

Research Paper

The experience of discrimination on multiple grounds

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Abbreviations

Acas	Advisory, Conciliation and Arbitration Service
EOC	Equal Opportunities Commission
ESOL	English for Speakers of Other Languages
ET	Employment Tribunal
IDS	Income Data Services

1. INTRODUCTION

In December 2010 Acas commissioned the Policy Studies Institute to undertake a qualitative research project exploring the experience of discrimination on multiple grounds. This report presents the findings from that research. It aimed to support more effective diversity management through greater understanding of the experience of multiple discrimination, engaging with its varied meanings. It sought to do so by engaging with policy, theory and practice in relation to multiple discrimination. The main focus was on the 'victim's' perspective. Drawing on interviews with ET claimants, advice workers and reviews of Acas and Citizens Advice cases, it set out to explore the following questions:

- a) What are the forms of multiple discrimination, both overt and subtle, involving two or more protected characteristics?
- b) How is multiple discrimination experienced and addressed at the workplace and within the dispute resolution system?
- c) What is the role of non union advice and support?

This project was small scale and exploratory in nature and sought to provide a foundation for further research in this area.

2. THE GROWTH OF POLICY INTEREST IN MULTIPLE DISCRIMINATION

There has been increasing debate in the UK that separate institutional strategies on the equality strands means that the situation facing people with combinations of certain social characteristics remains hidden. For instance, studies of ethnic minority women and labour market disadvantage have made a major contribution to our understanding that gender, race and faith should become an integral part of a strategy on race equality recognising intersectionality in employer practice (EOC, 2007; Bradley et al., 2007; Bungawala, 2008; Ahmed, et al., 2003). The Equal Opportunities Commission and legal scholars have discussed how some ethnic minority women's issues are invisible because of a silo-mentality that treats race, gender and faith separately (EOC, 2007; Solanke, 2009).

The concept of 'everyday racism', developed by Essed (1991) recognised that systematic and recurrent practices can be hidden from view. An example would include line managers making assumptions that minority women job applicants lack confidence and labelling them as lacking promotion potential. Essed's work explores how gender, ethnicity and other social characteristics help to shape everyday experiences, including that in the workplace (Essed, 1991; Essed, 1996). Explorations of the double disadvantage experienced by BAME women in UK workplaces (for example Bradley and Healy, 2008) have begun to engage with this complexity. This evolving evidence base implies that there is mileage in greater exploration of 'everyday multiple discrimination'. Multiple discrimination acknowledges that a range of social identities can influence people's workplace experiences.

2.1 Multiple identities at work

We all hold a range of identities, for example linked to our faith, our gender, as disabled or non disabled and in terms of our sexuality, class background and work status. People do not necessarily simply fit into boxes as, for example, older, black, Muslim, Christian, lesbian, gay, disabled but can encompass many different identities. Multiple identities can be a factor in different workplace experiences across and between social groups. Studies have shown that multiple identities do not exist in a vacuum and are not static. Rather they depend on context and situation and the parties engaged in social interaction (Bhavnani et al., 2005; Shakespeare, 1998; Vernon, 1998; Mac and Ghail, 1999). Identity formation involves a process of how people see themselves and can be shaped by how other people see them. How others see you can be revealed in social interactions and your perception of how you are seen by others.

Vernon outlines the potential for multiple discriminations for people holding a range of characteristics associated with economic and social disadvantage. In discussing the multiple oppression of disabled people she states:

"...whilst disability may be the only aspect of disabled white heterosexual men's experience of oppression, the same cannot be said of disabled Black people, women, gay men and lesbians, older people and those from the working class. They can point to no single source for their oppression. For them the potential for discrimination is greater in all situations because of the increased likelihood of one or another aspect of their stigmatized identity being an 'undesired differentness' ". (Vernon, 1998:208)

To take another example, older Jobcentre Plus clients with mental health conditions have discussed the stigma attached to mental health and related fear of disclosing their mental health history to employers as well as their fear of age discrimination (Hudson et al., 2009).

A range of academic disciplines are engaging in multiple identities and multiple discrimination, recognising that the nature and dynamics of discrimination can be complex (see Ruwanpura, 2008; Squires, 2009; Solanke, 2009).

2.2 Workplace cultures

The dynamics of discrimination take place within workplace cultures as well as being manifested at interpersonal and structural levels. Bradley and colleagues' study of ethnic minority women and workplace cultures for the EOC Moving on Up investigation provided strong evidence on how workplace cultures helped shape the experience of ethnic minority women (Bradley et al., 2007). The research found that workplace cultures could exclude ethnic minority women with gender and ethnic disadvantages compounding one another and allowing multiple discrimination to flourish. For example organisational stereotypes of Black Caribbean women could present them as unable to manage or too aggressive. These stereotypes could be distinct from those about women in general and about ethnic minority men. Line managers were found to play a crucial role in making people feel welcomed and fairly treated within the workplace and work teams. Bradley and colleagues usefully contrast cases of bad managers with those where managers showed "*cultural intelligence*". This evidence base signals the pertinence of informal workplace cultures in everyday working lives. It reinforces Essed's finding that "*everyday events can acquire a broader meaning in the context of unequal ethnic and gender power relations*" (Essed, 1996: 40).

Unwelcome behaviours that can contribute to a hostile working environment include harassment and bullying. These behaviours are particularly prominent in, though not exclusive to, the lives of disabled and lesbian, gay and bi-sexual adults (Smeaton et al., 2010; Colgan et al., 2006).

According to an analysis of evidence from a range of surveys by Abrams and colleagues, over one quarter of men and women have experienced ageism which is far more common than other forms of prejudice (cited in Smeaton et al., 2010). Ageism also seems to be on the increase and we lack systematic evidence on the contours of this growth.

2.3 Theories of ordinary, additive and intersectional multiple discrimination

The Central London Law Centre's guide to multiple discrimination (Lewis, 2010) outlines three broad types¹:

- Ordinary multiple discrimination - different characteristics, different occasions
- Additive multiple discrimination – different characteristics, same occasion
- Intersectional multiple discrimination – different characteristics in combination

¹ As Lewis (2010) states, there is considerable inconsistency in the use of terminology in discussions of multiple discrimination.

Lewis (2010) goes on to discuss the indirect and direct forms of each of these forms of discrimination.

The legal framework is able to engage with cases of ordinary/additive multiple discrimination. Evidence for the Equality Bill submitted by the Equality and Diversity Forum, provides the example of the ordinary multiple discrimination experience of 'a female wheelchair user who is passed over for promotion because her employers want a man to take the lead, and, on another occasion, she is unable to go to an important meeting because it is being held in an inaccessible place'. She was multiply disadvantaged and it is possible to separate out the aspects of her identity contributing to this unfavourable treatment. Intuitively this can be seen as a form of additive multiple discrimination linked to the cumulative effects of disadvantage associated with a range of social identities. The case of *Perera v Civil Service Commission* is an example of what might be described as 'pure' additive multiple discrimination. In this case a man was turned down for a job because of a variety of factors - his experience in the UK, his command of English, his nationality and his age². Perera was multiply disadvantaged and it is possible to separate out the aspects of his identity contributing to this unfavourable treatment.

While the legal framework can engage with **ordinary/additive** discrimination, there has been concern from a number of quarters about the lack of redress for **intersectional** multiple discrimination.

There has been much debate on the meaning and significance of intersectionality (see for example Pheonix and Pattynama, 2006). The concept encompasses the basic premise that social groups are not rigidly demarcated by race, age, disability, gender, class or other status. These social characteristics are not mutually exclusive and can interact with workplace experiences. In the experience of intersectional multiple discrimination, discrimination occurs on more than one ground simultaneously, the different characteristics, interacting and operating in combination (see Moon, 2010; Lewis, 2010; Solanke, 2009). This form of multiple discrimination tends to be associated with stereotypical attitudes and prejudice, myths and stigma and assumptions of inferiority towards people with a combination of identities. Lewis provides the example of older female television presenters being dismissed when younger presenters and older male presenters are not (Lewis, 2010:8).

Employment Tribunals have appeared willing to acknowledge intersectionality (for a summary of case examples see Solanke, 2009: 729-731). However, the stance of the Court of Appeal has been less favourable. In 2004, the Court of Appeal in *Bahl v the Law Society* ruled on the 'correct' way to deal with intersectional discrimination (a ruling that is binding on the lower courts). In this case an Asian woman claimed that she had been subjected to discriminatory treatment in relation to her perceived characteristics, both on the grounds that she was Asian *and* on the grounds that she was a woman. This judgment made it clear that each ground had to be separately considered and a ruling made in respect of each, even if the claimant experiences them as inextricably linked. This led to Ms Bahl failing to prove that discrimination had occurred, as she could not identify which aspect of her claim related to only one characteristic.

² These examples can be found in the Equality and Diversity Forum evidence at <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmpublic/equality/memos/ucm0902.htm>

Solanke suggests that there are three changes that may assist courts in Britain to “take intersectionality seriously” (Solanke, 2009: 726):

- The qualitative difference of intersectional claims needs to be clarified; and gathering empirical evidence can help this process.
- The traditional categorical approach to grounds needs to be challenged, with a more prominent role for social realities such as stigma.
- Greater legal acknowledgement of the socio-cultural context in which intersectional discrimination is able to occur.

2.4 Intersectional discrimination and clause 15 of the Equality Act 2010

Legal redress for the social experience of unfair intersectional multiple discrimination within British workplaces was moved a step closer to in the Equality Act 2010. The Act signalled that people may feel treated less favourably on more than one equalities ground simultaneously and that there ‘may’ be a new provision for intersectional multiple discrimination. While additive discrimination would continue to be recognised by single discrimination claims, clause 15 of the Equality Act 2010 allows for discrimination claims involving *two* simultaneously operating (thus ‘intersectional’) social characteristics to be brought to Employment Tribunal. For example, a Polish woman experiences employment discrimination based on assumptions that she lacks education and is incapable of doing a higher status job. She is not seen as a serious candidate for promotion and is consequently segmented into a job with little autonomy while Polish men and White British women are promoted. She feels that this is because she is an ethnic minority woman.

This **intersectional** multiple discrimination tends to be associated with stereotypical attitudes and prejudice towards people with a combination of characteristics. Recognising this potentially shifts the legal process away from a concentration on individual perpetrators of discrimination towards workplace cultures and attitudes.

The wording of the clause 15 provision is presented in Box 1. It proposed that only *direct* discrimination be covered. Claimants bringing a claim of multiple discrimination to an Employment Tribunal could construct a hypothetical comparator as part of the process of proving that combined discrimination had taken place. For example, an older Asian woman bringing a claim of unfavourable treatment in promotion based on age and race could try to demonstrate that a younger Asian woman or an older Asian man would have been promoted perhaps presenting statistics of the workplace profile in different job categories.

One argument for the intersectional multiple discrimination provision is that it should encourage employers to pro-actively prevent its workplace occurrence. It would do so by prompting them to review and understand how discrimination can involve the unique contribution of more than one protected characteristic. While all types of claims should encourage employers to review their practices, the embedding of intersectional discrimination in workplace cultures makes the need to foster preventative action all the more important.

A potential weakness in clause 15 is that there is no provision for indirect discrimination that would recognise artificial barriers that have a disproportionately adverse impact on the disadvantaged. However, one of the reasons why discrimination at work can be difficult to prove is because it can be subtle, less visible and there may not be an intention to discriminate. Clause 15

also ignores the scope for multiple discrimination on the basis of more than two protected characteristics. Pregnancy discrimination is excluded.

There are a number of uncertainties around how provision for dual combined discrimination would operate in practice (Lewis, 2010) and these would need to be addressed through case law once such a provision was implemented.

While this research project was in progress the Government decided not to implement clause 15. The proposed regulation has been dropped amidst the argument that it was too expensive for business to implement (HM Treasury, 2011:7), implying a weak 'business case' for its implementation.

Box 1 – Combined discrimination: Dual characteristics

(1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.

(2) The relevant protected characteristics are—

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) race
- (e) religion or belief;
- (f) sex;
- (g) sexual orientation.

(3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).

(4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.

(Source: Equality Act 2010 –
<http://www.legislation.gov.uk/ukpga/2010/15/section/14>)

2.5 'Combinations' of discrimination on multiple grounds

Early on in the research, cases involving discrimination on multiple grounds were reviewed from two sources: Acas and Citizens Advice. This section provides a summary of these reviews.

2.5.1 Employment Tribunal claims of discrimination on multiple grounds

When a claim is made to an Employment Tribunal, Acas is notified of the details of the claim and contact details of the parties and has a statutory duty to offer conciliation in order to attempt to settle the case and thus avoid the need for the claim to go to a full tribunal hearing. The details include the range of grounds involved in the claim and the outcome. Employment Tribunal claims of discrimination on multiple grounds are more common than single strand claims. At the start of this research Acas provided the research team with access to its database of claims of discrimination on multiple grounds. This included 473 claimants with claims that opened and closed between January 2007 and December 2010. Many cases involved unfair dismissal and/or breach of contract in combination with equality jurisdictions. This perhaps reflects the serious breakdown in the employment relationship that can be involved in discrimination cases. As will be seen later in this report (chapter six), the unfair dismissal claim can potentially reflect employer use of disciplinary procedures. In order to explore whether there were patterns in the combination of cases the data was analysed further. The most frequent associated jurisdictions are listed in appendix 1 (table 1a) along with the jurisdiction abbreviations (table 1b). The most common associations seem to involve religion and belief and race, race and gender and age alongside disability, age alongside sex and age alongside race (for more detail see appendix 1, tables 1c-f).

2.5.2 Citizens Advice reports of discrimination on multiple grounds

While the research team were developing the topic guides, Citizens Advice was approached for permission to review advice reports that related to workplace discrimination cases. The focus of this review was on identifying cases that mentioned more than one equality strand. Citizens Advice acts as a form of head office for Citizens Advice Bureaux around the country. Local bureaux send Citizens Advice office brief advice reports summarising advice cases. This short review of case reports³ received from local advice workers from January 2010 to January 2011 was undertaken. Single strand discrimination cases were considerably more common than reports of discrimination on multiple grounds. Table 1d summarises the combinations of multiple grounds found in this review.

³ The cases were accessed electronically, Citizens Advice kindly granting access to its Bureau Evidence Retrieval Tool which stores the advice reports across the range of issues on which the general public seeks advice.

3. RESEARCH METHODS

With the possibility that provision might be made for combined discrimination in the legal framework in the future, evidence needs to be built regarding what impact this clause might have on the employment landscape. A starting point is to gather greater empirical evidence on the experience of discrimination on multiple grounds. This chapter provides a brief overview of the research methods and sample characteristics.

3.1 Research design

The primary field research used qualitative methods, involving the following two strands:

- Depth face-to-face interviews with claimants who had made claims of workplace discrimination to an Employment Tribunal (ET)
- Shorter telephone interviews with advice workers that claimants are likely to turn to for support.

3.1.1 Claimant interviews

Research participants were sampled from an Acas database of claimants who had brought claims on multiple equality grounds.

The interviews were semi-structured with an emphasis on exploring claimant perceptions and experiences (the topic guide is presented in appendix 2). Due to resource constraints, the sample was restricted to London and the South East. The claimants were drawn from a variety of sectors and occupational groups. The diverse range of occupations that the claimants covered included the following:

- A security officer, private sector
- A delivery driver, private sector
- Two care assistants, one private sector and one voluntary sector
- A cleaner working for a contract cleaning firm
- A nursery nurse in the public sector
- A public sector housing manager
- A cashier in a betting shop
- A client manager providing IT support to the financial sector

The interest was in cases that had gone to an ET hearing, but also those that had been settled by Acas or privately settled. Cases that had been withdrawn were not included. All claimants participated in the research on an anonymous basis. Several claimants had signed compromise agreements as part of a process of claim settlement and were notably cautious in the details of their workplace experiences that they were willing to share with the researcher.

In January 2011, claimants were sent an opt-out letter and information sheet as a first step towards obtaining their informed consent for participation in the research. Some claimants contacted the researcher and asked to be included in the study. Following the end of a two week opt-out period, sample selection involved the administration of a short telephone screen. Screening began with the claimants who had opted into the research. The key aim of the screening was to try to find claimants who appeared to have experienced intersectional multiple discrimination as well as some examples of additive multiple discrimination. To

avoid over complexity, the screening (and subsequent interviews) used the following working definitions of additive and intersectional discrimination:

- Intersectional discrimination is defined as that which occurs on more than one ground simultaneously, the different characteristics, interacting and operating in combination.
- Additive discrimination is defined as discrimination that occurs on different occasions involving a different equality strand on each occasion.

A claimant's workplace experiences might include intersectional discrimination and additive discrimination.

The claimant interviews were conducted face-to-face and lasted up to 90 minutes (in one case two hours). It was important that claimants could take their time sharing their workplace experiences and perceptions. Topics included:

- Self identities
- Work history, aspirations and opportunities
- Dynamics of discrimination at work (events, subtle and overt)
- The decision to claim and sources of advice and support (probing the role of HR department, lawyers, Citizen Advice Bureaux and union representatives)
- Factors influencing decisions about representation and advice
- Conflict handling experiences prior to and following the ET claim (including the role of the Acas Conciliator)
- Outcomes and suggestions for improving how discrimination on multiple grounds is addressed in practical terms within the workplace
- Awareness of clause 15 and sources of information, perceptions of the difference that will be made by the new provision (probing perceptions of strengths and any weaknesses).

3.1.2 Advice worker interviews

A small number of advice workers (five) were also interviewed, four for a maximum of 15 minutes, by telephone. The fifth interview was for around 20 minutes and face-to-face. The telephone interviews were with employment law specialists based in advice and law centres, including a centre manager, two employment solicitors and a barrister. The face-to-face interview was with a self-employed advice worker to Polish migrant workers.

The adviser interviews explored the following themes:

- Respondent role with respect to advising on workplace discrimination;
- Relative incidence of single strand discrimination and discrimination on multiple grounds;
- Range of grounds in cases of potential multiple discrimination;
- Awareness of clause 15 of the Equality Act 2010, sources of information on multiple discrimination and views on clause 15;
- Issues for rights enforcement raised by multiple discrimination cases.

The interviews were achieved by 'cold-calling' advice workers and asking for 10-15 minutes of advice worker time. Calls were also made to Citizens Advice Bureaux but this did not yield any interviews (though a short conversation was had with one advice worker who referred requests for advice on workplace

discrimination to Acas). All advice workers seemed under considerable time pressure. The advice worker topic guide is reproduced in appendix 2.

3.1.3 Piloting

The first claimant and adviser interviews were treated as pilots, and included in the sample. The claimant pilot reinforced that the topic guide needed to be used flexibly. Claimants were discussing traumatic experiences. The interviewer allowed claimants to talk about particular workplace events and experiences at length, with the interviewer then asking follow-up questions with a view to covering a range of pertinent questions in the topic guide.

3.1.4 Sample characteristics

A summary of the claimant sample characteristics can be found in Appendix 3. This is not intended to be a representative sample, but aims to capture a diversity of claimant accounts indicative of their mindsets and experiences in the workplace and in attempts to attain legal redress for perceived discrimination on multiple grounds.

3.1.5 Data analysis

Drawing on interview topics and themes, a coding framework, was developed in order to analyse the data. Thematic summaries of the data helped to facilitate an exploration of patterns across the cases. Patterns across the shorter advice worker interviews were also analysed.

3.2 Report structure

The remainder of this report explores a number of themes.

- Chapter four explores claimant accounts of the workplace experience of discrimination on multiple grounds;
- Chapter five reviews claimant experiences of trying to access advice and support;
- Chapter six looks at dispute resolution following claimant submission of the initial discrimination claim to the Employment Tribunal;
- Chapter seven reflects on discrimination and workplace cultures, drawing on the experiences of claimants and their suggestions for tackling discrimination on multiple grounds. It considers non union advice and support and the implications of the findings for clause 15. The chapter also presents suggestions for further research.

4. CLAIMANT EXPERIENCES OF DISCRIMINATION ON MULTIPLE GROUNDS

This chapter begins by returning to the issue of multiple identities at work, outlining claimant perceptions. The chapter then explores the forms that discrimination on multiple grounds took. It engages with two broad types: intersectional and additive multiple discrimination; and draws on the definitions used in screening claimants and during the interviews. To reiterate the working definitions presented in the previous chapter:

- Intersectional discrimination is defined as that which occurs on more than one ground simultaneously, the different characteristics, interacting and operating in combination.
- Additive discrimination is defined as discrimination that occurs on different occasions involving a different strand on each occasion.

Some claimant accounts were indicative of additive multiple discrimination and others showed signs of intersectional multiple discrimination. All claimant accounts seemed to involve examples of direct discrimination, both overt and covert. There were also reports of harassment and victimisation alongside overt and covert discrimination. The chapter goes on to consider attempts at more informal dispute resolution before turning to the decision to submit an Employment Tribunal claim.

4.1 Claimant perceptions of their multiple identities at work

As noted in chapter two, identity formation involves a process of how people see themselves and can be shaped by how other people see them. How others see you can be revealed in social interactions and your perception of how you are seen (and treated) by others in those interactions. Workplace experiences of discrimination can be actual and perceived.

When initially asked about their identities, in the early part of the interview, respondents sometimes referred to several aspects of their identity. For example, the software manager spoke about her identity as a French citizen, her Iranian heritage, a woman, a Muslim not particularly religious, and a professional well qualified to do her job. Other participants initially focused on their ethnic identity. For example, the housing manager described himself as black African and a British citizen. The security guard described herself as Asian. However, as the research interviews progressed and claimants began to talk about their workplace experiences of discrimination and the decision to make a claim, they began to talk about other aspects of their identity, explicitly or implicitly. For example, the older Asian woman began to talk about her age as well as ethnicity.

Claimant narratives conveyed how their identities were a dynamic in their workplace experiences; both in the ways in which they were seen and treated by other members of staff.

4.2 Examples of additive multiple discrimination

An older Asian man working in the voluntary and community sector perceived that age and race discrimination had taken place. As well as experiencing threatening physical behaviour from a manager he also experienced verbal abuse and racist comments, sometimes implying that he was a terrorist. For example:

"One was in terms of age they would mention that when I was going to retire, another about Muslim issues, scams or terrorism, something happened they would talk to me about that like I'm one of them". (CL5)

Similarly, an Eastern European man in his 50s working as a driver for a food retail delivery business perceived that he had experienced age and race discrimination. CL8 described the age discrimination as indirect. Management complained that he was slower in making home deliveries than his younger colleagues and seemed to expect the same level of fitness from him. He also felt that he had experienced subtle race discrimination as he was not fluent in English, explaining how responses to ESOL needs (needs relating to English for Speakers of Other Languages) in the workforce became racialised:

"...the common reaction from someone who speaks the language fluently and he speaks to someone who hardly communicates, is this feeling of superiority, 'I am wiser, I am smarter. The other one who cannot speak the language must be stupid' ". (CL8)

He described how management subsequently summarily dismissed him and felt that they had deliberately exaggerated a minor misdemeanour.

The claimant sample also included two women with pregnancy related experiences. In these instances claimants made separate claims for disability discrimination, maternity and sex discrimination in their ET1 forms. Both women described how their employers failed to make reasonable adjustments during their pregnancy. CL7 worked as a care assistant in a private hospital and described how she felt discriminated against. Examples of the series of events that fuelled her perception included being told that she could not attend ante natal classes, being made to feel that her job would be at risk if she did not lift heavy patients, being told to continue working though she was in pain and also when her doctor had told her to have bed rest.

4.3 Examples of intersectional multiple discrimination

There were two claimants who described experiences that seemed to be characterised by intersectional multiple discrimination. Perhaps the strongest example emerged from CL4, a French Iranian woman, working for a private service sector company where she was the only woman in a largely young, white British workforce. She commented on the everyday ageist, racialised and sexist office 'banter' that she encountered:

"... I ticked the wrong boxes than everybody, either a woman or a Muslim... I was so shocked by this in the beginning ... sometimes they call you oldie, sometimes they say to you is it above your intelligence to understand the product". (CL4)

"They are not subtle people, why they should be subtle I was the only one you know and they did it openly. You know I mean for example the racial things they had a Turkey office you know openly they would call them the camel and you had a camel drawing and stuff like that for the Turkey office". (CL4)

She described the workplace culture as "*mostly macho*" and there being an overt lack of respect shown towards her in multiple incidents of direct discrimination and harassment. She was often "*mocked*". Work problems that arose in the working day were being made personal and she felt dehumanised, explaining

"they sort of forgot me as a person". An acquaintance told CL4 that prior to her appointment a woman had experienced discrimination and had left the company rather than challenge these patterns of behaviour in a workplace culture that seemed hostile to both women and ethnic minority women. CL4 explained that this information helped her to stop internalising what was happening to her:

"Well I say okay so it's not just me because when you're in this kind of situation in the beginning I was thinking what's wrong with me you know, what am I doing wrong, maybe I don't understand them, you know, but then I realise it was not me". (CL4)

She described how tensions worsened at work and evidence of her poor performance was being fabricated. CL4 observed that the actual poor performance of a male colleague was not addressed and she felt that there was a 'double standard' compared to how she was being treated. She also felt that there was a refusal to apply the company's anti-harassment policy to her.

To take a second example, CL3 was an older Asian man working as a cashier in a betting shop. He had two degrees including an MBA, and asked his line manager if there were jobs in the organisation that could take advantage of his qualifications. Her response sent him mixed messages. On the one hand she said that she would help him apply for jobs on the intranet. At the same time she said that the higher grade posts that he was looking for were not on the intranet and he would need to climb the job ladder. The job ladder involved: cashier - Deputy manager of a shop - supervisor of several shops - Area Operations Manager. At the time his supervisor was a young white British woman with a university degree. She had not been a cashier and was being trained as an Area Operations Manager. CL3 felt that he was treated unfairly, explaining:

"...how come I have two degrees and I'm not even being asked to be trained as a Deputy Manager and then a manager of the shop whereas there were managers and deputy managers, some of them did not even have GCSEs and they became managers because they'd worked with the company for several years really". (CL3)

He observed that Area Operations Manager jobs were not being advertised on the intranet. People were being brought in from outside to do these jobs. He felt that 'subtle' discrimination was occurring.

"I was not sure what could be the reason because there could be [any] combination of the three reasons that I can think of and that is my gender, my age and my race...it was subtle definitely. Nobody ever used any words of derogatory nature". (CL3)

"...nobody ever mentioned anything, it was all just quiet. You do your job and you go home. But then new recruits whom I partly trained to become cashiers ... they were invited to become Deputy Managers and they became Deputy Managers and both of them were young white males and I was never asked". (CL3)

He was given a verbal promise that he would be trained as a more senior cashier but this promise was not honoured.

"...I remember my manager.. in one of the shops before she left the company she was asked by the supervisor if she wants to be trained as a supervisor and... well I was never asked". (CL3)

His performance was good and he was always given a lot of over-time. He was reliable and received no customer complaints. CL3 never asked for feedback on why he was not getting promotion opportunities – he just got on with his job and felt that the lack of access to promotion was a continuing event.

The incident that triggered CL3's formal criticism of workplace practice was when he was left alone in the shop one evening and his manager went on one hour statutory break. Cashiers are not supposed to be left alone looking after the safe. CL3 had previously had a bad experience with a racist and offensive customer. Being left alone that evening triggered the memory and brought on feelings of stress which fed into a formal grievance.

4.4 Attempts to resolve disputes before submission of an Employment Tribunal Claim

Several claimants felt that their grievances should not have escalated to an Employment Tribunal claim. Some claimants had tried to resolve their workplace problems informally. CL4 spoke informally to her team leader about derogatory comments being made by her colleagues, but he wasn't prepared to do anything. He seemed to want to have a quiet time 'going to the pub with his colleagues'. CL4 felt that Human Resource Management seemed very poor – over one year after starting work she was still waiting for a contract. She spoke to a local manager and he did not seem to take her concerns seriously:

"...the local manager he was a little laughing, he was saying to me "make an effort, see them as a client"... I went, you know, often to my manager he was telling me "be a little bit more familiar, smile you know be nice to them, I mean handle their ego, use your charm", I mean what the hell is going on". (CL4)

She asked to have a regular meeting with her manager and also to meet the team members to discuss their conduct towards her but no one was forthcoming.

She made an official written complaint about the discrimination and felt from that point that the management decided to "*get rid*" of her, finding ways to isolate her, and although she was receiving positive feedback from clients: "*I start to find myself with nothing to do*". After two months she was sent an email asking her whether she was serious about the grievance and she replied that she was. When she took time off for a medical appointment at short notice, despite following custom and practice of people calling in sick, management treated this as misconduct and she went through a disciplinary hearing.

Several claimants conveyed how the workplace culture was not conducive to resolving conflict informally. While CL3 did not complain about unfairness in promotion opportunities, some time later he did complain to a line manager that he was left alone in the shop when this should not happen to staff in his role. He received no response, so raised a formal grievance and asked for double staffing and day shifts as he felt that it would be safer. During a period of sickness absence he was put through a disciplinary procedure and eventually dismissed.

Several claimants were union members at the time of their claim, including some in non union firms with a history of hostility towards trade unions. In two cases, unions did not provide claimants with any further support once dismissal had occurred. Another claimant received initial support from her union but once the full-time officer left, the support disappeared.

4.5 The decision to make an Employment Tribunal claim

The research participants decided to submit a discrimination claim to an Employment Tribunal because they perceived that they had been unfairly treated at work and this needed to be formally recognised. Several participants felt that evidence had been fabricated or exaggerated in order to dismiss them and were angry and upset. CL1, spoke of wanting to prove that she "*was not guilty*" of the misconduct that she had been accused of. She was also concerned about the financial impact of the dismissal and wanted compensation. CL5 wanted to "*clear my name*". CL6 felt that he could not ignore the discrimination that he experienced, that he had "*no choice*". For CL4, it was "*a question of principle*". Two claimants wanted reinstatement (CL6 and CL8).

5. ADVICE AND SUPPORT FOR PEOPLE EXPERIENCING DISCRIMINATION ON MULTIPLE GROUNDS

This chapter reviews advice workers' perceptions of the incidence of multiple discrimination and their sources of information on it. Claimant experiences of trying to access advice and support are then explored including: initial claimant awareness of sources of advice and support; the accessibility, use and impact of non union advice and the support gap. The chapter ends with advice worker concerns around gaps in advice and support.

5.1 Advice worker perceptions of the incidence of multiple discrimination

There was a perception among the advice workers that single strand discrimination was much more common than discrimination on multiple grounds, in relation to the cases that they came across in their day to day work. Most were unsure whether there were more cases in the workplace and workers were not seeking advice from them (or were not recognising the incident as multiple discrimination). This is perhaps an issue on which it is difficult to speculate as discrimination experiences can remain hidden. One advice worker described cases of discrimination on multiple grounds as involving age/gender and race/religion or belief. For example, one case involved a young hairdresser who was harassed by her male/older boss, which the advice worker described as a clear case of harassment. Another advice worker, a barrister, described cases of discrimination on multiple grounds as involving 'race/sex'. He elaborated that he gave advice to Muslim women who were being treated unfavourably at work compared with Muslim men. He also noted that these cases had settled because they were strong cases. A third advice worker had seen cases of sex/disability and disability/race dual strand discrimination but felt that *"it hardly ever happened"*.

Two advice workers described how typical cases of discrimination on multiple grounds involved pregnancy and a combination of sex/race discrimination. An advice centre manager reported how the centre dealt with quite a lot of Polish women who experienced pregnancy discrimination. He came across about six of these cases each year, described as involving a combination of gender and race. They were settled with some success, and so there was no formal Employment Tribunal (ET) hearing or were informally resolved with the next line of management, and thus no ET claim was submitted. To meet language needs, Polish interpreters worked at the centre for one day a week; and there was concern that language support budgets were being cut.

The Eastern European claimant was working as an advice worker in the Polish community and was also interviewed for this research with his advice worker hat on. His clients were working in minimum waged jobs and the adviser discussed the concentration of Polish women in cleaning. He described how cleaning firms exclusively employing migrant women were forcing pregnant women to do duties that they should not be (echoing the experiences of CL7 and CL9). A major retailer was turning a blind eye to this and the advice worker had supported them in making written grievances, a particularly challenging task for them given ESOL needs. He was able to informally resolve cases before they went to an ET hearing. This advice worker felt that employers treated Polish women differently because of their perceived characteristics, reflecting their gender, race and religion and belief. In describing what he felt was their experience of multiple discrimination he explained (paraphrasing the view of the companies he dealt with):

"I think it's the same with Polish women, most of them, what they can get here in the labour market is cleaning Most of them work for minimum wages and nobody expects them to push higher up. Companies don't want to invest in migrants because they are migrants and if they're women, well there's this stereotype Polish woman, she come here and within a year she gets a child and maybe in two or three years another child, Catholic, in Poland ... 95 per cent is Catholics, so Polish means Catholic and Polish means they will have children and the companies expect Polish women while working here, to get children and so "no, we don't invest in them because in half a year, in 10 months they will begun on maternity. And if they are back, then after a year maybe another child and ...", so you keep the Polish women as long as possible without training, without giving them information about how to improve your skills because you don't really expect them to be bound to the company, to work with some degree of enthusiasm for the company. It's a stereotype". (CL8/ Advice worker)

He emphasised the large demand for his services from the Polish community working in non union firms with ESOL needs; and contrasted the vulnerability of workers in unionised and non unionised workforces thus:

"[Large retailer] is a good employer and also because there's union inside every [large retailer], there are union representatives. The [larger retailer] employees can go directly to the union representatives if they have anything as a complaint, as a grievance, whatever. The people from the cleaning company, they have nowhere to go". (CL8/ Advice worker)

A sixth advice worker from a Citizens Advice Bureau reported that they did not provide advice on workplace discrimination cases, but instead referred members of the public seeking such advice to the Acas helpline.

5.2 Advice workers' sources of information on multiple discrimination

Advice workers referred to receiving information on multiple discrimination from various publications, for example the Equal Opportunities Review, Income Data Services (IDS) and Industrial Relations Law Reports (to which law centres had subscriptions) and employment law handbooks. One adviser praised an IDS book published each year, which is his first reference guide for the legal position and advising on cases. Another had read the recently published Central London Law Centre Guidance (Lewis, 2010) which he described as "*scarily detailed*". It was not always evident, including in examples above, that advice workers were clear on the meaning(s) of multiple discrimination.

They were well aware that there had been debates on multiple discrimination and knew about clause 15, the combined/dual discrimination clause in the Equality Act 2010. The majority were aware that the dual discrimination clause was not going to be implemented. Their views on this will be reported in the next chapter.

Several advice workers had attended Acas training on the Equality Act. They also regularly trained other advice workers in NGO/voluntary sector organisations. There was some concern that training was too focused on theory rather than the practice of multiple discrimination. For example, one comment on a training course was:

“...they didn’t say this is how you bring a multiple strand case. The application itself is very vague and the law is talked about in a very general way”. (Advice worker)

This advice worker also described multiple discrimination and equalities as a massive grey area, particularly given the amount of change potentially introduced by the Equality Act 2010.

A recurring theme from advice workers was that cases of intersectional multiple discrimination need to go to Employment Tribunal so that advice workers can build up experience of how to deal with them. This also reflects the challenges in making training more practice orientated in advance of implementing clause 15.

5.3 Initial claimant awareness of sources of advice and support

While all claimants felt that they had experienced discrimination on multiple grounds they were often unclear about their rights and what taking a case to an Employment Tribunal would entail. They also lacked awareness of sources of advice and support. Five claimants were trade union members at the time of their claim, including several who had experienced disciplinary hearings prior to making a claim. Once the hearings went against them their union did not provide any further support.

5.4 Claimant access to and use of non union advice and support

Most claimants commented on the poor availability of free or affordable advice and support. They commented on Citizens Advice and Law Centres, the Acas help-line, solicitors and other more informal sources of help.

5.4.1 Citizens Advice and Law Centres

All claimants were aware of Citizens Advice and several approached this organisation for advice. The Latin American claimant with ESOL needs had been told about Citizens Advice in her English language lessons. She visited a local bureau which referred her to a law centre which got Acas involved and helped her access a solicitor to resolve the dispute. Several claimants commented on the basic nature of the advice that could be provided by Citizens Advice and the long queues to speak to an adviser. This could make them feel like they were being ignored. Another claimant had tried to contact a law centre but had been put off by the long queues.

5.4.2 The Acas helpline

Three of the claimants reported that they had contacted the Acas help-line, two having heard about the helpline before. One had a previous workplace experience of discrimination and had found out about the helpline during this time. All felt they wanted more support than was available or within the remit of the service.

5.4.3 Solicitors

A recurring theme was that claimants found solicitors too expensive. Claimants also commented on the difficulty in finding a solicitor specialising in employment. Two claimants (CL4 and CL6) had friends, acquaintances and family members who were barristers or solicitors and were able to access informal (free) help. Before CL4’s case was heard at the tribunal she paid a junior barrister to discuss

part of the case with her as she could not afford a more senior one. She commented:

"...Unfortunately employment law it's very technical you need to understand it fully and mostly[need a] barrister than solicitor". (CL4)

In addition to the Latin American claimant, another claimant had drawn on the services of a no win no fee solicitor and another used a solicitor linked to his home insurance, trying to build up support in economically smaller fragments. One claimant (CL7) accessed a solicitor via a trade union, as a member of that union.

5.4.4 Self learning

Several claimants embarked on a journey of finding out about their rights seeking information on the internet and discovering guides to law in libraries. One had relied heavily on Cunningham and Reed's *Employment Tribunal Claims: tactics and procedures*. Two claimants self learned in conjunction with informal advice from legal contacts, while the Eastern European claimant solely relied on self learning. While two felt that they had learned a lot through the process, CL3 described the downside being that it could prolong the case:

"One tends to read since not qualified in legal matters, one only tends to read what works out in your favour. You see you become biased for a period and that's not good for one's case and in this it got prolonged for I don't know how many months if not a year and all the time you don't know what is happening whereas a solicitor can go through the file and straight away say 'no let's not touch these ones, let's only concentrate on this'. And this is what one of the solicitors said who give me private advice. I paid him two hundred and fifty pounds for that that's all that I could afford, and he said that you have ... you have plucked up everything under the sun to enter in your case hoping that something will work and something will not work, that's not the way to present, you just concentrate on the main things which I would have done earlier". (CL3)

5.5 The impact of lack of advice on claimants in their pursuit of legal redress

On the whole, claimants lacked knowledge of the legal framework and system. Their experiences are perhaps illustrative of a lack of worker awareness of both how to respond to perceived discrimination at work and a lack of timely, accessible, advice, but also a sense of powerlessness at work.

5.5.1 Misinterpreting anti-discrimination legislation

Two participants described how they had misinterpreted the religion and belief legislation because of their lack of understanding and the lack of advice. They therefore removed this from their claim. In submitting their claims, claimants had drawn upon a series of events that had happened over time.

5.5.2 Lack of awareness of time limits for Tribunal claims and fear of exercising rights

There are time limits on when a complaint can be brought into the Tribunal process. In discrimination cases the primary time limit is usually three months from the act complained of, or in the case of an act extending over a period of

time (or a continuing act as it is often referred to) the end of that period. If a claim is out of time then a Tribunal will not have jurisdiction to hear the complaint unless the complainant can invoke one of the specific escape clauses in the legislation.

Several participants eventually discovered that strands of their equality claims had timed out. In these cases the decision to claim had been triggered by a dismissal and the timed out events had occurred over several years.

One claimant illustrates how fear of exercising rights, interacting with lack of awareness of legal processes, can affect a future claim. CL3 was amongst those whose equality strand claims had timed out. He felt that if he had complained about the different strand incidents that had contributed to his discrimination when they took place he would have been labelled as a troublemaker and he feared losing his job. He noted:

"...If I had brought up all these issues all the time then in my seven years of employment I would have done almost every other month... I mean can you imagine I raise a grievance every time and then when the grievance is going whether I should bring it up to the Employment Tribunal or not within the three months or if the company for whatever reason does not attend to my grievance for ten months then I am already time barred for three months. I mean these things are not very clear at least with the lay person...". (CL3)

This problem may be more difficult to convey in cases of multiple discrimination when events can vary across different strands. Fear of complaining (on top of lack of awareness of how to complain and the legal process) may also contribute to fewer discrimination claims being made (multiple and single strand).

Two claimants had brought discrimination claims linked to workplace experiences during their pregnancy. Jurisdictions cited in their ET1 forms included disability, sex, maternity and unfair dismissal. CL7, working as a care assistant, emphasised that she had not known her rights at work. Although she was worried that work pressures and practices were putting her unborn child at risk, management threats about her job security led her to continue working. Maternity Action, a national charity coordinating the Alliance Against Pregnancy Discrimination, has reported that many women do not know their rights, basic entitlements and how the law on pregnancy discrimination relates to their situation. They do not understand that if employers neglect health and safety issues this is pregnancy discrimination (Smeaton et al., 2010).

5.5.3 Advice worker concerns about the support gap

Advice workers were acutely aware of a support gap for claimants. The manager at one centre felt that he was fairly unique in representing claimants at tribunal. He felt that having decent advice and support prevented frivolous claims.

More generally, advice workers were concerned about the low level of employment rights awareness amongst claimants (and potential claimants). In this vein an advice worker emphasised that multiple discrimination is a difficult concept. There is a strong need to raise awareness and this is the main issue for claimants. At the moment people do not understand what discrimination involves, let alone multiple discrimination. It is worth quoting him at length.

"I think it's quite a difficult concept isn't it... I am still struggling to get my head round it so obviously I've got some knowledge so obviously the lay person is going to have a harder job getting their head round it. I think that it's an issue of making them aware of their rights. It's an educational need for employees to understand the new right given to them... People at the moment don't fully understand what discrimination involves and it's a further complexity. If they are not aware of that then they are not necessarily going to raise a complaint". (Advice worker)

Under the current coalition government elected in May 2010, the advice landscape is undergoing another wave of change. The following quotation from an employment solicitor conveys this. It emphasises the importance of accessibility and 'simplicity' in the law and legal process and tensions in a current policy shift towards making it harder for claimants to access support:

"It comes down to awareness, awareness and making the information accessible and easy to understand. As a solicitor reading the Equality Act and all the changes I have no idea how a lay person is supposed to run your own claim and this is what the current government is actually trying to encourage, basically trying to clamp down on employment lawyers and discourage the litigant person but it is very difficult and so maybe making it as simple as possible you need to make it as simple as possible, making the literature as simple as possible and maybe enforcement". (Advice worker)

6. DISPUTE RESOLUTION FOLLOWING SUBMISSION OF AN EMPLOYMENT TRIBUNAL CLAIM

This chapter looks at dispute resolution following claimant submission of the initial discrimination claim to the Employment Tribunal (ET). It explores some of the themes emerging in claimant accounts of their experience of Acas conciliation and the ET system. It also considers the outcome of the claims and views on the role of clause 15. One claimant engaged in mediation and this experience is also commented on.

6.1 Conciliation and mediation

All claimants recalled being contacted by Acas following their ET claim, but not always the detail of that contact. CL1 thought that she had ignored the Acas letter, saying: *"I was so upset those days I just ignored unnecessary letters. I thought that this was not very relevant to my things"* and could not remember contact with a conciliator. CL6 did not want to talk to Acas as he was so upset about his workplace experiences. He explained: *"I wanted to set a precedent because I'm suffering"*.

None of the respondents who had agreed to conciliation actively or positively engaged with the service. In some instances this was because they failed to make contact with their nominated conciliator. It was not clear what lay behind this failure: it may have been linked with finite resources in Acas; or because a case had 'timed out' prior to conciliation contact. There was also a perception that conciliation did not fit with the parties expectations of their case. This may be linked with a wariness about being pressurised into settling their case. The pressures associated with the information and advice gap reported elsewhere in this paper were also evident in parties dealings with Acas (see also Hudson et al., 2007). In one instance a party felt that the Acas conciliator lacked the legal knowledge required to engage in the complexities of her case.

While CL6 had not initially wanted to talk to Acas, the chairman of the tribunal recommended mediation after looking at the evidence (and was seemingly influenced by CL6's desire for reinstatement). The ensuing independent mediation process was used as a means of moving towards a settlement and CL6 was positive about it in providing a vehicle for his employer side's barrister to sit down and talk to him *"like a human being"* and listening to him. This felt like a *"breath of fresh air"* after his experience of a workplace culture where he felt dehumanised and unable to engage with a hostile management. He had wanted to use his negative workplace experiences to set a precedent, but with hindsight thought that if he had not settled with the assistance of mediation his health would have seriously been affected by the strain of the claim.

6.2 Experience at the Employment Tribunal Hearing

At the Employment Tribunal claimants were trying to prove that an employer had discriminated against them because of different protected characteristics. Those claimants who had their case heard at the Employment Tribunal found it a daunting experience. The claimants without representation explained that it was lack of access and resources that led to them having to represent themselves, rather than a personal choice to do so. They spoke about feeling at a disadvantage compared with their (ex) employers who had representation.

Some claimant accounts conveyed how they struggled to articulate their evidence, including the unrepresented CL2:

"In the end I had such a hard time to get my thing ready so I just ... asked the librarian to direct me to the part to do with tribunal and unfair dismissal and It was only after I'd gone, because I had the contract there and I was looking through the contract, and after reading the bits in from the law books and in their contract, they didn't have anything about confidentiality in their contract. And I was trying to pinpoint that. But as I said when I went to one of the legal people and they were saying to me, you know, you need to get legal representative because then these people know the law and this one might be able to put this across.. So I feel that because I didn't have that knowledge a lot of ... although I had the documentary evidence there I just couldn't get it across for them to ... the tribunal to understand, get things from my perspective because until their final day of the hearing there were three legal people from the firm at the tribunal hearing". (CL2)

It is extremely difficult to assess evidence of discrimination on multiple grounds (Lewis, 2010). CL4 had felt confident about her case when she submitted her ET1. However, at the Employment Tribunal she felt very disadvantaged by not having a barrister, both in terms of her ability to engage with law (including case law) and having to cross examine the person who dismissed her. She was unable to prove that her employer had discriminated against her because of different protected characteristics.

6.3 The outcome of claims and the impact on claimants

Three claimants had settled and the remainder had lost their case at the Employment Tribunal stage. The majority were disappointed with the outcome of their claim, including some of those who had settled. They also emphasised how negative (overall) they had found the process of making a claim including discrimination on multiple grounds. One had been reinstated but left the company soon afterwards. Two were in employment, two were looking for employment and some had retired.

Taking forward the claim had taken its emotional toll. They described their journey as a *"heartbreaking"*, *"a major detriment in my life"*, an isolating experience that made them feel *"traumatised"*. Claimants felt that it had brought their lives to a halt. A marriage had broken down during the strain of pursuing the case. Several felt that they still needed closure and the desire for this had contributed to them agreeing to participate in the research. One or two claimants had begun to suffer from stress before making the claim to the Employment Tribunal. Following the decision to claim, the emotional strain intensified: CL4 explained:

"Awful honestly it made my depression really, really bad. Spent days and days crying, I mean I lost interest in everything it's really, really humiliating... You need to find another job as a matter of urgency because what you are losing in the process has no price, and people think you go to the tribunal for money. Believe me ... you go to have some kind of psychological healing and people in the Claimant room told me the same and some lawyer told me the same...". (CL4)

One claimant was still seeing a counsellor at the time of her research interview.

6.4 Views on the value of clause 15

6.4.1 Claimants

Claimants were unaware of the combined discrimination provision embodied in clause 15. The interviewer told them about the case of Ms. Bhal V Law Society (see Box 2) and asked them what they thought about this case and whether it resonated at all with their own experience. Several identified with the experiences of Ms Bahl. Hearing about the case prompted CL1 to say that in her own case it was difficult to 'separate out' the discrimination that she had experienced. CL2 reflected on her workplace experiences noting "*although we had a black man in there (the workplace) it was mostly young white girls who were given senior roles*". Perhaps unsurprisingly, the claimants whose experience came across as intersectional (CL3 and CL4) appeared to see a resemblance between Ms. Bahl's workplace experiences and their own. They thought that greater recognition of combined discrimination would be a positive step forward and "*better than nothing*". CL4 explained:

"I mean it's obvious to me that on the single strand is a nonsense you are what you are ... you need to bring discrimination in its totality, and I think that is the only way to see things you know otherwise you are asking people to contain things in pieces which is quite impossible. And what happened to this lady is similar to what happened to me, you're telling me, tell me that when you were ejected from the meeting it was because you were a woman or you're old. How you want to know this kind of thing, I mean lets be reasonable once again and it's impossible to know they're rejecting you for what you are. Let's say it this way, if it happens you're black, you're a woman, you're older and I don't know you are Sikh, you are ticking all the wrong boxes so it needs to be a whole. Single is a nonsense ... because the justice is not able to understand the whole problem". (CL4)

Drawing on her self-learning from the Legal Action Group guide to tribunal claims (Cunningham and Reed, 2010) and advice from a barrister friend, this claimant submitted extremely detailed evidence of her workplace experiences⁴. The submission noted her multiple identities: gender, age, ethnic and religious background and language skills. It also included a schedule of discrimination, with the following headings:

- Brief description of the incident (including when and how she complained and the response)
- Why she felt the incident represented discrimination
- Whether the incident involved discrimination on the basis of age, sex or race or a combination
- Precise/ approximate dates
- The names and job titles of those involved and the part they played
- When she documented the incident and how
- The comparator

⁴ She was unsuccessful at the Employment Tribunal and, at the time of her research interview, she was pursuing the case to the Court of Appeal.

- The type of discrimination alleged/whether each incident was direct discrimination and or harassment or victimisation.

She had kept detailed notes of her experiences which she was able to draw on. The schedule of direct discrimination very clearly indicated incidents of “*a combination of discrimination*” and multiple incidents of harassment and victimisation. CL4 detailed over 60 incidents in her evidence submission, in which she was also trying to convey how the socio-cultural context of the company allowed (intersectional) discrimination to occur. For example, headings under which incidents were grouped included “*refusal to apply anti-harassment policy of the company to me*” and “*company refusal to act on my written complaint*”. As noted in chapter two, the workplace socio-cultural context is one of the elements that Solanke (2009) argues will allow the courts to take intersectional multiple discrimination more seriously.

Those claimants who appeared to have experienced intersectional discrimination were (understandably) not sure whether it would have made a difference to have been able to have put in their claim under a combined discrimination jurisdiction. However, they hoped that it would make a difference.

Box 2 – Bahl v the Law Society

In 2004, the Court of Appeal in *Bahl v the Law Society* ruled on the correct way to deal with intersectional discrimination. In this case an Asian woman claimed that she had been subjected to discriminatory treatment both on the grounds that she was Asian *and* on the grounds that she was a woman. This judgment made it clear that each ground had to be separately considered and a ruling made in respect of each, even if the claimant experiences them as inextricably linked. This led to Ms Bahl failing to prove that discrimination had occurred, as she could not identify which aspect of her claim related to only one characteristic.

6.4.2 Advice workers

6.5 Views on the added value of clause 15 and its challenges

While some advice workers felt that they had come across cases that were similar to Ms. Bhal versus the Law Society, none had reported taking such cases to an Employment Tribunal.

As implied in the previous chapter, these advice workers would avoid taking an intersectional discrimination case to Employment Tribunal because of the potential difficulties. In approaching cases of discrimination on multiple grounds they all followed the strategy of focusing on the equality strand that gave them the best chance to win the case, as conveyed in the following quotation:

“You would run with the characteristic that you have the best chance of winning the case with, picking up on the strongest comparator”. (Advice worker)

Lewis notes that the key thing for advice workers is ‘to think clearly about the basis of the discrimination against the worker, as that is relevant to the nature of the evidence needed to prove the case’ (Lewis, 2010:10).

If clause 15 were to be implemented at some stage in the future, advice workers and claimants would want to get some advance information on its potential to be used, to “*get a feel for it*” and “*have greater confidence in using it*” before pursuing cases. This suggests the importance of EHRC specialist support if such a provision were to be implemented, but also the value of using practical examples, perhaps with the support of vignettes (or hypothetical examples) informed by grounded, real world examples.

The advice workers interviewed for this research expressed mixed views on whether what had happened to Ms. Bahl was fair and they also had mixed views on clause 15. One viewpoint was that while the government had pulled back from taking clause 15 forward, this kind of legal provision would stop some miscarriages of justice. Another viewpoint emphasised that clause 15 would not make much of difference to claimants as intersectional discrimination does not place them at too great a disadvantage. Both a barrister and employment solicitor working in law centres felt that intersectional discrimination was rarely a problem in practice. The employment solicitor explained:

“I’ve not seen enough evidence that not being able to bring [dual] claims is going to affect people’s ability to defend themselves or bring a claim. At the end of the day firstly I’ve not come across many [cases of dual discrimination] in six or seven years of practising law. And secondly it is much more straightforward to bring a single claim....You cannot have double counting for compensation”. (Advice worker)

This advice worker, felt that it was difficult to answer whether the treatment of Ms Bahl was fair because of the difficulty in proving intent and motivation in discrimination cases, particularly where the employer is mistreating someone generally. She elaborated:

“You cannot prove intention and you cannot prove motivation. So when someone is calling you names, ‘immigrant’ for example, that is explicitly based on race but when someone is mistreating you or you have been ostracised at work you cannot prove why. The judgement itself needed to be phrased that way. Otherwise its going to be a landslide isn’t it. On the other hand it [what happened to Ms Bahl] was a little bit unfair. I think that in time it will probably be defined over time through more case law. The problem is that though you have very very subtle forms of harassment or discrimination. That is the most common form in the workplace anyway. No one is going to be stupid enough to call someone a racist name. However, you will know if you have been a victim of being ostracised or talked about... and that’s difficult to prove”. (Advice worker)

6.6 Two or more characteristics?

For those who were relatively positive about the potential benefits of clause 15, redress for intersectional cases involving *two* characteristics was felt to be a good starting point for addressing intersectional multiple discrimination. Indeed, most advice workers felt that two was sufficient as they did not see this level of complexity in the cases coming through their doors. One advice worker felt that three characteristics were satisfactory and that any more would lead to too great a degree of complexity. Another emphasised that the number of characteristics is not the only issue; also important are the equality strands involved and the circumstances of the discrimination.

7. CONCLUSIONS

This research aimed to explore the experience of discrimination on multiple grounds with a particular interest in the experience of intersectional multiple discrimination. It was exploratory in nature and sought to explore questions for further research. To conclude the report, this chapter considers general issues of discrimination, particularly the role of workplace culture, the position of people experiencing discrimination in relation to advice and support and finally considers the implications for clause 15. In so doing the chapter further reflects on claimant experiences outlined earlier in this report and related claimant suggestions for providing an enabling context for individuals, and organisations, to address the experience of discrimination on multiple grounds.

7.1 Discrimination and workplace cultures

The Employment Tribunal claimants interviewed for this study were drawn from lower and higher paid jobs across a range of sectors. Some advice workers also referred to the experiences of migrant workers in supply chains. The research participants were highly critical of workplace practice, poor human resource management and line managers' lack of training on management and equality in the workplace. These are familiar themes in explorations of discrimination and diversity management at work (see for example Greene and Kirton, 2009). The public sector equality duty aims to embed equality considerations into the day to day work of public authorities, encouraging them to tackle discrimination and equality. Employers (in the private and voluntary sectors not covered by the duty as well as the public sector) should pro-actively develop policies to prevent discrimination. This can include for example increasing line management awareness of their responsibilities and good practice with respect to complaint handling and monitoring practice, equalities outcomes and action planning.

As noted in chapter four, several claimants emphasised that their cases and grievances should not have escalated in the way that they did. There was a related concern about unclear rules and procedures and inconsistency in practice, for example with respect to promotion processes and access to training. Informal resolution of disputes is likely to be difficult in cases of perceived workplace discrimination where an informal work culture is contributing to a climate of discrimination. Both quantitative and qualitative research studies suggest a need to tackle informal workplace custom and practice and unwritten rules that contribute to unfair discriminatory practices (Hudson and Radu, 2011; Smeaton et al., 2010). A greater understanding of informal work processes is needed to achieve the benefits of more pro-active employer equalities approaches. Further research might usefully explore the socio-cultural contexts in which intersectional discrimination can take place in order to increase understanding of the dynamics at play.

Claimants were concerned that if there were not mechanisms in place to foster improvements in workplace equalities practice and redress for discrimination, unfair practices would remain hidden and unchecked. As noted in chapter two, several claimants had signed compromise agreements as part of a process of claim settlement. Use of compromise agreements has grown, are seen by employers as having a number of advantages (CIPD, 2011) and potentially reduce recourse to the employment tribunal system. However, they do not necessarily help to tackle underlying problems in employers' equalities practice. It would be useful to have some further research on how the practice of compromise agreements sits with employers' equal opportunities policies, complaints about practice and organisational learning. This might usefully draw

on employer, (ex) employee and trade union perspectives, although this is challenging given the emphasis on confidentiality in such agreements.

This research has focused on learning from Employment Tribunal (ET) claimant experiences. ET claims are likely to reflect a drop in the ocean of workplace discrimination experience and we might also usefully learn from the experiences of those who perceive unfair treatment and do not make ET claims. They may be unsure about whether what they have experienced is multiple discrimination or may perceive that they have experienced it, but have not taken any action for a variety of reasons.

However, future research also needs to explore management handling of equalities at work in order to more fully identify the challenges that employers face in engaging with intersectional (and single strand) discrimination. Dickens and colleagues provide a potentially fruitful approach (Dickens et al., 2009). Their use of deliberative techniques helped them to go beyond employers' current knowledge and understanding of the management handling of sexual orientation, religion and belief in the workplace, to produce solutions (Dickens et al., 2009). The workshops might usefully draw upon some of the themes in this research and participating employers might helpfully be willing to engage with their potentially poorer practice as well as good practice. As well as employers, deliberative workshops might involve other stakeholders, such as Acas conciliators, trade unions, Citizen's Advice and CIPD, fostering dialogue and sharing of experiences to engage with the evidence base and participant perceptions of policy and practice. Comparative discussion might also be facilitated with participants from European countries with a multiple discrimination provision and with Acas non UK conflict handling contacts.

7.2 Discrimination and non union advice and support

Multiple discrimination is a difficult concept. Access to the right kind of support and advice can be pivotal in the claimant journey. As seen in chapter five, most of the claimants participating in this research were concerned about the poor availability of free or affordable advice and support. In thinking about what would have improved their experience of a bringing a claim of discrimination on multiple grounds, claimants emphasised the importance of advice and support at an early stage. Timely advice can help reduce the extent to which claimants, and potential claimants misinterpret anti-discrimination measures, raise awareness of workers' rights, dispute resolution and the likelihood of ET success. It may also help alleviate the fear of making discrimination related complaints. Adviser support also needs to come from an employment specialist with plenty of experience of the law and legal process. Several research participants had friends in the legal profession and were able to draw upon this resource. However, not everyone has such social networks. There are signs of a lack of claimant awareness of how to find a solicitor with the appropriate degree of knowledge. Moreover, advice workers want to receive training on the practice of multiple discrimination as well as the theory.

Claimant experiences suggested additional support gaps. First, a need for more accessible guidance for the lay person trying to make sense of their experiences in relation to what feels to them like an obscure and opaque legal framework that they need to engage with. Second, that conciliators require specialist training from barristers to develop a better understanding of discrimination on multiple grounds so they can advise claimants on complex issues in an accessible way. This might also be of assistance to conciliators involved in pre-claim conciliation.

There is a need for ongoing research around the non union advice and support gap. For example, some claimants were critical of the support that they obtained from the Acas helpline, seeming to desire greater assistance than was available. It might be useful for future research to explore these signs of dissatisfaction further.

While the role of union support was not the focus of this research (see instead Moore et al., 2011), some claimant experience showed the importance of ensuring continuity of union support where a trusted adviser is able to see a case through to its conclusion.

7.3 Clause 15

At the time of writing, redress for intersectional multiple discrimination has not been implemented in the legal framework and there are no indications at the present time of the issue being subject to further review. However, as well as recognising the distinctive experience of individuals experiencing intersectional discrimination, implementation of the dual-combined discrimination in the Equality Act 2010 as currently constructed might have a symbolic significance. Reflecting a growing recognition that multiple identities may interact with workplace practices and cultures, as argued earlier in this report, an intersectional multiple discrimination provision might also encourage employers to pro-actively prevent it's workplace occurrence. It would do so by prompting them to review and understand how discrimination can involve the unique contribution of more than one protected characteristic.

This exploratory research reinforces the kinds of changes that Solanke suggest may assist British courts in taking intersectional discrimination seriously (see chapters two and six). As implied by the varied views of advice workers on clause 15, further research is needed to clarify the similarities and differences in experiences of intersectional and single strand discrimination. It might usefully look at a wider range of characteristics and workplace contexts than has been possible in this study. To support greater legal acknowledgement of the socio-cultural context in which intersectional discrimination is able to occur, there needs to more research around the social realities of stigma and stereotypes and how they are played out in labour markets and workplace contexts, formal and informal.

As advice workers signalled, for a provision on intersectional discrimination to work effectively there would need to be considerable emphasis on building awareness and understanding of the provision, including through Equality and Human Rights Commission specialist support. This is particularly important given the potential complexity involved in such claims.

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APPENDIX 1 JURISDICTION COMBINATIONS

Table 1a The most frequent associated jurisdictions in ET claims

Jurisdiction combination	Frequency	No. of equality jurisdictions
BOC-DRB-RRD-UDL-WA	15	2
BOC-RRD-SXD-UDL-WTR/AL	14	2
BOC-DAG-RRD-UDL-WA	11	2
BOC-DRB-RRD-UDL- WTR/AL	10	2
BOC-RRD-SXD-UDL-WA	10	2
BOC-DAG-SXD-UDL-WA	9	2
BOC-DAG-DDA-UDL-WTR/AL	9	2
BOC-DAG-RRD-SXD-UDL	8	3
BOC-DAG-DDA-SXD-UDL	7	3
BOC-DAG-SXD-UDL-WTR/AL	7	2
BOC-DDA-SXD-UDL-WA	7	2
DRB-RRD-SXD-UDL-WA	7	3
BOC-DAG-RRD-UDL-WTR/AL	6	2
DAG-DDA-UDL-WA-WTR/AL	6	2
BOC-DRB-RRD-SXD-UDL	6	3
DDA-RRD-UDL-WA-WTR/AL	6	2
DRB-RRD-UDL-WA-WTR/AL	5	2
RRD-SXD-UDL-WA-WTR/AL	5	2
BOC-DAG-DDA-DRB-UDL	4	3
BOC-DAG-DDA-RPT-UDL	4	2
BOC-DAG-DDA-UDL-WA	4	2
BOC-DDA-DRB-RRD-RPT-UDL	4	3
BOC-DAG-RRD-SXD-UDL-WA	4	3
DDA-RRD-SXD-UDL-WA	4	2
DSO-SXD-UDL-WA-WTR/AL	4	2
BOC-DDA-MAT-SXD-UDL	4	2
BOC-DDA-RRD-SXD-UDL	4	3
BOC-DDA-RRD-SXD-UDL-WA	4	3

Table 1b Key to jurisdiction abbreviations

Jurisdictions	Label
ADG	Detriment because of failure to allow accompaniment at a disciplinary or grievance hearing
APA	Failure to consult over redundancy
BOC	Breach of contract
DAG	Discrimination on grounds of Age
DDA	Discrimination on grounds of Disability
DOD	Detriment for requiring time off for non work activities
DRB	Discrimination on grounds of Religion or Belief
DSO	Discrimination on grounds of Sexual Orientation
EQP	Failure to provide Equal Pay
FCT	Failure to consult with employee representative
FLW	Flexible working regulations
FML	Failure to pay remuneration for health and safety reasons
FPA	Failure to pay a protected award
FTE	Less favourable treatment than a full time employee
FTO	Failure to allow time off
FTP	Failure to provide a guarantee payment
FTR	Failure to pay remuneration while suspended
FTS	Failure to allow time off to seek work during redundancy
FT1	Failure to pay for time off
FWP	Failure to provide a written pay statement
FWS	Failure to provide a written statement of reasons for dismissal
HSR	Detriment for health and safety reasons
IRF	Application for interim relief
MAT	Detriment on grounds of maternity
MWD	Failure to pay minimum wage
PAY	Unauthorised deductions for union subscriptions
PID	Detriment due to exercising rights under the Public Interest Disclosure Act
RPT	Failure to pay a redundancy payment
RRD	Discrimination on grounds of Race
SUN	Detriment for refusing to work on Sunday
SXD	Discrimination on grounds of Sex
TUE	Discrimination in employment on trade union grounds
TUM	Detriment on trade union grounds
TUR	Detriment on grounds related to recognition of a trade union
TXC	Detriment due to exercising rights under the Tax Credits Act
UDC	Unfair dismissal
UDL	Unfair dismissal
UIA	Unfair dismissal
WA	Failure to pay or unauthorised deductions from wages
WTR/AL	Failure to allow leave or pay for statutory annual leave
WTR	Working time regulations

Table 1c Jurisdiction combinations in ET claims involving religion and belief and race

Jurisdiction combinations	Frequency	No. of equality jurisdictions
BOC-DRB-RRD-UDL-WA	15	2
BOC-DRB-RRD-UDL- WTR/AL	10	2
DRB-RRD-SXD-UDL-WA	7	3
BOC-DRB-RRD-SXD-UDL	6	3
BOC-DDA-DRB-RRD-RPT-UDL	4	3

Table 1d Jurisdiction combinations in ET claims involving sex and race

Jurisdiction combination	Frequency	No. of equality jurisdictions
BOC-RRD-SXD-UDL-WA	10	2
BOC-DAG-RRD-SXD-UDL	8	3
DRB-RRD-SXD-UDL-WA	7	3
BOC-DRB-RRD-SXD-UDL	6	3
RRD-SXD-UDL-WA-WTR/AL	5	2
BOC-DAG-RRD-SXD-UDL-WA	4	3
DDA-RRD-SXD-UDL-WA	4	3
BOC-DDA-RRD-SXD-UDL	4	3
BOC-DDA-RRD-SXD-UDL-WA	4	3

Table 1e Jurisdiction combinations in ET claims involving age and one or more other equality strands

Jurisdiction combination	Frequency	No. of equality jurisdictions
BOC-DAG-RRD-UDL-WA	11	2
BOC-DAG-SXD-UDL-WA	9	2
BOC-DAG-DDA-UDL-WTR/AL	9	2
BOC-DAG-RRD-SXD-UDL	8	3
BOC-DAG-DDA-SXD-UDL	7	3
BOC-DAG-SXD-UDL-WTR/AL	7	2
BOC-DAG-RRD-UDL-WTR/AL	6	2
DAG-DDA-UDL-WA-WTR/AL	6	2
BOC-DAG-DDA-DRB-UDL	4	3
BOC-DAG-DDA-RPT-UDL	4	2
BOC-DAG-DDA-UDL-WA	4	2
BOC-DAG-RRD-SXD-UDL-WA	4	3

Table 1f Types of cases of discrimination on multiple grounds recorded in Citizens Advice Bureaux from January 2010 to January 2011

Types of equalities ground	Number of case reports citing these grounds
Sex and race	5
Sexual and racial harassment	1
Age & race	3
Disability* & race	2
Disability* & age	2
Disability & sexual orientation	1

*100 of 162 cases involving disability were reviewed

APPENDIX 2 THE TOPIC GUIDES

TOPIC GUIDE FOR MULTIPLE STRAND DISCRIMINATION CASE CLAIMANTS

Section A: Work history, self- identity and background to the claim

1. Could you tell me a little bit about yourself?
Probe:
Self-identity (e.g. class, gender, older person, ethnicity, religion, disabled person, area affiliation), age
Current employment situation
Aspirations and perceptions of opportunities
Previous work/ work history
Type of work done at time case was brought
Length of time with employer when made ET claim (or whether claim related to recruitment)
Whether now left this employer and when (in real time eg..month/year and with respect to timeline of tribunal process)
Whether employed at present and type of work done (probe whether change in nature/ status of employment consequent on job change)
2. What were the circumstances leading up to your Employment Tribunal claim?
Probe:
Events surrounding discrimination claim and aspect(s) of identity relevant to each event
Isolated event or a process
Was discrimination very clear to you, overt, easy to identify? Why? How?
What were the signs?
Was discrimination more subtle, informal, difficult to put your finger on? Why? How?
A bit of both – overt/subtle aspects
Direct/indirect discrimination/whether clearly treated less favourably
Whether felt that they experienced multiple discrimination, feeling treated less favourably on more than one ground simultaneously [*If appropriate, pick up on discussion during initial screening*]
Explain: people do not necessarily simply fit into boxes as older, black, Muslim, Christian, disabled etc The government has introduced the concept of multiple discrimination. Multiple discrimination acknowledges that a range of characteristics (for example race, age, disability, gender, religion or belief and sexual orientation) can influence people's workplace experiences. In other words a unique combination of characteristics can shape people's experience so that they feel treated less favourably on more than one ground simultaneously. This intersectional multiple discrimination tends to be associated with stereotypical attitudes and prejudice towards people with a combination of characteristics. For example, a Muslim woman is refused a job because she is not permitted to wear a scarf while at work and feels that this is simultaneously because she is a Muslim and a woman.

Period of time over which concerns about treatment at work developed (whether from start of employment or any obvious trigger)
Whether tried to defuse the situation informally, how, effects of this
Where helpful, map time-line to aid recall

3. Did you follow any formal internal procedures for resolving your concerns?
Probe:
Whether used grievance procedure/ if not why
In what way this helped/ didn't help to defuse the situation
Existence of TU/employee representation structure – membership
Use of internal (e.g. TU or employee representative) and/or external support during this process? Nature of support/ how helpful
How and when they decided to take tribunal action (was there a 'final straw' event? Influence of others, media, solicitor, trade union, family etc)
4. What was your main reason for making an Employment Tribunal claim?
Probe:
Main ground for claim? How came to decide on this. The strongest ground? Why?
Were there also other grounds cited for claim (e.g. equalities grounds/protected characteristics, breach of contract, unfair dismissal, failure to pay a redundancy payment), and why?
What did you hope/expect to achieve?
5. When bringing these separate claims in respect of each (protected characteristic), did you feel that this approach reflected the reality/totality of the discrimination that you experienced?
Probe:
Why/ why not?
Would you have liked to have been able to bring a claim of multiple discrimination (the type we discussed a moment ago) alongside, or instead of, your single strand claims? Why? Why not?
Do you think that this might have made a difference to your experience of claiming discrimination? Why/how? Why not?

Section B: Advice and support

I'd now like to ask you about the sources of advice and support that you have had since experiencing discrimination.

1. What sources of advice and support did you think were available to you when you initially experienced (the problem/discrimination) at work?
Probe:
Trade union, HR Department, Citizens Advice, Acas help-line, Solicitor, other
How did you find out about it?
What was available locally?
2. What advice and support did you actually seek?
Probe:
whether and how any advice sought eg.. from trade union, HR, Citizens Advice, solicitor, ACAS helpline

Why/why not? / barriers to access
Concerns re: any associated costs of advice/support, resources, fairness
At what stage was this advice/support accessed, nature/content of advice/support
How useful was this advice/support? Why/why not?
Previous use of this source of advice (outcome and feelings about this)

3. Did you represent yourself at any stage during your claim process?
Probe as appropriate:
Why/ why not/ conscious decision
Extent to which had a choice about the advice and support drawn on
Had you had any previous experiences of similar situations (e.g. court procedures, any previous tribunal experience) or did you know anyone else who had? Probe: both with this employer, or in other situations and how this influenced (self) representation decision
Positives and negatives of self-representation.
Whether employer had representation?
4. At the time that you submitted your claim to the employment tribunal, how were you feeling about it?
Probe:
Confidence in strength of case
Sense of grievance
Feelings of self-confidence in representing self or confidence in advice being received, representation
5. With hindsight, did you receive any bad advice?

Section C: Conflict handling following ET claim

Ask/probe as appropriate for unrepresented & represented claimants (key question for probing is Q5 if pushed for time)

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

1. What was your idea of what ACAS would do?
Probe:
Whether had any preconceptions about role that ACAS would play (e.g. extent of contact, type of contact, help that would be provided)
2. How much contact did you (or your representative) have with the conciliator(s)?
Probe:
Number of conciliators
Period of time over which had contact
Frequency of contact
Whether felt had enough time or hurried along
Accessibility of conciliator
Who was in control of contact?
Feedback from representative

3. To what extent did this provide enough time to go through your case and cover any concerns that you had?
Probe:
What would have liked more time for/ what felt spent too much time on
4. What type of contact did you have with the conciliator?
Probe:
Telephone/ face-to-face/ email/ - and whose choice was this
How helpful was this approach
5. What did you speak about with the conciliator over the time you had contact with him/her?
Probe:
Strengths and weaknesses of claim. Can you remember roughly what they said?
Did they talk to you about other cases/ case law involving multiple types of discrimination? How helpful was this? Was it at all confusing? How?
Did they talk about the limits of the law on addressing multiple discrimination? How helpful was this? Would this have helped you in any way?
Did you ever ask questions that the conciliator was not able to answer or answer sufficiently? (How did you feel about this?)
6. How would you describe your relationship with the conciliator?
Probe:
Trust & confidence, rapport
Whether felt taken seriously
Extent to which seemed neutral or seemed to 'side' with them or respondent
Whether felt any pressure to settle at any point(s)

Section D: Experience at the Employment tribunal

1. What were your expectations on moving onto the Employment Tribunal hearing stage? Probe: positive/negative
2. Overall, how did you feel about your experience at the Employment Tribunal?
Probe: why?
Views on pre-hearing review, eg. neutrality of tribunal personnel
Nature/ usefulness of preparation for full hearing – positives/ negatives
Views on full hearing
Opportunities to say what really wanted to say
3. How easy was it to come up with a comparator?
Probe: Why/why not? (example)
How felt about finding a comparator with a single characteristic?
4. Were you clear on how conflicting evidence was weighed?
Probe: Why?/why not? (examples of conflicting evidence)
Did you receive an adequate explanation of the reasons for decisions reached?

Probe:
How/ why not?

Section E: Outcome of claim

1. How did you feel about the outcome of the claim/ terms of settlement?
Probe:
Judgement with respect to claims under different jurisdictions
Remedy
Perception of key factors in the case/ reasons for settlement
To what extent did the legal system recognise your experience of discrimination with your employer (prospective employer)?
Adequacy of claiming under multiple jurisdictions or whether experience was more complex than this?
In 2004, the Court of Appeal in *Bahl v the Law Society* ruled on the correct way to deal with intersectional discrimination. In this case an Asian woman claimed that she had been subjected to discriminatory treatment both on the grounds that she was Asian *and* on the grounds that she was a woman. This judgment made it clear that each ground had to be separately considered and a ruling made in respect of each, even if the claimant experiences them as inextricably linked. This led to Ms Bahl failing to prove that discrimination had occurred, as she could not identify which aspect of her claim related to only one characteristic. Other cases since then have been lost for the same reason.
Do you think that what has happened to Ms Bahl and others is fair?
Do you see any similarity between your own experience and that of Ms Bahl? Why? Why not? Overall, how difficult was it for you to prove that discrimination had occurred in your case? (Probe on whether they have anything to add on this experience)
In the future it may be possible to bring a multiple discrimination claim involving two characteristics to an Employment Tribunal? With hindsight, might this provision have helped your claim – why/why not? Would two characteristics be enough? Was it in your case?
Decision to appeal/ not appeal

Section F: Suggestions for improving how discrimination on multiple grounds is addressed

1. Thinking back on the whole experience of making a discrimination claim, what impact has it had on your life?
Probe:
Short term/ long term
Negatives/ positives
Sense of empowerment/disempowerment/ balance of power
Any regrets about pursuing claim
2. Is there anything that you would do any differently? (Why, examples/ why not?)
3. Do you have any suggestions for improving how multiple discrimination is addressed?
Probe: at the workplace, in the claims process

Avoidance, accessing guidance/support, representation,
ease of seeking redress

Ask all who had sources of advice or representation

I would like to include the views of advice workers in this research, would you be willing to supply me with the contact details of those that you received advice and support from.

Note details or make arrangements to receive these after interview.

Anything else

Thank you for making the time to be interviewed. ACAS very much hopes that the research will increase understanding of multiple discrimination. Is there anything that you would like to add or any questions that you have for me? The research report will be published later in the year and I will send you a summary of the findings.

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

Ask interviewee to sign incentive receipt.

TOPIC GUIDE FOR ADVICE WORKERS

Section A: Background to the individual and their organisation

1. Can you tell me a bit about your role?
Probe:
Establish job title, how long they have been in the role, what they do on a day-to-day basis

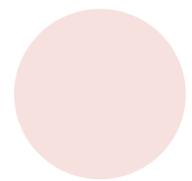
Section B: General views on re-dress for multiple discrimination

1. To what extent do you experience requests for advice/support in relation to multiple equality strands?
Probe:
Single strand cases a lot more common?
Some discrimination cases overlap? Examples of AMD cases?
Are particular combinations of discrimination more common than others?
(Other) examples of IMD cases
Approx frequency of requests for advice/support etc in relation to IMD?
Examples, probe combinations
2. How much do you know about clause 15, the new provision for multiple discrimination claims (combined discrimination) that may come into force in the future?
Probe:
Sources of information on clause 15/multiple discrimination (*outline key features of clause 15 if necessary*)
Adequacy of any information/ guidance received on multiple discrimination (& for equalities issues more generally)
Suggestions for improvement to information/what sort of information or guidance would it be useful to have?
In 2004, the Court of Appeal in *Bahl v the Law Society* ruled on the correct way to deal with intersectional discrimination. In this case an Asian woman claimed that she had been subjected to discriminatory treatment both on the grounds that she was Asian *and* on the grounds that she was a woman. This judgment made it clear that each ground had to be separately considered and a ruling made in respect of each, even if the claimant experiences them as inextricably linked. This led to Ms Bahl failing to prove that discrimination had occurred, as she could not identify which aspect of her claim related to only one characteristic. Other cases since then have been lost for the same reason.
Do you think that what has happened to Ms Bahl and others is fair?
Do you see any similarity between cases that you have come across and that of Ms Bahl? Why/how? Why do you think that you have not been coming across such cases? Are they rare? Don't people come forward with them? Why?
Adequacy of 2 characteristics signalled for combined discrimination cases?

3. What difference do you think that the new multiple discrimination provision will make? (outline new provision if necessary)
Probe:
Strengths/ weaknesses
Likely practical impact on workplace, claims, tribunals
Appropriateness of limiting provision to 'two' characteristics
Any early suggestions for improvement to the new provision

4. What are the key issues for rights enforcement raised by intersectional multiple discrimination cases?
Probe as appropriate:
Claimant barriers, eg.
cost of support and representation
ability to grasp technical/legal language and protocols
language barriers

Thank you for making the time to be interviewed. ACAS very much hopes that the research will increase understanding of multiple discrimination. Is there anything that you would like to add or any questions that you have for me? The research report will be published later in the year and I will send you a summary of the findings.



APPENDIX 3 CLAIMANT SAMPLE CHARACTERISTICS

Claimant	ET1 equality jurisdictions	Other jurisdictions	Whether ET1 judgement on equality jurisdictions	Representation
CL1 Woman, 50s Asian	Age Religion & belief Race	Unfair dismissal Failure to pay for statutory annual leave	ET1 final judgement made	
CL2 Woman, 50s Black Caribbean	Age Disability Race Religion & belief	Unfair dismissal	ET1 final judgement made	
CL3, Man, 60s Asian African	Age Race Sex	Breach of contract Redundancy payment	All equality strand claims had timed out ⁵	
CL4 Woman, 40s French Iranian	Age Religion & belief Race Sex	Public interest disclosure	ET1 final judgement made	
CL5 Man, 60s Asian	Age Religion & belief Race	Failure to pay Failure to pay for statutory annual leave	Settled	
CL6 Man, 30s Black African	Disability Sexual orientation Equal Pay Race	Public interest disclosure	Settled	
CL7 Woman, 30s, Black Caribbean	Disability Maternity Sex	Breach of contract Failure to pay	ET1 final judgement made	Union provided her with a solicitor
CL8 Man, 50s, Eastern European	Race Age	Breach of contract Unfair dismissal Failure to pay wages	ET1 final judgement made	
CL9 Woman, 30s, Latin American	Disability Maternity Sex	Breach of contract Unfair dismissal	Settled	Solicitor accessed through Law Centre

⁵ There are time limits on when a complaint can be brought into the Tribunal process. In discrimination cases the primary time limit on when a complaint can be brought into the Tribunal process is usually three months from the act complained of, or in the case of an act extending over a period of time (or a continuing act as it is often referred to) the end of that period.