

# **Empirical Research on Tribunals**

## **An Annotated Review of Research Published between 1992 and 2007**

By Martin Partington, Ed Kirton-Darling and Frances McClenaghan

**2007**

# Introduction

In the process of establishing the new Tribunals Service, both the Senior President Designate, Sir Robert Carnwath, and the Chief Executive, Peter Handcock were keen that lessons from empirical research into tribunals should not be lost. Having been asked to act as research adviser to Sir Robert, I asked my Research Assistants Ed Kirton-Darling and Frances McClenaghan to help prepare this annotated bibliography of the major reported studies that have appeared over the last 15 years which relate to tribunals and the development of administrative justice.

The review covers four classes of report:

1. Research projects which look at different aspects of the work of tribunals based in the UK.
2. One or two studies which take a comparative perspective, looking at analogous if not precisely similar issues in other countries.
3. Reports of one or two inquiries which, though not new research as usually understood, nevertheless provide evidence relating to issues relevant to the development of administrative justice or review other bodies of research.
4. Other (principally academic) books and articles which are relevant to the themes identified.

The review sets out for each report:

1. its year of publication
2. its author(s)
3. a brief description of the project and its relevance to the themes (identified below)
3. an indication of the themes to which the report is particularly relevant
4. source / publication details, including where possible a hypertext link to the full report

The primary objective of the review has been to produce a summary of work useful to those working on the development of the new tribunals service. Thus, we have sought to identify the 'principal themes' of the research reviewed which relate particularly to issues that those developing the tribunals service must address.

The principal themes identified are (in alphabetical order):

- Advice Provision
- Alternative Dispute Resolution
- Compulsory Mediation
- Costs and Fees
- Early Dispute Resolution
- Feedback
- Information Provision
- Inquisitorial/Adversarial system
- Judicial training
- Judicial selection
- Judicial support
- Perceptions of tribunals
- Representation
- Self-represented applicants
- Staff training
- Triage
- Use of IT
- Use of Call Centres

Although primarily intended for use within government, the review is, however, being published more widely as we hope it will be a resource for all those with an interest in tribunals and the rapidly developing tribunals scene. We are also anxious that the list should be subject to external scrutiny and criticism.

It must be stressed that the summaries provided here have not been written by the original researchers. Neither they nor the Administrative Justice & Tribunals Council nor the Tribunals Service are responsible for the content of this analysis. The authors named above are responsible for its contents and any errors and omissions. We are happy to accept comments and criticisms on the annotations we have made. We are also willing to consider for inclusion additional studies we have not annotated here. We are most grateful to the Council on Tribunals for agreeing to publish this review. All comments should be sent by email to [public@lawcommission.gsi.gov.uk](mailto:public@lawcommission.gsi.gov.uk)

**Martin Partington 2007**

# Contents

<b>Research from 2007</b> .....	<b>5</b>
<ul style="list-style-type: none"><li>• Tribunals In Transition: Resolution Or Adjudication</li><li>• Community Legal Service Direct Expansion Project</li></ul>	
<b>Research from 2006</b> .....	<b>7</b>
<ul style="list-style-type: none"><li>• Findings from the Survey of Claimants in Race Discrimination Employment Tribunals (SETA RRA)</li><li>• Advicenow guides: helping advisors and advice service users: An evaluation of advicenow's internet-based information guides</li><li>• The experience of claimants In discrimination Employment Tribunal cases</li><li>• Estimating the size and nature of the civil legal advice sector in England and Wales</li><li>• Tribunals for diverse users</li><li>• Using leaflets to communicate with the public about services and entitlements</li><li>• Evaluating a new era in housing benefit appeals</li></ul>	
<b>Research from 2005</b> .....	<b>16</b>
<ul style="list-style-type: none"><li>• Advice agencies, advisors and their clients: perceptions of quality</li><li>• Administrative justice and alternative dispute resolution: the Australia experience</li><li>• A matter of confidence: restoring faith in employment tribunals</li><li>• Review of the effectiveness of specialist courts in other jurisdictions</li><li>• ISB Self Help Project, Final Report</li><li>• Citizen Redress: What citizens can do if things go wrong with public services</li><li>• Litigants in Person: Unrepresented litigants in first instance proceedings</li><li>• Employment Tribunals Service User Survey 2005</li><li>• Helping those in financial hardship: the running of the Social Fund</li><li>• Making a Difference? Legal Representation in Employment Tribunal Cases: Evidence from a Survey of Representatives</li></ul>	
<b>Research from 2004</b> .....	<b>30</b>
<ul style="list-style-type: none"><li>• European methods of administrative law redress: Netherlands, Norway and Germany</li><li>• Conciliating in Unfair Dismissal Employment Tribunal Applications: does the timing of first contact with parties have an impact on the efficiency and effectiveness of the Acas Individual Conciliation Service</li><li>• Findings from the 1998 survey of representatives in Employment Tribunal cases</li><li>• Findings from the Survey of Employment Tribunal Applications 2003</li><li>• Civil Legal Aid: adequacy of provision</li><li>• Seeking resolution: the availability and usage of consumer-to-business alternative dispute resolution in the UK</li><li>• Findings from the 1998 Survey of Employment Tribunal Applications (surveys of applicants and employers)</li><li>• Monitoring the Disability Discrimination Act (DDA) 1995, Phase Three</li><li>• Understanding advice seeking behaviour</li></ul>	

<b>Research from 2003</b> .....	<b>42</b>
<ul style="list-style-type: none"> <li>• Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review</li> <li>• Getting it right, putting it right: Improving decision-making and appeals in social security benefits</li> <li>• Progress in improving the medical assessment of incapacity and disability benefits</li> <li>• Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type</li> <li>• Snakes and Ladders: Advice and support for discrimination cases in Wales</li> </ul>	
<b>Research from 2002</b> .....	<b>52</b>
<ul style="list-style-type: none"> <li>• Access to Justice For the Self-Represented Litigant: An Interdisciplinary Investigation By Designers and Lawyers</li> <li>• Admission Appeal Panels: Research Study into the Operation of Appeal Panels, Use of the Code of Practice and Training for Panel Members</li> <li>• "...It's Only Parking But..." Report of a research project on The Applicability to other Adjudicative Settings of Organisational Arrangements at the London Parking Appeals Service</li> <li>• Awareness, Knowledge and Exercise of Individual Employment Rights</li> </ul>	
<b>Research from 2001</b> .....	<b>57</b>
<ul style="list-style-type: none"> <li>• Explaining the growth in the number of applications to Industrial Tribunals 1972-1997</li> <li>• Leasehold Valuation Tribunals: Extending the Remit</li> <li>• National Survey of Child Support Clients</li> </ul>	
<b>Research from 2000 and earlier</b> .....	<b>59</b>
<ul style="list-style-type: none"> <li>• Challenges to School Exclusion</li> <li>• Mental Health Review Tribunals: a survey of special hospital patients' opinions</li> <li>• Parking Adjudications: the impact of new technology</li> <li>• Industrial tribunals workplace disciplinary procedures and employment practice</li> <li>• 'Social Security Appeals: What do claimants want?'</li> <li>• Why do so few Patients appeal against Detention under the Mental Health Act?</li> <li>• Evaluation of Disability Living Allowance and Attendance Allowance</li> <li>• The 1992 Survey of Industrial Tribunal Applications</li> <li>• Judging Social Security</li> <li>• Survey and Report into the Working of Medical Appeal Tribunals</li> </ul>	

---

## ***Tribunals In Transition: Resolution Or Adjudication (2007)***

G. Richardson, H. Genn

Discusses issues such as the adjudicatory feature of tribunals, the introduction of the concept of proportionate dispute resolution, matters relating to the independence of tribunals, the use of oral hearings, cases involving fundamental rights, and entitlements to material benefit or to an assessment or consideration.

Source: Public Law UKPL (2007) Pages 116-141

Themes: Feedback  
Inquisitorial / Adversarial system

### **Feedback**

Argues that the emphasis on feedback and early dispute resolution in the proposed tribunal reform could have a negative impact on the independence of tribunals (p 4).

### **Inquisitorial / Adversarial system**

The article states that the move in tribunals away from the traditional oral hearing raises a number of questions, namely:

- What would be the legal implications of such a move?
- What are perceived to be the advantages and disadvantages of oral hearings?
- What are the views of those with experience of tribunal hearings?
- Are there any guiding principles?

In terms of the legal implications of a move away from oral hearings, the article states that the closer the decision resembles a determination of rights, the more formal will be the procedures required. The more administrative the nature of the decision, the more flexible and informal the procedural requirements will be. There is no general an immutable rule, rather a strong preference for oral hearings where a determination of rights is involved (p 7).

---

## ***Community Legal Service Direct Expansion Project (2007)***

Advice Services Alliance / Advicenow

Advicenow was commissioned by the Legal Services Commission to produce a database of resources to be used by CLS Direct telephone operators to help callers manage their problems. The research scored information against a set of criteria, giving it a value out of six. Over 1,000 resources were assessed. 542 selected for inclusion in the database.

Source: [http://www.advicenow.org.uk/fileLibrary/pdf/Advicenow\\_research\\_report\\_22.01.07.pdf](http://www.advicenow.org.uk/fileLibrary/pdf/Advicenow_research_report_22.01.07.pdf)

Themes: Information provision  
The use of IT

### **Information provision**

The criteria selected were divided into two categories: information about the problem, and information about skills and support to help solve the problem.

Researchers expected to see the following pieces of information under the heading "Information about the problem":

- An overview of the issues;
- An outline of the key legal points;
- Guides to processes and procedures;
- Route maps of where to go, what to do and who to see;
- Step-by-step guides;
- Where to get more information, advice or support.

The following elements fell under the heading "information about skills and support to help solve the problem":

- Sample letters, forms and calculations;
- How to prepare for an event such as a visit, interview or assessment;
- Suggested questions to ask and key points to consider;
- How and when to record what you do;
- How to negotiate, how to be assertive or how to remain calm;
- Acknowledge stress and give support and boost confidence (p 3).

Only 4% of resources scored four or more for skills and support indicators and 27% of resources scored zero for skills and support. 46% scored 4 and above for information about the problem. There were very few resources that scored well across both sets of indicators (p 4).

Some skills and support indicators were employed more often than others. For example, few resources attempted to acknowledge anxiety and the need for support, or give generic 'how to' skills information. Indicators like 'Suggested questions to ask and key points to consider' were more common (p12).

In some areas, such as Immigration, Intentional homelessness and Industrial action, there were few resources of any type. Not only do few resources attempt to include information on the skills and support a person needs to manage a problem, many resources do not do enough to explain the law. For example, just over half of the resources do not score higher than 3 for information about the problem (p 12).

The research noted that the best resources were those written by organisations that have a distinct audience or close connections with their users. While some of the bigger information providers such as Adviceguide, and government departments provide detailed and comprehensive information about the legal situation, it isn't their intention to provide the skills or support information that would enable a user to manage their problems through to resolution (p 12).

The lack of consensus on what makes for effective information and the absence of any agreed quality criteria is a weakness for the sector (p 4). The report recommends developing a framework to form the basis of quality standards with full discussion within the sector on the purpose and effectiveness of information materials (p 5).

With regards to resources on government, law and rights, the quality in this area is acceptable but with few examples of very good or excellent materials. One example of a good quality resource is the Advicenow guide, 'Claiming compensation'. It scored 5/4 and includes case studies, ten 'steps to success' and a jargon buster. Other good resources include: Advicenow's 'Do I need a lawyer?' (4/3), Bar Council's leaflet 'You and your barrister' and ADRnow's mediation part of its website both scored 4/2 (p 19).

## **The use of IT**

There is a growing tendency for organisations to rely on the internet to deliver information and not make it available in paper form (p 4).

Some organisations have tailored their information resources to suit the web and provide information in small, manageable chunks, with clicks through to separate web pages to get the entire resource. However, this may be difficult and tiring for some users. If the information is not available as a whole document, then the user does not have anything to refer back to (p 13).

Furthermore, organisations that publish information in different formats do not always make clear whether it is exactly the same information that is available as an HTML web page, PDF download and paper leaflet (p 13).

---

## ***Findings from the Survey of Claimants in Race Discrimination Employment Tribunals (SETA RRA) (2006)***

Mark Peters, Ken Seeds and Carrie Harding

This is an extension of the 2003 Survey of Employment Tribunals that focuses solely on complaints in race discrimination cases. The study aims to investigate how and why race discrimination cases differ from other cases in terms of their outcomes; and the expectations and experiences of parties involved in such cases; and how parties from ethnic minority groups fare in Employment Tribunal cases as a whole.

It compares race discrimination (RRA) cases with 4 main comparison groups:

- non-RRA cases;
- Unfair dismissal (UDL) cases;
- Other discrimination cases;
- Short 'fixed period' conciliation cases.

Source: Employment Relations Research Series, no. 54, London: Department of Trade and Industry <http://www.dti.gov.uk/files/file34685.pdf>

Themes: Advice provision  
Information provision  
Perceptions of tribunals  
Early Dispute Resolution

### **Advice provision**

Sources of advice reportedly used by respondents before making their claim included a solicitor, barrister or some other kind of lawyer (21%) and trade union (13%). Other common sources included the Commission for Racial Equality (9%), ETS website (10%) and ETS telephone (8%). (p 17)

In total, 85% of RRA claimants received professional advice prior to submitting their claim form and 45% received professional advice whilst completing their claim. 93% of RRA claimants received active professional advice at some time during the case. A solicitor, barrister or some other kind of lawyer was the most common type of professional representative used by RRA claimants (52%). A Trade Union representative was the next most common source. (p 18)

RRA claimants (55%) were more likely to be represented at the hearing than non-RRA claimants (42%) or short conciliation cases (21%). No major differences were found in comparison to UDL or other discrimination cases. 61% of RRA claimants used a solicitor to represent them. 39% of RRA claimants whose case went to a full tribunal hearing had received legal representation prior to submitting their claim but had not received any at the hearing itself. (p 19)

While trade unions were not the most common source of advice and representation, they nevertheless had an important role in the tribunal process for a significant number of claimants. Around a fifth (19%) of claimants were represented or received advice from a trade union after submission of the claim form. (p 22)

43% of claimants were members of a trade union or staff association at the time they submitted their application; over two fifths (44%) of those received advice or representation from their union. 56% of union members said they were not advised or represented by their union. In addition to this, 16% of union members received no representation or advice throughout their case. (p 23)

Claimants were asked whether there was anybody they had not consulted whom they would have liked to have consulted for advice and guidance. Over half (51%) of RRA claimants would have liked additional help with the case, compared with around a quarter of claimants in each of the comparison groups. 42% said they would have liked to have used a solicitor, which was similar across the comparison groups. 37% of RRA claimants also said they would have liked additional help from the Commission for Racial Equality. (p 20)

22% did not use their desired source because they could not afford it. Furthermore 44% did not use a solicitor because they could not afford one. Around a quarter (24%) also said they already had someone to help with the case or it was too late to find an alternative. (p 20)

The most common type of free advice was advice from solicitors. Over two fifths (41%) received free advice from a legal source. Claimants who brought short conciliation cases were less likely to have received free advice from a solicitor (20%); they were more likely (33%) to have approached the Citizens Advice Bureau. (p 23)

Satisfaction with advice and representation was lowest amongst RRA claimants. Less than three quarters (73%) said they had made the right decision compared with 83% of non-RRA, 80% of UDL, 86% of other discrimination and 90% of short conciliation cases. 16% of RRA claimants said they had 'definitely' made the wrong decision to involve their representative in the case. (p 22)

### **Information provision**

The most common examples of 'passive' sources of advice were: ACAS publications or leaflets (36%), ETS publications or leaflets (34%), Commission for Racial Equality (33%). A smaller proportion (12%) used the DTI website for advice. Over three quarters (77%) of RRA claimants used at least one passive source. (p 20)

71% of claimants who received no representation or advice did use a passive source of information. However, a substantial minority (29%) of claimants used neither active nor passive sources of advice or representation. Three quarters of claimants who had a representative also used passive sources, whilst 88% who had a main adviser but no representative did so. (pp 20-21)

11% of RRA claimant who made comments on the effectiveness of the employment tribunal system said they would have welcomed more information about the procedures. However non-RRA claimants were more likely to mention this (21%). (p 29)

When asked what they would do differently in future 17% of RRA claimants said they would get more information or advice before taking action compared with 13% of EDL claimants, 12% of non-RRA claimants and 11% of short conciliation claimants. 16% of RRA claimants said they would go to a solicitor or get some form of legal representation and one in nine (11%) said they would seek different legal representation or be more involved in the legal procedure. A mix of other answers were given in small proportions. These findings suggest that RRA claimants feel relatively unprepared for their case. (p 38)

### **Perceptions of tribunals**

57% of RRA claimants were aware that a worker could apply for an Employment Tribunal if they believed their employer was not respecting their legal rights. Awareness of this was higher amongst the four comparison groups: other discrimination (69%), non-RRA (66%), UDL (66%) and short conciliation claimants (65%). (p 27)

RRA claimants were the least likely of the four comparison groups to believe that the ET hearing gave each party a fair chance to make their case. Just under half (46%) of RRA claimants whose outcome involved a decision at a tribunal thought that the tribunal gave each party a fair chance. Unsurprisingly, RRA claimants whose cases were unsuccessful were less likely than those whose cases were successful to report that the Tribunal was fair (41% versus 71%). (p 27)

Claimants were asked in general how satisfied they were with the workings of the employment tribunal system. Half of the RRA claimants (51%) were satisfied, with 20% being very satisfied. Four in 10 RRA claimants (41%) were not satisfied with 23% being not at all satisfied. (p 28)

Claimants in the four other groups were more likely to be satisfied with the overall workings of the employment tribunal system. 68% of UDL claimants expressed satisfaction, as did 69% of other discrimination claimants and 72% of non-RRA claimants. Claimants in short conciliation cases had the highest levels of satisfaction; eight in 10 (80%) of these claimants were satisfied, with 45% being very satisfied. (p 28)

11% of RRA claimants said that the tribunal system was unfair or failing. This opinion was not shared by the four comparison groups, with 1% or less of claimants in each of the four groups mentioning this. (p 29)

### **Early Dispute Resolution**

RRA cases were more likely to have hearings before the full tribunal hearing, with 26% having at least one additional hearing compared with the four other groups. 3% of RRA cases had a pre-hearing review. Similar levels were found amongst UDL cases (2%), non-RRA cases (2%) and other discrimination cases (4%). 8% of RRA cases had a preliminary hearing. Other discrimination cases were more likely to have a preliminary hearing (13%), whilst short conciliation cases were less likely to have one (3%). (p 30)

Four in ten RRA cases were settled by ACAS compared with 46% of non-RRA cases and over half (53%) of UDL cases. These findings therefore suggest that ACAS have less success with conciliation in RRA cases, possibly because it is more difficult to bring the relevant parties together if there has been a breakdown in their relationship. (p 34)

One fifth (20%) of RRA claimants whose cases went to a full tribunal hearing reported that they made an appeal to the Employment Appeal Tribunal (EAT). Appeals to the EAT were more likely to occur amongst RRA cases than non-RRA cases, UDL cases and short conciliation cases. Appeals were no more or less likely to be made among other discrimination cases. (p 33)

Half (50%) of appeals made in RRA cases led to a review hearing about the original decision made at the full hearing. In these reviews the decision of the original tribunal was upheld in nine out of 10 (90%) cases. There were no differences in these findings between the RRA cases and the other four groups. (p 33)

Among RRA claimants, satisfaction with the outcome of the case was expressed by a third (32%). Claimants in all the four main comparison groups held a more positive view, with more than half saying they were either very or quite satisfied with the outcome of their case. (p 37)

---

## ***Advicenow guides: helping advisors and advice service users An evaluation of advicenow's internet-based information guides (2006)***

**Daniel Taghioff, Sustainable Learning.**

This qualitative study assesses the value of Advicenow's user-focussed guides in helping users and advisers to deal with legal problems. The chief research methods are interviews and discussions with users and advisers.

Source: <http://www.asauk.org.uk/fileLibrary/pdf/Adnwevrpt.pdf>

Themes: Information provision  
Use of IT

### **Information provision**

This research would be very valuable when considering information, specifically leaflet, provision to users. It includes a series of recommendations, among others, that leaflets must:

- be attention-grabbing, in their use of language, design and presentation of information;

- use 'active' presentation techniques that require the user to respond/ choose/ decide what is relevant for them;
- provide an introduction and an overview of the whole of a particular problem or particular situation;
- present the legal points as well as information on 'soft' aspects e.g. feelings
- introduce the sorts of people and agencies the user may have to deal with and why;
- explain the differences between different advisers and the transitions between them, to avoid the user's getting lost in the spaces between professionals;
- present information in a way that follows the processes or procedures users are facing so that they are as intuitively sensible for the users as possible;
- be focused on a well-specified user situation capable of providing the structure for the guide (pp 24-25)

### **Use of IT**

The study suggests working with Google UK in providing a new Google service, akin to Google Maps, perhaps called Google Rights (p28)

---

### ***The experience of claimants in race discrimination Employment Tribunal cases (2006)***

Jane Aston, Darcy Hill and Nii Djan Tackey, Institute for Employment Studies.

This qualitative study was based on 40 in-depth interviews with claimants involved in Race Relations Act Employment Tribunal cases and examines their experience of bringing a claim.

Source: Employment Relations Research Series, no. 55, London: Department of Trade and Industry  
<http://www.dti.gov.uk/files/file27818.pdf>

Themes: Advice provision  
 Information provision  
 Perceptions of tribunals  
 Early Dispute Resolution  
 Triage  
 Judicial training  
 Judicial selection

#### **Advice provision**

Claimants consulted a range of sources of advice, including the CABx, their trade unions, local law centres, race equality organisations and solicitors. Some also conducted personal searches for information, and used sources including the Internet and the literature provided by ETS (p xi). Many claimants relied on unofficial sources for advice such as colleagues, friends and family (p 53).

#### **Information provision**

Several claimants described information in leaflets and on the internet as too general (p 57). Acas seemed to have played a relatively minor role in cases, and some claimants would have liked more contact and more information from Acas (p xi).

#### **Perceptions of tribunals**

Claimants did not feel adequately prepared for the Tribunal hearing, and did not know what to expect (p xi), some claimants were implicitly expecting a simpler, more informal process (p 146). One claimant strongly felt that there should be someone independent to advise claimants on what to expect, "They should take you

through and explain, and recommend you take it down, and come and sit in, down in the public gallery and take you through the procedures really." (p 78) Another claimant suggested that,

"If the Tribunal system wants to help the individual they have to find a way of giving practical support that doesn't cost the earth...There are people going through things like this who aren't members of a union and it's difficult to get advice even at an advice centre. I had to wait two or three weeks to get an appointment." (p 114).

### **Early Dispute Resolution**

Representatives were often involved in cases that were withdrawn or settled prior to a main Employment Tribunal hearing. However those who withdrew or settled often regretted doing so (p xi and p 73).

More could be done to prevent disputes from escalating to the point where claimants saw an Employment Tribunal as their only course of action. Steps could include introducing an additional mediation and conciliation stage before a claim for an Employment Tribunal is lodged (p xiii).

### **Judicial training**

Two claimants commented that the panel in their cases did not seem to understand the finer points of employment law.

Furthermore, the attitude of Chairs was found to be very important - claimants felt that a Chair who was fair and sympathetic to them could make all the difference to the way a case was run. This was particularly so when they represented themselves. The actions of the Chair also strongly affected how claimants felt about the Tribunal hearing as it proceeded, and also in retrospect (p 78). Those who had experience of more than one case at Tribunal reported that the attitude and approaches of the Tribunal Chairs varied greatly. Several claimants praised Chairs for giving them plenty of breaks and taking control of questioning. In contrast, others found Chairs to be rude, hostile and sarcastic (p 79). Overall, aside from a few exceptions, levels of trust and confidence in the Chairs and panel were low (p 83).

### **Judicial selection**

Several claimants commented on the ethnicity of the panel, a few claimants noted that the Chairs and Panels at their cases had all been White (p 82).

---

## ***Estimating the size and nature of the civil legal advice sector in England and Wales (2006)***

Matrix Research and Consultancy  
DCA Research Report

This report examines the size and nature of the civil legal advice sector in England and Wales. It seeks to: define the sector; establish what organisations/individuals it is comprised of; estimate the extent of supply of advice (with reference to workforce/cost implications); and explore the drivers which shape it.

Source: [http://www.dca.gov.uk/research/2006/04\\_2006.pdf](http://www.dca.gov.uk/research/2006/04_2006.pdf)

Themes: Triage

### **Triage**

This report will be valuable in helping to develop triage strategies as it sets out key players in advice provision. It estimated that 2/5 of the advice sector was accounted for by charitable, voluntary and not-for-profit groups that exist locally. Solicitors in private practice accounted for approximately 1/4 of the sector, national networks of charitable, voluntary and not-for-profit providers accounted for 20.2% (p 20).

---

## ***Tribunals for diverse users (2006)***

Professor Hazel Genn, Ben Lever and Lauren Gray,  
Faculty of Laws, University College London.  
DCA Research Report

A wide ranging study of access, experiences and outcomes of tribunal hearings from the perspective of tribunal users in three tribunals: the Appeals Service (TAS), the Criminal Injuries Compensation Appeals Panel (CICAP) and the Special Educational Needs and Disability Tribunal (SENDIST). The study also included focus groups with the general public and interviews with tribunal judiciary. It was designed specifically to compare the experiences of White, Black and Minority Ethnic users to establish how they perceive and are treated within tribunals and whether Black and Minority Ethnic users experience any direct or indirect disadvantage in accessing and using tribunal services.

Source: [http://www.dca.gov.uk/research/2006/01\\_2006.pdf](http://www.dca.gov.uk/research/2006/01_2006.pdf)

Themes: Information provision  
Perceptions of tribunals  
Advice provision  
Triage  
Judicial training

### **Information provision**

Public awareness of advice sources was variable and, with the exception of employment disputes, awareness levels of redress mechanisms were low (p52). Furthermore, few users had known about the possibility of seeking redress from their general knowledge, in most cases information about the possibility of appealing to the tribunal had come from the initial decision letter (p ii). Levels of awareness of redress were generally higher for employment, benefits and immigration problems. (p 115)

## **Perceptions of tribunals**

An unacceptably high proportion of users in TAS and CICAP did not know what to expect in the tribunal hearing. In SENDIST the practice of sending a video to users prior to their hearing appears to have been effective in framing users' expectations. (p ii)

## **Advice provision**

About 2/3 of respondents interviewed at tribunal hearings said that they had received some sort of advice (p 126) however many respondents reported difficulty in accessing free advice sources (p i). The report suggests that there is likely to be a significant number of people who may feel a justified sense of grievance but who, in the absence of advice, do not feel sufficiently knowledgeable or confident to persist in seeking redress. (p 127)

The most well-known formal source of advice was the Citizens Advice Bureau (CAB). However, respondents often used informal sources of advice such as friends and family. The key factors affecting awareness level and the use of advice sources were: respondents' proficiency in the English language, their level of familiarity with the English culture, their age, personal experience and their gender (p 72).

There were significant variations between tribunals both in whether advice had been obtained prior to the hearing and in the source of advice received. Users attending SENDIST hearings were the most likely to have had advice or help with their appeal. SENDIST and CICAP users were much more likely than TAS users to have received advice from a solicitor, while TAS users were the most likely to have received advice from a CAB or other advice agency. (p 126)

It is clear from the report that TAS users obtained advice from an enormously wide variety of sources, while CICAP users seemed most often to be directed toward legal advice by the police and victim support together with a much narrower range of other advisers. Users attending SENDIST hearings tended to have been advised most often by special needs organisations and support groups (p 129). Tribunal users on the whole expressed high levels of satisfaction with the advisers that they had used prior to their hearing (p 131).

## **Triage**

When respondents were asked how they had known that they might be able to get help from the source they had used, the most common response given was that they knew from general knowledge (40%) or it had been suggested by a friend or relative (25%). 20% had used the source before, and in 14% of cases respondents had been referred on to the advice source by some other adviser (p 130).

## **Judicial training**

Observation of tribunal hearings revealed generally high levels of professionalism among tribunal judiciary, with most being able to combine authority with approachability (p ii). In 92% of cases observed there was either no use or rare use of legalistic or technical language. There appeared to be more instances of use of legalistic language during SENDIST hearings than in either TAS or CICAP (22% compared with 8% across all tribunals) (p 160). Most tribunal judges were assessed by observers as being 'very helpful' or 'helpful' in their degree of assisting or enabling (75%). Observers also noted that the great majority of tribunals demonstrated good listening skills during hearings, with the majority being assessed as listening very well (87%) and only a small minority listening not very well (5%) (p 168). Insofar as there were problems, these should be rectified by appropriate judicial training.

---

## ***Using leaflets to communicate with the public about services and entitlements (2006)***

### **National Audit Office**

This report examines how effectively the Department for Work and Pensions manages the risk of providing inaccurate information in its leaflets. It also considers whether the Department communicates clearly and effectively about benefits and services in the leaflets it issues to customers. In particular, it asks how the Department manages the risks associated with producing and issuing inaccurate leaflets, whether it can ensure that the information in leaflets is accurate and accessible and whether leaflets are easily available for customers.

Source: (2006) HC 797 Session 2005-2006, 25/01/2006  
[http://www.nao.org.uk/publications/nao\\_reports/05-06/0506797.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506797.pdf)

Themes: Information provision

### **Information provision**

In 2004-05 the Department printed over 24 million leaflets. The Department spent around £110 million on communication activity in 2004-05. The total costs associated with the preparation, revision, storage and circulation of material are estimated at £31 million a year. On average leaflets cost £385 per thousand for English versions and £1,580 per thousand in Welsh (p 3).

The report made the following recommendations with regard to the leaflet review process:

- Review the need for each of the current leaflets and significantly reduce the number published;
- Establish a central database of all its leaflets to enable it to identify which have been reviewed, by whom and when a review is overdue. It should use the Content Management System to allow more efficient management of the accuracy of the information in its leaflets, shifting to managing the information itself rather than specific products, to avoid duplication of review effort;
- Adhere to agreed design standards;
- Carry out leaflet reviews based on risk;
- Clarify what material should be held in local offices;

The report also looked at whether leaflets were easy to obtain, and made the following comments:

- Many of the leaflets were not available at the Department's sites, and were difficult to obtain elsewhere - Researchers visited a selection of the Department's offices, voluntary bodies and other government departments. They found the leaflets they were looking for in half the 100 Department sites they visited. In the remainder, staff found it difficult to help customers to obtain leaflets where they were not available off the shelf;
- In the majority (83%) of the Department's offices, leaflets were easily accessible to the public;
- Even where they were available, they were not always up to date - there is no single up to date list of products which are available and most current;
- There was often a failure to agree the content of leaflets in time for reprinting. In April 2005, for example, only one of the Pension Service leaflets was signed off in time to be reprinted (pp 7-8)

However, even where leaflets were obtained, the report found that often leaflets were not easily understood by customers. The report made the following comments:

- Improvements could be made in signposting, for example using contents pages in every leaflet and making sure titles and cover images make it clear what the leaflet is for and what is in it;
- The readability of the text in leaflets may cause difficulties. 13 leaflets required a reading age higher than the national average and 8 required a reading age of at least 16. The use of some words, specific to the Department's business, for example disability, incapacity and entitlement can have an impact on readability (p 6);
- Customers' views are not always sought before the launch of leaflets (p 9).

Customers liked leaflets where:

- The Information help-line was on the front cover;
- Leaflets had a clear contents page;
- Important information was in bold;
- Important information was in the form of questions and answers;
- A glossary of terms was included.

Customers disliked leaflets where:

- The title was misleading or unclear;
- The leaflet was long;
- No contents page was included;
- Pale headings were used or white text on coloured background;
- Inappropriate images were used (p 6).

---

## ***Evaluating a new era in housing benefit appeals (2006)***

**E. Laurie**

Article examined and evaluating the role of Social Security Commissioners in housing benefit cases.

Source: Journal of Social Security Law J.S.S.L. (2006) Vol.13 No.3 Pages 138-168

Themes: Information Provision  
Inquisitorial / Adversarial system  
Judicial Training

### **Information provision**

The article notes that local authorities have a higher success rate (83%) than claimant appellants (67%) (Landlord appellants have a 74% success rate). These figures are related to the fact that local authorities have the benefit of in-house legal advice and are more likely to be "repeat players" and consequently have built-up expertise of the appeal process. Their knowledge of the appeals process may be relevant at two levels: first, they may be more selective about when they appeal to the Commissioners; secondly, they may have greater experience of preparing appeal papers and, in particular, identifying the point of law on which an appeal is based. Buck et al (T. Buck, D. Bonner and R. Sainsbury, Making Social Security Law, 2005) highlight the difficulty experienced by most individual appellants of presenting their appeal in terms of a point of law. This impediment is particularly acute at the leave stage, where an ability to identify an error of law is essential for passing this first hurdle. Conversely, an appellant who is represented has a distinct advantage given the flexibility of the formulations of "error of law". (pp 150-151)

### **Inquisitorial/ Adversarial system**

Whereas claimants are 7% more successful at oral hearings, landlords and local authorities are both less successful at oral hearings. In the case of claimant appellants, the improvement may be accounted for by the greater involvement of an adviser or representative. At oral hearings, claimant appellants are represented in an average of 77% of cases. The average figure for claimant representation across all cases is 40%. (p 159)

In their response to the Lord Chancellor's consultation on the Leggatt report, the Commissioners cast doubt on the ability of claimants to represent themselves. The findings presented in the article tend to undermine Leggatt's views on "do-it-yourself" representation, which have been adopted enthusiastically by the Government. (p 160)

The success rates for claimant applicants and landlord applicants for judicial review compare unfavourably with appeals to Commissioners. Claimants have a markedly better success rate on appeal to the Commissioners, compared with an application for judicial review. It may be the case that claimants do better before the Commissioners because of the Commissioners' inquisitorial jurisdiction. This approach should benefit claimants, particularly where they are unrepresented, and the majority (60%) of claimant appellants are not represented. However, it would perhaps be less usual for appellants to the Administrative Court to be unrepresented and one might have expected the Court's traditional adversarial approach to affect the outcome less where the applicant received the benefit of legal representation. In other words, the claimant's lack of representation before the Commissioners is compensated for by the Commissioner's inquisitorial approach, while the Administrative Court's adversarial style is compensated for by the claimant applicant's representation. The fact that Commissioners are social security specialists, whereas the judges of the Administrative Court are not, may also tend to increase applicants' prospects of success. (pp 164-165)

### **Judicial training**

Tribunal Chairmen are invited to participate in on-going training and are provided with update materials and information via the Judicial Information Bulletin, and the newly redesigned training, learning and development pages of the website. (p 154)

---

## ***Advice agencies, advisors and their clients: perceptions of quality (2005)***

Jenny Johnstone & James Marson, University of Sheffield.  
DCA Research Report

Research report on perceptions of quality of legal advice services provided by non-legally qualified advisers. It describes clients' perceptions of the advice they received, and providers' perceptions of the service they offer. It also examines advisers' views on quality standards and the advice network, and clients' definitions of a good quality service.

The findings are based on interviews with advisers working in the advice centre network in Sheffield, Leeds and Manchester - and the clients of these advisers. Forty-six advisers and fifty-eight clients were interviewed.

Source: [http://www.dca.gov.uk/research/2005/10\\_2005.pdf](http://www.dca.gov.uk/research/2005/10_2005.pdf)

Themes: Information provision  
Triage

### **Information provision**

There was a lack of awareness about the Community Legal Service's (CLS) purpose and its full range of services on the part of both advisers and clients (55 clients had never heard of it - p 33) (p ii).

The majority of advisers felt that the advice sector network could be improved, especially by increasing accessibility and outreach work - including court based services (p ii).

The key qualities needed by advisers were identified by clients and advisers as being the ability to communicate, together with knowledge of the law and legal procedures (p ii). Clients explained that they wanted advisers to have the knowledge but also know how to communicate that to the client in a way they could understand (p 77). Clients also valued qualities such as empathy, honesty in advice, interest in their problems and effectiveness in helping to resolve problems (p ii).

Overwhelmingly, clients were very satisfied with the advice they received and felt that the assistance had been 'very helpful' (49). Negative experiences tended to focus on the organisational aspects of service, waiting for advice, advisers spending too long with other clients and restrictive opening hours (p ii).

In terms of improving information provision, respondents thought that increased funding and resources would help, in conjunction with co-ordinating legal advice providers in the areas (p 72). Funding was mentioned in two respects, first, funding through contracts and the local councils and, secondly, through increasing legal aid eligibility (p 73).

## **Triage**

23 clients said that a family member or friend had recommended the advice centre to them. Relatively few clients had been specifically referred to the centre from another centre (3) or said they had found the centre from looking at a source such as the Yellow Pages (2). A number of clients (16) had taken time to research the centre. Few mentioned that they had used or been referred to the Community Legal Service directory of local advice centres. But when questioned further it was discovered that some clients (8) had been "recommended" to visit the centre by another centre because of the expertise to deal with the client's particular problem, illustrating that knowledge and information sharing of other advice centres was taking place but maybe not in the sense of the referral policy as laid down by the CLS (pp 24-25).

Advisers were asked whether they had a signposting or referral policy. 21 said that as a requirement of their contract with the Legal Services Commission (LSC) or quality mark they followed the CLS/LSC signposting and referral criteria, 12 said that they followed the signposting policy in their own office manual, 2 said they did it informally rather than following any formal procedure, 2 said they didn't know what, if any, policy they followed and 1 said they didn't have any such policy for referring but did signpost.

38 respondents said that they had signposted some clients. Advisers were not sure of the type and level of legal advice that advice centres in their area offered, which made it difficult when signposting and referring (p 75). One CAB adviser said that most of their clients get signposted and referrals very rarely happen as they should - ideally they would have "weeded" out the case very early on, meaning that they realised that they could not deal with it. Expertise was the main reason advisers referred cases, the second reason being when the case became too legally complex and involved judicial review or litigation. The latter were almost always referred to a firm of solicitors or the law centre.(p 69).

35 respondents said that they had cases referred to them or their advice centre. 6 said no and the remainder (2) said they did not know if any cases had been referred or not. 22 of those who said they or their advice centre took referrals said that it tended to be other advice centres who referred the cases to them. Only one client mentioned to the advisor that they had been directed to the CLS directory to find a relevant centre that could deal with their problem (p 70).

---

## ***Administrative justice and alternative dispute resolution: the Australia experience (2005)***

Trevor Buck, University of Leicester.  
DCA Research Report

This report examines the Australian system of administrative justice, in particular, the role of alternative dispute resolution (ADR) within that system. The report outlines developments across the courts, tribunals and ombudsmen offices, at both the Commonwealth and the state/territory levels of government. The report finds that Australia has produced a rich range of ADR practice across these cornerstone institutions, supported by a robust infrastructure.

Source: [http://www.dca.gov.uk/research/2005/8\\_2005\\_full.pdf](http://www.dca.gov.uk/research/2005/8_2005_full.pdf)

Themes: Alternative Dispute Resolution  
Compulsory mediation  
Early Dispute Resolution  
Inquisitorial / Adversarial system  
Judicial training  
Use of IT

### **Alternative Dispute Resolution**

This research is of value when considering how ADR might usefully be employed to meet the aim of the Tribunal Service to provide more proportionate dispute resolution.

There have been a number of important developments with regards to ADR, in particular the role of mediation in family law has had a pervasive impact on the development of ADR generally. The Australian government's approach to ADR contains three major strands. It is working to mainstream ADR within the federal civil justice system. It is helping to tailor particular ADR solutions for particular jurisdictions, such as human rights and family law. Finally, it is committed to promoting and engaging in ADR processes when it is itself a party to a dispute (p 50).

The pathway of tribunal development in Australia has generated a number of tribunals that present useful lessons. For example, the commonwealth administrative appeals tribunal is a model of a 'merits review' tribunal. The various ombudsman schemes in Australia have increased both their use of ADR in respect of individual grievances and their focus on systemic issues arising from individual complaints.

The National Alternative Dispute Resolution Advisory Council (NADRAC) has reported that the research literature generally indicates a high client satisfaction rate with mediation and that compared with adversarial methods, mediation produces higher compliance and lower re-litigation rates (NADRAC report, NADRAC: annual report for 2003-04, Canberra: NADRAC, para 120).

There are however, a number of factors necessary for an ADR process to take place. These include: the capacity of the parties to participate safely or effectively on their own behalf; the relevant costs of ADR and litigation and the benefits of each; cultural factors; the need for or possibility of more flexible results not possible in an adjudicated outcome; and the 'public interest may require a formal, public binding determination, or an authoritative interpretation and application of statute or case law' (Mack K, Court Referral to ADR: Criteria and Research, Melbourne: NADRAC/AIJA, p 6) (p 60).

### **Compulsory Mediation**

After 1997 the Federal Court obtained a power to require mediation before attempting formal legal proceedings. Compulsory mediation appears to have been a success, eliciting few complaints from parties (p ii). Regular results of client satisfaction with mediation vary little according to whether mediation is voluntary or compulsory (p vi). The policy underlying court-ordered mediation is that there may be some cases where, despite initial

opposition by some parties, mediation could nevertheless be valuable. One example of its potential use is where the courts could enforce mediation at a stage in proceedings just before a significant expense is about to be incurred (p 16, also see Dawson M, "Non-consensual alternative dispute resolution: pros and cons" (1993) *Alternative Dispute Resolution Journal* 173, 175.)

The settlement rate at mediation has averaged around 55 percent however mediations are still a small proportion of the overall caseload of both the Federal Court and the Federal Magistrates Court (p 12). Furthermore, empirical research commissioned by the Australian Law Reform Commission has suggested that spending on tribunals was on a par with court expenditure and that the mediation duration of AAT cases was longer than for cases in the Federal Court and Family Court (p 29).

There is a lot of debate about the value of ADR, in particular there are concerns that important questions of legal principle could be disregarded (for this and other arguments against compulsory mediation see p 16). Another concern is the need to protect the rights, in particular of the self-represented litigant:

"although ADR is capable of redressing some power imbalances between disputants, these imbalances will only be heightened if one party is forced to participate in ADR, because, for example, of a financial incapacity to litigate the matter or a lack of bargaining power" (Civil Justice Review Federal Civil Justice System: strategy paper, December 2003, Barton (ACT): Attorney-General's Department, p 50).

### **Early Dispute Resolution**

It is often assumed that ADR methodology always involves early intervention in a dispute. However, a number of commentators have noted that though timing of a referral to ADR may be extremely important 'there is not a universally optimal time to refer disputes to ADR, and early referral is not necessarily better as the parties may not be ready to settle and the dispute is not yet 'ripe' for resolution. Hence ADR can increase costs by adding another layer to the dispute resolution process when used indiscriminately.' (Civil Justice Review, Federal Civil Justice System: strategy paper, December 2003, Barton (ACT): Attorney-General's Department, p 133) However the Administrative Appeal Tribunal of the Australian Capital Territory (ACT) Tribunal has noticed a significant reduction in waiting times by focussing on early, mediated resolution of cases. (p iii)

In the Family Court there has been work undertaken on 'case evaluation', referred to in the Family Court as 'judicial settlement conferences', where a judge will evaluate the merits of a case and can provide an opinion on how the case is likely to be decided if it went to trial. Rates of settlement have been extremely high. (p 18)

The Australian Federal Family Court has also tried to facilitate the early resolution of disputes by developing pre-action procedures in respect of financial and parenting matters. The Family Law Rules 2004 prescribe that each party in a case 'must comply with pre-action procedures..including attempting to resolve the dispute using primary dispute resolution methods'. (p 11)

In Western Australia a different method of early dispute resolution has been tested. Namely that the legislation governing the State Administrative Tribunal (SAT) provides for questions of law to be referred by the Tribunal to the President in the course of a hearing of an application and judicial guidance could therefore be given to a tribunal before final determination, thus reducing the incidents of appeals. (p 42)

### **Inquisitorial / Adversarial system**

The legal profession is identified as the potential driving force behind cultural change towards the adoption of less adversarial approaches to dispute resolution. The strategy paper refers with approval to the movement in the United States and Canada of so-called 'collaborative law'; particularly active in the family law area. The paper states that, "The collaborative family law system centres on a fundamental rule that lawyers and clients must agree to work only towards a settlement." (p 11)

In 2004 the Family Court instituted a 'Children's Cases Programme' the critical feature of which is that proceedings are conducted in a less adversarial way. For example, ordinary rules of evidence do not apply and the judge controls the way in which the hearing proceeds - the judge determines what the real issues are and directs what evidence is to be required and the manner in which it is given. The judge may at his/her discretion limit cross-

examination. The proceedings concentrate upon the parties' proposals for the future of the child, rather than the past history of the parental relationship except in so far as it may be relevant to determining the primary issue. The hearing may take the form of various appearances rather than one event, and the judge may shift between the processes of determining contentious material facts and issues and using mediation techniques to assist in determining the case. (p 19) The Veterans' Review Board (VRB) has also taken a more inquisitorial approach, one example of which has been their employment of registrars who scrutinise applications by unrepresented parties. (p 25)

### **Judicial training**

The "Managing Justice Report" by the Australian Law Reform Commission recommended that every federal review tribunal should have an effective professional development programme. This should include induction, orientation programmes, mentoring, continuing education and training programmes and development of performance standards for tribunals. (p 30)

### **Use of IT**

The Victorian and Civil Administrative tribunal is accepting an increasing proportion of 'online' applications. Furthermore, the State Administrative Tribunal (SAT) in Western Australia modern case management practices are being implemented, providing for the electronic lodgement of applications and other documents. Tribunal members have web-based access to the Tribunal's information base and other resources (p 41). Applications to SAT can be made by telephone or via an electronically available pro-forma. (p 42)

---

## ***A matter of confidence: restoring faith in employment tribunals (2005)***

### **CBI**

This report surveys employers' attitudes to the employment tribunal system, highlighting areas of concern, and makes recommendations for improvement.

Source: [http://www.cbi.org.uk/ndbs/Press.nsf/0/33f9830ed75f765b8025708800523621/\\$FILE/Tribunals Brief - CBI.pdf](http://www.cbi.org.uk/ndbs/Press.nsf/0/33f9830ed75f765b8025708800523621/$FILE/Tribunals%20Brief%20-%20CBI.pdf)

Themes: Inquisitorial / Adversarial system  
Early Dispute Resolution  
Costs and Fees

### **Inquisitorial / Adversarial system**

45% of respondents saw the Employment Tribunal System as ineffective, 55% of them believed it was ineffective because it was too adversarial. (p 5)

### **Early Dispute Resolution**

The report recommends that the Government should, with ACAS, fully review the impact of fixed conciliation periods to ensure ACAS is able to offer the most effective service promoting speedy dispute resolution (p 6). It also suggests encouraging parties to share the maximum amount of information about the case at the earliest opportunity. This could include requiring an employee to provide a statement of loss at an early stage to speed up the process and help the parties reach a settlement. (p 17)

## Costs and Fees

The report recommends making more cost awards against unsuccessful claimants to send the message that there are adverse consequences to bringing weak claims. In the same vein, the Government should introduce a charge to bring a claim at an employment tribunal, set at an appropriate level to ensure all individuals have access to justice, while deterring weak and vexatious claims. (p 6)

---

## ***Review of the effectiveness of specialist courts in other jurisdictions (2005)***

Lexicon Limited Joyce Plotnikoff and Richard Woolfson.  
Consultants in Management, ICT and the Law  
DCA Research Report

In addition to the specialist functions of tribunals, the United Kingdom has recently begun experimenting with courts that specialise in particular types of problem facing modern communities. In some other countries, the development of problem-solving legal structures has a long history, derived in some instances from indigenous and tribal justice systems. This study explores the lessons, in particular the implications for the judiciary, legal profession and court process, that have emerged from the experience of ten courts in Australia, the United States and Canada specialising in drugs, domestic violence, community and mental health problems. The findings should assist in developing approaches that are appropriate to the needs of the justice system in this country.

Source: [http://www.dca.gov.uk/research/2005/3\\_2005.pdf](http://www.dca.gov.uk/research/2005/3_2005.pdf)

Themes: Judicial training  
Judicial selection  
Judicial support  
Inquisitorial / Adversarial system

### **Judicial training**

Judges surveyed disagreed about the level of experience required of tribunal judges. One judge took the view that appointments should come early in the judicial career, "before judges get too set in their judicial role." In contrast, a mental health court surveyed preferred appointees to be senior level judges.

### **Judicial selection**

A few courts noted the importance of additional professional qualifications. In addition to his legal qualifications, some judges had degrees in social work. (p 32)

### **Judicial support**

Features of a successful judiciary in a specialist court setting include:

- a flexible judicial attitude with a willingness to experiment with new 'team' approaches to diverting offenders from criminality;
- participate in the on-going monitoring of offender behaviour; and
- communicate to others the benefits of the work they do.

### **Inquisitorial/ Adversarial system**

The review quotes a number of studies which discuss the role of the defence lawyer in specialist courts:

"The defense attorney must step away from the adversarial mindset in which the best interests of the defendant is getting a case dismissed ...The effective defense attorney seeks to help the defendant succeed over time...avoiding as much as possible, any future, additional interactions with the criminal justice system"

"The importance of bringing the defense 'on board' has been recognised in setting up the Liverpool Community Justice Centre, where the judge is expected to 'lead collaborative working across CJS agencies... specifically with defense solicitors" (Department of Constitutional Affairs appointments advertisement, July 2004, <http://www.dca.gov.uk> )

In the New South Wales drug court whilst the program is running participants are informed that their legal aid lawyer is a member of the drug court team whose responsibility is first to the court. Thus any breach of a drug court program condition that is revealed to the lawyer must be reported to the court. (p 48 - 49)

---

## ***ISB Self Help Project, Final Report (2005)***

**Advicenow.org.uk**

This research evaluated the 'how to' (previously 'self help') section of the Advicenow website through observations, interviews and group discussions with advice workers and users.

Source: [http://www.advicenow.org.uk/fileLibrary/doc/Advicenow\\_final\\_report\\_to\\_ISB001.doc](http://www.advicenow.org.uk/fileLibrary/doc/Advicenow_final_report_to_ISB001.doc)

Themes: Information provision  
Use of IT  
Self-represented applicants

### **Information provision**

The research is very valuable for working on the development of advice providing web materials. It produces three key findings: good interactive presentation is essential; self help could be valuable; but the general public needed more developed problem solving skills and therefore the assistance of a skilled individual could greatly enhance the value of the service.

Materials targeted at self-represented applicants (see below) should provide information on relevant law and rights; support people through the process with 'how to' practical steps material; and contain skills based learning materials on how to manage a problem, communication and recording skills and getting help that can have a wider application. (p 19)

### **Use of IT**

The study found that people, especially vulnerable groups such as the homeless, appreciate having a secure online place to store their information. A review of Advicenow's Tracker Tool also shows that it has the potential to be used as a text service, which would appeal to young people. For example, a young person, working with an adviser, can make a record of their action plan and set a date to meet again. The Tracker Tool can then automatically remind the client of the time and place of appointment by sending a text to their phone before the meeting. (pp 12-13)

The authors of this study plan to take their work forward and envisage creating an internet based information service, supplemented by email advice with mentoring and peer support provided via a discussion forum. (p 5)

### **Self-represented applicants**

Hazel Genn and others have estimated that 40% of the population have a 'justiciable' problem in any five year period and that 30% of this group will attempt to deal with the problem themselves - equating to at least 1.26 million people a year (Pleasance et al, "Causes of Action: civil law and social justice", The Stationary Office) (p

17). Applicants are most likely to try to resolve cases on their own where their disputes concern consumer problems or problems with landlords and debt. However, only 14% of people are able to deal with their problems successfully, 16% abandoned the matter, the majority go on to seek further help from legal and advice services. (p 6)

---

## ***Citizen Redress: What citizens can do if things go wrong with public services (2005)***

### **National Audit Office**

This report attempts to map redress systems in public services, and considers how they might be improved. It looks at information issues, the ease of access to redress systems and whether current systems meet the needs of users. The main methods used were: short case studies of complaints handling and appeals in nine government organisations; a survey sent to central government organisations; a census of all government organisation websites; a phone 'mystery shopper' exercise with 18 large departments or agencies; a programme of focus groups along with a national survey of public opinion on redress issues; and interviews and consultations with comparator organisations, ombudsmen and stakeholder groups.

Source: (2005) HC 21, Session 2004-2005, 09/03/2005  
[http://www.nao.org.uk/publications/nao\\_reports/04-05/040521.pdf](http://www.nao.org.uk/publications/nao_reports/04-05/040521.pdf)

Themes: Information provision  
Use of IT  
Triage  
Perceptions of tribunals

### **Information provision**

The research looked at awareness of methods of redress; it found that the concept of an ombudsman is well-known amongst older people but less so with younger people (aged under 40). Public and private sector ombudsmen are seen in similar ways. Government sector ombudsmen are regarded as an option of last resort. In their survey only one person in 14 spontaneously mentioned contacting an ombudsman. By contrast, in another survey two fifths of people said that they had heard of the main public sector ombudsman when prompted to do so with their titles. (p 13)

The report shows that redress information on government organisations' websites has improved greatly since previous National Audit Office reports. More than five out of six departments and agencies (around 250) now provide phone, postal and email addresses for enquiries, although a small minority of these only gave the information in PDF format. PDF documents are rarely searchable by search engines and so information provided in this way is not as fully accessible as that provided in web formats. Furthermore, only a third of government organisations (98) provided an online enquiry form. (p 48)

Beyond the fairly basic level, general information on customer service was not extensive. For instance, only 51 government organisations told people when their customer service enquiry function was open and somewhat fewer gave a named staff member with a specific number (p 48). Fewer than one in six organisations mention that the citizen has a right to seek redress.

The extent of the complaints information varies sharply across the 183 organisations that provide some electronic materials. Around two thirds provide a dedicated complaints address or phone number or email address, and in the same proportion of departments and agencies it is possible to identify the job title of someone to whom a complaint can be sent. (p 50)

## **Use of IT**

### ***Phone access to redress information***

Jobcentre Plus gave the best standard of service, with accessible phone numbers, helpful and concerned telephone operators who quickly understood the problems, and a good range of leaflets that were dispatched immediately. The best agencies, like Jobcentre Plus, had well-informed operators who seemed to be recording details of the interaction on computer as callers spoke with them. By contrast, in the worst departments and agencies could offer little information about how redress systems work, had no printed leaflets they could send, or promised to send material which subsequently never arrived. In several organisations operators tried to refer callers to information on their websites, but then seemed stumped for anything to suggest when callers said they had no web access. (p 54)

The report recommends the creation of a single telephone number for citizens to contact in order to access reliable and useful information about their redress options and rights. It also suggests that Departments and agencies supply written information to citizens on request as information provided on the web is not a substitute for these alternative means of access. (p 14)

At the government-wide level the report suggests that the Cabinet Office and the Department for Constitutional Affairs should explore with the ombudsmen whether there is a case for providing citizens' with a single point of contact for impartial information on where to make a complaint or seek redress. (p 15)

### ***Internet access to redress information***

The study used the search engines on government websites to see what information was accessible on government websites. When they searched for 'appeals' around half of the sites brought up relevant information, while searching for 'tribunal' turned up information in less than a quarter of sites. (p 51)

The study found 6 links each to the Council on Tribunals and to the Citizens Advice Bureaux and just 7 links to other advice or support websites. Social security and benefits is the top-performing area for providing redress information, standing out from the rest of government. (p 52)

## **Triage**

Only half of the government organisations with complaints information on the web gave information on how to contact the Parliamentary Ombudsman, and only one in three provided a web link to the Parliamentary Ombudsman's website. One in five sites explained how the Parliamentary Ombudsman would proceed in handling complaints referred to her office and one in twelve sites gave information about the kind of redress that the Parliamentary Ombudsman could actually provide for complainants. (p 51)

The study also looked at whether websites mentioned the existence of an independent complaints handler or mediator. There were 54 cases where these kinds of intermediary bodies could be involved. Virtually all of them provided the complaint handler's or mediator's postal address and explained what complainants should do first, before taking their complaint to these bodies. Most references gave information on how the complaint handler or mediator would deal with complaints referred to them. But only around half of organisations referring to such bodies gave telephone or email contact details for them, and fewer than one in three provided a link to the complaint handler's or mediator's website. (p 51)

## **Perceptions of tribunals**

Nearly two thirds of respondents thought a tribunal would be rather intimidating or off-putting and small majorities felt that tribunals would be like a court and require a lot of expertise. Tax tribunals and employment tribunals were the best-known. (p 67)

---

## ***Litigants in Person: Unrepresented litigants in first instance proceedings (2005)***

Professor Richard Moorhead and Mark Sefton, Cardiff University.  
DCA Research Report

This is a study of people who represent themselves in court cases, except small claims and criminal cases.

Source: [http://www.dca.gov.uk/research/2005/2\\_2005.pdf](http://www.dca.gov.uk/research/2005/2_2005.pdf)

Themes: Self-represented applicants  
Triage  
Advice provision  
Early dispute resolution  
Staff training  
Judicial training

### **Self-represented applicants**

It explains why they represent themselves, the problems they face and has suggestions for improvements to the services they use.

### **Triage**

The report shows that courts are not confident signposters of unrepresented litigants (p ii). Staff indicated a rather confused knowledge about the way that solicitors worked (p 46). Although the CLS directory were to an extent being employed with a good degree of confidence, and at least some of the courts had developed their own local leaflet from the CLS directory, our focus groups also tended to reveal that staff were uncertain about what precisely was provided. In one court there were workshops for unrepresented litigants advertised in the court building, but staff were not aware of them. (p 47)

Help ended at this level; staff said for instance that they did not give out telephone numbers of agencies or of the likely opening hours. Many staff reported providing the names of three specialists in an area of law, but did not make recommendations.(p 47)

Whether staff ought to be signposting clients on is an open question. Not providing specific recommendations may inhibit advice seeking (Moorhead, R. (2000) "Pioneers in Practice: The Community Legal Service Pioneer Partnership Research Project" (LCD, London)). On the other hand, even short-lists threaten the court's position as a neutral focus in the legal community (p 48). However this does not negate the need for effective signposting. If courts do not ensure litigants are signposted to suppliers who are appropriate, there is a likelihood that litigants will be passed from pillar to post. ( Moorhead and Sherr (2004) "An anatomy of Access" (LSRC, London) (p 65)

### **Advice provision**

Typical advice providers were shown to be solicitors (sometimes the opponent's solicitor), only once was it apparent that another advice agency was involved, very occasionally it was given by friends or family. Local authority social services departments were common sources of assistance. The police and the court were also recorded as giving assistance occasionally (pp 30-31). One person got advice from a liquidator who was in effect their opponent (p 55). In housing cases, letting/ management agents sometimes gave assistance. Interestingly, at least three litigants received assistance from politicians. (p 45)

## **Triage (2)**

The study noted that the public's routes into advice are somewhat varied and unpredictable. One unrepresented litigant had tried the then Legal Aid Board (now the Legal Services Commission) and the CAB, without success. They said that by the time they spoke to someone useful at the CAB, their problems had moved on. Another simply walked into a solicitors firm and yet another went through the telephone book searching for anyone that dealt with family law (p 46). Other concerns people had about CAB included the disjointed nature of advice, which led to variable quality and the fact that CAB may not be appropriate for certain types of problem (such as advanced family disputes). (p 55)

## **Early Dispute Resolution**

Family cases (excluding divorce) involving unrepresented applicants were seen to be more likely to proceed to final hearings. Generally this greater likelihood only affects between 1 in 5 and 1 in 10 hearings, but it does suggest that cases involving unrepresented applicants were less likely to involve earlier settlement of their case (p 226). However the outcomes of cases did not differ drastically depending on whether someone was unrepresented or not. (p 227)

In injunctions cases there were starker differences. Cases where all parties were represented were likely to end in the early stages whereas when the respondent was unrepresented there were much more likely to be steps beyond the first appointment and more likely to be a final hearing. Enforcement activity was also more likely. (p 242)

In civil cases, as with family cases, there were subtle differences in the different stages at which civil cases ended, depending on whether the case involved an unrepresented party or not. Cases involving unrepresented claimants tended to proceed to later stages in the High Court. More County Court cases involving unrepresented litigants tended to proceed to later stages than cases where both parties were represented, especially where the claimant was unrepresented. (p 243)

In spite of this cases involving unrepresented litigants, even where active, did not seem to take much longer on average than cases where both parties were represented. (p 243)

## **Staff training**

Court staff should be trained and facilitated in their role as providers of information. Court staff did not feel that they had been so trained but picked up their approach to giving help from colleagues. Clear guidance should be given to staff about what is information and what is advice, and when help can and ought to be given competently, and in ways that do not compromise the neutrality of the court. (pp 262-263)

Routine orders still involve simple phrases which are not comprehended by lay litigants and could be dealt with more transparently. For example, explaining what 'file and serve' means or ensuring that a litigant knows that exchanging witness statements ordinarily means they would have to put in a witness statement of their own, are straightforward steps which would make the process clearer to litigants. This sort of information is best given by staff rather than in written form as literacy is a significant issue among litigants. (pp 256-257)

## **Judicial training**

Also suggests that judges require additional training to help them cope with self-represented applicants.

---

## ***Employment Tribunals Service User Survey 2005***

### **Employment Tribunals Service**

Customer survey issued by the Employment Tribunals Service, 887 responses received. Addresses issues around the quality of service provided to users.

Source: [http://www.employmenttribunals.gov.uk/customer\\_service/documents/usersurvey2005.pdf](http://www.employmenttribunals.gov.uk/customer_service/documents/usersurvey2005.pdf)

Themes: Information provision

#### **Information provision**

On average 96.1% of respondents were very satisfied or satisfied with the Employment Tribunals Service guidance booklets (p 1). 72% of respondents had phoned a tribunal office. 82% of respondents said they were helped then and there and 12.5% were pointed in the right direction. 94% of respondents who had called a tribunal were very satisfied or satisfied with the service they had received. (p 3)

91% of respondents who had phoned it, were very satisfied or satisfied with the ETS Public enquiry line. (p 1)

92% of people were very satisfied or satisfied with the Employment Tribunals website . 73% of people found the website easy or very easy to use. (p 2)

66% of respondents had written to a tribunal (not including complaints). (p 3). 92% were very satisfied or satisfied with the reply overall. (p 4)

Just under half of respondents (45%) stated that staff had explained to them what would happen during the hearing. (p 4) 98% of people thought that the information provided by the Clerk during the hearing was very clear or clear. (p 5)

---

## ***Helping those in financial hardship: the running of the Social Fund (2005)***

### **National Audit Office**

This report examines four main issues:

1. Does the Social Fund help those with the greatest difficulty in managing their income?
2. Could the Department do more to improve the quality of decision-making?
3. Does the Department administer the Social Fund efficiently?
4. Does the Department manage Social Fund debt effectively?

These issues were assessed through a variety of techniques including surveys, consultations, and process mapping.

Source: HC 179, Session 2004-2005, 13/01/2005  
[http://www.nao.org.uk/publications/nao\\_reports/04-05/0405179.pdf](http://www.nao.org.uk/publications/nao_reports/04-05/0405179.pdf)

Themes: Staff training  
Early Dispute Resolution  
Information provision  
Use of IT

### **Staff training**

Almost all decision-makers learn their role through on-the-job training, supplemented by mentoring, team discussions and job-shadowing. 92 per cent of districts decision-makers receive induction training and over a third provide some kind of refresher training at least annually. There are no central arrangements for training Fund staff. The Department makes available some training material, but it is out of date and districts can choose whether or not to use it. In the absence of centrally-led internal training, the Independent Review Service provides self-instruction computer packages and workshops to districts on request. (p 24)

The Secretary of State provides guidance for decision-makers. The Department also gives updates via bulletins and the intranet and runs an advice phone line for decision-makers. Additionally, the Independent Review Service provides advice for Service inspectors, which includes decision digests and case-studies. (p 24)

The report recommends that the Department should introduce up-to-date, centrally coordinated Social Fund training and that training could be based on existing Independent Review Service training and incorporate local good practice examples, to ensure all decision-makers have the same training opportunities. (p 8)

However the study found developments in training and guidance at a sub-national level. Some districts and regions have developed their own training and some regions give additional guidance to two-thirds of districts. The study also found that three-quarters of districts give extra guidance. In addition, a few districts seek guidance from third parties on, for example, handling claims involving homelessness and domestic guidance. (p 24)

One fund district rotates initial decision-makers and reviewing officers to train initial decision-makers on what the reviewers look for. In another district, decision-makers consider complicated decisions as a team, to ensure that they take a consistent approach. (p 23)

### **Early Dispute resolution**

The study recommends that checking practices should be improved to identify errors early. (p 8)

### **Information provision**

The NAO's survey of people on low incomes found that only 47 per cent knew that jobcentres sometimes pay grants and loans and only 14 per cent of those who needed financial help said they had used them. They are much more likely instead to turn to family and friends for money and advice. (p 20)

Interest groups told researchers that they found it difficult to advise customers on their chances of success because awards are not predictable owing to the discretionary nature and complex decision-making procedures. (p 20)

There was also a lack of awareness of the right of review. Not all customers were aware that they could ask the Department to look again at an initial decision. The standard decision letter tells customers their rights of redress, but the study showed that, when making Crisis Loans decisions on the phone, 19 per cent of districts do not always send decision notifications, particularly if they refuse a claim. In addition, locally produced off-system decision letters include varying amounts of detail about customers' right to internal reviews.

### **Use of IT**

One district has purchased a textmessaging facility to make contact with Crisis Loan customers. It had found that they did not access voicemail messages left by Social Fund staff because of the cost, whereas text messages are free to retrieve. The time saved by not having to repeatedly call customers not picking up messages outweighs the cost of sending the texts.

---

## ***Making a Difference? Legal Representation in Employment Tribunal Cases: Evidence from a Survey of Representatives (2005)***

**P. Latreille, J Latreille and K Knight**

Summarises a survey of representatives in employment tribunals (see above - Findings from the 1998 survey of representatives in Employment Tribunal cases (SETA)) focuses on legal representatives within that survey.

Source: Industrial Law Journal, Vol. 34, No.4, December 2005, p 308

Themes: Representation

### **Representation**

The article considered the impact of lawyer representatives on the stage of resolution and the amount of financial compensation paid in employment tribunal applications using the Survey of Representatives conducted as part of the 1998 SETA. They found that the impact differs when lawyers represent employers compared with applicants. When they represent the former, their presence leads to greater withdrawal rates by applicants but also a greater chance that the case goes to tribunal. (p 329)

When they represent applicants, their impact on the stage resolution is, in general, no different from other non-lawyer representatives. Their main exclusive impact on applicants in the data therefore appears to be in raising the level of compensation received by clients above that achieved by other representatives. (pp 329-330)

The data also appears to support the hypothesis that the effects of representation are moderated where the opposing party is also represented. The data reveals that withdrawal of the case is almost twice as likely (27% cf. 14%) when an employer representative faces an unrepresented applicant compared with the situation where the applicant has secured representation, while the latter scenario is associated with a correspondingly high settlement rate (47% cf. 36%). (p 318)

---

## ***European methods of administrative law redress: Netherlands, Norway and Germany (2004)***

Trevor Buck, University of Leicester.  
DCA Research Report

This report examines the profile of administrative law remedies in the Netherlands, Norway and Germany and makes some observations about the activities of regional European institutions in this field. For each jurisdiction the report provides an overview of the administrative law system and court structure, an outline of the ombudsmen schemes and the significant developments in Alternative Dispute Resolution (ADR).

Source: [http://www.dca.gov.uk/research/2004/2\\_2004.pdf](http://www.dca.gov.uk/research/2004/2_2004.pdf)

Themes: Early dispute resolution  
Alternative Dispute Resolution  
Compulsory mediation

### **Early Dispute Resolution**

The Netherlands has been relatively successful in avoiding litigation. Blankenburg argues that this cannot be attributed to an absence of legal regulation nor an absence of conflicts, 'avoidance is achieved by having a plurality of institutions' offering informal alternatives to judicial procedure and a number of 'exit' opportunities within court procedures. (E. Blankenburg (1999) in A. Zuckerman (ed), *Civil Justice in Crisis: comparative perspectives of civil procedure*, Oxford University Press, p 449) (p 10)

One of these exit opportunities is the preliminary injunction procedure. The injunction rarely involves more than one oral hearing, the parties present their respective cases and reply immediately. The proceedings are informal enough for the president of the court to indicate to the parties what their chances of success in a full action are likely to be. On average, cases going through the preliminary injunction procedure are terminated within six weeks from start to finish. Even though they remain free to do so, few parties initiate ordinary proceedings afterwards.' (E. Blankenburg, p 11) (p10-11).

### **Alternative Dispute Resolution**

According to data produced by the Netherlands Mediation Institute (NMI) in 2001 there were three important areas of mediation caseload in the Netherlands: family disputes (44%) labour disputes (25%); and commercial (13%). In the Netherlands an administrative court can refer the parties to mediation. 'Once a case is pending in an administrative court, Dutch laws allow for the judge to probe opportunities for an amicable settlement'. (A. de Roo and R.Jagtenberg (2002), 'Mediation in the Netherlands: Past - Present - Future', vol 6.4, *Electronic Journal of Comparative Law*, December 2002, <http://www.ejcl.org/64/art64-8.html> , o 142) (p 19)

De Roo and Jagtenberg say that mediation is most often used successfully 'in those cases where the number of interested parties is limited, and the parties are identifiable. This applies particularly to employment disputes between government employers and their civil servants; and - to a lesser extent - to disputes over building permits, that merely have an impact on the direct neighbour(s) of the applicant.'. (A. de Roo and R.Jagtenberg, p 144) (p 20)

Mackie considers that, 'Mediation is particularly appropriate for neighbourhood and noise-nuisance disputes. In principle, and if properly resourced, there is no obstacle to applying mediation...to disputes about repairs, discretionary grounds of possession, alternative accommodation, and pre-trial determination of facts and issues. (K. Mackie (2002), 'Developing Mediation in an Ombudsman Context', *The Ombudsman*, March 2002, pp 6-7) (p 53)

In Norway the Civil Procedure Committee has considered the ways in which judicial mediation could be strengthened. In the Dispute Act it set out guidance to help the court decide if mediation is suitable or not - 'weight should be attached to the attitude of the parties towards judicial mediation as well as the scope for reaching settlement or simplification of the case. Weight shall also be attached to whether judicial mediation may be inappropriate due to differences in the relative strength of the parties, the costs of judicial mediation, previous attempts at mediation or other considerations.' (p 34)

### **Compulsory mediation**

de Roo and Jagtenberg caution against mandatory mediation: ' We contend that mediation can only be truly facilitative, if it is structured against the backdrop of an accessible legal system. It should not be mediation or law. It should be mediation and law.'.. de Roo and R.Jagtenberg, p 145) (p 21)

In Norway civil procedure prescribes that all civil suits must be commenced at a conciliation court/board, which is both a mediating body and a court. The conciliation courts have a long history in Norway and are an intriguing example of the combination of the judicial power and mediation methods.(para 7.3 (2)) (p 34)

However the great majority of cases are in fact not conciliated/mediated at all. There are some significant exceptions to the underlying legal duty to take a civil claim to the conciliation courts e.g. where both parties have received legal assistance and agree that mediation in front of a conciliation board is pointless. Furthermore, disputes regarding decisions made by the state, regional or local governments or administrative agencies placed under these governments are also excluded.(p 24)

In Germany in 1999 the Federal Parliament introduced legislation which permits all 16 German states to introduce mandatory court-connected mediation. There are three categories of dispute which will qualify for mandatory mediation:

- financial disputes up to a value of 750 euros
- certain neighbourhood disputes; and
- defamation disputes where the alleged defamation has not occurred through the media. (p 43)

---

### ***Conciliating in Unfair Dismissal Employment Tribunal Applications: does the timing of first contact with parties have an impact on the efficiency and effectiveness of the Acas Individual Conciliation Service (2004)***

#### **ORC International**

This report presents the findings from a project designed to assess the impact of the timing of first contact with parties involved in unfair dismissal employment tribunal cases. A total of 316 cases were used in the study. In just over half of these contact was made with customers soon after the Employment Tribunal application was received at ACAS, and in the remaining 48% of cases contact was made after the receipt of the employer's response.

Source: [http://www.acas.org.uk/media/pdf/j/2/0804\\_.pdf](http://www.acas.org.uk/media/pdf/j/2/0804_.pdf)

Themes: Early Dispute Resolution

#### **Early Dispute Resolution**

Timing of first contact with customers had very little impact on the final outcome of the case. However, on average cases were resolved 18 days earlier when contact was made soon after the Employment Tribunal application was received compared to when contact was made after the receipt of the employer's response. (Executive Summary)

The study also assessed whether there was any difference in customer's level of satisfaction with the Acas conciliation service depending on when contact was first made. The conclusions drawn from the findings of the survey are that making first contact soon after the receipt of the Employment Tribunal application can raise unrepresented parties' levels of satisfaction with the service to that of representatives. (Executive Summary)

---

## ***Findings from the 1998 survey of representatives in Employment Tribunal cases (2004)***

P. L. Latreille, J.A. Latreille and K.G. Knight

This report is a result of a survey of 452 representatives. It considers the role of the representative in the outcome of the case, advice provision and its effect, the role of ACAS and representatives' perceptions of the tribunal system.

Source: Employment Relations Research Series, no. 35, London: Department of Trade and Industry  
<http://www.dti.gov.uk/files/file11453.pdf>

Themes: Representation  
Early dispute resolution  
Advice Provision

### **Representation**

Applicant representatives were typically involved earlier in cases than representatives acting for employers. Furthermore, the proportion of cases decided in favour of the applicant was higher for representatives acting on behalf of applicants than those acting for employers, and also where the other side was not represented. This suggests that advice is crucial to success (p xi).

'Experienced' representatives were asked about satisfaction with the employment tribunal system generally. Although around 80% of representatives said they were either 'Very satisfied' or 'Quite satisfied', almost one in five said they were either 'Not very satisfied' or 'Not at all satisfied'.

### **Early dispute resolution**

The report indicated that around three-quarters of representatives felt that cases where both parties were represented were more likely to be settled. Representatives often advise clients to settle, even when they feel that they have a good chance of winning (41% of applicant representatives and 28% of employer representatives). Though trade union representatives were less likely to recommend seeking settlement than other representative types (p x-xii).

### **Advice Provision**

#### ***Role of Acas***

More than three-quarters of the representatives in the survey felt they could trust the Acas conciliator 'A lot' and most representatives felt the Acas officer was even-handed. More than half of representatives felt that the Acas officer was important in reaching a settlement/ bringing the parties closer together. Trade Union and CAB representatives were more likely than solicitors/ barristers and 'Other' representatives to consider the work of the conciliator 'Very Important'. Overall 87% of representatives were satisfied with the service provided by Acas in the specific case that was the subject of the survey, most especially among trade union

---

## ***Findings from the Survey of Employment Tribunal Applications 2003 (2004)***

Bruce Hayward, Mark Peters et al, BMRB Social Research.

This study was designed to update earlier research and to provide details on parties, key features, outcomes and duration of employment tribunal cases. It is based on two surveys of applicants (2,236 cases) and employers (2,281 cases).

Source: Employment Relations Research Series, no. 33, London: Department of Trade and Industry  
<http://www.dti.gov.uk/files/file11455.pdf>

Themes: Information provision  
Advice provision  
Representation  
Costs and fees  
Early dispute resolution

### **Information provision**

Awareness of the right to enforce employment rights at a tribunal was higher among older applicants (50 or over) than among younger applicants. (72 versus 60%) Overall 2% of respondents were aware of the right to redress. (p 48)

43% of applicants and 37% of employers had used Acas publications and leaflets, whilst 37% of applicants and 26% of employers had referred to ETS publications or leaflets. Over one in six applicants and nearly one in five employers had visited the Acas website. A smaller proportion of survey respondents had used the ETS and DTI websites. (p 35)

### **Advice provision**

The study also found that the most common source of advice for applicants and employers was a solicitor or barrister. This was by far the most common source for employers (71%), whilst although the most common for applicants (44%), one in six also used other sources such as trade unions, Citizens Advice Bureau or family and friends. (p 31).

Nearly three quarters (73%) of those applicants who received neither professional advice nor had professional representation did use a passive source of information, and publications and leaflets were most often used. However, a substantial minority (27%) of applicants used neither active nor passive sources of advice or representation. This was true of an even greater proportion of employers (38%).

In terms of the Acas officer's advisory role, two-thirds (67%) of those who recalled having contact with an Acas officer said that the Officer had explained the tribunal procedure to them. 54% said that the Officer had helped them understand the strengths and weaknesses of their case. 63% said that the Officer had helped them consider the pros and cons of settling the cases without going to trial. (p 44)

### **Representation**

Employers were more likely than applicants to be represented at a full tribunal hearing (72 versus 42 %). (p 32) Young applicants (aged under 25) were less likely than their older counterparts to have legal representation. Managers/ Senior Officials and Associate Professional and Technical occupations were particularly likely to have used legal representation. Two-thirds of trade union members had legal representation, compared with just over half of non-members. (pp 38-39)

24% of applicants were members of a trade union or staff association at the time they submitted their application; 49% of those received advice or representation from their union. 51% of union members said they were neither advised nor represented by their union. (p 39)

For parties who were represented at a full hearing slightly over half had a solicitor to represent them (51% compared to 54% of employers). 15% of applicants used a trade union representative while 17% used a Citizen Advice Bureau. 13% of employers were self-represented, while a further 10% used an employment rights adviser. (pp 32-33)

Cases that went to a full tribunal hearing (and more specifically cases where the applicants were unsuccessful at tribunal) were most likely to involve parties that had received professional representation and advice. 67% of such cases involved parties that were represented. (p 36)

A quarter of applicants said that they would have liked additional help, compared with 12% of employers. 43% said they would have liked to have used a solicitor, while a fifth mentioned Acas and a trade union representative. A third of employers mentioned Acas and a further fifth a solicitor. 52% of unrepresented applicants said that they would have welcomed the advice of a solicitor. (p 34)

A quarter of applicants, compared with 15% of employers did not use their desired source because they could not afford to. 46% of applicants did not use a solicitor because they could not afford to do so. (p 34)

Since the 1998 study the proportion of applicants receiving no advice or representation at any time during the case appears to have decreased marginally from 10% to 7% although this change could be a result of the different designs of the two surveys. (p 71)

In general 72% of applicants were satisfied with the workings of the employment tribunal system, with 33% being very satisfied. Just under a quarter (23%) were dissatisfied. 17% of applicants who commented on the effectiveness of the employment tribunal system said that they would have welcomed more information, either about the employment tribunal system in general or the specific procedure involved. (p 49)

### **Costs and fees**

11% of applicants had a contingent fee arrangement. Cases involving discrimination claims and standard conciliation periods were more likely to have had a contingent fee arrangement (23 and 26% respectively), compared with only 7% of short conciliation period cases. Cases which involved unfair dismissal claims as the main jurisdiction were most likely to have a conditional fee arrangement. The terms of the conditional fee arrangement and the amounts agreed to be paid to legal representatives varied considerably; they ranged from a few hundred pounds to in excess of £20,000. The mean arrangement was £2,810, the median amount was £1,203. (p 41)

### **Early Dispute Resolution**

Only 8% of respondents said that there had been a preliminary hearing. (p 52)

In total, 60% of cases were settled. (p 57) As in the 1998 study, applicants who were professionally represented were more likely to achieve a settlement. (p 72)

---

## ***Civil Legal Aid: adequacy of provision (2004)***

### House of Commons Constitutional Affairs Committee

This report examines civil aid provision, and addresses six questions:

- What evidence is there of the emergence of 'advice deserts'?
- How can the Department for Constitutional Affairs and the Legal Services Commission provide incentives for legal aid practitioners to continue legally aided work?
- Is the perception that legal practitioners are moving out of legally aided work correct?
- Can the requirement for legal aid be reduced by the resolution of some legal issues on a more informal basis, through the Citizens' Advice Bureaux, long distance services or otherwise?
- Would a salaried service or the provision of law centres be viable solutions to lack of provision, either in areas without sufficient practitioners or elsewhere?
- What would be the comparative funding costs of a salaried service?

The findings are based on the Causes to Action research and oral and written responses from a number of key stakeholders.

Source: Fourth Report of Session 2003-04  
<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/391/391.pdf>

Themes: Advice provision  
Representation  
Self-represented applicants  
Use of Call centres  
Use of IT  
Triage

### **Advice provision**

In 2001 about 47% of households were eligible for Legal Aid. (p 30) However the introduction of legal aid contracting in January 2000 (civil) and April 2001 (criminal) has led to a reduction in the number of suppliers doing legal aid from about 11,000 to about 5,000. By April 2003, the number of solicitor firms holding civil contracts with the Legal Services Commission (LSC) had further declined by about 14%. This decrease has occurred, mainly in the mainstream areas such as family, debt welfare benefits and housing, whereas smaller work types such as education and public law have seen increases in the number of contract holders. (p 13) The report estimated that approximately 590 fewer contracts would be offered to solicitors and Not for Profit organisations in 2004/5. (Ev 239 para 49) (p 20) Furthermore, the Legal Aid Practitioner Group provided evidence that in 2003/04 74% of firms reported that they had turned clients away. (p 12)

It is the policy of the LSC to deal with fewer firms. The report says that this creates a number of problems. For example, if fewer solicitors' firms have contracts the problems of supply in rural areas will be exacerbated, especially in family law disputes which require different solicitors' firms for each of the parties. In time, the limited sourcing of legal aid work to fewer firms may result in higher fees being charged, since the bargaining position of the Department will be weaker. Fewer contracts with firms would involve the loss of investment in resources which the current body of experienced, trained and motivated legal aid practitioners represents. Once these practitioners are lost, they will be hard to replace. (p 21)

At present, it is possible to take advice from a wide range of firms in which there is a good general spread of expertise. Over-specialisation in certain areas of legal aid work may prevent solicitors from providing a holistic approach. Although specialisation can provide a concentration of expertise, firms must be able to offer a "joined up" service, since many people turn to solicitors with a series of connected problems that require expertise in different legal areas. (p 21)

The report discusses whether advice deserts exist. It states that in 2001 42% of legal aid bid zones had no welfare benefits specialist funded by the LSC. The percentages of bid zones without a specialist contractee were: for debt, 40%, housing 44%; and employment 63%. Such figures need to be interpreted carefully: members of the public may be willing to travel across ward boundaries and bid zones to get their advice and the LSC is developing helplines and other ways of reaching poorly served areas. (p 19)

The report supports the role that "outreach" programmes play in the range of services giving advice to the public. They warn, however, that the details of their implementation are of crucial importance. They must not be irregular or infrequent and they must integrate properly with other legal services to enable proper referral. (p 17)

However Advice Services point out that attitudes to travelling differ between people in urban and rural areas. They say that people in rural areas are more accustomed and able to travel long distances to access services, compared with people in urban areas who find long distances more offputting. (Ev 86, para 17) (p 19)

The Advice Service Alliance consider that in order to avoid the creation of 'advice deserts' there should be access to legally aided advice services:

- At a 'local' level in relation to family, housing, debt, benefits, employment and immigration law;
- At a 'sub-regional' or 'regional' level in relation to the other main categories of contracted supply - community care, education, public law, actions against the police, mental health, and clinical negligence. (Ev 87, para 20) (p 19)

The Law Centres Federation mention one solution found in Cumbria, where a justice bus tours the area giving advice to the public. (p 19)

## **Representation**

The report also looks at the field of employment, where eligibility for legal aid is particularly restricted. The only legal aid available for employment work is Legal Help; controlled legal representation does not apply to employment tribunal representation. Thus practitioners are paid for preparation work only; for representation clients must rely on a Not for Profit agency's other funding, their own funding, a student representative, the occasional pro bono lawyer and often nothing. (Ev 78, para 26) (p 31)

Lord Irvine of Lairg, before he was appointed Lord Chancellor, described the exclusion of tribunal representation from legal funding as a:

"... gap which cannot be rationally justified in the provision of legal aid...there is no greater unfairness than the legally unrepresented applicant against the legally represented employer in industrial tribunal cases...(it is)... irrational to exclude tribunal cases from any call on the legal aid budget." (Lord Irvine of Lairg, "The Legal System and Law Reform under Labour", in Law Reform for All, 1996)

## **Self-represented applicants**

Several research projects have shown that unrepresented claimants in tribunal hearings are at a substantial disadvantage (See e.g. Michael Adler and Jackie Gallaud, Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review, published by the Council on Tribunals, 2003, especially para 3.3; Richard Moorhead, Tribunals, Advice and the Community Legal Service, 2001; Hazel Genn, "Tribunals and Informal Justice, in The Leggatt Review of Tribunals, Academic Seminar Papers, 1993; [1993] 56 Modern Law Review, 393-411) and the Legal Services Research Centre's (LSRC) research for the LSC has demonstrated that employment problems are often triggers for a whole host of other justiciable problems, which tend to lead to further needs for advice. (p 31)

The report then turns to sources of advice. Clare Dodgson has indicated that advice can be provided via government departments, commenting: "people are not particularly concerned about who is giving that advice or what label is on it as long as it meets your needs". (Legal Action, July 2003, p 6)

The Legal Action Group (LAG) disagree with the LSC's point of view, especially in relation to advice from government departments. It believes that these initiatives raise important concerns about independence of advice and that there is potential for conflicts of interest. For example, a JobCentre Plus employee may less readily advise a client to appeal against the DWP's refusal of a welfare benefits claim than (say) an advisor at a citizen's advice bureau. It is also concerned about the breadth and the quality of government-sponsored advice. It is also concerned about the breadth and the quality of government-sponsored advice. It referred to a report of the Parliamentary Ombudsman which noted that over a third of the complaints she received related to the DWP and, of these, a 'significant number' of complaints against JobCentre Plus involved either incorrect or misleading advice about entitlement to benefits. (Ev 118, para 10) Research conducted by One Parent Families shows that satisfaction with advice provided by the Benefits Agency and Child Support Agency to lone parents was low, although help provided by New Deal for Lone Parents Advisers was high. (Richard Moorhead, Mark Sefton and Gillian Douglas, "Advice Needs of Lone Parents", 2004) (p 35)

### **Use of call centres**

In the Tyne Valley in Northumberland, the LSC has contracted a solicitors' firm to spend one day a fortnight delivering legal services in a church hall. The LSC believes that telephone advice:

- can successfully offer a specialist casework service;
- achieves equivalent outcomes more quickly than face to face advice;
- attracts a similar range of clients including people who otherwise would not have sought advice;
- produces outcomes that are equivalent to those achieved by face to face services, and with which clients are satisfied. ("How To Plug Legal Aid Gaps - Get on the Phone", The Times 24 February 2004) (p 39)

Clare Dodgson (then Chief Executive of the LSC) told the study that:

"The pilot results which you have seen are positive. I draw across to previous experience of NHS Direct where you can deal with relatively straightforward but quite complex professional judgment issues. NHS Direct was staffed by highly qualified nurses, not doctors. There is a question about highly specialised advice-givers who may not necessarily be lawyers and how we work with the not-for-profit and the voluntary sector area. We are committed to doing more telephone work with clients." (Q 59) (p 39)

Nony Ardill from the Legal Action Group cautioned against using the telephone for unsuitable cases:

"I think there were a number of instances when telephone advisers wanted to refer a client to a face-to-face adviser but were unable to do so because of lack of capacity and they then had to struggle on with the client through the telephone advice service, which was far from ideal. There is also the question of whether a telephone advice service can attract advisers and retain them...(however) The most important point is whether telephone advice is suitable for all clients and for all cases." (Q 115) (pp 39-40)

### **Use of IT**

In evidence Mr David Lammy MP noted that the Money Claims Online initiative could be extended to include housing matters (Q 318) In addition, JUSTICE praised the redesign of the LSC's 'Just Ask' website. (Ev 192, para 15) (p 40)

### **Triage**

The report says that the Community Legal Service (CLS) aims to provide a "seamless service" throughout its different levels of provision. Legal Action Group pointed out:

"... research carried out on specialist Quality Mark providers using 'mystery shoppers' to test referral activity suggests that the 'seamless service' is not working well in practice. (Richard Moorhead and Avrom Sherr, "An anatomy of access: evaluating entry, initial advice and signposting using model clients", 2003) Findings suggest that a significant proportion (up to 40%) of clients are referred to another agency that is less than appropriate; and a worrying minority (around 12%), instead of being referred, were given poor advice - outside the provider's

area of expertise. This study suggests that, in many cases, access to suitable specialist provision may be inhibited rather than facilitated by the CLS network. (Ev 119, para 14) (p 32)

---

### ***Seeking resolution: the availability and usage of consumer-to-business alternative dispute resolution in the UK (2004)***

Margaret Doyle, Katrina Ritters and Steve Brooker, DTI.

Describes the findings of a month-long study into the provision of independent alternative resolution (ADR) for specific sectors of consumer disputes. Its focus is on the use of arbitration, mediation, and ombudsmen services.

Source: <http://www.dti.gov.uk/files/file11557.pdf>

Themes: Information provision  
Triage

#### **Information provision**

Consumer advisers commented that though Consumer Direct will deal with the majority of calls, it was still necessary to fortify other sources of advice for more involved cases (pg 76), that small-business traders perceive that they have no body to turn to for advice (pg 76) and that advisers lack an awareness of ADR (PG 76)

#### **Triage**

An initiative by Leicestershire CC was mentioned, where a mediation service has been linked to the provision of advice (pg 67 - 68)

---

### ***Findings from the 1998 Survey of Employment Tribunal Applications (surveys of applicants and employers) (2004)***

DTI

Based on a random sample of 2,700 ET cases drawn from two independent sample surveys of applicants and employers who made applications between 1995 and 1997.

Source: Employment Relations Research Series, no. 13, London: Department of Trade and Industry  
<http://www.dti.gov.uk/files/file11600.pdf>

Themes: Information provision  
Advice provision  
Early dispute resolution

#### **Information provision**

The study shows that information about employment tribunals is not getting through to applicants - 54 per cent of those who had not made a previous application said they knew 'nothing at all' about the Tribunal system. (p 10)

Nearly 80 per cent of applicants were not members of a trade union or staff association. Applicants bringing discrimination cases were much more likely to be union or staff association members (62%). These statistics are relevant because applicants who are not members of a trade union or staff association will have to rely on other

sources of information. Consequently, as the proportion of such applicants increases, issues of information provision and the use of IT will become more significant. (p 31).

### **Advice provision**

63 per cent of employers and 49 per cent of applicants consulted an external law firm. Applicants who are professionally represented are more likely to achieve a settlement, while applicants who received advice only are more likely to have their cases dismissed or disposed. The most common source of advice for applicants was a professional advisor, consulted by 69 per cent of applicants. 10 per cent of applicants did not discuss their case with either a solicitor or a professional advisor. (pp 40-41)

### **Applicants**

Women were slightly more likely than men to discuss their case with a professional advisor. However there was no such difference in the case of solicitors. Trade union or staff association members were more likely than non-members to discuss their case with a professional advisor (92 and 63 per cent). In contrast non-trade union and staff association members were more likely to discuss their case with a solicitor (51 and 41 per cent respectively). Professionals were more likely than other occupational groups to discuss their cases with a solicitor. They were also more likely to discuss their case only with a solicitor and less likely to involve professional advisors. Trade union and staff association members are more likely than non-members to discuss their case with both a solicitor and, at least one, professional advisor. (p 41)

Applicants were most likely to discuss their case with a solicitor in cases of unfair dismissal and least likely in Wages Act cases (57 and 29 per cent respectively). Applicants involved in Wages Act and redundancy payments cases were less likely to get to discuss their case with a solicitor or a professional advisor than those bringing cases under the other jurisdictions. They were more likely not to receive any professional advice. Applicants bringing cases under the discrimination jurisdictions were more likely than those bringing cases under other jurisdictions to discuss their case with both a solicitor and, at least, one professional advisor. However, five per cent of applicants did not appear to have received professional advice. Applicants in unfair dismissal cases were more likely to seek advice from legal and professional advisors than in the remaining jurisdictions. (p 41)

### **Employers**

Employers from the non-profit making sector were most likely to have discussed their case with a solicitor (74 per cent), followed by private sector employers (65 per cent) and then the public sector (46 per cent). Workplace size is not associated with whether the employer discussed the case with a solicitor. However, single site are more likely than multi-site organisations to have discussed the case with a solicitor or other legal specialist. Employers were most likely to discuss their case with a solicitor in discrimination cases and least likely in Wages Act cases (70 and 50 per cent respectively). Employers who discussed the case with a solicitor were most likely to have been involved in cases which were settled (67 per cent) and least likely in cases that were withdrawn (54 per cent). Employers experienced in dealing with ET cases (six or more cases over the past five years) were less likely to discuss the case with a solicitor. (pp 41-42)

### **Early Dispute Resolution**

80 percent of applicants had heard of Acas prior to the Tribunal case. 97 per cent of employers said they had heard of Acas prior to the dispute that led to the ET application. 77 per cent of applicants said their first contact with Acas took place before being informed of the date for the Tribunal hearing. The timing of the first intervention is considered by many Acas Officers to be a factor that influences the parties' propensity to settle. Some Acas Officers argue that the notification of the hearing can act as a spur to the parties considering the possibility of settling, others argue that early intervention can help the parties from becoming too entrenched, making conciliation more difficult. 43 per cent of applicants who had settled their cases said they would 'definitely not' have reached a settlement without the involvement of the Acas officer, with a further 19 per cent saying they would 'probably not' have reached a settlement. (p 12)

While the ETS data suggested that 73 per cent of settled cases involved Acas conciliation, interviewees themselves said that Acas was involved in drawing up the settlement in just 36 per cent of cases. Settlements were most common in breach of contract, unfair dismissal and Wages Act cases (between 54 per cent and 58 per cent) and less common in discrimination cases (45 per cent) and redundancy payment cases (34 per cent - note that Acas conciliation was not available for this jurisdiction at the time). (pp 12-13)

---

### ***Monitoring the Disability Discrimination Act (DDA) 1995, Phase Three (2004)***

J. Hurstfield, N. Meager, J. Aston, J. Davies, K. Mann, H. Mitchell, S. O'Reagan, A. Sinclair

The report presents the findings of a study monitoring cases taken during the first 19 months of implementation of the DDA throughout the UK. The research draws on: information on all cases brought under the Act, case studies of 92 cases and potential cases under the Act, and interviews with legal and other experts involved in the Act's implementation.

Source: Department for Education  
<http://www.dfes.gov.uk/research/data/uploadfiles/RB119.doc>

Themes: Information provision  
Advice provision  
Early dispute resolution

#### **Information provision**

The study identified a number of specific barriers to taking cases which included: lack of awareness of the Act among disabled people; the lack of a Commission to publicise the Act and support applicants, the heavy reliance on charitable and free sources of advice and the lack of finance to support those taking cases. (p 3)

#### **Advice provision**

The study reported that legal advice was particularly important in DDA cases because, in most cases, the DDA claim was identified and initiated by an adviser or legal representative, rather than the applicant. (p 1)

22% of applicants in cases going to tribunal represented themselves, whilst 34% were legally represented. A higher proportion of respondents (59%) were legally represented, and the difference in representation between applicants and respondents is larger than is typically found in other areas of employment law. (p 2)  
Cases were more likely to be won by applicants who were legally represented. (p 1)

The case studies suggested that lack of finance was the main barrier for applicants in taking cases, and was the main reason why applicants chose to represent themselves or to rely on free sources of advice in cases. (p 2)

In the small number of Part III cases, almost all plaintiffs and defendants were legally represented, but as with Part II cases, for reasons of cost, there was heavy reliance among plaintiffs on free sources of advice or representation. (p 3)

#### **Early dispute resolution**

The study showed that ACAS plays a significant role in resolving DDA cases, with 41% of cases being settled through ACAS, and a further 33% being withdrawn or privately settled. In most cases with ACAS involvement, the parties reported satisfaction with the role played by ACAS. (p 2)

One in eight cases have a preliminary hearing, directions hearing or pre-hearing review, and there was a strong view among interviewees that such hearings were particularly beneficial in DDA cases in establishing the key issues and identifying the evidence necessary for the case. (p 3)

---

## ***Understanding advice seeking behaviour (2004)***

H. Genn, P. Pleasance, N. J. Balmer, Al. Buck and A. O'Grady

This paper discusses empirical findings about public use of legal advice and information services to help in resolving civil disputes and problems for which legal remedies exist ("justiciable problems"). The discussion uses data from the Legal Services Research Centre (LSRC) Survey of Justiciable Problems, a large-scale social survey of 5,611 adults' experience of and response to justiciable problems, conducted throughout England and Wales.

Source: <http://lsrc.org.uk/publications/advice.pdf>

Themes: Advice provision  
Triage

### **Advice provision**

Among those people who sought advice to try and resolve their problem, about fifteen percent were not successful. Unsuccessful attempts occurred most commonly in relation to homelessness, benefits, renting, employment, consumer problems, children and neighbour disputes (p 16). Giving up after an unsuccessful attempt to obtain advice tended to occur when respondents were dealing with problems over owned property, employment, neighbours, discrimination and consumer problems. On the other hand when people were dealing with homelessness, benefits, children, or problems over rented accommodation they were more likely to continue to try and resolve the problem on their own, rather than simply giving up. (p 17)

Genn and Pleasance identify a range of structural and personal obstacles which inhibit access to advice. The lack of availability of free sources of advice such as the CAB (due to limited opening hours, and unanswered telephones), unaffordable costs in regards to solicitors, and the lack of specific knowledge and help available were some of the obstacles mentioned.

The most common types of first adviser were solicitors (1/4 of respondents) and CAB (1/5 of respondents). Other common first points of contact were local authorities, advice agencies other than CAB, trade unions, employers, the police, insurance, companies. Almost one in five respondents went to some "other" sources of advice such as claim agencies, social workers, ombudsmen, housing associations, health professionals, court staff, barristers, MPs, religious organisations, the media, social security offices and consultants of various sorts. (pp 21-22)

About 8% of first advisers, 9% of second advisers and 7% of third advisers were friends or relatives. Where a friend or relative referred a person on elsewhere this was overwhelmingly to non-friend/ relative advisers. Personal networks, previous experience and knowledge were the most important factors influencing respondents' choice of adviser. (p 20)

The choice of first adviser appeared to vary substantially between different problem types. So, for example, for problems with owned property, the most common first adviser was a solicitor. CAB on the other hand were the most common first choice of adviser for problems with rented accommodation and employment. (p22)

A large proportion of respondents stated that their choice of first adviser was "obvious". However the choice of first adviser was inappropriate in many cases, for instance among those experiencing problems with renting and benefits, the most common source of advice was the local council - probably the body with whom the respondent was in dispute (p 23). It therefore appears that there is considerable scope for improving public consciousness about appropriate sources of advice. (p 20)

Respondents judged solicitors, CAB and other advice agencies most often to have been very or fairly helpful. There was, however, a greater degree of dissatisfaction with employers, local councils, insurance companies, trade unions and the police.(p 33)

## **Triage**

Respondents going first to solicitors were very likely not to go on to a subsequent adviser, whereas those respondents who went first to a CAB or the police were more likely to go on to use other sources of advice (p 25). Solicitors were the most likely category of adviser to suggest mediation.(p 27)

There were also differences in the likelihood that, having been referred on to another adviser, respondents would actually make contact with the person or organisation to whom they had been referred. While those referred by CAB and trade unions were very likely to make contact, those referred to "other" advisers, solicitors, employers and other advice agencies were less likely to make contact with the adviser to whom they had been referred.(p 30)

---

## ***Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review (2003)***

**M. Adler and J. Gulland**

The Literature Review is structured around four main headings:

1. Practical barriers that prevent potential users from accessing tribunals;
2. What users want from the tribunal process;
3. The proportion of users who have appealed before;
4. Users' views on the independence and impartiality of tribunals.

Source: [http://www.council-on-tribunals.gov.uk/docs/other\\_adler\(2\).pdf](http://www.council-on-tribunals.gov.uk/docs/other_adler(2).pdf)

Themes: Information provision  
Costs and fees  
Use of IT  
Perceptions of tribunals

### **Information provision**

Most tribunal users receive information about their right to appeal against the adverse decision from the agency that made the decision in the first place. However, this information is not uniformly good. For example, there has been criticism of the lack of information about appeal rights provided by the Child Support Agency. (CSA Standards Committee 2001) The effects of this are confirmed by Wikeley et al. (N. Wikeley, S. Barnett, J. Brown, G. Davis, I. Diamond, T. Draper, and P. Smith, "National Survey of Child Support Clients, DSS Research Report No. 152", 2001, pp 93-94) who found a low level of awareness of the right to appeal against a decision of the Child Support Agency, even among those who had lodged a complaint about their assessment. (p 3) (p 6)

Another example of this is in the area of immigration. Genn and Genn (H. Genn, and Y. Genn, "The Effectiveness of Representation at Tribunals", Lord Chancellor's Department, 1989) found that most appellants obtained information about their right of appeal direct from the Immigration Authorities. However, Gelsthorpe et al's (V. Gelsthorpe, R. Thomas, D. Howard, and H. Crawley, "Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type", Online Report 26/03, Home Office, 2003, p 45) research into family visitors appeals showed considerable problems with information about rights and procedures as well as difficulties with language and literacy.(p 6)

Those who do not get this information from the agency in question access a variety of sources, in particular Citizens Advice Bureaux and other information and advice agencies (J. Baldwin, N. Wikeley, and R. Young, Review, Judging Social Security, 1992; R. Berthoud, and A. Bryson, "Social Security Appeals: what do claimants want?", Journal of Social Security Law, 4(1), 1997, pp 17-41; Genn and Genn, 1989; and R. Sainsbury, "Survey and Report into the Working of Medical Appeal Tribunals, 1992.) (p 4)

For the Special Educational Needs Tribunal (SENT), a survey found that 25% of parents had sought advice from a lawyer and 43% from a CAB or a voluntary organisation, while 25% had not sought any advice. 90% of those who had sought advice were happy with the advice they received and said they could not have coped otherwise. Many also commented on the helpfulness of the information provided by SENT and SENT staff. Harris points out that those who seek advice in the first instance seem more likely to proceed with the appeal. (N.Harris, "Special Educational Needs and Access to Justice, 1997, pp 80-81) (p 9)

Looking specifically at Employment Tribunals, researchers found that applicants access a very diverse set of information sources, including Citizens Advice Bureaux, solicitors, workmates, family and friends, and trade unions. It is significant, however, that trade unions appear to be the main source of information for a very small proportion of applicants - 6% according to the Employment Tribunal Service ("Customer Survey", 2001), 18% according to Genn and Genn (1989). (p 5)

The main source of information accessed by applicants to employment tribunals appears to vary according to the nature of the case and according to the characteristics of the appellant. For example, recent research on applications to employment tribunals found that appellants in unfair dismissal cases were most likely to consult a professional adviser while those taking Wages Act or redundancy payments cases were least likely to have received any advice. (Department of Trade and Industry, "Dispute resolution in Britain: a background paper", 2002, p 26) Appellants in professional jobs were more likely to consult solicitors while (unsurprisingly) trade union members were more likely to consult trade unions. (p 5)

Tremlett and Banerji (N.Tremlett, and N. Banerji, "The 1992 Survey of Industrial Tribunal Applications", Department of Employment, 1994) and DTI (Department of Trade and Industry, "Findings from the 1998 Survey of Employment Tribunal applications (surveys of applicants and employers) Research Report No. 13, 2002) found that 90% of applicants to Industrial Tribunals had received advice before they applied to the tribunal. The increasing complexity of employment legislation and the related complexity of application forms for tribunals, leading to a greater need for advice at the application stage, has been noted by the Employment Tribunal Taskforce. (Employment Tribunal Taskforce, "Moving Forward: the Report of the Employment Tribunal System Taskforce", Department of Trade and Industry, 2002, pp 52-53) (pp 5-6) This is especially true in disability discrimination cases, where Meager et al. (N. Meager, B. Doyle, C. Evans, B. Kersley, M. Williams, S. O'Regan, and N. Tackey, "Awareness, Knowledge and Exercise of Individual Employment Rights", Department of Trade and Industry, 1999) have found that applicants rely on advisers to identify disability discrimination as an issue. (p 6)

In her recent studies of access to justice Genn (H.Genn, Paths to Justice: what people do and think about going to law, 1999, p 158; H. Genn, and A. Paterson, Paths to Justice Scotland: what people do and think about going to law in Scotland, 2001, p 164) found that, among those with employment problems, those who obtain advice were much more likely to end up a tribunal than those who do not.

In the course of their study of representation at four tribunals, Genn and Genn (1989) interviewed social security claimants who had received an adverse decision but had decided not to appeal. They found (p 130) that, although these claimants may have been aware of their right to appeal, they did not exercise it because of a 'lack of knowledge [about the procedures and any grounds for appeal] and sense of helplessness [in the face of authority]'. They conclude that access to good advice at this stage is the key to overcoming this problem. (p 4) Sainsbury (R. Sainsbury, "Consultation on 'Improving Decision Making and Appeals in Social Security': Analysis of responses", Department of Social Security, 1997, p 85) reported a concern amongst representative organisations that, in the case of social security appeals, a lack of adequate pre-appeals advice will result in fewer applicants claiming their right to an oral hearing, and that this will in turn reduce their chances of success. (p 12)

In Leasehold Valuation Tribunals, Blandy et al. (S. Blandy, I. Cole, C. Hunter and D. Robinson, "Leasehold Valuation Tribunals: Extending the Remit", Sheffield: Centre for Regional Economic and Social Research, 2001) found that, of those who did not apply to a Leasehold Valuation Tribunal, 36 per cent gave the complexity of the system as the reason for not doing so and a further 15% cited lack of information. (p 12)

There are frequent references to the difficulties people find in obtaining advice about their appeals. Harris and Eden (N. Harris and K. Eden, "Challenges to School Exclusion", 2000, p 152) note that there is a shortage of specialist agencies that are able to provide representation in exclusion cases and that, for this reason, representation rates are low. Similarly, Young (R. Young, "Child Support Appeals Tribunals: the appellant's perspective" in M. Harris and M. Partington (eds), *Administrative Justice in the 21st Century*, 1999, p 294) noted the difficulties in obtaining advice on Child Support since there are few advisers with the requisite specialist knowledge in this area. (p 12)

In addition, general research on access to justice indicates that people often experience difficulties in accessing free sources of advice. Practical problems in obtaining advice, such as limited opening hours, waiting times for appointments and difficulties in making telephone contact to arrange an appointment, can lead to problems, even for those with high levels of competence and determination, in obtaining advice when it is needed. (Genn 1999, pp 76-78) (p 12)

Moorhead et al. (R. Moorhead, A. Sherr, L. Webley, S. Rogers, L. Sherr, A. Paterson and S. Domberger, "Quality and Cost: final report on the contracting of civil non-family advice and assistance", 2001, p 154) found that "42% of respondents in their 'model client' study experienced "significant access problems while 11% failed to access advice services altogether. Problems cited included difficulties in accessing phone lines, unsuitable opening hours and inappropriate referrals between agencies. Similar difficulties were found by Pleasance et al. (P. Pleasance, A. Buck, N. Balmer, A. O'Grady and H. Genn, "Summary of Findings of the First LSRC Periodic Survey of Legal Need", 2002, p xi) (p 13)

### **Costs and Fees**

Most tribunals do not charge fees. One exception is the Leasehold Valuation Tribunal, although applicants on low income are entitled to a fee waiver. Blandy et al. (above, p 14) found that awareness of the right to a waiver was low and that the fee was a barrier to some potential applicants. Fees were introduced in October 2000 for appeals against a refusal of a visa to visit a relative living in the UK but were subsequently abolished in May 2002. During the period in which fees were levied, research was carried out into their effect on potential appellants. (V. Gelsthorpe, R. Thomas, D. Howard and H. Crawley, "Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type, Online Report 26/03, <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr2603.pdf> (14/02/07), 2003) This research was not able to establish whether the fee had been a deterrent as most of the interviews were carried out with the sponsors of people who had appealed. It was noted, however, that, in these cases, it was normally the sponsor rather than the appellant who had paid the fee (above, p 11). There was some evidence in this research that the level of fees contributed to the appellant's choice of a paper hearing rather than an oral one. (p 9)

### **Use of IT**

Sheppard and Raine (C. Sheppard and J. Raine, "Parking Adjudications: the impact of new technology" in M. Harris and M. Partington (eds) *Administrative Justice in the 21st Century*, 1999) asked users of the Parking Appeals Service about IT and found that 31% thought that electronic access had helped them. Raine (J. Raine, "Modernising Tribunals through ICTs" in M. Partington (ed.) *The Leggatt Review of Tribunals: Academic Seminar Papers*, Centre for the Study of Administrative Justice, 2001, p 113) has argued that information technology can help an appellant to feel more involved in the process and perceive it as fair. In his research on parking appeals, he found that appellants' view of the fairness of the system was enhanced by the fact that they were able to see on a computer screen all the documents available to the adjudicator. (p 14)

Genn (1999 p 256) urges caution about information technology as a solution to people's problems in accessing justice. "Although, in theory, information technology offers possibilities for easy access to information, there is still a considerable way to go before the average adult member of the public will possess the skill to access such information". In addition to the problems of computer literacy, she also refers to problems with 'ordinary' literacy, which not only act as a barrier to many people but also reduce the potential of IT in helping them access information. She cites a recent study of 8,000 members of the public aged 16 to 60 for whom English was their first language (Basic Skills Agency, "Adults' Basic Skills", 1998) which revealed that 16% of the adult population

is functionally illiterate and that, in some areas of the country, one in four adults are unable to read a parcel label. This study indicated that about 8 million people are so bad at reading and writing that they cannot cope with the demands of modern life. (p 14)

### **Perceptions of tribunals**

Baldwin et al. (above, 1992, p 172) note that many appellants are concerned about the levels of formality at tribunal hearings. However, Genn and Genn (above, 1989, p 124) make the point that appellants often confuse 'formality' with the fact that tribunals are bound by legislation and do not always distinguish between them. Baldwin et al. (above, p 174) maintain that the legislation by which tribunals are bound makes them 'essentially formal' and contend that chairmen have a major task in striking the balance between putting appellants at their ease and focusing on the disputed areas of law and fact. (p 16)

Coldron et al. (J. Coldron, K. Stephenson, J. Williams, L. Shipton and S. Demack, "Admission Appeals Panels: Research Study into the Operation of Appeal Panels, Use of the Code of Practice and Training for Penal Members", Research Report No. 344, Department for Education and Skills, 2002, p 68) found that parents' experience of school admission appeals was that they were too formal and 'court-like'. Conversely, Blandy et al. (above, 2001, p 50) reported that many participants found the process of Leasehold Valuation Tribunals too informal and suggested that the reason for this is the complexity of issues in many cases. They also found some concern that the tribunals' efforts to help unrepresented participants, by being more informal, could be seen as bias by opposing parties who are legally represented. (above, p 52) (p 17)

More generally, it is clear that some appellants want an opportunity to air their general grievances about what has happened to them and are disappointed when the 'formality' of the hearing does not allow this. (Young et al., above, 1999, p 290) (p 17)

There is little research evidence that users question the independence or impartiality of tribunal proceedings. However, there is some confusion amongst appellants about the difference between the 'independence and impartiality' of tribunals and their duty to apply the law (as mentioned above) and they may well not be clear that tribunals are even intended to be independent. Berthoud and Bryson (R. Berthoud and A. Bryson, "Social Security Appeals: what do claimants want?" *Journal of Social Security Law*, 4(1), pp 17-41, 1997, p 28) found that, in the case of social security appeals, many of those who appealed did not realise this and assumed that the tribunal was simply 'another step in the claiming process'. (p 23)

In Employment Tribunals, some users feel that the tribunals are biased in favour of employers. However, there is an outcome effect here because this view is particularly prevalent among those who lose their cases. A recent consultation exercise on Rent Assessment Panels found that tenants feel that there was a bias in favour of landlords (Department of Environment Transport and Regions, "Financial Management and Policy Review of Rent Assessment Panels in England", 2000, p 26). In school exclusion panels, parents commonly thought the Exclusion Appeal Panel had pre-judged their case and most parents did not think the hearing had been fair. However, it was clear that there is a strong outcome effect here too. (N. Harris and K. Eden, "Challenges to School Expulsion", 2000 pp 160 and 164) In Mental Health Review Tribunals, some appellants feel that the tribunal is too dependent on the evidence of the Registered Medical Officer. (p 24)

---

***Getting it right, putting it right:  
Improving decision-making and appeals in social security benefits (2003)***

**National Audit Office**

This report examines decision-making and appeals arrangements in social security, and in particular considers the effectiveness of arrangements in two major benefits: Jobseeker's Allowance and Disability Living Allowance. The research methodology included analysis of performance data, consideration of case studies, interviews, visits, consultations and surveys.

Source: HC 1142, Session 2002-2003, 07/11/2003.  
[http://www.nao.org.uk/publications/nao\\_reports/02-03/02031142.pdf](http://www.nao.org.uk/publications/nao_reports/02-03/02031142.pdf)

Themes: Feedback  
Use of IT  
Staff training

**Feedback**

The study states that the Department recognises the need for better support for decision-makers in Disability Living Allowance to foster continuous learning and raise standards. The introduction of a standard template for appeals submissions throughout the benefit is expected to increase the quality of work at this stage. The study also says the Department were considering an IT-based project intended to:

- improve the quality of, and success to, online guidance;
- provide computerised decision-support, with automatic links to relevant guidance and prompts for more information;
- generate suggested parameters for an appropriate benefit award to increase consistency of decisions, with decision-makers required to justify any deviations; and
- automatically identify any missing evidence at an early stage (p 26).

**Use of IT**

Jobseeker's Allowance decision-makers use three different computer systems. This makes interaction between decision-makers - and with other government departments - difficult. The situation also hinders good communication, as not all staff have access to all three systems.

Staff told researchers that the computer system made it difficult to record details of the reasons for decisions about customers' payments, what explanations had been given, and details of when decisions had been looked at again, so decision-makers did not always use them. The survey found that no one method was consistently used by offices to record customer requests for explanations.

The Department stated that they were aware of the limitations of their IT systems and, through the Digital Office Infrastructure project, were upgrading computers in local offices and providing access for all decision-makers to the departmental intranet, with its online benefit guides and manuals. They rolled out a new Customer Management System in 2003-04 to capture information electronically and issue customer statements reflecting information supplied (pp 35-36).

The study reported that the Appeals Service was planning, as part of their Modernising Appeals Programme, to:

- replace paper files with entirely electronic documentation and replacing the Appeals Service's IT infrastructure.
- link the Agency with the Department's agencies and businesses via computer, so that officials in all parts of the system are able to monitor the progress of appeals cases throughout their life, measure the overall time taken for an appeal to be processed and provide progress updates for customers; and
- allow customers to access details of their appeal via the internet (p 45).

## Staff Training

One of the report's recommendations is that the Department should develop on the job training. Enhancements might include more frequent rotation between initial decision, reconsideration and appeal stages, support and training in customer communication, a programme of secondments to central guidance and checking teams, and joint training activities with welfare rights representatives and local tribunal members (p 8).

Currently there is a great variation in the amount of training decision-makers receive. In some offices, local guidance is limited and decision-makers simply seek advice from colleagues and line managers. Other offices seek guidance from, variously a training officer, an office mentor, an in-house tutor and an unofficial network group of decision-makers (p 33).

By contrast, the report gives a number of examples of good practice. Doncaster Social Security Office has held a liaison day for local jobcentres in order to create a consistent approach to handling decisions, such as on late attendance and refusal of employment. In another region, a networking group for payment decision-makers has been set up to provide a forum for exchange of ideas and to host Adjudication and Constitutional Issues Division seminars. Payments decision-making has been centralised for the locality in the Edgware Social Security Office. This has created a centre of expertise, with the aim of creating greater consistency in decisions and enabling decision-makers to benefit from mutual support and guidance (p 34).

Decision-makers in Disability Allowance cases receive specialist training. Modules deal with mental health and learning disabilities and some 60 per cent of those attending the former module said it would help them make better decisions. The study says that the Department was planning a full roll-out of the training by December 2003 and are planning further specialist modules (p 25).

The Department have set up a range of mechanisms for providing formal and informal advice, guidance and training to decision-makers. The Adjudication and Constitutional Issues Division provides formal guidance and advice through its Decision Makers' Guide and intranet guidance, and gives ad hoc advice on specific cases. Other mechanisms include: team meetings; feedback from Decisions and Appeals Assurance Team checking; conferences for decision-makers; a decision-making advice procedures team and monthly bulletins. However, decision-makers consider that there is scope for greater learning from colleagues, commenting that time pressures often prevent them seeking guidance from advice teams or Medical Services doctors as much as they would like and that online internet-based guidance was difficult to use. (p 25)

---

## ***Progress in improving the medical assessment of incapacity and disability benefits (2003)***

### **National Audit Office**

This report examines the improvements made by the Department for Work and Pensions and Schlumberger, the contractor responsible for obtaining medical reports, with medical assessments following a report in 2001 (available here [http://www.nao.org.uk/publications/nao\\_reports/00-01/0001280.pdf](http://www.nao.org.uk/publications/nao_reports/00-01/0001280.pdf)). The earlier report recommended that there were areas which required improvement, including the speed of benefit processing, the quality of medical evidence, and the quality of service to the public. Using interviews, surveys and data analysis, the report finds that there has been significant improvements, but that there was still scope for better working: both parties could learn more from the results of appeals, work to obtain better evidence from general practitioners and others, and deal with the issues of overbooking appointments and non-attendance of customers.

Source: HC 1141, Session 2002-2003, 17/10/2003.  
[http://www.nao.org.uk/publications/nao\\_reports/02-03/02031141.pdf](http://www.nao.org.uk/publications/nao_reports/02-03/02031141.pdf)

Themes: Feedback

### **Feedback**

Since the 2001 report feedback from appeals tribunals has been improved, but these have not resulted in a reduction in appeals overturned because of the medical evidence or its interpretation. (p 4)

In September 2002, 54% of Disability Living Allowance appeals, 47% of Attendance Allowance appeals and 43% of Incapacity Benefit appeals were successful. The most common reason was new evidence being available to the appeals tribunals, but the President of Appeals Tribunals considers that in some cases, medical reports underestimate the severity of disability. (p 5) Specifically, in a quarter of cases successful at appeal the Benefits Agency decision-maker misinterpreted the evidence. (p 21)

The Department and Schlumberger have been working together on a series of pilots designed to gather better medical evidence from general practitioners, and provide additional training to decision-makers. At the date of this report the outcomes of these were not clear. (p 6)

The report states that greater feedback to decision-makers and doctors would assist doctors and decision-makers in learning from past cases and spreading good practice, and would ensure they are aware if they are systematically misinterpreting the guidance. The report recommends that the Department should put in place a mechanism by which decision-makers and Medical Services are routinely informed of the results of appeals against their assessments. (p 7)

Furthermore, the Department has taken action to improve the end-to-end process of decision-making, including learning from the successful appeals through feedback from the Appeals Service. (p 21) Also, since August 2001 tribunals have been able to refer medical reports they consider seriously substandard to Schlumberger for feedback, initially through the Chief Medical Adviser. Since December 2002 feedback has been directly to Medical Services managers. Tribunals are asked to return submissions to decision-makers if they are considered deficient. (p 22)

However, departmental managers reported that these feedback mechanisms had rarely been used and had not had a significant impact. The report found that decision-makers and individual doctors receive no notification and are not aware of how many customers with whom they had contact challenge their medical evidence. Nor are they aware of the outcome of these appeals. Doctors suggested that it is at this level that feedback needs to be improved to ensure that both they and decision-makers are aware if they are systematically misinterpreting the guidance. This would also help to spread good practice so that more doctors and decision-makers learn from collective experiences. (p 22)

In 2002-03 the Department sent presenting officers to represent their case to 20% of Disability Living Allowance appeals. Internal guidance states that they should attend on complex cases. The President of Appeals Tribunals however has argued that higher attendance at appeals might improve feedback on their findings.

The Department do not view the attendance of presenting officers at tribunals as the only solution. Having a presenting officer at every tribunal would be a major resource investment, and they consider presenting officers would not always be well-placed to provide direct feedback to decision-makers. A different approach piloted in Wales involved representatives from the Disability and Carers Service, the Appeals Service, Medical Services and Jobcentre Plus meeting to discuss the overarching issues emerging from tribunals, rather than adopting a case by case approach. The Department intend the findings from these meetings to help identify the potential for improvements to the current system, but they do not plan to deliver feedback on an individual basis. (p 23)

---

### ***Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type (2003)***

Gelsthorpe, V., Thomas, R., Howard, D. and Crawley, H.

Based on observation of interviews with applicants at overseas entry clearance posts and interviews with 55 applicants who had been refused. Interviews with 29 of these applicants and their sponsors after the time limit for appealing had elapsed. Separate survey of 544 sponsors of applicants who had appealed. Observation of 26 appeal hearings and case file analysis of 1224 cases.

Source: Online Report 26/03, London: Home Office  
<http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr2603.pdf>

Themes: Costs and fees  
Information provision  
Representation  
Feedback

#### **Costs and fees**

There was little indication that fees acted as a major influence on the decision to appeal.

#### **Information provision**

A lack of appropriate information about the appeal right and procedure is a key factor behind the low appeal rate. There is too much emphasis on written information, especially where information is not in a language appellants understand. Applicants often turn to their sponsors for guidance.

Representation - The presence of a representative increases the success rate of appellants at oral hearings. However, the success rate of those appellants who have their appeal determined orally without a representative is still higher than those appellants who have their appeal determined on the papers. This suggests that the most important contribution legal advice makes is the recommendation to opt for an oral appeal (p60). Information given should more clearly explain the differences between the two appeal types, including the differential success rates. This information should also be made available to sponsors in the UK.(p 43)

#### **Feedback**

Recommends increased feedback from adjudicators to ECOs, in annual reports and through formal reporting by the IAA on the consistent trends in decision-making. There should also be regular meetings between JECU and the IAA. (p 61)

---

***Snakes and Ladders:  
Advice and support for discrimination cases in Wales (2003)***

C. Williams

This report is based on research carried out by a team from the University of Wales, Bangor, on behalf of the Commission for Racial Equality, the Legal Services Commission, the Equal Opportunities Commission and the Disability Rights Commission.

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

Source: [http://www.drc-gb.org/Docs/10\\_331\\_Final version of summary report in Word - English.doc](http://www.drc-gb.org/Docs/10_331_Final%20version%20of%20summary%20report%20in%20Word%20-%20English.doc)

Themes: Information provision  
Advice provision  
Judicial training  
Triage

### **Information Provision**

The specific barriers to accessing advice identified by the research include:

#### ***Lack of information about rights and sources of advice***

There is a significant information gap in Wales. Public awareness of rights and of the role and function of key agencies of redress is low. (p 11)

The equality commissions should better advertise their role and more explicitly clarify the level and extent of their commitment to casework. They should continue to promote rights awareness using the full range of media, including developing access to their websites. They should consider ways in which they could use access points such as job centres, doctors' surgeries, schools, colleges and community organisations more effectively. The commissions could capitalise more significantly on cases won at tribunal for publicity purposes in order to build confidence in the community. They should also undertake further research on the use of helplines with the focus on what use individuals make of the information provided. (p 11)

#### ***Weak infrastructure for delivering advice, support and representation***

Furthermore, the commissions should establish and build strategic partnerships with other networks of advice providers, including the Law Society, NACAB, the Advice Services Alliance, RECs, disability organisations and the TUC to permit them to deliver more effectively good information at first-tier level to enhance effective signposting. (p 12)

### **Advice provision**

The report also found that there are substantial 'advice deserts' with whole areas of Wales having no specialist employment provision and restricted access to generalist services. There is lower per capita funding of generalist providers in Wales by comparison with England. Applicants secure representation at tribunal in approximately 60% of cases, although the quality of representation is variable. In approximately 40% of cases applicants represent themselves. (p 13)

To tackle this the report recommends that the Legal Services Commission should co-ordinate the establishment of Employment Advice Consortia. These bodies, possibly four in total, would comprise a partnership of key providers from the statutory independent sectors and be charged with the responsibility of delivery of effective services for the area served. Each consortium would monitor and evaluate need in their area, establish the framework for strategic development of services and ensure good quality localised coverage. (p 14)

#### ***Lack of training and quality accreditation amongst major advice providers***

The report found that generalist advisers lack the training and support to identify discrimination cases appropriately. Consequently, the quality of advice-giving from generalist providers such as CABx, solicitors, ACAS and the trade unions in Wales is very variable. Training of specialist advisers is also inconsistent.

#### **Judicial training**

Specialist expertise within the Employment Tribunal panel membership is not being drawn on consistently. There is a need to ensure development of specialist discrimination expertise amongst members through increased training and the establishment of a discrimination panel. (p 15)

The report recommends an increase in resources for the training of Chairs and Panel Members and make more effective use of specialist expertise amongst the members with a view to establishing a discrimination' panel. (p 15)

#### **Triage**

#### ***Poor system of referral and co-ordination between agencies, including a failure to transfer expertise between agencies***

The referral system is unsystematic with no formalised protocols in pathways to advice and support. The current system is fragmented and not conducive to client need in terms of providing for a smooth and coherent transition through the process of seeking information and advice, gaining representation and/or support in finding resolution to the issue. Advice workers work as single operators and co-ordination between agencies is ad hoc and reliant on personal and informal connections. Transfer of expertise is unsatisfactory. Training/ learning and the sharing of expertise are all weak with no strong information pools for advice-givers or comprehensive system for the accreditation of standards across Wales. (p 17)

The report recommends that the National Assembly for Wales should give consideration to funding a high level co-ordinating body responsible for strategic developments. Statutory agencies, such as Job Centres, Social Security offices, and Social Services could develop a procedure for the appropriate identification and referral of discrimination cases. (p 19)

---

***Access to Justice For the Self-Represented Litigant:  
An Interdisciplinary Investigation By Designers and Lawyers (2002)***

R. Staudt

A joint study by Illinois Institute of Technology's Institute of Design and the Chicago-Kent College of Law, drawing upon design techniques and the potential of the Internet to fundamentally reengineer, from the customer's perspective, civil court processes in which self-represented litigants seek access to judicial services.

Source: <http://a2j.kentlaw.edu/a2j/>

Themes: Use of IT  
Alternative Dispute Resolution

**Use of IT**

The study designs a number of computer programs which could be used by self-represented litigants to find their way through the legal process. One such initiative is the development of a website to diagnose people's legal ailments.

**Alternative Dispute Resolution**

Another program suggests alternative forms of dispute resolution on the basis of the client's description of the dispute.

---

## ***Admission Appeal Panels: Research Study into the Operation of Appeal Panels, Use of the Code of Practice and Training for Panel Members (2002)***

Coldron, J., Stephenson, K., Williams, J., Shipton, L. and Demack, S.

Based on postal survey of 1011 panel members and 317 appellants to schools admission appeals and on case studies, involving observation, interviews with panel members, parents and officers, and documentary analysis, in three LEAs and two school admission authorities.

The aim of the research was to establish whether or not admission authorities and admission appeal panels were following the guidance in the School Admission Appeals Code of Practice and to identify any areas where different guidance was wanted. There was also a focus on the training available for appeal panel members. (p 1)

Source: Research Report No. 344, London: Department for Education and Skills.  
<http://www.dfes.gov.uk/research/data/uploadfiles/RR344.pdf>

Themes: Information provision  
Advice provision  
Perceptions of tribunals  
Judicial training  
Early Dispute Resolution

### **Information provision**

The majority of parents found the information they received was easy to understand and they used both the local educational authority documents and the Code of Practice in preparing their appeal. Parents indicated that they wanted more information and guidance about the likelihood of them winning their case and they would have liked more detail about the grounds of rejection of their initial application to help them prepare. (p 2)

### **Advice provision**

When appellants were faced with making an appeal the people they most often turned to for help and advice were other parents. Almost half (49%) of the respondents discussed the possibility of appealing with other parents. 33% of appellants stated that they had spoken to a teacher or governor from the previous school and 27% to a teacher or governor from the school they were applying to. 24% had discussed their appeal with an LEA officer and 3% had sought help from a legal advisor. (p 55) None of the parents reported gaining any significant help via Internet sources, apart from accessing OfSTED reports. The majority of parents felt that they knew enough about the admission criteria. (p 2)

Most parents felt properly prepared for an appeal and knew whom to contact for advice. However, many panel members and officers interviewed were of the opinion that some parents needed a great deal of help in the preparation and presentation of their case. It was suggested that a guide, for example a concise parental version of the Appeals Code of Practice, may help parents better manage the process and contribute to reducing the levels of appeals. However, it is good practice that all parents have the same guidance and information and there may be some disquiet if parents see that the guidance is not the same as that available to appeal panels. It was found that parents who used the Code as it is were more likely to win their appeals. (p 3)

### **Perceptions of tribunals**

Appellants were asked a number of questions about how easy they found the procedure. Getting the necessary forms seemed not to be a problem for most people. However, knowing where to send the forms once completed does appear to be more problematic. (p 56)

Appellants were asked to suggest any improvements to the organisation of the appeals process. A strong theme in the responses was about guidance and representation. The comments suggest that appellants want more guidance and advice concerning the process, and many of them would like some kind of representation from the beginning of the procedure. (p 68)

A second theme was related to the information that appellants receive. Many felt they wanted more guidance on the likelihood of winning an appeal and explicit mention was made about class size appeals in relation to this point. A further issue was the wish for specific information appropriate to the appellant's situation rather than generic statements. (p 68)

Appellants were asked to agree or disagree with the statement, "I felt the hearing was conducted fairly." The majority of respondents agreed but a sizeable minority, 25% did not. Appellants were also asked whether they thought that the decision the panel arrived at was fair or not. 60% thought the panel made a fair decision and 40% did not. (p 65)

Appellants however did express the opinion that hearings should be less formal and that the "courtroom style" was intimidating. (p 68)

### **Judicial training**

Panel members feel well supported and receive enough information, advice and training to be effective, however they still feel more training is needed. Some panel members claim that they have not been offered any training. LEAs are typically conscientious about their training but in schools that are their own admission authorities training is the exception rather than the rule and there is a low level of awareness of what training is available. In schools the briefing of panel members is far more common than the provision of a dedicated training event.. (pp 4-5)

All the LEA admission authorities interviewed undertook their own training but the extent of this was influenced by whether there were a small or large number of appeals and panel members who needed training. To a lesser extent training involving an external organisation and/or an individual was used to complement the in-house training. There was some awareness of the ISCG materials and some local authorities had actually made use of them. The feedback on the materials was positive. Some authorities tried to differentiate their training by role and by level of experience. (p 156)

School admission authorities appear typically not to provide systematic training. There is a low level of awareness of what training may or may not be available and, generally, if panel members are recruited by school little training beyond briefing seems to be provided for them although some take up the LEA's invitation to participate in their training events. (p 156)

83% of panel members reported that they had had some training. Respondents in London were found to be more likely to not have received training than other Metropolitan or Shire authorities or selective areas. The majority of training courses lasted for one day (75%). Only 3% lasted longer than two days. Generally satisfaction with the quality of training events was high. The great majority of respondents (between 85% and 95%) said, of a variety of kinds of training offered for comment, that it was very good/useful. (p 36)

Specific areas of need, mentioned in response to a question about any perceived training needs, included the following topics - legal issues, refresher courses, observations of panels and extra training for Chairs. There was also the opinion expressed in the open responses that the need for differentiation of training was not always acknowledged, and that this may lead to difficulties in the training of members with a range of experience. (p 37)

Other areas where further training was thought necessary were training for multiple and class size prejudice appeals, presenting officer training and some guidance for the questioning of a child. (p 43)

90% of respondents agreed that the information provided by the local education authority was sufficient for them to carry out their role effectively. 75% of panel members agreed that the admission authority kept them up-to-date with legal judgements that might have an impact on appeals panel hearings and 74% felt that they didn't need further support from their LEA. (p 30)

Attitudes regarding how useful a web site for panel members would be were positive. 63% of respondents agreed that a 'web site for panel members with frequently asked questions/ legal problems would be useful'. (p 30)

93% of panel members reported to be familiar or very familiar with the contents of the Code of Practice. 97% agreed that they understood all the aspects that they needed to know for them to become an effective appeal panel member. (p 32)

### **Early Dispute Resolution**

A major concern was to do with the length of time the whole process took. Appellants thought that hearings should be held earlier in the year, and the whole process should be shortened. They also felt that the notification of the decision following the hearing takes too long, and that decisions concerning the appeal should be communicated as soon as possible. (p 69)

[A Special Report on School Admissions and Exclusions Panels was published by the Council on tribunals in 2003: see <http://www.council-on-tribunals.gov.uk/publications/502.htm>]

---

### **"...It's Only Parking But..."**

#### ***Report of a research project on The Applicability to other Adjudicative Settings of Organisational Arrangements at the London Parking Appeals Service (2002)***

John Raine & Stephanie Snape, University of Birmingham.  
DCA Research Report

This report presents an evaluation of the London Parking Appeals Service (PAS) and an examination of the applicability to other adjudicative settings of a set of organisational arrangements that have been pioneered at PAS.

The project sought to draw out the lessons for other tribunals and courts in terms of costs, benefits and disadvantages. The research focused upon:

- The extensive use of IT in support of the adjudication process
- The recruitment of lawyers, part-time, to sit as adjudicators
- A strong public service orientation
- A largely out-sourced administration

Applicability of these key features and importantly their combination to other adjudicative settings has been examined in relation to inputs, process and outputs. Three different adjudicative arenas were considered, namely the development of a national PAS, other tribunals and magistrates' courts.

The report highlights various strengths and weaknesses associated with the particular organisational choices made both ahead of and during the establishment of London PAS.

Source: <http://www.dca.gov.uk/research/2002/5-02es.htm>

Themes: Use of IT

#### **Use of IT**

Considers the transferability of the Parking Appeals Service model to other tribunals and states both the strengths and weaknesses of the PAS system. See John Raine, Modernising Tribunals through ICTs in M Partington (ed), The Leggatt Review of Tribunals: Academic Seminar Papers (2001) which repeats much of this paper but goes further considering also future developments.

---

## ***Awareness, Knowledge and Exercise of Individual Employment Rights (2002)***

Meager, N., Tyers, C., Perryman, S., Rick, J. and Willison, R.

Based on a telephone survey with 1000 people of working age regarding their knowledge of employment rights (not specifically those who had experienced problems).

Source: London: Department of Trade and Industry.  
<http://www.dti.gov.uk/files/file13207.pdf>

Themes: Information provision

### **Information provision**

Categorises action individuals would take in relation to specific problems at work, but does not directly address knowledge of the tribunal system except peripherally - 25% knew time limits for unfair dismissal cases (p 152), 1% used ETS as advice provider (p 185), 5.8% of people with dispute made application to ET (p 190). There is some discussion of why people would not take action. (p 197)

---

## ***Explaining the growth in the number of applications to Industrial Tribunals 1972-1997 (2001)***

DTI

The study looks at the different ways that applications to Industrial Tribunals have grown from 1972-1997. It splits the process into two parts, looking at:

- 1 the number of potentially actionable events that arise, and
- 2 the chance of such an event triggering an application.

Source: London: Department of Trade and Industry.  
<http://www.dti.gov.uk/files/file11618.pdf>

Themes: Information Provision

### **Information provision**

The study concludes that economic factors, such as the probability of winning, and the value of the award made, affect the number of cases brought. Other influential factors include the industrial structure and labour force composition. In particular, the number of unfair dismissals is connected with the number of small businesses, perhaps because internal redress systems are less prevalent there than in larger enterprises (EDR).

Another relevant issue was the decline in Union membership, and the correlative rise in cases. It was noted that Trade Unions represent applicants in roughly 10% of hearings and their involvement helps members to settle without a hearing - p 11. With the decline in membership people are turning to other sources of advice, such as Citizens' Advice Bureau but that relevant statistics are not available for this. (EDR and information provision)

---

## ***Leasehold Valuation Tribunals: Extending the Remit (2001)***

S. Blandy, I. Cole, C. Hunter and D. Robinson

Based on interviews with 38 freeholders and leaseholders and 11 representatives; a postal survey of 349 inquirers to LEASE about issues relevant to tribunals; an analysis of 40 cases which had been submitted to tribunals, some of which had been heard and others withdrawn; and a detailed analysis of eight cases, including interviews with those involved in the case and members of tribunals that had heard the appeal.

Source: Sheffield: Centre for Regional Economic and Social Research.

Themes: Judicial training  
Costs and Fees  
Early dispute resolution

### **Judicial training**

The majority of applicants interviewed were satisfied that the Panel had the necessary expertise to handle the case. In contrast, most respondents were not convinced that the Panel had the necessary skills to manage the case, or the professional experience and specialist knowledge to sit in judgement. The report recommends improving the training of Panel members.

### **Costs and Fees**

Confusion was expressed about the system of fee collection, involving the payment of two tranches up to a total of £500 (p 3). The report recommends a differentiated fee structure which reflects the value of the case.

### **Early dispute resolution**

There was an equal split between those who thought the Pre-Trial Review was helpful and those who considered it unhelpful. Respondents were less enthusiastic than leaseholders, complaining that they did not understand the purpose of a PTR. Moreover the potential benefits of PTRs are being threatened because applicants and respondents often do not attend them.

---

## ***National Survey of Child Support Clients (2001)***

Wikeley, N., Barnett, S., Brown, J., Davis, G., Diamond, I., Draper, T. and Smith, P.

Based on a survey of Child Support Agency clients, including 1017 non-resident parents and 1392 parents with care.

Source: DSS Research Report No. 152, London: The Stationery Office.

Themes: Information provision

### **Information provision**

Awareness of the right to appeal is not high (55% of non-resident parents and 45% of parents with care), but is higher among private cases.

---

## ***Challenges to School Exclusion (2000)***

Harris, N. and Eden, K.

Based on observations of 48 school exclusion appeal hearings and a postal questionnaires sent to 289 parents (questionnaires were also sent to local education authorities, head teachers, school governors and appeal panel members). Interviews with a small number of children who had been excluded were also carried out.

Source: London: Routledge Falmer.

Themes: **Judicial training**  
**Information provision**  
**Advice provision**  
**Perceptions of tribunals**

### **Judicial training**

38% of the panel members in the survey had not received prior training and 53% of panel members had had initial training but no further training. Overall, at the time of the survey 32% of the panel members had not at any time had any training. Of those who had had training, less than half received any training in the previous twelve months. (p 128)

Across LEAs the kind of training provided varied widely - from the provision of an information pack and guidance notes through to intensive training meetings with role play exercises, video and other presentations followed by discussion, and lectures on the legal framework and procedural issues. (p 128)

The study found that in one in eight hearings the chair exerted too much control and intervened too frequently whereas the chair was generally rather non-interventionist in one in five hearings. It judged the chairing of the hearing to be effective in approximately 44% of cases and broadly satisfactory in a further 21% of hearings. 36% of parents found the panel members' approach reassuring and helpful, 50% did not. (pp 159- 160)

### **Information provision**

A majority of parents in the survey confirmed that they had been informed by the school or LEA of their right of appeal. Only approximately 10% of parents claimed not to have received this information. In the LEAs surveyed it was common for a standard information letter or booklet to be sent out by the LEA or, in the case of a voluntary aided or grant-maintained school, by the head teacher. The information leaflets and letters were generally clear and included translations into ethnic minority languages. However, only a minority of LEAs or schools provide information on independent sources of advice. (pp 139-140)

Parents who subsequently appealed were more likely to have received advice than the non-appellants. Furthermore, the parents who appealed considered the advice they received when their child was excluded from school to have been more helpful than did the parents who subsequently decided not to appeal. This reveals a correlation between subjective views on the quality of advice (in terms of its perceived helpfulness) and a propensity to appeal. (p 140)

### **Advice provision**

Advice was obtained from a variety of agencies. Parents who appealed were far more likely to have received independent advice. Among the parents who appealed, none had sought advice from the school and only 9% from the LEA. Among the non-appellant parents, however, 9% had been in receipt of advice from the school and 21% from the LEA. Appellant parents were far more likely to have consulted a solicitor (25%, as compared with 7.5% of the parents who did not appeal). (pp 140-141)

An independent source of advice is particularly important given the evidence that some schools or LEAs appear to abuse their position by seeking to discourage parents from appealing and the fact that some parents' unwillingness to appeal stems from their failure to distinguish between the governors' meetings to reconsider the exclusion, which they can find unsympathetic and in some cases hostile, and the independent appeal stage. (p 142)

### **Perceptions of tribunals**

Only a minority of parents entering the appeal process were confident they would receive a fair hearing: 36% expected that the hearing would be fair, while 32% were unsure and 32% were definitely not confident about getting a fair hearing. The reason for such pessimism seems largely to have been the way the school dealt with their case prior to it reaching the appeal stage coupled with the parents' apparent failure to perceive the appeal stage as independent. However, virtually every parent who lost his or her appeal regarded the hearing as unfair, whilst all of those who won their appeal regarded it as having been fair. (p 160)

Fairness demands that the hearing is thorough in its review of the case for and against the reinstatement of the child. In the cases observed there was considerable variation in the thoroughness with which panels considered the evidence and the issues. Almost 30% of hearings lasted no more than 40 minutes and 48% of them lasted one hour or less. Most, 82%, were heard inside one hour and 40 minutes. Only 18% of cases lasted longer than this; the longest ran for over three hours. In the survey of parents 32% found the proceedings too rushed. It is interesting to note that in hearings where both parties' cases was presented to the panel, the presentation of the case in support of the exclusion ran for, on average, 23% longer than the appellant's: 43 minutes as compared with 35 minutes. (pp 162-163)

Some parents felt that there was an unfairness in their having to present their case after the school. There is a danger that it will force the parents onto a defensive footing. The authors believe that it would be better if the parents, who are after all the appellants, presented their case first. (p 163)

---

### ***Mental Health Review Tribunals: a survey of special hospital patients' opinions (1999)***

Dolan, M., Gibb, R. and Coorey, P.

Based on interviews with 70 patients who had applied to a Mental Health Review Tribunal, all from one hospital.

Source: Journal of Forensic Psychiatry, 10, pp. 264-275.

Themes: Information provision  
Perceptions of tribunals

#### **Information provision**

Only 6 patients (9%) displayed an accurate knowledge of the powers of tribunals in relation to their particular case. (p 267)

Although the medical records department at the hospital where the interviews were conducted automatically informs all patients of their rights of application to tribunal on admission, only 39 (56%) believed that their rights had been explained in an understandable manner at that time. Clarification of their rights of application was provided by legal representatives in only 12 cases (17%), while clinical teams offered additional information in 13 cases (19%). (p 268) Furthermore, the document supplied does not include information on the powers of the tribunals. (p 271)

## Representation

The majority of subjects (45, 64%) indicated that they were satisfied with the standard of their legal representation, 12 (17%) were partially satisfied, and 13 (19%) totally dissatisfied. (p 268)

## Perceptions of tribunals

For a substantial minority the tribunal is being used as a means of update on progress. This is a worrying development because of the cost and implications in terms of tribunal and RMO time. Perhaps patients need to be better informed by their RMOs and legal representatives about the likelihood of a successful outcome as part of the process of educating them about their rights, and assisting them in making informed decisions about tribunal applications. (p 271)

The study found that some patients refuse, on occasion, to see the tribunal medical representative, this indicates that a small number do not appreciate the role of this panel member in the proceedings. Refusal to see the tribunal doctor may jeopardise a patient's chances of having a hearing (Langley, 1993). Perhaps this is another area in which patients need to be made aware of the implications of making an application and the procedure they are expected to follow. (p 273)

There were 32 patients (46%) who felt that the tribunal panel operated as an independent body in examining each case critically and reviewing the legality of continued detention. However, 38 (54%) indicated that they thought that the tribunal was not independent as it was too easily influenced by evidence of continued risk to the public. (p 269) Perhaps patients' lack of understanding of the issues considered by tribunals in coming to a decision, and their limited knowledge of tribunal powers, explain their perception that the tribunal is biased. (p 273)

Although the majority of applications had been unsuccessful, 27 patients (39%) reported that they were totally satisfied with the last hearing and felt that they had the opportunity to put their point across; 23 (33%) were partially satisfied; and 20 (29%) were dissatisfied. (p 270)

There were 39 subjects (56%) who reported that they felt the tribunal format was too formal and intimidating and indicated that they would prefer an informal case-conference style meeting. The remainder (31, 44%) were happy with the formal rules and enjoyed the adversarial style of some legal representatives. (p 270)

---

## ***Parking Adjudications: the impact of new technology (1999)***

Sheppard, C. and Raine, J.

Based on a postal questionnaire sent to 1,000 people who had appealed to the Parking Adjudicators - 473 responded of whom 331 had had their appeal dealt with by post and 105 had appeared in person. A postal questionnaire was also sent to 100 people who had made representations regarding their parking fines but had not appealed - the response rate was 'around 40 per cent'.

Source: Harris, M. and Partington, M. (eds.)  
Administrative Justice in the 21st Century, Oxford: Hart Publishing.

Themes: Information provision  
Use of IT  
Perceptions of tribunals

## Information provision

21% of the non-appellant sample said that they were unaware of the right to appeal and claimed not to have received details of the Parking Adjudicators tribunal or the appeals form with the letter of "rejection of representations" from the parking authority. 45% of non-appellant respondents reported that they had not known of

the possibility of a postal appeal. Two out of three such non-appellants who did not know about the option of postal appeals indicated that, had they known, they would have lodged an appeal. (p 5)

The overall pattern of reasons cited by non-appellants for not making an application was as follows:

1. Feared having to pay costs (28%)
2. Unawareness of right (21%)
3. Little chance of winning ( 16%)
4. Didn't think it would be fair/impartial (12%)
5. The allowable grounds didn't suit (12%) (p 5)

### **Use of IT**

31% of respondents thought that the use of computers helped and several indicated that they had been very impressed by the image-processing arrangements and the general efficiency of the automated system. On the other hand, for 36% the computer was felt to have made no difference to the process. A further 27% expressed no opinion on the matter, while some 6% of respondents reported that, for them, it hindered the process. (pp 6-7)

### **Perceptions of tribunals**

57% of respondents felt the appeal was fairly conducted, 15% of respondents thought that it was unfairly conducted. Personal appellants were then asked about the formality of the trial, 64% responded that it was about right. 69% of respondents thought that the status of the hearing was very or fairly clear. (p 7)

Overall 42% of personal appellants said that the experience proved better than expected. 15% of personal appellants stated that the experience was worse than expected. (p 7) However respondents were evenly split when asked whether the trial was independent and impartial. 42% felt it was independent and impartial, another 42% felt it was not independent and impartial. (p 7) Personal applicants were more likely to believe that the trial was independent than postal applicants (57% to 36%). Also, as might be expected, respondents who had won their case were more likely to consider the trial fair than those who had lost (postal applicants - 58% to 11%, personal applicants - 90% to 25%). (pp 7-8)

---

## ***Industrial tribunals workplace disciplinary procedures and employment practice (1988)***

### **DTI**

Presents the findings of a two-part research project, commissioned by the DTI, which aimed to explore the influence of workplace disciplinary and grievance procedures and other workplace variables on applications to Industrial Tribunals.

Source: <http://www.dti.gov.uk/files/file11636.pdf>

Themes: Perception of tribunals

### **Perception of Tribunals**

The study indicated that respondents felt the industrial tribunal system is flawed in a number of ways:

- the law is too complicated (p iii)
- there should be a pre-hearing stage to weed out weak claims or to require applicants to pay a deposit. (p 21)  
They appeared not to know that there is already a pre-hearing review possibility (p 44)
- lawyers play too large a role. (p 21)

- the tribunal is felt to be inexperienced (p 21) - a member of the panel should be an expert in the industry involved in the case. (p 28)

---

### **'Social Security Appeals: What do claimants want?' (1997)**

Berthoud, R and Bryson, A.

Based on a postal questionnaire completed by 419 appellants to Social Security Appeal Tribunals who appealed regarding invalidity benefits. Study also included interviews with 29 appellants, 13 tribunal members, nine representatives and 13 appeals officers. It included those who withdrew their appeals and those who had not attended their tribunal hearing as well as those who had.

Source: (1997) *Journal of Social Security Law*, 4 (1), pp. 17-41.

Themes: Information provision  
Judicial training

#### **Information provision**

The study indicated that there was little awareness of the right to appeal even among claimants who had used the system. Some maintained that they had not been informed of their right, even when they had contacted the BA for advice (p 23).

Over one-quarter of the respondents to the author's postal survey had decided to consult an expert adviser on receiving their appeal papers. Appellants sought advice and representation for four reasons: to benefit from the technical know-how of an expert; to discuss the process with someone who had more experience of it than they did themselves; to act as an advocate and to provide moral support (p 32). Most of those who attended without representation had made a conscious decision not to take a representative along; it was not that representatives were unavailable or unreliable (p32).

The description of what to expect at a tribunal hearing in the ITS leaflet proved moderately successful in providing guidance and reassurance to those with concerns about what the hearing would entail. For those who were represented or had friends with knowledge of the system, talking to others was considered preferable to relying on written information alone, although the leaflet was a useful supplement (pp 30-31).

#### **Judicial training**

On the whole, chairs made a favourable impression. Appellants referred to them as "sympathetic", "caring", "good at listening", "nice", and "fair". In only one interview did the appellant criticise the chairman for being "uncaring". However interviewers noticed that sometimes chairs did not explain how the tribunal would proceed and what would happen at the end of the hearing.

Appellants were less sure about the wing members: they were said to play little part in the proceedings and, when they did, their questions were sometimes considered impertinent (pp 33-34).

---

### ***Why do so few Patients appeal against Detention under the Mental Health Act? (1995)***

Bradley, C., Marshall, M. and Gath, D.

Based on interviews with 40 patients in six psychiatric hospitals who had not appealed against their detention.

Source: British Medical Journal, 310, pp. 364-367  
<http://www.bmj.com/cgi/content/full/310/6976/364>

Themes: Information provision

#### **Information provision**

One of the main reasons for not appealing was not being aware of the appeals process. Among those who did not appeal about half were unaware that they have the right to do so. After receiving a full explanation of their rights twelve of those who did not appeal said they wished to and four did so within the time remaining before the deadline.

---

### ***Evaluation of Disability Living Allowance and Attendance Allowance (1995)***

Sainsbury, R., Hirst, M. and Lawson, D.

Based on interviews with 188 Disabled Living Allowance (DLA) and 174 Attendance Allowance (AA) appellants to Disability Appeal Tribunals. Also includes interviews with 278 DLA and 322 AA claimants who had requested an internal review but had not yet appealed beyond this stage.

Source: London: HMSO.

Themes: Information provision

#### **Information provision**

The majority of claimants had no or few difficulties completing the form and found it helpful in describing their illness or disability and its effects on their everyday lives. However, a substantial minority experienced difficulties with the content and layout of the form. Claimants with mental illnesses were particularly affected.

There were high levels of satisfaction with the help given by the Benefits Agency during the claim process and with the visit of the Examining Medical Practitioner (EMP). (p xviii)

37% of claimants who were unhappy with the outcome of their review said they would not be appealing further or were unaware that they could. A sizeable minority of appellants said that the tribunal documents were not helpful to them in understanding their case. (p xix)

---

## ***The 1992 Survey of Industrial Tribunal Applications (1994)***

Tremlett, N. and Banerji, N.

Based on interviews with 537 applicants (and 1,990 employers) at Industrial tribunals. Research discusses all the cases including those which settled in advance, not just those which went to tribunal.

Source: London: Department of Employment.

Themes: Information provision  
Early Dispute Resolution

### **Information provision**

90% of applicants sought advice when bringing their case. The most common sources of advice were Citizen's Advice Bureaux, private solicitors/ barristers, union officials, friends/ relatives and ACAS. 75% of employers sought advice. They most commonly used private solicitors/ barristers, internal sources. ACAS and employers associations.

Three quarters of those employers and two thirds of those applicants whose cases went to a full tribunal hearing said that what had happened there was clear to them. Over eighty percent of both groups said that when the tribunal reached its decision the outcome was clear to them.

### **Early Dispute Resolution**

Nearly half of cases were settled between the parties, with or without the help of an ACAS conciliation officer, before reaching a full tribunal hearing.

---

## ***Judging Social Security (1992)***

Baldwin, J., Wikeley, N. and Young, R.

Based on observation of 337 hearings and interviews with 181 appellants to Social Security Appeal Tribunals and Medical Appeal Tribunals. Chairmen, presenting officers and representatives were also interviewed.

Source: Oxford: Clarendon Press.

Themes: Advice Provision  
Inquisitorial / Adversarial system

### **Advice provision**

Only 17% of all appellants (whether they attended or not) were represented by agencies such as advice centres or Citizens Advice Bureaux. The lack of expert representation was seen by chairmen and members as making their active intervention to assist the appellant essential. (p 109)

### **Inquisitorial / Adversarial system**

The report noted that the lack of representation affected the hearing in a number of ways: firstly, where there was a representative at a hearing, the atmosphere was more formal and businesslike, and this may not always have been in the appellant's best interests. In such cases the tribunal focused narrowly on the legal issues, paying little attention to possible extra-legal solutions. Secondly, most respondents recognised that the absence of a representative meant that the proceedings became more drawn out, and that the inquisitorial approach could not compensate for the lack of preparation of an appellant's case which a good representative would have

undertaken prior to the day of hearing. Thirdly, the fear was expressed by a few chairmen and members that, by becoming too involved in assisting the unrepresented appellant, they would lose their objectivity and become biased in the appellant's favour. (p 109)

The overall message which came out of interviews with chairmen and members was that the inquisitorial approach was seen as being relevant in cases when an appellant attends a hearing, but has no representative. In cases where a representative is present, or an appellant is absent, the inquisitorial approach is much less in evidence. Indeed, in some circumstances it is abandoned altogether. (p 110)

---

## ***Survey and Report into the Working of Medical Appeal Tribunals (1992)***

**Sainsbury, R.**

Based on an analysis of 1,032 official tribunal records, a postal survey to which 1,028 appellants replied, observations of 38 MAT hearings and interviews with 39 appellants and 16 representatives.

Source: London, HMSO

Themes: Information provision

### **Information provision**

The appeal papers were considered helpful but criticised for their eligibility, lack of clarity, and lack of comprehensibility. The report recommends producing a summary of the contents of the papers in language comprehensible to a lay person. (p ii)

It recommends furthermore that documents should be produced in minority languages and that the reimbursement of some of the costs of an interpreter should be mentioned in the booklet 'Your Medical Appeal Tribunal'. The MAT should ensure that appellants understand the proceedings in general and the questions that they are being asked in particular (piv). It is also suggested that the addresses of local advice agencies should be made more prominent in the tribunal literature. (p v)