

Research Paper

Sexual orientation and religion or belief discrimination
in the workplace

Ref: 01/07

Prepared by Ben Savage, Acas Research and Evaluation Section
Funded by the Department of Trade and Industry (DTI)

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Disclaimer

This report contains the views of the author and does not represent the views of the Acas Council or DTI. Any errors or inaccuracies are the responsibility of the author alone.

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Foreword from Jim Fitzpatrick MP

I am pleased to introduce this research report exploring the impact of the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003. The research was run by Acas and funded by the Department of Trade and Industry (DTI).

The introduction of these regulations has been an important development in the area of equality and diversity, and indeed experiences of sexual orientation and religion and belief at work have been subject to significant media attention. However, the area has been largely unexplored from a systematic, research perspective. That is why this report is so important.

The findings show that 470 sexual orientation employment tribunal claims and 461 religion or belief employment tribunal claims were brought between 2004 and 2006. While the sexual orientation claims were dominated by allegations of bullying and harassment, the religion or belief claims included a wider variety of issues: principally, concerns around working hours, time off or leave to follow religious practices.

Discrimination at work is an important issue for both Acas and DTI. We will be examining the findings carefully in order to improve our understanding of the nature and causes of discrimination and harassment on grounds of sexual orientation or religion or belief in the workplace.

Anyone interested in receiving further copies of this report should contact Acas at research@acas.org.uk

A handwritten signature in black ink, appearing to be 'J Fitzpatrick', written in a cursive style.



**Statement from Rita Donaghy, CBE
Chair of Acas Council**

The introduction of the legislation relating to sexual orientation and religion or belief at work provides an important step forward in outlawing discriminatory behaviours and actions in our workplaces. I am proud of the work carried out by Acas, since the introduction of the law, to raise awareness and promote good practice in these important areas.

The Acas research, reported in this volume, comes at an opportune time – summarising developments since the legislation and providing an opportunity for reflection and learning.

The rights and obligations of employers and employees in respect of sexual orientation and religion or belief are matters of considerable importance to Acas. We shall be looking closely at the research findings as we move forward in developing our services to meet the needs of customers.

Further information on Acas guidance on sexual orientation in the workplace and religion or belief in the workplace is available on the Acas website www.acas.org.uk

A handwritten signature in black ink that reads "Rita Donaghy". The signature is written in a cursive style and is positioned on a light-colored, textured background.

EXECUTIVE SUMMARY

This report describes the findings of a programme of research exploring the impacts of the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003. The research included:

- A statistical analysis of the Acas case records of all sexual orientation discrimination cases and religion or belief cases brought between January 2004 and August 2006.
- An analysis of ET1 forms submitted by sexual orientation claimants and religion or belief claimants stating the grounds for their case, and ET3 forms submitted by employers stating their grounds for resisting the claimants' allegations
- Two focus groups with Acas conciliators who had handled sexual orientation discrimination cases and two focus groups with conciliators who had handled religion or belief discrimination cases.
- A survey of calls to the National Acas Telephone Helpline which related to sexual orientation discrimination or religion or belief discrimination.
- A series of depth interviews with claimants who had brought a claim of sexual orientation discrimination or religion or belief discrimination against their employer. Acas commissioned the Institute for Employment Studies (IES) to conduct this part of the research and the full findings can be read in *'The Experiences of Sexual Orientation and Religion or Belief Discrimination Employment Tribunal Claimants'*, Denvir et al, 2007.

Sexual Orientation

Case characteristics

- 470 cases where sexual orientation discrimination was the main jurisdiction were brought between January 2004 and August 2006.
- Two-thirds of sexual orientation claimants were men; they were most concentrated in London, the North West and the South West. Most sexual orientation claimants appeared to be lesbian or gay.
- Seven in ten respondent employers belonged to the private sector, broadly reflecting the make-up of the workforce in the UK. Within the public sector, claims were most likely to be brought against organisations in the criminal justice system (including police and the prison service) and local authorities.

Alleged discrimination

- Claims of sexual orientation discrimination appeared to be dominated by allegations of bullying and harassment. Verbal abuse appeared to be the most common form, consisting of name calling and threats; however, physical

attacks, incidents of sexual harassment and unfair treatment by managers were also alleged.

- The alleged bullying or harassment was sometimes perpetrated by one or two individuals, however in other instances it seemed to be part of a wider culture of homophobia within the organisation. The bullying or harassment may have gone on for a considerable period of time, lasting up to three years in some cases.
- Some sexual orientation claimants assert that the bullying or harassment had caused them to develop mental health problems including anxiety or depression; some also contemplated suicide.
- Claimants alleged that managers were either joining in with the bullying or harassment or failing to act to stop it when it is reported. Acas conciliators suggested this may be due to a lack of training or managers not receiving the support they need from human resources departments to tackle discrimination effectively.

Employer responses

- Employers usually denied all allegations of sexual orientation discrimination and the alleged incidents or acts of bullying or harassment. Conciliators felt that employer denial was common to all discrimination cases, and reflected the highly subjective nature of discrimination.
- Some respondent employers also asserted that the claimant's performance had been poor or that they had committed an act of gross misconduct; some claimants asserted that they had been provoked into committing the act of gross misconduct by long-term bullying or harassment.

Internal grievance procedures

- Sexual orientation claimants felt that they did not receive a fair hearing in internal grievance procedures: they felt their complaints were ignored or trivialised, and sometimes resulted in further abuse or victimisation.
- Respondent employers asserted that, where formal grievance procedures had been followed, the claimant's allegations were fully investigated.
- Some respondent employers asserted that the claimant had failed to instigate formal grievance procedures prior to bringing an employment tribunal claim; these employers argued that the claim should be struck out as a result.

Outcomes

- Around half of all sexual orientation cases resulted in a settlement between the claimant and the employer. A quarter of cases were withdrawn and one in seven proceeded to a full employment tribunal hearing. This pattern of outcomes is broadly similar to the outcomes of cases brought under most

- other discrimination jurisdictions: the exception being sex discrimination cases, which are less likely to be settled and more likely to be withdrawn.
- Claimants settled following advice from their representatives or due to concerns over costs or because of the stress of taking the case. Some claimants who settled expressed regret at not having their '*day in court*' and criticised the fact that money became the focus of the case rather than justice.
 - The median settlement figure for sexual orientation cases was £2,748, which is similar to the median settlement figure for cases brought under other discrimination jurisdictions. Around four in ten claimants receiving less than £2,500, while one in seven sexual orientation claimants received a large settlement figure of £10,000 or more.

Religion or Belief

Case characteristics

- 461 cases where religion or belief discrimination was the main jurisdiction were brought between January 2004 and August 2006.
- Two-thirds of religion or belief cases had race discrimination as a secondary jurisdiction.
- Two-thirds of religion or belief claimants were men; they were most concentrated in London, the North West and the West Midlands. It appeared that around half of religion or belief claimants were Muslim. The rest included Christians, Jews, Hindus, Sikhs and 'non-Catholic' claimants bringing cases against Catholic schools.
- Seven in ten respondent employers belonged to the private sector, broadly reflecting the make-up of the workforce in the UK. Within the public sector, claims were most likely to be brought against local authorities and education organisations.

Alleged discrimination

- Religion or belief cases included many allegations of bullying and harassment. Verbal abuse appeared to be the most common form, consisting of name calling and threats; however, physical attacks, incidents of sexual harassment and unfair treatment by managers were also alleged.
- The alleged bullying or harassment may have been perpetrated by one or two individuals or alternatively have been part of a wider culture of discrimination within the organisation. The bullying or harassment may have gone on for a considerable period of time, lasting up to two years in some cases.
- Some religion or belief claimants asserted that the bullying or harassment had caused them to develop mental health problems including anxiety or depression.

- Claimants alleged that managers were either joining in with the bullying or harassment or failing to act to stop it when it was reported. Acas conciliators suggested this may be due to a lack of training or managers not receiving the support they need from human resources departments to tackle discrimination effectively.
- Claims also included allegations of discrimination in recruitment or promotion, particularly from non-Catholics working in Catholic schools.
- Some claims related to problems around working hours, time off or leave to meet religious obligations. Such issues emerged as the dominant theme of the calls received by the Acas Helpline, suggesting that these issues are of far more concern to both employers and employees than issues around workplace dress codes, including the veil.

Employer responses

- Respondent employers usually denied all allegations of religion or belief discrimination and the alleged incidents or acts of bullying or harassment. Conciliators felt that employer denial was common to all discrimination cases, and reflected the highly subjective nature of discrimination.
- Some respondent employers also asserted that the claimant's performance had been poor or that they had committed an act of gross misconduct; some claimants asserted that they had been provoked into committing the act of gross misconduct by long-term bullying or harassment.

Internal grievance procedures

- Where internal grievance procedures had been followed, religion or belief claimants felt that they had not received a fair hearing: they felt their complaints had been ignored or trivialised, or that managers may have lied to cover up what had occurred.
- Employers asserted that, where formal grievance procedures had been followed, the claimant's allegations were fully investigated.
- Some employers asserted that the claimant had failed to instigate formal grievance procedures prior to bringing an employment tribunal claim; these employers argued that the claim should be struck out as a result.

Outcomes

- Nearly half of all religion or belief cases resulted in a settlement between the claimant and the employer. Three in ten cases were withdrawn and one in six proceeded to a full employment tribunal hearing. This pattern of outcomes is broadly similar to the outcomes of cases brought under most other discrimination jurisdictions: the exception being sex discrimination cases, which are less likely to be settled and more likely to be withdrawn.

- Claimants settled following advice from their representatives or due to concerns over costs or because of the stress of taking the case. Some claimants who had settled expressed regret at not having their '*day in court*' and criticised the fact that money became the focus of the case rather than justice.
- The median settlement figure for religion or belief cases was £3,000, with around four in ten claimants receiving less than £2,500. One in six religion or belief claimants received a large settlement figure of £10,000 or more.

1 INTRODUCTION

1.1 Acas work on the SORB Regulations

This report covers the findings of research undertaken by Acas on the impact of the Sexual Orientation and Religion or Belief Regulations. This research is one aspect of an integrated programme of initiatives undertaken by Acas and funded by the Department of Trade and Industry (DTI). This wider programme was geared towards assisting employers with compliance with the Regulations, raising awareness (among employers and employees), and facilitating self evaluation in the workplace. The purpose of the research element of the programme was to provide information and insight, both for Acas and the wider community, on the experience of sexual orientation and religion or belief in the workplace since the introduction of the Regulations.

The rest of the programme involved:

- Master class sessions within Acas to ensure that our own staff were versed in both the law and best practice, as well as in prime position in delivering the statutory function of providing conciliation in Employment Tribunal Claims
- Developing a set of self evaluation audit tools: these are available on our website for organisations to download and use and that Acas colleagues can assist organisations where required
- Providing two in-depth e-delivered training packages.
- Revising Acas written Guidance on the Regulations to ensure that it meets Plain English requirements.

1.2 The scope of the research

Acas has a statutory role to conciliate in those workplace disputes which have resulted in the submission of an Employment Tribunal Claim. The aim of this statutory function is to attempt to assist employers and employees to settle their disputes without recourse to a full Employment Tribunal hearing. In addition, Acas also offers a range of advice services – via its helpline, publications, training programme and workplace advisory projects. These advisory services are designed to help employers and employees to understand their rights and obligations in respect of employment law, and also to promote good practice in the area of employment relations.

The research programme reported in this document focuses on those stages in the development of disputes over alleged sexual orientation and religion or belief discrimination which fall within the scope of Acas' advisory and conciliation functions. As such it explores:

- The nature of employer and employee concerns around sexual orientation and religion or belief as reported to the helpline.
- The kinds of discrimination in the workplace faced by those who decide to submit an Employment Tribunal claim.

- The characteristics of Employment Tribunal claims, the issues involved in conciliation, and the outcome of these cases.

As part of the research programme a series of interviews with claimants were conducted by the Institute for Employment Studies (IES). The findings from the IES study are reported in a separate report. The evidence presented in this report draws on a number of sources utilising evidence from both Acas conciliation and advisory records and officers.

1.3 Employment Equality (Sexual Orientation) 2003 Regulations

This legislation came into force in December 2003 and applies to all aspects of employment and vocational training, including recruitment, promotion, terms and conditions (including pay) and dismissals. It is now unlawful on the grounds of sexual orientation to:

- Discriminate directly against anyone, i.e. to treat them less favourably than another person in a comparable situation, because of their actual or perceived sexual orientation.
- Discriminate indirectly against anyone, i.e. to apply a policy or practice which disadvantages people of a particular sexual orientation unless it can be objectively justified.
- Subject someone to harassment. Harassment is defined as unwanted conduct which takes place with the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- Victimise someone because they have made or intend to make a complaint or allegation or give evidence in relation to a complaint of discrimination on grounds of sexual orientation.

The regulations define sexual orientation as orientation towards people of the same sex, of the opposite sex, or of the same sex and opposite sex. This means that people are protected against discrimination in the workplace whether they are lesbian, gay, heterosexual or bisexual.

1.4 Employment Equality (Religion or Belief) 2003 Regulations

This legislation came into force in December 2003 and also applies to all aspects of employment and vocational training, including recruitment, promotion, terms and conditions (including pay) and dismissals. It is now unlawful on the grounds of religion or belief to:

- Discriminate directly against anyone, i.e. to treat them less favourably than another person in a comparable situation, because of their religion or belief.
- Discriminate indirectly against anyone, i.e. to apply a policy or practice which disadvantages people of a particular religion or belief unless it can be objectively justified.
- Subject someone to harassment because of their religion or belief.

- Victimise someone because they have made or intend to make a complaint or allegation or give evidence in relation to a complaint of discrimination on grounds of religion or belief.

Religion or belief is defined as being any religion, religious belief or similar philosophical belief. It will be the responsibility of Employment Tribunals and other Courts to decide whether particular circumstances are covered by the Regulations.

Exceptions to the regulations may be made in limited circumstances, for example if there is a genuine occupational requirement for a worker to be of a particular religion or belief or to comply with the religious belief or ethos of the organisation.

1.5 Structure of the report

Chapter Two discusses the method adopted in each of the five projects which made up the programme of research discussed in this report.

Chapter Three details the findings regarding sexual orientation.

Chapter Four details the findings regarding religion or belief.

Chapter Five discusses the findings regarding advice and representation; readers should note that these findings are regarding both sexual orientation and religion or belief employment tribunal cases, given that much of the data comes from Acas conciliators who discussed the advice and representation in discrimination cases in general rather than with regard to one particular jurisdiction.

Chapter Six discusses the findings in light of previous research and produces recommendations for further research.

With the exception of Chapter Five, the findings regarding sexual orientation and religion or belief are discussed separately. This is for two main reasons:

- It is assumed that many readers will be interested in only one of the two jurisdictions.
- The research found that the claimants involved in the two jurisdictions were largely from different groups; there was little evidence of claimants bringing cases which involved claims of both sexual orientation discrimination and religion or belief discrimination.

2 METHOD

2.1 Acas data records analysis

This part of the research consisted of an analysis of the Acas employment tribunal (ET) cases database of sexual orientation cases and religion or belief cases. The analysis focused on cases where the main jurisdiction of the claim was either discrimination or victimisation on grounds of sexual orientation (DSO) or discrimination or victimisation on grounds of religion or belief (DRB). The cases included in the analysis were brought between February 2004 and August 2006. Only cleared cases, where the outcome of the case had been decided, were included in the analysis.

Where applicable, the findings have been compared with the findings from the Survey of Employment Tribunal Applications (SETA) 2003 and the Survey of Claimants in Race Discrimination Employment Tribunal Cases (SETA RRA) 2005.

It should be noted, SETA 2003 was based on cases completed from 2002 to 2003 and SETA RRA 2005 was based on cases completed between 2003 and 2004. These earlier studies were also based on telephone interviews with claimants rather than an analysis of Acas' database records. Any comparison between the current analysis and SETA 2003 or SETA RRA 2005 should be viewed with these differences in mind.

2.1.1 Data cleaning

Before the analysis could be undertaken, the Acas ET cases dataset was cleaned. As cases were selected on a claimant basis, all cases where a claimant appeared more than once in the dataset were reduced to a single case. Individual claimants were identified using their surname, first name and the first line of their address. A large proportion of records held on the database were the result of claimants taking claims against individuals working at their organisation in addition to taking a claim against the employing organisation itself. In such cases, the record with the organisation's details was kept in the dataset while the records with individuals named as the Respondent were taken out.

2.1.2 Assigning extra variables

Extra variables were assigned to the data to enhance the analysis. The following variables were added:

Gender

Claimants' gender was identified via their title recorded on the Acas ET database. Claimants with the title 'Mr' were classed as 'male' while claimants with the titles 'Ms', 'Mrs' or 'Miss' were classed as female. Claimants whose title was gender non-specific, for example 'Dr', were classed as 'unknown'.

Where Claimants live

The Government Office Region (GOR) in which claimants live was identified via the postcode recorded on the Acas ET database. A small proportion of addresses were clearly not the addresses of the claimants themselves, being marked as 'c/o'. In such cases GOR was classed as 'unknown'.

Organisation SIC, broad sector and public sector type

A standard industrial classification (SIC 2003) label was assigned to the respondent organisation in each case on the basis of the company name and, occasionally, its address. For well-known organisations such as government departments or large national retailers the SIC was assigned without any desk research. For smaller organisations, desk research using the internet was undertaken to check the nature of the organisation.

Organisations were also assigned a 'broad sector' denoting whether they belonged to the public, private or voluntary sectors. Again, for well-known organisations or those in sectors such as 'wholesale and retail' where virtually all organisations belong to one broad sector category, that category was assigned without any desk research. For organisations in sectors such as 'health and social work' or 'education', desk research was undertaken to identify whether the organisation was in the public, private or voluntary sector.

Public sector organisations were assigned a further 'public sector type' category based on their SIC category and broad sector category. Within those classed as 'public administration and defence', organisations were classed as: criminal justice (police or prison service); local authorities; central government; education (schools, colleges or universities: note, independent schools were excluded); health (hospitals: note, private healthcare organisations were excluded); other (government agencies, non-departmental public bodies).

It should be noted that, in a small proportion of cases (4%), two or three organizations were named as the respondent. In such cases, a judgment was made as to which organization was most likely to have been the place of work. For example: where a claimant was bringing a claim against a school and a local authority, it was assumed the claimant had actually worked at the school; where claimants were bringing a claim against a recruitment agency and another organization, it was assumed that the claimant had actually worked at the organization which was not a recruitment agency.¹ In all of these cases, the SIC category was assigned based on where it was assumed that the claimant had actually worked. Where it was not possible to make a judgment or there was no record of the employing organization, the SIC was classed as 'unknown'.

¹ It is possible that these claimants may have been alleging discrimination at recruitment, and that therefore their case was as much against the recruitment agency than the other organisation. However, given the lack of information available to show whether this was the case, the data set and subsequent analysis was prepared on the assumption that it was not the case.

2.2 ET1 and ET3 form analysis

This research consisted of an analysis of ET1 forms and ET3 forms submitted to the Employment Tribunal (ET) by claimants and respondents respectively, on sexual orientation and religion or belief cases. Readers should note:

- ET1 forms are submitted by claimants and set out the grounds for their cases, including their claims of discrimination.
- ET3 forms are submitted by respondents (employers) and set out their grounds for resisting the claimants' allegations.

Acas has a statutory function to provide conciliation in the vast majority of claims submitted to an Employment Tribunal. Acas conciliators use copies of the ET1 forms and ET3 forms to inform their conciliation work.

All forms were obtained from the Acas regional offices where they are held. As standard practice, Acas keeps copies of ET1 and ET3 forms for six months after a case has been cleared – that is where the outcome of the case has been decided.

After six months, all forms are destroyed. Therefore, all of the forms included in this analysis were submitted in 2006, as forms from earlier sexual orientation or religion or belief cases were unavailable for analysis.

The final analysis included:

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

For the ET1 analysis, these numbers were determined by the number of forms available from Acas regional offices at the time. The numbers of ET3 forms included in the analysis are lower, partly because not all ET1 forms had accompanying ET3 forms, but also because of the greater repetition of themes in the ET3 forms.

The analysis was conducted by recording individual themes that emerged and subsequently grouping them into over-arching main themes. Key characteristics of claimants and respondents were recorded as follows:

- The claimant's sexual orientation and gender on sexual orientation cases
- The claimant's religion or belief and gender on religion or belief cases
- The industry of the employer

2.3 Acas conciliator focus groups

Acas has a statutory duty to promote a settlement between the parties in nearly all employment tribunal cases.

This research sought to identify the experiences and views of conciliators who had experience of working on cases brought under the sexual orientation or religion or belief regulations. Four focus groups were held. The groups were run as follows:

- Two groups discussing sexual orientation cases: one at the Acas London offices in October 2006 and a second at the Acas Manchester offices in November 2006. Three conciliators attended the London focus group while five attended the Manchester focus group.
- Two groups discussing religion or belief cases: one at the Acas Leeds offices in October 2006 and a second at the Acas London offices in November 2006. Six conciliators attended the London focus group while two attended the Leeds focus group.

Two similar topic guides were produced to guide the discussions: one for the sexual orientation groups and one for the religion or belief groups.

The findings of this research should be reviewed with the following in mind:

- A small number of conciliators (eight per jurisdiction, sixteen in total) took part in this research
- A number of conciliators who were invited to take part did not do so for a variety of reasons. Given the level of drop-out, the conciliators that did take part were to an extent self-selecting
- While all the conciliators who took part had a great deal of experience working on discrimination cases, their experience of sexual orientation or religion or belief cases was limited (having dealt with fewer than ten such cases each in a typical annual workload of around 300 to 340 cases). This can be seen as a reflection of the low number of sexual orientation cases and religion or belief cases brought overall since the introduction of the legislation.
- The views expressed in this research are the personal views of the conciliators who took part and should not be assumed to reflect the views of Acas as an organisation or the views of conciliators who did not take part.

2.4 Acas Helpline survey

The Acas Helpline exists to answer queries about employment matters from members of the public, including both employees and employers. The Helpline has handled an increasing number of calls in recent years, rising from 796,649 in 2003/04 to 908,553 in 2005/06 (Acas Annual Report 2005/06).

Against this backdrop, following the introduction of the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003, Acas Helpline staff now handle calls relating to discrimination on grounds of sexual orientation and discrimination on grounds of religion or belief.

The broad aim of this part of the research was to explore the nature of the calls being received by the Acas Helpline that related to either sexual orientation discrimination or religion or belief discrimination.

A key consideration in the research design was that it should take up a minimal amount of Helpline staff time and not affect the quality of the service received by Helpline callers. With this in mind, it was decided to conduct a small-scale survey

over a set period of time covering calls received by the Helpline that related to sexual orientation discrimination or religion or belief discrimination.

To do this, a short questionnaire was designed for Helpline staff to complete after having dealt with a call that they considered to be related to one of these areas of discrimination. The questionnaire was placed on the Acas Intranet, where Helpline staff could access it quickly and easily. The questionnaire was set up using the SNAP software.

Helpline staff were notified of the exercise by their Helpline manager. Encouragement was also given via e-mail from Acas Research and Evaluation and from the National Helpline Co-ordinator. Written briefing notes, explaining the nature of the survey and how and when to take part, were sent to Helpline managers who were asked to run through them with their staff.

Fieldwork took place between Monday 9th October 2006 and Friday 24th November 2006, a seven-week fieldwork period. It was decided that a minimum of 30 responses per jurisdiction would be sufficient to give an indication of the nature of calls that the Acas Helpline had been receiving related to sexual orientation and religion or belief discrimination. Initially a six-week fieldwork period was planned to achieve this number. However, this was extended to seven weeks in order to achieve 30 responses relating to sexual orientation discrimination.

All findings from the Helpline survey should be considered in light of the way in which the data was collected. Calls were recorded on an *ad hoc* basis by Helpline staff. It is possible that some SORB-related calls were received by Helpline staff but not recorded in the survey during the fieldwork period. All the findings from the Helpline survey should be taken as indicative of concerns, related to sexual orientation or religion or belief, that are arising in the workplace. Further research using a range of methodologies is needed to substantiate the findings from the Helpline survey.

2.5 Depth interviews with claimants

Acas commissioned the Institute for Employment Studies (IES) to run this part of the research.

IES conducted 30 in-depth, face to face interviews with claimants who had brought cases, 15 who had claimed under the sexual orientation regulations and 15 who had claimed under the religion or belief regulations. Interviews, which typically took place in the homes of claimants, were taped, transcribed and analysed using Atlas.ti, a Computer Assisted Qualitative Data Analysis Software (CAQDAS) package.

Claimants were recruited from the records of sexual orientation and religion or belief cases held by Acas. Prior to the research beginning, an introductory letter was sent by Acas informing individuals of the study. The letter assured them of confidentiality and anonymity and gave them the opportunity to opt out of the study. Some claimants responded to this letter expressing an interest in being interviewed but this was not a factor in sample selection.

IES then recruited four claimants by telephone, using an agreed script, for an initial pilot phase to test the discussion guides, which had been developed to help structure the interviews with claimants.

With very minor revisions to the discussion guides following the pilot phase, recruitment of the remaining 26 candidates took place in three further phases.

Full details of the research findings can be read in the IES report '*The Experiences of Sexual Orientation and Religion or Belief Discrimination Employment Tribunal Claimants*', Denvir et al, 2007.

3 SEXUAL ORIENTATION FINDINGS

3.1 Case Jurisdictions

The analysis of the Acas data records showed that, since the introduction of the Regulations, there had been 470 cases brought where the main jurisdiction was discrimination or victimization on grounds of sexual orientation (DSO). Overall, seven in ten (69%) sexual orientation cases had one or more secondary jurisdictions.

Table 1 shows the proportion of all sexual orientation cases containing particular secondary jurisdictions. The most common secondary jurisdiction was unfair dismissal (UDL), contained in around four in ten (44%) sexual orientation cases. This suggests that a minimum of four in ten sexual orientation claimants had already been dismissed, although others may have left prior, or subsequent to, putting in a claim.

A quarter (23%) of sexual orientation cases had sex discrimination (SXD) as a secondary jurisdiction. A further one in eight (13%) had wages act (WA) as a secondary jurisdiction and one in ten (10%) had race discrimination (RRD) as a secondary jurisdiction.

*Table 1: Secondary jurisdictions on cases where main jurisdiction is sexual orientation discrimination (DSO)**

	Total
Base: All cases where DSO is main jurisdiction	470
	%
UDL is a secondary jurisdiction	44
SXD is a secondary jurisdiction	23
WA is a secondary jurisdiction	13
RDD is a secondary jurisdiction	10
No secondary jurisdictions	31

Source: Acas ET cases database

* Table 1 includes only secondary jurisdictions that were allocated to 5% or more of sexual orientation cases.

3.2 Claimant characteristics

3.2.1 Claimants' gender

Of the 470 sexual orientation claimants in the Acas data records, just under two thirds (64%) were men. This is similar to the gender make-up of both the unfair

dismissal claimant population and the race discrimination claimant population as found in the DTI Survey of Employment Tribunal Applications (2003).

Of the 109 sexual orientation cases where sex discrimination was a secondary jurisdiction, six in ten (60%) were brought by women.

3.2.2 Claimants' sexual orientation

Claimant's sexual orientation was not recorded in the Acas case records, as sexual orientation is not collected systematically on ET1 forms. However, the research suggests that most of those facing sexual orientation discrimination in the workplace are lesbian or gay.

The analysis of the 42 ET1 forms submitted by sexual orientation claimants, suggested that most of the cases were brought by lesbian or gay people. A handful of the ET1 forms were submitted by heterosexual claimants and one was from a bisexual man. In line with these findings the helpline survey found that most of the employees calling the Acas Helpline with queries relating to sexual orientation discrimination were also thought to be lesbian or gay (see Box 1).

Box 1: Sexual orientation of employees calling the Acas Helpline

In the survey of calls received by the National Acas Telephone Helpline, Helpline staff were asked to describe what they thought the sexual orientation was of employees calling regarding sexual orientation discrimination, based on what the caller told them.

Of the callers for whom Helpline staff felt able to describe the sexual orientation, over three-quarters were thought to be from employees who were lesbian or gay. Around one in seven calls were considered to be from straight or heterosexual employees, while only a small proportion were thought to be from bisexual employees.

Of the 20 employees who were thought to be lesbian or gay, 16 were men.

3.2.3 Where claimants live

The 470 sexual orientation claimants in the Acas data records were concentrated in London (17%), the North West (13%) and the South West (13%). Within Great Britain, they were least likely to live in Wales (4%), the East Midlands (5%), North East (5%) or Scotland (5%).

However, compared with religion or belief claimants (see below), sexual orientation claimants were less likely to live in London and were more evenly distributed around the country.

Table 2 shows the full breakdown of sexual orientation claimants' home locations.

Table 2: Country or government office region in which sexual orientation claimants live

	Total
Base: All cases where DSO is main jurisdiction	470
	%
London	17
North West	13
South West	13
South East	12
Yorkshire and The Humber	9
West Midlands	8
East of England	6
East Midlands	5
North East	5
Scotland	5
Wales	4
Northern Ireland	0
Outside UK	1
Unknown	3

Source: Acas ET cases database

3.3 Respondent employer characteristics

3.3.1 Broad sector

Seven in ten (70%) respondent employers cited in the 470 sexual orientation claims in the Acas data records were from the private sector. One in five (21%) belonged to the public sector and 7% to the voluntary sector.

Table 3 compares these findings with the findings from SETA 2003 and SETA RRA 2005. Findings from these two surveys are presented in a single table for ease of comparison, although differences in the timeframes for data collection and the

methods used (as discussed in section 1.1) should be borne in mind when considering the findings.

The broad sector breakdown of sexual orientation cases was similar to that of unfair dismissal claimants as found in SETA 2003 (see Table 3). However, compared with the employers of both race claimants and other types of discrimination case, sexual orientation claimants' employers were less likely to come from the public sector and more likely to come from the private sector. Half (50%) of race claimants' employers and six in ten (58%) other discrimination claimants' employers came from the private sector, with four in ten (40%) race claimants' employers and a third (33%) of other discrimination claimants' employers coming from the public sector.

Table 3: Broad sector of employers of sexual orientation claimants

	DSO (sexual orientation)*	UDL (unfair dismissal) ***	RRD (race discrimination) **	Other discrimination ***
Unweighted	470	1113	491	232
Weighted		1104		241
	%	%	%	%
Private	70	71	50	58
Public	21	19	40	33
Voluntary	7	3	6	4
Unknown	2	6	4	6

* Source: Acas ET cases database

** Source: SETA RRA 2005

*** Source: SETA 2003. Note, as fieldwork for SETA 2003 began before the introduction of the DSO Regulations, it can be assumed these figures do not include employers of sexual orientation claimants

3.3.2 SIC sector

Breaking down the employers of the 470 sexual orientation claimants by Standard Industrial Classification (SIC 2003), the employers were concentrated in the following industries: wholesale and retail (17%), public administration and defense (16%) or hotels and restaurants (13%).

Table 4 shows the full breakdown of which industries sexual orientation claimants' employers belonged to.

Table 4: Standard Industrial classification of respondent employers in sexual orientation claims

	Total
Base: All cases where DSO is main jurisdiction	470
	%
Wholesale and retail	17
Public administration and defense	16
Hotels and restaurants	13
Real estate, renting and business activities	12
Health and social work	9
Manufacturing	8
Transport, storage and communications	8
Other community, social and personal services	7
Education	3
Financial intermediation	3
Construction	2
Agriculture, Hunting and Forestry	1
Mining and quarrying	0
Electricity, gas and water supply	-
Unknown	2

Source: Acas ET cases database

3.3.3 Public sector employers

In total, 98 of the 470 sexual orientation claimants had taken a case against a public sector organization. Table 5 shows the breakdown of these cases by type of public sector organization.

These claimants were most likely to have taken a case against a criminal justice organization (33%) or a local authority (32%). One in nine had taken a case against a central government organization (11%) or an education organization (11%). Less than one in ten (9%) had taken a case against a Health organization.

Table 5: Public sector organizations involved in sexual orientation cases

	Total
Base: All cases where DSO is main jurisdiction and employer is public sector	98
	%
Criminal justice*	33
Local Authority	32
Central government	11
Education	11
Health	9
Other	4

Source: Acas ET cases database

* Including the police and the prison service

3.4 Alleged discrimination

3.4.1 Bullying or harassment

Bullying or harassment emerged as the dominant themes of the ET1 forms submitted by sexual orientation claimants. The bulk of the bullying and harassment described in the 42 sexual orientation ET1 forms available appeared to be in the form of verbal abuse. This included: name-calling such as 'gay boy', 'poof', 'f**king faggot', 'f**king bitch' or 'you're a c**t'; exclusion from conversations and the feeling of being talked about by colleagues; being told to 'piss off you big girl'; and threats:

*'The Claimant was involved in an incident when [a colleague] spat on her and informed her that he had "people f**king queuing up to do you in and you had better lock your windows, lock your doors and your car because you are going to get it"...' (ET1 form, lesbian, manufacturing)*

Other allegations included: the sending of abusive e-mails; offensive remarks being written on claimants' timesheets; acts such as 'Pictures of nude men were stuck to the Applicant's in-tray' (ET1 form, gay man, publishing), exclusion from informal social networks; or having property defaced.

Some of the ET1 forms cited physical attacks or sexual harassment in addition to an on-going campaign of verbal abuse. Sometimes this was purely physical abuse, as in the case where a claimant was thrown 'head first into an external glass bin which contained broken glass.' (ET1 form, gay man, hotel worker) or the case of a claimant who 'was assaulted, he was hit on the back... and kicked in the groin...' (ET1 form, gay man, public sector agency)

However, in other cases there was a sexual element to the alleged abuse, which was either seen as sexual harassment or mentioned as part of a wider, long-term campaign of verbal and physical abuse. One such case involved the following incident:

'The Claimant was sitting in the office. [A colleague] pulled down his trousers and underwear in front of the Claimant, exposing his penis, and asked the Claimant "do you want to suck this?" (ET1 form, gay man, criminal justice system)

Where the reported bullying or harassment was being perpetrated by claimants' line managers or other more senior members of staff, it sometimes included treating the claimant less favourably than other employees. This included:

- Making claimants undertake *'menial tasks'*.
- Subjecting the claimant to extra or unnecessary scrutiny.
- Excluding the claimant from informal perks or benefits enjoyed by other employees.
- Denying claimants extra shifts when requested.
- Requiring the claimant to use flexi-credits for time off to see their GP.
- Punishing the claimant more harshly for mistakes or wrong-doing than other employees.

These findings were supported by the IES research with sexual orientation claimants, which found again that bullying or harassment was a central theme of the cases that the claimants had brought:

"[My boss] said he didn't like my hair, he touched my hair at the first meeting. He didn't like my glasses, he said he didn't like what I wore either ... He would just constantly bully and harass me in front of everybody... He punched me in the arm in a meeting once, and told me I wasn't a woman, because I am a gay woman ... And it just didn't stop, and I actually asked him to stop doing this... He screamed once at me which was so embarrassing - I hate your glasses, why can't you wear more feminine glasses, you're so aggressive."

(Lesbian woman, HR manager, settled)

The IES claimant interviews also explored some cases where claimants had been subject to disciplinary procedures. In these cases, the claimants felt the disciplinary procedures had been misused and that this amounted to bullying or harassment in itself:

"As part of [my partner's] disciplinary hearing, for some reason, they found the need to go through 18 months of my sent items [in] my e-mail account... They never explained why they did that... They pulled up e-mails, just stupid e-mails, [like] 'What do you want for tea?'... It was almost like it was to

highlight our relationship to the whole world, to the whole of HR. I sat around and just felt like they were just having a good laugh going through these e-mails, I'm sure. There was no need for them to use mine."

(Gay man, local authority, settled)

The finding that bullying or harassment was central to claims of sexual orientation discrimination was supported by the focus groups with Acas conciliators (see Box 2). Furthermore, the Acas Helpline survey calls recorded from employees with queries relating to sexual orientation discrimination were also dominated by issues around bullying or harassment (see Box 3).

Box 2: The view of Acas conciliators

Conciliators mentioned some of the offensive terms used to describe claimants who brought sexual orientation cases by their colleagues or managers:

'One of my colleagues had one where 'chutney ferret' was the phrase that had been used to a gay man about him. Another of my colleagues has got a case at the moment where a gay woman has been called ... I don't know whether she even is gay or whether they've just assumed that she is ... but they've called a her a 'salmon licker'...'

It appears that conciliators felt there are three main forms of discrimination involved in the sexual orientation cases they have handled:

- Direct, blatant homophobia from individuals or groups including verbal abuse
- More subtle, unspoken but organised homophobia by groups of fellow employees leading to a feeling of exclusion or isolation
- Unfair favourable treatment by managers including less favourable working conditions.

All three of these forms of discrimination can be classified as bullying or harassment, further suggesting that bullying or harassment may be the dominant feature of sexual orientation cases.

Box 3: Acas Helpline calls from employees regarding sexual orientation

The calls from employees recorded in the Acas Helpline survey regarding sexual orientation discrimination were dominated by queries relating to bullying or harassment.

The calls from employees where bullying or harassment emerged as a theme tended to involve cases of verbal abuse coupled with management indifference or inaction, as follows:

'The caller wanted to know what his options were following months of "verbal abuse" from his colleagues regarding his sexuality. He had raised it with his employer and they had done nothing.'

However, some of the callers also seem to have mentioned other issues alongside the bullying or harassment itself, including:

- Unfair dismissal:

'Employee had less than one year's service, had been bullied and dismissed because he is gay. His work colleagues had noticed that he was being treated less favourably (being picked on) because of his sexual orientation.'

- Being off sick with depression.

Calls from employees who were considered by Helpline staff to be straight or heterosexual covered a variety of situations relating to bullying and harassment including:

- A straight or heterosexual employee being bullied or harassed due to their colleague's perceptions of their sexual orientation
- A straight or heterosexual employee being bullied or harassed due to the sexual orientation of a family member:

'The caller was being bullied by her boss. The caller was a heterosexual woman with a homosexual son. The caller was also suffering harassment by her boss in regards to her son's sexuality. (Her son did not work in the office)...'

- A straight or heterosexual employee being disciplined for making alleged homophobic comments which they consider to be a joke

It should be noted that this last case is the only call regarding sexual orientation discrimination recorded from an employee who had been accused of being the *perpetrator* of bullying or harassment. All the other calls, both from employees considered to be lesbian, gay or bisexual, and employees considered to be straight or heterosexual, were from employees who appeared to be the *victim* of bullying or harassment.

3.4.2 Actors involved in bullying

The reported perpetrators of the bullying or harassment varied between the 42 ET1 forms. In some cases, one individual colleague was said to be responsible for the bulk of the bullying. Usually, though not always, this person appeared to be more senior than the claimant. In some cases this individual was the claimant's line manager, while in others it appeared to be a more senior manager or director:

'The Claimant was subjected to offensive homophobic remarks by a director of the company which commenced from the beginning of his employment.'
(ET1 form, gay man, wholesale and retail)

In other cases, however, multiple named individuals or groups of individuals were alleged to be involved in the bullying. One ET1 form described a claimant's experience of sitting in a meeting surrounded by colleagues making jokes about 'queers' and 'homos'. During the course of the meeting, the claimant was asked whether he was 'one of them' and he responded "Well, actually, yes I am". The response came as follows:

'... "Oh. Well, we don't really mind I suppose, as long as you don't work here". And again the group sat around the table laughed...' (ET1 form, gay man, real estate, renting and business activities)

In other situations where multiple individuals were reportedly involved, the bullying was presented in the ET1 forms as part of a widespread organizational culture of homophobia or an on-going campaign against the claimant:

'Homophobia was at such a scale in the office, I was frightened to cause a fuss...' (ET1 form, gay man, transport, storage and communications)

These findings were supported by the IES research with sexual orientation claimants. The claimants interviewed included some who had been discriminated against by one person acting alone, while others felt that the bullying or harassment they had experienced had been supported by groups of employees, managers or even the organization as a whole. The perpetrators of the bullying or harassment tended to be popular or influential people within the workplace who sometimes then drew others into bullying the claimant.

3.4.3 Length of time that bullying occurred

Not all ET1 forms gave an indication of the length of time over which the alleged bullying or harassment had occurred. However, those that did suggested that the bullying had gone on for a considerable period of time, lasting several months or years. This either took the form of a statement as to the length of time, such as: *'in excess of two years'* (ET1 form, gay man, local authority) or was evident from the dates on which the acts of bullying or harassment took place.

Analysis suggests that bullying either began soon after the claimant started working for the employer, or was triggered by an event such as the claimant's promotion, with other colleagues being resentful or jealous.

According to the ET1 forms, where a claimant complained about the bullying or harassment to more senior colleagues or human resources, this appeared to make matters worse. Perpetrators seemed to increase the scale of attacks, either by increasing their frequency or the ferocity of what was said or done.

Typically the alleged bullying or harassment only ended when the claimant left work, either by being dismissed or by resigning due to depression or anxiety induced by the bullying or harassment.

3.4.4 Alleged informal responses of managers

The general impression given by the 42 ET1 forms was that management action following the reporting of bullying or harassment was ineffective at best and at worst, resulted in the dismissal of the claimant.

Some of the cases involved claimants alleging bullying by members of staff at the same level of seniority as themselves. In such cases, complaints to managers were reported to result in the claimant being ignored, being laughed at, or being disciplined:

*'Having been called a 'f**king gay bastard' by a member of staff, I went to the manager and complained. She laughed when I told her, so I went to the senior manager who told me that it was probably because my sexuality makes the people I work with feel uncomfortable and that I should go away and consider how I behave.'* (ET1 form, gay man, hotels and restaurants)

In cases where the ET1 form indicated that the claimant had been bullied, victimized or treated unfairly by their line manager, it was alleged that complaining to senior managers resulted in the senior manager and the claimant's line manager 'closing ranks', sometimes resulting in the claimant's dismissal:

*'I felt I was being victimised and complained to the owner. He dismissed my concerns and I said that I was getting my coat... The owner then said "Fine. Your f**king P45 is in the post".'* (ET1 form, gay man, wholesale and retail)

The IES interviews with sexual orientation claimants also suggested that claimants felt their concerns had not been taken seriously by managers, including one lesbian woman claimant whose manager told her that she "didn't know how to have a laugh". (Lesbian woman, HR manager, settled).

These findings are reinforced by the findings from the focus groups with Acas conciliators, who feel that managers may be 'petrified' by the issue of bullying or harassment, and as a result are not dealing with it effectively (see Box 4).

The findings are also supported by the survey of sexual orientation and religion or belief calls to the Acas Helpline and the 2005 survey of customers to the Acas Helpline (see Box 5). Both indicated a low rate of calls from employers regarding bullying or harassment in comparison with other workplace issues. In calling the Acas Helpline, employers would presumably be seeking advice on how to deal with bullying or harassment effectively; the fact that they are not doing so, coupled with

the allegations from employment tribunal claimants, would suggest poor handling, and in some instances avoidance, of instances of bullying or harassment in the workplace.

Box 4: The view of Acas conciliators

Conciliators mentioned the reaction of managers to incidences of bullying or harassment, suggesting that in many cases managers do not deal effectively with problems as they arise:

'...a lot of managers as soon as somebody raises an issue like this are petrified of it. And rather than deal with it there and then they'll hide. And eventually it becomes then so serious that that's when you end up with a claim.'

Conciliators suggested that a lack of management training for staff when they first become managers was a reason for individual managers not tackling such discrimination effectively.

Furthermore, there was a feeling that Human Resources departments are not ensuring that managers receive the support they need to tackle discrimination in the workplace when it arises.

The suggestion from conciliators was that sexual orientation discrimination cases often begin with the bullying or harassment of individuals by other individuals or groups of staff. However, such situations are taken to an employment tribunal when managers and Human Resources departments do not tackle these problems effectively.

Conciliators also saw these cases as part of a wider issue of poorly trained managers in the workplace, who have received no staff management training and so are faced with situations they are not trained to handle.

Box 5: Acas Helpline calls from employers regarding sexual orientation

A significantly higher proportion of calls were recorded from employers regarding religion or belief discrimination than were from employers regarding sexual orientation. While a third of calls were from employers regarding religion or belief, only a small minority of calls were from employers regarding sexual orientation (see Table 6).

In contrast, the number of calls recorded from employees suggests that sexual orientation discrimination and religion or belief discrimination are concerns for similar numbers of employees in the workplace.

The lack of calls from employers about sexual orientation may relate to the fact that there was a lack of calls from employers regarding bullying or harassment.

Only 5% of calls from employers regarding both sexual orientation and religion or belief were felt by Helpline staff to relate to bullying or harassment, compared with 65% of calls from employees.

This finding is supported by a separate analysis of data from the 2005 survey of customers to the Acas Helpline which found that less than 5% of the calls received from employers regarding all jurisdictions were to do with bullying or harassment.

*Table 6: Calls by jurisdiction and type of caller**

	Sexual	Religion or	Both DSO	Total
Employee	25%	29%	-	55%
Employer	3%	34%	1%	37%
Representative	1%	4%	-	5%
Other	2%	2%	-	4%
Total	31%	68%	1%	100%

*Base = All calls recorded (n=110) Source: Survey of SORB-related calls to the Acas Helpline

3.4.5 Recruitment or lack of promotion

A few claimants had brought a claim against employers who interviewed them but for who they did not subsequently work. Some of these claims resulted from a feeling that the claimant had not been given the job because of their sexuality or their perceived sexuality. In addition, a further claim was based on an allegation that a claimant had been verbally abused and intimidated at an interview by a potential employer:

'...the Claimant was told that he was too camp to work on the front desk but that he might think about applying for a job in another part of the hotel, before considering working as a concierge, to give him a chance "to practice acting straight".' (ET1 form, gay man, hotels and restaurants)

Two claimants had brought claims that they had been passed over for promotion. Both of these claims were made by experienced managers applying for senior management posts. One claim included accusations of verbal abuse and exclusion from informal staff networks alongside the claim that he had been passed over for promotion (ET1 form, gay man, financial services).

Similar secondary themes emerged in the IES research with sexual orientation claimants, some of who felt they had been discriminated against either at the recruitment stage or when they applied for a promotion:

"This guy was heterosexual, white... he was a bog standard male [employee] and they're trying to say that he's more fitted than I? ...Here am I with [over 15 years] years service... and they're gonna give the job to somebody who [was a few months in], on the basis that he's more fitted or qualified or greater experience or anything. He couldn't hold a candle to me."

(Lesbian, civil servant, settled)

3.4.6 Dismissal

Another group of sexual orientation claims centered on allegations of unfair dismissal. In one case, the ET1 form reported that the claimant thought she had been dismissed from working in a gay bar because she was a heterosexual woman, hinting that her dismissal had made way for an attractive young man to replace her (ET1 form, heterosexual woman, gay bar).

In another case, the ET1 included an admission from a claimant that he had been party to wrong-doing, but a claim that his dismissal amounted to an over-reaction on the part of the employer, that other employees in his position may have received a verbal or written warning rather than a dismissal, and that his sexuality may have prompted his employer to punish him more harshly (ET1 form, gay man, hotels and restaurants).

Other ET1 forms included claims of unfair or constructive dismissal which were in addition to claims of bullying, harassment or victimization. In some of these cases, claimants reported that they had been dismissed following an incident where they felt they had been provoked into wrong-doing:

'I think my dismissal was unfair because on two occasions in the line of duty I have been provoked into a difficult situation. Being sworn at and talked down to on both occasions... Also my locker had sexual images that I found to be highly inappropriate drawn on lots of occasions which added to my mood state.' (ET1 form, gay man, hotels and restaurants)

Other claims suggested that the claimant's dismissal was a direct consequence of their making a complaint about bullying or harassment:

'I believe my employment was terminated because I had dared to complain about the bullying, intimidation and harassment I had received at the hands of [my line manager].' (ET1 form, lesbian, voluntary sector)

Finally, according to the analysis of the ET1 forms, some claimants had resigned following long-term bullying or harassment, claiming that their treatment, and the lack of action taken by managers to stop it, amounted to constructive dismissal.

3.4.7 Impacts on health and well-being

ET1 forms sometimes gave little information on the effects of the discrimination on the claimant's well-being, particularly those that involved an act of dismissal with no reference of bullying or harassment.

However the forms that described acts of bullying or harassment did tend to include descriptions of the alleged impact it had the treatment had had on claimants' health or well-being. This often involved the claimant saying that they had developed depression or anxiety as a result of the abuse they had faced:

'On consultation with my GP, he prescribed: Propranolol for Anxiety, Citalopram for Depression, Zolpidem Tartrate for Sleeping, Diazepam for Anxiety, panic attacks.' (ET1 form, gay man, transport, storage and communications)

Other ET1 forms said the claimant had felt suicidal, with one form saying the claimant had attempted suicide.

In such cases, the ET1 forms tended to stress that the claimant had not suffered from any mental health problems prior to being bullied or harassed:

'The Claimant has been suicidal... He has been prescribed anti depressants and is due to undertake counselling sessions. The Claimant did not have any mental health problems prior to the harassment and discrimination he encountered on the basis of his sexual orientation.' (ET1 form, gay man, wholesale and retail)

Acas conciliators also felt that some claimants bringing discrimination claims did have a tendency to suffer from mental health problems as a consequence of the discrimination they had experienced (see Box 6).

Box 6: The view of Acas conciliators

Conciliators' role is chiefly concerned with finding a resolution to employment disputes to avoid the issue going to employment tribunal. As such, the impacts of discrimination are not a central concern for them.

Nonetheless, a number of conciliators mentioned claimants suffering from mental health problems, possibly as a consequence of bullying or harassment at work:

'Well certainly in the one [ET claim] that's got the DDA with it, the DDA element of it has come along after. So they've been picking on him because he was homosexual, as he sees it, and he's ended up with stress and depression and all of that.'

The IES research also found that a number of the sexual orientation claimants interviewed had experienced mental health problems as a consequence of the discrimination they had experienced. However, some went further, discussing the wider impacts it had on their lives:

*'I've lost a relationship. I nearly lost my life. I nearly lost my mind. It upset my family. Nearly lost my home, which was really terrible, having to put that on the market because I just didn't think I could afford to live here any more. I lost my job. Lost my sex drive, that's still not right. Lost my confidence. I don't know, just everything, just everything. Financially, I'm in debt. I'm totally f***ed to be honest with you, to be perfectly honest with you.'*

(Gay man, IT manager)

3.4.8 Financial Impacts

One ET1 form also described the financial impacts of the bullying and harassment the claimant had faced and the knock-on effects on his mental health. The impression given was that his employability and his finances had been severely affected, resulting in the possibility of him losing his home:

'Due to his mental state the Claimant has been unable to mitigate his losses by attending interviews. The Claimant is currently in receipt of Jobseekers Allowance. The Claimant has been threatened with the loss of his home and he is unable to pay his mortgage...' (ET1 form, gay man, wholesale and retail)

3.4.9 Pay irregularities

Two types of allegations relating to pay emerged from the research findings. Firstly, accusations that employers had discriminated against claimants when setting pay levels; secondly, that employers had failed to pay claimants all the pay they were due at the point of dismissal.

Discriminatory pay levels

One ET1 form included problems around pay levels during employment, with the form asserting that the claimant had been given a lower pay rise than his colleagues. The ET1 form argued that this amounted to discrimination on the part of the claimant's employer. Incidents of bullying and harassment, consisting of verbal abuse by the claimant's area manager, were also alleged (ET1 form, gay man, business services).

A similar case emerged in the IES interviews with sexual orientation claimants, where a claimant felt she was not receiving the same pay as her colleagues:

'[My boss] paid me less than any other person on the executive team ... this guy refused to increase my salary, they refused to pay me the bonus that I was due. Yet they paid the other people the bonus.'

(Lesbian woman, HR manager, settled)

Failure to pay earnings due

These allegations were found in the ET1 forms, and related to cases where sexual orientation claimants had been dismissed. The forms asserted that claimants had not received all the pay due to them at the point of dismissal. Accusations included claimants not being paid for work done and claimants not receiving holiday pay due. Such claims tended to be for a relatively small amount of money, either for a few days work done prior to dismissal or a few days worth of holiday pay.

3.5 Employer responses to claimant allegations

3.5.1 Claiming cases are invalid

A number of the sexual orientation ET3 forms alleged that the claimants' case was invalid. In such cases, the Respondent either asserted that the claim was invalid because the claimant had not followed the three steps grievance procedure, or that it was out of time due to being brought over three months after the alleged acts of discrimination:

'The respondent also contends that the complaints... are out of time as the ET1 was not presented to the Tribunal before the end of the period of 3 months beginning when the act complained of was done.' (ET3 form, Housing Association, Heterosexual woman claimant)

Some of the ET3 forms also suggested that the claims made in the ET1 form were too vague and should be dismissed on the basis that they did not refer to specific acts of incidents:

'It is the respondent's contention that the claimant's grievance letter... only referred to vague allegations of comments being made to him which were derogatory in nature and directed to his sexuality. At no time were specific details of any alleged incidents provided to the respondent.' (ET3 form, Hotels and Restaurants, Gay male claimant)

3.5.2 Denial

In virtually all the sexual orientation ET3 responses, employers denied the claimants' allegations. Often, this included a general denial at the start of the ET3 form, stating that the Respondent was not discriminated against:

'It is denied that the respondent discriminated against the claimant on grounds of his sexual orientation'. (ET3 form, Hotels and Restaurants, Gay male claimant)

In cases where the ET1 form had cited specific instances of bullying or harassment, the ET3 form nearly always took each instance in turn and denied it had occurred:

'The serious allegation that [a staff member] pulled down his trousers and underwear in front of the Claimant exposing his penis and then asked the Claimant "Do you want to suck this?" is vehemently denied by [the staff member].' (ET3 form, Criminal Justice System, Gay male claimant)

Some of these ET3 forms, including the case above, contained an admission that certain behaviours described in the ET1 form were displayed, but asserted that such behaviour was not motivated by prejudice:

'It is admitted that [staff members] on occasions engaged in physical contact between themselves which took the form of slapping each other on their heads or their backs, putting their hands on each others hips and gyrating... and embracing each other. It is further admitted that on three occasions in the Office [staff members] engaged in behaviour that involved one behind the other in an act that simulated sex. Neither [staff members] were aware of the Claimant's sexual orientation at the time... These actions were not directed against the Claimant and were not carried out with the intention of offending the Claimant...' (ET3 form, Criminal Justice System, Gay male claimant)

These findings were supported by the findings from the focus groups with Acas conciliators, whose experience was that employers nearly always deny claimants' allegations (see Box 7).

Box 7: The view of Acas conciliators

Conciliators felt that once an employee has brought an employment tribunal claim, the employer's approach is to deny their claims.

Conciliators also noted a tendency for larger organisations to highlight their policies and procedures as evidence that they did everything they could to tackle discrimination.

The conciliators suggested that, on the rare occasions where employers admit that discrimination occurred, these employers' approach is to say that the discrimination was the fault of individuals working for the organisation rather than the organisation itself:

'...they may admit that an individual has discriminated, but they'll always then put in the defence that 'But we have done everything we could as an employer to make sure that didn't happen' - so we've done the training, we've got an equal opportunities policy and all of that. I think that's the only time that they'll ever actually say 'Yes that happened'.'

Conciliators had found that discrimination cases can be highly subjective, and can often come down to *'one person's word against another'*.

3.5.3 Further grounds for resistance

A number of the ET3 forms also stressed the employer's equal opportunities policies. The policies cited varied from a general reference that the employer does not discriminate on grounds of sexual orientation, such as *'Our selection of staff is based on merit, irrespective of sexual orientation... we are an equal opportunity employer'* (ET3 form, Wholesale and Retail, Gay male claimant) through to far more detailed and seemingly comprehensive policies:

'The respondent has and adheres to its Equal Opportunities in Employment Policy which states "[the organisation] is committed to equal opportunities for all its existing and future employees irrespective of gender, age, race, colour, creed, religion, religious belief, nationality, ethnic origin, sexual orientation, marital status, disability, real or suspected HIV/AIDS status and non relevant criminal background or Trade Union Membership."...' (ET3 form, Health and Social Work, Gay male claimant)

Some of the ET3 forms also added that the employer took claims of bullying or harassment very seriously, with some adding that the employer had taken all reasonable steps to prevent bullying or harassment from occurring in the workplace:

'The Respondent will aver that it took all such steps as were reasonably practicable to prevent its employees from discriminating against the Claimant as alleged or at all.' (ET3 form, Health and Social Work, Lesbian claimant)

Two of the ET3 forms suggested that the claimant saw the alleged bullying or harassment as a joke or *'jovial banter'* (ET3 form, Housing Association, Heterosexual female claimant) or had joined in with the culture of banter in the office:

'No comments made... relating to sexual orientation were unwelcome at the time, in fact most conversations were started by [the Claimant] who was very open with everyone and initiated conversations on this subject matter. In fact it was his most popular subject including constantly calling himself 'an old queen'...' (ET3 form, Wholesale and Retail, Gay male claimant)

Some of the ET3 forms stated that while the employer would have taken steps to keep the claimant's sexuality a secret, the claimant had chosen to reveal their sexual orientation to the rest of the workforce or had been open about their sexual orientation with colleagues:

'[The Claimant] made it very clear what his sexual orientation was at the interview and then immediately to the staff he worked with. He even told the company receptionist. If he had not told all his colleagues about his sexual orientation, the management of the company would have made strenuous efforts to ensure confidentiality: this possibility was, however, taken out of our hands.' (ET3 form, Wholesale and Retail, Gay male claimant)

A few of the ET3 forms suggested that the claimant's case was malicious or deliberate, with one such form saying it was motivated by the claimant's anger at the employer for reasons unrelated to discrimination:

'The company believes that the claim is malicious and that the story was fabricated because he was not allowed to work from home...' (ET3 form, Wholesale and Retail, Gay male claimant)

3.5.4 Dismissal

Where claimants had been dismissed, a number of the ET3 forms asserted that the claimant's performance had been poor or *'not at a level that was acceptable'* (ET3 form, Business services, Gay male claimant) and that this had been the reason for dismissal rather than any prejudice related to the claimants' sexual orientation.

In other such cases, the ET3 form alleged that the claimant had committed an act of gross misconduct, which again was the reason for dismissal rather than the claimants' sexual orientation. The ET1 forms in some of these cases had argued that the claimant was provoked into committing the act of gross misconduct by long-term bullying or harassment. In one such case, the ET3 form referred to a meeting between the employer and the claimant where the reasons for the claimant's previous silence was discussed:

'The claimant stated that in his defence his mitigation for his behaviour during this incident was that [a colleague] had been harassing him throughout his employment... The Claimant was asked why the matter has not been brought to anyone's attention in the past. The claimant stated that... he did not think that the management team would believe his allegations.' (ET3 form, Hotels and Restaurants, Gay male claimant)

In other cases where the ET1 form had said the claimant had resigned following bullying or harassment, the ET3 form said that managers had not wanted the claimant to resign, asserting that it had been the claimant's decision to leave.

3.5.5 Disciplinary procedures

The ET3 forms typically stated that dismissal procedures had been followed correctly, with some referring to the claimant being given verbal or written warnings or being asked to attend disciplinary meetings. However, they did not make specific reference to the statutory three-step procedure.

Where dismissed claimants had been accused of an act of gross misconduct, the ET3 tended to allege that such incidents had been fully investigated by managers, together with an assertion that the subsequent decision to dismiss the claimant was the right thing to do:

'Although it was [the claimant's] view that the Claimant's outburst was as a result of progressive disillusionment with his workplace and management, it was still an extraordinary unpleasant incident. It was also noted by [investigating manager] that he could not imagine a situation where such an extreme outburst could be justified. Accordingly, his decision was to uphold the final written warning.' (ET3 form, Hotels and Restaurants, Gay male claimant)

3.6 Experience of internal grievance procedures

3.6.1 Claimant perspective

Analysis of the ET1 forms suggests that formal grievance procedures were more often followed in larger private organizations and in public or voluntary sector organizations. However, in such cases, the ET1 forms included reports of:

- Complaints not being kept secret from claimants' colleagues, resulting in further abuse or victimization
- Complaints being ignored or trivialized, with one claimant being accused of being *'over-sensitive'* (ET1 form, gay man, public-sector agency)
- Claimants being disciplined as a result of taking a grievance
- Claimants being warned not to pursue grievances

The analysis of the ET1 forms suggests that while claimants from larger private sector organizations or the public and voluntary sectors may have been more likely to access formal grievance procedures, they were not any more likely than those in small private sector organisations to have felt that they had received a fair hearing.

The IES research with sexual orientation claimants supported these findings, with two claimants describing how they had been forced to begin employment tribunal proceedings before internal grievance procedures had been completed. This had been because their employers were taking so long to investigate their grievances that it would have been over three months after the incidents of discrimination, and therefore too late for them to bring an employment tribunal claim, had they waited for the grievance procedures to be completed.

It is interesting to compare these findings with the views of Acas conciliators, that large organisations are more likely to resolve problems internally because they have the procedures in place to do so (see Box 8). It may be that conciliators are correct, and that more problems are resolved internally by large organizations. Nevertheless, the ET1 form analysis and IES claimant interviews suggest that where problems are not resolved internally, and result in an employment tribunal claim, claimants feel that internal grievance procedures are not working.

Box 8: The view of Acas conciliators

Conciliators felt that most of the claimants in discrimination cases had been through some sort of internal grievance procedures but that these procedures had often made the situation worse:

'9 out of 10 ... maybe 19 out of 20 people have gone through internal procedures and it's not been upheld. . . .it often makes things worse because they feel as though there's then this big cover up and everybody's in it together to make sure that they find nothing...'

It became apparent during the discussions that conciliators feel there are differences regarding internal grievance procedures depending on organisation size. This was felt to be for the following reasons:

- Larger organisations may be more likely to resolve problems at the internal grievance procedure stage:

'they've got procedures... And there's unions involved as well. So they tend to be able to resolve them before it gets to the tribunal stage, and it's only maybe these extreme ones that end up with a tribunal application.'

- Larger employers may be keen to resolve problems at the internal grievance procedure stage rather than have problems revealed at public employment tribunals.
- There may be a lack of proper procedures amongst smaller employers.
- Where procedures are in place claimants from smaller organisations may not feel that the internal grievance procedure will be fair:

'... definitely with the smaller organisations I think that the claimant doesn't really have a lot of time for the internal procedures because they just see that you know the outcome is going to be inevitable and that you know that their complaint won't be heard. Or if it is heard it won't be really acknowledged as much as they'd want it to be.'

3.6.2 Employer perspective

Where claimants had instigated internal grievance procedures due to bullying or harassment, the ET3 invariably asserted that the claimant's grievances had been fully investigated and that the claimants' allegations could not be substantiated:

'...these grievances have been thoroughly and properly investigated and responded to by the Respondent under the laid down grievance procedures... after very thorough investigations the Claimant's grievance could not be substantiated, and was dismissed.' (ET3 form, Manufacturing, Lesbian claimant)

In other cases, it appeared from the ET3 form that the claimant had only notified the employer of the bullying or harassment that had occurred in a grievance letter after having resigned, with employers arguing that they had therefore not been *'given the opportunity to put the matter right'* (ET3 form, Wholesale and Retail, Gay male claimant). In such cases, the ET3 form asserted that had the employer known about the alleged bullying or harassment, *'a full investigation would have been instigated immediately...'* (ET3 form, Hotels and Restaurants, Gay male claimant).

Some of the forms stated that the claimant had failed to raise any grievance, and that first the employer had heard of the claimants' allegations was upon notification of the ET case. In such cases, the ET3 form argued that the case was invalid on that basis:

'The Respondent notes that the Claimant has not raised a grievance in relation to the issues raised in his complaint to the Tribunal... Accordingly, the Respondent contends that the Tribunal does not have jurisdiction to hear the Claimants complaints and asks that the Tribunal strikes them out on this basis.' (ET3 form, Transport, Storage and Communications, Gay male claimant)

3.7 Outcomes

3.7.1 Case outcome

Around half (52%) of sexual orientation cases resulted in a settlement between the claimant and the employer. A quarter (27%) were withdrawn by the claimant. Only one in seven (15%) went to a full tribunal hearing and a small proportion (7%) had an 'other' type of outcome such as being struck out (Table 7).

These outcome figures were similar to those for race discrimination cases found in SETA RRA 2005, of which half (51%) were settled. However, comparison between the current analysis and unfair dismissal (UDL) cases in the SETA suggests that sexual orientation cases may be less likely than UDL cases to be settled and more likely to be withdrawn. Six in ten (62%) unfair dismissal cases were settled and one in six (16%) were withdrawn in SETA 2003.

Table 7: Outcomes of sexual orientation cases

	Total
Base: All cases where DSO is main jurisdiction	470
	%
Settled	52
Withdrawn	27
Full ET hearing	15
Other outcome	7

Source: Acas ET cases database

3.7.2 Influences on case outcome

The IES research with sexual orientation claimants highlighted the reasons why sexual orientation claims may result in either a settlement or a withdrawal. Settlements tended to be initiated by employers, with claimants agreeing to the terms of the settlement following advice from their representatives. Some of the claimants interviewed expressed regret about not having their ‘day in court’ and there was strong criticism that money became the focus rather than justice:

“I think that people must realise that there are people there who are not doing it for the money. They’re doing it for their flipping, their own peace of mind and for justice. And that’s what law’s about, justice, you know not about money.”

(Gay man, local authority, settled)

These findings were supported by the findings from the focus groups with Acas conciliators, who felt that a desire for justice could be a barrier to settlement (see Box 9).

Cases tended to be withdrawn due to a lack of representation or the money to pay for it, a fear of the costs of losing a case, or due to stress from the case exacerbating existing mental health problems:

“I think you don’t get Legal Aid if you earn over a hundred and seventy pound a week. So I thought, if I lost, it could run into a lot of money ... Like that was the bottom line, money ... So I thought I would cut my losses and move on to this other job, which is what I did... And I was depressed and a bit confused at the time ... I lost my self confidence. I lost everything. I wasn’t thinking straight. It’s easy to sit here and say ‘why didn’t you do that’ ... It makes you ill in the end ... I felt like I was on my own. And I did try and tell people ... They tried to make out I was paranoid and stuff like that ... So I just left it alone.”

(Heterosexual man, skilled manual, withdrawn)

Box 9: The view of Acas conciliators

Conciliators felt that discrimination cases generally were more difficult to settle than other types of cases. This was for the following reasons:

- Claimants wanting what they see as *'justice'*, saying *'It's not about the money'* and *'I want my day in court'* and wanting *'a decision'*
- Respondents not wishing to admit they have done anything wrong or believing strongly that they have not done anything wrong
- Parties being less willing to *'move on'*, possibly because they are more emotionally involved in discrimination cases than in other types of case
- Claimants having unrealistic expectations about the amount of money they can expect to win
- Some representatives may act as barriers to settlement, either by giving claimants unrealistic expectations about the amount of money than expect to win, or by using the case as part of a *'crusade'* to further the cause of employment equality.

On the other hand conciliators felt there were some aspects of discrimination cases which may encourage a settlement, including:

- The subjective nature of the discrimination that may have taken place
- In some cases, the claimant still being employed by the respondent
- Claimants may be suffering from depression, anxiety or stress due to the discrimination they have faced. This may make them unable to cope with the tribunal process, and thereby more willing agree to a settlement.

Conciliators were asked what non-financial terms claimants and respondents sought in discrimination cases. For claimants, these included both a reference, which conciliators felt respondents were usually willing to give, and a letter of apology, which, in conciliators' experience, respondents were less willing to give, as a letter of apology may amount to admitting they did something wrong.

Conciliators suggested that respondents are always keen that settlements include Confidentiality clauses in order to prevent any further damage to their business or reputation.

3.7.3 Settlement compensation figures

While Acas ET case records do not include data on the sums of money awarded in employment tribunal hearings, they do contain data on settlement compensation: that is, the sums of money that employers give to claimants in cases which result in a settlement between the parties.

Around nine in ten (88%) settled sexual orientation cases involved the employer paying a sum of money to the claimant.

Out of the settled sexual orientation cases recorded in the Acas records system, where a sum of money was paid, the lowest sum was £8 and the highest was

£48,000. The median sum was £2,748. This compares with a median sum of £3,000 for both race cases and other types of discrimination case, a median sum of £1,700 for unfair dismissal cases and a median sum of £500 for short period conciliation cases (SETA RRA 2005).

Table 8 shows the breakdown of the compensation figures for settled sexual orientation cases where a compensation figure was recorded on the Acas ET database. Four in ten (41%) such cases had a compensation figure of between £1 and £2,499, with a quarter (25%) having a compensation figure of between £2,500 and £4,999 and one in seven (15%) being between £5,000 and £7,499. One in twenty (5%) had a compensation figure of between £7,500 and £9,999. Large compensation figures of £10,000 or more were recorded on one in seven (15%) such cases.

These figures are similar to the compensation figures for race (RRD) cases found in SETA RRA 2005 and those for other discrimination cases found in SETA 2003. For example, around four in ten race cases and other discrimination cases where a financial offer was made involved a compensation figure of between £1 and £2,499.

These findings suggest that the compensation figures for settled sexual orientation cases are broadly similar to those for other types of discrimination case.

Table 8: Settlement figures for settled sexual orientation cases

	Total
Base: All cases where DSO is main jurisdiction and a financial settlement was made	215
	%
£1 to £2,499	41
£2,500 to £4,999	25
£5,000 to £7,499	15
£7,500 to £9,999	5
£10,000 plus	15

Source: Acas ET cases database

In the IES research, some sexual orientation claimants who had settled expressed dissatisfaction with the money they had received. As well as suggesting again that no amount of money could compensate them for not having the 'day in court' that they wanted, claimants also suggested that the amount of money did not compensate them for the damage done to their lives:

"...the wild wild figures [colleagues] think I walked away with, ten times what actually came out of it. Besides the fact I lost my job, my health and I haven't worked since basically."

(Gay man, civil servant, settled)

4 RELIGION OR BELIEF FINDINGS

4.1 Case Jurisdictions

Nearly nine in ten (88%) religion or belief cases had one or more secondary jurisdictions, with only one in eight (12%) not having any secondary jurisdictions.

Table 2 shows the proportion of all religion or belief cases to which particular secondary jurisdictions had been allocated. Two-thirds (66%) of all religion or belief cases had race discrimination as a secondary jurisdiction, as shown in Table 9. Half (50%) of religion or belief cases had unfair dismissal as a secondary jurisdiction. One in seven (15%) had sex discrimination as a secondary jurisdiction and a further one in seven (14%) had wages act (WA) as a secondary jurisdiction.

*Table 9: Secondary jurisdictions on cases where main jurisdiction is religion or belief discrimination (DRB)**

	Total
Base: All cases where DRB is main jurisdiction	461
	%
RDD is a secondary jurisdiction	66
UDL is a secondary jurisdiction	50
SXD is a secondary jurisdiction	15
WA is a secondary jurisdiction	14
No secondary jurisdictions	12

Source: Acas ET cases database

* Table 1 includes only secondary jurisdictions that were allocated to 5% or more of religion or belief cases.

At this point it is interesting to note that Acas conciliators felt that there was probably an overlap between the race and the religion or belief jurisdictions (see Box 10), given that this view concurs with the statistical analysis of the religion or belief case records.

Box 10: The view of Acas conciliators

There is a perception that there is an overlap between race and religion or belief, with religion or belief cases usually containing an element of race discrimination.

Conciliators also cited examples of race cases they had handled prior to the introduction of the religion and belief legislation where claimants did appear to have been discriminated against on grounds of religion or belief as well as race:

'... before they brought in you know the legislation about the religious belief it was just a standard race case. ...that was a guy who was a Muslim who was saying he wasn't allowed time off to go to prayer. So I suppose that you know you could say it was an overlap there between him saying well I'm being discriminated against because of my race but also you know because of he needed time to attend the mosque.'

Conciliators agreed that the religion and belief legislation had largely *'filled a gap'* in cases where, before the introduction of the legislation, claimants could only claim that they had been discriminated on grounds of their race, when in fact their religion or belief could have been at the core of the discrimination they experienced.

4.2 Claimant characteristics

4.2.1 Claimants' gender

Two thirds (65%) of religion or belief claimants were men. This is similar to the gender make-up of both unfair dismissal claimants and race discrimination claimants found in the DTI Survey of Employment Tribunal Applications (2003), where around two-thirds of claimants were men.

4.2.2 Claimants' religion or belief

The ET1 form analysis suggested that around half of the cases included in the analysis were brought by Muslim employees. The remaining half were split between Christians, Jews, Hindus, Sikhs, those who described themselves as 'non-Catholics' bringing cases against a Catholic school, and a few cases where the religion of the claimant was not specified. ET1 application forms include a non-mandatory question on religion or belief. This information is not available to Acas and so the analysis is based on the ET1 forms available.

Overall, the Acas Helpline survey supported these findings. Around half of the calls received by the Acas Helpline which referred to a specific religion or belief were to do with Islam (see Box 11). However, it should be noted that employers were more likely to call with queries related to Islam than employees, with employees being slightly more likely to call with queries related to Christianity than Islam.

Box 11: Religion or belief cited in calls recorded in the Acas Helpline survey

Where Helpline staff felt that the call had been about a specific religion or belief, just over half of these calls were said by helpline staff to relate to Islam, with a quarter relating to Christianity. Smaller proportions of calls were felt to relate to Judaism or Hinduism. In around one in nine calls Helpline staff were unable to say which religion or belief the call related to.

Table 10 shows these figures broken down by type of caller. The findings suggest that employers were more likely to call with queries related to Islam than employees. While three-quarters of calls from employers regarding specific religions or beliefs were related to Islam, only a third of calls from employees regarding a specific religion or belief were related to Islam.

The findings also suggest that employees were more likely to call with queries related to Christianity than employers. While four in ten calls from employees regarding a specific religion or belief related to Christianity, only one in 20 calls from employers related to Christianity.

*Table 10: Which of the following religions or beliefs did the call concern?**

	Calls which related to specific religions or beliefs***	Employee calls related to specific religions or beliefs	Employer calls related to specific religions or beliefs
Base	62**	26**	31**
	%	%	%
Islam	55	35	74
Christianity	23	42	5
Judaism	6	8	3
Hinduism	5	-	10
Buddhism	2	4	-
Other	2	-	3
Don't know	11	19	3

Source: Survey of SORB-related calls to the Acas Helpline

* Note: in a few cases calls were felt to be about more than one particular religion or belief. Therefore these figures add up to more than 100%

** Note: small base size (n<100). Figures should be treated with caution.

*** Note: these figures include calls from Representatives (n=3) and Others (n=2) not broken down due to small base sizes

4.2.3 *Where Claimants live*

Religion or belief claimants were concentrated in London (33%), the North West (11%) or the West Midlands (11%). Within Great Britain, only a few cases were from claimants living in Wales (2%), the North East (2%) or Scotland (4%).

Religion or belief claimants who brought cases with race discrimination as a secondary jurisdiction were more likely to live in London than those who brought cases without race discrimination as a secondary jurisdiction. Nearly four in ten (37%) of those who brought cases with race discrimination as a secondary jurisdiction lived in London compared with only a quarter (25%) of those who brought cases without religion or belief as a secondary jurisdiction.

Religion or belief claimants who brought cases without race discrimination as a secondary jurisdiction were more likely to live in Scotland than those who brought cases with race discrimination as a secondary jurisdiction. While nearly one in ten (9%) claimants who brought a religion or belief case without race discrimination as a secondary jurisdiction lived in Scotland, only 1% of those who brought a religion or belief case with race discrimination as a secondary jurisdiction lived in Scotland.

Compared with sexual orientation claimants (see above), religion or belief claimants were more concentrated in London.

Table 11 shows the full breakdown of where religion or belief claimants lived.

Table 11: Country or government office region in which religion or belief claimants live

	All DRB as main jurisdiction	DRB main with RRD as a secondary jurisdiction	DRB main without RRD as a secondary jurisdiction
Base	461	302	159
	%	%	%
London	33	37	25
North West	11	11	11
West Midlands	11	12	9
South East	9	8	10
Yorkshire and The Humber	9	10	6
East of England	8	7	9
South West	5	4	8
East Midlands	5	4	6
Scotland	4	1	9
North East	2	2	1
Wales	2	1	3
Northern Ireland	0	0	-
Outside UK	0	0	-
Unknown	2	1	-

Source: Acas ET cases database

4.3 Respondent employer characteristics

4.3.1 Broad sector

Seven in ten (69%) respondent employers cited in religion or belief claims were from the private sector, with nearly a quarter (23%) coming from the public sector and 7% in the voluntary sector.

Table 12 compares these findings with the findings from SETA 2003 and SETA RRA 2005. Findings from these two surveys are presented in a single table for ease of comparison, although differences in the timeframes for data collection and the methods used (as discussed in section 1.1) should be borne in mind when considering the findings.

The broad sector breakdown of religion or belief cases was similar to that of unfair dismissal claimants as found in SETA 2003 (see Table 12). However, compared with

the employers of both race claimants and other types of discrimination case, religion or belief claimants' employers were less likely to come from the public sector and more likely to come from the private sector. Half (50%) of race claimants' employers and six in ten (58%) other discrimination claimants' employers were from the private sector, with four in ten (40%) race claimants' employers and a third (33%) of other discrimination claimants' employers coming from the public sector.

Table 12: Broad sector of respondent employers of religion or belief claimants

	DRB (religion or belief)*	UDL (unfair dismissal) ***	RRD (race discrimination) **	Other discrimination ***
Unweighted	461	1113	491	232
Weighted		1104		241
	%	%	%	%
Private	69	71	50	58
Public	23	19	40	33
Voluntary	7	3	6	4
Unknown	2	6	4	6

* Source: Acas ET cases database

** Source: SETA RRA 2005

*** Source: SETA 2003. Note, as fieldwork for SETA 2003 began before the introduction of the DRB Regulations, it can be assumed these figures do not include employers of religion or belief claimants

4.3.2 SIC sector

Breaking down the respondent employers of religion or belief claimants by Standard Industrial Classification (SIC 2003), shows that these employers were concentrated in the following industries: real estate, renting and business activities (15%), wholesale and retail (15%), and health and social work (13%).

Table 13 shows the full breakdown of which industries religion or belief claimants' employers belonged to.

Table 13: Standard Industrial classification of respondent employers in religion or belief claims

	Total
Base: All cases where DRB is main jurisdiction	461
	%
Real estate, renting and business activities	15
Wholesale and retail	15
Health and social work	13
Public administration and defense	13
Transport, storage and communications	9
Hotels and restaurants	7
Manufacturing	7
Education	7
Financial intermediation	5
Other community, social and personal services	4
Construction	2
Mining and quarrying	1
Electricity, gas and water supply	1
Agriculture, Hunting and Forestry	0
Unknown	2

Source: Acas ET cases database

4.3.3 Public sector employers

In total, 105 claimants took religion or belief cases against public sector employers. Table 14 shows the breakdown of these cases by type of public sector organization.

Public sector respondents to religion or belief cases were predominantly local authorities (26%) and education organizations (23%). One in five claimants (19%) had taken cases against a criminal justice organization and one in six (17%) had taken cases against a health organization. Less than one in ten (8%) had taken cases against a central government employer.

Table 14: Public sector organizations involved in religion or belief cases

	Total
Base: All cases where DRB is main jurisdiction and employer is public sector	105
	%
Local Authority	26
Education	23
Criminal justice*	19
Health	17
Central government	8
Other	8

Source: Acas ET cases database

* Including the police and the prison service

4.4 Alleged discrimination

4.4.1 Bullying or harassment

Bullying or harassment in a range of forms, including verbal and physical abuse, was a feature of the case submitted by many religion or belief claimants.

Verbal abuse was an element of the claims set out in a number of the ET1 forms submitted by religion or belief claimants. This particularly appeared to be the case with Muslim claimants, although there were also instances of Christian and Jewish claimants alleging bullying or harassment of this kind.

Some claims suggested that the verbal abuse came from colleagues at the same level of seniority as the claimant. The alleged behaviour sometimes took the form of name-calling or comments that over-lapped with racial discrimination, with claimants being called 'paki' or comments such as "Asian food is too smelly" being made (ET1 form, Muslim man, car rental).

However, some reported verbal abuse did refer directly to the claimant's religion, such as the comment: "You can't be a Muslim, you don't wear a ninja suit..." (ET1 form, Muslim woman, call centre)

Other cases involved the claimant claiming that they had received verbal abuse from managers. One ET1 form reported that the claimant had told his line manager that 'he wished to pray as he is Muslim. [She] replied "I don't give a f**k about your religion. Just do what I tell you."' (ET1 form, Muslim man, cleaner). In another case, a claimant was said to have been criticized by the manager of the store in which he worked for making a mistake. The claimant apologized and explained 'that he was fasting for Eid, which was why his concentration was lower than usual. [The Store

*Manager] retorted: "It's not my f**king problem, did I tell you to fast?"* (ET1 form, Muslim man, wholesale and retail).

Other cases involved allegations of claimants being criticized, mocked or verbally abused by managers because English was not their first language or because they could not read English very well.

Other forms of bullying or harassment alleged on ET1 forms included colleagues writing offensive remarks on claimants' property, excluding claimants from informal social networks or doing things to undermine the claimants' religious beliefs:

'[The Head Chef] would on occasions act kindly to the Claimant to lull him into a false sense of security, prepare some food for him, but only after the Claimant had consumed the food, would... [he] inform the Claimant that he had deliberately included pork in the ingredients knowing that, as a Muslim, the Claimant was absolutely forbidden to eat pork as it is against his religious beliefs' (ET1 form, Muslim man, hotels and restaurants)

Some of the ET1 forms referred to incidents of physical abuse or sexual harassment in addition to verbal abuse. Physical abuse included incidents of claimants being physically attacked by colleagues, as in the following case:

'The claimant was hit and kicked by a colleague and when he brought this to the attention of his supervisor nothing was done about it'. (ET1 form, Christian man, manufacturing)

ET1 forms for some female claimants also mentioned alleged incidents of sexual harassment. One Muslim woman reportedly received comments including *"You stand like a porn star", "Look at you, you can't be a virgin", "Have you shagged anyone?"* and *"You want to suck [a colleague's] dick"* (ET1 form, Muslim woman, call centre). One Jewish claimant claimed to have faced a combination of sex discrimination, sexual harassment and religion or belief discrimination from her Muslim employer:

'He spent the entire meeting being offensive about the Christian and Jewish religions... This was coupled with an attempt to convert me to Islam... [he said] our "relationship" was like a husband and wife and I was under a duty to respect him as Muslim wives do.' (ET1 form, Jewish woman, wholesale and retail)

Some ET1 forms included claims of less favourable treatment by managers. This included reports of:

- Subjecting the claimant to extra scrutiny
- Giving the claimant impossible deadlines
- Denying the claimant holidays when requested or making them feel unable to request holiday:

'The Claimant had been reluctant to request any holiday leave at all because she had on a previous occasion been advised... "Indians just go on holiday for marriage and you are already married so why would you go."... ' (ET1 form, Hindu woman, education)

- Denying the claimant the opportunity to attend training and development courses that other colleagues were permitted to attend.

In some cases this behaviour was also said to be accompanied by verbal abuse:

'Her direct line manager has been bullying her and putting her down constantly, denigrating the quality of her work... the said line manager put her under 'extreme scrutiny' and regularly gave her impossible deadlines to meet'
(ET1 form, Muslim woman, business services)

The IES research found that the religion or belief cases brought by the claimants they interviewed were less dominated by bullying or harassment than the sexual orientation claimants they had interviewed. However, instances of bullying and harassment were discussed by some of the religion or belief claimants, including the following example from a security guard:

" [A trainer] was giving a lecture to the class on appropriate ways to pat down any ethnic clothing ... He was talking about possibly turbans or garments, and that point was relevant stuff, I mean you have to know how to respect people when they come through [security]. [But] he went off on a tangent and he started to talk about the Hasidic Jews, the very religious ones, you know with the curls and the hat. And I don't know where this came from and it had nothing to do with the lesson, but he started to get very derogatory about it and talking about their sex life and their marital practices. And it was rude and crude and vulgar and I couldn't believe what I was hearing pretty much".

(Jewish woman, security officer, settled)

Furthermore, it should be noted that several of the religion or belief claimants interviewed by IES, particularly Asian Muslim claimants, felt that the discrimination they had experienced was as much to do with their race as it was to do with their religion, and that the two issues were virtually indistinguishable:

"Well, to me both [jurisdictions] go hand in hand ... because overwhelming majority of the Asian community or the ethnic community is Muslim."

(RB, Muslim, male, doctor, struck out)

4.4.2 Actors involved in bullying

As with the bullying and harassment alleged by sexual orientation claimants, the ET1 forms submitted by religion or belief claimants reported a variety of experiences of bullying or harassment. In some cases the bullying or harassment appeared to originate from one individual. In many cases, this individual was the claimant's line manager or a more senior manager.

In other cases, multiple individuals or groups appeared to be involved in the abuse that the ET1 forms described. In a number of such cases managers or supervisors were reported to have instigated the bullying, with other more junior members of staff appearing to join in at a later stage. For example, the alleged abuse faced by one claimant started with negative comments from his line manager threatening to sack him, progressed to non-verbal abuse, including having 'gay boy' written on a Christmas present, and then to verbal abuse related to his religion and race and physical abuse from colleagues and defacement of property (ET1 Form, Muslim man, manufacturing).

In some cases, either the events described indicated, or the ET1 itself suggested, that the discrimination faced by the claimant formed part of a widespread culture of discrimination within the organization. One such claimant referred to the 'culture' of his organization, where colleagues 'slagged off women, and told racist jokes', and where he was the victim of racist verbal abuse including jokes about his turban (ET1 form, Sikh man, criminal justice system).

4.4.3 Length of time that bullying occurred

In some cases no suggestion was given as to the period of time over which the claimant had faced bullying or harassment. However, in other cases an indication was given, with a number of ET1 forms suggesting that the bullying or harassment had occurred for months or years.

In other cases the ET1 form included a direct reference of the length of time, such as 'for the last 2 years I have been bullied or harassed...' (ET1 form, Muslim man, health and social work) In further cases the dates on which incidents were said to have occurred were recorded, indicating a large number of separate incidents over a long period of time.

A particular event - the July 2005 bombings - appeared to have triggered the alleged bullying or harassment in some of the cases, including the following example:

'After the bombings in London, a general discussion was held in the office. I participated in this discussion and said how I felt terrorism was unacceptable and that killing people was wrong. My line manager... said 'to get revenge we should burn all Muslims in the mosques'. I was offended by the anti-Islamic undertone of the discussion but felt too intimidated to challenge [my line manager] as I was the only Muslim in the office' (ET1 form, Muslim man, IT support).

4.4.4 Alleged informal responses of managers

Many of the ET1 forms suggested that managers had not done enough to protect claimants from bullying or harassment from colleagues. As one ET1 form put it:

'My employer is liable for not taking reasonable step to protect me, and my line manager has known of this behaviour and has done nothing about it.' (ET1 form, Muslim man, health and social work)

In other cases where the claimant's line manager was said to be responsible for the bullying or harassment, the ET1 form described an alleged situation where the claimant challenged the manager's behaviour. In such cases, managers were reported either to have threatened claimants, warning them not to pursue the matter, or to have dismissed their concerns:

*'I told [the manager] that unless he stopped I would be speaking to a solicitor... [He] replied, "I don't give a f**k - it's the company you'll sue, not me".'* (ET1 form, Muslim woman, call centre)

The focus groups with conciliators also discussed issues around the bullying and harassment faced by the religion or belief claimants whose cases the conciliators had handled. These themes and others identified by conciliators are outlined in Box 12.

Box 12: The view of Acas conciliators

When Conciliators were asked to discuss the features of claims made by employees bringing the religion or belief discrimination cases they had handled, several themes emerged including:

- Bullying and harassment:

'The Hindu guy, he said he'd been harassed by the manager ... he picked on him every day, continually questioning my work, being suspicious of what I said by micromanaging me, monitoring my screen, undermining me. His manager's behaviour demoralised him...'

- Wanting time off for religious observance.
- Less favourable treatment or lack of promotion:

... it was over some expenses not paid to him, and then not being chosen for a supervisor job....And he was supposed to go on a course and they wouldn't... pay for his accommodation...

- Disputes over appearance or dress at work.
- Exclusion or disadvantage for Muslim employees whose religion meant that they did not feel able to joining in with the office drinking culture.

Conciliators mentioned the reaction of managers to incidences of bullying or harassment, suggesting that in many cases managers do not deal effectively with problems as they arise:

'...a lot of managers as soon as somebody raises an issue like this are petrified of it. And rather than deal with it there and then they'll hide. And eventually it becomes then so serious that that's when you end up with a claim.'

Conciliators suggested that a lack of management training for staff when they first become managers was a reason for individual managers not tackling such discrimination effectively.

Furthermore, there was a feeling that Human Resources departments are not ensuring that managers receive the support they need to tackle discrimination in the workplace when it arises.

The suggestion from conciliators was that sexual orientation discrimination cases often begin with the bullying or harassment of individuals by other individuals or groups of staff. However, such situations are taken to an employment tribunal when managers and Human Resources departments do not tackle these problems effectively.

Conciliators also saw these cases as part of a wider issue of poorly trained managers in the workplace, who have received no staff management training and so are faced with situations they are not trained to handle.

4.4.5 Recruitment or Promotion

Some of ET1 forms described situations where claimants felt they had been discriminated against at the recruitment stage or when going for a promotion. These cases tended to be brought against public sector organizations by claimants who were already working for the organization. The claimants were either applying for a promotion or a post in a different part of the organization in which they worked. This group of claimants typically included professionals or managers and their cases did not appear to involve bullying or harassment.

In some cases from Catholic schools the alleged discrimination was blatant, with claimants reportedly being told they would not be appointed to a post on the basis of their religion or belief:

'[The Head Teacher] told me that I was welcome to apply for the post. However, he made it clear that he wished to appoint a Roman Catholic person and that I would not be interviewed if I applied for the post.' (ET1 form, non-Catholic woman, teacher)

In other cases the alleged discrimination was more subtle, as in the case of a claimant who felt that an assessment centre he had attended when seeking a promotion had been '*culturally biased*' (ET1 form, Sikh man, criminal justice system).

Similar issues around recruitment and promotion were uncovered in the IES interviews with religion or belief claimants. Again, some of the claimants working for Catholic schools reported that they were told directly that they would not be appointed to certain posts on the basis of their religion or belief:

"I made my application directly to the headmaster who refused to interview me on the grounds that I wasn't approved by the Catholic Church ... He said to me, "I'm not giving you it. I'm not interviewing you..."

RB, non-Catholic, male, teacher, successful

4.4.6 Working hours, time off or leave

Some of the ET1 forms described cases where claimants had encountered difficulties around their working hours or obtaining time off or leave for religious festivals.

One ET1 form described the experience of a Jewish claimant who was said to have encountered problems leaving early on a Friday:

'At my interview... [it was] agreed that I could finish work on Fridays at 1pm in order to celebrate the Sabbath... In practice, I usually worked until about 2pm on Fridays. On two occasions [my line manager] told me that I should stay longer on Fridays as my early departure was creating problems...' (ET1 form, Jewish man, Law firm)

A further ET1 form described how a Muslim claimant had difficulties obtaining time off to celebrate Eid:

'The Claimant asked [his line manager] for a day off for Eid. The Claimant had already given several months notice of this. However, [his manager] proceeded to make derogatory and insulting remarks directed at the

Claimant's faith. [His manager] said: "you get a day off at our Christmas, we should all get a day off for Eid..." (ET1 form, Muslim man, Manufacturing)

Problems over working hours, time off or leave also emerged in the IES interviews with religion or belief. One Muslim claimant discussed how, on joining his organization, he had arranged with his employer that he should not be sent on assignments away from home when this conflicted with his religious practices. However, over time, this agreement lapsed, with the claimant first experiencing problems during Ramadan:

"I told them it's quite hard, because when you start your fast ... it's quite hard to do in a hotel room ... four o'clock in the morning, where are you gonna go and find some food? So, I told them that, it's not feasible for me to go."

Muslim man engineer, settled

The calls recorded in the Acas Helpline survey also included issues around working hours, time or leave: indeed, such issues appeared to be the dominant theme of the religion or belief calls recorded (see Box 13). Given this, it is interesting to contrast this with the lack of calls recorded to do with workplace dress codes, despite the high profile media coverage of this issue at the time that the research was conducted (see Box 14).

Box 13: Acas Helpline calls regarding working hours, time off or leave

Working hours, time off or leave was the most dominant theme of the employee religion or belief calls recorded in the Acas Helpline survey.

These calls revolved around the issues surrounding employees seeking time off for religious observance, whether this involved an annual festival or a day of the week that their religion views as a day when they should not be at work. The religion most commonly mentioned in these calls was Islam, followed by Christianity. These calls included the following situations:

- Muslim employees querying their right to time off for Eid.
- Muslim employees being denied time off for religious festivals:

'Caller requested time off for a Muslim religious festival. The employer was in agreement in principle but... the date required had already been booked by other members of staff and as the employer was short of staff turned her request down. The other employees concerned had booked their holidays before this caller made her original request.'

- Christian employees not wishing to work on a Sunday:

'...Her contract of employment had been varied which meant she would have to work on a Sunday. As she is a devout Christian she was not prepared to work on a Sunday and wanted to know what she could do about her contract...'

- A Jewish employee not wishing to work on Saturday.
- A Jewish employee expecting paid time off for Jewish New Year.
- A Buddhist employee being denied time off for meditation training.

4.4.7 Dismissal

There were some cases where the religion or belief cases centred on a claim of unfair dismissal and did not include allegations of prior bullying or harassment. One such claim came from a claimant who felt she had been effectively dismissed when her fixed-term contract at a Catholic school ended and she was not given a permanent post due to not being a Catholic:

'The Head Teacher... informed me that he wished to appoint a Roman Catholic teacher to take over the class I was teaching... I consider that I was dismissed because I am not of the Roman Catholic faith'. (ET1 form, non-Catholic woman, teacher)

However, other ET1 forms including claims of unfair dismissal also included allegations of bullying or harassment. One such form said the claimant felt she had been dismissed because she had become pregnant. This was in addition to reportedly

receiving racist verbal abuse from colleagues and having her leave to celebrate Diwali cancelled (ET1 form, Hindu woman, education).

Some cases came from Muslim claimants who reported that they had been dismissed following the July 2005 bombings. One such ET1 form said:

'The London bombing triggered racist tension at work between colleagues. I was the target because I was the only Asian employee... The day the London bomb happened, my days were over at this [organization]...' (ET1 form, Muslim woman, health and social work)

A further claimant alleged that he was suspended and subsequently dismissed from a job he had recently started. His ET1 form reported that he had been told he had not had security clearance, despite being told by his previous employer that he had been given good references. One manager said to him *"after London, I can't take the risk"* (ET1 form, Muslim man, Transport, Storage and Communications).

Many of the ET1 forms included claims of constructive dismissal where claimants felt they had been forced to resign due to an on-going campaign of bullying or harassment against them. Some of these claims suggested that the abuse that the claimant had faced had led to them developing depression or other mental health problems which forced them to leave work.

In other claims, the ET1 form said that claimants had been dismissed after having complained about unfair treatment or bullying or harassment, with claimants suggesting that employers would rather dismiss them than deal with their concerns.

The IES interviews with religion or belief claimants also explored issues around unfair dismissal. Again, the issue emerged of Muslim employees being dismissed following the July 2005 London bombings:

"We had our three monthly appraisal. They said everything you're doing is fine ... Suddenly the bomb happens; a week later: "Sorry, we're going to have to let you go". And they had a list of things which I thought, "Where did you get them from?" I don't know. It was as if to say they'd already made their minds up, sat together, said right we'll say this, that and the other and I was out the door ... There was no warning, no written warning, nothing."

Muslim woman, nurse, withdrawn

3.2.8 Workplace dress codes

Workplace dress codes only featured in a small number of of the ET1 forms. Amongst those that did, one ET1 form described how an employer asked a claimant to remove his cross, saying that he could *'sense the stench of someone wearing a cross from far away'* (ET1 form, Male Christian, mining and quarrying). A further form mentioned that a claimant was told by his line manager:

"Whatever you do don't grow a beard and wear a turban". I replied saying, "I'm not Sikh, I'm a Muslim". His response was, "It doesn't matter, you are all the same to me".' (ET1 form, Muslim man, criminal justice system).

Analysis of the helpline survey findings also suggests that this issue is not a major theme of workplace disputes over religion or belief (see Box 14).

Box 14: Calls to the Acas Helpline regarding workplace dress codes

The issue of workplace dress codes did not emerge amongst the calls from employees recorded in the Acas Helpline survey. Furthermore, only a small number of calls were recorded from employers regarding workplace dress codes. These were about the issue of Muslim women wearing a veil in the workplace, and may have been prompted by the attention this issue was receiving in the media during the fieldwork period:

'This was about recruitment... a manager of a call centre rang saying that an applicant had applied who wanted to wear a veil. She said they weren't sure if customers would be able to hear her speaking on the phone through the veil. She was also concerned if they were being 'set up' because of recent news coverage to do with veils.'

It is interesting to note the contrast between the absence of calls received in the Acas Helpline survey regarding workplace dress codes, and the high profile this issue was being given in the UK media during the fieldwork period ('Remove full veils' urges Straw', BBC News website, Friday 6th October 2006; 'The woman at centre of veil case', BBC News website, Thursday 19th October 2006; 'Cross Row stokes Christian anger', BBC News website, Sunday 15th October 2006).

These findings suggest that the issue of workplace dress codes is not of primary concern to employees or employers in the workplace. Rather, both employers and employees appear to be more concerned about issues relating to working hours, time off or leave.

4.4.8 Exploitation of vulnerable workers

One ET1 form came from a claimant who had been dismissed after having complained to his manager that he and other workers were being exploited. The form gave detailed accusations, as follows, suggesting widespread exploitation of vulnerable workers in the organization:

'The managing director was profiteering by exploiting the weakness of the workers (many of them did not speak good English... they are on social benefit and they fear losing their jobs). He was profiteering by: 1) Not paying holidays 2) Not paying minimum wages... 3) Deducting money from workers wages for minus reasons (wrong doings) 4) Deducting money from the wages... to cover the rent for providing them accommodation... Anyone that dares to complain was dismissed.' (ET1 form, unknown religion or belief, man, hotels and restaurants)

4.4.9 Pay irregularities

A number of the ET1 forms included accusations that claimants had not been paid either for work done or for annual leave, or had not received redundancy pay. These

claims were usually made by claimants who had been dismissed and thought they had not received all the pay that they were owed upon dismissal. As in the sexual orientation cases, many of the claims appeared to be for relatively small amounts of money relating to a few days of work done or a few days of holiday pay.

4.4.10 Impacts on health and well-being

The ET1 forms that contained no reference to bullying or harassment did not tend to discuss the impacts of the discrimination. However, of those forms that did contain allegations of bullying or harassment, some went on to allege that it had adversely affected the claimant's mental health, causing them to develop depression or anxiety. One ET1 form went further to discuss the consequent effects of this on the claimant's personal and family life:

'I was verbally abused, physically threatened, racist remarks, harassment and bullying. I have been off sick due to work-related stress and on prescribed anti-depressants and receiving counselling... I have been treated unfairly. As a consequence my health is affected, psychologically, emotionally and mentally. As well as, personally, professionally and affected my family life.' (ET1 form, Muslim man, Health and Social Work)

A further ET1 form had attached to it a letter from the claimant's GP. In this letter the GP described the situation as follows:

'[The claimant] came to see my colleague in a very tearful and depressed state, stating that the continuing cause of her anxiety and depression was her line manager who had been bullying her and had threatened to sack her. She very much wanted to return to work but was afraid of her manager...' (Letter from Claimant's GP attached to ET1 form, Muslim woman, business services)

The IES interviews with religion or belief claimants also explored the impacts of the discrimination experienced by claimants. As with the sexual orientation claimants, a number of religion or belief claimants discussed how the discrimination experienced had affected their mental health and had wider impacts on their life:

"So that had an impact on the family and myself because you are out of work, you are at home all the time and you are depressed. It still has that effect on me, I don't discuss it with my wife: this is the first time I am [talking about it]. And it has an effect on my health."

(Muslim man, IT manager)

4.5 Employer responses to claimant allegations

4.5.1 Claiming cases are invalid

A number of the ET3 forms from employers asserted that the claimants' case was invalid, typically because either the claimant had not followed the three steps procedure (see also 3.4.2 below) or due to the case being brought over three months after the alleged acts of discrimination:

'The Respondent seeks an order from the Employment Tribunal that the claim of discrimination and victimization be struck out as they have been presented out of time.' (ET3 form, Hotels and Restaurants, Christian female claimant)

4.5.2 Denial

In nearly all the religion or belief ET3 responses, employers denied the allegations made in the ET1 form. This often included a general denial at the start of the ET3 form that the respondent had discriminated against the claimant on the basis of their religion or belief, together with a denial of any associated allegations:

'It is denied that the Claimant was unfairly dismissed... It is denied that the Claimant was subject to direct race discrimination or religious discrimination... It is denied that an unauthorised deduction was made from the Claimant's wages.' (ET3 form, Business services, Muslim male claimant)

In all cases where specific instances of bullying or harassment had been described, employers denied that these had occurred or that the accused individuals were disposed towards such behaviour:

'The respondent denies the allegations made by the claimant that the Head Chef... is bad tempered and has been violent and abusive to other members of staff...' (ET3 form, Hotels and Restaurants, Muslim male claimant)

These findings were supported by the findings from the focus groups with Acas conciliators, whose experience was that employers nearly always deny claimants' allegations (see Box 15).

Where one ET1 form had stated that the claimant had been dismissed because she had become pregnant, the ET3 form denied this was the case, saying *'the respondent was not made aware of by the claimant that she was pregnant.'* (ET3 form, Education, Hindu female claimant)

Some of the ET3 forms also argued that the claims made in the ET1 form were too vague and should be dismissed on the basis that they did not refer to specific acts or incidents.

Other ET3 responses mentioned the employer's equal opportunities policies as evidence of the organisation's good practice in this area. These varied from general assertions that they did not discriminate, such as *'the respondent employed other female and male staff from different races and there is no policy of discrimination'* (ET3 form, Education, Hindu female claimant) through to more comprehensive policy statements:

'the Respondent company does not tolerate unlawful discrimination on grounds of race, religion, sex, disability, sexual orientation or any other prohibited ground. The Respondent aims to treat all staff equally and free from prejudice.' (ET3 form, IT sales, Jewish male claimant)

Where managers had been accused of bullying or harassment, the response sometimes stated that the managers named had in fact treated the claimant well and been concerned for their welfare:

'[The manager] has assisted the claimant above and beyond that of an employer... When the claimant's wife had a baby... [The manager] donated baby clothes and products... to the claimant.' (ET3 form, Hotels and Restaurants, Muslim male claimant)

This particular ET3 form also attempted to excuse the alleged behaviour of a manager who had been accused of bullying or harassment:

'This incident is totally out of character for [the manager] and he explains this behaviour by reason of the fact that he had just found out his grandfather had died one hour previous to this incident.' (ET3 form, Hotels and Restaurants, Muslim male claimant)

One of the ET3 forms stated that the offensive remarks had been intended as a joke and that, at the time, the claimant had agreed that this was the case:

'[The manager] acknowledged that the remark was an attempt at humour and no offence was intended. The Claimant stated that he was happy with the response by [the manager]. In the circumstances the Respondent considered that was the end of the matter and no further action was taken.' (ET3 form, IT sales, Jewish male claimant)

Box 15: The view of Acas conciliators

Conciliators felt that once an employee has brought an employment tribunal claim, the employer's approach is to deny their claims.

Conciliators also noted a tendency for larger organisations to highlight their policies and procedures as evidence that they did everything they could to tackle discrimination.

The conciliators suggested that, on the rare occasions where employers admit that discrimination occurred, these employers' approach is to say that the discrimination was the fault of individuals working for the organisation rather than the organisation itself:

'...they may admit that an individual has discriminated, but they'll always then put in the defence that 'But we have done everything we could as an employer to make sure that didn't happen' - so we've done the training, we've got an equal opportunities policy and all of that. I think that's the only time that they'll ever actually say 'Yes that happened'.'

Conciliators had found that discrimination cases can be highly subjective, and can often come down to *'one person's word against another'*.

4.5.3 Disciplinary procedures and dismissal

Where claimants had been dismissed, the ET3 forms typically stated that the dismissal had resulted from the claimant's performance being poor or the claimant having committed an act of gross misconduct. This included cases where the ET1

form had said the claimant had been dismissed following the July 2005 bombings, as in one case where the ET3 form asserted that claimant had:

'[used] her mobile telephone during work hours and [used] the First Respondent's telephone for private calls. The Claimant was also warned about her lack of courtesy towards the First Respondent's patients.' (ET3 form, Health and Social Work, Muslim female claimant)

Where a claimant had been dismissed, the ET3 forms generally asserted that the proper dismissal procedures had been followed:

'He was also given a Written Warning... In summary, the Claimant was dismissed for Gross Misconduct after an investigation and Disciplinary Hearing and the matter was reconsidered at an Appeal Hearing.' (ET3 form, Business services, Muslim male claimant)

In some of the cases where the ET1 form had said the claimant had resigned following bullying or harassment, the ET3 response was that managers had not wanted the claimant to resign or *'attempted to persuade the claimant to reconsider his resignation'* (ET3 form, Wholesale and retail, Muslim male claimant), asserting *'there was no threat of dismissal...'* (ET3 form, Hotels and Restaurants, Muslim male claimant)

4.5.4 Claiming cases are malicious or deliberate

Two of the ET3 forms suggested that the claimant's case was malicious or deliberate. One said that the claimant had told his employer, the Head Teacher of a Catholic school, that:

'he knew he had no chance of getting the post as it required Roman Catholic approval but that he was presenting the expression of interest as he wished to make a test case on grounds of discrimination.' (ET3 form, Education, non-Catholic male claimant)

The other ET3 form of this kind said the claim was part of a series of attacks by a group of former employees who had set up a rival business.

4.5.5 Arguing legitimacy of discrimination

The ET3 forms from Catholic schools invariably argued that it was lawful for them to favour candidates for jobs or promotion who were practising members of the Catholic church, with one ET3 form adding that there was an agreement between the school and the local authority that this should be the case:

'the Respondents and the Roman Catholic Church have maintained an agreement... between the Church and the (local authority)... the Roman Catholic Church, in discharge of Section 21 (2A) duty has identified certain [teaching] posts... whereby "approval" will in effect not be granted unless the applicant or incumbent is a practising Roman Catholic. Regulation 39 of the Employment Equality (Religion or Belief) Regulations 2003 states that the

Regulations are "without prejudice" to section 21 of the Education (Scotland) Act 1980. (ET3 form, Education, non-Catholic male claimant)

4.5.6 Employer calls to the Acas Helpline regarding religion or belief

The ET3 forms completed by employers in religion or belief cases suggest how employers are responding to such claims. However, an insight into the wider concerns of employers around religion or belief can be gained from looking at those Acas Helpline calls received from employers that were associated with religion or belief (see Box 16).

Box 16: Employer calls to the Acas Helpline

As with calls from employees (see Boxes 13 and 14 above), calls from employers regarding religion or belief that were recorded in the Acas Helpline survey were dominated by queries relating to working hours, time off or leave. These calls tended to be from employers calling about Muslim employees. The following themes emerged from the calls regarding Muslim employees:

- Muslim employees requesting time off to pray:

'A new employee who is male requested an extension to his lunch break to attend prayer at the mosque on a Friday. The Company also has an employee who prays at work in a room provided for that purpose. The employer wanted to offer the gentlemen the same arrangement, [rather than that requested] as they feel [the latter] would open the flood gates to other request.'

- Whether Muslim employees are entitled to paid leave for Eid.
- Muslim employees requesting a change in hours during Ramadan.
- Muslim employees wanting time off for a pilgrimage to Mecca.

Other calls from employers relating to working hours, time off or leave included:

- Whether Hindu employees are entitled to paid leave for Diwali.
- An employer asking if they are required to allow a Jewish employee to leave at 2pm every Friday afternoon for Sabbath.
- An employer asking for advice about a job applicant who said they were a 7th Day Adventist and could not therefore work on Saturdays.

4.6 Internal grievance procedures

In 2004, the Employment Act 2002 (Dispute Resolution) Regulations 2004 came into force. The Regulations require employers to have minimum procedures for resolving grievances internally.

4.6.1 Claimant perspective

It was not often clear from the ET1 forms, even amongst those detailing claims brought against large employers, as to whether claimants had followed formal grievance procedures prior to bringing a claim.

Where grievance procedures had been followed it seemed from the ET1 forms that claimants were unhappy with the outcome, feeling that employers or managers had either lied to cover up what had occurred or simply ignored the claimant's concerns:

'To date the respondent has still failed to resolve the claimant's grievance despite the claimant having submitted his grievance four months ago.' (ET1 form, Muslim man, manufacturing)

Again in the IES research it was sometimes unclear whether the complaints or grievances raised by the interviewed claimants had been formal or informal. However, it was clear that religion or belief claimants were unhappy with their employers' responses to their concerns:

"Well firstly I wrote a letter to personnel and put down in writing what was happening to me. Because I had actually spoken to them on a few occasions and nothing had happened. They then started having meetings and I think the meetings are generally to frighten you and to think well this will teach you to make a complaint."

(Non-practising Catholic woman, shop worker, settled)

Furthermore, the interviewed claimants who worked in small or medium sized organizations typically said that there would have been little point in them raising a formal grievance about managers who were bullying them or treating them unfairly, because the investigators would be biased towards the perpetrators:

"I did say to them that, to be fair, why am I getting all these jobs when other people are staying around or why aren't you giving it to someone else? Why always me? And then, I didn't really get a response out of them. It's just that, he goes, it's my company and I'll do what I want. Which is what he said quite a few times ... he says either you do it or quit. ... Well every time I raised the point, it was just ignored completely. Quite a few times where I did raise the point where he said something but I raised it with someone else, and they go 'alright, we'll get back to you and we'll have a word with him'. And they never did. So I just thought it's a waste of time actually going through that route."

(Muslim man, engineer, settled)

It is interesting to compare these findings with the views of Acas conciliators, that large organisations are more likely to resolve problems internally because they have the procedures in place to do so (see Box 17). It may be that conciliators are correct, and that more problems are resolved internally by large organizations. Nevertheless, the ET1 form analysis and IES claimant interviews suggest that where problems are not resolved internally, and result in an employment tribunal claim, claimants feel that internal grievance procedures are not working.

Box 17: The view of Acas conciliators

Conciliators felt that most of the claimants in discrimination cases had been through some sort of internal grievance procedures but that these procedures had often made the situation worse:

'9 out of 10 ... maybe 19 out of 20 people have gone through internal procedures and it's not been upheld. . . .it often makes things worse because they feel as though there's then this big cover up and everybody's in it together to make sure that they find nothing...'

It became apparent during the discussions that conciliators feel there are differences regarding internal grievance procedures depending on organisation size. This was felt to be for the following reasons:

- Larger organisations may be more likely to resolve problems at the internal grievance procedure stage:

'they've got procedures... And there's unions involved as well. So they tend to be able to resolve them before it gets to the tribunal stage, and it's only maybe these extreme ones that end up with a tribunal application.'

- Larger employers may be keen to resolve problems at the internal grievance procedure stage rather than have problems revealed at public employment tribunals.
- There may be a lack of proper procedures amongst smaller employers.
- Where procedures are in place claimants from smaller organisations may not feel that the internal grievance procedure will be fair:

'... definitely with the smaller organisations I think that the claimant doesn't really have a lot of time for the internal procedures because they just see that you know the outcome is going to be inevitable and that you know that their complaint won't be heard. Or if it is heard it won't be really acknowledged as much as they'd want it to be.'

4.6.2 Employer perspective

Where a claimant had complained about discrimination or submitted a formal grievance, the ET3 form invariably asserted that the claimant's allegations had been investigated fully but had not been substantiated, as in the case where the ET1 form had said a claimant felt an assessment centre had been 'culturally biased':

'an internal management examination of the process used in the... selection procedure [was conducted] to determine whether the Respondent could be assured that the processes were fair and unbiased.' (ET3 form, Criminal Justice System, Sikh male claimant)

A number of forms stated that claimants had failed to follow the correct grievance procedures in place for dealing with bullying or harassment. As mentioned above (3.3.1), in such cases, the ET3 form usually went on to say that the claimant's case was not valid as a result:

'the Claimant has, in any event, failed to follow the statutory grievance procedure and therefore should not be permitted to pursue her claim.' (ET3 form, Health and Social Work, Muslim female claimant)

Other ET3 forms said that grievance procedures were under way and managers were awaiting an outcome:

'The claimant made a formal complaint of Bullying and Harassment this is currently being investigated under the ... Bullying and Harassment Policy.' (ET3 form, Health and Social Work, Muslim male claimant)

4.7 Outcomes

4.7.1 Case Outcome

Analysis of the Acas ET case database shows that nearly half (46%) of religion or belief cases were settled, while nearly a third (31%) were withdrawn by the claimant. One in six (16%) went to a full ET hearing and a small proportion (8%) had an 'other' type of outcome such as being struck out (Table 15).

These outcome figures suggest that religion or belief cases are almost as likely to be settled as race discrimination cases, of which 51% were found to have been settled in SETA RRA 2005. However, they also suggest that religion or belief are more likely to be withdrawn than both race discrimination cases and other types of discrimination cases, of which only one in five (21%) were found to have been withdrawn in SETA RRA 2005.

Compared with the unfair dismissal (UDL) cases in SETA, our analysis suggests that religion or belief cases may be less likely to be settled and more likely to be withdrawn. Six in ten (62%) unfair dismissal cases were settled and one in six (16%) were withdrawn in SETA 2003.

Table 15: Outcomes of religion or belief cases

	Total
Base: All cases where DRB is main jurisdiction	461
	%
Settled	46
Withdrawn	31
Full ET hearing	16
Other outcome	8

Source: Acas ET cases database

4.7.2 Reasons for case outcomes

The IES research with religion or belief claimants identified the reasons why claimants decided to settle or withdraw their case. Claimants who settled did so for a variety of reasons, citing costs, advice from representatives or the stress of taking the case:

"they were dragging their feet so long... I felt like I couldn't get back to work, I couldn't function, I just wanted to finish you know... the decision was my mental health, I just couldn't take it any more. I just had enough, you know, I was like living and breathing this thing, every single day. It was really making me ill that's all I can tell you, and I thought I can't keep functioning like this. I have to get this out of my life."

Jewish woman, security, settled

The interviewed religion or belief claimants who withdrew their cases tended to cite costs as the reason behind their withdrawal, particularly the threat of costs should they lose their case and the impact this could have on them or their families:

"And so I was left in a position that I either withdrew it or I fight on and if I lost it, it could basically ruin me. Which I've got to say you know, if it was just me myself, I would have continued but I've got a family and kids to think about...if I didn't give it up they were going to go after me for every penny I'd got...I was forced to withdraw, not because I changed what I believed in. But because they had threatened me financially and they were gonna shut me up at all costs basically."

Non-Catholic man, teacher, withdrawn.

Acas conciliators also discussed their experiences of promoting a settlement in discrimination cases, including the factors which may encourage, or act as a barrier to, reaching a settlement (see Box 18).

Box 18: The view of Acas conciliators

Conciliators felt that discrimination cases generally were more difficult to settle than other types of cases. This was for the following reasons:

- Claimants wanting what they see as *'justice'*, saying *'It's not about the money'* and *'I want my day in court'* and wanting *'a decision'*
- Respondents not wishing to admit they have done anything wrong or believing strongly that they have not done anything wrong
- Parties being less willing to *'move on'*, possibly because they are more emotionally involved in discrimination cases than in other types of case
- Claimants having unrealistic expectations about the amount of money they can expect to win
- Some representatives may act as barriers to settlement, either by giving claimants unrealistic expectations about the amount of money than expect to win, or by using the case as part of a *'crusade'* to further the cause of employment equality.

On the other hand conciliators felt there were some aspects of discrimination cases which may encourage a settlement, including:

- The subjective nature of the discrimination that may have taken place
- In some cases, the claimant still being employed by the respondent
- Claimants may be suffering from depression, anxiety or stress due to the discrimination they have faced. This may make them unable to cope with the tribunal process, and thereby more willing agree to a settlement.

Conciliators were asked what non-financial terms claimants and respondents sought in discrimination cases. For claimants, these included both a reference, which conciliators felt respondents were usually willing to give, and a letter of apology, which, in conciliators' experience, respondents were less willing to give, as a letter of apology may amount to admitting they did something wrong.

Conciliators suggested that respondents are always keen that settlements include Confidentiality clauses in order to prevent any further damage to their business or reputation.

4.7.3 Settlement compensation figure

While Acas ET case records do not include data on the sums of money awarded in employment tribunal hearings, they do contain data on settlement compensation: that is, the sums of money that employers give to claimants in cases which result in a settlement between the parties.

Around nine in ten (91%) settled religion or belief cases in the Acas ET database involved the employer paying a sum of money to the claimant.

Out of the settled religion or belief cases where a sum of money was paid, the lowest sum was £50 and the highest was £100,000. The median sum was £3,000. This is

the same as the median sum of £3,000 for both race cases and other types of discrimination case, and compares with a median sum of £1,700 for unfair dismissal cases and a median sum of £500 for short period conciliation cases (SETA RRA 2005).

Table 16 shows the breakdown of the compensation figures for settled religion or belief cases where a compensation figure was recorded on the Acas ET database. Four in ten (38%) such cases had a compensation figure of between £1 and £2,499, with a quarter (26%) having a compensation figure of between £2,500 and £4,999 and one in seven (15%) being between £5,000 and £7,499. One in twenty (5%) had a compensation figure of between £7,500 and £9,999. Large compensation figures of £10,000 or more were recorded on one in seven (16%) such cases.

These figures are similar to the compensation figures for race (RRD) cases found in SETA RRA 2005 and those for other discrimination cases found in SETA 2003. For example, around four in ten race cases and other discrimination cases where a financial offer was made involved a compensation figure of between £1 and £2,499.

These findings suggest that the compensation figures for settled religion or belief cases are broadly similar to those for other types of discrimination case.

Table 16: Settlement figures for settled religion or belief cases

	Total
Base: All cases where DRB is main jurisdiction and financial settlement was made	192
	%
£1 to £2,499	38
£2,500 to £4,999	26
£5,000 to £7,499	15
£7,500 to £9,999	5
£10,000 plus	16

Source: Acas ET cases database

The IES research explored the thoughts of religion or belief claimants who had settled about their decision to settle. The research found that satisfaction with the settlement varied, depending on the degree to which claimants felt in control of the final settlement. However, even those who settled for a large sum of money still expressed regret at not having taken their case to an employment tribunal hearing.

5 ADVICE AND REPRESENTATION

In all cases where parties (claimants or respondents) have a representative such as a solicitor, it is Acas policy that conciliators should deal with the representative, rather than the party directly.

The advice and representation received by sexual orientation and religion or belief claimants was explored in two parts of the research: firstly, in depth interviews with claimants who had brought a case under the sexual orientation or religion or belief jurisdictions; secondly, during the focus groups with Acas conciliators.

This section of the report covers findings related to both sexual orientation and religion or belief. This is for two reasons:

- It became clear during the discussions that conciliators had not dealt with a sufficient number of sexual orientation cases or religion or belief cases to be able to comment specifically on claimant representation in these types of cases. Therefore, their views and experiences should be seen as relating to discrimination cases as a whole.
- The IES research suggested that the same themes emerged amongst the sexual orientation claimants as amongst the religion or belief claimants.

5.1 Claimant's Advice and Representation

5.1.1 Law centres and Citizens Advice Bureaux

Conciliators felt that law centres and Citizens Advice Bureaux (CAB) offer effective advice and representation, but the quality of this advice or representation is dependent on the degree to which they specialise in employment law, with those who *'dabble you know in everything not having the knowledge or the expertise'* necessary to provide good quality advice or representation.

The IES research with claimants suggested that satisfaction with CAB varied. Some were satisfied, with one claimant describing the information they received from the CAB as *'extremely useful'*; others felt the information they were given was *'not that relevant'* and cited difficulties in making contact with the CAB, with one saying *'Citizen's Advice is the worst thing that ever was'*.

5.1.2 Equality bodies and interest groups

When reviewing these findings it is important to bear in mind that there is currently no national body responsible for the sexual orientation or religion or belief equality strands, as is the case with the Commission for Racial Equality (CRE) for race discrimination, the Equal Opportunities Commission (EOC) for sex discrimination and the Disability Rights Commission (DRC) for disability discrimination. However, the Commission for Equality and Human Rights will be responsible for both sexual orientation discrimination and religion or belief discrimination.

The findings from the Acas conciliator focus groups and the related IES claimant depth interview findings were as follows:

- Equality bodies such as local equality organisations or national equality bodies tend to only represent cases which they think are going to change the law. They may act as a barrier to settlement as their aim is to help the claimant win at an employment tribunal hearing and through this encourage wider changes in employment practices.
- The sexual orientation claimants interviewed by IES tended not to contact organisations such as Stonewall, with one such claimant saying:
“Sexuality’s a small part of my life so I don’t immediately think gay, Stonewall. I don’t do gay bars very often. I have lots of heterosexual friends and I don’t think that way.”
(Gay man, retail manager, settled)
- Some of the religion or belief claimants interviewed by IES whose cases included claims of race discrimination contacted the CRE. Satisfaction with the help they received from the CRE varied. Satisfaction appeared to be related to whether the claimant was already represented or not, with unrepresented claimants being disappointed with the level of support offered by the CRE.

5.1.3 Family members

Conciliators’ experience was that although family members may act as representatives, they may be biased or *‘blinkered’* due to being too emotionally involved in the case.

The claimants interviewed in the IES research did not use family members as representatives but some used knowledgeable family members as a source of advice. One sexual orientation claimant was not ‘out’ to his family and felt unable to go to them for support, particularly as one parent was ill.

5.1.4 Perceived geographical variation in the availability of advice and representation for Claimants

Conciliators generally agreed that London and the other big cities such as Birmingham and Manchester offered a wide range of legal advice and representation.

However, outside London and the other big conurbations, conciliators felt there was greater variation in the availability of either law centres or Citizens Advice Bureau services, with claimants facing a *‘postcode lottery’* as to whether they had access to free legal advice.

One conciliator mentioned the following case where a discrimination claimant lived in a rural area that had very limited free legal advice and could not find any help at all:

‘He couldn’t get anybody to help him. There was no ... there was a CAB in [area] but nobody did employment law. He was really struggling to find somewhere ... his wife was on the phone crying to me saying ‘We can’t get any help, we don’t know what we’re doing, we can’t get any help...’

It was also suggested that the availability of free legal advice or representation, and therefore the area or region in which the claimant lives, could impact upon the likelihood of employees bringing a claim.

These findings may have fewer implications for sexual orientation discrimination cases or religion or belief cases given that some minority populations tend to be concentrated in urban or metropolitan areas. However, the suggestion is that those sexual orientation claimants and religion or belief claimants who do live outside of these areas may be less likely to get good quality advice or representation when bringing a claim of discrimination against their employer.

5.2 Respondent's Advice and Representation

When conciliators were asked about the advice and representation received by respondents, they agreed that respondents were usually represented by solicitors. However, conciliators did suggest that respondent representation varied by size of organisation. Generally, conciliators felt that the larger an employer or respondent, the more likely they are to be represented.

Conciliators' experience was that small employers were *'often'* unrepresented in discrimination cases. They felt that the smallest employers are sometimes unrepresented because they do not feel that have the money available to afford a representative.

Conciliators suggested that the largest employers also have access to the best representation:

'You have a big company like [name], their employment law department's probably bigger than the amount of small solicitors there are in one borough.'

Conciliators felt that the advisors and representatives available to larger employers were *'very professional'* and *'very knowledgeable in case law'*. This was a result both of larger employers having greater financial resources: *'...because they've got more money to get better representation'* and because such employers *'have more claims brought against them'* so they have a greater need to invest in high quality representation.

6 DISCUSSION AND RECOMMENDATIONS FOR FURTHER RESEARCH

6.1 Sexual Orientation

This is the first research to explore the cases that have been brought under the Employment Equality (Sexual Orientation) Regulations. This section attempts to summarise key findings and identify recommendations for further research.

The findings produce an overall picture of the characteristics of the sexual orientation discrimination cases brought in the first three years since the introduction of the regulations, the characteristics of the claimants and employers involved, what may be occurring in the workplace to cause claimants to bring their case, and how employers are responding to the claimants' allegations.

6.1.1 Number of cases

The findings show that 470 sexual orientation cases were brought between January 2004 and August 2006, and suggest that the 'typical' sexual orientation case is brought by a lesbian or gay employee who claims to have been bullied or harassed at work, either by colleagues alone or by colleagues and managers. These findings are supported by earlier research which found that bullying or harassment in the workplace was far more of a problem for lesbian, gay or bisexual employees than discrimination by employers (Palmer, 1993).

The 2001 UK Census did not include a question on sexual orientation. However, government estimates suggest that approximately 3.6 million lesbian women and gay men live in the UK, making up around 6% of the total population (DTI, 2005). The population in employment in the UK was 28.8 million in 2005 (Labour Market Review, 2006), of which 6% equates to just over 1.7 million, assuming that the proportions of lesbian women and gay men employed is similar to that for the wider population.

The qualitative analysis of 42 ET1 forms submitted by sexual orientation claimants suggested that most, but not all of the 470 cases brought under the Employment Equality (Sexual Orientation) Regulations 2003 were brought by employees who identified as lesbian women or gay men, and that most, but not all, of these cases involved claims of bullying or harassment.

Previous research has found that the proportion of lesbian, gay or bisexual employees who have experienced bullying or harassment at work may vary from nearly a quarter (23%) in organizations classed as 'good practice' employers (Colgan *at al.*, 2006) to nearly half (48%: Palmer, 1993).

This suggests that the cases brought so far under the sexual orientation regulations represent a tiny proportion of the population of lesbian or gay employees who may be experiencing bullying or harassment at work. From the existing evidence, it is not possible to identify the extent to which the situations which result in an employment tribunal case represent, or differ from, the situations which do not result in an employment tribunal claim.

Other research has suggested that of all employees that report having experienced problems in the workplace, only 3% reported that they had brought an employment tribunal case against their employer as a result (Casebourne *et al.*, 2006). However, given the lack of a single jurisdiction under which all employees may bring an employment tribunal claim of bullying or harassment against their employer, and the consequent fact that some groups have no legal redress against this treatment, it is not possible to directly compare the findings for sexual orientation cases with the experiences of the wider population.

6.1.2 Claimant gender

The research found that two-thirds of sexual orientation claimants were men. This is similar to the gender break-down of claimants in cases brought under a number of other jurisdictions, including: religion or belief discrimination; race discrimination; unfair dismissal; breach of contract and wages act (Hayward *et al.*, 2004). Indeed, six in ten (61%) of all employment tribunal claims were brought by men (Hayward *et al.*, 2006), and as Fox (2005) notes, the overall proportion of claimants who are female has remained constant over time. So far, there has been limited research exploring the reasons why women are less likely to bring an employment tribunal claim than men (Fox, 2005).

In contrast to the above, Fox (2005) found that nine out of ten (90%) of sex discrimination cases were brought by female claimants. Nearly a quarter (23%) of the 470 sexual orientation cases had sex discrimination as a secondary jurisdiction. Of this group, six in ten (60%) were from women, so that female representation was higher in this group of cases than in claims in which there was no reference to sex discrimination.

6.1.3 Where claimants live

The research found that sexual orientation claimants in Great Britain were most concentrated in London, the North West, and the South West, and were least likely to live in the North East, Scotland, or Wales.

Given that the research suggests that most sexual orientation claimants are lesbian women or gay men, it would be interesting to compare the regional distribution of sexual orientation claimants with the regional distribution of lesbian women and gay men. However, it is not possible given that the Census 2001 did not include a question on sexual orientation.

6.1.4 Employer industry

The research suggests that seven in ten (70%) sexual orientation cases came from the private sector, with one in five (21%) coming from the public sector. This pattern is similar to that of unfair dismissal claimants, and fits the profile of the 'typical' employment tribunal claimant working in the private sector (Hayward *et al.*, 2004). However, it differs from the pattern of race discrimination claims, of which half (50%) come from the private sector (Peters *et al.*, 2006); the available evidence

does not identify why race discrimination cases have been more concentrated in the public sector.

Within the private sector, the research found that sexual orientation cases were most commonly brought against organizations in the wholesale and retail industry and the hotels and restaurants industry.

In the public sector, the analysis presented in this report showed that sexual orientation cases were most commonly brought against organizations in the criminal justice system (including the police and prisons) and local authorities.

The Labour Force Survey does not currently contain a question on employees' sexual orientation. Without such evidence regarding the numbers of gay men or lesbian women employed within each of the standard industry categories, it is difficult to say whether these findings reflect greater numbers of gay men or lesbians within these industries, or reflect a greater level of discrimination. Furthermore, there is evidence that around a quarter (24%) of lesbian, gay or bisexual employees avoid certain jobs, employers or industries because of concerns over discrimination (Palmer, 1993), which may further complicate the picture.

6.1.5 Bullying or harassment

The research found that claims of bullying or harassment in the workplace were the main focus of sexual orientation claims, with allegations of verbal abuse, particularly name-calling, and some additional instances of physical assaults, sexual harassment or unfair treatment by managers.

The variety in the nature of the alleged bullying or harassment is supported by previous research exploring the bullying or harassment experienced by lesbian, gay or bisexual employees (Palmer, 1993). However, there has been a lack of quantitative research measuring the extent of the bullying or harassment experienced by lesbian, gay or bisexual employees in the workplace. The DTI's Fair Treatment at Work survey (Grainger and Fitzner, 2007) measured the level of overall discrimination as reported by lesbian, gay or bisexual employees. However, due to the small numbers of lesbian, gay or bisexual employees interviewed, it was not possible to gain quantitative measures of the bullying or harassment they reported.

6.1.6 Depression, Anxiety and Suicide

It is important to note that many of the sexual orientation ET1 forms did not indicate how the alleged discrimination had impacted upon the claimant's well-being, financial position, employability or other aspects of their life.

However, the qualitative findings suggest that mental health problems, including depression or anxiety, may be a consequence of having experienced bullying or harassment in the workplace for some sexual orientation claimants.

The DTI 2003 SETA survey (Hayward et al, 2004) found that over four in ten (43%) claimants in discrimination cases said they had experienced stress, depression or been emotionally drained by the experience of taking an employment tribunal case. Further qualitative research (Aston et al, 2006) found that some race discrimination claimants had developed mental health problems, including depression or anxiety.

What is unclear, from both the SETA findings and the subsequent qualitative research, is how many of these claimants were already experiencing such problems because of the discrimination before bringing their employment tribunal case. Indeed Aston et al. (2006) note that claimants themselves:

'...were not always able to differentiate between the impact of having taken the case and the impact of the events at work which led up to the case being taken in the first place'.

The analysis of ET1 forms submitted by sexual orientation claimants suggests that it was the bullying or harassment in the workplace, rather than taking the claim, that caused the mental health problems that the claimant was experiencing. Nevertheless, as Aston et al. (2006) note, the process of taking an employment tribunal claim has the potential to exacerbate any existing effects of the alleged acts of discrimination.

The SETA research (Hayward et al, 2004) was conducted prior to the introduction of the sexual orientation regulations, and as yet no equivalent survey with sexual orientation claimants or employers has been conducted.

Our qualitative research also suggested that some of the sexual orientation claimants had felt suicidal. The national campaign group Mind has published a factsheet (Hatloy, 2004) summarizing a variety of research suggesting that mental health problems, including depression, lead to an increased risk of suicide, and that lesbian women and gay men may be at an increased risk of committing suicide. However, no available quantitative research has focused on the relationship between discrimination at work and suicide or the experiences of lesbian, gay or bisexual employees at work which may cause them to develop suicidal feelings.

6.1.7 Internal grievance procedures

Both the IES interviews with sexual orientation claimants and the analysis of ET1 forms submitted by sexual orientation claimants suggested that many claimants felt that they had not received a fair hearing at internal grievance procedures.

Previous research by IES found that race discrimination claimants also tended to feel that they had not received a fair hearing at internal grievance procedures (Aston et al., 2006). Gibbons (2007) also notes many related problems with formal grievance procedures. This suggests that the problems with internal grievance procedures alleged by sexual orientation claimants may not be unique to sexual orientation claimants, but part of wider pattern of difficulties stemming from the nature of internal grievance procedures.

In some of the cases it was unclear from the claimants ET1 form as to whether formal grievance procedures had been followed. Indeed in a number of the ET3 forms, employers argued that the claimant had failed to follow appropriate internal grievance procedures and that therefore the claimant's employment tribunal case should be struck out. No evidence is available on the proportion of cases rejected by the Employment Tribunal Service upon receipt of the ET1 (the 'pre-acceptance stage') where there is no evidence of parties following procedures, or of how many of these are subsequently accepted on later resubmission.

However, only 7% of sexual orientation cases were recorded as having an 'other' outcome, which includes cases struck out by an employment tribunal, on the Acas ET database.

In cases where the employer is waiting for a Pre- Hearing Review to decide whether the case should be struck out or not, there is little genuine prospect of Acas conciliation making any progress until that issue has been decided.

6.1.8 Case outcomes

A comparison of the findings with figures in the Acas 2005/06 annual report and the findings for religion or belief cases, suggests that the overall outcomes for sexual orientation cases are similar to the outcomes for all other discrimination jurisdictions with the exception of sex discrimination cases, which are less likely to be settled and more likely to be withdrawn. Furthermore, the median compensation figure for settled sexual orientation cases is similar to that for other types of discrimination case (Peters *et al.*, 2006).

Our research has not measured the outcomes of the sexual orientation cases that have gone to a full employment tribunal hearing. While further research should explore the outcome of such cases, the research reported here has focused on the overall nature of sexual orientation discrimination claims, and it is important to note that those that go to a full employment tribunal hearing represent only a minority (15%) of claims, with by far the largest proportion (52%) resulting in a settlement between the parties.

6.1.9 Suggestions for further research

This section has highlighted several areas for further research. Certainly the largest gaps relate to the lack of wider statistical information regarding the lesbian, gay or bisexual population and workforce in the UK, as could be derived, respectively, from the UK Census and the Labour Force Survey.

ONS has undertaken a consultation on the inclusion of a sexual orientation question in the 2011 Census and have decided against it. ONS summarised the issues in trying to measure sexual orientation as follows:

- No other country includes a question on sexual orientation in their Census.
- There are concerns over the 'acceptability' of a question on sexual orientation, noting focus group work in Canada suggesting that '*most participants did not approve of including a sexual orientation question on the Census*'; the reasons given being: concerns over privacy; proxy reporting for other household members; the mandatory nature of the Census and the sensitivity of the topic. ONS argues that such difficulties may adversely affect the UK Census' response rate.
- The conceptual issues around the multi-faceted nature of sexuality means that it may be too difficult to devise a reliable question. For example, the difficulty of determining what is being measured, i.e. behaviour, desire or identity.

- The potential difficulty of collecting the information in a way that respondents understand and accept: recent surveys found that some people have difficulty in understanding all the categories of sexual orientation. For example, a Metropolitan Police survey asked a question on self-perceived sexual orientation and revealed that the main query was 'what's heterosexuality?'

These issues relate to both political and scientific questions over the nature of sexual orientation and its role in public life. Many of the concerns are the same as those raised in the past for 'race' and 'ethnicity' and indeed there were problems in the 2001 Census with the ethnicity question, where people identified with a culture even when their link with that culture was fairly tenuous.

However, the fact remains that until evidence regarding sexual orientation is collected in the UK Census and other large surveys such as the Labour Force Survey, it will be extremely difficult to view any research regarding the lesbian, gay, or bisexual populations with a high level of confidence that the findings reflect the whole population that they have sought to cover.

Nevertheless, additional further employment research could include the following:

- A booster survey of sexual orientation discrimination claimants, similar to SETA RRA (Peters *et al.*, 2006). Such a survey would serve to quantify many of the qualitative findings regarding the background to sexual orientation cases, the characteristics of sexual orientation claimants and employers and the impacts of the discrimination experienced.
- An addition of a boost of lesbian, gay or bisexual employees to the next Fair Treatment at Work Survey. Booster surveys were conducted in the 2005 survey (Grainger and Fitzner, 2007) with minority ethnic employees and employees from certain age groups. Such a booster would serve to provide further, quantitative evidence of the nature of unfair treatment, discrimination and bullying or harassment experienced by lesbian, gay or bisexual employees in the UK.
- Qualitative research with employers. The research outlined in this report has explored the employer perspective on sexual orientation cases to a limited extent. However, further qualitative research with employers could explore:
 - a) The general attitudes of specific groups of employers, such as those from small to medium private sector organizations, or those from large public sector organizations, towards issues around sexual orientation discrimination in the workplace and the experiences of employers.
 - b) The experiences and views of employers who have faced a claim of sexual orientation discrimination by one of their employees.
- Quantitative surveys of employers. For example, a booster survey of the DTI Employment Rights at Work survey with lesbian, gay or bisexual employees. Such a survey would measure the awareness of lesbian, gay or bisexual employees of their rights at work and their awareness of the sexual orientation regulations. Existing quantitative research has measured employers' awareness of the sexual orientation regulations in the Yorkshire and Humber region (Monro and Nunn, 2006). However, no such available research has been done with employers in the UK as a whole.

- An addition of a question on sexual orientation in the employee part of the next Workplace Employment Relations Survey (WERS). WERS is regarded as one of the most authoritative sources of information on employment relations in Great Britain. Furthermore, its large sample size, including 22,451 employee interviews in 2004 (Kersley *et al.*, 2006) means that it is well placed to interview a large-enough sample of lesbian, gay or bisexual employees to allow for some sub-group analysis on sexual orientation.

6.1.10 Conclusions

The findings from this research have shed light on employees who have brought a case of discrimination on grounds of sexual orientation against their employer, and the issues surrounding their cases.

Further research, especially quantitative research, will be needed to deepen our understanding of the issues raised in this report.

However, many strong themes have emerged from this research. In particular, the sexual orientation claims were dominated by allegations of bullying and harassment, including verbal abuse, physical assaults or unfair treatment by managers. Furthermore, in a number of cases claimants asserted that the bullying had profound negative impacts on their health and well-being.

While we have been able to explore the employer perspective to a limited extent, further research is needed. The employer perspective will be important in gaining an understanding of how things may go wrong and what may be done to stop problems from occurring in the workplace.

6.2 Religion or Belief

The findings produce an overall picture of the characteristics of religion or belief cases, the characteristics of the claimants and employers involved, and what may be occurring in the workplace to cause claimants to bring their case.

This is the first research to explore the cases that have been brought under the Employment Equality (Religion or Belief) Regulations. This section summarises the key findings and produces recommendations for further research.

6.2.1 Number of cases

The findings show that 461 religion or belief cases were brought between January 2004 and August 2006. The qualitative analysis of 34 ET1 forms suggests that around half of the cases brought are from Muslim claimants, with the rest coming from Christians, Jews, Hindus, Sikhs and claimants describing themselves as 'non-Catholics' bringing a case against a Catholic school.

It is interesting to compare these findings with the populations adhering to the major faiths in the wider workforce. The Labour Force Survey (2003 to 2004) found that 80% of the workforce in England and Wales is Christian. People with no religion

made up the second largest group, around 14% of the workforce. Muslims were the second largest religious group, comprising 3% of the workforce, followed by Hindus (1% of the workforce), Sikhs (0.6% of the workforce), Jews (0.5% of the workforce), Buddhists (0.3% of the workforce) and those with any other religion (0.8%).

The ET1 form analysis was essentially qualitative in nature and there is no guarantee that the 34 forms analysed were representative of the 461 case brought between January 2004 and August 2006. However a comparison of the religion or belief ET1 forms with the findings from the Labour Force Survey suggests that there may be an over-representation of Muslims amongst the employees bringing employment tribunal claims of religion or belief discrimination. If this is the case, such over-representation may relate to the wider patterns of disadvantage experienced by British Muslims, as noted in a 2005 Open Society Institute report (Open Society Institute, 2005) arguing that Muslims, particularly those from a Pakistani or Bangladeshi background, are by far the most disadvantaged faith group in the UK labour market, and that such disadvantage in gaining employment may amount to a 'Muslim penalty' in the labour market.

Further quantitative research with religion or belief claimants, similar to the 2005 SETA RRA survey (Peters *et al.*, 2006) will be required to substantiate the indicative findings of this research and determine the religious identity of employees bringing a claim under the religion or belief jurisdiction.

6.2.2 Religion or belief discrimination and race discrimination

The finding that two-thirds (66%) of religion or belief discrimination cases had race discrimination as a secondary jurisdiction gives a strong indication of an overlap between the two jurisdictions. Furthermore, both the qualitative analysis of religion or belief claimants ET1 forms and the IES interviews with religion or belief claimants found that the issues of racism and religious discrimination were closely entwined for a number of claimants, particularly Muslim claimants of Asian origin.

These findings may be considered in the light of evidence in the 2001 UK Census findings showing that certain religious groups are dominated by particular ethnic groups: for example, 97% of Jews were White, 91% of Sikhs were Indian, 84% of Hindus were Indian and 60% of Muslims were Pakistani or Bangladeshi.

Unfortunately, given the lack of information on claimant's race in the Acas ET database, it is not possible to compare the ethnic origin of the religion or belief claimants whose cases contained a claim of race discrimination against the ethnic origin of the claimants whose cases did not contain a claim of race discrimination. Further quantitative research will again be required to identify the ethnic breakdown of religion or belief employment tribunal claimants.

6.2.3 Claimant gender

As with sexual orientation claimants, the research found that two-thirds of religion or belief claimants were men. This is similar to the gender break-down of claimants in cases brought under a number of other jurisdictions, including: race discrimination; unfair dismissal; breach of contract; and wages act (Hayward *et al.*, 2004). Indeed, six in ten (61%) of all employment tribunal claims were brought by men (Hayward *et*

al., 2004), and as Fox (2005) notes, the overall level of female claimants has remained constant over time. So far, no research has explored the reasons why women are less likely to bring an employment tribunal claim than men (Fox, 2005). However, it should be noted that the difference in the economic inactivity rates of women and men varies between different religious groups. In particular, Muslim women of working age were over twice more likely to be economically inactive in 2004 than Muslim men (69% compared with 31% respectively). In contrast, amongst Christians, who account for the majority (72%) of the population of Great Britain, there was a smaller difference in the economic inactivity rates of women and men of working age, being 25% and 16% respectively. Given that around half of the religion or belief employment tribunal claims may have come from Muslims, lower relative economic activity rates may have had an impact on the overall number of religion or belief claims brought by women

6.2.4 Where claimants live

The research found that a third of religion or belief claimants lived in London, compared with only one in seven sexual orientation claimants. Unfortunately, these findings cannot be compared with data for other jurisdictions as the SETA surveys (Hayward *et al.*, 2004; Peters *et al.*, 2006) do not report where claimants live.

Nevertheless, Census data allows us to compare the geographical distribution of religion or belief claimants with the wider population. The concentration of religion or belief claimants in London, may well be linked to the general geographical distribution of particular religious groups. The findings in this report suggest that around half of religion or belief claims have been brought by Muslim employees, and that many of the remaining claims have come from religious minorities including Hindus, Jews and Sikhs. The 2001 Census found that nearly four in ten (38%) of Muslims in Great Britain live in London; furthermore, over half of Jews (56%) and Hindus (52%) live in London, and nearly a third (31%) of Sikhs live in London. Given the concentration of religious minorities in London, this may explain why a third of the religion or belief claimants lived in London.

6.2.5 Employer industry

The research suggests that seven in ten (69%) religion or belief cases came from the private sector, with nearly a quarter (23%) coming from the public sector. This pattern is similar to that of unfair dismissal claimants, and fits the profile of the 'typical' employment tribunal claimant working in the private sector (Hayward *et al.*, 2004). However, it differs from the pattern of race discrimination claims, of which half (50%) come from the private sector (Peters *et al.*, 2006). Existing evidence does not identify why race discrimination cases have been more concentrated in the public sector.

Within the private sector, the research found that religion or belief cases were most commonly brought against organizations in the real estate, renting and business activities industry and the wholesale and retail industry.

In the public sector, the research showed that religion or belief cases were most commonly brought against local authorities and education organizations.

While there is evidence that certain religious groups are concentrated within certain industries, with 37% of Muslim men in employment working in the distribution, hotel and restaurant industry, and Muslim, Hindu and Sikh women being concentrated in sales and customer service jobs (Annual Population Survey, 2004), it is difficult to say at this point why religion or belief cases have been concentrated in certain industries.

6.2.6 Bullying or harassment

The research found numerous instances of bullying or harassment in the ET1 forms and the IES interviews with religion or belief claimants. As with the bullying or harassment reported by sexual orientation claimants, verbal abuse appeared to be the most common form of bullying or harassment, with instances of physical assaults, sexual harassment and unfair treatment by managers sometimes being alleged alongside the verbal abuse.

There is limited available evidence on the levels of bullying or harassment experienced by religious minority groups in the workplace in the UK. The DTI's Fair Treatment at Work Survey (Grainger and Fitzner, 2007) found that 8.5% of Muslim employees said they had experienced unfair treatment at work, compared with 7.3% of Christian employees. Furthermore, the survey found that 5.7% of Muslims had experienced what they understood to be discrimination at work. However, the survey did not report any such statistics relating to the bullying or harassment experienced by religious minorities.

6.2.7 Impacts on health and well-being

As in the sexual orientation cases, some of the religion or belief cases that involved allegations of bullying or harassment also tended to cite the impacts of the bullying or harassment on the claimant; such impacts tended to involve mental health problems including depression.

As noted previously, the DTI 2003 SETA survey (Hayward *et al.*, 2004) found that over four in ten (43%) claimants in discrimination cases said they had experienced stress, depression or been emotionally drained by the experience of taking an employment tribunal case. Further qualitative research (Aston *et al.*, 2006) found that some race discrimination claimants had developed mental health problems, including depression or anxiety.

What is unclear, from both the SETA findings and the subsequent qualitative research, is how many of these claimants were already experiencing such problems because of the discrimination before bringing their employment tribunal case. Indeed Aston *et al.* (2006) note that claimants themselves:

'...were not always able to differentiate between the impact of having taken the case and the impact of the events at work which led up to the case being taken in the first place'.

The analysis of ET1 forms submitted by religion or belief claimants suggests that it was the bullying or harassment in the workplace, rather than taking the claim, that caused the mental health problems that the claimant was experiencing.

Nevertheless, as Aston *et al.* (2006) note, the process of taking an employment tribunal claim has the potential to exacerbate any existing effects of the alleged acts of discrimination.

The SETA research (Hayward *et al.*, 2004) was conducted prior to the introduction of the religion or belief regulations, and as yet no subsequent booster survey with religion or belief claimants or employers has been conducted.

6.2.8 Working hours, time off or leave

Queries relating to working hours, time off or leave to follow religious practices dominated calls regarding religion or belief to the Acas Helpline from both employers and employees. As previously noted, these calls were regarding a range of issues including Sunday working for Christians, leaving early on a Friday for Jews, and obtaining leave for Eid for Muslims and leave for Diwali for Hindus. The last two of these issues may well have appeared due to the timing of the survey fieldwork in October and November 2006, given that in 2006, both Eid and Diwali were celebrated in late October. However, the queries relating to Sunday working and leaving early on a Friday are arguably issues that could be raised at any time of the year.

As the law stands, employers do not have to provide paid leave for religious holidays, although employees are entitled to ask their employer for time off from their annual leave to celebrate religious festivals, and employers should respond sympathetically to such requests where it is reasonable and practical for the employee to be away from work (Religion or Belief and the Workplace, 2005).

There has been little research into the difficulties that these issues pose for both employees and employers. For example, WERS 2004 explored issues around working hours, particularly in relation to women and part-time workers, but not in relation to religion or belief.

However, a 2001 Home Office survey (Weller *et al.*, 2001) found that Muslim employees and Hindu employees were most likely to require time off to attend religious festivals (80% and 67% respectively); in contrast, only a small minority (3%) of Christian employees said they required such time off, presumably because in the UK, official or bank holidays tend to be linked to Christian festivals. Interestingly, the research found that over three-quarters (77%) of employees belonging to a faith community were allowed by their employers to take time off to participate in religious festivals, with Christian and Sikh employees being the most likely to have been denied such time off (28% and 21% respectively).

While the Helpline survey findings are indicative, they do suggest that concerns around working hours, time off or leave to follow religious practices are central to both employee and employer concerns regarding religion or belief in the workplace. Further large sample, quantitative research should be conducted to substantiate this finding.

6.2.9 Dress codes

Unlike queries regarding working hours, time off or leave, very few calls were received relating to issues around workplace dress codes in the Acas Helpline survey. As previously noted, this was perhaps surprising given the level of attention that issues around workplace dress codes, including the veil or niqab, and the displaying of a cross at work, were receiving in the UK media during the Acas Helpline fieldwork period (October to November 2006).

There has been little other available research exploring the issues around of dress codes in the workplace. While this research suggests that the issue of workplace dress codes is a relatively minor issue for both employees and employers, in comparison with working hours, time off or leave, this finding will need to be substantiated by further large sample, quantitative research.

6.2.10 Recruitment and promotion

The research suggests that the religion or belief cases relating to alleged discrimination in promotion or recruitment tended to be brought by 'non-Catholics' working, or applying to work for, a Catholic school.

As previously discussed, the responses to such claims, in the employers' ET3 forms, usually claimed that it was legitimate for them to require that applicants were members of the Roman Catholic Church. Indeed, the law does state that it is justifiable for an organization to differentiate between candidates in this way when the organization has a religious ethos and can clearly show that being of a particular faith is a genuine occupational requirement ('GOR') for the post (Religion or Belief in the Workplace, 2005). However, as laid out in Acas guidance, there are a number of criteria and procedures in such cases which organizations should meet or observe, and ultimately only an employment tribunal or a higher court can rule as to whether or not a GOR is valid. Further research should explore the outcome of such cases which proceed to an employment tribunal.

6.2.11 Internal grievance procedures

Both the IES interviews with religion or belief claimants and the analysis of ET1 forms submitted by religion or belief claimants suggested that, where formal internal grievance procedures had been followed, claimants tended to feel that they had not received a fair hearing at internal grievance procedures.

Previous research by IES found that race discrimination claimants also tended to feel that they had not received a fair hearing at internal grievance procedures (Aston *et al.*, 2006). Gibbons (2007) also notes many related problems with formal grievance procedures. This suggests that the problems with internal grievance procedures alleged by religion or belief claimants may not be unique to religion or belief claimants, but part of a wider pattern of difficulties stemming from the nature of internal grievance procedures.

As in some of the sexual orientation cases, in some of the religion or belief cases it was unclear from the claimants ET1 form as to whether formal grievance procedures had been followed. Indeed in a number of the ET3 forms, employers argued that the

claimant had failed to follow appropriate internal grievance procedures and that therefore the claimant's employment tribunal case should be struck out. No evidence is available on the proportion of cases rejected by the Employment Tribunal Service upon receipt of the ET1 (the 'pre-acceptance stage') where there is no evidence of parties following procedures, or of how many of these are subsequently accepted on later resubmission.

However, only 8% of religion or belief cases were recorded as having an 'other' outcome, which includes cases struck out by an employment tribunal, on the Acas ET database.

In cases where the employer is waiting for a Pre- Hearing Review to decide whether the case should be struck out or not, there is little genuine prospect of Acas conciliation making any progress until that issue has been decided.

6.2.12 Case outcomes

A comparison of the findings with the Acas 2005/06 annual report and the findings for sexual orientation cases, suggests that the overall outcome for religion or belief cases are similar to the outcomes for all other discrimination jurisdictions with the exception of sex discrimination cases, which are less likely to be settled and more likely to be withdrawn. Furthermore, the median compensation figure for settled religion or belief cases is similar to that for other types of discrimination case (Peters *et al.*, 2006).

Our research has not measured the outcomes of the religion or belief cases that have gone to a full employment tribunal hearing. While further research should explore the outcome of religion or belief cases which proceed to a full employment tribunal hearing, this research has focused on the overall nature of religion or belief discrimination claims, and it is important to note that those that go to a full employment tribunal hearing represent only a minority (15%) of claims, with by far the largest proportion (52%) resulting in a settlement between the parties.

6.2.13 Suggestions for further research

As with sexual orientation, this section has highlighted a number of areas for further research. Unlike sexual orientation, the UK Census and other large surveys including the Labour Force Survey already include a question on religion and belief. This means that it will be possible to compare future quantitative research with religion or belief employment tribunal claimants with statistics regarding religious groups within the wider population and the workforce.

Additional research into religion or belief in the workplace could include the following:

- A booster survey of religion or belief discrimination claimants, similar to SETA RRA (Peters M *et al.*, 2006). Such a survey would serve to quantify the qualitative findings from this research regarding the background to religion or belief cases, the characteristics of religion or belief claimants and employers and the impacts of the discrimination experienced.

- An addition of a boost of employees belonging to particular religious groups in the next Fair Treatment at Work Survey. While the full report of the 2005 survey is not yet available, booster surveys were conducted in the 2005 survey with minority ethnic employees (Grainger and Fitzner, 2007). The 2005 booster with minority ethnic employees appears to have enabled some analysis by religion or belief, particularly for Muslim employees. However, presumably religious groups identifying as White, such as Jewish employees, will not have been included in the minority ethnic booster; given the small proportions of some religious groups within the wider population, they will therefore not have been included in the main survey in large enough numbers to enable them to be examined as a separate group. Consequently, a booster of minority religious groups in the next Fair Treatment at Work Survey would serve to provide additional, quantitative evidence of the nature of unfair treatment, discrimination and bullying or harassment experienced by employees belonging to religious minorities in the UK.
- Qualitative research with employers. The research outlined in this report has explored the employer perspective on religion or belief cases to a limited extent. However, further qualitative research with employers could explore:
 - c) The general attitudes of specific groups of employers, such as those from small to medium private sector organizations, or those from large public sector organizations, towards issues around religion or belief discrimination in the workplace and the experiences of employers.
 - d) The experiences and views of employers who have faced a claim of religion or belief discrimination by one of their employees.
- Quantitative surveys of employers. For example, a booster survey of the DTI Employment Rights at Work survey with religious minority groups. Such a survey would measure the awareness of religious minority employees of their rights at work and their awareness of the religion or belief regulations. Existing quantitative research has measured employers' awareness of the religion or belief regulations in the Yorkshire and Humber region (Nunn, 2006). However, no such available research has been done with employers in the UK as a whole.
- An addition of a question on religion or belief in the employee part of the next Workplace Employment Relations Survey (WERS) run by the DTI and Acas. WERS is regarded as one of the most authoritative sources of information on employment relations in Great Britain. Furthermore, its large sample size, including 22,451 employee interviews in 2004 (Kersley *et al.*, 2006) means that it is well placed to interview a large-enough sample of employees to allow for some sub-group analysis regarding the main religious minorities in the UK.

6.2.14 Conclusions

The findings from this research provide an indication of the events or circumstances which may prompt employees to bring a claim of discrimination on grounds of religion or belief against their employer.

The research suggests that a wide variety of issues and actors may be involved in these cases. Two-thirds of religion or belief cases also include allegations of race discrimination, suggesting a strong overlap between race discrimination and religious discrimination. The issues that may have generated the cases vary: from bullying or harassment, through to disputes over working hours, time off or leave to observe religious practices; workplace dress codes and recruitment or promotion practices. Unlike any of the problems raised in the sexual orientation cases, the difficulties raised in the religion or belief cases regarding working hours, time off or leave and workplace dress codes, represent a conflict between structures: the structure of business needs and practices versus the structure of a religion and its practices.

Further research, especially quantitative research, will be needed to deepen our understanding of the issues addressed in this report and substantiate the indicative, qualitative findings. However, importantly, this research suggests that the main area of conflict over religion or belief in the workplace relates to working hours, time off or leave, and not workplace dress codes, as the UK media would have us believe.

While we have been able to explore the employer perspective to a limited extent, further research is needed. The employer perspective will be important in gaining an understanding of how things may go wrong and how employers can successfully accommodate the religions or beliefs of their employees in the workplace.

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