

Research Summaries

Sexual orientation and religion or belief discrimination in the workplace

2007

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

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Acas research

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Sexual Orientation and Religion or Belief Discrimination in the Workplace

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In 2006/7, Acas carried out a programme of research aimed at providing a detailed understanding of the nature of employment tribunal claims brought under the EE (Sexual Orientation) Regulations 2003 and the EE (Religion or Belief) Regulations 2003). The research programme has involved a range of research methodologies and comprised a number of strands in order to provide a diverse set of perspectives.

The strands of research are:

- An in depth exploration of the experiences of employment tribunal claimants. This study was commissioned by Acas and carried out by the independent research organisation, the Institute for Employment Studies. A separate summary is provided on this research.

The remaining strands of research were all carried out within the Acas Research and Evaluation Section and comprise:

- A statistical analysis of the characteristics of SORB cases based on Acas database of employment tribunal claims
- An analysis of information drawn from the employment tribunal claim forms (the ET1 and ET3 provided by the claimant and employer respectively)
- An examination of the nature of SORB related telephone queries received by the Acas National Helpline service
- An exploration of the knowledge and insights of experienced Acas conciliators, provided in a focus group exercise

Summaries of each strand are attached.

This research programme was funded by the Department of Trade and Industry as part of a wider programme of initiatives

undertaken by Acas to address sexual orientation discrimination and religion or belief discrimination in the workplace.

The characteristics of SORB cases: a statistical analysis

Acas has a statutory function to conciliate in claims made to the Employment Tribunal (ET). The role of Acas is to work with the parties to seek a resolution of the case and thus avoid the claim proceeding to a full employment tribunal hearing.

This report describes the findings of an analysis of the Acas database records of ET cases brought under sexual orientation and religion or belief jurisdictions. A sizeable proportion of ET cases cover more than one jurisdiction, but the main focus of this analysis is where the *main* jurisdiction was either sexual orientation or religion or belief. The cases included in the analysis were brought between February 2004 and August 2006. Only completed cases – that is where the outcome of the case had been decided - were included in the analysis. The analysis covered a total of 470 sexual orientation and 461 religion or belief cases.

Where applicable, the data has been compared with the findings from two relevant surveys: data on unfair dismissal claims extracted from the Survey of Employment Tribunal Applications (SETA) 2003 and those regarding race discrimination claims from the Survey of Claimants in Race Discrimination Employment Tribunal Cases (SETA RRA) 2005.

It should be noted that both surveys were from a slightly different time frame from the main analysis covered in the paper: SETA 2003 was based on cases completed between 2002 to 2003; and SETA RRA 2005 was based on cases completed between 2003 and 2004. These earlier studies were also based on telephone interviews with claimants rather than an analysis of database records. Any comparison between the Acas data analysis and SETA 2003 or SETA RRA 2005 should be viewed with these differences in mind.

Jurisdictions

- Religion or belief discrimination (RRD) appears to be closely aligned with the race discrimination: two-thirds of religion or belief discrimination cases had race discrimination as a secondary jurisdiction.
- No single other jurisdiction is particularly aligned with sexual orientation discrimination: a third of sexual orientation cases had no secondary jurisdictions.

- Four in ten sexual orientation cases and half of religion or belief cases had unfair dismissal (UDL) as a secondary jurisdiction.

Claimant characteristics

- Two-thirds of both sexual orientation claimants and religion or belief claimants were men, with a third of claimants in both jurisdictions being women. This is similar to both unfair dismissal claims as found in SETA 2003 and to race discrimination claims as found in SETA RRA 2005.
- Claimants from both jurisdictions were more likely to be from London than any other government office region. Religion or belief claimants were especially concentrated in London. Within Great Britain, claimants from both jurisdictions were least likely to live in Wales, Scotland or the North East.

Employer's Industry

- Seven in ten employers of both sexual orientation claimants and religion or belief claimants were from the private sector. Thus sexual orientation and religion or belief cases were more concentrated in the private sector, in contrast to race discrimination cases, of which only half are brought in the private sector, and other discrimination (sex or disability) cases, of which six in ten are brought in the private sector (SETA RRA 2005).
- In the public sector:
 - Sexual orientation claimants were most likely to be bring cases against criminal justice organisations.
 - Religion or belief claimants were most likely to be bring cases against local authorities.
 - Compared with sexual orientation claimants, religion or belief claimants were notably more likely to bring cases against education organisations.

Case outcomes

- Around half of sexual orientation cases and religion or belief cases resulted in a settlement between the claimant and the employer.
- In a quarter of sexual orientation cases and nearly a third of religion or belief cases the applicant withdrew their claim.

- These figures show that claimants bringing both sexual orientation and religion or belief cases are more likely to withdraw their claim than those bring unfair dismissal claims. Furthermore, religion or belief cases may be more likely to be withdrawn than race discrimination cases and other types of discrimination cases (SETA RRA 2005).

Settlement compensation

- Around nine in ten sexual orientation claimants and religion or belief claimants who settled their cases received a sum of money as part of the settlement.
- Of those who received a sum of money, four in ten claimants bringing either a sexual orientation case or a religion or belief case, settled for less than £2,500.
- Excluding those settlements which did not involve financial compensation, the median settlement figure was £2,748 for sexual orientation claimants and £3,000 for religion or belief claimants. This compares with a median sum of £3,000 for race discrimination cases, £1,700 for unfair dismissal cases.

A thematic analysis of ET1 and ET3 forms

This summary describes the findings on an analysis of ET1 forms and ET3 forms submitted to the Employment Tribunal (ET) by claimants and respondents respectively, on sexual orientation and religion or belief. ET1 forms are submitted by claimants and set out the grounds for their cases, including their claims of discrimination. ET3 forms are submitted by respondents (employers) and set out their grounds for resisting the claimants' allegations.

The analysis included:

- 42 ET1 forms from sexual orientation cases
- 21 ET3 forms from sexual orientation cases
- 34 ET1 forms from religion or belief cases
- 20 ET3 forms from religion or belief cases

All of these forms were submitted in 2006.

Acas has a statutory function to provide conciliation in the vast majority of claims submitted to the ET. As standard practice, Acas keeps copies of ET1 and ET3 forms for six months after a case has been completed – that is where the outcome of the case has been decided. After six months, all forms are destroyed. Therefore forms from earlier sexual orientation or religion or belief cases were unavailable for analysis.

Sexual Orientation ET1 (claimant) themes

Most of the ET1 forms said the claimant was lesbian or gay. A handful said the claimant was heterosexual and one said the claimant was bisexual.

Acts of discrimination: Bullying or Harassment

- Bullying or harassment was by far the most dominant theme of the sexual orientation ET1 forms.
- Allegations of verbal abuse and harassment were prominent in the sexual orientation ET1 forms and included name-calling, verbal threats, intimidation, being talked about by colleagues and exclusion from informal social networks. Some claimants made allegations of physical abuse, including being physically attacked or sexually harassed by colleagues.

- Allegations of less favourable treatment by managers were also present, including denying claimants informal benefits, subjecting claimants to extra scrutiny or giving them menial tasks to do.
- In some cases one person, often the claimant's line manager or another more senior person, was responsible for the alleged bullying. In other cases, multiple individuals or groups of individuals seemed to be involved. In such cases, the ET1 form sometimes included claims of a culture of homophobia within the organisation.
- Where ET1 forms referred to the length of time that the alleged bullying or harassment had occurred for, this usually amounted to a time period of up to three years.

Responses of managers

- Where bullying or harassment in relation to sexual orientation was alleged, the ET1 form usually said that managers had either been complicit in the bullying or had failed to act to prevent it.
- Where claimants had complained about the bullying or harassment or raised a formal grievance, it was felt that managers had used the grievance procedures to trivialise or dismiss the allegations. Some claimants felt that disciplinary procedures had been instigated as a result of them bringing one or more grievances, while others in smaller organisations were dismissed after having complained.

Acts of discrimination: Terms or Conditions

- Some of the ET1 forms included allegations concerning claimants' terms and conditions, occasionally without any associated bullying or harassment. Allegations included discrimination at recruitment, pay irregularities or lack of promotion

Dismissal

- Where claimants had been dismissed, the ET1 forms often suggested this was linked to the bullying or harassment. Claimants sometimes felt they had been dismissed for complaining about being bullied. Others had been dismissed following an act of gross misconduct on their part; however,

they felt they had been provoked into committing this act by long-term bullying or harassment. Other claimants had resigned but were claiming constructive dismissal, saying that long-term bullying or harassment had forced them to resign.

Impacts of bullying or harassment

- Some of the ET1 forms gave details of the impacts of the bullying or harassment on claimants. These usually amounted to effects on their health or well-being, particularly their mental health, including claims of depression or anxiety induced by the bullying. One form described the financial impacts of this, with the claimant being unable to work and about to lose his home. Some claimants had felt suicidal and one claimed to have attempted suicide.

Sexual Orientation ET3 (employer) themes

Claiming cases are invalid

- Some ET3 forms said up front that the claimants' case was invalid, usually due to being brought over three months after the alleged acts of discrimination.

Denial

- In virtually all the ET3 responses to sexual orientation claims, employers denied the claimants' allegations. In cases where specific instances of bullying or harassment had been described in the ET1 form, employers nearly always denied that these had occurred. In a few cases, the ET3 forms admitted that some acts mentioned in the ET1 form had happened, but stated that the acts were not motivated by prejudice.
- Some of the ET3 forms also suggested that the claims made in the ET1 form were too vague and should be dismissed on the basis that they did not refer to specific acts of incidents
- Other ET3 forms also stressed the employer's equal opportunities policies, occasionally adding that they had taken all reasonable steps to prevent bullying or harassment from occurring in the workplace.
- Where managers had been accused of bullying or harassment, the ET3 form sometimes stated that the managers named had in fact treated the claimant well and been concerned for their welfare.
- One of the ET3 forms said that the claimant saw the alleged bullying or harassment as a joke and had joined in with the culture of banter in the office.
- Where claimants had instigated internal grievance procedures due to bullying or harassment, the ET3 asserted that the claimant's grievances had been fully investigated and that the findings had been that the claimants' allegations had been false.
- Some of the ET3 forms stated that while the employer would have taken steps to keep the claimant's sexuality a secret, the claimant had chosen to reveal their sexual orientation to the rest of the workforce or had been open about their sexual orientation with colleagues. As a result they felt less able to protect the individual from poor or unfair treatment.

Claimant not following grievance procedures

- Other ET3 forms alleged that the claimant had not informed managers that the bullying was occurring; some of these forms stated that the first the employer had heard of the claimants' allegations was upon notification of the ET case.
- A number of forms stated that claimants had failed to follow the correct grievance procedures in place for dealing with bullying or harassment.

Reasons for Dismissal

- Where claimants had been dismissed, the ET3 forms said that the claimant had been accused of poor performance or had committed an act of gross misconduct, and that this was the reason for dismissal rather than any prejudice related to the claimants' sexual orientation.
- In some of the cases where the ET1 form had said the claimant had resigned following bullying or harassment, the ET3 form said that managers had not wanted the claimant to resign.

Use of disciplinary procedures

- ET3 forms typically stated that dismissal procedures had been followed correctly though none made specific reference to the statutory three-step procedure.
- Where dismissed claimants had been accused of an act of gross misconduct, the ET3 forms alleged that such incidents had been fully investigated by managers, together with an assertion that the subsequent decision to dismiss the claimant was the right thing to do.

Claiming cases are malicious or deliberate

- A few of the ET3 forms suggested that the claimant's cases were malicious or deliberate, being motivated by the claimant's anger at the employer for reasons unrelated to discrimination.

Admission of fault

- One of the ET3 forms admitted that '*certain inappropriate comments*' may have been made in front of the claimant.

However, this ET3 form went on to argue that the managers concerned had since been disciplined or dismissed, that the claimant had failed to instigate grievance procedures, and that the organisation had a strict equal opportunities policy and should not be held responsible for the actions of its employees.

Religion or Belief ET1 (claimant) themes

- Around half of the ET1 forms relating to religion or belief said the claimant was Muslim. The remaining half were split between: Christians; Jews; Hindus; Sikhs; those who described themselves as 'non-Catholics' bringing cases against a Catholic school; a few cases where the religion or the claimant was not specified.

Acts of discrimination: Bullying or Harassment

- Bullying or harassment was a common feature of the Religion or Belief ET1 forms.
- Allegations of verbal abuse were prominent, including: name-calling; expressions of disregard or contempt for claimants' religion or religious practices; criticism or abuse due to claimants' low level of literacy. Allegations of physical attacks or sexual harassment were also present.
- Allegations of less favourable treatment by managers included: subjecting the claimant to extra scrutiny; giving the claimant impossible deadlines; denying the claimant holidays; and denying the claimant training or development opportunities.
- In cases where one person was responsible for the alleged bullying or harassment, this usually appeared to be the claimant's line manager or another senior member of staff. In other cases, multiple individuals or groups were involved, with some claimants mentioning a culture of discrimination within the organisation.
- Where claimants revealed the length of time that bullying or harassment had continued for, this usually amounted to a period of up to two years.
- Some ET1 forms from Muslim claimants concerning religion or belief discrimination alleged that the bullying or harassment had been triggered by the July 2005 bombings in London.

Acts of discrimination: Terms or Conditions

- One group of the ET1 forms contained allegations of discrimination in recruitment or promotion. These claims usually came from non-Catholics working at, or applying to work for, Catholic schools.
- Some forms cited problems around working hours, time off or leave. These included instances of Jewish claimants having

difficulties leaving work early on a Friday and Muslim claimants having difficulties obtaining leave to celebrate Eid.

- A number of forms included allegations of pay irregularities, with claimants saying they had not been paid for annual leave or work done.
- One ET1 form included serious allegations of widespread exploitation of vulnerable workers within the claimant's organisation.

Responses of managers

- The ET1 forms suggested that managers were usually complicit in the bullying, harassment or discrimination. Where claimants had complained about such treatment, it was alleged in the ET1 that the manager had either threatened the claimant not to pursue the matter, or had dismissed their concerns.
- Some claimants felt that information provided during formal grievance procedures had not been adequately assessed. The ET1s suggested that this information had either not been taken seriously or that managers had mis-used the information to either cover up the alleged bullying or harassment or to undermine the claimants' allegations.

Dismissal

- Some of the claims appeared to revolve around an act of dismissal that the ET1 form suggested was motivated by prejudice. Such cases included a non-Catholic teacher on a fixed-term contract at a Catholic school being denied a permanent post together with cases of Muslim claimants being dismissed following the July 2005 bombings.
- Other ET1 forms included claims of constructive dismissal, where claimants felt they had been forced to resign by long-term bullying or harassment and cases where claimants had been dismissed following making a complaint (see above).

Impacts of bullying or harassment

- Some of the ET1 forms said that the claimant had developed mental health problems as a result of the bullying or harassment that had occurred, including depression or an anxiety disorder. Some forms went on to say this had caused them to go on sick leave from work and one form stated that it had negatively affected the claimant's family life.

Religion or Belief ET3 (employer) themes

Claiming cases are invalid

- Some ET3 forms responding to claims of discrimination on the grounds of religion or belief said that the claimants' case was invalid. In such cases, this was due to it being brought over three months after the alleged acts of discrimination.

Denial

- In nearly all the ET3 responses relating to religion or belief, employers denied the allegations made in the ET1 form. In all cases where specific instances of bullying or harassment had been described, employers denied that these had occurred.
- Some of the ET3 forms also argued that the claims made in the ET1 form were too vague and should be dismissed on the basis that they did not refer to specific acts or incidents.
- Other ET3 forms also mentioned the employer's equal opportunities policies as evidence of the organisation's good practice in this area
- Where managers had been accused of bullying or harassment, the ET3 form usually stated that the managers named had in fact treated the claimant well and been concerned for their welfare. One ET3 form stated that the manager may have treated the claimant badly because the manager's grandfather had recently died.
- One of the ET3 forms stated that the offensive remarks had been intended as a joke and that, at the time, the claimant had agreed that this was the case.

Claimant not following grievance procedures

- A number of forms stated that claimants had failed to follow the correct grievance procedures in place for dealing with bullying or harassment, while other ET3 forms said that grievance procedures were under way and managers were awaiting an outcome.

Reasons for Dismissal

- Where claimants had been dismissed, the ET3 forms stated that the claimant's performance had been poor or that the claimant had committed an act of gross misconduct. In such cases, the ET3 forms said that this was the reason for

dismissal rather than any prejudice related to the claimants' religion or belief.

- In some of the cases where the ET1 form had said the claimant had resigned following bullying or harassment, the ET3 form said that managers had not wanted the claimant to resign.

Use of disciplinary procedures

- Such cases also stated that dismissal procedures had been followed correctly.
- Where dismissed claimants had been accused of an act of gross misconduct, the ET3 form alleged that such incidents had been fully investigated by managers, together with an assertion that the subsequent decision to dismiss the claimant was the right thing to do.

Claiming cases are malicious or deliberate

- Two of the ET3 forms suggested that the claimant's case was malicious or deliberate. One said that the claimant had told the employer, a Catholic school, that their claim was a test case against a Catholic school; another ET3 form said the claim was part of a series of attacks by a group of former employees who had set up a rival business.

Arguing legitimacy of discrimination

- The ET3 forms from Catholic schools argued that it was lawful for them to favour candidates for jobs or promotion who were practising members of the Catholic church, citing Regulation 39 of the Employment Equality (Religion or Belief) Regulations 2003 and section 60 of the Schools Standards and Framework Act. One ET3 form added that there was an agreement between the school and the local authority that this should be the case.

Admission of fault

- One of the ET3 forms admitted that a manager, who the ET1 form had accused of long-term bullying, had physically pushed the claimant. However, the ET3 asserted that this was in response to the claimant being physically aggressive towards the manager.

Survey of calls to the Acas Helpline

Acas runs a National Telephone Helpline used by employees, employers and representatives and providing information and advice on a wide range of employment related matters. Each year Acas handles around one million calls.

This is a summary of the findings of a survey which examined calls received by the Acas National Helpline which were felt by Helpline staff to be related to sexual orientation discrimination or religion or belief discrimination. The report is based upon 110 responses completed online by Helpline staff via the Acas Intranet. Fieldwork took place in October and November 2006. Staff were asked where possible to provide information on any calls that they received over this period that related to either form of discrimination. The survey provides an indication of:

- The characteristics of the calls and the callers themselves
- The reasons why callers rang the Acas Helpline.

As such it provides an insight into employee and employer concerns around sexual orientation and religion or belief discrimination in the workplace.

Characteristics of the calls and callers

- Only a very small proportion of the calls received from *employers* were about sexual orientation discrimination, far fewer than the proportion of calls from *employees* about discrimination on the grounds of sexual orientation. This contrasted with calls about religion or belief discrimination, where the proportions of calls from *employees* and *employers* were similar.
- Around half of calls from *employees* about religion or belief discrimination were from men and half were from women. In contrast, seven in ten calls from employees about sexual orientation discrimination were from men.
- In a majority of cases, Helpline staff felt able to use information provided during the call to assess the sexuality of *employees* calling about sexual orientation discrimination. In over three-quarters of these calls, the callers were thought to be lesbian, gay or bisexual.
- Calls from *employees* about religion or belief discrimination were most likely to be related to Christianity (four in ten) followed by Islam (a third). In contrast, calls from *employers* were mostly to do with Islam (three quarters) with only one in twenty calls from employers being to do with Christianity.

Reasons for the call

- Nearly all calls from employees and over eight in ten calls from employers involved queries regarding specific problems or cases rather than being more general requests for information for example on policy or procedures.
- Over eight in ten calls about sexual orientation discrimination were thought by Helpline staff to relate to bullying or harassment. In contrast, only a quarter of calls about religion or belief discrimination were seen as involving bullying or harassment.
- While two-thirds of calls from *employees* were thought by Helpline staff to involve bullying or harassment, this applied to only one in twenty calls from *employers*.
- Seven in ten *employees* calling about sexual orientation discrimination were thought by Helpline staff to be being personally bullied or harassed. However only a quarter of *employees* calling about religion or belief discrimination seemed to be experiencing treatment of this kind.
- The most prominent group of calls from *employees* about sexual orientation discrimination were those from gay or lesbian employees who were being verbally abused.
- Calls from *employees* about religion or belief discrimination predominantly related to working hours, time off or leave. These calls included issues such as Muslim employees querying their right to paid leave for religious festivals and Christian employees experiencing problems around not working on Sundays.
- The most prominent theme amongst calls from *employers* about religion or belief discrimination was again to do with working hours, time off or leave. These calls tended to involve queries about whether Muslim employees were entitled to time off for prayer or paid leave for Eid or a pilgrimage.
- Only a small number of calls related to issues around workplace dress codes including the issue of women wearing the veil at work. This is perhaps surprising given the media attention these issues were receiving during the fieldwork period.

The experience of Acas conciliators in dealing with sexual orientation discrimination and religion or belief discrimination cases

This report describes the findings from a qualitative study exploring the views and experiences of Acas conciliators all of whom have handled employment tribunal cases where the jurisdiction of the claim concerned alleged discrimination on grounds of sexual orientation or discrimination on grounds of religion or belief. The study consisted of four focus groups, two per jurisdiction, conducted by Acas Research and Evaluation Section. Fieldwork took place between October and November 2006. The main themes emerging from conciliators' experiences of sexual orientation and religion or belief cases are set out below.

Characteristics of cases

- Discrimination cases in general, including sexual orientation cases and religion or belief cases, may be differentiated from other types of employment tribunal case as follows:
 - More complex
 - More subjective
 - More emotional for both claimants and respondents
 - Individuals are more likely to be named as respondents.

Background to claims

- In general, conciliators did not see specific differences between the backgrounds of sexual orientation cases and those of other types of discrimination case. However, conciliators feel that sexual orientation cases are largely to do with bullying or harassment, particularly verbal abuse.
- Conciliators did not see any clear differences between religion or belief cases differed and other types of discrimination case. However, religion or belief cases were felt to be due to a wider variety of factors, including:
 - Bullying or harassment or unfair treatment
 - Terms and conditions including less favourable treatment and especially lack of promotion
 - Disputes over appearance or dress at work
 - Exclusion from work activities involving alcohol.

- Managers may not deal effectively with problems when they occur, and this may be due to a lack of management training or diversity training or a lack of support from Human Resources departments.
- The application of internal grievance procedures may make problems worse where claimants feel they are used to cover up what has happened.
- Larger companies may have more resources to deal effectively with problems at an early stage; smaller organisations may have a lack of procedures, meaning that disputes are not resolved in the workplace and result in an employment tribunal application.

Respondents' grounds for resistance

- Conciliators felt that it was a particular feature of all discrimination cases that respondents are more likely to deny the claims being made by the claimant than in other types of cases.
- Larger organisations may also cite their policies and procedures in their defence.
- In cases involving bullying or harassment, respondents may sometimes claim that the claimant joined in with the banter or comments being made.

Advice and Representation

- Conciliators felt that the quality of advice and representation varies according to the degree to which those providing the advice or representation specialise in employment law.
- Knowledgeable law centres, trade union representatives or citizens advice bureaux may provide the most effective advice or representation; family members may provide some of the least effective advice or representation.
- There may be considerable geographical variation in the availability of advice and representation for claimants, with the widest range available in London and other large conurbations. In rural areas, claimants may struggle to find any advice or representation.
- Larger employers are more likely to be represented and can afford the most effective representation.

Case Outcomes

- In conciliators' experience, barriers to reaching a settlement may include: claimants feeling that '*justice*' could only be achieved by 'having their day in court'; claimants having unrealistic expectations about the amount of money they may win; respondents being adamant that they did nothing wrong.
- Claimants may withdraw cases for a range of reasons including: being frightened by the nature of the employment tribunal process; respondents' solicitors sending letters to claimants that claimants perceive to be threatening; being abandoned by their representative; suffering adverse effects on their mental health due to bullying or harassment at work.
- Claimants may not get what they are looking for from an employment tribunal hearing. Many claimants want '*justice*' rather than a sum of money.

Impacts of Discrimination: Mental Health Problems

- Some conciliators felt that claimants may suffer adverse effects on their mental health, including stress or depression, as a result of bullying or harassment.
- Claimants may agree to settle when they feel too ill to cope with an employment tribunal hearing.

Exploring the impact of the EE (Sexual Orientation) Regulations 2003 and the EE (Religion or Belief) Regulations 2003:



The Experiences of Sexual Orientation and Religion or Belief Discrimination Employment Tribunal Claimants

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In 2006, Acas commissioned the Institute for Employment Studies to conduct a qualitative study exploring the experiences and views of employees who had been involved in sexual orientation or religion or belief employment tribunal cases. This Document provides a summary of that research. An over-arching summary is presented followed by findings which draw out the particular experiences of the two groups of claimants. This research was one element of an Acas programme of research on sexual orientation and religion or belief funded by the Department of Trade and Industry.

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

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

One strong theme among both sets of claimants was the tendency of their employers to respond to their complaint by seeing them as the problem, rather than the victim of unfair treatment. However while religion or belief claimants were typically dismissed, sexual orientation claimants tended to have involved disciplinary action or demotion for work performance until they felt they had no option but to resign. For a majority, dispute resolution procedures were

seen to be flawed, often exacerbating the experience of discrimination rather than resolving it.

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

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

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

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

Sexual Orientation Summary

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

Sexual orientation sample

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

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

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

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

Alleged act of discrimination

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

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

There were also claimants who felt that their employers were using disciplinary procedures unfairly or excessively to force them from the organisation and would ultimately use these procedures to dismiss them. These claimants invariably felt that the way the

disciplinary procedures were used and the judgements that were made were disproportionate to the professional mistakes of which they were accused. They also reported that, in their view, heterosexual colleagues were treated differently. They also felt that the reasons given for the use of the disciplinary procedures masked prejudice on the grounds of their sexual orientation.

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

From workplace dispute resolution procedures to employment tribunal claims

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

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

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

discrimination and these claimants tended to resign and submit an employment tribunal claim.

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

Advice, support and representation

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

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

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

The employment tribunal experience

Since none of the sexual orientation cases in the study went to a full hearing, claimants had limited experience of the employment tribunal service other than in the administration of their claim and in pre-hearing procedures. Those who settled did so at various stages in their claims but typically immediately after a pre-hearing review or just before a final hearing. Settlement amounts varied and settlement agreements generally contained a confidentiality clause regarding this amount. Those who settled tended to follow the advice of their representative regarding the timing and appropriateness of the settlement. Those without representatives seemed to feel at a particular disadvantage relative to their respondents.

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

Impacts and outcomes

Claimants reported a range of impacts including mental and physical problems and difficulties in finding employment. Claimant's employability was affected by difficulty in obtaining a reference and/or self-confidence and esteem issues attributed to the long experience of bullying. There was evidence of the experience leading to claimants changing their career or the place where they lived following on from their employment tribunal application.

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

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

Religion or Belief Summary

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

Religion or belief sample

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

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

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

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

Alleged act of discrimination

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

Discrimination over terms and conditions of employment was a major theme of religion or belief cases. Typically the claims related to an employer not accommodating the particular religious needs of

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

Where bullying and harassment occurred it was generally in the form of intimidation during a dispute where claimants felt that their employers were discouraging them from pursuing their case. There were also examples of verbal abuse, intimidation and sabotage of work by colleagues.

From workplace dispute resolution procedures to employment tribunal claims

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

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

Advice, support and representation

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

claimants felt that they would have been successful, or not have settled, had they had access to legal expertise.

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

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

The employment tribunal experience

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

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

Impacts and outcomes

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

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

