

Research Paper

Gender differences in enforcing employment law

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Abstract

This paper will draw on a range of data sources to examine gender differences in the enforcement of employment rights through the Employment Tribunal Service in the UK. In charting the growth in Employment Tribunal Applications, Burgess et al (2001) highlight the correlation in rise in the number of discrimination claims and the rise in the number of females in the labour force. While the vast majority of sex discrimination and equal pay applications are made by women, they only represent a small minority of claims to Employment Tribunals. This paper will look at the gender distribution of applications to Employment Tribunals overall and show that women are consistently less likely than men to make claims, comprising around two fifths of all applications over a sustained period of time. The paper will also look at the gender differences in the outcomes of Employment Tribunal applications.

The data sources include official labour market statistics collected by the Office for National Statistics as part of the Labour Force Survey (LFS); Acas case management data; and a series of Surveys of Employment Tribunal Applications. It also draws on the Department of Trade and Industry's Survey of Individual Awareness of Employment Rights; and data collected in the LFS Longitudinal Survey and the ONS Vacancies Survey. The paper will also draw on published research to contextualise the inequalities faced by women in the workplace.

Contents

List of Figures

Abstract

1. Introduction	1
2. Methodology	2
3. Findings.....	3
4. Gender approaches to problems experienced at work	7
5. Conclusions.....	9
References	12

List of Figures:

Figure 1: Gender distribution of employees in employment and in Employment Tribunal applications 1997	3
Figure 2: Gender distribution of all Employment Tribunal cases 1997 – 2002.....	4
Figure 3: The rates at which men and women make Employment Tribunal applications	5
Figure 4: Job separation for men and women 2002.....	6
Figure 5: Tribunal applications as a proportion of all employees experiencing a job separation 1998 – 2002.....	7
Figure 6: Outcome of Employment Tribunal cases for men and women in 1998.....	9

1. Introduction

Despite the fact that legislation was implemented in the UK in the 1970s to protect women from discrimination in employment and to ensure that they receive pay equal to that of their male counterparts, women still experience less favourable conditions in the labour market. In June 2003 women represented almost half of the workforce in the UK, with 68 per cent of women of working age being employed either full or part time (*Labour Market Trends*, February 2004). On average women working full time in the UK in 2003 earned 82 per cent of the hourly pay of men working full time, and women working part-time earned 40 per cent less than their male counterparts working full-time (ibid). A collection of studies published in Rubery et al (1998) examines gender occupational segregation and the gender pay gap in the Europe. Fagan (ibid) analysed the outcome of a job evaluation in a UK chemical factory which aimed to close the pay gap between male and female employees and found that twice as many men as women received the maximum 10 per cent capped pay rise. She also found that workers in lower grade jobs were far less likely than those in higher grade jobs to receive a pay rise. Both of the above findings reinforced rather than reduced inequalities between men and women as women were disproportionately located in lower grade jobs and men were disproportionately found in the high grade jobs in this chemical factory.

Looking at women's employment in Europe, Rubery et al (1999) found that women across Europe continued to earn far less than men across all occupational groups, regardless of what measure was used to categorise occupations. For instance using the manual versus non-manual classifications of occupations Rubery et al found that the gender pay gap remained constant between 1989 and 1993, with pay gaps being consistently largest in the UK for both manual workers (where women earned 67.2 per cent of men's wages in 1989 and 68.4 per cent in 1993) and non-manual workers (where women earned 56.7 per cent of men's wages in 1989 and 59.7 per cent in 1993). A recent UK Government Commission reviewing women's pay and employment suggests that there has been some improvement in the pay gap in female dominated jobs in recent years; in the year 2000 female employees earned around 78 per cent of the wages of their male counterparts employed in the 10 occupations in which the vast majority of women work (Kingsmill, 2002).

However, many commentators argue that most of the gender pay gap can be explained by occupational segregation. As Rubery et al (1998) points out the vast majority of low paid jobs across Europe are occupied by women. This is due to the atypical work in which women dominate employment (such as hairdressing, care work etc) and to indirect discrimination which devalues female dominated work. Carroll et al (1998) carried out a case study of women's pay in a large bank in the UK, and found that despite the fact that the banking industry is female dominated only seven per cent of the female workforce was found in the management grades compared to 50 per cent of the male workforce.

Other commentators such as Ledwith and Colgan (2002) point out that women continue to experience unfavourable conditions in the workplace because of their positions within Trade Unions. They argue that although there is evidence of a

growing female membership in trade unions, women are in a minority in the higher ranks of trade unions and are under-represented within the posts of full-time officers and shop stewards, and are therefore not in a strong position to make advances in the equality agenda. Where women are in a position to organise collectively, they face legal hurdles in enforcing their rights through tribunals. This is typified in a paper concerning inequalities in pay in the UK National Health Service (Grimshaw, 1998) which refers to an Employment Tribunal case in which speech therapists (i.e. workers in a female dominated occupation) made a claim of equal value to clinical psychologists and pharmacists (a male dominated occupation), despite the fact that the latter were consistently awarded higher pay deals than the former. The first tribunal found that the pay differentials were the result of separate pay bargaining structures which were seen to constitute a non-discriminatory 'material factor' in pay determination. However, this finding was over-ruled by the European Court of Justice which ruled that the existence of separate bargaining groups for female and male dominated professions did not amount to an 'objective justification' for unequal pay. Other high profile Employment Tribunal cases show that women found in high status jobs are more likely than their male counterparts to be over looked for promotions and less likely to be awarded bonuses¹.

Given these less favourable experiences of women in employment and the fact that Employment Tribunals are accessible by all economically active individuals it might be expected that the majority of Employment Tribunal claims would be brought by women. Indeed, Burgess et al (2001) have, in charting the growth in tribunal claims, shown a correlation between the rise in the number of discrimination cases and the increase in the number of women in employment. However, surveys of parties to Employment Tribunals have shown that women remain in the minority of applications. In the 1992 Survey of Employment Tribunal Applications (SETA) 32 per cent of applications were made by women; this proportion increased to 40 per cent in the 1998 survey.

This paper will present findings from primary analysis of Acas case management data which shows that this level of female applicants has remained constant and that women have consistently been in the minority among Employment Tribunal applicants since 1997, when the sample for the last SETA was drawn. It will also show that over the period 1997 to 2002 women have consistently made applications at a lower rate than men. The paper will then move on to look at gender differences in experiencing problems at work and responses to the problems they face. To throw some light on the possible explanations for the gender differences in using the tribunal system an examination of published research will be conducted.

2. Methodology

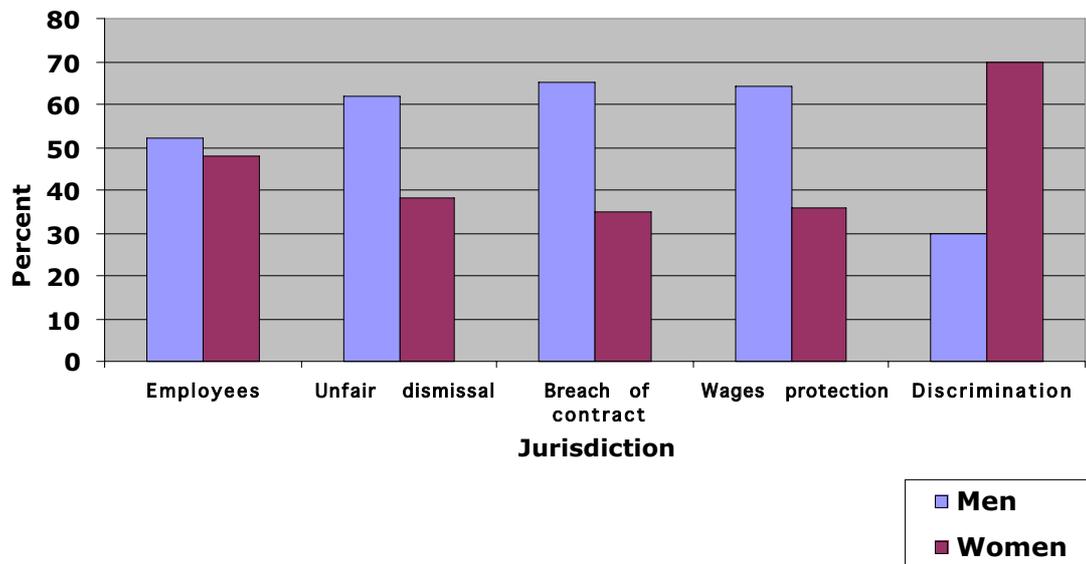
To examine the trends in gender differences in Employment Tribunal applications a primary analysis of Acas case management data for the period 1997 to 2002 was conducted. To derive an indicator for gender, the data in the applicant title field was recoded assigning the applicant to either feminine or masculine categories. In all there were details for over half a million cases. However,

around 10 per cent of the titles were missing and 5 per cent could not be assigned a gender, for instance 'professor' and 'doctor'. The Acas data was therefore used as a sample to estimate the actual number of cases brought by men and women. To ensure it replicated the population of Employment Tribunal cases as closely as possible the data was weighted so that the distribution of jurisdictions in the sample matched that of the distribution of jurisdictions published in the Acas Annual Reports 1997 to 2001. The distribution of female and male applicants involved in cases brought under different jurisdictions was calculated for each year. Using published Employment Tribunal statistics for each year, the number of cases brought by men and women were estimated. The estimates were validated by comparing the gender distribution for cases found in the analysis of Acas data for the year 1997 to that found in SETA98. In both samples it was found that 40 per cent of applications were made by women in the year 1997.

3. Findings

This section of the paper will begin by examining the gender differences in the types of applications made to Employment Tribunals. Figure 1 sets out the distribution of claims brought under the main jurisdictions of unfair dismissal, breach of contract, wages protection and discriminationⁱⁱ and compares them to the distribution of males and females employed either full time or part time in 1997. It shows that although women represent almost half of all employees in employment they account for only around a third of applicants bringing claims under each jurisdiction, with the exception of discrimination where 70 per cent of cases were brought by women.

Figure 1 - Gender distribution of employees in employment and in Employment Tribunal applications 1997

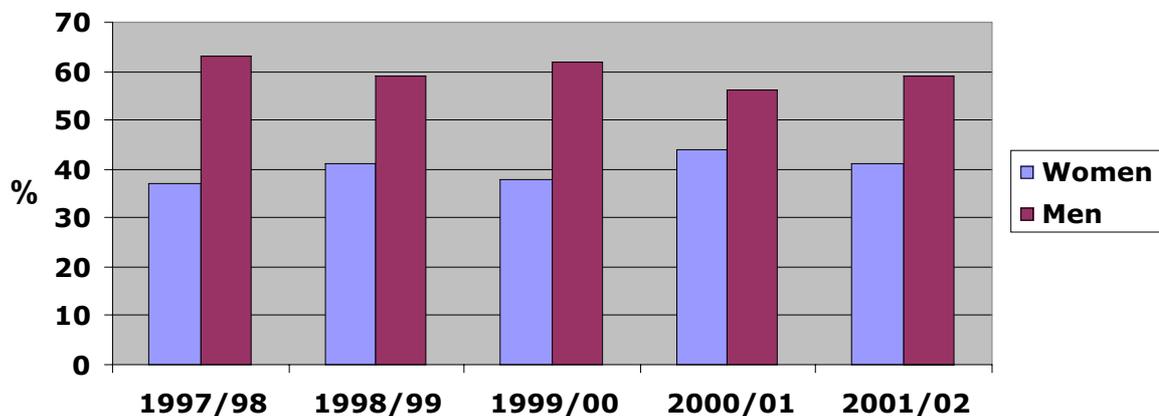


Source: Survey of Employment Tribunals 1998. Base 2699.

Acas case management data was analysed to further examine the gender distribution of claims of sex discrimination and equal pay and found that in 90 per cent of the former and 80 per cent of the latter applicants were female.

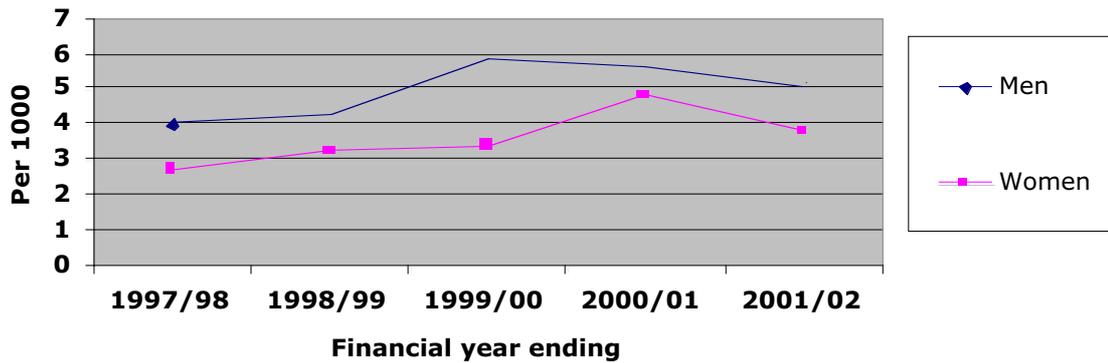
The data was also analysed to assess whether the gender distribution of applicants in cases brought under all jurisdictions varied over time. It was found that this trend was indeed consistent between the years of 1997 and 2002, with females comprising around two fifths of applicants in all cases. Although the vast majority of applicants making a claim concerning discrimination were women, the numbers of discrimination cases compared to those brought under other jurisdictions have always remained at a low level, and have therefore accounted for a minority of Employment Tribunal cases. Overall, therefore, women have constituted the minority of applicants over a consistent period of over time. See Figure 2.

Figure 2 - Gender distribution of all Employment Tribunal cases 1997 - 2002



To throw more light on the gender distribution of Employment Tribunal applications it is necessary to examine the rate at which men and women make claims. The rate at which men and women made claims to tribunals was estimated by dividing the number of claims made by the number of 1,000s of females and males in full or part time employment in the period 1997 to 2002. As Figure 3 shows, women are indeed less likely than men to make applications for an Employment Tribunal, with a much smaller rate of females compared to males making applications. In the year 2002, 5 men out of every 1,000 male employees made an application for an Employment Tribunal compared to 3.8 women per 1,000 female employees. As Figure 3 shows this difference has been sustained between 1997 and 2002.ⁱⁱⁱ

Figure 3 - The rates at which men and women make Employment Tribunal applications



The findings so far suggest that women are far less likely than men to enforce their employment rights through Employment Tribunals.

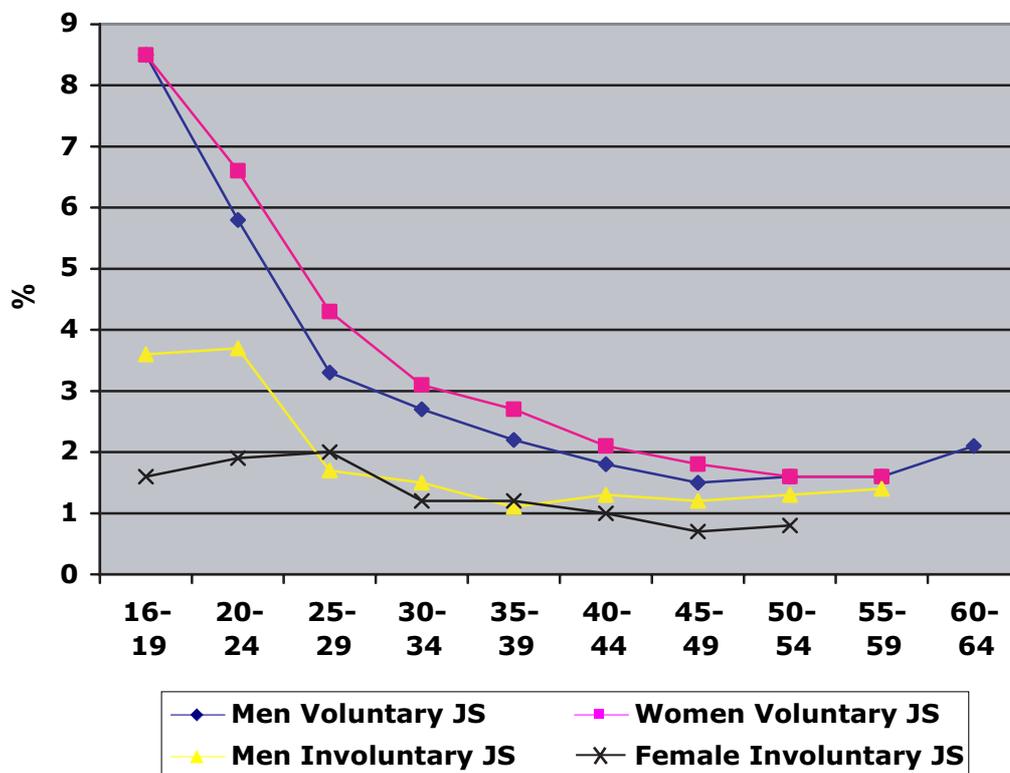
Research has shown that people experiencing problems at work are also likely to separate from their jobs. For instance, Hazel Genn conducted a large survey examining the use of the legal system to redress individual infringements of rights, including employment rights. In her screening survey^{iv} she found that 6 per cent of respondents had experienced 'problems' at work and of these 41 per cent had left their jobs. She also found there was no discernable difference between male and female respondents in experiencing problems or in leaving their job when problems occur. Similar results were found in the Department of Trade and Industry's Awareness of Individual Employment Rights Survey 2001, with 17 per cent of male and female respondents reporting experiencing problems at work. This study also found that women were just as aware of their employment rights as men.

Official statistics collected in the Labour Force Survey throw further light on the gender differences in job separations. In the year 2002, 4.3 per cent of employees in employment experienced a job separation; 1.4 per cent experienced an involuntary job separation and 3 per cent experienced a voluntary job separation (Weir, 2003). There were no gender differences in overall job separation, but variations were found when job separations were split into those in which the employee decided to leave their job voluntarily (to either move to a better job, for personal reason, such as having a baby or retiring for health reasons) and those in which the employer decided to either dismiss the employee, make them redundant or end a temporary contract of employment. In 2002 women were slightly more likely than men to experience a voluntary job separation (3.2 per cent compared to 2.8 per cent respectively) and men were slightly more likely than women to experience an involuntary job separation (1.6 per cent compare to 1.1 per cent). It must be noted, however, that these differences could be an artefact of the way in which the job separations are categorised. For instance, leaving work to have a baby is categorised as voluntarily separating from a job; while this may be the case for some, it could also be an involuntary job separation for others. Indeed, the Equal Opportunities Commission recently announced that it was undertaking an investigation into discrimination against pregnant women in employment. It pointed out that the

vast majority of enquiries they receive were from women who were concerned about employment rights during and after pregnancy. Therefore it is possible that the gender differences in involuntary job separations may be exaggerated.

Furthermore, age is closely associated with job separation. As Figure 4 shows age is negatively associated with job separations, with the likelihood of job separation depreciating as cohorts of employees grow older. It also shows that the gender differences in involuntary job separations are more pronounced between men and women in younger cohorts. Between the ages of 25 and 55 the differences are marginal; this is largely due to the fact that young people tend to work in temporary contracts as they flow in and out of education and that by the age of 25 the likelihood of 'job churning' has decreased. Moreover, age distribution in job separations need to be taken into consideration when examining trends in Employment Tribunals as 9 in 10 applicants are aged 25 and over (SETA 1998).

Figure 4 - Job separation for men and women 2002



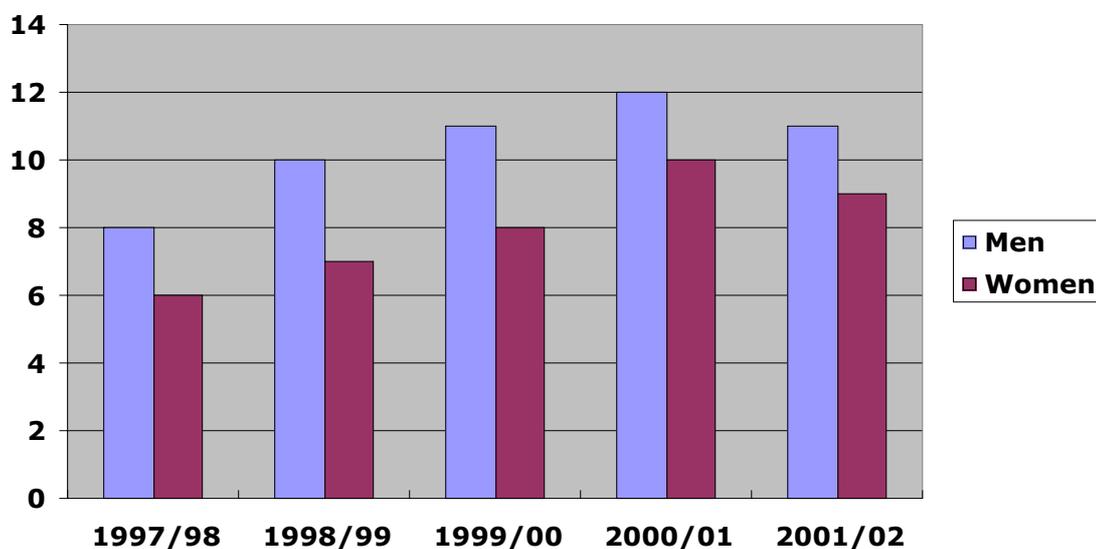
Source, Labour Force Survey 2002^v

Given that age probably explains much of the gender difference in the likelihood of experiencing an involuntary job separation and that the differences in 'voluntary job separation' and 'involuntary job separation' could be accounted for by the coding of each of these categories, it will be assumed that there is very little gender difference in experiencing job separations and the overall figures for

job separation will be used to further assess the rate at which men and women make claims to Employment Tribunals.

Accordingly, numbers of male and female employees experiencing a job separation over the period 1997 to 2002 were estimated using the above statistics. These estimates were then used to calculate the rate at which men and women make applications for an Employment Tribunal when they experience a job separation. Figure 6 shows that men are consistently more likely than women to make an application for a tribunal when they separate from their employment.

Figure 5 -Tribunal applications as a proportion of all employees experiencing a job separation 1998 - 2002



4. Gender approaches to problems experienced at work

This paper does not attempt to explain why women do not use the Employment Tribunal System to the same extent as men, as further and more detailed research is necessary to do this. However, some light can be thrown on this issue by examining some empirical research which has explored various approaches of groups of employees dealing with discrimination and unfair treatment at work. Many theorists have drawn on Hirschman's (1970) voice, loyalty and exit framework to examine the different strategies employees use when faced with a problem at work. Hirschman developed this framework to explain the behaviours of customers experiencing a deterioration of services or goods provided by an organisation; the customer could either 'voice' their concern in the hope of improving the product or service and thereby remain a 'loyal' customer of that organisation; or could decide to purchase the product or service elsewhere; the former was categorised as 'voice' and was strongly related to loyalty and the latter as 'exit'. Building on this framework other commentators and theorists have used voice, loyalty and exit concepts to develop theories about the

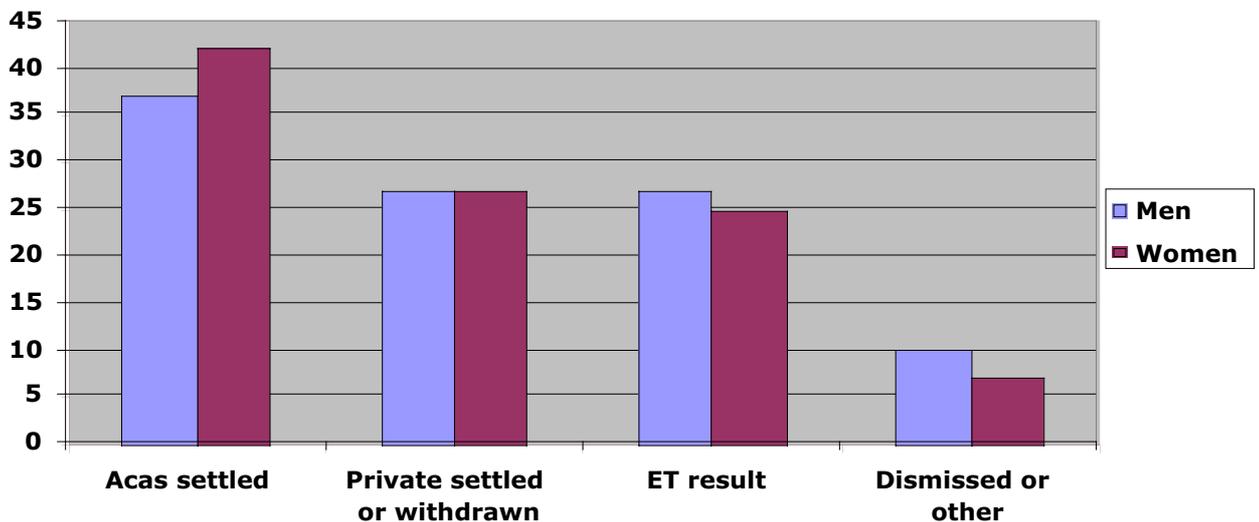
behaviours of employees within organisations. Lewin (1987) looked at the impact of grievance procedures in non-unionised workplaces to assess whether this mechanism could provide voice for employees and thus increase loyalty to the organisation and reduce labour turnover. He examined the characteristics of grievance filers and non-filers and found that the former were more likely than the latter to be young males, from an ethnic minority group, working in low skilled occupations and attaining a lower level of formal education. Lewin also found that employees who voice complaints were, contrary to Hirschman's theory, more likely than those who do not, to leave the organisation. Following on from this work, Boroff and Lewin (1997) further refined the analysis to control for a deterioration of work experience. They conducted a large survey and censored the sample for those who had experienced unfair treatment at work. They also conducted the survey in a unionised workplace. This research is of particular interest to the analysis of gender differences in courses of actions taken in the face of perceived infringements of employment rights as it throws some light on the different characteristics of those who do and do not report that they experience unfair treatment at work. It found that the former were disproportionately male and union members; they also had, on average, more work experience within the firm, higher earnings, more education, lower levels of job satisfaction along with lower levels of loyalty to the firm, a lower rating of grievance procedure effectiveness (quality), and greater perceived exit options; i.e. opportunities for alternative employment (ibid p56). One of their main findings was that employees who were less loyal to the firm were more likely than loyal employees to raise a grievance when they experienced unfair treatment, and that loyalty and job satisfaction were closely associated. Boroff et al strongly concluded that loyal employees 'suffer in silence'.

Many of the characteristics of those employees who do and those who do not raise grievances could, arguably, be explained by a gender effect in employment relations. Cully et al (1999) found that women responding to the Workplace Employee Relations Survey 1998 expressed higher levels of job satisfaction and loyalty to firms than men. Other studies have also found that women respond differently to men when experiencing problems at work. For example the DTI Survey of Individual's Awareness of Employment Rights (ibid) and the survey conducted by Genn (ibid) found that women were significantly more likely than men to seek advice about problems experienced: the former found that 70 per cent of women compared to 43 per cent of men sought advice when they experienced a problem at work; the latter found that women were 21 per cent more likely than men to seek advice when faced with a dispute which infringes legal rights. Evidence from the Acas Help Line Surveys 2000 and 2003 also supports the proposition that women are more likely than men to seek advice, with over two thirds of callers to the helpline being female^{vi}.

Furthermore, when men and women make applications for an Employment Tribunal they tend to resolve them in different ways. There are a range of outcomes which can be reached in the resolution of Employment Tribunal cases in the UK: parties can settle the case either directly between themselves, via representatives and/or via Acas conciliation; the applicant can decide to withdraw the claim; the claim can be dismissed at a preliminary hearing if the Chair finds that it has no merit; or the claim can be decided at a full hearing. Figure 6 presents findings from the Survey of Employment Tribunal Application 1998, which shows the outcomes of cases brought by men and women. It clearly shows

that women are more likely than men to settle their case via Acas conciliation. Women are less likely than men to have their case dismissed or disposed of at a preliminary hearing.

Figure 6 - Outcome of Employment Tribunal cases for men and women in 1998



These differences are more pronounced when the jurisdiction of the case is examined. For example, women making a claim of unfair dismissal are far more likely than men to settle the case via Acas conciliation (47 per cent compare to 41 per cent respectively). In Lattreille's (1998) analysis of SETA92 it was found that women in unfair dismissal cases which were decided at a full hearing were more likely than men to win their case, whereas in 1998 the survey found that women were just as likely as men to win their case at tribunal.

5. Conclusions

This paper aimed to assess the differences in the likelihood of men and women enforcing their employment rights using the Employment Tribunal System. It also aimed to explore any gender differences in experiencing problems at work and in the ways men and women deal with problems encountered. It found that women are less likely than men to use the ETS to enforce their employment rights, even though women represent just under half of the workforce, are equally aware of their employment rights as men, are just as likely as men to experience problems at work, are just as likely to experience a job separation, are more vulnerable to discrimination and continue to receive, at best, 82 per cent of the pay received by their male counterparts. It was found that men and women approach experiences of problems at work in different ways, with women being less likely than men to raise a grievance against an employer in the face of unfair treatment, and more likely than men to seek advice concerning any problems experienced. Also, when women make a claim to a tribunal they are more likely than men to opt for

conciliation rather than pursuing the claim to the tribunal. This paper therefore concludes that women are less likely than men to use formal/legalistic routes to enforce individual employment rights and are more likely to use an alternative route to dispute resolution. Further research is required to throw more light on the explanations as to why these gender differences in courses of action pertain.

End notes

ⁱ For example, *Jane Hayes v Charman Underwriting Agencies*, referred to in the *Guardian*, October 1st 2002

ⁱⁱ SETA 1998 grouped all discrimination cases together, including sex, race and equal pay

ⁱⁱⁱ To estimate the rate at which men and women make applications to employment tribunals the data from the Labour Force Survey was examined for each year. The number of cases brought by men and women were estimates based on the actual number of tribunal cases registered at the ETS in the years 1997 to 2002 using the gender distributions found for each year in the Acas case management sample.

^{iv} A survey in which Genn aimed to achieve a sample of people experiencing infringements of rights

^v Thanks to Guy Weir at the Office of National Statistics for providing this data

^{vi} Survey of Acas Helpline Users 2000 and 2003; the Acas Helpline provides a national team of officers to respond to queries concerning employment relations and employment law

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