re-mortgaging. Many looked into the possibility of using no win no fee solicitors and the two individuals in the sample that had representation had gone down this route. A nursery nurse from Eastern Europe argued that given her language difficulties she could not represent herself. No win no fee was her only option:

"I mean if I didn't have somebody with me like my son and solicitor no way I would have taken the case because my English is nowhere, my speech is not good so I couldn't take my case along to the tribunal no way I would have to had drop it" (Martha, East European, nursery nurse, settled)

However, not everyone was daunted by the prospect of self representation. Some of the more confident interviewees felt that they were the best person to represent themselves.

"I made a conscious decision to represent myself because I thought...its confidence, ...I thought I'll blow my own trumpet, I thought I was good enough to represent myself, argue my case". (Joe, Black Caribbean, factory worker, settled)

Some were so confident in the strength of their case that they were eagerly anticipating their day in court and were disappointed when they were persuaded to settle. However, at the same time most of those who were keen to self-represent also had channels of advice and support that gave them some confidence to take on the tribunal system. The sources of this advice included the free legal advice mentioned earlier but also friends and family. Martha recommended that people represent themselves but she acknowledged that her son and a friend had done a lot of work on it for her:

"My son and my friend was writing it and reading it and answer all so it's good to do it yourself but having somebody who knows to read or write, who knows little legal rights because, you know, unless somebody have a legal education you know then he can take it all the way but otherwise you need a solicitor" (Martha, East European, nursery nurse, settled)

For those that had some previous experience of tribunals and court procedures, even in quite an indirect way, the decision to self-represent was less problematic. In some cases this could be explained in terms of the effects of social and occupational class helping to ease claimants' sense of powerlessness. One claimant turned out to be a magistrate and had few concerns about representing himself:

"I'd never actually appeared at a tribunal but I know roughly the form of things and I wasn't worried about having to take it to that point myself." (Frank, White British, judiciary officer, settled)

Others had witnessed the court system in action through their own divorce proceedings or worked in fields where they had been advocates or studied HR management and felt that they knew what to expect. Another claimant's ex-husband was a lawyer:

"I had certain experiences of legal procedures, I went to court in the past few times and yes I have an understanding of court procedures so I thought 'well I might do it myself'." (Yoko, Japanese/British, web designer, settled)

5.3.3 Claimants' feelings about representation

Looking back on their experiences of self-representation most claimants felt they had been disadvantaged by it and wished that support had been available. Some described it as "traumatic", others described the stress they had suffered whilst undertaking the procedure, the negative impact on other family members and several mentioned how the depression they had suffered had been brought on by the situation. It was also clear that stress and depression, at least in part induced by lack of representation, lowered their confidence and made the whole process much harder:

"I was depressed, I wasn't confident at all, I wasn't confident at all, very shaky, very nervous, not happy about it, I felt that the chairwoman although she was helpful and sympathetic was still quite robust and was quite forceful in many ways, and I didn't know what I was doing". (Helen, Black Caribbean, social worker, settled)

The language issues and cultural differences discussed earlier could reduce claimants' confidence in self-representation. They created an effective barrier between claimants and the tribunal system that appeared insurmountable for some and was a serious cause of concern for others. One claimant who was Russian felt very uncertain of her reception at a tribunal particularly given the racist taunts she had sustained from colleagues:

"I'm from a different culture, my language and I don't have the same cultural sensitivities and I have this fear of and uncertainty of how, you know, English will respond and react to me culturally so I simply, you know, I couldn't be certain about the effect of my actions and this is where I needed advice and I never got it". (Ivana, Russian, branding manager, settled)

For these claimants representation reduced their fears about being able to express themselves and make their case effectively.

The claimants' lack of confidence in their ability to self-represent was further strained by the strategies of the respondents' representation. Claimants described how hearing about the legal team that was representing the employer when they were an individual with no representation was very demoralising. One claimant described it as a "David and Goliath" situation. Others reported that they had received bullying letters from the respondent's solicitors and several had been threatened with the recovery of costs if they lost, all of which could be incredibly intimidating and which caused additional levels of worry.

For those who had settled rather than pursuing the case to tribunal there were a number who had some misconceptions about the reality of the tribunal process. They believed that if they had had representation the case would have gone to tribunal and the employer would have been made accountable for their actions:

"Maybe I would have got more money. I would of (had) some punishment made in the company themselves if they knew I was professionally represented would have highlighted a few things and the company would have taken decision regarding the people who harassed me". (Yousof, Arab, hotel administrator, settled)

This belief that the tribunal would see justice done meant that claimants expressed similar frustration with both solicitors and Acas conciliators who pushed for a settlement and in doing so let the employers off the hook:

"No thanks to Acas because they pushed me to settle out of Court really, I wanted to expose it and let the whole world know." (David, Black African, architect, settled)

However, there were also a significant number who felt that there had been benefits of doing it themselves that went beyond the financial. A small number felt empowered by the experience of self-representation. It had given them some control over the tribunal process and where they were successful it boosted their confidence:

"I got the outcome I wanted, it made me feel good, it's not because I won something but I was in the right to start with and yes I achieved what I wanted". (Mary, Indian, administrator, settled)

"I felt advantaged because I didn't trust anyone to represent me how I wanted to be represented and to say what I wanted to say even though it was very difficult". (Sarah, White British, administrator, settled)

Others acknowledged that it had been 'a learning curve' and some even saw it as character building:

"Yes I became very strong than before because really those cases exhaust you and you have to be very, very strong". (Yousof, Arab, hotel administration, settled).

Key points:

- The large employers sampled tended to have a large HR function which took on the majority of the work for tribunal claims and used solicitors and lawyers for drawing up agreements and checking paperwork. Decisions about representation were shaped primarily by risk assessment. They were generally positive about self-representation.
- Smaller employers in the study tended to have less experience of tribunal claims and have less financial and human resources available to make self-representation possible. As a result they felt more constrained by the tribunal system and were frustrated by the cost of defending or settling a claim.
- Claimants' priorities and experiences regarding representation were more complicated than those of the employers. They were shaped by their previous experience and knowledge of the tribunal system, the advice available to them and their confidence and mental health at that time.
- The majority of claimants wanted representation and were disappointed and frustrated when they discovered they could not afford it. They felt that the tribunal system was weighted against them.
- Many race discrimination claimants felt that they were in a disadvantageous position culturally, linguistically and in terms of their legal knowledge by not having representation and that this had negatively affected the outcome of their case.
- Whilst many claimants found the process of self-representation stressful and difficult, conveying a sense of powerlessness, a small number (particularly those who had an outcome they were happy with) said that the process had given them confidence and enabled them to take control of the situation. This was particularly beneficial in situations where they no longer trusted those such as unions and human resources departments who they felt had failed to support them, and appeared to lack commitment in supporting race discrimination claims.

CHAPTER 6 THE ROLE OF ACAS AND THE EXPERIENCE OF INDIVIDUAL CONCILIATION

6.1 Introduction

This chapter explores claimant and respondent perspectives on the role of Acas in their experience of Individual Conciliation (IC). Three broad aspects of the IC service are covered, each of which has the potential to contribute, in different ways, to an unrepresented claimant and respondent satisfaction gap. It begins with an exploration of awareness of Acas prior to the claim, before turning to experiences of initial contact with Acas. Finally, the chapter reflects on experiences of contact with the conciliator during the case.

6.2 Awareness of Acas prior to the claim

Many claimants had no prior knowledge or awareness of Acas or the telephone helpline service, and had not even heard of them before seeking advice on their case. By contrast, many had heard of the Commission for Racial Equality and claimants had often learnt about Acas from this source during the process of seeking advice. Others had been told about Acas by a friend or colleague, or an advice agency such as the Citizens Advice Bureau, while some had only found out about Acas when contacted by them as part of their claim. Those who did have some awareness of Acas tended to cite their role in the arbitration of industrial disputes; most lacked familiarity with the IC process. Joseph's comment was typical of such responses:

"I've heard of them more in terms of when you have the big disputes like British Airways getting Acas involved or something, so that kind of thing. I actually didn't know at that point that they got involved on an individual basis". (Joseph, Black African, accountant, settled)

Some claimants had come across Acas involvement in individual conciliation because of their previous studies or the nature of their own employment role, although this was less common. For instance, Ali was a social worker, while Josephine had studied HR and this was how she knew about Acas. She was unusual among the sample in having used the Acas website as her first source of advice on the case, and had also used the Acas helpline. For a small number, this was not their first claim, and this was why they were aware of Acas.

Respondents were more likely than claimants to have heard of Acas prior to the case. Larger employers, in particular, had worked with Acas on previous cases, although not always on race discrimination issues. This meant that they were already familiar with the role of Acas, and had clear expectations in this respect.

Claimants argued that the Acas role in individual conciliation should be more widely publicised to increase awareness of it among the general public.

6.3 Initial contact with Acas

Initial contact with Acas was typically by letter a few weeks after submitting the ET1. Most claimants recalled the introductory letter and leaflet, and those who had read the leaflet were in general agreement that it provided a clear explanation of the conciliator's role. This quote by Joseph is typical of these views:

"The leaflet seemed quite informative, so I didn't have to get any more information. It made it quite clear what they were going to do and what they weren't going to be able to do". (Joseph, Black African, accountant, settled)

In a few cases, however, it was obvious that the conciliator's role had not in fact been well understood. For instance Joan, who expressed the desire for more "support" than she had received, said of her conciliator "I didn't know what they were supposed to do for me", despite having expressed positive views about the explanatory materials. Only a few people reported using the Acas website to obtain initial or further information, but those who had were positive about this.

One respondent from a small retail business faced similar issues to those raised by some claimants in that she was unclear about what she could expect from Acas; following an initial phone call from the conciliator, she had taken on a solicitor to defend the case, having gained the impression that Acas would not deal with her unless she had a representative, and was unhappy at the costs involved.

"Interviewer: [so] that was the one phone call that you had with ACAS. Did you talk to him once or twice or ...

Respondent: Yeah, I think it was probably once or twice, that was it. He said 'Get yourself some legal ... my advice is to get yourself some, you know, private legal advice.' ...

Interviewer: But ACAS should deal, particularly with unrepresented claimants.

Respondent: No, he told me to get represented. And that was the end of it, and then I had to get representation". (Manager, small retail company)

Among those who did have clear expectations of the role that Acas would play, whether prior to bringing their case, or as a result of the publicity material they were sent, the aspect most commonly cited was that of being 'neutral' or 'impartial'. However, it was clear from discussions of the style of conciliation that what people actually meant by referring to neutrality varied considerably, and that in practice, levels of satisfaction with this impartial role also varied. Some people had obviously expected Acas to represent them in some way, and were disappointed when they found that this was not the case. This was more widespread among those who had not previously heard of Acas, and those who were less familiar with the concept of conciliation. These issues are discussed in greater detail in Chapter seven.

6.4 Contact with the conciliator during the case

6.4.1 Claimant contact with the conciliator

Most claimants reported that they were in contact with a single conciliator throughout the period of their claim, apart from changes due to holiday cover. In one case, Sonja's, the conciliator had been changed at the request of the claimant because she felt that she was the one having to initiate contact, and that the relationship had broken down. Other claimants had chosen to discontinue contact with the conciliator. In the course of her first telephone conversation with

the conciliator, Sharon gained the impression that her conciliator was unsympathetic to her case:

"After, yes, after I'd told him, you know, what happened and he was like, you know 'So why are you pursuing it? Why don't you just let it rest? You've left anyway and got another job.' Yeah, that was why I didn't call him back". (Sharon, Black African, nurse, settled)

She had therefore engaged a solicitor at this point, and eventually obtained a cash settlement, although she was unhappy that many of the procedural issues she had tried to address at the workplace remained unaltered. Joe, a claimant who represented himself throughout, had similarly discontinued contact when his conciliator kept stressing the weaknesses of his case, but later agreed to a three-way meeting, which resulted in a substantially higher settlement than he had originally been offered.

In most cases, all contact was by phone, although there was a limited amount of email in some cases. Some people expressed a preference for email contact, as it was less disruptive than having to respond to a telephone call during the working day. Some claimants reported that while they preferred email contact, their conciliator was reluctant to communicate in this way, without giving clear reasons for this; in other cases the means of communication suited both parties. The amount of contact varied quite considerably, from a single phone call to a period of intense communication over several weeks or months. Mustafa spoke of his conciliator being *"like a tennis ball between the two parties, backwards and forwards"*. Soraja explained that an initial very active phase of her claim had involved communicating by phone and email with the conciliator several times a week, but that this had fallen to around once a fortnight towards the end of the case.

Many of those interviewed described their conciliator as reasonably approachable and available, responding promptly to phone calls and giving them time to explain their side of the story. This was a fairly typical comment:

"He was okay. He had plenty of time for me and if I couldn't reach him I'd leave a message on his voicemail and he'd get back to me". (Mustafa, Indian, production worker, settled)

Joe had some issues with his conciliator, but stressed that he had always been given a fair hearing:

"He listened, I'll give him that, he listened. He didn't sort of patronise me or try and hurry me off. He listened to me, and gave me a fair crack of the whip, and any time I phoned him, if he didn't get in contact with me straight away, he'd get in contact a day or so later". (Joe, Black Caribbean, factory worker, settled)

Some claimants found it frustrating that when their conciliator was out of the office they got a voicemail rather than being able to speak to someone else who might have been able to tell them what was happening, while respondents generally seemed less concerned about this.

A few claimants felt that their conciliator had been less proactive about contact than they would have wished. Horace said that: *"More contact or whatever would have given me confidence that they were doing all that they could"*.

Only four claimants in the sample had received face-to-face conciliation. In some cases, it seemed to have been helpful in allowing the parties to reach a settlement, while in others, little appeared to have been achieved. Joe had initially felt that his conciliator was not convinced of the merits of his case, but felt that this changed once there was a face-to-face meeting:

"But when I went down to the actual meeting, and I explained how things had gone on, and how things had been conducted, the Acas guy, the actual one who I spoke to initially, he turned round and said 'Well if that's true, if all this is true, then you have a very strong argument, and to be quite frank you're looking at unfair dismissal in conjunction with racial discrimination'."
(Joe, Black Caribbean, factory worker, settled)

Not all face-to-face meetings were productive, however. Sonja said that she had found the meeting unhelpful as she felt that Acas were overly sympathetic to her employer's point of view, and she was unhappy with the partial settlement she received.

Many claimants, including both those who were happy with the service provided by Acas and those who were unsatisfied, said that they would have preferred some face-to-face contact with a conciliator, even if it was only a single meeting, saying that this would have increased rapport, whereas they had found telephone contact relatively "cold" and "impersonal". Ivanka said that she had requested a face-to-face meeting but her conciliator had declined, saying that this was not necessary. It was not generally acknowledged that providing such a service more widely would require a considerable increase in Acas resources, although respondents were generally more sensitive to this issue than claimants. Mustafa was an exception to this, saying:

"No, there was no need for any of that. You know, it takes a lot of time these meetings, and they're expensive. Phone calls are a lot cheaper"
(Mustafa, Indian, production worker, settled)

Few people identified changes in the relationship with the conciliator over the period they were in contact. Often, this was simply because there had not been sufficient time for a relationship to develop. In some cases, however, it was clear that the trust that had developed between the claimant and the conciliator had been important in enabling the case to reach an acceptable conclusion. Serena had withdrawn her case, and felt disappointed that this seemed to be her only option, but did not blame her conciliator for this, saying that she had trusted her and felt that "she wanted what was best for me". Yousof had two conciliators and was very satisfied with the service each had provided. He had originally been keen to go to a tribunal and remained a little ambivalent about the fact that he had settled out of court, because he felt that no-one had been "punished" for their acts of discrimination. He commented "I felt let down with the law as well because I [would have] liked to take that manager to court." He explained that the support offered by the conciliation service had helped him persist in taking the claim, and work towards an acceptance of this outcome:

"[it gave] me strength to represent myself so I was able to say what I want, to give my feelings, they would listen, they are excellent listeners ... at the beginning it was a very big gap between both of us, I wanted to take it to court, I wanted to appear in court regardless [of] the money, how much I would get, and at the same time maybe there is influence from the other side that [he] doesn't want to deal with you, he's using his power and

solicitors and professionals. So in that sense I felt I'm coming closer and closer to sort out that". (Yousof, Arab, hotel administration, settled)

6.4.2 Respondent contact with the conciliator

Like claimants, most respondents reported that they were in contact with a single conciliator throughout the period of their claim. Several respondents praised the accessibility of their conciliator, as was the case with the director of the commercial cleaning company:

"If it went through to his voicemail then he was very, very quick, quick to come back. Quite often phone me from home, so I mean yeah, I couldn't, couldn't fault him in that respect". (Director, commercial cleaning company)

However, some respondents felt that their conciliator was insufficiently proactive. While acknowledging that this was likely to be because of a drop in funding for Acas services, they still felt aggrieved at receiving a poorer service than they felt they had a right to expect:

"Now whether Acas have got too high a workload, need more officers, I don't know, but effectively whilst I'm not a paying customer, I am their customer and I object to being made to feel, you know, that the person that I'm talking to is too stressed to listen to me and too much under pressure to give me the time I'm asking for". (Human resource manager, social care firm)

This was not the only criticism of the quality of contact. A respondent from one of the security companies described his conciliator as *"quite short and brusque"*. The conciliator told him that he did not have time to negotiate a settlement and came across as *"disaffected"*.

As noted earlier, respondents in large organisations were sometimes dealing with a conciliator they knew from previous cases. Several spoke with real appreciation about the service they had received from Acas. The director of the commercial cleaning company said of his conciliator:

"if we had another ET1... I would very much hope he was looking after that case". (Director, commercial cleaning company)

The ability of conciliators to listen, provide information and respect confidentiality for both parties was highlighted as a positive aspect of the Individual Conciliation service. For example the security company respondent who had found his conciliator *"short and brusque"* in his most recent defence of a race discrimination claim noted:

"Generally they do listen well ... pick their brains a bit too ... they are very good, they keep confidentiality for both parties". (Human resource manager, large security company)

Others felt that the conciliator had little time or interest in hearing their story, which reinforces that feeling listened to is something that respondents, like claimants, value:

"I said 'Well, I don't ... you don't want to hear my side of it?' He said 'No, no, I don't [want to] hear anybody's side of it.' ... all [he] sort of says is like 'Come on jolly together and pay up'." (Manager, small retail business)

Three respondents in the sample had received face-to-face conciliation. As with claimants, there were mixed experiences of this. The respondent from the large retail chain store had requested a face-to-face meeting for the first time in his dealings with Acas, and was very satisfied with the outcome, which he felt had allowed the two parties to meet halfway:

"He agreed there and then, shook our hands and said 'Thanks very much'. I got back to the office, drafted up some settlement wording, sent it via [conciliator] at Acas which she put onto her Acas headed paper and there you go that's it, he signed it, we signed it". (Manager, retail company)

However, another respondent from a large retail company reported that the claimant had walked out of a meeting after ten minutes, making allegations that Acas was biased.

Like claimants, one or two respondents would have liked more face-to-face contact, emphasising its value in building a relationship with the conciliator, as explained by the respondent in the museum:

"because you don't meet face-to-face it's very difficult to build a relationship with somebody that you have no clue, you know, what they look like or there's that sense of understanding because we've sat and we've looked into each other's eyes and you know?" (Human resource manager, public sector museum)

In contrast the respondent from the commercial cleaning company felt that face-to-face contact might have been counterproductive, both because appearances might impact on the dynamics of the relationship because of the logistics of frequent contact.

Key points:

- Few claimants had heard of Acas prior to making a claim, whereas most respondents were familiar with Acas. This had implications for their respective expectations of the conciliation service.
- In most cases, initial contact with Acas was a few weeks into the claim. The information materials supplied at this point were generally well understood, but not everyone fully grasped the nature of the conciliator's role.
- Both the length and extent of contact varied considerably across cases, from a single phone call to an extended period lasting several months. Most contact was by phone, with a limited amount of email contact. A few cases had involved face-to-face meetings.
- Many claimants and respondents were satisfied with the ease of contacting their conciliator, although some would have liked the conciliator to be more proactive about contacting them and providing regular updates. Many claimants and some respondents would have liked the opportunity of a face-to-face meeting.
- Feelings of trust and rapport with the conciliator were important to reaching an acceptable resolution of the case. For both claimants and respondents, feeling listened to contributed to satisfaction with the Acas Individual Conciliation service.
- Feeling that they were not being heard and that conciliators lacked time and were under pressure fuelled claimant and respondent dissatisfaction with the Acas Individual Conciliation service.

CHAPTER 7 THE STYLE OF INDIVIDUAL CONCILIATION IN RACE DISCRIMINATION CLAIMS

7.1 Introduction

As noted in the introduction to this report, Dix (2000) describes three broad elements of the conciliator role: the **reflexive role**, the **information provider** role and more **substantive involvement**. The reflexive role is concerned with relationship building, responding to the needs of the parties and establishing a positive working relationship. A range of tasks may be undertaken to this end including building professional confidence and trust and personal rapport and being sensitive and flexible in dealing with the parties. The information provider role of the conciliator can be pivotal in redressing any imbalance in the knowledge of the opposing parties, by clarifying the issues of the case, explaining the Acas role, the Employment Tribunal role and purpose and explaining case law. The substantive involvement role is an intervention that aims to narrow the gap in the parties' positions and precipitate a settlement. This may involve, for example, exploring with the parties the strengths and weaknesses of their cases, outlining how potential outcomes are constrained by the legal framework and assessing where the parties' interests lie. In undertaking these roles conciliators can deploy a variety of styles including being: reactive or proactive, a message bearer or seeking to influence the case and passive or forceful in the execution of their interventions.

Drawing on different elements of the potential conciliator role and styles, Dix presents three examples of conciliator style:

Type A: a more pro-active style, where the conciliator is forceful rather than passive, actively seeking to influence the outcomes of the case, using a range of reflexive, informative and substantive intervention.

Type B: seeking to influence the outcome of cases by focusing on a reflexive role, rapport-building and gaining the trust of the parties.

Type C: a more reactive style, with an emphasis on providing information and ensuring that parties are aware of procedural issues. Here, the approach is one of being message-bearing, rather than seeking to influence outcomes.

In delivering its Individual Conciliation (IC) service, Acas has long emphasised its impartial and neutral role. Conciliators are not supposed to advise their clients and have a difficult path to tread in both discussing and explaining the law to claimants and respondents, whilst not expressing a view of the merits of a case or its likely outcome (Dickens, 2000: 76).

This chapter takes a closer look at the conciliator role and the style of conciliation through the eyes of the claimants and respondents in race discrimination cases. In exploring conciliation style during the interviews, particularly substantive intervention, the research team often used vignettes to help facilitate discussion. The vignettes worked well either helping feelings about the style of conciliation to come to the fore or making hints of perspectives on the style of conciliation more explicit (see Appendix one for vignettes used in the topic guides).

7.2 Key aspects of the conciliator role

7.2.1 Relationship building – trust, empathy, rapport

Chapters 3 and 4 were indicative of the climate of hostility, fear and bitterness that may arise between the parties in race discrimination cases and Chapter five the sense of frustration and isolation that can be experienced in trying to secure access to justice. The narratives of the parties, claimants and respondents, were indicative of how the achievement of a relationship of trust with their conciliator could lead them to reflect positively on their experiences of IC. Low (or high) initial expectations of the conciliation service, and the extent to which they were borne out in practice, could influence these trust dynamics. Yoko, the British-Japanese woman who had worked for a multi-national company, had low initial expectations of the conciliation service. She associated public organisations with incompetence so was surprised when she found that a relationship of trust was swiftly developed with her conciliator, who she found “friendly”, “efficient” and “perfect” Yoko’s experience is also illustrative of how the quality of service delivery was linked to the emergence of trust:

“She was very efficient, I’m very pleased, I’m wondering why she’s not having her own practice..... She was very prompt, quick, very quick. I write an email to her, maybe within 10 or 20 minutes, I got back a reply, she was very good”. (Yoko, British-Japanese, web designer, settled).

There was also appreciation by the parties of conciliators who went out of their way to deliver the service, as illustrated by the following comment from the large security firm:

“I’m just thinking now [the conciliator] was good actually because she was going on holiday on the Friday, I think she even stayed in the office late or took the number home with her to try and get a settlement on the Friday, yeah so she tried her utmost as well”. (Human resource manager, security company).

The key driver to achieving a good relationship between parties and Acas was the perceived competence of the conciliation, a factor given more weight in the interviews than the conciliator treatment in respect of gender, ethnic background or age. There were several instances where provision of information by the conciliator helped to develop rapport and reinforced a sense of trust between the claimant and conciliator. In the case of Sam, a Black African man working as a security guard, the information provided conveyed the depth of the conciliator experience:

“I had a good rapport with her and she came across to me that like someone that I could actually trust because the way she came across to me, it's like she had a lot of experience, I can see that it's someone I can trust, I didn't have any reservation in discussing anything with her with regards to the case”. (Sam, Black African, security guard, settled)

However, some claimants felt that having a conciliator from a different ethnic background to their own had affected their treatment, as illustrated by the example of Sharon, a Black African nurse who had been working in an NHS hospital when the circumstances of her claim arose. Having already become disillusioned with the lack of support from management and her workplace union, her brief encounter with a conciliator had been a very negative experience for her. She explained how she felt her conciliator was making superficial judgements

about the validity of the case, that he was patronising, implying that their different ethnic backgrounds might have contributed to how he treated her:

"I'm not being you know prejudice[d] or anything but I just felt like he was a white man, male, middle class talking to this black woman who wants, you know he just think is just another person making a false accusation, that was my first impression and I just did not like him and that was the end of it... I didn't feel safe for to hand over my case into his hands and him handling in my best interest...I felt somebody was talking down to me, that tone of voice" (Sharon, Black African, nurse, settled).

Sharon's main concern was 'the approach' of the conciliator and her example illustrates that conciliation style can impact on the subsequent dynamics of the relationship with parties, particularly where initial expectations of Acas support are misplaced. Sharon went on to enlist the representation of a solicitor, who subsequently liaised with the conciliator.

The impact of race discrimination cases on the parties, discussed in some detail in the next chapter, can mean that they are in search of social support. Where the claimant or respondent senses empathy on the part of the conciliator, this can facilitate trust. Ali, who made a claim for race and disability discrimination following a job interview, had received what he described as "*threatening letters*" from the respondent. As Ali enthused about his frequent contact with Acas, he conveyed how his conciliator signalled empathy by communicating availability and appeared to be a positive force in their relationship:

"Yes, they offered me a point of contact, and when I did contact they said feel free to contact us any time, you under pressure, you're being threatened, if you feel threatened". (Ali, Pakistani, social worker, settled)

7.2.2 Providing information

Claimant narratives signalled that some were being given more information than others by their Acas conciliator. Some received little information and in the experience of many there was no discussion of case law. This is in part unsurprising as conciliators will vary their interventions according to the circumstances of the case before them and the needs of the parties. As seen in Chapter 5, the parties themselves can vary in the advice needs they identify, particularly first-time claimants and smaller employers. This meant that some claimants and respondents had weak and others stronger aspirations in terms of informational support, on point of first contact with their conciliator.

Several claimants were dissatisfied with what they saw as a conciliator 'go between' role and wanted to receive more advice and guidance. While not all claimants wanted advice and guidance, too great a focus on the information provision role could make claimants feel that they lacked sufficient support, fuelling negative perceptions of the Acas conciliation service. Andrea felt exasperated at the conciliator's approach:

"I just expected help and I didn't get any help. You know, you'd ring up and you'd ask a particular question and it would be "well what do you think?", or "what do you make of it?" or what ever and you know, like I'm saying, I really can't explain it. It's like going into a hospital to see a surgeon and the surgeon is asking you what to do, I really didn't have ... I'd never been down this road before". (Andrea, Black Caribbean, administrator, withdrawn)

In contrast, other claimants described how information support helped give them the confidence to face the prospect of a tribunal hearing, even though their cases did not go this far. Sam felt well prepared for his case and described the insights from the conciliator about how tribunals use case law as a revelation, greatly helping his understanding.

While our respondent sample was small, discussion of case law seemed more prevalent amongst this group compared with the claimant sample, both where there was in-house representation or the active involvement of the human resource function. One of the large security firms emphasised the value of tapping into Acas' expertise on cases going to employment tribunal thus:

"Thing is as well, where employment is getting a grey area, it's not black and white anymore, and because a lot of it is interpretation of the law and case law, where Acas is dealing with a lot of employment tribunals they will be more up to speed on what the thought process is in the employment tribunals, where you can read manuals till your blue in the face but it's the Chair's thoughts isn't it". (Human resource manager, security company).

7.2.3 Substantive intervention

Conciliators are often pivotal in opening the lines of communication between the parties. For example, Yoko candidly described how neither she nor her previous employer had wanted to talk but the conciliator had facilitated a dialogue. By making more substantive interventions, particularly in discussing the strengths and weaknesses of the case, pressing for more realism on the part of the parties, conciliators act to promote a settlement. Several claimants and respondents felt that they had an opportunity to have a frank exchange of views with their conciliator.

While there is a fine line between the conciliator role of discussing the strengths and weaknesses of the case (a legitimate Acas role) and giving an opinion on the case (which compromises neutrality), some conciliators were evidently able to walk that line. The clearest examples of this occurring were associated with instances of positive relationships having been built between conciliator and service user who having discussed the strengths and weaknesses of cases appeared to refrain from putting service users under pressure. Yoko's narrative conveyed this thus:

"She told me a fact that my employer's solicitor pressurised me to settle the case..... she just passed the message to me... she didn't pressurise me at all, and I was the one who decided I have to settle". (Yoko, British-Japanese, web designer, settled)

The respondent from the large cleaning company provides a further example of the conciliator being careful not to compromise neutrality:

"they're very, very patient... the Acas guy would say, you know, there's their offer, go away and have a think about and talk to your other director. So definitely not pushing in any way and supportive, yeah, very, very supportive... but they were definitely on the fence and you know, they're definitely not coming down my side". (Director, commercial cleaning company)

Some claimant narratives also conveyed instances of conciliators advising an out-of-court settlement in a manner that left the claimant feeling that they were still

very much in control and retained the conciliator's support whatever they chose to do. Sonia, whose contact with the conciliator occurred through her husband, described how the case was absorbing too much of his time and she was also ill. Responding sensitively to their personal circumstances the conciliator advised that an out-of-court settlement was in their best interests. Sonia explained:

"My husband ask[ed] her ... what we do now so she said to my husband it is up to, totally up to you but in a friendly manner I think out of court settlement is better". (Sonia, Indian, teacher, settled)

7.3 Perspectives on impartiality and more proactive styles

As seen in Chapter six those claimants and respondents who did have clear expectations of the role that Acas could play, most commonly cited their neutral or impartial role. However, their narratives conveyed diversity in expectations of conciliation style. Where the conciliator was described as "*an independent witness*" or as bringing the "*warring parties together*" this conveys the expectation of a more reflexive role, building and gaining the trust of the parties. Use of terms such as "*a go between*", "*a messenger*" and "*a post box*" suggests an information providing role, whilst anticipation that a conciliator would be "*a negotiator*" implies more substantive intervention.

There were concerns about the neutrality and impartiality of Acas across withdrawn and settled cases as well as those that went to full employment tribunal hearing. While the withdrawal or settlement of cases is a key role of Acas, the style of Acas conciliation where these outcomes were attained often came in for criticism. This was a particularly strong theme amongst claimants whose narratives either expressed dissatisfaction with Acas' passive role or with their lack of neutrality, as will be explored further below.

7.3.1 The role of initial expectations

As implied in the previous chapter, several claimants had expected Acas to represent them in some way. These instances were dominated by those who had not previously heard of Acas and were less familiar with the concept of conciliation. There were several instances of a clear link between initial expectations that the Acas conciliator would provide more help than they eventually did and dissatisfaction with the support provided in practice, several claimants in withdrawn cases criticising their experience of the passive role of Acas. There is an issue here of how expectations are managed to avoid claimants feeling let down as their experience of Individual Conciliation progresses. Andrea explained how she had thought that the conciliator would be there to help her, but was unhappy with what she perceived as a passive role:

"I spoke to Acas and he was most unhelpful, and then when I got the gist of what he was saying, that he couldn't advise me but anything that I passed on, he was the go-between, so I kept on, anything like emails I would copy him in on it...and he was hopeless, didn't help at all". (Andrea, Black Caribbean, administrator, withdrawn)

This claimant felt that she should have initially visited the Acas website to see what Acas did. However, in one or two cases it was clear that even if a claimant was disappointed with the withdrawal of a case they would not blame the conciliator if they had developed a good relationship, building trust and rapport that helped facilitate amicable case discussions. This was evident with Serena, who had been an agency worker in a private sector international construction

group and made a claim for race discrimination after walking off the job after encountering derogatory statements about her religion. While acknowledging the strengths of day-to-day contact with her conciliator Serena also reflected on how the conciliator could not rekindle communication with a company that was loathe to communicate and could do little for her as a temporary worker:

"On a day-to-day basis it was fine but because of the outcome and it was all lack of communication half of the time with them, well no communication with them and [the respondent] ... Just because you're a temp you've got no leg to stand on". (Serena, Indian, agency worker/secretary)

One or two respondents made a similar point as expressed by the respondent from the voluntary sector agency working with the elderly:

"But I think people like solicitors, people like myself who use Acas on a regular basis understand that it is not their role to get a good or bad outcome, it's their role to maybe help achieve an outcome that's achievable and is agreeable by all parties. But I think if they can establish trust, confidence and rapport at the outset then I think that you still appreciate their involvement and recognise the value that they've added during the process regardless whether the outcome is in your favour or not". (Human resource manager, social care firm)

7.3.2 The imbalance of power between claimant and respondent

Discussing the strengths and weaknesses of the case

Claimants often referred to conciliators talking about the strengths and weaknesses of their case, though to varying degrees. Respondents were less likely to have experienced such discussions and several thought that the conciliators' impartial role did not allow them to talk about strengths and weaknesses, for example the medium sized private sector car service company one of whose responses to the vignette was:

"I didn't realise that they would come and comment on the strength and weaknesses of a case such as that, that as you gave me in the example, I just thought they were really there to try and mediate settlement. If they do what you said, then I would not have a problem with that, at all, and that would have saved me a lot in solicitor fees because they cost a small fortune in the end". (Finance director, car servicing company)

While the large private sector cleaning company was not given advice by Acas, this was something that he would have welcomed. He, like other claimants and respondents, tended to construe conciliators commenting on the merits of their cases as giving advice.

The point at which conciliators began to talk about the strengths and weaknesses of cases appeared to be a critical juncture in the relationship between conciliator and claimant, particularly where they were seen as questioning the validity of claims. For example Geeta, a factory worker from an Asian background, whose case was also withdrawn, described how her conciliator questioned how there could have been race discrimination if other Asian members of the workforce had not come forward:

"...she was saying I'm not the only one... Indian person, why would they want to be racist with me... Because all the Asians are working there and why haven't they come forward". (Geeta, Indian, factory worker, withdrawn)

She felt unhappy about being asked by the conciliator why she had not made the claim several years ago when it had taken "a lot of guts" for her to pursue her claim at the time that she did.

Imbalance of power and the role of Acas in empowerment (disempowerment)

Strongly embedded in claimant discussions was a sense of the imbalance of power in the employment relationship and the difficulties in proving race discrimination. When asked by the researcher about her confidence in the strength of her case in pursuing the claim Yoko contrasted her inability to find a witness to support her race discrimination claim with a recent event on a reality TV show:

"...you must have watched Big Brother and I thought it was great you know it was horrible for Shilpa but what I meant was it captured the moment, it captured the moment, that white people are taking ... backstabbing somebody and taunting their culture, in that sense I thought it was good, of course I hated it ... it is very hard to prove that sort of thing ..." (Yoko, British-Japanese, web designer, settled)

Claimants and respondents could often see the merit of conciliators asking questions about the strengths and weaknesses of the case, but noted the importance of focusing on the positives as well as negatives. As seen in Section 7.2.3, Yoko had a positive experience with her conciliator who pointed out the strengths and weaknesses of her case and did not pressurise her to settle. However a stark theme emerging in several claimant narratives was that discussions with conciliators could serve to undermine them at a time when they were already feeling vulnerable. They argued that the conciliators' role should instead be one of empowering 'victims'. There were several instances of claimants in settled cases in both the public and private sectors feeling that conciliators were against them. Sonja had two conciliators and in encouraging her to think about the weaknesses of her case the second conciliator, at a very early stage, indicated that there was no scope for negotiation and that she should leave her job. Having eventually settled out of court, she felt that her conciliator was racist and had unfairly deliberately set out to undermine her confidence by exacerbating her sense of isolation:

"...she was siding with the workplace from the beginning and she was speaking with me to know how strong I am and even herself she worked to make me weak. When she feel I'm vulnerable and need somebody to speak with about what happened or to put me under pressure she disappeared and she doesn't call me back". (Sonja, Lebanese, nurse, settled)

There were a range of factors that could interact to deepen the claimants' sense of vulnerability. Martha felt hampered by her English as second language needs in communicating with her conciliator and required the help of her son to read documents. Her case discussions with her conciliator eroded her confidence:

"Usually the employer has the strong cases you know I think he mentioned that I don't know but it was some time ago I cannot be a hundred per cent

sure..... Well I, you know it is not nice to feel because you start losing your confidence, I start losing my confidence, I start to you know feel like yes maybe he has point there, yeah maybe. He (the conciliator) didn't give me anything there that give me confidence that my case was worth, you know good case, a strong case". (Martha, East European, nursery nurse, FTH)

Where cases had gone well and claimants felt satisfied with the outcomes it was clear that a style of conciliation that conveyed conciliator empathy was a factor in satisfaction with the outcome. For example, Sarah, a public sector administrator who had been in her job for around twenty years, felt that her conciliator had been empathetic, had given her the impression that her case was worth pursuing and had been pivotal in its settlement. It was very important to her that the conciliator did not make her feel that her case was being "put down". David, the architect in a private firm who had not been wholly satisfied with his conciliator, made similar comments:

"I don't think the victim need[s] at that stage to be told that... the conciliator..... should be empowering the victim rather than throwing his dreams or what have you through the window... that's not what you want to hear as a victim because the case hasn't progressed or it hasn't [been] explored at all it's ins and outs before you can come to that decision." (David, Black African, architect, settled)

While conciliators need to operate in a way that feels appropriate to the circumstances of the case, which may lead to inconsistency of approach between cases, they also need to be seen to be fair.

7.3.3 Feeling pressurised to settle?

Some claimants whose cases had settled felt that Acas impartiality had been construed a little too literally. Joe described feeling that his conciliator did not guide him in the right direction, and with hindsight could have been more helpful – *"they followed the terms of impartiality right down to the letter"*. Joe, like Ivanka, felt that the conciliator was too *"arms' length"* and *"stand-offish"*. However, several claimants who settled their cases felt Acas had not been impartial enough, so much so that they had been pressurised to accept a settlement. For this reason they questioned Acas' impartiality, often conveying that they felt that their conciliator had been biased towards the employer. David, whose race discrimination case had arisen when he felt that he had not been given responsibilities that were commensurate with his work as an architect, expressed this thus:

"They claim to be impartial but they are not. They get you to do what they want, what they want rather than what you want." (David, Black African, architect, settled)

While there were one or two examples of respondents feeling that their Acas conciliator was biased towards the employee, there was less of a tendency for employers to say that they felt under pressure to settle, though again it is a small sample. For example the respondent from the large cleaning company trusted his conciliator, found his conciliator *"very, very patient"*, *"very, very supportive"* and described him as *"on the fence"* throughout the case. Rather than being steered in the direction of settlement by the conciliator, he felt *"guided"*. However, the respondent from the large private sector retail company spoke of cases where he had felt pressurised to settle by the conciliator, disagreed with this stance and felt

confident enough to stand his ground. Of conciliators taking this approach he said:

"I'm relatively self-assured to be able to fight my ground and know what they're doing". (Human resource manager, retail company)

It was amongst the respondent narratives that there was more explicit discussion of how Acas restructuring in the context of reductions in resources was having an impact on the individual conciliation process. A respondent from one of the large security companies had found Acas unbiased in the past, but in the case he related felt that Acas had been biased towards the employee. The conciliator had signalled that he was unable to negotiate a settlement in the context of cutbacks:

"...usually they are unbiased and sort of try and help achieve a settlement. I think it was about the time that they'd gone through the restructure and the guy actually said something like 'well now we've had all these cutbacks now we can't really get involved in trying to help people negotiate settlements' ... almost saying 'I'll pass things on, I haven't got time'..."
(Human resource manager, security company)

Key points:

- The amount of time that conciliators can spend with the parties, responding to their needs, and the quality of the relationship that they build (including trust, empathy and rapport), can feed into satisfaction or dissatisfaction with the Individual Conciliation service.
- The perceived competence of the conciliation was a key driver in achieving a good relationship between the parties and Acas.
- Broadly speaking, conciliator competence and efficiency is more important to race discrimination clients than conciliator ethnicity, gender or age.
- Social support is particularly important in race discrimination cases, where conciliators are encountering clients in a heightened state of anxiety and distress.
- The instances of dissonance between initial claimant expectations of the Acas role and experience in practice raises issues of the extent to which and how claimants find out about Acas' role.
- Where claimants and respondents feel conciliators listen to them and acknowledge and respond to their experiences, even if they are not happy with the outcome of the case, they convey positive views of their experience of individual conciliation.
- There are mixed feelings about the neutrality of Acas, particularly amongst claimants.
- The way in which conciliators handle substantive intervention, particularly at the point where they discuss the strengths and weaknesses of the case is important. The parties want them to draw out positives as well as negatives. There also needs to be sensitivity in the timing of these discussions.
- Some claimants strongly question Acas' impartial role and convey concerns about bias to employers, dissatisfaction with the pressure to settle, and in some accounts there is a feeling that claimant vulnerabilities are being exploited, again particularly where there is a focus on the negatives of the case.

CHAPTER 8 THE IMPACT OF RACE DISCRIMINATION CLAIMS AND SATISFACTION WITH CASE OUTCOMES AND THE ACAS INDIVIDUAL CONCILIATION SERVICE

8.1 Introduction

A main aim of this research is to provide insights into the reasons for the unrepresented claimants' and unrepresented respondents' satisfaction gap in the delivery of Individual Conciliation (IC) services in Race discrimination claims. Previous chapters have already hinted at the role of a number of factors including the form of Acas conciliation (phone or face-to-face), the amount of time that conciliators spend with the parties and the way in which conciliators handle substantive intervention. This chapter takes a closer look at the impact of race discrimination claims on claimants and respondents as well as their overall feelings about the outcomes of their cases and the service that they received from Acas. Finally, it reviews their suggestions for improvements to the operation of the Acas IC service.

8.2 The impact on claimants and overall feelings about the outcome and Acas

8.2.1 *The impact of race discrimination*

It was not always easy for claimants to separate out the impact of race discrimination at work and the impact of bringing a claim. However, some claimants identified a range of negative impacts which they had experienced as a result of encountering race discrimination at work. These included people's attitude to their work or their employer being completely changed by their experience, sometimes to the point of them changing their form of employment. Horace adopted what might be described as a discrimination-avoidance strategy and this seemed more related to the experience of race discrimination than the impact of making the claim. He said:

"I swore I would never be in that position again...vulnerable to an employer, so I went and retrained myself. And became self employed. In six months, I've come here in this job, to take this job to build contacts, liaison, to go out there again and re-launch and employ myself and anybody else, i.e. my family members. I am scarred for life because of the discrimination". (Horace, Black Caribbean, project manager, withdrawn)

Feelings of "hurt", "upset", "anger", "bitterness", "cynicism" and "mistrust" were widespread among the sample of claimants. In some cases there was a tangible sense of shock at the way they had been treated in the workplace. However, for some the experience of race discrimination seemed to have increased the importance of confronting it if encountered again. Michael felt that it was important to challenge racial discrimination for the sake of future generations. He elaborated:

"...Racial discrimination is a very big problem in the workplace, but many people do suffer and they don't report it, so I've taken a position to say it's better to speak '...' make it heard and be counted for the better of other people, if the law changes or if something is done to inform those who are affected and they don't complain, that's better, if I don't complain, many

people who are affected by that will still be affected and nothing happens, so it's better to say it out, have it heard, even in the tribunal, even if I failed but it is still on record that this is happening in the private sector, the workplaces, I don't think it is only happening to me, it's happening to other people so I feel very strongly about it, I'm looking for ways in which I can take part in lobbying groups to fight race discrimination in the workplace". (Michael, Black African, warehouse operative, FTH).

8.2.2 The impact of claiming

Other than a successful outcome for their case, the main positive impact identified by claimants was an improved awareness of their employment rights and an increased confidence and willingness to stand up for their rights and to support others in similar situations. Typical comments included *"it makes you stronger"*, and *"I didn't think I could do it"*. These types of views were quite prevalent, and were also made by those who had otherwise found their experiences of bringing a case quite negative.

Very few claimants said that bringing their race discrimination case had made little or no impact on their lives. One such was Mustafa, who had received a settlement which he regarded as satisfactory and was keen to move on, saying:

"I was disappointed I got the sack, but I wasn't going to cry over spilt milk. What was done was done and I wasn't going to beg or anything like that". (Mustafa, Indian, production worker, settled)

However, one of the concerns expressed by claimants is that although they have pursued a case this has not generated changes in employer practice that would ensure that no one else experiences what they have been through. For example Michael kept in touch with an ex-work colleague, who indicated that racist practices were still present at the workplace where his claim had arisen. The colleague was reluctant to pursue a claim due to his observation of Michael's experiences.

Stress and depression were widely cited as issues arising from the process of bringing a case. While the incidents giving rise to the race discrimination claim were distressing in themselves (for a discussion see Chapter three) anxieties were further exacerbated by lack of familiarity with the claim process, the tactics of employers and concerns about the best conduct and likely outcome of the case, especially in the absence of legal representation. Ivanka articulated the vicious circle which could arise as a result:

"It was totally draining and, you know, it was driving on the depression and the negativeness and distress and, you know, my distress was constantly reinforced by communications from the employer's solicitors and then by ACAS and it was all accumulated to the message of 'If you don't have money, you are powerless and you can't really help yourself'." (Ivanka, Russian, branding manager, settled)

Several claimants also spoke of how they had internalised their experiences, conveying feelings of lowered self-esteem, powerlessness and incompetence. Derek explained:

"It makes you feel incompetent, your consciousness as an activist and someone who is fighting racial injustice, it's impact on your self-confidence, your ability to advise people and seek injustice, it's changed your perception

*of, it makes you become pessimistic and about [there] being justice.”
(Derek, Black Caribbean project officer, withdrawn)*

For some claimants stress had resulted in ill-health. Joan was still on medication for depression at the time she was interviewed. Sarah had found that her case was very slow to be resolved, due to delay in her organisation working through its own procedures. This had compounded her feelings of stress about bringing a claim, and she had spent several months on sick leave.

“It did my head in, that’s all I can say. You know I mean sleepless nights, wondering, worrying about the world, the future, I feel like that I’ve turned myself inside out almost over the whole thing. That’s all I can say, it was horrible. And I suppose because I’ve got enough intelligence I realised that it was taking a grip of me and I had to know that soon I would be able to let go of it”. (Sarah, White British, administrator, settled)

Absence from work because of stress also raised concerns about how to present this to any future employer, and the issue of whether or not to disclose making a race discrimination claim. Related issues included being labelled as a trouble-maker or as someone seeking personal gain especially if they were redeployed within the organisation.

It was clear that family and domestic life could also suffer and this, as with other impacts, could be a dynamic leading to settlement. Sonja described how the impacts of the case on her family life, the need to move on, and advice on this from a friend, had influenced her decision to settle:

“I was forced to agree because also I start to have pressure from my family, my friend who went with me to the meeting, he said ‘enough is enough... it is very clear they will make your life hell if you don’t agree, at least go and study’ and this is what I did”. (Sonja, Lebanese, nurse, settled)

Longer-term impacts

As seen in Chapter three, few claimants continued to work for the same employer (see Section 3.2.3). Amongst longer-term impacts, claimants discussed the financial repercussions of job loss as a result of taking forward their claim, including a long period of unemployment. Others spoke of moving into employment that was less suitable, worse paid or less convenient and had to live with the uncertainty of whether or not they would be able to regain their previous career trajectory. Some were wistful as they reflected on the costs as was the case with Michael who, though keen to continue to challenge race discrimination at work could not help wondering whether it had all been worthwhile:

“It has destroyed my career and the prospect of getting a promotion, if I had not made that claim for racial discrimination I think that my relationship with the managers and other staff could have been better, because I see it now, I’ve got a friend who is still employed there, he’s been discriminated again”. (Michael, Black African, warehouse operative, FTH)

8.2.3 Claimant feelings about the outcome and Acas

Claimant motivations had an important role to play in feelings about outcomes and Acas. The majority of claimants who participated in the research had settled

their cases and on the whole did not feel that the financial compensation that they received bore relation to what they had been through, and was lower than might have been obtained at tribunal. However, as seen in Chapter three, claimants had a range of motivations for bringing forth a claim for race discrimination. Some claimants wanted to have a public apology for the way that they had been treated, to expose poor employers or secure wider change in practices to ensure that others did not have to have similar experiences or to have a particular individual sanctioned.

Satisfaction with IC services where conciliators were perceived to have done their best for claimants

Mary, whose claim had centred on her treatment at a private sector job interview for an administrative role had been “*thrilled*” to have been told that the employer had “*learned a lesson*” and would “*try and improve on that*” as part of her settlement. Although she did not achieve the more personal apology that she had been seeking, she did not blame her conciliator:

“No I would still feel that this man I spoke with over the phone was doing his bit and he tried his best, so it wasn’t his fault if the other party didn’t give an apology, he did his best, I will still think it was a good step to take, I would involve them a second time”. (Mary, Indian, administrator, settled)

This theme of the conciliator being perceived to do their best contributing to satisfaction with the IC service was important in both some settled and withdrawn cases. Several claimants conveyed an awareness that some dynamics of the process of promoting a settlement could be beyond the conciliator experience, particularly if the respondent did not want to ‘*play ball*’, however dissatisfied they might be with this state of affairs. Serena, whose case was withdrawn, wanted the perpetrator of derogatory racist and religious statements to be reprimanded and was disappointed not to achieve her goal. However, she still described a good relationship with her conciliator. The conciliator, she felt, had done all that they could do. Conciliators had built positive relationships with these claimants at a time that they felt varying degrees of vulnerability and anxiety due to the experience of race discrimination and the raising of a claim. This helped to manage some of the heightened emotions generated by claimant experiences. Some claimants, like Sarah, said that settlement had not given them closure and for this reason while not dissatisfied with the service of the Acas conciliator per se, did not know whether in similar circumstances they would make a claim again.

Dissatisfaction with IC services where conciliators were perceived to have encouraged settlement at all costs

As implied in the previous chapter, there were numerous examples of claimants who had felt pressurised to settle but had wanted their day in court, a finding consistent with earlier research (Ashton *et al.*, 2006). Some claimants were acutely concerned about the style of Acas conciliation that they had experienced and thwarted aspirations for justice featured strongly in their narratives. The importance of empathy in race discrimination claims should not be underestimated with some claimants reacting against a style that they felt to be too impersonal. David provides an example of a claimant who was extremely disappointed with the settlement of his case and felt that Acas was too pre-occupied with settling the case at all costs. Reflecting on his experiences he implied that Acas did not care about the parties or the validity of claims:

"It's almost like maybe they structured it in a way that they care little what the situation is just try to get his, you know the conciliation between the two parties regardless, they're in this just to get it at all costs... he didn't realise I wasn't in it for the money I just wanted to expose these people".
(David, Black African, architect, settled)

Having had a strong conviction that he was not given responsibilities commensurate with his role as an architect and that ethnic minority members of staff in his firm were generally unfairly treated, he wanted to expose the employer by having his day in court. He explained:

"The injustice that's in my profession in this country which is a shame in year two thousand and six, seven you know people are still thinking along these lines, how many black architects do you know yourself, you know, we are out there but we just don't get given the opportunities to do our work".
(David, Black African, architect, settled)

Not all claimants wanted to have their day in court, including some of the most satisfied with the IC service. For example Joe commented *"I can't complain about Acas at all. I was just very glad to have them"*. Some of these claimants expressed how pleased they were not to have gone to a full tribunal hearing, though even they expressed some regret at not being able to achieve their day in court.

Revision of goals over time

Claimants sometimes had mixed motivations in pursuing cases, and as the case progressed they compromised on these in some way. The evolving impact of the case on race discrimination claimants interacted with motivations, modifying their contours. Part of Sharon's motivation had been to highlight the treatment of black nurses in the NHS and some of her colleagues felt that she should not have settled out of court. However, she explained how over time she wanted to get on with life:

"I was getting tired of so many meetings with the solicitor and my course and new job so I just wanted it to go away in the end, but if I didn't have my career to kind of follow it I could have pulled it right to the Court you know ..." (Sharon, Black African, nurse, settled)

To reiterate, and as Sharon's example shows, the personal circumstances of claimants can have a strong bearing on their commitment to pursuing their claim. Andrea's mother became ill and as she was the sole carer and she felt that she could no longer pursue the claim in this context, she withdrew it. Like others who had withdrawn their cases Andrea was disappointed about this but felt her choices to be constrained.

Claimant determination to follow through their case to a 'satisfactory' outcome

Claimants often had mixed feelings about the Acas Individual Conciliation service. As we have seen this was sometimes because conciliators were perceived to focus on negative aspects of the case. Joe is an example of this. While being so happy with the monetary settlement of his case that he had been willing to forgo the potential opportunity to damage the company publicly, he had mixed feelings about the IC service. He found it beneficial to hear about the strengths and weaknesses of his case, found it useful for the respondent to hear about what

was at risk in the case going forward but he hadn't really wanted to hear that his own case was weak:

"He basically made it be known to me that in order for you to take this case forward, you need to bring something more to the case.... I thought what I'd explained to him, I thought that sufficed, I thought that was a strong enough case in itself. So when he's saying that to me, I thought {swears} you, I'll just do what I have to do.... I don't think it was helpful at all. Because... he emphasised that fact that it was a weak case". (Joe, Black Caribbean, factory worker, settled)

So strong was his conviction about the employer's wrong doing, that he did not withdraw the case and pursued it to what he felt was a satisfactory settlement. His determination to think positively in the face of the challenges in taking the case forward is evident in the following quotation:

"If he reckons the case is weak, and he's had x amount of experience, because he's dealing with these cases on a daily basis, you've got to say to yourself, if he thinks that about my case, where in my case, where can I identify the so-called weak spots, and how can I take this to advantage, and use it as a strength?" (Joe, Black Caribbean, factory worker, settled)

Form of conciliation

The discussion of experiences of face-to-face conciliation in Chapter six suggested that claimants were more negative about this form of conciliation where they felt that the conciliator had been biased towards the employer. It is worth looking at these cases in more detail. The form of conciliation did not necessarily obviate such feelings of unfairness. At Michael's face-to-face meeting with his conciliator he felt that she disbelieved what he said and did not support his aims, but was biased towards the employer at a time when he felt very sensitive to an imbalance of power with his previous employer. This led him to question conciliator impartiality. Some claimant discussion of negative experience of face-to-face meetings with conciliators conveyed how conciliators need to handle such meetings sensitively. Sonja's perception that Acas was biased arose in part from observing the employer and Acas holding a meeting in another room, from which she was excluded. The heightened emotions and climate of distrust that are generated in race discrimination claims fuelled this reaction and contributed to dissatisfaction with the IC service.

8.3 The impact of the claim on respondents and their feelings about the outcome and Acas

8.3.1 The impact on respondents

Respondents identified a smaller range of impacts from having a race discrimination claim brought against them. A positive theme emerging from four of the respondents was that their experience led to improved procedures and practices, often related to the circumstances in which the race discrimination case had arisen. For example, the human resource manager at the social care firm had organised a brief manager training session on handling issues around probation, while the director of the commercial cleaning company had enlisted the help of a human resource consultancy to deliver management training on disciplinary procedures.

However, chief amongst the impacts was the cost of defending a case, not only in terms of paying for advice or representation, but in staff time spent preparing the case and attending meetings or tribunal hearings. Several expressed the view that these costs created an inbuilt pressure to settle, regardless of the merits of the case, and were uncomfortable with this, as it was seen to imply an admission of guilt, and could encourage spurious claims in future. One respondent reflecting on several of these themes said:

"...I'm starting to deal with the value of claims and what we have to do, it does educate I think, managers, in terms of what we have to pay. But when it comes to something where we could have won it I think they get a bit frustrated sometimes, I think otherwise... it sends a message to people put in a claim, you'll get some money. But on the other hand, it's management time as well and that's important". (Human resource manager, security company)

The smallest employer participating in the research felt that the impact of costs could be sizeable:

"Shops like this are gonna close down. If a shop of three people is going to be sued, you know. I don't see where it's helping, I don't see where it's helping. If anything I think it's destroying jobs". (Director, small retail company).

A race discrimination case was also seen as having a negative impact on staff morale. In one company, a member of staff felt undermined when a settlement was reached, as she felt her integrity had been impugned:

"The trainer who was the mentor for [claimant] was not happy at all and she needed a lot of counselling because obviously she felt that her integrity was being challenged and undermined because she was the one that obviously that was being accused of discriminating ... she knew the deal that was struck and wasn't happy so she did need a lot of counselling and support so that is where a lot of time went ... Because this lady was very good, and she could quite easily chuck in the towel and say 'I'm not working for the company' and so that was our biggest worry I think, was losing what we considered to be a good member of staff". (Business manager, residential home for the elderly)

One of the retail companies has a reputation for ethical business practice, and the fact that a race discrimination tribunal case was ongoing was seen as not only having potential to damage the company's reputation, particularly with trade unions, but also as affecting the morale of staff who were committed to these values:

"These are important issues for an organisation like [...] you know given their ethos, they have good relationship with Trade Unions and clearly one of the relationships is to progress and to be seen as good relationships as well. To that extent obviously adverse publicity doesn't help. And also for the employees as well, not just the publicity but the kind of employee relation side of it as well ... They have to protect that image, sort of feel like this kind of organisation why are you treating employees like that, that's the opinion that's you know, sort of perception you'll get out there". (Human resource manager, retail company)

One or two respondents admitted that the experience of having a race discrimination case brought against them had made them slightly wary about employing non-white employees in the future. For example, the director of the fashion retail company, half of whose employees were from ethnic minority backgrounds, said:

"So what do you do, stop employing Lithuanians, stop employing foreigners, because that's what happens in the end isn't it? I mean it doesn't, but, you know ... I imagine a lot of people would" (Director, small retail company).

8.3.2 Respondents' overall feelings about the outcome and Acas

As seen in Chapter two, nine out of ten of the respondents had settled their cases, while one of the cases was still in progress. Respondents tended to be quite sceptical about race discrimination claims and for this reason most of those who settled were not entirely happy about the settlement, but saw it as less costly than the case going to full tribunal hearing and reflected on the stress of having a case *"hanging over your head"*, even if it did not lead to sleepless nights. The comments of the respondent in the private residential care home were typical:

"...I think people a lot of employees go to Industrial tribunal knowing that they might get £500 or £1000 out of the company because they put their pragmatic hat on and think it's cheaper just to pay them £500 to go away, than to fight it but sometimes you do have to fight it to stop further cases". (Business manager, residential home for the elderly)

What differentiated the respondents' accounts from most of the claimants was that they had worked with Acas conciliation in tribunal cases on previous occasions, for some this relationship went back many years. This enabled them to compare previous experiences of different cases and give a more measured appraisal of Acas' role. Although the respondents tended to be less critical of Acas compared with claimants they did have particular issues with the service and some concrete suggestions for improvements, which will be explored further below. Employers' concerns lay as much with the wider employment tribunal system which several felt put them at a disadvantage:

"It doesn't matter how strong I feel that case is, the system is weighted against the employer, so you know it's a gamble whenever you go to an

Industrial Tribunal, it all depends on who the Chairman and the panel are at the time". (Business manager, residential home for the elderly)

8.4 Suggestions for improvements to the Acas Individual Conciliation service

Both claimants and respondents were asked whether they could identify things that Acas could do better and this elicited a variety of responses. While a minority of claimants were so satisfied with the Acas IC service that they had no suggestions for improvements many felt that there were things that could be done to improve the service. Their suggestions were often embedded in their feelings about the outcome of the case and the service that they had received from Acas. One or two claimants were so negative about the service they had received that they found it hard to be constructive.

The views of claimants and respondents will be considered in turn.

8.4.1 Claimants' suggestions for improvements

Type of contact

As touched on in Chapter six, there were a number of examples of claimants who would have liked to have been given the opportunity for a face-to-face meeting with their conciliator. There was general feeling across the claimant sample that Acas conciliators could spend more time listening to claimants. They felt that this form of contact would make it easier to narrate their case and aid communication. If more time could be spent with the conciliator, they could more carefully listen to the claimant, "*the victim*", "*understand the full story*" and minimise the scope for misunderstanding. Sharon suggested that her initial telephone contact with the conciliator was fine, but the second point of contact, when issues were explored in more detail, would have been better if they had met in person. Another suggestion, made by Sam, was that there should be a pre-negotiation meeting to give both claimant and respondent time to reflect on the information that they had been given.

Potential benefits of greater email contact were also flagged up by some claimants, which they implied would lead to more effective, speedier, communication than the reliance on written documents that they had experienced. Claimants wanted visible signs that their case was being prioritised, of which speedier email contact was one.

As noted in the previous chapter, on the whole claimants did not feel that the gender or ethnicity of the conciliator mattered but there were exceptions, appealing for greater ethnic diversity amongst Acas staff. As seen in Chapter two, several claimants had ESOL needs with the researcher having to reword questions, while Chapter four found that linguistically some claimants might be at a disadvantage if unrepresented. Although claimants moderated this potential disadvantage by drawing on trusted family members for support in interactions with their conciliator, this may not be available for other claimants.

Conciliation roles and style

Relationship building

As well as commenting on the form of Acas intervention, suggestions were made about changing the role and style of conciliation. Some comments revealed a high

degree of mistrust, for example questioning conciliator competence. Joe was not confident that his conciliator was aware of the full facts of previous cases. He appealed for conciliators to highlight case law precedents that had led to positive outcomes as well as precedents that had led to negative outcomes.

Some claimants emphasised the need for many improvements in the Acas Individual Conciliation service that might improve relationships with claimants, for example Michael, whose case had gone to a Full Tribunal Hearing appealed for:

"More empathy, more communication, more consistency, let them know that you're there and be there to listen, make so you don't want to get up in a business but make it known that you're there and you're there to be listen but make it obvious that you're in, not that someone can just dismiss you ... so make his presence felt to the victim. That is a bonus and if that's all ACAS can do then they will have achieved something". (Michael, Black African, warehouse operative, FTH)

A more proactive stance

There were also references to the need for more proactive conciliator engagement with claimants, helping applicants with the case, but also sending a strong message of their accessibility. Perceptions of local advice agencies, being inundated with work and unable to cope, reinforced frustration with the accessibility of Acas IC services. Wendy, whose experience of race discrimination had been gendered, had found her conciliator judgemental in the early stage of her claim. Rather than this she suggested that conciliators should:

"Ring up and just have a chat with them, and say 'I'm here, I'm in the office today if you need to come in'. I know they're not counsellors, but if they need to have a chat about anything I'm available between 10 and 12. You are giving the person the option then, coming in for half an hour or so". (Wendy, Black Caribbean, social worker, withdrawn)

This kind of narrative again implied a claimant desire for prioritisation of their case. Several claimants identified a need to address a representation gap, reiterating that they had not felt that the conciliator was on their side and feeling that the passive role of Acas served "no purpose". Andrea, very unhappy about the service she had received, was particularly vocal on this issue and suggested:

"I don't know if they could have a service where there is somebody that actually is on your side, and then they had somebody else that's on the person's side and then maybe there is two Acas individuals could sit and discuss it, I don't know if that's feasible, but the way it stands that he's just a go-between, to me it serves no purpose". (Andrea, Black Caribbean, administrator, withdrawn)

Other claimants implied that there was an advice gap that Acas conciliators might be able to fill if they could move away from their impartial role. Comments on the advice gap included a desire to be signposted to other organisations that might be able to provide support. One claimant wanted a special legal section within Acas which claimants could access while conciliation took place. There was also some support for earlier Acas intervention.

Earlier Acas intervention

The suggested potential benefits of earlier intervention included an earlier opportunity for those inexperienced in race discrimination claims to find out what it might involve and mean to progress the claim. Fewer cases going to Employment Tribunal through the influence of an independent perspective was viewed positively. Most were not sure of the exact point at which the earlier intervention should take place, although one speculated that this might be at the time of case management. However, there was a more general feeling that Acas could intervene before cases reached the Employment Tribunal stage, and might be able to influence developments by having a presence, if only indirectly:

"Whilst the two parties are [trying to resolve their differences], Acas could be there as, don't necessarily have to contribute but at least they will listen and can advise on feedback... Acas has been too marginalised, whether they allow themselves that or not, they need to redefine their intervention strategy" (Derek, Black Caribbean, project officer, withdrawn).

As seen in the exploration of internal grievance procedures in Chapter four, minor problems tended to escalate because of ineffective management or the absence of an internal grievance procedure. Several claimant accounts implied that Acas intervention might be beneficial at the time an informal complaint or formal grievance was made. However, not all claimants felt that earlier intervention would be helpful, for example questioning whether employers would be willing to cooperate.

Use of mediation

Mediation involves a neutral person working with those in disagreement to help them reach an agreement. One claimant (Joe) commented upon the potential for greater use of mediation to improve the Acas service, sometimes with a view to addressing the perceived imbalance of power in the employment relationship. The following quotation is illustrative. Implicit is criticism of the independence of trade union representation, implying trade union incorporation into management and the need for independent representation in grievance:

"...sometimes these companies get away, or tend to think they can get away with what they are doing to people because it's all done in-house. If you've got neutral independent body or person what actually comes in and sits down, as opposed to a union person that's been bought off, then yes it can have some sort of positive effect". (Joe, Black Caribbean, factory worker, settled)

Another claimant, Ali, argued that mediation might help address racialised conflict at an early stage, drawing an analogy with interventions made to secure reasonable adjustments for disabled people:

"I'm qualified as a social worker and rehabilitation officer. If we see a person is losing a job, on the verge of losing a job because of the deterioration in their sight, as a rehab worker one would say ok, well make an appointment to see your employer. Why they are thinking about getting rid of you. When the rehab officer, working with special team of people, visits an employer, and look at the... 'the lighting is dim, I think maybe just simple procedures, overhead lighting or projector lighting.' There could be simple tools that will assist this person in holding the job forever, and small

improvements sometimes means a person holding a job forever". (Ali, Pakistani, social worker, settled).

Interviewees usually had to be prompted on their thoughts on mediation and tended to have mixed feelings. Several claimants were sceptical of the scope for Acas mediation in race discrimination cases. An imbalance of power in the employment relationship was one reason given for this. Concern was also expressed that mediation would lead to an escalation of complaints. However, one or two claimants suggested a need for binding arbitration accompanied by an appeal system, based on their experience of recalcitrant employers who would not enter into the spirit of individual conciliation, leaving the conciliators' hands tied.

Raising awareness of the Acas Individual Conciliation service

While, as noted in Chapter six, initial materials received from Acas were generally well understood, there was also much support for Acas doing more to publicise its services. This arose in the context of claimants saying, for example: "*I wouldn't have known if it wasn't for a friend of mine*" (Wendy, Black Caribbean, social worker, withdrawn) and "*I didn't know even about Acas before this case*" (Yousof, Arab, administrator, settled). Suggestions included media advertising, fliers in notices of deadlines for income tax returns from HM Revenues and Customs, information to schools and colleges and on notice boards in doctors' surgeries and workplaces. There was also some questioning of the quality and accessibility of current Acas publicity material and information leaflets. This included the need for checklists on putting a claim together and handling it and information on cases:

"They need to do more enlightenment, you know, enlightenment, literature that people can really understand...to let people know exactly how such cases are handled..." (Sam, Black African, security guard, settled)

The cost of phone calls with the conciliator was also presented as a negative, one suggestion being that claimants could access a 0800 number.

What Acas can do to ease the stresses and strains of bringing a claim

Claimants were probed on whether they felt that there was anything that might ease the stresses and strains of taking forward a race discrimination claim. While some said there was nothing that could be done, including those that said that Acas were "*doing their best*", others felt it would have made a difference if the conciliator had been more accessible:

"...so I don't have to call again and to get in touch again and again, getting back to the person and like things like that, you now calling times, its you feel confident oh yeah he call me today and its good it looks like he's there to help with things" (Martha, Eastern European, nursery nurse, FTH)

One or two references were made to the need for preventative measures with Acas working to educate employers on the kind of practices that could give rise to experience of race discrimination and train managers in conflict resolution:

"What I discover in my own case is that most of my managers were not even trained in this area to handle the issue" (Sam, Black African, security guard, settled)

8.4.2 Respondents' suggestions for improvements

Earlier Acas intervention

There was some overlap in claimant and respondent suggestions for improvement. This included a degree of employer support for earlier intervention, employers suggesting that this might prevent cases escalating to tribunal stage. In one instance the discussion of earlier intervention was linked to a narrative of employers tending to settle cases before they got to employment tribunal as this was the simpler path and typically there was not a great deal of money involved. Employers did not express views on the timing of earlier Acas intervention.

Use of mediation

Several respondents suggested that there might be scope for mediation, for example the human resource manager in the security company felt that if the parties could have sat around the table this could have sped up the process of settlement. It was felt that speedier negotiation and resolution might arise from claimant and respondent exchanging evidence a lot earlier on in the proceedings. One respondent reflected on whether there was scope for another procedure between Acas and the tribunals *"that was not legally binding but would give some indication of the outcome of the case"* early on (Director, commercial cleaning company). There was some scepticism over whether mediation would be of benefit if the grievance procedure had been unable to resolve the conflict.

More employer support

There were also indications that respondents saw some potential in greater Acas support for employers and while the HR manager of one of the security companies was aware that Acas provided training courses he thought they might also organise employer seminars. He felt that these could provide guidance on good employment practice as well as networking opportunities for employers to share experiences with managers in other organisations:

"If Acas provided seminars that would be really useful because one it's providing information and two it's such a good networking tool for different HR managers because the things with these I think you learn from other people's experiences as well and I do enjoy going to seminars and I think Acas would be able to provide really good seminars". (Human resource manager, security company)

A more accessible Acas service

Finally, as with the claimants, there was some feeling that Acas could be more accessible, linked to a perception that Acas conciliators were not always able to keep employers informed and were *"overly stretched"*:

"I don't want to call and then find out after I've called they're on leave and e-mail contact is important in this day and age as well and a sort of regular update". (Human resource manager, museum)

"I suppose that if they had a bit more time because you ring them and they get back to you but quite often ... I know they are overly stretched, their resources have been cut, it would be good to have a few more (conciliators)". (Human resource manager, security company)

Reinforcing this picture of an organisation working to tighter resource constraints, the human resource manager at the social care firm, who had worked with ACAS conciliators over many years felt that they were under increasing pressure and tended to pass this on to the claimants and respondents, often giving the impression they were too busy to listen to all the facts in the case: *"I think Acas try and let people know how busy they are so they will get off the phone"*. This respondent felt conciliators needed to be more professional in their approach by giving adequate time to deal with cases effectively and also, being proactive and managing expectations. There was some discussion of the benefits of face-to-face contact, but also realism about the cost and scepticism about the likelihood of its more extensive use in the Acas IC service.

Key points:

- When discussing the impact that their race discrimination claim had had on them, claimants widely cited stress and depression. They also described a range of emotions including hurt, upset, bitterness and mistrust, financial hardship, negative impacts on family life, career and employment prospects.
- Respondent impacts included the cost of defending the case, in terms of advice and representation and staff time spent in meetings and hearings. They also cited negative impacts of the case on staff morale, which should not be ignored in assessments of the costs of race discrimination at work.
- There were indications from both claimants and respondents of 'discrimination avoidance', for example claimants not wanting to put themselves in the same situation with future employers. This was arguably an unintended consequence of inaction or counterproductive action in race discrimination cases.
- More positively there were reports of improvements to procedures in organisations in the aftermath of the cases.
- There was a considerable dissatisfaction with outcomes amongst claimants. The research sample was skewed to settled claims and so was the dissatisfaction. Those who were dissatisfied with outcomes often had much to say about weaknesses in the IC service, though, particularly for claimants, this was moderated by having a good relationship with the conciliator.
- Where weaknesses were identified, these included:
 - A perception Acas IC was committed to promoting a settlement at all costs, irrespective of the validity of claims.
 - Positive relationship building was found wanting in some cases, particularly where respondents felt pressurised to settle, including a lack of conciliator empathy with the claimant.
 - A perception that sometimes conciliators were not prioritising their case, a view fuelled by insufficient opportunities for contact with the conciliator and the quality of that contact.
- Claimants for whom English was a second language tended to rely on family members for language and other support. Drawing on trusted family for support in interactions with their conciliator appeared in part to moderate the potential for disadvantage.
- Some claimants were satisfied with Acas services even when they were dissatisfied with the outcome of their case. Their perception that conciliators had done their best for them, under difficult circumstances, helps to explain this. The conciliators had built positive relationships with these claimants at a time that they felt varying degrees of vulnerability and anxiety due to the experience of race discrimination and the raising of a claim.
- There was also considerable dissatisfaction with outcomes amongst respondents, but in explaining this they were less critical of Acas Individual Conciliation and more critical of the broader legal framework. They tended to be quite sceptical about race discrimination claims and for this reason most of those who settled were not entirely happy about the

settlement, but saw it as less costly than the case going to full tribunal hearing.

- Some claimant discussion of negative experience of face-to-face meetings with conciliators conveyed how conciliators need to handle such meetings sensitively. The heightened emotions and climate of distrust that are generated in race discrimination claims fuelled this reaction.
- Claimant suggestions for improvements to the Acas conciliation service were wide-ranging and included:
 - Type of contact: more face-to-face meetings, more time spent with the conciliator, greater email contact to speed up communication, some support for greater ethnic diversity of conciliators.
 - Changes to conciliator role and style: more relationship building and more proactive interventions, more balanced guidance in conciliation.
 - Earlier interventions before disputes escalated, possibly at the first signs of a complaint that might lead to a potential grievance.
 - There were mixed feelings about mediation, for example pointing to its potential being undermined by an imbalance in the employment relationship, but there was also some hope that it might even up that hand by providing a fair hearing.
 - More publicity and awareness raising of Acas services.
 - More preventative measures with Acas working to educate employers on the kinds of practices that could give rise to experience of race discrimination and train managers in conflict resolution.
- Respondents raised a similar range of themes, including:
 - Some employers felt that earlier Acas intervention might prevent cases escalating although they did not express views on timing.
 - Some employers suggested that speedier negotiation and resolution might arise from claimants and respondent exchanging evidence a lot earlier in the proceedings.
 - Some support was expressed for mediation.
 - A desire for more time with conciliators and for greater accessibility although this was tempered by a realistic attitude about the cost of this.
 - Greater Acas support for employers for example Acas seminars that could provide guidance on good employment practice with networking opportunities for employers to share experiences with managers in other organisations.
 - A more accessible service, though some scepticism at the prospects for this given signs of resource constraints.

CHAPTER 9 CONCLUSIONS AND POLICY IMPLICATIONS

Minority ethnic groups make up 8 per cent of the UK population and between 1999 and 2009 will account for half the growth in the working age population. The term 'super diversity' (Vertovec, 2006) is being used to describe the increased number of ethnic groups as new immigration takes place. The Strategy Unit report identified a key aim that "*in ten years time ethnic minority groups living in Britain should no longer face disproportionate barriers to accessing and realising opportunities for achievement in the labour market*" (Strategy Unit, 2003: 6). Dispute resolution in race discrimination cases has an important contribution to make to this agenda. However, as argued below, there is also an important role for preventative measures.

9.1 The key issues

The Equalities Review (2007) notes the persistence of racial disadvantage in the labour market. Race discrimination cases arise across the public, private and voluntary sectors. In discussing the circumstances of their race discrimination claims claimants presented vivid pictures of direct and indirect discrimination, racial harassment and victimisation. Some claimants, for example an Asian disabled man and ethnic minority women gave accounts of multiple discriminations. The majority of claimants in this study were no longer working for their present employer due to discrimination or a complete breakdown in the employment relationship. Many claimants felt an imbalance of power in the employment relationship, and were clear that they were the victims. Employers in this study tended to downplay race discrimination, a sign of which was the normalisation of banter, seeing claimants as the problem and themselves as victims (Chapter 3). Uppermost in employers' minds when they received a race discrimination claim was a desire to minimise costs. In this regard the employers talked about by claimants appeared myopic in allowing, via inaction or inept action, inter-racial conflict to fester in the workplace. Many claimants submitted a claim for race discrimination out of frustration with the employer's internal grievance procedure. As noted by Denvir and colleagues, a formal and stressful grievance process can create the expectation that disputes will go to Employment Tribunal (Denvir *et al.*, 2007). Gibbons has highlighted a number of unintended consequences arising from the requirement for a three-stage grievance procedure, and our research also lends weight to these views. Despite following various stages of the grievance process, the case was sometimes passed between senior staff members without a resolution. The rigidity of an internal grievance process was not always the most appropriate mechanism for some staff, such as those whose mother tongue is not English. Claimants also described not wanting to go through a grievance procedure because it would make the situation worse, in part because of a lack of faith in the system, but also a lack of scope for securing independent representation (Chapter five).

Issues also arose because of the lack of a grievance procedure. Minor problems were seen to escalate into more serious problems because of an absence or weakness of the internal grievance process to respond to a concern. Small businesses were more likely to settle a claim out of court because of an absent or out of date grievance procedure. There appeared to be a disjunction between the 'formal' and 'informal' grievance procedure with the latter featuring a relative lack of action, and the former featuring 'firm action.'

Lewis and Legard (1998) identified conciliators using reactive techniques in responding to high priority cases and Employment Tribunal dates, while more proactive approaches gave more equal weight to high and low priority cases. As the research design did not include interviews with conciliators it is not possible to comment specifically on this issue, but certainly some claimants and employers had gained the strong impression that their case was not being treated as a priority. Moreover, they did not always feel that the degree and quality of contact with conciliators was sufficient, raising questions of conciliator role and style.

In spite of measures in recent years to improve the regulation of race discrimination, claimants and respondents contributing to this report convey a sense of uncertainty of the outcome at the Employment Tribunal and criticisms of the outcomes of claims. Dickens (2000) suggests that there is a need for a more "*rights-enforcement*" form of individual conciliation, with concern for the quality and nature of settlements rather than just a settlement per se. Race discrimination claimants who perceived that settlement was being pursued by conciliators at all costs, would certainly agree with this line of argument. A theme in claimant narratives was that some felt cheated by the outcome (Chapter eight) and that employers and Acas "*colluded*". It is further noted that this "*may require some rethinking of the appropriate performance criteria for evaluating the individual conciliation function*" (Dickens, 2000: 90). In the same vein, albeit from a different direction, Gabbott and Hogg (1998: 98) argue in their study of Consumers and Services that if a service fails to deliver what it is designed to achieve, "*getting the process of delivery right will not be enough*" to increase customer satisfaction. This may indeed be so, but the research also highlighted key aspects of delivery that could be improved, particularly better publicity and marketing of the individual conciliation service, a more proactive approach on the part of the conciliator and a more accessible service. Both claimants and respondents wanted to feel that they had been listened to and taken seriously, and described an unwelcome awareness of time pressures. There was a desire for more face-to-face conciliation among claimants, although little recognition of the additional resources this would require. Where good relationships had been established, this was valued regardless of the outcome of the case. That conciliators were seen to be doing their best, often in an inhospitable context, was important to some claimants.

Our research highlights a real representation deficit for some respondents and claimants without a legal representative using the Acas conciliation service. This was less of an issue for the larger employers sampled who tended to have a large HR function and were generally positive about self-representation. Smaller employers tended to have less experience of, and expertise in, tribunal claims. They also have fewer financial and human resources so felt more constrained by the tribunal system and frustrated by the cost of representation. Claimants' priorities and experiences were shaped by previous experience and knowledge of the tribunal system, the advice available to them and their confidence and mental health at the time. Most wanted representation and were disappointed and frustrated when they discovered they could not afford it, feeling that this had negatively affected the outcome of their case. Whilst many claimants found the process of self-representation stressful and difficult, a small number said that the process had given them confidence and enabled them to take control of the situation. The lack of access to publicly-funded legal advice, and especially representation, for all but those in the lowest income groups meant that few other options were available in practice. The burgeoning market in 'no win no fee' advocates does not appear to serve this group well. Those who do bring a claim are therefore likely to be the tip of the iceberg.

Lacking representation could create unrealistic expectations about the role of the conciliator, and many claimants were in any case unfamiliar with the concept of conciliation. Dissonance between claimant expectations of the Acas role and their experiences in practice raises issues about how the concept should be explained and marketed to the general public. How conciliators handle substantive intervention, particularly at the point where they discuss the strengths and weaknesses of the case, is important. Some claimants strongly questioned Acas' impartial role and raised concerns about bias towards employers and dissatisfaction with a perceived pressure to settle. While conciliators need to operate in a way that feels appropriate to the circumstances of the case, which may lead to inconsistency of approach between cases, they also need to be *seen* to be fair.

9.2 Policy implications

Awareness and training: The satisfaction gap in unrepresented claimants' and respondents' views on the Acas Individual Conciliation service is in part shaped by workplace contexts whose dynamics are beyond the scope of individual conciliators to fundamentally alter. The evidence in this study of downplaying of race discrimination at work suggests an on-going need for awareness raising and training. On the basis of this research sample such action is as much needed in the public sector where there is a positive duty to promote race equality as in the private sector where there is not. Depending on the circumstances of the claim, line managers are an obvious target for this action as they can be the most appropriate person to approach informally with complaints in the first instance. However, insights from this study are indicative of a need for mainstreaming awareness and training (and may be relevant to a range of equality jurisdictions). Employees need to have faith in internal complaint and dispute resolution systems to help avoid the escalation of disputes. This is particularly difficult to achieve in race discrimination experiences where claimants can fear raising their head above the parapet.

While there may be opportunistic cases of race discrimination (as the employers interviewed for this research emphasised) there are signs that employers interpret this as the norm. Proactive work to promote greater awareness of the nuances that race discrimination can take may go some way to challenge these attitudes. Other recent studies have highlighted the importance of workplace cultures in fuelling racial disadvantage (see for example Bradley *et al.*, 2007). Acas' Race Equality and Diversity Service perhaps has a continued role to play in awareness raising and training, in collaboration with a range of other social actors and institutions. There were some suggestions from respondents that this might be useful (Chapter eight). Conciliators are well placed to signpost employers to the kind of support that can contribute to organisational change.

Acas resources, the intensity of support to the parties and the satisfaction gap: A key message from this research is that some actions that might increase unrepresented claimant and respondent satisfaction are not likely to be feasible in the contemporary climate of cost-cutting of Acas services. As has been emphasised at several points in this report and implied earlier in this chapter, the relationship between the conciliator and the parties is often crucial to satisfaction with the Individual Conciliation service. The point is laboured because it is an important one. Race discrimination claimants are particularly in need of social support in the aftermath of experience of race discrimination that can leave them wondering who to trust. The suggestions from claimants and respondents for more accessible conciliators who can spend time listening to the parties, building understanding of their concerns and aspirations, and being seen as

responsive to them, can be invaluable in generating satisfaction with the Individual Conciliation service, even when the parties are unhappy with the outcomes of the cases. Providing a more intensive, responsive service that prioritises the parties' needs for contact with the conciliator is likely to require an injection of resources that conflicts with the current climate of cut backs. Similarly while there are potential benefits from the introduction of more face-to-face contact this is likely to require higher rather than lower staffing levels. The same can be said of other possible changes to the way in which Acas supports the parties.

Earlier dispute resolution: The evidence from this research reinforces arguments that earlier dispute resolution has the potential to address cases before they escalate to the Employment Tribunal stage, ameliorating the adversarial nature of the race discrimination regulatory framework. As seen in the previous chapter there are numerous examples of claimants and respondents who signalled that an early dispute resolution service would be beneficial and might have made a difference in their cases. While both claimants and respondents were unclear about when this intervention should take place, implicit in narratives was the ineffective management of grievances (chapter four). The implication of this is that Acas might usefully intervene to seek earlier resolution. While claimants are keen to have someone 'on their side', both claimant and respondent narratives (chapters seven and eight) show that Acas has the potential to be seen to be providing a fair hearing. The desire for face-to-face conciliation would seem to indicate the potential for the parties to a race discrimination dispute to be convinced of the benefits of mediation. There are of course instances where the parties to conflict at work display reluctance to engage in dispute resolution and we have reviewed some instances of this in this report. Gibbons' recommendation that Employment Tribunals use their discretion to take into account reasonable behaviour and procedures when making awards and cost orders may act as an incentive for parties to enter into the spirit of dispute resolution.

The quality of advice and accessing the application process: The proposals outlined in the Gibbons review for improving the quality of advice to potential claimants and respondents, and redesigning the application process so that claimants access it through the helpline would have been of potential benefit to many in our sample. In particular, claimants and smaller firms felt in need of advice. This report has outlined at length a range of disturbing impacts of pursuing a claim on claimants' health and general well-being. These may be moderated, at least to some degree by providing them with additional help through erosion of the advice gap. This is likely to apply to other jurisdictions as well as race discrimination.

Mediation: The research provides mixed, and often tentative, support for mediation as a form of conflict management with respondents appearing more proactive than claimants in engaging with its potential. This may be due to respondents' greater experience of cases, but also because of the sometimes thorny issue of Acas neutrality and impartiality. Perceptions of an imbalance of power in the employment relationship and ascendancy of managerial prerogative led to a strong imperative for conciliators, and mediators, to rise to the challenge of appearing even handed while endeavouring to resolve disputes. Dispute resolution professionals need to receive practical support, in terms of adequate time to work with the parties, performance management and training. This is an area on which Acas is currently working, albeit in a difficult climate.

Access to representation: The majority of unrepresented race discrimination claimants contributing to this research (and respondents with constrained recourse to legal support) would prefer representation and perceived it to have

some importance in securing access to justice. It is important that the current inhospitable climate for access to representation (and justice) is addressed. The transition to the Commission for Equality and Human Rights is seeing greater attention paid to this agenda (see for example DCLG *et al.*, 2006)

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APPENDIX 1 THE CLAIMANT AND RESPONDENT TOPIC GUIDES

Qualitative research exploring unrepresented claimants' and employers' views on the Acas Individual Conciliation service in Race discrimination claims

Topic Guide for Race discrimination case claimants

This topic guide sets out the main areas of inquiry that will be common to all



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claimant interviews and suggests a sensible 'route' through these areas of discussion. However, it is to be used flexibly with suggested probes being used as appropriate.

Introductions

- Introduce self and organisation.
 - Explain/ reiterate purpose of the research.
 - State that there are no right or wrong answers, as we are interested in the claimant's experiences, perceptions, views.
 - Explain/ reiterate independence of research team from Acas.
 - Explain position re: confidentiality and anonymity.
 - Explain purpose of recording, transcription, nature of reporting.
 - Check that interviewee is happy to proceed.
 - Remind that interview should take up to/around 90 minutes and check any time restrictions.
 - Check respondent happy to start the recording of the interview.
-

Section A: Current/ recent employment and background to the claim

1. Could you tell me a little bit about your current employment situation?

Probe:

Type of work done at time case was brought

length of time with employer in ET case (or whether claim related to recruitment)

whether now left this employer and when (in real time eg...month/year and with respect to timeline of tribunal process)

Whether employed at present and type of work done (probe whether change in nature/ status of employment consequent on job change)

2. What were the circumstances leading up to your Race discrimination claim?

Probe:

Period of time over which concerns about treatment at work developed (whether from start of employment or any obvious trigger)

Whether tried to defuse the situation informally, how, effects of this

Existence of TU/employee representation structure – membership and use of this?

3. Did you follow any formal internal procedures for resolving your concerns?

Probe:

Whether used grievance procedure/ if not why

In what way this helped/ didn't help to defuse the situation

Use of internal (e.g. TU or employee representative) and/or external support during this process?

How and when they decided to take tribunal action (was there a 'final straw' event? Influence of others, media, etc)

4. What was your main reason for making a Race discrimination claim?

Probe:

Were there also other grounds cited for claim (e.g. sex discrimination, unfair dismissal), and why?

5. What did you hope/ expect to achieve?

Section B: The decision to self-represent

I'd now like to ask you about how you came to represent yourself.

1. How did you come to the decision to represent yourself?

Probe:

What sources of advice and support did you think were available to you?

What was available locally?

whether and how any advice sought (or why not) eg... from trade union, Citizens Advice, solicitor, Acas helpline

At what stage this was done

Previous use of this source of advice

Outcome and feelings about this

Concerns re: cost

2. To what extent do you feel that you had a choice about this and made a conscious decision to represent yourself?

3. Had you had any previous experiences of similar situations (e.g. court procedures, any previous tribunal experience) or did you know anyone else who had?

Probe:

both with this employer, or in other situations

how this influenced self-representation decision

4. At the time that you submitted your claim to the employment tribunal, how were you feeling about it?

Probe:

Confidence in strength of case

Sense of grievance

Feelings of self-confidence in representing self and more generally

Did employer have representation? What impact did this have on how they were feeling?

Section C: The role of the Acas conciliator

I'm now going on to look at the role of the conciliator.

1. Can I ask, had you heard of Acas before they contacted you about your claim?

Probe:

How had heard about Acas?

What had heard?

2. What was your idea of what Acas would do?

Probe:

Whether had any preconceptions about role that Acas would play (e.g. extent of contact, type of contact, help that would be provided)

3. How/when (i.e. at what stage in the process) were you first contacted by Acas?

Probe:

Whether received an introductory letter/leaflet from Acas

What this said

Feelings about introductory letter and leaflet received from Acas

Whether accessed any information on the Acas website. How useful this source of information was.

What, if any, expectations claimant had about the role that Acas would play after this contact (e.g. extent of contact, type of contact, help that would be provided)

Whether claimant felt clear about the role of conciliator at the start

4. Did you have contact with one conciliator throughout the time you were in contact with Acas?

Probe:

gender / ethnic background/ age/ region based

5. How much contact did you have with the conciliator(s)?

Probe:

Period of time over which had contact

Frequency of contact

Whether felt had enough time or hurried along

Accessibility of conciliator

Who was in control of contact?

6. To what extent did this provide you with enough time to go through your case and cover any concerns that you had?

Probe:

What would have liked more time for/ what felt spent too much time on

7. What type of contact did you have with the conciliator?

Probe:

Telephone/ face-to-face/ email/ - and whose choice was this

Joint meetings

what liked about type of contact

what disliked about type of contact

whether/ why would have liked more or less telephone/ face-to-face etc contact

8. What did you speak about with the conciliator over the time you had contact with him/her?

Probe:

Did you ever ask questions that the conciliator was not able to answer or answer sufficiently? (How did you feel about this?)

Did they talk to you about other cases/ case law?

9. How would you describe your relationship with the conciliator?

Probe:

Trust & confidence, rapport

Whether felt taken seriously

Extent to which seemed neutral or seemed to 'side' with them or respondent

Whether would have liked a different conciliator/ why/ why not?

How felt about conciliator being e.g.[a man] [White] [older]

10. Did your relationship with the conciliator change over time?

Probe:

How/why this relationship changed over time / turning points

11. What, if anything, do you think was good about how the conciliator worked with you?

Probe:

Whether conciliator was a good listener (e.g. was your version of what happened listened to)

Whether/ how conciliator provided useful information (e.g. on procedural issues, likely viewpoint of tribunal) Whether this helped understanding of what was going to happen

Whether/ how conciliator helped facilitate improved communication with the employer

What was not so good?

Section D: The style of Acas conciliation

1. One of the questions being explored in this research is whether there are particular styles of Acas conciliation and how these affect the process. I'm going to outline a scenario of one person's experience of conciliation and then ask you some questions about it.

"John had worked for a local authority for twenty years and for much of that time had been happy in his job, but in the last five years he had tried unsuccessfully to get promotion and felt that his line manager was treating him unfairly. After following the internal grievance procedure, John put in a claim for Race discrimination to an employment tribunal. Three weeks later he was contacted by an Acas conciliator. The first time they spoke about what the role of the conciliator would be and the kind of service that John could expect to receive. The second time they spoke in more detail about John's case. After listening at length to John's account of events, the conciliator began to raise issues about the strength of John's Race discrimination claim, questioning whether there was sufficient evidence that he had been unfairly treated. While John argued that he was not given sufficient opportunity to fully meet the selection criteria for promotion, compared with other candidates, the conciliator suggested that the employer might argue that he had simply not been the best candidate for the job and that the equal opportunity procedure was very clear that people should be appointed on merit. John felt that the conciliator was being aggressive and that he was being pressurised to settle the case".

What do you think about John's reaction to the conciliator? How do you think that you would feel in this situation? Why might the conciliator have decided to focus on the weaknesses of the case? Are there any problems with this approach?

Did your conciliator try to make you think differently about your case? How? (probe for description of how conciliator made claimant think about strengths and weaknesses) How did you feel about this at the time? Did the conciliator's approach make you take a more critical perspective on your claim immediately or over time? Why? With hindsight, was this a helpful approach?

Did you feel able to have a frank exchange of views? How did you feel about this?

Did the conciliator tell you anything that you didn't want to hear? How did you feel about this?

Over time did the conciliator try to influence your decisions? How did he/ she go about this? How did this make you feel? Was the conciliator assertive in trying to promote a resolution of the dispute? Do you feel they should/ shouldn't have been assertive? Why?

Do you feel that the conciliator provided you with information that helped you decide what to do next?

Probe:

Can you give me an example of the sort of thing you mean?

How conciliator discussed these issues?

How claimant felt about this?

Would you have liked more advice and guidance than the conciliator was able to provide?

Section E: Outcome of claim and overall satisfaction

1. How did you feel about the outcome of the claim/ terms of settlement?
2. How satisfied would you say you were with the Acas conciliation service overall?
3. In what ways do you feel that your experience would have been different if the Acas conciliation service had not been available?
4. To return to the example of John that we visited earlier

"John lost his claim at the employment tribunal and felt let down by the Acas individual conciliation service and when asked to provide feedback on the service he had received he described it as poor. It is a recurring finding of research that people who have experienced a negative outcome after receiving a service tend to be more critical of that service than those who are successful".

What do you think of the way that John reacted? Might he have justification for feeling let down?

Thinking back, did you feel more positive or negative about the Acas Conciliation Service earlier in the case than you do now?

To what extent do you feel that your views of the Acas conciliation service have been influenced by the outcome of your case?

Section F: The experience of self-representation

Thinking back over the experience of representing yourself

1. What were the positives?
2. What were the negatives?
3. Did anything about the experience surprise you?

4. To what extent did you feel disadvantaged by representing yourself? Why was this?

5. Would you recommend someone else in this position to represent themselves? Why/ why not?

Section G: Suggestions for improvements

1. Thinking back on the whole experience of making a Race discrimination claim, what impact has it had on your life?

Probe:

Short term/ long term

Negatives/ positives

2. Is there anything that you would do any differently? (examples)

3. Thinking back on your experience of Acas conciliation are you able to identify two or three things that Acas conciliation could do better? Wait for unprompted reply, then aim to identify anything that might ease stresses and strains related to claim, or prompt earlier resolution, e.g.

Probe: (these probes to be added to iteratively based on suggestions made in previous interviews)

Nature of Acas intervention (e.g. mediation in the workplace)

Timing of Acas intervention (e.g. before tribunal case submitted)

Ease of contact with the conciliator?

Amount of time spent with conciliator?

Timing of Acas intervention (would it have been helpful to have had earlier contact with the conciliator before you submitted your claim to the employment tribunal?)

Better written information

Anything else

Thinking about this interview, could I just ask why you agreed to take part?

Thank you for making the time to be interviewed. Acas very much hopes that the research will help it make improvements to the service that it provides. Is there anything that you would like to add or any questions that you have for me?

Our report will be published later in the year and we will send you a summary of the findings.

Pay incentive (emphasising that it is a thank you for participation in the research and if the interviewee is on benefits the payment will not affect those benefits in any way) Ask interviewee to sign incentive receipt.

Qualitative research exploring unrepresented claimants' and employers' views on the Acas Individual Conciliation service in Race discrimination claims

Topic Guide for Race discrimination case respondents

This topic guide sets out the main areas of inquiry that will be common to all respondent interviews and suggests a sensible 'route' through these areas of discussion. However, it is to be used flexibly with suggested probes being used as appropriate.

Introductions

- Introduce self and organisation.
- Explain/ reiterate purpose of the research.
- State that there are no right or wrong answers, as we are interested in the employer's experiences, perceptions, views.
- Explain/ reiterate independence of research team from Acas.
- Explain position re: confidentiality and anonymity.
- Explain purpose of recording, transcription, nature of reporting.
- Check that interviewee is happy to proceed.
- Remind that interview should take around 45 minutes, though they might like to carry on for longer, and check any time restrictions.
- Check that interviewee is happy to start the recording of the interview.

Section A: Employer characteristics and background to the claim

1. Can you tell me a little about background of your organisation/company?

Probe:

Sector/ nature of the business

Establishment size

Staff association/ union recognition.

2. How would you describe the composition of your workforce in terms of ethnic diversity?

Probe:

Extent of diversity overall, site in question

Gender/ age composition of workforce

3. What was your job title/ role at the time of the Race discrimination claim (refer to claimant by name, or specify in the last case where used Acas conciliation)

Probe:

Current job title

4. What were the circumstances leading up to the Race discrimination claim (refer to claimant by name, or specify in the last case where used Acas conciliation)?

Probe:

Employee job title/ department

Employee length of service (in real time e.g. month/year and with respect to timeline of tribunal process)

Whether claim related to recruitment

Period of time over which complaint about treatment at work developed (whether from start of employment or any obvious trigger)

Whether tried to defuse the situation informally, how, effects of this?

5. Did you follow any formal internal procedures for resolving the individual's concerns?

Probe:

Whether grievance procedure used/ if not why

In what way this helped/ didn't help to defuse the situation, how, effects of this?

Existence/use of TU or employee representative structures, and effect of this?

How and when claimant decided to take action (was there a 'final straw' event? Perceived influence of others, media, etc)

6. At the time that you heard that a claim had been submitted to the employment tribunal, how were you feeling about this?

Confidence in strength of case

Sense of grievance

Section B: The decision to self-represent

I'd now like to ask you about how you came to represent yourself.

1. How did you come to the decision to represent yourself?

Probe:

What sources of advice and support did you think were available to you?

What was available locally?

Whether and how any advice sought (or why not) e.g. from employers' organisation, Citizens Advice, solicitor, Acas helpline?

At what stage this was done?

Previous use of these sources of advice?

Outcome and feelings about this?

Concerns re: cost?

2. To what extent do you feel that you had a choice about this and made a conscious decision to represent yourself?

3. Had you had any previous experiences of similar situations (e.g. court procedures, any previous tribunal experience) or did you know anyone else who had?

Probe:

Both with this employer, or in other situations

How this influenced self-representation decision

Feelings of confidence in representing self

Was claimant represented, and how did this affect how you felt about things?

Section C: The role of the Acas conciliator

I'm now going on to look at the role of the conciliator.

1. Can I ask, had you heard of Acas before they contacted you about your claim?

Probe:

How had heard about Acas

What had heard

Awareness/use of helpline

2. What was your idea of what Acas would do?

Probe:

Whether had any preconceptions about role that Acas would play (e.g. extent of contact, type of contact, help that would be provided)

3. How/ when (ie... at what stage) were you first contacted by Acas?

Probe:

Whether received an introductory letter/leaflet from Acas

What this said

Feelings about introductory letter and leaflet received from Acas

Whether accessed any information on the Acas website. How useful this source of information was

What, if any, expectations respondent had about the role that Acas would play after this contact (e.g. extent of contact, type of contact, help that would be provided)

Whether respondent felt clear about the role of conciliator at the start

4. Did you have contact with one conciliator throughout the time you were in contact with Acas?

Probe:

gender / ethnic background/ age/ region based

5. How much contact did you have with the conciliator(s)?

Probe:

Period of time over which had contact

Frequency of contact

Whether felt had enough time or hurried along

Accessibility of conciliator

Who was in control of contact

6. To what extent did this provide you with enough time to go through your case and cover any concerns that you had?

Probe:

What would have liked more time for/ what felt spent too much time on

7. What type of contact did you have with the conciliator?

Probe:

Telephone/ face-to-face/ email/ - and whose choice was this

Joint meetings

What liked about type of contact?

What disliked about type of contact?

Whether/ why would have liked more or less telephone/ face-to-face etc contact?

8. What did you speak about with the conciliator over the time you had contact with him/her?

Probe:

Did you ever ask questions that the conciliator was not able to answer or answer sufficiently? (How did you feel about this?)

Did they talk to you about other cases/ case law?

9. How would you describe your relationship with the conciliator?

Probe:

Trust & confidence, rapport

Whether felt taken seriously

Extent to which seemed neutral or seemed to 'side' with them or claimant

Whether would have liked a different conciliator/ why/ why not?

How felt about conciliator being e.g. [a man] [White] [older]

10. Did your relationship with the conciliator change over time?

Probe:

how/ why this relationship changed over time / turning points

11. What, if anything, do you think was good about how the conciliator worked with you?

Probe:

whether conciliator was a good listener (e.g. was your version of what happened listened to)

whether/ how conciliator provided useful information (eg...on procedural issues, likely viewpoint of tribunal) Whether this helped understanding of what was going to happen

whether/ how conciliator helped facilitate improved communication with the claimant?

what was not so good?

Section D: The style of Acas conciliation

1. One of the questions being explored in this research is whether there are particular styles of Acas conciliation and how these affect the process. I'm going to outline a scenario of one employer's experience of conciliation and then ask you some questions about it.

"Brenda had worked for a clothing manufacturer for ten years and for much of that time had been happy in her job, but in the last year of her employment she had tried, unsuccessfully, to get promotion and felt that her boss was treating her unfairly. After following the internal grievance procedure, Brenda put in a claim for Race discrimination to an employment tribunal. Three weeks later Brenda's employer heard from an Acas conciliator. The first time they spoke about what the role of the conciliator would be and the kind of service that the employer could expect to receive. The second time they spoke in more detail about Brenda's case. After listening at length to the employer's account of events, the conciliator tried to play devil's advocate about the strength of the employers' response to Brenda's Race discrimination claim, questioning the argument that Brenda had simply not been the best candidate for the job and that the equal opportunity procedure was very clear that people should be appointed on merit. The conciliator noted that there was a possibility that the tribunal might weigh up the evidence and find that Brenda had been unfairly treated. The employer felt that the conciliator was being aggressive and that he was being pressurised to settle the case".

What do you think about the employer's reaction to the conciliator? How would you feel in this situation? Why might the conciliator have decided to focus on the weaknesses of the case? Are there any problems with this approach?

Did your conciliator try to make you think differently about your case? How? (probe for description of how conciliator made respondent think about strengths and weaknesses) How did you feel about this at the time? Did the conciliator's approach make you take a more critical perspective on the claim immediately or over time? Why? With hindsight, was this approach helpful?

Did you have a frank exchange of views? How did you feel about this?

Did the conciliator tell you anything that you didn't want to hear? How did you feel about this?

Over time did the conciliator try to influence your decisions? How did he/ she go about this? How did this make you feel? Was the conciliator assertive in trying to promote a resolution of the dispute? Do you feel they should/ shouldn't have been assertive? Why?

Do you feel that the conciliator provided you with information that helped you to decide what to do next?

Probe:

Can you give me an example of this?

How conciliator talked about these issues

How respondent felt about this

Whether seeking/hoping for more guidance than this?

Section E: Outcome of claim and overall satisfaction

1. How did you feel about the outcome of the claim/ terms of settlement?
2. How satisfied would you say you were with the Acas conciliation service overall?
3. In what ways do you feel that your experience would have been different if the Acas conciliation service had not been available?
4. To return to the example of Brenda that we visited earlier

"Brenda won her claim at the employment tribunal and the employer felt let down by the Acas individual conciliation service and when asked to provide feedback on the service he had received he described it as poor. It is a recurring finding of research that people who have experienced a negative outcome after receiving a service tend to be more critical of that service than those who are successful".

What do you think of the way that the employer reacted? Might he have justification for feeling let down?

Thinking back, did you feel more positive or negative about the Acas Conciliation Service earlier in the case than you do now?

To what extent do you feel that your views of the Acas conciliation service have been influenced by the outcome of your case?

Section F: The experience of self-representation

Thinking back over your experiences of representing yourself

1. What were the positives?
2. What were the negatives?
3. Did anything about the experience surprise you?
4. To what extent did you feel disadvantaged by representing yourself? Why was this?
5. Would you recommend someone else in this position to represent themselves? Why?/ Why not?

Section G: Suggestions for improvements

1. Thinking back on the whole experience of responding to a Race discrimination claim, what impact has it had on the business?

Probe:

Day to day running of the business

Workplace relations

Short term/ long term

Negatives/ positives

2. What impact has it had on you as an individual?
3. Is there anything that you would do any differently? (examples)
4. Thinking back on your experience of Acas conciliation are you able to identify two or three things that Acas conciliation could do better,

Wait for unprompted reply, then aim to identify anything that might ease stresses and strains related to claim, or prompt earlier resolution, e.g.

Probe: (these probes to be added to iteratively based on suggestions made in previous interviews)

Nature of Acas intervention (e.g. mediation in the workplace)

Timing of Acas intervention (e.g. before tribunal case submitted)

Ease of contact with the conciliator?

Amount of time spent with conciliator?

Timing of Acas intervention (would it have been helpful to have had earlier contact with the conciliator before you submitted your claim to the employment tribunal?)

Better written information

Anything else

Thinking about this interview, could I just ask why you agreed to take part?

Thank you for making the time to be interviewed. Acas very much hopes that the research will help it make improvements to the service that it provides. Is there anything that you would like to add or any questions that you have for me?

Our report will be published later in the year and we will send you a summary of the findings.

