Snakes and Ladders
Advice and Support for Discrimination Cases in Wales

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Foreword

I am delighted to write the foreword to this important piece of research by a distinguished team from the University of Wales, Bangor. “Snakes and Ladders” explores the experience of people who have suffered discrimination in Wales, charts the hurdles they have to overcome in order to seek redress, and makes recommendations for change.

This report has its origin in the widely held belief that people in Wales are less likely than citizens in other parts of the UK to bring cases of discrimination through the Employment Tribunal system, and that even when cases are registered they are more likely to be withdrawn and are less likely to be successful than elsewhere. The Commission for Racial Equality, Disability Rights Commission, Equal Opportunities Commission and Legal Services Commission are to be thanked for commissioning and publishing this valuable research exploring these propositions. Its publication is itself an example of the partnership working between equality organisations which has developed in Wales, particularly in the context of devolution. The report suggests, however, that much more can be done to improve partnership working in Wales generally.

Of particular concern is the report’s portrayal of Wales as an "advice desert", with too few sources of quality advice in the complex field of discrimination, especially in rural Wales.

Lack of co-operation exacerbates these problems. The report calls for better co-operation between advice and equality agencies and a programme to share and transfer expertise. Often discrimination problems go undetected by frontline general advice providers, so improvements are needed here, as well as between specialist advice providers to ensure adequate support to challenge discrimination, including cases of multiple discrimination.

Those who suffer discrimination are often the most vulnerable in our society. Addressing these problems will not only be good for specific individuals, it will benefit our society as a whole. I am sure that all those committed to equality and social justice will be interested in the findings of this research, and will wish to consider the part that they can play to improve the situation.

Carwyn Jones AM
Minister for Open Government and Equality

February 2003
SNAKES AND LADDERS

Advice and Support for Employment Discrimination Cases in Wales

Introduction
The Equality Statement, issued by the government in November 1999, set out an agenda for extending the scope of equality legislation and laid down a commitment to achieving greater consistency in the legal protection available to a range of disadvantaged groups. It states, "We will ensure that the right legislative framework and institutional arrangements are in place and that information, guidance and other support is available to challenge discrimination and deliver fair treatment to allow everyone to develop and contribute to their full potential" (Cabinet Office, 1999). Following devolution, the Government of Wales Act (1998) imposes a legal imperative on the Welsh Assembly Government to promote equality of opportunity, with equality clauses that effectively confer ‘positive rights’ on all citizens of Wales. To this end, it is necessary for territorial disparities to be recognised and addressed. There is a considerable dearth of employment advice in Wales such that it may well be that applicants from Wales do not enter the tribunal system on equal terms with their counterparts in other parts of the UK and may not be able to secure comparable outcomes. It may also mean that potential applicants are deterred from entering the system.

Research Aims
This research aims to outline the current pattern and level of information, advice and representation for people in Wales who may be seeking redress under the equalities legislation in employment discrimination. It seeks to assess the likely impacts of existing support on tribunal outcomes, both in terms of quality and quantity. It attempts to identify the specific barriers to accessing advice, information and support in all areas of discrimination (race, gender and disability) as perceived by both the providers and applicants within the system, as well as other key stakeholders. It makes recommendations for change in order to achieve a more efficient and effective national system of complainant aid.

Research Methodology
Information was obtained from a number of sources in order to throw light on the existing arrangements for complainant aid in employment discrimination and its impact on outcomes in the areas of race, gender and disability.

- A review of the available literature, research, policy documents and government reports relating to developments in the equalities field and the operation of Employment Tribunals was conducted.

- The research group consulted leading academics and experts in the field of discrimination in Wales, including the commissioners of the equality
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bodies, the Legal Services Commissioner and equality advisors at the National Assembly for Wales.

- Statistical information on tribunal outcomes for the region in which Wales forms a substantial part was obtained from the Public Register. The statistical analysis reviewed trends across the period 1996 to 2001 for race, gender and disability. The analysis considered the number of discrimination complaints registered in Wales by the Employment Tribunals and compared these with England and Scotland. It took into account the relative population sizes of the different countries by comparing the number of cases registered in the differing countries per 100,000 of the estimated 1998 population. It considered the number of complaints registered for sex, race and disability discrimination in Wales and compared these with the equivalent returns for England and Scotland.

- The tribunal reports of 116 cases of discrimination heard by the Employment Tribunal in Wales in 1999 and 2000 were analysed. Seven reports were discarded because information relating to key variables was missing from the data set.

- Researchers attended the meetings of the newly established Employment Rights Network Wales over the period of the study, observed tribunal hearings, attended a training day for Chairs and Panel Members and attended meetings of the Employment Tribunal Users group. The minutes of these groups were examined for the period 1999-2002.

- In-depth semi-structured interviews were undertaken with five key stakeholder groups. Those included in the qualitative study were: Chairs and Panel members serving in the Employment Tribunal Region 6; professional advisors and information providers in statutory and community organisations and three groups of applicants taken from the three areas of discrimination - sex, race and disability.

Discrimination in the Welsh Context

Wales has a poor historical record on equality of opportunity. The newly-established Welsh Assembly Government has put in place a forthright equalities agenda but it will take time for the impact of these measures to be felt across Wales. In post-devolution Wales, many organisations have experienced considerable disruption and, in some cases, reorganisation as constitutional change has highlighted the need for a specifically Welsh focus, the collection of data specific to Wales and required liaison between organisations within Wales. The infrastructure to enable these new lines of communication is only just evolving, as previously many organisations operated from England-based central offices.

A continuing concern in Wales amongst service providers is that individuals experience greater difficulty in exercising their rights and gaining redress than
individuals living elsewhere in Britain. Research conducted by the Equal Opportunities Commission in Wales in the early Nineties lent some support to this perception in finding that, when compared with the rest of Britain, the Employment Tribunal (ET) region covering Wales had: the lowest number of sex discrimination cases taken; the highest rate of withdrawals and private settlements; and the lowest rate of success at ET. In the period 1997-99, the same research project was extended to include race and disability and found significant differences in outcome when comparing Wales with other parts of Britain.

Regional disparities, such as those suggested by this early research, can be explained by a number of factors including the organisation of the tribunal system itself, the collation of statistics, variation in judicial interpretation, the impact of mediation and conciliation services and, importantly, the availability and nature of information, advice, support and representation to those in the process of seeking redress.

Over and above these considerations it may be the case that national/regional variations can be accounted for, partly, by the nature of employment in Wales or the employment background of the individuals concerned. In Wales, a number of structural factors clearly have a bearing on outcomes. Changes in the nature of the labour market have affected the job security of individuals, particularly in rural areas. Wales has employment rates that are consistently lower than equivalent GB rates. There are a higher number of women workers in Wales concentrated in the part-time low-paid sector by comparison with other parts of the UK. The pay gap in Wales stubbornly persists, with average hourly and weekly earnings of women still much lower than those of men. Discrimination has been identified as a key factor in the gender pay gap. The available evidence suggests that economic activity rates are lower amongst ethnic minorities in Wales than whites and particularly low amongst ethnic minority women. Such labour market exclusion extends to disabled people in Wales with a number of barriers, both physical and attitudinal, impeding access of disabled people to the workplace. In addition, the Welsh labour market is characterised by a high number of small and medium sized enterprises (SMEs) where the support mechanisms for sustaining complainants, such as trade union membership, may be lacking. All these factors have a part to play in understanding the patterning of discrimination in Wales.

The Tribunal System in Wales
Wales has never had a system of Employment Tribunals that is particular to itself. At present, a fully integrated system covers both England and Wales. In Scotland and Northern Ireland the situation is different. They benefit from autonomous systems under their own President. Until March 1987, Wales was not regarded as an entity at all. Half the country was administered from Regional Offices situated in England. The Regional Office in Cardiff dealt with
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south Wales, Hereford, Worcester and Gloucester. On reorganisation, the whole of Wales became part of the administrative area known as Region Six.

It is suggested that some specific factors in the operation of the Tribunal System in Region Six may have a bearing on outcomes. Factors, such as the location and accessibility of tribunal hearings, limits on the use of part-time Chairs, delays in the system and the limited implementation of the provisions of the Welsh Language Act, may present barriers for some applicants. Further it has been suggested that limited training opportunities for Chairs and panel members and lack of diversity amongst Chairs and panel members are factors that impinge on the Service’s ability to respond appropriately to the demands of equality proficiency.

Discrimination Cases in Wales
Every year, the number of discrimination cases coming before the tribunal increases. This is unlikely to change. Sex discrimination registrations in Wales (Region Six of which Wales forms the largest part) per 100,000 population are steadily increasing. Registrations for race are consistently lower than England or Scotland. Registrations for disability are lower than England or Scotland. The demand for complainant aid is set to rise substantially. In some instances an individual's grievance may have an element of discrimination coupled with some other type of employment malpractice such as unfair dismissal, or the individual may be subjected to discrimination on two or more fronts, such as race and gender. It is widely acknowledged that individuals presenting multiple claims may find negotiating their way through the system even more precarious given that they fall between the specialist agencies. However, what these figures cannot reveal is the level of unmet need - those who have been subjected to some form of discrimination but who do not pursue a claim against the employer in the employment tribunal.

Applicants achieve representation at tribunal in about 60% of cases but the quality of representation is variable. In 40% of cases, applicants represent themselves. The success rates at tribunal between England, Scotland and Wales are roughly consistent.

The Provision of Advice and Support
Advice provision in Wales is fragmented, disjointed and sparse, with few trained and experienced specialists in this complex area of the law. Access to the available specialist support is ad hoc and more akin to entering a lottery than subscribing to a formalised system of support. It is the few, and only those well-equipped, who are using the system, but even for them the pathways are complex and the obstacles are many. Many generalist workers lack the training to advise appropriately and refer clients. Too few specialist workers benefit from any system of accreditation of the quality of their work. Both generalist and specialist advisors fail to share information and expertise when handling cases with the net result that expertise is lost to the case, people are passed from pillar to post and cases of multiple discrimination may
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be poorly served. Liaison between the major players and, in particular, liaison between the unions and mainstream advice providers has been demonstrated to be poor. There is a need for a system based on constitutional alliances, rather than one reliant on personal and informal contact.

By all accounts, funding of advice per capita at generalist level is lower than elsewhere in Britain. Existing funding arrangements for front line advice providers are inadequate and unstable.

Users’ Experience of the System
The tribunal system itself is not the best way of dealing with discrimination. Only the few are equipped to negotiate the system and very few obtain successful outcomes. As has been demonstrated, the process of seeking redress is marred by obstacles and barriers. In many cases, organisations do not shift their practices as a result of an individual complaint. In addition the legislation is limited. Changes in workplace practices and better systems of internal grievance and mediation are fundamental.

In all three areas of discrimination - race, sex and disability - there are issues unique to the particular discrimination. However, factors common to all those who have suffered discrimination in Wales indicate that what is needed is a system of expert advice which might include referral to counselling support. It should be proactive and well known to potential users, and it should offer early and appropriate information, advice and support. There should be referral to expert opinion on legal matters, eligibility criteria, and likely outcomes and consistent and integrated support through the process of complaint. Such a service would ideally assist in the reintegration of the claimant into the workforce.

Main Findings

- There is a significant information gap in Wales. Public awareness of rights and of the role and function of key agencies of redress is low.
- Applicants often experience persistent discriminations over a long period of time and yet fail to define their experiences as discrimination within the context of the law.
- The pattern of advice-giving agencies in Wales reveals substantial 'advice deserts' with whole areas of Wales having no specialist employment provision and restricted access to generalist services.
- There is lower per capita funding of generalist providers in Wales by comparison with England.
- Applicants secure representation at tribunal in approximately 60% of cases, although the quality of representation is variable. In approximately 40% of cases, applicants represent themselves.
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- Generalist advisors lack the training and support appropriately to identify discrimination cases. Consequently, the quality of advice-giving from generalist providers, such as CABx, solicitors, ACAS and the trade unions, in Wales is very variable.

- Training of specialist advisors is inconsistent.

- Specialist expertise within the Employment Tribunal panel membership is not being drawn on consistently. There is a need to ensure development of specialist discrimination expertise amongst members through increased training and the establishment of a discrimination panel.

- The referral system is unsystematic with no formalised protocols on pathways to advice and support. The current system is fragmented and not conducive to client need in terms of providing for a smooth and coherent transition through the process of seeking information and advice, gaining representation and/or support in finding resolution to the issue. Users experience being shunted from pillar to post between a number of agencies and frequently do not receive a satisfactory service.

- The system of complainant aid is characterised by poor co-ordination. Advice workers work as single operators and co-ordination between agencies is ad hoc and reliant on personal and informal connections.

- Transfer of expertise is unsatisfactory. Training/learning and the sharing of expertise are all weak with no strong information pools for advice givers or comprehensive system for the accreditation of standards across Wales.

- There is a lack of diversity amongst Chairs and panel members. There is a need to target recruitment to ensure representation from minority groups.

- No thoroughgoing audit has been conducted of the accessibility of tribunal hearings or key advice-giving agencies for disabled people.

- Bilingual provision of advice giving is sparse.

- High levels of stress characterise users’ experience of attempts to gain redress for their grievance. Emotional costs often far outweigh the benefits of proceeding with a case and therefore applicants look for a cluster of qualities in advice-givers, including emotional support.

- The limits on ‘legal aid’ eligibility restricts the possibility of redress for some applicants.

- It is not possible statistically to disaggregate data on tribunal applications, cases or outcomes specifically for Wales which constrains attempts to monitor impacts of the Welsh equalities policy agenda.

- In terms of the settlement of cases, the withdrawal rate in Wales appears to be higher than that of Scotland or England.
POLICY RECOMMENDATIONS

Addressing the Information Gap
The study reveals that rights awareness amongst applicants and potential applicants is low, as is their knowledge of the role and function of key agencies. The challenge in Wales is to develop a more informed, rights aware populace by creating a more integrated and substantial network of information bases. Information about key agencies, their role and function, needs to be more readily available via allied statutory services, such as job centres, social work departments, clinics and schools, as well as via community informants in voluntary sector organisations. Such critical signposters need to be adequately resourced. Use of the Internet is increasing and this is a vital mechanism of community support and information sharing for marginalised groups as well as a source of factual information. Efforts should be made to capitalise on this development.

The equality commissions should:

- Better advertise their role and more explicitly clarify the level and extent of their commitment to casework. They should continue to promote rights awareness using the full range of media, including developing access to their websites. They should consider ways in which they could use access points, such as job centres, doctors’ surgeries, schools, colleges and community organisations, more effectively. The commissions could capitalise more significantly on cases won at tribunal for publicity purposes in order to build confidence in the community.

- Undertake further research on the use of helplines with the focus on what use individuals make of the information provided.

- Consider a presence for the commissions in north Wales in parallel to the north Wales office of the DRC.

- Establish and build strategic partnerships with other networks of advice providers, including the Law Society, NACAB, the Advice Services Alliance, RECs, RNIB and other disability organisations and the TUC, to permit them to deliver more effectively strong information at first-tier level to enhance effective signposting.

ACAS could:

- Clarify their role and publicise it more effectively to potential applicants.
The Legal Services Commission could:

- Review the accessibility and dissemination strategy of parts of their directory, including the list of solicitors with employment expertise and CABx employment specialists in order to improve access for claimants to specialist advisors (i.e. mini directories).

Building the Infrastructure

The study has demonstrated the existence of vast 'advice deserts' in Wales in which the quality of generalist advice is variable and the availability of specialist advice is non-existent. There is a need for the identification of earmarked specialists beyond the existing LSC contracts in all areas of Wales. In rural areas, outreach work appears to be vital to improve access to justice for very marginalised individuals. One way of ensuring consistency of coverage would be the establishment of Employment Advice Consortiums with formalised constitutional links between major providers. As yet, no thoroughgoing audit of funding of advice provision has been undertaken.

The National Assembly for Wales should:

- Consider the provision of advice services for discrimination cases as part of the strategy to address social exclusion in order to ensure the provision of advice and support services to those people who are ineligible for publicly funded legal assistance.

The Legal Services Commission could:

- Co-ordinate the establishment of Employment Advice Consortia. These bodies, possibly four in total, would comprise a partnership of key providers from the statutory, independent sectors and be charged with the responsibility of delivery of effective services for the area served. Each consortium would monitor and evaluate need in their area, establish the framework for strategic development of services and ensure good quality localised coverage.

- Encourage more advice agencies to become accredited with the LSC Quality Mark and extend LSC contracts to build the number of specialist providers across Wales.

- Support an audit of the funding of advice services in Wales in conjunction with the Welsh Assembly Government, the Welsh Local Government Association and in co-operation with major service providers such as NACAB, TUC and Race Equality Councils.
The Legal Professional Bodies should:

- Assist the co-ordination of a Free Barrister service for north and mid Wales and facilitate the extension of the existing South Wales Free Representation Unit to include other key players, especially the commissions and solicitors.

Trade Unions should:

- Develop a more consistent network of specialist advisors for discrimination cases.

Training and Accreditation

The current system of training of generalist and specialist advisors is partial and variable. At a generalist level, providers require consistent and additional training and development in order to provide a service that accurately identifies and appropriately refers cases to the specialists. This is critical in relation to CABx providers, trades union branch officers and other first-tier workers. At a specialist level, the picture is again characterised by ad hocery, with few providers benefiting from consistent and ongoing quality training. The basis of a national standard of competency for Employment Advice exists and is overseen by the LSC (the LSC Quality Mark). This could be reformed and extended to ensure standardised and good quality advice-giving in all parts of Wales. In addition, the accreditation of a national qualification in advice work is required. Within the ET Service there is a need to promote the development of specialist expertise.

The ET service should:

- Increase resources for the training of Chairs and Panel Members and make more effective use of specialist expertise amongst the members with a view to establishing a 'discrimination' panel.

The equality commissions should:

- Support the development of the Employment Rights Network Wales in order to improve liaison, quality of training, competency development and the sharing of expertise.

Colleges of Higher and Further Education in Wales could:

- Consider the accreditation of courses towards a national qualification in advice work.
Trade unions should:

- Ensure that local representatives are more highly trained in discrimination issues and their areas of expertise identified and deployed more effectively.

NACAB could:

- Ensure that the training of generalist advisors be tailored towards the more effective identification and referral of discrimination cases.

The Law Society and/or Bar Council should:

- Give consideration to following the Scottish Law Society’s lead in providing for expert status accreditation based of peer review for employment discrimination work for solicitors.

Co-ordination and Transfer of Expertise

Co-ordination between major agencies in the field is weak. This is particularly pertinent in the light of the fact that many discrimination cases involve multiple jurisdiction. To enhance effective liaison and referral, more formalised systems are needed. In order to steer such strategic developments there is a need for an appropriately resourced high level co-ordinating body. This body would be responsible for disseminating best practice across the country and building the mechanisms to facilitate the transfer of expertise. It would be responsible for initiating and overseeing training developments and research programmes, for identifying key statistical indicators that adequately measure the system in Wales and pressing for the collection of the relevant data. It could act as a major conduit for user views through links with the Employment Tribunal User groups and the National Assembly of Wales, as well as the major Equality bodies. Although in its embryonic form, the Employment Rights Network Wales has this potential.

The National Assembly for Wales should:

- Give consideration to funding a high level co-ordinating body responsible for strategic developments.

The Legal Services Commission could:

- Establish formalised channels for the transfer of expertise between employment specialists and those at general help level through contracting specialist providers to engage in capacity building.
The equality commissions should:

- The CRE in particular - consider the identification and development of a core REC earmarked and funded for specialist casework support and advice to which other generalist providers across Wales, including other RECs, could make referral for specialist support in race cases.

NACAB could:

- Establish strategic partnerships between CABx in order for specialist expertise to be available as a resource to a network of bureaux, following the model of the Special Support Unit.

Trade unions could:

- Develop better links between branch and region and strengthen the procedures for access to discrimination specialists without delay.

Statutory agencies, such as job centres, social security offices, social services, could:

- Develop a procedure for the appropriate identification and referral of discrimination cases.

Meeting Client Needs

A number of obstacles exist within the system which militate against client satisfaction in pursuing claims of discrimination. In addition to accessible and good quality information and advice, claimants require continuity of service to be assured of the link between advice and representation. In addition, this study makes clear the need for emotional support and counselling in the process, which could be provided by workplace support groups and specialist community groups. Mediation is critical. The LSC pilot initiatives in mid Wales demonstrate the potential of formalised partnership arrangements for the delivery of a comprehensive mediation service. Such pilots could be extended and developed across Wales.

An audit of access to, and the amenities within, tribunal locations should be conducted particularly in relation to disabled users. There is also a need to recognise the needs of those whose first language is not English in advice provision in Wales. Welsh language provision needs to be monitored and research is urgently needed not only to establish the level and quality of provision but also to review the satisfaction of Welsh national origin claims in employment.
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In terms of Welsh language developments, greater co-ordination and service support is required for the ETS and other tribunals to offer an effective and comprehensive service.

Key agencies in the field need to reflect the diverse nature of Welsh society in their personnel profiles.

The Lord Chancellor’s Department should:

- Widen the eligibility criteria in order to extend the number of people eligible for publicly funded assistance.
- Extend public funding of discrimination cases to include representation at tribunal.

The Law Society and/or Bar Council should:

- Consider standardising the fee arrangements and make provision for user friendly information on how contingency work is funded.

The ET service should:

- Continue to make efforts to establish an office in north Wales with a permanent and full-time Chair.
- Establish clear targets for the recruitment of lay members in order to promote greater diversity. In this respect we endorse the Hepple Report recommendation that: ‘An equality scheme for the employment tribunals should set targets for achieving lay membership of not less than 40% women by 2003, and 50% by 2006 and a percentage that reflects the proportion of ethnic minority communities in each region by 2006’. In addition, Employment Tribunals need to maintain consistent standards in relation to targeting disabled people.
- Establish a target for the recruitment of Welsh speakers amongst the lay membership of not less than 20% in this respect.
- Consider establishing (along with other tribunals) a specialist support unit to advise and assist individual tribunals on Welsh language service matters, to supervise hearing arrangements where Welsh is to be used and to provide specialist translation services.
- Conduct an ongoing review of the premises being used, in terms of accessibility generally, but particularly in relation to disabled users.
- Continue to make efforts to strengthen the ET User Group as a forum for enhanced liaison between advice providers and the Service and as a more effective channel for communicating the needs of service users.

The Equality Commissions should:
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- Consider how they promote their services amongst the Welsh speaking community and monitor the use of bilingual services.

The Legal Services Commission could:
- Extend the framework for a system of third party independent mediation (as demonstrated by pilot initiatives in mid Wales) to other areas of Wales.

Trade unions could:
- Follow best practice in the provision of telephone support for workers experiencing difficulties at work.

ACAS should:
- Consider a more proactive role related to rights-based work moving beyond communication and conciliation to an equal opportunities role.

Addressing the lack of statistical information
The report finds that the analysis of ET outcomes is necessarily limited by the lack of statistical integrity for the country. If policy makers in Wales are to be in a position to track trends and to monitor outcomes then there is an urgent need to address the difficulty of producing accurate, detailed and robust data for Wales that can be subjected to comparison.

The ET service should:
- Ensure the production of, and regular output of, ET statistics disaggregated for Wales. It is proposed that the designation ‘a Welsh case’ should refer to claimants who live or work within Wales, irrespective of where the case is being heard.

ACAS could:
- Increase regional monitoring particularly in relation to the withdrawal rate in Wales.

Issues and Challenges
In post-devolution Wales a number of key developments, both legislative and institutional, have forged a new equalities agenda. This agenda is being given a strong steer by the Welsh Assembly Government. Against this backdrop the Government has announced proposals for the creation of a Single Equality Body with the aim of harmonising the equality legislation. The implications of this proposal are currently being debated but will necessarily include discussions about the institutional framework for resolving discrimination cases. Whatever the outcome, the mandate has been established for closer
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coordination and joint working between the equality bodies. It will, however, take time for these developments to bed in and make visible changes in organisational practice and culture in Wales.

It will also take time to convince the average worker that strong and effective systems of redress are open to the individual, irrespective of where they live and work in Wales. The challenge in Wales is to develop a more informed, rights aware populace and to build a more integrated and substantial network of complainant aid.

Whilst this study has illustrated the significance of a number of factors on how people fare in the process of seeking redress in Wales, the analysis is necessarily limited by the lack of statistical integrity for the country. If we are to be in a position to track trends and to monitor outcomes then there is an urgent need to address the difficulty of producing accurate, detailed and robust data that can be subjected to comparison.

There remain two major impediments to the strategic development of services in Wales. Neither Employment nor Legal Services are devolved responsibilities. Neither is tied constitutionally to Wales. Much will depend, therefore, on the political will of Welsh Government to lobby for enhanced service provision in Wales and for key organisations like the Welsh Local Government Association to recognise and address the need for adequate, appropriate and secure funding arrangements to underpin the necessary developments.
Introduction, Aims and Methodology

1.1 Introduction and Aims
This research was conducted against a backdrop of significant change in discrimination law at both national and international levels. The Race Relations (Amendment) Act (RR(A)A) 2000 became operational from April 2001 closely following the implementation of the Human Rights Act 1998. Key amendments to the Disability Discrimination Act (DDA) 1995 are proposed for 2004. A European Directive on the burden of proof in sex discrimination cases was implemented in 2001 and other major Directives in relation to race, religion and sexual orientation will be implemented steadily over the next two years, age being incorporated in 2006. Closer to home, we have seen the establishment of the National Assembly for Wales under the Government of Wales Act 1999 which, uniquely in the whole of Europe, places a duty on Welsh governance to have due regard to equality of opportunity for all in all its dealings. Change is also taking place in relation to bringing claims under the legislation. An Employment Act 2002 introduces fundamental changes to the resolution of disputes in the workplace and proposes other measures to streamline the tribunal process. The Hepple Report (2000) on the Enforcement of UK Anti-Discrimination legislation, Sir Andrew Leggatt's Review of Tribunals (2001) and 'Moving Forward: the Report of the Employment Tribunals Taskforce' (2002) all contain far-reaching proposals with significant implications for the equalities field. These developments reflect, in relation to discrimination, a movement for change away from reliance on state regulation and retrospective inquiries into individual complaints, towards greater emphasis on organisational change. The core of this focus is on institutional discrimination.

At the same time, the nature of discrimination in contemporary society is changing as demographics and the nature of the labour market changes. Attitudes and patterns of exclusion have been transformed and people's expectations have grown about the need for equal treatment and recognition of differences in the right to it. There have been changes in employment practices driven by equalities legislation and the related Codes of Practice, such that most large organisations now operate equal opportunities policies. Nevertheless, the current focus on organisational change does not reduce the need for efficient and effective redress procedures to ensure the availability of appropriate remedies, or the need to ensure that individuals receive appropriate support in taking their claim forward.

The present government has committed itself to carrying out an assessment of local need and to achieving better consistency of access to advice/support for those seeking redress. To this end, it is necessary for territorial disparities to be recognised and addressed. There is a considerable dearth of employment advice in Wales, such that it may well be the case that applicants

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1Cabinet Office 30th November 1999 Equality Statement
from Wales do not enter the tribunal system on equal terms with their counterparts in other parts of the UK and may not be able to secure comparable outcomes. It may also mean that potential applicants are deterred from entering the system.

This research aims to outline the current pattern and level of information, advice and representation for people in Wales who may be seeking redress under the equalities legislation in cases of employment discrimination. It seeks to assess the likely impacts of existing support on tribunal outcomes, both in terms of quality and quantity. It attempts to indicate the specific barriers to accessing advice, information and support in all areas of discrimination (race, gender and disability) as perceived by both the providers and applicants within the system, as well as other key stakeholders. It also makes recommendations for change in order to achieve a more efficient and effective national system of complainant aid.

1.2 Research Methodology

Information was obtained from a number of sources in order to throw light on the existing arrangements for complainant aid in employment discrimination and its impact on outcomes in the areas of race, gender and disability.

- A review of the available literature, research, policy documents and government reports relating to developments in the equalities field and the operation of Employment Tribunals was conducted.

- The research group consulted leading academics and experts in the field of discrimination in Wales, including the Commissioners of the Equality bodies, the Legal Services Commissioner and Equality advisors at the National Assembly for Wales.

- Statistical information on tribunal outcomes for the region in which Wales forms a substantial part was obtained from the Public Register. The statistical analysis considered trends across the period 1996 to 2001 for race, gender and disability. The analysis considered the number of discrimination complaints registered in Wales by the Employment Tribunals and compared these with England and Scotland. It also took into account the relative population sizes of the different countries by comparing the number of cases registered in the differing countries per 100,000 of the estimated 1998 population. It considered the number of complaints registered for sex, race and disability discrimination in Wales and compared these with the equivalent returns for England and Scotland.

- The tribunal reports of 116 cases of discrimination heard by the Employment Tribunal in Wales in 1999 and 2000 were analysed. Seven...
reports were discarded because information relating to key variables was missing from the data set.

- Researchers attended the meetings of the newly-established Employment Rights Network Wales over the period of the study, observed tribunal hearings, attended a training day for Chairs and Panel Members and attended meetings of the Employment Tribunal Users group. The minutes of these groups were examined for the period 1999-2002.

In-depth semi-structured interviews were undertaken with five key stakeholder groups. Those included in the qualitative study were: Chairs and Panel Members serving in the Employment Tribunal Region Six; professional advisors and information providers in statutory and community organisations and three groups of applicants taken from the three areas of discrimination - sex, race and disability. There were three main strands to the qualitative inquiry:

- perceptions of the availability and nature and operation of advice-giving services in Wales
- the experiences of applicants and potential applicants in pursuing complainant aid and taking forward a claim
- comments on particular aspects of the Welsh context in relation to pursuing claims of discrimination at work.

Full-time Chairs (two), including the Regional Chairman and Panel Members (four) serving in Wales, were interviewed. In addition, the Chair of the Association of Tribunal Members in Wales was interviewed. A request to survey and interview lay members serving in Wales was declined by the Employment Tribunal Service. The panel members who were interviewed volunteered to partake in the study.

The professionals were drawn from a wide range of organisations involved in advice giving or as advocates for the rights of those who experience discrimination. A full list of the agencies contacted is set out in Appendix C. In-depth, semi-structured interviews were conducted with over 70 advice providers - both specialists and generalists - and over 40 additional agencies were consulted.

Applicants, and potential applicants, were identified via a number of sources, including the commissions, Citizens Advice Bureaux, solicitors’ offices, press advertisements, as well as by word of mouth.
A total of 87 in-depth, semi-structured interviews were conducted with applicants or potential applicants, either by telephone or face-to-face. (n> race 24, n>gender 38, n>disability 25). In addition, focus groups were conducted in several areas of Wales in order to tap unmet need.

Sex discrimination applicants
Of the 38 people who claimed to have been discriminated on the grounds of sex, 21 women and 1 man were passed on by the EOC, 11 from CABx, 2 from the Cardiff Law Centre and a further 3 were traced through tribunal decisions. Two focus groups were held in colleges of further education, one in north Wales and one in mid Wales. Fifteen people attended in total. The majority of our contacts came from the south of Wales, from Cardiff and the valleys, three from mid-Wales and the rest from the north; Caernarfon, Bangor, Rhyl and Holywell. Eight interviewees worked in the public sector and two thirds of the women worked in large organisations. There was a wide range of occupations - social workers, managers, technicians, shop workers, nursing, police officers, drivers, barmaids, telesales, chambermaids, receptionists, teachers and cleaners. Most interviewees had a relatively short work record (less than four years), and some had occupied a series of short-term contracts. Five of the women had work records of between 11 and 18 years. The age range was between 18 and 48 years. The women we spoke to were at different stages of the ET process: indeed some had not entered it at all, having phoned the EOC helpline for information and decided not to proceed. Eight had been to tribunal (one had won her case), eight cases had settled and 15 were awaiting hearings and in the process of getting advice. Two had resolved their difficulties with their employers after contacting the EOC.

Disability discrimination applicants
25 people who had made a complaint of discrimination on the grounds of disability were interviewed. 18 were contacted via the DRC helpline, 2 from our own sources, 3 via CABx and 2 via RNIB. The largest single group came from Cardiff; others came from the valleys, Newport, Caerphilly, mid-Wales, Colwyn Bay, Mold, Bangor and Deeside. 12 of the interviewees were men and 13 were women and their ages ranged from 28 to 60. 4 respondents had been disabled since birth, 9 from between seven and thirty five years and 12 for four years or less. They had predominately been employed for many years, 13 for more than ten years. They were employed in a wide range of industries and occupations, including machine operators, care workers, administrators, managers, tool fitters, welders, and teachers. 8 of the 25 worked in the public sector. The occupational range was reflected in their educational background; 5 had degrees or a professional qualification, 4 had taken NVQ qualifications, the rest had left school between the ages of 16 and 18 years.

Race discrimination applicants
In terms of race discrimination, 25 individuals (14 men, 11 women) ranging in age from 28 to 50, were approached. In-depth face-to-face interviews were
conducted with 16 individuals who had proceeded with discrimination claims and a further eight contacts made with those who had experienced discrimination at work but had not invoked formal grievance procedures. Of the 25, 16 were traced through the CRE, 4 via tribunal reports and the remainder through informal contacts. Applicants were drawn from across Wales but the largest single group came from Cardiff and the valleys. They had experienced a wide range of employment. The majority were, or had been, employed in the public sector, for example, in the Health Service, the Library Service, Probation, and the Police Force. The remainder were in private sector occupations, such as television, pharmacy and the voluntary sector. The vast majority were in what could be termed middle class/white collar occupations that they had usually occupied for some time, in one case over 30 years. Given their occupational level, it is not surprising that they were relatively well-educated, either holding a higher education degree or a professional qualification.

1.3 Limitations of the Study
Employment rights disputes necessarily evoke strong emotions within applicants, especially when they are not resolved satisfactorily. Collecting evidence from applicants retrospectively inevitably means their reconstruction of events are subject to some bias and, whilst this is a potential pitfall in all research, it must be noted as a particular caveat of this study given the emotive and often traumatic nature of the experiences recorded.

Whilst every effort was made to include a wide range of applicants at various stages of the tribunal, it has to be acknowledged that these represent the tip of the iceberg in relation to the vast numbers of submerged cases of those experiencing discrimination at work but who for a number of reasons are unwilling or unable to take their claim forward.

Particular limitations relating to the statistical data are discussed in Chapter Four.

1.4 The Structure of the Report
Chapter One outlines the aims and methodology of the study. Chapter Two outlines some of the key challenges posed by the specific context of Wales, in particular its socio-economic structure and how this affects equality of opportunity. Chapter Three describes the tribunal system in Wales and highlights issues relating to the profile, recruitment and training of Chairs and Panel Members. Chapter Four sets out the available statistical evidence. It provides data on the level of registrations, the settlement of claims and offers analysis of claims emanating from within Wales brought before the tribunal between 1999 and 2000. Chapter Five reviews the level and quality of information, advice and support provisions in Wales. It focuses on specialist and generalist providers, considering issues such as funding, training, the extent of liaison in handling cases and the transfer of expertise. The chapter concludes with a discussion of the major deficiencies in provision and offers
some recommendations for the development of a more efficient and effective system of complainant aid. Chapter Six documents the articulated experiences of applicants and potential applicants when seeking redress in Wales. It outlines the views of the 'professional' advice givers in the system. It identifies the barriers facing particular groups and makes recommendations for change. In the concluding chapter, Chapter Seven, the study returns to the issues of the development of equality in Wales and sets the findings of the study against a wider context of change in the equalities field.

1.5 Terminology
The terms used in this report reflect the relevant statutory concepts. We have used the term 'sex discrimination' rather than 'gender discrimination' in line with the Sex Discrimination Act. The term 'ethnic minorities' is used in its most generic sense to include all those distinguished as such in accordance with the Census categories. The study also refers to those of English national origin and Welsh national origin as defined according to the category 'national origin' in the Race Relations Act 1976 (RA 1976).
Discrimination in the Welsh Context

2.1 Introduction
The Equality Statement, issued by the government in November 1999, set out an agenda for extending the scope of equality legislation and laid down a commitment to achieving greater consistency in the legal protection available to a range of disadvantaged groups. It states: 'We will ensure that the right legislative framework and institutional arrangements are in place and that information, guidance and other support is available to challenge discrimination and deliver fair treatment to allow everyone to develop and contribute to their full potential.' Following devolution, the Government of Wales Act (1998) imposes a legal imperative on the Welsh Assembly Government to promote equality of opportunity, with equality clauses that effectively confer ‘positive rights’ on the citizens of Wales. This forthright piece of legislation will require a substantial response from public organisations in Wales reforming what has hitherto been a poor historical record on equal opportunity. Nevertheless it is widely acknowledged that the average person’s attempts at gaining access to justice, following discrimination at work, can be frustrated by a range of factors, including regional variation. This chapter seeks to identify a number of structural factors in the Welsh context that constrain individual efforts in seeking redress.

2.2. A Welsh Effect?
A continuing concern in Wales is that individuals experience greater difficulty in exercising their rights and gaining redress than individuals living elsewhere. A number of issues, of varying complexity, are immediately raised by this proposition. Firstly, the proposition implies that it is possible to statistically dis-aggregate cases from Wales for the purposes of comparison. This assumption is not sustainable (see Chapter Three). In addition, there is much research evidence to suggest that variables such as delays in the system, the use of interlocutory hearings, the existence of representation, or lack of it, and the profile, experience and training of tribunal members, has an effect upon outcomes (Chapter Three). Over and above these considerations, there is the complex issue of judicial interpretation once the individual case reaches tribunal stage. The legal complexities associated with such issues - such as when to draw inferences of discrimination in cases of racial discrimination - are well documented. By contrast, the disability legislation is

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3 Cabinet Office, (1999)
5 McCrudden, C; Smith, D J and Brown, C (1991)
6 This concern was expressed by a number of service providers in Wales at a conference in March 2001 hosted by the newly-established Employment Rights Network Wales
7 See Edwards, M, ‘Employment Discrimination’, Law Society’s Gazette Vol. 98. No 5 p.34 The legal tests have been laid down in King v Great Britain China Centre (1992) IRC 517, and Zafar v Glasgow City Council (1998) ICR120, but it is clear that implementing the tests is problematic: see British Gas Trading Limited (2) Alan Burley v Aaron Clarke (20001) EAT (Unreported)
as yet young and, as a result, possibly contentious interpretative issues of law may not have been identified.

In addition, bald statistical figures cannot give a true picture, since they give no indication of the nature of withdrawals, settlements or the level of unmet need. In fact, a number of formal and informal mechanisms within the employment tribunal process are intended to encourage negotiation and settlement at a relatively early stage of disputes between employer and employees. Attrition rates can thus be viewed both negatively and positively. Lack of specialist advice may be an important issue, particularly in rural areas. It is critical, therefore, to examine the allied issue of the nature of the available professional and community/voluntary support in order to determine whether sufficient generalist and specialist advice is available for complainants wishing to pursue their grievance (Chapter Five).

It is pertinent, however, to raise a further possibility highlighted by some interviewees in this study; that is, the suggestion that, in many cases, perception may be the crucial factor. In effect, so strong is the belief that people in Wales fare less well than claimants elsewhere (and are not, therefore, likely to ‘win’ at tribunal) that this may become an influencing factor in itself at various points in the process of seeking redress.

All these factors - many of which are explored in this report - are relevant in illuminating what may or may not be a ‘Welsh effect’ in respect of satisfying claims of discrimination, although few of them can be rigorously isolated for the purpose of comparison with other regions of the UK.

Over and above these considerations it may be the case that national/regional variations can be accounted for partly by the nature of employment in Wales, or the employment background of the individuals concerned. A number of structural factors clearly have a bearing on outcomes. The nature of the labour market in Wales, including the high number of SMEs, pay disparity and the nature of women's work; trade union membership and factors of rurality, including geographical barriers in access to legal advice, all have a part to play.

2.3 The Socio-economic Context of Wales
The economic profile of Wales provides the context in which to understand developments in equal opportunity. A number of factors particular to the economic context of Wales shape and constrain the individual’s ability to pursue a claim of discrimination.

The labour market
In the last decade, Wales has experienced massive economic restructuring, leading to instability and economic insecurity. In recent years, for example, a number of large manufacturing organisations, such as Corus and Laura
Chapter Two

Ashley, have closed resulting in large scale and highly publicised job losses and redundancies.

Labour market analysis indicates employment rates that are consistently lower than equivalent GB rates for both men and women. In Wales, the rates of pay of both men and women have gradually declined compared with rates in Britain as a whole. Wales has the lowest average hourly and weekly earnings for men of all the 12 standard regions of Britain, apart from the North East, whilst only four regions have higher average female hourly earnings than Wales. In times of economic insecurity, poor employment practices proliferate.

Small and Medium-Sized Businesses
Another particular characteristic of Wales is the preponderance of small and medium-sized businesses (SMEs). Wales is characterised by informality in work practices and an over-dependence upon micro and small businesses, where the support mechanisms for sustaining complainants may be lacking.

The Welsh Development Agency SME Equality Project reports that many of these organisations have a low level of equal opportunities awareness, few have employment policies in place and many do not provide staff with adequate contracts of employment. A recent report from the DTI confirms the relationship between small firms and a lack of knowledge of employment rights, suggesting only one fifth of employers in their sample felt confident in their knowledge of individual employment rights. The high number of SMEs has a negative impact on the likelihood of pursuing a claim of discrimination, not simply because of poor employment practices, staff loyalties and shortage of alternative employment options, but also because many of these organisations are not covered by the requirements of the DDA. Prior to the introduction of amendments to the DDA due in 2004, this may well have prevented some disabled people from taking discrimination claims forward,

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8 Blackaby et al., (2001)
10 Blackaby et al., (2001)
12 It may be that the number of withdrawals is partly explained in terms of non-unionisation and the consequent lack of institutional support. However, such a hypothesis is perhaps undermined by earlier evidence from a 1992 Department of Employment study which claimed that small private employers are the most likely to be brought before a tribunal. However, it is clear that what the Department of Employment regarded as a small employer at the time (fewer than a hundred with an average size of 35) would be regarded very differently today. Indeed, parts of the Department of Employment’s Report gives some support to the notion of the significance of Union support since it concluded that in cases to do with racial discrimination complainants were more likely to be union members. See DOE 1992 Survey of Industrial Tribunals. For discussion, see Labour Research Vol. 83(3) March 94, p17-19
13 SME Equality Project is supported by the Welsh Development Agency and the European Social Fund and is working with businesses throughout Wales to help promote equal opportunities.
since section 7 of the 1995 Act exempted small businesses, employing fewer than 15 people, from its remit.

**Rurality**

The economic insecurity, experienced by individuals who work or are seeking work in Wales, is exacerbated by rurality. Cloke *et al.* (1997) suggest that the rural economy as a whole is weak when compared with the rest of Wales, and even weaker when compared with the UK. The post-war restructuring of local economies in rural areas has led to a decline in traditional sources of employment, particularly in agriculture, on which local labour markets were once largely dependent. Farming-related work has given way to manufacturing and the service sector. Much of this growth is, however, in the more accessible parts of the countryside. For many of those who live in rural areas, changes in employment patterns have not eased the ‘persistent problem of lack of local job opportunities and job choices’ but have created jobs that are often poorly paid, insecure, seasonal or part-time. Rural areas are even more vulnerable because of the predominance both of the self-employed, with a disproportionately higher number of men and women falling into this category in rural Wales than in the country as a whole, and because of the existence of many small businesses. Of the latter, 55% employ fewer than four people, and less than 0.5% of employers in any sector employ more than 100. Such circumstances may deter those who feel they have suffered some form of discrimination from pursuing a claim that they may fear that to do so might result in dismissal. Furthermore, where local networks are critical to finding and keeping employment, employees are often fearful of becoming permanently unemployable if, by pursuing their claim, they gain a reputation as a troublemaker.

The nature of rural employment lessens the likelihood of trade union representation in the workplace and the existence of any formalised grievance procedures. It is also difficult for those who live in rural communities to access sources of advice and assistance that may be readily available in more urban areas. Access to private transport is highly differentiated both within and between households and significant numbers of people are non-mobile, dependent on bus services and lifts to access facilities and services not available locally. The location of tribunal hearings may be geographically distant from the place where the claimant lives and works. (See Chapter Three)

**Women in the labour market**

In relation to women, there are specific factors that characterise their experience of work in Wales. Although, traditionally, their economic activity rates have been relatively low compared with women elsewhere in Britain, the number of women in the Welsh workforce is rising. This is attributed to changing attitudes to work and a shift from a manufacturing base to the

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15 Cloke *et al.*, (1997) p.64
16 Ibid, p. 61
17 Rees, T (1999)
service sector. Nevertheless, the nature and circumstances of women’s employment is not always conducive to an awareness of equal opportunities and discrimination legislation, nor to women’s right to pursue a claim against an employer. Indeed, it could be argued that the nature of their employment might make it more possible for employers to engage in discriminatory practices without fear of recrimination. Many women in Wales are in part-time, low paid work. In fact, the proportion of those in part-time work is higher in Wales than Britain as a whole (43%). This kind of employment is not necessarily a matter of choice but the result of the fact that few employers operate family-friendly policies. Part-time work is the only family-friendly work available. Although there has been a growth in childcare provision, there are still fewer childcare facilities in Wales than in England. A number of women work from home or contribute to family businesses, such as farms, and often have no legal rights of employment protection.

Despite the Equal Pay Act 1975, the pay-gap for women in Wales stubbornly persists. The average hourly and weekly earnings of women in Wales are still much lower than those of men. Hourly, the pay gap is 13% and weekly 22% for full-time workers but this stretches to 36% when the hourly earnings of women in part-time work is compared with men in full-time work. It is acknowledged that a key factor in the gender pay gap is discrimination.

Few women in Wales attain senior positions in management or the professions. Even fewer women take up public appointments and are particularly poorly represented in local government and on tribunals, including Employment Tribunals. While union membership and participation in union affairs at district and regional level has grown, progress is slow and trade unions are more reflective of male than female culture. Whilst trade union density is higher in Wales than in Britain as a whole, men are more likely to be members of a union than women, with the trade union density of female manual workers being particularly low. The British evidence suggests that the main reason for lower rate of union density amongst women is the fact that union density rates are lower within the part-time work sector where women are concentrated.

**Ethnic minorities in the labour market**

Wales has a relatively small, diverse and significantly dispersed ethnic minority population. Most local authorities in Wales have a minority population

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18 Blackaby et.al., (2001)
19 Rees,T (1999)
20 Blackaby, op cit
21 Rees, op cit, p38
22 Beddoe, (2001) p175-6
23 Blackaby, op cit
24 28% compared with 30%. When Union densities for both full and part-time employment are compared, women are more likely to be Unionised. Source: Trade Union Congress (2002) “Trade Union Trends; Today’s Trade Unionists, Analysis of the 2001 Labour Force Survey”, Economic & Social Affairs Department
of less than two percent, although in the Cardiff area ethnic minority population concentrations match the national average of seven percent.

Much of the research evidence in relation to ethnic minorities and the labour market in Wales relies on the 1991 Census.\textsuperscript{25} The available evidence demonstrates that economic activity rates are lower amongst ethnic minorities in Wales than whites and particularly low amongst ethnic minority women as compared with white women. Economically active women from ethnic minority groups in Wales are more likely to be self-employed than white women and more likely to work full-time. Self-employment is high amongst both ethnic minority men and women and there is considerable occupational segregation, ethnic minorities being concentrated in particular sectors of the labour market. Figures based on the last census put the overall unemployment rate for Wales at 10.1%. For all ethnic minority groups the rate is higher than whites: for black groups it was 23.4%, that is twice as high as the national rate for Wales. Amongst some groups, such as Black Africans, the rate was three times as high, standing at 31.9%. For the South Asian groups the rate was 14.7%. For Chinese and Others 13.7%. For ethnic minority women the unemployment rate stood at 13.1% as compared with 6.6% for white women in Wales.

Following the 2001 Census, this picture needs considerable updating. It is clear, however, that many individuals from ethnic minority communities are working in highly isolated conditions in Wales - either geographically, or within predominantly white organisations. Self-employment among ethnic minorities is high and concentrated in the small business sector where unionisation is low and worker rights are difficult to protect. Until recently, even on a UK level, the quality of information on ethnic minority trade union membership was very unsatisfactory.\textsuperscript{26} Within Wales, no figures on trade union membership amongst ethnic minorities are available and TUC Cymru openly admits that trade unions have made only limited progress in Wales in recruiting black and ethnic minority members.\textsuperscript{27} It may be, therefore, that union membership in Wales is lower than that of the UK as a whole, the overall figures indicating that the unionisation rate amongst members of ethnic minority groups is slightly lower than that of white employees.\textsuperscript{28} Furthermore, in some areas of Wales, the support networks and range of agencies which ethnic minorities would normally use to seek advice and support are thin on the ground or wholly absent. In recent years, the CRE has given a higher profile to the issue of rural racism, suggesting that ethnic minorities within rural populations are

\textsuperscript{25} Williams, Day, Standing and Rees (1999)
\textsuperscript{26} A survey conducted in February 2001 found that the keeping of ethnic records was patchy and inconsistent; only 56% of those unions that responded undertook ethnic monitoring and even those that did admitted to problems with the accuracy of their statistics. See Labour Research, April 2001, Vol 90 No 4, pp 9-10
\textsuperscript{27} Wales TUC Cymru are committed to generating Welsh statistics in the future: see for example, “Challenging Racism” (2002) General Council Statement to Conference, where it reports a programme of work which will include a mapping of black and ethnic minority trade union members in Wales.
\textsuperscript{28} With a unionisation rate of 26%, black and Asian employees are slightly less likely to be unionised than white employees (c.f. 29%). However, membership is higher among black employees (30%) and especially so among black Caribbean employees (32%). The lowest union density is found among Pakistani employees (20%)
highly isolated, have little access to help and advice, and receive scant support from local agencies.\textsuperscript{29}

A recent interim report by the Cabinet Office Performance and Innovation Unit on ethnic minorities and the labour market indicates persistent gaps in unemployment rates, earnings and occupational attainment between white and ethnic minority communities.\textsuperscript{30} It concludes that discrimination is likely to be a major explanatory factor of the disadvantage suffered by ethnic minorities. It presents evidence from discrimination tests, the personal accounts of members of ethnic minorities, tribunal decisions and summaries of public opinion surveys. There is no good reason to believe that these factors do not apply to ethnic minorities living in Wales.

**Disabled people in the labour market**

*Disability Wales/Anabledd Cymru* estimate that a minimum of 400,000 disabled people live in Wales; that is, 1 in 6 of the population. This figure is derived from service registrations with Social Services as recorded by the Welsh Office and, therefore, represents a minimum figure rather than a true picture of disability in the Welsh community. 38\% of all disabled people are in the labour market in Wales. Whilst the picture of labour market participation is variable depending on the nature of the impairment, it is acknowledged that disabled people have persistently lower employment participation rates and higher unemployment rates than the overall rate - almost twice that of those of working age. They are more likely to be self-employed or in part-time work. A number of barriers, both physical and attitudinal, impede access of disabled people to the workplace. However, a further important contributory factor to low participation is the lack of protection offered by the DDA. At present, only a private employer with 15 or more staff has a duty to disabled employees under the Act. This quota does not exist in any other anti-discrimination legislation and the government is committed to removing the threshold in 2004. Effectively, this means that currently approximately 80\% of employers in Wales can legally discriminate against disabled people. Furthermore, public transport – a service vital to the labour force participation of disabled people in Wales - is excluded from the Act and only in September 2002 was the DDA extended to cover education. These shortcomings, whether deliberate or otherwise, represent a deep flaw in any plan to increase the economic activity of disabled people.

Workplace discrimination against disabled people is widespread and they are currently afforded minimal protection in law. A survey of 2,000 disabled people of working age in Great Britain found that one in six who are, or who have been, economically active say that they have experienced discrimination or unfair treatment at work.\textsuperscript{31}

\textsuperscript{30} www.cabinet-office.gov.uk (2002)
\textsuperscript{31} Meager (1999)
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2.4 Previous Research in Wales

A review of existing literature suggests that, with the exception of surveys undertaken by the Department of Employment, there have been no major studies on employment tribunal outcomes in Wales and little published research on the pattern of advice-giving.32

A relatively small study by Feld (1992) focusing on sex discrimination suggested 'a lower level of use and successful outcome for the law in Wales'. Feld argued that a number of economic and cultural factors are key determinants of poor outcomes but she also pointed to low levels of awareness amongst women in Wales plus the lack of experience of Chairs and Panel Members, trade unions and ACAS in dealing with sex discrimination cases. In the current study, we approached a number of institutional stakeholders in the justice system, including the Council on Tribunals. We were informed that they have not looked at employment tribunal processes and operational issues specifically in the context of discrimination in Wales. It was also acknowledged that only very recently has any thought been given to collecting data on Wales as a distinct entity.

A study of legal advice provision in rural Wales by Harding and Williams (1994) notes a scarcity of advice, suggesting that CABx in Wales are weak in this respect and tend to concentrate on debt and benefit cases. It also points to the existence of only one Law Centre and few sex equality agencies compared with England and that, unlike Scotland, notes that the Employment Rights Network has only recently been established. The rurality of much of Wales presents particular problems for those seeking redress. The Harding and Williams study, in which 8 solicitors in and around Haverfordwest in Dyfed (as it then was) were interviewed, found that the bulk of their work was in conveyancing, drafting wills, probate and trusts with some categories of work being regarded as uneconomic because they were not profitable.33 Employment issues were dealt with by 65% of solicitors’ offices located in rural Wales and only 18% of solicitors ranked this area as important, compared with issues of crime and conveyancing. Only 13 offices, comprising 5.5% of the total, dealt with race and sex discrimination cases.

People tend to look to the nearest town for their legal services, wherever that may be geographically. Geographical barriers are significant in Wales. Solicitors are concentrated, in the main, in urban areas, although the number of firms varies. In north Wales, firms tend to be concentrated along the northern coast, which might imply a greater effort in getting advice for some people, particularly where transport services are poor. Access to legal support varies, therefore, from one part of rural Wales to another.

33 Harding and Williams, (1994), p14
In addition, this report noted a fundamental issue in relation to access to services in Wales:

‘within the UK it is only in Wales that language might be perceived by indigenous people as a barrier to legal services’. 34

It is clearly crucial that individuals should be able to access advice and choice through their language of choice.

Whilst the evidence from within Wales is thin, it is clear from the wider research field that a number of key factors shape outcomes in discrimination cases. These include aspects such as awareness by individuals of their rights, the level of information, the level and quality of advice and support available to them, the processes of conciliation, access to legal aid, the level and quality of representation, and the experience of Tribunal Members in adjudicating discrimination cases. 35 Few of these issues have been pursued in relation to the Welsh population.

34 Harding and Williams, op cit.p15
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The Tribunal System in Wales

3.1 An Employment Tribunal Service for Wales?
Wales has never had a system of Employment Tribunals that is particular to itself. At present, a fully integrated system covers both England and Wales. In Scotland and Northern Ireland the situation is different. They benefit from autonomous systems under their own President.

Until March 1987, Wales was not regarded as an entity at all. Half the country was administered from Regional Offices situated in England. The Regional Office in Cardiff dealt with south Wales, Hereford, Worcester and Gloucester. On reorganisation, the whole of Wales became part of the administrative area known as Region Six. Even now, this includes areas of Cheshire, Staffordshire, Shropshire, Hereford and Worcester as well as covering cases from Newcastle-under-Lyme and Stoke-on-Trent. The southern part of Region Six is administered from the Cardiff Employment Tribunal Office, whereas the northern part of the Region is administered from Shrewsbury. A map of the ET Region of which Wales is the largest part is set out in Appendix A.

At Cardiff and Shrewsbury, the workload is mixed in that both offices receive cases that originate in both England and Wales. In 2001, 112,086 applications of all kinds were made to tribunals in England and Wales, as compared with 109,171 in the previous year. Region Six’s share of this total was 8,433 cases in 2000 and 8,813 cases in 2001. The offices could not provide figures broken down in relation to discrimination as such, although the Regional Chair was able to indicate that more discrimination cases are heard at Shrewsbury than at Cardiff with the preponderance of cases emanating from over the English border. It is clear that there is no statistical dis-aggregation of cases emanating from Wales. It is not, therefore, possible to refer to ‘Welsh cases’, in either statistical or administrative terms. Sir Andrew Leggatt’s report, however, crucially notes the significance of constitutional change and argues for the need to consider ‘the consequences of devolution for the administrative justice system’.36 In post-devolution Britain, there is an urgent need to recognise Wales as a distinct administrative entity. Existing arrangements not only add to constitutional and legal uncertainties but also hinder planning on a devolved regional basis.37

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37 See Williams v Cowell [1999] (No ET 47918/96:EAT No.0904/97)
3.2 The system in Wales

It is not within the remit of the report to comment in general terms on the operation of the tribunal system in Wales. We endorse the recommendations of the Employment Tribunal System Taskforce (ETST)\(^{38}\) which points to best practice in the system as a whole and points to the need for localised research. It is pertinent, however, to highlight a number of particular operational characteristics in Region Six that were raised in this study and that may have a differential impact on applicants in Wales.

Location of the tribunal offices
The ETST report recognises that the location of an Employment Tribunal (ET) may present a barrier to some users\(^{39}\) and calls for a review of the provision of facilities by reference to immediate local needs and requirements. It also concludes that there is a need for a minimum standard of accommodation for ET with appropriate disabled access within and outside the relevant buildings.\(^{40}\) The Region does not own any premises outside Cardiff and Shrewsbury and Chairs and Panel Members have suggested to us that some of the accommodation currently in use is not particularly user-friendly, especially in north Wales. Much of the provision across Wales is housed in excess courtroom space but the precariousness of current arrangements can be seen from the fact that these facilities have been made available subject only to a gentleman’s agreement between a senior judicial figure and the Regional Chair. Whilst the ET Service and the Regional Chair have made strenuous efforts to right the situation, existing arrangements remain very vulnerable. Indeed, we were informed by key individuals within the ET Service, that planning has been hindered by the lack of suitable accommodation over some 10 years. The importance of securing a strategic venue in north Wales cannot be overstated, not only are the geographic and cultural arguments compelling but also it needs to be stressed that the provisions of the Welsh Language Act may not apply in Shrewsbury.

Limits on the use of part-time Chairs
Because of financial constraints, the ET Service took instruction from the Chief Executive, in March 2001, that the agency was likely to run out of money in September. Part-time Chairs were instructed not to exceed their ‘sitting limits’ (70 days for retired Chairs and 50 days for those not retired). This meant that, for the latter part of that year, only full-time Chairs were able to hear cases. In previous years, this limit was waived but, in 2001, the rule was enforced throughout England and Wales. Wales relies heavily on the use of part-time Chairs, leading to a backlog of cases and listings being cut back by 30%. In Cardiff, the part-time Chairs reached their sitting limits by September of 2001 with some impact on waiting lists. The impact of this instruction, however, was felt most particularly in relation to the Shrewsbury

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39 ETST p.53, para 5.50

40 p.83, para 8.56
and north Wales hearings, with the waiting lists for single-day cases reported as running at eight or nine weeks and, for multiple-day hearings, at 13 weeks. Such operational and resourcing issues need close examination in order to ensure a system capable of meeting the challenges. Research evidence suggests the use of permanent, experienced full-time Chairs is more likely to promote client satisfaction\(^41\). Significantly, the ESTS Report\(^42\) suggests a very different balance between full-time and part-time Chairmen than that which prevails in Region Six. It recommends a 75% to 25% proportion of full-time Chairmen to part-time, concluding that it would lead to more flexibility in the handling of cases.\(^43\)

In addition, as funding for part-time Chairs in Region Six dries up, cases are increasingly being heard at Shrewsbury since that is where the full-time Chairs are based. This results in increased travel distance for many north Wales applicants.

**Use of Welsh Language**

Strictly speaking, the provisions of the Welsh Language Act do not have to be taken into account by the Employment Service working out of Shrewsbury. It is a moot point as the Welsh Language Board is of the firm opinion that the Act applies to both general and pre-hearing administrative contact with users, and the conduct of hearings. They argue that it is the location of the applicant rather than the location of the tribunal that determines whether the Act applies. Welsh speakers, they suggest, should not lose their rights under the Act by being obliged to attend a tribunal hearing outside Wales.\(^44\) It is the stated practice of the ET service to make use of translators at tribunal hearings when requested. From our analysis of the reports we found this to be very uncommon and in single figures, but those contacted with direct experience of such cases in both Carmarthen and Caernarfon were complimentary about the procedures and claimed that the system can work effectively.

Encouragingly, in accordance with Welsh Language Guidelines, a language scheme has been adopted for the use of Welsh in Employment Tribunals.\(^45\) The aim of the Scheme is to provide a service whereby the conduct and processing of cases will be in bilingual form should either party request it. The aspirations of the Welsh Language Board are perhaps higher. It has suggested that a number of principles should be applied to the tribunal process including:

- that the two languages be treated equally whether spoken or written
- at the beginning of the process, the language of choice of each user needs to be established and recorded

\(^{41}\) Hepple et al (2000) p.87  
\(^{42}\) see para 10.14  
\(^{43}\) The report indicates that it is inappropriate for complex and lengthy cases such as discrimination cases to be handled by part-time chairs.  
\(^{44}\) See Response of the Welsh Language Board to Consultation Paper (CP 13/2001) p.45, para 5.17
that thereafter, the process should facilitate whichever language has been chosen, orally and in writing.

The delivery of a seamless bilingual service is an enormous challenge. The Welsh Language Board has suggested that the best way forward would be to establish a specialist tribunal support unit in Wales to advise and assist tribunals of all kinds with Welsh language service matters, but with the core bilingual administration retained by individual tribunal services, such as the Employment Tribunal Service.

Procedures relating to pre-hearing reviews, the hearing of preliminary issues and directions hearings
All regions make use of hearings that are confined to preliminary issues. The evidence attests to the value of standard directions and direction hearings.\(^{46}\) There is some evidence in this study to suggest a reluctance to use this discretionary power by ET service from the Cardiff tribunals. Several solicitors referred to the fact that other regions are more prone to give directions as to the conduct of the case prior to the hearing, eg exchange of documents/statements etc.\(^{47}\) The Regional Chair confirmed that he preferred a more informal approach that allowed for matters to be dealt with at the actual hearing. He took the view that it was best not to issue directions in cases where there were unrepresented individuals with little relevant experience or expertise.\(^{48}\) Whilst a minority of the legal respondents were very critical of this approach, suggesting that it might disadvantage some applicants, the more common view was that the informal approach was to be welcomed in that it provided for a more flexible approach.\(^{49}\)

Employment Tribunal Users Group
The ETST concluded that the network of User groups established has a valuable role to play in the ET system but requires more coherence.\(^{50}\) An ET Users Group for Region Six was established in Cardiff in 1992 but was poorly attended, despite widespread invitations. It ceased to operate in 1995 but was successfully reconstituted in 1996 with advice and assistance from ACAS. A similar committee was established in the Shrewsbury office in 1996. There is no constitution for the User Group and those who attend are circulated by the office of the Regional Chair. The attendance list in the past has consisted of Chairs and Panel Members, representatives from private solicitors firms,

\(^{46}\) Hepple et al p.93
\(^{47}\) The approach in Shrewsbury may be more conventional - we visited the Tribunal unannounced and found that on that particular day (19.7.2002) that four of the eight cases listed were for directions. Moreover, one of the Shrewsbury-based Chairs interviewed indicated that he found pre-hearings useful and would invariably list such hearings in cases where individuals were unrepresented.
\(^{48}\) See also Eurobell Holdings PLC v Barker (1998) ICR 299
\(^{49}\) Our experience echoes the evidence of the Employment Tribunal ServiceTaskforce (ESTS) survey which similarly concluded that there were very mixed views about the need for standardised directions (see para 6:37)
\(^{50}\) ETST para 5.58
ACAS, CABx, the equality commissions, trades unions and employers groups. Noticeable omissions are the Chair of the Association of Tribunal Members, representatives from the Employment Rights Network, representation from the Law Centre and from the Legal Services Commission.\(^{51}\) As a forum, it has the potential to engage in critical debate about the operation and development of the service within the region and to comment, in particular, on issues concerning the enforcement of equality in Wales. It has been noted that the equality commissions do not attend these meetings, despite being circulated and that communication between this body and the equality agencies would benefit from a much stronger link. From our observations of its meetings, albeit limited, and from a review of the minutes of its meetings, it appears that issues that impact significantly on individual applicants are not given a significant hearing. In other words, the voice of the consumers is weak. One respondent described it as ‘a complaints committee but not for members of the public’. In fact, it appears to operate neither as a channel for complaints and evaluation of the service, nor as an effective forum of communication between the major stakeholders. In its national survey of customers, the Employment Tribunals Service boasts a 90% positive satisfaction response in relation to every one of its offices. In response to customer comments across England and Wales, it has provided clear information on parking and local transport, as well as booklets in six ethnic minority languages and Welsh, including large print, Braille and audio tape versions. The User Group forum could act as a key mechanism for relaying difficulties and needs in relation to access to, and use of, the tribunal service.

**The conduct of hearings**

Sir Andrew Leggatt’s Review of Tribunals suggested that many tribunals adopt an adversarial rather than inquisitorial approach. This is particularly true of Employment Tribunals as they involve one party against another rather than one party against the state. Many of those interviewed commented that hearings have become more legalistic and formal than expected - a view particularly expressed by unrepresented users. One key advocate suggested people refer to it as ‘the employers’ tribunal’ reflecting the disadvantaged position of the applicant. Against this, several applicants commented on the fairness and facilitative style of the Chairs, especially in cases where they lacked representation.

**Inference**

The proposition that there is a reluctance by the ETS generally to make use of the power established by case-law\(^ {52}\) to infer from primary facts in race cases was explored in this study. Our analysis, based on a reading of tribunal reports, suggests otherwise in that detailed reference to such possibility, if rather standardised and formulaic, is made in some two thirds of the reports.

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\(^{51}\) The Association of Tribunals has no formal representation – membership is voluntary and not all panel members subscribe. Inclusion of the Legal Services Commission is also a moot point. The Commission is not a direct user but sponsors key players and would also clearly have an interest in strategic developments.

\(^{52}\) King v Great Britain - China Centre (1991) IRLR 637, CA: Zafar v Glasgow County Council (1998), IRLR 36,HL.
considered. Only in a minority of the cases were applicants’ claims upheld on such criteria, but the legal possibility was canvassed, often seemingly on the initiative of the Chair. Some academics\(^{53}\) point to the crucial impact of the RRA 1976, Sec. 65 questionnaires in establishing discrimination based on inference. With two striking exceptions, the reports, however, make no reference to such material.\(^{54}\) Lay panel members, when questioned during a training seminar, appeared to be unaware of the potential of questionnaires. It is not clear why reference to questionnaires should be so uncommon. It may be that they are not used or that their use is unreported. Be that as it may, significantly, in both cases where questionnaires were referred to the applicants were successful. The specialist solicitors questioned were somewhat ambivalent about the value of questionnaires, suggesting employers often provide trite answers. We would suggest, however, that even such ‘trite’ answers might be helpful in establishing the case.

*Delays in the system*

Applicants reported that some cases take a long time to be heard. In a few cases they reported that their own case had taken years. The record for the longest action is that of a disabled person whose case had taken eight years to be decided. However, there was little complaint of delay from the applicants as a whole. The statistical evidence suggests that there may be an accumulation of cases waiting to be heard. This is clear if one simply looks at the increase in cases registered in the last few years and the fact that the system is dealing with a similar number of cases in 2001 as it did in 1999.

The ET Service has adopted performance targets including a 26-week hearing date from time of receipt of application. The self-imposed target for 2000/2001 was 75%. The actual achievement was 57%.\(^{55}\) The target itself may be somewhat low, for the Employment Law Committee of the Law Society suggests that a period of some six to eight weeks from submission of IT1 is a workable minimum. Tribunal Chairs suggest that such a tight timetable is unrealistic pointing out that, under current arrangements, the ETS have to allow three weeks for return of Notice of Appearance, together with a further minimum of two weeks Notice of Hearing. They suggest that in practice considerably more time has to be given in order to minimise postponements. A number of external and internal factors can contribute to delays. The ETS is an integrated service with the result that Chairs at times of acute staffing crisis can be called upon to serve in other regions. In addition, appeals, law awaiting clarification, illness and unavailability of Chairs can produce delays.

\(^{54}\) Case no. 2901665/99; Case no. 1600679/99
Table One: Analysis of the percentage of hearings first heard within 26 weeks of being received 2000/1

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of hearings first heard within 26 weeks of received</th>
<th>No of centres</th>
<th>Target percentage</th>
<th>No of centres above target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest</td>
<td>Highest</td>
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<tr>
<td>Wales (Region Six)</td>
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<tr>
<td>England</td>
<td>57</td>
<td>94</td>
<td>19</td>
<td>75</td>
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<tr>
<td>Scotland</td>
<td>62</td>
<td>81</td>
<td>4</td>
<td>75</td>
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</table>

Table Two: Analysis of the percentage of hearings first heard within 26 weeks of being received 2001/2

<table>
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<tr>
<th>Country</th>
<th>Percentage of hearings first heard within 26 weeks of received</th>
<th>No of centres</th>
<th>Target percentage</th>
<th>No of centres above target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest</td>
<td>Highest</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Wales (Region Six)</td>
<td>50</td>
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<td>75</td>
</tr>
<tr>
<td>England</td>
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<tr>
<td>Scotland</td>
<td>63</td>
<td>77</td>
<td>4</td>
<td>75</td>
</tr>
</tbody>
</table>

There are 25 ET centres in Great Britain and a wide range of performance across the service. Overall performance has worsened between 2000/1 and 2001/2. England’s performance is generally better than either Wales or Scotland. Wales’ performance compared with the other countries was about average in 2000/1 but below average in 2001/2. In 2001, Cardiff was ranked 12 in the league table of centre performance and Shrewsbury 22nd.

Unanimous decisions
Our review of tribunal reports 1999-2001 indicated a high degree of unanimous decisions. This can be interpreted both in positive or negative terms. One interviewee in our study argued that some critical distance was necessary in the adjudication of race cases. ‘I think I have to give more of a minority decision at times and not go with the unanimous decision because I am more close to the difficulties of (ethnic minority) people. I look at things differently… we need more people with direct experience rather than having stereotypical middle class people from similar backgrounds. For them, it’s not a job but a position; they are out of touch. It gives them an elevated status… in their mind, racist comments, remarks, graffiti, don’t carry the same value as for black and ethnic minorities. It doesn’t mean anything to them as it impacts on black and ethnic minorities.’

3.3 Profile of Chairs and Panel Members
There are 106 full-time and 262 part-time Chairs for England and Wales. In Scotland, there are 11 full-time and 29 part-time Chairs. The figures for Wales (Region Six) are seven full-time Chairs (one of whom is a woman and four of
whom can speak Welsh) and 14 part-time Chairs (two of whom are women and one of whom can speak Welsh). In the Cardiff office there are four full-time and eight part-time Chairs and in Shrewsbury three full-time and six part-time Chairs. None of the Chairs presently serving Region Six come from an ethnic minority background.\textsuperscript{56} Three full-time Chairs in the Cardiff office speak Welsh and one full-time and one part-time Chair in the Shrewsbury office are Welsh-speaking.

Lay members of Employment Tribunals are appointed by the Secretary of State for Trade and Industry. There are 1,825 lay members for England and Wales and 250 for Scotland. 151 lay members sit on panels administered from the two offices serving Wales in Shrewsbury and Cardiff. Of these, 43 or 28\% are women and 108 or 72\% are men. Just two lay members come from an ethnic minority background; both are male. That means that the ET system serving Wales operates with just 1.2\% ethnic minority representation. This includes the judicial members. Among the lay members, three women and six men have a declared disability. This means that disabled members make up 6\% of the membership profile. Of the 151 lay members, 127 are over 50 years of age (84\%), that is, 28 women and 99 men, suggesting a high rate of members above retirement age. This skew in the age profile also applies in relation to Chairs. Whilst the Department of Trade and Industry (DTI) application form specifically asks about ability to speak Welsh, the department does not keep any information on the number of Welsh-speakers who are currently serving in any of the Regions.

The information for those wishing to apply for lay membership, as published by the DTI, states that, ‘Women, ethnic minorities and individuals with disabilities are under-represented as lay members of Employment Tribunals. The DTI would therefore welcome applications from such individuals’. DTI guidance for applicants also states, ‘you will have a good understanding of diversity issues in the workplace’ thus indicating the importance placed on both descriptive and substantive representation of minority group interests.

Likewise, the Hepple Report (2000) discusses the need for diversity in the recruitment of Chairs and Panel Members citing the Government’s acceptance that tribunals should reflect the composition of the workforce they serve as closely as possible.\textsuperscript{57}

New recruitment and selection procedures are now in place for lay members. A shift from the previous system of nominations (and the need for balanced representation by both employer and employee groups) to a system of open advertisement for positions, should significantly redress current imbalances in the representation of minority groups. Commenting on the previous system, interviewees pointed to the lack of proactive strategies by trades unions and

\textsuperscript{56} A full-time chair from an ethnic minority was sadly lost to the Service due to illness and premature death. It is also reported that the Service was experiencing considerable difficulty in recruiting suitable female applicants to serve as Chairs.

\textsuperscript{57} Hepple, op cit, para 4.10 p.90
employers to ensure the nomination of individuals from minority groups. The Welsh language is an issue of particular importance in this respect, given that recruitment and selection are centralised outside Wales. It was suggested that the paucity of Welsh-speaking members effectively means 'the same people are doing all the cases' which may have implications for the administration of justice.

Much will depend on the ability of the DTI and the Lord Chancellor's Office proactively to encourage applications from such groups to redress imbalances of gender, race, disability, and the ability to speak Welsh, that currently exist. The specification of clear targets for Wales should be a priority.

Some respondents questioned the need for any descriptive representation on the panels, arguing that 'cases turn upon their own merits' and that all Chairs and Members should be 'equality proficient' irrespective of the case before them. This is a powerful argument but one that relies on a system that will 'naturally' produce a diverse panel that represents modern-day society with Chairs and Panel Members having training and experience at an appropriate level effectively to service discrimination cases.

3.4 Training in Discrimination

The Hepple Report explored in some detail the issue of training of Chairs and Panel Members and cited the Equal Opportunities Commission (EOC) view that, 'until chairmen hearing discrimination cases become consistently well trained across Great Britain, individual applicants will receive different levels of justice depending on where they live, a situation that is clearly unacceptable'. The report examined the correlation between the experience and training of Chairs and Panel Members and outcomes and recommended a degree of specialisation amongst Chairs. It found support for the practice of assigning cases to Chairs with experience and requisite training. With regard to lay members, the report advocated that the current programme of training for lay members be continued but that additional resources should be provided for specialist training to a select number of lay members. The report suggested: ‘the practice should continue that lay members are not called to sit on discrimination cases unless they have the requisite experience or training’.

The training that Chairs and Panel Members receive in Wales (Region Six) is restricted to one day per year. It consists of a nationally designed package that is administered uniformly throughout the regions. In the period under study, the training on equality issues was allocated half a day and facilitated by experienced Chairs, alongside the national training co-ordinator and appeared to be of an excellent standard. Nevertheless, it is generally agreed that such training is insufficient, given the complexity and changing field of discrimination law. Furthermore, respondents referred to the lack of

58 ibid, p.87
59 Hepple, op cit, p.89
opportunity to build up experience of the law. One Chair commented that 'only a small proportion will have done discrimination cases and some never at all'. The data presented in Chapter Four of this study provides some evidence to suggest that some Chairs hear very few discrimination cases in any one year. According to one Panel Member, he had not sat on a discrimination case since 1993. Regrettably, we were unable to pursue issues regarding the experience and training of individual members and Chairs in discrimination cases because of restricted access to members via the Employment Tribunal Service.

The clear conclusion, therefore, is that there is a need for increased training. Indeed the target set by the President of Employment Tribunals for England and Wales is that it should be doubled to two days. The ambition seems modest but the resource implications are considerable. Current arrangements in Region Six require provision at five venues. The training is provided jointly by two experienced full-time Chairs with other chairmen in attendance as group facilitators. If training were doubled and provided in identical form then it would have a significant impact on the availability of Chairs for Tribunal work. Despite the high quality of current provision, it is clear that it may be necessary to draw on alternative providers.

3.5 A Discrimination Panel?

From our analysis of the tribunal reports and the responses of interviewees there is evidence that the operating practice of Region Six is to ensure gender-mixed panels in cases of sex discrimination. Procedures relating to race cases are looser.

In relation to the race discrimination, Operational Guidance A5 refers to the appointment of special members to hear such cases. The so-called 'Jacques Undertaking' requires people with special knowledge and experience of relations between people of different racial groups in the employment field should sit, 'wherever possible', on hearings under the Race Relations Act. The stipulation is that the individual must have knowledge and recent UK based experience (in the past six months) working in a multi-racial workforce. This should include practical experience of discrimination employment provisions. In many regions, this has led to the establishment of a 'race panel' of suitably qualified members to be drawn upon as race cases arise. In Region six there are a total of 28 such members available to serve on race cases, but apparently very few from an ethnic minority background. It should be noted, however, that the Hepple Report calls for the discontinuation of specialist race panels, favouring specialist training for earmarked lay

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60 See also the ETST Report, op cit at paras 10:34-40.
61 Abergele, Telford, Cardiff (2x) and Carmarthen.
62 Two full-time Chairs x two days (+ day preparation) x five venues = 22 full days. Other Chairs would also be involved as facilitators.
63 Operational Guidance (A5 2002) Appointment of Special (Race) Members to hear Race Relations Cases.
64 Hepple, op cit p.89
members. Despite this, other regions do operate a race panel and in at least one region a specialist disability panel is operative. It might be that the development of a 'discrimination panel' with specialist and intensive training support in all aspects of discrimination would be the way forward for Wales. This would not only allow members to build and develop their expertise and experience in dealing with discrimination cases but would also more appropriately service individuals with multiple discrimination cases.

3.6 Conclusion
A common assumption amongst applicants and advice workers in Wales is that it is more difficult for those with complaints of unlawful discrimination to have their claims upheld at ET in Wales than is the case in England. This has led to protracted debate on all sides. The assumption is flawed in the crudest sense simply because it is impossible to distinguish ‘Wales’ as a specific entity for the purposes of comparison, whether statistical, administrative or otherwise. At a more sophisticated level, adhering to the assumption suggests deep and intractable biases in the operation of the law in Wales. This, again, is an untenable proposition. It is likely that a number of factors are at play that may lead to differential outcomes, some of which are specific to the Wales context and many of which are beyond the remit of the Tribunal Service.

It has been argued, however, that some specific factors in the operation of the Tribunal System in Region Six may have a bearing on outcomes. Factors, such as the location and accessibility of tribunal hearings, limits on the use of part-time Chairs, delays in the system and the limited implementation of the provisions of the Welsh Language Act may present barriers for some applicants. Further it has been suggested that limited training opportunities for Chairs and Panel Members and lack of diversity amongst Chairs and Panel Members are factors that impinge on the Service’s ability to respond appropriately to the demands of equality proficiency.
Chapter Four

Discrimination Cases in Wales: Statistical Data

4.1 Introduction

Every year, the number of discrimination cases coming before tribunal increases. Given both current developments in the legislation on discrimination and human rights and a growing awareness amongst the general public, it is unlikely that this trend will be reversed. As a consequence, the demand for complainant aid is set to rise substantially.

In 2000, in Wales, 1,938 cases were registered claiming discrimination on the basis of race, gender or disability. In the same year, 88 cases were settled by ACAS. 101 cases were either determined privately or withdrawn before a tribunal hearing took place. Of those who pursued their claims to a hearing, 52 in all, 20 were successful in establishing that they had been subject to discriminatory practices in their present or former workplace. Of the remainder, 1,697, some were in progress but the majority were related to part-time worker pension cases which were being held in the system pending a decision of the House of Lords following a referral in September 1999 as to whether these cases were out of time.

In some instances, an individual's grievance may have an element of discrimination coupled with some other jurisdiction, such as unfair dismissal, or the individual may be subjected to discrimination on two or more fronts, such as race and gender. It is widely acknowledged that individuals presenting multiple claims may find negotiating their way through the system even more precarious given that they fall between the specialist agencies. It has been suggested that, at times, the focus on discrimination elements has worked against the applicant in that other infringements of employment law have been ignored to their cost.

However, what these figures cannot reveal is the level of unmet need; those who have been subjected to some form of discrimination but who do not pursue a claim against the employer at an employment tribunal. Even where employees are aware that they are the subject of discrimination in their workplace and that they have rights and remedies in relation to such bad practices on the part of their employers, the burden is upon them to pursue their claim. They may be apprehensive about antagonising an employer where they are concerned about the insecurity of their own employment or of the high unemployment rates in the area in which they live and work. They may have no union representation in their place of employment, nor any access to advice-giving agencies outside it. Grievance procedures within the workplace may resolve the dispute without necessitating the involvement of outside agencies. Nevertheless, in any one year there are a substantial number of potential applicants who never appear in the statistics.
This chapter sets out the available evidence on the registration and settlement of cases in Wales. It also contains an analysis of a sample of 116 cases brought before the Employment Tribunal in Wales between 1999 and 2000.

4.2 Discrimination in Employment in Wales, 1996-2001

The statistics, which deal with employment discrimination in Wales and are reported in this section, are taken from the Public Register and relate to the period from 1996 to 2001. The analysis considers the number of discrimination complaints registered in Wales and compares these with England and Scotland. The section ends by looking at what happens to discrimination cases: the proportion settled by ACAS, withdrawn or settled privately; the proportion of cases that are heard; and the number that are settled in favour of the applicant. In each case a comparison is made between what is happening in Wales, England and Scotland.

Table One: Discrimination Cases Registered in Wales, England and Scotland 1996 – 2001.*

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<thead>
<tr>
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<td>Scotland</td>
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<td>320</td>
<td>396</td>
<td>2292 **</td>
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<td>16792</td>
<td>27565</td>
<td>27103</td>
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*  Reported to the research team by the Employment Tribunal Service May 2002.
** This figure is inflated due to the need to re-enter some registrations relating to part-time work
*** There were no returns for Scotland for 2001

Equal Pay cases are not included in the figures in this table but are discussed separately later in this chapter. In the last six years, 106,785 discrimination cases have been registered with the Employment Tribunal Service: 95,263 in England, 7,896 in Wales and 3,626 in Scotland. Each year from 1996 to 2001, the number of cases has increased, from 7,833 in 1996 to 27,103 in 2001. The pattern of increase is very distinctive. In Wales and England it largely took

65 The statistical evidence of case registration and disposal is not ideal. From an ET perspective, Wales is part of Region Six, which includes large parts of England, and therefore it is impossible to refer to Wales without the 'contamination' of the 'English' cases. The concept of Wales in this respect is further undermined by the difficulty of determining where a case may be geographically. Along the border, in particular, an applicant may live in Wales and work in England or vice-versa. Even those who live in the heart of Wales may work elsewhere.
place in two phases, first in 1997/1998 and the second in 2000. However, in Scotland there was a different pattern, a single large increase in 2000.

The increasingly large numbers of sex discrimination cases and the very distinctive pattern of growth in these figures have to be approached with great caution. Normally one expects statistics, which are collected to monitor a service, to be consistent and reliable measures of that service. In this instance it is not the case. There are two reasons for this; first, from 1994 onwards, the basis of the categorisation of sex discrimination was changed. In other words, from 1994 onwards the category was expanded to include the 'part-time pension cases' - a group of claims that had not been registered previously. This was due to changes in the law relating to these claims.

In 1994, two European Court of Justice judgements (Vroege v NCIV Instituut Voor Volkshuisvesting BV, 1994 : IRLR651 and Fisscher v Voorhuis Hengelo BV, 1994 : IRLR 662) were published which said that an occupational pension scheme which excluded part-time workers contravened European equal pay laws if the exclusion affected a much greater number of women than men, unless the employer could show that the exclusion of part-timers could be objectively justified on grounds unrelated to sex. Subsequently, unions in England and Wales from the health, local government, education, banking and electricity supply sectors lodged a number of test cases with the Employment Tribunal on behalf of members who worked part-time.

In November 1995, the test cases, referred to as Preston & Others - vs Wolverhampton Healthcare NHS Trust & Others, came before a tribunal which found that:

- Pension rights should be granted to part-time workers
- Rights should be back-dated two years
- Rights should only be granted where the Applicant had commenced their Employment
- Tribunal applications must be made within six months of leaving their employer

The decision was appealed by the unions. The Tribunal's findings were upheld by the Employment Appeals Tribunal in 1996 and, upon further appeal, by the Court of Appeal.

Following the decisions of both higher courts, the matter was referred to the House of Lords in September 1999. Whilst the Tribunal’s decision relating to the six month time limit for lodging applications was upheld by the Law Lords, the two-year period of back-dating granted by the Tribunal was deemed to contravene European law. In seeking to address this specific issue, the Law Lords referred the question to the European Court of Justice (ECJ) for a preliminary hearing. The Law Lords published their judgement in February 2001.
Following a Directions Hearing held on 21st November 2001 in which a number of further issues were raised, test cases were selected and moved forward to a full hearing, which took place in June and July 2002. The decision of the Tribunal was promulgated on 5th August 2002. A Directions Hearing was due to take place in October 2002 to identify further test case issues.

This process has had a very significant impact on the returns for sex discrimination. Prior to the incorporation of the ‘part-time pension cases’ into the category, sex discrimination had applied to single, almost unique, cases that were determined through the tribunal system. From 1994 onwards, the part-time pension cases were included in the category; they were resolved in a very different way - by the selection of test cases and the determination by the courts on points of law. The result of this change was that large numbers of cases could appear in the system in a very short period of time, be rolled over until the test cases were determined and then suddenly disappear out of the figures. Also it made it very difficult to use the figures to make comparisons over time because at different times they measured different types of cases.

Second, and more importantly for our purposes, the collection of registration information about these cases became confused. The ET Service contends that, technically, the part-time pension cases should always have been categorised as sex discrimination right from 1994. However, some were wrongly categorised, as equal pay cases, and it was not until April 2000 that this mistake was fully realised and corrected. Moreover, the reclassification of cases in Scotland in 2000 and the issue of new instructions by the Directorate that year suggested that different regions of the service had developed different practices. Given this confusion, which affects the integrity of the equal pay returns as well as sex discrimination, it is clear that for the purpose of comparison over time or between the different parts of the UK the returns for sex discrimination are probably neither valid nor reliable. This is particularly regrettable because registrations for sex discrimination make up the majority of all registrations for discrimination throughout this period. The highest proportion was recorded in Wales in 2001 and the lowest in England in 1999. Each country has a distinct pattern of registrations. In Wales, sex discrimination cases as a percentage of all cases ranges between 70% and 90% (Equal Pay not included). Throughout the period, sex discrimination has made up more than two thirds of all discrimination cases in Wales, whereas in England sex discrimination has ranged between 55% and 67% and in Scotland it has largely been between 62% and 66%.

Table Two: Cases of sex discrimination registered in Wales, England and Scotland as a percentage of all discrimination cases registered, 1996-2001

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>84.3</td>
<td>65.5</td>
<td>79.6</td>
<td>76</td>
<td>85.5</td>
<td>88.1</td>
</tr>
<tr>
<td>England</td>
<td>65.6</td>
<td>63.4</td>
<td>57</td>
<td>54.9</td>
<td>67.2</td>
<td>66.7</td>
</tr>
<tr>
<td>Scotland</td>
<td>77.1</td>
<td>65.6</td>
<td>61.9</td>
<td>66.1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The registrations for disability and race have not been subject to the effects of the part-time pension registrations:

Table Three: Cases of disability discrimination registered in Wales, England and Scotland as a percentage of all cases registered, 1996-2001

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>0</td>
<td>16.9</td>
<td>13.4</td>
<td>17.2</td>
<td>10.7</td>
<td>8.8</td>
</tr>
<tr>
<td>England</td>
<td>1.2</td>
<td>15.1</td>
<td>21.2</td>
<td>22.4</td>
<td>17.8</td>
<td>20.6</td>
</tr>
<tr>
<td>Scotland</td>
<td>2.6</td>
<td>19.5</td>
<td>20.3</td>
<td>22.5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In each of the three countries, registrations for disability discrimination rose significantly in 1997 due to the influence of the introduction of the Disability Discrimination Act. In England, registrations have grown strongly from 84 in 1996 to 4,607 in 2001, making up over 20% of the registrations that year. In Wales and Scotland, registrations have not been so buoyant. In Wales, there were no cases registered in 1996, gradually increasing to 235 in 2001. In Scotland, the increase has been even more modest, rising from seven in 1996 to 89 in 1999, but the pattern of percentage increase in Scotland is more similar to England than it is to Wales.

Table Four: Cases of race discrimination registered in Wales, England and Scotland as a percentage of all cases registered, 1996-2001

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>18.6</td>
<td>17.6</td>
<td>7.0</td>
<td>6.7</td>
<td>4.2</td>
<td>3.1</td>
</tr>
<tr>
<td>England</td>
<td>32.9</td>
<td>23.0</td>
<td>23.1</td>
<td>23.7</td>
<td>17.2</td>
<td>15.6</td>
</tr>
<tr>
<td>Scotland</td>
<td>20</td>
<td>14.8</td>
<td>17.8</td>
<td>13.4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Race discrimination cases show a very different pattern of registration compared with sex or disability. Registrations for race discrimination have shown a much lower rate of increase than sex or disability. In England, there has been a significant increase in cases registered, from 2,379 in 1996 to 3,822 in 2001 (registrations for race discrimination in England peaked at 4,009 in 2000). In Wales and Scotland, the increase in the number of registrations over the period has been very small, from 65 to 82 in Wales and from 51 to 56 in Scotland. In part this reflects the much smaller ethnic populations in these countries. The rate of increase in each country also varies from 60% in England to 26% in Wales and 9% in Scotland which suggests that race discrimination cases are more likely to emerge in England than in Wales or Scotland.

4.3 The Settlement of Cases

In 1999 and 2000, 17,287 cases of discrimination were determined by the Employment Tribunal Service in Wales, England and Scotland - 2.8% of these cases were in Wales, 93.9% in England and 3.1% in Scotland. The small increase in the overall number of cases from 1999 to 2000 was not significant
but it did conceal a decline in Wales from 264 cases in 1999 to 241 cases in 2000.

**Table Five: Cases determined in 1999 and 2000 as a percentage of all discrimination cases**

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wales</td>
<td>264</td>
<td>241</td>
<td>505</td>
</tr>
<tr>
<td>England</td>
<td>7747</td>
<td>8500</td>
<td>16247</td>
</tr>
<tr>
<td>Scotland</td>
<td>270</td>
<td>263</td>
<td>533</td>
</tr>
</tbody>
</table>

Chi-square = 5.807 DF= 2 p=.055

**Table Six: Method of determination in Wales, England and Scotland 1999/2000 as a percentage of all discrimination cases**

<table>
<thead>
<tr>
<th></th>
<th>Wales</th>
<th>England</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>ACAS</td>
<td>188</td>
<td>37.2</td>
<td>6188</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>207</td>
<td>41</td>
<td>5845</td>
</tr>
<tr>
<td>Tribunal</td>
<td>110</td>
<td>21.8</td>
<td>4214</td>
</tr>
<tr>
<td>Total</td>
<td>505</td>
<td>100</td>
<td>16247</td>
</tr>
</tbody>
</table>

Chi-square = 49.939 DF = 4 P = 0.000

There were similar levels of settlement by ACAS in Wales, England and Scotland, (app 38%) but there was some variation in the level of withdrawal, which was high in Wales, (41%; 5% more than in England) and low in Scotland (30%). In contrast, the number of cases going forward to the tribunal was low in Wales, (21.5%) and high in Scotland (31%). These differences were statistically significant suggesting that there was a real difference between England and Wales. In England, there were fewer withdrawals and a higher number of cases going to the tribunal than there were in Wales.

**Table Seven: Method of determination in Wales, England and Scotland, 1999 and 2000 (disaggregated) as a percentage of all discrimination cases**

<table>
<thead>
<tr>
<th></th>
<th>Wales 1</th>
<th>England 2</th>
<th>Scotland 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>ACAS</td>
<td>100</td>
<td>37.9</td>
<td>88</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>106</td>
<td>40</td>
<td>101</td>
</tr>
<tr>
<td>Tribunal</td>
<td>58</td>
<td>22</td>
<td>52</td>
</tr>
<tr>
<td>Total</td>
<td>264</td>
<td>100</td>
<td>241</td>
</tr>
</tbody>
</table>

1. Chi-square = .167 DF=2 p=.920
2. Chi-square =20.19 DF=2 p=.000
3. Chi-square = 2.97 DF=2 p=.227

There were no significant changes in the way in which cases were determined in Wales and Scotland between 1999 and 2000 but there was a significant increase in the number of withdrawals and a decrease in the cases going to tribunal in England. However, the level of withdrawal in England is still lower than Wales.
Table Eight: Successful cases as a percentage of all discrimination cases heard at the Tribunal, 1999-2000.

<table>
<thead>
<tr>
<th></th>
<th>Wales</th>
<th>England</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Successful</td>
<td>35</td>
<td>31.8</td>
<td>1186</td>
</tr>
<tr>
<td>Unsuccessful</td>
<td>75</td>
<td>68.2</td>
<td>3028</td>
</tr>
<tr>
<td>Total</td>
<td>110</td>
<td>100</td>
<td>4214</td>
</tr>
</tbody>
</table>

Chi-square = 4.95 DF=2 p=.084

On the face of it, Wales appears to have the highest level of success at the tribunal but the Chi-square value is relatively low suggesting that there is little significant difference in the success rates of the three countries. The rate of success over the two years is stable, there were no significant differences with respect to any of the three countries. (Wales Chi-square=2.01 DF=1 p= 0.157) (England Chi-square= 0.05 DF=1 p= 0.814) (Scotland Chi-square = 0.045 DF=1 p= 0.832)

Equal Pay Cases 1998-2001

The number of Equal Pay cases registered and disposed of is subject to dramatic change over short periods due to the registration of block claims. Therefore, this category of cases is not subject to reliable analysis. The raw data for 1998-2001 is shown below.

Table Nine: Equal Pay cases in Wales, 1998–2001

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of cases</td>
<td>Number of cases</td>
<td>Number of cases</td>
</tr>
<tr>
<td>Registered</td>
<td>646</td>
<td>125</td>
<td>1037</td>
</tr>
<tr>
<td>% of disposals</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Disposals</td>
<td>62</td>
<td>14</td>
<td>154</td>
</tr>
<tr>
<td>Settle by ACAS</td>
<td>17</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>40</td>
<td>6</td>
<td>137</td>
</tr>
<tr>
<td>Heard at tribunal</td>
<td>5</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Successful at tribunal</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

• In 2000-2001, three cases were disposed of otherwise.
4.4 Single and Multiple Jurisdictions

In 2001, the Shrewsbury and Cardiff offices of the Tribunal Service reported 2,673 discrimination applications. The cases were classified by jurisdiction. 440 involved a single jurisdiction - one area of discrimination, either race, sex or disability. 116 involved multiple discrimination and 2,028 were cases that combined discrimination with non-discriminatory elements. Table Nine summarises these figures:

Table Ten: Discrimination applications by jurisdiction 2001

<table>
<thead>
<tr>
<th>Area of discrimination</th>
<th>Total applications</th>
<th>Total jurisdiction classifications</th>
<th>Single jurisdiction</th>
<th>Multiple discrimination</th>
<th>Combined disc. and non-disc. elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>81</td>
<td>82</td>
<td>37</td>
<td>7</td>
<td>38</td>
</tr>
<tr>
<td>Sex</td>
<td>2359</td>
<td>2313</td>
<td>357</td>
<td>20</td>
<td>1936</td>
</tr>
<tr>
<td>Disability</td>
<td>233</td>
<td>289</td>
<td>46</td>
<td>89</td>
<td>154</td>
</tr>
<tr>
<td>Total</td>
<td>2673</td>
<td>2684</td>
<td>440</td>
<td>116</td>
<td>2028</td>
</tr>
</tbody>
</table>

The vast majority of cases of discrimination have non-discriminatory elements; this is particularly true for sex discrimination, where 84% of the cases fall into this category. At the other end of the scale, there are a significant number of single jurisdictions; a classification that seems to be particularly important to those who are discriminated against on the basis of race. 45% of these cases were classified as such. The pattern for disability was different again. Multiple discrimination was significant, 31% of those who were discriminated on the grounds of disability were also discriminated on other grounds. From the evidence of this report it is difficult to explain this different pattern of jurisdiction, but it does suggest that the process of complaining is complex and involves action beyond the act of discrimination itself. This conclusion is certainly supported by the evidence of the interviews with applicants.

4.5 Analysis of Tribunal Reports, 1999 and 2000

One way of considering the experience of applicants is to look at what happens to cases once they get to an Employment Tribunal. To help understand the position of applicants in this situation, 116 cases of discrimination heard by the Employment Tribunal in Wales in 1999 and 2000 were selected and analysed. This information was taken from the reports of

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66 A comparison of the total applications and the total jurisdiction classification are discrepant and may conceal a small element of double counting
67 These figures are taken from a report from the Cardiff and Shrewsbury Tribunal Offices
68 This conclusion may be distorted by the large number of part-time pension cases that were classified as sex discrimination in that year
the tribunal hearings. Seven cases were discarded because information relating to key variables was missing from the data set. 69

Table Eleven: Discrimination cases brought to the Employment Tribunal in Wales, 1999-2000

<table>
<thead>
<tr>
<th></th>
<th>1999</th>
<th>2000</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases</td>
<td>58</td>
<td>51</td>
<td>109</td>
</tr>
</tbody>
</table>

The Applicants
In all, 116 cases of discrimination pertaining to Wales were considered for the year 1999-2000.

Table Twelve: Cases disposed of by the Employment Tribunal in Wales, 1999-2000: area of discrimination

<table>
<thead>
<tr>
<th>Area of discrimination</th>
<th>Number of cases</th>
<th>% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td>56</td>
<td>51</td>
</tr>
<tr>
<td>Disability</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Race</td>
<td>29</td>
<td>27</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>100</td>
</tr>
</tbody>
</table>

The greatest number of discrimination cases disposed of by the tribunal were on the grounds of sex, (51%), followed by complaints relating to race (27%), and complaints under the Disability Discrimination Act (22%).

Table Thirteen: Cases disposed of by the Employment Tribunal in Wales, 1999-2000: applicant's gender and employment sector

<table>
<thead>
<tr>
<th>Gender</th>
<th>Number of cases</th>
<th>% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>41</td>
<td>38</td>
</tr>
<tr>
<td>Female</td>
<td>68</td>
<td>62</td>
</tr>
<tr>
<td>Employment Sector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private</td>
<td>78</td>
<td>72</td>
</tr>
<tr>
<td>Public</td>
<td>31</td>
<td>28</td>
</tr>
</tbody>
</table>

Given this division, it is not surprising that the majority of complainants were women (62%). The majority of respondents (72%) were employees in the private sector.

69 Any attempt to measure the nature of the tribunal process by looking at tribunal reports is confounded by the nature of the reports themselves. They are intended to give a report of a judgement by the tribunal in a particular case, not to measure the nature or the effectiveness of the tribunal process itself. The reports do contain a limited amount of measurable information relating to the process and to the case that can be used as a quality measure. With little additional effort these documents could become a major form of quality assurance related to tribunal performance. The analysis was restricted to reports from 1999 to 2000.
Table Fourteen: Cases disposed of by the Employment Tribunal in Wales, 1999-2000: representation.

<table>
<thead>
<tr>
<th>Representation</th>
<th>Number of cases</th>
<th>% of cases</th>
<th>Total number of valid cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants represented</td>
<td>61</td>
<td>58</td>
<td>106</td>
</tr>
<tr>
<td>Applicants representing themselves</td>
<td>48</td>
<td>42</td>
<td>106</td>
</tr>
<tr>
<td>Respondents represented</td>
<td>64</td>
<td>60</td>
<td>107</td>
</tr>
<tr>
<td>Respondents representing themselves</td>
<td>45</td>
<td>40</td>
<td>107</td>
</tr>
</tbody>
</table>

Legal qualification of representatives

<table>
<thead>
<tr>
<th>Representation</th>
<th>Number of cases</th>
<th>% of cases</th>
<th>Total number of valid cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants’ representative legally qualified</td>
<td>40</td>
<td>40</td>
<td>100</td>
</tr>
<tr>
<td>Respondents’ representative legally qualified</td>
<td>48</td>
<td>47</td>
<td>101</td>
</tr>
</tbody>
</table>

Representation from the voluntary sector

<table>
<thead>
<tr>
<th>Representation</th>
<th>Number of cases</th>
<th>% of cases</th>
<th>Total number of valid cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants’ representation from the voluntary sector</td>
<td>21</td>
<td>20</td>
<td>105</td>
</tr>
<tr>
<td>Respondents’ representation from the voluntary sector</td>
<td>14</td>
<td>14</td>
<td>103</td>
</tr>
</tbody>
</table>

The differences in the total number of cases on each variable are due to the absence of data on those particular variables.

More than half the applicants and respondents appearing at the tribunal were represented. Those who appeared for respondents were more likely to be legally qualified than those appearing for the applicant. Compared with respondents, applicants were more likely to be represented by advocates from the voluntary sector, their trade union or CAB. Where respondents drew upon expertise outside the legal profession, they tended to call upon their trade association rather than any other organisation.

Does representation make a difference?

One of the main concerns of applicants, and those who represent them, is whether representation at a tribunal makes any difference to the outcome. Research indicates that an answer to the question lies in the relationship between the tribunal decision, in favour or against the applicant, and whether the applicant was represented at the hearing. A second question relates to the qualifications of those who represent applicants and, more importantly, whether they are legally qualified. A third question is concerned with the impact of the Legal Services Commission scheme where the link between specialist expert advice and representation is ensured (see Chapter Five) and whether people with this expertise are more successful on behalf of their clients than other representatives.

The analysis of the case reports in 1999 and 2000 does not give clear answers to any of these questions. The data is simply not available to answer the third question although there is evidence elsewhere in this report to suggest that representatives skilled in employment law do have a higher success rate than others. It is clear that when a joined-up specialist advice and representation service is provided, the success rate is strikingly high.70

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70 See Chapter Five
To answer the other questions, the relationship between representation (both for the applicant and the respondent) and the outcome was analysed in relation to unfair dismissal and more general allegations of discrimination by the use of Chi-squared tests. No significant association was found between representation as such and the tribunal decision. One aspect of representation which may be relevant, yet remains un-testable in this analysis, is the impact on applicants, who are often undergoing considerable stress given the realisation that they will not be represented at tribunal. It is not impossible that the lack of representation in Wales may be associated with the region’s relatively high withdrawal rate. A similar analysis was made with respect to the legal qualifications of representatives and tribunal decisions. Again, there was no statistically significant relationship between the two in the cases of general allegations of discrimination, but there was a significant relationship between representation and the outcome of cases of unfair dismissal.

Table Fifteen: Legal representation and tribunal decisions: unfair dismissals and discrimination

<table>
<thead>
<tr>
<th>Decision</th>
<th>Legal qualification of applicant’s representative</th>
<th>Legal qualification</th>
<th>No legal qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>In favour of the applicant</td>
<td>17</td>
<td>63%</td>
<td>1</td>
</tr>
<tr>
<td>Against the applicant</td>
<td>10</td>
<td>37%</td>
<td>7</td>
</tr>
</tbody>
</table>

Fisher’s exact test p=.016

It would seem, from this rather limited evidence, that being represented at a tribunal *in itself* does not make a difference to the outcomes, either for the applicant or the respondent. Nor does the evidence suggest that having a representative with a legal qualification is likely to make a difference in cases of general allegations. However, when these cases are linked with unfair dismissal, it is probable that having legal representation is likely to increase the applicant’s chance of success. This may be because these cases are generally regarded as being more straightforward than more complex discrimination cases that often depend on establishing inference. Given that the analysis was based on cases heard over a two-year period and involved a relatively small number of cases, some caution must obviously be exercised. It is pertinent to note, however, that the Employment Tribunal Service Taskforce similarly noted that comments about the significance of representation were mixed, but concluded that most of those consulted noted difficulty in obtaining affordable advice when needed.²¹

### The cases
All the cases in this report involve claims for discrimination. 51% were sex discrimination, 27% were on the grounds of race and 22% related to disability. 71% of cases involved other jurisdictions, mainly unfair dismissal but

²¹ para 5:30
including redundancy, denial of benefit, a failure to be shortlisted for a position, not being offered an interview, or a failure to gain employment.

Table Sixteen: Cases brought to the Employment Tribunal in Wales 1999-2000: discriminatory action

<table>
<thead>
<tr>
<th>Discriminatory action</th>
<th>Number of cases</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfair dismissal</td>
<td>61</td>
<td>56</td>
</tr>
<tr>
<td>Redundancy</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Denial of benefit</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Not shortlisted</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Not offered an interview</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Failure to gain promotion</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

These particular jurisdictions were associated with claims of discrimination under the relevant sex, race or disability legislation

The seriousness of discrimination in the workplace is underlined by these figures. The most likely context in which discrimination is manifest is when a person’s job is threatened either by being dismissed or being made redundant. These are serious life events and suggest that any action based on discrimination involves much more than the act of discrimination itself and is related to the seriousness of the threat to a person’s employment, their lifestyle and for many, their family responsibilities.

Table Seventeen: Cases brought to the Employment Tribunal in Wales, 1999-2000: percentage of tribunal decisions in favour of the applicant

<table>
<thead>
<tr>
<th>Discriminatory action</th>
<th>Total number of cases</th>
<th>Number of decisions favourable to the applicant</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfair dismissal</td>
<td>55</td>
<td>27</td>
<td>49</td>
</tr>
<tr>
<td>Redundancy</td>
<td>6</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>Denial of benefit</td>
<td>4</td>
<td>2</td>
<td>50</td>
</tr>
<tr>
<td>Not shortlisted</td>
<td>1</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Not offered an interview</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Discriminated under the DDA/RR/SDA</td>
<td>101</td>
<td>37</td>
<td>30</td>
</tr>
</tbody>
</table>

In some of these categories, the figures are so small that the results are quite unstable and may vary considerably from year to year, but there is more certainty with the figures relating to unfair dismissal and discrimination. Of course, these categories overlap and very often the tribunal will have to adjudicate on unfair dismissal and discrimination in the same case. The figures suggest that the tribunal is more likely to find in an applicant’s favour when asked to judge on very specific issues, such as unfair dismissal, rather than more general issues of discrimination when they have to draw inference and thus determine more complex cases. This may relate to the level of training of Panel Members and possibly to a reluctance to use inference referred to in other sections of this report.

As far as the applicant is concerned, the decision of the tribunal is critical. However, there are other aspects of the tribunal system that are important. These relate to accessibility, their experience of the Chairs and the
composition of the Panels. In the tribunal decision reports themselves, there are few indicators that relate to these matters, but there are some, and they give some impression of the tribunal’s effectiveness on these matters.

Table Eighteen: Cases brought to the Employment Tribunal in Wales, 1999-2000: the location of the tribunal’s hearings

<table>
<thead>
<tr>
<th>Location of tribunal</th>
<th>Number of cases</th>
<th>Percentage of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiff</td>
<td>77</td>
<td>71</td>
</tr>
<tr>
<td>Shrewsbury</td>
<td>17</td>
<td>16</td>
</tr>
<tr>
<td>Caernarfon, Abergele, Flint</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Carmarthen</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Hereford</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Bristol</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>100</td>
</tr>
</tbody>
</table>

The Tribunal Service covers the whole of Wales but cases are predominately heard in Cardiff and Shrewsbury. 71% were held in Cardiff and 16% in Shrewsbury. Some attempt has been made to hold hearings in north and west Wales particularly for those people with a disability who find travel difficult. When this occurs, applicants appreciate it (see Chapter Six).

Table Nineteen: Cases brought to the Employment Tribunal in Wales, 1999-2000: experience of the Chairs - percentage of cases heard by tribunal Chairs

<table>
<thead>
<tr>
<th>Tribunal Chairs</th>
<th>Number of cases</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr R Davis, Mr B Lloyd, Mr J Thomas</td>
<td>50</td>
<td>46</td>
</tr>
<tr>
<td>Mr S J Williams, Mr Pritchard, Miss Collier</td>
<td>30</td>
<td>28</td>
</tr>
<tr>
<td>12 other Chairs</td>
<td>29</td>
<td>27</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>100</td>
</tr>
</tbody>
</table>

Considering the number and frequency of cases heard by Chairs in this two-year period, it is clear that relatively few Chairs hear the majority of cases. Six chairs heard almost 74% of cases. The experience of other chairs over the period is somewhat limited although they may have sat outside the Welsh region. Seven chairs only heard one or two cases in two years.

From an equal opportunities perspective, it is not possible from the tribunal decision reports to establish the ethnic origin of Chairs or Panels, or their level of disability, but it was possible to determine their gender.

Table Twenty: Cases brought to the Employment Tribunal in Wales, 1999-2000: gender of Chairs and Panels at each sitting

<table>
<thead>
<tr>
<th>Chair or Panel</th>
<th>All male</th>
<th>All female</th>
<th>Mixed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Chair</td>
<td>76</td>
<td>71</td>
<td>31</td>
</tr>
<tr>
<td>Panel</td>
<td>46</td>
<td>44</td>
<td>3</td>
</tr>
</tbody>
</table>
Chapter Four

In recent years, attempts have been made to address the gender balance on tribunals in Wales and this has had a measure of success. Nevertheless, men chair 71% of hearings and 46% of Panels are all male. The all-female Panel is very rare at only 3% of the total.

4.6 Conclusion
A review of the statistical evidence of this period leads us to make the following conclusions:

1. Figures relating to sex discrimination and equal pay registrations between 1994 and 2000 are unreliable and probably invalid
2. There has been a small decline in the number of discrimination cases determined in Wales between 1999 and 2000
3. There was a relatively higher level of withdrawals in Wales than in England and Scotland in 1999/2000
4. There was a relatively smaller number of cases going to the tribunal in Wales than in England and Scotland in 1999/2000
5. About 25% of discrimination cases in Wales involve multiple discrimination
6. More than half the applicants who appear before the Employment Tribunal with discrimination cases are represented
7. Representation increases the applicants’ chances of winning in unfair dismissal cases
8. Almost three-quarters of all cases heard in Wales are heard in Cardiff
9. Tribunal Chairs in Wales are predominately male
10. Panels in Wales are predominately mixed, male and female.
Mapping Provision in Wales

5.1 The Quantity of Providers
The level and distribution of advice-givers in Wales reveals huge advice deserts. This picture itself belies the on-the-ground experience of an enormous deficit in provisioning for discrimination cases. In meeting the advice needs of clients, providers can be divided into generalists - offering holistic initial advice and specialists who offer advice advocacy and representation at a specialist level. According to the latest Legal Services Commission Directory, 7 solicitor firms have been awarded the Specialist Quality Mark Level, the majority based in south Wales, together with 3 organisations, again from South Wales, which hold Employment Contracts. These are Cardiff, Swansea and Pontypridd CABx. Other specialist employment solicitors are to be found predominantly in Cardiff. These are firms which, for commercial or other reasons, decide not to seek quality mark recognition. In terms of generalists, CABx are the greatest providers in Wales with 59 main CABx and 145 secondary outlets serving a population of 2.8 million. (A map indicating the geographical locations of advice-providers in Wales can be found in Appendix B.)

The current pattern of provision is by no means a steady state. For example, the CRE has only been handling cases from its Cardiff office since 1995. The North Wales Race Equality Network, established in 2000, still does not have the capacity to handle casework. Disability rights have scarcely been protected in Wales prior to the establishment of the Disability Rights Commission in 2000 and specialist CABx advice in the south is of limited scope, is of fairly recent origin, and its future apparently precarious. Moreover, the prospect of the widespread extension of such services by means of outreach provision may be limited because of the localised, perhaps parochial, nature of the CABx management structure. So, even in areas where there is provision, it may be partial and not have been up and running for very long. The unqualified response of those agencies contacted is that advice provision in Wales is sparse, under-funded and fragmented.

72 Dial Swansea, incorporating Neath/Port Talbot, have applied for accreditation but the process is yet to be completed.
73 See below: the CAB offices in Cardiff and Swansea which we visited have different approaches but are currently partly funded by contracts from the Legal Services Commission. It is clear that compliance with current contract conditions is difficult and therefore the future of the current service is not guaranteed. An indication of the vulnerability of these projects is the fact that local authority funding which underpins the service in Cardiff is subject to six-month renewal. The lack of stability and security of funding is a serious weakness.
74 We are informed by one of the city providers of a specialist service, that there was little prospect of extension to neighbouring valleys because such activity would be seen as encroachment.
5.2 Funding Advice in Wales

In 2001-2002, funding of Citizen Advice Bureaux from Unitary Authorities amounted to 44% of the £5.2 million direct funding received by CABx in Wales. This core funding meets the cost of keeping bureaux going in terms of communications infrastructure, salaries, offices, etc. There is no statutory duty for local authorities to provide such funding and NACAB have argued for the need to place local authorities under such statutory duty.

Local authority funding in Wales is some 33% per capita less than that in England, averaging about 75p per head of population. There is considerable variation between local authorities, ranging from 36p per capita to £1.46. This obviously affects provision and accessibility of the service, with a correlation between low core funding and high deprivation. Ability to attract the additional funding essential for service development also depends upon core funding.

A picture of some poorly funded bureaux whose hands are tied in terms of provision and development begins to emerge.

The funding of RECs by the CRE has recently been realigned. CRE funding was previously used to fund posts, but has now been re-engineered towards an outcome-based system based on areas of work specified in the individual REC business plan. Now casework is funded, rather than caseworkers. This means that all RECs will have to undertake to carry out employment discrimination responsibilities.

There is only one Law Centre in Wales which receives a block grant from the Lord Chancellor’s office and some funding from the LA. The block grant ends in 2003. The Law Centre is Cardiff-based but not contracted by LSC to provide specialist employment work. It, nevertheless, undertakes some employment discrimination work within the framework of its LSC Quality Mark for general help with casework. In November 2001, it was obliged to close its drop-in advice desk due to lack of funding. The position remains unchanged but ongoing discussions are taking place with the local authority in an effort to securing funding to re-introduce the service.

Private solicitors, even those awarded Quality Mark recognition, receive no funding from the LSC for representation work in employment tribunals. Funding is limited to the provision of advice and assistance with an expenditure cap at £500 that is only exceeded in special circumstances. Little wonder, therefore, that it is generally considered that acting for employees in employment disputes is not lucrative work. This may be something of a misconception. Preparation and representation at ET is regarded as non-contentious work thus allowing those that actually undertake such work to charge in a variety of different ways with the result that there is no

75 NACAB internal briefing paper 2001
standardisation of legal costs.\textsuperscript{76} The definition of a contingency fee is extremely wide: ‘\textit{any sum (whether fixed or calculated, either as a percentage of the proceedings or otherwise)... only in the event of success. The fact that an agreement might stipulate a minimum fee in any case, whether win or lose, will not prevent it from being a contingency arrangement}’.\textsuperscript{77}

It is also important to note that ‘ineligible’ clients, ie those not eligible for public funding for assistance, may not be able to access much free legal advice or assistance, a significant issue in differential access to services.

A thoroughgoing audit of funding on employment advice, assistance and representation in Wales is required so that a clear picture of the suggested relative shortfall can be made evident.

\section*{5.3 Generalist Providers}

\subsection*{5.3.1 Trade unions}
Union membership among employees in the UK has marginally increased in recent times and according to the latest figures, some 7.5 million working people currently are members of trade unions or staff associations. The increase in numbers has not been matched by an increase in the proportion of employees belonging to a union, but instead reflects a strong expansion of the labour market during the period. Union density, ie the proportion of employees that currently belong to a union, continues to decline. Union density in the UK now stands at 29.1\% and 39\% in Wales.\textsuperscript{78} Whilst unionisation in Britain as a whole is declining, the available evidence suggests membership is higher in Wales than Britain overall. Unionisation is lower for women than men and the trade union density for women is particularly low. The information deficit is being addressed. TUC Cymru recognises that Unions must do more to demonstrate their relevance to individuals who historically have been under-represented.\textsuperscript{79}

The TUC has an equal rights department and provides training via its National Education Centre for officials. In the larger unions most lay representatives will have had some training in discrimination issues. There is an informal network of equality officers with varying status within their unions but no standardised provision across all unions.

The interviews for this study included TUC Cymru and representatives of

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{76} S87 (1) Solicitors Act 1974 - Proceedings before all tribunals other then the Lands Tribunal and the Employment Appeals Tribunal. Given the widely acknowledged legal complexity of work at the ET the justification for the existing classification is perhaps weak.
\item \textsuperscript{77} See rule 18(2)(a)-(c) of the Solicitors’ Practice Rules 1990, Annex 1A, p29.
\item \textsuperscript{78} Trades Union Congress (2002) Trade Union Trends: Today’s Trade Unionists. Wales used to have the highest density but is now second highest after Northern Ireland (40\%).
\item \textsuperscript{79} See, for instance, 2002 Conference rule change which will provide for ethnic minority and women group membership of the General Council.
\end{itemize}
\end{footnotesize}
seven unions/professional associations, including a specialist advisor on race.

The main detail of the findings indicates:

- Employment is not a devolved matter, so much of the training and policy development is London-centred. Until recently, there was little evidence of any co-ordinated policy or development on a regional basis. Encouragingly, however, there is evidence of some important movement and funding developments. The Wales Union Learning Fund was launched in 1999 to engage trade union members in learning opportunities and a significant sum has been made available for 2002/3. In addition, the Welsh Assembly Government is to provide funding to the TUC Cymru to support the work of its education team. The team has been established to develop the skills of Union representatives and to facilitate appropriate accredited training.

- The London-centred tradition of dealing with employment issues is perhaps best reflected by the fact TUC Cymru has no casework capacity to respond to enquiries from the public about discrimination. We were informed that TUC Cymru typically receives some two-three calls a week from the public concerning discrimination and that ad hoc arrangements are in place for dealing with such contact. If the caller is a member of a union then the usual response is to refer the person to the union concerned or to the General Secretary of their union. Occasionally, the call will be from a member who is disenchanted with his/her particular union. We were advised that, in such circumstances, the member could chose to make a complaint to a Certification Officer, an independent statutory officer (appointed by the Secretary of State and Industry) whose functions include the power to determine complaints that trade unions have breached specific statutory provisions or, in relation to certain matters, their own rules. Little, if any, publicity is given to this option. Moreover, it is clear that at present the Certification Officer’s role is not as broadly defined as that of an ombudsman, with the result that it would be beyond his/her capacity to respond to a complaint of negligence or possible conflicts of interest. Calls are sometimes received from non-union members. Until very recently there was some resistance to giving assistance to non-union members. The recent launch of a TUC website designed to provide help and information on workplace issues for union and non-union members is seen as an important step forward.

- Support mechanisms for discrimination cases vary from union to union. There is a tendency amongst the larger traditional unions for the emphasis to be on sex discrimination issues with few appropriately equipped to deal

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80 Following discussions with ACAS, it has been agreed that the DTI Partnership Fund, which to date has had very limited application in Wales, should be used to develop and promote workplace partnership agenda in Wales. A number of initiatives are being planned. See TUC CYMRU: Annual Report 2001-2002, pp 18-19.
81 £550,000.
83 Worksmart - Wales, TUC. 29 August 2002.
with race or disability cases. Most of the large unions have equality officers but the focus of their work has been on gender. This infrastructure has some potential for positive support to victims of discrimination. The TGWU's equality committee, for instance, has established a regional support network for members involved in employment disputes. Telephone support is provided by trained officials across Wales. They are trained to support rather than advise or counsel; indeed they are not 'covered' to give advice. This distinction is important, and both elements need to be in place to ensure client satisfaction as illustrated in the testimony of applicants in Chapter Six.

- The arrangements amongst unions for engaging professional legal representation vary enormously. Some lawyers and officials suggested that there was perhaps a tendency/tradition in south Wales among the traditional unions to overly rely on branch members for support, thus giving rise to later legal complications.

- There is evidence to suggest that applicants are not always clear as to whom the legal service is representing and conflicts of interest are possible. 84

- There was considerable support for the view that they are generally poor at handling race cases.

The trades unions in Wales have clearly made some progress of late but have a long way to go in terms of putting in place an effective system of complainant aid. The low rate of calls to the TUC and the lack of any formalised procedure for responding to potential applicants are indicative of this sluggishness. To date, there is no systematic monitoring in place, the training of branch officers is variable and access to specialist help ad hoc. This situation must be set against the fact that other sources of complainant aid are generally denied to those who hold union membership. The questionable assumption of many other key agencies is that they are receiving a satisfactory service from the union such that they can focus on others in need.

5.3.2 Citizen Advice Bureaux (CABx)

There are 59 main CABx in Wales, with 145 secondary advice outlets. Each CAB is managed locally by an elected Charity Trustee Board and most have paid specialist managerial staff (currently 99 in Wales) as well as volunteers. In the year 2000 to 2001, there were 1,931 people involved in CAB Wales which included 751 volunteer advisors. There are only three LSC contracted employment specialist services in Wales. In the year 2000 to 2001, CABx doors were open to clients for 1,500 hours every week and 270,000 new enquiries were received, of which 24,000 related to employment practices.

84 See eg Peter Gibbs v Iron & Steel Trades Confederation/case No 160081/2002
900 of these were specifically identified as discrimination cases. The CABx rely on a helpline service. Their commitment to the use of volunteers is both a strength and a weakness in as much as the turnover of advisors can mean loss of expertise.

Initial compulsory training to a level of ‘general help competence’ is provided for all volunteers and full-time staff. This includes basic training in discrimination. Further training is available for generalist advisers and specialists but is not mandatory. A course for specialist advisers who are taking on employment casework and generalist consultants who need to be able to support workers taking on employment cases is available. People going on the course must already be at the competence level in the area of employment; that is, be able to identify and give advice on fair and unfair dismissal, changes in contracts and redundancy entitlement. The training does not include representation.

CABx are all members of NACAB. Membership is conditional on compliance with NACAB’s membership scheme quality assurance standard, which is commensurate with the LSC General Help Quality Mark. NACAB has the right to undertake an audit of any bureau at any time and to revoke a bureau’s membership if standards are not met. Membership of NACAB can be withdrawn if a bureau ‘compromises the aims and principles of the Association or consistently fails to operate to the quality assurance standard.’

Provision of advice and representation on discrimination

In the course of this study, we have visited and/or made telephone contacts with 15 CABx. We have met with NACAB staff in St. Asaph and liaised with NACAB in Aberystwyth and Cardiff. Appendix B shows the locations of main bureaux and outreach branches throughout Wales, with main offices clustered in terms of population densities in north Wales to the east of Llandudno and in south Wales.

The detail of the findings suggests:

- There is considerable variation in terms of recognising discrimination and taking on such cases. In north Wales, for example, in 1999-2000 nine CABx dealt with 116 employment discrimination cases between them. On the other hand, an interview with a deputy manager of a CABx serving a large population revealed that no-one from the bureau had represented a client at ET ‘for at least two years’, and held the view that employers in that area, many of whom were large, well-established companies were ‘pretty good’. This manager had not come across any discrimination cases. Her view was that legislation was ‘veering towards the employee’ with ‘unreasonable’ cases being taken to tribunal. This bureau deals with 10,000 cases a year and, during the period April 2001 to March 2002, saw

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85 NACAB Membership Scheme
86 Ynys Mon Employment Bid to LSC, 2001
667 employment cases. This suggests that discrimination awareness may be low and cases pass through un-noticed. The manager of another bureau in north-east Wales felt that discrimination often went unrecognised and skill was required ‘to tease it out’. Her bureau sees between 25 and 30 employment cases a month, of which four or five are likely to be discrimination cases. However, the bureau has no employment specialist and would normally refer clients to local solicitors.

- Even in the bureaux where there are employment specialists, clients will often be interviewed by a generalist before being referred to a specialist. If discrimination is not picked up as an issue at this stage, it is possible that some potential cases might be lost. Many generalist workers are not able to demonstrate the sophisticated diagnostic skills needed in what are often complex cases. Further, the use of helplines necessarily means many cases are not attended to. The Cardiff bureaux (which holds an LSC employment contract) offered a ‘guestimate’ that they were only able to respond to 3% of all enquiries.\(^8^7\) Whilst we are unable to come to any firm conclusions as to the actual level of unmet need, the indications are that it is considerable.

- Specialist service is clearly only available to a minority of clients. The following extracts from the Annual Report of Swansea CABx illustrate how small, and yet how successful, the employment casework service actually is:

  ‘During the past year we took on 60 new cases (working on 87 cases in total throughout the year). As in past years, we successfully negotiated settlement in the majority of cases, although only in two was it possible to do so without the necessity of filling Employment Tribunal applications. In 10 cases it was necessary to proceed to a full hearing. Of those, two were represented by myself, both successfully. Of the eight represented by a pupil barrister as part of the Free Representation Service, only one was unsuccessful’. (2001/2)

Where it exists, therefore, a joined-up service of advice and representation can achieve marked success.

- CABx have traditionally provided advice of a generalist nature, but increasingly are responding to the demand for specialist advice and casework. In terms of LSC contracts to provide employment work, there are three specialists operating from Cardiff, Swansea and Pontypridd. It is clear that the pattern of delivery varies. For instance, the employment specialists in Swansea, though sometimes available to supervise the work of others with non-eligible clients, only deal directly with clients who are eligible under the LSC contract. In Cardiff, however, specialists had direct contact with both eligible and non-eligible clients. The contract funds advice only and not representation. Cardiff workers use other funding for

\(^8^7\) Cardiff CABx reported a total of 1,905 employment enquiries out of which 89 were discrimination between April 2001-March 2002. Regrettably, it is not known how many of these cases were taken to tribunal.
representation while Swansea uses the Free Representation Unit. Whilst different delivery systems may not prejudice the quality of the service provided, such diversity may further contribute to public confusion about how to access specialist advice. By all accounts, these CABx offer a good but limited service. The study also identified one ‘unofficial’ specialist who has developed a high level of expertise in the field and whose operation is unconstrained by LSC funding. He is able to take on clients who are in employment, and therefore not ‘legally aid-able’, and to represent them at tribunal. He took on 45 formal casework clients last year. His service is considered invaluable in the north Wales area. He pointed out that complicated cases are sometimes eligible for public funding but that it was not always apparent in the early stages that a case was going to be complex, so it was not usually possible to guarantee public funding. This resulted in clients being turned away.

- Several of those interviewed suggested that public funding should be extended to cover representation and that the existing very narrow qualifying parameters should be broadened.

- It is acknowledged that north and mid Wales are ‘advice deserts’ as far as employment advice and representation is concerned.

The overall picture suggests that CABx are generally weak in respect of identifying discrimination either as a result of resource constraints or because of raised expectations regarding the nature and level of help available at the generalist level. CABx recognise that, in some cases, information and referral is all that can be offered. If it be that bureaux advertise a service that claims that they are, ‘able to offer advice and information on any subject’, then generalist providers cannot be criticised for being unable to offer specialist assistance. Given the current level of resources, CABx are faced with a difficult situation in which they are making claims which they cannot meet and that there is no chance of their being able to do so until they have a core of full-time specialist advisors and are able to strengthen the diagnostic skills of their generalist advisors through training and development.

In addition, those areas benefiting from LSC Employment contracts operate with considerable constraints in terms of who and how they can help. This point is well illustrated: we were informed that one contracted specialist service was reluctant to provide an out-of-hours service on the basis that such a service would probably attract more ineligible than eligible clients and thus put the future of the existing contract at serious risk. It appears that the existing eligibility criteria are very stringent. Another specialist provider

88 For example, Montgomeryshire CAB’s website
89 If an individual and his/her partner have a disposable income of more than £611 a month or have more than £3,000 capital for example, then the client will not be eligible for legal help.

We were informed that experienced staff would take some 10 minutes to complete an eligibility assessment (figures as at 2002).
suggested that the most urgent need was for additional funding which would enable specialists to supervise the service provided by the organisation for non-eligible clients. LSC contracts do allow for such activity. Any such additional service would require funding.

The situation is exacerbated by the fact that the population in large areas of Wales have no access to employment specialists. Some of those interviewed suggested the way forward would be to engage peripatetic specialists, working flexibly in communities as well as in bureaux, and develop the use of video links which would go some way to meeting unmet need in Wales.

5.3.3 Law Centres

Cardiff Law Centre
Established in the early 1970s, Cardiff Law Centre was the third law centre to be established in the UK, and the first one outside London. It is managed as a collective with ten members and a management committee. In 2000-2001, 64% of their funding came from LSC contracts, 28% from LSC grant, 5% from Cardiff City Council and 2% from the Legal Aid Fund.\(^{90}\) There are 18 members of staff, eight of whom are caseworkers. The Centre provides free legal advice and representation on welfare rights, discrimination, refugee and asylum issues and housing. Their services are available solely to people who live and/or work in Cardiff.

There is one employment discrimination caseworker, giving advice and representation at ET, although the Centre does not operate an LSC employment contract. Since June 2002, this worker has also been seeing employment rights cases. In the last 18 months he has seen 45 clients with discrimination cases, the majority being disability cases. Cases that do not have union support are given priority. By all accounts, the Centre offers a vital service to the Cardiff community and, in particular, to disabled clients. Generally, however, awareness of the service amongst the general population is low.

Proposed Law Centres for mid and north Wales
Plans to establish a Law Centre in north Wales have been under discussion for over eight years. A steering group was set up five years ago and they became a company limited by guarantee two years ago. The Chair of the steering group, a north Wales solicitor, stated that whilst there has been no continuity or certainty in the steering group’s history, they now have lottery funding for a feasibility study. It is envisaged that the law centre would include three or four solicitors travelling around north Wales, working on an appointments system and using community meeting places, CABx, etc to meet clients. The feasibility of a north Wales centre has not yet been established. Some of those interviewed were sceptical of this model of serving a vast geographical area, arguing that it would amount to little more than a

\(^{90}\) Law Centre Annual Report 2001
telephone service for most. There is evidently a need for more specialist provision in the north of Wales and the proposal for a feasibility study undertaken under the auspices of the steering group might indicate the most appropriate way forward.

In August 2002, funding was secured for a mid Wales Law Centre. Located in Aberystwyth, the Law Centre is likely to open in early 2003. It will initially offer a second-tier service providing support for existing specialist level suppliers in education, community care and public law/human rights work. It is envisaged that there will be four caseworkers/lawyers and one practice manager who would give advice on the telephone and work peripatetically.

5.4 Specialist Providers

5.4.1 ACAS

The Advisory, Conciliation and Arbitration Service (ACAS) is an independent, government-funded body which is not connected to the ET Service. Its function is to promote good employment relations and, within that broad definition, it performs a variety of functions including conciliation that essentially involves intervention to assist parties to reach a settlement and thus avoid going to a formal tribunal hearing. ACAS has a statutory duty to provide conciliation under most employment protection legislation. An outline of the standard of service which users can expect is available and includes a commitment to respond within five working days of notice of an actual or potential formal complaint. It publishes a number of user-friendly pamphlets to explain what a conciliator will or will not do. Amongst the do’s and don’ts are the following:

- discuss the possible options open to the parties
- tell each side any proposals the other side has for settlement.

The conciliator will not:

- tell the parties what he/she thinks of the case or the likely outcome of a tribunal hearing
- act as a representative, take sides, or help either party with their case.

Put simply, the objective is to promote conciliation and not equal opportunities. Published research testifies, however, to the fact that individual

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91 Employment Tribunals Act 1996 s.18(2)
92 ACAS, The ACAS Commitment.
conciliation officers do have different approaches or ‘styles’ of working and to the difficulty of sustaining neutrality. 93

What clients expect is not necessarily what they get. Evidence presented to the ETST suggests that the quality of service provided is variable and that the reliance on contact by letter or phone has at times led to a lower settlement rate. ACAS was not seen as proactive and too often it was left to the parties to approach ACAS. 94 By contrast, ACAS research points to high levels of client satisfaction with the majority - some two thirds of applicants and representatives - expressing positive opinions about their experience. 95 Within ACAS, success is essentially measured in terms of tribunal avoidance. ACAS figures suggest that performance in Wales is broadly in line with that of England and Wales with a 77% avoidance rate compared with a 75% rate across England and Wales. The avoidance rate figure for Wales comprises a settlement rate of 34% together with a withdrawal rate of 43% compared with a settlement rate of 42% and a withdrawal rate of 33% across England and Wales. The figures are not strictly comparable so any expression of concern would be premature, but it may be that the withdrawal rate in Wales is significantly higher than in England. The number of cases dealt with in Wales has declined of late, but again it would be premature to conclude that the former year-on-year incremental increase in workload has been reversed.

*Interviews were undertaken in two of the three offices in Wales and the main findings suggest:*

- Tribunal Chairs and the majority of employment lawyers interviewed were particularly complimentary about the service received in the region and suggest that the high settlement rate in Wales is in part due to a more proactive approach. 96 On the positive side, one interviewee stated, ‘I’ve got an excellent relationship with ACAS, particularly in Wales, and I have some experience of ACAS outside of Wales because from time to time we will be referring matters for political or sensitive reasons rather than perhaps using solicitors in that particular region. I find that the ACAS Wales people are very helpful in their approach. Now possibly it’s because I’ve got a good relationship with the local people, they know me and we’ve worked together over the years. I was very disturbed by the indifference of people outside Wales’. Other lawyers, however, were a little more sceptical about the impact and effectiveness of ACAS, suggesting that often conciliation led to settlements that were too low and ill-considered.

94 See para 7:12
95 Hines, I; Dix, G and Fox (2000) Conciliation in Employment Rights Cases: User Feedback, ACAS Research and Evaluation Section. The Report refers to the mismatch in expectations and indicates that there was a significant level of demand among un-represented parties for their conciliation officer to give them an opinion on how good their case was (see p. 4)
96 Of the lawyers interviewed only two were generally negative whilst the remainder were very positive.
ACAS are a very variable quality. There are some excellent ACAS workers out there and there are some appalling ACAS workers out there. They are supposed to ring up and conciliate in every case and ring up prior to start. The truth is, that happens in one in five occasions. Quite often it's not till the week before or even on the day of the hearing ACAS rings up. Maybe it's because they say, ‘Oh the party has got a solicitor so no need to get involved.’ So I can't say whether they do.’ ACAS officers when interviewed resisted any suggestion that the service in Wales was significantly different, emphasising the civil servant nature of their approach and training. ‘All the different conciliators get the same training, so they don't get anything different in terms of training here than they would get in any other region’. They also emphasised their commitment to the national standards referred to above and were at a loss to account for the above comments regarding delay. They openly conceded that pressures can build up in local offices from time to time, but were confident that there were no existing institutional problems across Wales.

• The locations of ACAS offices are inaccessible to many and outreach work is partial. The two offices visited during the study were situated in business parks on the outskirts of the town and city. Home visits are arranged where individuals are unable to visit the office but it was suggested that, such arrangements are probably exceedingly rare. No records on the frequency of home visits were available. However, we were informed that as a rule of thumb, home visits would only be arranged if the applicant were unrepresented. It is evident that there has been a sharp decline in face-to-face contact and conciliation in ACAS nowadays is primarily conducted by telephone. The pattern in Wales is little different from that found in other regions in England.

• There is no public record of the ethnic profile of the conciliation officers. It appears that none of the conciliation officers are from black and ethnic minority backgrounds although it was stated ‘we do have black staff in the office’. At present, there are a total of 19 conciliation officers operating across Wales, nine of whom are female, one is disabled, and three are Welsh-speaking. All 10 of the staff employed on the helpline are female, two of whom are Welsh-speaking.

It is encouraging to report that ACAS Wales/Cymru is generally very well regarded amongst the key professional players. Indeed, the service may be well placed to respond positively to recent government initiatives that suggest the need for a more proactive approach in respect to dispute resolution with an increasing emphasis on early intervention. However, whilst acknowledging the tentative nature of the statistical comparison made above, it is clearly necessary to monitor and collect additional data with regard to the service in Wales. It would be a cause of concern if the trend to withdraw was established as a distinguishing feature. We appreciated the openness of

97 ACAS Research and Evaluation Section: Face-to-Face Contact in Individual Conciliation
senior staff and on the basis of their evidence would suggest that the profile of front-line workers needs to change over time to better reflect the linguistic and ethnic diversity of Wales. Perhaps, too, some consideration might be given to reversing the present trend for less and less face contact.

5.4.2 Private Solicitors
Finding a specialist employment law solicitor and negotiating the funding for his/her service requires special skill or good fortune. As has been indicated, only a handful of solicitors are accredited with the Specialist Quality Mark Level (See Appendix D). Others, however, may claim expertise and be classed as such by the Law Society. This classification, unlike the LSC accreditation and inclusion as a member of the Law Family Law Panel, is based on self-certification. Moreover, the Law Society does not publish lists of those who claim such expertise. Postcode searches are possible and telephone enquirers are generally given the names of three potential lawyers in their area. Some self-identified experts are clearly bona fide specialists - experts who are not persuaded of the need to secure Quality Mark status with some claiming that the process is onerous and too bureaucratic. Be that as it may, the lack of any appraisal is clearly unsatisfactory. One way forward, as suggested in the Taskforce Report, would be to adopt a similar approach to the one established in Scotland, where the Law Society of Scotland has set up a system for accrediting specialists by means of an assessment panel. Specialist status is given to solicitors who can demonstrate expertise.

Fourteen interviews were conducted with solicitors across Wales as part of this study, and contact was made with staff from three chambers. When questioned about the benefits and limitations of the existing LSC Quality framework, the consensus view clearly reflected opinions expressed in professional journals, which is, that the present system, described as input–based, essentially measures management or administrative efficiency rather than actual quality. ‘The truth is that well-organised agencies can offer bad advice and poorly organised agencies, in QM terms, can offer cracking advice.’ The Advice Services Alliance has argued in favour of a shift of emphasis towards the monitoring of outputs, that is, the outcome for clients, through the application of three main processes: peer review; practitioner accreditation; and outcome measures. The LSC defend existing arrangements on the basis that they provide for some objectivity, but are piloting alternative approaches, including peer review. If the pilot is successful it might be possible for the LSC to move in concert with the Law Society and establish a common, if different, accreditation process for both lawyers and non-lawyers.

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98 ETST, para 5.36
99 Benson, A; Waterhouse, P (2001) ‘A mark of what?’ Adviser, November-December pp 5-7. See also Fearnley, J (2002) ‘Quality: where to now?’ Adviser, May and June, pp 4-6 and 41. Similar views were expressed by both private solicitors and advisers in the voluntary sector.
100 The ASA is the representative body of the major UK advice networks.
Accredited firms confirmed that the administrative burden was sometimes onerous, but their major concern was that their contract status had led to little beneficial impact on their business. Indeed, one of the five firms listed had given notice of withdrawal because they found the scheme ‘unprofitable’. Another firm informed us that they were seriously contemplating leaving the scheme. More publicity is required if the scheme is to succeed. The major concerns, however, were the constraints imposed by the eligibility criteria and the lack of funding for representation. Their concerns were echoed by all our interviewees, and it is clear that there is an urgent need to review the eligibility criteria in the context of employment law. It cannot be right that the existing criteria all but bar any person in employment from the right to a service.

The main detail of the findings suggest:

- Individual contact with solicitors is ad hoc and not based on clients' knowledge of their employment specialism. For example, one applicant interviewed stated: 'I was moving house and I happened to have a solicitor'. Applicants often talk to lawyers they know personally or have had some professional contact with, rather than approach them as specialists in employment matters. It appears that, rather than these acting as an initial filter, they do take on cases for which they are not suitably qualified.

- If the applicant belongs to a union there is a possibility of getting specialist legal representation via their union. During the study, we spoke to a number of solicitors who regularly acted for trade unions. It was suggested that the pattern of consultation was very variable with some unions arranging solicitor contact from the outset whereas others tended to delay until a crisis occurred.

- Some of the more rights-aware applicants in the study sample sought specialist help outside of Wales (for example, in race cases particular solicitors' names were being circulated informally).

- There is a perception amongst some users of collusion between the big solicitors. This was particularly noted in the Cardiff area. One interviewee referred to 'the old boys' club'.

- There was little evidence of the emergence of paralegal-employment specialists in Wales. Practitioners and tribunal personnel cited examples of poor practice but conceded that representation by such persons was rare in Wales.

- Public funding for legal representation is not available for employment tribunals, although it is available in cases of appeal to the Employment Appeal Tribunal. The need to review the eligibility criteria is urgent, but a broader debate about public funding is beyond the scope of this study. However, it should be noted that the ETST claimed that those consulted
complained of some difficulty in obtaining affordable advice. We have outlined above that there is a lack of standardisation about the fees charged. Indeed, we were impressed by the variety of approaches adopted by those solicitors funded by contingency fee arrangements. In one office the charging arrangements were outlined in a very comprehensive and detailed folder whereas others indicated that they simply explained the options to the potential client. Both approaches have their dangers: the first might intimidate a person who is not familiar with legal jargon whereas the second might lead to some misunderstanding. Certainly our experience echoed that reported by the Taskforce. Applicants informed us of their difficulties in finding appropriate legal support and pressures to recommend individual solicitors. Indeed, one of the Tribunal Chairs indicated his frustration that there was no protocol or system established for referring unrepresented applicants to recognised specialists following interlocutory hearings. ‘I’m stuck - my hands are tied - I simply have to tell him or her to see a solicitor or go to the CABx’. We were informed by one respondent that the Tribunal Service had previously suggested the possibility of direct referral to specialist CABx but that the scheme had been vetoed by the relevant CABx Management Committee on the ground that it would effectively lead to queue jumping. We have subsequently discussed the possibility of resurrecting the proposal with the Director of NACAB Cymru and been informed that, whilst there might be some merit in the proposal, funding was clearly an issue. It might also be appropriate for an agency, such as the Employment Rights Network Wales, to broker a meeting with the relevant local Law Societies with a view of establishing more appropriate referrals.

5.4.3 The Free Representation Service

The Wales and Chester Circuit Free Representation Scheme was established in the latter part of 1992. It was set up following discussions between barristers and CABx in south Wales. In due course, it was extended to include north Wales from Chester. The north Wales venture, however, hardly got off the ground and can possibly be best described as currently dormant. Indeed, we were informed by the service’s current organiser that the existing service is under-used and capable of responding to more requests. He claimed that in previous years they had been well served by cases from CABx in north Wales but that the referral source has all but dried up. Resuscitation is, therefore, possible and again there would appear to be an urgent need for an appropriate agency to facilitate discussion about revival.

The south Wales scheme was set up at very little cost, the major cost being simply the cost of printing notepaper and referral forms in both English and Welsh. Pupil barristers do most of the work, though exceptionally,

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101 ie preliminary hearings held to clarify issues prior to a full hearing.
102 Barristers at Chester chambers currently to do some pro bono work. According to information received from one chambers very little of such work is at Employment Tribunals—perhaps some two cases a year from Wales.
103 Normally first six-month pupils who are not entitled to earn money.
experienced Counsel can be engaged to take on difficult cases. Although the scheme cannot guarantee representation for any case, the evidence suggests that the system is coping with referrals from existing sources. The scheme operates on an extremely simple basis: referral agencies, principally CABx contact the clerk to chambers to secure representation on the hearing date. If an undertaking is given to provide representation the papers are forwarded to Counsel. If there is any uncertainty about whether representation should be given then the matter is referred to the scheme’s co-ordinator.\textsuperscript{104}

The scope of referral agencies has been widened to include Law Centres, various independent advice centres, the Somalian Advice Bureau and Racial Equality Councils in Wales.\textsuperscript{105} The number of cases has increased year on year and continues to grow.\textsuperscript{106} Requests by the CRE and EOC about extending the scheme to accept referrals from them have been refused to date on the basis that they are publicly-funded and have a paid legal staff, which instruct solicitors and counsel to handle discrimination cases. Some confusion exists as to whether the scheme will accept direct referrals from solicitors. One that had been awarded the LSC Quality Mark for advice and assistance told us that her requests to transfer clients to the representation unit had been refused on ‘principle’. However, another reported that she had recently been successful in transferring a case to the service. She remarked that, where she was not confident to take on a case on a no-win/no-fee basis, she would refer the case to 'a junior pupil on a pro-bono basis' as the only way of providing any sort of representation. Mutually agreed protocols are, therefore, urgently required. Encouragingly, there is some evidence of movement in this direction but third party initiatives are probably necessary in order to secure significant progress.

The above example of co-operation within the legal profession could herald significant improvement in the nature of the service provided to applicants who lack the means of securing private or union-funded representation. The general evidence in this context is of the two branches of the legal profession acting independently of each other with the result that some vulnerable applicants are left unsupported.

Further expansion of the scheme is possible. For instance, there is ongoing discussion with the local Law School about extending the scheme to include students undertaking the bar vocational course. Similar arrangements might be possible for Law Society students engaged in training contracts. It needs to be stressed, however, that the scheme is essentially about representation and not advice-giving.

\textit{The only... bad experience that we've had is where clients have become too emotionally involved in the cases and they've started

\textsuperscript{104} Philip Marshall, Iscoed Chambers, 86 St. Helen’s Rd, Swansea, SA1 WBQ. 
\textsuperscript{105} Report: Wales & Chester Free Representation Scheme. Dec 1997 
\textsuperscript{106} ibid- February 1996- Nov 1977: 284 (including 155 Employment Tribunals). More recent figures are being prepared but we are informed that the numbers are on the increase. It is also clear that the work nowadays is almost exclusively done by pupil barristers.
ringing us up and becoming quite agitated on the phone wanting to see a Barrister or wanting to spend time. And I've had to explain that the service is like Ronseal, it does what is says on the tin, it's free representation. It doesn't extend to consultation, but having said that there are occasions where the Barrister himself has said, 'Well this is a case where I do need to see the client' and they have gone to the CABx to see the client.'

Usually the only contact with applicants is at the tribunal hearing. The success of the scheme is, therefore, highly dependent on competent preparation such as is provided under the Swansea CABx Scheme. The scheme co-ordinator, though herself a trained solicitor, rarely provides representation directly. The focus is on preparation and thereafter the case is transferred to the Free Representation Scheme.

By all accounts the Free Representation offers a vital service in the south Wales area and represents another example of the dearth of provision in other areas of Wales. The service succeeds entirely on the basis of good will and voluntary effort. To establish the service as a permanent feature of current provision, some additional monies are required to provide for administrative support and monitoring.

5.4.4 The equality commissions
The EOC has been operative in Wales since 1979 and the CRE since 1995. The DRC began its operation in Wales in 2000. Applicants making tribunal applications under the DDA prior to April 2000 had to seek advice and support elsewhere. In all instances, central offices are based in Cardiff but the DRC do have a north Wales office and the CRE is in negotiation regarding the opening of a north Wales office.

In 2001, the EOC launched its centralised helpline which filters cases emanating from Wales to its Wales Office. The DRC operates a centralised helpline on a similar basis. The CRE does not, as yet, have a centralised complaints helpline.

The commissions have a duty to consider all requests for assistance but retain discretion as to whether to assist tribunal applicants. Indeed, the commissions only offer representation to a tiny proportion of potential ET cases brought to their attention. The commissions operate with priority criteria in terms of the handling of cases, by and large supporting cases that have strategic advantage and will advance the law in some way.

In 2001, the EOC provided advice to 640 complainants and received eight formal applications for assistance under Section 75 of the Sex Discrimination Act 1975. Legal representation was given in two cases. In the same year, 288 members of the public contacted CRE Wales for advice on race discrimination. Of these, 116 (40%) led to formal applications for legal assistance from the CRE under Section 66 of the Race Relations Act 1976.
Thirty-four of these (29% of all cases) were related to employment and 82 (71% to non-employment matters). Of the 34 cases, two were granted legal representation. The DRC are currently unable to provide the figures for Wales as they only began disaggregating them in April of 2002.

These figures demonstrate the small amount of cases in which the commissions offer legal support relative to the number of employment cases brought to their attention. By far the fastest growing area of discrimination complaints is in the area of disability. It is also important to note that the three equality commissions vary in the levels of support they are able to offer to individuals. The CRE probably provide the greatest level of support and the EOC the least with the DRC somewhere in between. The CRE and the DRC do offer help in the initial stages of a claim provided the case comes within the scope of the law, whereas the EOC only provide individualised help when the case fits within their range of priorities. In addition, they vary in the extent to which they are resourced with caseworkers. The CRE currently has two caseworkers, the EOC has one and the DRC has two caseworkers (one of whom is Welsh-speaking). This represents a significant resource constraint on their activity.

The main detail of the findings in this study suggest:

- **Delays**
  The EOC suggest that ‘from an initial contact to a person knowing we will take the case forward is about three months’. Much depends on how quickly the employer responds to the SD74 Questionnaire. The DRC suggest following a call to the helpline ‘people may wait weeks for a caseworker and then be rejected if it transpires they are a member of a union’. Similarly it was indicated that applicants might wait months to hear if they have CRE support. The implications of such delays are that too often this leads to an exacerbation of the individual’s case and to raised expectations that are frequently dashed. In some cases, applicants claimed they were timed out because of their false expectations of assistance. A faster transition between helpline and caseworker would be more satisfactory in such cases, or, where there is no helpline in use, it is important that applicants get early and clear notification of the nature and level of help they can expect from the commissions.

- **Use of helplines**
  The DRC helpline received 267 calls from Wales between April 2001 and March 2002, but they point out that some of these calls were from employers and that the figure may be higher as not all callers gave their addresses.\(^\text{107}\) Disaggregation of ‘Welsh’ cases suggests calls to the helpline are under-represented from Wales. The overall figure for calls to the helpline in 2001/2 was 85,000. The EOC are unable to supply a figure as they are in the process

\(^{107}\) Calls to the helpline from Wales show a 7% increase of all substantive calls
of changing their database system. The CRE do not operate a centralised helpline.

All commissions will increasingly rely on the use of helplines. The use of helplines may raise people's awareness and increase demand and has the potential for opening access particularly for those living in more rural areas of Wales. If they are staffed by legally trained personnel helplines can be highly effective and increase the organisation’s ability to deal with claims rapidly and efficiently.

In this study, however, the provision of a helpline service was viewed with some caution by both providers and complainants for a number or reasons. Some of the key arguments presented were that helplines exacerbate delays, distance the agency from the client group (by and large clients now only get telephone advice) and represent hidden time costs - (all that the recording system documents is the phone call, not how much time is spent on repeat calls on one case). It was suggested that the average length of a call is 45 minutes. In terms of disability, helplines are limited in their use for people with particular impairments. It was noted that currently they do not directly offer a bilingual service although the DRC suggest that calls could be routed to a bilingual worker in Wales on request. (EOC callers can receive advice in Welsh.) The perception of caseworkers is that helplines function primarily as a gate-keeping device rather than being a customer-oriented service. As one worker commented, 'they act as a filter for strategic cases, otherwise people get palmed off with publications. The situation will only get worse as more and more people use the pamphlets, DIY and represent themselves'.

Against this, comments on the literature provided as a follow-up to calls made to the EOC helpline were, however, very positive. Recipients suggested that information arrived promptly, was clear and accessible and enabled them to assess the merits of their case by reference to other case material.

The DRC have conducted a survey to evaluate their helpline service.108 The report is based on a rolling survey between September 2000 to March 2001 in which 40 interviews a month were undertaken from a random selection of callers across the UK. The report claims a majority of respondents reported high levels of satisfaction and viewed the helpline as a good source of accurate information. Respondents felt that the helpline was efficient and that their calls were answered promptly. In cases where the DRC helpline offered to act on behalf of respondents, satisfaction was high. Respondents were more critical when the helpline suggested that they should contact another organisation for help. One third of the respondents thought that the DRC should get more closely involved with their case. That said, nine out of ten respondents said that they would use the helpline again. The results of this

survey do not conflict with the experience of respondents in Wales. They saw the helpline and the DRC as an efficient, reliable source of information. They, too, were pleased when the DRC ‘took up their case’ and critical when they did not. They were often quite angry when they felt that they were being passed on to other organisations and felt that the DRC were distanced and rather clinical in their dealings with their case.

There are several implications of an increased reliance on helplines that are both positive and negative. However, it may not be the most helpful medium for some ethnic minority communities, people with particular impairments and those who, for whatever reason, are unable to articulate themselves in this way. Whilst commissions have the figures on use of helplines and could fairly easily disaggregate by type of query and by geographical area within Wales, these figures are not being used consistently for monitoring purposes. The DRC do currently collect information but do not follow up cases. Accordingly, the commissions are not aware of what happens to people with the advice they are given. There is a need to make full use of the intelligence-gathering in Wales in order that the devolved government and the commissions in Wales can monitor the impact of their efforts.

- **Transfer of expertise**

  A major finding of the study is that caseworkers in Wales work as single operators, drawing infrequently on the expertise of others or making use of key agencies, including the commissions. Where they do liaise, it is often informal and reflects personal networks and contacts rather than any formal or systematised transfer of expertise. Individual caseworkers reported that they did not have time to consult given the pressures of their caseload. We noted instances wherein considerable expertise built up over a long period of time was being lost to the field as individuals moved on. With few exceptions, there appears to be no co-ordinated effort to identify key personnel as a potential source of training providers or to share expertise across agencies or from specialists to generalists. Formalised, competency-based training of advice workers is claimed to be almost non-existent; practitioners instead learning as they go along. Three key employment specialists working under LSC contract stated they had received only ‘basic’ equal opportunities training. Efforts to build up expertise amongst CAB first-tier advisors are frustrated by the fact that many of them are volunteers.

  It is clear that professionals working in the equalities field in Wales are relatively small in number. Interviewees frequently referred to people across agencies on first name terms, often having worked together in the past in different capacities. Close recruitment is a feature of the region with both positive and negative implications. This suggests a system heavily reliant on personalities, informal contacts and goodwill rather than one reliant on institutional mechanisms for ensuring quality advice giving and co-operation. In turn, it makes the operating system vulnerable to personality conflicts.

  A number of developments are underway in Wales to enhance the transfer of expertise between agencies. The establishment of the Employment Rights
Network (ERNW) in 2000, a partnership of key providers in the field, will act as a critical co-ordinating body. Its first objective is ‘to relieve poverty, in particular by supporting the provision of free legal services in the area of employment law for those unable to provide the same from their own resources and, in particular, those who face discrimination in employment’. Scotland has had such a network in operation for over a decade. This body is, however, in an embryonic stage and it will take some time before its aspirations are felt across Wales. It should be noted that ERNW currently receives no funding. In an attempt to address the lack of good quality advice, the EOC, CRE and NACAB have in the past submitted - albeit unsuccessfully - a joint bid to LSC for funding for equality trainers and a telephone consultancy service for first-tier workers. Nevertheless, this infrastructure needs bolstering.

There is a need for a telephone or web network consultancy system to serve providers with advice and support. This might be developed along the lines of the Equality Exchange Network that exists for employers. The EOC has recently received funding from the government to set up a website for legal advisors on how to handle sex discrimination, sexual harassment and equal pay claims. It is widely accepted that transfer of expertise is a key mechanism for addressing the issue of quality of advice for discrimination cases.

- **Lack of awareness amongst general public of the role and function of the commissions**

There is a general lack of awareness of all commissions amongst the communities they serve. A survey by the DRC in Wales suggests that there was significant public awareness of the DDA, 1995. Yet the Commission goes on to point out,

> 'a cause for major concern is that only 44% of disabled people have heard of the DDA. This means, inevitably, that many disabled people are not enforcing their rights because they are unaware of the legislation to protect them. Awareness is highest among those people who work with a disabled colleague (77% of whom have heard of the DDA) and higher amongst more affluent groups.'

Awareness also seems to bear some relation to the nature of the disability. For example, diabetes and auditory impairments are the two conditions that are most likely to lead to a successful claim at the tribunal. An in-house EOC study reviews service delivery but does not indicate levels of awareness of EOC services amongst the general public. No such similar surveys have been conducted by the CRE in Wales. Our study suggests critically low levels

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109 Object 1, Application for Registration as a Charity to the Charity Commissioners
110 DRC (2001) Public Attitudes and Awareness on Disability in Wales in 2001. 50% of respondents heard of it compared with England, where 46% of respondents had heard of it and Scotland where only 37% had heard of it.
of awareness, even amongst those in the top occupational categories. Women interviewed claimed they had not heard of the EOC and found themselves referred there by default. Amongst ethnic minority communities, despite race being a core identity factor, knowledge levels were particularly

low, people reaching the CRE or RECs via Social Security offices or Job Centres following dismissal. Further, there is substantial misunderstanding of the remit of the commissions even amongst professionals which leads to poor referrals. The study found that the level of misunderstanding was especially high amongst applicants holding a perception of the commissions as principally casework agencies and who, therefore, could not understand why they were not able to get help and support. More cynically, one interviewee suggested that, 'what you become to them is a statistic but this is about people's lives and people's careers!' The commissions need to be more transparent about the limitations of their casework function and more explicit about the rationale for this. There is a need for better publicity about their role.

Where the commissions do support cases, the support is regarded as of high quality. There is no doubt that the commissions do expend a vast proportion of their resources on litigation issues and, given the small number of cases they can feasibly support against the huge demand, there are bound to be dissatisfied clients. However, the withdrawal from direct casework is clearly out of line with public expectations. One EOC worker stated, 'It is almost a secret that we continue to give casework in Wales' and went on, 'the advice service are poor relations of the EOC'. The CRE in Wales appears to be floundering given the high expectations of an increasingly rights-aware public. In addition, even of those cases the commissions do wish to support, 'the budget is the gatekeeper' and the later in the year such a case presents, the less likelihood it has of getting support (both EOC and CRE operate capped budgets).

- **Multiple claims**

In cases of multiple claims, commissions do not offer partial representation - it is either full representation or nothing. However, they do part-fund with other agencies. The lead organisation pursues the case putting their area of discrimination as the primary complaint. Interviewees suggested that, in cases of multiple discrimination, individuals are even more likely to be shunted from pillar to post, experience delays and a doubling-up of effort in getting appropriate advice and support. Poor liaison between key agencies foists added responsibility on the claimant. It was also suggested that the commissions focus too narrowly on their area of expertise resulting in their missing/dismissing other important elements of employment law in a case. This is of concern given the high percentage of applications that involve a multiple or combined jurisdiction.

- **Welsh language discrimination**

Whilst there are questions to be raised of all the commissions about the level of service available to clients bilingually, the specific remit of the CRE in
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relation to cases of discrimination of Welsh/English national origin under the Race Relations Act 1976 demands specific comment. In post-devolution Wales, the CRE has experienced an unprecedented rise in the number of queries relating to discrimination on the basis of national origin, both Welsh and English. Many of these complaints are not related to employment discrimination. However, there are a steady number of applicants claiming discrimination in the workplace related to national origin.

Between January 2001-December 2002, 288 telephone enquiries were received by CRE Wales. Of these, 82 were concerned with Welsh/English discrimination issues. A breakdown of these 82 enquiries is provided in the table below. All legitimate complaints were investigated. Of the 82 complaints, 46 were given further assistance under Section 66 of the RRA 1976. Of the remaining enquiries, the complainants were either informed that the matter fell outside of the scope of the Act or were directed to the appropriate agencies.113

Table One: Welsh language, Welsh national origin, English language and English national origin complaints to CRE

<table>
<thead>
<tr>
<th>Description of complaint</th>
<th>Empl.</th>
<th>Non-empl.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welsh language related complaint- English complainant (eg 'Welsh essential' job requirement, school lessons only in Welsh...etc)</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Welsh language related complaint- Welsh complainant (eg. not permitted to speak in Welsh, school lessons only in English...etc)</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>English complainant complaining of anti-English comments/bias in media</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Welsh complainant complaining of anti-Welsh comments/bias in media</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>National Origin complaint- English complainant (eg for differential service provision, employment, against public and private bodies)</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>National Origin complaint- Welsh complainant (eg for differential service provision, employment, against public and private bodies, including ONS cases)</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11</strong></td>
<td><strong>71</strong></td>
</tr>
</tbody>
</table>

In relation to discrimination on the basis of Welsh national origin, these issues are often intimately intertwined with issues of language. The RRA 1976 makes no provision for the specific protection of language discrimination and can only be evoked if it can be established that language discrimination is in fact indirect racial discrimination on the grounds of national origin. There have been some high profile cases of both Welsh and English national origin cases

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113 For example, the CRE does not have the power under the Act to pursue complaints of discriminatory comments in the media and would direct these complaints to the BSC and ITC.
in employment in Wales supported by the CRE where groundbreaking precedent has been established.\textsuperscript{114}

Nevertheless, misconception persists that language discrimination is as equally actionable within the legislation as the other more familiar forms of discrimination. This may result in the false assumption that the CRE are reluctant or unwilling to pursue such cases or indeed that they are not identified as the appropriate agency to take forward cases of Welsh national origin.

5.4.5 Cefn
A potential link agency for the CRE in respect of Welsh language issues is CEFN, based in north Wales. CEFN is a Welsh language pressure group widely identified as a key agency for promoting the Welsh language and for supporting individuals with claims of discrimination against the Welsh language. It handles a range of discrimination claims that include some specifically related to employment. Subsequent to the introduction of the Welsh Language Act 1993 and the establishment of the Welsh Language Board, many of the discrimination claims handled by CEFN can be dealt with by recourse to the requirements of this legislation on employers. However, the Welsh Language Act does not cover individual claims and, in as much as these relate to national origin, they will still evoke the relevant clauses of the RRA 1976. Irrespective of the remit of the various pieces of legislation, CEFN acts as an important filter of unmet need in respect of Welsh discrimination, related both to the language and to national origin. CEFN, however, receives no public funding and relies on a small staff of volunteers. One interviewee stated the opinion that, ‘the system as it is now with one voluntary body working for Welsh language cases is not satisfactory’. The development of more integrated links between CEFN, the CRE and RECs can only enhance the identification and effective resolution of employment cases relating to Welsh national origin.

5.4.6 Race Equality Councils
There are five Race Equality Councils (RECs) in Wales, most recent being the North Wales Race Equality Network established in 2000. From September 2001 to June 2002, the Valleys REC saw five people who had been discriminated against in the workplace, south east Wales saw 10, Cardiff 42 and Swansea four. Due to its proximity to north Wales, the Cheshire, Halton and Warrington REC also receives a number of complaints emanating within Wales. NWREN is not handling cases as yet but suggests some considerable unmet need in the north Wales area.

KPMG’s (1997) \textit{Fundamental Review of the Public Service Role of Racial Equality Councils} considered the role of RECs in respect of casework. They noted fragile networks between the CRE and RECs, in terms of cross-referrals, advice and support, ‘little by way of national or regional learning

\textsuperscript{114} Williams v Cowell & Cowell (No ET 47918/96:EAT No.0904/97); Kelleway v (1) BBC, (2) Jones, ( ET No 161184/00)
networks in this area of work’, and ‘no guidance as to how RECs should, if at all, work with other funding agencies providing such services’. The report also pointed to a lack of guidance on casework best practice and ‘insufficient investment in the specialised nature of the work in terms of case updates, reference manuals, shadowing experience, etc’.

The report emphasised the need to recognise local RECs as a ‘vital point of access’ and the key role of the CRE in identifying local providers and maximising resources. Many RECs are too small and ill-equipped to provide a complainant-aid service and that, as the report suggests, a full service of complainant aid can best be provided by creating a network of core RECs with smaller local units acting as referral points. There is a need for a ‘supporting infrastructure of training, advice, reference and good practice in order to be sufficiently professional to be able to serve clients effectively’.

This study goes some way to confirming the findings of the KPMG report. A number of applicants interviewed in this study suggested their cases were characterised by slow and inefficient support. By contrast, Directors of RECs attested to the considerable demand on their services and yet poor success rates. Despite 22 years in operation, the Race Equality First in Cardiff can boast just a handful of success at tribunal. Pointing to institutional blocks, the director argued, ‘It’s not that we are not taking cases forward but what’s happening to them’. Potential applicants also suggested that some ethnic groups were better serviced by the Councils than others, given staff knowledge levels of different cultural groups. Within Race Equality First Cardiff, however, significant efforts have been made to work closely with a range of organisations working for specific communities such as SAHELI (an organisation supporting Muslim women), the Association of Muslim Professionals and MEWN Cymru and to develop a programme of outreach work.

The RECs in Wales perform an important casework function against considerable demand from the public. They are increasingly under pressure to assist organisations like the CRE and the National Assembly for Wales in terms of consultation and promoting good practice amongst public sector organisations. Under the new funding arrangements, casework services are subject to earmarked funding which may enhance the level of the service but also may make it vulnerable to competing priorities.

There is by no means a seamless service for ‘race’ in Wales. The system that exists is characterised by conflicts/criticism/staff turnover and lacks integration and co-ordination. Despite the available infrastructure for race complaint aid - particularly in the Cardiff area - the service is inhibited in terms of providing the fullest range of services either because of legal, financial, procedural or political barriers. It is folly to suggest there are a plethora of agencies available to support the claims of black and ethnic minorities without a full exploration of the limitations under which they work and an evaluation of their

115 KPMG’s *Fundamental Review of the Public Service Role of Racial Equality Councils (1997 CRE)* p6
effectiveness in relation to particular needs in the ethnic minority communities.\textsuperscript{116} It is clear that RECs in Wales offer a vital localised service.

However, it may be that the way forward lies in designating and resourcing one of the RECs in Wales to develop core specialist advice and support on which the network of other RECs can draw. The current level of support provided indicates that the majority of RECs outside of Cardiff are able to offer support only in a small number of cases.

\subsection*{5.4.7 The Legal Services Commission}

The Access to Justice Act created the Legal Services Commission to replace the Legal Aid Board from April 2000. One of its main tasks was the creation of Community Legal Service Partnerships. First anticipated in the Labour Party’s election manifesto in the run-up to the 1997 election, these were intended to provide, ‘a network of quality assured providers of information, advice and legal services, supported by co-ordinated funding, delivering services to local communities, in accordance with an effective assessment of local needs’.

The objective of the CLS was to provide the right help in the right place from the right person of the right quality. This was to be achieved by setting up a network of providers, lawyers, CABx, law centres and local authorities. The target in Wales was to set up CLS Partnerships involving providers, funders and users in all 22 local authority areas by the end of March 2002. Quality was assured by establishing an agreed minimum standard approved by the LSC and advertised by means of a Quality Mark to prove the standards.

By June 2002, partnership agreements had been established with some 19 authorities and, in almost half of the authorities concerned, local strategic plans were being developed.\textsuperscript{117} It is not envisaged, however, that local partnerships will undertake the primary planning role in regard to employment law, since it is felt that together with other areas of specialist law, such as education and mental health, that a Wales-wide regional perspective is required. Consideration is being given to the division of Wales into four areas in order to bridge the gap between regional and local perspectives. If established, the structure might provide the dynamic required to facilitate the potential developments discussed above.

The LSC recognise that existing specialist provision in employment is inadequate and acknowledge the need to prioritise employment law provision for future development. The developmental constraint imposed as a result of the inability of the LSC to fund specialist advice, other than for eligible clients,

\textsuperscript{116} LSC Partnership Innovation budget has recently funded MEWN Cymru to run a three-year project to review legal information and advice needs in ethnic minority communities.

\textsuperscript{117} Preparatory discussions are ongoing with the other three authorities.
might be overcome by the future funding of organisations which apply for Quality Mark accreditation as a General Help Organisation. Some 280 of such organisations are to be found across Wales - organisations with the potential to provide first-tier advice. The challenge thereafter would be to forge links with specialist services and specialist lawyers. The potential for significant improvement is clear, but success will only be achieved if proper funding is in place. There needs to be a broad coalition of stakeholders, including the Assembly and local authorities.

The LSC is also involved in promoting advice services through the Partnership Innovation Budget (PIB). In Powys, this brings together Powys CAB, Powys Benefit Take-up Campaign, Powys Mediation and a number of other advice providers, to work together to provide services in rural areas through local health centres and doctors’ surgeries. The project envisages health professionals referring clients to a single advice line for diagnosis and information. One of the features which has made this project attractive to the Legal Services Commission is the existence of Powys Citizens Advice Bureau which enables the flexible planning and delivery of services across a very large county. The PIB is funded partly by the Legal Services Commission but builds on the ‘Better Advice, Better Health’ project funded by the National Assembly for Wales through NACAB. This project was initiated in October 2001 and is an opportunity, through a partnership between NACAB Cymru and the National Assembly, to provide local and co-ordinated provision of generalist and welfare rights advice by CABx, in co-operation with Primary Health Care teams across Wales. Prior to the development of this initiative, a number of CABx in Wales were already pioneering - often with haphazard and insecure funding - advice services, particularly welfare rights advice, in health settings.

The project has four main objectives as set by the National Assembly: reducing levels of under-claimed benefits; giving priority to deprived areas and areas designated under the Communities First Initiative; contributing to the reduction of health inequality and poverty across Wales; and reducing NHS non-medical workload. The scheme was piloted in seven areas over the period October 2001 to March 2002. The plan is for 50 projects to be in place by October 2002.

The LSC interest in the PIB is in its use to innovate ‘experimental’ services and ways of offering advice. For example, their relationship with Powys Mediation is a way of promoting the Lord Chancellor’s objective of establishing mediation as a means of addressing some of the problems that can lead to cases being heard in tribunals or the courts. To date, the LSC, via the PIB, help fund the mediation service in Powys and monitor its performance. Evidence from those who peruse discrimination cases suggest that mediation could be a valuable tool in the settlement process and may remove much of the anguish and conflict associated with the process of arbitration and adjudication.
5.5 Other Sources of Advice

5.5.1 Discrimination Law Association
The DLA was founded in London in 1995. They aim to:

- Promote and improve the giving of advice, support and representation to individuals complaining of discrimination
- Raise awareness and encourage debate on discrimination law and practice
- Promote teaching of discrimination law
- Secure improvements in the scope and enforcement of UK anti-discrimination legislation
- Share information and ideas internationally.

The organisation has around 400 subscribing members, 10 of whom are in Wales. These include three solicitors (one in north Wales, two in Cardiff), Cardiff Law Centre, Ynys Mon CAB, REF, S.E.Wales REC, two trades unions and one academic.

5.5.2 The Maternity Alliance
The London-based Maternity Alliance's mission statement sets out that it is 'working to end inequality and to promote the well-being of all pregnant women, new parents and their families'. They provide helplines to give advice on rights and benefits to employees and employers, run training courses for employers, advisers (like CABx) and health professionals and have a range of publications. The organisation has produced a Specialist Advisers Directory, which contains 175 entries. Of these, nine are in Wales: four solicitors, all of whom are based in south Wales and five CABx, three in south Wales and two in north Wales. This is potentially an important service for those experiencing pregnancy dismissal and one interviewee in this study had found the service 'helpful and encouraging'. However, the organisation was unable to provide statistics to callers from Wales. Without monitoring statistics it is impossible, however, to characterise take-up of the service in Wales.

5.5.3 Job Centres
Job Centre managers have no training in identifying discrimination or constructive dismissal. Almost without exception, the managers and advisers interviewed in this study felt that it was not part of their job to know employment law and that their remit was confined to providing advice on benefits and Job Seekers Allowance (JSA). People who leave employment voluntarily are not normally entitled to JSA. There is a 'Decision Making' section in the JSA interview which looks at whether a client had good cause to leave a job if they left voluntarily. The client sets out her/his case and this is faxed to the Decision Making Section of the Department of Work and Pensions in Cardiff. It is, in turn, sent on to the employer who fills in his/her version, and this is sent to the client, together with the decision. It appears that, even when it is acknowledged that a client had good reason to leave
employment and is therefore entitled to JSA, no advice about where to go to get advice to take the case further is offered.

A supply of the form IT1 is held at Job Centres. One manager believed ‘it would cause trouble’ if they handed them out to people. Although available on request, he suggested, ‘you would have to have some knowledge of the system to be able to do so’. A worker at Bangor Job Centre had to ask several colleagues before he could ascertain whether they could supply an IT1, and then it entailed a long search before one could be found. Another manager said she would produce an IT1 even if it were not requested depending on, ‘how bad it was…if it’s something glaringly obvious, like unfair dismissal because of pregnancy’. The manager of a Job Centre in one of the largest towns in south-west Wales felt that the model on which her office was organised facilitated sign-posting. In this office, clients are assigned to one adviser who saw the client every time she/he came in to sign on. Information about decision outcomes would be picked up by the adviser and discussed with the client next time they met. This may lead an adviser to suggest filling in an IT1. A Job Centre manager in a small town in mid-Wales said he made sure that leaflets about discrimination provided by the DTI were readily accessible. An adviser in a town 20 miles away was not sure whether they had any such leaflets. A manager who had previously worked in Adjudication (now called Decision Making) said he would definitely produce an IT1 for someone whom he felt had been a victim of constructive dismissal. There is an average of 250 people on this Job Centre’s register and the manager estimated that he gave out one IT1 every 18 months. He feels he knows more about the issue than most Job Centre personnel. There is very little about it in the training, just a ‘throw-away line’ in a section about anticipating customers’ needs. He added that he was appalled at the length of time that elapsed between filling in an IT1 and the hearing, quoting the phrase, ‘Justice delayed is justice denied’. There appears to be no set procedure in relation to the giving of information to potential applicants or identifying discrimination cases.

All 10 advisers or managers interviewed said they would refer customers to ACAS or CAB but only if the customer asked for advice. This must be viewed against evidence in this study that suggests that, for many, the Job Centre is the first port of call following employment disputes and unfair dismissal in particular.

5.5.4 Advice at a distance
Internet-based services are likely to increase in the future, as is the application of technology in general to complainant aid providers. The LSC is developing plans for the Quality Mark to be extended to accredited Internet sites. Electronic versions of ET1 and the employer questionnaire could also be made available. This development is to be welcomed as the additional source of advice will be important to those geographically marginalised and for those with particular access requirements. This study has demonstrated that access to sources of advice via the Internet is important to disabled applicants and it was mentioned in race cases as a source of networking for specialist advice beyond Wales. Wales, however, lags behind the rest on the
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UK in Internet access and is, in fact, in the bottom fifth of regional household Internet connection tables.\textsuperscript{118} In addition, a digital divide persists within Wales related to gender, age and socio-economic group.

Beyond opening access to information and advice for potential applicants, the Internet is an important medium for the transfer of information and expertise between providers. In this study, few of the providers interviewed, both generalists and specialists, used the web in this way. However, the majority agreed that the development of good quality websites and formalised mechanisms for consultation and exchange of expertise would enhance the quality of their work.

5.6 Conclusion

A number of particular factors characterise the current system of complainant aid in Wales. The quantity and distribution of providers has resulted in huge advice deserts in many parts of Wales. There is some evidence to suggest that the funding levels for advice per capita are lower in Wales than other parts of the UK. Where there is provision, the quality is variable with no comprehensive system of quality assurance in operation. Of concern is the heavy reliance on union support in employment disputes when the evidence suggests unions are ill-equipped to service appropriately this complex area of the law. The available support mechanisms for first-tier generalist workers are weak and there is a need for additional training and development at this level in order to ensure a service that accurately identifies discrimination and appropriately refers cases. At specialist level, providers need to be better and more systematically trained with some form of accreditation assuring the service. There is a need for a more effective system of transfer of expertise and more co-ordinated working between agencies, constitutionally based rather than reliant on informal contact. The current system is fragmented and not conducive to client need in terms of providing for a smooth and coherent transition through the process of seeking information and advice, gaining representation and/or support in finding resolution to the issue.

The evidence points to a number of specific solutions and improvements which, we would suggest, would contribute to having five essential elements in place. Firstly, access to appropriate information and or advice-givers should be sufficiently competent to identify the legal implications of the individual’s problem. Secondly, access to affordable specialist advice should be available when appropriate. Thirdly, access should be available to a support network dedicated to giving the potential applicant the psychological and emotional fortitude necessary to see the process through. Fourthly, access should be available, when appropriate, to competent representation. Finally, where the applicant negotiates the journey, access should be available to a responsive tribunal, a forum located within a reasonable travelling distance, where the key personnel are properly trained and sensitive to the sociological, cultural, and ethnic diversity of those who seek justice before them.

\textsuperscript{118} Welsh Consumer Council (2000) ‘Internet Inequality in Wales’ 200b
Chapter Five

The development of a robust system of complainant aid in Wales will require additional and new resources to allow for the expansion of existing services and enable the development of new services to build the appropriate infrastructure.
Chapter Six

Experiencing the System

6.1 Introduction
There have been a number of high profile discrimination cases in Wales in recent years. For example, Jeffers v North Wales Probation Service 1994 (race), Jones v Whitbread Walker (gender), Goodwin v Patent Office (disability) and Williams v Cowell and Kelleway v BBC (Welsh/English national origin). By all accounts those who present at tribunal are the few and said to be characterised by their 'feisty' nature. Reasons for failed claims include presenting out of time, having to shoulder the burden of proof, lack of expertise amongst tribunal members, absence of a full-time Chair and there is some evidence, if a little outdated, that in sex discrimination cases the presence of a woman on the panel affects the success rate in sex discrimination cases. In disability cases, the most common reason for failure is that the tribunal rejects the applicant's claim to be disabled. For those who do succeed, success comes at a price. Studies repeatedly show the costs, not only in terms of emotional stress and worsened relationships, but also that many who leave their employment are unable to find alternatives or find themselves labelled as troublemakers when they come to apply for other jobs, particularly in small towns. Effectively, discrimination comes cheap. Compensation awards are relatively low and the scope of a tribunal to bring about change in the employing organisation is extremely limited.

This chapter draws on qualitative data to explore the experiences of those seeking redress following discrimination at work. It brings together the perceptions of advisors and those of applicants. Their experience of the system provides a foundation on which to build an understanding of complex interactions that constitute discrimination, employment and complaint.

6.2 Race Cases in Wales
There is no evidence to suggest that racial discrimination in the workplace is any less prevalent in Wales than it is elsewhere. The most recent study by the Cabinet Office Performance and Innovation Unit (2002) attests to the fact that ethnic minorities experience persistent disadvantage and discrimination in the labour market even after taking into account variables such as experience, geographic location and age which are known to affect labour market exclusion. Ethnic minority women face particular disadvantage. In addition, there is some considerable evidence to suggest that employers in Wales have lagged behind other areas of the UK in terms of the development of equal opportunities policies and that awareness of issues of race and racism have been slow to reach the public policy agenda. As one interviewee suggested, 'race relations are not embedded into the mentality of the Welsh

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120 Meager et.al.1999
121 Equal Opportunities Review No 108, August 2002, p.8-27

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population, they are more conservative, indeed backward in certain communities as compared with other parts of the UK’. Another referred to ‘an almost polite, orchestrated resistance to change’ and ‘the debilitating malaise that permeates our institutions’. Whilst no systematic studies have been undertaken to date in Wales, anecdotal evidence from Race Equality Councils and other agencies serving minority communities in Wales has for some considerable time confirmed workplace discrimination as a key factor in the labour market exclusion. Further, there is a recognised lack of the type of agencies and associations that minority communities typically use in their advice seeking habits and even a demise of agencies, such as Newemploy, that provided vital services to ethnic minority communities in terms of access to the labour market.

An important confounding factor in Wales is that the ethnic minority population is both diverse and significantly dispersed, key concentrations being in Cardiff, Swansea and Newport. In parallel with this demography - agencies serving these communities have tended to evolve in the south leaving the majority of Wales with no specialist provision in terms of information, advice and support. It was only in 2001 that the North Wales Race Equality Network was established and this agency has no casework function. There is no provision for the county boroughs across mid Wales. Even in areas where there are concentrations of ethnic minorities, individuals are likely to be working in very isolated conditions.

6.2.1 Professional views - race discrimination

- Low levels of awareness amongst the black and ethnic minority communities and especially amongst women
This was described by one advice worker as ‘generally abysmal’, another suggested they stumble across the services finding out about CRE or REC via social security offices or job centres after having been sacked. It was suggested that individuals are reluctant to complain because of jeopardising job prospects and also because of lack of confidence in the internal grievance procedures. Individuals are very isolated with each person approaching their case as unique given that there is little opportunity to share information and gain from the experiences of others due to lack of networks. Any action taken relates to the level of rights awareness of the individual. One worker commented, ‘people need to know they are one amongst many - their knowledge of the law is so low’.

- Significant amount of unmet need
It is suggested that there exists a considerable amount of unmet need due to agencies operating gate-keeping processes because of their limited resources. This comment was consistently levied at the CRE. ‘The CRE and EOC are no longer involved in casework but other PR activities…where are the outreach people? We are not getting a service?’ Race cases are often
complex and stretch the resources of even the most 'open door' agencies. As a respondent in the Law Centre Cardiff admitted, 'if a case requires more time and resources that we can deploy - ie: if we have to get a barrister involved for example - we just couldn't take it on'. A union representative in north Wales spoke of being inundated with cases once he was designated as having a race specialism. Other barriers mentioned in the interviews are:

- **language and communication problems** - some applicants are only able to give restricted information to their advice worker or solicitor so that their case sounds weak. Others, it is suggested, experienced mis-communication and it was noted that the increased use of helplines doesn't work in favour of minority communities. One worker condemned what she called the 'Ask Jeeves approach'.

- **cultural factors** - 'our people are not in the habit of making complaints' one interviewee stated, 'we suffer in silence, we don't spy on others and don't want to be seen as a people who complain... We are brought up to accept authority - our managers, bosses, parents, people higher than us... Even the most educated people hold back'. This was particular noted amongst ethnic minority women. Workers at SAHELI reported the reluctance for women to make a complaint and related this to cultural values. It was also suggested that ethnic minority women have already had to struggle within their own communities for the right to enter the labour market and 'feel grateful to have a job' and, therefore, that they don't feel they have rights within the workplace. Lack of skills and confidence to take a case forward was also noted.

- **employment insecurities**- comments reflected the view that Wales is a small place and people fear being labelled a troublemaker in a country where the pool of opportunities is very limited. They also fear discrimination in selection or even losing their job: 'our people are suffering because they are easily identified by their names etc - they don't get shortlisted'.

- **confidentiality** - interviewees noted lack of confidentiality as a factor deterring potential applicants. At times, people are being given advice in very conspicuous and public places.

- **lack of outreach work by advice-giving agencies**. 'We need networks for passing information, we need outreach work...', one worker suggested.

- **costs of proceeding** - were a frequently suggested factor expressed, not only in terms of the financial costs, but also in terms of emotional and time resources.

- **lack of representation** in public office/key organisations in Wales was also seen as weakening the political influence of ethnic minorities.

- **the need for counselling support** was frequently expressed. A typical statement was 'people need a lot of support, a lot of reassurance from me'.
• Too few agencies
There are too few agencies to call on and those that are there are stretched and can only offer limited help. It was noted that the pattern of agencies that exist are fragmented - lacking co-ordination and co-operation such that it is not a seamless service. Liaison between agencies is limited in some cases being wholly absent and in others very poor. It was suggested that liaison between the CRE and EOC is not good in relation to cases of multiple discrimination. The relationships between the CRE and RECs were also seen as variable, with little evidence of information sharing and consultation over cases. One respondent argued the 'mechanisms for linking are there but not happening as yet'.

Provision for those outside the metropolis is almost non-existent. As one interviewee said of the north Wales area - 'there is very little support. Individuals seeking help would have to use a solicitor and pay and then he/she might not be an employment specialist. Possibly some use the net or friendship networks for advice. The CABx in Wales are not representative or reflective of diversity in the community. Not all CABx have employment specialists. We have one ET specialist serving the north. He's a good bloke and if he didn't have the skill to work with a race case he would acquire it - though he might not be able to give the emotional support often needed in a race case'. There are few community groups established in the north and those there are tend to operate as social groups rather than for rights and advocacy.

• Poor liaison and poor transfer of expertise
It was suggested that first-tier workers are not using the specialist advice of RECs or the CRE. For example, union officials are not seeking their support feeling that to do so would implicitly suggest their ignorance. It was stated that advice workers are often trained outside of Wales because of lack of expertise and training providers on race equality in the country.

• Trade union reluctance to become involved in race cases
As one respondent said, 'they don't want to upset the apple cart and therefore tend to belittle people's concerns'. There was a strong and repeatedly reiterated sense that the unions are not helpful to black and ethnic minorities and lack experience in dealing with race cases. It was commented that the level of expertise at branch level is variable. Some unions, in particular, were singled out for mention. Indeed, the CRE in Wales have had a number of discrimination cases against the unions. It was also suggested that the unions had not taking a proactive role in promoting black and ethnic minority people for selection as tribunal members. One interviewee suggested the unions are characterised by 'institutional racism'.
• **Variable quality of the advice given by RECs**
It was suggested that RECs are overstretched, subject to changes in staff and therefore lose expertise that they have built up. Some commentators suggested that RECs are limited in their ability to serve diverse cultural needs in the communities. Such comments concur with the findings of the KPMG study of RECs nationally.

• **Private solicitors**
In terms of private practice, the picture is variable. The findings suggest that many solicitors have little experience and skill in dealing with race cases but there is also some high quality representation provided often sought and accessed beyond the borders of Wales. People have word of mouth contacts for 'good solicitors'. The Free Representation Service Cardiff is seen as fulfilling a vital and important role taking over cases prepared by RECs and CABx.

• **Referral route - 'pillar to post'**
The analysis of cases that get to tribunal stage indicate that many have used a network of advice agencies beyond the boundary of Wales and sought representation outside of Wales. This fact was confirmed by the professionals. It was suggested that many people from the ethnic minority communities are drawing on old established networks based on religious of social groupings, word of mouth contacts, friends in other parts of the country and nominated solicitors who are known to be sympathetic.

• **The tribunal**
Interviewees suggested the confrontational nature of the tribunals prevents against black and ethnic minority individuals getting a fair hearing. It was noted as a very intimidating process in which minorities are significantly disadvantaged by virtue of cultural norms, language barriers and power differentials. Further, it was argued that the lack of diversity amongst chairs and panel members serving in Wales, their limited experience of living and working in multicultural communities, and the infrequency with which they handle race cases, places such minorities at an immediate disadvantage. One interviewee suggested the tribunal panels were reluctant or unwilling to recognise 'black on black discrimination'.

• **Few cases succeed at tribunal**
The common perception is that there is no point trying with race cases in Wales because 'you don't stand a chance'. One respondent suggested, 'We are often more inclined to go with cases to Bristol because we feel in Cardiff we will fail'. This is coupled with lack of confidence in workplace grievance procedures. These perceptions have a 'community effect' deterring others from entering into the process. It was stated that people would drop out, move on or set up on their own rather than take an employer to task. As a consequence each case remains unique and community confidence is not being built up. This resonates with the relatively low figures of registrations
and low success rate statistically. When questioned about the notion of ‘a Welsh effect’ the comments strongly suggested that Wales lags behind other areas of the UK in terms of race awareness and that this permeates its institutions including the operation of the tribunals.

• ‘National origin’ cases - English/Welsh discrimination
There is only one specialist agency supporting cases in relation to Welsh language discrimination in Wales (see Chapter Five re: language discrimination and the legislation). The Director suggested that this agency had ‘had a difficult relationship with the CRE in the past’ and ‘no relationship with RECs’ in Wales. It was suggested that the CRE are not widely identified as a source of help for those experiencing language/Welsh national origin discrimination. Overall, Welsh-speaking advice workers and caseworkers are thin on the ground across Wales and several agencies suggested they would find it difficult to provide a service for individuals through the medium of Welsh. Many suggested they do not get such requests. It was generally agreed by those interviewed that cases of English discrimination are increasing. This study included one case in which a claim of employment discrimination on the basis of English national origin had been made.

6.2.2 User views - race discrimination
Many of the issues raised by the professions were also raised by applicants. However, a number of additional points were specifically raised in the applicant interviews:

• Vulnerability
Even those in ‘safe’ professional positions/ or working in sectors where there is good overall representation of ethnic minorities and support available – eg NHS – face discrimination. The Royal College of Nursing, for example, has a helpline but still people reported being harassed and bullied and yet not taking forward a grievance. People attested to appalling discrimination, both direct and indirect, including a case where dog excrement had been put in an employee’s locker and he still could not get satisfaction on the internal grievance procedure.

• Difficulties of definition
In the majority of cases interviewed, the individual had experienced a long but persistent process of undermining. They reported that it was ‘difficult to put your finger on what is happening’ or to understand it as racial discrimination. Low levels of awareness of the law meant they did not perceive they had a case and their early advice seeking was focussed on establishing from ‘the professionals’ whether there was a case or not. One interviewee said, ‘I put up with five and half years of hell’.

• Reluctance to proceed with complaint
This was typified by one interviewee who said, ‘to prove racism unless someone has called that name to your face… is a waste of time… my advice to anyone would be don’t even bother trying, you are not going to win’. Interviewees reported a type of cost/benefit analysis - whereby even though they recognised they were the subject of discrimination the perceived impacts of making a complaint were seen as greater than the benefits of attaining justice. This characterised the help seeking process with constant reviews as to whether it was worth proceeding given high emotional costs, impacts on their family and friends, on their future employment prospects and financial costs. ‘I am working in white man’s land and should be grateful to have a job’.

Interviewees frequently reported having to leave their job or go off sick as a result of engaging in the complaints process yet very few considered victimisation as an aspect of their claim.

**Experience of delays and uncertainties**

Applicants were often unsure whether an agency they had approached considered they had a case or if they would give them support. Several attested to confused expectations, particularly where it transpired that the agency was providing advice but not representation. Many claimed this was either not communicated to them or not understood by them. They, therefore, frequently feel let down and/or run out of time with their complaint. ‘I wanted to take a case but CRE said I was out of time - I’ve been going to them all along, right from the first instance, and nobody ever told me about time limits’.

Several interviewees mentioned the limited capacity of the Commission and expressed confusion over the CRE and REC’s respective role. ‘Who are the people’s helper?! The CRE or the REC?’ ‘people are being palmed off’.

**Use of networks**

There is a dearth of the type of agencies usually used by minority groups and many interviewees gave evidence of using advice networks, both formal and informal, solicitors, union representatives and black workers groups beyond Wales. ‘I called a muslim women’s organisation in London, I knew them from my travels…..I got a book about dress ‘Islam the natural way’ and I photocopied the sections and enclosed them with a letter to my employer. That organisation helped me over the phone.’

**Views of key agencies**

A patchy response from RECs was consistently reported. Criticisms ranged from receiving bad advice, obfuscation and delay to accusations of sectionalism. One respondent argued they are ‘not equipped to deal with cases’. Another stated ‘the advice system failed me’. Lack of unionisation amongst the respondents was high. One ethnic minority woman said, ‘talk of unions in our generation is little or none’. However, the impact of this might be fortuitous for two reasons. Firstly, advice agencies frequently use union membership as a reason to turn people away - they are referred back to their unions. Secondly, there was a general sense that the service from the unions is poor. It was suggested by one applicant that the ‘local bods are useless’ but if you get beyond them to specialist help you might get some good help. ‘We got the local chap, the local idiot. From there things went down hill’ and yet
another said, 'We went to the MSF as they had a protocol that if you were black members your case would be channelled towards some expertise'. The contradictory effects of being foisted back onto unions that give a poor service left many high and dry. Comments relating to the CRE seemed to suggest confusion over their role. A typical comment would be: 'they are no longer involved in casework but other PR activities'. Those interviewed questioned the limited casework function of the CRE. On ACAS - the lack of face-to-face contact was noted -'I never met an ACAS officer' - and there was a general sense expressed that they were not working for the applicant.

**Pillar to post**

One case described how she went to her local union representative, from there to a specialist representative outside Wales and when he withdrew she was given a different local representative. From that advisor she went to the CRE, from the CRE to the REC, who wasted so much time that her case went out of time, and finally went to the CABx where she was advised to drop the case with the advice-giver saying, 'he who runs wins the day' or to switch to a plea of victimisation because of the amount of time that had lapsed. Her case was put together by the CABx and she was represented by the Free Barrister Service. It took five and a half years from her experience of discrimination to come to tribunal and then she lost the case.

**Confidentiality**

The study uncovered instances where CAB service level agreements with key organisations prevented workers within those organisations from using CABx as a source of complainant aid. Questions were raised by respondents about the interdependence of organisations and the need for confidentiality. The study included two instances of discrimination by CAB of their own workers which left these individuals with few accessible options for advice and help. The interviews also included a number of instances where individuals did not want to be seen entering RECs and instances where individual complainants were obliged to speak about their private issues in public spaces. Some suspicion of collusion between ACAS representatives and employers was also expressed- 'they all know each other, they've been to school together' and, in one instance, a case where the director of REC was a good friend of the respondent's solicitor. These factors acted to deter people from pursuing their claim.

**The resolution of the complaint**

Resolution can take place in a number of ways but predominately by reference to ACAS or to the tribunal. Whatever the outcome, only the most resilient, well-resourced and well-networked individuals and often those who had had some contact with the equality bodies or RECs and were rights aware appear to reach tribunal. Those who had embarked on the process of complaint were some of the most equipped to do so, that is because of the strength of their contacts, support networks and their personal knowledge base. Their motivation was unequivocally justice rather than financial compensation - 'winning or losing doesn't count but I wanted a good
On the tribunal process

The over-riding perception amongst those interviewed was that, in Wales, you stand little or no chance of success at employment tribunal and that in Wales you are unlikely to get a fair hearing – so there is no point bothering. It was also noted that the process was intimidating and very formal. Others pointed to the unequal standing between applicant and respondent - ‘my trainee barrister was pulled to pieces. Their barrister took half an hour, mine took five minutes.’ By contrast, several of those who had been in the tribunal setting generally spoke favourably of the Chairs’ efforts to provide a fair hearing. For example, one individual said, ‘I don’t think the Panel understood race issues, I think the Chair did. The Chair was fine, I couldn't say bad about him.’

6.3 Sex Discrimination Cases

Introduction

As demonstrated in the statistical evidence in Chapter Four of this report, sex discrimination cases make up the majority of all registrations for discrimination. The picture in relation to sex discrimination is clearly undergoing change if we are to take at face value the assertion of Val Feld’s 1992 study that the number of cases in Wales was ‘disproportionately low’. It is clear that, whilst England had the highest level of registrations per 100,000 population between 1996 and 1997, in the last four years that position has been overtaken by Wales, such that by 2001 the rate of registrations in Wales per head of population was almost twice that of England. There are a number of ways of accounting for this apparent increase in registrations, not least changes in the labour market and employment practices. Whatever the reasons this increase underscores the ongoing need to secure efficient and effective complainant aid. As demonstrated in Chapter Five there are markedly few agencies in Wales available to women seeking support. The most frequently cited pathway for women in this study is the CAB or local solicitor. Only incidentally did they come within the ambit of the EOC.

It is likely that this sample represents a higher than average number of applicants who have received free and good advice. Contacts came via Cardiff Law Centre and CABx with the capacity to represent at tribunals. We know that such advice is extremely limited in Wales, being confined largely to Cardiff and Swansea and with a few ‘unofficial’ specialists in CABx in other parts of Wales. The interviews attest to the huge amount of stress, fear, intimidation and humiliation women continue to experience in the workplace. The women we spoke to are the ones who had begun to take steps to assert their rights and it is likely that they are the tip of the iceberg with countless others putting up with discrimination, for fear of losing their jobs or through ignorance of their rights.
6.3.1 Professional views - sex discrimination

- **Women in Wales are not rights-aware**
  Even when appraised of their rights, women are extremely reluctant to act. A former UNISON member who had worked on Merseyside as well as in north Wales found a degree of acceptance in women in Wales that would not be tolerated by many women in Merseyside. She argued that a culture of male dominance is prevalent, particularly in rural areas. She suggested that CABx in north Wales are ‘very middle class, inclusive and insular’ and do not have

  the campaigning mentality of CABx in cities, where they are more political and far more rights-aware. For example, few women are aware of an EC directive\(^\text{123}\) which requires employers to undertake a full risk assessment of workplace conditions for pregnant employees and nursing mothers. Such information is available on the Maternity Alliance website but there is no campaigning presence of the Maternity Alliance in Wales. This lack of information compounds women's powerlessness. The union representative stated that, ‘if ordinary women started to claim their rights, then we could turn around the culture of the workplace’.

- **Women want acknowledgement that they have been treated unfairly**
  One interviewee suggested that the most important issue was identification that they had been discriminated against. ‘They want apologies rather than financial awards.’ This was borne out in several interviews. ‘I just wanted a wrist slapped and an acknowledgement that I had been badly treated,’ said one woman. A UNISON representative suggested that there is ‘not enough mediation’, and not enough emphasis on the vulnerability of women who were pregnant or were new mothers. It was suggested that mediation could be a tool for preventing escalation of an adversarial confrontation by fostering a climate in which an employer felt able to offer an apology.

- **CABx are weak at identifying sex discrimination**
  It is apparent from telephone calls received by the NACAB Special Support Unit that advisers in Wales are often little or ill-informed about discrimination issues. CABx generalist advisors, it is argued, do not prioritise employment need because they are not adequately resourced and trained to do so. Consequently, they do not get the funding because they do not have the expertise to identify discrimination. Interview statements suggested that CABx can identify ‘obvious cases’ like pregnancy dismissals, but otherwise are not aware of the type of questions to ask clients to more complex cases of discrimination. This was borne out by two interviews with CABx workers, both of whom said that their only experience of sex discrimination cases involved pregnancy dismissal.

- **There is widespread ignorance about the existence of the EOC**
  This is particularly noted in north and mid Wales. It is suggested that even those at the top of their profession are dolefully unaware of the nature and role of the EOC and, in some cases, of its existence. An applicant who held a

\(^{123}\) Pregnant Workers’ Directive, October 1994
top management position and who knew the ‘head’ of the EOC in Wales did not know they had a helpline; another woman, working in a service industry in Cardiff, thought that the EOC was ‘for race cases’. Some women indicated that they thought its remit was confined to equal pay issues. People in north Wales, in particular, feel remote from Cardiff both geographically and culturally. A random sample of administrative staff and students at UWB revealed very low awareness of the EOC, particularly among undergraduates. Two of the women we spoke to in north Wales were given the EOC’s number by ACAS; neither seemed aware of the Commission’s remit. Nearly all our contacts through the EOC helpline were from south Wales and it appears that of sex discrimination cases that go to ET a considerable number emanate from south Wales. An ex-SSU adviser felt that the Commissions should have regional offices attached to tribunal offices in order to promote awareness of their role and function.

• There is a need for employment specialists in north Wales
A solicitor in Bangor told us that she would not dream of taking on an employment discrimination case as employment law was becoming increasingly complex. She said she would advise clients with employment issues to go to solicitors in Chester and that there was no one to whom she could refer them in north Wales. One interviewee suggested most solicitors do ‘bread and butter work’, comparing them with GPs and the specialists with consultants. The fact that there is no specialist employment help available in north Wales arguably puts people experiencing discrimination in the workplace at an even more of a disadvantage than those with more ‘straightforward’ grievances, given the fact that discrimination issues are acknowledged to be extremely complex. The ‘unofficial’ specialist CABx worker mentioned in Chapter Five had 1,221 enquiries about employment in 2001-2002, 77 of which were related to discrimination. These figures bear testimony to the comment made by a NACAB SSU adviser, who pointed out that the best way of measuring unmet need was to provide specialist advice in an area where there had previously been none.

• Representation issues
A CABx adviser endorsed what many other professionals interviewed stated, ie that employment tribunals are meant to be informal hearings where applicants can represent themselves. The reality is very different, with respondents usually requiring legal representation. One CABx advisor suggested that, ‘representation at tribunals is drifting from CABx to solicitors because of increasingly complex employment law which is about to get even more complex’. This will impact on women because they are more likely to use CABx as a first port of call than a solicitor. At the moment, very few solicitors have an incentive to act for applicants because it is not a lucrative area of work. However, they willingly represent respondents because the opposite is true. Further it was noted that, ‘Solicitors acting for respondents know that no costs can be incurred against them if the applicant has free representation’. A CABx adviser told us he recently had a case where the respondents asked for more time at a hearing. A new date was set (which will be 12 months from filling in ET1). The CABx adviser asked for costs. The
Chair agreed in principle that costs would be appropriate but could not be awarded to a free service. This means that solicitors can ask for deferments, safe in the knowledge that they will incur no costs and this gives them the opportunity to harass applicants. The adviser pointed out that, since women are more likely to be in low-paid jobs than men, they are more likely to use CABx or pro bono lawyers than solicitors, so this potentially harassing behaviour on the part of respondents’ solicitors is likely to have more of an impact upon women. The CABx adviser commented, ‘while Europe and UK government are passing legislation to increase people’s rights, there are few accessible mechanisms for people to get help in claiming those rights’.

- **From pillar to post**
  Several of the professionals interviewed in the study attested to the fact that women are shunted between agencies. Signposting services and getting advice appears to be a very ad hoc process. The interviews indicated that the typical referral route for women would be via the CABx or a private solicitor. Where there is no CABx help available, then the only alternative is a solicitor. If women are unionised, then other agencies refuse to take them on and the service from the unions is variable. It was suggested that unions frequently drop cases and often at the last minute. Of the women interviewed, all those who contacted ACAS were advised to contact the EOC. The EOC, in turn, often advised women to go to a CABx. So women applicants found they completed a full circle without necessarily getting satisfactory help.

### 6.3.2 User Views – sex discrimination

- **Stress**
  The emotional stress of taking forward a claim was mentioned time and again by the interviewees. One woman suggested the interview process was ‘like therapy’ in terms of being able to talk about her case. All of the women interviewed had been damaged, or at the very least hurt by their experience. Some of the stories were harrowing and many were extremely moving. Even in the brief accounts some startling material was gleaned. For example, a young woman who had recently had a baby went back to a bar where she had worked previously to ask for some shifts. She was told that they ‘have a policy of not employing women who have had babies as they are unreliable’. This young woman rang the EOC but could ‘not be bothered’ to go through the ET process: ‘I wanted a quick stab at them rather than a long drawn out thing’. The following statements are typical:

  ‘I was very unhappy, in tears every night, I lost weight, couldn't sleep and was on medication for anxiety. I was lucky I could afford a counsellor, otherwise I would have gone round the twist.’

  ‘I was mentally and physically worn out by the whole process.’
‘I went to my GP, burst into tears and he signed me off for stress.’ (She was off for a year.)

**Pregnancy and maternity leave issues**

We talked to 14 women who had sought advice in this area. Eight of the contacts came through the EOC and six from CABx. Even in this small sample a pattern began to emerge. Women who are good at their jobs and apparently valued by their employers are told when their pregnancies become public knowledge that their situations have suddenly changed. Two examples suffice: One woman, who was working at an hourly rate, was told that she would be promoted and contracted for a permanent position. She told the company she was pregnant and planned to work until she was 37 weeks. When she was 31 weeks she was informed she was surplus to requirements and that a member of staff from another, over-staffed branch would replace her. That person's job was offered to a colleague, not her. Another woman, who worked as an assessor for a training company, was told when she returned from a two-week holiday that the company was in financial difficulty and that she was to be made redundant. Her husband rang her boss and asked if he knew she was pregnant. The boss denied it, but let slip that he had already taken legal advice about sacking pregnant women. Another person had been taken on while she was on holiday.

Women who want to change their hours or job-share after maternity leave often find barriers have been erected to prevent them from doing so. One of those interviewed wanted to job-share when she returned from maternity leave. She was told that the job of receptionist was not suitable for job-sharing. She pointed out that there are not many jobs more suited to job-sharing. A part-time teacher working for six years on a succession of 10-month contracts reported that her employers told her that she was not eligible for statutory maternity pay as it was only for those on 12-month contracts.

**Harassment and bullying**

Eight of the women interviewed had been subjected to sexual harassment. Whilst nearly all the women we interviewed told us that they were under a considerable amount of stress, those who had been sexually harassed were universally severely affected. One said, ‘I just went to pieces, had blackouts, memory loss and am still very depressed’. Another had been sexually assaulted by her manager when she was 19-years old. Her mother persuaded her to go to the CABx for advice. She feared men and asked the female bureau manager to sit in on her interview with the male adviser. She did not go to the police as, ‘My boss was well-known and I was too scared’. Another interviewee described herself as ‘feisty’. She was determined to put a stop to the ‘rude comments, sexual innuendoes, swearing….horrendous sexual harassment’ that she was enduring at work. Her case illustrates many of the key elements identified in this study: sexual harassment, bullying, fabricated accusations, the consequences of whistle-blowing, fear of being identified as a troublemaker and fear about future employment prospects, as well as a very considerable amount of stress.
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• Fear and intimidation
Fear is a key issue for many women. One woman interviewed, who was being sexually harassed and bullied at work, stated that other female colleagues were well aware of what was going on but refused to bear witness. ‘One of them rang me at home and said she still wanted to be her friend, but she was frightened of losing her job if she made a statement, and she had a mortgage to pay.’ Another woman was intimidated by her manager when she pointed out that men doing the same job as her were paid more. He offered to pay her the same rate but on reduced hours. ‘I felt this was blackmail and felt frightened and intimidated … the manager said I had opened a can of worms, so I dropped it.’ Years later, after the manager had left, she took her case to tribunal and was satisfied with the settlement she was offered before the hearing.

• From pillar to post
Many of the women’s experience attest to the fact that they are shunted from pillar to post. A typical case would include contacts with a plethora of agencies. A teacher got in touch with the local authority’s HR department who passed on her complaint to the legal department. They told her she had no rights in the matter. She rang two unions who could not help her as she was not a member. She rang the EOC and was told that since the issue was not just about women they could not help. They sent her an information pack and suggested she get in touch with the Maternity Alliance. The Alliance gave her ‘lots of advice and encouragement’ and suggested she went to a CABx or a solicitor. She rang ACAS at this point; they said they could not help in any way and suggested she got in touch with the EOC. She went to Cardiff CABx and after an initial interview was passed on to one of their employment specialists. ‘I felt I was being thrown backwards and forwards by all these different agencies.’ It is clear that it takes a large measure of determination to pursue a case and many people would have given up along the way. This woman told us that she would have given up if left to pursue the case herself: she was seven months pregnant and disinclined to continue. However, by chance, a friend working in HR found a 1980 precedent where a teacher who had the same sort of contract had won her case. This encouraged her. Her case was settled before the hearing.

• Views of the Equal Opportunities Commission
Most of the women (and the one man) interviewed spoke highly of the EOC if they had had contact. ‘Very helpful’ and ‘very sympathetic’ were typical comments. There appears however, to be some confusion about the extent of EOC support. One woman said that it had not been made clear that the Commission could not take on her case: she was ‘not pleased with their performance’. Most women found the information pack extremely useful and many commented that it arrived within days of initial contact. One woman said that, although the pack was informative, ‘there was no one there to hold your hand through the process’. Another said it was, ‘sort of easy to follow’. And a third commented, ‘a bit of guidance would have been handy’ referring to the need for counselling support. For two separate employers, knowledge of the fact that their employees had been in touch with the EOC was enough
to induce change - one case of equal pay and the other over the issue of weekend working and childcare.

- **Views of the unions**
  Union help appears to be variable - towards poor. Some of the accounts indicated considerable bad practice. Eight of the women we spoke to had been in touch with their unions. One said her union (GMB) was ‘brilliant’, another was let down by a representative but well served by his replacement on the same issue years later. One interviewee suggested her union was ‘very remote... I didn’t think they would help’, and yet another who was represented by her union’s solicitors, claimed that they were unsupportive. It appears the women were looking for a degree of emotional support over and above information-giving. One woman’s union wrote a letter to her manager and said that this was all they could do. In one case the applicant's union dropped her two weeks before the hearing. She was forced to go to a solicitor, who got the paperwork from the union. She told us that the solicitor was, ‘gobsmacked, he had never seen such a mess, even the IT1 wasn’t filled in properly’. In the bundle of paperwork was a letter from the union’s head office to the area representative saying ‘ditch her’. This applicant felt, ‘utterly let down by my union: they didn’t help with the IT1, they didn’t tell me about the three-month time limit and they dropped me two weeks before the hearing’.

- **Views of the CABx**
  Thirteen of the women interviewed had had some sort of contact with a CABx. Two women said they would not contact a CABx because of previous bad experiences, ‘been there before and spoke to a useless woman’ said one. Another made the typical statement that, ‘you never know when they’re going to be open, I’ve tried to get in touch with them in the past and they’re always closed’. One woman had been ill advised by a CABx and thought they were a ‘waste of time’ and another said she ‘wasn’t too happy with the CABx as they advised me that I should wait until I was sacked before they could do anything’. By contrast, others spoke highly of CABx advisers - whether LSC contracted specialists or an ‘unofficial’ specialist. One applicant was bullied at work after she had asked for a job-share after her third child was born. The ‘unofficial’ specialist she saw at her local bureau was ‘helpful and very honest about the possible outcome’ of taking her case to tribunal. In the event, the adviser brokered a settlement with ACAS. Words like ‘brilliant’ were used to describe specialists at one CABx. It is clear that in the few CABx where there is specialist help available, clients experience a high level of satisfaction.

- **Views of ACAS**
  Seventeen women in the study mentioned ACAS. It seems that awareness of ACAS is relatively high, even though some people are not aware of its precise role. Several said words to the effect that they ‘just knew’ about ACAS. One women who rang ACAS as a first port of call was directed to the EOC. Another who had been subjected to harassment and bullying, and whose management was unsupportive, rang ACAS on a friend’s advice. ‘They were very helpful and listened to me for a long time. It was such a relief to have an
official organisation who seemed prepared to take my situation seriously.’ They suggested that she took her case to ET. Yet another applicant wanted a letter of apology which ACAS tried to mediate. She found ACAS, ‘very approachable… a very good service’. By contrast, others commented that they found them ‘perfunctory’ and ‘a waste of space’.

- **The tribunal experience**

Ten of the women we spoke to had experienced hearings. Without exception the women described this as an intimidating and harrowing experience. Their views of the actions of Chairs may be coloured by their outcomes. However, many of the comments reveal bias and intimidation. One felt that the Chair was, ‘biased from the start… he was an old bloke and very condescending. He called me by my first name but he called my boss Mr B’. Another was represented by a no win/no fee solicitor. At one point ‘the judges’ asked questions she did not understand. When she asked for an explanation they ‘got agitated and were not patient’. One applicant objected to the fact that, ‘the Chair said that he knew that her employers had made considerable efforts to address discrimination within their organisation’. Another said the Chair ‘made her feel like a stupid little girl’ and yet another found ‘the whole experience extremely daunting and I couldn't have managed it on my own… I feel the odds were stacked against me from the beginning. The Chair said she didn't believe that a reputable company would wilfully flout employment law’. However, there is some evidence in the responses that suggests Chairs make a big effort with un-represented applicants and that no representation is more advantageous than poor representation.

- **Reflections on the significance of the Welsh context**

Women were asked whether the fact that they lived in Wales had an effect on what they had told us. The women who did have something to say on the subject spoke of ‘male domination’ and Wales being ‘behind the times’. Those who had worked elsewhere were obviously better placed to have opinions. One said, ‘I've worked in Bristol and in London… I don't think there's much difference between them and Cardiff. Cardiff's much the same, quite cosmopolitan, but outside Cardiff people are very naive and old-fashioned… women are not seen as equal, in this part of south Wales, anyway, it's a man's world. There's a culture of male domination and manipulation… this wouldn't have happened in Bristol’. Another offered the frequently stated sentiment that there is a ‘lot of mutual back-scratching, it all depends who you know here’. This was reiterated by another commentator who said, ‘there’s a lot of corruption in Cardiff and the ET is part of it… there’s no doubt that the tribunal favours employers, big business always wins. I am just a little person with no chance’. In addition it was suggested that among SMEs in Wales there is widespread ignorance about employees’ rights. But this type of comment was not confined to the private sector. One woman commented that her first police sergeant stated he, ‘didn't like probationers, didn't like women and didn't like Welsh-speakers’.
6.4 Disability Cases
Disability cases are the fastest rising area of discrimination registrations in Wales. Following the introduction of the DDA in 1995 and a number of test cases and the establishment of the DRC in Wales in 2000, rights awareness in this area is growing. Nevertheless, there are still many disabled people who do not acknowledge the social or rights-based model of disability and regard their disability as an individual impairment. There is also concern expressed about the level of acceptance in Wales of disability. More than once in this investigation it was noted that in the public forum disabled people seem to have a low profile and where there is an impact of any kind it is made by those who use wheelchairs. Individuals note the ignorance shown by members of the public about the impact of specific disabilities. They feel that even the most common conditions are not fully understood and those that are somewhat rarer not at all. Yet those who are in employment see themselves in a very positive light, as one of few disabled people in the open labour market. They are doubly distressed when this seems to be brought into doubt by discrimination and by threats to their employment.

6.4.1 Professional views - disability discrimination
Professionals were consulted in a wide range of agencies, including trade unions, the CAB, disability rights organisations and the DRC.

- **Awareness of disability and vulnerability**
The first, and in some respects the most, fundamental aspect of the problem for disabled people is the low level of awareness of disability by applicants and by respondents. ‘In the population as a whole awareness is low and only increasing slowly’. On the individual level, people do not know what their rights are. Disabled people lack visibility in Wales - they are not often seen in important positions, certainly not in employment. ‘The DDA often doesn’t help, ordinary people cannot understand it, they don’t know that they have been discriminated against.’ This lack of awareness has got to be seen against a background of vulnerability - people fear that they will not be able to get another job and, therefore, they are reluctant to pursue cases. In rural areas this fear can be combined with the fear of stigmatisation and, particularly, those with an invisible disability may not want to disclose their disability in small communities.

- **Unmet need**
It is suggested that there is a huge amount of unmet need. The following three comments typify the nature of the gate-keeping processes:

‘We can only justify funding (a case) if it had a reasonable chance of success. It’s not just the act of discrimination we have to take into account but things like the credibility of the witnesses – the quality of the evidence etc. Discrimination cases are very hard.’
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‘Resources are very stretched. The DRC’s target is only 75 cases per year from a population of eight million disabled on a UK basis. Wales has only one case so far that’s met DRC criteria. In the UK – 80% are resolved without going to tribunal.’

‘Of course, if they are getting advice elsewhere, eg a union, then we refer them to them. But at the same time the recurring theme from clients is that they are poorly serviced by the unions because the unions do not have the experience in dealing with discrimination cases.’

• Too few specialist agencies
There is a noticeable dearth of agencies enforcing disability rights. Whilst there are specialist agencies relating to particular impairments, these vary in their ability and resources to offer aid in disability discrimination cases. One advisor suggested, ‘The problem is that there are too few agencies with any expertise in this field. I mean agencies that know about disability and can advise on employment matters. Really there are only two, the DRC and CABx. At the moment, the DRC have the help line but they have no worker in Wales so that people have to go via Manchester. NACAB are very willing to embrace disability equality issues and representation but they themselves need to get their act up to scratch and develop their knowledge base’. It was also noted in the interviews that provision outside of the Cardiff area was particularly poor.

‘Provision is often much worse outside Cardiff. It is very difficult for some people to get in touch with those people who can help. There are few points of contact in parts of rural Wales. Transport is very expensive when you are poor and, in some areas, there is no public transport hardly at all. It’s OK to say people can contact you by phone but you have to have a phone and if you are talking to, say, someone in Manchester in the middle of the day that costs as well.’

• Pillar to post
Individuals continue to be passed from pillar to post in the system such that the system itself can increase a person’s vulnerability. One commentator suggested, ‘What we have is a “pass you on” system. When organisations are contacted, often the first question they ask is: “Can you get help elsewhere?” If the applicant can, then they drop them right away. It’s a very intimidating process’.

• Views on the trade unions
Trade unions are seen by the DRC as a major source of help for disabled people but the interviews suggested people are poorly serviced by their unions. A typical statement was, ‘The unions are not offering disabled members the services they should do. They don’t think it’s important. They lack an understanding of disability equality issues and they don’t seem to see disability discrimination on equal merit as, say, race and gender’. This, in turn, disempowers people. If the unions don’t think it’s important it is likely to have a disincentive effect. From the clients’ point of view the unions are regarded
as having little experience in dealing with disability discrimination cases. This must be an issue for the trade unions, because even though they have good intentions they often lack experience and are giving wrong advice. As one trade union officer said to me recently, ‘We never win any disabled cases’.

- Views on the Disability Rights Commission
  One interviewee stated, ‘It’s easy to be critical of the DRC but you have to remember that it’s only existed since April 2000 and, therefore, is very new’. Its main client contact is via the helpline which covers England, Scotland and Wales. ‘With the DRC it’s all done over the phone (unless someone has a hearing impairment). The worker has to make a judgement on the basis of the call. They have a lot of discretion.’ It was suggested that, with the helpline approach ‘people may wait weeks for a caseworker’. One commentator suggested this mitigates against the opportunity for a resolution at an early stage. ‘A much faster transition between the helpline and the caseworker would be sensible.’ Others commented on the limited role of the DRC in relation to casework, ‘The biggest “problem” with the DRC is that it is a gatekeeper controlling resource allocation, for example it will not deal with TU members. It has its own priority areas identified for its own purpose. Having said that the DRC probably gives more help than EOC but less than CRE’.

6.4.3 User views – disability discrimination

- Pursuing a complaint: cost/benefit analysis
  Many disabled people spoke about the difficulty of deciding to mount a complaint against their employer. This was particularly true of those applicants who had worked for the same company for a long period of time, lived in close knit communities and who felt that their chance of alternative employment was very limited. For them to pursue a complaint about discrimination they had to take a number of factors into account - the threat of dismissal or redundancy, vulnerabilities due to age and the nature of their disability, their sickness record and chances of re-employment. Over and above these considerations two countervailing pressures may deter the person from taking that course of action. The first is the person's concept of disability and his or her image of themselves as a disabled person. If they see their disability as a personal problem for them to manage they are less likely to complain. If, on the other hand, they have a firm perception of themselves as a social being with rights they are more likely to resist. The final element that influences action is the person's perception of the employer and their feelings of loyalty and deference. For all these reasons many 'complaints' never get off the ground and others are pursued with different degrees of confidence, certainty and determination.

- Routes to advice and support
  Different complainants follow different paths through the process of complaint. The variety of starting points for a complainant can be seen in the following examples. For those in work the main support, the starting place is their union. Typically, ‘I went to talk to the union, they were very good. The local man said we should fight but he warned me that they would finish me if they could’. For those who have been sacked, the Job Centre was for many the
starting place. ‘I went to the Job Centre to sign on. They suggested that I get 
in touch with ACAS and they suggested I got in touch with the DRC.’ At times 
it was a combination of circumstances, ‘In April 2000, I was registered as 
partially sighted. I saw a social worker and she suggested that I talk to the 
Disability Employment Advisor. It was suggested that I go to the Hereford 
College of the Blind for an assessment’. Others entered the system through 
family or community contacts, ‘The solicitor was someone my wife knew, a 
friend of a friend, owed a favour so said he would help out’. The more isolated 
contacted the DRC, one of the few disability organisations the general public 
knows about. Some complainants made contact on the web or were directed 
to the Commission by telephone operators.

• Getting through the system
People’s experience of the system differs widely. Three cases involving 
people with epilepsy had taken three years to reach an outcome. Others 
appeared to get lost, as illustrated by one case of a person with vision 
impairment who had taken eight years and another with dyslexia which had 
taken seven and a half years. However long it takes, the system involves a 
high level of chance, as one applicant said, ‘it’s like a game of snakes and 
ladders’. Certainly there are those who gain support by finding ladders and 
hoist themselves up and there are those who suffer the anguish of finding a 
‘snake’ that drags them down. For example, a snake and ladder situation is to 
discover after some months of apparent support by the Disability Rights 
Commission (a ladder) that one does not have a disability (a snake).

‘The union head office said, when I complained in April, that I was out of time 
as the “offence” had taken place in December. The Disability Rights 
Commission said there were ways around that. I rang the caseworker and the 
papers went to the legal officer of the Disability Rights Commission. They said 
that I was not disabled and that the case was out of time. I couldn’t 
understand the first part. Should it take them 12 months to decide if a person 
is disabled? It should be decided at the beginning, you should be told at the 
beginning.’

• Views on helping and advice-giving organisations
Disabled people in this study sought advice from a wide range of 
organisations. There were some obvious contacts that many people used. 
They were the DRC, trade unions, CABx, solicitors and their local Job Centre 
but there were others which are part of the infrastructure of care for those who 
are disabled. These included larger charities, such as the Cardiff Institute for 
the Blind, the Wales Council for the Deaf, the British Deaf Association and 
smaller groups, such as the Asthma Association, the Shaw Trust, Care First, 
DIAL and organisations that support epileptics. For some disabled people who 
found themselves threatened and confused by the prospect of losing their 
jobs or not gaining advancement, the obvious place to go for advice was the 
organisation that had helped them in the past. Very often these were caring or 
advocacy organisations related to particular disabilities. Experience of these 
organisations, which are generally dedicated to other forms of support for 
disabled people, suggested that they were not geared to giving advice on
employment matters. Those that contacted such organisations were always warmly received but they did not obtain any worthwhile advice, appropriate action or sensible referrals to other organisations that could help. Many sought the support and advice of friends, family and members of their immediate community to assist them in their claims.

An analysis of the interviews shows that respondents sought three properties in advice organisations. In order of importance to the applicant, the first involved a cluster of properties, such as kindness, trust, being with you, having a relationship and producing confidence - a cluster that could be labelled a 'close relationship'. The second cluster involved giving specific help, pro-action, explanation, strategy, conciliation and advice - a cluster that could be labelled 'appropriate action'. The third and final cluster involved experience, information and knowledge - a cluster that could be labelled 'relevant knowledge'. From the viewpoint of the complainant, an effective and efficient advice-giving organisation is one which offers a confident relationship, in which it displays relevant knowledge and produces appropriate action. When the advice-giving organisations are judged against these properties a complex picture emerges.

- **Disability Rights Commission**
The property that is most clearly associated with the Disability Rights Commission is that of 'relevant knowledge'. *The DRC were fantastic - a mine of information. The DRC explained the options including going to the tribunal. All this was done on the phone, which was fine, I wasn't passed from pillar to post*. However, the DRC did not score well on the other properties. In the eyes of complainants, the Commission did not produce appropriate action. Typical responses were, *I contacted the DRC by the help line. Not sure why, not sure what they could do. They were very kind but they did not offer anything, they were passive and not reactive. They did ask if I had any help, I told them the union*, or *The DRC support you but they do not really help*.

The only exception was when the Commission indicated that they would take over the prosecution of the case. *I sent my documents to the DRC - I thought they would be interested. They were helpful. They said they might help legally. They put me in touch with a caseworker. She was helpful and sympathetic.* Nor was the Commission seen to offer a close relationship. Sometimes this made people angry, *The DRC were not very helpful – rubbish in fact. All I wanted to do was to go over and see someone who knew about disability – no appointment. They said they needed to contact London over that. They sent me an information pack, but I needed to sit down and sort out ways of dealing with the bullying. They were no help, no meeting, no intervention with employers, no representation, no support, nothing*.

- **Trade unions**
The trades union had a very different profile in the minds of applicants. Often they were seen to offer a close relationship, *I went to talk to the union. They were very good. The local man said we should fight but he warned me that*
they would finish me if they could’. But there were exceptions, ‘Looking back I feel I was very let down by the UNISON, they are in the management’s pocket’. Very often the unions were seen to pursue appropriate action, ‘Thought about taking them to court but I have to work with them. I went back to the shop steward. The union has been very helpful and supportive’. The biggest unease about the unions was their lack of knowledge about disability and discrimination:

‘There was a lot of bullying where I worked, of the staff. It was insidious, undermining, being called into the office for little chat. At first we had no manager but within six months of his appointment all the staff made a complaint to the union about the bullying of staff and clients. They were not a lot of help. They didn’t seem to know what to do.’

- Solicitors
Solicitors do not seem to score highly on any of the properties. In none of the interviews did any of the respondents speak of having a close relationship with their solicitor, indeed the only comment suggested the reverse. There was some ambivalence about the extent to which solicitors follow appropriate action, sometimes not at all, ‘Solicitors were not a lot of use, very slow. They need more skills in sorting things out’.

Few were impressed with the relevance of their solicitor’s knowledge about disability or employment law. Perhaps the reason for this is that most complainants who contacted a solicitor did so through a ‘friend of a friend’ rather than seeking discrimination specialists. For example, ‘I could have gone to a solicitor direct but whom do you choose? Would everyone know how to do that? In the end, I got mine through a friend - the solicitor was her sister’.

In the few cases where they had been recommended to a specialist in employment law, there was much more confidence expressed in their level of relevant knowledge. ‘After I left I went to the union to see if I could sue the L.A. They thought I had a case and they referred it to a specialist firm (named in interview) they said that it was below the 75% level, it was only 60%’.

- The Job Centre
An unexpected area of help for applicants was the Job Centre. Moreover, in some cases it was the Job Centre that first identified the discriminatory nature of the problem. ‘I went to the Job Centre to sign on. They suggested that I got in touch with ACAS and with the DRC.’ For those who had more experience of disability and employment they were already in contact with the Disability Employer Advisor and they went to them for advice when problems arose. While it is not possible to give an overall assessment of the quality of the service provided by the Job Centre, as it was used by relatively few applicants, there were certainly examples of respondents establishing close relationships with Job Centre personnel. ‘I went to the Job Centre and they were great. They put me on the Back to Work Scheme, I think it’s called. I got an appointment next day with a woman. She was fantastic.’
There were also examples of appropriate action being undertaken, ‘I applied, did not hear for two months. Eventually the disability employment officer talked to personnel and they said no interview because of the driving licence. She pressed them but they would not make an offer, they made no reasonable adjustment’.

- **Citizens Advice Bureaux**
  Only one respondent in the sample made use of a CABx and his opinion was that the relationship was close, the action appropriate and the organisation worked on a sophisticated knowledge base. Of course, if this is the case, the questions arise as to why more people do not use the service or if this respondent benefited from the services of a specialist. It may also be that the CABx are not identified as a mainstream disability organisation and are not seen by the disabled community as an appropriate organisation for them.

- **ACAS**
  In the experience of those interviewed for this research, settlement by ACAS, withdrawal and private settlement were closely related, there were no examples of anyone settling privately or withdrawing their case without the intervention of ACAS. Respondents were also very puzzled and critical of the role ACAS seemed to play. For one person who eventually settled out of court, ‘In my case they offered to settle out of court, not much (£500) less than they would have to pay their solicitor if we had gone back to court. Mrs X at ACAS said that the offer was flat and final and I didn't have a strong case’.

  Other complainants felt pressurised; ‘I am not sure about ACAS. I was sent to them by the benefit office. I talked to them about what the situation was when I finished work. They said go to ACAS, but they were useless. I asked for advice but they just kept saying they couldn't give any. After the appeal went in they visited me and said that 75% of people settle out of court. If I went ahead I might lose’. And even more dramatically, ‘Then this man turned up, he said he was from ACAS, well he rang me on my mobile. I don't know where he got the number from, I don't give it to anyone. He said that I didn't have a strong case, that I wouldn't get anywhere at the tribunal. He said I should give it up. After he left, I thought about it, him having my mobile number really worried me. It was all too much. I went down and withdrew my case’.

  In one case, the relationship was more positive, ‘I contacted ACAS, the legal officer in X, he was very helpful’.

- **The tribunal**
  Few people had any experience of what to expect at the hearing itself, ‘When I went to the tribunal I was under the impression that there would only be the Chair, but there was a full tribunal (three people in all). They came in, sat down, did not introduce themselves. To this day, I do not know the name of the Chair. They gave their decision and got up and walked out. They just marched in and marched out’.
For most people it was a very stressful experience. A typical statement would be, ‘At the tribunal I represented myself. My company was represented by a barrister, solicitors. Seven days it was. The first three days were excellent, started well on their first witnesses, but by the fourth day I was exhausted. Sometimes we were up to 2am preparing. Over the weekend it was easier. I had never done anything like this before. It was a new experience’.

- **Reflections on living in Wales**
  
  For some, the process of complaint led them to reflect about some of the disadvantages of living in Wales. ‘Pursuing a grievance in Wales is a lonely business. You feel you are on your own. In a city there may be a group’.

  ‘In Wales, people are at a disadvantage in rural areas. The main information sources are in England. Even in Cardiff we seem to be out on a limb, but it’s not really a disadvantage.’

  ‘The resources in Wales are poor. There is no local provision locally for contact lenses. Everything takes more time.’

6.5 **Common factors for discrimination applicants**

Whilst the analysis suggests that there are specific issues affecting the negotiation of justice for the particular groups, it is also possible to identify a number of factors common to their experience. Considering the evidence together, this represents an analysis of just under 100 in-depth interviews.

Defining discrimination is a major initial hurdle for many potential applicants. In the initial stages of the process, the applicant is seeking confirmation of the merits of their case. Several of those interviewed, even in the face of substantive evidence, often having suffered discrimination over a long period of time and a process of persistent undermining, still grappled to shrug off a sense that they were somehow at fault themselves.

A perennial theme was the lack of awareness of complainant aid bodies even amongst professional groups and those who were most rights-aware. There was considerable misunderstanding about the role of the commissions and an inability to distinguish between information, advice and the possibility of representation. Many assumed that the acknowledgement of having a case coupled with advice would mean they would get representation.

The pillar-to-post syndrome was identified in almost all cases interviewed. By far the majority of applicants had been shunted between a number of agencies before gaining appropriate advice and support. Overall the complainants interviewed did not regard the system of advice-giving they had encountered as being either efficient or effective. On the contrary, the actions of those who offer advice are sometimes seen as unhelpful, illogical and unrelated to the needs of complainants. Many applicants spoke of feeling unwanted or rejected by the system, the first question when they seek help often being: are you in touch with anyone else? They reported a sense of being up one minute and down the next. For them, the advice system is like a
complex game of snakes and ladders in which, at times, the snake and the ladder are often barely distinguishable and where the start of the process is not clear, nor the end.

Several respondents attested to an acceleration of events due to the mishandling or breakdown of internal grievance procedures. Many would have benefited from processes of mediation, as what they were seeking was a hearing of their grievance and justice rather than financial compensation.

Stress, a costs/benefits analysis and frequently the desire to withdraw characterised all cases. In many instances, the interviewees broke down in tears or recollected high levels of stress in taking a case forward - for themselves and their families. Several suggested that the emotional costs outweighed the benefits of proceeding but felt compelled to pursue cases because their job prospects had been severely compromised.

In their evaluations of services the comments were highly variable, confirming the fact that engaging with the process is something of a lottery. Expressions of disenchantment could, of course, be attributed to the adversarial and emotionally costly nature of such cases but, more illuminating, is the suggestion that individuals seek a cluster of qualities from advice-givers and feel frustrated when elements of these expectations are not present. Nevertheless, there is a need for agencies to produce clear and accessible information about their role and function.

The level of unionisation was relatively low amongst those interviewed and some individuals had only joined their union when things began to go wrong. Others said they could not afford union membership or claimed that the unions were not helpful, based on hearsay or the experiences of others.

6.12 Conclusion
The tribunal system itself is not the best way of dealing with discrimination. Only the few are equipped to negotiate the system and very few obtain successful outcomes. As has been demonstrated, the process of seeking redress is marred by obstacles and barriers. In many cases organisations do not shift their practices as a result of an individual complaint. In addition the legislation is limited. This is recognised in the switch to a more proactive and preventive stance towards organisational change embodied in the Race Relations (Amendment) Act 2000 and the DDA 1995 and the statutory requirement of the Codes of Practice. Changes in workplace practices and better systems of internal grievance and mediation are fundamental. What is needed is specialist support to those serving in mediation roles to facilitate preventive action and speedy conciliation.

The research highlights a number of issues in relation to the workplace experience of these groups. There is a need for increased support for disabled workers to manage their disability in the workplace, by advice, counselling and retraining. This can be achieved by the presence of disability advocacy officers in large organisations and by better support for trade union
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representatives. The isolated position of many black and ethnic minority workers implies similar support networks within and between organisations. There is some evidence of the development of black professional networks in Wales, for example in some public sector organisations. Women continue to be subject to abusive and humiliating situations in work and pregnancy dismissal is rife. Employers and management are apparently routinely using methods of forcing constructive dismissal. At the same time agencies of redress for women are thin on the ground. Many of these issues are best addressed by strategic and targeted change in workplace practices.

From the user perspective what is needed is a system of expert advice which might include referral to a counselling service. It should be proactive and well known to potential users, and offer early and appropriate information, advice and support. There should be referral to expert opinion on legal matters, eligibility criteria, likely outcomes and consistent and integrated support though the process of complaint. Such a service would ideally assist in the reintegration of the claimant into the workforce.
Chapter Seven

Issues and Challenges in Wales

7.1 The Changing Policy Context

In post-devolution Wales a number of key developments, both legislative and institutional, have forged a new equalities agenda. This agenda is being given a strong steer by Welsh Assembly Government with the need for inclusivity being incorporated into national concerns and priorities. It has long been recognised that legislation alone, or the operations of the enforcement system through tribunals, does not produce equality. Whilst the law has a strong symbolic value it has had effect at the level of organisations - the arena of discriminations - and both public and private sector institutions have shown themselves resilient to change. The current trend is to move from enforcement towards a more proactive approach that recognises that more can be achieved by harnessing the self interest of employers - carrots not sticks - and through engaging more stakeholders in the regulatory processes. The 'positive duty' on public authorities to promote equality under the Race Relations (Amendment) Act 2000 provides an exemplar and the government has stated its commitment to extend the positive duty to sex and disability discrimination. Against this backdrop, the Government has announced proposals for the creation of a Single Equality Body with the aim of harmonising the equality legislation. The implications of this proposal are currently being debated, but will necessarily include discussions about the institutional framework for resolving discrimination cases. Whatever the outcome, the mandate has been established for closer co-ordination and joint working between the equality bodies. It will, however, take time for these developments to bed in and make visible changes in organisational practice and culture in Wales.

It will also take time to convince the average worker that strong and effective systems of redress are open to any individual, irrespective of where they live and work in Wales. This study has demonstrated that the system that does exist repeatedly fails even those most equipped to use it, such that widespread beliefs foster a lack of confidence in the system on the part of both clients and advice workers. Advice provision in Wales is fragmented, disjointed and sparse, with few trained and experienced specialists in this complex area of the law. Access to the available specialist support is ad hoc and more akin to entering a lottery than subscribing to a formalised system of support. It is the few, and only those well-equipped, who are using the system, but even for them the pathways are complex and the obstacles are many. Many generalist workers lack the training to advise appropriately and refer clients. Too few specialist workers benefit from any system of accreditation of the quality of their work. Both generalist and specialist advisors fail to share information and expertise when handling cases with the net result that expertise is lost to the case, people are passed from pillar to

125 (Cabinet Office Equality Statement Nov.1999)
126 Towards Equality and Diversity.
post and cases of multiple discrimination may be poorly served. Liaison between the major players and, in particular, liaison between the unions and mainstream advice providers has been demonstrated to be poor. There is a need for a system based on constitutional alliances, rather than one reliant on personal and informal contact.

By all accounts, funding of advice per capita at generalist level is lower than elsewhere in Britain. Existing funding arrangements for front line advice providers are inadequate and unstable. This is clearly a key factor in the currency of the notion of a 'Welsh effect' on tribunal outcomes. Other factors, such as the nature of the labour market in Wales, the nature of trade union membership, rurality and socio-cultural factors, such as language, perceptions of the role of women, disabled people and those from ethnic minority communities, all have a role to play.

Whilst this study has illustrated the significance of these factors on how people fare in Wales, the analysis is necessarily limited by the lack of statistical integrity. If we in Wales are to be in a position to track trends and to monitor outcomes then there is an urgent need to address the difficulty of producing accurate, detailed and robust data that can be subjected to comparison.

The challenge in Wales is to develop a more informed, rights-aware populace by creating a more integrated and substantial network of information bases. These would appropriately penetrate and extend the existing fibres in the web of civil institutions as they exist, in addition to the development of new routes to justice. The average person uses a number of everyday information sources: schools, post offices, job centres, GP surgeries, voluntary and community organisations, workplace education and, increasingly, the new technologies. It is well known that people return to familiar sources of support. Many of the individuals who took part in this study had a poor understanding of the role and function of key agencies which resulted in non-take-up of their service and/or dashed expectations of what they could offer. This study has demonstrated the significance of the immediacy of sources of information at local level over and above that of the Equality Commissions that are often seen as remote or inaccessible. Whilst Internet use in Wales is still lower than in other parts of the UK, it is likely to be an important source of information in the future. Exploiting the available information sources and making them more effective is critical to greater community empowerment.

It is also apparent from this study that information pools are not retained through the use of local support groups and specialist support groups such as, for example, black worker groups or worker education groups. The vast majority of discrimination cases are not unique, but they become unique by virtue of the fact that information and expertise that could be shared remains with the individual case. The study has also indicated the applicant's need for some type of counselling provision in the process of advice-giving. The network of disability access groups across Wales is an important and significant development in this respect. Black and ethnic minority worker groups have also been shown to be important sources of information, support
and mediation, although few exist specifically for Wales. Mewn Cymru is one important example of such a network operating to support the needs of black and ethnic minority women in Wales. The trades unions also have a vital role to play here with some showing signs of developing workplace support mechanisms.

Early and effective intervention in the workplace can often dissipate conflict and lead to the satisfaction of grievances if handled appropriately. The gap between making a complaint at work and the step of pursuing a complaint to tribunal stage is enormous and there are potentially many intermediate steps that could be taken to resolve conflicts more effectively. The Employment Act 2000 lays emphasis on early intervention and mediation within the workplace. In principle, this is a welcome development. However, there are concerns that obliging individuals to use the internal grievance system may compound the potential for discrimination and deter many from taking their grievance forward. It has been demonstrated in this study that individuals from ethnic minority groups, those living in rural areas and those with unstable and insecure employment patterns fear the effect making a complaint will have on their job prospects. The requirements of the new Act may exacerbate such vulnerabilities. This makes the need for individual empowerment and the development of a rights-aware populace even more vital.

Finally, this study has shown that, for those who reach the Employment Tribunal, they are represented in about 50% of cases. The nature of representation is variable, some having legal advisors and others, and professional advocates such as CABx personnel. By all accounts those not serviced by a representative receive substantial support from the Chair at a hearing. Whilst this study could not establish any significant link between representation and outcome, other studies have consistently shown the importance of high quality representation in ensuring access to justice. Secondary research indicates that where an individual is legally represented they are more likely to be successful. However, appearing with a non-legal person, such as a trade union representative or a CAB representative, does not enhance their chances, an applicant appearing alone being more likely to be successful. It may be that, in Wales, what the statistics have revealed is enormous variability in the nature of representation such that it is not possible to determine the benefit of legal representation.

If this situation is to be addressed, action is required on the part of a number of stakeholders. The effectiveness of this action will be enhanced if steps are taken in a co-ordinated fashion and on a partnership basis. There remain two major impediments to the strategic development of services in Wales. Neither Employment nor Legal Services are devolved responsibilities. Neither is tied constitutionally to Wales. Much will depend, therefore, on the political will and ability of Welsh government to lobby for enhanced service provision in Wales and to capitalise on the obvious good will and commitment to reform that exists amongst key agencies in Wales. Organisations, such as the Welsh Local Government Association, must recognise and address the need for

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127 Meager et al 1999 p.101-103, Genn, H.
adequate, appropriate and secure funding arrangements to underpin the necessary developments.

7.2 The Way Forward

Addressing the information gap
A more robust and accessible system of information needs to be available to people in Wales. People’s information-seeking activity is necessarily varied depending on their social circumstances and further research is needed in order to review the needs of particular communities. Whilst research has pointed to the benefits of a ‘one-stop shop’ approach to information giving, it is clear from this study that more flexible instruments are required that reflect the variety of need and a geographically dispersed population. Information about key agencies, their role and function, needs to be more readily available via allied statutory services, such as job centres, social work departments, clinics and schools as well as via community informants in the third sector organisations. Such critical signposters need to be adequately resourced. Use of the Internet is increasing and this is a vital mechanism of community support and information sharing for marginalised groups as well as a source of factual information. Websites need to be linked, pathways through the system demonstrated, and access to exemplar cases made available from the equality commissions. The equality commissions should consider evaluating the effectiveness of helpline information by following up individual cases that have made use of the helpline. The Legal Services Commission should review the accessibility and dissemination of parts of their Directory. The absence of a presence of the major equality commissions outside of the Cardiff area has had an effect on rights awareness in other parts of Wales - in particular north and mid Wales. The establishment of an office of the DRC in north Wales and proposals to set up an office of the CRE in the north will greatly enhance public awareness in these areas. The EOC might follow this lead. Greater publicity will need to be given by all the equality commissions to successful resolution of conflicts and successful tribunal outcomes in order to build community confidence.

At another level, the information gap relates to the lack of statistical information in Wales. This must be addressed in order that consistent, accurate data, capable of comparison, is readily available for a range of monitoring purposes.

Building the infrastructure
The study has demonstrated the existence of vast ‘advice deserts’ in Wales in which the quality of generalist advice is variable and the availability of specialist advice is non-existent. In rural areas, outreach work appears to be vital to improve access to justice for very marginalised individuals. There is

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128 For example, the Legal Services Commission Partnership Innovation budget funding Mewn Cymru to run a three-year project to review legal information and advice needs in ethnic minority communities.

129 CABx developments and REF Cardiff developing outreach to dispersed communities.
a need for the identification of earmarked specialists beyond those currently under contracts with the LSC together with further extension of the LSC Quality Mark. One way forward would be the establishment of Employment Advice Consortia with formalised constitutional links between major providers. This would take the form of partnership arrangements covering geographical areas of Wales and ensuring a network of well-advertised quality provision at both generalist and specialist level.

Ideally, a seamless service would include provision for both eligible and ineligible clients, as those in work are currently excluded from publicly funded support to take forward their claims. There is a need to ensure that advice services in Wales receive adequate and appropriate direction and funding. A major audit of the funding of advice services in Wales is urgently required, led by key parties, such as Welsh local government, NACAB and supported by the Welsh government.

Training and accreditation
The current system of training of generalist and specialist advisors is partial and variable. At a generalist level, providers require consistent and additional training and development in order to provide a service that accurately identifies and appropriately refers cases to the specialists. This is critical in relation to CABx providers, trades union branch officers and other first-tier workers. At a specialist level, the picture is again characterised by ad hocbery. The majority of respondents in this study described 'learning on the job' rather than benefiting from any planned, formalised or standardised system of training. The LSC Quality Mark, whilst potentially offering a coherent system of accreditation, imposes a number of constraints on providers that build a pattern of perverse incentives into the system. Further, there is need for more inter-agency discussion in respect of the identification of employment law expertise within the legal profession. The existing self-certification process of the Law Society provides few safeguards or little publicity whereas the LSC Quality Mark to date is proving to be insufficiently popular with the legal profession. It is early days, and perhaps the Quality Mark may gain significant and sufficient ground. In the meantime, consideration needs to given to following the Scottish Law Society example and providing for expert status based on peer review.

The basis for accrediting a national standard of competency exists for Employment Advice and is overseen by the LSC. This could be reformed and extended to ensure standardised and good quality advice-giving in all parts of Wales. The feasibility of developing a qualification for non-lawyer advice-givers should be investigated. Such a qualification would appeal and be accessible to advice givers in the voluntary sector. Colleges of Higher and Further Education in Wales should consider the development and accreditation of a national qualification in advice work.
Co-ordination and transfer of expertise

In order to steer such strategic developments, there is a need for an appropriately resourced high level co-ordinating body. This body would be responsible for disseminating best practice across the country and building the mechanisms to facilitate the transfer of expertise. It would be responsible for initiating and overseeing training developments and research programmes, for identifying key statistical indicators that adequately measure the system in Wales, and pressing for the collection of the relevant data. It could act as a major conduit for user views through links with the Employment Tribunal User groups and the National Assembly of Wales as well as the major equality bodies. In its embryonic form the Employment Rights Network Wales has this potential. This body should be supported and sponsored by the Welsh government in order to carry out its proposed role effectively.

Meeting client needs

A number of obstacles exist in the system which mitigate against client satisfaction in pursuing claims of discrimination. In addition to accessible and good quality information and advice, claimants require continuity of service to be assured that the link between advice and representation is guaranteed. This has a demonstrable effect on outcomes as early indications in Swansea CABx suggest. In addition, this study makes clear the need for emotional support and counselling in the process of gaining redress for grievance. Applicants in this study sought a level of emotional support from advice-givers which, too often, they were not resourced to provide. This could be provided by strengthening workplace education and support groups. Mediation is also critical at an early stage in the process. The LSC pilot initiatives in mid Wales demonstrate the potential of formalised partnership arrangements for the delivery of a comprehensive mediation service. Such pilots could be extended and developed across Wales. An audit of access to, and the amenities within, tribunal locations also needs to be conducted and not singly in relation to disabled users. The needs of those whose first language is not English should also be recognised. Welsh language provision needs to be monitored and research is urgently needed, not only to establish the level and quality of provision but also to review the satisfaction of Welsh/English national origin claims in employment discrimination.

In terms of Welsh language developments, more co-ordination and service support is required for the ETS and other tribunals to offer an effective comprehensive service.
7.3 Recommendations

Accordingly this report has identified a number of specific recommendations:

Addressing the Information Gap

The equality commissions should:

- Better advertise their role and more explicitly clarify the level and extent of their commitment to casework. They should continue to promote rights awareness using the full range of media, including developing access to their websites. They should consider ways in which they could use access points such as job centres, doctors’ surgeries, schools, colleges and community organisations more effectively. The commissions could capitalise more significantly on cases won at tribunal for publicity purposes in order to build confidence in the community.
- Undertake further research on the use of helplines with the focus on what use individuals make of the information provided.
- Consider a presence for the commissions in north Wales in parallel to the north Wales office of the DRC.
- Establish and build strategic partnerships with other networks of advice providers, including the Law Society, NACAB, the Advice Services Alliance, RECs, RNIB and other disability organisations and the TUC to permit them to deliver more effectively strong information at first-tier level to enhance effective signposting.

ACAS could:

- Clarify their role and publicise it more effectively to potential applicants.

The Legal Services Commission could:

- Review the accessibility and dissemination strategy of parts of their directory including the list of solicitors with employment expertise and CABx employment specialists in order to improve access for claimants to specialist advisors (i.e. mini directories).

Building the Infrastructure

The National Assembly for Wales should:
Consider the provision of advice services for discrimination cases as part of the strategy to address social exclusion in order to ensure the provision of advice and support services to those people who are ineligible for publicly funded legal assistance.

The Legal Services Commission could:

- Co-ordinate the establishment of Employment Advice Consortia. These bodies, possibly four in total, would comprise a partnership of key providers from the statutory, independent sectors and be charged with the responsibility of delivery of effective services for the area served. Each consortium would monitor and evaluate need in their area, establish the framework for strategic development of services and ensure good quality localised coverage.

- Encourage more advice agencies to become accredited with the LSC Quality Mark and extend LSC contracts to build the number of specialist providers across Wales.

- Support an audit of the funding of advice services in Wales in conjunction with the Welsh Assembly Government, the Welsh Local Government Association and in co-operation with major service providers such as NACAB, TUC and Race Equality Councils.

The legal professional bodies should:

- Assist the co-ordination of a Free Barrister service for north and mid Wales and facilitate the extension of the existing South Wales Free Representation Unit to include other key players, especially the commissions and solicitors.

Trade unions should:

- Develop a more consistent network of specialist advisors for discrimination cases.

Training and Accreditation

The ET service should:

- Increase resources for the training of Chairs and Panel Members and make more effective use of specialist expertise amongst the members with a view to establishing a 'discrimination' panel.

The equality commissions should:
• Support the development of the Employment Rights Network Wales in order to improve liaison, quality of training, competency development and the sharing of expertise.

*Colleges of Higher and Further Education could:*  
• Consider the accreditation of courses towards a national qualification in advice work.

*Trade unions should:*  
• Ensure that local representatives are more highly trained in discrimination issues and their areas of expertise identified and deployed more effectively.

*NACAB could:*  
• Ensure that the training of generalist advisors be tailored towards the more effective identification and referral of discrimination cases.

The *Law Society* and/or *Bar Council* should:  
• Give consideration to following the Scottish Law Society’s lead in providing for expert status accreditation based on peer review for employment discrimination work for solicitors.

**Co-ordination and Transfer of Expertise**

The *National Assembly for Wales* should:  
• Give consideration to funding a high level co-ordinating body responsible for strategic developments.

The *Legal Services Commission* could:  
• Establish formalised channels for the transfer of expertise between employment specialists and those at general help level through contracting specialist providers to engage in capacity building.

The *equality commissions* should:
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- The CRE in particular - consider the identification and development of a core REC earmarked and funded for specialist casework support and advice to which other generalists providers across Wales, including other RECs, could make referral for specialist support in race cases.

*NACAB* could:
- Establish strategic partnerships between CABx in order for specialist expertise to be available as a resource to a network of bureaux, following the model of the Special Support Unit.

*Trade unions* could:
- Develop better links between branch and region and strengthen the procedures for access to discrimination specialists without delay.

Statutory agencies, such as *Job Centres, Social Security offices, Social Services*, could:
- Develop a procedure for the appropriate identification and referral of discrimination cases.

**Meeting Client Needs**

The *Lord Chancellor's Department* should:
- Widen the eligibility criteria in order to extend the number of people eligible for publicly funded assistance.
- Extend public funding of discrimination cases to include representation at tribunal

The *Law Society and/or Bar Council* should:
- Consider standardising the fee arrangements and make provision for user-friendly information on how contingency work is funded.

The *ET Service* should:
- Continue to make efforts to establish an office in north Wales with a permanent and full-time Chair.
Establish clear targets for the recruitment of lay members in order to promote greater diversity. In this respect, we endorse the Hepple Report recommendation that: 'An equality scheme for the employment tribunals should set targets for achieving lay membership of not less than 40% women by 2003, and 50% by 2006 and a percentage that reflects the proportion of ethnic minority communities in each region by 2006'. In addition, Employment Tribunals need to maintain consistent standards in relation to targeting disabled people.

Establish a target for the recruitment of Welsh speakers amongst the lay membership of not less than 20% in this respect.

Consider establishing (along with other tribunals) a specialist support unit to advise and assist individual tribunals on Welsh language service matters, to supervise hearing arrangements where Welsh is to be used and to provide specialist translation services.

Conduct an ongoing review of the premises being used, in terms of accessibility generally, but particularly in relation to disabled users.

Continue to make efforts to strengthen the ET User Group as a forum for enhanced liaison between advice providers and the Service and as a more effective channel for communicating the needs of service users.

The equality commissions should:

- Consider how they promote their services amongst the Welsh-speaking community and monitor the use of bilingual services.

The Legal Services Commission could:

- Extend the framework for a system of third party independent mediation (as demonstrated by pilot initiatives in mid Wales) to other areas of Wales.

Trade unions could:

- Follow best practice in the provision of telephone support for workers experiencing difficulties at work.

ACAS should:

- Consider a more proactive role related to rights-based work moving beyond communication and conciliation to an equal opportunities role.

Addressing the Lack of Statistical Information

The ET Service should:
• Ensure the production and regular output of ET statistics dis-aggregated for Wales. It is proposed that the designation 'a Welsh case' should refer to claimants who live/or work within Wales, irrespective of where the case is being heard.

ACAS could:

• Increase regional monitoring, particularly in relation to the withdrawal rate in Wales.


ACAS (1998) The ACAS Commitment


Blackaby, D; Moore, N; Murphy, P; O'Leary, N (2001) The Gender Pay Gap in Wales. Manchester, Equal Opportunities Commission


Cabinet Office November 1999 Equality Statement
Http://www.nds.coi.gov.uk/coi/coipress.nsf

Cabinet Office July 2002 ‘Towards Equality and Diversity’
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KPMG's Fundamental Review of the Public Service Role of Racial Equality Councils (1997 CRE)

Law Society (2000), Practice Advice Service, Payment by Results, London


Lewis, J and Legard, R (1998) ACAS individual conciliation: a qualitative evaluation of the service provided in industrial tribunal cases: research paper 1, ACAS


Meager, N; Doyle, B; Evans, C; Kersley, B; Williams, M; O'Regan, S and NijJDjan, T (1999) Monitoring the Disability Discrimination Act 1995, London, Department for Education and Employment


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Welsh Consumer Council (2000) Internet Inequality in Wales 200b

Williams, C (2001) Race and Racism, What’s so special about Wales? in Dunkerley, D and Thompson, A (eds) Wales Today, Cardiff, University of Wales Press

Williams, C; Day, G; Rees, T and Standing, M. ‘Equal Opportunities Study for inclusion in the Structural Fund Programming 2000-2006’, National Assembly for Wales
Appendix A
Appendix B
Appendix C

Personnel and agencies contacted

ACAS Cardiff office
ACAS Research Unit
ACAS Wrexham office
Association of Muslim Professionals
Association of Tribunal Members
Avon and Bristol Law Centre
CABx: 5 in north Wales, 2 in mid Wales, 7 in south Wales
Cardiff ET office
Cardiff Law Centre solicitors
CEFN
Chair, ET
Chwarae Teg
Coleg Powys
Communications Unit, Sheffield
CRE caseworker
CRE Commissioner for Wales
Director of North Wales office, DRC
Director, Disability Wales
Discrimination Law Association
DRC caseworker
DRC Commissioner for Wales
Employment Relations Directorate, DTI
Employment Rights Network Wales
EOC caseworker
EOC Commissioner for Wales
Equality Unit, National Assembly of Wales
ET Users Group
ETS Bury St Edmunds
ETS Scotland
Federation of Law Centres
Free Representation Unit, Chester
Free Representation Unit, Swansea
Job Centres (10)
Llandrillo Community College, Rhyl
Lord Chancellor’s Department
Manchester Law Centre
Maternity Alliance
Mediation Wales
MEWN Cymru
NACAB SSU, Wolverhampton
NACAB, Aberystwyth office
NACAB, St Asaph office
North Wales Race Equality Network
President of ET
Race Equality First
Regional Chair, ET
Regional Director, Legal Services Commission Wales
Regional Planning and Partnership Manager, Legal Services Commission Wales
SAHELI
SHEKINA
Shrewsbury ET office
Solicitors: four in Cardiff, five in rest of south Wales, two in north Wales (four with LSC franchises)
South East Wales Race Equality Council
Swansea Race Equality Council
TUC Wales
Trades Unions - branch offices of six trade unions
University of Wales Aberystwyth
Valleys Race Equality Council
Welsh Language Board
Appendix D

List of LSC accredited specialists:

Those with LSC Employment Contracts:

Cardiff CABx
Pontypridd CABx
Swansea CABx

Those accredited at specialist Quality Mark Level:

Allington Hughes - Wrexham
Gamlins - Rhyl
Garside, Harding and Davies – Tredegar
Garside, Harding and Davies – Abergavenny
Garside, Harding and Davies – Newport
Harding Evans – Newport
Hugh James – Merthyr Tydfil
Randell, Saunders, Phillips and Lloyd – Llanelli
Lowless and Lowless – Pembroke
Lowless and Lowless - Tenby
Wales 2000